

VOLUME FIVE OF SIX

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Roger L. Couch, Special Circuit Court Judge

RECEIVED

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S.C. Supreme Court

RICHARD BERNARD MOORE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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1 MR. MORTON: Yes, sir.

2 THE COURT: Did he say that, something different?

3 MR. SALTER: No, sir.

4 MR. MORTON: He---

5 THE COURT: So, I'm trying to find out what's contested
6 about that conversation.

7 MR. MORTON: Well, what's---

8 THE COURT: He, in fact, said they would stipulate it
9 took place and what happened.

10 MR. MORTON: Your Honor, it was not stipulated in front
11 of the jury. And if I just can back off for a minute and be
12 a defense attorney in Mr. Morin's shoes, and be a member of
13 that jury trying to decide the motive for this case, it is
14 of the utmost importance that Mr. Morin knew exactly what
15 happened out there with Mr. Mabry, from the deputy, as
16 deputy solicitor, and his conversation with Mr. Gibson. And
17 the fact of the matter is that Mr. Morin did not know that
18 Mr. Mabry had gone and confronted Mr. Gibson with---

19 THE COURT: He, he---

20 MR. MORTON: ---his story and that---

21 THE COURT: What I, what I -- let me say something.

22 MR. MORTON: Yes, sir.

23 THE COURT: What, what it appeared to me, from reading
24 the information I've seen from the transcript, is that Mr.
25 Morin was aware that somebody from the solicitor's Office

1 went out there, that the story had not changed, and
2 apparently, through your discussions with Mr. Mabry and your
3 deposition with Mr. Gibson recently, indicates that he, in
4 fact, did have that conversation, that the story had not
5 changed. And, so, again, and they have now indicated they
6 would stipulate that the conversation took place.

7 Now, what effect that had on Mr. Morin, I'm not sure
8 what Mr. Mabry's testimony's gonna have to do with that
9 since he was no longer participating in the case, no longer
10 involved in the case, wasn't there. So, I, I -- your
11 argument with Mr. Morin's, the effect it had on his defense,
12 is reserved. Even if Mr. Mabry does not testify, if the
13 facts of that conversation are stipulated to, and so far I
14 have not heard any contested fact about that fifth day after
15 the incident conversation with Mr. Gibson.

16 MR. MORTON: Our position is that Mr. Morin knew about
17 Mr. Gibson's written statement and his statement to the
18 police officers on that night.

19 THE COURT: Uh-huh. (Affirmative).

20 MR. MORTON: That he did not know the substance of Mr.
21 Gibson's conversation with Mr. Mabry, and that that is very
22 important to the defense of this person for this witness.

23 THE COURT: And, again, I'm gonna -- I understand your
24 argument. I'm gonna deny your motion for recusal. So,
25 let's move on with the case.

1 MR. MORTON: Your Honor, we would like to proffer the
2 testimony of Mr. Mabry.

3 THE COURT: Absolutely.

4 Mr. Mabry, come forward.

5 MR. MABRY: Yes, sir.

6 THE COURT: Please swear the witness for me, Madam
7 Clerk.

8 CLERK: Yes, sir.

9 ANTHONY MABRY, having been first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please. Once you're seated,
12 state your name for the record.

13 WITNESS: James, J-A-M-E-S, Anthony Mabry, M-A-B-R-Y.

14 THE COURT: Your witness, counselor.

15 MR. MORTON: Thank you very much, Your Honor.

16 THE COURT: Yes, sir.

17 DIRECT EXAMINATION

18 BY MR. MORTON:

19 Q Good morning.

20 A Good morning.

21 Q How you doing?

22 A I'm doing fine.

23 Q You were the deputy solicitor in the Seventh Circuit --

24 A Correct.

25 Q -- when this incident at Nikki's happened, correct?

Anthony Mabry - Direct examination
by Mr. Morton

1 A Yeah, I was, I was the senior deputy. There was actual
2 two deputies, myself and Donnie Willingham. But I was the
3 senior deputy, litigation deputy.

4 Q And you stayed on after this incident until when?

5 A January 10th, 2001.

6 Q Okay. And, in fact, you were the one who served the
7 death notice on Mr. Moore, is that right?

8 A I was involved in that process, yes, correct.

9 Q So, you not only were involved in the process and the
10 investigation of this case, you actually served the death
11 notice on Mr. Moore?

12 A I didn't physically serve it on him. I believe Mr.
13 Clevenger might of done that, but I was involved in the
14 decision to seek the death penalty, and Mr. Gossett, I
15 believed, signed the notice and I had my investigator serve
16 him with it.

17 Q Okay. Was that done in court?

18 A No, sir, I believe that was just served on him -- what
19 we typically did was we served a death notice on the
20 defendant at the jail and we served the public defender with
21 a copy I believe.

22 Q Okay. During this investigation, you had the
23 opportunity to go to speak to Mr. Gibson --

24 A Correct.

25 Q -- who I think you'll agree was an important witness?

Anthony Mabry - Direct examination
by Mr. Morton

1 A He was an important witness on motive. I don't
2 think -- he wasn't critical to the armed robbery or the
3 murder, but he was an important witness as to motive.

4 Q What, what would have been the motive if he didn't
5 provide it?

6 A Well, it would still be robbery because the fact, the
7 way the facts played out, Terry Hadden was in, inside the
8 convenience store and Mr. Hadden, according to Mr. Hadden's
9 statement, as I understood it, Mr. Moore came in, put some
10 items on the counter, and then he heard the victim say what
11 the hell are you doing. And when he -- then he turned
12 around and he saw Mr. Moore had the victim's, both the
13 victim's hands held down on the counter and Mr. Moore turned
14 and fired a shot at Mr. Hadden, and then he fell, as you
15 said, and played dead, and then gunfire erupted, erupted
16 both ways.

17 So, just from those facts, you can infer a, a motive to
18 commit a robbery. If you take that with additional facts,
19 that after the shooting Mr. Moore went around behind the
20 counter, took all the video poker money, and then left the
21 store. Additionally, when Mr. Moore left the store, as you
22 come out of the store, if you look kind of to the right, you
23 can see Spartanburg Regional Hospital. Mr. Moore was
24 wounded.

25 If, if you're wounded, you need to go to the hospital,

Anthony Mabry - Direct examination
by Mr. Morton

1 you would take a right, go under 585, take a left at like
2 the second red light, where Charlie Hodge's office use to be
3 on the right, and you would be at the emergency room. It's
4 about a two, maybe a two minute drive max to the, three
5 minutes maybe, to the emergency room.

6 And Mr. Moore took a left out the store instead with
7 the money, and went, I don't remember how many miles, and
8 went to Mr. Gibson's residence in the middle of the night,
9 about three o'clock in the morning. So -- and there was no
10 question he took the money.

11 So, that -- there was motive there other than Mr.
12 Gibson's testimony. But Mr. Gibson's testimony would have
13 framed -- plus there was testimony from a nurse in the
14 medical records that he had cocaine or he told the nurse he
15 had cocaine that night.

16 Q So, I don't---

17 A There was more than just Mr. Gibson in this case. But
18 he was an important witness because he, he added,
19 eventually, that Mr. Moore had come there earlier, and then
20 came back later and had money, at the time, to buy cocaine.

21 Q And I'm not gonna get too far afield about the facts of
22 this case, but---

23 A Right.

24 Q ---what weapon did Mr. Moore bring in to rob Mr.
25 Mahoney with?

Anthony Mabry - Direct examination
by Mr. Morton

1 A My understanding, he brought no weapon in.

2 Q Okay.

3 A He came in, took the .45 away from Mr. Mahoney, and
4 shot Mr. Mahoney with the .45. That's my understanding.

5 Q And your understanding is that he, he only took that
6 weapon from Mr. Mahoney after Mr. Mahoney pulled it out?

7 A Correct.

8 Q Okay.

9 A But that would of been after Mr. Mahoney made the
10 statement what the hell are you doing. So, that's an --
11 there's an inference that Mr. Moore was trying to commit a
12 common law robbery before Mr. Mahoney pulled out the .45.

13 Q So, your investigation finally concluded that, that
14 Mr. Moore did not have a weapon when he came into the store?

15 A I don't remember what -- if that wasn't -- I don't
16 think that was concluded until the ballistics came back and
17 the victim's family actually or the people that owned
18 Nikki's actually confirmed who the guns belonged to.

19 Q Okay. And the guns belonged to Mr. Mahoney?

20 A Correct.

21 Q So, the theory then is that Mr. Moore came in there
22 unarmed, somehow --?

23 A Perhaps.

24 Q -- took, took Mr. Mahoney's .45 from him, a shoot-out
25 incurred --

Anthony Mabry - Direct examination
by Mr. Morton

1 A Correct.

2 Q -- and that the reason he went in to do that was so
3 that he could go get money to go buy cocaine?

4 MR. SALTER: Your Honor, I'm gonna object. We've gone,
5 we've gone far beyond Mr. Mabry's, any possible involvement
6 Mr. Mabry had as we---

7 THE COURT: I think, I think we have. We're not, we're
8 not trying the PCR yet.

9 MR. MORTON: Yes, sir, I understand.

10 THE COURT: We're going to in a minute if we get there.

11 MR. MORTON: Yes, sir.

12 THE COURT: So, this is a proffer concerning Mr. Gibson
13 and the statement that he made.

14 MR. MORTON: Yes, sir.

15 Q Mr. Gibson provided you with an important or provided
16 the solicitors who actually prosecuted this case with a very
17 important element, and that was motive to go into Nikki's
18 store and rob Mr. Mahoney.

19 A Well, as I, as I said at the time, and we'll get to in
20 a -- I'm sure we're gonna get to what Mr. Gibson told me.
21 At the time he had given, he did not provide anything
22 because he was saying that Mr. Moore came to his house and
23 only wanted to take him to the hospital. What -- as far as
24 this issue, there was, there was evidence in the file that
25 led us to believe that this was motivated to get drugs. Not

Anthony Mabry - Direct examination
by Mr. Morton

1 motivated that he went -- he went to Mr. Gibson's house to
2 get drugs, and one of the things in the file was that as
3 soon as the robbery occurred, the shooting and the murder,
4 that the police officer went immediately to a, a known crack
5 house looking for the perpetrator. And when he got to that
6 known crack house, that's when he found Mr. Moore back, came
7 upon Mr. Moore as he backed into a telephone pole.

8 So, there were -- I can't -- I can only tell you at the
9 time that I was investigating the case we already believed
10 or were suspicious that this crime was motivated to get
11 money for drugs.

12 Q So, armed with that information, you went to confront
13 Mr. Gibson?

14 A No, that's not correct. We went -- I went to interview
15 Mr. Gibson because this was a potential death penalty case.

16 Q But---

17 A And he was a witness. Let me, let me finish. And I
18 had read his statement about Mr. Moore coming to his home
19 and asking to take him to the hospital. But I believed
20 there was more involved than that, than Mr. Moore asking to
21 take him to the hospital. It did not make sense to me based
22 on the facts as I knew it.

23 Q Okay. So, after -- had you had an opportunity to
24 review Mr. Gibson's statement, and with what you believed to
25 be the motive in this case, you went to Mr. Gibson's house?

Anthony Mabry - Direct examination
by Mr. Morton

1 A Correct. That would of been two to three days,
2 something like that, after the robbery and murder.

3 Q Tell us what happened.

4 A Okay. I went there---

5 Q Can I show -- I'm just gonna show the Court, you don't
6 have to look at this now, but I have these two photographs.
7 They're, they're photographs of the store.

8 THE COURT: Any objection from the State of me viewing
9 the photographs?

10 MR. SALTER: No, Your Honor.

11 MR. MORTON: It's probably not the right time, time,
12 but I---

13 THE COURT: All right. Pass them up please. Thank
14 you.

15 MR. MORTON: I'm sorry.

16 THE COURT: All right. You may proceed.

17 MR. MORTON: I'm sorry.

18 THE COURT: That's all right.

19 A It was Solicitor Gossett, myself, possibly Mr. Dyer,
20 who was our chief investigator and administrative, and maybe
21 Mr. Clevenger. Maybe Detective Denton met us out there. I
22 can't remember. But we went to Mr. Gibson's house, which is
23 kind of in an old subdivision, 1940's, 50's subdivision as I
24 remember it down a little two lane road. We went to Mr.
25 Gibson's house.

Anthony Mabry - Direct examination
by Mr. Morton

1 I went up and knocked on the door. Somebody came to
2 the door first. I thought it was his son, Mr. Gibson's son.
3 He said Mr. Gibson did not want to talk to us. I continued
4 to talk with the son because I wanted to speak with
5 Mr. Gibson. He got Mr. Gibson to come to the door.
6 Mr. Gibson stepped outside, and I spoke with Mr. Gibson at
7 that time.

8 He told me the same story that he told the police the
9 night of the murder or the, in his initial statement. I
10 communicated to him, during the conversation, that I did not
11 believe his story. I believe I -- and I don't remember
12 exactly how I communicated it to him. It's been 11 years.
13 But I may have asked him, probably asked him did he come
14 here to get drugs. That may of been the way I communicated
15 to him, may of just told him that doesn't make any sense or
16 I believe you. I don't remember the exact words.

17 But he stuck by the story. He said no, that's not what
18 happened. He, he asked me to take him to the hospital. I
19 got back in the car, in the car, and told solicitor Gossett,
20 and whoever else was in the car with us, that he was
21 sticking by the original story, and he was, he wasn't coming
22 clean or he wasn't telling us about the drugs.

23 Q Okay. Did the jury hear any of this?

24 A No, sir.

25 Q And why is that?

Anthony Mabry - Direct examination
by Mr. Morton

1 A I was not called as a witness.

2 Q Okay. And why is that?

3 A I left the Solicitor's Office on January the 10th,
4 2001. I had nothing, that I remember, to do with this
5 particular case after that.

6 Q So, during that---

7 A And, and I never told anyone outside of our office
8 about the conversation.

9 Q Never told Mr. Morin?

10 A No.

11 Q Would it have been, you think, Brady material to tell
12 Mr. Morin?

13 A No.

14 Q Okay. Why is that?

15 A Because when I told the witness that I did not believe
16 him or what, however I communicated it to him, it didn't
17 make sense to me or was he there to get drugs, he didn't
18 change his story. He said no, he was here and to ask me to
19 go to the hospital.

20 Q Which then, upon Mr. Gibson's testimony in front of the
21 jury, became a prior inconsistent statement by him, correct?

22 A Correct. But that was also testified to before the
23 jury. He took -- he testified -- it was testified to before
24 the jury. He talked to us two or three days after the
25 crime, and it was also before the jury that he did not

Anthony Mabry - Direct examination
by Mr. Morton

1 change his story until Mr. Gowdy met with him.

2 Q I don't see that. I'm not, I'm not here trying to
3 argue with you.

4 A Well, you're testifying right now. That's not even a
5 question.

6 Q But -- well, yeah. Well, I'm testifying. You and I
7 have had this conversation before, but---

8 MR. SALTER: Your Honor?

9 THE COURT: I'm gonna caution---

10 MR. MORTON: Yes, sir.

11 THE COURT: ---the attorney and the witness---

12 WITNESS: Yes, sir, I'm sorry.

13 THE COURT: ---not to argue.

14 Q Mr. Morin did not know of the details of this
15 conversation with Mr. Gibson in that there were four or five
16 law enforcement officials that came to his house three or
17 four days after this incident?

18 MR. SALTER: Your Honor, now he's asking Mr. Mabry to
19 speculate as to what Mr. Morin may or may not have known.

20 MR. MORTON: Well, he just said he didn't tell him.

21 THE COURT: Well, again, he didn't participate in the
22 trial. I'm thinking you're asking him for some knowledge.
23 You want to lay a foundation for what he might know of what
24 occurred at trial other than what's in the transcript.

25 Q Okay. You didn't memorialize -- back to the point, you

Anthony Mabry - Direct examination
by Mr. Morton

1 didn't make a statement or nobody in that car wrote out
2 anything that y'all had questioned Mr. Gibson about or what
3 he had told you?

4 A Not that I'm aware of. I haven't been through the
5 solicitor's file.

6 Q Okay.

7 A And I had a computer that I worked off of, old Doss
8 computer, and when I left in January, that, that thing --
9 everything was deleted off of that computer. So, if it was
10 on there, it's gone. If it was -- if it's in the file, I
11 haven't looked in the file to see if there was a note. I
12 don't remember making any notes about that.

13 Q As I, as I understand what your testimony is though
14 that there were several of you who went to Mr. Gibson's --

15 A At least three.

16 Q -- house?

17 A At least three and there was a policeman that met us
18 out there cause we wanted to talk to him, but we also wanted
19 to see where he hit the telephone pole and where, where he
20 laid down on the ground, those type of things.

21 Q So, there were at least three from your office---

22 A Right.

23 Q ---and a police officer?

24 A Correct.

25 Q And---

Anthony Mabry - Direct examination
by Mr. Morton

1 A But, but nobody -- I was the only one that talked to
2 Mr. Gibson about, that I remember about the incident.

3 Q And as you indicated, you communicated to him, at
4 least, that you didn't believe that Mr. Moore came over
5 there to get a ride to the hospital and---

6 A Correct.

7 Q ---in fact, you indicated to Mr. Gibson that y'all's
8 believe was that he came over there to get crack?

9 A I communicated to him, as I said, that I didn't believe
10 him and I believe I asked him that question and that may of
11 been the way I communicated it was did he come over here to
12 get drugs, or something like that, and he denied it. I --
13 what I remember is that set him, that seemed to kind of
14 anger him and set him off when I said that. But he did not
15 come off of it. I mean he did not say -- he said no, he
16 can't -- it's just like I told y'all, he came over here and
17 asked me to take him to the hospital.

18 Q And he remained steadfast in that story when he talked
19 to you?

20 A He did two to three days after the crime.

21 Q Which you would agree with me that that then became a
22 prior inconsistent statement that was subject to Mr. Gibson
23 to cross-examination---

24 MR. SALTER: Your Honor---

25 Q ---from Mr. Morin --

Anthony Mabry - Direct examination
by Mr. Morton

1 MR. SALTER: ---now I object to that because it's not a
2 prior inconsistent statement at the time it was given. It
3 was a prior consistent -- it was a subsequent consistent
4 statement.

5 THE COURT: I've already noted that in my mind.
6 Go ahead.

7 Q -- at the time of the trial?

8 A Well, it would of been an inconsistent statement at the
9 time of the trial, but it wasn't when he told me.

10 Q I understand.

11 A He stuck by his same story.

12 MR. MORTON: well, beg the Court's indulgence,
13 indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q And the jury never knew anything about this
17 conversation.

18 would you---

19 A I disagree.

20 MR. SALTER: Objection, Your Honor.

21 A ---disagree?

22 A That's in the record.

23 MR. SALTER: It's in the record that they did.

24 Q Okay. Did the jury know that you had communicated to
25 Mr. Gibson what your belief was?

Anthony Mabry - Direct examination
by Mr. Morton

1 A That's not in the record.

2 Q Okay.

3 A So, the answer would be no.

4 Q The jury never knew that Mr. Gibson was, at least from
5 the State's prospective, someone that y'all were interested
6 in?

7 A I think that's in the record. I mean there's no
8 question about that. That's in the record.

9 Q Okay. So later---

10 A We talked -- I mean the police talked to him. We
11 talked to him a couple days later, and then Mr. Gowdy talked
12 to him again. So, I don't see how that could not be in the
13 record.

14 Q So, later Mr., Mr., Mr. Gibson picks up a couple crack
15 charges?

16 A That's correct.

17 Q Correct?

18 MR. SALTER: Your Honor, again, this is irrelevant to
19 the matter---

20 MR. MORTON: No, obviously the jury, the jury -- did
21 the jury know---

22 THE COURT: I have an objection I have to rule on.

23 MR. MORTON: I'm sorry, judge.

24 THE COURT: The objection is as to relevancy. The
25 inquiry, at this point in time, remains whether or not this

Anthony Mabry - Direct examination
by Mr. Morton

1 lawyer should be required to recuse himself, and the issue
2 is whether or not his testimony is on, according to the rule
3 that I'm going by, on a contested matter. If it involves an
4 uncontested matter, then he should -- he has the right to
5 remain in the case and testify.

6 The facts about which he's testifying, so far I've not
7 heard that they're contested. Now, the later effect, when
8 he no longer worked at the Solicitor's Office and didn't
9 participate in the trial, may be contested. It's the way
10 I'm, the way I'm hearing it so far. But I -- we need to
11 confine the questioning---

12 MR. MORTON: I have.

13 THE COURT: ---to that issue.

14 MR. MORTON: That's all I have.

15 THE COURT: All right. You wish to ask any questions?

16 MR. SALTER: Just extremely briefly, Your Honor.

17 THE COURT: Yes, sir.

18 MR. SALTER: To clarify one thing in my own mind.

19 CROSS-EXAMINATION

20 BY MR. SALTER:

21 Q Mr. Mabry, you described earlier that the emergency
22 room was relatively close to the crime scene?

23 A Correct.

24 Q When you walk up to -- when you -- if you were to walk
25 up to the door of Nikki's, could you see the emergency room?

Anthony Mabry - Cross-examination
by Mr. Salter

1 A As I remember it, you can see it. It sticks up above
2 the trees kind of to your right. From twelve o'clock, it'd
3 be like three o'clock or, or two o'clock, four o'clock,
4 something like that. You just -- all you had to do was take
5 a right, go under the bridge, go under 585. You go through,
6 I think, come to the second traffic light or the third, you
7 take a left, and then the emergency room would be up the
8 hill on your right. It's just---

9 Q So, that -- based on your understanding of the simple
10 geography and the layout of, of the hospital in relationship
11 to the store, there's no reason that Mr. Moore would have to
12 go drive to anyone else's residence in order to get him to
13 the emergency room?

14 A Well, common sense would tell you, if you're wounded,
15 you would go to the emergency room right away. That's the
16 best way I can answer that. I mean he, he could of turned
17 left, and then, you know, in an attempt to get away, and
18 then changed his mind later. But my -- the common sense, to
19 me, would be, would be, if you're shot, you turn right and
20 go straight to Spartanburg Regional.

21 Q All right. So, even when you confronted Mr. Gibson,
22 the fact that the Solicitor's Office did not believe his
23 story, he didn't change it?

24 A I didn't say the Solicitor's Office. I think it was
25 just me and him talking.

Anthony Mabry - Cross-examination
by Mr. Salter

1 Q Okay.

2 A And when I finished, we went over to the car and I
3 introduced him to Holman and whoever else was with us. But
4 I was the one that talked to him. It was just me and him
5 talking about basically the facts. He might of said
6 something to Holman about my statement is true or something
7 like that. But what I remember it was he and I talking near
8 his door about the facts of the case.

9 Q And he didn't fall off that statement at all?

10 A No, he stayed with his original statement to the
11 Sheriff's Office.

12 Q Thank you.

13 A Okay.

14 MR. SALTER: Nothing further, Your Honor.

15 THE COURT: Anything further?

16 MR. MORTON: Your Honor, nothing further for Mr. Mabry.
17 Thank you.

18 THE COURT: All right. You may step down.

19 Any other witnesses you wish to call?

20 MR. MORTON: No, sir.

21 THE COURT: Now, I -- the Court's gonna inquire about
22 Mr. Gibson's deposition.

23 MR. MORTON: Yes, sir.

24 THE COURT: You've taken his deposition.

25 MR. MORTON: Yes, sir.

Anthony Mabry - Cross-examination
by Mr. Salter

1 THE COURT: I will -- I assume that if there was some
2 testimony in there that indicates that what Mr. Mabry said
3 is not true that you would be telling me about that right
4 now.

5 Is there any inconsistent testimony in Mr. Gibson's
6 deposition or should we put it in the record as part of this
7 proffer?

8 MR. MORTON: There was no testimony from Mr. Gibson
9 about that. Nobody knew -- I never, I never knew about any
10 of this until two weeks ago.

11 THE COURT: Okay. Well, do you want to offer any
12 testimony from Mr. Gibson on this point?

13 MR. MORTON: Well, I'm gonna call Mr. Gibson as a
14 witness.

15 THE COURT: I'm talking about this motion. I've got to
16 decide the motion before I can go forward.

17 MR. MORTON: Beg the Court's indulgence.

18 THE COURT: Yes, sir.

19 (Pause.)

20 MR. SALTER: Your Honor?

21 THE COURT: Yes, sir.

22 MR. SALTER: Just so the record is clear, the State
23 does not have a copy. We've requested a copy of the
24 deposition. We do not have a copy of his deposition.

25 THE COURT: of Mr. Gibson's deposition?

Anthony Mabry - Cross-examination
by Mr. Salter

1 MR. MORTON: I'm sorry.

2 MR. SALTER: We do not have a copy of Mr. Gibson's
3 deposition.

4 MR. MORTON: Oh, I'm so sorry.

5 MR. SALTER: We were, we were never provided with one
6 by the court reporter.

7 MR. MORTON: I have copies of the deposition, Your
8 Honor. I thought they were provided one by the court
9 reporter, which I thought was standard procedure.

10 THE COURT: All right. It normally is. You want to go
11 ahead and put that in the record, let me unbreak the seal,
12 and then we'll provide it to them so we're sure we've got
13 the original. It looks like that's what that is. Thank
14 you.

15 All right. I've been handed what appears to be the
16 original deposition of George Gibson. Looks like it was
17 dated on December 16th, 2010. It is a sealed copy. The
18 record will reflect that the Court is breaking the seal, and
19 I'll return it to counsel for your use.

20 MR. MORTON: Thank you, Your Honor. And the record
21 will reveal that I'm---

22 THE COURT: Pass it over to the State.

23 MR. MORTON: Yes, sir.

24 THE COURT: The State now has the original.

25 MR. SALTER: Thank you, Your Honor.

Anthony Mabry - Cross-examination
by Mr. Salter

1 THE COURT: All right. Does that conclude your proffer
2 or is there---

3 MR. MORTON: No, sir, I was gonna call Mr. Gibson as a
4 witness, as a witness. I wonder if we could take a break, a
5 break just for one second. My client has some bathroom
6 needs.

7 THE COURT: Sure. We'll take about a ten minute break.
8 Let's leave Mr. Gibson in the hallway until such time as
9 you're ready to call him.

10 Court's in recess for about ten minutes. I'll stay on
11 the bench.

12 MR. MORTON: Thank you, Your Honor.

13 MR. SALTER: Thank you, Your Honor.

14 (WHEREUPON, a short recess was taken at this time.)

15 THE COURT: Are we ready to call Mr. Gibson as a
16 witness?

17 MR. MORTON: Yes, sir.

18 THE COURT: Ask Mr. Gibson out in the hallway to step
19 in please.

20 (The witness comes into the courtroom.)

21 THE COURT: Mr. Gibson, come down here to my left to
22 be sworn in. Right over here, sir.

23 Madam Clerk, I'm gonna ask you to swear this witness
24 for me.

25 WITNESS: where?

George Gibson - Direct examination
by Mr. Morton

1 THE COURT: Right there. You're fine.

2 GEORGE GIBSON, having been first duly
3 sworn, testified as follows:

4 THE COURT: Have a seat in the witness stand, sir.

5 (Witness complies.)

6 THE COURT: State your name.

7 WITNESS: George Gibson.

8 THE COURT: Mr. Morton, your witness.

9 MR. MORTON: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. MORTON:

12 Q Good morning, Mr. Gibson.

13 A Morning.

14 Q You were visited by Richard Moore on the night of
15 September 16th, 1999, as Mr. Moore was, came to your house
16 wounded in the arm?

17 MR. SALTER: Your Honor, I'm gonna object.

18 MR. MORTON: I'm just trying to clue him into what
19 we're talking about. I'm not---

20 MR. SALTER: He's leading the witness. I'm gonna
21 object.

22 THE COURT: Let him, let him state his objection.

23 MR. MORTON: I'm sorry.

24 MR. SALTER: I did not object when Mr. Mabry was
25 testifying because Mr. Mabry is obviously my co-counsel, but

1 I object to any leading of this witness.

2 THE COURT: Try not to lead the witness.

3 MR. MORTON: Yes, sir.

4 THE COURT: Thank you.

5 Q Mr. Gibson, do you know Richard Moore?

6 A Not personally. But I just know his name, yeah.

7 Q Okay. Did you know Richard Moore on September the
8 16th, 1999?

9 A Yeah.

10 Q Did he come to your house that night?

11 A Yes.

12 Q Okay. And did you tell the police officers that he
13 came to you -- why, why did you tell -- that night, what did
14 you tell the police officers about Mr. Moore's visit?

15 A Let me remember. I told them he came to my house and
16 he was wounded. He asked me to take him to the hospital. I
17 mean I asked him -- oh, shoot, wait a minute. Let me get it
18 together. He came to my house. He asked me a question, and
19 how I put that?

20 I can't remember too much.

21 THE COURT: Sir, you're gonna have to -- you're
22 mumbling and I can't hear what you're saying.

23 WITNESS: I'm trying to remember.

24 THE COURT: All right. The question is what you told
25 the police on the night of the incident.

George Gibson - Direct examination
by Mr. Morton

1 WITNESS: Oh, the same thing I wrote in the statement,
2 right. That he came to my house and he asked me to do
3 something for him, get him something, and I couldn't, and he
4 was wounded, and I said you need to go to the hospital.
5 That's it.

6 Q Do you remember what you told the police on that night?
7 Would a copy of your statement help you to refresh your
8 memory?

9 A I can't -- not every word -- not -- I would have to go
10 over it to really --.

11 Q Okay. Did you tell the police that night that
12 Mr. Moore came to your house for you to "get him something"?

13 A Yes. Yeah.

14 Q I'm gonna give you a piece of paper and ask you if you
15 recognize that. Tell you what I better do, I better give
16 you the switched copies if you don't, if you don't mind so
17 -- now, is that your signature at the bottom of that page?

18 A Yes.

19 MR. MORTON: Okay. Your Honor, at this time I would
20 like to mark this as Defense Exhibit 1, Applicant's Exhibit.

21 THE COURT: Any objection?

22 I assume that's a statement that was signed---

23 MR. MORTON: Yes, sir.

24 THE COURT: ---on the night of the incident?

25 MR. MORTON: Yes, sir.

George Gibson - Direct examination
by Mr. Morton

1 THE COURT: Is that right?

2 MR. MORTON: Yes, sir.

3 MR. SALTER: Your Honor, are we still on the proffer or
4 the motion?

5 MR. MORTON: Yes, sir.

6 THE COURT: Yes, sir, we're still in the proffer.

7 MR. SALTER: Okay. All right.

8 THE COURT: All right. Without---

9 MR. SALTER: I have no objection to it.

10 THE COURT: Without objection then it will be received
11 as a Applicant's Exhibit for the proffer, No. 1.

12 (WHEREUPON, the statement was marked as Applicant's
13 Exhibit No. 1 and received into evidence for purposes of
14 this hearing only.)

15 Q Now I ask you to look at Applicant's Exhibit during the
16 proffer No. 1 and tell us if that's your signature.

17 A Yes.

18 Q And can you read and write?

19 A Yeah, I can.

20 Q Okay. Did you write this?

21 A No.

22 Q That -- is this your statement as---

23 A That was my statement.

24 Q ---it was told to someone else?

25 A Yeah.

George Gibson - Direct examination
by Mr. Morton

- 1 Q Okay. You want to take a second to, to look at that?
- 2 A Uh-huh. (Affirmative).
- 3 (Pause.)
- 4 Q Have you---
- 5 A Uh-huh. (Affirmative).
- 6 Q ---had a chance to look at your statement?
- 7 A Yeah.
- 8 Q Okay. And is that the statement that you gave to the
- 9 police on the night of September 16th, 1999?
- 10 A Yes.
- 11 Q And in that statement does it mention anything about
- 12 cocaine or crack or drugs?
- 13 A No, it didn't.
- 14 Q And in your statement why did you tell the police
- 15 Richard Moore came by your house?
- 16 A In this statement?
- 17 Q Yes, sir.
- 18 A That he wanted to go to the hospital.
- 19 Q Okay. Now, later, Mr. Gibson, three or four, two or
- 20 three days later after this incident, do you remember some
- 21 solicitors or police officers coming to your house?
- 22 A Yes.
- 23 Q Okay. And do you remember Mr. Mabry or not coming, as
- 24 being one of those people?
- 25 A I -- no, cause I, at that time, he didn't have a beard.

George Gibson - Direct examination
by Mr. Morton

1 So, I don't remember him.

2 Q Okay. Do you remember what happened when they came by
3 your house?

4 A Nothing really happened. He just came by to check out
5 the scene.

6 Q Okay. Do you remember them talking to you?

7 A Only one talked to me.

8 Q And do you remember who that was?

9 A Rusty.

10 Q Rusty.

11 And that would be Mr. Clevenger?

12 A He did -- he just said, you know, he came by to check
13 out the, the scene, and wasn't nothing really said.

14 Q Did they talk to you about why Richard Moore came to
15 your house that night?

16 A No, they didn't. Nobody mentioned it.

17 Q Okay. Did they say anything to you about drugs or
18 crack cocaine or cocaine?

19 A No, they didn't.

20 Q Okay. And if you had -- you remember testifying in
21 this case?

22 A Yeah.

23 Q Okay. And if you had testified, and if you, in front
24 of the jury, if that question had been asked to you, did the
25 police, solicitors come by and talk to you about what

George Gibson - Direct examination
by Mr. Morton

1 Mr. Moore wanted that night?

2 A No, they didn't ask me that.

3 MR. MORTON: Okay. I have no more questions, Your
4 Honor.

5 THE COURT: Counselor.

6 MR. SALTER: No questions, Your Honor.

7 THE COURT: All right, sir. You may step down. I'll
8 ask you to have a seat back out in the lobby.

9 WITNESS: Yes, sir.

10 THE COURT: Thank you very much and we'll be calling
11 you later.

12 WITNESS: All right.

13 THE COURT: All right. Any further testimony in the
14 proffer?

15 MR. MORTON: No, sir, Your Honor.

16 THE COURT: All right. You wish to revisit your
17 argument?

18 MR. MORTON: Your Honor, you know, Rule 3.7, Your
19 Honor, talks about a lawyer not being an advocate unless his
20 testimony relates to an uncontested issue. I think there's
21 a contested issue here. I think the contested issue is,
22 number one, now we are diverging statements that the jury
23 did not hear about that affects this man's credibility, and
24 the, the ultimate issue at this trial was whether Mr. Moore,
25 whether Mr. Gibson can be believed or not. I think that's

1 the issue, and I think that it does not involve an
2 uncontested issue, and I think Mr. Mabry is a witness in
3 this issue.

4 THE COURT: Yes, sir.

5 MR. SALTER: I will be as succinct as possible. Your
6 Honor already understands our position. The question's not
7 whether or not Mr. Gibson contests whether or not someone
8 came by his house. The question is whether or not the
9 State, in this case, the State Attorney General's Office
10 would contest that.

11 We do not contest it, and to go back even further to
12 support Your Honor's earlier ruling, I place on the record
13 that on Page 1565, during closing argument, Mr. Morin goes
14 on, begins on Line 8, Mr. Barnette asked him after I sat
15 down, did you ever talk to anybody after the police, and he
16 said oh, yes, somebody from the solicitor's Office. An
17 investigator came out there and talked to me about three
18 days later.

19 Mr. Morin goes on and impeaches him with the fact, the
20 fact there's a pending trafficking charge, and he only
21 changed his story some, some month or so before the trial,
22 and we would stipulate again to all that.

23 THE COURT: The testimony given by Mr. Gibson, would
24 you comment on that Mr. Morton?

25 What he just gave probably makes this less of an

1 important issue and maybe not even an issue at all---

2 MR. MORTON: Well---

3 THE COURT: ---in this case.

4 MR. MORTON: ---the issue is Mr. Gibson's credibility,
5 and Mr. Morin obviously had an obligation to pursue that.
6 So that now Mr. Gibson is indicating that he would have
7 testified adversely or he testified -- his testimony would
8 be divergent from the State and what the State is now trying
9 to say is, and it's, it just needed to be explored.

10 THE COURT: Well, in looking at the rule, and I'm
11 reading the comments under the rule, and it says that the,
12 the idea or the purpose is to avoid confusion to the
13 tribunal. It says the tribunal has a proper objection when
14 the trier of fact may be confused or misled by a lawyer
15 serving both as an advocate and a witness, and they're
16 talking about the jury being confused by that occurrence or
17 the confusion that would result from that happening. We
18 don't have a jury here.

19 MR. MORTON: Yes. Yes, sir.

20 THE COURT: And I'm certainly not confused by what's
21 going on here I don't think. I'm, I'm, you know, I'm trying
22 to find out what the purpose of, of this is when the basic
23 fact that a conversation did occur is not contested. Now
24 what is in contest is the State is saying something probably
25 more in favor to your Court, case than what the witness

1 would say.

2 MR. MORTON: Any reflection on the witness'
3 credibility, Your Honor, is -- the tribunal, I submit, would
4 be Your Honor.

5 THE COURT: Yes, sir.

6 MR. MORTON: The tribunal for purpose of today's
7 hearing or this week's hearing.

8 THE COURT: Well, I'll be the finder of fact as well in
9 this case.

10 MR. MORTON: Yes, sir, as, as, as the tribunal. So,
11 we're thus -- and I'm not trying to be pedantic, but, you
12 know, Mr. Mabry is now gonna be a witness for us.

13 THE COURT: He's gonna be a witness, a witness in a
14 case. I---

15 MR. MORTON: Well, we're gonna---

16 THE COURT: I'm not sure even his testimony is
17 favorable to you, but it was --.

18 MR. MORTON: As to our obligation here, Mr. Mabry is
19 gonna be a witness, and Mr. Mabry, in his current
20 obligation, is to defend the effectiveness of Mr. Morin.
21 Our submission is that that, under Rule 3.7, presents a
22 conflict in this tribunal.

23 THE COURT: I'll hear from you.

24 MR. SALTER: Again, Your Honor, I think Mr. Mabry's
25 already testified. I don't know what else he could add in,

1 because his involvement in this case obviously ended some
2 nine months before any change in the story occurred and ten
3 months before it, before the trial. Again, Your Honor, I
4 pointed -- as Your Honor pointed out, the comments to the
5 rule talk about the confusion of the trier of fact, and
6 that's obviously -- the rule envisions the jury confusion.
7 I think Your Honor understands our position other than that
8 and I will rest on what---

9 THE COURT: All right. I'm gonna take a short recess
10 and I'll come back and make a ruling.

11 Thank you very much.

12 MR. MORTON: Thank you, Your Honor.

13 (WHEREUPON, a short recess was taken at this time.)

14 MR. MABRY: I'm sorry, Your Honor. I was speaking to a
15 witness outside.

16 MS. ARMSTRONG: Your Honor, do I need to request Mr.
17 Moore be brought in the courtroom?

18 THE COURT: You just did.

19 MS. ARMSTRONG: Oh, thank you. Sorry.

20 (WHEREUPON, the defendant comes into the courtroom at
21 this time.)

22 THE COURT: All right. In, in reviewing the motion
23 of -- the Applicant's motion is to disqualify the entire
24 Attorney General's Office?

25 MR. MORTON: No, sir, Mr. Mabry.

1 THE COURT: Oh, Mr. Mabry?

2 MR. MORTON: Yes, sir, Your Honor.

3 THE COURT: All right. And I would like to hear from
4 the State as to what hardship that might work on the State
5 if we were declared a witness in the case as opposed to an
6 attorney.

7 MR. SALTER: Well, Your Honor, in preparing for the
8 case, Mr. Mabry's been preparing for a number of witnesses
9 and I'm completely unprepared to examine those witnesses,
10 and no different than any other lawyers when we work as a
11 team.

12 THE COURT: So, he is prepared to, to handle certain
13 witnesses for the State?

14 MR. SALTER: Yes, sir, Your Honor.

15 THE COURT: So, he were recused in the matter, that
16 would mean you would be needing a continuance?

17 MR. SALTER: In order -- at least a brief one in order
18 to prepare to examine those witnesses.

19 THE COURT: What's brief?

20 MR. SALTER: I don't know. I'd actually have to sit
21 and talk to him for sometime.

22 THE COURT: Well, my concern is that, to be quite
23 honest with you, the, there is a contested question as now
24 to what was said during that conversation. Whether or not
25 that bears on whether or not the counsel acted properly or

1 improper, that's a stretch, to be quite honest with you
2 because, you know, at very -- at least your argument
3 initially was that it should of been brought up by counsel,
4 and now it's a question as to whether counsel should of
5 been, interviewed both witnesses I suppose.

6 Is that where we are?

7 MR. MORTON: Well, Your Honor, I think, I think it's an
8 issue here, sir.

9 THE COURT: Well, I know you think it's an issue, but
10 my question is what, what is the difference in the issue
11 based on the testimony that I've heard so far?

12 MR. MORTON: Well, Your Honor, you have Mr. Gibson's
13 credibility in issue. You also have the issue of the fact
14 that later on in this case Mr. Gibson was, in fact, from our
15 prospective, turned by Mr. Mabry's questioning of him,
16 and---

17 THE COURT: Well, I think the turning took place, it
18 appears, at a date much later than Mr. Mabry's
19 participation.

20 MR. MORTON: Yes, sir.

21 THE COURT: It appears.

22 MR. MORTON: Oh, yes, sir, there was, there was several
23 incidents that we---

24 THE COURT: Unless you have some information you want
25 to -- again, now's the time to tell me if there's something

1 else that I don't, I'm not aware of.

2 MR. MORTON: Well, Your Honor, again, there are -- for
3 two years Mr. Gibson was steadfast in what his testimony
4 would be. He was steadfast to Mr. Mabry, but then, again,
5 now Mr. Gibson doesn't remember talking to him. So, that's
6 the number one contested issue, but later as they---

7 THE COURT: Well, now at the trial he, he didn't
8 remember who he talked to either as I recall. He said some
9 people. He didn't know.

10 MR. MORTON: Right. It was not clear at trial, Your
11 Honor, that Mr. Gibson had, when confronted, made a prior
12 inconsistent statement to Mr. Mabry, and I think it's
13 significant in that he was communicated with by Mr. Mabry
14 and by several others. He later was arrested for
15 trafficking in crack, possession of crack, which charges
16 were pending at the time of, of this trial. After being
17 communicated with by Mr. Mabry that they thought he was
18 selling and dealing crack and this was a crack house.
19 It's -- I just -- and I'm not sure if I'm answering the
20 Court's question.

21 THE COURT: Well, again, the, the issue, in, in a
22 post-conviction relief, is whether or not your client
23 received adequate representation, and, you know, they're
24 several issues. But I'm not sure that, that, and, of
25 course, there is an issue concerning a, a Brady violation

1 that occurred, a possible issue. But that was brought up at
2 trial and ruled on by the court and is subject to appeal.

3 MR. MORTON: Well---

4 THE COURT: It could of been appealed.

5 MR. MORTON: I'm not sure, I'm not sure that it was
6 because I'm not sure that we knew of the Brady violation at
7 that point.

8 THE COURT: Well, I'm not sure one occurred to be quite
9 honest with you. It's kind of a problem there.

10 MR. MORTON: Well, we were, we were trying to convince
11 the tribunal that it did is I guess is one issue.

12 THE COURT: Well, I'm trying -- let's, let's just get
13 down to the crux of the thing. I'm not gonna allow him to
14 participate, in any way, in, in Mr. Gibson's examination,
15 cross-examination in this trial or otherwise. I'll recuse
16 him to that extent. I do find that it would work a
17 substantial hardship on the State if I were to recuse him
18 altogether.

19 I realize that the purpose of the rule is to prevent
20 the trier of fact from being confused or misled by a lawyer
21 serving as both an advocate, an advocate and a witness. I
22 do not feel that that is a, an issue in this matter because
23 I think I fully understand the issues and the, and the
24 matter, in this matter and what's, what's to be heard and
25 not heard, and the chance of my being confused or mislead by

1 that lawyer's participation is minimal at best.

2 I also find that the fact that a conversation did occur
3 is not contested. I realize that Mr. Gibson indicated that
4 drugs were not discussed and, and Mr. Mabry has indicated
5 that drugs were discussed. I think I can sift through as
6 that as well. So, I don't find that I'll be confused in
7 that, in that regard.

8 Also, Subparagraph B of Rule 3.7 provides that a lawyer
9 may act as an advocate in a trial in which another lawyer
10 and the lawyer's firm are likely to be called as a witness
11 unless precluded to do so by Rule 1.7 or 1.9. I've reviewed
12 those rules. They don't apply in this case, and I do, have
13 not heard that, in anyway, Mr. Mabry had, is privy to or has
14 any information that he may of gained from the applicant as
15 a result of his prior participation in this trial or any
16 secrets that might exist. And for that reason, I'm going to
17 allow him to participate except to the extent I will not
18 allow him to participate in anyway in Mr. Gibson's
19 examination or cross-examination during the trial of the
20 case.

21 Now, anything further on this issue?

22 MR. MORTON: I have further, but I'm not gonna say it.
23 I understand the Court's ruling.

24 THE COURT: Thank you very much.

25 Now, anything further from the State before I proceed

1 with the actual trial of the PCR?

2 MR. SALTER: No, sir, Your Honor.

3 THE COURT: All right. Now, any other motions before
4 we begin the actual hearing on the PCR?

5 MR. MORTON: No, sir, just -- I want the record -- I'm
6 sure it is clear that we except to the judge's ruling---

7 THE COURT: Oh, I'm sure---

8 MR. MORTON: We do not accept the ruling.

9 THE COURT: ---you take exception to the ruling?

10 MR. MORTON: Yes, sir. Thank you, Your Honor.

11 THE COURT: Thank you very much.

12 MR. MORTON: Yes, sir.

13 THE COURT: Now, I'd like for you to make a brief
14 opening statement if you would as to the issues you expect
15 to raise, and I'll be happy to hear from you at this time.

16 MR. MORTON: All right, sir. Your Honor, Your Honor
17 has the application. Well, what the -- the issues that we
18 intend to present are as listed under I guess Number 8 -- 9
19 and 10, I'm sorry, in that the trial judge erroneously
20 limited Mr. Moore's right of allocution.

21 THE COURT: Yes, sir.

22 MR. MORTON: Okay. I'm sorry, Your Honor. B, in that
23 trial counsel failed to conduct an adequate investigation,
24 investigation into this case as far as mitigation is
25 concerned and failed in their duty and obligation to present

1 reasonable mitigation in this case.

2 THE COURT: Yes, sir, go ahead.

3 MR. MORTON: That the trial counsel was ineffective in
4 that -- in this case there was lots of physical evidence
5 involved in that it involved bullets and shell casings and
6 fragments and blood serology, pathologist, and so forth, and
7 we believe that trial counsel failed in their regard and was
8 ineffective to the extent that they did not hire, consult,
9 or have testimony from any experts in regard to the physical
10 evidence in this case.

11 THE COURT: Yes, sir.

12 MR. MORTON: And D, because the State failed to
13 disclose Brady material as to their res gestae motive
14 witness, Mr. Gibson.

15 THE COURT: Yes, sir.

16 MR. MORTON: That the counsel was ineffective in that
17 they had a proper and legitimate Batson motion after the
18 selection of this all white jury that tried Mr. Moore and
19 they abandoned. That's, that's an issue. We intend to
20 raise that, Your Honor.

21 THE COURT: Go ahead.

22 MR. MORTON: We are, intend to raise the issue of, of
23 the, the judge's failure -- well, actually appellate
24 defendant, appellate defense lawyer's failure to raise, on
25 Mr. Moore's direct appeal, the denial of Judge Clary for the

1 request to charge by Mr. Morin and Kelly of voluntary
2 manslaughter.

3 THE COURT: Yes, sir.

4 MR. MORTON: That counsel was ineffective in presenting
5 an adaptability expert.

6 THE COURT: Go ahead.

7 MR. MORTON: Trial counsel failed to request a charge
8 on the statutory mitigating circumstance of provocation by
9 the victim. Trial counsel was ineffective in their failure
10 to request a charge on a statutory aggravating circumstance,
11 a statutory aggravating circumstance where the aggravated
12 circumstance being that the defendant acted in such a manner
13 and with a weapon that it caused, it was, the danger was
14 that it caused greater, great risk of death to more than one
15 person. That should have been argued by trial counsel and
16 it was not.

17 THE COURT: Say that once again.

18 MR. MORTON: I'm sorry?

19 THE COURT: Restate that for me.

20 MR. MORTON: Okay. One of the statutory aggravators is
21 that, whether you use a device that is likely to cause
22 danger to more than one person.

23 THE COURT: Yes, sir.

24 MR. MORTON: And our argument is that it is broad, it
25 is vague, it did not -- the Legislature's intent was not to

1 apply that statutory aggravator to a pistol.

2 THE COURT: Okay, sir. All right.

3 MR. MORTON: That the appellate defender was
4 ineffective in that he failed to raise an issue on direct
5 appeal that Judge Clary was, should not have admitted the
6 res gestae testimony of Mr. Gibson and a nurse who came and
7 testified that Mr. Moore was under the influence of cocaine,
8 and that trial counsel was ineffective in not objecting to
9 that nurse's testimony at the trial level as being improper
10 hearsay.

11 THE COURT: All right, sir. Is that it?

12 MR. MORTON: Yes, sir.

13 THE COURT: All right. State.

14 MR. SALTER: Yes, sir, just briefly, Your Honor.

15 With respect to his Ground A, the limitation of right
16 to allocution, it is our position that the judge did not
17 limit the right to allocution. Also I think Your Honor will
18 hear testimony that counsel previously advised their client
19 as to his ability to ask for mercy.

20 As Ground B, I think the State evidence will show that
21 there was reasonable investigation for mitigation evidence.
22 They hired an expert to assist them in this regard. The
23 family was uncooperative and Mr. Moore himself did not
24 provide much assistance in that, in developing that
25 information because of a fall-out he had with his family.

1 With respect to failure to rebut the state's physical
2 evidence, I think Your Honor will hear reasonable efforts
3 were made by counsel to rebut that physical evidence
4 including the fact that they retained both a crime scene
5 expert, a forensic pathologist, and an investigator.

6 We submit there is no Brady violation with respect to
7 Mr. Gibson. Mr. Gibson's statement that was a matter,
8 again, that I think, I think it all came out at trial.

9 With respect to abandoning the Batson motion, I think
10 that the record will reflect that the reason advanced by the
11 prosecution for the strikes were, in fact, race neutral.
12 The failure to raise the denial of voluntary manslaughter
13 request is at issue on direct appeal. We would submit that
14 there would not be any ineffectiveness on appellate
15 counsel's part because there was no evidence to support
16 voluntary manslaughter.

17 With respect to the failure to present adaptability to
18 prison evidence, the evidence before the court will be that
19 they, that counsel, in fact, hired an expert, but made a
20 strategic decision not to present it.

21 There will also be evidence as to a strategic reason
22 for not requesting a jury instruction that victim provoked,
23 provoked the confrontation.

24 With respect to the failure, the failing to object to
25 the statutory aggravator about a gun is a weapon that can,

1 is capable of causing death and serious bodily harm to more
2 than one person, I would point out that State versus
3 Locklair, L-O-C-K-L-A-I-R, is already addressed that issue,
4 and says that a handgun can fall in the definition of the
5 statute.

6 As to the failure of Appellate Defense to raise the res
7 gestae testimony, we'd submit that the testimony was
8 properly admitted. There was no objection reserved for, for
9 the appellate defender to raise the issue, and we submit
10 that trial counsel would have a strategic reason for not
11 objecting to the testimony.

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

13 The Applicant may call its first witness.

14 MS. ARMSTRONG: Thank you, Your Honor.

15 May it please the Court?

16 THE COURT: Yes, ma'am.

17 MS. ARMSTRONG: Applicant calls Pete Skidmore.

18 THE COURT: Come forward, sir, to my left and be sworn.

19 PETE SKIDMORE, being first duly
20 sworn, testified as follows:

21 THE COURT: Sir, have a seat and state your name for
22 the record.

23 WITNESS: Peter Gordon Skidmore.

24 THE COURT: Your witness.

25 MS. ARMSTRONG: Thank you.

Pete Skidmore - Direct examination
by Ms. Armstrong

1 DIRECT EXAMINATION

2 BY MS. ARMSTRONG:

3 Q Good morning, Mr. Skidmore.

4 A Morning.

5 Q Mr. Skidmore, how are you employed?

6 A I'm a private licensed investigator through SLED.

7 Q Okay. And that's the State of South Carolina?

8 A Yes.

9 Q Okay. And how long have you been a private
10 investigator?

11 A A little over 17 years.

12 Q Okay. And did you have some involvement in the case of
13 Richard Moore?

14 A I did.

15 Q Okay. And do you recall when you first became involved
16 in Richard Moore's case?

17 A Sometime I believe in '01.

18 Q And just so it's clear for the record, you became
19 involved in Mr. Moore's case at the trial level?

20 A Yes.

21 Q Okay. Do you recall who your first contact was with
22 the defense of Mr. Moore, the person that you spoke with?

23 A The attorney that was representing Mr. Moore, and I
24 believe that was Attorney Morin, is that right?

25 Q Yes, sir, there were two, Morin and Mr. Kelly.

Pete Skidmore - Direct examination
by Ms. Armstrong

1 A Yes.

2 Q Okay. So, Mr. Morin contacted you and what did he tell
3 you about the case?

4 A It's been quite sometime, and I apologize for that, but
5 we just went over the facts of the case. He gave me
6 discovery at that particular time.

7 Q Okay.

8 A I think we had a couple meetings before I actually got
9 out and started investigating as I remember.

10 Q Okay. And, so, you met with Mr. Morin and you
11 received some discovery and did you have -- did either Mr.
12 Morin or Mr. Kelly or both give you sort of your marching
13 orders?

14 I mean what did they tell you to do?

15 A Pretty much they gave me several witnesses that they
16 would like for me to go out and try to find and interview.

17 Q Okay. And now, if I understood, based on the, the
18 funding order that was submitted for both you and the
19 mitigation investigator, Drucy Glass, you were primarily a
20 fact investigator?

21 A That's correct.

22 Q Okay. And a fact investigator, just again so it's
23 clear for the record, that's typically someone who deals
24 with the first phase issues, the guilt phase issues?

25 A Yes.

Pete Skidmore - Direct examination
by Ms. Armstrong

1 Q okay. In this case, did you deviate from that role at
2 all?

3 A Not, not much. I believe they asked me, at some point
4 maybe, to try to locate some folks and then at some point I
5 handed that off to Ms. Glass.

6 Q okay. So, how would you describe your working
7 relationship with Mr. Moore?

8 A Mr. Moore?

9 Q Yes, sir.

10 A Well---

11 Q Did you have one?

12 Did you meet?

13 A Yes, we did. We had a good relationship.

14 Q Okay. When he -- when you asked him questions, you
15 felt like he would give you answers---

16 A Yes.

17 Q You were confident about that?

18 A Yes.

19 Q Okay. All right. Did you -- was there ever a time
20 when you were involved in the penalty phase investigation?

21 A There again, I don't believe so. I may of been asked
22 to try to find some witnesses. But the -- from my
23 prospective, there wasn't much investigation going on in
24 that area that I was aware of.

25 Q Okay. If you'd been asked to conduct an investigation,

Pete Skidmore - Direct examination
by Ms. Armstrong

1 in your line of work, typically how do you do that?

2 A well, we sit down with Mr. Moore and go -- you're,
3 you're speaking of the mitigation aspect of it?

4 Q Private investigations in general.

5 A Okay.

6 Q what is the method that is basically the standard for
7 investigating witnesses?

8 A Okay. Typically we would sit down with the attorney
9 and then I would go and meet with the client and see what
10 his version of the facts were versus the law enforcement's
11 version of the facts and see how much deviation was there.
12 He may know some witnesses that law enforcement doesn't
13 know, and I would go and try to locate those witnesses,
14 interview those witnesses, also look at the forensic stuff.
15 I'm not anywhere near an expert in forensic.

16 Usually, at that point in time, somebody would be
17 called in that is an expert and we may work together, me
18 developing the witnesses and him matching up what the
19 forensic evidence points toward, and see, you know, if any
20 of those kind of come together and work for our, our favor.

21 Q Okay. So, you're fairly interactive with other experts
22 as well as the attorneys and the client?

23 A Yes.

24 Q Okay. In Mr. Moore's case, do you recall ever having
25 a, a team meeting or a meeting of the minds about the

Pete Skidmore - Direct examination
by Ms. Armstrong

1 forensics in this case?

2 A No.

3 Q Okay. Do you recall ever working with, I believe it's
4 Don Girndt may of been retained?

5 A On this case, no.

6 Q Okay. Any other forensic experts, crime scene
7 reconstruction, anything?

8 A No.

9 Q Okay. But in your line of work, would you say that
10 that's typical or the standard?

11 A Very much so in a death penalty case, yes.

12 Q Okay. All right. And as part of your investigation,
13 did you, did you ever identify or do you recall identifying
14 any forensic issues that should of been explored?

15 A I, I don't recall.

16 Q Okay. All right. And, so, it's been nine years?

17 A Yes.

18 Q And let me just ask you a question generally about
19 private investigations.

20 Is that typically something that you do -- how do you
21 make contact with people who are potential witnesses?

22 A I, I go face-to-face. I go where I have an address
23 possibly to try to track down that person and talk to them
24 face-to-face.

25 Q would you say that's standard in private investigation?

Pete Skidmore - Direct examination
by Ms. Armstrong

1 A It's my standard, and I -- if it's not, it should be,
2 in my opinion.

3 Q Okay. And why is face-to-face the preferred method?

4 A Well, you get to see what type of body language the
5 person has going on, and you, you get more of a one-on-one
6 relationship and rapport built with that individual, and it
7 just works much better than communicating via mail or via
8 telephone, in my opinion.

9 Q Okay. And you've been a private investigator you said
10 18 years?

11 A Close to 18, yes.

12 Q Okay. And, Mr. Skidmore, in death penalty cases, is --
13 what is your standard practice?

14 Do you do some investigation and drop out or, or what
15 do you -- how do you handle death cases?

16 MR. SALTER: Your Honor, I'm not sure -- I've allowed
17 it to go on so far, but I'm not sure she's laying a proper
18 foundation for him to testify as to what should of gone on
19 in death penalty cases.

20 MS. ARMSTRONG: I'm asking him, as a private
21 investigator, what is the standard for conducting
22 investigation. He's a licensed private investigator.

23 THE COURT: I understand that, but I'm not sure --
24 well, I'll let you ask the question, and we'll see what he
25 says.

Pete Skidmore - Direct examination
by Ms. Armstrong

1 A Would you repeat the question?

2 I'm sorry.

3 MS. ARMSTRONG: All right. I'll narrow it---

4 THE COURT: Thank you.

5 MR. ARMSTRONG: ---somewhat.

6 Q Mr. Skidmore, when you assisted Attorneys Morin and
7 Kelly in, in this case, how long were you involved?

8 What was the time frame?

9 Were you involved in it up until the end or---

10 A No, I was not. I, I started out and then, at some
11 point, it just kind of stopped. I mean they were no
12 meetings, no more meetings. I wasn't aware of when we were
13 going to trial and it just kind of stopped.

14 Q Okay. But if you had been asked to do further
15 investigation you would of done so?

16 A Yes.

17 Q Okay. Thank you. I have no further questions. Please
18 answer anything that Mr. Salter may have.

19 CROSS-EXAMINATION

20 BY MR. SALTER:

21 Q Mr. Skidmore, how are you doing this morning?

22 A Good. How are you?

23 Q I'm doing fine. Thank you. Good to you see again.

24 A Good to see you.

25 Q Just -- I'll be real brief.

Pete Skidmore - Cross-examination
by Mr. Salter

1 You talked about you prefer face-to-face interviews
2 with someone?

3 A Yes.

4 Q That doesn't always pan out, does it?

5 A Not always.

6 Q I mean sometimes people just won't even talk to you?

7 A Yeah, but usually that is face-to-face with me. I do
8 not do very much telephone interview at all.

9 Q Would you agree that sometime you don't have any choice
10 but to do a telephone interview or communicate with someone,
11 with someone, in some other matter other than face-to-face?

12 A In very rare occasions.

13 Q All right. Now, you testified that you were asked and
14 interviewed, or at least attempted to interview a number of
15 witnesses.

16 You did what you were asked to do, did you not?

17 A Yes.

18 Q Okay. And you reported your findings back to counsel?

19 A Yes.

20 Q So, they had whatever information that you provided to
21 them?

22 A Yes.

23 Q All right, sir. Do you remember who, who all you
24 interviewed?

25 A I, I don't off the top of my head. I'm sorry.

Pete Skidmore - Cross-examination
by Mr. Salter

1 Q Well, do you have like a -- I've been provided with a
2 copy of, labeled statement.

3 Do you have a record that you would of submitted so
4 that you could get paid for the work you did?

5 A Yes.

6 With me?

7 Q Yes, sir.

8 A No.

9 Q You don't have a copy of that?

10 A No.

11 MR. SALTER: Your Honor, I don't have -- do you have an
12 unmarked copy?

13 Thank you.

14 MS. ARMSTRONG: Yes.

15 THE COURT: You may approach.

16 MR. SALTER: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 Q I show you a document, Mr. Skidmore, and ask you, I ask
19 if you can identify that.

20 A That is our billing statement for this case.

21 Q All right, sir. Your billing statement -- excuse me,
22 Your Honor. Your Honor, I'll move to introduce that as
23 Respondent's Exhibit 1.

24 THE COURT: Any objection?

25 MS. ARMSTRONG: No objection.

Pete Skidmore - Cross-examination
by Mr. Salter

1 THE COURT: Without objection it will be marked as
2 State's Exhibit No. 1.

3 You want to pass it to the court reporter---

4 MR. SALTER: Yes, sir.

5 THE COURT: ---so it can be marked please?

6 (WHEREUPON, the billing statement was marked as
7 Respondent's Exhibit No. 1 and received into evidence at
8 this time.)

9 Q Thank you, Mr. Skidmore.

10 Before I even ask you any questions about that
11 document, did you have anyone assisting you doing your
12 investigative work?

13 A Yes.

14 Q All right. And who would that have been?

15 A Investigator Cooper, Tom Cooper.

16 Q All right, sir. Do your records reflect an entry for
17 September, I'm sorry, for July 23rd of 2001?

18 A Yes.

19 Q And does it not indicate there that you reviewed the
20 case and evidence?

21 A Yes.

22 Q So, you, you did, in fact, review the evidence in, that
23 was available in this case, correct?

24 A As far as I know, yes.

25 Q All right. And on September -- those records indicate

Pete Skidmore - Cross-examination
by Mr. Salter

1 that you subsequently reviewed the case a couple of times---

2 A Yes.

3 Q ---correct?

4 And you met with Mr. Moore and talked to him?

5 A Yes.

6 Q What did, what did you discuss with Mr. Moore?

7 A I'm sure we went over the discovery after I got the
8 discovery, and any potential witnesses, things like that,
9 and it has been a long time, and to be honest, I don't
10 remember a whole lot.

11 Q I understand.

12 Well, nine and a half years?

13 A Right.

14 Q Okay. Do you recall an Ann Yarborough?

15 A Where would that be?

16 Q I'm sorry. That would be under July 26th of 2001.

17 A Yes.

18 Q Do you remember who she was?

19 A I believe she was working or at, at the store where the
20 incident occurred.

21 Q All right.

22 A Best of my knowledge.

23 Q All right, sir. That same entry indicated that you
24 attempted to locate both George Gibson and Terry Hadden?

25 A Yes.

Pete Skidmore - Cross-examination
by Mr. Salter

1 Q All right. You -- did you thereafter obtain an address
2 and speak to Mr. Hadden?

3 A Yes.

4 Q Okay. There's an, there's an entry here dated
5 August 29th of 2001 where Mr. Cooper traveled to
6 Spartanburg and located subjects and conducted interviews?

7 A Yes.

8 Q Do you know who those subjects were?

9 A Off the top of my head, no, but I'm sure there were
10 witness statements given to the attorneys.

11 Q Okay. Who is Mario Madison?

12 A I don't---

13 Q You don't recall?

14 A ---recall.

15 Q Okay. Now, with respect to the efforts that counsel
16 may of been making to develop a case in mitigation, you just
17 didn't have any role in that, correct?

18 A Not really, no.

19 Q I see.

20 A Other than trying to help locate some witnesses.

21 Q Okay. And, so, if counsel had -- did they, in fact,
22 had Ms. Glass working on that, did they not?

23 A Yes.

24 Q And they didn't necessarily -- because you were working
25 on the guilt side of it, they didn't necessarily communicate

Pete Skidmore - Cross-examination
by Mr. Salter

1 with you any findings they may have, right?

2 A That's true.

3 Q Okay. Do you, do you recall who a Laurie Turner is,
4 and I would refer you to an entry dated October 16th of
5 2001.

6 A I don't recall.

7 Q And that entry indicates that you spoke to her through,
8 by telephone for 30 minutes, right?

9 A Right.

10 Q And was she someone that, that the defense thought
11 should, would testify?

12 A I don't know if the defense thought she'd testify. It
13 could of been they wanted to see if it would develop into a
14 witness.

15 Q Okay. Do you -- on the very last page of Respondent's
16 Exhibit 1 there's an entry for October 19th of 2001?

17 A Yes.

18 Q It says you interviewed George Gibson?

19 A Yes.

20 Q And it says you also reviewed a statement with him,
21 right?

22 A That's correct.

23 Q And what did you say his answers were?

24 A I think it was a second or third statement, and he was
25 going along with the last statement that was provided to me

Pete Skidmore - Cross-examination
by Mr. Salter

1 to go over with him.

2 Q All right. So, you interviewed him after he changed
3 his story?

4 A Yes.

5 Q Okay. And you reported that back to counsel?

6 A Yes.

7 Q All right.

8 THE COURT: What date was that on that exhibit, sir?
9 What was the date on the exhibit for that?

10 MR. SALTER: It's October, October 19th, Your Honor.

11 THE COURT: Thank you.

12 MR. SALTER: 2001.

13 THE COURT: Yes, sir.

14 MR. SALTER: Nothing further, Your Honor.

15 THE COURT: Redirect?

16 MS. ARMSTRONG: Just a few questions, Your Honor.

17 REDIRECT EXAMINATION

18 BY MS. ARMSTRONG:

19 Q Pete, I believe Mr. Salter asked about your involvement
20 in the penalty phase, and you said that you had minimal
21 involvement trying to find some witnesses?

22 A Yes.

23 Q Okay. And did you travel out-of-state searching for
24 witnesses or was this in South Carolina?

25 A This was in South Carolina.

Pete Skidmore - Redirect examination
by Ms. Armstrong

1 Q Okay. You never went to Michigan?

2 A No, I never went to Michigan.

3 Q Okay. And as far as interviewing Mr. Gibson with his
4 sort of new and improved version of events, you -- do you
5 recall when you did that?

6 Would it have been during the trial?

7 A No, I wasn't involved in the trial at -- I mean it
8 wouldn't of been during -- I, I wasn't here during the trial
9 --

10 Q Okay.

11 A -- the best I remember or recall.

12 Q Okay. And obviously -- just one final question.

13 This -- excuse me. Respondent's Exhibit No. 1, which
14 is your billing statement---

15 A Yes.

16 Q ---does that accurately reflect the dates and hours
17 spent working on this case?

18 A Best of my knowledge, yes.

19 Q Okay. Thank you.

20 Have no further questions.

21 THE COURT: Recross.

22 MR. SALTER: Nothing further, Your Honor.

23 THE COURT: You may step down.

24 WITNESS: Thank you.

25 THE COURT: Do you wish to excuse the witness?

Wilbert Casey - Direct examination
by Mr. Morton

1 MS. ARMSTRONG: Yes, Your Honor.

2 May the witness be excused?

3 THE COURT: Any objection?

4 MR. SALTER: Without objection, Your Honor.

5 THE COURT: Sir, if you'll leave the exhibits you're
6 free to go.

7 WITNESS: Thank you.

8 THE COURT: Thank you very much.

9 WITNESS: You have a good day.

10 THE COURT: Yes, sir, you too.

11 Applicant may call its next witness.

12 (Pause.)

13 THE COURT: Sir, if you'll come forward to my left over
14 here to be sworn in.

15 WILBERT CASEY, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat please, sir.

18 (Witness complies.)

19 THE COURT: State your name.

20 WITNESS: Wilbert Lee Casey.

21 THE COURT: Thank you.

22 You may proceed, counselor.

23 DIRECT EXAMINATION

24 BY MR. MORTON:

25 Q Mr. Casey, my name is Jim Morton, and I believe that

Wilbert Casey - Direct examination
by Mr. Morton

- 1 you're a friend of -- are you a friend of Mr. Gibson's?
- 2 A Yes.
- 3 Q Okay. Are you still a friend of his?
- 4 A Yes.
- 5 Q Were you a friend of his on September 16th, 1999?
- 6 A Yes, sir.
- 7 Q Were you at his house that night?
- 8 A Yes.
- 9 Q Do you remember Mr. Moore coming to Mr. Gibson's house
- 10 that night?
- 11 A Yes.
- 12 Q Do you remember the fact that Mr. Moore had been shot
- 13 in the arm?
- 14 A Yes.
- 15 Q Do you remember someone telling Mr. Moore he needed to
- 16 go to the hospital?
- 17 A Yes.
- 18 Q Do you remember any conversation about crack cocaine?
- 19 A No, I don't.
- 20 Q Did Mr. -- were you interviewed by the police?
- 21 A No.
- 22 Q Were you interviewed by any attorneys?
- 23 A No.
- 24 Q Any attorneys' investigators?
- 25 A No, only -- anytime I talked to investigators last week

Wilbert Casey - Direct examination
by Mr. Morton

1 when they came to my house with a subpoena.

2 MR. MORTON: Okay. Beg the court's indulgence.

3 THE COURT: Yes, sir.

4 (Pause.)

5 Q Please answers any questions that one of these
6 gentlemen will have for you.

7 Can I---

8 THE COURT: You may cross-examine.

9 MR. MORTON: ---hold one on second, Your Honor?

10 THE COURT: Yes, sir.

11 MR. MORTON: Can I ask him just one more question.

12 THE COURT: Yes, sir, go ahead.

13 Q How many -- were there other people there that night,
14 Wilbur?

15 A Yes, sir, I don't remember how many, and I can't
16 remember who all was in the house.

17 Q How many -- approximately how many other people were
18 there?

19 A I have no idea. Maybe -- I don't know. Maybe four or
20 five.

21 Q Okay. That's all I have. Thank you.

22 THE COURT: Mr. Mabry.

23 CROSS-EXAMINATION

24 BY MR. MABRY:

25 Q Mr. Casey, how long have you known Mr. Gibson?

Wilbert Casey - Cross-examination
by Mr. Mabry

1 A Oh, maybe 20, 25 years I guess.

2 Q Okay. And on September, the night that Mr. Moore came
3 by, how many times did you see Mr. Moore come by that night?

4 A I only saw him once.

5 Q Okay. Is that when he came to the door shot?

6 A It was that night.

7 Q Okay. All right. And who all was there at the house?

8 There was you, there was a girl named Dollar, right?

9 A I don't recollect. She was there a lot.

10 Q Okay. So, she was there a lot?

11 A Yeah.

12 Q And there was two other guys, right?

13 A I don't remember who all was in the house.

14 Q Okay. And y'all didn't live there, did you?

15 A No.

16 Q Okay. And what were you doing at Mr. Gibson's house at
17 three o'clock in the morning if you didn't live there?

18 A It was a gathering place.

19 Q It was a gathering place to smoke crack, wasn't it?

20 A Yes.

21 Q Okay. And, in fact, Mr. Gibson sold crack cocaine,
22 didn't he?

23 A He went and got it for people occasionally.

24 Q Okay. In fact, Mr. Gibson picked up charges after this
25 incident occurred for trafficking in cocaine?

Wilbert Casey - Cross-examination
by Mr. Mabry

1 A Yes, I believe he did.

2 Q Distribution of cocaine?

3 A I don't know what all.

4 Q All right. But that's what y'all were doing there that
5 night, wasn't it---

6 A Yes.

7 Q --- partying and smoking crack?

8 A Yes.

9 Q And when Mr. Moore came to the door and knocked on the
10 door, you went, at three o'clock in the morning, you had to
11 go and get Mr. Gibson out of bed, didn't you?

12 A I don't remember.

13 Q You were sleeping on the couch, is that right, or were
14 you sleeping with Dollar in another room?

15 A No, I didn't sleep with nobody.

16 Q Where do you -- where do you remember you were asleep
17 at?

18 A I don't recall.

19 Q All right. Well---

20 A I don't, I don't think I was asleep.

21 Q Okay. Watching TV?

22 A I don't know.

23 Q Smoking crack?

24 A We was partying. I'm not --.

25 Q You were partying?

Wilbert Casey - Cross-examination
by Mr. Mabry

1 A I don't smoke crack.

2 Q Okay. And do you remember having to go get Mr. Gibson
3 out of bed?

4 A No, I don't.

5 Q Okay. But you -- Mr. Moore wanted to see Mr. Gibson,
6 didn't he?

7 A As far as I know, that's who he knew. I didn't know
8 Mr. Moore.

9 Q All right. And after you got Mr. Gibson to the door,
10 you walked away and let Mr. Gibson talk to Mr. Moore, is
11 that right?

12 A I know he talked to him. I don't remember how he come
13 by talking to him or when he answered the door or anything.

14 Q Okay. Well, who went to the door when Mr. Moore first
15 knocked on the door?

16 Was it you or one of the other fellows or Dollar?

17 A I don't recollect.

18 Q Okay.

19 A Many peoples walking around the houses. It's anybody
20 up in there answer the door.

21 Q Okay. And somebody got Mr. Gibson and said Mo's at the
22 door or Richard Moore's at the door or somebody, or somebody
23 is at the door that's shot?

24 Is that what -- you tell me.

25 A I don't recollect.

Wilbert Casey - Cross-examination
by Mr. Mabry

1 Q Okay.

2 A Only thing I know he came there and, and I don't know.
3 I really don't remember. I was high. I don't remember.

4 Q Okay. You were high and you don't remember?

5 A Yes, sir.

6 Q Did, did Mr. Gibson go to the door and talk to
7 Mr. Moore?

8 A I believe he did.

9 Q And he wouldn't let him in the house, would he?

10 A I don't think he came in the house.

11 Q Okay. And you walked away when Mr. Gibson was talking
12 to Mr. Moore at the door, is that correct?

13 A I suppose.

14 Q Okay. So, you don't know what all was said between
15 Mr. Moore and Mr. Gibson?

16 A No.

17 Q Okay. No further questions.

18 THE COURT: Redirect.

19 REDIRECT EXAMINATION

20 BY MR. MORTON:

21 Q Mr. Casey, I don't know if I understood you right.

22 Did you say that you didn't see, you didn't know that
23 or you don't know that Mr. Gibson talked to Mr. Moore?

24 A I, I really don't know. I suppose, like I said, as far
25 as I know he was the only one that he knew.

Wilbert Casey - Redirect examination
by Mr. Morton

1 Q You do remember someone telling him to go to the
2 hospital?

3 A Mr. Gibson told me he did. He had told me that later.

4 Q Okay. That night?

5 A Yes.

6 Q Okay. That's all I have.

7 THE COURT: Any recross?

8 MR. MABRY: Maybe just to clear up.

9 RECROSS EXAMINATION

10 BY MR. MABRY:

11 Q Mr. Gibson told you that he told Mr. Moore to go to the
12 hospital, right?

13 A Yes.

14 Q And he wasn't gonna take him to the hospital, was he?

15 A I doubt it.

16 Q Okay.

17 THE COURT: Anything further?

18 Q Did -- when the -- the police arrived, arrived just a
19 few minutes after that, right?

20 A Yes.

21 Q Okay. Did the police ever come in the house where
22 y'all were and search the house?

23 A I don't remember. I don't, I don't think they did.

24 Q Okay. Thank you very much.

25 THE COURT: All right, sir. You may step down.

1 wish to have the witness released?

2 MR. MORTON: Yes, sir.

3 THE COURT: Any objection?

4 MR. MABRY: No, sir. Thank you, sir.

5 THE COURT: You're free to go, sir. Thank you very
6 much for coming today.

7 WITNESS: Thank you.

8 THE COURT: Applicant can call its next witness.

9 MR. MORTON: Your Honor, for scheduling purposes,
10 our -- we have a witness that can be here at, during the
11 lunch break, which I hope that we're gonna get.

12 THE COURT: We'll stop for lunch.

13 MR. MORTON: Okay. He's gonna be here -- I told him to
14 be here, to be ready to go by two o'clock, and, Your Honor,
15 I also wondered if---

16 THE COURT: Well, now, you want to stop now to---

17 MR. MORTON: Well, I can call Mr. Mabry.

18 THE COURT: Well, I'm ready to take another witness.

19 MR. MORTON: Okay. Call, the Applicant calls Mr.
20 Mabry.

21 THE COURT: Mr. Mabry, come up.

22 Please swear Mr. Mabry for me.

23 ANTHONY MABRY, having been first duly
24 sworn, testified as follows:

25 THE COURT: Have a seat please.

Anthony Mabry - Direct examination
by Mr. Morton

1 WITNESS: Yes, sir.

2 THE COURT: State your name.

3 WITNESS: James Anthony Mabry.

4 THE COURT: Your witness.

5 DIRECT EXAMINATION

6 BY MR. MORTON:

7 Q Mr. Mabry, where are you employed?

8 A I'm assistant attorney general. I -- with the South
9 Carolina Attorney's General's Office. I'm assigned to the
10 capital litigation section.

11 Q Okay. And in your capacity as assistant attorney
12 general in the capital litigation section, what is your role
13 in this case?

14 A I am assisting Mr. Salter in handling the capital PCR
15 of Richard Moore.

16 Q Okay. And in that regard---

17 A Second, I guess second chair counsel---

18 Q Okay.

19 A ---would be the right word.

20 Q Okay. And in that regard, is it your -- are you trying
21 to defend the effectiveness of Mr. Morin and Kelly in the
22 trial of Mr. Moore in 1999?

23 A Correct.

24 Q Okay. And you are attempting to show that they did all
25 they could do, they were not ineffective, correct?

Anthony Mabry - Direct examination
by Mr. Morton

1 A I'm -- as an officer of the Court, I'm trying to, along
2 with Mr. Salter, present the truth as we know it in defense
3 of the claims by Mr. Moore, that counsel acted
4 appropriately.

5 Q And that is your, what you're trying to assist Mr.
6 salter in showing?

7 A Correct.

8 Q That counsel did not act inappropriately?

9 A Correct.

10 Q Okay. This case involved an incident at Nikki's
11 Speedway or, or Convenience Store, right?

12 A Right, restaurant, convenience, kind of slash -- more
13 restaurant than convenience store.

14 Q Okay. At the time you were the deputy solicitor here
15 in Spartanburg County?

16 A That's correct. We had -- we actually had two
17 deputies. I was the litigation deputy. I was the senior
18 deputy.

19 Q You were the senior deputy?

20 A Correct.

21 Q So, you remember when this incident happened?

22 A Yes.

23 Q And you were involved in the investigation of this
24 incident?

25 A Correct.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Okay. And---

2 A Not as a police officer like investigating to make an
3 arrest, but investigation preparing for potential death
4 penalty case, trial of the case, prosecution of the case.

5 Q And did, as part of your investigation, did you have
6 the occasion to interview Mr. Gibson?

7 A Correct.

8 Q Okay. And we have already been through a lot of that.
9 I'm not gonna go through all of it---

10 A Sure.

11 Q ---all of it again.

12 A Sure.

13 Q Do you remember who else you interviewed?

14 A Oh, gosh. Not very well. I may have interviewed
15 Mr. Hadden, and that -- I have some reason to think I met
16 with the family. I remember Mr. Mahoney's father, who's
17 sitting here today, and we met -- I believe I met with the
18 family. Mr. Hadden may of been there with them, but I
19 can't -- we may have met -- I may have interviewed him in a
20 conference room, but I -- that's -- talked to Paul Dorman at
21 the scene. I believe he was out there at the scene when we
22 went, went and looked at the scene. You have to refresh my
23 memory if there's somebody else I interviewed. I can't
24 remember right now.

25 Q Did you go to the scene on the day, the day that it

Anthony Mabry - Direct examination
by Mr. Morton

1 happened?

2 A Not the day it happened. I -- Jim, I may be wrong, but
3 I believe we went to the scene before we went to Mr.
4 Gibson's house. It may of been on a different day, but I
5 think that's correct.

6 Q And you testified earlier that you interviewed
7 Mr. Gibson?

8 A Correct.

9 Q And tell me why you did that.

10 A Okay. We were investigating the case as a potential
11 death penalty case. As I recall, we went to the crime scene
12 and looked at it. Then we saw where the gun was thrown out.
13 I don't specifically -- I remember that was just up the
14 highway somewhere. Then we went to where the truck was
15 found, and then I interviewed Mr. Gibson. But as I told you
16 earlier, I'd also reviewed the file and it was my gut
17 instinct that Mr. Gibson wasn't telling us everything about
18 what went on that night, why, why Mr. Moore was there.

19 Q And, so, in that regard, what did you do?

20 A I went to his door. I thought -- it may of been the
21 fellow who just testified, but I thought his son came to the
22 door. He was reluctant to come talk to me.

23 Q When you say he, you mean Mr. Gibson?

24 A Right. He didn't want to talk to us, and I finally
25 talked his son into going and getting him and bringing him

Anthony Mabry - Direct examination
by Mr. Morton

1 out. Told him we weren't investigating him. We were
2 investigating a homicide. Just wanted to talk to him about
3 what he knew about the homicide.

4 He came, finally came out and I talked to him briefly
5 about what happened. This was like right outside his -- the
6 doors -- as I remember, the doors kind of right beside the
7 driveway, beside the house. Holman and Rusty or whoever was
8 with us was in the car and I talked to him. He told me the
9 same story that's in his written statement.

10 Q Okay. Did you communicate with him?

11 I think your words were you didn't believe---

12 A Correct. I don't remember what my exact words were.
13 But when I communicated to it, I remember he -- it was like
14 he was offended by what I said or something angered him, but
15 he still stuck by the same story that he was not there to
16 get drugs. He, he came and asked him to take him to the
17 hospital.

18 Q So, drugs became a topic, I guess, would that be fair
19 to say, when you asked Mr. Gibson why Mr., that Mr. Moore
20 really came by to get drugs?

21 Is that fair?

22 A I believe so. I think that's correct.

23 Q And he said no?

24 A He said no.

25 Q Okay.

Anthony Mabry - Direct examination
by Mr. Morton

1 A Then I took him over to the car, I introduced him to
2 Holman, and I think it was Rusty, maybe Johnny Dyer was
3 there, but I can't, I can't remember. But he might of told
4 them, you know, my statement is what's in the statement --
5 what's in my statement to the police is, you know, what
6 happened. He reiterated that maybe. I don't -- I'm not
7 real clear about that. But he didn't change, he didn't
8 change his story.

9 Q Okay. And you informed me that you were involved in
10 this investigation when we took Mr. Gibson's deposition back
11 in December, is that right?

12 A Correct. He -- when he told you that -- I think he
13 testified in his deposition that there was some people that
14 came out from the Solicitor's Office a couple days later and
15 he talked to them. Soon as -- it's in the deposition. In
16 fact, when he finished testifying, you and I -- I told you,
17 you said you didn't know it, and I informed you that I did
18 talk to Mr. Gibson.

19 Q Okay. And later after that, just a couple weeks ago,
20 you and I had a conversation on the phone about---

21 A Correct.

22 Q ---the details of your conversation with Mr. Gibson---

23 A Right.

24 Q ---back on---

25 A Correct.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q ---that---

2 A It was a conference call.

3 Q Right.

4 A Mr. Salter and you and I were on the phone.

5 Q Regarding your involvement of interviewing Mr. Gibson?

6 A Correct.

7 Q And did you take any notes?

8 A I don't remember.

9 Q Okay.

10 A I really don't recall.

11 Q If you had taken notes, what would you have done with
12 them?

13 A They'd either be in the solicitor's file or I took them
14 on my computer. And when I left the Solicitor's Office, I
15 had everything erased from my computer by Lindsey McCraw,
16 who use to work in our office, was kind of our computer
17 person. He went over to the Sheriff's Office.

18 Q And why was that?

19 A I didn't -- there was a bad --

20 Q Break-up?

21 A Not a break-up. It was a contentious election between
22 our office and Mr. Gowdy's office, and I didn't want them
23 having anything on my personal -- it wasn't my personal
24 computer, but my lap top that I used in the office. So, I
25 had everything deleted from my computer.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Did you -- and that would have been -- that would of
2 occurred some time after the election and before his
3 swearing in before---

4 A Correct.

5 Q ---Mr. Gowdy's swearing in?

6 A Correct.

7 Q Okay.

8 A I left on January the 10th, 2001, and he was sworn --
9 I think, I think that's -- whatever day Tray was sworn in I
10 think we left the same day or the day before. I can't -- I
11 think it was the 10th.

12 Q Do you know whether or not anyone else with you took
13 any notes?

14 A No, I don't.

15 Q So---

16 A I don't believe they did.

17 Q Okay. Would that have been policy?

18 A No, Rusty was good about taking notes. But see I was
19 the only one that talked to Gibson out there as I remember.
20 Rusty wasn't there.

21 Q Well}---

22 A Rusty was at the car or talking to an officer who was
23 there. I was the one interviewing Gibson right there near
24 his house. It was just me and him as I remember.

25 Q If -- when confronted by you, if Mr. Gibson had said

Anthony Mabry - Direct examination
by Mr. Morton

1 oh, nah, he really came by here to get crack, do you think
2 you would of written that down?

3 A Yes.

4 Q And the fact that he---

5 A And turned it over to the other side cause it would of
6 been evidence in support of aggravation under the---

7 Q The fact that he didn't say that you don't think it
8 was, it wasn't something that y'all wrote down?

9 A No.

10 Q Okay.

11 A Cause he didn't come off the statement he gave to the
12 Sheriff's Office.

13 Q Okay. Later -- beg the Court's indulgence one second,
14 Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 Q You -- when you left the office again you said
18 January 10th, I guess, 2001, is that right?

19 A Correct.

20 Q And when you left, you ceased to become involved in
21 this case?

22 A Correct, as far as I can recall, they didn't---

23 Q So, it's---

24 A I don't think they -- let me -- I don't think they
25 called me. One time Barry called me about an expert in a

Anthony Mabry - Direct examination
by Mr. Morton

1 case, but I don't even think -- I don't think it was this
2 case. So, I think -- that was the end of my involvement.

3 Q But your involvement now as assistant attorney general,
4 you have reviewed this case?

5 A Correct.

6 Q You have reviewed the testimony and the statements that
7 have transpired in this case?

8 A Correct.

9 Q Okay. And as part of your review, you have learned
10 that, at trial, Mr. Gibson indicated that on the night of
11 September 16th, 1999, that Mr. Moore had come, came over
12 there to get crack cocaine?

13 A Correct. Twice.

14 Q Twice. Okay.

15 A Once before. He didn't have any money.

16 Q Okay.

17 A And then he came back later and said he had money.

18 Q Now, Mr. Moore had previously indicated obviously, in
19 his September 16th, 1999, statement, that Mr. Moore came
20 by to get a ride to the hospital?

21 A You mean Mr. Gibson?

22 Q Mr. Gibson came by. I mean that---

23 A Right.

24 Q Mr. Moore came to Mr. Gibson's to get a ride to the
25 hospital?

Anthony Mabry - Direct examination
by Mr. Morton

1 A Correct.

2 Q Okay. And at trial, again, Mr. Gibson testified that
3 Mr. Moore came over to get cocaine?

4 I'm not trying to repeat myself. I'm just trying to---

5 A Okay. He told the police that night, the night
6 Mr. Moore came, that he wanted to go to the hospital.
7 That's what's in his written statement. He told me the same
8 thing, and, and is that what you're asking me?

9 Q Yes.

10 A Okay. I got confused.

11 Q And then, at trial, he said something different?

12 A Correct.

13 Q Now, would you agree with me then that his
14 September 16th statement and his statement to y'all a few
15 days later at trial would then become a prior inconsistent
16 statement on his part?

17 A His statement of September 16th and his statement to
18 me are inconsistent with his testimony at trial?

19 Q And---

20 A About drugs, correct?

21 Q And could of been brought up by Mr. Morin?

22 A Not only could of been, I believe they were brought up
23 either by Mr. Morin or on redirect by Mr. Barnette.

24 Q Okay. All right. We'll let the record speak for that.

25 A Whatever the record shows is what it shows.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Okay. Did you -- do you know -- did Mr. Morin or
2 anybody on his behalf or behalf of Mr., he and Mr. Kelly
3 talk to you about that statement that Mr. Gibson gave you a
4 few days after this incident?

5 A Did Mr. Morin or Mr. Kelly?

6 Q Morin or Kelly.

7 A No, no, not that I recall.

8 Q Do you have anything---

9 A No. No, my answer is no.

10 Q Okay. In your capacity as assistant attorney general,
11 are you aware of anything that you see which would indicate
12 an awareness on Mr. Morin and Mr. Kelly's part that you had
13 had a conversation with Mr. Gibson?

14 A Yes, the testimony at trial that Mr. Gibson said he met
15 with people from the solicitor's office and he couldn't
16 remember who they were a couple days after the murder and
17 robbery.

18 Q Okay. Do you, do you have anything either in the
19 record or in the file that indicates they spoke to you?

20 A No.

21 Q Okay. Do you have anything in the file that or in the
22 record that specifically says that, in fact, Mr. Gibson was
23 steadfast in his story to you as it relates to 9/16/99?

24 A From my reading of the record, that's what his
25 testimony was at the trial, that he didn't change his story

Anthony Mabry - Direct examination
by Mr. Morton

1 until he met with Mr. Gowdy three or four weeks before the
2 trial.

3 Q And, in your opinion, do you think that that was an
4 inconsistently, inconsistency that was brought out at trial?

5 A Correct.

6 Q You think it was?

7 A Correct.

8 Q Okay. Do you think there's anything more that Mr.
9 Morin and Mr. Kelly could of done to eliminate that
10 inconsistency?

11 A No.

12 Q Does that opinion have anything to do with the fact
13 that you are now representing them?

14 A No.

15 Q A few days after this incident you went to talk to
16 Mr. Gibson, and is it -- am I giving a fair characterization
17 that you told him that you believed that he was involved
18 with crack?

19 A I communicated to him that I did not believe his story
20 as he told it to the police, and as I recall, the, the -- I
21 phrased it to him did Mr. Moore come here to get crack, and
22 that offended him. So, he knew I didn't believe him, and I
23 asked him did he come here to get drugs or crack.

24 Q would it be fair to say---

25 A He would not, he would not change his story.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Would it be fair to say at that point then it would be
2 Mr. Gibson knew that y'all thought he was involved with
3 crack?

4 A I can't tell you what Mr. Gibson was thinking but
5 exactly what I just told you. I said to him he would have
6 to answer that question. Of course, I heard his testimony
7 too. He could, he could of believed it. I didn't believe
8 him. Yeah, no question about that.

9 Q Okay. So, at the very least, from your conversations
10 with him, he was notified by you, your office, and the
11 police, that y'all thought he was involved with crack?

12 A No, he was notified by me.

13 Q Okay. Well---

14 A I was the only one talking to him.

15 Q Well, now, do you know whether Mr. Morin and Mr. Kelly
16 were notified that Mr. Gibson was put on notice through your
17 conversation with him that---

18 A Not to my knowledge. I didn't tell anyone that other
19 than Holman. As I said before, I got in the car and I said,
20 told Holman whoever was in the car that he's not coming
21 clean, he's not telling us about the drugs, but I didn't
22 disclose it to any attorneys and I left the office in
23 January of 2001.

24 Q Now, after your conversation with him, Mr. Gibson was
25 charged with trafficking in crack, correct?

Anthony Mabry - Direct examination
by Mr. Morton

1 I mean not as a direct result of you -- I mean not---

2 A He was---

3 Q ---necessarily saying -- I'm saying that---

4 A He was charged. I can't remember when he was charged.

5 He, he -- as I, as I remember it, and looking at, I've

6 looked at the files too, he didn't have any drug charges

7 pending when I talked to him. He picked up two drug charges

8 after, sometime after the -- I talked to him in

9 September '99, right?

10 Q Right.

11 A He picked up drug charges I think in 2000, in the Year

12 2000. One -- the trafficking in 2000. I think the

13 possession in July of 2001 before the trial.

14 Q Correct.

15 A Is that right?

16 Q Correct.

17 A Okay.

18 Q So, this incident happened, you go and talk to him

19 about the crack, and then he's charged with trafficking in

20 crack in 2000?

21 A Correct.

22 Q Possession of crack in 2001?

23 A Possession of crack second offense in, in 2001.

24 Q And---

25 A July I think. June or July, something like that.

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Okay. And then he testifies at trial differently than
2 what he had indicated on the night of September 16th and
3 the, and what he told you?

4 A After meeting with Mr. Gowdy, and my understanding from
5 reading the record, Mr. Gowdy said now tell me the real
6 reason Richard Moore was there, and I'm paraphrasing cause I
7 don't have the record, and Mr. Moore told them, told
8 Mr. Gowdy in that interview that the real reason Mr. Moore
9 was there was to get drugs is my understanding. I was
10 not---

11 Q Now---

12 A ---a party to that interview.

13 Q Obviously you've been a prosecutor?

14 A Correct.

15 Q And how long were you a prosecutor?

16 A Eleven and a half years.

17 Q Okay. In your professional experience as a prosecutor,
18 do witnesses come forward voluntarily and tell you that
19 they're involved with drugs?

20 A Sometimes they do. The gentleman that just testified
21 did.

22 Q Okay.

23 A Well, I don't know that he volunteered. He was
24 subpoenaed to be here, but when---

25 A Well, but---

Anthony Mabry - Direct examination
by Mr. Morton

1 Q I don't want to argue.

2 A When I asked him, when I asked him the question he said
3 yes, sir.

4 Q In your experience as a prosecutor---

5 A Sometimes they don't. Sometimes they do.

6 Q In your experience as a prosecutor, would it be typical
7 or atypical for someone like George Gibson to come forward
8 and volunteer that testimony?

9 A I'd say about 50/50.

10 Q Okay.

11 A I've had them, I've had them tell me, in death penalty
12 cases, that they were smoking crack without any prompting or
13 any questioning, any inquiry, and I've, then I've had them
14 deny things like that. So, I'd say about 50/50.

15 Q Okay. Let me ask you this. As a prosecutor then,
16 Mr. Gibson -- first of all, let me ask you this.

17 You don't know that, but Mr. Gibson apparently came
18 forward, I think the record will speak for itself, with his
19 new statement on September 25th, 2001?

20 A Okay. Something like that.

21 Q In your experience as a prosecutor, how would
22 Mr. Gibson physically have come to make that statement?

23 A He -- like I said, I was gone by then, but they would
24 of brought him in---

25 MR. SALTER: Your Honor, I'm gonna object now. He---

Anthony Mabry - Direct examination
by Mr. Morton

1 THE COURT: I'm gonna sustain that objection. It calls
2 for speculation on the part of the witness.

3 MR. SALTER: Right.

4 Q In your experience as a prosecutor, would you call a
5 witness on the phone?

6 How would you get someone like Mr. Gibson to come to
7 your office and talk?

8 A You routinely meet with them prior to trial in the
9 conference, in the conference room upstairs. That's not --
10 that's done in every case.

11 Q And how would they get there?

12 A They drive themselves or somebody drives them there.

13 Q How would they be -- would they be notified hey, how
14 about coming and talk to us---

15 A Right.

16 Q ---on two o'clock on Thursday?

17 A Right. The investigator would call them and say you're
18 gonna, you're gonna be a witness in a trial, the solicitor
19 wants to meet with you and talk with you.

20 Q And, Mr. Gibson, you would trust, would just come on up
21 there?

22 A Sometimes they do.

23 Q Were you aware---

24 A Most of the time.

25 Q Were you aware -- are you aware, from anything in the

Anthony Mabry - Direct examination
by Mr. Morton

1 file, that Mr. Morin and Mr. Kelly were aware that
2 Mr. Gibson was incarcerated at the time of his testimony?

3 A I don't see anything -- I didn't see anything in the
4 trial transcript about that.

5 Q Okay. My question was anything that you have reviewed
6 that indicates that Mr. Morin and Mr. Kelly were aware.

7 A Oh, okay. I have seen the rap sheet that was provided
8 to them by the Solicitor's Office, and it shows a conviction
9 for possession of crack or cocaine, something on the rap
10 sheet, and I think it says 11 days confinement, which is
11 kind of strange. But they, they -- and, again, I'm not sure
12 that's accurate, Jim, because I've looked at the files
13 upstairs and it looks like he actually pled after the trial
14 in 2003. I think we're gonna have to get the sentencing
15 sheets to actually see when Mr. Gibson pled guilty to the
16 possession.

17 Q I'll introduce that later. I was gonna share, show you
18 a rap sheet.

19 A Sure.

20 MR. MORTON: Excuse me, Your Honor.

21 (Pause.)

22 MR. MORTON: Beg the Court's indulgence for just one
23 second.

24 THE COURT: Yes, sir.

25 (Pause.)

Anthony Mabry - Direct examination
by Mr. Morton

1 Q Fair to say that you thought, Mr. Mabry, that -- I'm
2 sorry. I don't mean to point.

3 You thought Mr. Mabry that -- we're not in front of a
4 jury.

5 A That's all right.

6 Q You thought that Mr. Gibson, and this is the last time
7 I'm gonna ask you this, was selling crack and that's the
8 reason Mr. Moore went over there?

9 A Correct.

10 Q And was it -- would it have been important to you for
11 that information to be presented to a jury---

12 A If it was---

13 Q ---as a prosecutor?

14 A If it was the truth, yes.

15 Q As a prosector?

16 A If it was the truth, yes.

17 Q And you believed it was the truth?

18 A I did, based on the file, what I knew before I went out
19 there that day.

20 MR. MORTON: Okay. That's all I have, Your Honor.

21 THE COURT: Cross-examine.

22 CROSS-EXAMINATION

23 BY MR. SALTER:

24 Q At the time of your conversation with Mr. Gibson, you
25 did not, in fact, know that crack cocaine was involved?

Anthony Mabry - Cross-examination
by Mr. Salter

1 You did not know that crack was involved at that time,
2 did you?

3 A I -- it was based on my review of the file and the
4 circumstances of the crime. I believed it to be involved,
5 that the robbery involved getting money for drugs based on
6 several things that were in the file, but I didn't know it
7 for a fact, no.

8 Q Correct.

9 All right, sir. Was it your habit to take notes of any
10 conversations you would have with the witness in preparing
11 for trial?

12 A Sometimes I did. Sometimes I didn't. In talking to
13 somebody out there at their house like that, I may have, I
14 may not. I just don't remember.

15 Q And you testified earlier that you would have
16 disclosed -- you would of -- you would have written down and
17 disclosed if Mr. Gibson had, in fact, admitted that crack
18 cocaine was involved?

19 A Oh, yes.

20 Q Okay.

21 A Correct. But because he didn't change his story, then
22 there was nothing to disclose.

23 Q All right. And you didn't have any role whatsoever in
24 the decision to review Mr. Gibson prior to the trial?

25 A No, as I said, I left in January, January 10th, 2001.

Anthony Mabry - Cross-examination
by Mr. Salter

1 So, I would of been working in Greenville at the Haynesworth
2 Sinkler Boyd Law Firm at the time.

3 Q Did you know the trial was ongoing?

4 A I don't remember.

5 Q All right. And you don't know what information, if
6 any, had been disclosed to the defense after you left the
7 Solicitor's Office?

8 A No.

9 Q Okay. Thank you.

10 A Just, just -- other than what, you know, looking at,
11 preparing for this PCR hearing I've looked through, but I
12 don't -- I haven't gone through the solicitor's files. So,
13 I don't know.

14 MR. SALTER: Nothing further, Your Honor.

15 MR. MORTON: No, sir.

16 THE COURT: You may step down.

17 WITNESS: Thank you, Your Honor.

18 MR. MORTON: He can be excused.

19 THE COURT: Nice try.

20 All right. I assume you don't have any short witnesses
21 at this point in time?

22 MR. MORTON: No, sir.

23 THE COURT: All right. When is your next witness
24 available?

25 MR. MORTON: Two o'clock.

Rusty Clevenger - Direct examination
by Mr. Morton

1 THE COURT: Two o'clock.

2 All right. We'll recess at this time for lunch. We'll
3 resume promptly at two o'clock.

4 MR. MORTON: Yes, sir.

5 THE COURT: Thank you very much.

6 MR. SALTER: Thank you, Your Honor.

7 (WHEREUPON, Court was in recess for the lunch hour.)

8 THE COURT: The Applicant may call its next witness.

9 MR. MORTON: Your Honor, the Applicant will call
10 Mr. Rusty Clevenger.

11 THE COURT: Come forward to my left to be sworn please.

12 WITNESS: Yes, sir.

13 RUSTY CLEVINGER, having been first
14 duly sworn, testified as follows:

15 THE COURT: Have a seat please.

16 WITNESS: Yes, sir.

17 THE COURT: Once you're seated, state your name for the
18 record.

19 WITNESS: My name is Charles R. Clevenger. Everyone
20 refers to me as Rusty.

21 THE COURT: Your witness, Mr. Morton.

22 MR. MORTON: Thank you.

23 DIRECT EXAMINATION

24 BY MR. MORTON:

25 Q Mr. Clevenger, were you, you involved in the

Rusty Clevenger - Direct examination
by Mr. Morton

1 investigation of this case?

2 A I responded initially after the investigation began as
3 a review for the solicitor's office.

4 Q And you made a, a report as a result thereof?

5 A Yes, sir.

6 Q Okay. Do you have that report with you?

7 A I do.

8 Q Okay. On Page 2 of your report, last paragraph --
9 first of all, let me---

10 A Yes, sir.

11 Q ---let me back up before I get to that.

12 Did you talk to Mr. George Gibson?

13 A I don't recall.

14 Q Okay. Back to your report?

15 A Yes, sir.

16 Q Bottom of the page, I think it's the second page.

17 In your report, you indicated that, and maybe you can
18 edify us on what, who you talked to, to put that information
19 in, in the paragraph, in that paragraph. In other words, in
20 that paragraph, tell me if it says that the information you
21 obtained was that the defendant, Mr. Moore, pulled a lug
22 wrench from a concealed part of his body and threatened the
23 deceased, that would be Mr. Mahoney?

24 A At, at the beginning of that paragraph we're referring
25 to the page I'm looking at, it says Dorman added.

Rusty Clevenger - Direct examination
by Mr. Morton

1 Q Yes, sir.

2 A Yes, sir, that was where I would have got the
3 information from Investigator Dorman.

4 Q Okay. Would that be from -- and why would it be from
5 Investigator Dorman?

6 A Because he was at the location I was at when I obtained
7 the information.

8 Q Okay. Would it -- could it have possibly have been
9 from Investigator Denton?

10 A No, sir, I don't believe I'd spoke to Investigator
11 Denton at that point.

12 Q Okay. But from someone you were told that the witness
13 said that the defendant came in with a lug wrench concealed?

14 A That's, that's what it states, yes, sir.

15 MR. MORTON: Okay. And that's all I have.

16 MR. MABRY: May it please the Court?

17 THE COURT: Yes, sir.

18 CROSS-EXAMINATION

19 BY MR. MABRY:

20 Q Mr. Clevenger, you're now the coroner for Spartanburg
21 County, is that correct?

22 A Yes, sir, that is.

23 Q And back in September of 1999 you were my investigator,
24 is that right?

25 A That's correct.

Rusty Clevenger - Cross-examination
by Mr. Mabry

1 Q And as part of -- was it kind of regular routine, when
2 you had a major homicide or potential death penalty case,
3 you would go out to the scene?

4 A Yes, sir.

5 Q And at -- that was for the purposes of our office, the
6 solicitor's office?

7 A That's correct. It was gathering information that
8 started with the bond process all the way through the, the
9 regular process.

10 Q Okay. And you, according to the notes that you just,
11 were just referred to, you talked to Investigator Dorman
12 inside, either outside or inside Nikki's, is that right?

13 A At the location, yes, sir.

14 Q Okay. And Mr. Dorman was the crime scene evidence
15 officer for the Sheriff's office, is that right?

16 A That's correct.

17 Q He would of collected evidence there at the scene like
18 bullets, casings, blood?

19 A Sketch diagrams.

20 Q Yes, sir.

21 A That kind of thing.

22 Q Yes, sir.

23 And you don't know where he got this information about
24 the perpetrator possibly coming in with a tire iron?

25 A No, sir.

Rusty Clevenger - Cross-examination
by Mr. Mabry

1 Q All right. Do you remember whether that information
2 ever turned out to be true or false?

3 A I don't remember.

4 Q Okay. would that be reflected -- would that be
5 reflected in the trial record, whether it----

6 A The testimony itself.

7 Q ---panned out or not?

8 A Yes, sir.

9 Q Investigator Dorman, he's not an, he's not an
10 investigator that goes out and interviews witnesses like
11 Detective Denton, is that right?

12 A No, sir.

13 Q All right. So, that's where you got that information
14 about the tire iron?

15 A That's correct.

16 Q Okay. Thank you, sir.

17 THE COURT: Redirect?

18 MR. MORTON: That's all, Your Honor.

19 THE COURT: Sir, you may step down.

20 WITNESS: Thank you.

21 THE COURT: Any objection to the witness being excused?

22 MR. MORTON: No, sir.

23 THE COURT: Gentlemen?

24 MR. MABRY: No, sir.

25 THE COURT: You're free to go. Thank you for coming,

Jim Aiken - Direct examination
by Mr. Morton

1 sir.

2 WITNESS: Thank you, Your Honor.

3 THE COURT: You may call your next.

4 MR. MORTON: We would call Mr. Jim Aiken.

5 THE COURT: Sir, if you'll come forward to my left to
6 be sworn in.

7 WITNESS: Yes, Your Honor.

8 THE COURT: Thank you.

9 JIM AIKEN, having been first duly
10 sworn, testified as follows:

11 THE COURT: Have a seat please.

12 WITNESS: Thank you, sir.

13 THE COURT: Sir, once you're comfortable, I'd ask that
14 you state your name for the record please.

15 WITNESS: Very well, sir. My name is James Evans
16 Aiken. A-I-K-E-N.

17 THE COURT: Mr. Morton, your witness.

18 MR. MORTON: Thank you very much, Your Honor.

19 THE COURT: Yes, sir.

20 DIRECT EXAMINATION

21 BY MR. MORTON:

22 Q Mr. Aiken, tell us a little bit about yourself, and
23 your career, your education, and so forth.

24 Do you remember -- first of all, were you called as a
25 witness in the case of State versus Richard Moore?

Jim Aiken - Direct examination
by Mr. Morton

1 A I do have some recollection of, of being prepared for
2 this particular case, but I have no recollection of
3 providing testimony, sir.

4 Q Okay. So, you don't remember coming into a courtroom
5 here in Spartanburg and testing, testifying on behalf of
6 Mr. Moore?

7 A I don't recall that at this time, sir.

8 Q Tell me where, Mr. Aiken, you, what your occupation is.

9 A I'm presently president of James E. Aiken & Associates,
10 which is a jail prison consulting concern that deals with
11 all aspects of criminal justice as pertains to confinement
12 facilities and systems.

13 Q And how long -- are you self-employed there?

14 A Yes, I am, sir.

15 Q And tell us a little bit about your education.

16 A I have an undergraduate degree from Benedict College,
17 Columbia, South Carolina. I hold a Master's Degree in
18 Criminal Justice from the University of South Carolina.
19 Benedict College, undergraduate, USC, graduate.

20 Q And after graduating from the, from college, what did
21 you do?

22 You went to work for the Department of Corrections in
23 South Carolina, is that correct?

24 A That's sort of correct, sir. I started working for the
25 Department of Corrections in 1971, and I graduated from

Jim Aiken - Direct examination
by Mr. Morton

1 Benedict in 1972. I was employed as a substance abuse
2 counselor in the Manning Correctional Institution, South
3 Carolina Department of Corrections. From there I was
4 promoted to administrative assistant to the warden of that
5 particular facility, and from there I was promoted to deputy
6 warden of that same facility.

7 Then I was promoted to deputy warden at the Central
8 Correctional Institution, CCI, of the State penitentiary.
9 From there I was promoted to the rank of warden at the
10 women's Prison, and then from there I was promoted to the
11 rank of warden at the Central Correctional Institution, and
12 from there I was promoted to the rank of deputy regional
13 administrator over 16 prisons within the South Carolina
14 Department of Corrections.

15 From there I was promoted, appointed commissioner of
16 corrections for the Indiana Department of Corrections, and
17 then from there I was appointed director of corrections for
18 the United States Virgin Islands, and then from there, of
19 course, I became James E. Aiken & Associates. I've also
20 provided technical assistance to many jurisdictions within
21 the United States as well as external United States.

22 Back in 1985 or '86, when I was the warden of the state
23 penitentiary, I was approached by the U.S. Department of
24 Justice to provide technical assistance especially as
25 pertains to high security prison systems, classification of

Jim Aiken - Direct examination
by Mr. Morton

1 inmate population, to which I've classified thousands and
2 thousands of inmates, as well as evaluated correctional
3 systems and their classification systems managing the hard
4 to manage and violent inmates, critical event evaluation as
5 it pertains to security, teaching wardens how to be wardens.

6 Q Let me, let me, let me interrupt you right there.
7 Let's go at this a little step-by-step.

8 When you were at Manning, what was your---

9 A Well, when I was at the Manning Correctional
10 Institution I was a social worker per se or substance abuse
11 counselor, and I was involved with looking at inmates with
12 substance abuse histories, and looking at their behavior
13 patterns as a result of them being incarcerated as well as
14 being involved in substance abuse. From there, being
15 promoted to deputy warden of the same facility.

16 I was in charge of security operations, classification
17 of inmate population, as well as problematic delivery and
18 administrative functions.

19 Q Tell us a little bit about your interactions actually
20 in your day-to-day functions and your day-to-day
21 responsibilities as it went towards the inmates and staff
22 there.

23 A Well, one of the philosophies that I learned working
24 with the Department of Corrections in South Carolina, you
25 don't operate correctional facilities sitting in an office.

Jim Aiken - Direct examination
by Mr. Morton

1 You had to get out. You had to interact with inmate
2 population. You had to go in contraband control looking for
3 contraband. You had to break up fights. You had to serve
4 on disciplinarian committees. You had to also fill in for
5 correctional staff when they would leave a post, for
6 example. No one was big enough or more important than to
7 hold any post within that prison and that's the philosophy
8 that I followed for almost 40 years now.

9 Q So, you, you've worked with inmates, you dealt with
10 inmate problems, you dealt with classifications, you worked
11 those hours, is all that safe to say?

12 Tell us about that.

13 A I was involved with just about every aspect or should I
14 say every aspect of managing inmate population. Any --
15 feeding cell blocks, breaking up fights, disciplinarian, use
16 of force upon inmate population, all aspects of managing an
17 inmate population on a day-to-day basis, and eventually got
18 to teach others how to do it on not only a national, but
19 international basis.

20 Q After your initial stint at Manning, you were promoted
21 to the deputy warden at Manning?

22 A Yes, sir.

23 Q And what, what does that mean?

24 A Being the deputy warden of that facility, you were
25 second in command. You were individuals that interpreted

Jim Aiken - Direct examination
by Mr. Morton

1 policy, implemented policy, monitored the prison operations.

2 Again, you don't sit in an office. You had to walk
3 around. You had to interact with inmate population. You
4 read inmate's records continuously. You classified inmates.
5 You were the disciplinary. You had to prepare for
6 emergencies to include hostage situations, riots, disruptive
7 groups within the prison system or within that particular
8 prison. You evaluated officer performance as it pertains to
9 the, the security. You were always, always attuned to the
10 daily operations of that facility to prevent escapes and
11 homicides, et cetera.

12 Q After you left Manning, where did you go?

13 A As I stated before---

14 Q Manning was a medium security facility?

15 A That was a medium security prison.

16 Q Tell us the difference between -- I'm sorry to
17 interrupt.

18 If you'd give us a little background into the levels of
19 security in the prison institution.

20 A Very well. Manning, at that particular time, housed,
21 if I remember correctly, housed about 350 inmates. It was a
22 maximum security external perimeter where you had gun
23 towers, you had bob wire, you had security dogs around the
24 perimeter. It was just as secure a perimeter of any maximum
25 security prison.

Jim Aiken - Direct examination
by Mr. Morton

1 But being a medium security prison, inmates had freer
2 access to go from Point A to Point B. That doesn't say they
3 were not under security evaluation and observation. But
4 they had a way of, a better way of going from work, for
5 example, back to their living area without having to be
6 restrained or had to have or direct officer escort, but they
7 were accounted for on a continual basis.

8 Moving onto Central Correctional Institution, that was
9 a maximum, super maximum security installation, and what I
10 mean by that is that you had the most disruptive predator
11 inmate population within the South Carolina correctional
12 system. That was inclusive of inmate population that are
13 or, thank you, more, so disruptive that some of them had to
14 be sent to this facility while they were in pre-adjudicated
15 status because they were so disruptive and predator behavior
16 patterns in the county facility in pre-adjudication status.
17 Also we housed our death row inmate population. We housed
18 inmate population that was so, so dangerous that other
19 prisons could not handle this type of inmate.

20 Of course, I was involved with every aspect of the
21 security delivery of that facility inclusive of
22 classification, managing inmates from the use of force to
23 disciplinary functions. I evaluated officer performance as
24 well as performance of all of the other staff at this
25 facility. The basic premise was security and safety of

Jim Aiken - Direct examination
by Mr. Morton

1 inmate, staff, as well as general community even though this
2 population was very predator prone, not only individually,
3 but collectively, of inmate population inflicting random as
4 well as systemic violence against each other and staff as
5 well. And also, in that facility, housed death row
6 population where inmates awaited execution and disposition
7 as set forth by the Courts.

8 Q Tell us what you mean Mr. Aiken by predator.

9 I'll tell you what, let me, let me interrupt myself and
10 finish with your qualifications.

11 After you were at, you were the, at CCI, where did you
12 go?

13 A I then was promoted to the rank of warden at the
14 women's prison, and at that facility I was similar to other
15 facilities as pertains to the security and classification of
16 inmate population, evaluating all aspects of, of or
17 operation of a facility. We housed inmate population
18 ranging from maximum security to minimum security. We did
19 not manage work release inmate population.

20 I was in charge of all problematic delivery as well as
21 security as well as the administrative function of the
22 facility. I was the chief policy maker and interpreter and
23 insured that policy, rules, regulations, and sound
24 correctional practice was adhered to.

25 Q After leaving the women, WCI I think they call it, did

Jim Aiken - Direct examination
by Mr. Morton

1 you go back to CCI?

2 A Yes, sir, I went back. I was promoted to the rank of
3 warden where I was the chief executive officer of that
4 particular facility that I just explained to you.

5 Q Now, what year was this, if you remember?

6 A My best recollection was in the early 80's, '82 I think
7 it was, and I did perform all the duties of, necessary for
8 those, that particular facility. I had, I think, a total of
9 five deputy wardens under me because it was such a big
10 facility, and it's the most secure facility in my opinion.
11 Not only that, we house the death row population, and I was
12 responsible, as the warden of that facility, to insure the
13 executions were taken place that were ordered by the Court,
14 and I oversaw two executions while I was in the capacity of
15 warden.

16 Q When you said oversaw, what does that mean?

17 What did you do in relationship to those two
18 executions?

19 A I planned the executions, I implemented the, the
20 process, I put the key into the switch, turned the switch,
21 pressed the button, and stood as close as I am, I would say
22 no more than, no less than five feet away from the condemned
23 inmate after he made his last statement and watched him,
24 after pressing the button, watched him be placed to death
25 and I did that twice.

Jim Aiken - Direct examination
by Mr. Morton

1 Q And I believe that, also in your capacity I believe at
2 CCI you had to order one of the snipers to shoot, is that
3 right?

4 A No, sir, that was several years later.

5 Q Oh, okay.

6 All right. From CCI, where did you go after you left
7 CCI?

8 A Then I was promoted to deputy regional administrator
9 over the midlands correctional region, which includes, was
10 inclusive of approximately 16 facilities ranging from places
11 like CCI down to minimum security facilities involving
12 classification process, security, policy, rules,
13 regulations, sound correctional practice of all of those
14 installation, and then I was promoted to the rank of
15 commissioner of correction in the State of Indiana.

16 Q Okay. Before we get to Indiana, I -- would it be fair
17 to say you have a very good understanding of the number of
18 institutions in South Carolina and their classification
19 system?

20 A Well, I don't have -- I have distinct knowledge of
21 their classification system, and not only that, the
22 historical development of their classification system. Not
23 only in the State of South Carolina, but other jurisdictions
24 also. And the type of institutions that, that are there and
25 the reason for them being there.

Jim Aiken - Direct examination
by Mr. Morton

1 Q And do we have maximum security prisons in South
2 Carolina?

3 A Yes, sir, we do.

4 Q And do you know how many we have?

5 A I don't know right offhand. I know they're the main
6 facilities, of course, places like Lieber, and Kirkland, and
7 there's also a facility within Kirkland, for example.

8 Q If an inmate is given a sentence of life without
9 parole, where would he be housed within the South Carolina
10 Department of Corrections?

11 A He would be housed in the---

12 MR. SALTER: Your Honor, at some point I think I need
13 to object to this because he hasn't been qualified as an
14 expert as of yet.

15 MR. MORTON: Okay.

16 THE COURT: Are you offering him as an expert?

17 MR. MORTON: Yes, sir.

18 THE COURT: In what field?

19 MR. MORTON: In the field of classifications of inmates
20 and the security of staff and inmates within those
21 institutions and the classification thereof.

22 THE COURT: Any objection?

23 MR. SALTER: No, sir, Your Honor. But I would move, in
24 limine, to restrict his testimony pursuant to State versus
25 Bryant, which is 642 S.E.2d 582, state versus Burkhart,

Jim Aiken - Direct examination
by Mr. Morton

1 which is 640 S.E.2d 450, both of which were decided in 2007
2 by our Supreme Court, and I'd ask that we note his testimony
3 to Mr. Moore's ability to adapt to prison and to prohibit
4 any testimony regarding conditions generally in other
5 institutions, hypothetical institutions, where he may be
6 housed as opposed to what has he done what, while he was
7 incarcerated in Michigan, what has he done while he's
8 incarcerated in South Carolina.

9 THE COURT: Any problem with that stipulation?

10 MR. MORTON: I'm not sure I understood his, his last
11 phrase there about what to limit his discussion not to what
12 has happened in Michigan or South Carolina?

13 MR. SALTER: No, no, no.

14 MR. MORTON: Yeah, that's what---

15 MR. SALTER: To limit him to that opposed to---

16 THE COURT: Any objection to that stipulation?

17 MR. MORTON: No, sir.

18 THE COURT: All right. Then I'll qualify the witness
19 as an expert within the field stated. We'll limit his
20 testimony as requested.

21 WITNESS: Thank you, Your Honor.

22 THE COURT: You may proceed.

23 WITNESS: Thank you, Your Honor.

24 THE COURT: Yes, sir.

25 Q Mr., Mr. Aiken, you have been asked by myself to review

1 the classification and the history of Mr. Richard Moore in
2 this case, correct?

3 A Yes, sir, I was asked to conduct an evaluation of
4 records that were forwarded to me and classify him or a
5 security evaluation of him like I have with thousands and
6 thousands of inmates, thousands and thousands of
7 classification transactions pertaining to inmates in the
8 security level as well as other inmate population.

9 Q And, again, you have done that how many times?

10 A Thousands and thousands of times. Plus working for the
11 U.S. Justice Department, I have been involved with
12 evaluation of classification systems throughout the United
13 States ranging from the most secure environment that the
14 U.S. has down to least secure populations.

15 Q And you have reviewed the history of, of Mr. Moore?

16 A As provided by counsel, that is correct, sir.

17 Q And do you remember -- you would have -- were -- would
18 you have been available to testify in 2001?

19 Were you doing the same thing now in, in 2001 as you,
20 as you are now?

21 A Yes, sir.

22 Q Okay. And have you testified in the courts in this
23 state?

24 A Yes, sir, federal and state.

25 Q Okay. Approximately how many times?

Jim Aiken - Direct examination
by Mr. Morton

1 A I've classified -- I don't know how many times in this
2 jurisdiction, but certainly more than ten, fifteen times to
3 say the least.

4 Q And, in that capacity, you have had the opportunity to
5 evaluate the records of Mr. Richard Moore?

6 A That is correct. I evaluated him based on my almost 40
7 years in this business and my expertise coming from not only
8 running these institutions, but being a part of policy
9 development like I've been appointed by Congress and the
10 president to evaluate prison rape elimination, which has a
11 strong connection to classification all over the United
12 States. It have a direct relationship to federal, state, as
13 well as county facilities.

14 Q And I believe that, just briefly, after you left the
15 State of South Carolina, you were the, the corrections
16 commissioner in the State of Indiana?

17 A I took over the State of Indiana, adult as well as
18 juvenile correctional system, and I was also the director of
19 corrections for the United States Virgin Islands.

20 Q Okay. You have been hired or retained by us, correct?

21 A Yes, I was retained by you to make this assessment as
22 we just discussed.

23 Q Does the fact that we are going to pay you for
24 testifying here today, in anyway, influence your testimony
25 about what you would say about Mr. Moore and his ability to

Jim Aiken - Direct examination
by Mr. Morton

1 adapt in prison?

2 A No, sir, I call them like I see them.

3 Q Okay. And why is that?

4 A Because you have to do everything you can to ensure the
5 protection of the public, staff, as well as inmate
6 population. Prison systems are dangerous places containing
7 predator as well as disruptive inmate population, and those
8 people that violated criminal statutes. And, and, no, it's
9 not an exact science. But the point is, is that we can
10 better predict human behavior and manage those behaviors,
11 and, and that's what I do, sir.

12 Q When you say it's not an exact science, have there been
13 occasions where you testified that you didn't think someone
14 would, where you testified that you didn't think they would
15 be a problem with adaptability where some inmates have gone
16 on to commit acts of violence within the institution?

17 A Inmates have been involved with violent acts while in
18 confinement based on a classification that involved me
19 evaluating it. I've had a situation, for example, where
20 I've had to order---

21 MR. SALTER: Your Honor, I'm gonna object now to any
22 historical anecdotes.

23 THE COURT: He's been qualified as an expert in this
24 area. If he wants to render an opinion, I'll be happy to
25 hear it.

Jim Aiken - Direct examination
by Mr. Morton

1 MR. SALTER: Thank you.

2 MR. MORTON: Your Honor, I was trying to get to his
3 opinion and then the basis for that opinion.

4 THE COURT: I understand. Well, again, let's try to
5 stick to that subject. He's already been qualified. So, we
6 don't need to go back through his qualifications.

7 MR. MORTON: Yes, sir. No, I wasn't trying to go back
8 through his qualification, but I'll move on, Your Honor.

9 Q Tell us, if you will, Mr. Aiken, when you say predator,
10 what do you mean by that?

11 A A person that's involved with chronic and continued
12 random and systemic violence often trying to inflict relief
13 of violence continuously within a correctional facility.
14 Also it's an inmate population that has individually or
15 collectively tried to control the operations of prison.

16 Q And in your review of Mr. Moore's record, what have you
17 discovered about Mr. Moore?

18 A That he can be adequately managed while in confinement
19 status, and that the South Carolina Correct, Department of
20 Corrections can adequately manage him.

21 Q And what do you base that on?

22 A Based on his institutional history, his behavior
23 patterns, and how those behaviors have been adequately
24 managed not only in a jail environment, but also in a prison
25 environment.

Jim Aiken - Direct examination
by Mr. Morton

1 Q And would your testimony have been the same in 2001 had
2 you been called to testify at, during the penalty phase of
3 his case?

4 A That's correct, sir.

5 MR. MORTON: Beg the Court's indulgence one second,
6 Your Honor.

7 THE COURT: Yes, sir.

8 (Pause.)

9 MR. MORTON: That's all I have, Your Honor.

10 THE COURT: Yes, sir, you may cross-examine.

11 MR. SALTER: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. SALTER:

14 Q Mr. Aiken, how are you doing this afternoon?

15 A I'm doing fine, sir. Good to see you.

16 Q Good to see you, sir.

17 You indicated earlier that you testified previously in
18 about ten or fifteen capital cases?

19 A I said at least that in South Carolina.

20 Q At least that?

21 A Many more elsewhere, sir.

22 Q Some of those were jury trials, correct?

23 A Yes, sir.

24 Q Some -- and some were post-conviction relief cases,
25 correct?

Jim Aiken - Cross-examination
by Mr Salter

1 A Yes, sir.

2 Q All right. And in each case you testified on behalf of
3 the inmate?

4 A When I said the results were considered to be favorable
5 to the inmate.

6 Q All right, sir. But you've never testified on behalf
7 of a prosecution is what I'm getting at.

8 A I've never been asked to do that, sir.

9 Q All right. Now, in each of your prior cases, you,
10 you've expressed a general opinion that the department's
11 capacity and ability to control an individual essentially in
12 a box, correct?

13 A I'm afraid I don't quite understand that question, sir.

14 Q All right. Regardless you -- it's been your opinion
15 that regardless of why an inmate's been incarcerated that
16 the SCDC has the ability to, to adequately handle the person
17 no matter what they do, correct?

18 A Not necessarily so. I have provided an expert opinion
19 to counsel that even though the correctional system or
20 another correctional system could manage this individual,
21 that he was at the highest level of probability to cause a
22 critical event.

23 Q Okay. And how does SCDC go about determining how to
24 classify an inmate?

25 A Well, they look at the criminal record. They look at

Jim Aiken - Cross-examination
by Mr Salter

1 the person's behavior while incarcerated. They look at the
2 medical history. They look at the educational history.
3 They look at their involvement in STG's or security threat
4 groups or gang involvement. They look at the person's
5 overall history to include his age, et cetera, and mental
6 health history and a number of other things.

7 Q All right. And they base the decision on where to, to
8 house the inmate based on those classifications, is that
9 correct?

10 A Yes, sir, I'm sorry. Go ahead please.

11 Q No, I was finished with my question.

12 A Okay. Classification, in layman's terms, is the
13 ability to place the inmate in a proper security level based
14 on a number of factors to include criminal history and the
15 things that I've shared with you, and, and those are what we
16 call driving forces or drivers as to the type of security an
17 inmate shall receive while incarcerated.

18 Q All right. Now currently Mr. Moore is housed on Death
19 Row, correct?

20 A Beg your pardon?

21 Q Mr. Moore's currently housed on Death Row, correct?

22 A That's my understanding, sir.

23 Q All right. What are the conditions like on Death Row?

24 A Well, it's a very high security environment. It's not
25 necessarily the most secure place within a correctional

Jim Aiken - Cross-examination
by Mr Salter

1 system. It's a place where inmates are, are kept. They're
2 allowed certain privileges based on their behaviors, and --
3 but, no, they don't have free run of going to the community,
4 for example, that you would in a very low security
5 environment.

6 Q All right, sir. And one of the first things that
7 happened when Mr. Moore went into the Department of
8 Corrections to go to Death Row was he was given a copy of
9 the inmate disciplinary system summary, is that correct?

10 A He was given a copy of the inmate handbook, is that
11 what you're referring to?

12 Q Yes, sir, the handbook. Yes, sir.

13 A Yes, sir, he should have received a handbook with
14 rules, regulations, those expectations as set forth by
15 staff, yes, sir.

16 Q All right. And that's done for several reasons?

17 A Beg your pardon?

18 Q This is done for several reasons?

19 A Yes, sir.

20 Q All right. One of those reasons would be to ensure
21 that he knows how to comport himself within the Department
22 of Corrections?

23 A Yes, sir.

24 Q All right. It's also done to maintain order within the
25 Department of Corrections, is that not true?

Jim Aiken - Cross-examination
by Mr Salter

1 A Yes, sir.

2 Q All right. This is for the safety of everyone in the
3 institution?

4 A To include the public, the general public also, sir.

5 Q All right. Were you given, by Mr. Moore's counsel, any
6 information about any disciplinaries that Mr. Moore may of
7 had while he was housed on Death Row?

8 A Yes, sir.

9 Q All right. Those records indicate he has gotten into
10 some trouble, has he?

11 A Yes, sir, he had several disciplinaries.

12 Q At least three, correct?

13 A I, I remember several of them, but I don't know exactly
14 what the number was, sir. I just evaluated the incidents.

15 Q Wasn't he convicted, on December 17th of 2003, for
16 using obscene or vulgar language?

17 A I don't know the exact date, but are you referring to
18 the altercation or verbal altercation he had with staff
19 concerning opening a window?

20 Q Correct. Yes, sir.

21 A Yes, sir.

22 Q All right, sir. That's something you don't want
23 happening in the Department of Corrections at all, is it?

24 A Well, I don't want that to happen obviously, but I also
25 have to look at it from an operational, prison operational

Jim Aiken - Cross-examination
by Mr Salter

1 prospective versus a general community looking at it.

2 Q All right. But you want inmates to respect the, the
3 CO's in the facility, correct?

4 A That's the desired outcome, but the point still remains
5 still if they don't demonstrate those behaviors, I'm capable
6 of managing those behaviors.

7 Q All right. And you would agree that SCDC views this as
8 a fairly serious matter, do they not?

9 A Everything is considered to be serious, but you have to
10 look at it from the, the scale of things, sir.

11 Q All right. Now, wasn't he also convicted in August of
12 2006 of a charge involving possessing or attempting to
13 possess a cell phone and a cell phone charger?

14 A 1986, yes, sir.

15 Q 1986?

16 A I'm sorry. 2006.

17 Q Was that 2006?

18 A 2006, sir. I'm sorry.

19 Q I'm not trying to trip you up.

20 A I know that, but, you know, '86 stuck in my mind for
21 some reason. I'm sorry.

22 Q All right, sir. Now, how does someone on Death Row
23 come about getting a cell phone?

24 A Let me count the ways. Cell phones, and I've been
25 studying this for some time now, have a way to getting into

Jim Aiken - Cross-examination
by Mr Salter

1 institutions through a number of mechanisms. Whether it's
2 food stuff that's going into mess hall or through a visit,
3 unfortunately through misconduct of staff. Also through,
4 especially like in 1996, we've come a long way. But cell
5 phones are very small items, and, and they're many ways that
6 inmate population, especially back at that time, were using
7 to, to introduce cell phones into the institution.

8 Q Got you.

9 Now, why does having a cell phone a problem for the
10 department?

11 A It's a problem for the department because inmates can
12 communicate without authorization, and what you have to do
13 is control that communications. As I stated, he was on
14 Death Row and he had received a cell phone. This was
15 discovered because security systems did work, and, in my
16 opinion, appropriately punished for that behavior.

17 Q All right. And this is been such a problem for the
18 department that they moved, have they not, to be able to
19 allow to jam all cell phone signals at institutions?

20 A They're requesting that, yes, sir, and I'm in full
21 support of that as well as some other approaches that are,
22 that I have in mind to control that type of communications,
23 and they've been very effective and, and must continue to do
24 that.

25 Q All right. Now, were you provided information

Jim Aiken - Cross-examination
by Mr Salter

1 concerning the Spartanburg County disciplinaries that

2 Mr. Moore had engaged in?

3 A Yes, sir, I have.

4 Q All right. Are you aware that, on August 30th of
5 1993, he received a verbal reprimand for refusing a direct
6 order from an officer?

7 A I do recall -- I don't recall the exact date or the
8 particular incident, but he was mouthing off at a
9 correctional officer, and, and was appropriately punished
10 for that, yes, sir.

11 Q And then on August 1st of '96 he was locked in his
12 cell for four days for abusing telephone privileges?

13 A Yes, sir, I do remember that incident. I don't
14 remember the exact date.

15 Q All right. And do you remember an incident where he,
16 in '96, where he was locked down for four hours for arguing
17 with a correctional officer?

18 A Are you talking about the incident standing by the
19 door?

20 Q Yes, sir.

21 A Yes, sir, I recall that.

22 Q All right. What were the facts of that?

23 A Well, an officer told him to get out of the door and he
24 told him he wasn't going to the door, and the officer locked
25 him up. That happens on a continual basis in a correctional

1 environment, sir.

2 Q Okay. Then on February 13th of '97, he lost
3 telephone and canteen privileges for refusing to follow a
4 direct order, did he not?

5 A Which direct order was that, sir?

6 Q I don't believe I have that in front of me.

7 You don't, you don't recall that specific---

8 A I---

9 Q ---incident?

10 A I'm trying to remember which one it was. That's all.

11 Q All right. And do you recall him being written up
12 while, for refusal to follow instructions while he was
13 awaiting trial on the murder charge?

14 A What instructions were they, sir?

15 Q I believe that one was also related to his conduct in
16 asking him to do something he just refused to do it.

17 A There's several incidents where he showed immature
18 behavior regarding that, and you have to understand, in a
19 prison environment, you're told what to do, when to do it,
20 and how to do it, and you have no discretion. And the
21 incidents that I reviewed, I reviewed pertaining to
22 spartanburg, he was appropriately managed with demonstrating
23 those behaviors, sir.

24 Q All right. Do you recall any disciplinaries occurring
25 while he was in Michigan?

Jim Aiken - Cross-examination
by Mr Salter

1 A Not right offhand, sir.

2 Q So, you're not aware of incidents occurring in
3 Michigan?

4 A I'm not saying they did not occur.

5 Q Just don't recall them?

6 A I just don't recall them, no, sir.

7 Q Do you recall where he was written up in November of
8 2000, again this would be while awaiting trial, for
9 possession of a lighter?

10 A In his shirt pocket if I'm not mistaken, sir, and it
11 was a red lighter?

12 Q Yes, sir.

13 All right, sir. You mentioned earlier predator
14 inmates. Predator inmates.

15 A Yes, sir.

16 Q They're a problem, right?

17 A Problem, they're always a potential for that. But the
18 point is, is that prison systems are geared to manage
19 predator inmate population at just certain security levels.

20 Q All right, sir. Well, you provided a, in preparing for
21 your, for your testimony today, were you provided with a
22 copy of Mr. Moore's prior criminal convictions?

23 A I did get to review prior criminal convictions. I
24 don't remember each one chronologically, sir.

25 Q All right. But you'd agree that, in the beginning of

Jim Aiken - Cross-examination
by Mr Salter

1 1991, he had a history of escalating violence towards
2 individuals who were weaker than he was?

3 A Are you talking about his community behaviors, sir?

4 Q Yes, sir.

5 A I don't know whether I would classify it escalating,
6 but it was certainly criminal acts that was not tolerated by
7 the courts nor the community.

8 Q All right. How about a September 1991 purse snatching
9 here in Spartanburg County?

10 A Yes, sir, I do recall that particular incident.

11 Q And in that incident, didn't he beat and kick a lady?

12 A He beat and kicked a lady if I'm not mistaken. He also
13 beat on his, her boyfriend.

14 Q Right. So badly he had to go to the hospital, correct?

15 A That's -- I think I do remember him being sent to the
16 hospital. I don't know whether he was admitted or not, sir.
17 But certainly that was inappropriate activity in the county.

18 Q All right, sir. You, you were provided information
19 that Mr. Moore was convicted in 1994 for an offense
20 occurring on September 31st of 1991 in which he began by
21 jumping across a counter in a Rack Room and pinning a female
22 employee against the wall?

23 A I do recall that incident. I don't have the date.

24 Q All right. And you're aware of a 1997 conviction for
25 assault and battery of a high and aggravated, aggravated

Jim Aiken - Cross-examination
by Mr Salter

1 nature with a female victim, were you not?

2 A A female victim?

3 Q So, I don't, I don't recall the lady's last name, but
4 the female victim case which initially began as a criminal
5 sexual conduct case, correct?

6 A I remember, I remember reading some material pertaining
7 to that, yes, sir, his, his community behavior.

8 Q All right. So, don't Mr. Moore's actions reflect that
9 he is, in fact, a predator?

10 A No, sir.

11 Q And they don't, they don't show he's unable to adapt to
12 prison, do they?

13 A Not necessarily so, sir.

14 Q Not necessarily so.

15 Why not?

16 A Well, your community behavior is a better predictor of
17 future community behavior. Your institutional behavior is a
18 better predictor of future institutional behavior, and then
19 you have to look at it and evaluate it with prison eyes, and
20 can that prison system manage that behavior, and those are
21 the three prongs that I look at in making these evaluations.

22 Q All right. So, his prison behavior, based on his past
23 prison behavior, you would predict that he would, in fact,
24 refuse directives given to him by correctional officers,
25 correct?

Jim Aiken - Cross-examination
by Mr Salter

1 A There's another variable that's also in play, and in
2 that is a person becomes institutionalized, and also the
3 variable that an individual gets older. And as the
4 individual gets older, and this is based on classification
5 of thousands and thousands of inmates, as well as other
6 things that I have read, research, that the individual's
7 involvement in disruptive acts, while incarcerated, goes on
8 a downward slope. It doesn't -- it's not exact. But
9 there's a downward slope.

10 Number three is when you look at the type of behavior
11 within the prison that may, to community eyes, seems like
12 the end of the world. But in prison administrative eyes is
13 not as bad as can be, and I can give you examples if you
14 care to.

15 Q But Mr. Moore's behavior, both in the Department of
16 Corrections and out in the community, has shown that he is
17 gotten more and more violent until he was arrested and
18 convicted of murder and then sentenced to Death Row,
19 correct?

20 A Well, violent within the facility, I don't see where
21 he's taken hostages, he's stabbed staff, stabbed other
22 inmates, escaped by force, part of a security threat group.
23 I didn't see those behaviors, sir.

24 Q All right. But -- so, absent any evidence that he's
25 stabbed somebody while in prison, absent evidence that he's

Jim Aiken - Cross-examination
by Mr Salter

1 taken a hostage, he's gonna be adaptable to go to prison,
2 correct?

3 Is that your opinion?

4 A I'm saying that the prison system can adequately manage
5 him for the remainder of his life necessary to control him.

6 Q All right, sir. Nothing further.

7 THE COURT: Redirect.

8 MR. MORTON: Just a few questions, Your Honor.

9 THE COURT: Yes, sir.

10 REDIRECT EXAMINATION

11 BY MR. MORTON:

12 Q Mr. Gibson -- I'm sorry. Mr. Aiken, have there been
13 any, not only stabbings, but any type of assaultive
14 behaviors by Mr. Moore while he's been in prison?

15 A None that I, I -- assaultive behavior upon staff, I
16 have not seen that and I've not---

17 Q Okay.

18 A I've seen he's been in fights with inmates, but I
19 didn't see that predator behavior pattern.

20 Q Any weapons possession charges?

21 A No, sir.

22 Q Any gang involvement?

23 A No, sir.

24 Q And as you indicated, no type of behavior that would
25 seem to indicate that he would be a threat really within the

Jim Aiken - Redirect examination
by Mr. Morton

1 prison population?

2 A All inmates population -- all inmates have a potential
3 for threat, and you never -- when you start saying that they
4 never will, that's when you have a problem. The point is
5 that he has had a number of years in prison, in jail, and
6 criminal activity, and not demonstrated behaviors we just
7 discussed, discussed.

8 Q Do his infractions for disobeying staff, having the
9 possession of a cell phone, refusing to follow instructions,
10 indicate to you that there would be a problem with his
11 adaptability in, in the penitentiary?

12 A No, sir, he doesn't come anywhere near the level of
13 predator inmate population and the intensive type of
14 management that's required for that type of population. He
15 has no history of that.

16 Q And would you have so testified in 2001?

17 A Yes, sir.

18 MR. MORTON: That's all I have, Your Honor.

19 THE COURT: Recross.

20 MR. SALTER: Just extremely brief, Your Honor.

21 THE COURT: Yes, sir.

22 RECROSS-EXAMINATION

23 BY MR. SALTER:

24 Q Mr. Aiken -- and I promise this will be brief.

25 A No problem, sir.

Jim Aiken - Recross examination
by Mr. Salter

1 Q Since September of 1999, however, Mr. Moore's been
2 incarcerated throughout the period, correct?

3 A Since his arrest.

4 Q And what -- when did he go to Lieber for Death Row?

5 A I don't have the exact date, but I think it was
6 somewhere right after his adjudication in October of 2001.

7 Q All right, sir. And, so -- now, you were asked whether
8 or not he's engaged in any assaultive or gang behavior, but
9 he's been on Death Row for ten years, nine years?

10 A I, I don't understand the question, sir.

11 Q He's been on -- Mr. Moore's been on Death Row since he
12 was transferred to Death Row, correct?

13 A That's my understanding, sir.

14 Q And, so, he would not expect to see gang or other
15 assaultive behavior, would you?

16 A I, I beg to differ from you, sir. Inmate population
17 that's been involved and have what they call clout or juice
18 have ways of controlling and demonstrating controlling and
19 disruptive and violent behavior upon other inmates as well
20 as staff while on Death Row, sir, unfortunately.

21 Q Okay. We're, we're aware of that.

22 Nothing further.

23 THE COURT: You may step down, sir.

24 WITNESS: Thank you, Your Honor.

25 May I be excused, sir?

Jim Aiken - Recross examination
by Mr. Salter

1 THE COURT: Any objection to this witness being
2 excused?

3 MR. MORTON: No, sir, Your Honor.

4 MR. SALTER: None, Your Honor.

5 THE COURT: You're free to go. Thank you very much.

6 WITNESS: Have a good day, sir.

7 THE COURT: Yes, sir, you too. You too.

8 The Applicant may call the next witness.

9 MR. MORTON: We call Mr. George Gibson to the stand.

10 THE COURT: George Gibson, outside.

11 MR. SALTER: Your Honor, I'd like the record to reflect
12 that Mr. Mabry is leaving the courtroom.

13 THE COURT: It will so reflect.

14 Sir, come forward again right up here to my left.

15 GEORGE GIBSON, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat, sir, and once seated, sir,
18 state your name for me.

19 WITNESS: Sir?

20 THE COURT: Say your name for me.

21 WITNESS: George Gibson.

22 THE COURT: Thank you.

23 Mr. Morton, your witness.

24 MR. MORTON: Thank you very much, Your Honor.

25 DIRECT EXAMINATION

George Gibson - Direct examination
by Mr. Morton

1 BY MR. MORTON:

2 Q Mr. Gibson, you testified for us earlier, correct?

3 You've already been in this courtroom one time today?

4 A Yes.

5 Q And we appreciate you being here. I just wanted to ask

6 you some questions about your involvement in this trial of

7 Richard Moore, and if the attorney general will allow me,

8 you gave a statement to the police in, on September the

9 16th of 1999, correct?

10 A Yes.

11 Q Signed sworn statement?

12 A Sir?

13 Q A signed and sworn statement?

14 A Yes.

15 Q And have I marked that, Mrs. Court Reporter?

16 COURT REPORTER: Yes.

17 Q And, again, if you'll look at Applicant's Exhibit No.

18 1.

19 That's your statement, correct?

20 A That's correct.

21 Q Okay. And you signed on there that the facts contained

22 herein are true and correct?

23 A Yes.

24 Q And then you were later, several days later visited by

25 some people from the solicitor's office and from the police

George Gibson - Direct examination
by Mr. Morton

1 who also questioned you about why Mr. Moore was at your
2 house, is that correct?

3 A No.

4 Q Okay. Tell me what your recollection of that visit
5 was.

6 A They just came to check the scene, check out the scene
7 where the truck was wrecked in my yard and, and that's it,
8 and they just -- and they didn't question me at all.

9 Q You don't remember talking to them at all about why
10 Mr. Moore was there?

11 A No, they just said that they was here to check the
12 scene out, and then this is the prosecutor---

13 Q Okay.

14 A ---and that's it. That's all that was said. I
15 remember that well.

16 Q Okay. And do you remember that on March the 23rd of
17 2000 you were arrested and charged with trafficking in crack
18 cocaine?

19 A Yes.

20 Q Is that right?

21 A Yeah.

22 Q Okay. And do you remember that you were also arrested
23 in, on May the 31st of that year for driving under
24 suspension?

25 A Yes.

George Gibson - Direct examination
by Mr. Morton

1 Q Okay. Do you remember, on July the 22nd of 2001,
2 that you were arrested for possession of crack, driving
3 under suspension, disregarding a stop sign, and improper
4 turn?

5 A Yes.

6 Q Is that right?

7 A Yeah.

8 Q Now, let me ask you, as to your trafficking in crack
9 charge, that case, what happened to that case?

10 A Dismissed.

11 Q Okay. Do you remember when that was?

12 A November 28th of 2001 I guess. I think -- the exact
13 date -- but it was dismissed in November.

14 Q Okay. After you were arrested for crack March, on
15 March 23rd, again, as I've said, you were arrested for DUS
16 and on July 22nd you were arrested for possession of crack
17 again, right?

18 A That's what they say.

19 Q And did you do that?

20 Were you in possession of crack on that day?

21 A No.

22 Q You weren't?

23 A No.

24 Q And do you remember what happened to that charge?

25 A I, I got probation for it.

George Gibson - Direct examination
by Mr. Morton

1 Q You got probation for it?

2 A As I remember cause I was -- my lawyer told me hey, my
3 word wouldn't, don't mean nothing. So, I pleaded guilty for
4 it.

5 Q You pled guilty?

6 A He told me I might as well plead guilty for it. My
7 word don't mean nothing.

8 Q Okay. So, you decided to go ahead and plead guilty to
9 it even though you---

10 A On the advice of my lawyer.

11 Q Even though you didn't possess any crack on that date?

12 A No, I didn't.

13 Q Okay. How about the charge, the trafficking charge
14 that was dismissed, did you -- were you trafficking in crack
15 on that day?

16 A I wasn't. I wasn't.

17 Q Okay.

18 A That's why it was dismissed.

19 Q You testified that, during Richard Moore's trial,
20 correct?

21 You testified during his trial?

22 A Yes, sir.

23 Q Yeah.

24 And you testified that you had---

25 MR. SALTER: Your Honor, we'll finally object. I'm

George Gibson - Direct examination
by Mr. Morton

1 not -- I realize we're not in front of a jury.

2 MR. MORTON: Okay.

3 MR. SALTER: Your Honor knows how to sift out between
4 leading and non-leading, what it is and isn't testimony.

5 Q Did, did you, Mr. Gibson, make statements to police
6 officers, other than Mr. Brown who took your statement on
7 the night of September 16th, 1999, that Mr. Moore came to
8 your house in order to get a, get help or get a ride to the
9 hospital?

10 A Yes.

11 Q You did, you did tell other officers that?

12 You did tell other officers that?

13 A Yes.

14 Q Okay. Do you remember who they were?

15 A Now, I do now since I seen his name on there.

16 Detective Brown.

17 Q Detective Brown?

18 A Yes.

19 Q Is Detective Brown in the courtroom?

20 A Huh?

21 Q Is he here?

22 THE COURT: Is Detective Brown in the courtroom?

23 WITNESS: I don't know. I don't know.

24 Q Okay.

25 A It's been 11 years.

George Gibson - Direct examination
by Mr. Morton

1 Q Other than---

2 A I don't know.

3 Q Other than Detective Brown, other than Detective Brown
4 did you tell any other police officers, between September
5 the 16th of 1999 and the time Richard Moore went to trial
6 in October of 2001, that Richard Moore was at your house to
7 get help for his wound?

8 Did you tell anybody else that story?

9 A No.

10 Q Okay. So, the only person that you remember telling
11 that to is?

12 A That statement I gave to Detective Brown.

13 Q Detective Brown.

14 Okay. Do you remember what your status was as far as
15 your freedom when you testified in Richard Moore's case?

16 A I was serving 60 days for driving under suspension a
17 third time.

18 Q Okay. Do you, do you remember where you were housed?

19 A Where was I at?

20 Q Right.

21 A I was in Kirkland, Kirkland in Columbia.

22 Q Okay. Were you ever in Allendale?

23 A Yes, that's after I, after I went back after the trial.

24 They sent me to Allendale for the next 30 days. I was at
25 Kirkland for 30 days and Allendale for 30 days. So --.

George Gibson - Direct examination
by Mr. Morton

1 Q Do you remember testifying in Richard Moore's trial
2 that you had given a statement to Mr. Gowdy that Richard
3 Moore came by your house to get crack cocaine that night?

4 Do you remember testifying to that?

5 A Yeah.

6 Q Okay.

7 A Yep.

8 Q And do you remember saying that you told Mr. Gowdy that
9 for the first time on September the 25th of 2001?

10 A Yes.

11 Q Correct?

12 A (Witness nods affirmatively.)

13 Q And do you remember being released from jail on
14 September the 24th of 2001?

15 A September the 24th?

16 Q Yes, sir.

17 A From jail?

18 Q Yes, sir.

19 A For what?

20 Q Do you remember being arrested and served with an --
21 I'll back up to try and help you explain that.

22 Do you remember being served with a bench warrant on
23 August the 20th of 2001?

24 A For driving under suspension?

25 Q For failure to appear.

George Gibson - Direct examination
by Mr. Morton

1 A Right, yeah.

2 Q Is that right?

3 A Right.

4 Q So that on August the 20th of 2001 you were arrested
5 and placed into the Spartanburg County Jail for failing to
6 previously appear in Court as directed, correct?

7 A Yeah, for---

8 Q Okay. And that sentence I believe was a 60 day
9 sentence?

10 A Right.

11 Q Okay. And let me -- you have any objection to it?

12 MR. SALTER: I don't believe I have any objection to
13 it.

14 THE COURT: All right. I don't know what it is.
15 What is it?

16 MR. MORTON: It's a, it's a release form from the
17 Spartanburg County Jail.

18 THE COURT: All right.

19 MR. MORTON: I would move---

20 THE COURT: Without objection it will be admitted as an
21 Applicant Exhibit.

22 (WHEREUPON, the jail record was marked as Applicant's
23 Exhibit No. 2 and received into evidence at this time.)

24 Q Mr. Gibson -- may I approach the witness, Your Honor?

25 THE COURT: Yes, you may.

George Gibson - Direct examination
by Mr. Morton

1 Q Mr. Gibson, this is where you were incarcerated at the
2 Spartanburg County Detention Facility, correct, for 60 days?

3 A Uh-huh. (Affirmative).

4 Q On a bench warrant?

5 A Uh-huh. (Affirmative).

6 Q Correct?

7 A Yeah.

8 Q And on Applicant's Exhibit No. 2, this shows that you
9 were released on September 24th of '01, is that right?

10 A That's what it says.

11 Q That's what it says?

12 A Yeah.

13 Q Okay. So, you were placed in jail on August the
14 20th of 2001 on a bench warrant. You remained there until
15 September 24th of 2001, correct?

16 A (Witness nods affirmatively.)

17 Q And on September 25th you met with Mr. Gowdy and gave
18 them their, your new statement that Richard Moore came by
19 your house asking for crack cocaine, is that right?

20 A I didn't make them new statements. I just added that.
21 He asked me why.

22 Q Oh, okay.

23 A And---

24 Q So, was that the first time somebody had asked you why?

25 A Yeah.

George Gibson - Direct examination
by Mr. Morton

1 Q That was the first time. I thought you had told
2 previous people that, that he came by so you could help him
3 or give him a ride to the hospital.

4 A That's what I said on that one.

5 Q So, that was why?

6 A Yeah, he asked me why.

7 Q Okay.

8 A And I just said -- I just told him why.

9 Q When they asked why before---

10 A They didn't ask me why before.

11 Q Okay. So, you just volunteered that you were gonna,
12 that he asked for a ride to the hospital?

13 MR. SALTER: Your Honor, I'm gonna finally object again
14 to leading.

15 THE COURT: I would ask you not to lead, but I don't
16 know if that last question was leading.

17 So, go ahead.

18 MR. SALTER: Yes, sir, Your Honor.

19 Q When asked before -- were you asked before, on
20 September the 16th, 1999, why Richard Moore was at your
21 house?

22 A Repeat that again exactly.

23 Q On September the 16th when Richard Moore came by
24 there --

25 A Right.

George Gibson - Direct examination
by Mr. Morton

- 1 Q -- the police came by there after that, right?
- 2 A They came by that same night.
- 3 Q Right?
- 4 A Yeah.
- 5 Q And asked you what, what did he want.
- 6 A He didn't, he didn't ask me what I want.
- 7 Q No, no, no.
- 8 A He, he asked, asked me for, to give him a statement.
- 9 Q What Mr. Moore wanted.
- 10 Why did Richard Moore -- did, did they ask you what was
- 11 Richard Moore doing at your house?
- 12 A I told them on the statement.
- 13 Q Okay. And you told them on the statement that---
- 14 A I told them---
- 15 Q ---to give him a ride to the hospital, is that right?
- 16 A That's right.
- 17 Q Okay. Or to help him, right, or to help him is what
- 18 you said?
- 19 A Yeah.
- 20 Q Okay.
- 21 A That's what I said.
- 22 Q But then that changed, is that correct?
- 23 A It didn't change. I just told them that he asked me
- 24 why.
- 25 Q Okay.

George Gibson - Direct examination
by Mr. Morton

- 1 A Exactly what was the reason he was there.
- 2 Q And---
- 3 A And---
- 4 Q ---you told Mr. Gowdy?
- 5 A I just told them.
- 6 Q You told Mr. Gowdy that on September the 25th of
- 7 2001?
- 8 A (Witness nods affirmatively.)
- 9 Q Okay. And you had just been released from jail, as I
- 10 pointed out to you, on September the 24th, 2001?
- 11 A I can't remember.
- 12 Q Okay. I'll show you this again. This is Applicant's
- 13 Exhibit No. 2, which indicates what?
- 14 A I don't even remember when I was released.
- 15 Q What is the date?
- 16 A That says 2/24/01.
- 17 Q What's the month?
- 18 A Huh?
- 19 Q What's the month?
- 20 What's that date?
- 21 A Right there?
- 22 Q Yeah.
- 23 A Nine.
- 24 Q 9/24/01.
- 25 So, you were released on 9/24/01. You gave Mr. Gowdy a

George Gibson - Direct examination
by Mr. Morton

1 statement that Gibbes, that Mr. Moore came by your house for
2 cocaine on the next day?

3 A I didn't get to see him I don't think. I---

4 Q I'm sorry?

5 A If I remember correctly I did not get to see Mr. Gowdy
6 on, when I, when I was released cause I went back---

7 Q You testified---

8 A ---three days later---

9 Q You testified---

10 A ---for driving under suspension.

11 Q Did you testify at Mr. Moore's trial?

12 A Yes, I testified.

13 Q And did you testify at that trial that you told the
14 solicitors, on September the 25th, that Mr. Moore came by
15 your house after the night of the incident to get cocaine?

16 A I wasn't in no jail. I hadn't been in jail when I told
17 him that I don't think. I hadn't been to jail. If I
18 remember it correct, I hadn't been to jail, sir, when I had
19 to go see him. I had to go to trial for that driving under
20 suspension and I hadn't been to jail when I told him that.

21 MR. MORTON: Beg the Court's indulgence, Your Honor.

22 (Pause.)

23 Q Mr. Gibson---

24 A Yes.

25 Q ---when you testified in Mr. Moore's trial---

George Gibson - Direct examination
by Mr. Morton

- 1 A Yes, sir.
- 2 Q ---you were asked by the prosecutor when did you add
3 this new cocaine part---
- 4 A (Witness nods affirmatively.)
- 5 Q ---and I want you to read what that says right here.
6 Read the question and read your answer.
7 What's the question?
- 8 A The question. Did you make the, make the addition to
9 your statement, September the 25th.
- 10 Q Okay. The question is well, when did you make the
11 addition to your statement.
- 12 A All right.
- 13 Q That's the question.
- 14 A After -- okay. After the 25th.
- 15 Q Okay.
- 16 A Okay.
- 17 Q All right.
- 18 A Like I said, I don't remember being in jail at that
19 time.
- 20 Q Well, I'm not asking you if you were in jail at that
21 time. I'm asking you, when you testified, you testified
22 that you changed your statement on September the 25th,
23 which is the day after you were released from jail.
- 24 A I didn't change my statement. I added something to it,
25 what he asked me.

George Gibson - Direct examination
by Mr. Morton

1 Q Okay. Well, you added---

2 A So, that wasn't changing his statement.

3 Q Okay. Well, you added that part?

4 A Yeah---

5 Q On September 25th?

6 A I don't know what date it was, but it says
7 September the 25th. I don't remember.

8 Q And that was your answer, right?

9 A Right.

10 Q September 25th.

11 A I don't remember that.

12 Q Okay. Well, let me show you this again.

13 A But I see it. I see it. But like I said, I don't
14 remember saying September 25th unless that was the, unless
15 that's the day of the trial.

16 Q But you see it in the transcript of the Court records,
17 correct?

18 A Yes.

19 Q Okay. So then -- do you remember what happened to you
20 next?

21 A Happened to me?

22 Q Yes, sir, as far as your incarceration.

23 A What this got to do with me?

24 Q Because I'm just gonna ask you some questions,

25 Mr. Gibson. If you'll do your best to answer them, then

George Gibson - Direct examination
by Mr. Morton

- 1 we'll try and get you out of here as---
- 2 A okay.
- 3 Q ---as best we can.
- 4 A That's the way -- if you get to the point and ask me
- 5 the questions---
- 6 Q okay. I'll---
- 7 A ---I can get to it and answer you correctly. Again,
- 8 you taking me back to stuff I really don't remember---
- 9 Q I understand.
- 10 A ---and I can't just up and say it.
- 11 Q I understand.
- 12 A You understand, cause it's been 11 years, man.
- 13 Q okay. I understand.
- 14 A I'm ten years older than I was.
- 15 Q I'm gonna do the best I can.
- 16 A All right.
- 17 Q okay. Do you remember going to jail then for a 105 day
- 18 sentence?
- 19 A Yeah.
- 20 Q okay. Do you, do you remember what date that was?
- 21 A No.
- 22 Q okay.
- 23 A Damn.
- 24 Q Let me ask you to look at something for me.
- 25 Okay. Now, Mr. Gibson, I'm gonna -- Your Honor, I

George Gibson - Direct examination
by Mr. Morton

1 would like to mark the defendant's rap sheet. Not the
2 defendant's. The witness' rap sheet as Applicant's Exhibit.

3 THE COURT: Any objection?

4 MR. SALTER: No objection, Your Honor.

5 THE COURT: All right. Without objection it will be
6 marked as Applicant's Exhibit No. 3 I believe.

7 (WHEREUPON, the rap sheet was marked as Applicant's
8 Exhibit No. 3 and received into evidence at this time.)

9 Q Now, Mr. Gibson, I'm going to show you this, okay, and
10 what it is is your rap sheet. Okay.

11 A I know my rap sheet.

12 Q Okay.

13 A I can -- huh?

14 Q What's -- tell me, tell me -- I'm looking at---

15 A I know about my rap sheet.

16 Q I'm gonna ask you what is on this exhibit.

17 Okay. In other words, we have just had this marked as
18 an exhibit in this case.

19 A Uh-huh. (Affirmative).

20 Q And the number of that exhibit is No. 3. Okay.

21 A What's No. 3?

22 Q Well, it's No. 3, the, the number that we have put on
23 this exhibit.

24 Okay?

25 A Okay.

George Gibson - Direct examination
by Mr. Morton

1 Q That -- I'm gonna ask you about what this exhibit has
2 on it.

3 A Okay.

4 Q Okay. And does this exhibit indicate that it is, that
5 it is your name on there?

6 A I can't see it. Show it to me. Yeah, yeah.

7 Q Is that correct?

8 A Uh-huh. (Affirmative).

9 Q And does this exhibit indicate that you were arrested
10 and charged -- okay. I'm gonna show it to you. I'm gonna
11 show it to you.

12 Okay. Does it indicate -- do you see that date right
13 there?

14 A 2001, yeah.

15 Q What's the whole date?

16 A 7/22/2001.

17 Q Okay. And that on 7/22 of 2001 you were arrested and
18 charged with driving under suspension, disregarding a stop
19 sign, improper turn, and possession of crack?

20 A Okay.

21 Q Is that correct?

22 A That's correct.

23 Q Okay. Now, tell me what the date says right there.

24 A 9/28. Eight. Eight.

25 Q 9/28/01?

George Gibson - Direct examination
by Mr. Morton

- 1 A Yeah.
- 2 Q Okay. And it indicates that -- what does that, what
3 does that say beside 9/28/01?
- 4 A That's the date.
- 5 Q Say it, say it so the court reporter can hear you if
6 you don't mind.
- 7 A Custody status received, start date, 9/28/2001.
- 8 Q Custody status received, start date, 9/28/2001.
- 9 A Okay. Can I ask a question?
- 10 Q Yes, sir.
- 11 A Are you taking me through all this just to ask me a
12 specific question on why I changed my statement I tell you,
13 and you don't have to put on trial cause I already served
14 time for all this.
- 15 Q Okay.
- 16 A Okay.
- 17 Q I'm just gonna ask you a few more questions.
- 18 A We can do it and let me answer the question that you
19 want to ask me. Okay.
- 20 Q Okay. I'm gonna ask you these questions---
- 21 A Sure.
- 22 Q ---and you answer them.
- 23 Okay?
- 24 A All right.
- 25 Q I'm asking and you answer it.

George Gibson - Direct examination
by Mr. Morton

- 1 A All right.
- 2 Q Okay. Does your rap sheet---
- 3 A If I remember.
- 4 Q Does your rap sheet indicate that you were placed in
- 5 jail again on September the 28th of 2001?
- 6 A It says it, yes.
- 7 Q Okay. So, you were let out on the 24th, and you gave
- 8 a addition to your statement on the 25th?
- 9 A Addition, is it, is it on there?
- 10 Q Well, you said that.
- 11 A I'm talking about is it on there. I was really -- I
- 12 didn't say I was let out on the 24th. You said it was on
- 13 there.
- 14 Is it on that paper that you had?
- 15 Q No, I just showed you this on, on exactly, on this---
- 16 A Okay.
- 17 Q ---Exhibit No. 2.
- 18 A Okay.
- 19 Q Right, that you were released on the 24th.
- 20 A Okay.
- 21 Q Okay. You made the addition to your statement.
- 22 A Okay. That right there. All right.
- 23 Q You testified that you made your addition to your
- 24 statement to Mr. Gowdy on the 25th.
- 25 A Okay.

George Gibson - Direct examination
by Mr. Morton

1 Q Okay. Then you were put back in jail on the traffic
2 charges on the, on the---

3 A That's true.

4 Q ---on the 28th?

5 A Yes, sir.

6 Q For 105 days?

7 A That's true.

8 Q Okay.

9 A No, it was for driving under suspension. Not no
10 trafficking.

11 Q Okay.

12 A Okay.

13 Q Well, I consider that---

14 A All right.

15 Q Okay. I'm, I'm talking about for, for---

16 A Okay.

17 Q ---driving.

18 A Uh-huh. (Affirmative).

19 Q Right?

20 A That's what I'm talking about too.

21 Q Now, they had you for disregarding a stop sign and for
22 an improper turn.

23 A Okay.

24 Q But you did 105 days on, right?

25 A I did 60 days.

George Gibson - Direct examination
by Mr. Morton

1 Q okay. Did you do that offense?

2 Did you do that?

3 Did you disregard---

4 A Driving under suspension?

5 Q Did you disregard a stop sign?

6 A No, I didn't.

7 Q okay.

8 A I didn't regard, disregard a stop sign.

9 Q okay. So then you were placed back in jail on
10 September the 28th, correct?

11 A That was after I got out. Three days later.

12 Q You got out on the 24th. You met with Mr. Gowdy on
13 the 25th.

14 A I guess so if it says it.

15 Q And you went back to jail on the 28th?

16 A That's right, for driving under suspension again.

17 Q Okay. And when you went back to jail on the 28th, do
18 you remember where you were kept?

19 A Kirkland. I told you that.

20 Q Kirkland.

21 A I was sent to Kirkland.

22 Q Okay.

23 A And --.

24 Q Then you came back from Kirkland and testified in Mr.
25 Moore's trial?

George Gibson - Direct examination
by Mr. Morton

- 1 A True.
- 2 Q Right.
- 3 Okay. And when you came back, do you remember what
- 4 date you came back to the---
- 5 A I don't remember.
- 6 Q ---department---
- 7 A I don't remember.
- 8 Q Do you remember who brought you back, the Department of
- 9 Corrections or Spartanburg?
- 10 A I don't -- Department of Corrections or somebody came
- 11 and got me.
- 12 Q Okay.
- 13 A It was a female driver.
- 14 Q Do you remember talking to Mr. Morin, that would be Mr.
- 15 Moore's lawyers, leading up to any of this?
- 16 A I don't remember talking---
- 17 Q Okay.
- 18 A ---to any of them.
- 19 Q Okay. Okay. Do you remember then testifying, as I
- 20 think you have said, in Mr. Moore's case correct?
- 21 A (Witness nods affirmatively.)
- 22 Q And then after his trial was over you were sent to
- 23 Perry, is that right?
- 24 A I was sent back to Columbia.
- 25 Q Okay.

George Gibson - Direct examination
by Mr. Morton

1 A I went back to Kirkland.

2 THE COURT: Maybe I'm confused.

3 Did I understand that he went back to Allendale at one
4 time?

5 MR. MORTON: Yes, sir, I wasn't, I wasn't gonna -- were
6 you in Allendale, Mr. Gibson?

7 A After I went back to Kirkland and they processed me
8 there they sent me to Allendale for the last 33, for them
9 other 30 days. So, altogether I served 60 days, 30 days in
10 Kirkland beside the three days I stayed up here at the
11 county, and I went back to Kirkland and they sent me to
12 Allendale for the last 30 days. So, a total of 60 days I
13 was incarcerated for driving under suspension.

14 Q After you were placed in jail, and tell me if you
15 remember this or not, on September the 28th, do you
16 remember, and when you came to testify from Mr. Moore's
17 trial, do you remember how long you were at the Spartanburg
18 County Detention Center?

19 A Yeah.

20 Q How long?

21 A I think 12 days.

22 Q Twelve days?

23 A Twelve days I think.

24 Q And during that 12 day period were you visited by Mr.
25 Morin or Mr. Kelly?

George Gibson - Direct examination
by Mr. Morton

1 A No.

2 Q Do you remember -- and if I've asked this already I
3 apologize.

4 When you were released from -- when you left the
5 Spartanburg County Detention Center after you testified,
6 okay, do you remember going to Perry?

7 A They always take me through Perry on your way back to,
8 on your way to Columbia.

9 Q Okay. Did you stay there at Perry?

10 A Not overnight.

11 Q Okay. Did you go back to Columbia---

12 A Yes.

13 Q ---immediately?

14 A The same day we stopped in Perry. I think we ate there
15 for lunch or whatever and we went on to Kirkland.

16 MR. MORTON: Okay. Beg the Court's indulgence one
17 second, Your Honor.

18 THE COURT: Yes, sir.

19 (Pause.)

20 Q When you testified at Mr. Moore's trial were you in
21 prison clothes or were you in street clothes?

22 You remember when you came in the courtroom?

23 A I was in street clothes.

24 Q Okay.

25 A If it makes any difference.

George Gibson - Direct examination
by Mr. Morton

- 1 Q Do you remember where you got that from?
- 2 A where I got them from?
- 3 Q Yes, sir.
- 4 A They were mine.
- 5 Q Okay. Well, who gave them to you?
- 6 A Ain't nobody gave them to me.
- 7 Q They did not?
- 8 A They were my own clothes.
- 9 Q They didn't take you home---
- 10 A I had them sent from home.
- 11 Q They didn't -- I guess my point is---
- 12 A They came from home.
- 13 Q You had them---
- 14 A My brother brought them up here.
- 15 Q who did?
- 16 A My brother brought my clothes to me.
- 17 Q Okay.
- 18 A Damn.
- 19 Q Now, when you added to your statement that Mr. Moore
- 20 came by to get crack cocaine---
- 21 A I didn't say that.
- 22 Q Okay.
- 23 A I didn't say that.
- 24 Q You didn't say that?
- 25 A I said to get something.

George Gibson - Direct examination
by Mr. Morton

1 Q Oh, to get something.

2 A I didn't re -- I didn't mention cocaine.

3 Q And why did you say something?

4 why did you say that?

5 A Evidently he know what I was talking about when they
6 asked that. I said that. I didn't say no cocaine. I don't
7 remember saying that.

8 Q And you indicated -- tell me that you didn't, he didn't
9 show you any money?

10 A Hu huh. (Negative).

11 It wasn't no, it wasn't no -- it was the question, was
12 to get something. But wasn't nothing shown or mentioned or
13 no money. He said I got money, but no money was ever shown.

14 Q Okay.

15 A Okay.

16 Q Okay.

17 A And I told you that before.

18 MR. MORTON: Okay. I beg the Court's indulgence.

19 THE COURT: Yes, sir.

20 (Pause.)

21 Q Mr. Gibson, and I'm -- I'm gonna be finished with you.
22 Okay.

23 A Thank you.

24 Q Do you remember, during the trial, being asked about
25 talking to an investigator, excuse me, and a solicitor three

George Gibson - Direct examination
by Mr. Morton

1 or four days after the incident with Mr. Moore?

2 You remember being asked that?

3 A Yeah.

4 Q Okay. And do you remember what your response was?

5 A I talked to Rusty.

6 Q Okay.

7 A That was it.

8 Q Let me ask you if you can---

9 A I think -- which one?

10 Q That right there. On Page 1260 of the transcript on
11 Line 14, right?

12 A Right.

13 Q I guess what I'm asking you is in your testimony you
14 said that you had been visited two or three days after
15 Mr. Moore came by---

16 A Yeah.

17 Q ---by an investigator and a solicitor, correct?

18 A And -- yeah. And -- yeah.

19 Q Okay.

20 A Yeah.

21 MR. MOORE: And that's all I have, Your Honor.

22 THE COURT: All right. We're gonna take about a five
23 to ten minute break before we resume with cross-examination.

24 MR. SALTER: Yes, sir, Your Honor.

25 THE COURT: Mr. Gibson, I'm gonna caution you, if you

George Gibson - Direct examination
by Mr. Morton

1 would, do not discuss your testimony with anyone during this
2 break. You can go to the rest room and then come back and
3 resume the stand.

4 WITNESS: All right.

5 THE COURT: Okay. We'll take about a five to ten
6 minute break.

7 Court's in recess.

8 MS. ARMSTRONG: Thank you, Your Honor.

9 (WHEREUPON, a short recess was taken at this time.)

10 THE COURT: Sir, come on up.

11 (Witness returns to the stand.)

12 THE COURT: The State ready to proceed?

13 MR. SALTER: Yes, sir, Your Honor.

14 THE COURT: The Applicant ready to proceed?

15 MS. ARMSTRONG: We are, Your Honor.

16 THE COURT: Go ahead, sir.

17 MR. SALTER: Thank you, Your Honor.

18 THE COURT: Your witness.

19 CROSS-EXAMINATION

20 BY MR. SALTER:

21 Q Good afternoon, Mr. Gibson.

22 A How you do, sir?

23 Q You've been asked a lot of questions already. So, I'll
24 be as brief as I can.

25 A Yes, sir, thank you.

George Gibson - Cross-examination
by Mr. Salter

1 Q Is it fair to say that your memory of the events of
2 1991 through 2001 were better back at the time of your
3 trial, your testimony at trial than they are today?

4 A I would say so.

5 Q And do you testify---

6 A I think I really blocked out of my mind---

7 Q Why is that?

8 A ---and trying to forget some things.

9 Huh?

10 Q Well, why is that?

11 A Some things you don't want to remember.

12 Q All right, sir. All right. And did you testify
13 truthfully when you testified in---

14 A To my best---

15 Q ---October of 2001?

16 A ---knowledge, sir.

17 MR. MORTON: Object. Object.

18 THE COURT: Objection.

19 MR. MORTON: He's bolstering. I mean he can't -- he's
20 trying to -- did you testify truthfully I think is an
21 improper question even on cross-examination, Your Honor.

22 THE COURT: I'll ask you to rephrase the question
23 please.

24 MR. SALTER: All right. I'll do that.

25 Q Let me take you back to the night of September 15th,

George Gibson - Cross-examination
by Mr. Salter

1 1999. Mr. Moore had came to your house that night, didn't
2 he?

3 A Yes.

4 Q And he wanted you to get him something, right?

5 A Yes.

6 Q And that something was crack cocaine, was it not?

7 A (Witness nods affirmatively.)

8 Q All right. You -- but he wanted you to get it for him
9 on credit cause he didn't have any money?

10 A Yes, I would say, yeah.

11 Q All right, sir. And he later -- then he later came
12 back the following morning, the morning of the 16th,
13 right?

14 A Yeah.

15 Q About three o'clock in the morning?

16 A Uh-huh. (Affirmative).

17 Q And somebody had to wake you up, right?

18 A Right.

19 Q And you went to the door and talked to him, correct?

20 A Yeah.

21 Q And he wanted to get some cocaine -- he wanted you to
22 get cocaine then too, did he not?

23 A He said get me something.

24 Q Something, that something meant cocaine?

25 A Yeah, yeah, yeah, something.

George Gibson - Cross-examination
by Mr. Salter

1 Q All right. You testified to all these matters back
2 when you testified at trial, correct?

3 A Yes.

4 Q All right. Now, you didn't mention getting, Mr. Moore
5 asking you to get you something when you first gave a
6 statement on September 16th, didn't you?

7 A No, I didn't.

8 Q And didn't you testify at trial that you, the reason
9 was because you didn't want to get involved, you were
10 scared?

11 A No, I said it was the reason I didn't mention it --

12 Q Right.

13 A -- I said cause drugs was mentioned.

14 Q All right. This is because some people---

15 A It wasn't no drugs involved. It's just drugs was
16 mentioned.

17 Q All right, sir. And this is because people would come
18 to your house and smoke crack, right?

19 A Sometimes.

20 Q Sometimes.

21 Did you sell crack?

22 A No.

23 Q You didn't sell crack, but you can get crack for people
24 sometimes?

25 A I get it, yeah.

George Gibson - Cross-examination
by Mr. Salter

1 Q All right. And you just didn't want to get involved in
2 anything involving a murder?

3 A I didn't know at that time that's what it was about.
4 So, you know, I just---

5 Q Right.

6 A It was over in the morning and I wasn't, you know --.

7 Q And you had a pending trafficking in cocaine charge at
8 the time of your trial testimony?

9 A At that time, no.

10 Q No, you didn't have a pending charge, a trafficking?

11 A Not at that time, no.

12 Q All right.

13 A Not at that time when that happened. No, I didn't.

14 MR. SALTER: Your Honor, may I approach the witness?

15 THE COURT: You may approach.

16 Q I'm gonna show you your trial testimony, Mr. Gibson---

17 A No.

18 Q ---from back in October 2001.

19 A That didn't happen. That happened in, in -- that
20 didn't happen in 2001.

21 Q All right. weren't you asked at that time -- Your
22 Honor, I show you Page 1252 of the record beginning on Line
23 8.

24 Were you not asked whether you had a pending traffic,
25 trafficking charge?

George Gibson - Cross-examination
by Mr. Salter

1 A It -- at, at trial?

2 In the trial?

3 Q Yes, sir.

4 A Oh, in the trial, yeah.

5 Q Okay.

6 A But I thought you was talking about before that. Oh,
7 okay.

8 Q During the trial.

9 A Yeah. Okay.

10 Q Now, were any promises made for you on that charge to
11 get you to testify?

12 Did, did the Solicitor's Office make you any promises?

13 A No, no, no.

14 Q All right. Now, you were asked a bunch of questions
15 about where you were incarcerated and when you were
16 incarcerated there. You testified your memory is not real
17 clear on all of that, is that correct?

18 A Yeah.

19 Q Is it possible you may of been housed some place you
20 just don't recall at least temporarily?

21 A I mean about concerning what?

22 Q Well, do you recall being housed in Perry Correctional
23 Institute at anytime after your trial testimony?

24 A I know where I was at. I wasn't in no -- was I in --
25 when I was testifying for, against, you know, at the trial,

George Gibson - Cross-examination
by Mr. Salter

1 I was at Kirkland and they brought me up here for that.

2 Q All right. You were also asked at trial and earlier
3 today about someone visiting your house a couple days after
4 the incident with Mr. Moore.

5 Do you remember that happening?

6 A Yes, sir, I remember that happening.

7 Q And you indicated earlier that you thought that they
8 just wanted to come by and check the crime scene, correct?

9 A That was when I first, when, the first time that
10 somebody came by after the, after I went, you know, that
11 night. After that night, the first time someone came by was
12 then and it was Rusty. I remember him and I think solicitor
13 Gowdy was in the car because I didn't, you know, the windows
14 were tinted. But that's who it was, you know, and they
15 didn't say nothing, but just said I came by, you know, we
16 came by to check out the scene of the crime. But they
17 didn't ask no questions, you know what I'm saying. They
18 didn't ask me no questions.

19 Q All right. So, you don't recall them -- you don't
20 recall talking to them about the crime at all?

21 A No, I didn't talk to nobody about the crime. I
22 remember Rusty cause he was one of the investigators. He
23 said, you know, the dude say who he was and that was it, and
24 later. I talked to him later, you know, but it wasn't at
25 that particular time three or four days after, you know,

George Gibson - Cross-examination
by Mr. Salter

1 that was all. They just came by checking out the scene.

2 Q So, you later -- and you later added to your earlier
3 statement about a month before the trial, correct, when you
4 talked to Mr. Gowdy?

5 A Yeah, I told him that, that was when I added that why.

6 Q Now, you were asked about your possession of crack
7 charge that occurred when you were arrested. I believe it
8 was a July 22nd, 2001, arrest for possession of crack,
9 DUS, and, and failure to---

10 A But like I said, it wasn't no---

11 Q ---stop at a stop sign?

12 A It wasn't no crack involved. I don't know where that
13 come from. But the only thing said, possession of crack,
14 which I can tell you why. It wasn't no involved.

15 Q All right, sir.

16 A They didn't that -- the officer went in the car and
17 checked the car that I was in this, but it was peanuts, and
18 I had a telephone line on his car in another case. Okay. I
19 was in the car at the time handcuffed, and he said look what
20 I found in this telephone case. I said what. I said what
21 cause I was in the car and I heard. He told the other
22 officer, and he say a rock. I said that ain't mine, and I
23 yelled to the people yard I was in. He came -- he standing
24 in the door. I said hey, man, look, I did not have any
25 drugs, and I said I don't know where you got this from, but

George Gibson - Cross-examination
by Mr. Salter

1 they are not mine. I was in the back seat, and they told me
2 shut up. I said no, I'm not gonna shut up because I don't
3 have no -- I didn't have no drugs on me.

4 Q All right.

5 A Okay.

6 Q All right, sir.

7 A That's what I said.

8 Q You later entered a plea though on advice of counsel?

9 A Huh?

10 Q You later pled guilty, did you not?

11 A At the advice -- I mean he said the lawyer. Like I
12 said, his word against mine, they gonna take his word. So,
13 that's why he told me, he said just -- and they changed it
14 to, instead of a rock, to a tenth of a gram of powder. They
15 changed it to a tenth of a gram of powder. He said
16 though -- he said okay, we pled guilty. We gonna get
17 probation for it. I got probation for it. I got a years
18 probation for it. So -- but that's why I did not have any
19 and I go to my grave saying it.

20 Q Okay. Do you recall -- you were asked earlier about
21 whether or not you talked to Mr. Moore's trial attorneys and
22 you said no.

23 A Huh?

24 Q Do you remember talking to an investigator for them, a
25 Mr. Skidmore?

George Gibson - Cross-examination
by Mr. Salter

1 A Who is that?

2 Q Do you recall talking to an investigator for the, for
3 Mr. Moore and whoever then was representing Mr. Moore?

4 A I don't remember.

5 Q You don't remember?

6 A I don't remember talking to nobody involved. I don't
7 remember talking to nobody.

8 Q Don't remember that at all?

9 A No, I don't remember that.

10 Q All right.

11 A The only person I remember talking to was Rusty Clever
12 (sic) and he's the investigator.

13 Q Okay. Going back to the incident some three or fours
14 days after, after Mr. Moore came to your house that morning
15 on the 16th, do you recall asking or answering questions
16 about that at trial?

17 A Answering questions about why he came to my house?

18 Q No, sir, about the, about someone from the solicitor's
19 office and an investigator or a policeman.

20 Do you remember talking -- do you remember answering
21 these questions at trial?

22 A I remember them, but if it's on that statement I did.

23 Q Okay.

24 A You know, I don't know.

25 MR. SALTER: I don't have anything further, Your Honor.

George Gibson - Redirect examination
by Mr. Morton

1 THE COURT: Redirect.

2 MR. MORTON: Just a couple questions, Your Honor.

3 THE COURT: Yes, sir.

4 REDIRECT EXAMINATION

5 BY MR. MORTON:

6 Q And I apologize, Mr. Gibson, I'm going to try to be
7 brief.

8 Do you remember testifying in Court at Mr. Moore's
9 trial that Mr. Moore had come by your house earlier that
10 night between eight o'clock and ten o'clock?

11 A I remember that, yeah.

12 Q Okay.

13 A Yeah, I, I answered that.

14 Q And did, on the night that this incident happened, was
15 there -- did you have any crack?

16 A (Witness nods negatively.)

17 Q Did you give Mr. Moore any crack?

18 A (Witness nods negatively.)

19 Q Was there -- did he see any crack?

20 Did any crack change hands?

21 A No, it didn't.

22 Q Did it appear to you that Mr. Moore had been doing any
23 cocaine?

24 A No, Mr. Moore was on his way to work he said.

25 Q Okay. When he came back by, did it appear to you that

George Gibson - Redirect examination
by Mr. Morton

1 he had been on any cocaine?

2 A No, he didn't. I didn't cause really it was over in
3 the morning. Like I said, it was late and he was bleeding.

4 MR. MORTON: That's all I have, Your Honor.

5 THE COURT: Recross.

6 MR. SALTER: Just briefly.

7 RECROSS-EXAMINATION

8 BY MR. SALTER:

9 Q Mr. Moore told you he was on his way to work the first
10 time he came by?

11 A That was the first time, yeah, he was. He said he was
12 on his way to work.

13 Q That's because you told him you weren't gonna be able
14 to get him any---

15 A No, it wasn't that. I just---

16 Q ---anything?

17 A He told me he was on his way to work.

18 MR. SALTER: All right. Nothing further, Your Honor.

19 THE COURT: You may step down, sir.

20 WITNESS: Say, are they through with me?

21 THE COURT: You can step down. I'm gonna find out.

22 WITNESS: Okay.

23 THE COURT: Any objection to him being excused?

24 WITNESS: I got a long way to go home.

25 MR. MORTON: No, sir, Your Honor.

Steven Denton - Direct examination
by Ms. Armstrong

1 THE COURT: Any objection?

2 MR. SALTER: No, Your Honor.

3 THE COURT: All right. You're free to go. Thank you,
4 sir.

5 WITNESS: Thank you, sir.

6 THE COURT: Right out through the back door with this
7 gentleman.

8 WITNESS: All right.

9 THE COURT: Call the next witness please.

10 MS. ARMSTRONG: Yes, Your Honor. I believe
11 Mr. Denton's out in the hallway.

12 THE COURT: All right. That will be fine.

13 Sir, come forward to my left to be sworn.

14 STEVEN DENTON, having been first duly
15 sworn, testified as follows:

16 THE COURT: Sir, have a seat in the witness stand, and
17 once you're seated, I'd ask that you state your name for me.

18 WITNESS: Steven L. Denton.

19 THE COURT: Your witness, Ms. Armstrong.

20 MS. ARMSTRONG: Thank you, Your Honor.

21 Please the Court?

22 THE COURT: Yes.

23 DIRECT EXAMINATION

24 BY MS. ARMSTRONG:

25 Q Good afternoon, Mr. Denton.

Steven Denton - Direct examination
by Ms. Armstrong

- 1 A Good afternoon.
- 2 Q Thank you for being here today.
- 3 A You're welcome.
- 4 Q And, Mr. Denton, can you just tell us what you do for
- 5 a, a living, sir?
- 6 A Currently I'm a lawyer.
- 7 Q Okay. What do you practice?
- 8 A I practice across the street, criminal defense,
- 9 domestic, personal injury, an array of things.
- 10 Q Sort of a general practice?
- 11 A That's right.
- 12 Q Okay. Now, before you went to Law School, did you have
- 13 a first career?
- 14 A I did.
- 15 Q What did you do?
- 16 A I was employed by the Spartanburg County Sheriff's
- 17 office.
- 18 Q Okay. And what was your position with the Sheriff's
- 19 Department?
- 20 A Well, the majority of the 23 and a half years that I
- 21 served, 18 and a half was done working homicide, death
- 22 investigations. Prior to that was narcotics.
- 23 Q Okay. And did there come a time when you became
- 24 involved in the homicide at Nikki's Speedy Mart?
- 25 A Yes.

Steven Denton - Direct examination
by Ms. Armstrong

1 Q Okay. And to the best of your recollection, how
2 earlier in the game did you get involved with this homicide
3 investigation?

4 Would you say you were one of the first or where did
5 you fall?

6 A I would of been one of the first five, six, you know,
7 that would of responded. I was on call for homicide that
8 week. Probably that month, back in '99, and I remember I
9 got called in the early hours.

10 Q Okay. All right. And that would be immediately after
11 the homicide?

12 A Yes.

13 Q Okay. And where did you go after you were called in?

14 A I believe I went straight to what I call, and this is
15 from review of my notes, it's been a long time, crime scene
16 one, which would of been Nikki's Speedy Mart.

17 Q With Hillside Drive being the secondary crime scene?

18 A That's right.

19 Q Okay. All right. So, you go to the primary crime
20 scene, and do you have -- have you had a chance to review
21 your report---

22 A Yes.

23 Q ---and familiarize -- okay. So, you would agree with
24 me you got there about 4:00 a.m.?

25 A I got called I think at 4:05. So, put me getting there

Steven Denton - Direct examination
by Ms. Armstrong

1 from somewhere probably I would, I would imagine about a
2 quarter of 5:00, something like that.

3 Q Okay. To the best of your recollection, was there
4 anybody, any other members of the Sheriff's Department at
5 Nikki's when you arrived or would you say you were the
6 first?

7 A I am sure there were other people there in the parking
8 lot. I had a policy, and I, I can tell you nobody entered a
9 crime scene where you knew a death had occurred until first
10 a, however you want to, first and foremost, the coroner was
11 present, whoever represented the Coroner's Office, and
12 second an ID tech.

13 Q Okay.

14 A And then the, the third, the third person would be the
15 investigator, and only the chief investigator to begin with.
16 So, I know nobody was inside the scene waiting.

17 Q Okay.

18 A So, there were probably other personnel there.

19 Q And, so, in this particular case, you were the chief
20 investigator?

21 A Yes.

22 Q Okay. And I notice that you were waiting for the ID
23 tech and that would be Investigator Dorman?

24 A I believe at that time it was.

25 Q Okay. And who was the coroner at that time?

Steven Denton - Direct examination
by Ms. Armstrong

1 A Just from my notes, it was Ken Bishop.

2 Q Okay.

3 A I would never have remembered that.

4 Q Okay. Okay. So, y'all's procedure was you wait for
5 the three of you to get together or, or the three---

6 A That's---

7 Q ---main participants in the investigation, and then
8 you'd go in and start processing and doing that sort of
9 thing.

10 A That's right.

11 Q Okay. All right. Do you recall speaking or, or, or
12 interviewing any witnesses at the scene?

13 A I remember, at some point, speaking with Mr. Hadden. I
14 believe it's Terry Hadden.

15 Q Yes, sir.

16 A He was somebody at the scene. I -- you know, I don't
17 know if I interviewed him right away or at some point I did
18 interview him.

19 MS. ARMSTRONG: Okay. And, Your Honor, may I approach
20 the witness?

21 THE COURT: You may.

22 MS. ARMSTRONG: Thank you. Thank you, Your Honor.

23 THE COURT: Yes, ma'am.

24 Q See if you can identify that for the record, sir.

25 A I can. This is, this is the standard investigation

Steven Denton - Direct examination
by Ms. Armstrong

1 report that I, that I think I initiated and, and completed.

2 Q Okay. And when you do an investigative report like
3 this or when you were doing investigation reports like this,
4 I take it you had a fair amount of training about how to get
5 your facts down for---

6 A I am sure I did.

7 Q Okay. All right. And, so, when you wrote these
8 reports, you tried to be thorough?

9 A Yes.

10 Q Okay. And if a, if a witness, certainly the only, I
11 guess, in this case he was, he was an ear witness and an eye
12 witness or based on which sort of the scenario, heard
13 something or he, or he saw first, but you would agree with
14 me that he was really the only disinterested, or I shouldn't
15 say disinterested, or uninvolved person at Nikki's?

16 There was the victim, there was Mr. Moore, and there
17 was Mr. Hadden.

18 MR. MABRY: Your Honor, just -- excuse me. I'm gonna
19 object. I don't mind preliminary leading, but we're getting
20 into what the witness is here to testify to. If she's not
21 to lead, I'm gonna object at this time.

22 THE COURT: I'm gonna let her ask this question, but
23 she shouldn't suggest answers that may be provided by Mr.
24 Hadden.

25 MS. ARMSTRONG: I apologize, Your Honor.

Steven Denton - Direct examination
by Ms. Armstrong

1 THE COURT: That's all right.

2 Q Okay. But would you agree with me that Terry Hadden is
3 a pretty important witness?

4 A I would.

5 Q Okay. All right. And do you recall what Mr. Hadden
6 told you about the incident?

7 A Specifically word-for-word, no. But I can tell you I
8 believe that he was playing on one of the poker machines
9 when the defendant came in, and was there playing the poker
10 machines as the events unfolded.

11 Q Okay. And, so, whatever details he would of given you
12 that night, it should be in your report?

13 A Either mine, Detective Clevenger, or Ken Bishop's. It
14 could be in an incident report. But certainly, if I
15 interviewed him, things that he would of said would of been
16 in there.

17 Q Okay. All right. And do you recall taking statements
18 from anybody else that evening?

19 A I, I don't. I could have, but I don't recall
20 specifically.

21 Q Okay. And after you did the, the crime scene
22 investigation, what was the extent of your involvement
23 beyond that?

24 A Well, I mean obviously trying to figure out what
25 happened, how it happened, who's involved. A lot of that

Steven Denton - Direct examination
by Ms. Armstrong

1 had, luckily in this case, taken place because the defendant
2 had been arrested.

3 Q Right.

4 A Okay. So, you know, general crime scene investigation,
5 putting together at least a summary of what we believed
6 happened based on the evidence, that sort of thing, that's
7 pretty much it.

8 Q Okay. And then making yourself available, I take it,
9 for trial?

10 A Sure.

11 MS. ARMSTRONG: Okay. Your Honor, I beg the Court's
12 indulgence.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 MS. ARMSTRONG: Your Honor, at this time I'd move to
16 have Mr. Steve Denton's ten page investigation report in
17 Case Number 990901180 concerning the homicide of James
18 Mahoney, like to have it marked as an exhibit. I understand
19 that the, even though this report had been identified by the
20 witness, I believe that the Attorney General's Office is
21 going to object to the report.

22 THE COURT: Objection?

23 MR. MABRY: Yes, sir, Your Honor. My problem is,
24 judge, is it's -- I believe it's nine pages.

25 THE COURT: Yes, sir.

Steven Denton - Direct examination
by Ms. Armstrong

1 MR. MABRY: And a lot of what, a lot of the things that
2 are in the report were told to Detective Denton by other
3 officers. Whether ID officer or somebody else who spoke to
4 someone. In fact, they're statements the defendant made to
5 him, which would be self-serving hearsay, which would not be
6 allowed to come in at the trial. So, that, that's the basis
7 of our objection. I guess if they're putting it in to show
8 that this is the report that trial counsel had, I don't have
9 any objection on that grounds. But many of these things
10 would not have been admissible before the jury, and would
11 not have been able to come in through this witness.

12 MS. ARMSTRONG: Your Honor?

13 MR. MABRY: That's our objection.

14 MS. ARMSTRONG: We agree. We are offering it for
15 purposes of showing what defense counsel knew based on
16 Investigator Denton's report and the information that was
17 provided to counsel.

18 THE COURT: Is there any objection to it being
19 introduced for purposes of indicating what trial counsel may
20 have reviewed?

21 MR. MABRY: No. No objection.

22 THE COURT: All right.

23 MS. ARMSTRONG: Thank you.

24 THE COURT: Then I am going to admit it.

25 MS. ARMSTRONG: Thank you, Your Honor.

Steven Denton - Direct examination
by Ms. Armstrong

1 THE COURT: Counsel, you need to get this -- you're
2 gonna ask some questions. It needs to be marked I think No.
3 4.

4 (Whereupon, the investigative report was marked as
5 Applicant's Exhibit No. 4 and received into evidence at this
6 time.)

7 Q One final question, Mr. Denton. This is a cleaned up
8 copy of---

9 A Sure.

10 Q ---what I showed you the first time. I just want to
11 make sure that this is the faxed copy of the report that you
12 generated when you were the lead investigator.

13 A It appears that it is.

14 MS. ARMSTRONG: All right. At this time the Applicant
15 moves this into evidence.

16 I have no further questions, Mr. Denton. Thank you for
17 coming and please answer any questions.

18 THE COURT: Mr. Mabry, your witness.

19 MR. MABRY: Yes, sir.

20 CROSS-EXAMINATION

21 BY MR. MABRY:

22 Q Good afternoon, Steve. How are you doing?

23 A Good afternoon. Hope you're well.

24 Q Yeah, I'm doing good.

25 I notice in your report -- am I accurate in saying you

Steven Denton - Cross-examination
by Mr. Mabry

1 spoke to Mr. Hadden?

2 You actually spoke to him?

3 A I did at some point.

4 Q Okay. And according to your report, he told you that
5 he was playing one of the poker machines at about 3:20 a.m.,
6 a black male entered the store, walked over to the beer
7 cooler, walked up to the counter, and then he heard James,
8 that would be Mr. Mahoney, say what the hell?

9 A That's right.

10 Q Okay. And then he heard the black male tell Jamie to
11 get the hell back.

12 A That's correct.

13 Q And he states -- that would be Mr. Hadden. He turned
14 around, and looked both, at both of them, and at that point,
15 the black male said out loud I told you not to move and
16 pointed a gun at Mr. Hadden, the person at the poker
17 machine, and fired one shot toward him.

18 A That's correct.

19 Q Okay. And he fell to the floor and pretended like he
20 was dead and laid still?

21 A That is -- that's correct.

22 Q Okay. Then he heard about seven or eight shots that
23 were fired?

24 A That's right.

25 Q Okay. Then he heard the black male leave the store

Steven Denton - Cross-examination
by Mr. Mabry

1 because the doorbell rang and he also heard the car start up
2 with a loud muffler and leave the premises?

3 A That's right.

4 Q Okay. And he, he, he, he said that he went back inside
5 and called -- I guess that's Mr. Hadden went back and called
6 9-1-1?

7 A Yes.

8 Q Okay. Now, Mr. Moore was arrested, based on your
9 investigation, near the home of Mr. Gibson, is that right?

10 A That's right.

11 Q Okay. Do you remember, do you remember, during the
12 investigation, that the officer who, who apprehended
13 Mr. Moore went directly to Mr. Gibson's house because he
14 knew it to be a crack house or where people hung out that
15 were using crack?

16 A I do. I was very close with that officer. In fact, we
17 worked a lot of cases together. The reason I say that is
18 Deputy Rollins is no longer with us. He passed away some
19 years ago. But, however, he -- that area specific, that was
20 his area, and, you know, when I knew that, that he went
21 there and he radioed and told me that, you know, I knew
22 that, that was most likely the suspect given that it had
23 blood and money and that kind of thing obviously. But also
24 his knowledge about that---

25 Q Okay. So, he goes---

Steven Denton - Cross-examination
by Mr. Mabry

1 A ---about that area.

2 Q Okay. I'm sorry. I interrupted you.

3 A No, no, no, about that area. That's, that -- I
4 remember that meaning something to me that night.

5 Q Okay. So, a call goes out about the shooting, and the
6 robbery at Nikki's, and this officer, he, Rollins, he goes
7 directly to that area that he believes to be a crack house
8 and that's where he catches Mr. Moore---

9 A That's right.

10 Q ---in the middle of the wreck?

11 A That's right.

12 Q And there he catches him getting out of his truck and
13 the money's inside the truck---

14 A That's right.

15 Q ---like \$1,480 with blood all over the money?

16 A Correct.

17 Q Mr. Moore's shot as well?

18 A Correct.

19 Q Okay. I believe that's all I have. Thank you, sir.

20 A Sure.

21 THE COURT: Redirect?

22 MS. ARMSTRONG: None, Your Honor.

23 THE COURT: All right. You may step down, sir.

24 WITNESS: Thank you.

25 THE COURT: Any objection to the witness being excused?

1 MS. ARMSTRONG: No objection. We'd ask that he be
2 excused.

3 MR. MABRY: No, sir.

4 THE COURT: You're free to go.

5 WITNESS: Thank you.

6 THE COURT: Thank you very much.

7 You may call your next witness?

8 MR. MORTON: Your Honor, that's all we have at this
9 time.

10 THE COURT: All right. We will start then at nine
11 o'clock in the morning.

12 Court's in recess at this time.

13 Thank you very much.

14 MR. SALTER: Yes, sir, thank you, Your Honor.

15

16 (WHEREUPON, Court was in recess for the evening.)

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1 Tuesday, February 3rd, 2011

2

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

4 MR. SALTER: Yes, sir, Your Honor.

5 THE COURT: All right. Applicant ready to proceed?

6 MS. ARMSTRONG: Yes, Your Honor.

7 THE COURT: All right. You may call your first witness
8 today.

9 MR. MORTON: Your Honor, we call Mr. Paul Dorman.

10 THE COURT: Come forward, sir. Come over here to my
11 left and be sworn please.

12 PAUL DORMAN, having been first duly
13 sworn, testified as follows:

14 THE COURT: Have a seat in the witness stand, sir, and
15 once you're seated, I ask that you state your name.

16 WITNESS: Paul M. Dorman. D-O-R-M-A-N.

17 THE COURT: Your witness, Mr. Morton.

18 MR. MORTON: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. MORTON:

21 Q Mr. Dorman, how are you this morning?

22 A Doing fine, sir.

23 Q And you drove here all the way from Frankfurt, Kentucky
24 I understand?

25 A Yes, sir, I did.

Paul Dorman - Direct examination
by Mr. Morton

1 Q Do you want some water?

2 A I'm fine for right now. Thank you.

3 Q Mr. Dorman, tell us a little bit about your education
4 and your history, your career professionally.

5 A I was a police officer for 23 years. Eight of those
6 years as a crime scene investigator. I'm presently employed
7 by the Kentucky State Police as a forensic investigator, a
8 forensic analyst specializing in fingerprints, and I have
9 approximately 54 hours of college courses that I'm taking as
10 well as police training. I've gotten over 3,000 hours of
11 police training, and I've got basic crime scene
12 investigation, advanced crime scene investigation classes
13 that I've attended.

14 I've also attended classes in latent fingerprint
15 analysis, developing latent prints from crime scenes and
16 evidence, both basic and advanced. The last class, major
17 class I took was conducted by the FBI on crime scene
18 procedures and collecting of evidence and processing crime
19 scenes, and I've also taken non-accredited courses from the
20 University of West Virginia in their forensics program.

21 Q And back in September 16th of 1999, you were a crime
22 scene investigator with the Spartanburg County Sheriff's
23 Department?

24 A Yes, sir, I was.

25 Q And you were in that role for how long?

Paul Dorman - Direct examination
by Mr. Morton

1 A Approximately five years, sir.

2 Q And you have been qualified as an expert in this Court?

3 A Yes, sir.

4 Q In the area, in the area of, as a crime scene analyst?

5 A Crime scene investigator as well as latent fingerprint.

6 MR. MORTON: Your Honor, at this time we would move to
7 introduce Mr. Dorman as an expert in the area of crime scene
8 analysis.

9 THE COURT: Any objection?

10 MR. MABRY: Is that crime scene investigation,
11 analysis?

12 I, I'm just kind of trying to understand what he said.

13 MR. MORTON: Crime scene investigation and analysis.

14 WITNESS: Investigation. Crime scene investigation I
15 believe is what they, they qualified me in.

16 MR. MABRY: All right. No objection to that, crime
17 scene investigation.

18 THE COURT: No objection to him being qualified as an
19 crime scene, expert crime scene investigator and/or
20 fingerprint expert, is that right, Mr. Mabry?

21 MR. MABRY: Yes, sir.

22 THE COURT: You may proceed.

23 Q Mr. Dorman, again, you were employed at the Spartanburg
24 County Sheriff's Department on September 16th, 1999?

25 A Yes, sir.

Paul Dorman - Direct examination
by Mr. Morton

1 Q And can you tell us what you did upon receiving the
2 call that there had been an incident at Nikki's Grocery on
3 that day?

4 A Yes, sir, I was requested to respond to that location
5 which is located at 366 Highway 221 here in Spartanburg.
6 Upon arrival I met with Detective Steve Denton who explained
7 the details of the incident. I went into the business there
8 and did a cursory viewing of the scene, and then once that
9 was through I began conducting my crime scene investigation
10 and collecting evidence and processing and documenting that
11 evidence.

12 Q Okay. And did, did you say what time you got there?

13 A I don't have it on the face of my report.

14 Q Did you -- do you have a copy of your report?

15 A Yes, sir, right there.

16 Q Okay. As a result of your investigation, did you
17 diagram a sketch?

18 A Yes, sir, I did.

19 Q Let me show you if this would be a sketch that you
20 diagrammed.

21 A Yes, sir, that's---

22 Q Okay.

23 A That's the one I did at the office. I have -- I did
24 one that---

25 Q Okay.

Paul Dorman - Direct examination
by Mr. Morton

1 A ---that was a hand---

2 Q Hand done?

3 A ---at the scene, yes, sir.

4 Q And that's one more---

5 A A little bit cleaner.

6 Q More specific.

7 A Yes, sir.

8 Q Okay. And is this one the same one as this one?

9 A Yes, sir.

10 Q And then you have a third one?

11 A Yes, sir.

12 MR. MORTON: Your Honor, I would like to -- hold on to
13 that one. That's the one I have.

14 WITNESS: Yes, sir.

15 MR. MORTON: Like to mark these as, as Applicant's
16 Exhibits.

17 MR. MABRY: Oh, no objection.

18 THE COURT: Without objection.

19 Are you marking those separately?

20 MR. MORTON: I can just mark them together, Your Honor,
21 if it'd be easier.

22 THE COURT: All right. Then they'll be received as one
23 exhibit.

24 No. 5, is that right?

25 COURT REPORTER: Yes, sir.

1 THE COURT: For the Applicant.

2 (WHEREUPON, three diagrams were marked as Applicant's
3 Exhibit No. 5 and received into evidence at this time.)

4 Q And, Mr. Dorman, you have, at least sitting there on
5 the witness stand, a copy of that one, is that right?

6 A Yes.

7 Q And that was -- yeah, I'm just gonna hand this up to
8 you, judge.

9 THE COURT: Thank you.

10 Q As part of that sketch that you drew, let me just kind
11 of go over that a little bit so everybody will be clear.

12 You have here labeled, of course, you have an end which
13 would indicate doors?

14 A Yes, sir.

15 Q Okay. You have X, Y, Z, and W, correct?

16 A Yes, sir.

17 MR. MORTON: And apologize for leading. I'm just
18 trying to get him through this.

19 W would be two, 221?

20 A Yes, sir, that would be the front of the business.

21 Q The front door?

22 A Yes, sir.

23 Q And where you have a V-1, V-2, V-3, V-4, and V-5, those
24 would be the video poker machines?

25 A Yes, sir.

Paul Dorman - Direct examination
by Mr. Morton

1 Q Okay. This overturned chair would basically be where
2 Mr. Hadden was?

3 A Yes, sir, that's, that's where I believe he was
4 sitting.

5 Q Okay. So that if you walk into the front doors of
6 Nikki's, there is a counter there?

7 A Yes, sir.

8 Q How big is this whole location, the whole store?

9 A The, the---

10 Q Just approximately.

11 A Ten feet, 10-feet 8-inches and three-quarters, the
12 inside.

13 Q The circumference would be---

14 A In the area---

15 Q What, 30 by 30 or 20 by 20?

16 A And 21-feet 4-inches from side to side.

17 Q Twenty-one feet side to side?

18 A Yes, sir.

19 Q And then the other?

20 A Ten, 10-feet 8-inches and three-quarters to, from the
21 entrance to the area where---

22 Q The counter?

23 A ---the countertop is, yes, sir.

24 MR. MORTON: Okay. And, judge, I thought I had marked
25 these.

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by Mr. Morton

1 THE COURT: They have not yet been introduced.

2 MR. MORTON: Okay. Your Honor, I think, without
3 objection, and I will clarify that.

4 THE COURT: All right.

5 MR. MORTON: I would like to---

6 THE COURT: Any objection---

7 MR. MABRY: No, sir.

8 THE COURT: ---to those going in?

9 MR. MABRY: No, sir, Your Honor.

10 THE COURT: All right. They'll be admitted. Let's
11 mark those separately. So, they'll be numbered 6 and 7.

12 MR. MORTON: Thank you.

13 (WHEREUPON, two photographs were marked as Applicant's
14 Exhibit Nos. 6 and 7 and received into evidence at this
15 time.)

16 MR. MORTON: As to Exhibit 7, Your Honor, and I
17 explained to Mr. Mabry and to Mr. Dorman, this -- the bottom
18 part of Exhibit 7 is just the top of another photograph.

19 THE COURT: The top of -- well, actually it's the one I
20 think you're -- it's No. 6 maybe when I was looking at it.

21 MR. MORTON: Yeah, I think you may be right, judge.

22 THE COURT: I think that's -- that's what it looked
23 like to me.

24 MR. MORTON: Yes, sir.

25 Q And, Paul, so, in Exhibit 6, show us on Exhibit 6 where

Paul Dorman - Direct examination
by Mr. Morton

1 the front door would---

2 A (Witness points.)

3 Q ---and show, show the judge.

4 THE COURT: I'm good, I'm good. Just put it back down.

5 WITNESS: This would, this would be the front door area
6 right here, sir.

7 THE COURT: All right.

8 Q And show us the, where the counter would be.

9 A And this is -- the counters are here. You can clearly
10 see it's a counter area.

11 Q Okay.

12 A Three bar stools.

13 Q Okay.

14 A Right there.

15 Q And, so, this would be the customer side of the counter
16 obviously where---

17 A That's right.

18 Q ---where the customer sits to eat hot dogs or drink a
19 Coke or beer, whatever they want to do?

20 A Yes, sir.

21 Q And on the other side was the server's side---

22 A That's correct, sir.

23 Q ---correct?

24 And on the other side of the counter was where Mr.
25 Mahoney was?

Paul Dorman - Direct examination
by Mr. Morton

1 A That's correct, sir.

2 Q Okay. This Exhibit No. 7, I was showing you Exhibit 6,
3 would be more -- I apologize for this.

4 MR. MABRY: That's okay, till we get to the meat of it.

5 Q Would be a closer view and from more to the right of
6 this angle in -- is that right?

7 A Yes, sir, if you look at both these photographs, you'll
8 see there's a deer head right here, and right to the left of
9 that there's a photograph. That's that photograph right
10 there. This side right here is this vote yes on November, I
11 believe it's November the 2nd, this sign right here, and
12 you're actually looking at this standing right in front of
13 here looking back. And where you see this area right here
14 where it says 14 and 13, that's the sink---

15 Q Right.

16 A ---area right here.

17 Q Okay. And also, on No. 6, you can make out these Bic
18 lighters here?

19 A Yes, sir.

20 Q Correct?

21 A Yes, sir.

22 Q And this is just a closer up here---

23 A Yes, sir.

24 Q ---of these Bic lighters?

25 Okay. Over to the right, Paul, I'll call you Paul, I

Paul Dorman - Direct examination
by Mr. Morton

1 apologize, Mr. Dorman---

2 A That's all right.

3 Q ---is a mens bathroom?

4 A Yes, sir.

5 Q A womens bathroom?

6 A Yes, sir.

7 Q Okay. These, in Exhibit No. 6, what did you
8 characterize that -- is that a display of some kind?

9 A Yes, sir, it's a candy display.

10 Q Candy display?

11 A Yes, sir.

12 Q And was there also a Coca-Cola machine or sort of a
13 dispenser?

14 A There's a, there's a display if you -- right here on
15 this side.

16 Q Hold up and show, show the judge.

17 A On this side, you can barely see, you see the red right
18 here. Right on the other side there's a wall that goes back
19 to where the video area was, and that's where the Coke
20 display was, and it was basically Coke stacked on top, cases
21 of Coke stacked on top. Now, back this way towards the
22 x-side, there is a Coke cooler and a beer cooler, and then
23 another Coke cooler---

24 Q Okay.

25 A ---over there on the far wall of that.

Paul Dorman - Direct examination
by Mr. Morton

1 Q So, on Exhibit 6, the poker machines would be around
2 the corner back in here?

3 A Yes, sir.

4 Q Okay.

5 MR. MABRY: No objection.

6 THE COURT: No objections?

7 MR. MABRY: No, sir, Your Honor.

8 THE COURT: Without objections, they'll be admitted
9 into evidence.

10 You want to mark those separately?

11 MR. MORTON: However the Court wants me to do it, Your
12 Honor.

13 THE COURT: Well, if you're gonna be using them
14 individually I think you need to mark them separately.

15 MR. MORTON: These are then -- yes, I think that would
16 be -- they're four different photographs on each page.

17 THE COURT: I understand. Well, let's mark each page
18 separately so we can identify what you're referring to at
19 any given time.

20 MR. MORTON: Thank you, Your Honor.

21 (WHEREUPON, photographs were marked as Applicant's
22 Exhibit Nos. 8 through 23 and received into evidence at this
23 time.)

24 Q So, Mr. Dorman, I'm going to give you these to refer to
25 if we need to.

Paul Dorman - Direct examination
by Mr. Morton

1 Now, just to make clear, you were the, you were the
2 Spartanburg County Sheriff's Department crime scene
3 investigator on this day who came and investigated this
4 scene?

5 A That's correct.

6 Q Okay. I'm sure you spent quite a bit of time there?

7 A Yes, sir, I did.

8 Q And have you had a chance to review those pictures
9 or---

10 A Yes, sir.

11 Q There were -- was there a handgun found at the scene?

12 A Yes, sir, there was actually two handguns at the scene
13 found.

14 Q Okay. And one handgun that was found was a, I believe
15 a .32, right?

16 A Yes, sir.

17 Q That, from all determinations, was not involved in this
18 incident, correct?

19 A That's correct, sir.

20 Q That belonged to the store owner or to Mr. Mahoney?

21 It did not belong to Mr. Moore, correct?

22 A As far as I, I understand, sir, it belonged to the
23 store.

24 Q Okay. So, we can discount the .32.

25 The other two guns that were involved was a, a .45, is

Paul Dorman - Direct examination
by Mr. Morton

1 that right?

2 A Yes, sir.

3 Q And that was a revolver?

4 A No, sir, a .45 semiautomatic pistol.

5 Q .45 was a semiautomatic, which means the .45, the
6 semiautomatic, was found at another location on the road?

7 A Yes, sir, it was.

8 Q And I believe testimony would show that that had been
9 thrown out of the car by Mr. Moore?

10 A That's what I understood, yes, sir.

11 Q Okay. But the .45 that we're talking about was,
12 belonged either to the store or to Mr. Mahoney?

13 A That's correct, sir.

14 Q Okay. And the .45, being a semiautomatic, means that
15 it ejects shell casings---

16 A That is correct, sir.

17 Q ---is that right?

18 There was also a .44 revolver, is that right?

19 A Yes, sir.

20 Q That was also found?

21 A Yes, sir.

22 Q Okay. And the .44 revolver, shell casings revolve I
23 mean---

24 A Yes, sir.

25 Q ---right?

Paul Dorman - Direct examination
by Mr. Morton

1 They don't -- they aren't ejected?

2 A That's correct.

3 Q Okay. Now, the .45, which was taken by Mr. Moore,
4 thrown out of the window on the Highway 9 or wherever, was
5 found there, correct?

6 A Yes, sir, it was found in a different location, yes,
7 sir.

8 Q Okay. And the .44, can you tell us where the .44 was
9 found?

10 A The .44 was located next to the victim where he was
11 laying at.

12 Q And in Applicant's Exhibit No. 10 you can't really see
13 the .44 in that picture, but can you tell us, can you locate
14 for us on that picture about where the .44 was found?

15 A The .44 is, is---

16 MR. MORTON: Can you show the judge?

17 A ---laying, laying right, Number 11.

18 THE COURT: Uh-huh. (Affirmative).

19 A Where Number 11 is. It's just to the back side of this
20 chair. When the victim was found, he was laying like this
21 and it was just to the left of his head.

22 Q And this would---

23 THE COURT: What was that number, placard?

24 WITNESS: Number 11, sir.

25 THE COURT: Thank you.

Paul Dorman - Direct examination
by Mr. Morton

1 MR. MORTON: This was Applicant's Exhibit No. 10,
2 and -- but the, the placard was Number 11, judge.

3 THE COURT: Uh-huh. (Affirmative).

4 Q In the bottom right-hand corner you can see the victim?

5 A That's correct.

6 Q And, so, he had obviously been transported and that's,
7 that's -- is that -- that is the .44 right there?

8 A Yes, sir, it is.

9 Q Okay. Now, Mr. Dorman, could you tell how many times
10 the .44 had been fired or was there, from your investigation
11 and reviewing and talking to the expert?

12 A The, if I'm not mistaken, the .44, I'd have to go back
13 to the information that was sent back from SLED, but if I'm
14 not mistaken---

15 MR. MABRY: I'm gonna object. I'm gonna object at this
16 time.

17 A ---it was shot one time.

18 MR. MABRY: Excuse me. I'm gonna object at this point.
19 The testimony is in the record from the forensic firearms
20 expert. He's testified he's not an expert in firearms. I'd
21 object to his answering that question.

22 THE COURT: Well, I'll allow him to answer to the
23 extent that he knows.

24 MR. MORTON: From his review.

25 THE COURT: From his investigation.

Paul Dorman - Direct examination
by Mr. Morton

1 MR. MORTON: Yes, sir.

2 THE COURT: So, if he, if he determined himself, from
3 his investigation of the crime scene the number of times it
4 had been fired, he can testify. If that information is
5 totally from SLED, that report is in the record I assume
6 during the testimony---

7 MR. MORTON: Yes, sir, it's in the record.

8 THE COURT: ---in the record.

9 MR. MORTON: It's in the record.

10 A I, offhand, I can not remember. I -- when I reviewed
11 the SLED report, that's where I was able to remember the---

12 Q Do you remember how many .44 bullets that were found,
13 actual projectiles that had been shot by the .44?

14 A From the---

15 MR. MABRY: I'm gonna, I'm gonna object again. He's
16 not testifying as an expert in firearms or identification of
17 the caliber of, of bullets. He's a crime scene
18 investigator. So, that, that testimony's in the record at
19 the trial from the SLED expert which bullets were fired by
20 which guns. So, he can testify to how many bullets, fired
21 bullets he found, but not the caliber of the bullets.

22 THE COURT: Again, within his area of expertise, which
23 is the investigation of the crime scene---

24 MR. MORTON: Yes, sir.

25 THE COURT: ---I'll let him testify, and if he has some

Paul Dorman - Direct examination
by Mr. Morton

1 independent knowledge of the caliber of the bullets, I'm not
2 sure how he gained that. But if he did, I'll allow him to
3 tell us how he determined that.

4 A There were numerous projectiles found. Some of the
5 same, what appeared to be the same caliber, and there was
6 one that did not match the same caliber as others that I
7 collected. But I couldn't, at that time, I could not tell
8 you whether it was a .44, .45.

9 Q Okay. So repeat that for us one more time.

10 A There was several spent projectiles that were
11 collected. Some, some were larger than the, than one that
12 was found, some were jacketed, and then there, then there
13 was one particular round that was a silver tip type round.

14 Q Okay. How many .45 shell casings were found?

15 A I'll have to look through here to get exactly how many.
16 Six shell casings and one live round.

17 Q Six shell casings of casings that came from fired
18 bullets from the .45?

19 A That's correct.

20 Q And one live round?

21 A Yes, sir.

22 Q And you have your report?

23 A Yes, sir.

24 Q Can you tell us where the live round was found?

25 A Live round was found on the countertop.

Paul Dorman - Direct examination
by Mr. Morton

1 Q So, there was a live .45 round that was found on the
2 countertop?

3 A Yes, sir.

4 Q And, so, then you said there were five or six shell
5 casings?

6 A There were six shell casings in all.

7 Q Six shell casings in all, and can you tell us where
8 those shell casings were found?

9 A Yes, sir, Shell Casing Number 2 was found in the back
10 underneath a sink.

11 Q Okay.

12 A Shell casing number---

13 Q Let's, let's, let me, let me stop you right there.

14 So, from your ledger, what you have designated Number
15 2, that shell casing, that .45 shell casing was found on the
16 server side of the counter?

17 Is that right or is that wrong?

18 A Let me make sure I got this. I may of misstated that.
19 Excuse me.

20 Q That's okay. It's a, gets kind of complicated and --.

21 A Okay. Exhibit, my Exhibit Number 3, which was a shell
22 casing, .45, was found in a Little, Little Debbie's display
23 case. Number 4.

24 Q Okay. Hold on for a second.

25 A It's actually a different one found behind the counter.

Paul Dorman - Direct examination
by Mr. Morton

1 Q Okay. Was the first one that you spoke of, the .45
2 shell casing, one of the .45 shell casings, was found inside
3 the Little Debbie's display case?

4 Is that where you're talking about?

5 A Yes, sir, one was found inside the display case.

6 Q Okay. And let's just try to get oriented. I won't do
7 this with every one. Try and orient us, if you will, to
8 where the, where the---

9 A Right there.

10 Q Right there.

11 Okay. It was found inside there?

12 A Number 6, yes, sir.

13 Q Okay. And go ahead and tell us where the other .45
14 shell casings---

15 A The Number 4 was also found on the floor on the other
16 side of the Little Debbie's display case or two side-by-side
17 at that display case.

18 Q Okay.

19 A And then shell casing, which is Number 5, was found on
20 the floor in front of a Pepsi display case on the customer
21 side, which was left back here, Number 5 here---

22 Q Right.

23 A ---and then Number 7 was located here, which goes into
24 the video poker area, and that would be to the right of the
25 door to the rest, one of the restrooms.

Paul Dorman - Direct examination
by Mr. Morton

1 Q Okay. And---

2 A And then I have Number 9, 29 was found in a York
3 Peppermint display on the counter --

4 Q Okay.

5 A -- which you can see right here. There was one inside
6 that display there.

7 Q Okay.

8 A Number 30, that was the one that was found in the
9 kitchen area underneath the sink.

10 Q Okay. So, you have described one unfired bullet on the
11 counter?

12 A Yes, sir.

13 Q Five shell casings on the customer side of the counter?

14 A That's correct, sir.

15 Q One .45 shell casing found on the server's side of the
16 counter?

17 A Yes, sir.

18 Q Okay. In your opinion as a crime scene investigator,
19 those shell casings, the location of those shell casings
20 would indicate where were they fired from, not specifically,
21 but which side of the counter?

22 MR. MABRY: Objection. Leading.

23 THE COURT: Overruled.

24 A The Number 30 was fired on the side of the counter
25 where the clerk or the server would be at, and the remaining

Paul Dorman - Direct examination
by Mr. Morton

1 shell casings were fired from the customer side---

2 Q Okay.

3 A ---of the --.

4 Q Five on the customer side, one on the server, Mr.
5 Mahoney's side?

6 A That's correct, sir.

7 Q There also is, on State's Exhibit 13, I'm sorry,
8 Applicant's Exhibit 13 and Applicant's Exhibit 14 -- well,
9 let me show you 14 first, and on 14, in the bottom left-hand
10 corner of Applicant's 14, do you see a paper bag on the
11 counter there, a picture anywhere?

12 A Yes, sir, it's Number 2 right here.

13 Q Right there, Number 2?

14 A Yes, sir, where the placard is on Number 2, there's a
15 paper bag right behind it.

16 THE COURT: Okay.

17 Q Okay. And, again, if we're looking at this store, the
18 paper bag is -- you can see it here in the corner?

19 A Yes, sir.

20 Q There's a .45 shell casing under the sink over here on
21 the server side?

22 A That's correct, sir.

23 Q There is a bullet -- let me ask you.

24 Was there a bullet that was found to have ricocheted
25 off one of these poker machines and out into the parking

Paul Dorman - Direct examination
by Mr. Morton

1 lot?

2 A Yes, sir, poker machine number three, there was
3 indentation showing where a projectile had hit it and then
4 it angled off and it went through the window and hit a
5 vehicle out in the parking lot and then was found in the
6 parking lot on the ground.

7 Q And here on Applicant's Exhibit No. 9 in the upper
8 right-hand corner, that would depict what?

9 A This is the parking lot---

10 Q Right.

11 A ---where the front of the building, the parking lot and
12 the vehicle that the round hit is over here in the far
13 right-hand side and you can barely---

14 Q Okay.

15 A ---see the back end of it.

16 Q Okay. So, which direction would that bullet that was
17 found in the parking lot come from?

18 A The -- looking at the direction, the way it hit, it
19 came from the, the counter area --

20 Q Right.

21 A -- and hit the poker machine and then went out.

22 Q Okay.

23 A So, it traveled to the south, towards the south area.

24 Q Let me show you what's been marked as Applicant's
25 Exhibit No. 13 and tell us what that is.

Paul Dorman - Direct examination
by Mr. Morton

- 1 A That's the paper sack that was sitting on the
2 countertop.
- 3 Q Okay. And are there holes in the, that bag?
- 4 A Yes, sir, there is.
- 5 Q And is there blood on that bag?
- 6 A Yes, sir, there is.
- 7 Q And did you swab that blood?
- 8 A I collected the bag.
- 9 Q Okay. You collected the bag, the bag?
- 10 A The bag itself. Did not swab.
- 11 Q Okay. And can you sort of inform us what the holes in
12 this bag show?
- 13 A It's showing where a round had passed through it and
14 had exited, this right here, which is the bottom left
15 photograph showing---
- 16 Q Bottom left is an entrance hole?
- 17 A Yes, sir. Yes, sir, it's an exit hole.
- 18 Q Okay. Okay. And the exit hole in that bag would be on
19 which side of the counter?
- 20 A It would be on the, the customer side.
- 21 Q Okay. And the entrance hole would be from what side of
22 the counter?
- 23 A The entrance hole would of been from the other side,
24 the --.
- 25 Q Okay. And was there -- was it a fairly level entrance

Paul Dorman - Direct examination
by Mr. Morton

1 and exit wound or --?

2 A Again, sir, I can not say. I can not remember.

3 Q Okay. But, in your opinion, whatever bullet went
4 through this bag came from the server side toward the
5 customer side?

6 A Yes, sir.

7 Q Okay. And this blood was obviously swabbed and sent to
8 SLED?

9 A The bag was sent.

10 Q The bag was.

11 A If I'm not mistaken, the bag was sent to SLED.

12 Q The bag was sent to SLED and presumably they tested the
13 blood that was on there?

14 A Yes, sir.

15 Q Okay. There were other bullets -- let me, let me clear
16 up, finish with one thing that I'm talking about.

17 There was a bullet that was found in the parking lot --

18 A Yes, sir.

19 Q -- that apparently had ricocheted off one of the poker
20 machines?

21 A That's what it appeared to be, yes, sir.

22 Q There was a bullet that was found in the floor, is that
23 correct?

24 A Yes, sir.

25 Q Okay. And Mr. Mabry didn't want you to say what kind,

Paul Dorman - Direct examination
by Mr. Morton

1 but there was a bullet found here on the floor somewhere?

2 A Placard Number 6.

3 Q A fired bullet?

4 A It was a projectile, yes, sir.

5 Q Yes, sir, it was a projectile, and---

6 MR. MABRY: I'm gonna object to the comments of
7 counsel, and also I didn't want him to say -- the Court
8 heard my objection. But he's making comments and testifying
9 now rather than asking questions.

10 MR. MORTON: I apologize.

11 THE COURT: Thank you.

12 Q Was there another bullet found on the, on the customer
13 side of the counter, on the customer side of the store?

14 Did you---

15 A Yes.

16 Q There was?

17 And where was that bullet found?

18 A Besides Number 6?

19 Q Besides Number 6 and besides the one in the parking
20 lot.

21 A Okay. There was one that had hit in the high left-hand
22 corner of the building. I extracted a jacket from the wall
23 where the bullet had hit there.

24 Q You did extract a bullet from the wall?

25 A I -- it was the jacket that had cased the bullet.

Paul Dorman - Direct examination
by Mr. Morton

- 1 Q The jacket that cased the bullet?
- 2 A Yes.
- 3 Q And that jacket was from what type of bullet?
- 4 A At the time I could not tell.
- 5 Q Okay.
- 6 A From -- I later learned from the report.
- 7 Q Is, is showing you Applicant's Exhibit No. 8, tell us,
- 8 in the upper right-hand corner, what that depicts and, and
- 9 where it was.
- 10 A This photograph shows where the round had hit --
- 11 Q Uh-huh. (Affirmative).
- 12 A -- the wall.
- 13 Q Right.
- 14 A And basically you had five poker machines, and it was
- 15 to the top left of the poker machine.
- 16 Q Okay. Let's see if we can point that out on one of
- 17 your sketches.
- 18 A That should be right there.
- 19 Q Let's do a little cleaner sketch. Let's do --.
- 20 A Here's your poker, number five poker machine. It hit
- 21 right up high on this wall right here, which was the Z,
- 22 inside the Z wall.
- 23 Q So, we have one bullet that hit up here, one bullet
- 24 that hit a poker machine, and one out in the parking lot?
- 25 A Correct.

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by Mr. Morton

1 Q And one bullet that was found in the floor?

2 A That's correct.

3 Q Okay. We also have five projectiles on the customer
4 side of the counter?

5 A That's correct.

6 Q One projectile, one---

7 THE COURT: You mean five casings.

8 MR. MORTON: I'm sorry. Shell casings, Your Honor. I
9 appreciate it. I'm sorry.

10 Q Shell casings on this side of the counter, one shell
11 casing on that side of the counter?

12 A That's correct.

13 Q Okay. There was testimony -- I beg the Court's
14 indulgence one second, Your Honor.

15 THE COURT: Yes, sir.

16 (Pause.)

17 Q There was State's Exhibit No. 20, and I don't know what
18 it is on your ledger, Mr. Dorman, which was the fragment
19 that you found in the wall over the poker machine.

20 A Over the poker machine, and by mine that was Number,
21 Number 37.

22 Q Okay. And was that a projectile?

23 Was that the core part of a bullet or was that just a
24 fragment?

25 A The -- it was actually my Exhibit Number 31 and 37 was,

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by Mr. Morton

1 I marked that as where the photograph was.

2 Q Okay. Your---

3 A The -- it was a piece of metal jacket --

4 Q A piece of a metal jacket?

5 A -- that separated from the lead portion of the bullet.

6 Q Okay. It was not a bullet?

7 A No, sir.

8 Q It was a fragment?

9 A Yes, sir.

10 Q Would -- can you explain in, as a crime scene
11 investigator, most likely how the bullet that was in the
12 floor I think which is marked by your placard six, is that
13 correct?

14 A Yes, sir.

15 Q Had it hit something?

16 MR. MABRY: I'm gonna object. I think that's
17 speculation for this witness. He's not a firearms, firearms
18 examiner. So, we would object to that.

19 MR. MORTON: Your Honor, he's a, he's a crime scene
20 investigator. I'm not asking him to -- he's objected to the
21 identity of the bullet.

22 THE COURT: well, I think he can testify as to whether
23 the projectile was deformed in any fashion and I'll allow
24 him to testify to that extent.

25 MR. MORTON: Thank you, Your Honor.

Paul Dorman - Direct examination
by Mr. Morton

1 A From the appearance when I collected it, it did appear
2 that it had made contact with something, but I could not say
3 exactly what.

4 Q Okay. Just briefly, Mr. Dorman, just a brief recap.
5 You found five, six .45 shell casings?

6 A Yes, sir.

7 Q Five of them were on the customer side?

8 A Yes, sir.

9 Q One of them was on the server/clerk's side?

10 A That's correct, sir.

11 Q Okay. You found a bullet in the floor somewhere in
12 this area?

13 A Number 6, yes, sir.

14 Q You found a bullet in the parking lot?

15 A Yes, sir.

16 Q And a bullet that had gone up in the wall up here?

17 A That's correct.

18 Q Okay. And State's Exhibit No. 20 at trial, which I
19 think was your 31, was a fragment and not a bullet?

20 A It was a metal jacket from---

21 Q Metal jacket.

22 Okay. And the bag was sitting on the counter?

23 A Yes, sir.

24 Q A bullet had passed through it from the server side to
25 the customer side?

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by Mr. Morton

1 A Correct.

2 Q There were also bullet holes, were there not, behind
3 the scene, behind the sink in the---

4 A Yes, sir.

5 Q ---kitchen side?

6 A Yes, sir.

7 Q Correct?

8 A Yes, sir.

9 Q And that would of been your 13 and 14 or---

10 A That's correct, sir.

11 MR. MORTON: Okay. I just want to make sure, judge, I
12 hadn't taken any of the exhibits.

13 THE COURT: Here's the, one of them right here. You
14 handed it to me.

15 MR. MORTON: Yeah, I didn't want to take her, her
16 pictures and put them back with mine.

17 THE COURT: That's quite all right.

18 I'll ask the witness, the number of bullet holes behind
19 the sink was?

20 WITNESS: Two, sir.

21 THE COURT: Two. Thank you.

22 Q And, of course, Mr. Mahoney had a bullet?

23 MR. MABRY: I couldn't hear the question.

24 THE COURT: Mr. Mahoney had a bullet --

25 MR. MABRY: Right.

Paul Dorman - Direct examination
by Mr. Morton

1 THE COURT: -- is the question.

2 MR. MABRY: I couldn't hear the last part of it.

3 Sorry.

4 THE COURT: That's all right.

5 Q And I believe that was, just for the record, No.
6 State's Exhibit 97. I don't know what it was for you,
7 Mr. Dorman. I don't know if you have that comparison. It's
8 not---

9 A The bullet holes in the---

10 Q Yes, that's not important.

11 A No, I did not.

12 MR. MORTON: Okay. Beg the Court's indulgence one
13 second, Your Honor.

14 THE COURT: Yes, sir.

15 (Pause.)

16 Q Please answer any questions that Mr. Mabry has.

17 THE COURT: Your witness, Mr. Mabry.

18 MR. MABRY: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. MABRY:

21 Q Paul, what time did you get there to the scene?

22 A I found my field notes here. It shows that I arrived
23 at 3:35.

24 Q Okay. You were not there when the actual shooting took
25 place, is that correct?

Paul Dorman - Cross-examination
by Mr. Mabry

1 A No, sir, I was not.

2 Q Okay. So, you don't know exactly what happened inside
3 that store and when it happened, do you?

4 A No, sir.

5 Q Okay. I'm gonna wait till---

6 MR. MORTON: I'm sorry. I was just trying to get out
7 of your way.

8 MR. MABRY: Sure. I'll wait.

9 One moment, Your Honor.

10 (Pause.)

11 THE COURT: Yes, sir.

12 Q And when you got there, Paul, there were, I believe you
13 testified, Mr. Mahoney was behind the counter?

14 A Yes, sir, he was.

15 Q Okay.

16 (WHEREUPON, a photograph was marked as Respondent's
17 Exhibit No. 2 for identification purposes only at this
18 time.)

19 Q I'm gonna show you what's been, what was actually --
20 well, it's Respondent's Exhibit No. 2.

21 Is that a photograph you took of the crime scene and
22 the location of Mr. Mahoney's body?

23 A Yes, sir, it is.

24 Q All right. That was behind the counter, am I correct?

25 A Yes, it was.

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q Hand that up.

2 And when you got to Nikki's Grocery, I believe the --
3 what was one of the first things you noticed before even
4 entering the store?

5 A There was, appeared to be some blood in the, right at
6 the door and into the parking lot. I -- then Detective
7 Denton and I spoke. And when you looked into the front door
8 you could see blood on the doorway from the outside.

9 Q All right. There's like double glass doors where you
10 come out of the store?

11 A Yes, sir.

12 Q And there was blood there as well?

13 A Yes, sir.

14 Q And then there was a blood trail leading into?

15 A When you opened the door, there's a blood trail that
16 led all the way into in front of the counter and then around
17 back of the counter.

18 Q Okay. So, there's a blood trail that actually -- how
19 do you get behind the counter?

20 There's two ways you can get behind the counter, right?

21 A There was -- you had the counter area that was opened.
22 There's a slit in the wall in which made a counter, and then
23 to the right of that counter area there's a door that leads
24 back to the kitchen and the counter, back to the rear area
25 of the counter.

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q Is that picture that we just handed up to the judge, is
2 that taken from generally the area where you would come
3 around the counter?

4 A Where Mr. Mahoney -- when I took the picture, I stepped
5 right into the doorway, walked straight in, made an
6 immediate left, and Mr. Mahoney was laying right there.

7 Q Okay. And what did you notice -- there was something
8 unusual you noticed about the blood on Mr. Mahoney as well.

9 A There was blood that was not consistent with the wounds
10 that he had received.

11 Q Okay.

12 (WHEREUPON, a photograph was marked as Respondent's
13 Exhibit No. 3 for identification purposes only at this
14 time.)

15 Q I show you Respondent's Exhibit No. 3.

16 Can you tell us, in that photograph, what you're
17 talking about, the blood that wasn't consistent?

18 A If you look at the back of his shirt, sir, there is no
19 exit wound at all on the, on his back. But yet there's
20 blood that is blood that has dripped down --

21 THE COURT: This one is better.

22 MR. MABRY: Oh, is it?

23 I'm sorry, Your Honor.

24 A -- that is dripped down on top of him, which led me to
25 believe that somebody that was bleeding was actually over

Paul Dorman - Cross-examination
by Mr. Mabry

1 the top of him and it was coming down.

2 Q Okay. Okay. Now, the paper bag that's been referred
3 to, do you know if that paper bag was moved at all during
4 the struggle or shooting inside the store?

5 A No, the only thing I can say is when I got there that's
6 where it was located. I don't know if it was touched or
7 somebody had moved it.

8 Q Okay.

9 (WHEREUPON, a photograph was marked as Respondent's
10 Exhibit No. 4 for identification purposes only at this
11 time.)

12 Q I show you Respondent's Exhibit No. 4.

13 Is that a picture of the paper bag?

14 A Yes, it is.

15 Q Okay. And is there a piece of paper next to that paper
16 bag?

17 A Yes, sir.

18 Q Okay. And what is there about that piece of paper that
19 you notice?

20 A There's blood that is right there. There is blood
21 spatter that is showing the direction of where it fell, came
22 downward, and at least three of them are going to kind of a
23 .45 degree angle into the bag right here.

24 Q Okay. What about the piece of paper that's next to
25 the, the bag?

Paul Dorman - Cross-examination
by Mr. Mabry

1 A The blood is dropping down, straight down, and then
2 going over the edge. The paper was actually curved.

3 Q Okay.

4 A It looks like somebody had been standing there and the
5 blood fell.

6 Q Okay. Is the paper pushed up like I'm pushing up right
7 now?

8 A Yes, sir. Yes, sir.

9 Q Okay. Does that indicate that the bag was possibly
10 moved at some point?

11 A Looking, looking at it, sir, I'd say that it's not been
12 moved. But -- I say it had not been moved from that
13 location.

14 Q No, I mean that the bag had been moved at some point
15 pushing the paper over.

16 A Oh, yes, sir, it could of been.

17 Q And, again, you weren't there when the actual shooting
18 took place and there was no video of the crime.

19 A No, sir.

20 Q So, you don't know exactly what took place there around
21 the corner?

22 A The video was not working at that time.

23 Q Okay. And you don't know exactly when the blood
24 dripped on to that bag or the piece of paper --

25 A No, sir.

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q -- in the sequence of the shots?

2 A No, sir.

3 Q Now, was Mr. Hadden still there when you got there?

4 A I believe he was outside---

5 Q Okay.

6 A ---with the officers.

7 Q All right. Now, did you talk to him at all?

8 A I don't remember talking to him.

9 Q Okay.

10 (WHEREUPON, a photograph was marked as Respondent's
11 Exhibit No. 5 for identification purposes only at this
12 time.)

13 Q What, what was Mr. Hadden, as far as your
14 understanding, what was his location at the time the
15 shooting took place?

16 A He was sitting in front of video poker machine number
17 three playing video poker when the incident occurred.

18 Q All right. And when the incident occurred, what
19 happened to Mr. Hadden or at least what was related to you?

20 A What was related to me was that a person had entered
21 into the store, some shots were fired, he went to the
22 ground, and when the suspect left, then he actually got a
23 cell phone to make a phone call, dialed 9-1-1.

24 Q Okay. I'm going to show you Respondent's Exhibit 5.
25 Is that a picture of the video poker machines---

Paul Dorman - Cross-examination
by Mr. Mabry

1 A Yes, sir.

2 Q ---where Mr. Hadden was supposed to be sitting?

3 A Yes, sir, where the---

4 Q If you show the judge. I'll hold it up. Where is---

5 A Going from right to left, one, two, three, four, five

6 is the way I numbered the video poker. Number 3 is the

7 center one. That's the chair that it's believed that

8 Mr. Hadden was sitting in when the incident occurred.

9 Q And is that how you found the chair when you got there,
10 on the floor?

11 A Yes, sir.

12 Q Tipped over?

13 A Yes, sir.

14 Q Okay. And you found a gunshot -- do you remember
15 Mr. Hadden relating that Mr. Moore, the perpetrator, he
16 didn't know who it was at the time, but the perpetrator had
17 actually turned and fired a shot at him?

18 A That's what was related to me, yes, sir.

19 Q And did you actually find a bullet hole somewhere in
20 the wall near the poker machines?

21 A There, there was two places where bullets had hit
22 either the wall or the video poker machine.

23 Q Okay.

24 MR. MABRY: If I could have just a moment, Your Honor.

25 (Pause.)

Paul Dorman - Cross-examination
by Mr. Mabry

1 (WHEREUPON, a photograph was marked as Respondent's
2 Exhibit No. 6 for identification purposes only at this
3 time.)

4 Q I show you Respondent's Exhibit No. 6. It's actually
5 two photographs together. If you could tell the Court what
6 those are.

7 A This is where the one round hit the wall right in that
8 corner right there. It's like a sheetrock, thin sheetrock,
9 and then up behind it is brick, and then this is showing --
10 it's actually like some -- you see where the round hit it
11 here, and inside that, right where that area is, that's
12 where the jacket of the round was located.

13 Q Okay. Thank you. And you said there was another
14 location. I believe that was a video poker machine that was
15 struck?

16 A Yes, sir.

17 Q Is that correct?

18 A Yes, sir.

19 Q And that would, would of been near where Mr. Hadden was
20 seated?

21 A Poker machine Number 3, sir.

22 Q Okay.

23 (WHEREUPON, a photograph was marked as Respondent's
24 Exhibit No. 7 for identification purposes only at this
25 time.)

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q So, that was the actual machine where he was sitting---

2 A Yes, sir.

3 Q ---and got hit?

4 Show you Respondent's Exhibit No. 7. If you could
5 identify that for the Court.

6 A That is where a round hit the back wall. You have the
7 kitchen, the sink that was right behind where the clerk had
8 been located at, and directly behind it there's a brick
9 wall, the sink right there, and that particular round hit
10 right above the sink.

11 Q Okay.

12 (WHEREUPON, a photograph was marked as Respondent's
13 Exhibit No. 8 for identification purposes only at this
14 time.)

15 Q Show you Respondent's Exhibit No. 8.

16 Is this a copy of one of your evidence sheets from this
17 case?

18 A This is, this is the front page, yes, sir.

19 Q All right. If you'll look down there, can you show
20 me -- does it reflect anywhere on there where you found the
21 .40 or you processed the .44 caliber pistol, the one that
22 belonged to Mr. Mahoney?

23 A The .44 was Item Number 4, and in my exhibits---

24 Q I'm gonna ask you if you'll just put a little mark,
25 check, star beside that.

Paul Dorman - Cross-examination
by Mr. Mabry

1 A Item Number 4 was a Charter Arms Bulldog .44 caliber
2 five shot revolver with five live rounds and one spent round
3 in the chamber.

4 Q I'm sorry. Say it -- was it five live rounds or four
5 live rounds?

6 A No, there's four live rounds and one spent.

7 Q So, it's the, the .44 caliber that belonged to
8 Mr. Mahoney, the one that was found next to his body---

9 A Yes, sir.

10 Q ---behind the counter, that one had four live rounds in
11 it?

12 A Yes, sir.

13 Q And one spent round?

14 A Yes, sir, it's a five shot revolver.

15 Q Okay. Thank you. Hand that up to the Court.

16 (WHEREUPON, a photograph was marked as Respondent's
17 Exhibit No. 9 for identification purposes only at this
18 time.)

19 Q Show you Respondent's Exhibit No. 9.

20 Can you tell us, is that a photograph of the front of
21 the counter --

22 A Yes, sir.

23 Q -- where you come in where a customer would be?

24 A The right side of the---

25 Q Hold up.

Paul Dorman - Cross-examination
by Mr. Mabry

1 A ---photograph is the doorway where you enter in.

2 There's a, a hallway that leads back this way towards the
3 front door. Right here's the doorway and you walk-in, and
4 this is the, actually the second doorway into the building,
5 into the area, main area right here.

6 Q So, you come in the glass doors and then you have to go
7 to the back?

8 A There's a glass doors here. As you walk in, there's a,
9 there's a room to the left --

10 Q Uh-huh. (Affirmative).

11 A -- and then you walk into a second doorway, and this is
12 the second doorway into that room.

13 Q Okay. What's, what's all this stuff on the floor---

14 A Okay.

15 Q ---in front of the counter?

16 A Right here, this is the Little Debbie's display case,
17 and the placards indicate where I found evidence within
18 this, this area, general area right here.

19 Q Okay. And was that -- did you find that display case
20 just like that --

21 A Yes, sir.

22 Q -- knocked over on the counter?

23 A Yes, sir, it was.

24 Q Okay. Was there any kind of bullet holes or anything
25 to the display?

Paul Dorman - Cross-examination
by Mr. Mabry

1 A There was no bullet holes, but there were two shell
2 casings found with the display.

3 Q Okay.

4 (WHEREUPON, a photograph was marked as Respondent's
5 Exhibit No. 10 for identification purposes only at this
6 time.)

7 Q Show you Respondent's Exhibit No. 10. If you can tell
8 us what that is.

9 A That's the front door going to the outside. It's the
10 very first door you come into when you come into the
11 building.

12 Q Okay.

13 A This is the inside---

14 Q That's the---

15 A This is the inside portion.

16 Q Was the blood on the inside or the outside?

17 A It's on the inside.

18 Q Inside.

19 Okay. Sorry. If I could just have a moment, Your
20 Honor.

21 THE COURT: Yes, sir.

22 MR. MABRY: Okay. I got it.

23 (WHEREUPON, two photographs were marked as Respondent's
24 Exhibit Nos. 11 and 12 for identification purposes only at
25 this time.)

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q Let me show you two photographs, Respondent's Exhibit
2 11 and 12. First want to show you 12.

3 Is that photograph from the, Mr. Mahoney's, what would
4 of been Mr. Mahoney's side of the counter looking out?

5 A Yes, sir, this is the kitchen side, yes, sir.

6 Q Okay. And do you see this red item right here?

7 A That's a Bic lighter.

8 Q Bic lighter?

9 A Display, yes, sir.

10 Q Okay. And do you remember whether that was moved or
11 disturbed or not, or not?

12 A It was sitting in a location. I don't know if it was
13 disturbed. I can not remember.

14 Q All right. Okay. Well, let me show you this
15 photograph, Respondent's Exhibit 11.

16 A That's the bottom showing the location of where the
17 paper bag was located on the countertop.

18 Q Right.

19 A It was basically where it had, and you can see the Bic
20 lighter displayed right here.

21 Q Okay. Does it appear to you that it's been moved at
22 all?

23 A I don't know what it looked like before---

24 Q Okay.

25 A ---that incident occurred. It could of been sitting in

Paul Dorman - Cross-examination
by Mr. Mabry

1 that direction. It could of been up against the wall there.

2 I'm not sure. It's in---

3 Q Okay. Is that---

4 A It's in, it's in a -- it's in an angle. It's at an
5 angle. That's all I can say.

6 Q Okay. And does it appear to be kind of a display that
7 would be displayed for customers to buy Bic lighters?

8 A It be my opinion, yes, sir.

9 Q Okay. But it's not turned toward the customers. It's,
10 it's kind of angled away from the counter now, is that
11 correct?

12 A Yes, sir.

13 Q Was it related to you, when you got there, that the
14 first thing Mr. Mahoney heard was something---

15 MR. MORTON: Object.

16 THE COURT: I don't know what the question's gonna be
17 yet.

18 MR. MABRY: I'll withdraw it.

19 THE COURT: All right.

20 Q Now, Mr. Dorman, you testified you're an expert in
21 crime scene investigation, but I believe you're not an
22 expert in firearms identification, is that correct?

23 A No, sir.

24 Q Okay. Did you do any test on these weapons yourself
25 personally to determine how far shell casings would be

Paul Dorman - Cross-examination
by Mr. Mabry

1 ejected from the weapon?

2 A No, sir, from my experience I carried a, a 9-11 Colt,
3 which is a, the Argentine model. It's a representative of
4 the 9-11, Colt 9-11. It's got the same body parts, same
5 size. I carried that while in the Marine Corp as well as in
6 the Army Reserves. I've handled them all through my career
7 in law enforcement and I've shot hundreds of rounds through
8 them, and I know the way that they eject out, and
9 approximately how far a round, an eject will go, depending
10 on how the person shoots it, and this is just from my
11 personal experience.

12 Q Okay.

13 A That's where I've got experience with the .45.

14 Q All right. Was their testimony -- did you testify at
15 the trial in this case?

16 A Yes, sir, I believe I did.

17 Q Okay. Did you testify in the trial about where you
18 thought the shell casings were fired from?

19 A Sir, I can not, I can not remember exactly what I
20 testified---

21 Q Okay.

22 A ---at that time.

23 Q You know you testified to the collection of evidence
24 and where it was located?

25 A Yes, sir.

Paul Dorman - Cross-examination
by Mr. Mabry

- 1 Q But you don't remember whether you testified---
- 2 A I've read, I've read some of transcript with---
- 3 Q You don't---
- 4 A ---of the original trial.
- 5 Q You don't recall whether you testified where, where the
- 6 evidence might have originated from?
- 7 A Oh yes, sir. Yes, sir, I testified to where I, where I
- 8 collected the evidence at.
- 9 Q Okay.
- 10 A Yes, sir.
- 11 Q And, again, you weren't there at the time this
- 12 happened. So, you don't know the position of any weapon
- 13 when it was fired, whether it was up, down, sideways --
- 14 A I was not, no, sir.
- 15 Q -- whether people were fighting over a gun --
- 16 A That's correct.
- 17 Q -- or whether the gun was actually over the counter
- 18 when it was fired?
- 19 I'm talking about directly over the counter between the
- 20 defendant and Mr. Mahoney if that's where the gun went off.
- 21 You don't know.
- 22 A No, sir, it -- the, the only thing I can say is at
- 23 least one round was fired from behind the counter.
- 24 Q All right. Well, let me ask you about that. If a
- 25 round was fired from in front of the counter or over the

Paul Dorman - Cross-examination
by Mr. Mabry

1 counter, could the round have bounced onto Mr. Mahoney, and
2 during the struggle, been cast to the back behind the
3 counter?

4 A There is that possibility. It could of hit -- if it
5 ricocheted back, if it came back like this, it could of
6 come, come out at this shoulder and bounced towards the
7 back.

8 Q Okay. And you also know that casings will tumble,
9 they'll also roll as well once they hit the floor, don't
10 they?

11 A Yes, sir.

12 Q Okay. But there's no question there were six shell
13 casings, .45 shell casings fired in all?

14 A Yes, sir.

15 Q Is that right?

16 And five were found in front of the counter and one
17 behind the counter?

18 A That's correct.

19 Q And -- but you don't know who was holding that .45
20 weapon when it was fired?

21 A No, sir, I wasn't---

22 Q Any of those six times?

23 A Neither of those, no, sir.

24 Q Okay. If a person fired the .45 caliber weapon from
25 where you took this photograph, they came around the corner

Paul Dorman - Cross-examination
by Mr. Mabry

1 and shot Mr. Mahoney as he was trying to come out from
2 around from behind the counter in the doorway, could the
3 shell casing have ejected and ended up where you found it
4 behind the counter?

5 A With the doorway being in the location right here?

6 Q Right.

7 A Okay. Had -- in my, in my opinion, from my experience,
8 had the person been standing here or is standing on this red
9 carpet, that particular shell casing would of been found
10 back this way instead of under here in this section. It
11 would not of ejected towards the front. It would of been
12 towards the back.

13 Q Unless it hit---

14 A Unless somebody kicked it, but he had to come back here
15 and the blood spatter did not come back this far. It went
16 here, here, here, here, and back out again.

17 Q All right. If he shot Mr. Mahoney in this area where
18 Mr. Mahoney's feet are or anywhere close to him, could the
19 shell casings have hit Mr. Mahoney, the shooter, or hit
20 something else in the kitchen and rolled to where it was
21 found?

22 A There's always that possibility. It could of hit the
23 ice machine. But like I said, it was found back under here,
24 which led me to believe it went back this way towards the
25 back this way. That's what it led me to believe when I

Paul Dorman - Cross-examination
by Mr. Mabry

1 found it.

2 Q Okay. But you agree shell casings can tumble?

3 A They can.

4 Q They can roll?

5 A They hit things and it's never a hundred percent
6 exactly where it's gonna sit, hit everytime when it's fired.

7 Q Or a person can kick the shell casing?

8 A Yes, sir.

9 Q Now, that's not, working the crime scene there, was not
10 the only thing you did in this case, is that right?

11 A That's correct, sir.

12 Q You went out to where the gun was located, the .45?

13 A Yes, sir.

14 Q Do you remember where that was located?

15 A I did not go to where the gun was located at.

16 Q Do you remember where, do you remember where it was
17 located?

18 A It was located off of a roadway. I'd have to look at a
19 report. I believe Crime Scene Investigator Dedmon had
20 recovered that weapon before I even left the, the scene. I
21 did go to another location and that's where Mr. Moore had
22 been located in his pickup truck.

23 Q Okay.

24 (WHEREUPON, a photograph was marked as Respondent's
25 Exhibit No. 13 for identification purposes only at this

Paul Dorman - Cross-examination
by Mr. Mabry

1 time.)

2 Q Show you Respondent's Exhibit 13.

3 Can you tell us what that is?

4 A This is the left side of the truck where it was
5 located. I believe to be, had been driven by Mr. Moore.

6 Q And what's that on the door of the truck?

7 A Blood.

8 (WHEREUPON, a photograph was marked as Respondent's
9 Exhibit No. 14 for identification purposes only at this
10 time.)

11 Q Show you Respondent's Exhibit 14.

12 Can you tell us what that is?

13 A That is money that was found inside the pickup truck on
14 the seat. This, this particular truck has only one seat,
15 and this was found on the seat just to the right of where
16 the driver would be sitting.

17 Q Okay. Do you remember how much money that was?

18 A I got it. Inside the vehicle was \$1403 in U.S.
19 currency.

20 Q All right. Was there anything on the money?

21 A Blood.

22 Q Blood?

23 A Yes, sir.

24 Q Okay. And where was that vehicle located?

25 A The -- let's see. It was located in the driveway of

Paul Dorman - Cross-examination
by Mr. Mabry

1 [REDACTED].

2 Q Okay.

3 (WHEREUPON, a photograph was marked as Respondent's
4 Exhibit No. 15 for identification purposes only at this
5 time.)

6 Q And where was Hillside from Nikki's?

7 How far away is, is Hillside Drive where you found the
8 vehicle?

9 A Right off-hand I can't remember, sir. I just know it
10 was to -- I believe it was to the southeast area from the
11 store.

12 Q Okay. And where is Spartanburg Regional Hospital from
13 Nikki's?

14 A It's -- Spartanburg Regional was to the northwest if
15 I'm not mistaken.

16 Q Well, how would you get there from Nikki's?

17 A Oh, if, if I came -- if I needed to go to the hospital,
18 I'd turn to the, to the right, and when you came out of the
19 parking lot, went to the left to go to Hillside.

20 Q Okay. And how far is it from Nikki's to Spartanburg
21 Regional?

22 A I---

23 Q Roughly.

24 A I can't say. I've been there numerous times, but right
25 now I can not remember how far it is.

Paul Dorman - Cross-examination
by Mr. Mabry

- 1 Q All right.
- 2 A It's, it's not that far though.
- 3 Q Okay. Can you get there in say a minute or two?
- 4 A Probably, yes, sir.
- 5 Q Okay. Show you Respondent's Exhibit No. 15.
- 6 Can you tell us what that is?
- 7 A That is a pocketknife that was found on the seat inside
- 8 the pickup truck.
- 9 Q Is that under money?
- 10 A It was under the money when it was first found, yes,
- 11 sir.
- 12 Q Okay. Now, you can't tell us the order in which these
- 13 bullets were fired inside the store?
- 14 A No, sir.
- 15 Q I mean you can tell us there were six fired shell
- 16 casings, .45 shell casings?
- 17 A Yes, sir.
- 18 Q And one fired .44 shell casing?
- 19 A Yes, sir.
- 20 Q But you can't tell us in what order those, the one's
- 21 that you found?
- 22 Like that was the first one, this was the second one,
- 23 this was a third, there's no way to tell that, right?
- 24 A No, sir.
- 25 Q Okay. And did you do any kind of string, you know,

Paul Dorman - Cross-examination
by Mr. Mabry

1 take a piece of string and measure from one location to
2 another?

3 A The, the only one I did was the round that went through
4 the window out to the car.

5 Q Okay.

6 A I did show the angle where you can see where it went
7 through the window. I strung a string out to where the car,
8 where it indented the car---

9 Q Right.

10 A ---and took a photograph of that, and we took a
11 measurement from where it exited the window to where the car
12 was located at.

13 Q All right. Did -- was there a string measurement from
14 the paper bag to any location to try---

15 A No, sir.

16 Q ---to identify where that round went?

17 A No, sir.

18 Q Okay. Well, were you present when the forensic, I mean
19 the firearms expert testified at the trial?

20 A No, sir, I wasn't allowed to be in here.

21 Q Okay.

22 (WHEREUPON, two photographs were marked as Respondent's
23 Exhibit Nos. 16 and 17 for identification purposes only at
24 this time.)

25 Q All right. The .32 gun that was under the counter,

Paul Dorman - Cross-examination
by Mr. Mabry

1 that was determined not to have been fired at all?

2 A That's correct, sir.

3 Q Is that correct?

4 And that belonged to the store?

5 A I believe so, yes, sir.

6 Q And do you remember that the .45 was determined to
7 belong to the owners of the store?

8 A Yeah, I believe that's what they said. I'm not---

9 Q All right. And the .44 was determined to belong to Mr.
10 Mahoney?

11 A I believe that's what it said, and I can only go back
12 to after reading the, the reports.

13 Q Okay. State's Exhibit 17, 16 and 17, can you tell us
14 what these are?

15 A No. 17, No. 17 was a gray colored backgammon board that
16 was on the floor next to the desk in the kitchen, and was---

17 Q That's behind the counter?

18 A Yes, sir, it was behind the, the counter, and those are
19 chips from that backgammon --.

20 Q And what's the next picture, 16, I think?

21 A And that's the shell casing that I found. There's a
22 bucket that says acid on it, and to the left of that bucket
23 was where I found that shell casing inside the kitchen area.

24 Q Okay.

25 A And it's a .45 caliber shell casing.

Paul Dorman - Cross-examination
by Mr. Mabry

1 Q And what is that on the floor right next to that?

2 A It looks like blood, but it's not blood.

3 Q Okay.

4 A It's actually -- the floor, at one time, look like it
5 was painted a white color, and this is where it's chipped
6 up, and it's all through the whole kitchen it's like that.

7 Q Where did you determine, through your investigation,
8 where the money was kept?

9 A I, I don't know. I don't know where it was located
10 at---

11 Q Okay.

12 A ---originally.

13 Q But when you went, when you went out to Hillside Drive,
14 there was a blue money bag and 1400 and something dollars in
15 cash?

16 A The money bag was laying there with some money inside
17 of it, and then there was money strode in there along with
18 some cardboard pieces of flat cardboard.

19 Q Okay. And was there blood behind the counter?

20 A Behind the counter of the business, oh, yes, sir.

21 Q Okay. And how far from that location was the blood?

22 A From the bullet?

23 Q The casing, yeah. That casing.

24 A The, the casing, yes, sir. The -- if you're looking at
25 this, the sink is actually back on this side and this,

Paul Dorman - Cross-examination
by Mr. Mabry

1 this -- you can see where the chair is. If you look at the
2 picture of the chair in one of the earlier photographs,
3 where it was located at, Mr. Mahoney was laying, if you look
4 at that picture where Mr. Mahoney laid---

5 THE COURT: Just a second. Just a second.

6 A ---you can actually see the white acid.

7 THE COURT: I'm about to get there.

8 A The acid container right there.

9 THE COURT: You want to use this photo?

10 A Okay. You see where the acid container is right there?

11 Q Uh-huh. (Affirmative).

12 A That shell casing is back in-between this area and this
13 sink right there.

14 Q Okay.

15 A Right back in there. And the closest blood, you can
16 see where it goes right over the top of Mr. Mahoney, and all
17 down in this area on the counter along here.

18 Q So, just a few feet away?

19 A Yes, sir.

20 Q Okay.

21 (WHEREUPON, a photograph was marked as Respondent's
22 Exhibit No. 18 for identification purposes only at this
23 time.)

24 Q Show you Respondent's Exhibit 18.

25 Can you tell me where that was found?

Paul Dorman - Cross-examination
by Mr. Mabry

1 A Yes, sir, it was found next to a burn barrel behind the
2 house there at [REDACTED]. When you came into their
3 driveway, and where the truck was, truck was located back
4 towards the, the roadway.

5 Q He backed into a telephone poll?

6 A Yes, sir. When you look at it, you go back, the house
7 is back here --

8 Q Uh-huh. (Affirmative).

9 A -- and you go back there. The burn barrel, it would be
10 on the rear right side of the building.

11 Q Okay. And that's a \$5 bill?

12 A Yes, sir.

13 Q And was there anything else you found there with that?

14 A There was a t-shirt located there.

15 Q Okay.

16 A T-shirt.

17 Q Okay. What, what was on the shirt?

18 A Blood.

19 MR. MABRY: If I could have just one moment, Your
20 Honor?

21 THE COURT: Yes, sir.

22 (Pause.)

23 Q And was there blood also in the parking lot?

24 A Yes, sir, it appeared to be blood in the parking lot of
25 the business.

Paul Dorman - Cross-examination
by Mr. Mabry

1 MR. MABRY: That's all I have, Your Honor.

2 THE COURT: Do you wish to have these put into
3 evidence, the ones that you---

4 MR. MABRY: I thought I had, Your Honor. Yes, sir,
5 Your Honor, I'll move them into evidence.

6 THE COURT: You want to look at those exhibits?

7 MR. MABRY: They're, they're exhibits from the trial
8 itself. So---

9 THE COURT: I understand. But I want to give him a
10 chance to look and see if it's proper.

11 MR. MABRY: Yes, sir, I'm sorry.

12 (Pause.)

13 MR. MORTON: Your Honor, I object to No. 14 and No. 15.

14 THE COURT: State the basis of the objection.

15 MR. MORTON: That, that is not a true and accurate
16 representation of the knife, where it was found, and
17 photographed by this witness, Your Honor, and they haven't
18 laid a foundation for that.

19 THE COURT: The testimony I recall was that the knife
20 was under the money when it was located.

21 MR. MORTON: Your Honor, can I---

22 THE COURT: Is that, is that -- Mr. Mabry, did I---

23 MR. MABRY: That's what I thought, yes, sir.

24 THE COURT: ---mischaracterize that, Your Honor?

25 MR. MABRY: That's my understanding from the record as

Paul Dorman - Cross-examination
by Mr. Mabry

1 well.

2 MR. MORTON: Your Honor, can I examine the witness
3 about that---

4 MR. MABRY: Sure.

5 MR. MORTON: ---before you make your ruling?

6 MR. MABRY: I apologize.

7 THE COURT: Absolutely.

8 MR. MABRY: That's not---

9 REDIRECT EXAMINATION

10 BY MR. MORTON:

11 Q All right. Mr. Dorman, you were the designated crime
12 scene investigator on this case?

13 A Yes, sir, I was.

14 Q Including the investigation on Hillside Drive?

15 A Yes, I was.

16 Q And as a crime scene investigator, it's very important
17 to secure the scene before you get there, correct?

18 A Not---

19 Q It's important for the police to secure the scene?

20 A Yes, sir.

21 Q So that nothing would be disturbed before you had an
22 opportunity to take photographs?

23 A That's correct.

24 Q Correct?

25 And is it, is it not true that the photograph that is

Paul Dorman - Redirect examination
by Mr. Morton

1 depicted there in 14 and 15 was not as you found it when you
2 got there to photograph it?

3 A That's where it was located.

4 Q Okay.

5 A When I, when I got there, that's -- the, the knife had
6 been moved by Investigator Lacy and placed it back in the
7 position where he located it.

8 Q So, when you got there the knife had been moved?

9 A Yes, sir.

10 Q And when you took this photograph---

11 A That's where he said he found it.

12 Q ---there was a knife there that when you got there to
13 photograph it it wasn't there like this, correct?

14 A But---

15 A It had been moved. It had been moved, yes, sir.

16 MR. MORTON: That's the basis of my objection, Your
17 Honor.

18 THE COURT: Mr. Mabry.

19 MR. MABRY: Your Honor, I believe those photographs
20 were in, admitted into evidence at the trial. So, they're,
21 therefore, in the record for this PCR anyway. But he said
22 the officer put it right back where he found it, and they
23 photographed it. So, I think it -- I mean you've heard the
24 testimony, sir.

25 MR. MORTON: Your Honor, I understand that the, that

Paul Dorman - Redirect examination
by Mr. Morton

1 the testimony's in the record, and I understand the
2 testimony was not objected to. My point is that is not a
3 fair and accurate portrayal of the knife as photographed on
4 the scene.

5 THE COURT: Well, he indicates it's a fair and accurate
6 portrayal as how he discovered it and the picture that he
7 took at that time. To that extent, I'm gonna admit.

8 MR. MORTON: Okay.

9 THE COURT: And now the other, other exhibits, do you
10 have objection?

11 MR. MORTON: Yes, sir, I have no objection, Your Honor.

12 THE COURT: All right. So, those will be admitted as
13 marked.

14 (WHEREUPON, Respondent's Exhibit Nos. 2 through 18 were
15 received into evidence at this time.)

16 THE COURT: Are you now gonna begin your redirect?

17 MR. MORTON: Thank you very much, Your Honor.

18 THE COURT: Yes, sir.

19 CONTINUED REDIRECT EXAMINATION

20 BY MR. MORTON:

21 Q But, again, Investigator Dorman, it's very important
22 for nothing to be disturbed before you photograph it --

23 A That's the way we like to do it.

24 Q -- so that there will be an accurate portrayal of how
25 the scene was and you can photograph that?

Paul Dorman - Redirect examination
by Mr. Morton

1 A Yes, sir.

2 Q And that knife had been moved and placed there by
3 someone else before you got there?

4 A That's correct.

5 Q Okay. Mr. Mabry, I think, I don't know if he misspoke,
6 but the .44 is a revolver?

7 A Yes, sir.

8 Q It does not eject shell casings?

9 A No, sir, it does not.

10 Q Okay. And was it your testimony that, in your opinion
11 from your experience and as a crime scene investigator, that
12 the person responsible for the firing of a gun that ejected
13 the shell casing that was behind the counter did not match
14 the blood that was found there?

15 MR. MABRY: Objection.

16 MR. MORTON: In other words, did you indicate -- oh,
17 I'm sorry. Go ahead.

18 THE COURT: What's the objection?

19 MR. MABRY: Well, first of all, the question is
20 misleading. This is redirect examination, and I don't -- I
21 believe that mischaracterizes the testimony. I don't think
22 he testified to all, everything that's in that question.

23 THE COURT: I'll sustain the objection. Ask that it be
24 rephrased as to leading.

25 MR. MORTON: Yes, sir.

Paul Dorman - Redirect examination
by Mr. Morton

1 Q Investigator Dorman, give us your opinion about the
2 circumstances that you found as far as the blood and the
3 shell casing in relation to that blood, and whether or not,
4 in your opinion, the person who dripped that blood ejected
5 that shell casing?

6 MR. MABRY: I object to that on the grounds of
7 speculation. He's not a firearms examiner. He did no
8 testing of this weapon. He can't---

9 THE COURT: You elicited testimony concerning the blood
10 patterns in proximity of the shell casing. That's been --
11 the door's opened.

12 You may answer the question.

13 A The way the shell casing was located at, in my opinion,
14 there was a -- the .45 was fired behind the counter. The
15 blood that's there showed me that when it came through the
16 door and stayed basically to the left side center of Mr.
17 Mahoney and to the left -- the way that a .45 ejects, does
18 not eject forward. It ejects like, like over your shoulder,
19 your right shoulder unless you break your wrist at the time
20 of the shooting, then it may come up and hit you in the
21 shoulder, hit you in the arm, but depending on how it's
22 fired. The blood and the shell casing did, at that time,
23 did not lead me to believe that that blood and that shell
24 casing had, were together.

25 Q Came from the same---

Paul Dorman - Redirect examination
by Mr. Morton

1 A I guess that's the best way to put it.

2 Q It came from the same person?

3 MR. MABRY: Object to leading. I object to the
4 leading.

5 THE COURT: I'm gonna sustain that objection.

6 MR. MORTON: Okay.

7 THE COURT: I'm gonna let him formulate his opinion and
8 state it.

9 A The blood that was found on Mr. Mahoney and to the left
10 of him and then behind where the cash register and the desk
11 was, the shell casing, at that time, I did not believe that
12 the person that left that blood is the person that fired
13 that particular weapon. Like was, it was brought up by the
14 prosecutor, that bullet, because there were two officers
15 that came onto that scene, there was a paramedic that came
16 into that scene, the person that did the shooting came in
17 that scene, it could of been kicked.

18 Q It could of been kicked?

19 A It could of been kicked?

20 Q All of them could of been kicked?

21 A Yeah.

22 Q Right?

23 A Yes, sir.

24 Q It could of been picked up and moved?

25 A I don't think it was picked up, but it could of been

Paul Dorman - Redirect examination
by Mr. Morton

1 hit by somebody.

2 Q Okay. As far as the bullets that were found, the
3 actual bullets that were found on the customer side of the,
4 of the, of the counter---

5 A Yes, sir.

6 Q ---and was there a bullet found in the parking lot?

7 A There's one in the parking lot, two in the customer
8 side, and one in the, in the kitchen side.

9 Q Okay. Let me ask you, if you will, to look at your
10 report as to the location of, of the bullets, and does your
11 report indicate that, in your Number 6, was a spent bullet
12 projectile on the floor to the left of the Coke display
13 case?

14 MR. MABRY: I'm gonna object on the grounds this is not
15 proper redirect. I don't even think I asked about bullets
16 on the floor or anywhere around.

17 MR. MORTON: Yes, he asked how many bullets were on the
18 customer side of the counter.

19 MR. MABRY: I asked how many casings. Not fired
20 bullets. I didn't go into bullets.

21 MR. MORTON: He asked bullets.

22 THE COURT: I'll allow the question.

23 Q You found a bullet Number 6 --

24 A Yes, sir.

25 Q -- on the floor on the customer side to the left of the

Paul Dorman - Redirect examination
by Mr. Morton

1 Coke display counter?

2 A That's correct, sir.

3 Q Okay. You also found a spent bullet, Number 16, that
4 had ricocheted off the video poker machine out into the
5 parking lot?

6 A That's correct, sir.

7 Q Is that correct?

8 A Correct.

9 Q Now, you also found a spent bullet, Number 12, on the
10 clerk's side, the server side of the counter, correct?

11 A Yes, sir.

12 Q And you also found a spent bullet, Number 18, found on
13 the floor beside the right side of the desk of the victim's
14 leg?

15 A That's correct.

16 Q Now, in looking at your report, did you find the,
17 another bullet, another third bullet on the customer side?

18 A On the customer side?

19 Q Yes, sir.

20 A We found, found the, the one in the wall. That's where
21 the jacket was. Then I found two pieces of a silver tip in
22 the customer area.

23 Q Okay. So, the, the fragment in the wall was a
24 fragment?

25 A It was, it was a---

Paul Dorman - Redirect examination
by Mr. Morton

1 Q I'm talking about---

2 A The jacket.

3 Q Yeah, I'm talking about actual bullets?

4 A The, the lead casing, no, it was not there.

5 Q Okay. So, as far as actual bullets you found on the
6 customer side, you were only able to find two, one in the
7 parking lot and one on the floor?

8 A That's correct.

9 MR. MORTON: Okay. That's all I have, Your Honor.

10 THE COURT: Mr. Mabry.

11 RECROSS EXAMINATION

12 BY MR. MABRY:

13 Q Mr. Dorman, who would be a better person to ask
14 about---

15 MR. MORTON: Object.

16 THE COURT: Overruled.

17 Q who would be a better person to ask about shell casings
18 ejecting and where, how they could end up and where they
19 could go, you or a firearms examiner?

20 A Expert firearms examiner.

21 REDIRECT EXAMINATION

22 BY MR. MORTON:

23 Q Okay. Do you know whether---

24 THE COURT: I'm not gonna allow the question.

25 You may step down, sir.

1 Do you wish to have this witness excused?

2 MR. MORTON: Yes, sir, I'm sorry.

3 MR. MABRY: No objection.

4 THE COURT: You're, you're free to go. Thank you.

5 WITNESS: Thank you, sir. What do I do with these,
6 sir?

7 THE COURT: Yes, sir, just hand them to the court
8 reporter.

9 WITNESS: Okay.

10 THE COURT: Just one second. I'll ask the attorneys to
11 approach. The court reporter, she's got a question about
12 the exhibits.

13 MR. MABRY: Yes, sir, I'm sorry.

14 THE COURT: Before this witness leaves, let's be sure
15 we've got it straight. Here's the ones that were admitted.
16 You might want to have those as well.

17 MR. MABRY: Yes, sir.

18 THE COURT: Let's be sure she has everything. I don't
19 want something to walk out.

20 MR. MABRY: Yes, sir.

21 (Pause.)

22 MR. MABRY: Respondent's has all their exhibits, Your
23 Honor.

24 THE COURT: Thank you.

25 MR. MABRY: Yes, sir.

1 THE COURT: Mr. Mabry.

2 MR. MABRY: I'm sorry, Your Honor.

3 MR. MORTON: This is not the one we marked.

4 MR. MABRY: I don't have any problem with that.

5 THE COURT: All right. We're substituting for Exhibit

6 5?

7 Okay. You agree with that, Mr. Mabry?

8 MR. MABRY: Yes, sir, Your Honor.

9 THE COURT: All right. Thank you.

10 MR. MABRY: Yes, sir, you're welcome.

11 THE COURT: All right. Mr. Dorman, I believe they
12 don't have an objection to you being excused. So, you're
13 free to go.

14 WITNESS: I appreciate that, sir.

15 THE COURT: All right. We'll take a short recess.

16 Court's in recess for about five to ten minutes.

17 (WHEREUPON, a short recess was taken at this time.)

18 MR. MORTON: Your Honor, can we have just about two
19 minutes?

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

21 (Pause.)

22 THE COURT: Yes, sir.

23 MR. MORTON: Your Honor, we're gonna call Mr. Moore to
24 the stand.

25 THE COURT: All right.

1 MR. MORTON: We would ask the Court to consider just
2 taking his handcuffs off. He's got leg, he's got leg irons
3 on.

4 THE COURT: Uh-huh. (Affirmative). I'll ask, any
5 problems?

6 OFFICER: We normally don't do that, sir.

7 THE COURT: I think I'm gonna leave him in chains. I'm
8 not gonna, not gonna release his hands.

9 MR. MORTON: Your Honor, is there a possibility then --
10 I'm not trying to parse -- his, his arms are connected to
11 his waist.

12 Could they stay handcuffed, but just not connected to
13 the waist chain?

14 THE COURT: We're gonna leave it like it is.

15 MR. MORTON: Thank you.

16 THE COURT: All right. You can call him to the stand.

17 MR. MORTON: Call Mr. Richard Moore.

18 RICHARD MOORE, having been first duly
19 sworn, testified as follows:

20 THE COURT: Have a seat please, sir.

21 (Witness complies.)

22 THE COURT: State your name for me.

23 WITNESS: Richard Bernard Moore.

24 THE COURT: Mr. Morton, your witness.

25 MR. MORTON: Thank you very much, Your Honor.

Richard Moore - Direct examination
by Mr. Morton

1 THE COURT: Yes, sir.

2 DIRECT EXAMINATION

3 BY MR. MORTON:

4 Q Richard?

5 A Yes.

6 Q How old are you now?

7 A Forty-five.

8 Q How old were you when this incident happened?

9 A Thirty-six I believe.

10 Q This was 1999. So, it would of been almost 12 years
11 ago.

12 where are you from?

13 A Michigan.

14 Q Okay. And, and how long have you been in South
15 Carolina?

16 when did you move here?

17 A I can't remember the exact year, but I'd say 15 years.

18 Q Okay. How many years were you before here then before
19 this incident at Nikki's happened?

20 A Ten or twelve I would say.

21 Q Married, children?

22 A I have children, but never been legally married.

23 Q How many children do you have?

24 A Two.

25 Q You have family in Michigan?

Richard Moore - Direct examination
by Mr. Morton

- 1 A Yes.
- 2 Q Most of your family in Michigan?
- 3 A All of my family's in Michigan.
- 4 Q What family do you have in Michigan?
- 5 A Well, I have a dad. I have five brothers and two
- 6 sisters, and I have multiple aunts and uncles and first
- 7 cousins and nieces and nephews.
- 8 Q Did you graduate high school?
- 9 A Yes, I did.
- 10 Q Where did you graduate high school from?
- 11 A Mount Clemmons High School.
- 12 Q Okay. Did you play sports?
- 13 A Some. Some.
- 14 Q Okay.
- 15 A Basketball and wrestling.
- 16 Q Did you go to college?
- 17 A No, sir.
- 18 Q Okay. Did you get in trouble when you were up there?
- 19 A Yes, I did.
- 20 Q Such as?
- 21 A I had a weapons charge and maybe a -- I believe also a
- 22 possession of stolen property.
- 23 Q What kind of weapons charge?
- 24 A A rifle.
- 25 Q Okay. What kind of rifle?

Richard Moore - Direct examination
by Mr. Morton

1 A Twelve gauge shotgun I believe it was.

2 Q Okay. And you had some trouble here in South Carolina?

3 A Yes, I did.

4 Q And you were charged -- you're charged with common law
5 robbery?

6 A Yes.

7 Q You pled guilty to that?

8 A Yes, I did.

9 Q You were charged with aggravated assault?

10 A Yes.

11 Q You pled guilty to that?

12 A Yes, I did.

13 Q You had numerous driving under suspension charges?

14 A Yes.

15 Q Did you plead guilty to those?

16 A Yes, I did.

17 Q Okay. Were you -- had you been working?

18 Tell me a little bit about your work history.

19 A Well, I worked many jobs, even a management job at one
20 point. Most of the labor I did was in the manufacturing
21 business. Martex Fibers was one place that I worked there
22 on several occasions, and I did a little bit of construction
23 as well.

24 Q And had you recently lost your job before this incident
25 happened?

Richard Moore - Direct examination
by Mr. Morton

1 A Yes, I did.

2 Q And who were you living with when this incident
3 happened?

4 A I was living with Linda Byrd. She's the mother of my
5 two children.

6 Q And where is she now?

7 A She's back in Michigan.

8 Q Okay. And did she testify in the penalty phase of your
9 trial?

10 A I believe she did, yes.

11 Q And did one of your -- and your son I believe?

12 A My -- he -- my stepson. That's not -- he's not my
13 biological son.

14 Q Her---

15 A Her son, right.

16 Q Okay. And they're back in Michigan?

17 I might of asked you.

18 They're back in Michigan now?

19 A Yes.

20 Q Okay. Did Mr. Morin and Mr. Kelly talk to you about
21 your family in Michigan and that kind of thing?

22 A I was asked about them. I returned (sic) over the
23 information that, that was asked, addresses, phone numbers,
24 and names.

25 Q Did, at some point, you and Mr. Morin and Kelly have a

Richard Moore - Direct examination
by Mr. Morton

1 parting of the ways so to speak or were you disgruntled with
2 the way you thought things were going in preparation for
3 this trial?

4 A Yes, there was some -- how could I put it?

5 There was some distrust on my behalf concerning those
6 two attorneys that represented me.

7 Q But then, again, you're not an attorney?

8 A Right.

9 Q Okay. But you got the feeling that they weren't doing
10 as good a job as you would like for them to do?

11 A Exactly.

12 Q The whole time not being an attorney. So, not really,
13 not knowing what an attorney all has to do.

14 A Exactly.

15 Q Okay. And I think, at some point during the trial, you
16 indicated that you did not want them to represent you?

17 A Correct.

18 Q And the judge told you you could represent yourself?

19 A Yes.

20 Q And he excused them?

21 A Right.

22 Q All right. Then after further discussions with them,
23 you wanted them to represent you?

24 A I was -- excuse me. I was left with no choice, other,
25 either them or myself. So, I took the advice of the judge

Richard Moore - Direct examination
by Mr. Morton

1 and allowed Mr. Kelly and Mr. Morin to represent me.

2 Q Did you ever do drugs?

3 A Yes.

4 Q You smoke crack?

5 A Yes.

6 Q Smoking crack on the night of September 16th, 1999?

7 A No.

8 Q Did -- when you went to the hospital after you got
9 arrested, and put in the ambulance, taken to the hospital,
10 did they take your blood there?

11 A No.

12 Q Did you tell anybody you were doing cocaine?

13 A No.

14 Q Okay. Back to Mr. Morin and Mr. Kelly and your family
15 in Michigan, do you know, did you provide them with names
16 and numbers as you said?

17 I think you said you provided them with information
18 about your family in Michigan?

19 A Yes, I did.

20 Q And did they report back to you that they had talked to
21 some of them?

22 A If -- I can't remember everything that was said at the
23 time. But I think maybe they tried to call a few of the
24 numbers and that's as far as they went.

25 Q Do you know whether either of them went to Michigan?

Richard Moore - Direct examination
by Mr. Morton

1 A No.

2 Q You, you don't know that or they did not?

3 A They did not.

4 Q Do you know whether anybody on their behalf went to
5 Michigan?

6 A No, I don't know.

7 Q You don't know the answer to that?

8 A No.

9 Q And, Richard, do you have some write-ups and some
10 infractions, some disciplinary problems, while you've been
11 in the Department of Corrections?

12 A Yes.

13 Q You haven't been a number one a top model inmate, so to
14 speak?

15 How would you characterize your behavior in, while
16 you've been in the penitentiary?

17 A I would say fairly, if not above average. There's
18 extreme behavior in the Department of Corrections. I don't
19 take -- that's not me. I don't do nothing like that.

20 Q Why not?

21 A I'm -- that's just -- I don't. That's not something I
22 would do. I don't, I don't assault officers or inmates or
23 anything like that.

24 Q I think you got in a fight with an inmate one time?

25 A Yes, I did, and it was dismissed.

Richard Moore - Direct examination
by Mr. Morton

1 Q Within the Department of Corrections?

2 A Yes, it was dismissed.

3 Q Okay. You had recently lost your job?

4 A Yes.

5 Q And you had at -- in that job, what were the hours that
6 you worked?

7 A I worked the night shift. I worked from 6:00, I think
8 from 7:00 till 2:00, 7:00 till 3:00.

9 Q 7:00 p.m. --?

10 A Yes.

11 Q -- till 2:00 or 3:00 a.m.?

12 A Right.

13 Q Okay. How long had it been since you had lost your job
14 before this night?

15 A It was in that same week. I believe it was in that
16 same week.

17 Q Okay. And do you remember, were you and Linda, were
18 y'all renting a house or---

19 A No, we were buying it.

20 Q Okay. Y'all were buying a house?

21 A Right.

22 Q Okay. Was she working?

23 A Yes.

24 Q Okay. Did you know George Gibson?

25 A I had met him a time or two, yes.

Richard Moore - Direct examination
by Mr. Morton

1 Q Okay. And you knew he was involved in crack?

2 A Yes, I did.

3 Q Okay. And on this particular night, why did you go --
4 had you -- first of all, were you familiar with Nikki's
5 Store?

6 A Yes, I was.

7 Q How?

8 A I frequented Nikki's Store probably two to three times
9 a week.

10 Q And how is that?

11 Is it near your house?

12 Is it on the way to your work?

13 How, how -- do you pass there?

14 Why there?

15 A Basically it, it kept the late hours. It stayed open
16 later than the other chain stores in the neighborhood. So,
17 it was, it was open during the late hours.

18 Q So, if you got off work, you'd go by there?

19 A Exactly.

20 Q And get a beer or whatever?

21 A Exactly.

22 Q So, on this night, why did you go to Nikki's?

23 A I went to Nikki's to purchase beer and cigarettes.

24 Q Okay. And is that what you did?

25 A I tried, yes, yes.

Richard Moore - Direct examination
by Mr. Morton

1 Q Okay. Did you have a, a weapon when you went in there?

2 A No, sir.

3 Q Did you know or were you familiar with Jamie Mahoney,
4 Mr. Mahoney?

5 Did you know that he had -- had you seen him in there
6 before?

7 A Yes.

8 Q Okay.

9 A Mr. Mahoney recommended that I purchase a particular
10 Zippo lighter because he had one just like it with a -- if
11 I'm mistaken, it had a little panda bear on it, on the,
12 inscribed on the actual Zippo lighter, and I would also get
13 my, the lighter fluid from Mr. Mahoney as well. In fact, he
14 filled it up for me.

15 Q Okay. So, he recognized you?

16 A I'm sure he did, yes.

17 Q And this lighter incident was a previous --

18 A Right.

19 Q -- on a previous occasion?

20 A Right.

21 Q So, when you went in that night, what did you do?

22 A I entered the store and I spoke and I went to the left
23 and got two beers, 22-ounce cans of Ice House, and I
24 believe, when I got to the counter, I asked for a pack of
25 New Ports I believe.

Richard Moore - Direct examination
by Mr. Morton

- 1 Q Okay.
- 2 A Menthol cigarettes I believe.
- 3 Q And were those items placed in the bag?
- 4 A Yes.
- 5 Q The bag that we have shown pictures of?
- 6 A Right.
- 7 Q And you brought them and what did you do?
- 8 After you got them, where did you get them from?
- 9 A Excuse me?
- 10 Q Where, where -- did you get them from a cooler in there
- 11 where they kept the beer?
- 12 A Yes.
- 13 Q And where would that cooler have been?
- 14 A It would of been to the left once you entered.
- 15 Q Okay. So, looking at Applicant's Exhibit No. 5, this
- 16 diagram, the cooler would of been over here?
- 17 A Yes, somewhere in there, in here. This area here
- 18 somewhere.
- 19 Q Where, where -- you're pointing to the left side of
- 20 this diagram where the exit is, is that correct?
- 21 A Correct.
- 22 Q Okay. Did you know Terry Hadden?
- 23 A No, I didn't. Personally, no, I didn't.
- 24 Q Were you aware that there were security cameras in
- 25 there?

Richard Moore - Direct examination
by Mr. Morton

1 A Yes, sir.

2 Q How were you aware of that?

3 A You could see them every time you entered the store.
4 They was a camera and then there's a, I think, a monitor
5 that showed it.

6 Q So, that night you had on a t-shirt?

7 A Yes.

8 Q And a pair of shorts?

9 A Yes.

10 Q Okay. And after you got the beer and put it on the
11 counter, what happened?

12 A Mr. Mahoney rang it up and I think it came to 5.12 or
13 5.11, somewhere in that range, and the actual change I was
14 short. And I asked Mr. Mahoney could I get it out of a --
15 there's a offer -- there's a change, where people, when you
16 buy things there, you throw your pennies and your nickels in
17 this little change container, and I always use to put money,
18 change, small change, not much, but into that container.
19 And I asked Mr. Mahoney if it was okay if I could use the
20 .11 or .12 within that little cup holder there that held the
21 extra change.

22 Q And what happened then?

23 A Mr. Mahoney stated no, that I could not, and that's
24 when I asked Mr. Mahoney don't you know or remember that
25 I've always put change within that cup, and I couldn't

Richard Moore - Direct examination
by Mr. Morton

1 understand why he would tell me no when I've always put
2 change in that cup.

3 Q Then what happened?

4 A Mr. Mahoney stated that I needed to get out of his
5 store, and I said get out of your store, why, I didn't know,
6 I thought it was his store, but come to find out it belongs
7 to some other owners. But I asked him what do you mean get
8 out of your store, and he said get your black ass out of my
9 store.

10 Q Do you -- Mr. Mahoney was not a big man?

11 A No, nothing -- no.

12 Q Do you feel like he was intimidated by you?

13 A I really can't say. I, I don't believe so.

14 Q Did you know that there were pistols in that store?

15 A I knew that there was one. That was the one that he
16 always kept in his waistband.

17 Q In his waistband in the front or the back?

18 A In the back.

19 Q Okay. And you were aware of that?

20 A Yes, sir.

21 Q And after he told you to leave the store --

22 A Uh-huh. (Affirmative).

23 Q -- what did you say?

24 A Well, once he went to my black ass out of the store,
25 that's when I, I must of said something like I'm not going

Richard Moore - Direct examination
by Mr. Morton

1 no where and something to that effect, and---

2 Q Did you cuss?

3 A I may have. I'm not sure. But that's when Mr. Mahoney
4 said oh, you will leave.

5 Q And what happened then?

6 A His, his body, he went under the counter and when his
7 hands came up from the counter, I saw that he had a, the
8 weapon, a pistol in his hand.

9 Q And what did you do?

10 A When his hand -- when he come up with the pistol, I
11 automatically responded and, and I wouldn't allow him to
12 point that pistol at me. So, I reached for it.

13 Q And what happened then?

14 A We struggled over that particular pistol, and it fired,
15 it went off, and it jammed, and that's how I was able to get
16 it from his hands.

17 Q Okay. When you say you struggled for it and it went
18 off, do you know where that bullet went?

19 Did it -- did that bullet hit you?

20 A I don't believe it did.

21 Q Okay. So, y'all struggled over the gun?

22 A Yes.

23 Q When you say you don't believe it did, you would
24 remember that, right?

25 A Right.

Richard Moore - Direct examination
by Mr. Morton

1 Q And when you struggled over the gun, you say it jammed?

2 A Yes, it did.

3 Q Tell us how that happened.

4 A That's the -- I'm not a gun expert, but that's the
5 semiautomatic .45. That -- it, it ejects the, the, the --.

6 Q Casings.

7 A -- the spent shell. At the same time when the, when a
8 shell comes out of it, the live round goes up for, to
9 prepare to shoot again. But when both of our hands on it,
10 it couldn't make that full action. It jammed. A bullet
11 jammed in the chamber.

12 Q So, were you able to then get possession of the .45
13 from Mr. Mahoney---

14 A Yes.

15 Q ---or tell me what happened next?

16 A Yes. When it jammed, we, we struggled over it, and I
17 was able to remove it, take it from Mr. Mahoney. Mr.
18 Mahoney immediately reached behind his back and pulled the,
19 the .45 out, and he fired the .45.

20 Q The .44?

21 A The .44. I'm sorry.

22 Q Okay.

23 A And he fired the .44, struck me across the chest, and
24 through my arm, through my left arm.

25 Q Okay. And I'm not trying to pit witnesses, but the

Richard Moore - Direct examination
by Mr. Morton

1 testimony would be that Mr. Hadden said that you took that,
2 one of those guns and turned and fired it at him in the, in
3 the, back at the video poker machine.

4 A That's what he testified, yes.

5 Q Right.

6 And tell us about -- did that happen?

7 A No, it didn't. That didn't happen because when Mr.
8 Mahoney pulled the second gun from his waistband, I
9 immediately -- there's a diagram that should show like a
10 pillar that would of been to my right.

11 Q A doorway?

12 A Yes, there's a door, but I think there's a, there's a
13 pillar right there.

14 Q Let me show you---

15 A See where, where the deer head is?

16 Q Let me show you what's Applicant's---

17 A I'm trying to say this---

18 Q ---No. 6.

19 You're trying to say the pillar was over the Pepsi
20 display case?

21 A Correct.

22 Q That's what you're calling the pillar was that doorway
23 there---

24 A Right.

25 Q ---over the, beside the deer---

Richard Moore - Direct examination
by Mr. Morton

1 MR. MABRY: I'm gonna object to leading.

2 MR. MORTON: I'm sorry. I'm trying to---

3 MR. MABRY: That's about two or three questions in a
4 row is leading.

5 THE COURT: I'll ask you not to lead the witness.

6 Q Show us where again, on numbers -- after he fired, what
7 did you do?

8 A I moved trying to get to block, to cover myself around
9 by the pillar.

10 Q And this was after you had been hit by the .44?

11 A Yes.

12 Q And when you said the pillar, again, on Applicant's
13 Exhibit No. 6, you're talking about where the Pepsi bottles
14 are?

15 A Correct.

16 Q Okay. And where was Mr. Mahoney in Applicant's No. 6
17 when he hit you with the .44?

18 A Behind the counter on the -- not the -- I was on the
19 customer side. He was on the -- what do you call it?

20 Q The server side.

21 A The server side, right.

22 Q Okay. So, what did you do then?

23 A I tried to fire the .45 at Mr. Mahoney, and it couldn't
24 because it was jammed. It wouldn't fire. So, I had to
25 bring it down and slide the, the chamber, the cock, the,

Richard Moore - Direct examination
by Mr. Morton

1 whatever you -- the chamber. I had to chamber a fresh round
2 into the .45 and that ejected the round that was causing the
3 jamage, the jam.

4 Q Okay. And then after it became unjammed --?

5 A I, I shot.

6 Q And how many times did you shoot?

7 A I -- three or four times I think. I shot blindly
8 because of the pillar. I shot -- I wish I could demonstrate
9 with my hand, but the pillar -- I couldn't see Mr. Mahoney
10 when I fired. I shot around the pillar. It wasn't -- cause
11 he went behind that same pillar.

12 Q Now, some of the bullets ended up -- in Applicant's
13 Exhibit No. 7, would the bullet holes above the sink and to,
14 beside the sink been the result of you firing back there at
15 Mr. Mahoney?

16 A Yes, it would.

17 Q Okay. Did you ever walk around, from looking at
18 Applicant's No. 6, was this -- did you ever walk around this
19 way and shoot at Mr. Mahoney?

20 A No, I didn't.

21 Q Okay. After you shot at, over the counter --

22 A Uh-huh. (Affirmative).

23 Q -- Mr. Mahoney was down?

24 A Right.

25 Q And what about Mr. Hadden, did y'all have any

Richard Moore - Direct examination
by Mr. Morton

1 conversation?

2 Did you say anything to him?

3 A No, in fact, after the shooting, after the shooting, it
4 got eerily quiet and I didn't hear anything from behind the
5 counter nor behind me, and I, I couldn't just -- there's no
6 way I was just gonna walk out and not know and have this man
7 shoot me in the back as I was trying to leave. So, as I
8 said, it got eerily quiet. I walked around to where that
9 entrance is, and that's when I saw Mr. Mahoney was down.

10 Q Okay. And then what did you do?

11 A I looked and I saw a bag of money.

12 Q And what did you do?

13 A I reached and grabbed it. I grabbed it and left.

14 Q And left out the front door?

15 A Right.

16 Q You got in your truck.

17 A Yes.

18 Q And---

19 A Oh, I'm sorry. I got in my truck and---

20 Q That's okay. No, I was, I was getting a little bit of
21 water.

22 Beg the Court's indulgence.

23 (Pause.)

24 A Do you want me to carry on?

25 Q Well, yeah, hold on just one second.

Richard Moore - Direct examination
by Mr. Morton

1 You got in your truck, correct?

2 Tell us -- you tell us what you did.

3 A I left the store and I got in my truck, and I started
4 driving toward I think the Whitney area, and I went to,
5 towards Gibson's house to ask him for help.

6 Q Well, let me ask you this.

7 MR. MABRY: I didn't hear the answer. I'm sorry.

8 THE COURT: Asked for help.

9 Q Before you went to Gibson's house, did you go towards
10 Gibson's house or did you go up California Avenue?

11 A That's correct. I went up California, California
12 Avenue.

13 Q Why?

14 A I have no idea.

15 Q Okay.

16 A I guess out of panic, out of -- I don't know.

17 Q Did you know that James Mahoney was dead or dying?

18 A No, I didn't. I just knew he was down.

19 Q And you knew that you had taken the money?

20 A Yes.

21 Q And after you went up California Avenue, what did you
22 do with the gun, the .45?

23 A That's when I realized -- then that's when realized I
24 had the .45 still in my hand, and I ought -- I just threw it
25 out of the window and kept on driving.

Richard Moore - Direct examination
by Mr. Morton

1 Q Okay. And what did you do next?

2 A That's when I made it to George Gibson's house.

3 Q Okay. Why did you go there?

4 A Well, I knew that, more than likely, someone would be
5 up at that hour, and I went there to ask could he help me
6 with my arm.

7 Q Had you been by there earlier in the night asking for
8 crack cocaine?

9 A No, I hadn't. No, I hadn't.

10 Q And, so, you went to George's thinking that someone
11 would be up cause they---

12 A Right.

13 Q ---party over there?

14 A Right.

15 Q Okay. Did you go there to ask George Gibson to get you
16 some crack cocaine?

17 A No, I didn't.

18 Q Okay. Did you -- there was a \$5 bill and your t-shirt
19 that were found in the yard.

20 A Uh-huh. (Affirmative).

21 Q In other words, after you talked to Mr. Gibson, you
22 backed down the drive, you backed into a pole, the police
23 came, you gave up, you went to the hospital?

24 A Right.

25 Q They found a \$5 bill and your t-shirt with blood on it

Richard Moore - Direct examination
by Mr. Morton

1 in Mr. Gibson's yard?

2 A Right.

3 Q Why -- how was that \$5 bill there?

4 What was the relevance of that?

5 A I'm sure that's the five that I had when I entered the
6 store, and as far as the t-shirt, I had tried to take my
7 t-shirt and secure it around my arm, and I wasn't able to do
8 it with one hand. So, I guess it must of fell off.

9 Q Did you take any money up there with you to go buy any
10 crack cocaine for it?

11 A No, I didn't, I didn't go to buy any crack cocaine, no.

12 Q Why didn't you, why didn't you just go to the hospital?

13 A I panicked. I knew I had done wrong. I panicked, and,
14 honestly, I went to, just to see if George would wrap my arm
15 to stop the bleeding. And when he said no, told me to
16 leave, I had lost a lot of blood and that light hit it and
17 that's how I almost passed out and hit the telephone pole as
18 I was backing out.

19 Q When you got to the hospital, did you know that Jamie
20 Mahoney had died?

21 A That's when -- I don't recall who had told me, but I
22 had been told then that Mr. Mahoney had passed.

23 Q And your reaction was?

24 A I couldn't believe it. I didn't believe it. I refused
25 to believe it.

Richard Moore - Direct examination
by Mr. Morton

1 Q why is that?

2 A Cause I didn't want to have that on me. I didn't -- I
3 felt, I felt bad. I didn't, I didn't want to believe it.

4 Q Did you express that?

5 A Yes, I did. Yes, I did.

6 Q What did you say?

7 A Well, word-for-word, I can't remember. But I know I
8 just -- I believe -- in some way, I may of said that's a
9 lie, that's a lie, that's not true, you know. But
10 word-for-word I can't remember.

11 Q You honestly couldn't believe it could happen?

12 A Exactly. I couldn't believe it could happen.

13 MR. MABRY: Objection to leading.

14 MR. MORTON: I apologize.

15 THE COURT: Sustained.

16 Q When -- you, you were treated and you were placed in
17 jail?

18 A Yes.

19 Q You were in jail for two years before this trial
20 occurred?

21 A Yes.

22 Q You talked with your attorneys about the case?

23 A Some, yes.

24 Q Did you -- again, you, you told them about your family
25 in Michigan?

Richard Moore - Direct examination
by Mr. Morton

1 A Yes, I did.

2 Q Did they go in discussions with you about legal things
3 such as what voluntary manslaughter was, what self-defense
4 was, what needed to be shown to even have the jury consider
5 the possibility?

6 Do you know what voluntary manslaughter is?

7 MR. MABRY: Objection. That's a compound question. He
8 asked two questions. I'd like for him---

9 THE COURT: I'd ask you ask one question.

10 Q Okay. Do you know what voluntary manslaughter is?

11 A To some extent.

12 Q What's your understanding of it?

13 A It's -- I think, I think it's to where you would, you
14 would be responsible, in some way, form of action, for
15 taking someone's life because of death somewhat.

16 Q Okay. As opposed to murder?

17 A As -- yes, yes, as opposed to murder.

18 Q That a voluntary manslaughter charge is not as serious
19 or not as blameworthy as a murder charge?

20 MR. MABRY: Objection to leading.

21 THE COURT: Sustained.

22 A In, in---

23 MR. MORTON: I'm sorry.

24 THE COURT: Sir, I've ruled that question improper.

25 Ask another question.

Richard Moore - Direct examination
by Mr. Morton

1 Q Okay. Did you talk to Mr. Morin and Mr. Kelly about
2 the, what we call the elements?

3 Lawyers talk about elements, and, I'm sorry, but when
4 we got to Law School they say they're certain elements that
5 you make to a case, sugar, butter, flour. They're elements
6 to voluntary manslaughter.

7 Did they go through that, in detail, with you?

8 A No, they didn't.

9 Q Did they go through the self-defense?

10 A No, they didn't.

11 Q Did they say to you that -- did they talk to you about
12 testifying during your guilt phase, putting you on the stand
13 like I'm putting you on the stand now?

14 A Yes, they did.

15 Q And when y'all talked about you taking the stand, did
16 they explain to you that your testimony may be necessary for
17 the judge to charge the jury voluntary manslaughter or
18 self-defense?

19 A No, they didn't.

20 Q Did they talk to you about your prior record?

21 A Yes, they did.

22 Q And you knew that your prior -- did you know that your
23 prior record would be told to the jury if you testified---

24 A They made that---

25 Q ---part of it?

Richard Moore - Direct examination
by Mr. Morton

1 A They made that very clear to me.

2 Q Okay. You got up -- before the trial began -- how long
3 did the trial last?

4 A Let's see. Penalty---

5 Q The guilt phase.

6 A The guilty, the guilt phase I think was around a week
7 or so.

8 Q Okay.

9 A Six or seven days.

10 Q Did that include the selection of the jury?

11 A I believe it did.

12 Q Okay. Do you remember how long the testimony was?

13 A No, I don't. I don't.

14 Q Do you remember what evidence Mr. Morin and Mr. Kelly
15 put up in their case?

16 A No, sir.

17 Q Do you remember having a discussion with Mr. Morin
18 and/or Kelly about your ability to, forget testifying, your
19 ability to make a statement to the jury at the end of the
20 guilt phase?

21 A Yes, I was told that I could only speak of what, of the
22 testimony, actual testimony and that's all I could talk
23 about if I was to speak.

24 Q And what, what did that mean to you?

25 A Well, under the circumstances, there was such -- there

Richard Moore - Direct examination
by Mr. Morton

1 was a lot of testimony that -- there was no way I could
2 recall what I could or could not speak of, what I could and
3 could not speak of.

4 Q Why couldn't you -- you didn't, you didn't understand
5 what you could and couldn't say?

6 A I couldn't remember and I wasn't prepared by my counsel
7 as to discuss this, discuss that, because this was in
8 testimony. I, I didn't know.

9 Q Did you understand the parameters or the boundaries
10 under which you could testify or which you could make a
11 statement at that point?

12 A I would say yes. I, I believe I did.

13 Q Okay. The penalty phase, you were convicted?

14 A Uh-huh. (Affirmative).

15 Q And you entered the penalty phase.

16 Do you remember the evidence that your counsel put up
17 for you in the penalty phase?

18 A No, I don't.

19 Q Okay.

20 A No.

21 Q Do you remember what witnesses they called?

22 A No, not off. No, I don't.

23 Q Did they call anybody from any of your family from
24 Michigan?

25 A No, they didn't. No.

Richard Moore - Direct examination
by Mr. Morton

1 Q Okay. At the end of the penalty phase, did you
2 understand that you could also make a statement to the jury?

3 A Yes, I did.

4 Q Did you -- had you been explained that you could
5 express your remorse?

6 A Yes.

7 Q And what happened then?

8 A I believe I attempted to do so, and it's like every
9 five or so words I tried to say the prosecution objected and
10 I believe the judge sustained.

11 Q And do you remember the judge's comments to you?
12 They're in the record, but I'm just---

13 A Something to the effect that, again, Mr. Moore, you
14 could only testify to what's in the, what's in the record I
15 think.

16 Q Okay. After the judge's comments, did you have an
17 opportunity to talk to your lawyers about the parameters of
18 what you could say then?

19 A Yes.

20 Q Okay. And did they explain it to you?

21 A No.

22 MR. MORTON: Okay. I beg the Court's indulgence one
23 second, judge.

24 THE COURT: Yes, sir.

25 (Pause.)

Richard Moore - Direct examination
by Mr. Morton

1 Q Richard, I know you expressed, at the end of the guilt
2 phase, when you attempted to testify or make a statement to
3 the jury that you were very nervous?

4 A Yes, I did.

5 Q And you're nervous now?

6 A Yes, I am.

7 Q And if you had been allowed to say something to the
8 jury at the end of the penalty phase, what would you of said
9 and you can look at your notes?

10 A Well, I would of expressed remorse and sorrow. I would
11 of asked -- I would of clearly said that I was sorry, that I
12 am sorry. I would of clearly said that I didn't mean for
13 this to happen. I would of expressed the hurt and pain that
14 I know that the Mahoney family has felt because of my
15 actions.

16 I would of asked mercy. I would of asked for
17 forgiveness and mercy from the jurors and the Mahoney
18 family. I am sorry. I am very sorry, very sorry, and I
19 wish I had the opportunity then to say what I'm saying now.
20 I had a, something prepared, but I think it's best I, I say
21 it if from my, from my heart. I am sorry.

22 Mr. Mahoney, I am very sorry.

23 And if I was able, I would say it that way to the, to
24 the jurors. Yes, I would. I didn't mean for this to
25 happen. I brought pain on your family, the Hadden's, my

Richard Moore - Direct examination
by Mr. Morton

1 family as well, and I ask for mercy.

2 Q You did something wrong?

3 A Yes, I did.

4 Q You take responsibility for that?

5 A Yes, I do.

6 Q How often do you think about that?

7 A Everyday. Everyday.

8 Q How so?

9 A I took a life. It changed me. A lot happened. Each
10 day I wake up, where I'm at, I'm reminded. I don't want to
11 forget. I don't want to forget because if I forget, then
12 I'm not feeling anymore and I feel this everyday. Everyday.
13 I know, I know you do. I'm sorry. I'm very sorry. I'm
14 very sorry, and I, I regret I didn't take the opportunity
15 then to say what I'm trying to say now because a lot of
16 years has passed. And I know the pain is still there. I
17 took a son, a brother, a uncle, and I'm sure a friend to
18 many. I'm sorry. I am sorry.

19 Q Richard, please answer any questions the attorney
20 general will have.

21 THE COURT: Mr. Mabry.

22 MR. MABRY: Yes, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. MABRY:

25 Q Mr. Moore, you knew Jamie by his name Jamie, isn't that

Richard Moore - Cross-examination
by Mr. Mabry

1 right?

2 A Yes, I did.

3 Q Okay. And, so, if a witness testified or there was
4 testimony in the record or in the evidence that you said
5 Jamie, get back, that wouldn't be surprising to you since
6 you knew his name was Jamie, isn't that right?

7 A That would be surprising to me.

8 Q Okay. Now, when you were arrested, Mr. Moore, your
9 family didn't want to have anything to do with you, did
10 they, the family up in Michigan?

11 A That's not true.

12 Q Okay. Well, they wouldn't send you any money, would
13 they?

14 A Yes, they did.

15 Q They wouldn't hire you a lawyer, would they?

16 A They couldn't afford it.

17 Q Your family up in Michigan was thoroughly familiar with
18 your criminal record, weren't they?

19 A Yes, they were.

20 Q Possession of a weapon, is that right?

21 A Yes.

22 Q Breaking and entering, is that right?

23 A Attempted.

24 Q Attempted breaking and entering?

25 A Yes.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q Probation violation?

2 A Yes.

3 Q Parole violation?

4 A I think that applied with the probation violation.

5 Q Okay. You spent four and a half years in the Michigan
6 State Prison System?

7 A Yes.

8 Q In fact, the reason you came down to South Carolina
9 with your girlfriend, Mrs. Byrd, the mother of your children
10 said let's go to South Carolina and get you a fresh start,
11 isn't that right?

12 A No.

13 Q Okay. Well, you came down to South Carolina after
14 spending four and a half years in the Michigan State
15 Penitentiary, isn't that right?

16 A Yes.

17 Q Okay. But when you came down here, it wasn't a fresh
18 start?

19 You just continued a life of crime, didn't you?

20 A No.

21 Q Okay. I'm gonna show you this letter, and ask you if
22 you wrote this letter.

23 Be Respondent's Exhibit 19, Your Honor.

24 THE COURT: Thank you.

25 A Yes, I did.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q okay. And that's the letter you wrote to your public
2 defender, Mr. Morin, isn't that right?

3 A Yes.

4 Q And in that letter you tell Mr. Morin whether you call
5 or write, explain the reason for this information. I have
6 not informed them of the State's intention to seek the death
7 penalty. When I was first arrested I asked for their help,
8 and was told there would be no help coming, and to get
9 myself out of this mess.

10 A Uh-huh. (Affirmative).

11 Q At that point I had made up my mind not to call on them
12 ever again for any reason.

13 Isn't that what you said in the letter?

14 A Yes, it is.

15 Q Okay. So, when you first got arrested, first of all,
16 they knew about everything you'd done up in Michigan?

17 A Yes.

18 Q And then you'd come down here to South Carolina and
19 been arrested numerous times and gone to jail, isn't that
20 right?

21 A I don't know if they knew that, no.

22 Q Okay. Well, they knew you were charged with murder and
23 armed robbery, didn't they?

24 A Yes.

25 Q Okay. And they told you to get yourself out of this

Richard Moore - Cross-examination
by Mr. Mabry

1 mess, there would be no help coming?

2 A To some extent, yes, that's---

3 Q Well, that's what you put in the letter, isn't it?

4 A Word-for-word, I -- that may not be the exact wording
5 they said, but that's what I put in the letter, yes.

6 Q Okay. And your lawyers hired a mitigation investigator
7 to help with your case, isn't that right?

8 A I -- possibly. I don't know who, who -- I don't know
9 who held what position as to who was hired.

10 Q All right. Do you remember a lady named Drucy Glass?

11 A Yes, I do.

12 Q Okay. Did she come highly recommended?

13 A By who I mean?

14 Q I'm asking you.

15 A I don't know.

16 Q All right. Was she a mitigation investigator on your
17 case?

18 A I, I thought Drucy was a expert juror.

19 Q No, there was a -- well, I can't tell you.

20 A I'm not -- I don't know what her function was --

21 Q Okay.

22 A -- what her occupation was.

23 Q Was there a juror expert that your lawyers retained?

24 A I believe there was, yes.

25 Q Okay. And there was also a mitigation investigator

Richard Moore - Cross-examination
by Mr. Mabry

1 they retained?

2 A And that---

3 Q That's to track down anybody that come, could come and
4 testify on your behalf and say good things about you.

5 Do you remember a lady like that?

6 A Yes.

7 Q Okay.

8 A Yeah.

9 Q And did Ms. Glass attempt to contact your family by
10 telephone?

11 A I'm sure I gave her all the information that I had. As
12 to whether or not she attempted --

13 Q well, did your lawyers or Ms. Glass ever come back and
14 tell you I tried to contact your father, he won't answer the
15 telephone, I tried to contact your brother at your father's
16 residence, he won't answer the telephone?

17 Did she ever, did she ever tell you that?

18 A No.

19 Q Did she ever tell I called your aunt, your aunt, and
20 your aunt said he's dead to us?

21 A No.

22 Q All right.

23 A No.

24 Q Did she ever tell you she wrote certified letters to
25 your family in Michigan?

Richard Moore - Cross-examination
by Mr. Mabry

1 A No.

2 Q And nobody wrote her back?

3 A No.

4 Q Did you ever tell her that two of your brothers were in
5 prison while you were sitting in jail awaiting trial on
6 these charges?

7 A I may have.

8 Q What was your brother in prison for?

9 A I really don't know. I don't know.

10 Q It was drugs, wasn't it?

11 A I don't know.

12 Q You don't know what your brothers were in prison for?

13 MR. MORTON: Your Honor---

14 A No, I don't. I don't.

15 MR. MORTON: ---I object to the relevancy of this.

16 THE COURT: Overruled. It has to do with family back
17 at home and his cooperation. I'll let him ask it.

18 A No, I don't know.

19 Q Okay. When you were in high school, you were expelled
20 several times for fighting, weren't you?

21 A I don't know if it was several times. I may have been
22 expelled once for fighting in high school. Several, no.

23 Q When you got out of high school, you started getting in
24 trouble with the law?

25 First was the possession of a weapon charge, isn't that

Richard Moore - Cross-examination
by Mr. Mabry

1 correct?

2 A Yes.

3 Q And then you had the breaking, attempted breaking and
4 entering charge?

5 A Yes.

6 Q And you couldn't live on probation or parole. You got
7 that revoked and you went to prison, isn't that correct?

8 A No, that's not correct.

9 Q Well, how many times were you in and out of prison in
10 Michigan?

11 A When you violated par, probation in Michigan, you could
12 be returned on a six month flop is what they would call it
13 in Michigan.

14 Q Uh-huh. (Affirmative).

15 A So, each time I would violate the probation, either by
16 not showing up to the Probation Office or either by not
17 keeping employment, then they could easily say we're gonna
18 put you back in prison for six months.

19 Q Uh-huh. (Affirmative).

20 A And that's how I ended up doing four and half years
21 because of violations.

22 Q Okay. How many times were you in and out of prison
23 when you lived in Michigan?

24 A I don't know. It's---

25 Q Four?

Richard Moore - Cross-examination
by Mr. Mabry

1 A There was not---

2 Q Four or five times?

3 A There was no new charges --

4 Q No.

5 A -- other than the violations.

6 Q Are you the person that served time in prison?

7 I'm not. I'm asking you.

8 How many times did you go into prison, get out, go back
9 to prison, get out, go back to prison, get out?

10 How many times did that occur while you lived in
11 Michigan?

12 A An accurate number I can not tell you.

13 Q Okay.

14 A I do not know.

15 Q And you also moved, when -- about the time you got to
16 be 18, you moved away to Detroit, didn't you?

17 A No.

18 Q Never lived in Detroit?

19 A Never lived in Detroit. Never lived in Detroit.

20 Q Now, at the trial of this case, in the guilt phase,
21 Judge Clary talked to you by yourself, didn't he, about
22 whether you wanted to testify or not?

23 You remember that?

24 A He may have. We may have talked. It's a lot of things
25 that I don't remember because --

Richard Moore - Cross-examination
by Mr. Mabry

1 Q Okay.

2 A -- it's, it's not that I don't want to answer. I want
3 to answer truthfully to all your questions, but some things
4 you just can't, you just don't retain.

5 Q I want to show you the transcript, Page 1511, starting
6 down here Judge Clary says Mr. Moore, at this time I'm going
7 to explain to you certain of your rights, and if there's
8 anything you do not understand, simply let me know and I
9 will attempt to clarify myself for you.

10 Do you understand that?

11 You said I understand. The jury would of been out of
12 the courtroom.

13 A Okay.

14 Q We've reached the stage of the trial where you may
15 present your own defense, and you have the right to testify
16 in your own behalf. However, no one can make you testify.
17 Then he tells you that your prior record can come in if you
18 do testify. If you elect not to take the stand, I will
19 charge the jury they couldn't hold that against you. It's
20 entirely left up to you whether or not to testify. You can
21 talk with your attorneys, your family, your friends. But
22 the ultimate decision as to whether to testify or not is up
23 to you.

24 Do you understand that, and you said yes, sir.

25 A That's true.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q Did you understand that?

2 A Yes, I did.

3 Q All right. And he said thank you. You may be seated.
4 And, at this point, he asked Mr. Lawyer, I mean Mr. Morin,
5 your lawyer, he said I believe he's not going to, but that
6 might change later, and then you, when it came up again
7 later, you said you had decided not to testify. That's what
8 you told the Court.

9 A Yes.

10 Q Okay. All right. In fact, it's right here on Page
11 1515, I examined you on the record insofar as your rights
12 are concerned prior to lunch.

13 what is your intention insofar as testifying or not?

14 No, sir, Your Honor, he will not testify. No, sir.

15 A No, sir.

16 Q So, you understood all that?

17 A Yes, I did.

18 Q Okay. But you chose not to testify?

19 A I did, by the advice of my counsel, I chose not to
20 testify.

21 Q Okay. Tell me which counsel told you not to testify.

22 A Mr. Morin, Mr. Morin and Mr. Kelly.

23 Q Okay. Isn't it true, Mr. Moore, you never wanted to
24 testify because you were always worried about your criminal
25 record coming out in the guilt phase of this trial?

Richard Moore - Cross-examination
by Mr. Mabry

1 A No, sir.

2 Q You weren't concerned about that at all?

3 A No, sir.

4 Q And your testimony is your lawyers told you not to
5 testify?

6 A Yes, sir.

7 Q And that's the only reason you didn't testify?

8 A Yes, sir.

9 Q It wasn't your own decision?

10 A It was my decision once I was advised by my counsel at
11 the time to not testify. I followed their advice, yes.

12 Q It had nothing to do with you being worried about your
13 criminal record coming out?

14 A No, sir.

15 Q Now, your lawyers didn't want you to make a statement,
16 a final statement to the jury in the guilt phase.

17 Do you remember that?

18 A Didn't want me to make a statement?

19 Q Not testify.

20 But do you remember Judge Clary going over with you the
21 right to make a closing argument---

22 A No.

23 Q ---in your guilt phase?

24 A I, I wanted to make the argument, yes.

25 Q Okay. But your lawyers didn't want you to, did they?

Richard Moore - Cross-examination
by Mr. Mabry

1 A I think they did.

2 Q All right. You -- it's your recollection or your
3 memory that your lawyers wanted you to make a closing
4 statement to the jury?

5 A Yes.

6 Q Okay.

7 A I think they did.

8 Q Now, you said the lawyers, your lawyers had explained
9 to you about the penalty phase, that you could express
10 remorse to the jury?

11 A Say that again.

12 Q All right. In the penalty phase, you had testified
13 just a while ago regarding making a final statement to the
14 jury. You said my lawyers explained to me that I could
15 express to the jury my remorse for this crime.

16 A Right.

17 Q Okay. Did they also explain to you the fact you could
18 ask the jury for mercy, to spare your life?

19 A Yes.

20 Q Okay. So, you knew you could do that?

21 A Yes.

22 Q Okay. But you didn't make a final statement to the
23 jury in the penalty phase?

24 A I attempted to make a -- I was -- how could I put it?
25 I was object every -- every time I attempted to speak I

Richard Moore - Cross-examination
by Mr. Mabry

1 was, the prosecution would object.

2 Q Okay.

3 A And I, I -- in the, in the term -- I, I couldn't
4 because everytime I attempted the prosecution objected and
5 the judge sustained.

6 Q All right. Well, I'm gonna try to clear something up.

7 Okay. In the guilt phase, you made a closing statement
8 to the jury.

9 Do you remember that?

10 A No, I don't. I was -- could you put it before me
11 please?

12 Q Yes, I can. This is in the guilt phase now.

13 THE COURT: Page number?

14 MR. MABRY: I'm sorry, Your Honor. 1575.

15 THE COURT: Thank you.

16 Q It actually starts on 1574, and this is where the,
17 Judge Clary is instructing you you may not testify in your
18 closing argument. You gave up that right. You can comment
19 on the facts, what the evidence has revealed in this case.
20 Insofar as mentioning punishment, you're not to mention that
21 cause you're not, we're not about that right now. And if
22 there are any violations of what I'm laying out to you, I'll
23 have to stop you there basically.

24 All right. He brings the jury back in, and then you
25 tell them, ladies and gentlemen of the jury, please forgive.

Richard Moore - Cross-examination
by Mr. Mabry

- 1 me for the mistake I made in this presentation. You say
2 I've seen a knife, which is on display here, the tire tool.
3 I've heard people say that they've a part of this case.
4 They may be -- it doesn't tie to me. I don't want to offend
5 Your Honor any longer. So, I'm going, not going to say
6 anymore.
- 7 Okay. That was in the guilt phase?
- 8 A Okay.
- 9 Q All right. So, you made a closing argument in the
10 guilt phase of this case.
- 11 A It is---
- 12 Q I'm not trying to trick you. It's just -- that's
13 what's in the record. You actually made a closing argument
14 to the jury.
- 15 A Is that considered a closing argument?
- 16 Q Yes, it's considered a closing statement or closing
17 argument in the penalty, in the guilt phrase. Okay. That's
18 what happened. That's where you actually started your
19 statement, on 1572, and Mr. Gowdy objected, and---
- 20 A Right there -- I remember that there where I was trying
21 to---
- 22 Q Right.
- 23 A ---put my hand in my pocket---
- 24 Q Right.
- 25 A ---and I couldn't, I couldn't because, from the shot I

Richard Moore - Cross-examination
by Mr. Mabry

1 received, from the bullet wound I received, I lost nerve
2 damage through my hand.

3 Q Okay.

4 A I couldn't feel my hand to put it in my pocket and I
5 think that's where Mr. Gowdy objected---

6 Q Right.

7 A ---because I was gonna speak about my being shot as
8 well.

9 Q Right. You couldn't testify. You could only argue
10 what was in the evidence.

11 A Okay.

12 Q Okay. And that's, that's when you made a closing
13 statement. That's the end of the guilt phase.

14 Okay. You still with me?

15 That was in the end of the first part of the trial.

16 The end of the guilt phase is when you made a closing
17 statement. Mr. Gowdy objected several times and the judge
18 sent the jury out and y'all had a discussion.

19 Do you remember that?

20 A Vaguely.

21 Q Okay.

22 A Vaguely.

23 Q My next question is, I wasn't trying to trick you, but
24 in the penalty phase --

25 A I mean this is quite complicated.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q In the penalty phase, when it came time to make your
2 closing statement to the jury, or your allocution or
3 whatever it's called, you didn't make a statement at all?

4 A Are you asking me?

5 Q I'm asking you.

6 A I believe I didn't, right.

7 Q You didn't?

8 A I believe I didn't.

9 Q Okay. Can you tell me why you didn't make a statement
10 when you lawyers had told you you could make a plea for
11 mercy and you could express remorse to the jury?

12 why did you not make that statement?

13 A Under intimidation. I, I think, at that time, my, my
14 state of mind I think was that the intimidation of the
15 prosecution by whatever I attempted to say prior.

16 Q In the guilt phase?

17 A I believe so. Whatever I attempted to say prior, I, I
18 was at a loss. I was at a loss.

19 Q Okay.

20 A I mean I was at a loss.

21 Q Now, your wife, Mrs. Byrd, testified in the mitigation
22 case and so did your stepson, is that right?

23 A Mrs. Byrd and I were never married.

24 Q Well, I meant your mother of your children.

25 A Right.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q She testified and your stepson testified, is that
2 right?

3 A Right, my two younger children were much too young to
4 be brought into this.

5 Q Okay.

6 A I think they were seven and, seven and six at the time.

7 Q Now, you testified -- where were you living at the time
8 this incident happened?

9 A [REDACTED] in the Whitney community in Spartanburg
10 County.

11 Q All right. And who did you live there with?

12 A Mrs. Byrd.

13 Q And your children?

14 A And our three children, yes, her stepson and the two
15 that she and I had together, have together.

16 Q What time did they go to bed that night?

17 A Normally they would go to bed at 11:00, 10:00, 11:00.

18 Q Okay. What time did you leave that night?

19 A Exact time I think it was right around, I think it was
20 right around that time, 10:00 or 11:00 I think.

21 Q Okay. Well, you weren't working at that time?

22 You told us you had lost your job?

23 A Right.

24 Q Where were you -- where did you go?

25 A Well, in the Whitney community I had, I knew a guy. I

Richard Moore - Cross-examination
by Mr. Mabry

1 visited him, Ervin Keller. Just -- it's the, the -- it's in
2 the county. So, to be in the county, we just -- we would
3 ride around in the, on the back streets and all.

4 Q So, that's what y'all were doing, just riding around on
5 the back streets?

6 A Yeah, drinking beer, yes.

7 Q Now, did Mrs. Byrd know you had left the house?

8 You left your wife and children in the bed and you
9 left?

10 A I'm sure I let her know that I was leaving, yeah.

11 Q Do you remember her testifying, what she testified to
12 in this case?

13 A I think she, she may of stated that she didn't know I
14 had left the house.

15 Q Right.

16 A Right.

17 Q So, you were living with this woman and got two
18 children, and they go to bed, and you leave the house at
19 eleven or twelve o'clock, is that right?

20 A Uh-huh. (Affirmative).

21 Q And you're just riding around in the whitney community?

22 A Yes.

23 Q Okay. And you go -- what time do you go into Mr.
24 Mahoney's store?

25 A I don't know the exact time.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q Well, the shooting happened around three o'clock in the
2 morning, is that right?

3 A Yes.

4 Q 3:00 a.m.?

5 A Okay.

6 Q So, from 12:00 to 3:00 a.m. in the morning, you and
7 your friend are just riding around in the Whitney community?

8 A Not just continuously driving, no. But like it -- the
9 property where he lived, we could easily park on his
10 property or drive the neighborhood. So, no, it wasn't a
11 continuous driving of three hours.

12 Q What were y'all looking for when you were driving
13 around?

14 A We wasn't looking for anything. We were sitting in the
15 vehicles and drinking beer and talk and laugh and that's
16 about it.

17 Q Well, you had plenty of time to go by Mr. Gibson's
18 house, did you, didn't you, around midnight?

19 A Around midnight?

20 Q Uh-huh. (Affirmative).

21 A Yeah. I would say yeah.

22 Q Okay. And, in fact, you had lost your job. So, you
23 didn't have any money?

24 A That's not true.

25 Q Well, you had \$5?

Richard Moore - Cross-examination
by Mr. Mabry

1 A I wasn't broke.

2 Q You had \$5, is that it?

3 A Yeah, at the, at the time, yes, I had \$5.

4 Q Okay. And you knew Mr. Gibson was involved in drugs,
5 didn't you?

6 A Yes.

7 Q You knew he was a crack dealer, didn't you?

8 A I'm not gonna say -- no, I didn't know he was a crack
9 dealer, no.

10 Q You know he was a person who could get crack for
11 somebody if they wanted it?

12 A Yes.

13 Q Okay. Now, you walked into Jamie's at 3:00 in the
14 morning.

15 were you by yourself?

16 A Yes, I was.

17 Q And you said you walked in and put something on the
18 counter, is that right?

19 A Two beers.

20 Q Okay. And you only had \$5. So, you were short of
21 change.

22 A Correct.

23 Q It was, it was -- how much was it, 5.12 is that your
24 testimony?

25 A I think, yes, sir.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q okay.

2 A 5.12.

3 And your testimony is Mr. Mahoney wouldn't let you get
4 .12 out of the little cup with the change in it?

5 A Correct.

6 Q Okay. So, you're telling this judge that he turned
7 down a sale, the ability to sell some beer to you, who had
8 been, been in the store several times, simply because he
9 didn't want to let you get change out of a cup?

10 A Correct.

11 Q All right. Now, your testimony on direct was that, at
12 that point, he told you to get out of his store?

13 A Uh-huh. (Affirmative).

14 Q And you refused to leave?

15 A Yes.

16 Q Okay.

17 A Yes.

18 Q Well, so, he wasn't gonna sell you any beer?

19 A Correct.

20 Q All right. Well, why didn't you just go to another
21 store and buy beer somewhere else?

22 A I really don't know.

23 Q Okay.

24 A I really don't know.

25 Q Which instead of leaving you chose to stay in there,

Richard Moore - Cross-examination
by Mr. Mabry

- 1 right?
- 2 A Yes.
- 3 Q You could of turned around and walked out?
- 4 A Yes, I could have, but---
- 5 Q But you didn't?
- 6 A Yes, sir.
- 7 Q And when Mr. Mahoney pulled a gun out on the other side
- 8 of the counter, it's his store, right?
- 9 At least you thought it was?
- 10 A Well, yes.
- 11 Q Wasn't your store, was it?
- 12 A Oh, no, sir.
- 13 Q It's his store?
- 14 A Yes.
- 15 Q If he doesn't want to sell something to somebody, he
- 16 doesn't have to, does he?
- 17 A No, he doesn't.
- 18 Q Okay. And, in fact, when he pulled the gun out to tell
- 19 you he was gonna make you leave the store, you didn't leave
- 20 the store, did you?
- 21 A My first response -- no, I didn't, to answer your
- 22 question. No, I didn't.
- 23 Q You grabbed the gun?
- 24 A I grabbed to block the gun, yes.
- 25 Q Well, you grabbed it and took it away from him?

Richard Moore - Cross-examination
by Mr. Mabry

1 A Are you asking me or are you---

2 Q I'm asking you.

3 A No, I didn't grab it to take it away from him. The gun
4 came up from the counter. I reached and blocked the gun so
5 it wouldn't be pointed at me and that's---

6 Q Okay. And the gun went off?

7 A The gun went off.

8 Q All right. And you took the gun away from him?

9 A We struggled for the gun, yes, and I ended up having it
10 in my possession.

11 Q Okay.

12 A Yes.

13 Q Why didn't you leave then?

14 A Because first Mr. Mahoney, when I had the gun, he
15 immediately reached and pulled the second gun.

16 Q Uh-huh. (Affirmative).

17 A So, there was no way I could immediately walk out and
18 leave.

19 Q Well, why didn't you just put your hands up and say,
20 with the gun in your hand, don't shoot, I don't want no
21 trouble?

22 Did you ever say that?

23 A In the heat of the moment I didn't think like that.

24 Q You didn't say that?

25 A No, sir, I didn't say that.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q And then your testimony is he shot you?

2 A Yes.

3 Q Okay. And then you shot at him?

4 A Yes.

5 Q And, in fact, you shot six times, isn't that right?

6 A I don't know the number of times I shot, no.

7 Q Five, six, you don't know?

8 A No, I don't.

9 Q You squeezed the trigger every time you fired the gun,
10 is that right?

11 A I squeezed the trigger. The gun was jammed. I had to
12 eject the jammed bullet, and that's when I returned fire.

13 Q Okay. You said you hid by the pillar and you had to
14 eject, had the gun down, and you had to eject the live round
15 from it, is that right?

16 A Right.

17 Q Okay. And you're telling the judge that that live
18 bullet was ejected right there where you're at that pillar?

19 A Yes.

20 Q Okay. And then you start shooting at Mr. Mahoney.
21 why didn't you just leave after he shot you in the arm?
22 why didn't you say, man, you shot me, I'm leaving?

23 A That's not reality.

24 Q Okay. You just started shooting at a man in his own,
25 in his own business?

Richard Moore - Cross-examination
by Mr. Mabry

1 I'm asking you, did you shoot the man in his own
2 business?

3 A Let me say I returned fire because I also feared for my
4 life at that time. So, I returned fire.

5 Q All right. So, he, he shot you in the arm?

6 A Yes.

7 Q And you had to unchamber a round?

8 A Correct.

9 Q So, you made sure you loaded the gun and then you fired
10 at him?

11 A Right.

12 Q And you don't remember how many shots you fired?

13 A No, I don't.

14 Q Okay. Did you see him drop?

15 A No, I didn't.

16 Q Okay. He was behind the pillar when you were shooting?

17 A Yes, sir.

18 Q Okay. Now, you said you went around to see if he was
19 down or not?

20 A Right.

21 Q Well, as soon as you go through that doorway into the
22 back of that business, you can, you can see him down right
23 then, couldn't you?

24 A Not necessarily, no. No, sir.

25 Q You couldn't see him down till you got right over the

Richard Moore - Cross-examination
by Mr. Mabry

1 top of him?

2 A I -- no, that's not what I'm saying. When you go, when
3 you walk through there, I looked and Mr. Mahoney was down.

4 Q Uh-huh. (Affirmative).

5 A And I -- and there I saw the bag of money if that's
6 where you're leading to.

7 Q I'm asking you, when you round that, just like this
8 opening right here, you had to go around that corner, as you
9 say, you alleged, to see if Mr. Mahoney was down or not
10 cause you didn't want to leave the store getting shot in the
11 back?

12 A Correct.

13 Q As soon as you round that doorway, you could see Mr.
14 Mahoney down on the floor, couldn't you?

15 A Oh, yes.

16 Q Okay. Why didn't you leave the store then?

17 If that was your real reason for going around that
18 corner to see if he was down, why didn't you leave then?

19 A I can't answer that question because in the heat of the
20 moment I wasn't thinking rationally.

21 Q In the heat of the moment you had to go over to where
22 the money bag was?

23 A No, I happened to see the money bag and that's when,
24 when I took it.

25 Q I'm asking you why didn't you keep going?

Richard Moore - Cross-examination
by Mr. Mabry

1 why didn't you -- you see he's down, why don't you
2 leave?

3 why don't you -- why didn't you just keep walking over
4 there to where his head was and where the money bag was?

5 A Because most people don't walk with their heads down
6 and no place else, sir. Like you walked around that corner,
7 that's not the way most people walk.

8 Q But you were looking, according to your testimony, to
9 see whether he was down or not?

10 A Correct.

11 Q So, you would of been looking down?

12 A Correct.

13 Q And once you saw he was down, you didn't leave the
14 store?

15 You went over there to where the money bag was, didn't
16 you?

17 A I saw the money bag, right.

18 Q You went straight and got the money?

19 A Are you asking me?

20 Q Yes, sir.

21 You went straight and got the money?

22 A I saw the money bag and I reached and grabbed it, yes,
23 sir.

24 Q And that's -- you went and got what you went in there
25 for in the first place, isn't that right?

Richard Moore - Cross-examination
by Mr. Mabry

- 1 A No, sir.
- 2 Q Isn't it true you've been convicted of attempted purse
3 snatching?
- 4 A Attempted purse snatching, yes, sir.
- 5 Q Well, no, not attempted. Purse snatching.
- 6 A Attempted purse snatching, sir.
- 7 Q And did you not attack a woman and attack her husband
8 in order to get that purse?
- 9 A No, sir.
- 10 Q You deny that?
- 11 A I deny that.
- 12 Q Okay. What did you need the money from her purse for?
- 13 A At -- I can't -- I don't know.
- 14 Q Drugs, wasn't it?
- 15 A No.
- 16 Q You weren't addicted to cocaine then?
- 17 A No, sir.
- 18 Q You committed a common law robbery where you jumped
19 over the counter and took the woman and slammed her up
20 against the wall.
- 21 A No, sir.
- 22 Q You didn't do that either?
- 23 A No, sir.
- 24 Q Did you rob the store?
- 25 A I -- yes, I did.

Richard Moore - Cross-examination
by Mr. Mabry

1 Q Took -- you went -- you jumped over the counter, didn't
2 you?

3 A No, sir.

4 Q You didn't jump over the counter?

5 A No, sir.

6 Q What did you steal the money out of there for?

7 A It was given to me. I asked for it.

8 Q You, you asked for the money and they gave it to you?

9 A Yes, sir.

10 Q What was it for?

11 A I don't know.

12 Q Why did you need the money?

13 A I don't know. I can't remember. That was years ago.

14 Q It was, it was for cocaine, wasn't it?

15 A No, sir. I'm not gonna -- and that's -- it's just like
16 you're leading me now and I'm not gonna lay it like that.

17 Q It's cross-examination. It's cross-examination. I'm
18 allowed to ask leading questions on cross-examination.

19 My question is what did you need the money for?

20 A At -- I can't -- is -- I don't know, sir.

21 Q You don't remember?

22 A I can't say for sure what I needed the money for, no,
23 sir.

24 Q You're also convicted of assault and battery of a high
25 and aggravated nature in Spartanburg County, weren't you?

Richard Moore - Cross-examination
by Mr. Mabry

1 A Yes, sir, I believe I was.

2 Q Were you addicted to crack cocaine at the time this
3 crime was committed?

4 A No, sir.

5 Q You deny telling the nurse at the hospital or the EMT's
6 that you were on cocaine that day?

7 A Yes, sir.

8 Q You were just up at three o'clock in the morning having
9 a good time?

10 A Yes, sir, those were my regular working hours I lost my
11 job. So, my -- I guess my internal clock was still use to
12 those hours.

13 Q Your testimony is you didn't fire a shot at Mr. Hadden?

14 A No, I didn't.

15 Q Okay. And your testimony is Mr. Mahoney only fired one
16 shot at you with a .45, is that right?

17 A My testimony -- I don't know exactly what was used by
18 Mr. Mahoney other than what he presented at first, which was
19 the, the .45.

20 Q And he fired one shot and you took the gun away from
21 him.

22 That was your testimony on direct---

23 A Correct.

24 Q ---wasn't it?

25 A Correct.

Richard Moore - Cross-examination
by Mr. Mabry

- 1 Q Okay. One shot, correct?
- 2 A From the .45, yes.
- 3 Q Correct?
- 4 A Correct.
- 5 Q Then how do you explain two .45 shots over at the video
6 poker machine?
- 7 A I don't know if there is two .45 shots over at the
8 video poker machine. I know that the .44 was shot at me as
9 well.
- 10 Q well, there was a .45 jacket found in the corner over
11 at the poker machines.
- 12 You remember that?
- 13 A I heard testimony to there were fragments or something.
- 14 Q It was a jacket. There's a .45 bullet found out in the
15 parking lot that ricocheted off the other poker machine, and
16 you didn't take a shot at Mr. Terry Hadden?
- 17 A No, sir, I didn't.
- 18 Q And you knew Jamie had a .44 before you even walked in
19 the store?
- 20 A I didn't know what it was. I knew that he had -- he
21 would normally keep a, a pistol in his waistband. Now what
22 type, I didn't know.
- 23 Q Did you call 9-1-1 after you were shot?
- 24 A No, I didn't.
- 25 Q Okay. In fact, you went outside -- did you ask

Richard Moore - Cross-examination
by Mr. Mabry

1 Mr. Hadden to call 9-1-1?

2 A No, I didn't.

3 Q In fact, you went out and got in your truck and turned
4 left and went towards Mr. Gibson's residence, didn't you?

5 You went left on 221?

6 A I don't believe I did.

7 Q Well, did you take a right and go to the hospital?

8 A No, I didn't.

9 Q Were you shot in the arm?

10 A Yes, I was.

11 Q And you ended up at Mr. Gibson's house?

12 A Yes, I did.

13 Q You -- and your testimony is because you wanted
14 Mr. Gibson to help you wrap your arm?

15 A Yes, sir.

16 Q Is he ever treated you for injuries in the past?

17 A No, sir.

18 Q Is he a doctor?

19 A No, sir.

20 Q Is he a nurse?

21 A Not that I'm aware of, sir.

22 Q Why would you go to Mr. Gibson's house for you to wrap
23 your arm?

24 A Because I knew there would be someone up at that hour.

25 Q People, people down there cause there's crack at the

Richard Moore - Cross-examination
by Mr. Mabry

1 house, right?

2 A Well, yes, yes, yes.

3 Q Mr. Moore, you've had numerous, numerous disciplinary
4 infractions since you've been incarcerated, is that correct?

5 A I've had a few disciplinary actions.

6 Q Okay. You also had some up in Michigan, didn't you, in
7 those four and a half years?

8 A That's been a while ago. It's possible.

9 Q Okay. Do you remember one in particular that your
10 lawyers were worried about might come in --

11 A No, I don't.

12 Q -- if Mr. Aiken testified?

13 A No, I don't. I don't, no.

14 MR. MABRY: Nothing further, Your Honor.

15 THE COURT: Redirect.

16 MR. MORTON: Just a couple questions, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. MORTON:

19 Q There was some questions from Mr. Mabry about the
20 different two opportunities for you to speak to the jury.
21 One was at the end of the guilt phase, and then one was at
22 the end of the penalty phase.

23 A Okay.

24 Q Okay. And I just wanted to clear up, at the end of the
25 guilt phase, did you get up and attempt to make a statement

Richard Moore - Redirect examination
by Mr. Morton

1 to the jury?

2 A I believe I did, yes.

3 Q And were there objections made by Mr. Gowdy?

4 A Yes.

5 Q And did the judge rule in favor of Mr. Gowdy?

6 A Yes. Yes, he did.

7 Q And did that intimidate you?

8 A Yes. Yes, it did. It did.

9 Q And, at the penalty phase, you then decided not to get
10 up and try to make a statement?

11 A Correct.

12 Q And you -- why didn't you do it at the penalty phase?

13 A I was under the -- I believe I was under the impression
14 that the same behavior from the prosecution would follow
15 suit.

16 Q Okay.

17 A I would, I would receive the same treatment from the
18 previous.

19 Q Mr. Hadden -- I'm sorry. Mr. Mabry asked you, after
20 this scuffle or after the argument, about you not having
21 enough change for the beer, why didn't you walk out.

22 A Uh-huh. (Affirmative).

23 Q Do you now wish that you had walked out?

24 A Lord knows I wished I had of walked out then, yes, sir.
25 Yes, sir.

1 Q Thank you very much.

2 THE COURT: Recross.

3 MR. MABRY: No, sir, nothing.

4 THE COURT: You may step down.

5 WITNESS: Thank you.

6 THE COURT: Ask the attorneys to approach.

7 (WHEREUPON, a bench conference was held at this time.)

8 THE COURT: All right. We'll crank back up at 1:45.

9 MR. MABRY: Yes, sir.

10 MR. SALTER: Yes, sir.

11 THE COURT: Court's in recess.

12 MR. SALTER: Yes, sir, Your Honor.

13 (WHEREUPON, Court was in recess for the lunch hour.)

14 THE COURT: All right. I'm gonna put on the record a

15 conference that I had in my office. At that time I was

16 informed by counsel for the Applicant that one of the

17 witnesses may have been present during testimony, and would

18 you put on the record what you've informed the Court of

19 please, ma'am?

20 MS. ARMSTRONG: Yes, Your Honor. Doctor Conradi, who

21 is a forensic pathologist, was in the courtroom for a pretty

22 good portion of former Investigator Dorman's testimony, and

23 she is not going to testify as to anything involving his

24 area of expertise. That being crime scene analysis theories

25 about how the crime occurred, that sort of thing.

1 THE COURT: My understanding, during the conference,
2 was that she will be testifying concerning the injuries
3 suffered by the victim in the case?

4 MS. ARMSTRONG: Yes, Your Honor.

5 THE COURT: And the affect the gunshot may of had on
6 him at the time that he was---

7 MS. ARMSTRONG: That is---

8 THE COURT: ---shot, is that right?

9 MS. ARMSTRONG: Yes, Your Honor. She has two very
10 thorough questions that she's going to address.

11 THE COURT: And, Mr. Mabry, if you'd put on the record
12 your position.

13 MR. MABRY: Yes, sir, Your Honor. As long as she -- my
14 initial concern was because Mr. Dorman was qualified as a
15 crime scene investigator or crime scene investigation. Not
16 analysis. Took a crime scene investigation. That she might
17 be relying on something he said. But it's been represented
18 to me that she will not be, and she'll limit her testimony
19 to what's been represented here in court, and I have no
20 objection to her testifying.

21 THE COURT: Based upon those positions, I've agreed to
22 allow the witness to testify. However, I've informed
23 Mr. Mabry that, if, at any time during the testimony he
24 feels that that agreement is being violated, that he has the
25 right to interpose an objection at that time.

Sandra Conradi - Direct examination
by Ms. Armstrong

1 MS. ARMSTRONG: Thank you, Your Honor.

2 THE COURT: All right. You may call your next witness.

3 MS. ARMSTRONG: Thank you.

4 The Applicant calls Doctor Sandra Conradi.

5 (WHEREUPON, eight photographs were marked as
6 Applicant's Exhibit Nos. 16 through 23 for identification
7 purposes only at this time.)

8 THE COURT: Ma'am, come forward to my left and be sworn
9 in please.

10 SANDRA CONRADI, having been first
11 duly sworn, testified as follows:

12 THE COURT: Ma'am, have a seat in the witness stand
13 please.

14 (Witness complies.)

15 THE COURT: State your name.

16 WITNESS: Sandra Epsteen Conradi.

17 THE COURT: Your witness, counsel.

18 MS. ARMSTRONG: Thank you.

19 DIRECT EXAMINATION

20 BY MS. ARMSTRONG:

21 Q Good afternoon, Doctor Conradi. How are you?

22 A Good afternoon.

23 MS. ARMSTRONG: May I approach the witness?

24 THE COURT: You may.

25 Q Doctor Conradi, I'm handing you a document entitled

Sandra Conradi - Direct examination
by Ms. Armstrong

1 curriculum vitae, and I'll ask you to take a look at it, and
2 tell me who it belongs to.

3 A This is my CV, curriculum vitae.

4 MS. ARMSTRONG: Okay. Your Honor, I'd like to go ahead
5 and offer this as---

6 THE COURT: You want to show that to---

7 MS. ARMSTRONG: Yes, I have a copy for him.

8 THE COURT: ---State's counsel please?

9 MS. ARMSTRONG: Yes, Your Honor.

10 MR. MABRY: We'll stipulate to her qualifications as a
11 forensic pathologist.

12 THE COURT: All right. Any objection to that being
13 placed into the record?

14 MR. MABRY: No, sir.

15 THE COURT: All right. It will be received as an
16 Applicant's Exhibit, and it's been stipulated that this
17 witness is an expert.

18 (WHEREUPON, the curriculum vitae was marked as
19 Applicant's Exhibit No. 24 and received into evidence at
20 this time.)

21 THE COURT: I think it's within the area of pathology,
22 is that right?

23 MS. ARMSTRONG: Forensic pathology, Your Honor.

24 THE COURT: Thank you very much.

25 Q And just for the record, and just so things are, are

Sandra Conradi - Direct examination
by Ms. Armstrong

1 clear as to Doctor Conradi's expertise in this area, I'm
2 just gonna briefly address or ask Doctor Conradi would you
3 please explain your education background?

4 A Yes, ma'am, I went to Medical School at the University
5 of Cincinnati, and graduated there going on to a residency
6 in the general field of pathology. I took a three year
7 absence while my, while my husband and family went to
8 Germany where he was a surgeon in, in the Army, came back
9 and got a position with the Hamilton County Coroner's Office
10 for a year or two actually in forensic pathology doing
11 coroner's autopsies. I then moved to Charleston in 1973
12 where I was appointed deputy chief medical examiner for
13 Charleston County, and then medical examiner, chief medical
14 examiner in, I believe it was, 1985.

15 I worked there as chief medical examiner doing forensic
16 pathology until 1999 when I resigned from that position,
17 continued as a pathologist at the Medical University of
18 South Carolina until 2001 when I retired. Since then I'm
19 doing, I've been doing private consult cases generally for
20 defense, but also for prosecutors that might need my
21 expertise.

22 Q Okay. But you've testified for both the defense and
23 the prosecution?

24 A Yes, ma'am.

25 Q Okay. All right. And, so, right now you are retired

Sandra Conradi - Direct examination
by Ms. Armstrong

1 from the Medical University of South Carolina, but you are
2 still a licensed forensic pathologist?

3 A Yes, ma'am.

4 Q Okay. All right. Have you had an opportunity to
5 review evidence related to the death of James Mahoney?

6 A I have.

7 Q Okay. And can you just go through the list of
8 documents that you've been supplied with in preparation for
9 your testimony here today?

10 A If I could have access to my briefcase there, all the
11 list is in that on a yellow pad.

12 Q Thank you.

13 A Thank you.

14 I was provided case notes from the trial, which was 15
15 pages.

16 Number 2, Doctor Wren's testimony at trial.

17 Number 3, coroner's investigative form.

18 Number 4, the autopsy report by Doctor Wren.

19 Number 5, forensic science Investigator Dorman's
20 testimony at trial.

21 Number 6, Deputy Murphy's statement at trial.

22 Number 7, Terry Hadden's statement.

23 Number 8, forensic unit Sheriff's Office case report,
24 11 pages.

25 Number 9, chart of bullet, bullet fragments, and

Sandra Conradi - Direct examination
by Ms. Armstrong

1 shells, 11 pages. I'm sorry. Not just bullet and bullet
2 fragments, but also other items that were collected.

3 Number 10, photographs and diagrams of the crime scene.

4 Number 11, autopsy photographs.

5 Number 12, diagrams of the scene. I think there were
6 five of them.

7 Q Okay. And, so, you've reviewed all these materials?

8 A Yes, ma'am.

9 Q Okay. And based on your review of materials including
10 the, especially including the, the autopsy report from the
11 trial as well as the reports that were generated by Doctor
12 Wren and the other forensic investigators, have you been
13 able to form an opinion as to the cause of death for Mr.
14 Mahoney?

15 A Yes, ma'am.

16 Q Okay. What is that opinion?

17 A The cause of death is a gunshot wound to the chest with
18 perforation of the heart, and hemopericardium, which means
19 bleeding into the sac around the heart causing the heart to
20 become unable to beat.

21 Q Okay. And do you have an opinion, to a reasonable
22 degree of medical certainty, as to how many times Mr.
23 Mahoney was shot?

24 A Yes, I do.

25 Q And what is that opinion?

Sandra Conradi - Direct examination
by Ms. Armstrong

1 A One time.

2 Q Okay. And why do you say you think it's one bullet and
3 not two?

4 A There are atypicalities both of the exit wound of the
5 chest and the entrance wound into the arm which I can show
6 better, better than I can talk about.

7 If I could show the photographs to the judge?

8 Q Yes.

9 May I approach the witness?

10 THE COURT: You may.

11 Q I'm sorry. Already here.

12 A I just need this top one.

13 Q Okay.

14 A The exit wound from the chest is, in my opinion,
15 somewhat atypical for an exit wound in that it has a lot of
16 bruising around it, and I will explain why that bruising is
17 there in my opinion. The entrance wound into the arm is
18 also atypical. It should be a nice round hole surrounded by
19 an abrasion border, and I'll explain what I'm talking about
20 in a minute. There is somewhat of an abrasion border, but,
21 in my opinion, that wound to the arm is caused by a tumbling
22 bullet going into the arm and staying there after breaking
23 the humerus, the large bone of the right upper arm.

24 If I could maybe demonstrate what I'm talking about?

25 This wound has a lot of bruising around it. It's way

Sandra Conradi - Direct examination
by Ms. Armstrong

1 more bruising than I would expect to see from a, a simple
2 exit wound from the chest.

3 The reason that's there, in my opinion, is that Mr.
4 Mahoney's arm was tight against this area, and as the bullet
5 tinted the skin coming out of the chest, it hit here into
6 his arm probably as it was tumbling and caused the irregular
7 atypical entrance wound into the arm. It's torn. They're
8 torn edges in that wound. There is somewhat of an abrasion
9 border and also some bruising around that, that wound.

10 But, in my opinion, if that was a primary exit,
11 entrance wound, meaning another gunshot, it should be a nice
12 round hole very similar to the initial hole that went into
13 Mr. Mahoney's chest to begin with on the left side, and it
14 is not. It's very irregular and torn. So, I think it's one
15 wound.

16 Q Okay. And this type of wound that Mr. Mahoney
17 sustained -- and I'm gonna go ahead and offer Applicant's
18 Exhibit No. 16 into evidence.

19 MR. MABRY: No objection to any of those photographs.

20 MS. ARMSTRONG: All right.

21 THE COURT: Without objection, they'll be marked as
22 Applicant's Exhibits.

23 MS. ARMSTRONG: Thank you. And that would be exhibits,
24 Your Honor, Applicant's Exhibits, for the record, 16 through
25 23. They're all photographs.

Sandra Conradi - Direct examination
by Ms. Armstrong

1 THE COURT: Thank you.

2 MS. ARMSTRONG: Thank you.

3 (WHEREUPON, Applicant's Exhibit Nos. 16 through 23 were
4 received into evidence at this time.)

5 Q All right. Doctor Conradi, in addition to determining
6 that there was, based on the evidence, one bullet that went
7 through Mr., the, the victim's chest area and then
8 reentered, left, and went through his arm, how---

9 A I'm sorry. Reentered right.

10 Q Yes, I'm sorry.

11 Based on your, your assessment of his, of his injuries,
12 what were the likely course of his death be in minutes---

13 A I can't give you minutes. But---

14 Q ---or seconds?

15 A ---I, I think, due to the force of the bullet, he would
16 of been down on the ground if not immediately, very close to
17 immediately after being shot and passed out, became
18 unconscious very quickly, and then died very quickly because
19 every time the heart beat there was more and more blood
20 going into that sac and compressing the heart so it couldn't
21 beat any further. So, he was probably dead in a matter of
22 minutes. I can't give you the exact number, but---

23 Q Certainly.

24 A ---in the range of five to ten I would say.

25 Q Okay. All right. Well, thank you and please answer

Sandra Conradi - Cross-examination
by Mr. Mabry

1 any questions that Mr. Mabry or Mr. Salter may have.

2 THE COURT: Mr. Mabry, your witness.

3 CROSS-EXAMINATION

4 BY MR. MABRY:

5 Q Good afternoon, Doctor Conradi.

6 A Good afternoon.

7 Q How are you doing?

8 A Fine. Thanks.

9 Q Okay. Good.

10 Are you still living in Charleston?

11 A Oh, yeah.

12 Q Oh, good, great. Are you familiar with a Doctor
13 McMahon at MUSC in Columbia?

14 A What's his first name?

15 Q I don't remember.

16 A The name sounds familiar, but I can't place where I
17 know it from.

18 Q Okay. Could it be a pathologist?

19 A He could be. I just don't know.

20 Q Okay. That's fine.

21 Do you know Donald Girndt from SLED?

22 A That name is also familiar, but I haven't dealt with
23 him either for a long long time.

24 Q Okay. Did you talk to Doctor McMahon in this case?

25 A No, sir.

Sandra Conradi - Cross-examination
by Mr. Mabry

1 Q Okay. One question I have for you. I think I can use
2 one of the photographs that you have, 17. If you'd hold
3 this up.

4 A Sure.

5 Q Can you tell me what, what these items are
6 surrounding -- this is the entrance wound, am I right?

7 A In the, in the left chest, yes.

8 Q He's shot here?

9 A Yes.

10 Q The bullet came out his, came out his chest here?

11 A It did.

12 Q Okay.

13 A It's just a little bit above the entrance wound.

14 Q What's all these red specs around here?

15 A In my opinion, those are stippling --

16 Q Okay.

17 A -- indicating a fairly close range wound due to the
18 powder put out by the gun and, and going through the shirt
19 and stippling his skin. So, I think it's a close range
20 wound.

21 Q Okay.

22 A Not contact, but close.

23 Q Close.

24 And how close would it, have it to be---

25 A You could -- you'd have to test fire the gun using that

Sandra Conradi - Cross-examination
by Mr. Mabry

1 ammunition to see for sure, but I'd estimate 12 to 15
2 inches, something in that range.

3 Q Twelve to fifteen inches?

4 A As an estimate.

5 Q And do you know -- have you looked at these photographs
6 of the crime scene?

7 Do you how wide the counter is at Nikki's?

8 A No.

9 Q Okay. There's also a photograph in here I wanted to
10 ask you about. If I can -- let me find it.

11 If I could have just a second, Your Honor?

12 THE COURT: Yes, sir.

13 (Pause.)

14 Q Okay. This looks good.

15 I believe it's your testimony that you believe Mr.
16 Mahoney would have collapsed when he was shot with this
17 gunshot wound?

18 A Almost immediately.

19 Q Almost immediately?

20 A Yes.

21 Q Okay. Could you show, in this photograph, 18, where
22 Mr. Mahoney's -- if you can point out to the Court -- well,
23 just for the record so -- the judge can see it, but where
24 are his feet located in relation to the door?

25 Do you see this doorway here?

Sandra Conradi - Cross-examination
by Mr. Mabry

1 A Yes, sir.

2 Q Okay. Where are his feet located in relation to that
3 door?

4 A Towards the door.

5 Q Okay. And is it, I guess, kind of parallel with the
6 frame of the door?

7 I guess parallel would be if he came out from the door,
8 would you run into the front of his tennis shoes?

9 A Yes, you would.

10 Q Okay. So, you, in your opinion, you believe he was
11 standing roughly in that area when he was shot?

12 A Roughly in that area, yes, sir.

13 Q Okay. Close to the, that door opening right there?

14 A Yes, I think he probably dropped pretty well where he
15 was shot.

16 Q Okay. And you've reviewed, I guess, all kind of
17 materials regarding the crime scene?

18 A Yes, I did.

19 Q Okay. Do you remember any bullet holes being found in
20 this wall right here between, which would of been between
21 him and the person on the other side of the counter?

22 A Any bullet holes you're saying?

23 Q Through that wall, yeah.

24 A I, I don't recall specifically.

25 Q That's fine.

Sandra Conradi - Cross-examination
by Mr. Mabry

1 A I don't recall.

2 Q I understand.

3 And according to that photograph, he was standing
4 roughly in the opening to that doorway from the photograph?

5 He's standing roughly like this you believe when he,
6 when he collapsed?

7 A All I can say is that he probably dropped about where
8 he was shot. So, I, I -- from the photographs, yes, and
9 everything -- his back was towards the, the door and he
10 collapsed in that area if I'm interpreting that photograph
11 correctly.

12 Q well, this is the door right there?

13 A This is the---

14 Q His back would of actually been to that freezer---

15 A That's correct.

16 Q ---over there, right?

17 A That's correct, yes.

18 Q Okay. And he was shot -- if that's the frame of the
19 door and I'm standing where he was, he was shot in this
20 side, am I correct, my left---

21 A Correct.

22 Q Lower left side. The bullet went upwards and to the
23 front and exited near, near his nipple, is that right?

24 A It exited to the right of the sternum.

25 Q Okay.

Sandra Conradi - Cross-examination
by Mr. Mabry

1 A A little bit below the nipple I would say.

2 Q Little bit below?

3 A Yes.

4 Q And then the direction of that bullet would be back
5 toward the opening of the door?

6 A The direction of the --?

7 Q The -- where the bullet came from.

8 If it came in his side and exited right here near his
9 nipple, the way I'm standing, if he's standing in that
10 photograph, the bullet came from the direction of that
11 opening of that doorway?

12 A I'd have to actually be there in the store I think to
13 interpret that.

14 Q Well, let's imagine he's just standing back up where he
15 was standing where you say he collapsed.

16 A Yes.

17 Q If he's standing straight up, that side, his left side
18 would of been facing that doorway?

19 A If, if you stand and mock the way he's laying there now
20 --

21 Q Uh-huh. (Affirmative)?

22 A -- his back and this area would be about lined up with
23 the doorway, but it's hard to really interpret. I'm not
24 saying that he didn't move at all. I'm just saying it's
25 likely, likely he collapsed after he was shot. But as far

Sandra Conradi - Cross-examination
by Mr. Mabry

1 as whether he was standing here and then just flopped over
2 onto his stomach, I couldn't say that. I mean he could of
3 moved a little bit.

4 Q Oh, so, you're now saying he could of moved a little
5 bit.

6 A Well, he could of, yeah. I mean, like I said,
7 immediately or almost immediately he would of collapsed
8 because of the, the shot, the shot penetrating his chest.
9 That's a lot of velocity on that bullet.

10 Q Okay.

11 A So, I think he would of collapsed very quickly, but to
12 say he collapsed instantly and was exactly in that position,
13 I can't say that.

14 Q Okay. Well, if he did collapse instantly, if he's
15 standing back up where his feet are, of course, he'd go back
16 a little bit further cause his feet are laying like that?

17 A That's right.

18 Q His side would be toward the doorway that, that leads
19 to---

20 A That's correct. That's correct, yeah.

21 Q And the direction of the bullet would be coming from
22 the doorway and exiting right here, am I correct?

23 A That's correct, yes.

24 Q Okay. And you've got stippling, what you believe to be
25 stippling on the wound?

Sandra Conradi - Cross-examination
by Mr. Mabry

1 A I believe that's stippling, yes. Yes, sir.

2 Q Okay. And as I understand it, your testimony, do you
3 know -- do you have any idea how long, how long he would of
4 remained conscious?

5 A No.

6 Q Okay.

7 A A short time, very short time.

8 Q Well, how short is short?

9 A That -- that's hard to say exactly in seconds or
10 minutes, but a very short time because his heart sac would
11 of filled up with blood very quickly.

12 Q Could of been---

13 A And he couldn't, he couldn't -- his heart wouldn't be
14 able to beat.

15 Q After it filled up?

16 A After it filled up.

17 Q Okay. But he could of lived for seconds, up to
18 minutes, before he went unconscious?

19 A He could of been conscious for seconds to a minute or
20 two, and then unconscious for another five minutes, ten
21 minutes, hard to say. But he would of been dead very, very
22 soon.

23 Q Okay. And what kind of pain would he have been in
24 while he was conscious during those possible two minutes?

25 A Well, I would think he, at least from the humerus

Sandra Conradi - Cross-examination
by Mr. Mabry

1 fracture, which is very painful, that he would of had pain.

2 Q Okay.

3 A For the, for the short time he was conscious.

4 Q Okay. And it's your opinion that it was one gunshot
5 wound?

6 A Yes, sir.

7 Q And that's because of the irregularity here on the
8 chest, and then the irregularity on the arm?

9 A The bruising around the exit wound of the chest and the
10 irregularity of the entrance to the arm.

11 Q Is it -- and I understand now. I've seen the pictures.
12 Is it possible -- well, you know, from reviewing the
13 materials, that there were bullets flying all around him in
14 that place, am I right?

15 A Yes, sir.

16 Q Okay. Is it possible that another ricocheted bullet --
17 he could of had a through and through, but also a different
18 ricocheted bullet actually hit his arm?

19 A That's possible.

20 Q Okay.

21 THE COURT: Redirect.

22 MR. MABRY: I, I had one more question, Your Honor.

23 THE COURT: Oh, I'm sorry. Excuse me.

24 MR. MABRY: Excuse me. Yes, sir, I'm sorry.

25 Q Did, did you review Doctor Wren's testimony in this

Sandra Conradi - Cross-examination
by Mr. Mabry

1 case?

2 A I did.

3 Q Okay. Did he testify that it was possible that this
4 was just one gunshot wound?

5 A Yes.

6 Q Okay. Thank you.

7 A You're welcome.

8 THE COURT: Redirect.

9 MS. ARMSTRONG: Very briefly.

10 REDIRECT EXAMINATION

11 BY MS. ARMSTRONG:

12 Q Mr. Mabry asked you about Doctor Wren.

13 Do you, do you know Doctor Wren?

14 A We trained Doctor Wren in Charleston.

15 Q So, he was your former student?

16 A He was.

17 Q Okay. And even though it's possible that there could
18 of been some crazy ricochet, based on your findings, do you
19 still believe it was one bullet?

20 A I do.

21 Q Okay. Thank you.

22 THE COURT: Anything further?

23 MR. MABRY: No, sir.

24 THE COURT: Cross.

25 All right, ma'am. You may step down.

1 WITNESS: Thank you.

2 THE COURT: Thank you very much.

3 MS. ARMSTRONG: May she---

4 THE COURT: Any objection to her being excused?

5 MS. ARMSTRONG: Oh, I'm sorry. I was gonna ask.

6 MR. MABRY: No, sir.

7 THE COURT: All right. You're free to go.

8 WITNESS: Thank you.

9 THE COURT: Thank you for coming, ma'am.

10 Applicant may call the next witness.

11 MR. MORTON: Your Honor, I wanted to inquire, if I
12 could, about the exact language that was entered into as a
13 stipulation about Mr. Girndt.

14 THE COURT: Girndt?

15 MR. MORTON: Yes, sir, he was a -- he's a former SLED
16 agent in Columbia that was retained by the defense, and our
17 stipulation was that -- I can't remember exactly what it was
18 to tell you the truth.

19 MR. MABRY: Mr. Salter.

20 MR. SALTER: I do believe that the stipulation was that
21 Mr. Girndt, when contacted, has indicated that he does not
22 have a copy of his report or his findings from, from the
23 work he did nor did he have any independent recollection of
24 his work.

25 THE COURT: Is that your understanding?

1 MR. MORTON: Yes, sir.

2 THE COURT: Just for the record?

3 MR. MORTON: Yes, sir.

4 THE COURT: Okay.

5 MR. MORTON: Yes, sir.

6 THE COURT: All right.

7 MR. MORTON: Beg the Court's indulgence one second,
8 Your Honor.

9 THE COURT: Yes, sir.

10 (Pause.)

11 MR. MORTON: I'm going to get a witness, judge, if
12 that's okay.

13 MR. MABRY: He's coming.

14 THE COURT: Come forward, sir, to my left to be sworn.

15 MICHAEL MORIN, having been first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat. Once seated, state your name
18 for the record.

19 WITNESS: My name is Michael Morin.

20 THE COURT: Counsel, your witness.

21 MR. MORTON: Yes. Yes, sir, thank you very much, Your
22 Honor.

23 DIRECT EXAMINATION

24 BY MR. MORTON:

25 Q Good evening, Mr. Morin.

Michael Morin - Direct examination
by Mr. Morton

1 A Mr. Morton.

2 Q I'm just gonna start kind of from the beginning, and
3 ask you some questions about how you got involved and so
4 forth.

5 As you're well aware, this crime happened September
6 16th, 1999?

7 A Yes, sir.

8 Q It began on October the 18th of 2001?

9 A The trial, yes, sir.

10 Q Right.

11 And when did you graduate Law School?

12 A 1992.

13 Q And what were your grades?

14 No, I'm just kidding.

15 How many -- you graduated in '92?

16 A That's correct.

17 Q And then -- what -- can you give us a history of where
18 you were between '92 and---

19 A Sure.

20 Q ---'99?

21 A In the Fall of 1992 I worked for Brooks Law Associates,
22 which was Jim Brooks and Keith Kelly. I stayed there until
23 April of 1995 at which time I was hired by the Spartanburg
24 County Public Defender's Office. I stayed at the
25 Spartanburg County Public Defender's Office until

Michael Morin - Direct examination
by Mr. Morton

1 December 2002.

2 On January 1st, 2003, I began working for the
3 Seventh Solicitor's Office in the Cherokee County Office,
4 and I stayed there until January 1st of or January 3rd of
5 this year, and I was transferred back here to the
6 Spartanburg office.

7 Q Were you practicing criminal law before you went to the
8 Public Defender's Office?

9 A A little bit, but not much.

10 Q Okay. And in the Public Defender's Office, you had
11 some experience with murder cases?

12 A Yes.

13 Q And how many murder cases did you try before this one?

14 A I would say four. But I remember two specifically.

15 Q Okay. And those were not death penalty cases?

16 A No, sir.

17 Q And was this your first death penalty case?

18 A Well, in the Spartanburg County Public Defender's
19 office at that time they had what they call the third chair,
20 which you weren't really responsible, but you worked on the
21 case and watched and that kind of thing, and I had been the
22 third chair on the State versus Theodore Kelly. I was third
23 chair on the State versus Jimmy Locklair.

24 Q Okay.

25 A And I wasn't counting those as my murder experiences.

Michael Morin - Direct examination
by Mr. Morton

1 They are separate.

2 Q Okay. And as third chair -- well, I think we all know
3 what third chair is.

4 A Uh-huh. (Affirmative).

5 Q Third chair is somebody who just helps out the other
6 two attorneys?

7 A Correct.

8 Q Did you take any witnesses that you remember?

9 A Seems like maybe in Locklair I did a juror
10 qualification, but beyond that, no.

11 Q And do you remember when you were appointed in this
12 case?

13 A It was shortly after he was arrested. I know that I
14 have a, quite a few notes in one of those boxes over there
15 if I could get those. I tried to document as best I could
16 if you want the specific times that I was referring.

17 THE COURT: I'll allow you to step down. I'll allow
18 the witness to step down and retrieve whatever he needs.

19 A In my notes I had written September 1999 I met with the
20 defendant shortly after his arrest. That would of been at
21 the Spartanburg County Jail.

22 Q Okay. And at that point had you been -- you were just
23 acting in your capacity I guess as Public Defender.

24 At that point, I guess my question is, had -- did Judge
25 Cole or Judge Clary appoint you and Mr. Kelly to represent

Michael Morin - Direct examination
by Mr. Morton

1 Mr. Moore as far as this death penalty case or I guess my
2 question is were you there as just a public defender going
3 to see a client who was charged with murder?

4 A Yes.

5 Q Okay.

6 A I was there -- the, the case came into the Public
7 Defender's Office and it was assigned to me. I went
8 directly to see him because of the way the case was.

9 Q Okay. And then you were appointed when it became a
10 death penalty case?

11 A Uh-huh. (Affirmative).

12 Q You were sort of already handling it, is that fair to
13 say?

14 A Yeah. Yes, sir, I was, according to the statute, I was
15 already qualified to try a death penalty case when the case
16 was assigned to me.

17 Q Okay. And how did Mr. Kelly come on board?
18 why was that?

19 Was it because you worked with him before, you trusted
20 him you?

21 A Once, once I was served of the notice of their
22 intention to seek the death penalty, I knew that the second
23 attorney would be appointed, and I felt that I could work
24 with Keith, and Keith was very competent, and I wanted to
25 have a say in who the second chair was.

Michael Morin - Direct examination
by Mr. Morton

1 Q What -- how would you characterize Mr. Kelly's criminal
2 experience before this?

3 A I think he had a good bit of criminal experience in the
4 private practice. I, I --.

5 Q And I can ask him, but do you know whether he had tried
6 murder cases before?

7 A I believe he had.

8 Q Okay. Had not tried -- he had not tried a death
9 penalty case?

10 A I don't know that. I think he may have.

11 Q Okay. Did you go to the bond hearing?

12 A There was a bond hearing---

13 Q Was there a bond hearing?

14 A ---in General Sessions, yes.

15 Q Do you remember testimony from State's witnesses at
16 that bond hearing that Mr. Moore had gone into Nikki's Store
17 armed with a lug wrench?

18 A There wouldn't have been any witness' testimony at a
19 bond hearing. There would of been the State giving their
20 version of what they believe the facts would show.

21 Q And is that the version that they gave?

22 A What I wrote down for the bond hearing was, is they
23 said that the witnesses had picked him out of a lineup.

24 They claimed that he was armed upon entering. They claimed
25 he made a statement let's get out of here when he left. I

Michael Morin - Direct examination
by Mr. Morton

1 found out the gun had been recovered, that he had given some
2 sort of statement to both the police and the hospital, which
3 was being characterized as a confession. That's what I had
4 written down.

5 MR. MORTON: Okay. I'm begging the Court's indulgence
6 for one second, Your Honor.

7 (Pause.)

8 Q I'm sorry. Let me back up.

9 Do your notes indicate that the State's theory, at that
10 point, was that Mr. Moore came in armed?

11 A All right. Those are the notes I'd written at the bond
12 hearing, which was the witness claimed the defendant was
13 armed. Let's see.

14 Q And these are the notes you---

15 A These are my notes that I was accumulating as I was
16 handling the case.

17 Q Do you mind if I look at those?

18 I think those are the notes that you---

19 A Yes, sir, I think you have some. It's those and
20 there's those.

21 Q Okay.

22 A But I don't think -- I don't see anything in my notes
23 prior to the bond hearing discussing whether or not he was
24 armed if that answers your question.

25 Q Okay. Okay. I'll, I'll come back to it.

Michael Morin - Direct examination
by Mr. Morton

1 A Okay.

2 Q Thank you.

3 A Uh-huh. (Affirmative).

4 Q Did -- what was the State's theory at trial?

5 A The State's theory, as I recall it, was that Mr. Moore
6 entered the store with the intention of robbing Mr. Mahoney.
7 They seemed to not be -- and I don't remember at the trial.
8 I remember -- it's been pointed out to me, I read the
9 transcript, that Mr. Gowdy had, had, in his closing, claimed
10 that he had, Mr. Moore had something in his hand. But even
11 there, where the bond hearing, the discussion about he was
12 armed when he came in. They never seemed to really be
13 certain about what it is they were alleging he was armed
14 with, and obviously it wasn't too long into this case where
15 we, where it was, it was admitted by everybody that both
16 firearms belong to Mr. Mahoney.

17 So, the State was maybe had a knife. There was some
18 discussion about a tire iron. But it was never connected to
19 Mr. Moore. So, I guess that answers your question I think
20 as far as what their theory was, and it seemed that their
21 theory was it was gonna be a common law robbery, and it
22 turned into an armed robbery.

23 Q So, would it be fair to say that they never, even until
24 closing, never had a consistent theory as to what---

25 A I think that's fair.

Michael Morin - Direct examination
by Mr. Morton

1 Q And, so, obviously that would of been important to
2 exploit on as a defense attorney?

3 A I guess, yes.

4 Q Okay. That, that even the State doesn't, doesn't have
5 a theory about what happened in there?

6 A well, I don't know if the State didn't have a theory.
7 Their theory was that he went in there to commit a crime.
8 How he was gonna commit it, they were a little less specific
9 on as far as I can remember back then.

10 Q Because testimony came out during the trial that the
11 lug wrench that that found in there had actually, and I
12 think Mr. Gowdy said as much, the lug wrench, there was an
13 explanation for the lug wrench, that it had been loaned out
14 to somebody earlier in the night---

15 MR. SALTER: Your Honor, I'm gonna object to the form
16 of the question.

17 Q Is it true -- I'm sorry.

18 THE COURT: Are you -- leading?

19 MR. SALTER: Yes, sir, Your Honor.

20 THE COURT: Sustained.

21 Q Is it true that, during the trial, the State disabused
22 themselves of the lug wrench theory?

23 A From my recollection of the transcript I read that
24 seemed to be the case. But I don't have any independent
25 recollection of how that went.

Michael Morin - Direct examination
by Mr. Morton

1 Q Was their testimony from one of the State's witnesses
2 that a motorist had been into Nikki's Store earlier that
3 evening asking for help with a tire?

4 A Again, that's what I recollect reading in the
5 transcript, but I don't have any independent recollection of
6 it.

7 Q Okay. And they -- also there was some reference to a
8 meat cleaver, do you remember that, or, or a knife or
9 something?

10 A The only, the only knife I recall was basically the one
11 that was found in the truck.

12 Q Do you remember any reference to a meat cleaver?

13 A No, sir.

14 Q Okay. Did you read in -- how -- I guess you have been
15 provided with Detective Clevenger's report?

16 A I'm sure I had a copy of it. I'd have to go over there
17 and see what copy I had.

18 Q I've got a copy of it if I can find it.

19 I apologize to the Court, judge.

20 (Pause.)

21 MR. MORTON: Your Honor, I was gonna show Mr. Morin
22 Detective Clevenger's notes. I think I, we had already put
23 them in. I didn't want to put them in again.

24 MR. SALTER: Your Honor, it's my understanding the
25 notes never came in during Mr. Clevenger---

Michael Morin - Direct examination
by Mr. Morton

1 THE COURT: I don't recall anything about any notes.
2 You can check with the court reporter. She has a list that
3 indicates what's in.

4 MR. MORTON: In any event, Your Honor, there is some of
5 my writing at the top that they have seen and have no
6 objection to, and I will ask Mr. Morin---

7 THE COURT: You want to introduce that now?

8 MR. MORTON: Yes, sir.

9 MR. SALTER: Your Honor, as long as it's not being
10 offered to prove the truth of the matter asserted, we have
11 no objection. It's being offered simply to show whether or
12 not this was available to counsel, and he had an opportunity
13 to review it---

14 THE COURT: Is the purpose---

15 MR. SALTER: ---no objection.

16 THE COURT: ---to show what was available to Mr. Morton
17 at the time?

18 MR. MORTON: Yes, sir.

19 THE COURT: All right. I'll allow it in. Get it
20 marked.

21 (WHEREUPON, the investigative progress report was
22 marked as Applicant's Exhibit No. 25 and received into
23 evidence at this time.)

24 Q Mr. Morin, I'll give you Applicant's Exhibit No. 25 and
25 ask you what that is.

Michael Morin - Direct examination
by Mr. Morton

1 A It indicates it's Rusty Clevenger's investigative
2 report.

3 Q Okay. Would that have been furnished to you?

4 A I would think so. But, once again, if I may step down,
5 I probably should bring that box over here.

6 THE COURT: Why don't you do that?

7 WITNESS: If I may.

8 A Yes, sir, I have a copy of this in my file.

9 Q And in that Applicant's Exhibit No. 25, on the bottom
10 of Page 2, last paragraph---

11 A Uh-huh. (Affirmative).

12 Q ---would you read that for us?

13 A Where it says the defendant pulled a lug wrench, is
14 that where you are?

15 Q Yes.

16 A Defendant pulled a lug wrench from a concealed part of
17 his body and threatened the deceased with it.

18 Q Okay. You obviously talked to Mr. Moore about what
19 happened that night?

20 A Yes.

21 Q And was Mr. Moore consistent throughout that he had no
22 intention of going in there and robbing?

23 A Yes.

24 Q Okay. And that he had no weapon?

25 A Yes.

Michael Morin - Direct examination
by Mr. Morton

- 1 Q Okay. And that he had no gun?
- 2 A Yes, he was quite clear about that.
- 3 Q And that the -- you were---
- 4 MR. SALTER: Your Honor, I'm gonna object now to
- 5 leading again.
- 6 MR. MORTON: I'm -- I'll---
- 7 MR. SALTER: This is his witness.
- 8 THE COURT: Try not to lead the witness.
- 9 MR. MORTON: Yes, sir, Your Honor.
- 10 THE COURT: Thank you.
- 11 Q Tell us, Mr. Morin, if you will, whose guns they were.
- 12 A They were Mr. Mahoney's.
- 13 Q Okay.
- 14 A The victim.
- 15 Q Okay. And do you remember -- can you describe the
- 16 guns?
- 17 I mean just tell us what they were.
- 18 A They were a large caliber gun. One was a .45
- 19 semiautomatic, and I believe the other one was a .44 magnum.
- 20 I could be mistaken, but I'm pretty sure that they were both
- 21 very large.
- 22 Q And there was a .32 that wasn't, I'm sorry, that wasn't
- 23 involved?
- 24 A I don't remember if there was another gun.
- 25 Q Okay. Do you remember -- can you tell us what you do

Michael Morin - Direct examination
by Mr. Morton

1 remember about what your investigation or the investigation
2 as given to you by the police indicated as far as guns,
3 gunshots, crime scene, so forth?

4 I know that's a broad, and it's an open ended question.
5 Were there numerous gunshots fired?

6 A Yes.

7 Q And were there gunshots fired by more than one bullet,
8 I mean more than one gun?

9 A Yes.

10 Q Okay. And do you remember the State's witnesses
11 testifying about how many bullets were fired by each gun?

12 A I only remember what I read in the transcript.

13 Q Okay. Do you remember that it was multiple --

14 A Yes.

15 Q -- multiple shots from more than one gun?

16 A That's my recollection, yes, sir.

17 Q Okay. And is it fair to say that there were many shell
18 casings?

19 A I believe, yes.

20 Q Bullet fragments?

21 A Yes.

22 Q Serology to blood spatter, blood drops?

23 A Yes.

24 Q Fingerprints?

25 A Not that I recall. But that doesn't mean it wasn't.

Michael Morin - Direct examination
by Mr. Morton

1 But I don't remember.

2 Q Footprints?

3 A I don't remember. I don't think so. But -- because I
4 remember that the blood going from the path from the
5 customer side around through the doorway to the victim. But
6 I don't remember if any footprints or something like that
7 from my recollection. It may of been. But that's the part
8 I remember.

9 Q Do you remember a bag being on the counter that had a
10 bullet hole in it?

11 A The only bag that I remember is the money bag that was
12 in the truck.

13 MR. MORTON: Okay. If I might, Your Honor, I'm sure
14 it's part of the record, if the clerk has that evidence, I
15 would like to show it to Mr. Morin.

16 THE COURT: You put a photograph of the bag put into
17 the record.

18 MR. MORTON: Yes, sir, I actually wanted to show him
19 the bag if it's not too much trouble.

20 THE COURT: It is available, Madam Clerk?

21 CLERK: Yes, sir.

22 THE COURT: You may want to use gloves before you
23 handle that. It's got blood on it. You may want to use
24 gloves before people handle that. It's got blood on it.

25 MR. MORTON: Well, we had done that before, but---

Michael Morin - Direct examination
by Mr. Morton

1 THE COURT: That's the reason I suggested the
2 photographs.

3 MR. MORTON: Yes, sir.

4 THE COURT: I know in the past with bloody items
5 they're handled by people with gloves. I assume there's a
6 reason for that.

7 MR. MORTON: Judge, I'm not worried about it.

8 THE COURT: I'm just -- however you want to handle
9 that, proceed is fine with me.

10 Q Show you what's been marked as State's Exhibit 17
11 during the trial --

12 A Okay.

13 Q -- and ask you if you remember---

14 A I, I remember what's in it and I didn't remember it was
15 in a bag, but I did remember that it was on the counter.

16 Q Okay. Did you remember there was testimony about a
17 bullet hole, about a bullet passing through there?

18 A Like I said, I knew that he had put -- he had always
19 said he had gone in there and put the beer and the, and
20 cigarettes or candy on the counter to buy. So, I -- that's
21 engrained in my mind. I met with him many times. So, I
22 remember that part, but I don't remember this bag.

23 Q Okay. Do you -- did you have anybody look at this bag
24 or test this bag?

25 A I don't remember this bag.

Michael Morin - Direct examination
by Mr. Morton

1 Q The---

2 A Obviously -- I mean it's marked and, and it's
3 consistent with it. But like I said, after ten years, my
4 recollection was is he went there and he put this, the items
5 up and he was gonna buy them. That's the part that I
6 remember. So, I guess that's all I can say about the bag.

7 Q Okay.

8 A I thought---

9 Q Your Honor -- would you look at the holes in this bag
10 while we got it up her?

11 A Would I?

12 Q Yes, sir.

13 A Yes, sir, I can see them.

14 Q Can you tell which one is from the condition it's in
15 now or which one is, from your lay person, looks like an
16 entry wound or entry---

17 MR. SALTER: Your Honor, that's beyond any expertise
18 that he may have. I don't think a lay person can testify to
19 that.

20 MR. MORTON: That's okay. I'll withdraw the question,
21 Your Honor.

22 Q There are two holes in this bag, right?

23 A Yes, sir. Well, yes, sir.

24 Q And are the holes -- how -- I guess what I'm asking is
25 does it seem to indicate that the path of the bullet that

Michael Morin - Direct examination
by Mr. Morton

1 entered this bag was almost horizontal?

2 A Yeah, they're, they're pretty close to being
3 horizontal, the two holes.

4 MR. MORTON: Okay. And, Your Honor, as I understand
5 it, I don't need to put this in evidence, right?

6 THE COURT: It's, it's in evidence in the case.

7 MR. MORTON: Yes, sir.

8 Q And do you remember, Mr. Morin, that there were, there
9 were blood droplets on this bag?

10 A I don't remember the bag.

11 Q Okay. You, never having done a death penalty case,
12 death penalty cases are different, would you agree with me
13 on that?

14 A They are.

15 Q Okay. Would you agree with me that there are resources
16 around the State and around the country from which you can
17 draw experts from in various fields?

18 A I think that goes for any case, but, yes.

19 Q Right.

20 And as far as the crime scene in this case --

21 A Uh-huh. (Affirmative).

22 Q -- did you hire an expert to review the evidence that
23 was collected?

24 A Yes.

25 Q Okay. And what -- do you remember meeting with him?

Michael Morin - Direct examination
by Mr. Morton

1 A I have a vague recollection, after I read my notes last
2 week, of going to Don, Don Girndt's house in Columbia and
3 meeting with him, and I remember that I provided him some of
4 the things, the things that were provided to me by the
5 State. But other than that, I have to rely on my notes as
6 to what was said or done because, before I read that in any
7 notes, and it's my handwriting, I know it's me, I, I had, I
8 didn't remember going to see him. But when I read that I
9 went to Columbia to see him, I remembered sort of where his
10 house is and I remember going there, but---

11 Q Do you remember meeting with him other than that one
12 occasion?

13 A That's the only time that I recall.

14 Q Okay.

15 A And that's, like I say, if it hadn't been for my notes
16 and you told me I went there, I would of probably disputed
17 it.

18 Q Was Mr. Girndt a crime scene reconstructionist expert?

19 A The only thing I remember about Mr. Girndt, and if I
20 may step over here just for a second, cause I may have his
21 CV and I may not. The only thing I remember, cause I didn't
22 see anything there, about Mr. Girndt was that he had
23 previously worked in law enforcement and I believe he worked
24 for SLED as an investigator and he had done some of this
25 work before.

Michael Morin - Direct examination
by Mr. Morton

1 Q Some of what you---

2 A Crime scene construction, deconstruction,
3 investigation, that kind of thing.

4 Q Okay. And do you know what his qualifications were
5 specifically as to crime scenes?

6 A That's why I was gonna see if I had his CV and I do
7 not. So, I do not know at this time.

8 Q Sorry.

9 (Pause.)

10 Q Do you remember Mr. Girndt -- I think you've already
11 testified you don't remember any other interaction with him
12 other than your one trip to Columbia?

13 A I don't think I---

14 THE COURT: Mr. Morton, is that name---

15 MR. MORTON: I'm sorry.

16 THE COURT: Is it Girndt?

17 MR. MORTON: Girndt. G-I-R-N-D-T.

18 THE COURT: Thank you.

19 Q Do you remember, again, whether, what his
20 qualifications specifically were?

21 A He just came from that list of experts that we got him
22 from. I don't remember what his exact experts were.

23 Q Okay. Do you, you -- so, again, you don't know whether
24 he was a ballistics expert?

25 A The best I recollect is he had experience in crime

Michael Morin - Direct examination
by Mr. Morton

1 scene investigation.

2 Q Okay.

3 A He wasn't a ballistics, I don't think. I mean he had
4 experience with firearms, but it wasn't like somebody you
5 get from SLED who test fires a gun I don't think.

6 Q Do you remember whether he was a blood spatter expert?

7 A I've told you what I remember about it.

8 Q Okay. I have to just go through---

9 A I understand. No, I don't remember that, if he was or
10 wasn't.

11 Q Did he consult with you in an attempt by you to try to
12 figure out the paths of any of these bullets or what the
13 shell casing locations indicated or---

14 A Well, in the course of talking about crime scenes and,
15 and the main reason that my notes indicate I was talking to
16 him was to try and determine where each, Mr., what the
17 evidence was showing where Mr. Mahoney and Mr. Moore were at
18 the time of the shooting. Where the bullets were going, who
19 was holding where, who was standing where, to try to get a
20 clear picture of what the state, and, and in the event that
21 Mr. Dorman or Mr. Clevenger were gonna present their
22 interpretation of it, I would be able to adequately
23 cross-examine them as to where these people were standing
24 aside from what Mr. Moore had told me.

25 I mean obviously Mr. Moore has told me consistently

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1 what his part, version was and that was fine. But I needed
2 to be able to have somebody telling me what their
3 professional opinion was so that, when I got to the point
4 where I was gonna be faced with cross-examining them, I
5 would have some education as to what that evidence may
6 reflect.

7 Q And do you feel like that you succeeded in that?

8 A I do from reading what I wrote.

9 Q Okay. Do you feel that -- you've read the transcript.

10 A I have read it over, yes, sir.

11 Q Does the transcript indicate to you that there was a
12 sufficient analysis done in front of the jury by a crime
13 scene reconstructionist or expert about the path or about
14 the location of these casings or---

15 A I don't understand your question. I, I think, I think
16 what you're asking is do I think that this -- I may be
17 wrong.

18 Are you asking me did the State do an adequate job in
19 presenting its case as far as where shell casings were?

20 Q Yes, sir.

21 A I'm sure, at the time, I felt like, I felt like they
22 didn't. Now, ten years later, even in the transcript, I, I
23 really -- I mean because I was attacking their, their
24 credibility of their witnesses and how they were claiming
25 that it happened, and, and I can remember back then thinking

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1 there's openings here as to their -- there's, there's holes
2 in this story.

3 Q As far as the physical evidence is concerned?

4 A I thought so.

5 Q And do you feel like that you exploited that
6 sufficiently?

7 A Yeah, I thought I did.

8 Q You didn't have a crime scene reconstructionist or any
9 crime scene expert testify?

10 A No.

11 Q Okay. You did put up testimony?

12 A Not in the guilt phase. I don't believe we did.

13 Q I think you put up Investigator Denton.

14 A Okay.

15 Q I don't want---

16 A I didn't read -- I guess I didn't read the transcript
17 for enough if I did it.

18 Q Okay. Do you remember that there was a shell casing
19 that was found, a .45 shell casing?

20 A On the counter.

21 Q There was -- do you remember there being a live bullet
22 found?

23 A Yes. I'm sorry. I do remember that.

24 Q Okay. Do you remember there being a shell casing from
25 a .45 found on Mr. Mahoney's side of the counter?

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1 A There may of been. I, you know, the thing about shell
2 casings is I knew going into that trial and know now it's
3 mainly they hit things and they go all over the place.

4 Q I understand.

5 A You can kind of tell which direction they're gonna go
6 out of the gun. But after that, they hit surfaces and
7 walls.

8 Q But obviously---

9 A But, but I don't know. There might of been one on both
10 sides or whatever. I remember the gun because that was the
11 whole, the stove pipe, they were grabbing for the gun, the,
12 the bullet would of got jammed. I remember that.

13 Q Okay.

14 A That's how a live round would of ended up on the
15 counter, you know.

16 Q Do you remember either arguing or cross-examining the
17 State's witnesses about State's Exhibit I believe it was No.
18 8, which was the .45 shell casing that was found behind the
19 counter?

20 A I don't. I'd have to rely on the transcript as to
21 whatever I did---

22 Q Okay.

23 A ---with regard to that shell casing.

24 Q If there had been a .45 shell casing found behind the
25 counter where Mr. Mahoney was---

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1 A All right.

2 Q ---would you have considered that testimony to be
3 important?

4 A Without knowing where the shell, the shot came from, I
5 mean it's not really important, I don't think, in the sense
6 that if -- you're asking me now. I'm giving you the answer
7 that I know right now.

8 Q I understand.

9 A I don't know---

10 Q I understand.

11 A ---what I was doing then. But right now I would say I
12 don't know because, as I stated, if I'm standing across that
13 counter from you and I fire a gun and the bullet comes, the
14 shell casing gets ejected, where it lands is, is based on so
15 many things, who's moving---

16 Q If an expert---

17 A ---what it hit.

18 MR. MABRY: Let me---

19 Q I'm sorry.

20 A All those things would come into play, how far his arm
21 was, where he was standing. The shell casing location in
22 that, in that confined space wouldn't tell me too much.

23 Q Do you think that it would have been important for an
24 expert to give you their opinion about the things that you
25 just testified to about shell casings and their locations

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1 and how they get there?

2 A After talking to Mr. Girndt, my notes indicate he had
3 an opinion about it.

4 Q About --?

5 A About where the shots were coming from and that kind of
6 thing.

7 Q Okay. And do you remember what that was based on?

8 A I had a meeting -- if I may back up. I had a meeting
9 with Doctor Carol McMahon, who teaches forensic pathology or
10 was teaching it, and Don Girndt, and we talked about
11 bullets, and where things were, and where the bullet wounds
12 to the victim were, and all that kind of thing. And their
13 position, those experts were saying they felt like the shots
14 were fired from inside the kitchen area, which would have
15 put Mr. Moore inside, in the back through the door. And if
16 you -- I know it's odd. But after all these years, some of
17 the things he's told me later on, but I remember that
18 counter and you take a, go to the right, and you go through
19 a door way. That's how you got back to where Mr. Mahoney
20 was. And what I've written in my notes was the fatal shot
21 came from inside the kitchen area, which is different than
22 him saying he was on one side of the counter.

23 So, once that happened, I was staying with what he
24 remembered cause he's gonna testify to it. I'm not gonna
25 call an expert to come and say he was somewhere other than

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1 where he was --

2 Q Okay.

3 A -- or where he said he was.

4 Does that make sense?

5 I don't want to go too far, but that's---

6 Q No, I understand.

7 A ---what I recall.

8 Q I understand.

9 A A lot of that just comes from my notes.

10 Q Do you recollect or did you talk to, before trial, the
11 State's crime scene analyst, Mr. Dorman?

12 A I don't remember speaking with him.

13 Q Did you know or explore his opinion as to the State's
14 own expert as to the likely reason that that .45 shell
15 casing was behind the counter?

16 A May I step and see what---

17 Q Sure.

18 A I---

19 THE COURT: Are you ready?

20 WITNESS: I am, sir.

21 THE COURT: Mr. Morton, he's ready to answer.

22 MR. MORTON: Okay. I'm sorry.

23 A Mr. Morton, I have, and the way the case file, when I
24 was putting it together, I broke it up by who's testifying
25 and what they had. So, I had four different files for Mr.

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1 Dorman.

2 One is his forensic, forensic unit field notes where
3 he's written down various things. Then there's a forensic
4 unit case report, which is a more formal report. Then there
5 is a property report, which looks like the things that he
6 collected, blood swabs and all that kind of things, and
7 there's blood, a swab collection drawing where he's drawn
8 the inside of the, the, Nikki's and numbered where he got
9 all that. So, I had all that and that's what I had, would
10 of had when Mr., I saw Mr. Girndt in Columbia.

11 Q Okay.

12 A And that's what I would of known. So, I guess that's
13 the answer to that.

14 Q Okay.

15 A Including his report, as I stated that.

16 Q When you say his report, you mean Mr. Dorman's report?

17 A Yes, it's an 11 page forensic unit case report.

18 Q Right.

19 A I had that.

20 Q And when you met Mr. Girndt, do you remember who else
21 was there?

22 Were you there -- I mean obviously you were there, but
23 was somebody else there or was it just you and Mr. Girndt?

24 A I don't know.

25 Q And does he have a report?

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- 1 A Doctor -- Mr., Mr. Girndt?
- 2 Q Right.
- 3 A No, I don't think so.
- 4 Q Okay. Do you recall the information that was given to
- 5 him?
- 6 A I, I know I would of had this, but I don't remember
- 7 what it is I gave to him. But I remember he had stuff, he
- 8 said I had faxed stuff to him, and he looked at it before I
- 9 went down there --
- 10 Q Okay.
- 11 A -- so he could be thinking about that.
- 12 Q You mentioned Doctor -- is it McMahon?
- 13 A I spelled it M-C-M-A-H-O-N and I pronounced it McMahon.
- 14 Q And who is she?
- 15 A She taught forensic, to my -- she, she's in the USC in
- 16 Columbia. She taught their forensic pathology I believe.
- 17 Q And did you testify -- did you say that you went down
- 18 and met with her?
- 19 A Yes.
- 20 Q Did you do that on the same day you met with---
- 21 A I believe I did.
- 22 Q ---as you met with Mr. Girndt?
- 23 A I believe that's what my notes say I did.
- 24 If I may?
- 25 On August 21st, 2009, 2001, I met with her at the USC

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1 School of Medicine there in Columbia from 9:50 to 10:20. We
2 talked about stippling, how close he was to the gun,
3 problems with the description is what I've written. And
4 then I wrote six to eighteen inches from gun. It's -- is it
5 a burn or abrasion on the collar?

6 Photos 18 through 24 through the shirt puts him no more
7 than 24 inches from the barrel of that gun to the entry of
8 the bullet. That's what I wrote as far as talking to her.

9 Q Okay. And what are -- what do you -- do you have down
10 there -- do you have her CV or her qualifications?

11 A I have her CV. I've seen it when I went through these
12 files, but I don't -- it's not in the main file there. It's
13 in one of those over there that I glanced at on Friday.

14 Q Okay. And do you remember her experience or her
15 qualifications other than she's a forensic pathologist or is
16 she a forensic pathologist?

17 A It struck me she had worked at -- I don't remember.
18 I'll just be guessing here.

19 THE COURT: If you want to step down and get her CV,
20 you have the right to refresh your memory from your file.
21 Go ahead.

22 WITNESS: Now, I apologize to the Court. Those files
23 are not in as a good order as these.

24 THE COURT: Okay. All right.

25 WITNESS: I'll check right here first, but --.

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1 (Pause.)

2 THE COURT: Is the name Carol McMahon?

3 WITNESS: Yes, sir.

4 THE COURT: We're off-the-record.

5 (WHEREUPON, an off-the-record discussion was held at
6 this time.)

7 WITNESS: I found the resume for two other people, but
8 not to her.

9 THE COURT: Okay.

10 WITNESS: Maybe that's to what I was referring cause I
11 can't find it, judge. I apologize. I can't locate -- I
12 thought that I'd seen -- I saw the resumes of some other
13 people that worked on the case over there. I must of been
14 confused.

15 Q Do you remember talking to her more than that one time?

16 A No, that was the only time I talked to her. I mean I
17 might of spoken to her on the phone and sent her the
18 autopsy, faxed her the autopsy as I did with Mr. Girndt so
19 he'd have the documents before I got there, and then I went
20 down there and spoke with her.

21 Q Back to Mr. Dorman, do you remember talking to him
22 before trial?

23 A No, sir.

24 Q You don't remember---

25 A I don't remember.

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1 Q ---or you didn't?

2 A I don't remember.

3 MR. MORTON: Okay. And I don't know, Your Honor, after
4 checking with the court reporter that his report has been
5 entered, and I would like to do that now if that would be
6 okay, Mr. Dorman's report?

7 THE COURT: You want to take a look at what he wants to
8 put in?

9 MR. SALTER: Yes, sir, Your Honor, please.

10 MR. MORTON: Your Honor, with the State's permission
11 and with your permission, I would like to show this to Mr.
12 Morin while we find a cleaned copy.

13 THE COURT: Okay. You can ask him if, you know, if
14 he's familiar with it.

15 Q Would you have been provided with that?

16 A This is the 11 page -- yes, this is the 11 page report
17 that Mr. Dorman, that I referred to when I had his stuff
18 out. You've got it out of order, but I think that's all of
19 it.

20 Q Okay. And Richard consistently maintained that Mr.
21 Mahoney fired at him, that there was a struggle for the gun,
22 and the .45 was fired at him?

23 Do you remember that?

24 A I obviously know that Mr. Mahoney fired at Richard. I
25 don't remember the sequence.

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1 Q Okay.

2 A I -- because my recollection was, is Mr. Moore was
3 defending himself from getting Mr. Mahoney shooting him with
4 the first gun, and Mr. Moore got the gun from him, and then
5 Mr. Mahoney shot him with the second gun is the way I
6 remember it.

7 Q Okay. Would it have been important to you if you were
8 able to have an expert come to court and say that, from his
9 analysis of that crime scene, especially as it relates to
10 the shell casing behind the counter, when I say behind I
11 mean on Mr. Mahoney's side, and from also looking at the, at
12 the blood spatter, that it indicated to him that the .45 was
13 fired as it was shooting out toward the customer side?

14 Would that have been important?

15 A Without any more thoughts than what you've gave me, I
16 don't know that it would have.

17 Q Okay. Would it have indicated, if that were the
18 testimony, would it have indicated, again, that the .45 was
19 fired from the service side of the counter?

20 THE COURT: When you say the service side, are you
21 talking about the kitchen side or---

22 MR. MORTON: Kitchen side, yes, sir. I'm sorry.

23 THE COURT: The kitchen side.

24 A Mr., Mr. Mahoney shot Mr. Moore.

25 Q I understand.

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1 A Mr. Mahoney was on the service side. So, I don't
2 know---

3 Q Mr., and Mr. Mahoney was on the kitchen side?

4 A Oh, I'm sorry. Kitchen side.

5 Q Right.

6 A I don't -- I thought service, you meant he was doing
7 service.

8 Q Well---

9 A Mr. Mahoney was on one side of the counter and
10 Mr. Moore was on the other.

11 Q Right.

12 A And Mr. Mahoney shot Mr. Moore.

13 Q Right.

14 A And he shot him while he was standing on the kitchen
15 side.

16 Q Right.

17 A So---

18 Q There was also testimony from Mr. Hadden, correct?

19 A Yes.

20 Q Who said that Mr. Moore fired at him?

21 A I believe that's what this transcript says, and I
22 believe I remember him saying something to that effect.

23 Q Okay.

24 A Pointing the gun or shooting the gun or something.

25 Q Right.

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1 And there was a -- do you remember that there was a .45
2 bullet that was found out in the parking lot having
3 ricocheted off the poker machine?

4 A There was something in the parking lot. I don't
5 remember if it could be, if -- I'd, I'd rely on, on the
6 notes and the, the reports. But I don't remember if that
7 bullet could be identified as being from either one of the
8 guns.

9 Q Could it have been reasonably argued, based on the
10 testimony, based on the testimony, if an expert said the .45
11 was fired from the kitchen side headed out --

12 A Uh-huh. (Affirmative).

13 Q -- and if that bag that was on the counter were Mr.
14 Moore's beers indicated a pretty much horizontal shot going
15 from the kitchen side to the customer side?

16 A Uh-huh. (Affirmative).

17 Q And if there was a .45 bullet found in parking lot --

18 A Uh-huh. (Affirmative).

19 Q -- would that have been important, do you think, to
20 present?

21 A To my recollection, that testimony that you just
22 described would have, for the most part, been what Mr., we
23 were saying.

24 Q Okay.

25 A It'd been what the State was saying. I mean everybody

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1 agreed that they both shot at each other.

2 Q well---

3 A And everybody agreed that both guns were Mr. Mahoney's,
4 and everybody agreed that Mr. Moore had to take one of the
5 guns, or they didn't agree he had to take it, but they
6 agreed he did take it, and I felt, as Mr. Moore said, if
7 faced with -- and you're asking me the difference between
8 the .45 and the .44, I don't remember which one came out
9 first, but both guns came from the kitchen side. Both
10 people fired at each other, and both people, at that point,
11 both people were defending themselves.

12 Q And Mr. Moore had always indicated to you that there
13 were two shots fired at him by Mr. Mahoney?

14 MR. SALTER: Your Honor, I'll object to leading.

15 THE COURT: Just one second before you answer that
16 question.

17 MR. MORTON: What---

18 THE COURT: Is that an objection?

19 MR. SALTER: Yes, sir, Your Honor, leading---

20 THE COURT: And what was the objection?

21 MR. SALTER: Leading.

22 THE COURT: Well, I'm not gonna -- it was a leading
23 question.

24 Refresh my memory, Mr. Morton, just for the Court's
25 purposes---

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1 MR. MORTON: Your Honor, Mr. Moore testified that Mr.
2 Mahoney got the .45 after asking Mr. Moore to leave.

3 THE COURT: Yes, sir.

4 MR. MORTON: And that Mr. Moore indicated he wasn't
5 leaving. And that Mr. Mahoney got the .45 out from
6 underneath the counter.

7 THE COURT: He grabbed it.

8 MR. MORTON: And pointed at him and he grabbed it.

9 THE COURT: Yes, sir.

10 MR. MORTON: And when he did, a bullet came out as I
11 remember the testimony.

12 THE COURT: A shot -- one shot was fired and then he
13 said it jammed.

14 MR. MORTON: Right, one shot from the .45.

15 THE COURT: But your question was two shots.

16 MR. MORTON: Right, yes, sir, because---

17 THE COURT: And I didn't understand that that squared
18 with the facts. Now, there was another shot later fired.

19 MR. MORTON: Yes, sir.

20 THE COURT: Because the .44 had a bullet---

21 MR. MORTON: Yes, sir. Yes, sir.

22 THE COURT: ---leave it.

23 MR. MORTON: Yes, sir.

24 THE COURT: But your question didn't distinguish
25 between how many shots were fired from each gun. So, I

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1 found it to be a little bit misleading on the facts that are
2 in the record of this case at this point in time.

3 MR. MORTON: Well, Your Honor, you know---

4 THE COURT: So, I want to be fair with the witnesses.

5 MR. MORTON: I want to be fair too.

6 THE COURT: Ask him questions that are based on the
7 facts.

8 MR. MORTON: Yes, sir.

9 THE COURT: What's been testified to as far as what you
10 and I agreed upon is that Mr. Moore indicated that the gun
11 was presented, he grabbed it, at that time it went off, I
12 assume pointed in his direction, the way I heard the
13 testimony. He said it then jammed. He got it from him and
14 that he went for the other gun and fired at him again.

15 MR. MORTON: Yes, sir.

16 THE COURT: So, there was two different guns firing one
17 shot each.

18 MR. MORTON: At that point.

19 THE COURT: Well, your question was there was two, two
20 bullets fired and you didn't distinguish between .45's or
21 .44's.

22 MR. MORTON: Okay. Well---

23 THE COURT: I think that's a pretty important
24 distinction---

25 MR. MORTON: Yes, sir.

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1 THE COURT: ---in my mind of what I heard so far.

2 MR. MORTON: All right, sir.

3 THE COURT: So, I want to be fair with this witness as
4 to what's in the record thus far.

5 MR. MORTON: Yes, sir.

6 THE COURT: So, that's my concern and I've expressed
7 it.

8 Go ahead.

9 MR. MORTON: Okay.

10 Q If Mr. Moore's contention was that the .45 was shot at
11 least one time from the kitchen side of the counter toward
12 him and toward the customer side of the counter, and if that
13 bag indicated that a shot had been fired from the kitchen
14 side through that bag, okay?

15 A Okay.

16 Q Okay. And if -- and, in fact, they found a .45 bullet
17 that would have come from that direction.

18 A Okay.

19 Q Okay. As well as Mr. Moore being shot in the arm.

20 A Right.

21 Q Okay. Would the testimony and would the expert opinion
22 of the crime scene expert been important to you to
23 substantiate that?

24 A Okay. So that I follow you, you're saying that if
25 there was a bullet that they could track to the .45, and if

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1 there was somebody who could say that it was fired by Mr.
2 Mahoney or in Mr. Mahoney's position, and if they could use
3 the bullet hole through the back to line-up where he would
4 have been when he fired that shot, would that have been
5 important?

6 And, again, I'm trying to remember what I remembered
7 then because, over the years, I've thought about the case
8 and I know what Mr. Moore has told me, and I know, you know,
9 and I don't know, at this point, I really -- what my memory
10 of it is may be different than what actually Mr. Moore told
11 me because I remembered it, I've thought about it, and that
12 kind of thing.

13 But getting to your question, I remember that there was
14 a fight about that .45, and that, and our argument was that
15 that bullet, live round on the counter was evidence that
16 that was, there was a thing because if he grabbed that and
17 the bullet came up and it got jammed in there, would of come
18 out, but beyond that, I don't remember what we were arguing
19 because that's the only way I know that the first gun was
20 the .45, that that's where the argument came from cause that
21 part I remember.

22 Q Okay.

23 A And, therefore, I know that the .45 had be first, and I
24 remember Mr. Mahoney had a second gun somewhere in his back
25 or was known to have it or that's where he kept it. So, I

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1 guess your, the answer to your question is, is if somebody
2 was gonna come into Court and testify that Mr. Mahoney fired
3 a shot at Mr. Moore, would that have made a difference?

4 Is that what your question?

5 Q From the .45 or that the .45 had gone off from where
6 Mr.---

7 A I don't, I don't know that it would of made a
8 difference.

9 Q You don't know that it would have?

10 A No, sir.

11 Q Okay. would that have explained the .45 that they
12 found out in the parking lot potentially?

13 A It -- what -- then -- if they can say that the bullet
14 passed through the bag---

15 Q Well, forget the bag.

16 A Because if you don't---

17 Q We'll get back to the bag.

18 A All right. The reason I say that is because the State,
19 the State's---

20 THE COURT: I'm gonna allow the witness to answer the
21 question.

22 MR. MORTON: I'm sorry.

23 THE COURT: Don't tell him how to---

24 MR. MORTON: I'm sorry, Your Honor.

25 THE COURT: ---answer it.

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1 A The State's witness is saying that he pointed the gun
2 at him and fired. The gun would of been the .45.

3 Q Right.

4 A So, unless the witness would be able to testify that
5 the bullet went through the bag, because then it would of
6 been coming from Mr. Mahoney's side, you follow me?

7 Because Mr. Moore would of been on that side. So, your
8 expert witness, as I understand you telling me, would have
9 to not just say the bullet came from the .45, and not just
10 say it came from that direction. He would have to say that
11 it came from that side of the counter. That's what he would
12 have to say. And if he could say all that, then that would
13 of discredited Mr. Hadden's testimony that he saw it. But
14 Mr. Hadden was questionable. But, anyway, that -- I guess
15 that's your answer.

16 Q If that were the testimony --

17 A Yes.

18 Q -- that could have been used to discredit---

19 A Mr. Hadden.

20 Q ---Mr. Hadden?

21 A That's correct.

22 Q It could also have been used to substantiate what
23 Mr. Moore had been telling you?

24 A Well, I didn't need Mr. Moore---

25 Q Oh, I'm sorry. No, no---

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1 A ---to substantiate it to me.

2 MR. SALTER: Your Honor, I'm gonna ask---

3 MR. MORTON: I'm sorry. I don't, I don't mean to
4 interrupt, Your Honor. I apologize.

5 THE COURT: Go ahead and finish your answer.

6 Have you finished your answer?

7 WITNESS: I think he was saying would it substantiate
8 it. He didn't have to convince me Mr. Moore was telling me
9 the truth.

10 Q Okay. Would that have made a difference -- but to
11 summarize, if an expert could, would have come in, knowing
12 what you know now, and said that the .45 bullet came from
13 where Mr. Mahoney would of been standing, and there was a
14 .45 bullet found in the direction that that .45 would of
15 been shot in the parking lot, that would have helped
16 discredit Mr. Hadden?

17 A Yes.

18 Q Okay. And the evidence of that is if an expert had
19 testified as such---

20 MR. SALTER: Your Honor, I object. He's still leading
21 the witness.

22 THE COURT: Well, he's asking a hypothetical question
23 at this point in time on if an expert were to testify in a
24 certain fashion. That's, that was the beginning of it. So,
25 it's hypothetical.

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1 Go ahead.

2 Q If a person were to testify that the location of that
3 shell casing indicated that it more than likely came from a
4 place in the kitchen where Mr. Mahoney would have been
5 standing, would that have, or would have been from the
6 struggle over the gun, would that have been important?

7 THE COURT: I'm gonna ask the attorneys to approach.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: All right. You may proceed.

10 Q If -- Mr. Morin?

11 A Uh-huh. (Affirmative).

12 Q There was testimony from an expert which indicated, and
13 I'll try and take this step-by-step, that that there was a
14 shell casing behind the counter, probably fired from where
15 Mr. Mahoney was, would that have been important?

16 A I'm hesitating because you're using the word probably.
17 It could of probably done a lot of things, and it would
18 require, under your hypothetical, it would require the
19 expert to say that, in his expert opinion, that that bullet
20 came from the .45 and that it went in that direction. And
21 if you could -- well, I, sir -- if you could get somebody to
22 say that, it would discredit Mr. Hadden's allegation that he
23 saw Mr. Moore point the gun at him.

24 But if you're saying the expert's gonna say he probably
25 or it could have, as I stated before about my own knowledge

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1 of it, much less Mr. Dorman's, Mr. Clevenger's, or your
2 expert---

3 Q Yeah, well, I respectfully -- I don't want to interrupt
4 you.

5 A Well, that's my answer.

6 Q Well, you know, your, your lay opinion is---

7 A Well, I understand.

8 Q ---not -- okay.

9 A But my professional opinion is, is if you're gonna have
10 an expert who's gonna hypothetically testify where a bullet
11 came from, he better be able to say it came from there, not
12 probably.

13 Q Okay. If the testimony -- and, again, judge, I
14 apologize.

15 My recollection of the testimony --

16 A Okay.

17 Q -- from a crime scene expert --

18 A Uh-huh. (Affirmative).

19 Q -- in fact, he was the State's crime scene expert --

20 A Okay.

21 Q -- was that due to the location of the blood of
22 Mr. Moore in the kitchen --

23 A Right.

24 Q -- and due to the location of the shell casing that
25 they found in the kitchen --

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1 A Okay.

2 Q Okay. That that shell casing most likely would not
3 have been fired by Mr. Moore when he was in the kitchen.

4 A Is that what the testimony was?

5 Q If that's, if that's his, if that's his testimony,
6 would that be important?

7 A Okay. Now---

8 MR. SALTER: Your Honor, I think we need to clarify
9 because that's Mr. Dorman's testimony this morning. It's
10 not what he testified to at trial and we take issue as to
11 whether or not---

12 THE COURT: You agree that that's the case?

13 MR. MORTON: Sure. Yes, sir.

14 THE COURT: Okay. That's in the record now.

15 MR. SALTER: Thank you, Your Honor.

16 THE COURT: Thank you.

17 Q That would of been important though if that were, in
18 fact, his testimony.

19 A Okay.

20 Q Okay.

21 A Now you're gonna have to go back because I'm not sure
22 which, which hypothetical question you're testifying to.

23 Q Okay. I'm gonna try to break it down. I'll break it
24 down as best I can.

25 If there was crime scene expert --

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1 A Yes.

2 Q -- who, in fact, was the State's crime scene expert --

3 A Okay.

4 Q -- who would have testified at trial --

5 A Yes.

6 Q -- that the location of the shell casing that was
7 found, the .45 shell casing, that was found in the kitchen
8 area --

9 A Uh-huh. (Affirmative).

10 Q -- most likely, because of the blood that was also
11 found in the kitchen --

12 A Uh-huh. (Affirmative).

13 Q -- most likely not fired by Richard Moore being in the
14 kitchen.

15 MR. SALTER: Your Honor, again, we would interpose the
16 same objection we raised earlier that that would go beyond
17 the qualifications of Mr. Dorman to render such an opinion.

18 MR. MORTON: Well, Your Honor?

19 THE COURT: I think he testified to it --

20 MR. MORTON: Yes, sir.

21 THE COURT: -- already. The objection wasn't raised at
22 that point in time.

23 Go ahead.

24 A All right. Now, I, I think I understand your
25 hypothetical.

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1 Q Okay.

2 A But let me make sure I understand it.

3 Q Okay.

4 A You're saying what if the State's witness said that the
5 .45 was fired from inside the kitchen?

6 Q And if I can expound on that, and---

7 THE COURT: Attorneys approach please.

8 (WHEREUPON, a bench conference was held at this time.)

9 THE COURT: Yeah, step outside, Mr. Morin.

10 WITNESS: Yes, sir.

11 (WHEREUPON, a bench conference was held at this time
12 and the following takes place outside the hearing of Mr.
13 Morin.)

14 THE COURT: All right. At the two, last two side bars,
15 bars, I have cautioned the Applicant's attorney concerning
16 hypothetical questions, and I have indicated to him that it
17 is the Court's understanding that if hypothetical questions
18 are going to be used, it's necessary to include all of the
19 facts that are in the record that would bear on the
20 hypothetical question that's being asked, and in this
21 particular case, you're referring to the one shell casing
22 that was found inside of the kitchen from the .45.

23 I was pointing out to you that there were numerous
24 other, and I think the number is six, other shell casings
25 that were found outside of the kitchen from the .45, and

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1 that was not mentioned to the witness that, of the seven .45
2 shell casings, one of them was located in the kitchen and
3 the opinion from the other witness would of been that that
4 indicated it was fired inside the kitchen, from the kitchen
5 side.

6 There's a concern that the State has concerning this,
7 and, again, I was cautioning counsel to, that this
8 particular witness -- and my primary concern is this witness
9 had been sequestered, has not been presented during the
10 hearing, has not been privy to what's been put into the
11 record, and it's somewhat an unfair situation because he's
12 unaware of what's in the record of this hearing, and,
13 therefore, can not speak as to other evidence that it might
14 be in the record that would bear on the question.

15 So, I'm particularly sensitive about this because it
16 was at the, the Applicant's request that he's been
17 sequestered. So, I think he's in a somewhat of an unfair
18 situation here being asked about matters that are in the
19 record that he hasn't heard before and has no knowledge of.
20 So, that's been my concern about the hypothetical
21 questioning that's been, that's going on at this time.

22 Mr. Mabry, you indicated you had a concern as well.
23 So, put that on the record.

24 MR. MABRY: Well, yes, sir, we -- our concern, on
25 behalf of Mr. Salter and I is, it's twofold there. As the

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1 Court said, he hasn't been in here. He hadn't heard Mr.
2 Moore's testimony.

3 Based on my conversations with the witness or our
4 conversations with the witness, I'm not sure what Mr. Moore
5 told this witness before trial is exactly what he told in
6 here in court. So -- and he's been, he's been told by
7 counsel what Mr. Moore said in here, and that may confuse
8 him.

9 And not -- and then number two, Mr. Dorman, if he
10 had -- it's not questioned what Mr. Dorman testified to here
11 today. It's a question whether Mr. Dorman could have
12 testified at the trial. He's not a firearms expert. He
13 hasn't tested these weapons. He doesn't have the expertise
14 to say where a shell casing would have landed if, where a
15 gun was fired.

16 The State could of objected, and at PCR, you've got to
17 show that the testimony would have been admissible at trial.
18 Not just that it would of come in at the PCR.

19 So, I think you got to, and not only that, but Mr.
20 Dorman testified here today that it's also possible that the
21 gun was fired by Mr. Moore behind the kitchen counter. It
22 could have ricocheted off the body or something else in the
23 kitchen or been kicked by somebody and ended up where it did
24 in the kitchen.

25 So, there's a lot of possibilities. Mr. Dorman wasn't

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1 as categorical as they're representing his testimony to be.
2 I don't think the hypothetical is a fair question.

3 THE COURT: Hear from you, Mr. Morton.

4 MR. MORTON: Your Honor, first of all, I was trying to
5 pose, believe it or not, the simplest hypothetical that I
6 could with the intent of going through the other shell
7 casings that Your Honor has expressed a concern about. I
8 wasn't trying to, and, of course, they can cross-examine
9 him. I wasn't trying to be, trying to be to scale. I
10 wasn't trying -- cause I wanted to explain the other shell
11 casings. I was trying my best to relate Mr. Dorman's
12 testimony as to the .45 shell casing and where it was most
13 likely fired from.

14 THE COURT: Did Mr. Dorman give that opinion at trial?

15 MR. MORTON: No, sir.

16 THE COURT: Okay.

17 MR. MORTON: And as to that, had he been properly
18 talked to or consulted or examined or had Mr. Morin had his
19 own expert -- this is the State's expert. It's especially
20 powerful coming from the State's expert.

21 THE COURT: Well, now---

22 MR. MORTON: Had that come out at trial---

23 THE COURT: Well, now, again -- again, now, Mr. Dorman
24 is a CSI, and he qualified his testimony this morning saying
25 he wasn't a ballistics expert, and he really couldn't give

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1 opinions on those issues. So, I do recall that testimony as
2 well this morning.

3 MR. MORTON: Well, Your Honor---

4 THE COURT: But that's what -- we're getting into the
5 weight. My concern is the line of questioning, using
6 hypotheticals when this witness wasn't present in court,
7 and, again, my concern is that they, they don't fully
8 explain the entire situation, the questions that I've heard
9 thus far as far as placing what I consider to be relevant
10 information.

11 Specifically, the first question that I objected to and
12 called you up about was concerning the shot that would of
13 come from behind the service area, from the service area out
14 toward the poker machines. The testimony that's in the
15 record is that there were two bullet strikes in that corner.

16 Now, one of them they found a metal jacket in. They
17 didn't find the bullet. That was in the corner, splintered
18 a piece of wood. The other one hit the, hit the poker
19 machine, and Mr. Dorman testified it went through the
20 window, hit a car in the parking lot, and was found in the
21 parking lot. But there were at least two bullets or two
22 parts of a bullet or two something hit that corner coming, I
23 assume, only place I heard any testimony about guns being
24 fired, would of been either on the customer side or the
25 service side of the counter, and you were relating to him

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1 that there was one shot fired. It would of had to have gone
2 through the bag, and then the one that would of been fired
3 at Mr. Hadden, and it would of been the one that went
4 outside, and I'm indicating to you the record says there's
5 two things that struck in that corner.

6 One of which could of been, hypothetically, when they
7 were struggling with the gun, the gun went off, one bullet
8 went in that direction. Mr. Hadden may not even know that
9 came in his direction. Your client could of then gotten the
10 gun, and pointed the gun, and fired it in his direction.
11 That would account for two strikes in the corner.

12 MR. MORTON: Or not, Your Honor.

13 THE COURT: Or not. That's what I'm saying.

14 MR. MORTON: Your, your---

15 THE COURT: But that information wasn't provided to the
16 witness that there were possibly two strikes in the corner
17 when that evidence is in the record.

18 MR. MORTON: I'll be glad to provide that to him, Your
19 Honor.

20 THE COURT: That was my concern on the first question.

21 MR. MORTON: I'll be glad to provide it to him. We
22 can---

23 THE COURT: On the second question, we're talking about
24 the shell casing that's in the kitchen. You're indicating
25 there was one in the kitchen, but then there are also six on

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1 the outside. His memory is somewhat sketchy. It's been ten
2 years. I understand that and I'm not trying to limit your
3 examination although you are on direct.

4 I am trying to, however, follow the rule that says if
5 you're going to question using hypothetical questions, you
6 must include everything in the record that would bear on the
7 hypothetical question. You can't pick and choose your facts
8 and you---

9 MR. MORTON: I'm not.

10 THE COURT: ---get a certain answer on that.

11 MR. MORTON: Yes, sir.

12 THE COURT: But that's what I'm concerned is occurring
13 here, and I'm not going to allow it. That's all I'm gonna
14 say. In other words, I want to see that all the facts --
15 when you frame a hypothetical question, you got to be
16 careful. Put everything in it that's relevant to that
17 question, and that's what I'm asking you to do.

18 MR. MORTON: Yes, sir.

19 With -- can I respond?

20 THE COURT: Yes, sir.

21 MR. MORTON: With all due respect, everything that is
22 relevant to that hypothetical question is open for
23 discussion. Just because they were other shell casings
24 found in the, on the customer side of the, of the counter,
25 it does not necessarily held -- does not have anything to do

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1 with the shell casing that was found on this side of the
2 counter. That's all I'm trying to get at is what Mr. Dorman
3 said most likely was the reason for that shell casing being
4 where it was without having any discussion about the other
5 shell casings. I'll be glad to get into that too.

6 And, Your Honor, with all due respect, there were two
7 bullets fired in that, found on the customer side of the
8 counter. Mr. Dorman also testified that he could not find
9 the bullet that hit in the corner. He testified that there
10 was a bullet in the parking lot. He testified that there
11 was a bullet in the area just adjacent to the Coke display,
12 which could be the second bullet. Not three bullets. Two
13 bullets.

14 THE COURT: Well, I've tried a lot of murder cases and
15 I've tried a lot of cases where guns are fired. They don't
16 find all the bullets, and---

17 MR. MORTON: Your Honor?

18 THE COURT: Now that happens.

19 MR. MORTON: I'm---

20 THE COURT: It's, you know, when they're fired, they go
21 a lot of places.

22 MR. MORTON: Your Honor, and that's certainly---

23 THE COURT: And there's no question though that there
24 were two strikes in that corner.

25 MR. MORTON: Well, Your Honor, the fact that they

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1 don't---

2 THE COURT: One of them may of been a ricochet. I
3 don't know. I'm just saying that, that I have a problem
4 with your line of questioning. I'll continue to have that
5 problem unless you include all of the facts that are in the
6 record that bear on the question. I've made my ruling. You
7 can proceed.

8 MR. MORTON: Your Honor?

9 THE COURT: Call the witness back in.

10 MR. MORTON: Can I suggest -- can I have a suggestion?

11 THE COURT: To me?

12 MR. MORTON: Can we just replay Mr. Dorman's testimony
13 for the witness?

14 THE COURT: The entire testimony of Mr. Dorman?

15 MR. MORTON: As to the facts as the .45 shell casings
16 and as to the---

17 THE COURT: Yes, sir.

18 MR. SALTER: We object. He moved to have everybody
19 sequestered. It's been my practice, in the past, to have
20 trial counsel sit in here for to avoid precisely this kind
21 of problem. We would object to now having all Mr. Dorman's
22 testimony played back, your Honor.

23 THE COURT: It's under an order of sequestration. I'm
24 gonna take about a five to ten minute break.

25 (WHEREUPON, a short recess was taken at this time.)

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1 THE COURT: All right. I'll ask Mr. Morin retake the
2 stand. Ask Mr. Morin to come back in and retake the stand.
3 Thank you.

4 (Pause.)

5 THE COURT: Mr. Morin, please retake the stand for me.

6 (WHEREUPON, the witness returns to the stand.)

7 THE COURT: Once he returns to the stand, Mr. Morton,
8 you may proceed with your direct.

9 MR. MORTON: Thank you.

10 CONTINUED DIRECT EXAMINATION

11 BY MR. MORTON:

12 Q Mr. Morin, if the crime scene analyst or the
13 reconstruction expert would have testified at trial that
14 there was a .45 shell casing in a location which would
15 indicate to him was fired not by Mr. Moore going around the
16 counter because the expert, having looked at the blood
17 dropping, okay, but would have been fired from where the
18 struggle over the gun occurred, from the, from the, from the
19 kitchen going out, would that have -- would you like to have
20 known that?

21 A The part about it going out I would have.

22 Q Okay.

23 A The part about in the kitchen, from reviewing my notes
24 during the break, apparently I did know about it, but not in
25 the manner in which you're asking. So, yeah, I would of

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1 liked to have known that the .45 was going out.

2 That's your question?

3 Q Well, that's part of the question.

4 A Okay.

5 Q Okay. And the other part of the question was from
6 where it was going out, most likely according to the expert,
7 would that have been important to you if the expert had said
8 that most likely it would have been coming not from
9 Mr. Moore going around in the kitchen, but from where Mr.
10 Mahoney would have been?

11 A Okay. So, this hypothetical, he's gonna testify that
12 Mr. Moore couldn't have fired the shot, Mr. Mahoney had to?

13 Q That's the implication from the hypothetical.

14 A Once again, if, if he could do that, then he would help
15 discredit Mr. Hadden's testimony.

16 Q And that would have been important to bring out, at
17 trial if he would have testified at such --

18 A Uh-huh. (Affirmative).

19 Q -- that would have been important?

20 A Insofar as it would of --?

21 Q Gone---

22 A ---gone to discrediting or adding---

23 Q Right.

24 A ---something to discredit Mr. Hadden.

25 Q Okay. Now, there were other shell casings, .45 shell

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1 casings, on the customer side of the convenience store.

2 A To my recollection, there were shell casings and just
3 from what I just saw Mr. Dorman's drawings and saw, saw some
4 of the dots, that kind refreshed it a little bit, but they
5 were pretty much -- they were in different places as far as
6 I can remember.

7 Q Okay.

8 MR. MORTON: I apologize, Your Honor.

9 THE COURT: That's all right.

10 (Pause.)

11 Q Mr. Moore indicated to you that---

12 MR. SALTER: Your Honor, I'm gonna object. He can't
13 ask what Mr. Moore indicated to him.

14 Q If the evidence at trial---

15 A Yes, sir.

16 Q ---were such, okay, that State's Exhibit No. 4, was an
17 unfired .45 bullet that was found on the counter --

18 A Right.

19 Q -- would that be important in your analysis to, to know
20 and understand?

21 A It's my understanding that that bullet got there when
22 they fought over the .45 and Mr. Moore had to try and take
23 it away from him, and the action went and it came out.

24 Q What I, what I, if---

25 A I---

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1 Q Let me, let me -- yeah. Okay.

2 A I, I -- my recollection is that's one of the theories I
3 had that I kept in my memory.

4 Q Okay. So, would the location of all of the bullets,
5 all the fragments, all the shell casings, and their location
6 in the store, was that important to you, as a defense
7 attorney, defending this case?

8 A Some of them.

9 Q Okay. Explain that for me.

10 A If the shell casings or the bullet is close to where I
11 believe the gun was, then it couldn't have gone anywhere.
12 In other words, if I'm holding the gun, and the bullet comes
13 out, goes right here, it didn't hit the floor and bounced
14 back-up. It fell out here. However, if you're talking
15 about shell casings that are spread out where people are
16 moving, and they're hitting doors, and, like I said before,
17 the walls -- the farther away they get from them, the less
18 it's gonna be able to tell because he could of kicked them.
19 Anything could of happened.

20 So, I mean you can argue anything you'd like, but the
21 question is do all of their locations mean something, and
22 some of them mean more than others.

23 Q Would it be important for you, as a defense attorney
24 defending a death penalty case, to know as much as you could
25 about those shell casings and, and where they were found?

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1 A Yes, sir, and that's why I went to see Don Girndt.

2 Q Okay. And was he able to explain that to you?

3 A His explanation, sir, was that Mr. Moore fired a fatal
4 shot from inside the kitchen. I didn't care for that
5 explanation, based on the blood. As I wrote in my notes, if
6 I may, it is the opinion of Doctor McMahon and Girndt that
7 the fatal shot came from inside the kitchen area, and then I
8 went on and said this is based on -- this will not work due
9 to the blood, the money, and the stippling. That was a
10 meeting, and by the way, at Mr. Girndt's house with Doctor
11 McMahon.

12 Q If an expert would of testified contrary to that, would
13 that have been important?

14 A If I got a different expert to say something different,
15 it would have, yes, sir.

16 Q Okay. And it would have been even more important if
17 the State's own expert said that, correct?

18 A If the State's expert had said that Mr. Mahoney fired
19 the .45 that Mr. Hadden was saying that Mr. Moore fired, is
20 that the question?

21 Q No.

22 A I'm sorry.

23 Q Cause I think -- I don't, I don't want to put---

24 A I'm not---

25 Q ---words into the hypothetical that I don't think were

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1 testified to.

2 A Okay. would you repeat the question?

3 Q Okay. If an expert, if the State's expert had
4 testified that what Mr. Girndt told you was not his opinion,
5 would that have been important?

6 A If, if it helped us it would.

7 Q well, would it help you?

8 A well, I don't know. what -- it could be a lot of
9 things, Mr. -- I'm not trying to be evasive, and I'm trying
10 to remember. But you're saying would it have helped, but
11 you're not telling me what it would of said.

12 Q Okay. Let me go over the evidence---

13 A Okay.

14 Q ---as best we can determine.

15 A Yes, sir.

16 Q Okay. Do you agree or disagree, okay, that State's
17 Exhibit No. 4---

18 A Which was?

19 Q An unfired .45 bullet.

20 A Okay.

21 Q Okay. was found on the counter?

22 A Yes.

23 Q You agree with that?

24 A Yes.

25 Q Okay. Do you agree that there was a .45 shell casing

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1 found in the overturned chip and candy container on the,
2 Mr. Moore's side of the counter?

3 A If that's what the evidence says.

4 Q Okay.

5 A All right. I, I remember the unfired bullet. The only
6 reason -- I don't want to say I remember something I don't.

7 Q Okay. If there was further testimony --

8 A Yes.

9 Q -- okay, by State's witnesses --

10 A Uh-huh. (Affirmative).

11 Q -- that there was another .45 shell casing --

12 A Uh-huh. (Affirmative).

13 Q -- okay, State's Exhibit 6 --

14 A Okay.

15 Q -- okay, that was found just right of the women's
16 bathroom door.

17 A Okay.

18 Q Okay.

19 A I'm, I'm not sure where that is, but---

20 Q Okay.

21 A ---okay.

22 MR. MORTON: And I'm, I'm showing to him, Your Honor,
23 State's Exhibit, Applicant's Exhibit No. 6.

24 THE COURT: All right.

25 MR. MORTON: -- is which a blown-up photograph of

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1 photographs that were taken I believe by Mr. Dorman at the
2 scene.

3 Q Okay?

4 A All right.

5 Q Now, do you see, in State's, in, in Applicant's Exhibit
6 No. 6 --

7 A Uh-huh. (Affirmative).

8 Q -- several placards --

9 A Yes.

10 Q -- where they mark where they collected evidence?

11 A Right.

12 Q Right?

13 A Right.

14 Q Okay.

15 A Okay.

16 Q And if the evidence, as testified to at trial or if it
17 was testified to at trial, indicated that placard number one
18 --

19 A Right.

20 Q -- okay, which, and this gets confusing, was State's
21 Exhibit No. 4.

22 A Right, I---

23 Q Okay.

24 A Right, the bullet.

25 Q Was an unfired bullet?

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- 1 A Right.
- 2 Q Okay. That placard number two --
- 3 A Uh-huh. (Affirmative).
- 4 Q -- according to Mr. Dorman's photographs --
- 5 A Uh-huh. (Affirmative).
- 6 Q -- and his placards --
- 7 A Uh-huh. (Affirmative).
- 8 Q -- and his report --
- 9 A Right.
- 10 Q -- was a brown paper sack with a bullet hole in it.
- 11 A Okay.
- 12 Q Okay?
- 13 A Right.
- 14 Q And if shell casing number three --
- 15 A Uh-huh. (Affirmative).
- 16 Q -- Mr. Dorman's placard number three --
- 17 A Right. I see it.
- 18 Q -- was a .45 shell casing --
- 19 A Underneath there.
- 20 Q -- found on the floor inside Little Debbie's --
- 21 A Right.
- 22 Q -- display on the customer side of the counter.
- 23 A Okay.
- 24 Q Okay. And if Mr. Dorman's number four --
- 25 A I guess that --

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- 1 Q I think that's -- right there.
- 2 A Okay.
- 3 Q And his ledger --
- 4 A Uh-huh. (Affirmative).
- 5 Q -- was another .45 shell casing --
- 6 A Uh-huh. (Affirmative).
- 7 Q -- found on the floor on the customer side of the
- 8 counter in front of the Little Debbie's display case?
- 9 A Right.
- 10 Q Okay. And if Mr. Dorman's placard, and if his evidence
- 11 and if his testimony indicated that there was another .45
- 12 shell casing --
- 13 A Uh-huh. (Affirmative).
- 14 Q -- and that would be indicated by his placard number
- 15 five.
- 16 A Right.
- 17 Q Okay. which was found on the floor in front of a Pepsi
- 18 display on the customer side of the counter.
- 19 A Right.
- 20 Q okay?
- 21 A Okay.
- 22 Q And if -- well, we can't see six on there.
- 23 A No.
- 24 Q If Mr. Dorman's testimony at trial -- I'm gonna skip
- 25 number six cause I'm gonna try to clear up the shell

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- 1 casings.
- 2 A Okay.
- 3 Q Okay. If Mr. Dorman's placard number seven --
- 4 A Uh-huh. (Affirmative).
- 5 Q -- indicated that he found a .45 shell casing on the
- 6 floor just to the left of the center of the entrance into
- 7 the, the video poker machine area --
- 8 A That's that way.
- 9 Q -- and also adjacent to the women's bathroom door, just
- 10 to the right of the women's bathroom door?
- 11 A Yes, I see it.
- 12 Q Correct?
- 13 A Uh-huh. (Affirmative).
- 14 Q Okay. And if Mr. Dorman indicated that there was a .45
- 15 shell casing found underneath the sink area on the kitchen
- 16 side of the counter --
- 17 A Right.
- 18 Q Okay?
- 19 A Uh-huh. (Affirmative).
- 20 Q And that is State's Exhibit No. 8.
- 21 A Okay.
- 22 Q Okay. which means that there were, and tell me if I'm
- 23 wrong, that we have an unfired bullet on the counter, a .45,
- 24 correct?
- 25 A Right.

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1 Q We have a shell casings -- these shell casings were
2 found on the---

3 A Four of them.

4 Q ---customer side of the counter.

5 A Right, looks like four of them.

6 Q Okay. And that would be State's Exhibit No. 5, State's
7 Exhibit No. 6, State's Exhibit No. 7, State's Exhibit No. 9,
8 and State's Exhibit No. 10.

9 A I---

10 Q And I---

11 A ---was trying to keep up with you on the things---

12 Q Okay.

13 A ---because I see three on, three placards, near there,
14 one, two, three, four.

15 Q Okay.

16 A And those are on the customer side and then---

17 Q Okay.

18 A ---the fifth one you asked me about, we were talking,
19 which was on the sink, which was on the other side, right?

20 Q Right.

21 A Make sure the picture -- and I remember some of the
22 pictures that you -- but---

23 Q Okay.

24 A But it's coming back to me a little.

25 Q I just want to try at least to establish this.

Michael Morin - Direct examination
by Mr. Morton

- 1 A Okay.
- 2 Q That if --
- 3 A Uh-huh. (Affirmative).
- 4 Q -- Mr. Dorman testified at trial --
- 5 A Right.
- 6 Q -- that there were shell casings, that shell casing
- 7 number five --
- 8 A Uh-huh. (Affirmative).
- 9 Q -- was found --
- 10 A Yeah.
- 11 Q -- by the chip container, by the chip and candy
- 12 container --
- 13 A Uh-huh. (Affirmative).
- 14 Q -- that State's Exhibit No. 6, which is another shell
- 15 casing, was found just to the right of the bathroom door.
- 16 A Okay.
- 17 Q That's his seven.
- 18 A Right.
- 19 Q State's Exhibit 6.
- 20 A All right.
- 21 Q And that if his testimony was that there was another
- 22 .45 shell casing found inside the Peppermint display case --
- 23 A Here.
- 24 Q Right?
- 25 A which apparently he didn't put a placard on it.

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by Mr. Morton

- 1 Q Well, I'm not sure if you can just see it from there.
2 I think they're other---
- 3 A Oh, okay.
- 4 Q I'm not trying to testify. I apologize.
- 5 A Okay.
- 6 Q But if that's what his testimony was---
- 7 A If that's what he testified. Okay.
- 8 Q And if his testimony was that, jumping to shell casing
9 number nine, State's Exhibit No. 9 --
- 10 A Uh-huh. (Affirmative).
- 11 Q -- was found inside the Little Debbie's display case --
- 12 A Okay.
- 13 Q -- and State's Exhibit No. 10 was another .45 shell,
14 shell casing laying in the floor in front of the counter
15 just left of the door.
- 16 A Okay.
- 17 Q If that was his testimony --
- 18 A Okay.
- 19 Q -- then would you agree with me that Mr. Dorman would
20 have testified that there were then five .45 shell casings
21 found on the customer side of the counter?
- 22 A That's what it appears, yes.
- 23 Q Okay. And that he testified that there was one .45
24 live round on the counter.
- 25 A Uh-huh. (Affirmative).

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1 Q And if he testified that there was a .45 shell casing,
2 which was State's Exhibit No. 8 --

3 A Uh-huh. (Affirmative).

4 Q -- that was located under the sink area --

5 A Uh-huh. (Affirmative).

6 Q -- in the kitchen --

7 A Right.

8 Q Okay.

9 A Uh-huh. (Affirmative).

10 Q If that was his testimony --

11 A Okay.

12 Q -- okay, and if Mr. Dorman had said at trial --

13 A Uh-huh. (Affirmative).

14 Q -- what I am trying my best to reinterpret here what he
15 said today, was most likely not fired by Mr. Moore coming
16 around the door?

17 A Okay.

18 MR. SALTER: Your Honor, I'm gonna have to object now
19 because he still hasn't indicated where the bullets in the
20 corner ended up.

21 MR. MORTON: I'm not done -- I'm not talking about the
22 bullets in the corner, with all due respect. I'm talking
23 about the shell casings. I will get to the bullets.
24 Promise. Sorry.

25 THE COURT: I'll let you finish your question, and

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1 before you answer, you can renew your objection.

2 Q If Mr. Dorman had testified at trial that the most
3 likely scenario, due to the evidence that he, and I'm not
4 saying it exactly like he said it, that his opinion, his
5 expert opinion would have been that the shell casing found
6 behind the counter, okay, was fired not by Mr. Moore coming
7 around the doorway and shooting at, at Mr. Mahoney, but
8 rather was shot from this front part of the counter with the
9 gun headed out.

10 A Okay.

11 Q Okay.

12 A All right.

13 Q If that.

14 A If that.

15 Q Okay. Would that have been something that you would
16 like to have known?

17 MR. SALTER: Now I'll renew my objection, Your Honor.

18 THE COURT: I'll allow the question to be answered and
19 I'll give it the weight I think it deserves.

20 MR. SALTER: Thank you, Your Honor.

21 A Yeah, because -- may I?

22 Q Yes.

23 A My argument, based on what Richard said, was that Mr.
24 Mahoney put a .45 to him. Okay. So, I picture Mahoney
25 going like this. This is how I was getting ready for the

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1 case. Mr. Moore grabs the gun and something happens, and
2 the bullet comes out, and it gets moved, which would cause a
3 fire in the direction to which you are referring, and I
4 don't know if I argued that at trial. But that would of
5 been my understanding of it as it's---

6 Q And if you had had an expert --

7 A Right.

8 Q -- say that's, especially the State's expert --

9 A Uh-huh. (Affirmative).

10 Q -- say that, that would of been important?

11 A Only so much as it impeaches Mr. Hadden's testimony.

12 Q Right.

13 And Mr. Hadden was, other than Mr. Moore --

14 A Right.

15 Q -- the only eye witness?

16 A That's correct.

17 Q So, Mr. Hadden's credibility was important --

18 A Yeah.

19 Q -- right?

20 So, was it important to you to, to discredit

21 Mr. Hadden?

22 A Yes.

23 Q And to attempt to be able to show that there were, that
24 there was a bullet fired from the .45 in the direction of
25 Mr. Hadden --

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- 1 A Uh-huh. (Affirmative).
- 2 Q -- that he may have mistakenly thought Mr. Moore fired.
- 3 A Would that have been important?
- 4 Q Uh-huh. (Affirmative).
- 5 A In his -- I keep saying this because I don't want to
- 6 be -- the question, in my mind, is making it that Mr. Hadden
- 7 operated in a vacuum, and I tried to discredit, to discredit
- 8 him, and anything that would of helped discredit any of the
- 9 State's witnesses---
- 10 Q Okay.
- 11 A ---whether it's between themselves or with somebody
- 12 else certainly would of been important.
- 13 Q Okay. I'll jump ahead to the bullets.
- 14 Okay?
- 15 A That's fine with me.
- 16 Q And to the bullet hole.
- 17 If they were testimony by an expert, yours or the
- 18 State's or anybody's --
- 19 A Uh-huh. (Affirmative).
- 20 Q -- that there were two bullets found on the customer
- 21 side of the counter, two actual projectiles found on the
- 22 customer side of the counter, would that have been something
- 23 that you would like to have known in defending this case?
- 24 A They're .45's?
- 25 Q Two bullets.

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1 A I can't---

2 Q Okay. I'll, I'll, I'll try and be as accurate as I
3 can.

4 One .45 --

5 A Okay.

6 Q -- bullet/projectile found in the parking lot --

7 A Okay.

8 Q -- which the expert would have testified ricocheted off
9 the video poker machine and went into the parking lot.

10 A Okay.

11 Q Okay. And if the expert would have testified that
12 there was a .44 projectile on the floor on the customer side
13 of the counter --

14 A Uh-huh. (Affirmative).

15 Q -- near where Mr. Moore was --

16 A Uh-huh. (Affirmative).

17 Q -- when he got apparently shot according to the
18 blood---

19 A Right.

20 Q Okay. Would that be something that you would have
21 liked to have used in your analysis and presentation of this
22 case?

23 MR. SALTER: Your Honor?

24 THE COURT: Yes, sir.

25 MR. SALTER: Again, he omits the jacket found in the

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1 corner.

2 MR. MORTON: I'm not omitting it. I'm coming---

3 THE COURT: Sustained. Rule the question
4 inappropriate.

5 MR. MORTON: If Your Honor --?

6 THE COURT: Yes, sir.

7 MR. MORTON: I'm gonna get to the, to the one in the
8 corner. I am just trying to establish now that there were
9 two actual bullets found on the customer side of the
10 counter.

11 THE COURT: And a jacket from another bullet.

12 MR. MORTON: Yes, sir.

13 THE COURT: And I sustained the objection. I've asked
14 you to rephrase the question.

15 MR. MORTON: Okay.

16 Q Mr. Morin, Exhibit No. 20 --

17 A Okay.

18 Q -- was -- are you familiar what with, what the Exhibit
19 No. 20 was?

20 A No, sir.

21 Q Okay. If Exhibit, if Exhibit, if Exhibit No. 20 was,
22 in fact, a fragment, okay?

23 A Fragment.

24 Q Would that be important to your analysis?

25 A Okay.

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1 Q whether it be from a -- go ahead. I'm sorry.

2 A Well --.

3 MR. SALTER: Your Honor, I do believe the testimony was
4 that it was a jacket, a part of a .45 jacket that was
5 recovered, and not a fragment.

6 THE COURT: That's my understanding.

7 Is that not your understanding, Mr. Dorman?

8 MR. MORTON: Your Honor, the, the testimony at trial---

9 THE COURT: Are you talking about trial or at this
10 hearing?

11 MR. MORTON: Well, both at -- I'm talking about at
12 both. I'm talking about they kind of used, intermingling
13 lingo. Sometimes they say fragment, sometimes they say, is
14 my understanding, jacket fragment or something to that
15 extent.

16 THE COURT: As I recall the testimony, what was
17 recovered from the corner---

18 MR. MORTON: Yes, sir.

19 THE COURT: ---strike was a jacket from a .45.

20 MR. MORTON: Was---

21 THE COURT: Both.

22 MR. MORTON: Part of a jacket or fragment from a .45.

23 THE COURT: My understanding is a jacket's a wrapping
24 of the bullet, and it was a jacket is what it was described
25 in the hearing to, before me today. And I'm just asking you

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1 to place all the facts that are relevant to that into the
2 record---

3 MR. MORTON: Okay. Your Honor -- then Your Honor I
4 would like to look at the evidence that was -- I'm -- as far
5 as what was introduced in trial, as far as what that was and
6 what it looked like.

7 THE COURT: Are you talking about now from the, the
8 ballistics expert---

9 MR. MORTON: Yes.

10 THE COURT: ---or are you talking from Mr. Dorman?

11 MR. MORTON: No, I'm talking about from Mr. Dorman, who
12 testified at trial, and Mr. Whitler, who is---

13 THE COURT: I'll give you a moment to take a look at
14 it.

15 MR. MORTON: All right, sir.

16 (Pause.)

17 MS. ARMSTRONG: Your Honor? Your Honor?

18 THE COURT: Yes, ma'am.

19 MS. ARMSTRONG: This is apparently a child proof
20 envelope that will not open. Is it -- I don't know who I
21 need to ask about opening the package.

22 THE COURT: Well, what is it?

23 MR. MORTON: It's---

24 MS. ARMSTRONG: Piece, piece of metal jacket that Mr.
25 Morton was gonna show Mr. Morin, and I just didn't want to

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1 do something I wasn't suppose to do.

2 THE COURT: Well, my -- I think the issue was what it
3 was testified to at trial to be, and I'm trying to find that
4 in the transcript.

5 MR. MORTON: Yes, sir, I can---

6 THE COURT: Where is that?

7 MR. MORTON: Yes, sir, it's in the transcript. It's
8 different places in the transcript. It is at, on the
9 transcript -- it's on Page 1424.

10 MR. SALTER: Your Honor, the first reference to it I
11 believe is on Page 1280, 1288, Line 24.

12 THE COURT: I'm sorry, 1288?

13 MR. SALTER: Yes, beginning on Line 24.

14 THE COURT: Just one second.

15 MR. SALTER: And that's Mr. Dorman's trial testimony.

16 (Pause.)

17 THE COURT: Yes, sir, your objection was to the
18 question did not refer to the fact that there was --?

19 MR. SALTER: That it was a jacket, and not the, the
20 fragment of a core. As I understand it, it, the jacket is
21 the metal that, that encases that is actually lead.

22 THE COURT: In this case, Mr. Dorman's testimony says
23 in this particular case, when the bullet made impact with
24 the wall, it separated and this is the portion I was able to
25 locate. I'm reading from 1289, Lines 12 through 14, and

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1 then the part you referred me to indicated that the jacket
2 had to have come from the .45 since it was used in jacketed
3 ammunition. I'll read it if you want me to.

4 MR. MORTON: And I'm sorry, Your Honor, are you, are
5 you on Page 12 on, of the transcript?

6 THE COURT: What I just read, what I just read is 1289
7 of the transcript, direct examination by Mr. Willingham of
8 Paul Dorman, and on Line 12, and I think you're referring to
9 the State's expert, I believe you're referring to Mr. Dorman
10 in the question, is that correct?

11 MR. MORTON: Yes, sir.

12 THE COURT: Mr. Dorman states, on Line 12, in this
13 particular case, when the bullet made impact on the wall it
14 separated, and this is the portion I was able to locate.

15 MR. MORTON: Yes, sir, he says -- and he indicates
16 that, in this particular case, that this Exhibit No. 20 was
17 a copper lead bullet jacket fragment marked State's
18 Exhibit---

19 THE COURT: Yes, he indicates that the bullet
20 separated---

21 MR. MORTON: Yes, sir.

22 THE COURT: ---when it hit the wall. I'm just reading
23 what he said.

24 Q Okay. Mr. Dorman testified that Exhibit No. 20, as I
25 understand it, that was embedded in the wall, was part of a

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1 jacket, .45 jacketed fragment that had struck the wall as
2 His Honor mentioned that.

3 okay?

4 A Uh-huh. (Affirmative).

5 Q Now, Mr. Whitler indicates that Exhibit No., when he
6 was asked by State's counsel, let me show you Exhibits No.
7 20, and this is on Page 1424, where is the location that
8 that bullet was found. Okay. And I'm going to show it to
9 you.

10 A I was gonna say are you asking me or are you telling
11 me?

12 Q Okay.

13 A If that's what it says in the transcript, I---

14 Q Okay.

15 A Okay. No. 20. Oh.

16 Q This is on direct examination by Mr. Barnette.

17 A Okay.

18 Q Let me show you State's Exhibit No. 20.

19 A Uh-huh. (Affirmative).

20 Q where is the location that bullet was found at.

21 A And then the answer is it says recovered in a wall.

22 Q Okay.

23 A Okay.

24 Q Now, if that testimony is inaccurate or if that
25 testimony is misleading as to whether or not Exhibit No. 20,

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by Mr. Morton

1 the fragment that we have seen, was a bullet or not, in
2 other words, I'm asking -- I guess I'm asking you does it
3 say where that bullet fragment came from and could there
4 have been a reasonable interpretation that that bullet
5 fragment was part of a fragment that was fired by the .45
6 from behind the counter, that when it hit the, something and
7 separated?

8 A All right. We're talking about the fragment in the
9 wall?

10 Q Right.

11 A And it's where he says, and then according to your
12 results, which bullet, which weapon fired a bullet, and he
13 says Exhibit 3, the .45.

14 Q Right.

15 A So, if I understand, we're talking about whether
16 there's two bullets from the .45 over there or one?

17 Q One thing I want to, I want to clarify. Then we --
18 then I'll come back to you, okay, is that the question, as
19 phrased by Mr. Barnette---

20 A Yes.

21 Q ---and that was portrayed to the jury --

22 A Right.

23 Q -- seems to indicate --

24 A Yes.

25 Q -- that Exhibit No. 20 --

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1 A Uh-huh. (Affirmative).

2 Q -- was a bullet.

3 A That seems to be, yes, because it says which one, which
4 weapon could have fired this bullet.

5 Q And if the testimony from an expert, from the State's
6 expert were to, were to be such that, that Exhibit No. 20
7 was, in fact, part of a jacketed fragment, then
8 Mr. Barnette's question and Mr. Whitler's answer would be
9 misleading because Exhibit No. 20 is not a bullet.

10 MR. SALTER: Your Honor?

11 Q I guess the point---

12 THE COURT: Just one second.

13 MR. SALTER: Your Honor, I'm gonna object. That's not
14 what the testimony was.

15 THE COURT: I'll sustain the objection. Strike the
16 question. I'll refer you back to the page that I just
17 referred you to where Mr. Dorman testified about what that
18 was, and you're welcome to quote him if you'd like at the
19 trial or quote him what he said this morning. But in both
20 cases, he -- my interpretation of what I've read and heard
21 is that he indicated it was a jacket from a .45 bullet.

22 MR. MORTON: Yes, sir, fragmented jacket.

23 THE COURT: Now, I realize that's not the whole bullet.
24 I understand what you're saying.

25 MR. MORTON: Yes, sir.

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1 THE COURT: And that does not necessarily indicate that
2 a bullet struck there, but it may indicate that it does, and
3 Mr. Dorman's testimony was the bullet separated when it hit
4 the wall. That's what the expert said. Read it.

5 MR. MORTON: Okay.

6 THE COURT: I'll read it to you again if I need to.

7 MR. MORTON: Well, that the---

8 THE COURT: Now, that's his testimony.

9 MR. MORTON: Yes, sir, I understand.

10 THE COURT: Now, if you're gonna quote the State's
11 expert, let's quote him, and you didn't in your question.
12 So, I'll sustain the objection.

13 MR. MORTON: Okay. And as I understand his testimony
14 in here today, and I apologize, again, if I am misquoting
15 him, was not specifically that---

16 THE COURT: I don't know if he was asked that.

17 MR. MORTON: Okay.

18 THE COURT: I think he was asked what he recovered.
19 I'll take the time to let you take a look at it.

20 MR. MORTON: All right, sir.

21 THE COURT: Go ahead.

22 MR. MORTON: And I'm gonna put -- does the Court want
23 to see what's in here?

24 THE COURT: I think I know what it is. I mean I don't
25 think it's in, it's in controversy that it's a jacket or a

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1 portion of a jacket from a .45 bullet.

2 MR. MORTON: Okay. And do you want me to pause, Your
3 Honor, then while the court reporter looks at the, for that?

4 THE COURT: Well, if you're gonna ask that question.
5 Again, I don't mind you asking the question, but I'm going
6 to require that you accurately state---

7 MR. MORTON: Yes, sir.

8 THE COURT: ---what the expert said---

9 MR. MORTON: Yes, sir.

10 THE COURT: ---in your hypothetical because that's
11 what's required. And if you didn't take notes at the time,
12 that's fine, we'll look it up.

13 MR. MORTON: All right, sir.

14 WITNESS: May I retrieve my keys from this office cause
15 apparently this is gonna go past the time and I have---

16 THE COURT: Yes, sir, I'll take -- you can do that
17 while we're looking it up.

18 WITNESS: Thank you, sir.

19 THE COURT: Don't discuss your testimony---

20 WITNESS: No, sir.

21 THE COURT: ---with anyone while you leave the
22 courtroom.

23 WITNESS: I will not.

24 THE COURT: Thank you.

25 (Pause.)

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1 MR. MORTON: Your Honor?

2 THE COURT: Yes, sir.

3 MR. MORTON: What is the possibility of having this
4 printed if we're not gonna finish Mr. Morin today?

5 I don't know if we are---

6 THE COURT: Oh, I intend to finish him today.

7 MR. MORTON: Okay.

8 THE COURT: I had intended to finish him today.

9 MS. ARMSTRONG: Your Honor, may I step out to make a
10 call to home?

11 THE COURT: Yes, ma'am.

12 (Pause.)

13 THE COURT: Have we found any reference to it?

14 MR. MORTON: Yes, sir, we have. We have, and Mr.
15 Dorman testifies, in one particular place, that there was a
16 bullet that had hit in the high left hand corner of the
17 building. I extracted a jacket from the wall where the
18 bullet had hit there.

19 THE COURT: Well, that, that would square with his
20 trial testimony where he said when the bullet hit the wall
21 it separated.

22 MR. MORTON: And I'll, I'll take your word for it, Your
23 Honor.

24 THE COURT: Well, I mean I just read it.

25 MR. MORTON: Oh, okay.

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1 THE COURT: I mean it's in the transcript and I'll read
2 it again if you want me to.

3 MR. MORTON: No, sir, Your Honor, unless it---

4 THE COURT: I'm not trying, I'm not trying to make this
5 up.

6 MR. MORTON: No, I understand. I'm not trying to make
7 this up. I'm not trying to make it up either.

8 THE COURT: And I will tell you you have the right to
9 ask a hypothetical question, question, but it's got to be
10 based on facts supported by the evidence. I'm reading from
11 a case now that I looked up, and you may pose hypothetical
12 questions on any theory which can be reasonably deduced from
13 the evidence, but it has to be based on what's in evidence.
14 And, again, my point is that if you're going to ask this
15 witness about opinions by a State expert, you're referring
16 to Mr. Dorman, you're going to have to correctly quote his
17 opinion.

18 Now, if you want to deduce a theory from that, a
19 different theory, this question says you have the right to
20 pose that. But the -- it's got to be based on the evidence.
21 And, again, you can use the quote that he had this morning
22 or you can use the quote that he, that he stated in the
23 trial.

24 Now, if there's some other expert that I'm unaware of
25 that is rendered an opinion on the subject that's gonna be

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1 testifying in this case, then maybe we need to recall this
2 witness after that's in the record. I don't know.

3 MR. MORTON: Your Honor, I would like to have a
4 transcript of Mr. Dorman's testimony in this proceeding.

5 THE COURT: Now, let me explain my concern.

6 MR. MORTON: Yes, sir.

7 THE COURT: When we started this trial, you told me it
8 would take two days. I set aside two days for the trial.
9 Now, you -- we haven't finished your case yet. Now you're
10 wanting me to stop and have a transcript done.

11 MR. MORTON: No, sir.

12 THE COURT: Well, let me finish. And just how much
13 more are -- how much more do you plan to put in?

14 You know, I've got to schedule things and I need to be
15 able to set my schedule in a reasonable fashion.

16 So, where are we?

17 MR. MORTON: I'll do the best I can.

18 THE COURT: I'm not, I'm not saying you didn't. I'm
19 just saying you got to set a schedule.

20 MR. MORTON: I understand, yes, sir.

21 THE COURT: Now, next week I'm in General Sessions and
22 I have some things already planned for next week.

23 MR. MORTON: Yes, sir.

24 THE COURT: But I'm under some time constraints. I'd
25 like to get this case done.

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1 MR. MORTON: Yes, sir.

2 THE COURT: Again, when we started, I inquired of both
3 sides and I was told two days would be sufficient. We're at
4 the end of two days.

5 MR. MORTON: Yes, sir.

6 THE COURT: Still in your case. Now you're asking me
7 to stop and print a transcript.

8 MR. MORTON: No, sir, I wasn't asking you to stop now
9 and print a transcript. We can keep going as to that and
10 leave that issue, if we could revisit it after the
11 transcript was prepared, and one of the reasons that we are
12 running longer is that we had not anticipated calling what,
13 in my limited experience, has traditionally been State's
14 witnesses. So --.

15 THE COURT: Well, I don't know. PCR's, trial counsel
16 gets called by the Applicant a lot. That happens.

17 MR. MORTON: Okay. Well, like I said, my limited
18 experience. So, I try to give you the best guesstimate that
19 I could.

20 THE COURT: I understand that.

21 How many, many witnesses do you intend to put up?

22 MR. MORTON: Mr. Kelly.

23 THE COURT: Is that the gentleman from Georgia?

24 MR. MORTON: No, sir.

25 THE COURT: I'd heard about that on Monday. That's the

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1 reason I asked.

2 MR. MORTON: Yes, sir.

3 THE COURT: Is there, is there---

4 MR. MORTON: Mr. Kelly is the, is the---

5 MR. SALTER: Is co-counsel, Your Honor.

6 THE COURT: Okay. I understand that.

7 How about the person from Georgia, you don't intend to
8 call that person now?

9 MR. MORTON: As of right now I don't intend to call
10 him.

11 THE COURT: Okay. State, how many witnesses are you
12 planning to do?

13 MR. SALTER: Maybe two or three short witnesses, Your
14 Honor.

15 THE COURT: All right.

16 MR. SALTER: Something brief. We're not -- nothing
17 like what you've see this afternoon.

18 THE COURT: All right. Well, I'm just gonna adjourn at
19 this point in time.

20 Now, let me explain. I am doing a complicated case.
21 It's starting tomorrow morning. I have witnesses coming in,
22 I mean lawyers coming in on -- we have nine pretrial motions
23 to deal with. The last time I did this it took four days.
24 They tell me they can do it in two just like this case told
25 me they could do it two. So, I'm going to try to do that.

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1 what I will do is I will contact you sometime on Thursday to
2 let you know whether or not we can resume on Friday.

3 In the mean time, you're welcome to get whatever you
4 need from the transcript. I will refer you to Gazes versus
5 Dillards Department Store. I intend to read that myself on
6 this issue. But I do believe that a hypothetical question
7 posed to any expert, I assume an attorney is an expert, has
8 to be supported by the evidence, and I'm not going to allow
9 misquoting of, of experts. I'm not saying you did that
10 intentionally, but I think you have to be accurate in that
11 record. An objection has been raised.

12 MR. MORTON: All right.

13 THE COURT: All right. We're in recess.

14 I'll contact you on Thursday. I'll caution this
15 witness not to discuss his testimony with anyone during the
16 break. Thank you.

17 We're adjourned until Friday morning. I'll let you
18 know when we will reassemble.

19 MR. SALTER: Thank you, judge.

20

21 (WHEREUPON, Court was in recess for the evening.)

22

23

24

25

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1 Thursday, February 3rd, 2011

2

3 (WHEREUPON, a forensic unit case report was marked as
4 Applicant's Exhibit No. 26 for identification purposes only
5 at this time.)

6 THE COURT: All right. Is Mr. Morin outside?

7 MR. MABRY: Yes, sir.

8 THE COURT: Ask Mr. Morin to step back into the
9 courtroom please.

10 (Witness complies.)

11 THE COURT: Mr. Morin, if you'd resume the stand for
12 me, sir.

13 WITNESS: Yes, sir.

14 (Witness returns to the stand.)

15 THE COURT: Mr. Morin, I will remind you that you were
16 placed under oath in this case earlier. You remain under
17 oath at this time.

18 WITNESS: Yes, sir.

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

20 MR. SALTER: Yes, sir, Your Honor.

21 THE COURT: Is the Applicant ready to proceed?

22 MR. MORTON: Yes, sir.

23 THE COURT: All right. You may proceed.

24 CONTINUED DIRECT EXAMINATION

25 BY MR. MORTON:

Michael Morin - Direct examination
by Mr. Morton

1 Q Mr. Morin, I don't want to go back over everything
2 we've already gone over. I'll just kind of take a minute
3 to, to recap. I think we were discussing Mr. Dorman's
4 testimony and his opinions.

5 Beg the Court's indulgence one second, Your Honor.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Mr. Morin, was it your analysis in this case that
9 Mr. Moore went into this business unarmed?

10 A I think that's undisputed.

11 Q Okay. And---

12 A I mean I say undisputed. I mean with a firearm.

13 Q Okay.

14 A Obviously the State had their own opinion.

15 Q Okay. And that there were two weapons used?

16 A That's correct.

17 Q And both of which belonged to Jamie Mahoney?

18 A Correct.

19 Q There were six or seven shots fired?

20 A Yes, sir.

21 Q And there were shell casings?

22 A Yes, sir.

23 Q Fragments?

24 A Yes, sir.

25 Q Bullets?

Michael Morin - Direct examination
by Mr. Morton

1 A Yes, sir.

2 Q Blood?

3 A Yes, sir.

4 Q And, in that regard, you testified that you went to see
5 Mr. Don Girndt?

6 A That's correct.

7 Q And do you have your notes from that interview. Okay.

8 A Your Honor, I apologize. I didn't pick them up as I
9 came in this morning.

10 THE COURT: Get your box. That's fine. You might want
11 to just move it over here beside you. That's fine. If you
12 want to look at it.

13 WITNESS: Yes, sir.

14 A Yes, sir.

15 Q Can I see them?

16 A Yes, sir.

17 Q Is this them?

18 A They're -- these are both my notes.

19 Q Okay.

20 A It, it appears, it appears that the white note, the
21 white one seems to have a lot more meeting with different
22 people. The yellow one is more of this is what I was trying
23 to do.

24 Q Okay.

25 A But I, I think that's the way they're divided up.

Michael Morin - Direct examination
by Mr. Morton

1 Q Okay. Your notes indicate that you had a phone call
2 with Mr. Girndt?

3 A That's correct.

4 Q That the victim may have fired three or four shots, is
5 that right?

6 A The phone call I had with Don Girndt on August 14th,
7 he had spoken to Mr. Dorman and I wrote down that the victim
8 may have fired three or four shots, three from a .45 and one
9 from a .44, and then it goes on and talks about Item 31 and
10 Item 37.

11 Q Okay.

12 A I understand that.

13 Q Those are, those are sketches I think maybe?

14 A I think so.

15 Q Okay.

16 A Well, it says Item 31 are a copper jacket by video
17 poker---

18 Q Right.

19 A ---a .45, and a bullet went into the parking lot. Also
20 a .45.

21 Q So, your notes indicate that after Mr. Girndt spoke to
22 Mr. Dorman that the victim fired three shots from a .45 and
23 one from a .44 is what their---

24 MR. SALTER: Objection, Your Honor. It's---

25 Q It's what you were told?

Michael Morin - Direct examination
by Mr. Morton

1 A It says the victim may---

2 MR. SALTER: Your Honor?

3 THE COURT: I've got an objection.

4 MR. MORTON: I'm sorry, judge.

5 THE COURT: I have to deal with it.

6 MR. MORTON: I'm sorry.

7 THE COURT: Yes, sir.

8 MR. SALTER: I think that mischaracterizes his notes.

9 The notes are based on a conversation with Mr. Girndt, and
10 it's not clear, from those notes, whether or not the opinion
11 was that of Mr. Dorman or of Mr. Girndt.

12 THE COURT: Well, I'm gonna allow him, the witness to
13 answer the question.

14 Read the note that's in question.

15 WITNESS: Yes, sir.

16 THE COURT: And then I'll let you question him about
17 it.

18 MR. MORTON: Yes, sir.

19 A The victim may have fired three or four shots and then
20 I wrote three from .45 and one from the .44. Of course, we
21 know that he fired one .44 because it hit Mr. Moore. So,
22 the question would then become whether or not there were two
23 .45's or three.

24 Q Okay. And your notes indicate three from the victim
25 from a .45?

Michael Morin - Direct examination
by Mr. Morton

1 A Once again, in looking at my notes, it says three or
2 four shots, and it says one from a .44. So, that one is
3 out. So, that means it's either two or three from the .45.

4 Q In their opinion?

5 A That's right.

6 Q Okay. And would you agree with me, Mr. Morin, that
7 this was a fairly complicated case from the physical
8 evidence aspect of it?

9 A No more than any other murder I had before or after it.

10 Q Okay.

11 A Probably somewhere in the middle.

12 Q Okay. The fact that there were casings, six casings,
13 bullets, possibly deflected --

14 A Uh-huh. (Affirmative).

15 Q -- blood --

16 A Uh-huh. (Affirmative).

17 Q -- in order to try and decipher that --

18 A Uh-huh. (Affirmative).

19 Q -- did you, did you go to talk to Don Girndt?

20 A Yes, I did.

21 Q Okay. And your notes indicate that you talked to him
22 on the phone.

23 Did you---

24 A I spoke to him on the phone on August 14th and then
25 on August 21st --

Michael Morin - Direct examination
by Mr. Morton

1 Q Can I stand beside you?

2 A Yes, sir.

3 Q Okay.

4 A I'm just checking to see where my, I believe it goes
5 on. Yeah, August 21st, when I met with Doctor McMahon
6 than at USC School of Law, that was -- School of Medicine.
7 I'm sorry. School of Medicine. And we talked. After I
8 left there, I went to Don Girndt's house, who also lived in
9 Columbia and---

10 Q Right.

11 A ---and met with him. My notes say meeting at Don, at
12 Girndt's home with Doctor McMahon, lasted for one hour. So,
13 that was the 21st of 2001.

14 Q Okay. Can I look at those?

15 A Yes, sir.

16 Q Okay. I'm sorry. Yes, sir. Thank you.

17 Do you remember what evidence you had when you met with
18 Doctor Girndt, with not Doctor Girndt, Mr. Girndt?

19 A No, sir.

20 Q Do you know, on what basis, he formed his opinion?

21 A Well, because I don't know exactly what I had with me,
22 other than the other note indicating he spoke to Mr. Dorman,
23 you know, I have to surmise from that that he had some of
24 the stuff. I remember faxing some of the stuff, reports,
25 and their lists -- the items are listed in there as you've

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by Mr. Morton

1 seen. So, I assume, based on my notes is what I'm going on
2 here, and what vague recollection it's caused me to
3 remember. I kind of remember Mr. Girndt's house. I
4 remember making that trip. I -- so, that's all I can tell
5 you about that.

6 Q Okay. And I think you testified Tuesday --

7 A Okay.

8 Q -- that Mr. Girndt's opinion was that the shot, there
9 may have been a shot fired by Mr. Moore on the kitchen side
10 of the counter?

11 A My notes indicate that it was the opinion of, of
12 McMahon and Girndt together that the fatal shot came from
13 inside the kitchen area is what I wrote.

14 Q Okay.

15 A And then I also expressed concern in my notes as to
16 what that meant.

17 Q Okay. And, again, you can't -- what, what I hear you
18 saying is you can't testify as to the basis of that opinion?

19 A No, sir.

20 Q And you do remember, of course, that Richard went
21 behind the counter and his blood drippings were back there?

22 A Yes, sir.

23 Q Did you try and seek out the advice of any other
24 expert?

25 A No, sir, I mean those were the two -- with regard to

Michael Morin - Direct examination
by Mr. Morton

1 the crime scene you mean?

2 Q Yes, sir.

3 A Yeah, I, I'm pretty sure that was, that was it.

4 Q Did you talk to Mr. Moore, upon your return, about what
5 Mr. Girndt said?

6 A I believe I did. It makes -- I'm gonna make sure that
7 I've got -- on September 18th, I met with Mr. Moore, I
8 wrote down in pod four, gave him a copy of State's evidence
9 in support of aggravating circumstance, informed him that
10 Keith and I were going to meet with some people in Columbia.
11 Not those people. That was Drucy Glass. I'm checking both
12 notepads that I have.

13 So, the next, the next notes, the next notes that I
14 have is a visit with Mr. Moore on the 18th, and it talks
15 about meetings with Ms. Glass, Don Girndt, and others from
16 Capital Litigation to talk about what they thought might
17 be---

18 Q I'm, I'm sorry. I didn't understand.

19 A I, I talked to him about going to see Ms. Glass and
20 Mr. Girndt. But I don't -- I didn't write down what parts
21 of that conversation.

22 Q Okay. Had Richard told you he never went behind the
23 counter and shot Mr. Mahoney?

24 A Oh, Mr., Mr. Moore is clear. I mean he's defended
25 himself from Mr. Mahoney's firing---

Michael Morin - Direct examination
by Mr. Morton

1 Q Right.

2 A ---and that he doesn't shoot anymore after he leaves
3 that side of the counter.

4 Q Right.

5 A That's---

6 Q And, so, did you think it was important to understand
7 the basis of Mr. Girndt's opinion?

8 A I'm satisfied that Mr. Girndt had some of the evidence
9 that I had. He based it on what it was showing.

10 Q I'm sorry?

11 A I'm satisfied that I didn't go down there and just tell
12 Mr. Girndt what I thought.

13 Q Right.

14 A He had some of the same evidence I had. So, I would of
15 known that he was basing his, his analysis on the things
16 that I was looking at, the things that you've been looking
17 at. I don't know that I told Mr. Girndt what Mr. Moore's
18 story was because I wanted Mr. Girndt to look at it and tell
19 me what he saw, and I didn't want it to be excused by what
20 Mr. Moore has told me, which I believe Mr. Moore is telling
21 the truth about it. There's no reason for him not to.

22 Q Okay. And would it have mattered -- well, let me ask
23 it this way.

24 Did you know, before trial, that the State's expert,
25 that being Mr. Dorman, would have testified that the person,

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by Mr. Morton

1 that he did not believe that the person who left that blood
2 behind the counter is the person that fired that particular
3 weapon meaning the .45?

4 MR. SALTER: Your Honor, that's not a correct summary
5 of Mr. Dorman's testimony. It's also not something he would
6 of been allowed to testify at trial. While we may have
7 waived, waived the failure to, by failure to
8 contemporaneously object here in PCR, he would not have been
9 able to give any such testimony at the time of trial.

10 MR. MORTON: Your Honor, if I may?

11 THE COURT: I'm listening.

12 MR. MORTON: Mr., Mr. Dorman, first of all, was an
13 expert, crime scene expert at trial, and who testified in
14 here on Tuesday, and I can read the paragraph on Page 68.
15 That the blood that was found on Mr. Mahoney and to the left
16 of him and then behind where the cash register and the desk
17 was, the shell casing, at that time, I did not believe that
18 the person that left that blood is the person that fired
19 that particular weapon. Likewise, it was, it was brought
20 up---

21 THE COURT: Fired which particular weapon is he talking
22 about?

23 MR. MORTON: I'm sorry?

24 THE COURT: Which particular weapon?

25 MR. MORTON: The .45.

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by Mr. Morton

1 THE COURT: There's two of them.

2 MR. MORTON: The .45. We had been talking about the,
3 the shell casing behind the counter, and, and Mr. Dorman,
4 Officer Dorman was discussing---

5 THE COURT: Page what, 65?

6 MR. MORTON: Page 68.

7 THE COURT: Eight. Excuse me.

8 MR. MORTON: Well, I think it starts at -- they're a
9 couple different places.

10 THE COURT: I -- well, I'm looking at -- starting on
11 Page 67.

12 MR. MORTON: Yes, sir.

13 THE COURT: Perhaps the best way to handle this would
14 be---

15 MR. MORTON: Yes, sir.

16 THE COURT: ---to read to the witness what Mr. Dorman,
17 in fact, did say---

18 MR. MORTON: Yes, sir, that's---

19 THE COURT: ---in this trial and that way we don't have
20 to characterize what he said.

21 MR. MORTON: Okay.

22 Q I will start then on Page 67 in the middle, and go on
23 through Page 69 or, or half-way through.

24 THE COURT: well, I'm gonna ask that you start with
25 Line 1 on Page -- I'm looking at Page 67. Because that's

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1 the question that you asked. There was an objection to the
2 question from Mr. Mabry. I ruled that Mr. Mabry had opened
3 that door, but the actual question that was being answered
4 starts on Line 1.

5 MR. MORTON: All right, sir.

6 THE COURT: So, let's start on Line 1.

7 MR. MORTON: All right, sir.

8 Q Investigator Dorman, give us your opinion about the
9 circumstances that you found, as far as the blood and the
10 shell casing and relation to that blood, and whether or not,
11 in your opinion, in your opinion, the person who dripped
12 that blood ejected that shell casing. Mr. Mabry objected.
13 The Court indicated that Mr. Mabry had---

14 THE COURT: Well, let's, let's -- I asked you to read
15 it.

16 MR. MORTON: Okay. Okay. I'm sorry.

17 THE COURT: Let's read it.

18 MR. MORTON: I'm sorry. I'm just trying to---

19 "MR. MABRY: I object to that on the grounds of
20 speculation. He is not a firearms examiner. He did no
21 testing of this weapon. He can't---"

22 "THE COURT: You elicited testimony concerning the blood
23 patterns in proximity of the shell casing. That's been the
24 doors opened. You may answer the question."

25 "MR. DORMAN: The way the shell casing was located at,

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1 in my opinion, there was a -- the .45 was fired from behind
2 the counter. The blood that's there showed me that when it
3 came through the door and stayed basically to the left side
4 center of Mr. Mahoney and to the left, the way that a .45
5 ejects does not eject forward. It ejects like, like over
6 your shoulder, your right shoulder. Unless you break your
7 wrist at the time of the shooting, then it may come up and
8 hit you in the shoulder, hit you in the arm.

9 But depending upon how it's fired, the blood and the
10 shell casing did, at that time, did not lead me to believe
11 that the blood and the shell casings and that shell casing
12 had were together."

13 "Q. Came from the same---"

14 "A. I guess that's the best way to put it."

15 "Q. It came from the same person."

16 "MR. MABRY: Object to the leading. I object to the
17 leading."

18 "THE COURT: I'm gonna sustain that objection."

19 "MR. MORTON: Okay."

20 "THE COURT: I'm gonna let him formulate his opinion
21 and state it."

22 "MR. DORMAN: The blood that was found on Mr. Mahoney
23 and to the left of him and then behind where the cash
24 register and the desk was, the shell casing, at that time, I
25 did not believe that the person that left that blood is the

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1 person that fired that particular weapon. Like was -- it
2 was brought up by the prosecutor, that bullet, because there
3 were two officers that came onto the scene, there was a
4 paramedic that came into the scene, the person that did the
5 shooting in that scene, it could have been kicked."

6 "It could have -- MR. MORTON: It could have been
7 kicked?"

8 "A. It could have been kicked."

9 "Q. All of them could have been kicked?"

10 "A. Yeah."

11 "Q. Right?"

12 "A. Yes, sir."

13 "Q. It could have been picked up and moved?"

14 "A. I don't think it was picked up, but it could have
15 been hit by somebody."

16 "Q. Okay. As far as the bullets were found, that were
17 found, the actual bullets that were on the, found on the
18 customer side of the, of the counter?"

19 "A. Yes, sir."

20 "Q. And there's a bullet found in the parking lot?"

21 "A. There's one in the parking lot, two on the
22 customer side, and one, and one in the kitchen side."

23 "Q. Okay. Let me ask you, if you will, to look at
24 your report as to the location of the bullets."

25 THE COURT: Does that complete your questioning as to

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1 the---

2 MR. MORTON: Yes, sir.

3 THE COURT: ---proximity of the blood and the shell
4 casings?

5 MR. MORTON: Yes, sir.

6 THE COURT: All right. That then, that then would be
7 the opinion placed into the record by Mr. Dorman as to that.
8 Now you may formulate whatever question you'd like to based
9 on that testimony.

10 Yes, sir.

11 MR. SALTER: Your Honor, my objection would still be
12 that Mr. Dorman -- the question was whether or not he would,
13 Mr. Morin was aware that the State's expert would of been
14 willing to testify to this at trial. My objection is he
15 couldn't have testified to it at the trial.

16 THE COURT: I understand and that goes to the weight
17 that I might give to this testimony as it relates to this
18 particular case, and I'll be weighing that later on.

19 MR. SALTER: Thank you, Your Honor.

20 THE COURT: But as far as his right to ask the
21 questions, I'll allow him to ask the question.

22 MR. SALTER: Thank you, Your Honor.

23 Q Had you had an opportunity, Mr. Morin, to talk to Mr.
24 Dorman, and, if so, had he expressed his opinion to you in
25 that regard?

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1 A I don't recall speaking to Mr. Dorman.

2 Q Okay. Would that have been important in the defense
3 of, of this case for an expert to say what Mr. Dorman just
4 said?

5 WITNESS: And, Your Honor, I don't want to
6 mischaracterize it, but I tried to follow along with what
7 was being said, and I think what was being said was
8 Mr. Moore didn't fire the shot that was, they believed came
9 from the kitchen, and, obviously, we don't want any evidence
10 that Mr. Moore fired anything in the kitchen. We want
11 Mr. Moore to be firing from the customer side.

12 Q Right.

13 A But as you read, and as Mr. Dorman said, the shell
14 casings were everywhere and could of been gotten there for
15 any reason. So, with that, and my expert saying they shot
16 maybe one of the shots came from in the kitchen, which we do
17 not want, because Mr. Moore's defended himself from the
18 customer side, so, in answer to your question, if Mr. Dorman
19 was gonna testify that Mr. Moore could not have fired from
20 inside the kitchen, that would of been good.

21 Q That would of been what?

22 A That would of been good.

23 Q Okay. And after you spoke to Mr. Girndt --

24 A Uh-huh. (Affirmative).

25 Q -- did you go talk to any other experts?

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1 A No.

2 Q Okay. And is it possible that you might have found an
3 expert who would say exactly what the State's expert said?

4 A I suppose if I kept going and looking for expert after
5 expert I eventually may of found one who said what they
6 thought might apply to what I wanted. I mean,
7 hypothetically, I suppose there's an expert that would say a
8 lot of things.

9 Q Well, hypothetically, but if the State's expert said
10 something that was important to help your case, as you said
11 that---

12 A Yes.

13 Q ---that's good for you?

14 A If Mr. Dorman is saying that Mr. Moore couldn't have
15 shot in the kitchen, then that would be, be good.

16 Q Okay. And, theoretically as you said, hypothetically I
17 guess, you could of found an expert to put up in your case
18 as well?

19 A Well, I don't know if I could have or not. I mean I
20 don't know how many experts I would of had to go through. I
21 went to one that I felt was qualified and that's what he
22 told me. I don't understand.

23 Q Okay. I guess what I'm saying is if the State's
24 expert, not your expert --

25 A Right.

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1 Q -- is saying that --

2 A Right.

3 Q -- there's probably not much of a leap, agree or
4 disagree---

5 A I have no idea.

6 Q -- that you could of found a defense expert?

7 A I don't know if it's a leap or not.

8 Q Okay. Did you know, before trial, that that's what Mr.
9 Dorman was gonna testify to?

10 A I don't recall. I only had what his notes were cause I
11 don't remember meeting with him.

12 Q Okay.

13 A So, I mean his reports and things to that nature.

14 Q Okay. Do you remember any, eliciting that from him
15 during trial?

16 A I don't remember, other than what's in the transcript,
17 as to what was or wasn't said.

18 Q Okay. As far as Doctor McMahon, do you know the basis
19 upon which she formulated her opinion?

20 A I'm sure she had a copy of the autopsy that described
21 the wounds to the victim.

22 Q Okay. As -- did you talk to any other forensic---

23 A No.

24 Q ---pathologist?

25 A No.

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1 Q Okay. Do you believe that Mr. Dorman's testimony about
2 the origination of at least one of those .45 shell casings
3 would have helped you cast some doubt as to Mr. Hadden's
4 observations?

5 MR. SALTER: Your Honor, this is been asked and
6 answered.

7 THE COURT: I'm sorry. I was talking to my law clerk.
8 What was the question?

9 MR. MORTON: The question was does Mr. Morin believe
10 that Mr. Dorman's testimony, as to the person in the
11 origination of one of those .45 shell casings at least, may
12 have helped him contest the observations of Mr. Hadden.

13 THE COURT: I believe it has been asked and answered,
14 but I -- that was the other day. I'll let him ask it one
15 more time.

16 MR. SALTER: Thank you, Your Honor.

17 THE COURT: And then we'll move on. I'll let you ask
18 the question.

19 A I believe, I believe the answer is that obviously if
20 there's a question, if there's something to cast doubt or
21 something on Mr. Hadden's credibility as a State's witness
22 that would be good.

23 Q That would be --?

24 A Good.

25 Q Okay. And that testimony would have supported what

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- 1 Mr. Moore was, had been telling you?
- 2 A That there was a bullet fired from the .45 at him.
- 3 Q Right.
- 4 A Well, from what I recall, there was a wrestle over that
- 5 gun.
- 6 Q Right.
- 7 A He didn't just immediately take it from him like a
- 8 movie. They had to wrestle for it and---
- 9 Q Right.
- 10 A ---it went off.
- 11 Q Right.
- 12 A And whether or not he fired one or two or one got
- 13 jammed and all that kind of stuff, in the heat of whatever
- 14 was going on between him and Mr. Mahoney, I believe is
- 15 pretty clear from the, or I'd like to think it was clear in
- 16 the trial, but whether or not Mr. Hadden saw Mr. Moore point
- 17 the gun at him or whether or not the, they were both
- 18 pointing the gun at him as they wrestled over it, that
- 19 wasn't really an issue that was gonna control this case.
- 20 Q Okay. I guess I'm asking that if you had not, if you
- 21 did not know before trial --
- 22 A Right.
- 23 Q -- what the State's expert was gonna testify to---
- 24 A If Mr. Dorman had gone and said something---
- 25 MR. SALTER: Your Honor, he keeps characterizing

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1 Mr. Dorman as the State's expert. While he did testify as
2 an expert for the State, his testimony was limited to crime
3 scene analysis. It was not the additional testimony that he
4 put up as a defense witness.

5 THE COURT: You're saying he's not a ballistics expert?

6 MR. SALTER: No, sir, I'm saying he's characterizing
7 him as a State's expert, but the testimony that he's relying
8 upon was not given as a State's expert. It was given as a
9 defense expert.

10 THE COURT: I'll allow the question. That goes, again,
11 to the weight of it.

12 A If Mr.---

13 MR. SALTER: Thank you, Your Honor.

14 A If Mr. Dorman had testified differently then the
15 reports and other things that he had been, I had been
16 provided, then I would have questioned him about that at
17 trial.

18 MR. MORTON: Okay. I'm trying to make a point here,
19 Your Honor. I'm not trying to keep reasking the same
20 question.

21 If you had known what I just read you --

22 A Yes.

23 Q -- that Mr. Dorman's opinion was --

24 A That there was a .45 that came out of the kitchen that
25 wasn't Mr. Moore's --

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1 Q Right.

2 A Okay.

3 Q -- would that fact have caused you to consider putting
4 Mr. Moore on the stand?

5 Would that be a factor?

6 A Okay. I wanted Mr. Moore to get on the stand.

7 Q Okay.

8 A We had long conversations about Mr. Moore getting on
9 the stand regardless of anything the experts were gonna say.

10 Q Okay. I guess my question is if you had known in
11 advance of trial --

12 A Uh-huh. (Affirmative).

13 Q -- that Mr. Dorman was gonna testify the way he
14 testified --

15 A At trial.

16 Q -- would you have gone to Mr. Moore and said we have a
17 witness who is, will bolster, bolster your credibility as to
18 this?

19 MR. SALTER: Your Honor, it -- just so the record's
20 clear, we maintain the objection I raised earlier that Mr.
21 Dorman would not have been allowed to do that. He testified
22 about gathering evidence at trial. He didn't testify to any
23 expert opinion that he was allowed to testify to in PCR.

24 THE COURT: Do you understand the State's objection?

25 MR. MORTON: Your Honor, I understand what the

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1 State's -- the State is objecting to that that was not Mr.
2 Dorman's testimony at trial.

3 THE COURT: It's not within his field of expertise, the
4 opinion that you elicited during this PCR, and I understand
5 their objection.

6 MR. MORTON: Okay.

7 THE COURT: And have ruled so far that, that goes to
8 the weight---

9 MR. MORTON: Okay.

10 THE COURT: ---that I can give to it.

11 MR. MORTON: Okay.

12 THE COURT: Because the question I guess they're
13 raising is whether or not he would of been allowed to give
14 those answers had he had that opinion.

15 MR. MORTON: Okay.

16 THE COURT: Because, again, if he, if he's not an
17 expert within that field, we've, we've talked about experts
18 and how you ask questions about them, and how you get that
19 evidence in front of a jury, and that is an issue that an
20 attorney would have to also weigh. So, I understand their
21 objection.

22 MR. MORTON: Yes, sir.

23 THE COURT: I understand your question.

24 MR. MORTON: Yes, sir.

25 THE COURT: And I'm going to give it the weight that I

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1 choose to give it when I consider the case.

2 MR. MORTON: Yes, sir.

3 THE COURT: So, I'm gonna allow you to ask the
4 question. But we've, we've gone over this area a couple of
5 times from different directions, and I understand that
6 you're trying to get a particular answer. But let's try to
7 get the answer, get whatever answer he's gonna give and move
8 on. So, I'm gonna let you ask the question.

9 MR. MORTON: Okay.

10 THE COURT: I'm ruling in your favor.

11 MR. MORTON: Yes, sir.

12 THE COURT: But I'm asking you let's move this along.
13 Thank you.

14 A I guess the answer is anything that would have
15 convinced Mr. Moore to testify, because I was desperate for
16 him to do so, would have been good.

17 Q And were you aware that, during this trial, that Mr.
18 Dorman testified about the shell casings and where they were
19 found and what weapon fired them?

20 Are you aware of that?

21 A That he testified at trial?

22 Q Yes.

23 A I was there and I, I remember being in, in the trial.

24 But what Mr. Moore actually said, I mean Mr. Dorman actually
25 said, I'd have to rely on the transcript. I don't remember

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1 every question, every -- I remember, you know, different
2 parts of it.

3 Q Okay. But if he testified at trial regarding the
4 locations of shell casings, what gun fired those shell
5 casings, and if he were allowed to answer the question and
6 give the answer that he gave as to the origination of that
7 .45 that we testified to --

8 A Uh-huh. (Affirmative).

9 Q -- if you had known that information before trial --

10 A Uh-huh. (Affirmative).

11 Q -- would that have been a factor in possibly asking
12 Mr. Moore to testify or would it have---

13 A As I stated, anything that I could of gotten that would
14 of helped Mr. Moore testify I would have been glad to have.

15 Q Okay. But you didn't have that -- last question.
16 Considering the fact that that was Mr. Dorman's opinion
17 --

18 A Okay.

19 Q Okay. Was there a reasonable likelihood that you may
20 have found an expert to say the same thing?

21 A I have no idea.

22 MR. SALTER: Your Honor, that's just---

23 THE COURT: That has been asked and answered.

24 MR. MORTON: Okay. Has no idea.

25 Mr. Morin, do you remember, at the end of the guilt

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1 phase, when Mr. Moore attempted to make a statement to the
2 jury?

3 A Yes.

4 Q And I'm not trying to mischaracterize, and I'm not
5 trying to lead, but I think it was your testimony to us that
6 you didn't realize that he was gonna do that or y'all had
7 discussed and he was, had kind of decided he wasn't gonna do
8 that?

9 A We just -- we were caught off guard by his decision to
10 do it, yes.

11 Q Okay. Because that's something y'all had discussed?

12 A Yes.

13 Q And then he decides that's what he wants to do?

14 A Yes.

15 Q And the judge ruled that what he was trying to say was
16 out of bounds?

17 A That's correct.

18 Q And then later, during that colloquy between Judge
19 Clary and Mr. Moore, Mr. Moore was, did not ask the jury for
20 mercy, correct?

21 A It would of been -- it wouldn't have been, come up at
22 that time.

23 Q Okay.

24 A That's not what we were talking about.

25 Q Okay.

1 A I don't---

2 Q Just wanted to make that point.

3 At that point he didn't ask the jury for mercy?

4 THE COURT: You're referring to at the end of the guilt
5 phase?

6 MR. MORTON: At the end of the guilt phase.

7 WITNESS: At that---

8 MR. MORTON: I just wanted to make sure that, that --
9 yes, sir, I understand. That was not appropriate for him to
10 ask.

11 THE COURT: He wouldn't have been allowed to.

12 MR. MORTON: Yes, sir, I understand.

13 Q All right. So, when he came to the penalty phase --

14 A That's correct.

15 Q -- Judge Clary indicated to ask Mr. Moore whether he
16 wanted to speak again, correct?

17 A I believe that's correct.

18 Q Okay. And Mr. Moore declined to do so?

19 A Uh-huh. (Affirmative).

20 Q Okay. And after that conversation, did y'all have a
21 chance to talk to Richard Moore about what he would have
22 been allowed to say to the jury?

23 A We talked to Mr. Moore about that prior to that part of
24 the trial coming up is my recollection. Our thoughts on it
25 were that that would have been the opportune time for him to

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1 talk, speak rather than after the, the guilt phase where he
2 could, at that point, put in that request for mercy and
3 those types of things. We felt like that was what he should
4 of done, and I don't know how much conversation we had
5 between the time Mr., Judge Clary said that and we took
6 whatever time, whether it was minutes or stepped out or what
7 we did, but that wasn't the first time we talked to him
8 about that mercy request.

9 Q Okay. At that time, do you remember having an
10 opportunity to talk to Mr. Moore again about his opportunity
11 to ask the jury for mercy?

12 A I don't know if we just turned to him and said three
13 words or, or what. I don't remember. I mean, I mean I'm
14 trying to remember where we are. It seems like we said
15 okay, but I don't know if we made a reference back to a
16 different conversation we had or if we had a longer
17 conversation then. I don't remember.

18 MR. MORTON: And, Your Honor, I'm sure this is in the
19 record. I wanted to show and what I'm showing you is a part
20 of the transcript, Transcript Page Number 1713.

21 Should I mark it, Your Honor?

22 MR. SALTER: I would.

23 THE COURT: If it's in the transcript, it's in the
24 transcript.

25 MR. MORTON: Yes, sir, I was just -- and on Line 12 --

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1 A Uh-huh. (Affirmative).

2 Q -- is the judge indicating that now, once again, this
3 is your right, Mr. Moore, to address the jury and, once
4 again, the statement that you would make to the jury would
5 have to be confined to the evidence that has been presented
6 and to the issues concerning the sentence imposed.

7 A Right.

8 Q Right?

9 A Right.

10 Q And that was the judge's instruction?

11 A Uh-huh. (Affirmative).

12 Q And the defendant indicated that he understood that
13 instruction?

14 A That's what it says here on Line 18.

15 Q At that point did you ask for a break or any
16 interruption or have any opportunity to talk to Richard
17 Moore about his opportunity to---

18 A If we asked for a break---

19 Q ---in fact, ask for mercy?

20 A If we asked for a break it would be on here.

21 Q Okay.

22 A And it looks to me, looks to us, looks to me, in
23 reading this transcript, that Mr. Moore and we already had
24 some conversation about it because he says all right, sir,
25 thank you very much. And if he wanted a break, we would

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1 have asked for it at that moment.

2 Q Okay. So, apparently you did not?

3 A Apparently.

4 THE COURT: What page is that?

5 WITNESS: Seven.

6 MR. MORTON: Page 1713, Your Honor.

7 THE COURT: Thank you.

8 Q And Mr. Moore was not informed, at that time, by Judge
9 Clary that he had a right to ask the jury for mercy?

10 A Judge Clary didn't use the word mercy. He talked about
11 the sentence.

12 Q Right.

13 A But we already talked to Mr. Moore about that.

14 Q Okay. Mr., Judge Clary had admonished Richard at the
15 end of the guilt phase---

16 A Correct.

17 Q ---that any statement he made had to be confined to the
18 facts and the evidence?

19 A Right.

20 Q Correct?

21 And at the end of the penalty phase --

22 A Uh-huh. (Affirmative).

23 Q Correct?

24 A Yes.

25 Q His admonition was that the statement that you would

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1 make to the jury would have to be confined to the, to the
2 evidence that has been presented and to the issues
3 concerning the sentence imposed.

4 A Right.

5 Q You did not raise an objection?

6 A Well, he's allowed to give a statement as to the
7 sentence, which would be mercy. And if Mr. Moore had
8 started up like he did at the end of the guilt phase and
9 said I'm here and this kind of thing and the offer, and the
10 judge had then admonished him, I would of objected then.
11 But some of the things that I recall him saying at the end
12 of the guilt phase applied and would have been permissible
13 at this spot, but not at that spot, and what you're asking
14 me is this question about mercy, and my understanding of
15 that charge is, when the judge says as it applies to
16 sentence, that includes that because we're talking about
17 whether or not he's gonna get, what his sentence is gonna
18 be.

19 So, if you're asking me I didn't, did I make Mr. Moore,
20 make it clear to Mr. Moore that the sentence included mercy
21 or sentence meant mercy, I don't know if I did that word --.

22 MR. MORTON: I beg the Court's indulgence, Your Honor.

23 THE COURT: Yes, sir.

24 (Pause.)

25 Q Mr. Morin, as I understand, during this trial you had

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1 assumed to kind of conduct the guilt phase?

2 A That's correct.

3 Q And Mr. Kelly was gonna handle the mitigation and
4 penalty phase?

5 A That's correct.

6 Q Okay. Would you agree with me that, during the guilt
7 phase, that Mr. Gibson was an important witness?

8 A I would. I mean he's the State's witness and his
9 testimony hurt, but whether it was important, how important,
10 I mean -- every -- I don't know. I mean his testimony was
11 prejudicial.

12 Now, important, as far as weighing, I don't know what
13 the jury did with it. I mean obviously you'd rather not
14 have Mr. Gibson's testimony than have it, but how important
15 it was, I don't know.

16 Does that make sense?

17 I mean I know it was -- I don't think Mr. Moore was
18 convicted because Mr. Gibson said what he said. So, I guess
19 that's the best answer I can give.

20 Q Mr. Gibson provided the State with the motive, did he
21 not?

22 A I think a bag of money on the front seat of his car
23 what was given the motive.

24 Q Mr. Gibson's testimony was, would you agree with me and
25 I don't want to lead, was relied upon quite heavily by the

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1 State in their arguments?

2 A I think -- well, I'd have to reread Mr. Gowdy's
3 closing. I think his closing, whether he relied on it and
4 how much he relied on it speaks for itself I would imagine.

5 Q Mr. Gowdy, in his closing, indicate that, did he, I'm
6 asking you, do you remember this, indicating that Mr. Moore
7 was so bent on getting money for crack that he shot another
8 man through the heart?

9 A If he said that, that sounds like something he would
10 say.

11 Q Okay. That he stepped over a dying and broken body to
12 get money to go to Gibson's and get another rock of crack
13 cocaine.

14 A Once again, that sounds like Mr. Gowdy.

15 Q Okay. He went to get crack. Crack cocaine will make
16 you desperate.

17 A (Witness nods affirmatively.)

18 Q Correct?

19 A If you're saying that's what Mr. Gowdy said, I believe
20 you. That---

21 Q Okay.

22 A That's---

23 Q That he wanted crack cocaine?

24 A Okay.

25 Q That he shot a man through the heart and stepped over

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- 1 his body to get money and then to get drugs?
- 2 A Uh-huh. (Affirmative).
- 3 Q Correct?
- 4 A My first answer it sounds to me like Mr. Gowdy made
- 5 that an issue.
- 6 Q Okay. He went to a crack dealer's house after the
- 7 shooting. He didn't call 9-1-1. He went to a crack
- 8 dealer's house.
- 9 A Okay.
- 10 Q So, do you agree with me---
- 11 A That---
- 12 Q ---that that was, that was an important part---
- 13 A Yes, it sounds like it was.
- 14 Q An important part of the State's case?
- 15 A Sounds like it was, yes, sir.
- 16 Q So, therefore, would you agree with me that the
- 17 credibility of Mr. Gibson was important?
- 18 A Right.
- 19 Q Okay. And you were not informed of Mr. Gibson's change
- 20 in story until the week before trial?
- 21 A I believe that's correct.
- 22 Q Okay. So, I believe, on October the 18th, was the
- 23 day this trial began?
- 24 A Uh-huh. (Affirmative).
- 25 Q And you stood up and, and informed the judge that you

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1 had just been informed the week before---

2 A Uh-huh. (Affirmative).

3 Q ---I think it was actually about ten days, that Mr.
4 Gibson was now indicating that Richard Moore came to his
5 house not for help, but to get crack cocaine?

6 A Once again, I believe there was -- you're, you're
7 quoting from the, from the transcript.

8 Q Okay.

9 A So, I assume that's what I said.

10 Q Okay. Okay. Did you know, at that time, that there
11 were other people at Mr. Gibson's house when Mr. Moore came
12 by?

13 A I don't recall. Like I said, you, you said that I said
14 that it was ten days, and I think my notes indicated that.
15 But I don't remember making that argument in Court.

16 Q Okay.

17 A So, I don't remember if I knew there were other people
18 there or not. But I don't think I did.

19 Q Okay. Did you -- was that the first you had heard
20 about Mr. Gibson changing his story was when Mr. Gowdy, a
21 week, ten days before, had given you supplemental notice of
22 testimony to be used in aggravation?

23 A I believe that's correct.

24 Q That included George Gibson's new statement?

25 A That sounds correct.

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1 Q Okay. Did you know that, three days after this
2 incident, that Mr. Mabry had gone to Mr. Gibson's house and
3 indicated to Mr. Gibson that he didn't believe him and that
4 he didn't believe the hospital story and that he thought, as
5 the deputy solicitor, that Mr. Moore was coming over there
6 to get crack?

7 A I didn't know anything that Mr. Mabry was doing other
8 than when he had conversations with me here at the
9 courthouse.

10 Q Was, before trial then, you did not know of that
11 statement that Mr. Gibson had given to Mr. Mabry?

12 A Any conversations that Mr. Gibson had with Mr. Mabry I
13 was not aware of.

14 Q Okay. Were you given any kind of memorialized
15 statement or anything?

16 I think your answer is no to that?

17 A Yeah, I think -- yes, you mean with Mr., conversation
18 between Mr. Mabry and Mr. Gibson?

19 Q Right.

20 A I don't recall anything like that.

21 Q Did you know that, on June the 5th of 2001, that an
22 investigator from the Solicitor's Office had again gone to
23 talk to Mr. Gibson?

24 A I, I didn't have their work product --

25 Q Okay.

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1 A -- that I recall.

2 Q When you say their work product --

3 A Yes.

4 Q -- would have it -- would that have been important to
5 you?

6 A To know what they were doing?

7 Q To, to know that, that, that they had gone to talk to
8 Mr. Moore, I'm sorry, talk to Mr. Gibson.

9 A Uh-huh. (Affirmative).

10 Q Told them they didn't believe him.

11 A Uh-huh. (Affirmative).

12 Q Told him they thought he was selling crack, and that he
13 remained steadfast in his story that Mr. Moore came over
14 there to get help.

15 MR. SALTER: Your Honor, I'm sorry. I was confused by
16 the question as to which time, which Mr. Morton was
17 referring---

18 Q Okay. Well, I'm talking about would it have been
19 important, do you think---

20 A It would have been helpful to know --

21 Q Okay.

22 A -- that the, Mr. Gibson had told one deputy solicitor
23 one story, and told a different deputy solicitor a different
24 story.

25 Q Okay.

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1 THE COURT: Well, that's not the question.

2 WITNESS: I'm sorry. I thought it was.

3 THE COURT: You misunderstood, you misunderstood that
4 question.

5 Q Would that -- would it have been important to you to
6 know that George Gibson had, when confronted by Mr. Mabry,
7 reiterated that Mr. Moore came by not to get crack, but to
8 get help as he had just previously stated to him on that
9 night?

10 A Well, I don't know that it would of made a difference
11 if he said it on one day and then the next day continued to
12 say what it was. I mean how many -- I guess you're saying
13 would it have helped to know Mr. Gibson said on two
14 different occasions versus the one occasion where he claimed
15 the crack was the reason?

16 Q Yeah.

17 A Well, two -- I guess, yeah, I mean if the jury's gonna
18 say well, twice he said it was this way and now he's saying
19 it's this way. But that's gonna be whether or not the jury
20 wants to use that to his credibility because now he's on the
21 stand under oath in front of the jury saying something
22 different.

23 Q Yeah.

24 So, what are you---

25 A Well, I mean I think I brought that out in the trial

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1 from the fact he changed from his original story.

2 Q Yeah, I understand.

3 A So, I, I don't know how much more it would have done to
4 say he told him the next day, he had repeated the original
5 story.

6 Q Two or three days.

7 A Well, two or three days.

8 Q In other words, when he came to trial---

9 A Yes.

10 Q -- he said that Mr. Moore---

11 A Uh-huh. (Affirmative).

12 Q ---came by his house to get crack cocaine?

13 A Yes.

14 Q And he had given, given a previously written statement
15 indicating otherwise?

16 A That's right.

17 Q And then you would have been armed with another prior
18 inconsistent statement to use --

19 A Sure.

20 Q -- that he said?

21 A Well, that would of helped impeach him.

22 Q Okay. Were you aware -- any objection?

23 MR. SALTER: It depends. It's gonna depend to --

24 did -- the document you have is from an unknown individual?

25 MR. MORTON: Right.

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1 MR. MORTON: Your Honor, I would like to mark this for
2 Applicant's identification.

3 THE COURT: You can mark it for identification
4 purposes.

5 (WHEREUPON, an investigator's interview report was
6 marked as Applicant's Exhibit No. 27 for identification
7 purposes only at this time.)

8 Q Mr. Morin, I'm gonna show you what's been marked for
9 identification purposes by the Applicant as Exhibit No. 27
10 and ask you to tell us what that is if you will.

11 A It's listed as Seventh Circuit Solicitor's Office
12 investigators interview and it---

13 Q The name of the case?

14 A It's Richard Moore. Witness or victim is George
15 Gibson. It lists his address, says he does odd jobs, lists
16 his date of birth, and Social Security number.

17 Q And further down in that Seventh Circuit Solicitor's
18 Office investigators interview --

19 A Uh-huh. (Affirmative).

20 Q -- what does it say about info?

21 A The -- this witness called the police the night of the
22 crime reporting the whereabouts of the defendant. It is
23 theorized that this witness may have or was selling drugs to
24 the defendant. See rap sheet.

25 Q Okay. And this Exhibit No. 27 that I'm just giving to

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1 you, it's dated on what date?

2 A June 15th, 2001.

3 Q Okay. And what do the notes indicate below the info?

4 In other words, I think you just read the info---

5 A Uh-huh. (Affirmative).

6 Q ---that---

7 A It says notes. When I spoke to this witness on
8 June 5th, 2001, he stated he never knew the defendant's
9 full name. He knew the defendant only as Mo. He stated the
10 defendant showed up at his house and said can you help me, I
11 need to go to the doctor. This witness admits to knowing
12 the defendant prior to this event, and then it says what
13 does victim desire from case, question mark.

14 Q And below that there's a line.

15 A Said investigator and nobody signed.

16 MR. MORTON: Okay. I would move this into evidence,
17 Your Honor.

18 Were you aware of that?

19 A No, as I stated, I didn't have work product from the
20 State.

21 MR. SALTER: Your Honor, he's moved it into evidence.
22 We don't object.

23 THE COURT: No objection. It will be admitted as
24 marked.

25 (WHEREUPON, Applicant's Exhibit No. 27 was received

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1 into evidence at this time.)

2 Q So, I'm sorry. I don't mean to keep repeating.

3 So, you weren't aware of this?

4 A No, it's a note that, that the State is collecting, the
5 solicitor and his investigator. So, I don't think they
6 share their notes with us.

7 Q Okay. Do you think it would have aided you in your
8 cross-examination of Mr. Gibson and his credibility?

9 A I think it would have the same as -- I mean if I -- I'm
10 trying to think how that would work because Mr. -- that's
11 the story basically, as I recall it, that Mr. Gibson gave in
12 his written statement, that he came there asking for help.
13 So, as I answered you before, if I said to Mr. Gibson well,
14 didn't you tell the solicitor's office, if I had that, that
15 that's what happened on June whatever, and he would either
16 say he said yes, he said that, or no, he didn't. And if he
17 said yes, I told him on that day, then that would go towards
18 making his new statement about crack more into question.

19 Q Right.

20 And again---

21 A I don't know, you know, if Mr. Gibson said yes, that
22 is -- if he said no, I never told him that, then I'd pretty
23 much be done with that not knowing who he told that to and
24 that kind of thing.

25 Q well, if he said no, I didn't say that, then, at that

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1 point, that would of been a prior, this would of been a
2 prior inconsistent statement on his part, correct---

3 A Yes.

4 Q ---from what he testified to---

5 A Yes.

6 Q ---at trial?

7 A Yes.

8 Q Okay. So, when he went to trial, he said that he had
9 given a statement for the first time to the Solicitor's
10 office on September 25th?

11 A Yes.

12 Q That Moore came by for crack?

13 A Right.

14 Q Okay. So, this June 15th, 2001, memo --

15 A Uh-huh. (Affirmative).

16 Q -- you would have used against him, had you known about
17 it, to show that he had made a prior inconsistent statement?

18 A I would have asked him, isn't it true, on June
19 whatever, didn't you tell someone, cause it doesn't say who,
20 from the Solicitor's Office that this other thing was true.

21 Q Right.

22 A And then I would of had to take what his answer was.

23 Q Well, if he had answered, if he answered no, I didn't
24 say that, could you then have produced this for him to
25 review as substantive evidence?

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1 A well, it wouldn't have been his statement, and I don't
2 know whose statement it is. So, I don't know that I would
3 of been able to do that.

4 Q Okay. You would agree with me that it was a, it's a
5 Seventh Circuit solicitor's office investigators interview,
6 correct?

7 A Yes, that's what it says at the top.

8 Q And you would agree with me that the investigator
9 theorized that this witness may have or was selling drugs to
10 the defendant, right?

11 A That's what that report says.

12 Q which would seem to indicate that they went out and
13 confronted again Mr. Gibson?

14 A That's what it sounds like.

15 Q Okay. So now we would have two prior inconsistent
16 statements?

17 A Instead of one.

18 Q That you didn't know about?

19 A Two prior that I didn't know about?

20 Q Yeah, the one to Mr. Mabry.

21 A Right.

22 Q And this one.

23 A Right.

24 Q okay. And would that have been important to you?

25 A well, the fact that he was staying, he was staying with

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1 his original story would of been helpful.

2 Q Okay. Did you know that Mr. Gibson had been charged,
3 on July 22nd, with possession of crack?

4 A I had his rap sheet.

5 Q And did the rap sheet indicate that he had been
6 charged, on July 22nd, with possession of crack?

7 A I believe that's what the rap sheet indicated.

8 Q Okay. And it also indicated that he had a pending
9 trafficking in crack?

10 A That's correct.

11 Q And it also indicated that he had a prior drug offense
12 for possession of marijuana and possession of amphetamines?

13 A I had his rap sheet. I assumed those things are on
14 there.

15 Q Okay. Mr. Morin, what is your understanding of the
16 State's duty to provide you with impeachment evidence,
17 impeachment evidence?

18 A As far as his rap sheet or --?

19 Q No, I'm going back---

20 A As far as what they know?

21 Q I'm going back and I'm going to get to his rap sheet.
22 As far as two prior inconsistent statements?

23 A Well, I've been a prosecutor for eight years, and if
24 that had happened and I was doing it, I would tell the, the
25 State, defense because that's just how -- I felt -- I would

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1 feel like they should know everything. But that's my take
2 on my job as a prosecutor. I know, from dealing with both
3 as a defense attorney and as my colleagues, they have
4 different views of---

5 Q Right.

6 A ---what---

7 Q Do you and you would disclose that, you think, as an
8 obligation that you have under Brady versus Maryland?

9 A No, I would disclose that as trying to be as forthright
10 in my own practice. I would disclose the fact that we --
11 and, and some of that -- I mean obviously I'm not gonna put
12 down what my theory is. I'm not gonna tell them that. But
13 I may have told them that we had spoken to him on that
14 June 2001, which I guess would of been a couple, 18 months
15 after the occurrence, that he had said yeah, this, and now
16 he's saying this. So, I wouldn't -- let me put it this way.

17 with the three or four days that Mr. Mabry had, I
18 wouldn't have done anything with. With the June one, if he
19 comes and says my statement is still my statement, I don't
20 need to tell you. If he changes, like he did ten days
21 before to something different, then I would of said look,
22 he's changed his statement. He told me in June that it was
23 still the statement, and I'm now just finding out that he's
24 changing it.

25 Does that make sense?

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1 I think that's the fair way to do it. That's me. And
2 I, I don't know that, under Brady versus Maryland, I'm, I'm
3 required to tell you what my theories are or that I think
4 somebody was selling drugs or those kind of things cause
5 that's just unfounded, what I think, until I know.

6 Q Okay. But, nevertheless, at the time that this case
7 went to trial --

8 A Yes.

9 Q -- you had just found out, a week to ten days before,
10 that Mr. Gibson was now saying that Mr. Moore came over
11 there for crack?

12 A Yes.

13 Q You weren't told that he had been confronted with that,
14 at least twice by Mr. Mabry, by this, by an investigator in
15 the Solicitor's Office?

16 A I wasn't aware of that.

17 Q Okay. His rap sheet, taking a look at Mr. Gibson's rap
18 sheet, which is Exhibit, Applicant's Exhibit No. 3 --

19 A Uh-huh. (Affirmative).

20 Q -- you were -- go ahead. I'll give you---

21 A Okay.

22 Q I'm waiting on you to look at it.

23 A All right.

24 Q The rap sheet indicates that Mr. Gibson had a pending
25 trafficking in crack charge?

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1 A Yes.

2 Q From March of 2000?

3 A Yes.

4 Q From this same solicitor's office?

5 A Yes.

6 Q That he had a possession of crack charge from
7 July 22nd of '01 from this same solicitor's office?

8 A Right.

9 Q That he had prior convictions for simple possession,
10 possession of marijuana, and possession of amphetamine?

11 A Yes.

12 Q Okay. Which would have made his trafficking in crack
13 charge a trafficking in crack second offense?

14 A Yes.

15 Q Okay. Which meant that he would have been looking at a
16 possible sentence of 30 years, no parole on that?

17 A I believe that's the top end at that time.

18 Q Okay. And for the possession of crack charge, which
19 would have potentially been a third offense?

20 A If the -- I'm trying to remember, because the
21 methamphetamine/marijuana conviction that you refer to --

22 Q Uh-huh. (Affirmative).

23 A -- was, at that time, 20 years old. And I mean it says
24 '81 his court date or '80. So, it was about 20 years old.

25 Q Right.

Michael Morin - Direct examination
by Mr. Morton

1 A I don't know, and, of course, it's a marijuana. So,
2 some of that stuff might of been a bond forfeiture, which
3 wouldn't have counted.

4 Q Amphetamines -- he was also convicted of possession of
5 amphetamine?

6 A Right.

7 Q Okay.

8 A Twenty, twenty years earlier, that's correct.

9 Q Yeah, that---

10 A And -- well, okay.

11 Q So, potentially---

12 A If, if they could---

13 Q If they wanted---

14 A ---argue that---

15 Q If they wanted to.

16 A Yes.

17 Q Mr. Gibson was looking at sentences of 30 years, no
18 parole, for trafficking in crack second?

19 A Uh-huh. (Affirmative).

20 Q And he was looking at a sentence of a mandatory minimum
21 of ten years, up to fifteen years for possession of crack
22 third?

23 A I'm trying to remember what the sentence of it was back
24 then, but I think that's right.

25 Q Okay. You did not point that out to the jury, correct?

Michael Morin - Direct examination
by Mr. Morton

1 A Didn't -- I didn't point out his potential sentences
2 and his charges.

3 Q Did you understand, at the time, that that was
4 something that you could do under the law?

5 A I don't, I don't know if I knew that then or not.

6 Q Okay. Do you think that may have been a factor for the
7 jury?

8 A I thought that the fact that he had a pending
9 trafficking charge with that solicitor's Office and now he
10 was saying that he was selling drugs was a motivation to
11 change his story to help the State, which is what I tried to
12 bring out at trial.

13 Q Could that have been further, his motivation been
14 further enlightened by the amount of time he was looking at?

15 A I guess.

16 Q Okay.

17 A I mean---

18 Q And -- go ahead. I'm sorry.

19 A Yeah, I, I suppose it could have.

20 Q And by the additional pending possession of crack
21 charge?

22 In other words---

23 A Well---

24 Q ---you---

25 A ---if, if -- he'd already been convicted I think of

Michael Morin - Direct examination
by Mr. Morton

1 because on here it's showing that his, his possession of
2 crack charge, if I may, says court date 9/27/01. This, this
3 trial---

4 Q I mean I, I might be wrong, but I think if you look at
5 that---

6 A Okay.

7 Q Okay.

8 A I'll show you where I'm looking.

9 Q Okay.

10 A It's highlighted.

11 A It says convicted, court date, 9/27/01.

12 Q Right.

13 A So, he's already convicted of that when we're trying
14 this.

15 Q Right.

16 A So, he wasn't looking at any sentence on that. He'd
17 already been convicted.

18 Q Okay. I'm gonna -- I'm not---

19 A Right?

20 Q I know. I don't want to agree with that.

21 A Well---

22 Q But I'll, I'll show you this.

23 A Okay.

24 Q And you tell, you've been reading these things a long
25 time, that he was arrested, correct, on July the 22nd of

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by Mr. Morton

1 '01---

2 A That's correct.

3 Q ---for improper turn, DUS, and disregarding a stop
4 sign, and possession of crack?

5 A Yeah, July 22nd he was charged with, as you stated, and
6 I'm just gonna read it to make sure we're on the same thing.

7 Q Okay.

8 A Driving under suspension, the improper turn, the
9 possession of crack, disregarding a stop sign, that's
10 correct.

11 Q Okay. And then the next now---

12 A Yeah.

13 Q Okay. Is, is his court charge, correct?

14 A That's right. You're correct.

15 Q Okay.

16 A I was not correct because I was looking at where you
17 had that highlighted.

18 Q Okay. And my apologies for that.

19 A That's all right.

20 Q So that on the date of this trial---

21 A That was pending. It appears that that was pending.

22 Q The possession of crack was pending?

23 A Yes.

24 Q And do you think that it may have shed further light on
25 Mr. Gibson's motivation to have informed the jury that he

Michael Morin - Direct examination
by Mr. Morton

1 also had a possession of crack charge from just a couple
2 months earlier?

3 A Yes.

4 Q And he was looking for that 15 years for that?

5 A The fact that he had that charge, yes.

6 Q And that he was looking at 15?

7 A I suppose that -- now you're asking me what the jury
8 would do with that information.

9 Q No, I understand.

10 A But I suppose it would have helped, yes.

11 Q Okay. Did you know that, that Mr. Gibson was in jail
12 at the time of his testimony?

13 A I don't remember if he was in jail or not.

14 Q Okay. I'm gonna show you some things that I've, I've
15 put up just because I, it's easier to read and ask you --

16 A Okay.

17 Q -- if this was, in fact, the case or if this is what
18 you remember if I know how to work this thing.

19 Mr. Gibson, September of '99, he indicated that Moore
20 wanted a ride to the hospital when he came by?

21 A I believe that's his statement, yes, sir.

22 Q That three or four days after the incident, he told
23 Mr. Mabry Moore wanted a ride to the hospital and that's why
24 he came by, not---

25 A You're telling---

Michael Morin - Direct examination
by Mr. Morton

1 Q ---to buy crack?

2 A You're telling me that today, yes.

3 Q And you didn't know that?

4 A No.

5 Q That on March 23 of 2000 he was arrested for
6 trafficking in crack, you knew that?

7 A I knew that.

8 Q That on May 31st he was arrested for DUS?

9 A Yes.

10 Q That on June the 5th he gave a statement to an
11 investigator from the Solicitor's Office, when confronted
12 about whether Moore came over there for crack that no, Moore
13 wanted a ride to hospital?

14 A You're telling me that today --

15 Q You didn't know that?

16 A -- from that investigator thing you gave me.

17 Q And you did not know that?

18 A Not that I'm aware of.

19 Q That on June the 28th of '01 he had received a 60 day
20 sentence for failure to appear?

21 A If it appeared on the sentence, on the rap sheet I
22 would of known it.

23 Q Okay.

24 A But if it didn't I don't know that I would have.

25 Q Okay.

Michael Morin - Direct examination
by Mr. Morton

1 A Because---

2 Q And I took that. I'm sorry.

3 A ---I can't really tell, from the information up there,
4 what that is. If it is, if it's on there, then I knew it.

5 Q I don't -- tell me if you see that anywhere.

6 A I'll try to do better than the last time.

7 Q Okay.

8 A You're saying in June of 2001?

9 Q Right.

10 A I don't see that on here.

11 Q Okay.

12 MR. SALTER: Your Honor, I'm gonna have to object. It
13 appears from that document, and the whole line of
14 questioning that defense counsel is now engaging in, it's
15 irrelevant because it's a, it's a crime that doesn't carry
16 more than a year and it doesn't involve dishonesty.

17 THE COURT: Are you asking for it to be admitted?

18 MR. MORTON: Yes, sir.

19 THE COURT: Okay. You want to address that?

20 MR. MORTON: He said he didn't object I think is what
21 he said, Your Honor. So, I would ask---

22 MR. SALTER: I don't object to the document, but I do
23 object to the entire line of questioning cause it's
24 irrelevant. I mean I have no -- I don't question that the
25 document is what it purports to be.

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by Mr. Morton

1 THE COURT: I see.

2 MR. SALTER: But my, my whole objection is -- my
3 objection is to the entire line of questioning.

4 THE COURT: What is the relevance of that particular
5 document?

6 MR. MORTON: Well, if the Court will allow me to
7 continue on, I think that my, my, the relevancy is as to
8 George Gibson's motivation, his credibility, and what Mr.
9 Morin knew about Mr. Moore especially in the months
10 preceding, in the weeks preceding his changed statement on
11 September 25th.

12 THE COURT: I'll allow it.

13 (WHEREUPON, the bench warrant was marked as Applicant's
14 Exhibit No. 28 and received into evidence at this time.)

15 A I, I don't believe that I had or was aware of this.

16 Q Okay. And that indicates that he was -- beg the
17 court's indulgence.

18 (Pause.)

19 Q Then on, on June the 28th he was served with that --
20 he was -- actually indicates that, I'm sorry, that on June
21 the 28th he failed to appear?

22 A That's what it says, for his DUS.

23 Q And that, at that time, the magistrate, in his absence,
24 gave him a 60 day sentence and issued a bench warrant?

25 A That's right.

Michael Morin - Direct examination
by Mr. Morton

1 Q Okay. That that bench warrant was then signed on
2 August the 13th?

3 A That's what the document says.

4 Q Okay. And that's from the Magistrate's Office,
5 correct?

6 A Yes.

7 Q That, in the mean time, he had picked up this
8 possession of crack charge, disregarding stop sign, improper
9 turn on July the 22nd?

10 A Right.

11 Q That's not on there.

12 A Right.

13 Q Okay.

14 A Okay. We're back up there.

15 Q Yeah, I'm sorry. I'm sorry. I had to backtrack
16 because wanted, I wanted to point out was that he failed to
17 appear --

18 A Uh-huh. (Affirmative).

19 Q -- on June 28th.

20 A Right.

21 Q He picked up another crack charge?

22 A Right.

23 Q Were you aware that, despite the fact that that failure
24 to appear was outstanding, that he was granted bond on
25 July 22nd, 2001?

Michael Morin - Direct examination
by Mr. Morton

1 A Obviously these dates mean that, but---

2 Q Okay. And that on August the 20th of 2001 he was
3 arrested for the failure to, failure to appear?

4 A That's what this says.

5 Q Okay. That on September the 24th -- do you have any
6 objection to --?

7 MR. SALTER: No objection.

8 THE COURT: It will be admitted without objection,
9 whatever it is.

10 What is it?

11 MR. MORTON: It's a release slip from the, from the
12 jail indicating that he was released on September 24th.

13 THE COURT: All right. Thank you.

14 (WHEREUPON, the jail record was marked as Applicant's
15 Exhibit No. 29 and received into evidence at this time.)

16 A Yes, sir.

17 Q That on September the 24th, then George Gibson was
18 released from the Spartanburg County Jail, and that
19 indicates time served.

20 Is that your interpretation of that?

21 A That's what is written.

22 Q Right.

23 A But he had done the time.

24 Q I'm sorry?

25 A Okay. Yeah.

Michael Morin - Direct examination
by Mr. Morton

1 Q Okay.

2 A I mean he---

3 Q And he had been -- my recollection is, is back then, 60
4 day sentence, 51 percent, he would of gotten 30 something
5 days.

6 Q I understand.

7 And then that, on September the 25th, he gave a new
8 statement to the prosecutors?

9 A They told me what the new statement was and when they
10 got it and we talked about that.

11 Q And that on September 28th he went back to jail.
12 Did you know that?

13 A I don't remember if he was in jail or not.

14 Q Okay.

15 A I just don't. I mean he could of, he could of been in
16 jail and they could of dressed him out to bring him in or
17 not. I just don't remember.

18 Q Would you have liked to have known -- would you have
19 asked him about it?

20 A If the charges he was in on were -- if the convictions
21 that underlined, that were the basis for his incarceration
22 were allowable, then I probably would have.

23 Q Okay. But the fact that he was serving time at the
24 time of his testimony, would that have been something that
25 you brought out?

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by Mr. Morton

1 A I don't know that I would have.

2 Q Okay. Do you think it's important?

3 A No, I think his convictions are important. Where he is
4 at that point or his motivations for changing his story,
5 which I felt like it was a trafficking charge, that's why he
6 was trying to change his story, as you've already pointed
7 out, he had reason to want to change it.

8 Q Would you agree with me that George Gibson, in your
9 experience as the defense attorney and as a prosecutor --

10 A Uh-huh. (Affirmative).

11 Q -- if you needed his testimony --

12 A Uh-huh. (Affirmative).

13 Q -- that it was important that you get him to the
14 courthouse?

15 A Yes.

16 Q Okay. And that if he was in jail --

17 A Uh-huh. (Affirmative).

18 Q -- you knew you could get him to the courthouse---

19 MR. SALTER: Your Honor, he's leading again. I've let
20 it go so far this morning, but counsel's leading?

21 THE COURT: He is on direct. So, let's try not to lead
22 the witness.

23 Q As a prosecutor and dealing with a man named George
24 Gibson, how would you make sure he got to the courthouse?

25 A I would tell my investigator to issue a subpoena, which

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by Mr. Morton

1 I've done this week, and if they were in jail, I would speak
2 to the person in charge of having him transported up for
3 that term of court.

4 Q When you issued a subpoena, you would just issue a
5 subpoena and have Mr. Gibson---

6 A Served.

7 Q ---served --

8 A Yes.

9 Q -- and show up on a certain day?

10 A Yes.

11 Q Okay. And on October the 18th is when this trial
12 began, right?

13 A I believe that's correct.

14 Q And you did not know of his new statement, you, you
15 said, until the week before. I think it was actually about
16 ten days.

17 A Okay.

18 Q Okay. Did you think about asking for a continuance at
19 that point?

20 A I don't remember thinking about a continuance if
21 that -- I mean it's kind of a -- I---

22 Q Did you, did you ask for---

23 A I think if I would of thought a continuance -- if, if I
24 thought I could get one, if I thought I had a basis for one,
25 I would of made that motion. I don't know that that

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by Mr. Morton

1 statement alone would have been a ground. So, I may not
2 have done that.

3 Q Okay.

4 A But---

5 Q In any event, you did not make a motion---

6 A No.

7 Q ---for a continuance?

8 A I don't believe I did.

9 Q Okay. And you will admit that this was a new statement
10 that had just come to light?

11 A I think I argued about that.

12 Q Okay. Did you talk to Mr. Moore about the request that
13 you were gonna make for a voluntary manslaughter charge?

14 A I -- yeah, we did because we were talking about what we
15 thought the outcome could be in trial and what we were
16 trying to do. At that point, without him testifying, the
17 best that we could try to do is get a manslaughter.

18 Q Okay.

19 A But, again, without him testifying, it's gonna be an
20 issue---

21 Q Did you, did you discuss with him what voluntary
22 manslaughter was and how you needed to have some evidence
23 with which to show the judge?

24 A Uh-huh. (Affirmative).

25 Yes.

Michael Morin - Direct examination
by Mr. Morton

1 Q Okay. And do you think that he understood what
2 voluntary manslaughter was?

3 A I think so.

4 Q Okay. Did you talk to him about self-defense?

5 A Yes.

6 Q Okay. Do you remember Mr. Gowdy, in his closing
7 statement, using the phrase that Richard Moore's behavior
8 was "escalating violence"?

9 A Mr. Morton, the only thing I can remember, from Mr.
10 Gowdy's closing, is him standing in front of the jury, and
11 he may deny it, but I'll swear that he, he reached behind
12 himself at a certain point and I thought he pinched himself
13 on the back to make his voice crack. I remember that. But
14 the details of what else he said at either one of them, as
15 you, you will, you've already alluded, showed me the, where
16 in the transcript where he said these things about the
17 crack, but I don't remember the details of his closing. I
18 can only remember some of my own.

19 Q Okay.

20 A And are you talking about the closing that he made at
21 the penalty or the guilt phase?

22 Because I -- at the guilt phase, at the penalty phase,
23 I know I couldn't tell you much about what he said.

24 Q Okay.

25 A I, I, I think that -- I'm just telling you that's what

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by Mr. Morton

1 I can remember. I don't remember.

2 Q I understand.

3 Okay. If Mr. Gowdy did, in fact, use those words,
4 escalating violence --

5 A Uh-huh. (Affirmative).

6 Q -- to talk about Mr. Moore---

7 A In the penalty phase or in the guilt phase?

8 Q In the penalty phase.

9 A Okay.

10 Q would that have indicated to you that now his future
11 dangerousness was an issue?

12 A And he said it in his closing?

13 Q Yes, sir.

14 A I don't know. I don't think so. His record had come
15 in and that was one of the things that they were arguing as
16 a reason for their belief in what the sentence should be. I
17 don't know that that necessarily raised to that, especially
18 at that point, but --.

19 Q Based on what you know about Mr. Moore's disciplinary
20 record in the Spartanburg County Jail --

21 A Uh-huh. (Affirmative).

22 Q -- would there have been any reason not to present an
23 adaptability expert?

24 A The only thing I remember about that is I know he was
25 in Pod 5 for a while while I represented him, and the reason

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by Mr. Morton

1 you go to Pod 5 is because there's some sort of, you've had
2 some sort of problem inside the jail. But beyond that, I
3 don't know about his disciplinary. I don't even know why he
4 was in Pod 5.

5 Q Okay. If an expert would have testified that his
6 disciplinar troubles within the Department of, within
7 Spartanburg County Detention Center --

8 A Uh-huh. (Affirmative).

9 Q -- were for disobeying a police officer, for having 11
10 dimes, some of which were, he was found not guilty within
11 internally --

12 A Okay.

13 Q -- if an expert, or if, upon review of his records,
14 those were the types of things, not major types of
15 infractions within the Department of Corrections, within
16 Spartanburg County Detention Center, I'm sorry --

17 A Uh-huh. (Affirmative).

18 Q -- would there have been a reason then not to call an
19 adaptability expert just based on that?

20 A Just based on the, on what he did at Spartanburg
21 County?

22 Q Right.

23 A I don't think that would of been if it was just that.

24 Q Okay. Because, at that point, his record was already,
25 had been brought up to the jury?

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by Mr. Morton

1 A Right. But most of his record that, that was brought
2 up or some of it was in Michigan.

3 Q Right.

4 A Right.

5 Q But the jury already knew about all that.

6 A Well, now, you're talking about two different things.
7 You're talking about his convictions and you're talking
8 about how he did while he was incarcerated.

9 Q Right.

10 A So --.

11 Q Right.

12 A But you -- and your question is specifically just to
13 what happened at the Spartanburg County Jail?

14 Q Let me, let me see if I can make myself clear. The
15 jury knew about his prior record.

16 A Right.

17 Q Okay. They didn't know about his infractions in the
18 Spartanburg County Jail, right?

19 A I believe that's correct.

20 Q And if you had brought in an adaptability expert, the
21 State could of brought out those infractions in the
22 Spartanburg County Jail?

23 A well, I would of used it to show that he did have some
24 problem, whether he was convicted or they were minor or what
25 have you.

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by Mr. Morton

1 Q Right.

2 A Yeah.

3 Q And if, in fact, the expert had presented evidence that
4 these infractions were minor, would there have been a reason
5 not to call an adaptability expert?

6 A And just so I'm clear, you're talking just the stuff
7 that happened in Spartanburg?

8 Q Yes, sir.

9 A And if he said that just the stuff in Spartanburg was
10 minor and that kind of thing and he could explain it away,
11 then, then maybe we, maybe he would of been helpful. But,
12 you know, I mean there's still gonna come out, the jury's
13 gonna hear their argument is that he's not -- he won't
14 follow the rules.

15 Q Right.

16 A So they're gonna get to put in more evidence that he
17 won't follow the rules. So, you know, you kind of have to
18 weigh that back and forth.

19 Q Okay. Did you consider asking the Court for a
20 statutory mitigating charge in this case that there was, the
21 jury could consider, as a statutory mitigator, provocation
22 by the victim?

23 A I don't remember.

24 Q You don't remember considering that?

25 You don't remember doing it, right?

Michael Morin - Direct examination
by Mr. Morton

1 A I don't remember if I considered it or if I did it.

2 Q Okay.

3 A And at this point we're talking about weather or not
4 Mr. Kelly and I considered or did.

5 Q Okay.

6 A Because now you're in the penalty phase.

7 Q Okay. I know I've already asked you, but I'm gonna ask
8 you again about Mr. Gibson's testimony --

9 A Okay.

10 Q -- and the importance of it.

11 A All right.

12 Q How would you---

13 A Well, based on what you read to me from Mr. Gowdy's,
14 state, closing, he made it more of an issue than I would
15 have thought it would of been or should of been. However --
16 well --.

17 Q And you made an---

18 MR. MABRY: Wait.

19 Q I'm sorry?

20 A I was gonna say, you know, I, I did what I thought I
21 could do to impeach him. I guess that's my answer.

22 Q And you made, and you made a motion to exclude --

23 A Uh-huh. (Affirmative).

24 Q -- his testimony --

25 A That's correct.