STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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Certiorari to Sumter County

Honorable R. Knox McMahon, Circuit Court Judge

WAYNE D. COOPER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001507

APPENDIX

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) 2007-GS-43-0277

State of SC,)
PLAINTIFF)
vs.) TRANSCRIPT OF RECORD
)
Wayne Cooper,)
DEFENDANT)

November 10-13, 2008
Sumter, South Carolina

B E F O R E:

THE HONORABLE HOWARD P KING, JUDGE; and a jury.

A P P E A R A N C E S:

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Taken by Melissa Winfield, CVR
Transcribed by
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Official Court Reporters

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THE COURT: Mr. Corbett, what's the next matter?

MR. CORBETT: Thank you, Your Honor. Your Honor, at this time the State would call the case of the State of South Carolina versus Wayne D Cooper. It is indictment 2007-GS-43-277.

Mr. Cooper is before the Court on a true billed indictment alleging murder. He is represented by attorney Arthur Wilder. Mr. Cooper and Mr. Wilder are present in the courtroom.

Your Honor, the State is ready to proceed. If I may, I will hand up the original indictment and a listing of the State's potential witnesses.

THE COURT: All right. Mr. Corbett or Mr. Wilder, any special requests to voir dire?

MR. CORBETT: Nothing from the State, Your Honor.

MR. WILDER: Nothing from the defense.

THE COURT: All right. All right. Ladies and gentlemen of the jury panel, if you would give me your attention. You have heard the State announce that they have called the case of the State of South Carolina versus Wayne Cooper.

What I'm going to tell you now are the allegations of the indictment, but I would tell you that the allegations of the indictment are not

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evidence of anything. They are simply the lawyers' views of what they think the evidence will show.

But I tell you this so that you can determine whether you know anything about the case or anything that would prevent you from serving as a juror in this case.

But the allegations of the indictment are the State alleges that on or about September the second, 2006, that Mr. Cooper did along with another feloniously kill willfully and with malice aforethought kill one Brandon Green by means of shooting him and that Mr. Green died as a result of the shooting.

So the charge is one of murder against Wayne Darnell D-a-r-n-e-l-l Cooper. The defendant Mr. Cooper is represented by Mr. Arthur Wilder. Mr. Wilder, would you stand, introduce yourself to the jury and have your client stand and face the jury, please.

MR. WILDER: All right. Ladies and gentlemen of the jury, I'm Arthur Wilder. I have been practicing law here in Sumter County for over 30 years. This is my client, Mr. Wayne Cooper.

THE COURT: Thank you. Please be seated. All right. Before we select the jury I need to ask you

some questions. Please give your attention to these questions and if they apply to you, then respond accordingly.

Is any member of the jury panel related by blood or connected by marriage to the defendant, Wayne Darnell Cooper; if so, please stand. The following individuals may appear as witnesses in this case.

And I would ask that if the witnesses are present in court, if they would stand and face the jury whenever your name is called and then you may be seated after your name is called.

Mary Green, Wanda Rogers, Theresa Green, Erin Boland, Ricky Richards, Kevin Lindsey, Steve Ham, Tracy Gerek, Terrance Colclough, Robert Sinkler -- I'm sorry -- Robert Skinner, Ray Mackessey, Cindy Pierson, Trevor Brown, Wayne Dubose, Wesley Garner, Africa Josey, Maria Hodge, Ken Nesbitt,. Nesbitt, Dr. Janice Ross, Ila Simmons, Jamie Turner, Tommy Barron, Tameka Green, Shirlene Skipper, Anthony Dennis, and Allen Dailey.

MR. CORBETT: Your Honor, also if you would sound Angie Boland.

THE COURT: I did say -- I said Angie I think or did I skip it? Angie.

MR. CORBETT: You said Erin, and it's and Angie.

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THE COURT: Erin Boland and Angie Boland. Okay. Thank you. You may be seated. Is any member of the jury panel related by blood or connected by marriage to any of the witnesses that I have read off; if so, please stand. Who is the gentleman that was standing back there?

JUROR: I know the -- some of the...

THE COURT: All right. Come on up, please.

(Whereupon a bench conference was held.)

THE COURT: All right. In addition, ladies and gentlemen, there are other potential witnesses -- and let me give you their names. K-y-r-i-a Chestnut, Chris Porter, Latonya Hilton, Otis Cooper, possibly a records clerk from Wyboo Plantation Utilities, possibly a records clerk for treating doctor from Doctor's Care, and Derrick Leon Cooper.

Is any member of the jury panel related by blood or connected by marriage to any of those potential witnesses; if so, please stand. Thank you.

Is any member of the jury panel close personal friends of any of the parties, their lawyers or any of the witnesses whom I have read off to you; if so, please stand.

Does any member of the jury panel know anything about the facts of this case as I have briefly

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recited them to you; if so, please stand.

Has any member of the jury panel formed or expressed an opinion as to the guilt or innocence of the defendant, Wayne Cooper; if so, please stand.

Is any member of the jury panel aware of any interest, any bias, or any prejudice for or against the defendant, Wayne Cooper, other than what has already been disclosed to me; if so, please stand.

Other than what has already been disclosed to me, can each member of the jury panel give to the State and the defendant, Wayne Cooper, a fair and impartial trial; if not, please stand.

All right. Come forward, please.

(Whereupon a bench conference was held.)

THE COURT: All right. Other than what has been disclosed to me, does any member of the jury panel know of any reason whatsoever why he or she should not serve as a juror in this case; if so, please stand.

All right. Thank you. Any additional questions on behalf of the State, Mr. Corbett?

MR. CORBETT: Nothing further from the State, Your Honor.

THE COURT: On behalf of the defense, Mr. Wilder?

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MR. WILDER: Nothing further, Your Honor.

THE COURT: All right. Come up, counsel.

(Whereupon a bench conference was held.)

THE COURT: All right. Counsel, based upon our discussions at the bench, are there any further matters for the State before we draw the jury, Mr. Corbett?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: Mr. Wilder?

MR. WILDER: Nothing from the defendant, Your Honor.

THE COURT: Mr. Clerk, if you will give us a jury, please.

BAILIFF: Ladies and gentlemen, I think you know the routine by now, we have been through it before. When your name is called, please come through the double gates or the single gate on this side. Juror number 84, Teresa James (black female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Just excuse the juror for this trial.

BAILIFF: Have a seat back in the jury panel.

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You have been excused for this trial, please ma'am. Juror 137, Joyce Strickland (white female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse the juror from this trial.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror 143, Brenda Watts (white female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mrs. Watts.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 162, Thomas Wright (white male). Your Honor, I think Mr. Wright...

THE COURT: Transferred. That's okay. All right. Skip it and go to the next one.

BAILIFF: Juror number 38, Lawanda Conyers (black female.)

MR. WILDER: Number please?

BAILIFF: Number 38. What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

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MR. WILDER: Swear Mrs. Conyers.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 82, Stacey Ingham (white female). Gentlemen, I think you will find this is...

MR. WILDER: That's correct.

BAILIFF: What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mrs. Robertson.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 160, Ronald Wright (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Wright.

BAILIFF: Have a seat in the jury box, please sir. Juror number 88, Francis Kennedy (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse Mr. Kennedy for this trial.

BAILIFF: Have a seat back in the jury panel. You have been excused for this jury trial, please sir. Juror number 126, Marvin Riley (black male).

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What says the State?

MR. CORBETT: Excuse the juror, please.

BAILIFF: Have a seat back in the jury panel. You have been excused for this trial, please sir. Juror number 150, Lillie Williams (black female). Juror number 150, Lillie Williams.

THE COURT: All right. We'll have to check on her. Maybe they misunderstood my instructions, but that was...

MR. WILDER: Your Honor, I believe that was the one you said had a conflict Friday.

THE COURT: That's right.

BAILIFF: Okay. Juror number 74, Donald Hauptman (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Hauptman.

BAILIFF: Have a seat in the jury box, please sir. Juror number 56, Kevin Elliott (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Elliott.

BAILIFF: Have a seat in the jury box, please sir. Juror number 145, Robert Welch (white male).

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What says the State?

MR. CORBETT: Present the juror.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Welch.

BAILIFF: Have a seat in the jury box, please sir. Juror number 139, Angie Thornhill (white female). What says the State?

MR. CORBETT: Mr. Herring, that was 139, correct?

BAILIFF: 139.

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse the juror for this trial.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror number 92, Terry Kudra (white female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: We'll excuse the juror.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror number seven, Thomas Ardis (white male). What says the State?

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MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Excuse Mr. Ardis.

BAILIFF: Sir?

MR. WILDER: Please excuse the juror.

BAILIFF: Have a seat back in the jury panel, sir. You have been excused from the trial, please sir. Juror number 76, James Higgins (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse Mr. Higgins.

BAILIFF: Have a seat back with the jury panel. You have been excused from this trial, please sir. Juror number 151, Mary Williams (black female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please swear Mrs. Williams.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 118, Rebecca Prater (asian female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mrs. Prater.

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BAILIFF: Have a seat in the jury box, please ma'am. Juror number 104, Gregory Mcgrady (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse the juror.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please sir. Juror number 129, Kristin Shumaker (white female). What says the State?

MR. CORBETT: Mr. Herring, that was 129?

BAILIFF: 129.

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mrs. Shumaker.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 122, James Reid (black male). What says the State?

MR. CORBETT: Excuse the juror, please.

BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please sir. Juror number 123, James Reynolds (white male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Reynolds.

BAILIFF: Have a seat in the jury box, please sir. Juror number 110, Mae Myers (black female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please swear Mrs. Myers.

BAILIFF: Sir?

MR. WILDER: Please swear the juror.

BAILIFF: Have a seat in the jury box, please ma'am.

THE COURT: All right. Counsel, contrary to what I earlier talked about, the decision to select two alternates, so two alternates. Two.

BAILIFF: Juror number 31, Janet Caldwell (white female). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mrs. Caldwell.

BAILIFF: Have a seat in the jury box, please ma'am. Juror number 51, Elizabeth Duffy (white female). What says the state?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Please excuse Mrs. Duffy.

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BAILIFF: Have a seat back in the jury panel. You have been excused from this trial, please ma'am. Juror 159, Jeremy Wright (black male). What says the State?

MR. CORBETT: Present the juror, please.

BAILIFF: What says the defendant?

MR. WILDER: Swear Mr. Wright.

BAILIFF: Have a seat in the jury box, please sir.

THE COURT: All right. Anything with regard to selection of the jury on behalf of the State, Mr. Corbett?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: On behalf of the defendant, Mr. Wilder?

MR. WILDER: Give me one moment, Your Honor --

THE COURT: All right, sir.

MR. WILDER: -- to consult with my client.

(Mr. Wilder conferring with defendant.)

MR. WILDER: No motions relative to selection of the jury.

THE COURT: All right. All right. Counsel, come up just a minute and let's talk about scheduling.

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(Whereupon a bench conference was held.)

THE COURT: All right. Ladies and gentlemen of the jury selected in the trial of this case, two things. First of all, we have reached the lunch hour and I'm going to excuse you and allow you to go and get your lunch.

And the second thing is I have been advised by counsel that there are some matters that we need to take up and do before we go forward with the trial of this case. And I don't want to keep you waiting in the jury room unnecessarily.

So what I'm going to do is to excuse you now and go with the bailiff and she will show you where your jury room is and how to get in and out of the courthouse. And I'm going to ask you to be back in your jury room please at 3:00.

That will -- that's about an hour and 45 minutes away, and we have got some matters that we have got to take up, so if you would be back in your jury room please at 3:00 and we'll be ready to go at that time.

Two or three matters before I excuse you. First of all, later on in this trial I will name one of the 12 members of the principal jury as the foreperson of the jury. When I do that, the foreperson should always sit in the first seat here on the front row.

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The alternates should always sit in the seats where they are seated. That is this corner and that corner. Other than that, none of the seats in the jury box are reserved.

It does not matter what order you come and go from the courtroom. I would simply ask that you go all the way down so it wouldn't be a situation of crawling over one another, reserving the first seat on the front row for the foreperson when I name that foreperson and of course the seats in the corners, first seat on the second row and the seat up here for the alternates who will always sit in those seats.

I would also tell you that it would be improper for you to discuss this matter with anybody over the lunch recess. I know you don't know anything about the case except what I told you briefly it is about, but any discussion of the case with your family or your friends would be improper.

And this admonition will carry throughout the trial of this case and any recesses. You should not discuss the case with anyone until the case is over and you have been discharged by me as jurors.

The reasons for that are pretty apparent. You have got to decide the case based upon what you hear in this courtroom and not on the basis of what anyone

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else might say.

So do not discuss the case with anyone, do not allow anyone to discuss it with you. If anyone should approach you or try to talk to you about the case, get their name and their description and report it to the bailiff and they will report it to me and I will deal with them.

And finally, do not discuss the case among yourselves when you are reassembling in the jury room or at any time during the trial of this case until I tell you it is appropriate for you to begin your deliberations. Any discussion before that would be premature.

So I would tell you that while you are assembling there in the jury room and at any recesses you can talk about anything you want to talk about, sports, weather, children, grandchildren, anything at all, but don't talk about this case until I tell you it is appropriate for you to do so.

So with those admonitions I am going to excuse you, allow you to go about your business and ask you to please be back in the courtroom at 3:00 and we'll have our matters taken care of and be ready to go with the jury promptly at that time. I will see you at 3:00. Thank you. Have a pleasant lunch.

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(Jury left the courtroom at 1:09 p.m.)

(Whereupon remaining panel was excused.)

THE COURT: The Court will be in recess until 2:30 at which time we'll take up the motions that need to be discussed at that time and then we'll be ready to go with the jury at three. So we'll be in recess until 2:30.

(Whereupon court was in recess for lunch.)

THE COURT: Thank you. Please be seated. All right. Counsel, after our office or in chambers discussion we are going to change our schedule a little bit from what we were going to do, but let's go ahead and hear the preliminary matters that Mr. Wilder and Mr. -- all right. Where is Mr. Finney?

All right. Back on the record with regard to State versus Wayne Darnell Cooper. Mr. Cooper is present in the courtroom with his attorney, Mr. Wilder. Also we need -- Mr. Campbell, see if you can find Mr. Finney. I want to take up his matter in just a minute.

But in the mean time, Mr. Wilder, I believe you had indicated you had some matters that you wanted -- motions you wanted to make and matters you wanted to put on the record.

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MR. WILDER: Thank you, Your Honor. Your Honor, two years ago we filed a rule five and Brady motion on the State, and over the period of time the State has responded in different manners to that rule five and Brady motion, but we want to renew it now, the date of trial, to make sure that we have been given everything that we have requested under rule five and Brady.

THE COURT: All right.

MR. WILDER: The written motion that was previously filed with the Court as to the specifics of that.

THE COURT: All right. Mr. Corbett, has everything been furnished to the defense under rule five of the rules of criminal procedure as well as the Brady case?

MR. CORBETT: It has, Your Honor.

THE COURT: All right.

MR. WILDER: Your Honor, in that regard when the case was called for trial back during the summer, the State came forward with a ballistics test which indicated that a firearm that had been seized from the defendant's residence on Suzie Mae Rembert -- or Suzie Rembert Road was -- did not match a bullet that was taken from the decedent in this case.

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At that time the State offered to stipulate that that firearm that was seized from the defendant's residence, since it couldn't be shown to have anything to do with this case, would not be referred to in that trial.

Whereupon I filed a motion to have that firearm independently examined and by my own ballistics expert. The thing was scheduled for a hearing before Judge Cothran. We got funds to go ahead and have the thing independently examined.

We filed a motion to have the firearm secured and transported to Georgia where the ballistics agent was. I gave a proposed order to the Solicitor's office and then at the hearing regarding a bond last week the Solicitor said, well, that will probably be dealt with by some stipulation this week.

So what I'm -- and then I looked at him and said well, you know, if they intend to stipulate that that firearm is not going to be used in this trial, then that does resolve the independent examination issue.

I want to make sure that's the case, that the State is stipulating that that firearm does not need to be independently evaluated, that they are not going to refer to it in -- in this case.

THE COURT: Mr. Corbett?

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MR. CORBETT: That is correct, Your Honor.

THE COURT: You will not refer to it at all?

MR. CORBETT: Your Honor, unless the defense somehow--

THE COURT: Well, unless they open the door, I understand. But as far as the State's case is concerned, that firearm will not be referred to or made a part of the State's case in any manner is what--

MR. CORBETT: That's correct.

THE COURT: All right. All right.

MR. WILDER: All right. Then Your Honor, of course, we're moving to suppress any statement my client gave or may have given to--

THE COURT: We're going to come up with that in a few minutes. I understand a motion to suppress has been made and we are going to get into that as far as testimony is concerned as soon as I deal with the jury.

MR. WILDER: All right. Thank you, Your Honor.

THE COURT: All right. Anything else?

MR. WILDER: Anything else? Okay. Your Honor, for the record, anything else that was seized at that residence, if it becomes something the State wants to go into, I do want to put everybody on notice that I

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am moving to suppress anything that was seized pursuant to that search and I'd like that to be something the State's aware of so that--

THE COURT: We going into both the Jackson v Deno statement issue and we are also going into your motion to suppress whatever was received and whatever the State seized as a result of the search, and we'll take those matters up as soon as we deal with the jury and send them home.

MR. WILDER: All right. Thank you, Your Honor. I don't think we have anything else.

THE COURT: All right. Mr. Finney, you had something that you wished to put on the record? And let the record reflect that Mr. Ernest A Finney, the third, Chip Finney is here on behalf of the co-defendant, Derrick Leon Cooper.

MR. FINNEY: Yes, sir, Your Honor. Just for the record we wanted to interpose an objection to the fact that we were told that we should be ready for trial this morning. We prepared for trial.

The two gentlemen, the Cooper brothers, are indicted on the same indictment, and my client has been in jail awaiting today for almost two years and that he is -- objects very strongly to not being able to go forward with the presentation of his defense so

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that he can try to take his release from this black mark on his record.

THE COURT: All right. Mr. Corbett?

MR. CORBETT: Your Honor, with regard to the co-defendant, I believe it's the State's prerogative to call one defendant as opposed to calling both defendants.

In this particular case we're alleging that one of the defendants made a statement which references the other defendant. We anticipated a Bruton issue there.

There is also an issue with the number of jurors available, so we made a tactical decision, so-to-speak, to go ahead and proceed against one defendant today.

THE COURT: All right. All right. The Court ruling or position would be on that, that the matter of which case is called and what order to call them is a matter that is left to the Solicitor, and the Solicitor has the right to determine if they wish to sever one case from the other, and they have done so in this case.

In addition, there is -- there has been articulated on the record a possible Bruton issue with regard to trying the two defendants together. I

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don't know whether that exists or not, but it might, but that could be influential as far as the State's decision as to whether to try both of them together.

And secondly, I will state for the record that there was a juror issue, and that being the number of jurors. We began today with I believe 52 jurors. Judge James drew a jury of 13 or 14 and that left us the remainder to draw from, and that would have prevented a trial with both defendants because then there would have been a 10 strike 20 strike arrangement with trying two defendants at the same time and there were not enough jurors to do that.

But that's just for the record and that -- your position is noted.

MR. FINNEY: Thank you, Your Honor.

THE COURT: Thank you.

MR. WILDER: In that regard, Your Honor, since the State did elect to sever these two fellows that were indicted together, I would like the co-defendant to remain available to me to call as a witness at whatever stage of the trial.

In other words, I'm asking for a court order that he not be taken away at whatever stage of the trial I might need him to testify as a witness. I'll certainly work with the State.

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THE COURT: Well, you wouldn't need him until the defense case; is that correct?

MR. WILDER: No, sir. I'm going to move -- I'm going to call him as a witness to suppress the statement also. He was with my client, knows how much my client had to drink that day.

THE COURT: All right. Well, then this afternoon. But as far as during the State's presentation of their case, you don't need him during that point.

MR. WILDER: I don't think so, Your Honor. I certainly -- of course, up to them whether to call him as a witness, but after I get done with him on the suppression hearing, I don't think I'm going to need him until my case.

THE COURT: All right. And he is incarcerated at the Sumter Lee Regional Detention Center; is he not?

MR. WILDER: Yes, sir.

THE COURT: All right. Keep him here this afternoon, Mr. Scott. All right. All right. That will conclude the matters with regard to this matter for right now. In just a minute as soon as we get all the jurors back, I'll take care of releasing them for the afternoon and we'll go into the suppression

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matter.

In the mean time, Mr. Gamble had a quick guilty plea he wanted me to do while I'm waiting on the jurors to make sure we get all the jurors back. Mr. Gamble out there? All right. Come on in.

(Whereupon a recess was had in this case.)

THE COURT: All right. Now, Charlie, have we got all the jurors? Okay. Bring them in and I'm going to send them home.

(Jury entered the courtroom at 3:07 p.m.)

THE COURT: All right. Thank you very much, ladies and gentlemen. Thank you for your promptness in being back here this afternoon. Before we begin the actual trial of this case, I thought it might be helpful if I explain to you basically how a trial proceeds.

First of all, the State will make an opening statement. An opening statement is not evidence. It is simply an outline to help you understand what the State expects the evidence will show. The defendant may, if he wishes to, present an opening statement, but he doesn't have to for reasons that I will explain later.

Following the opening statements, you will hear the testimony and evidence in this case. This will

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consist of testimony from the State's witnesses as well as any physical exhibits which may be introduced into evidence.

Following the completion of the testimony, the attorneys will again have an opportunity to make what is called a closing statement or summation to you. This is an opportunity for the attorneys to summarize the case from their respective points of view. Again, these arguments are not evidence.

Following the closing statements by the attorneys, I will instruct you on the law of South Carolina as it pertains to the issues that have arisen in this case. And when I have completed my instructions to you, you will be permitted to begin your deliberations in order to reach a verdict.

Now ladies and gentlemen, you're now the jury in this case, and I want to take a few minutes to tell you something about your duty as jurors and to give you some preliminary instructions. At the end of this trial I will give you more detailed instructions and those instructions will control your deliberations.

It will be your duty to decide from the evidence what the facts are. You and you alone are the judges of the facts. You will hear the evidence, decide

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what the facts are, and then apply those facts to the law which I will give to you. That is how you reach a verdict.

In doing so, you must follow the law whether you agree with it or not. The evidence will consist of testimony of witnesses, documents and other things received into evidence as exhibits and any facts on which the lawyers agree or which I may instruct you to accept.

Now, you should not take anything that I may say or do during this trial as indicating what I think of the evidence or what your verdict should be. I am not permitted to have an opinion about the facts. That is a matter solely for the jury's determination.

The same law that makes you the judge of the facts makes me the judge of the law. You must take the law as I give it to you regardless of what you think the law is or what the law ought to be.

If I'm wrong on the law, there is another time and place for that error to be corrected. But for this case, you must accept the law as I charge it to you.

Now, this is a criminal case brought by the State of South Carolina. The State charges the defendant, Wayne Darnell Cooper, with the offense

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known in the law as murder. The charge against the defendant is contained in the indictment which is the document that I hold in my hand.

The indictment is not evidence of anything. It is simply the description of the charge made by the State against the defendant. The defendant has pled not guilty to the charge and is presumed innocent unless and until proven guilty beyond a reasonable doubt.

A reasonable doubt is the kind of doubt that would cause a reasonable person to hesitate to act. A defendant has the right not to testify and never has to prove innocence or present any evidence. The burden of proof is always on the State of South Carolina.

Now, there are certain things that are not evidence and you must not consider them as evidence in deciding the facts of this case. Statements and arguments of the attorneys are not evidence. Questions and objections of the attorneys are not evidence. And testimony that I instruct you to disregard is not evidence.

Evidence may be direct or circumstantial. Direct evidence is testimony by a witness about what that witness personally saw or heard or did.

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Circumstantial evidence is indirect evidence. The law permits you to give equal weight to both, but it is for you to decide how much weight to give to any of the evidence.

There are rules of evidence which control what can be received into court. When a lawyer asks a question or offers an exhibit into evidence and a lawyer on the other side thinks that it is not permitted by the rules, that lawyer may object.

If I overrule the objection, the question may be answered or the exhibit may be received. If I sustain the objection, the question cannot be answered and the exhibit cannot be received.

Whenever I sustain an objection to a question or deny a motion to admit an exhibit into evidence, you must ignore the question or the existence of the exhibit and you must not guess what the answer would have been or what the exhibit would have shown.

Sometimes it may be necessary for me to request that you leave the courtroom while I discuss with you -- with the attorneys legal questions that come up during the course of the trial.

If this occurs, you should not speculate about our discussions or the reasons that you were asked to leave the room. This is simply a procedure used

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or -- by all courts and the law requires when certain legal issues arise.

There also may be occasions -- often as possible so that it will not be necessary that you leave the courtroom more than is absolutely necessary.

Again, if I ask the attorneys to step up to the bench or if I ask you to leave the courtroom, please don't think that anybody is trying to hide anything from you or keep any evidence from you. This is simply a procedure used by all lawyers and by all courts to determine and decide legal questions.

In deciding what facts to believe, you may have to decide which witnesses to believe and which witnesses not to believe. This is called credibility. You may believe everything a witness says or only part of it or none of it.

In deciding what to believe, you may consider a number of factors including the witnesses ability to see or hear or know the things a witness testified as to. The quality of the witnesses memory. The witnesses manner or demeanor while testifying. Whether the witness has an interest in the outcome of the case or any motive, bias, or prejudice. Whether the witness is contradicted by anything the witness said or wrote before the trial or by any other

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witness -- evidence. And how reasonable was the witness' testimony when considered in the light of other evidence which you do believe.

Now just a few words to you about your conduct as jurors, some of which I have already mentioned to you, but they are important enough that they need to be re-emphasized.

Do not talk to each other about this case until the end of the case when you go to the jury room to decide your verdict. Do not talk with anyone else about this case until the trial is ended following your verdict and you have been discharged as jurors by the Court.

This means, do not discuss the case with members of your family or friends or with anyone else. You may tell them that you are a juror, but don't tell them anything about the case until you have been discharged by me.

Do not let anyone talk to you about the case. If anyone should approach you or try to talk to you about the case, get their name or their description, report it to the bailiffs, and they will report it to me.

Do not read any news stories or articles or listen to any radio or television reports about the

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case. With all due respect to my friends in the news media, some of the things that they report are not always accurate as to what actually went on in court and you have got to decide this case based upon what you hear in this courtroom and not on the basis of what might be in the news media.

So if there is anything in the newspaper or broadcast media, simply put that newspaper aside or turn that broadcast off and do not listen to that matter because you have got to decide the case based upon what you hear in this courtroom.

You are not to consider as evidence anything that you may see or hear when court is not in session. Do not do any research such as consulting dictionaries or other reference materials or the internet and do not make any investigation about the case on your own.

If you need to communicate with me, simply give a signed note to the bailiff, the bailiff will give it to me and I will deal with your problem. And finally and probably most important, do not make up your mind about what your verdict should be until you have heard all of the testimony and evidence in this case and the instructions on the law by the Court.

You will be instructed when to begin your

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deliberations by either me or the bailiff. Now ladies and gentlemen, I had hoped and thought that possibly when I sent you to lunch that we would have all of the pretrial matters out of the way.

And we do have -- have gotten some of them resolved, but there are others that we haven't resolved. And after discussing it with the lawyers, what I was going to do was to go ahead and begin the actual trial and testimony in this case this afternoon and then have you come in late tomorrow, let us come back and resolve the rest of those preliminary matters that we needed to do.

But after discussing it with the lawyers, I have concluded the best thing for us to do is for us to get all of these matters that we need to get taken care of on the record outside of your presence taken care of this afternoon so that when we begin in the morning we'll be able to go straight through without any breaks and I won't be keeping you back in that jury room while we take care of these matters.

So, even though you have only been back here about 20 minutes, I am going to go ahead and excuse you for the rest of the day so that we can get all of these matters out of the way and behind us and be ready to start with the trial of this matter in the

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morning.

What I would like to ask is I would like to ask you to be here at 9:00 if that doesn't cause anybody any particular problems. If it causes anybody any particular problems, we can start at 9:30, but I'd like to get a little bit of a jump start on it at 9:00 unless that causes anybody any particular problems.

Having heard that it does not or there are no protestation, I am going to excuse you now, ask you to please come back to your jury room tomorrow morning at 9:00.

I assure you that we will have all of these other matters concluded if we have to work into tonight to get them finished so that we can go forward with the jury tomorrow morning at 9:00. Thank you and you are free to go.

(Jury left the courtroom for the evening.)

THE COURT: All right. Counsel, I made the decision to go ahead and give the jury that little preliminary talk before we started for the simple reason to save that 10 or 12 minutes tomorrow when we get ready to go forward.

I also made the decision that I'm not going to swear the jury until in the morning, but we'll swear

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them in the morning.

I don't see any problems with the way that it was -- handled that. And when they come back at 9:00 in the morning, we'll be -- we'll have these matters concluded and be ready to go forward with opening statements without any further ado from me.

Any objection to that proceeding on behalf of the State, Mr. Corbett?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: Mr. Wilder?

MR. WILDER: None on behalf of the defendant.

THE COURT: All right. Good. Then we will remember -- y'all help remind me that the jury has not yet been sworn in the morning but we'll take care of that at the point that we're ready to start. All right.

Mr. Wilder, I understand that you have made a motion to suppress the statement under Jackson versus Deno; is that correct?

MR. WILDER: That is correct.

THE COURT: All right. The defense has made a motion for suppression of the statement of the defendant in this case, Mr. Corbett. The burden then shifts to the State to show that that statement was

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freely and voluntarily given and the circumstances under which the statement was taken.

So you may present whatever testimony or evidence you wish to present in that regard.

MR. CORBETT: Thank you, Your Honor. May it please the Court. We would like--

THE COURT: Wait -- wait just a minute.

MR. WILDER: Before proceeding, Your Honor, I would like to move to sequester two of the State's witnesses. Wanda Rogers and Mary Green, Your Honor. And the reasons for that are there was an alibi notice filed with the court over a year ago I think.

Any way, it's been some time. And the State responded to my alibi notice under rule five and they disclosed that the two witnesses that they intend to rely on to establish my client's presence at the scene of the crime are Wanda Rogers and Mary Green.

And if I need to hand this up to the Court, this is Mr. Corbett's notice to me in response to my alibi notice, and my -- my contention is at this point, Your Honor, my co-defendant has been sequestered de facto because he's back locked up. He's not here.

But the State is not given us any line-up disclosure, no photo show-up, the report doesn't -- doesn't indicate anybody's name. It says -- it's got

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descriptions of purported individuals who allegedly did this that don't fit my client, and I believe that it's prejudicial to have these two witnesses in the courtroom during any portion of the testimony. So I'd move to sequester.

THE COURT: Even the sequestration motion?

MR. WILDER: Yes, sir.

THE COURT: Okay. Mr. Corbett, do you have a position?

MR. CORBETT: Your Honor, I believe the sequestration would be appropriate during the trial. I don't think it's appropriate for testimony on the voluntariness of a statement.

THE COURT: Well, I disagree. It could be. And especially if the defense's alibi and the contents of the statement have something to do with the alibi situation.

And they are going to be used to present -- to prove the presence of the witness, the -- and the contents of the statement are going to come out.

I'm -- I can't see that the statement, the State is in any way prejudiced by that and there is potential for prejudice as far as the defendant is concerned. I'm going to require that for the witnesses Mary Green and Wanda Rogers be sequestered.

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(Whereupon there was a pause.)

THE COURT: All right. There are actually two motions. I assume they are going to be handled separately. But there won't be the same witnesses. Don't you also have a motion to suppress the matters received -- seized, property seized in connection with the search, Mr. Wilder?

MR. WILDER: Yes, Your Honor. And it does dovetail into the suppression of the statement motion because it's my contention that they seized the body of my client without having any proper warrant, and so at the time that they were seizing things out on the Suzie Rembert Road or wherever that is, I'm -- I--

THE COURT: All right. I will hear the testimony on both the motion to suppress the statement under Jackson versus Deno and to suppress the evidence under an improper search and seizure at the same time and then we'll hear the arguments after all of the evidence is presented.

MR. WILDER: Thank you.

THE COURT: All right. You may proceed to call your witnesses, Mr. Corbett.

MR. CORBETT: Thank you, Your Honor. The State would call Investigator Tommy Barron to the stand.

THE COURT: All right. Mr. Barron?

TOMMY BARRON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Barron, good afternoon.

A How you doing?

Q If you would please tell us by whom are you employed?

A I'm employed with the Sumter County Sheriff's Office.

Q And how long have you been employed with the Sumter County Sheriff's Office?

A Approximately 13 years.

Q And is that your total amount of time in law enforcement?

A No, sir, I have 27 years time. Previous I worked three years with Clarendon County and then other years with the City of Sumter.

Q Very well. If you would please tell us what is your current duties with the Sumter County Sheriff's Department?

A Criminal investigator.

Q And what have your prior positions with the Sumter County Sheriff's Department been?

A My prior position before I retired two years ago was the captain of investigations.

Q And so you retired and came back to work for the sheriff's department?
A Yes, sir.
Q Okay. And Investigator Barron, is it fair to say that over the course of your law enforcement career that you have had occasions to interview a number of suspects?
A Yes, sir.
Q Okay. Now, did you have occasion to interview Wayne Cooper?
A I did.
Q Okay. Can you tell us when that took place?
A That took place on September the fifth, 2006.
Q And do you know about what time of day that was?
A It was approximately 8:00 pm.
Q Okay. And prior to speaking with Mr. Cooper, did you take any steps to advise him of any rights that he had with regard to statements?
A I did.
Q Okay. If you would please tell us a little bit about that.
A I advise him of his Constitutional Rights, Miranda warnings, by using this sheet. He indicated to me he could read and write. He -- he read each one of them verbally out -- out -- out loud, and each one he read has got a number by each one, he initialed -- initialed it

which indicated to me that he understood it.

And then the last part was a -- the waiver of rights also part of this sheet, he indicated he understood and he also signed the form.

Q Now, you -- just a moment ago you were referring to a document. And if you would, tell us what it says there across the very top.

A Sumter County Sheriff's Office.

Q Okay. And if you would please tell us what this block is?

A Miranda warning, waiver of rights.

Q And did Mr. Cooper sign this form?

A Yes, sir, he did.

Q And did you witness that signature?

A Yes, sir, I did.

MR. CORBETT: Your Honor, we -- at this time we would offer this State's Number one for identification.

THE COURT: All right.

(WHEREUPON, State's Exhibit No. 1 was marked for identification only.)

BY MR. CORBETT:

Q Now Investigator Barron, I'm going to ask you to again refer to what we have now marked as State's Number one for identification. You had indicated that he went

through that form.
A Yes, sir.
Q And that he read the rights out loud.
A Right.
Q And that he initialed beside it.
A Yes, sir.
Q Okay. And where was this form completed?
A It was completed at my office at the Sheriff's Office.

MR. CORBETT: Your Honor, with regard to what's been marked as State's Exhibit one for identification, I wanted to offer this into evidence. I don't know if at this point it would be considered a Court's Exhibit or a State's Number one, but whatever form or fashion necessary for it to be available to the Court.

THE COURT: Mr. Wilder?

MR. WILDER: Your Honor, I have no objection to being before the Court but as long as it's not considered moved into evidence before the jury.

THE COURT: I understand that. But that -- for that reason I usually make them as Court's Exhibit. We will make it Court's Exhibit number 1 for purposes of this hearing.

MR. WILDER: Thank you.

(WHEREUPON, Court's Exhibit 1 was admitted into evidence.)

BY MR. CORBETT:

Q Now, Investigator Barron, did you have an occasion to talk with Mr. Cooper about the events of September 2nd, 2006?

A Yes, sir.

Q And you indicated that he had been advised of his rights; is that correct?

A That's correct.

Q Okay. Was there anything about Mr. Cooper that led you to believe that he did not understand his waiver or that he was not capable of understanding the waiver?

A There is nothing to -- indicated to me. All indications that he fully understood everything I asked him.

Q Now, with regard to the statement, was that reduced to writing?

A Yes, sir.

Q Okay. And whose handwriting is that in?

A That's my handwriting.

Q Okay. Now, what information did you rely upon in writing out this information?

A The information he gave me concerning the facts on September the second.

Q Okay. Any of the information handwritten on this document, was any of that information that you wrote in of your own knowledge?
A Everything I wrote is what he told me.
Q So there was no facts or extraneous information that you added in?
A No, sir.
Q Okay. Now, upon completing filling this form out -- or excuse me -- this statement, did Mr. Cooper have an opportunity to review it?
A After -- yes, he -- he read it to himself and he said he understood and he signed the statement indicating that this was his voluntary statement and that he understood the statement.
Q And again, he signed that document?
A Yes, sir, he did.
Q And you witnessed it?
A Yes, sir.
Q And do you have the original of that document present -- here in the courtroom?
A Yes, sir, right here.

MR. CORBETT: Your Honor, at this time we would offer the statement of Wayne Cooper as Court's number two.

THE COURT: All right. Be admitted into

evidence for purposes of this hearing as Court's Exhibit number 2.

(WHEREUPON, Court's Exhibit 2 was admitted into evidence.)

BY MR. CORBETT:

Q Now, Investigator Barron, with regard to this statement, did you make any type of promises to Mr. Cooper in order to get him to give you this statement?

A No, sir.

Q Okay. And did you make any type of threats toward him?

A No, sir.

Q Okay. Did you in any way, shape, or form coerce him or make him give a statement?

A No, sir.

Q Please answer any questions Mr. Wilder may have.

THE COURT: Cross-examination, Mr. Wilder.

MR. WILDER: Thank you.

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Barron, good afternoon.

A Hey, how you doing?

Q Just fine. Had you been out to the location there that they were arrested on Suzie Rembert Road?

A Yes, sir, I was there.

Q And I'm going to show you a picture evidently provided by Ray Mackessey. I got it somewhere. Did you see that collection of cans?
A I never -- no, sir, I never saw this.
Q Did you know where that picture was taken?
A I don't know.
Q Okay. Now, the defendant did indicate to you that he had had something to drink that day; didn't he?
A No, sir, he never indicated.
Q He never said that?
A No, sir.
Q Do you know what time he got off work at Fire Mountain that day?
A I'm not sure.
Q But he drove -- he was either driven or he drove from Columbia over here to Sumter and earlier at some point that day?

MR. CORBETT: Objection, Your Honor.

BY MR. WILDER:
Q All right. So--

THE COURT: Wait just a minute. What's your objections?

MR. CORBETT: Your Honor, he's asking this witness where Mr. Cooper drove from. And there's no foundation or basis that this witness can answer

that.

THE COURT: All right. Sustained as it's asked. Rephrase the questions please, Mr. Wilder.

BY MR. WILDER:

Q All right. Do you know where the defendant drove earlier that day or where he had been earlier that day?

A I don't know.

Q Okay. What time of day did you first lay eyes on him?

A I'm thinking it was somewhere around 6:30 or 7:00.

Q Okay. At that point were you aware that he was wearing a pain patch?

A A pain patch?

Q A pain patch to administer painkiller.

A No, sir, I wasn't aware of it.

Q You didn't see the pain patch on his neck?

A I don't recall a pain patch.

Q But the jail removed it from him?

A I don't recall it. Could have been there, but I don't -- I don't recall seeing it.

Q He didn't tell you that he had received a injury at work earlier a few weeks before then?

A He never indicated to me.

Q And he was under treatment by a doctor at Doctor's Care? You didn't know any of that?

A He never said it to me. The only thing he said to me at the house was, you look like someone I can trust and I want to ride with you.
Q Okay. And you were unaware that he had beer to drink earlier that day?
A If he -- if he had alcohol, he -- I didn't smell any and he didn't -- there was no indication that he was under the influence of anything when I interviewed him. He appeared to be definitely sober to me.
Q But your testimony is that in the body of this that that's your handwriting and as far as the statement is?
A Yes, sir, that's my handwriting.
Q He signed down at the bottom, you signed it also?
A Yes, sir.
Q No other witnesses to that; were there?
A No, sir.
Q You immediately went -- written by yourself?
A That's correct.
Q And also on the waiver of rights form?
A Same thing.
Q Just you and he?
A Yes, sir.
Q So if there were any medication that he was being treated with, you don't know about them?
A I wasn't aware of any medication.

Q All right. Did he tell you anything that you didn't put in the statement?
A No, he told me -- what you see in the statement is basically what we talked about and no more, no less.
Q Okay. So there was nothing else that he told you that he volunteered that you didn't put in the statement?
A No, sir.
Q Did you make any separate notes other than what's in the statement about what the conversation--
A We talked about the conversation and then I told him then I wanted to get it in writing. He indicated that was fine. And so that's when I wrote out our conversation.
Q But you didn't have any separate--
A I didn't have any separate notes.
Q Okay. Did you have separate notes from what -- what you saw at the house --
A No, sir.
Q -- that you wrote down? All right. Thank you.

MR. WILDER: No other questions of this witness.

THE COURT: Redirect?

MR. CORBETT: Nothing on redirect, Your Honor.

THE COURT: All right. Thank you, Mr. Barron. You may step down.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett, you may

call your next witness.

MR. CORBETT: Your Honor, could we have just one moment?

THE COURT: Yes.

(whereupon there was a pause.)

MR. CORBETT: Am I correct that in this hearing if Mr. Cooper takes the stand to discuss voluntariness of the statement that I can then call witnesses in reply?

THE COURT: Yes, sir.

MR. CORBETT: Judge, the reason I say that is I have additional witnesses who have contact with the defendant Wayne Cooper that day.

THE COURT: Yeah, you can call witnesses in reply.

MR. CORBETT: If I put them up now, I would be guessing as to whether--

THE COURT: That's right. You can call witnesses in reply and I'll -- when I -- I'll give him a chance to testify on this issue without waiving Fifth Amendment rights, then if there is anything in reply, we'll give you a chance to present that if it is true reply.

MR. CORBETT: Very well, Your Honor. That's all the witnesses that we have regarding the

voluntariness of the statement.

THE COURT: All right. How about -- are we going to go into the suppression at the same time or do you want to -- they don't overlap? What I'm thinking is that they may overlap especially from Mr. Wilder's standpoint -- well, let's take them one at a time. Okay. We'll go ahead. That's the -- that's the Jackson v Deno voluntariness matter.

Now, Mr. Wilder, you have the right to present any testimony that you wish to present regarding this voluntariness issue from either other witnesses or from your defendant.

He has the right to take the stand and testify on the voluntariness issue without waiving his Fifth Amendment rights against self-incrimination.

MR. WILDER: Thank you, Your Honor. We'd call Trevor Brown.

TREVOR BROWN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILDER:

Q Mr. Brown, state your employment, please.

A I'm with the Sumter County Sheriff's Office.

Q How long have you been with the sheriff's office?

A Going on 11 years.

Q Okay. Now, back here on the day that Mr. Cooper was arrested, I believe that happened out on Suzie Rembert Road?
A Yes, sir.
Q You were there.
A Yes, sir.
Q Okay. Now, you put him in handcuffs?
A I don't recall handcuffing.
Q Well, was he put in handcuffs?
A I'm not sure.
Q He was taken into custody because he wound up down at the law enforcement center; right?
A Yes, but I didn't transport him there.
Q Okay. Well, you were one of the first people to see him arrive there at the scene.
A Yes.
Q Okay. And did you tell him specifically to put down a drink that he had in his hand?
A I don't recall that, no, sir.
Q Is it possible that you did that?
A I don't remember. If it -- if it happened or not, I'm not sure.
Q You're not sure. Well, at any point while he was out there in your presence, did handcuffs get put on him?
A I don't recall him being handcuffed, no.

Q How about his brother, Derrick?
A No, sir. I -- I didn't handcuff him. That's why I said I don't recall.
Q I'm asking did you see him in handcuffs.
A No, sir, I don't -- I don't remember seeing him in handcuffs.
Q All right. So isn't it your procedure to handcuff somebody suspected of murder?
A Is it -- say that question again.
Q Isn't it your procedure to handcuff somebody you suspect of murder?
A Not all the time, no.
Q So you are contending that he -- he wasn't in handcuffs?
A What I continue if he wasn't in handcuffs?
Q You contending he wasn't in handcuffs?
A Yes, I do -- each situation is different.
Q I'm asking about this situation on September 6th or the fifth, whenever it was you first saw him out there at the Suzie Rembert Road.
A Okay.
Q You don't remember if he was in handcuffs or not?
A No, sir, I don't.
Q No independent recollection of what happened?
A No, sir. I remember being at the scene and I

remember leaving the scene, going to get the search warrant.

Q Going to get the search warrant.

A Yes.

Q So you went to get the search warrant after you had already been at the scene?

A Yes.

Q How long had y'all been at the scene before you bothered to go get a search warrant?

A Well, soon as the defendant showed up at the residence.

Q Soon as -- the defendants weren't at the residence?

A Showed up at the residence.

Q Weren't?

A They weren't at the residence while we were there. We were in the area and then we stopped the defendants pulling up to the residence.

Q Okay. So y'all made a search of the area before the search warrant was issued?

A No, sir, we did not search the area before the search warrant was issued.

Q Well, with -- how did you know what was in the house?

A We don't know what -- I don't know what was in the house.

Q You didn't specify when you went to get the search

warrant that you were looking for certain material that you had already seen in the house?

A No, sir, we didn't go inside the house, so I wouldn't know what was in it.

Q How long were you there before the defendant arrived?

A Maybe 15, 20 minutes.

Q What, kind of waiting on him to get there, right?

A Well, we were doing surveillance on the area and he showed up.

Q What was your information about why you were sitting there at the location?

A That he was a possible suspect in a murder investigation.

Q Okay.

MR. WILDER: Your Honor, I'd ask the State to produce a copy of the search warrant at this time so we can deal with the actual document.

THE COURT: Copy wasn't given to you in discovery?

MR. WILDER: Well, I got a copy that has some things written on it. The defendant has in his possession, Your Honor. I'd like to get one with this witness's signature on it from the State if I could.

THE COURT: Do you have a copy of it,

Mr. Corbett?

MR. CORBETT: Yes, Your Honor.

THE COURT: All right. Furnish it to him. Make copies if you need to.

BY MR. WILDER:

Q Let me show you a copy of that search warrant, ask if that's your signature on it, Mr. Brown.

A That -- that's my signature on it.

MR. WILDER: Your Honor, I would like that marked for identification.

THE COURT: All right. Be marked Defendant's for identification. Defendant's No. 1 for ID at this point.

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification only.)

BY MR. WILDER:

Q Now Mr. Brown, you swore under oath at that time the witness interviewed by law enforcement--

THE COURT: I think if you're going to use this now, is it -- to cross-examine him with, then I have got a right to consider it as a part of this. It needs to go in -- come in as a Court's Exhibit as a part of this hearing if that's going to--

MR. WILDER: Well, don't have any objection.

THE COURT: All right. Let's mark it Court's

Exhibit number 3 then.

(WHEREUPON, Court's Exhibit 3 was admitted into evidence.)

BY MR. WILDER:

Q All right. Now, you got this -- to be clear, you got this search warrant after the defendants --

A Were at the residence.

Q -- at Suzie Rembert Road?

A Right, they were not inside of the residence.

Q But they showed up at the house in a car?

A Correct.

Q Okay. And you had already been there for some time, other members of law enforcement had already been there for some time?

A Yes, but not inside of the residence.

Q Okay. Now, a witness you said advised one of you was a write --

A Yes.

Q -- sworn statement?

A Yes, could I -- may I read it?

Q Sure.

A You want me to read it out loud or...

Q I'm just asking you about that one portion of it. Well, you have information that gun used to shoot and kill Brandon Green was a rifle; right?

A Yeah, this information was relayed to me by Captain Jamie Turner.
Q Jamie Turner.
A Yes.
Q All right. So somewhere you got that information that the rifle was used, okay, and that came from Jamie Turner.
A Yes.
Q Do you know where Jamie Turner got the information from?
A No, sir.
Q Okay. And that two black males occupied a green in color Chrysler product; right?
A Yes.
Q Where did that information come from?
A Also from Captain Turner.
Q Do you know where he got that information from?
A No, sir.
Q Would it be fair to say that all the reasons for your belief for what you were looking for that -- that this information came from Jamie Turner?
A Yes.
Q Okay. So all of the information that's in here came from Jamie Turner. Do you know where he got any of that information?

A No, sir.
Q All right. But all of that is obviously hearsay because you didn't know any of it?
A No, sir, it wasn't told to me, no. Only thing that was told to me was on the bottom part of the -- it says that on September 5th, 2006 law enforcement located the green in colored vehicle at 905 Suzie Rembert Road which matches the description of the vehicle relayed at the top of the paragraph.
Q All right. So that part of it you knew about because you had been at --
A I saw the vehicle.
Q -- Suzie Rembert Road?
A Yes.
Q All right. The rest of it is all information about the preceding September 2nd which you got from Mr. Turner.
A Yes.
Q You have no idea where he got that information?
A No, sir.
Q It's not based on a reliable confidential informant; is it?
A I can't speak to that. That will be a question for Captain Turner.
Q Okay. All right. And you don't remember whether or not Mr. Cooper had a drink in his hand when you first

talked to him?
A No, sir, I don't recall.
Q Okay. No other questions.
THE COURT: Redirect?

CROSS-EXAMINATION

BY MR. CORBETT:
Q Officer Brown, was there any indication to you that Wayne Cooper was under the influence?
A No, sir.
Q Okay. Did he smell of alcohol?
A No, sir.
Q Did he slur his words?
A No, sir.
Q Was he unsteady on his feet?
A No, sir.
Q Okay. And you indicated that y'all were already in the vicinity?
A That's correct.
Q And then he arrived at scene -- at the residence after you had already been there keeping an eye out?
A Yes.
Q Okay.
MR. WILDER: No other questions.
THE COURT: Wait a minute. Wait a minute.
MR. CORBETT: No other questions.

THE COURT: All right. Re-cross?

MR. WILDER: No questions.

THE COURT: All right. Thank you, sir, you may step down.

(Witness left the stand.)

MR. WILDER: Call Wayne Dubose.

WAYNE DUBOSE, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILDER:

Q Mr. Dubose, please state your employment.

A I'm employed with Sumter County Sheriff's Office.

Q And were you so employed back in 2006, September, when this incident was taking place?

A Yes, sir, I was.

Q Okay. You were out at Suzie Rembert Road --

A That's correct.

Q -- this evening waiting on these guys to come home?

A Yes, sir.

Q Okay. Do you know where this picture of the cans was taken?

A No, sir.

Q That collection of beer cans that was photographed by Officer Ray Mackessey, do you know where that was, have any idea?

A No, sir, I don't recall on this particular picture.
Q Okay. Now, you remained at the scene while Trevor Brown went on in to get a search warrant; did you not?
A Yes, sir.
Q And you had a set of keys that you obtained from Wayne?
A I believe we did take some keys out of his pocket, yes, sir.
Q And you went on in before the search warrant arrived; didn't you?
A Negative, no.
Q No?
A No, sir.
Q Well, at what point did you lay eyes, what time of day did you lay eyes on Mr. Wayne Cooper?
A I believe it would have been shortly after six, maybe 6:30, we actually get off at six but it was about time we were getting off when Investigator Brown advised that he had been notified there was a possible murder suspects that were going to a residence and we were going to assist and -- finding those subjects.
Q But nobody had an arrest warrant for any of these possible murder suspects; did they?
A Not that I'm aware of.
Q Okay. So there you are at the house with no search

warrant and no arrest warrant and these two guys arrive.
A Well, we wasn't at that residence. We were parked down the street. We knew which residence it was going to be. The vehicle.
Q In the vicinity, no arrest warrant, no search warrant, waiting on him to get home?
A No arrest warrants that I was aware of at the time.
Q Okay. So what was your probable cause for putting them under arrest?
A They were not arrested.
Q Handcuffed; weren't they?
A They were detained, yes, sir.
Q Well, has -- your definition of detained means they were handcuffed?
A They were -- I actually handcuffed one of the subjects.
Q Correct.
A And at that time I did advise both of them -- both of them were mirandised by me.
Q Okay.
A And they were handcuffed, they were told they were detained but they were not under arrest, and then other officers with the investigations began to arrive.
Q Not under arrest.
A That's correct.

Q Well, but yet in handcuffs?
A Yes, they were being detained for their safety and ours.
Q So you want to maintain that they were not under arrest if they were handcuffed?
A They were being detained, yes, sir.
Q And that's your definition of detained?
A They were being detained. They were not under arrest.
Q Were they told that they were free to go?
A No, sir, they were being detained at that moment.
Q You didn't read them the rights orally?
A Yes, from a card.
Q Okay. Do you recall telling Mr. Cooper to put his drink down?
A No, sir.
Q Do you remember if he had a drink in his hand?
A No, sir, I don't recall either individual having a drink.
Q Are you saying he didn't have one or you don't recall it?
A No, sir, I don't recall either one having a drink.
Q Does that mean that you remember that either one of them didn't have a drink or that you don't remember?
A I'm just saying I don't recall either having a drink.

Q Okay. Now, do you recall seeing a pain patch on his neck?

A No, sir, I don't recall that.

Q And that one was removed from his neck by the jail later on that evening or the next day, you don't know whether that happened or not?

A No, sir, I don't -- I don't recall that.

Q Weren't there. Okay. Did you ask him why his car was behind the residence?

A No, sir. When they -- when the vehicle arrived, myself, Investigator Brown and another officer approached the car, removed them from the vehicle, and they were detained and mirandised at that point. Like I say, other officers began to show up, and then Investigator Brown left to go obtain the search warrant.

Q All right. So at what point did you go into the residence?

A After Mr. Brown got back with the -- we had actually tried to knock on the door of the residence. We could hear something inside, but we could not enter the residence that was locked, and then Mr. Brown returned with the search warrant.

And if I recall, I believe Mr. Green maybe had the keys to the residence and then we entered afterward.

Q All right. So what you're saying is that because

nobody had a warrant for the defendant's arrest and because nobody had a probable cause to put him under arrest, you just detained him; right?

A Yes. We were the first officers on the scene. We detained him until the other officers who were investigating the case arrived.

Q Because you had no arrest warrant?

A Not that I was aware of.

Q If you'd have had one, you could certainly put him under arrest?

A Yes, we'd have had a warrant.

Q Right. All right. Did you actually see the search warrant before you went in the house?

A I don't recall seeing it. I know Mr. -- or Investigator Brown had it and then I don't know who he read it to, but the search warrant was back at the residence.

Q Okay. No other questions.

THE COURT: Redirect? Actually it's re-cross -- it's cross-examination because this witness was called by Mr. Wilder, so it's cross-examination.

CROSS-EXAMINATION

BY MR. CORBETT:

Q Now Officer Dubose, you had had contact with Wayne Cooper that evening?

A Yes.

Q Okay. Was there anything about his speech, mannerism, conduct, actions or anything that suggested to you that he was under the influence?

A No, sir, none that I recall.

MR. CORBETT: That's all the questions I have, Your Honor.

THE COURT: Redirect?

MR. WILDER: No other questions.

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

(Witness left the stand.)

THE COURT: All right. Mr. Wilder?

MR. WILDER: Your Honor, at this point we would call Derrick Cooper to the stand.

THE COURT: All right.

MR. WILDER: Mr. Finney's client. Mr. Cooper, if you would come around here, put your hand on the bible.

THE COURT: All right. Yeah, go ahead, swear him.

DERRICK COOPER, after being duly sworn, testified as follows:

THE COURT: All right. Let the record reflect that the witness that has been called is a

co-defendant in this case also indicted in the same indictment number 07-GS-43-277. He is represented by Mr. Chip Finney.

Mr. Finney, have you discussed with him his Fifth Amendment rights and rights to remain silent and cannot be compelled to provide any testimony in this matter that might tend to incriminate him?

MR. FINNEY: Yes, sir.

THE COURT: Is he willing to waive any Fifth Amendment rights that he may have in this matter?

MR. FINNEY: Yes, sir.

THE COURT: All right. Mr. Cooper, you understand that you have the right to remain silent, anything that you say can and may be used against you in a subsequent trial, and that if you take the stand and testify in this, that you're freely and voluntarily waiving your rights under the Fifth Amendment. Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right.

DIRECT EXAMINATION

BY MR. WILDER:

Q Derrick, you have been charged in this murder also; haven't you?

A Yes, sir.

Q You're a co-defendant on this indictment that your brother is on trial for right now?
A Yes, sir.
Q Okay. You remember being arrested on September 5th?
A Yes, sir.
Q That was over on Suzie Rembert Road; right?
A Yes, sir.
Q That was at -- whose house was that officially?
A Wayne.
Q Wayne's house?
A Yes, sir.
Q Okay. So no question but that he is the resident that lives there; right?
A Yes, sir.
Q And you lived out there close to where Brandon Green was shot; right?
A Yes, sir.
Q Is that Cedar Hill Mobile Home Park?
A Yes, sir.
Q Okay. Now, so on September 5th, now directing your attention to that day, about what time did y'all get to Suzie Rembert?
A I believe it was around 4:30, a little bit after 4:30, close to 5:00.
Q And you were driving?

A Yes, sir.
Q And Wayne wasn't driving; was he?
A No, sir.
Q Wayne had had a lot to drink that day; hadn't he?
A Yes, sir.
Q Tell the Judge what--

THE COURT: All right. Yes, sir.

MR. WILDER: I'm not going to--

MR. CORBETT: I'd like to interpose an objection.

THE COURT: Yes, sir. It's leading. Don't lead him. He's your witness.

MR. WILDER: I understand, Your Honor.

BY MR. WILDER:
Q What if anything had Wayne had to drink earlier that day? What time did y'all get off work and what happened next?
A Well, we got off of work around 3:30 and got -- we had got our checks. He couldn't cash his because he didn't have his ID with him, so I went across the highway on Garner's Ferry, cashed mine at Piggly Wiggly.

We left from there. I went to the game store and came back to the same parking lot we worked at, stop at the game store, bought two video games, left from there and went to the gas station, put some gas in my car and I

bought three beers and I bought three beers for me, three beers for him and a little bottle of NJ, think like a half a pint of NJ.

And while we was -- while filling up my gas, I rolled me a joint of weed. I had some marijuana. And from there we came back to Sumter.

Q All right. Describe the three beers you bought for Wayne. What size were they?

A 24-ounce.

Q 24-ounce?

A Yes, sir.

Q Three of them?

A Yes.

Q Around three. He drank all them things?

A Yes, sir.

Q Okay. And then a bottle of what was -- A and J?

A No, E and J.

Q E and J?

A Yes.

Q What is that?

A It's brandy.

Q Brandy?

A Yes, sir, liquor.

Q Okay. Did he have any of the brandy?

A Yes, sir. I split half and half. I pour half in his

cup, half in my cup.
Q He had half a bottle of brandy?
A Yes, sir.
Q Is that a pint or half pint?
A Half pint.
Q Half pint?
A Yes, sir.
Q Okay. So quarter pint of brandy. Okay. And then you said you rolled up some weed and smoked that, too?
A Yes, sir.
Q Marijuana?
A Yes, sir.
Q Okay. Now, your brother was being treated for an injury or is it not true that your brother was being treated for an injury he received at McDonalds?
A Yes, sir.
Q And he was going to Doctor's Care for that?
A Yes, sir.
Q Okay. Now, what happened right about the time you got off work relative to the treatment of the injury he received at McDonalds?
A Talking about when we ride out to Sumter?
Q Right before you came to Sumter, yeah.
A Riding drinking, listening to music, smoking, want to ride home come from Sumter -- I mean coming from columbia.

Q Taking any medication?
A Yes, sir, he took -- he already had a -- he had a patch on his neck he have to wear every day, like a treatment patch that he gets from Doctor Care. On top of that he takes I think it was a muscle relaxers.
Q Muscle relaxers and a pain patch. Okay. and you observed that he had taken those, that medication and also had the pain patch?
A Yes, sir.
Q Now, was it his custom to take any of the medication for the injury while he was working at Fire Mountain?
A No, he had to -- I know he took it -- he took it right before we left, so it was -- he had to take it daily because of the pain that he was having.
Q Okay. You know whether he had taken any earlier that day while he was working at Fire Mountain?
A Right before we got off he had took some.
Q Just right before he got off?
A Yes, sir.
Q All right. What time do y'all usually get to work?
A Depends on -- on the weekdays we get to work at 8:00 and go like 7:00 before we open. It's before we open the store up. On the weekend he get there at five, 5:30.
Q In the morning?
A Yes, sir.

Q 5:30 am sometimes. Okay. How much you think your brother weighs?
A Hmm, I give about 160, 165-pounds.
Q So this would have been about in the course of an hour it took y'all to get from Fire Mountain back over here to Suzie Rembert Road?
A Yes, sir.
Q And during the course of that hour, three 24-ounce beers -- what kind of beers were they?
A I had bought him, he drink Budweisers, Bud -- like maybe two Budweisers and one Bud Light.
Q Was this beer or malt liquor?
A Beer.
Q Beer. Okay. Three of those. Quarter of a pint of brandy. Pain patch. Medication?

MR. CORBETT: Objection, Your Honor. Was that a question?

MR. WILDER: Trying to remember if I got it all.

BY MR. WILDER:
Q And marijuana. Is there anything else you remember your brother having?
A No, sir.
Q Now, when you got to the house were y'all placed under arrest?
A We was detained, yes, sir, they put us in handcuffs

once we pulled in the driveway we was -- the car -- the car was rushed in by officers.

Q Rushed?

A Yes, sir.

Q They had weapons drawn?

A Yes, sir, we didn't even put the car in park I was just backing in, trucks was coming up, people was running from behind the house.

Q Okay. And then were you put under arrest?

A Yes, sir.

Q They put handcuffs on you?

A Yes, sir.

Q Make you sit on the front porch?

A The first they had us on the ground sitting on the ground for a while.

Q Sitting on the ground?

A Yes, sir.

Q In the handcuffs?

A Yes, sir.

Q All right. Did they go in the house and search?

A Yes.

MR. CORBETT: Objection, Your Honor. Leading.

MR. WILDER: I don't believe--

THE COURT: Wait. Wait just a minute. The objection is leading?

MR. CORBETT: Yes, sir.

THE COURT: Overruled.

BY MR. WILDER:

Q All right. Did they go in the house and search?

A Yes, sir.

Q All right. How quickly did they go in the house and search?

THE COURT: All right. I'm going to sustain it as to what they did in the house unless he was in there with them. He can say he went in the house, but what happened inside the house, unless he was inside, he would not be able to testify as to what they did.

BY MR. WILDER:

Q Okay. How quickly did they go in the house for whatever purpose they went in there?

A After they put us in handcuffs?

Q Right.

A Probably 15 minutes after they put us in handcuffs.

Q Fifteen minutes?

A Yes, sir.

Q All right. Do you remember if Mr. Trevor Brown was there when they went in to do the search?

A To be honest, it was like 12 or 13 officers, 15 cops there. I remember seeing Anthony Dennis, a couple of

females, a couple of males.

Q All right. And nobody gave you an arrest warrant; did they?

A No, sir.

Q Did they read you your rights?

A No, sir.

MR. WILDER: No other questions at this point.

THE COURT: Cross-examination, Mr. Corbett?

CROSS-EXAMINATION

BY MR. CORBETT:

Q Mr. Cooper, you indicated that on September 5th of 2006 that you and your brother worked that day?

A Yes, sir.

Q And that you arrived back in Sumter at approximately 4:30?

A In that area between 4:30, almost 5:00. Don't remember exactly what time. I knew it was in between that time, almost 5:00, wasn't 5:00 yet.

Q Wasn't 5:00 yet?

A No, sir.

Q And you got off work that day at 3:36?

A Yes, sir or 3:30. I clocked out at 3:30.

Q So if your payroll record that day indicated that you had clocked out at 3:36 p.m., would that be correct?

A Yeah, it -- if my payroll records say that, yes, sir.

Q So you left Columbia no earlier than 3:36?
A I give it -- probably around 3:45 actually leaving Columbia about 3:45 after cashing my check because everything is in the same area we worked at.
Q Okay. So you left Fire Mountain?
A Yes, sir.
Q And you went to cash a check?
A Yes, sir.
Q And where did you cash the check?
A Right across the street at the Piggly Wiggly.
Q At the Piggly Wiggly?
A Yes, sir.
Q On Highway 378?
A Yes, sir, Garner's Ferry.
Q Okay. And then you indicated that you went and bought some beer?
A No went to game store after that.
Q Went to?
A We went right to the game store and bought two games.
Q Right.
A Okay.
Q Where is the game store?
A In the same parking lot where we work at.
Q Okay. Then you left the game store and went where?
A To the gas station.

Q And where is the gas station located?
A It's located diagonal from our job like right across the street diagonal, it's like a gas station liquor store set up.
Q And you indicated that you were both drinking; is that correct?
A Yes, sir.
Q Okay. And what were you drinking?
A I had two Miller Lights and a Miller High Life.
Q And brandy?
A Yes, sir.
Q And marijuana?
A Yes, sir.
Q Okay. You had all of that?
A Yes, sir. They -- they had locked me up with marijuana.
Q I'm sorry?
A I was arrested with marijuana same day.
Q Now, you were able to drive from the vicinity of Fire Mountain to Suzie Rembert Drive; is that correct?
A Yes, sir.
Q And is that located generally behind the McLaughlin Ford area here in Sumter?
A Yes, sir.
Q Okay. So your testimony is that after having

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consumed that amount of beer and brandy and marijuana, you were still able to operate a vehicle from Columbia to Sumter?

A Yes, sir.

Q Now Wayne Cooper is your brother; is that correct?

A Yes, sir.

Q And you were still facing this charge; correct?

A Yes, sir.

Q So the more successful Wayne Cooper is in these types of hearings, the more successful you will be?

A What you mean, far as him...

Q If Wayne Cooper was to get some evidence excluded, that would benefit you; wouldn't it?

A I -- I believe so.

MR. CORBETT: Your Honor, just one moment, please.

THE COURT: Yes, sir.

(Whereupon there was a pause.)

BY MR. CORBETT:

Q Now, you indicated your brother had a pain patch?

A Yes, sir.

Q And he went to work with that on; is that correct?

A Yes, sir.

Q What kind of work does he do?

A Cook.

Q Cooks?
A Yes, sir.
Q Around fire?
A No, I cook around -- he just like around the oven, stove, ain't no fire, it's like a steam oven.
Q But he cooks, steam ovens, knives?
A Yes.
Q Utensils?
A Yes, sir.
Q And he's able to go to work with his pain patch on?
A Yes, sir.
Q Now, answering questions isn't any more difficult than driving a car; is it?
A No, sir.
Q Now, when you were asked about seeing Trevor Brown that evening, you don't recall seeing him?
A No, not to be honest, no. It been two years ago, sir. I remember seeing a lot of cops on the scene. I know Anthony Dennis was one of the ones and the heavy-set guy, real big, guess he was the one yelling in my face. It was a lot of officers on the scene, so I can't tell you if I seen precisely him, but I seen a lot of guys there.
Q So there were a lot of officers on the scene; is that correct?
A Yes, sir. Yes, sir.

Q As soon as you got out the vehicle, you were detained?
A Yes, sir.
Q Now, the truth of the matter is, they did not go into that residence for some period of time; right?
A Yes, sir, about 15 minutes.
Q They did not immediately go into that residence?
A No, it was asking us questions and about where we was coming from and where we work at and stuff like that.
Q Now, as a matter of fact, when you were handcuffed, you were advised of your rights; correct?
A No, sir.
Q You telling us the officer did not advise you of your rights?
A No, sir, I didn't even know what they was detaining me for.
Q And also the officer asked you for consent to go into that residence; didn't he?
A No, sir. He didn't ask me because he asked who lived there and I didn't live there. He didn't ask me for consent.
Q Okay. So did you hear the officer ask either you or Wayne Cooper for consent to go into that residence?
A No, sir.
Q You didn't hear that?

A No, sir.
Q Mr. Cooper, who was in the residence?
A His baby mother and my baby mother.
Q Okay.
A And our kids, our children.
Q Okay. I'm sorry. Who was in the residence?
A Our children and his baby mother and my baby mother was in there.
Q What are their names?
A Latonya Hilton, I think Kyria Chestnut.
Q I'm sorry?
A Kyria Chestnut.
Q Now, when the police ultimately went in the residence, were they still in the residence?
A Yes, sir.

MR. CORBETT: No further questions, Your Honor.

THE COURT: Re-cross or redirect?

MR. WILDER: No other questions of this witness.

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

(Witness left the stand.)

MR. WILDER: Your Honor, we issued a subpoena for Dr. Mohammad Rasul (phonetic) from Doctor's Care, but since he is not here yet, we're going to go ahead and proceed with Mr. Wayne Cooper's testimony.

THE COURT: All right. Come around, Mr. Cooper.

WAYNE COOPER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILDER:

Q Mr. Cooper, you're the defendant in this trial; right?

A Yes, sir.

Q Okay. On the day you were arrested, September 9th, September -- September 5th, 2006, y'all were arrested at Suzie Rembert Road; right?

A Yes, sir.

Q Okay. Do you agree that you got off work at 3:36 pm?

A Yes, sir.

Q About that time over at Fire Mountain over in Columbia?

A Yes, sir.

Q Okay. Now, for some time prior to that had you been treated by Doctor's Care for an injury that you received to your head?

A Yes, sir.

Q When did you receive this injury and where?

A When I slip and fell. I slip and fell at work and hit the -- bust the back of my head and hurt my shoulder, my left side, my shoulder and my back.

Q All right. So for -- and that injury occurred at McDonalds here in Sumter; didn't it?
A Yes, sir.
Q Okay. So you went to Tuomey first and you were treated there for that injury?
A Yes, sir.
Q And then you wound up being treated by Doctor's Care; right?
A Yes, sir.
Q All right. Now, the Doctor's Care people, you been to there -- how many times do you think you have been to Doctor's Care to be treated for that?
A It was numerous times.
Q All right. And this course of treatment led up to the date of September 5th that we're talking about; right?
A Yes, sir.
Q Okay. Now, Doctor's Care they were treating you, how were they treating you, what medications were they prescribing for you, if any?
A They was giving me muscle relaxer, I think Motrin 800, and it was a pain patch that administered medicine, had a battery in it that pump medicine into my neck.
Q Pain patch that pumps medicine into your neck. Would you describe the effect or intended effect of that pain patch?

A The pain patch, it makes me a little drowsy, not too much.
Q Drowsy. All right. And this was prescribed for you by Doctor's Care?
A Yes, sir.
Q Okay. Where did you obtain this pain patch from? Did you have to go to a pharmacy?
A No, Doctor's Care, every time I go they would put the patch on.
Q Okay. So the doctor at Doctor's Care would prescribe this for you?
A Yes, sir.
Q Okay. And did you have pain in your neck that that was -- that idea was to kill the pain?
A It was -- it was for the pain that was in my shoulder and down in my back.
Q Okay. Now, all these times you went to Doctor's Care they were sending bills for treatment; weren't they?
A Yes, sir.
Q So they were keeping careful track of how many times you went out there and what they were prescribing for you; right?
A Yes, sir.
Q Okay. And the day that you were arrested, did they come up to you and give you an arrest warrant or did they

just slap some handcuffs on you?

A They just put handcuffs on me.

Q Did they serve an arrest warrant on you or were you arrested without a warrant?

A I was arrested without a warrant.

Q Okay. Now, did they make this fine distinction about whether you were being detained or put under arrest or did they just put you in handcuffs?

A They just put us in handcuffs. They was asking us a lot of questions.

Q Did they give you Miranda rights?

A I don't remember. I don't recall hearing none.

Q Okay. All right. Did you understand what your rights were or were you intoxicated?

MR. CORBETT: Objection, Your Honor.

THE COURT: All right. Objection is sustained.

BY MR. WILDER:

Q Were you intoxicated?

A Yes, sir.

Q Okay. Did you have beer to drink before you were arrested?

A Yes, sir.

Q Did you have brandy to drink?

MR. CORBETT: Objection.

THE COURT: Overruled.

BY MR. WILDER:
Q Did you or did you not have brandy to drink?
A Yes, sir.
Q Did you have marijuana to smoke?
A Yes, sir.
Q How many beers did you have to drink?
A I had three 24 ounces.
Q Did you have those after you got off work?
A Yes, sir.
Q Okay. So between 3:36 and whatever time you wound up in law enforcement custody, you had already had the three beers and the brandy?
A Yes, sir.
Q And the marijuana?
A Yes, sir.
Q And the pain patch?
A Yes, sir, and the pain pills.
Q Pain pills. Tell the Judge about the pain pills.
A Yeah, when I knocked off from work because I don't take the pills during work because of the -- being in the kitchen, when I got off from work, I just -- I took two pills and then proceeded to leave out the door with my brother.
Q Were these pills prescribed for you?
A Yes, sir.

Q What kind of pills were they?
A Motrin 800 and I think it was a muscle relaxer.
Q Motrin 800 and muscle relaxers. Okay. Now, you remember at some point being in the company of Mr. Tommy Barron who testified earlier. You remember that?
A I remember seeing him, yeah.
Q Remember seeing him. Do you remember your conversations with Mr. Barron?
A No, sir.
Q Do you remember being read your rights by Mr. Barron?
A No, sir.
Q Do you remember what, if anything, you told him?
A No.
Q Okay. Now, since all of that took place, you have had a chance to read what was on this statement that's been marked for identification. Have you not? You've had a chance to read that?
A I've read it while I -- after I been incarcerated.
Q After you were incarcerated -- back of it. I'm going to show you what's been marked for State's -- Court's Exhibit number 2 first. Have you had a chance to read that; didn't you?
A Like I said, once I was locked -- already locked up and incarcerated.
Q After you were locked up and incarcerated, did you

have a chance to read it?
A Yes, sir.
Q Is that statement true?
A No, sir.
Q Is it accurate?
A No, sir.
Q Do you even remember signing it?
A I remember signing pieces of paper where he was pointing his fingers at.
Q Okay. Well, let me show you Court's Exhibit number two. Do you have a recollection of what you're talking about Mr. Barron pointing his finger?
A Yeah, he was pointing on them lines where to put my signature at.
Q Okay. So did you do what he told you to do?
A Yes, sir.
Q Do you recall being promised anything about being let go or anything?
A Yes, sir, he said he was going to release me after -- after I do what he asked me to do he said he was going to let me go.
Q Okay. Now, that statement that I showed you marked Court's Exhibit number 2 I believe it is says that you shot a pistol; doesn't it?
A Yes, sir.

Q Is that what happened?
A No, sir.
Q That statement is not in your handwriting; is it?
A No, sir.
Q You acknowledge that the signature belongs to you; don't you?
A Yes, sir.
Q Were you just doing what Mr. Barron told you to do?
A Yes, sir.
Q Now, there's no question in your mind that you were put under arrest; isn't that right?
A Yes. Say that question again?
Q You were put under arrest; weren't you?
A Yes, sir.
Q They never told you you were free to go anywhere if you wanted to; did they?
A No.
Q I'm going to show you a report Tuomey Hospital, ask you if these are your medical records. Summary from Doctor's Care dated October the sixth. Does that pertain to you?
A Yes, sir.
Q So you weren't released from Doctor's Care until after the date of this incident; right?
A Yes, sir.

MR. WILDER: I would ask that those be marked as Court's exhibits.

THE COURT: For... mark it, show them to Mr. Corbett. Want to mark them separate or just...

MR. WILDER: I guess one exhibit.

THE COURT: All right. Be consolidated and marked as Court's Exhibit number 4.

(WHEREUPON, Court's Exhibit 4 was admitted into evidence.)

MR. CORBETT: Your Honor, the State objects to these records.

THE COURT: Why is that, sir?

MR. CORBETT: Your Honor, first ground is relevance.

THE COURT: All right. What else?

MR. CORBETT: Your Honor, we'll go with the relevance.

THE COURT: All right. Mr. Wilder, what's the relevance?

MR. WILDER: Your Honor, I believe they're relevant because they show that there was an ongoing course of treatment for this defendant that included prescription of painkillers and they corroborate his testimony that he was receiving prescribed medication for an injury and that what he's testifying to is

true.

THE COURT: All right. Under rule 401 relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. I believe that they are relevant and the objection is overruled for purposes of this hearing.

MR. WILDER: Thank you.

BY MR. WILDER:

Q And now, Mr. Cooper, all these others were also Doctor's Care records, are they not, and Tuomey Hospital records?

A Yes, sir.

Q And they all pertain to your treatment for that injury; don't they?

A Yes, sir.

MR. WILDER: Offer these into evidence as a Court's Exhibit, Your Honor.

MR. CORBETT: Your Honor, objection, relevance and hearsay.

THE COURT: All right. I do have a problem with the hearsay nature element. I also have a problem with the relevance. I think the previous records were admitted -- relevance -- relevant to show the

date when he was discharged from treatment and that he was in fact treated, but I'm not sure what the relevance or admissibility of these records are, Mr. Wilder, and also there's a problem with hearsay, but I will be glad to hear from you.

MR. WILDER: Your Honor, they are we believe and as a Court's Exhibit we're not in front of the jury, so we don't believe there is any prejudicial effect to the State in allowing these to come into evidence, but we believe again the ongoing course of treatment shows that this isn't something he made up after the fact but that in fact he was being treated during this period of time.

THE COURT: What do these records show that the other records don't show that I have already admitted?

MR. WILDER: Your Honor, just that they were additional dates that he went in to Doctor's Care.

THE COURT: Objection is sustained.

MR. WILDER: Your Honor, we would ask that they be proffered for the record.

THE COURT: All right. Be proffered as Court's Exhibit number 4 for the record but not admitted. Five. Okay. Court's number five for id but not admitted.

(WHEREUPON, Court's Exhibit No. 5 was marked for identification only.)

MR. WILDER: Your Honor, that is the -- oh, answer any questions...

THE COURT: All right. Cross-examination?

CROSS-EXAMINATION

BY MR. CORBETT:

Q Mr. Cooper, good afternoon.

A Good afternoon.

Q Mr. Cooper, I'm going to refer to what has been marked as Court's Exhibit number 2. If you would please read that statement for me.

A Read this whole statement?

Q Yes, sir.

A Says on September -- on Saturday, September the second, 2006, at approximately 5:15 I was on my way to work when I receive a call on my cellphone from my brother Derrick Cooper. He said that he needed for me to come to his residence to help me get his vehicle started.

I arrive at his residence, Cedar Hill Mobile Home Park MHP. We got his vehicle started. I then decided to ride with him because -- then it's scratched out -- my vehicle was messing up. My brother was driving a four door Chrysler green in color.

We were leaving out and a black male walking down the

street threw a beer bottle at our vehicle striking it on the windshield. Someone was a walking with the black male but I couldn't tell if the person was a male or female, only that the person was black.

We stopped the vehicle and my brother Derrick asked him did he throw something and our vehicle and the black male shot at us. We then jumped into our car and was in the process of leaving when I turned to my left and fired one shot from my gun which I believe was a 22 revolver. I didn't shoot but once. But my gun fell apart.

We then drove out of Cedar Hill MHP and started towards Columbia. Once we got on to 378 -- Highway 378/76, I tossed a gun out of the window near James Ervin Auto Sales. We went on to work. We worked at Fire Mountain which is on Garners Ferry Road in Columbia.

Q All right. Now, Mr. Cooper, Mr. Wilder a few moments ago was asking you about that statement; correct?

A Yes, sir.

Q And you indicated that you didn't know what was in that statement?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q So your testimony here today is that Investigator Barron wrote this statement and then had you sign it?

A Yes, sir.
Q And you signed it because he said you can go home if you signed this?
A Yeah. That's what he promise -- he tell me I go home. He just -- what he asked me to do I did.
Q Now, you were obviously capable of reading; is that correct?
A I was under -- I was under alcohol and medication, sir.
Q You are capable of reading?
A I was under medication and alcohol.
Q Let me ask you this, Mr. Cooper. Why would Investigator Barron write into your statement your claim of self-defense if he was the one making up the statement?
A I have no idea.
Q And it's your testimony that he made up that you threw the gun out at James Ervin's Auto Sales?
A I didn't say it. He was talking -- he talked -- he was talking.
Q Your testimony is that he made that up?
A Yes, sir.
Q Okay. So if he says Investigator Turner and other officers out to the side of the road at James Ervin Auto Sales to look for a gun, he's just yanking them around, too?

A Sir, I wasn't in my clear state of mind.
Q But wouldn't that make sense?
A Would that make sense? Repeat your question.
Q If Investigator Barron makes up this part about James Ervin Auto Sales --
A Uh-huh.
Q -- and then sends Investigator Turner and officers out there to James Ervin Auto Sales to look for a gun, then he would just be jerking them around; right?
A Yes, sir.
Q Because he made that up; is that correct?
A Yes, sir.
Q So he came up with the time, the fact that your brother called you on a cellphone, the part about he was having trouble getting his vehicle started; is that correct?
A I -- he asked me -- he asked me a lot of questions. I'm not clear what I answered. He was just talking.
Q Okay. Now, let me ask you this. You got off work about 3:36; is that correct?
A Yes, sir.
Q And you arrived at your residence between 4:30 and five?
A Yes, sir.
Q Is that correct?

A Around that time.
Q Okay. Now, if you would, please, look at this document which has been marked as Court's Exhibit 1, and tell me, what time did you sign that?
A 8:05.
Q So that's more than three hours after you were detained or arrested, whichever word you want to use?
A Yes, sir.
Q That's correct, right?
A Yes, sir.
Q Now, referring to Court's Exhibit number 2. What time did you sign this document?
A 8:50 pm.
Q So now that's almost four hours after you were taken into custody.
A Yes, sir.
Q Is that correct?
A Yes, sir.
Q And it's your testimony here today that none of that in that statement were your words?
A Yes, sir.
Q Now, you were arrested on September 5th of 2006; is that correct?
A Yes, sir.
Q And have you been in jail since that time?

A Yes, sir.
Q All right. So if your medical record indicates a discharge date of October 5, 2006, you weren't actually there; correct?
A I was in jail.
Q Meaning you were not at your physical therapy office?
A Yes, sir.
Q Okay. So -- now, how long had you been working at Fire Mountain?
A I been working at Fire Mountain about a month, month and a half, about a month and some weeks.
Q And how long had you been wearing this pain patch?
A I been wearing the pain patch for a while. I can't recall how -- since the incident had happened.
Q Since before you started working at Fire Mountain?
A Yes, sir.
Q So you routinely worked at Fire Mountain with this patch on?
A Yes, sir.
Q And in addition to that, you would take Motrin 800?
A Not while I'm working, sir.
Q Not while you're working.
A No, sir.
Q All right. And then it's your testimony that you left work at 3:36; correct?

A Yes, sir.
Q That you and your brother went to the Piggly Wiggly to cash a check?
A Yes, sir.
Q That you went to a video game store to buy a couple of video games?
A Yes, sir.
Q Okay. Then went to a gas station where you bought beer and brandies; is that correct?
A Yes, sir.
Q And then drove straight to Sumter?
A Yes, sir. He -- he had a -- bought a blunt, too.
Q Okay. And it's your testimony that you were so under the influence at 8:50 that you couldn't understand what you were doing?
A Sir, I drunk three beers, brandy and smoked some weed and under pain medication.
Q Your brother was also drinking; correct?
A Yes, sir.
Q Also smoking marijuana?
A Yes, sir.
Q And he was driving the car?
A He wasn't under pain medication either.
Q He wasn't taking Motrin?
A No, no -- no muscle relaxers neither.

Q But he was driving the car?
A Yes, sir.
Q Is that correct?

MR. CORBETT: No further questions.

THE COURT: Redirect?

MR. WILDER: No other questions, Your Honor.

THE COURT: All right. Thank you. You may step down.

THE WITNESS: Thank you.

(Witness left the stand.)

THE COURT: All right, sir. Mr. Wilder, you may call your next witness.

MR. WILDER: Your Honor, as the doctor doesn't appear to have arrived, we'll rest this portion of our presentation of evidence at this time. It's my understanding that if the Court doesn't suppress it, if you allow it to come in over objection, then I still have to make a issue of it before the jury.

THE COURT: That's correct, but we haven't gotten to that point yet. Let me see. I told Mr. Corbett that I would give him a chance to put up any reply testimony, so let me see.

MR. WILDER: I see. I'm sorry.

THE COURT: See if we got all the testimony we need. I told you that I would give you the

opportunity to present any reply testimony to the testimony presented by the defendant on the motion to suppress and the Jackson v Deno.

MR. CORBETT: Your Honor, might I have one moment, please?

(Whereupon there was a pause.)

MR. WILDER: Could my client have a restroom break?

THE COURT: Yes.

(Whereupon there was a brief recess.)

THE COURT: Mr. Corbett? Where did Mr. Corbett go? Can't seem to get everybody here at the same time. All right. Everybody is back in the courtroom now.

Mr. Corbett, the defense has rested as far as any testimony that they wish to present with regard to the motion to suppress the -- either the evidence seized in the search warrant or the Jackson v Deno matter, but I did indicate that I would give you an opportunity to present any reply testimony. Is there any reply testimony on behalf of the State?

MR. CORBETT: Judge, pertaining to the statement and the search warrant?

THE COURT: Yes, I think that's everything that's -- what we're talking about at this point.

You don't have anything else on the search warrant; do you, Mr. Wilder?

MR. WILDER: No, Your Honor.

THE COURT: Okay. That's the defense matters. They have presented everything on the search warrant and the Jackson v Deno, so we are talking about both the motion to suppress the statement and the evidence received in -- obtained in the search warrant.

MR. CORBETT: Your Honor, may it please the Court. We would call Investigator Trevor Brown to the stand.

THE COURT: All right. Mr. Brown, come around. You have already been sworn.

TREVOR BROWN, after being duly reminded of oath, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Brown.

A Yes, sir.

Q You had previously testified that you were at the scene on Suzie Rembert Road that day; is that correct?

A That's correct.

Q Okay. And you indicated that you and other officers were on the lookout for two suspects in a murder case.

A Yes.

Q And that you had been conducting surveillance on a location near Suzie Rembert Road?
A Yes.
Q Okay. And I believe your testimony was that suspects or individuals matching the description of the suspects matched on the scene?
A Yes.
Q And that they were detained at that time.
A Yes.
Q Okay. And you indicated that they were mirandised?
A No, sir, Investigator Dubose made that.
Q I'm sorry. Were you present for that?
A No, sir, I -- I was present, but I wasn't in the -- I wasn't there when they was talking to him. I went -- I left the scene, went to get the search warrant.
Q Now, prior to you leaving the scene did anyone enter the residence from law enforcement?
A No, sir.
Q Okay. Do you know if anyone in law enforcement asked for consent to go into that residence?
A One of us did. I'm not sure who it was but I know consent wasn't given.
Q So you went and got a search warrant; is that correct?
A That's correct.

Q You appeared before the magistrate?
A Yes.
Q Okay. And presented her with information that you had been briefed on about the case?
A Correct.
Q And when you returned, were any officers in the residence?
A No, sir.
Q Okay. So once you returned with the search warrant, was entry then made?
A Yes.

MR. CORBETT: No further questions.

THE COURT: Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:
Q You didn't get the search warrant until 6:50 pm; right?
A Could I see the warrant?

THE COURT: Yes, sir. Here it is.

THE WITNESS: Thank you, sir. Yes, sir, it was signed at -- it was signed at 6:50 pm, yes.

BY MR. WILDER:
Q Okay. What date?
A September 5th, 2006.
Q What date did the Judge put by the Judge's signature?

A September 5th, 2006, 6:50 pm, right here.
Q What date would that say right there?
A The Judge signed September 1st, 2006, on the back, but she put --
Q At what time?
A The Judge -- 6:50 pm.
Q September the first.
A Right.
Q Okay. All right. Your testimony is that's in error; isn't it?
A Yes, that's an error.
Q Your recollection is it was September 5th.
A Yes. That's what's on the front of the search warrant as well as the second page of the search warrant, September 5th. Only page -- on third page where it's September 1st, but it's the same year and the same time, just a correct -- mistake made on the date, but the month and the year and the time are correct.
Q Was a mistake made as to the date on the second page, could have been mistake as to the time on the first page; couldn't it?
A It's a lot of mistakes.
Q Again, none of that information is based on your personal knowledge; is it?
A Just the part that I testified to earlier about the

car being there at the scene.
Q And all the information pertaining to the Coopers came from Mr. Jamie Turner?
A Yes. Captain Turner relayed information to me and I typed the search warrant.
Q And you don't know where he got that information?
A No, sir.
Q But it was all told to him by somebody because he wasn't there; was he?
A That's a question for Captain Turner, not for me.
Q All right. No other questions?

THE COURT: Mr. Corbett, redirect?

MR. CORBETT: Briefly, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:
Q Now, Investigator Brown, Mr. Wilder was asking you about an instance where the Judge wrote 9-1-2006 on the form; is that correct?
A Yes.
Q All right. Is that date accurate?
A No, sir.
Q Okay. And as a matter of fact, on your return you indicated that the arrest -- the search warrant was executed on 9-5-2006; correct?
A Yes.

Q And your sworn signature or your -- in front of the Judge is also dated September 5, 2006.

A Yes.

Q Thank you. That's all the questions that I have.

THE COURT: Anything further of this witness, Mr. Wilder?

MR. WILDER: No.

THE COURT: All right. Thank you. You may step down.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett, anything else in reply to the defense testimony regarding these two issues?

MR. CORBETT: Your Honor, we'd call Investigator Jamie Turner.

THE COURT: All right. Mr. Turner.

JAMIE TURNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Turner, by whom are you employed?

A Sumter County Sheriff's Office.

Q And how long have you been with the Sumter County Sheriff's Office?

A Eighteen years.

Q And what is your current stat -- what is your current rank with the Sumter County Sheriff's Office?
A I'm a captain.
Q Of investigations?
A Yes, sir.
Q Okay. And were you with the Sumter County Sheriff's Department back on September 2nd of 2006?
A I was.
Q Okay. And you were the investigator at that time?
A I was a lieutenant in investigations.
Q Okay. And did you have occasion to be involved in the case involving the death of Brandon Green?
A I was.
Q Okay. And did you also have occasion to on September 5 of 2006 respond to Suzie Rembert Road?
A I did.
Q Now, did you have any personal contact with Wayne Cooper that day?
A Once -- well actually what happened was we were notified, we sent officers out ahead of us, we were working -- acting on some information. Those officers called back and said that they had arrived at the residence and had been detained, so at that time several investigators including myself went out to that residence.
Q And so you arrived on the scene; is that correct?

A I did.
Q And did you have any contact with Wayne Cooper?
A I did.
Q Okay. Now, what if anything was out of the ordinary about Mr. Cooper's behavior or his mannerism or anything else?
A Nothing that I saw. I mean, he talked to me, he answered questions, I -- I was the one that actually asked him about could we have consent to go to the house and he denied me consent and that's when Trevor Brown was sent to go type a search warrant.
Q Okay. And did he smell of alcohol?
A No, sir.
Q Did he smell of marijuana?
A No, sir.
Q Okay. Did he give you any indication in his speech, his stance, his gaze, his walk or anything of that nature to suggest that he was under the influence?
A No, sir.
Q Okay. How was it that he came to speak with Investigator Barron?
A We were actually -- once the search warrant was brought back and executed, they were sitting, there were several of us, but he was in the living room I believe of the house sitting on a couch.

Investigator or Captain Barron at the time was sitting on the other end of the couch, there were several -- couple other officers standing there, too.

It was at that -- you know, we -- well, we advised him that based on what we had found that they were under arrest for the murder and that, you know, asked them if they wanted to make any statements. The brother, Derrick, said he didn't have nothing to say.

Mr. Wayne, Mr. Cooper, Wayne Cooper said that, looked around, he looked at Captain Barron, said he looked like a trustworthy person and that he was going to talk with him.

So at that time basically everybody that was there just kind of let Captain Barron take Mr. Wayne Cooper to the office to interview.

Q Now, when you say Investigator Barron was interviewing him, was anyone else present?

A I was right outside the door.

Q Okay.

A And there was other officers in the office, but the door was open and that was at times, you know, listening -- I was listening in, I could hear them talking.

Q Was there anything that evening during the questioning that you heard that suggested that Officer Barron promised him anything or had threatened him in any

way?
A No, sir.
Q Okay. Were you able to hear him talking to Investigator Barron?
A I could hear them both talking.
Q Was there anything about Mr. Cooper's speech that suggested that he was under the influence?
A No, sir.
Q Investigator Turner, was there an occasion where the Sumter County Sheriff's Department sent people to the vicinity of James Ervins Auto Sales to search for a weapon?
A I believe it was the next day we -- Lieutenant Nelson, his whole shift, some investigators searched the -- which would be the south side of 378 in front of the base, also base security at OSI offered and actually sent Air Force personnel to search the north side of 378, and it was searched from -- well, Highway 441, Patriots Parkway all the way back to Cherryvale Drive, so it's probably about 25, 30 people involved.
Q In a search for the weapon in front of James Ervin Auto Sales?
A That's right, which he said he had thrown -- he said in his statement he had thrown out in that vicinity, so there was a lot of people went out there looking for it.

Q Thank you, Investigator Turner. That's all the questions I have.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Turner, you heard testimony that the information on the search warrant came from you.

A Yes, sir. I was on the telephone with Sergeant Brown.

Q .22 caliber rifle ammunition as well as items establishing the identity of persons in control of areas searched. That's what y'all were looking for. Give you one marked for identification...

THE COURT: I have it. State's -- Court's Exhibit 3.

BY MR. WILDER:

Q Description of property stolen, a .22 caliber rifle, ammunition as well as items establishing the identity of persons in control of areas searched. Right?

A That's right.

Q That's what y'all were looking for.

A That's right.

Q Okay. And then a witness down in the reasons for belief, a reason -- a witness interviewed by law enforcement advised that the weapon used was a rifle?

Q Thank you, Investigator Turner. That's all the questions I have.

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Q That's what y'all were looking for.

A That's right.

Q Okay. And then a witness down in the reasons for belief, a reason -- a witness interviewed by law enforcement advised that the weapon used was a rifle?

A She stated that -- that was Mary Green stated that.
Q Mary Green.
A That's right.
Q The source of your information then is Mary Green.
A Yes, sir, she was there when it happened.
Q All right. She said it was a rifle?
A No, sir, she -- what she stated was, and I don't know if it was, you know, a mix-up between me and Trevor Brown, but I knew at the autopsy a 22 bullet was recovered, 22 contraband -- ammunition was found at the scene on the ground, was a box of 20 -- of about three or four bullets on the ground, was .22 caliber, and what she's -- she told me she saw was an object looked like about a foot long come out the window, it's a little long for a handgun.

I might have inadvertently said a rifle, but that's what she told me it was. So based on the information I had from the autopsy at the crime scene and what she described as object foot long coming out the window, I thought it was a rifle.

Q Well, let's be clear. Did she say it was a rifle or did she say it was something a foot long?
A She said it was an object about that long which is about a foot long.
Q All right. So you're holding up your fingers about a foot apart.

A About a foot.
Q And you're saying that that's what she said it was an object about a -- about a foot long according to what you're saying. She didn't use the term rifle?
A I don't believe she did.
Q But you used the term rifle when you relayed that probable cause?
A I may have.
Q To Trevor Brown?
A I may have --
Q All right.
A -- because--
Q And Mary Green, if she's the source of your information, she's never given any reliable information to police before; had she?
A Sir, she was there when it happened, so the information she gave -- you know, she's an eye witness to the crime. I don't know Mary Green.
Q You don't know Mary Green?
A Never met her before that time.
Q So you're not in a position to comment on whether or not she was a source of reliable information or not?
A No, sir, she was an eye witness to the crime.
Q Now, she didn't use anybody's name as to who the perpetrators of this were; did she?

A No, sir, she pointed to -- she pointed out a mobile home which at lot 26 and she said that the vehicle that she was trying to describe and the person or the people that she saw, she saw at that residence.

Q What if any information did you obtain from Rodney Green?

A I didn't -- I didn't talk to Rodney Green. I mean, I talked to him, but I was looking for his mother, Mary Green.

Q So the -- this information you're saying is probable cause in here, it came from Mary Green exclusively?

A Mary Green and Wanda Rogers. I interviewed Wanda Rogers on the day this happened. She was another witness.

Q Neither one of them knew -- specific names; did they?

A Other than they -- Wanda Rogers, no. She seen the people before. So did Mary Green. She don't know them by name. But she did point out the residence, a trailer, a lot 26 which I went down around 8:30 that morning, the morning this happened, and ran a tag on a white vehicle, Plymouth Breeze in the yard that came back to Wayne Cooper.

Q Okay. All right. So nobody had seen anything inside this residence at the time on Suzie Rembert Drive, nobody had seen anything in there?

A No, sir, we didn't -- because we wasn't allowed to go

in. They didn't give us consent. But we could hear somebody moving around inside. We knew somebody was in the residence.

We had Wayne and Derrick there and neither one of them, Mr. -- Mr. Wayne Cooper said he didn't have a key to it which he -- after the search warrant showed up, he had a key then. He said nobody was there. There's somebody moving around inside.

The suspect vehicle is in the back yard along with his white Plymouth Breeze is in the back yard and somebody is in the house moving around.

Q All right. So none of the information that you had came from Rodney Green?

A No, sir, the only question I asked Rodney Green is where is your mother, Mary Green, at. I was trying to locate her when I arrived at the scene that morning, that Saturday morning.

Q Okay. Now, did Mary or Wanda identify anybody else who was a witness to this?

A That's the only two witnesses I've ever talked to about this.

Q It's the only two you talked to?

A That's the only two that I'm aware of.

Q Now, was Mary Green's statement reduced to writing?

A No, sir.

Q How about Wanda's?
A No, sir.
Q No statement taken in writing?
A No, sir.
Q Okay. Thank you. No other questions.

THE COURT: Redirect?

MR. CORBETT: Yes, sir, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Now Investigator Turner, the decision to have people watch Suzie Rembert Road, that decision was compiled from various sources of information; is that correct?
A That's right.
Q What you call an investigation.
A Yes, sir.
Q You spoke to Wanda Rogers?
A I did.
Q You spoke to Mary Green?
A I did.
Q You got information about a description of a car.
A I did.
Q You obtained information I believe you testified about a mobile home in Cedar Hill Mobile Home Park where that car had been seen?
A That's right.

Q And you began to piece together people associated with those vehicles?

A To start with the -- the white Plymouth Breeze came back to Wayne Cooper. That was the morning of the incident. The owner of that mobile home mark, Jesse McLeod furnished us the name of the renter, the people renting that residence, and the occupants of that. One of them was Derrick Cooper.

So Derrick Cooper and his girlfriend was renting that -- that mobile home that had Wayne Cooper's car parked there, the white Plymouth Breeze. Yes, that's right, we were piecing together information.

Q Okay. And as a result of pulling together this information, then you -- you then developed the address of Suzie Rembert Road as a residence of one of the suspects; is that correct?

A That's right.

Q Okay. And at your request officers did surveillance on that residence?

A Actually at the time Wesley Gardner went around there looking for one of the females, the girlfriends, and that's right, and then we got a call that they were on the way home. We sent officers around there to do surveillance to see if they came there.

Q And the suspect vehicles were seen in the yard?

A Yes, sir, in the back yard.
Q And various piece of information that you're gathering in your investigation, these weren't from paid informants; were they?
A No, sir.
Q These were witnesses?
A Yes, sir.
Q Mobile home park manager.
A That's right.
Q DMV records.
A That's right.
Q Thank you, Investigator Turner. That's all the questions I have.

THE COURT: Re-cross, Mr. Wilder?

MR. WILDER: No other questions.

THE COURT: All right. Thank you, Mr. Turner. You may step down.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett, further evidence from the State with regard to these two questions?

MR. CORBETT: That's all the evidence from the State, Your Honor.

THE COURT: All right. Mr. Wilder, be glad to hear from you by way of argument with regard to the

motion to suppress the evidence seized in the search warrant and also the statement of the defendant.

MR. WILDER: Your Honor, if it please the Court. Under the case of State versus Saxon, which I believe is at 201 Southeast second 114, specifically page 117 which is a 1973 case, Your Honor, we would quote that with the preposition that if an accused's intoxication was such that he did not realize what he was saying, the confession may be inadmissible as a matter of law because it was involuntary.

And Your Honor, we would rely upon that reasoning first of all to suppress the statement, but also, Your Honor, under a violation of procedure under South Carolina code section 1713140 and 1713150, Your Honor, that there was a warrantless seizure of my client, that he was arrested without probable cause, without a warrant, without -- I mean, the search warrant of the premises, they're not allegedly relying on any of that for the proposition of taking him into custody.

He was developed as a suspect, not a individual who was most probably guilty of the offense of murder. They have to have more than that. They have to have probable cause for an arrest of my client. They did not have that. They took him into custody

and began -- they arrested him without a warrant, took him into custody, began to question him and then developed a confession from him as allegedly firing a gun involved at or about the time that the decedent was shot.

We believe that the taking of the body of my client into custody on a warrantless arrest without any kind of magistrate's probable cause or indeed -- they haven't even as of now articulated.

THE COURT: Well, are you contending that he was -- was or was not arrested at the time?

MR. WILDER: I'm contending he was arrested.

THE COURT: All right. If he was arrested, can't the police make an arrest on a felony arrest based on information from citizens? They don't have to have anything else other than that. Isn't it a lawful arrest if they -- if I say I saw that fellow rob that liquor store over there, can't they -- can't they arrest on that basis?

MR. WILDER: If they have probable cause, Your Honor, but they're substituting their judgment for a magistrate's judgment when they do that.

THE COURT: No, in this case -- in this case the testimony is that they had information from Wanda Green that the thing was stuck -- something was stuck

out the window and that was part of their basis for their thing.

MR. WILDER: Not of any particular car or any particular individual. They didn't give any names or -- they have address down the street where this guy may have been seen at some previous -- I saw somebody like that before. That is all they got.

That's not probable cause, Your Honor. That -- they don't have any information that would directly lead to Wayne Cooper at the time that they took him into custody.

The probable cause as stated on their search warrant is the best they're going to do, and that information is hearsay, it's not even based on a statement that was given by a reliable--

THE COURT: Well, we are talking about the third issue here. Seems like to me we got three issues here, we got an issue with regard to the admissibility of the statement under Jackson versus Deno.

MR. WILDER: Yes, sir.

THE COURT: We got the question of the admissibility of the results of the search warrant. And then we've got the question of the -- not sure what you want to suppress as far as the -- your

client is concerned, I'm not sure what we're talking about there. I'm -- you...

MR. WILDER: Your Honor, let me clarify.

THE COURT: All right.

MR. WILDER: This is fruit of an illegal arrest. That's what I'm saying.

THE COURT: What is the fruits of an illegal arrest?

MR. WILDER: His statement.

THE COURT: What is?

MR. WILDER: The statement that he gave to the police officer. This is a fruit of an illegal arrest, that they took him in under -- into custody unlawfully, illegally without a search warrant and I'm contending without any probable cause.

They went ahead and arrested him without a search -- without an arrest warrant, they took him into custody and they were asking him questions and they got him to sign a statement.

I'm moving to suppress it on grounds that he was illegally in custody, that he had been arrested without any probable cause.

Now, it's true that I think you're correctly stating the law that they can make an arrest if they got probable cause without a warrant. But I don't

believe they had probable cause. And that's why I'm moving to suppress the--

THE COURT: Well, what difference as far as the statement is concerned does it make whether he was arrested or he wasn't arrested if he's given Miranda warnings?

MR. WILDER: Your Honor, I believe that he was arrested illegally and that they're --

THE COURT: Okay.

MR. WILDER: -- and that it is fruit of an illegal arrest. If they had no right to arrest him, then they had no right to have him in custody.

THE COURT: Well, let's say that they had -- there's no question of arrest coming in whatsoever. And they said, all right, Mr. -- Mr. Cooper, would you ride downtown with us and he says, sure. And so they ride downtown and they read him the Miranda rights and they give him all that stuff and he makes the same statement that he gives. What's the problem?

MR. WILDER: I don't believe there is a problem if he understands he's waiving his rights. However, under the Fourth Amendment of the United States Constitution and any similar applicable law we have including our state constitution that they have to

have probable cause, Your Honor, for an arrest for certain (sic) and a seizure and I believe that their seizure of the defendant and his body was--

THE COURT: Have you got any authority on your position?

MR. WILDER: State versus--

THE COURT: Give me case law.

MR. WILDER: State versus Owen, State versus Bellamy and State versus 192 coin operated video -- let me just hand this motion in writing up to the Court, Your Honor.

THE COURT: All right.

MR. WILDER: And I'd like to make that part of the record if -- if it please the Court. I have given a copy to the Solicitor's office. Both of those are motions are in writing. That's the precedents we would rely on.

THE COURT: All right. I'm going to call on Mr. Corbett in just a minute, but I have got one other question, Mr. Wilder. Is it your position that a search warrant, that the probable cause for a search warrant can or cannot be based on hearsay testimony?

MR. WILDER: Your Honor, it would be my understanding that if it's based on reliable

information, which is subject to the Court's review at this point, that if that reliable information is something that you believe is reliable, you -- you can base it on hearsay.

However, Your Honor, in this case I don't believe that they have established that the information, whether it's reliable or not, leads to my client for any probable cause that he should have been arrested.

THE COURT: Well, doesn't that requirement of reliability come in when the State is relying upon information given to them by someone they maintain is confidential as a confidential informant and not -- in other words, if I -- and just thinking out loud.

If I give the information to a law enforcement officer that I saw a particular individual run into a house with a weapon in his hand and that law enforcement officer goes and relates that to the magistrate, I'm an eye witness to that, I saw that happen, but I'm not a confidential informant? I'm telling an officer what I saw.

Now, isn't that basis enough for a search warrant?

MR. WILDER: Your Honor, in your case it certainly would.

THE COURT: Well, I--

MR. WILDER: Eminently reliable individual.

THE COURT: Let's make it some -- some nefarious character like Mr. Herring.

MR. WILDER: Okay. Your Honor, my thinking on that is just this. If you said it was Mr. Herring, that's one thing. But if you said it's a gentleman that had glasses on and it could be anybody that might live down the street at a certain residence.

THE COURT: Well, I don't know who it was.

MR. WILDER: Before -- in other words, that's what I'm saying. The information in this case doesn't lead to any specific individual. It's just a shot, a circumstance -- circumstance that could lead to any number of people.

THE COURT: But the links are there. And then they chain them and they talk about the vehicle that Wanda Green saw, they talk about the checking the -- the department records to find out who that vehicle belonged to, obtaining a name, I mean, those are all things that were relayed to the magistrate; were they not?

MR. WILDER: Your Honor, there has been no information to show who the vehicle belonged to that was in the yard of the defendant put on the stand

here in this review by the State that had the burden of proof.

THE COURT: I understood Mr. Turner said that they checked into that and found out the vehicle belonged to Mr. Green.

MR. WILDER: Found that -- my understanding that a white vehicle that was parked down the road in Cedar Hill Mobile Home Park had a connection to Mr. Cooper.

But there has been no testimony that any -- any vehicle that was parked outside of this residence is the vehicle that Mary Green or the other lady saw, Wanda, saw that evening.

THE COURT: All right.

MR. WILDER: So I don't believe that they have established probable cause that leads to Wayne Cooper and the whole thing fails for want of probable cause whether they had gone to a magistrate or not.

They didn't have sufficient information that led to either Wayne or Derrick and they went and they laid in wait outside their house, and when they got there, they arrested them without a warrant, without probable cause.

It's true it was for a felony. I'm not contesting that part of it. Normally they can arrest

for a felony if they have sufficient I think probable cause to make the arrest without -- without the -- the magistrate because that would slow them down.

And the public policy is that they need to be able to arrest without a warrant. I'm -- my contention is if they had gone to a magistrate, they couldn't have gotten an arrest warrant and they knew it, that they arrested--

THE COURT: Summarizing your position is you're saying that this isn't -- this is not on the date of the crime based on information that they saw -- that the witness gave them right then that they acted on.

MR. WILDER: Right.

THE COURT: But it was on information that they had had for three days from the second -- from the second until the fifth.

MR. WILDER: Right.

THE COURT: That they could have taken that information to the magistrate and obtained an arrest warrant.

MR. WILDER: If they had probable cause. They didn't do it. They didn't.

THE COURT: I say they could have taken it to the magistrate and the magistrate could have made a judicial determination of whether an arrest warrant

should issue.

MR. WILDER: That's right. And nothing changed while they were sitting there at the residence. They arrested him without probable cause, without arrest warrant, now they are trying to bootstrap the case by taking the confession from him which we don't believe he gave voluntarily, but -- but that's a separate issue from whether or not he was lawfully arrested.

And we just don't believe he was arrested lawfully and he should never have been in that room with Officer Barron in the first place if they had gone according to procedure, which they did not.

So we believe his Fourth Amendment Constitutional Rights, his right to privacy was violated, that he was in arrest unlawfully.

THE COURT: Mr. Corbett?

MR. CORBETT: Thank you, Your Honor. Your Honor, if I may address the search warrant issue first because it appears that some of the conversation here today had been about hearsay.

And Your Honor, if I may, I'm going to hand up the State versus John L Sullivan the third, 230 Southeast second 621, 267 South Carolina 610. Your Honor, we believe that that case stands for the proposition that officers can relay information among

themselves in order to obtain a search warrant particularly in instances where they are not relying on paid informants but where they are relying on citizen witnesses.

In the present case that's what we have. Your Honor, Investigator Turner, he testified that they're being led to the--

THE COURT: Let me stop you a minute. Maybe we can cut this a little bit short. Let's assume for a moment that the police officers had gone to the magistrate on September 4 and said, here's what we have, we have this statement from Wanda Green, we have what we have learned from the Highway Department records, and the other parts of the investigation that -- that lead to the two defendants in this case.

Based on that, we want a -- an arrest warrant. And the magistrate says, that is probable cause for arrest and I will grant the arrest warrant. And so armed with the arrest warrant they stake out the house and they come there. Okay.

And they arrest them. And they say, can we search the house, and they say, no. So then you go down with that same information to the magistrate on the fifth and obtain a search warrant.

And I will be very frank with you. In the fact

scenario that I have just given you I think that there was probable cause for the issuance of a search warrant in that situation where they already have gotten an arrest warrant and they arrested them then they went to the magistrate and the magistrate made a determination based on that.

Where I have a problem with this is a three day lapse between the time of the commission of the crime, really no more newer information other than finding them at the scene and then going down and getting the search warrant at that point to try to buttress what they already knew and then getting the statement from the defendant which they already knew.

My problem is the lapse in time and failure to get the arrest warrant before the -- before they took the defendant into custody. Address that.

MR. CORBETT: Your Honor, Investigator Turner's testimony was that we were working on the suspects. Once we got to the residence and found out that yes they were in fact there, then we executed the search warrant based on what we found there. That's when we arrested them.

Now, I was trying to avoid the getting into the what they found there, but his testimony was based on what we found there, then we placed them under

arrest. And that what we found there is referenced in Mr. Wilder's motion. It's the car, the window tint, the gun, et cetera.

THE COURT: So at what point is it the State's position that they were arrested?

MR. CORBETT: Your Honor, bear with me one moment, please.

THE COURT: Or not so much they but this defendant. This is the only one I am dealing with. At what point was he arrested because I haven't heard anybody yet say he was arrested.

MR. CORBETT: Yes. Your Honor, State's contention is once that search warrant was executed and the gun was found and the other items, they were placed under arrest.

THE COURT: Who testified to that?

MR. CORBETT: Your Honor, it was Investigator Turner who testified based on what we found, I placed him under arrest.

MR. WILDER: May it please the Court.

THE COURT: Wait a minute. Now, what did they find? I'm looking at the return of the search warrant and it looks like they found papers with Wayne Cooper's name on it. All that does is identify it as being his trailer.

Twelve rifle found in AJ -- found by AJ in bedroom number one. Green in color Chrysler. Well, that certainly wasn't found in the residence. That would have been -- had to have been sitting outside. And what's that last thing, torn tint found in garbage can. Torn what?

MR. CORBETT: Torn tint. That's the window film, Your Honor.

THE COURT: Oh. All right. Go ahead, Mr. Corbett.

MR. CORBETT: Your Honor, so our contention is that based on the items that were found as a result of the search warrant that the arrest was appropriate, the felony arrest.

He was then taken to the station which leads me to the second portion where they contest the validity of the statement, the voluntariness of it. Your Honor, that comes down to a matter of credibility.

Multiple officers have testified in this courtroom today that there was nothing about his appearance, his mannerism, his speech or anything else that led them to believe that he was in any way under the influence.

Investigator Barron testified as to how the statement was taken. And Judge, if you see the

statement, you will notice that it is rather detailed, and that Investigator Barron, had he been making it up, he certainly could have made it up better than he did.

Your Honor, that's also one of the reasons in terms of kind of circumstantial evidence, one of the things I wanted to point out is the sheriff's department sent about 30 people out there along the roadway to look for that gun.

Again, not to -- not determinative in and of itself, but if Investigator Barron is making up about where he threw the gun out, why are they sending 30 people out there to look for it? That's a little farfetched.

Also, Your Honor, again getting back to the credibility -- credibility issue. We have got one defendants -- the only difference between me and him is I didn't have the pain patch or taking Motrin 800, I could drive the car, but yet this defendant is telling us some three hours or more later he didn't understand the statement or a miranda that he was being given.

So the testimony, the credible testimony before the Court is that he was advised of his miranda rights and that he voluntarily gave a statement.

With regard to the search warrant issue, Your Honor, I believe that's addressed in the case that I just handed up a few moments ago in that it was based on gathering information from a variety of sources in order to obtain it. It wasn't a situation where it was paid informants being used to obtain the search warrant.

So Your Honor based on all the information before the Court, we believe it was a valid arrest, we believe the statement was voluntarily given. Of course a defendant is going to come into the courtroom and say, I didn't understand what I was signing, it wasn't voluntarily given.

They never come into court and say, oh yeah, I gave that statement putting myself at the scene of the murder. That never happens.

But what we have is multiple officers who testified to his condition and that also Investigator Barron as to the voluntariness of it. And the search warrant was valid based on the way the information was provided to the magistrate.

THE COURT: All right. All right. Mr. Wilder?

MR. WILDER: Your Honor, the information that is on their incident report said they were looking for a green Intrepid and the fact that they found a

Chrysler product when they got to the man's house, there is no evidence that anybody gave a statement that that was the car that was involved in this incident.

Mary Green didn't -- information that he said he got from Mary Green didn't say that. Information he got from Wanda, that lady, didn't say that. They said that there was somebody she saw -- she'd had seen before down at a particular lot.

They -- they call in a -- a white vehicle that's down there and somehow that's linked to Mr. Cooper over on Suzie Rembert Road.

There is nothing that establishes there's probable cause to arrest my client that evening. Whether they have an arrest warrant or not, they did not have a right to arrest without probable cause. And that's what I'm saying. That's--

THE COURT: So you are moving to suppress the arrest; are you not?

MR. WILDER: Yes, sir. And -- and they call it a detention, but if you put handcuffs on a person and take him into custody and you don't have probable cause, I submit that violates his Fourth Amendment right.

They -- they didn't have probable cause to do

that. And after the fact they want to say oh, well, you know, he gave a statement. They want to try to use that to develop the probable cause. But I submit that all -- standing alone with no statement, there's no probable cause for his arrest.

They did not have the right I believe to put him -- to take him into custody that evening and that the thing ought to fail because he was arrested without probable cause. That's -- simply that -- that is our argument.

Also, that we believe that he had had enough to drink, smoke, ingested by drugs and pain patch and medication and all of that to render him to the point where he is not able to understand what he is doing and that--

THE COURT: Doesn't that become a jury issue? Because the -- there is -- there's testimony both ways.

MR. WILDER: Threshold it is for you to decide, Your Honor, and you got to make a determine -- I think the standard might be preponderance of the evidence.

THE COURT: Right.

MR. WILDER: But in front of the jury it's proof beyond a reasonable doubt.

THE COURT: Right.

MR. WILDER: So there is a higher standard in front of the jury, but we believe that it shouldn't even come in now because of the fact that he was on all these medications.

And regardless of what his appearance might have been, we believe we have established beyond a reasonable doubt that he was under the influence of medication, drugs and -- and booze.

And that he -- this confession, whatever it is, was not voluntary because he didn't understand what he was doing. So I -- I just believe that it should be suppressed for that reason standing alone coupled with the reason that he was unlawfully in custody to begin with, with no arrest warrant.

And that's pretty well conceded, Your Honor, there's no arrest warrant. So we're now talking about--

THE COURT: So, they concede there is no arrest warrant. I don't believe there is any question about that.

MR. WILDER: So what -- what is he in custody on? And you have to decide whether or not the events they testified to establish probable cause for the arrest of Wayne Cooper. I don't believe that they do

and therefore I move to suppress.

THE COURT: I understand. Okay. All right, counsel. I understand what we are talking about here and I have got the exhibits and the matters that you have given to me in this matter.

And basically, Mr. Wilder, see if I'm summarizing your position correctly, is -- are three-fold position. Number one, that there was no probable cause for arrest, and therefore anything obtained after that arrest was -- first of all let me state this again.

Your position is there's no probable cause for arrest, therefore the arrest was illegal, the arrest was illegal, then anything received or obtained as a result of that arrest is basically fruits of the poisonous tree which include the statement and the things received, gotten under the arrest warrant. That's the first point.

The second point is if you get beyond that, that there was no -- the statement was involuntary because he was intoxicated and was unable to give his consent to the statement at this level that is a -- a testimony -- that is based upon a preponderance of the evidence, might be reasonable doubt before the jury but it's preponderance of the evidence before me

as to the voluntariness issue.

And then third is that there was no probable cause sufficient to support the search warrant that the magistrate issued.

MR. WILDER: That's correct.

THE COURT: All right. Those are the three issues and I understand it. Counsel, I want to look at these cases and the things that have been submitted. How about being in here at 8:30 in the morning and I will rule on the issues.

What time is the jury coming back, nine? Did I tell them nine? Let's be here at 8:30 in the morning. I'll be prepared to rule on the motions at that time. Thank you. I will see you in the morning.

(Whereupon court was in recess for the evening.)

****** November 11, 2008 ******

THE COURT: All right. Thank you. And we're back on the record with regard to the matter of the State versus Wayne Darnell Cooper. Mr. Cooper is present with his attorney, Mr. Wilder. The State is also present with Mr. Corbett.

Counsel, in reviewing the matters that I needed to review to make a determination on the motions, I have concluded that I need a little more information,

and in that regard I want to call as a Court's witness who has already been sworn without cross-examination from either party but simply to respond to questions from the Court, officer Jamie Turner. Mr. Turner, would you come around, please?

Mr. Turner, I have just a few questions of you, and I want to preface this by saying that I want your answers to be -- since I believe you are the chief investigating officer on this case and this is your case, that I want your answers to be from your investigation, not necessarily from your personal knowledge.

It would be what any of the police officers may have learned in connection with this matter. And it would be from your investigation and not -- not necessarily personal knowledge.

But my first question to you is, what led the police to the Suzie Rembert Road location on September the fifth, 2006, at 5:00 in the afternoon? What information led the police to the Suzie Rembert location on September the fifth, 2006, at 5 pm?

OFFICER TURNER: Actually a couple of things on Saturday started that. The first thing was the witness, Mary Green, identified the mobile home at lot 26, Cedar Hill Mobile Home Park, that's where she

had seen the vehicle.

THE COURT: Which vehicle?

OFFICER TURNER: The -- it's a green, a dark green Dodge she said Intrepid, ended up being a Dodge -- I mean a Plymouth Concord, primarily the same body style. It was made by the same company, it's just a different -- one is a Plymouth and one is a Dodge.

Any way, she identified -- she said that the -- she seen the vehicle in the mobile home park before and that -- she told me where she saw it. She said that there was a large black male with flared nostrils. That's how she described the person she sees driving that car and the person she saw that morning.

She pointed to the trailer, which I went down around 8:30 that morning and there was a white vehicle, white Plymouth Breeze.

THE COURT: That morning being what morning?

OFFICER TURNER: Saturday morning. The day of the murder.

THE COURT: All right. The second.

OFFICER TURNER: That's right.

THE COURT: Okay. Go ahead.

OFFICER TURNER: There was a white Plymouth

Breeze backed up to that mobile home. I ran the tag. The tag comes back to Wayne Cooper, Suzie Rembert Road.

THE COURT: On the white car, the tags was Suzie Rembert.

OFFICER TURNER: Yeah, it was a white car parked there.

THE COURT: All right. The white car was parked outside the mobile home at...

OFFICER TURNER: At lot 26.

THE COURT: At lot 26 and you ran the tags on that, and those tag -- that vehicle was registered to the defendant in this case.

OFFICER TURNER: That's right.

THE COURT: And that address, the defendant in this -- of the person that you ran the tags on was the Suzie Rembert Road address.

OFFICER TURNER: Yes, sir.

THE COURT: All right. Go ahead.

OFFICER TURNER: I talked to some neighbors in the neighborhood and they talked about the same thing, a lot -- it said, you know, well-built black male that -- that was seen there driving this green vehicle.

We continued with the investigation. And on --

I was running down some other leads Saturday afternoon. Well any way, Saturday evening I received a phonecall from -- I had a neighbor in the neighborhood -- in that trailer park said that the green vehicle came and backed up to the house, a female and two black males -- actually two females, two black males came out, loaded stuff in the car, they took the white vehicle and that -- that vehicle, and this all happened within 10 minutes, we couldn't get police officers over there, and left.

So -- and there was no more activity at lot 26 Sunday or Monday.

THE COURT: Okay.

OFFICER TURNER: Monday morning we received a phonecall, it was from the mother of one of the -- I think it was Latonya Hilton's mother saying -- we put a bolo out on the green Intrepid, suspect's car, and she said that -- that one of the -- that her daughter had a boyfriend that had a car like that and she hadn't seen her daughter since this happened.

Wesley Gardner, Investigator Wesley Gardner started following up trying to locate the daughter. Sometime during that day the mother makes contact with the daughter. We find out she's out at Suzie Rembert Road. Gardner goes out there.

THE COURT: All right. Stop you right there. The mother made contact. And she told you that her daughter was at the Suzie Rembert Road address?

OFFICER TURNER: That's right.

THE COURT: Okay. And her daughter being...

OFFICER TURNER: Latonya Hilton I think it is.

THE COURT: Okay. All right. Go ahead.

OFFICER TURNER: Wesley Gardner goes out there, won't nobody answer the door. He goes around the back and sees the green -- well, it's the -- the green car -- the green car and the white car is parked -- white car in front of the green car, it's a fence, but it's open from -- you can walk around from the front to the back. He called me.

THE COURT: So both the two cars are at the Suzie Rembert address at that point.

OFFICER TURNER: Yes, sir.

THE COURT: And this is when, on Sunday?

OFFICER TURNER: No, this is Monday afternoon.

THE COURT: Monday afternoon. Okay.

OFFICER TURNER: This is probably about 3:30, 4:00 in the afternoon.

THE COURT: All right.

OFFICER TURNER: He calls me, tells me what he finds. We make a decision that we want to

question -- still don't know who -- well, we find out Darrell -- we find out Darrell's name through the mother. I mean Derrick Cooper, I'm sorry, the brother's name.

We can't find his driver's license or anything. There's something screwy about the date of birth. We end up getting it, but at the time we trying to run it to get information on Derrick, we can't get it.

We do have Wayne's because Wayne was arrested here in Sumter and had had a record for -- or had an arrest for a CDV I believe it was or DUI. We were able to get Wayne's information from DMV, but not Derrick's at the time. Any way--

THE COURT: What did you find out from the DMV about Wayne?

OFFICER TURNER: He had a driver's license and had a minor driving record.

THE COURT: And what address?

OFFICER TURNER: Suzie Rembert.

THE COURT: Okay.

OFFICER TURNER: In the mean time, the intent was we now knew who we were looking for, but we sent officers out there to watch the residence. Well, the mother calls back and apparently the daughter calls her back -- called her back, said they on the way

home from work from Columbia.

And it was a short -- like 10 minutes later we get a call from Wayne Dubose, the officers sitting on the house, they just pulled up in the yard. They instructed that, you know, to -- to -- you know, we on the way out there.

So we all leave and go out there. Talk to both of them. They both detained. They suspects. They were suspects in the murder.

THE COURT: Okay. That's -- that -- I'm interested in up to that point when they arrive there and that's what I was getting at is what information you had, and by you I mean the quote police.

That's all of you had -- that led you to the Suzie Rembert location and also what information you had, being you the police, or collectively had regarding the involvement of the defendant in this case.

Now, what did Wanda Green tell you she saw when you -- when you interviewed her and that was on the -- that was on the morning of the murder; is that right?

OFFICER TURNER: It's Mary Green and Wanda Rogers.

THE COURT: All right. All right. Which ones

did you talk to, both of them?

OFFICER TURNER: I talked to both of them.

THE COURT: All right.

OFFICER TURNER: All right. Mary Green is the aunt of the victim. She was with him. Her first -- she tells me that they are walking from Wanda Rogers' address.

THE COURT: Okay.

OFFICER TURNER: In the mobile home park. It's right on the corner. I'm not certain about the address, but it's right on the corner. They rode -- pulled around her house and then you go out. She says that they are walking home, the vehicle comes up the road, she hears something.

THE COURT: The vehicle being the green Chrysler.

OFFICER TURNER: Intrepid.

THE COURT: Okay.

OFFICER TURNER: She says the Intrepid. She says it's dark green with tinted windows with a silver bottom.

THE COURT: All right.

OFFICER TURNER: She says that the -- she said the large black male gets out the car that had -- her -- that him and Brandon had words, and the large

black male, supposed to be Derrick, kind of walks off around the house, walks off. Wayne gets in the car and they drive around the corner.

THE COURT: But she doesn't identify him as being Wayne and--

OFFICER TURNER: No, she don't know him by name.

THE COURT: She doesn't know him by name.

OFFICER TURNER: She know she seen the larger of the two before driving that car and at lot 26.

THE COURT: Okay.

OFFICER TURNER: She don't know him by name, but she seen him before. All right. Wanda Rogers says she hears -- hears a car outside and looks out the window at -- over at the Cherryvale Fire Department which is well lit in front, got nightlights up, and sees a slender black male and a larger black male, and the larger black male is wearing a dark pants and a white shirt and the slender black male is wearing dark pants and a dark shirt. Sees them at the trunk of the car, green Intrepid or green vehicle.

The larger black male gets in the car on the driver's side. The slender guy gets in the passenger side in the vehicle, goes back by her house going back into the park.

That's where Mary Green picks it back up. She

says they walked a little -- just a -- you know, a hundred, 200 feet going home, the car -- Brandon Green, the victim, is in front of her, a few feet in front of her walking in front of her, the car pulls up beside is -- she sees an object come out the window she says looks about a foot long or about this long.

She don't say a foot. She says about this long comes out the window. She -- multiple gunshots fired, the car backs out and flee -- leaves. Brandon walks off a few feet and collapses.

THE COURT: All right. Let me get straight on the cars now. The Chrysler, the Intrepid is the green car and who is it registered to?

OFFICER TURNER: The mother Cooper, the brother's mother.

THE COURT: The brother's mother.

OFFICER TURNER: Yeah, Derrick and Wayne's mother.

THE COURT: Derrick and Wayne's mother. And the Plymouth is registered to who?

OFFICER TURNER: To Wayne.

THE COURT: To Wayne, the defendant in this case.

OFFICER TURNER: That's right.

THE COURT: All right. All right. One final thing. What led you to contact the employer?

OFFICER TURNER: We was at the house and they -- when they came up there that day, I didn't -- I knew Wayne's name and Derrick's name, it's not till they came up and actually we--

THE COURT: All right. So you didn't have any contact with the employer until after they came back to the house about 5:00 that afternoon on September the fifth, it was sometime after that that you -- it was discussed with them?

OFFICER TURNER: It was -- it was not to them but--

THE COURT: With the employer.

OFFICER TURNER: With the employer. I called the employer that afternoon. I said -- I asked two questions. I said, did they work Saturday? Yeah. What time did they get there? He said -- he told me, points to me about 6:12 that morning. I said, what kind of vehicle were they driving? He said it was by the camera.

THE COURT: All right. So this is between the time they were detained and the time that the other officer went down to see about the search warrant because that's in the search warrant affidavit.

OFFICER TURNER: It was prior to -- I talked to the employer prior to Trevor calling me back to say that I'm sitting at the computer, just do the search warrant.

THE COURT: Right. But it was after they had come back to the house.

OFFICER TURNER: That's right.

THE COURT: But prior to getting--

OFFICER TURNER: So one of them still had his Fire Mountain shirt on.

THE COURT: All right. And that -- that's the first contact you have had or that's the first information you had regarding their employment or any way to get in touch with the employer.

OFFICER TURNER: That's right.

THE COURT: All right. That's information I need. Thank you very much. And if you will step down, and counsel, we will take five minutes.

(Whereupon a brief recess was had.)

THE COURT: All right. Get the defendant back in the courtroom, please. All right. We are back on the record with regard to the matter of the State versus Wayne Cooper. Mr. Cooper is present with his counsel, Mr. Wilder. The State is also present through Mr. Corbett.

The matter before the Court today are the pretrial motions made by the defense in this case. Yesterday afternoon I summarized those three motions. It being the defendant's position that there was no probable cause for the arrest and therefore the matters obtained in the search and with the statement were improperly obtained.

After having heard further testimony from Officer Turner this morning with regard to the police investigation, the thing that really had troubled me about this was the question of the probable cause for the arrest.

But, after hearing -- heard the testimony this morning, I have concluded that there was probable cause for the detention or arrest, whatever you want to characterize it as, as of 5 pm on September the fifth.

The information developed by the police including the vehicles involved, the description that two black males were involved in the shooting, the registration of the white car located at the mobile home park in the name of the defendant which further revealed the defendant's home or residence on Suzie Rembert Road, the arrival at that location in the car identified in the shooting, all of this and other

things are evidence, some of it may be circumstantial, some of it direct, that the police had probable cause for the arrest and so it is my conclusion that they did have that probable cause which then leads me to consider the next two questions of the probable cause for the search warrant.

And based on State versus Bellamy where the Court looks at the entire totality of the circumstances in determining whether the affidavit is sufficient, Bellamy holds that the task of issuing magistrate is simply to make a practical, common sense decision whether given all the circumstances set forth in the affidavit before him including the voracity and basis of knowledge of persons applying hearsay information, there is a bear probability that contraband or evidence of a crime will be found in a particular place.

The duty of the reviewing court is simply to ensure that the magistrate had a substantial basis for concluding that probable cause existed.

And State versus Sullivan stands for the proposition that probable cause can be based upon hearsay statements when that information is reliable. This was not a situation of an informant but was

information that came from witnesses in the case.

And it's my view that under the totality of the circumstances there was sufficient information for probable cause of the search warrant, search warrant was properly obtained, and the information obtained in the search warrant is admissible.

And finally, with regard to the voluntariness of the statement, that my job is to determine the voluntariness based upon the preponderance of the evidence at this time.

And I know that there is a dispute as to whether the defendant in this case was intoxicated and thus unable to give a voluntary statement, but I am -- have determined based upon the preponderance of the evidence standard that I must use in determining admissibility that the statement was freely and voluntarily given, the jury has a different level that they must decide about the voluntariness issue, and I will so instruct them at the appropriate time.

But as far as admissibility of the statement is concerned, I find that the Miranda warnings were properly given, the defendant was detained, but the Miranda warnings were properly given and that he freely and voluntarily waived his right -- rights under Miranda and freely and voluntarily made the

statement. And the statement would be -- is admitted as well.

All right. Mr. Wilder, I know you don't agree with those rulings and the exception is not necessary. Your positions are noted.

MR. WILDER: Thank you, Your Honor. And at the appropriate time I'll again raise those objections as evidence is coming in and I will simply ask that the Court would preserve my objections during those particular times of testimony.

THE COURT: I will. And I would also expect that under the way that we have been going with this case that you're going to want instructions to the jury, though at the time of the admissibility or the time of admission, not admissibility, but the time of admission of the statement that they are to consider the voluntary issue, and then later at the close of the case they're going to want an instruction that they are again to consider that -- the voluntariness, that those issues for them to determine and they need instructions on that both at the time that the statement is admitted and again during the final charge.

MR. WILDER: Yes. Thank you, Your Honor. And that would be correct. Your Honor, I have one other

matter I'd like to ask that be made a part of the court record. This is a subpoena on Dr. Mohammed Rasul of Doctor's Care.

I did not have this yesterday afternoon, but the process server returned it as being served Monday at 3:07 pm at 2475 Broad Street Extension.

So -- and it was for him to appear Monday, November 10th, 2008 or thereafter during General Sessions Court, but he did not appear yesterday afternoon, so I don't know -- I got -- he obviously got service of the subpoena and if the Court wanted to look at it, there--

THE COURT: No, sir, I--

MR. WILDER: It's John Johnson I believe served it on him, and that's his affidavit down there at the bottom, so I know he got it and I -- therefore we -- we were expecting him to show or at least make some reply to us why he couldn't.

But I heard nothing from Dr. Rasul at this point. I do want it to be a court record that he was served before we stop presenting evidence yesterday afternoon. And I hope he'll show up later when I need him in front of the jury.

THE COURT: Well, that was going to be my question. Are you going to need him later on?

MR. WILDER: Yes, sir.

THE COURT: All right. We'll make this a part of the record. And what I would like for you to do is when we break today or in the morning, find out what his status is, and if you need assistance from the Court, let me know. But it does appear that he has been properly served with the subpoena.

MR. WILDER: Thank you, Your Honor.

THE COURT: All right. Make that a part of the record as another Court's exhibit, whatever the next number is, and I'm going to return to the Court Reporter Court's exhibits numbers one, two and three.

And what I would suggest, counsel, Mr. Corbett, when it comes time to present these, would be to again offer them as State's exhibits, leave them as Court's exhibits and we'll put another sticker on them as State's exhibits one, two and three and I will admit them subject to Mr. Wilder's objection.

But they'll still have the Court exhibit sticker on there as well as the State's exhibit sticker on there so that the record will be preserved for appeal. Is that satisfactory, Mr. Wilder?

MR. WILDER: Yes, Your Honor. I would ask that the written motions I handed up to the Court also be appended to the Court records.

THE COURT: I assume that they were filed; were they not?

MR. WILDER: No, Your Honor. I just -- I typed them up and I handed them up to the Court and gave a copy to Mr. Corbett, but I never had an opportunity to file them.

(WHEREUPON, Court's Exhibit No. 6 was marked for identification only.)

THE COURT: All right. I have the motion to suppress the statement and the -- yeah, and the motion to suppress the search and seizure. I think the proper way to do that would be simply to give them to the Clerk and let the Clerk clock them and then they would be a part of the file in this case because that's where the motions would normally be handled rather than as exhibits.

MR. WILDER: All right.

THE COURT: So I will have the Clerk file those, but -- and they will be clocked, but they'll be clocked as of today, but the record will reflect that they were furnished to the Court prior to the beginning of the en camera hearing.

MR. WILDER: Thank you, Your Honor. And I would like to at this point, Your Honor, put on record the motion to suppress any in-court identification of the

defendant by Wanda or Mary, the two State's witnesses, and the grounds for that will be that improper suggestive manner of the suggestion of the name of Wayne Cooper by law enforcement. Also, no line-up, no photo show-up, no -- no procedure.

THE COURT: Mr. Corbett, what say you? This is by the -- any in-court identification by Mary Green or Wanda Rogers?

MR. WILDER: That's correct.

THE COURT: Okay.

MR. WILDER: The two witnesses that the State says--

THE COURT: Identified two black males.

MR. WILDER: Two black males, that's correct.

THE COURT: That's right.

MR. CORBETT: Your Honor, we believe that any identification made by the witnesses in this case would be appropriate. There is nothing against the rules from a witness sitting on the stand saying, I had an opportunity to observe the defendant in this location and that's him there.

So in this particular instance, there is -- there is no grounds to exclude them identifying the defendant.

THE COURT: Have they ever identified him

before?

MR. CORBETT: They did not identify him by name.

THE COURT: Have they ever identified him at all?

MR. CORBETT: That is correct, Judge.

THE COURT: Tell me about it. When?

MR. CORBETT: The witness Wanda Rogers was able to not identify him by name but knew that they were from the neighborhood.

THE COURT: All right. She identified two black males as being from the neighborhood.

MR. CORBETT: Right. And she can look at them and say, that's the guy I have seen in the neighborhood before, but I didn't know his name at the time.

THE COURT: All right. I think I'm going to have to hear this testimony en camera. I cannot, you know, it's just -- it sounds pretty weak to me that she was never offered a line-up, never offered to pick him out of a line-up.

He's sitting here now with defense counsel, looks like it's awful suggestive to me, but I'll let you call the witness and -- and I'll rule on it.

MR. CORBETT: Very well, Your Honor. We'd call Wanda Rogers to the stand.

THE COURT: All right.

MR. WILDER: Your Honor, we did ask that they be sequestered. Is the other lady also in the courtroom?

WANDA ROGERS, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Rogers, good morning.

A Good morning.

Q Miss Rogers, let me ask you, back on September 2nd of 2006, where were you living?

A Nineteen Cedar Hill.

Q And that's located here in Sumter County?

A Yes.

Q Now, when you say Cedar Hill, that's Cedar Hill Mobile Home Park?

A Yes.

Q Okay. Now, I am going to show you this photographic blow-up here. Is this Cedar Hill Mobile Home Park?

A Yeah.

Q Okay. Now, if I tell you that this is the fire station here, do you know about where Cedar Hill Mobile Home Park you live based on this picture?

A (Indicated.)

Q And on September 2nd of 2006, how long had you lived at Cedar Hill Mobile Home Park?

A About three or four months.

Q Now on September 2nd of 2006, that day, did you have occasion to talk with the police officers about a shooting incident?

A Yes.

Q Okay. And what were you able to tell them that you saw that day?

A I was able to tell them that when I -- I heard a car coming through the park real fast, so I went to the window and look out the window. The -- Derrick was walking across my yard. Wayne was already at the fire station.

He got out of the driver's seat, walked around the car and got on the passenger's side and Derrick got in the driver's side and they throw the car back in reverse and went back through the park.

Q Okay. Now, this was at night; is that correct?

A Yes.

Q Where was the car?

A Parked at the fire station.

Q Okay. And had you seen these individuals before?

A They normally ride through the park real fast every day.

Q Okay. Now, at this point in time you did not know

them by name; is that correct?
A No.
Q Okay. And let me ask you, you had -- you gave that information to police; is that correct?
A Yes.
Q And these were individuals that you had seen before?
A Yes.
MR. WILDER: Your Honor, object to the leading.
THE COURT: Don't lead her.
BY MR. CORBETT:
Q The individuals you saw that night, had you seen them before?
A Yes.
Q What occasion had you had to see them before?
A Normally when they ride through the park either coming in or going out.
Q And do you have any idea of about how long they had lived in the same neighborhood as you?
A No.
Q What is your best estimate on how many times you had seen them prior to this occasion?
A It was several times. They live on the back of me.
Q I'm sorry. Say that again?
A They live on the back of Cedar Hill. When you come in Cedar Hill, you got to pass my home to get to where

they live.

Q Now, the individuals you saw that night getting in the car, do you see one of them in the courtroom today?

A Yes.

Q You do?

A Uh-huh.

Q Would you point him out, please?

A The gentleman sitting here in the white shirt.

Q Now, when you were talking to the police about what you had seen that morning, did you tell the police that you had seen them on prior occasions?

A I can't remember.

THE COURT: What was the answer to that?

BY MR. CORBETT:

Q I'm sorry. Say that again.

A I can't remember.

THE COURT: Can't remember. Okay.

BY MR. CORBETT:

Q But it's your testimony today that you had seen Wayne Cooper here in the courtroom, you had seen him on a number of prior occasions?

A Yes.

MR. CORBETT: One moment please, Your Honor.

(Whereupon there was a pause.)

MR. CORBETT: That's all the questions I have,

Your Honor.

THE COURT: Cross-examination.

CROSS-EXAMINATION

BY MR. WILDER:

Q Would you state your name again, please, for me.

A Wanda Denise Rogers, R-o-g-e-r-s. Okay.

Q What time of morning was it that the car drove by?

A I say approximately it's about 5:15, 5:30.

Q 5:15 to 5:30?

A Uh-huh.

Q And that's when the shooting happened?

A Yes. Around in that time.

Q 5:15 to 5:30 it was dark.

A Uh-huh.

Q Night time?

A It wasn't really dark. It was like mid-morning.

Q Sun wasn't up?

A No.

Q Okay. Now, let's see. You started out telling the police that it was an older model square-bodied Caprice.

A Yes.

Q Blue and white at the bottom kind of fades into the white, should be occupied by three black males.

A Yeah.

Q Did you hear somebody tell the police that?

A No.
Q Okay. So you told them that it was a green Intrepid, Dodge Intrepid; is that right?
A Uh-huh.
Q A green Intrepid. Now, you also told them that the person who was driving it weighed between 220 and 250 pounds.
A No.
Q And that he had a short afro hairstyle.
A I said he had a low haircut. It was like a lower afro cut.
Q An afro cut. Okay. And you held your hands up to your head about how -- how short was it?
A It was about this short.
Q Okay.
A It wasn't that high.
Q Right. So I'm just guessing, maybe an inch and a half away from the head is what you had your hands up there?
A Around that, yeah.
Q So about an inch and a half afro sticking out around the head.
A Uh-huh.
Q All right. And -- but you're sure about that because you were able to see -- was that the driver or the

passenger with the afro?
A During this -- the one with the afro was the one that walked across the yard. That was Mr. Derrick.
Q Across the yard.
A Mr. Derrick came across the yard. I was in the window. He came across the yard. Mr. Wayne was parked at the fire station.
Q Okay. You were parked -- I mean, you were -- you say you saw this from your window?
A Yes.
Q Of your trailer.
A Yes.
Q Your mobile home. And you pointed out to Mr. Corbett I believe that as you enter the mobile home park, it's the first one on the right?
A Yes.
Q Okay.
A First one on the left.
Q Let me show you again, make sure I understood where you pointed. You point to where you were--
A Right here.
Q Right there.
A Right here.
Q Okay. On the corner. All right. And that's where you were looking out your windows?

A It was -- the windows were -- it was like this. There was one here, and there was a wall between it, then there was another window. I was in the far end window.

Q All right. So -- and then you say you saw somebody get into a car at the fire station. And the fire station's across the street. Now, explain to me how you see the fire station from your trailer.

A Because where the windows was at, it's facing the fire station, and the fire station is lit up.

Q And you just happened to be looking out your window at 5:15 in the morning?

A Yes.

Q And you say you saw this man with an afro get into a car?

A Uh-huh.

Q And he's driving?

A He wasn't driving at the time. He was walking. Wayne was driving at the time. He got out of the driver's seat, walked around the car, got on the passenger's side, and the gentleman that was walking got in the driver's seat and throw the car back in reverse and it went back through the park.

Q And you call this a Dodge Intrepid that you saw?

A It was somewhere in that model.

Q All right. So this -- this isn't the time when the

shooting happened; is it?
A When I saw the car?
Q Yeah.
A No.
Q This is some other time?
A No, it was--
Q Before or after the shooting?
A It was before the shooting.
Q Before the shooting. How long before?
A Well, when I saw the car and I went and I lay back down, I saw thing -- 15 or 20 minute, that when their -- their cousin came to the door and had me to call 911.
Q Okay. So you saw this -- this incident of a person getting in and out of a Dodge Intrepid, a dark green Dodge Intrepid, you saw it 15 or 20 minutes before you knew anything about a shooting.
A Yeah.
Q So that event really didn't have anything to do with the shooting event.
A Yes, it...
Q Well, you didn't see the shooting, too; did you?
A No.
Q So you don't know if -- if this is the same vehicle that was involved in the shooting or not, do you? You just saw two black males getting in a vehicle, and you

think it's Wayne and Derrick Cooper later; right?
A I saw the -- the car, and around the time the shooting happened, the car came back through the park.
Q 15 or 20 minutes later --
A No, I can't--
Q -- another green car comes back through the--
A No, it was the same green car that I saw.
Q Same green car. You didn't see the occupants of the car on that occasion, though; did you?
A No.
Q Okay. And you didn't see the actual shooting; did you?
A No.
Q All right. Did you hear it?
A No.
Q You didn't hear any gunshots. All right. So what we're left with here is that you think it was the same green car that came through.
A It was the same car.
Q But you didn't see the shooting and you didn't hear it.
A No, I didn't see the shooting, but it was the same car I saw parked at the fire station.
Q All right. Now, you've never been asked to pick whoever you saw getting in and out of a car 15 or 20

minutes before this shooting happened, you never asked -- been asked to pick these people out of a line-up; have you?

A No.

Q And the police never came to you with any kind of a show-up, photographic show-up to ask you can you identify these people out of a picture line-up?

A No.

Q All right. And the night this happened, you didn't say it was Wayne Cooper or Derrick Cooper or any -- you didn't give them any names; did you?

A No, I didn't give them any names, but I told them they was from the neighborhood.

Q And you say you saw some people getting in and out of a car 15 or 20 minutes before this thing happened that came from the neighborhood.

A Uh-huh.

Q Right? Okay. All right. Now, I believe you said that you had seen them around there some time before. When was the first time you decided to put the names, Wayne and Derrick, with those two people? How did you decide on that?

A How did I decide on that?

Q Yeah. I mean, you didn't know their names on the second of September when the police were talking to you,

so when did you decide to put Wayne and Derrick on those two names that got in and out of the car?

A Once I realized it's a car that was coming through the park and where the car was living at at that time.

Q Well, you -- you still didn't know who was living down there -- I believe it's 26 you said?

A No, I didn't say any number.

Q Huh?

A I didn't say any number.

Q You didn't say there -- but you never did know the names of who stayed down there; did you?

A I never said which trailer it was neither. I never said the number of the trailer.

Q You never said the number of the trailer. So you didn't point out a particular trailer down the way and say the people lived there? You didn't say that to the police?

A Yes.

Q You did.

A Uh-huh.

Q Which number did you say?

A I didn't say a number.

MR. CORBETT: Objection, Your Honor.

THE COURT: What?

MR. CORBETT: She's saying, I didn't say a

number. Mr. Wilder is saying, oh, so you didn't point it out. There are two different questions.

THE COURT: You can clarify it on re-direct examination. Cross-examination is allowed.

BY MR. WILDER:

Q Okay. So you never gave him a number, you just pointed to a particular trailer.

A Yes, where I seen the car at.

Q All right. And -- but you didn't know who lived in that trailer even when you were pointing it out; right?

A No.

Q All right. Well, when did you pick the name Wayne Cooper to associate with the person that you say got in and out of the car?

A I didn't.

Q Well, you just testified a little while ago that Wayne got out of the car or Derrick got out of the car and -- and you--

A I never said Derrick got out of the car. I said Derrick was walking across from my yard and went and got in the car.

Q All right. Let's start with that. When did you decide that the name of that person was Derrick Cooper?

A Once I finished talking with the investigators and things and everything was turn my attention of who they

were.

Q All right. So you got the name from the police.

A No. You putting words in my mouth.

Q You got the name from law enforcement; right?

A No.

Q Well, when did you decide that that was the name? It was after they'd been arrested; wasn't it?

A Yes.

Q Okay. So you waited till after they were arrested to decide who it was.

A That's when I realized who it was.

Q When you realized who it was is after law enforcement told you the names of the people--

A No, they never said the name that they had arrested. All they said was they had two gentlemen arrested. They never said their name.

Q You read about it in the paper; didn't you?

A No, I didn't.

Q You never looked at any of the articles in the newspaper?

A No.

Q How about did you -- did you talk with this other lady who is in here who is supposed to be a witness? Did you talk about the case with her?

A No.

Q You never talked about it with -- with her?
A No.
Q Not even with the Solicitor's Office you didn't speak about that -- about that with Mr. Corbett?
A With Miss who?
Q Did you talk about the case with Mr. Corbett?
A No.
Q So he never asked you to identify anybody as who you saw getting in and out of the car?
A What you mean identify?
Q Did he ever ask you who it was you saw?
A Yes, and I give the description of who I saw.
Q And when did that conversation take place? When did you have that conversation with Mr. Corbett?
A I didn't had that conversation with Mr. Corbett. I had that conversation with the investigator.
Q The investigator. Mr. Turner?
A Yes.
Q When did you have that conversation with Mr. Turner?
A The second.
Q On the second?
A Yes.
Q But you didn't give them a name on the second; right?
A No.
Q Okay.

MR. WILDER: No other questions of this witness.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Rogers?

A Yes.

Q The date, the morning of September 2nd when you talked with police, how had you described the individuals that you had seen in the car?

A I say it -- the gentleman that walked across my yard was a short, stocky dude with a medium size afro wearing a white shirt and black pants, black shorts. The gentleman that was at the fire station I couldn't really see shirt -- I know it was a dark colored shirt and he was tall with a low haircut.

Q And you also pointed out to the police where at least one of them lived?

A Yes.

Q Now, at the time that you were telling the police this information, you knew you had seen them on prior occasions, right?

A Yes.

Q That's how you knew--

MR. WILDER: Objection.

THE COURT: Sustained.

BY MR. CORBETT:
Q Now, the two individuals you were describing to police, had you seen them before?
A Yes.
Q Now, you were asked some questions about name and person. Had you been to any type of court proceedings regarding this matter?
A No.
Q Now, somewhere along the way you became aware of the name Wayne Cooper and Derrick Cooper; is that correct?
A Uh-huh.
Q Do you recall at what point in time you became aware of the names of these individuals?
A I'm say it was like -- I'm guessing roughly like two to three months.
MR. WILDER: I'm sorry, I didn't hear.
THE COURT: Two or three months.
MR. WILDER: Two or three months after?
THE WITNESS: Uh-huh.
BY MR. CORBETT:
Q Now, the person that you pointed out that you said you saw that night --
A Uh-huh.
Q -- sitting here at the table, which person was that?
A He was the person that was at the fire station parked

and got out of the driver's seat and walked around the car and got on the passenger side.

Q Do you now know his name?

A Now I do.

Q Okay. But at the time you did not?

A No.

Q And I believe your testimony is that some--

THE COURT: Don't summarize her testimony. Just ask questions. I remember what her testimony was.

MR. CORBETT: That's all the questions I have.

THE COURT: All right. Questions?

MR. WILDER: Yes, Your Honor.

RECROSS-EXAMINATION

BY MR. WILDER:

Q Does he look any different today than you think he looked back then?

A You--

Q Talking about Wayne, my client.

A Could you ask him to remove his hands?

Q Pardon?

A Could he stand up?

Q Look any different today?

A No.

Q No different.

A No different.

Q Okay. Have a seat. Now, you say you saw him someplace before.
A Uh-huh.
Q Where and when?
A In the trailer park.
Q Where?
A In the trailer park, riding around in the trailer park.
Q Big trailer park. Where in the trailer park?
A Passing my house in his car.
Q Passing your house in his car. Always the dark green Intrepid?
A Yes.
Q Always.
A Uh-huh.
Q Dark green Intrepid. All right. On what date, do you remember?
A No.
Q No? What time of day?
A It was in the daytime, morning time, night time. They live on the back of me, so they got to pass my house to come to they house.
Q They live -- you say he lives down there?
A Uh-huh.
Q Okay. All right. But that night you didn't see the

shooting, you saw something happen 15, 20 minutes before you knew anything about a shooting.

A Yes.

MR. WILDER: Thank you, Your Honor.

THE COURT: All right. Thank you. You may step down.

(Witness left the stand.)

THE COURT: All right. Is your other eye witnesses identification witnesses that you have, Mr. Corbett?

MR. CORBETT: Yes, Your Honor. I will bring that witness in.

THE COURT: All right. All right, Mr. Corbett.

MR. CORBETT: Your Honor, Mary Green is present in the courtroom, my witness to the event. She can describe generalities but cannot pick -- say that the defendant sitting in the courtroom was the person that she--

THE COURT: All right. So you're not going to offer her to pick the defendant out here in the courtroom?

MR. CORBETT: No, sir.

THE COURT: All right. So those are the only two witnesses that you have as far as the identification is concerned, the eye witness

identification.

MR. CORBETT: That's correct, Your Honor.

THE COURT: All right. All right. Then Miss Green should remain sequestered until -- until time for her to be called as a witness in this case if she is called as a witness in this case.

All right. The motion has been made by Mr. Wilder on behalf of the defendant to suppress the eye witness identification, in-court identification of the defendant by the witness Wanda Rogers. Be glad to hear from you, Mr. Wilder.

MR. WILDER: Your Honor, these matters it seems to me turn on opportunity to observe the reliability, the--

THE COURT: Five Biggers factors.

MR. WILDER: That's correct. And Your Honor, I don't need to educate the Court. You obviously already know all those factors. But I don't -- I don't believe the standards have been met in this case.

At best -- well, I'd rather not make the argument with one of the sequestered witnesses still in the room.

THE COURT: All right. Yeah. Ask the sequestered witness to leave, please.

(Whereupon there was a pause.)

MR. WILDER: Your Honor, what we have here is let's -- let's just assume for a minute that even if the lady was correct about the identification, it's not probative as to who fired a shot. But I don't think that the standard is met even with what she says, she's saying that through a window across the street at -- at a fire department that she saw two people change in the car.

That's got no necessary correlation. Really what she's identifying I think is a car later on. She says that allegedly the same car came back by, not two occupants of a car but a car came by and that she thinks it's the same car that -- or she's testified it's the same car.

But, insofar as a face or an identity or a name, what she has done is -- is several months later take information that the police developed and -- and after the man was already arrested, after he was charged, many months after this or several months after this event she wants to attach a name to two of the participants she says had something to do with the events of this evening.

I think that the police by not getting a line-up -- why didn't they get a line-up, why didn't

they go do a photo show-up immediately on the fourth or the fifth right after they took these people into custody? It would have been a simple thing to do.

But the matter now that we're left with is that the identification of my client has been impermissibly suggestive and -- and the opportunity of the witness to observe the events is tenuous at best, and I submit that -- that the in-court identification should be suppressed.

THE COURT: All right. Mr. Corbett?

MR. CORBETT: Your Honor, thank you. And Your Honor, my apologies to the Court. I had sent downstairs and asked them to bring up some case law that I had on this particular point.

Unfortunately I don't bring all of the case law with me and then when I hear the motion for the first time I'm trying to play a little bitch of a catch-up in bringing the Court the appropriate case law.

But what we have is a witness in this case who testified that I had seen the defendant on prior occasions. And her testimony was, I saw him during the daytime, I saw him morning, I saw him night--

THE COURT: Let me ask you this. I remember what the testimony was. And the testimony of her was that she saw two black males as far as this green car

is concerned 15 minutes before the shooting, then that car came back through the mobile home park.

What is probative of her identification 15 minutes before of what happened 15 minutes later when the shooting took place?

MR. CORBETT: Your Honor, another witness will put that car at the scene of the shooting within a very short timeframe, timeframe of no more than minutes.

THE COURT: But what is probative about her identification of this individual as being in the car at the time of the shooting? I mean, you know, anything could have happened in that 15 minutes. That car could have come back through there five times and -- and had two different individuals in it. Nobody has put the individual in the car at the time of the shooting.

I mean, this witness hasn't put the individual in the car at the time of the shooting. So what's probative about her testimony even if it's not suggestive?

MR. CORBETT: Her testimony together with the testimony of other witnesses is probative of who was in the car. The car was at the fire station. She identified the person within a minute or so--

THE COURT: She didn't identify him. She identified a black male.

MR. CORBETT: Well Judge, now her testimony was, I saw Wayne Cooper pull up to the fire station.

THE COURT: That's right.

MR. CORBETT: Get out.

THE COURT: And she didn't even know -- and this is what really bothers me about this thing, Mr. Corbett. This is what I want somebody to explain to me. Throughout her testimony she identified him as being Derrick and Wayne, yet she later admitted she didn't even know who they were at the time.

MR. CORBETT: That's correct.

THE COURT: And she keeps referring to them throughout her testimony as Derrick and Wayne, so she obviously got that information from some other source.

MR. CORBETT: That is correct, Judge. And she testified when I was giving the descriptions to the police, I didn't know their names. There was a couple months later as the arrests were made and things were done in the case that then I found out what their names were. That was her testimony from the stand.

THE COURT: All right.

MR. CORBETT: But from where I was sitting in my house looking at the fire station which has plenty of light around it, I saw the man in the white shirt pull up to the fire station, get out and go around to the passenger's side.

THE COURT: Okay.

MR. CORBETT: When I say white shirt, Your Honor, I meant here in the courtroom today, not what he was wearing that night. Then, Your Honor, that testimony together with the testimony of other witnesses creates the probative, the change -- sorry -- the chain of events so-to-speak of that person at the fire station, individuals change, then we give a description, not the ability to pick him out, but a description of individuals from another witness within minutes in the same car, and that was what makes it probative.

MR. WILDER: Your Honor?

THE COURT: All right. All right. The five Biggers factors, and I want you to address these, Mr. Corbett. Opportunity of the witness to view the criminal at the time of the -- at the time of the commission of the crime.

MR. CORBETT: Address that one first, Your Honor?

THE COURT: Yeah, that's the first one is the opportunity of the witness to view the criminal at the time of the crime. That's the first Biggers factor.

MR. CORBETT: Yes, sir. And she observed him minutes before the crime took place.

THE COURT: Fifteen minutes before the crime took place.

MR. CORBETT: Judge, actually I think her testimony -- and I was -- and I may not have followed it evenly, but I know that she said 15 minutes later they came to my house for me to call 911.

THE COURT: No, I believe -- I may be wrong, but I understood her to say 15 minutes later they came back through the park.

MR. CORBETT: Okay.

THE COURT: But whatever. Go ahead.

MR. CORBETT: All right. Judge, my recollection is 15 minutes later they came to my house for me to call 911. And Judge, our testimony through other witnesses will establish that events which led up to them getting back to her house.

So it had -- our other witnesses will establish testimony substantially less than 15 minutes from the time the event took place.

THE COURT: All right. Second Biggers factor, witness degree of attention.

MR. CORBETT: Judge, if I could touch on one more point on the first one before I move on, if I may. Other witness testimony will establish an initial altercation with this car and the individuals. Testimony will establish that it then ends up at the fire station and then back at the altercation scene.

THE COURT: Okay.

MR. CORBETT: So there is a -- there is a first altercation, fire station there's observed by Wanda Rogers, and then the second part of the altercation where the shooting takes place. So there is that link in there with the defendants and the two altercations at the fire station.

THE COURT: Well, when you're talking about altercation, what are you talking about?

MR. CORBETT: Judge, the testimony from the State is going to be that the deceased and a witness were walking along the roadway and had an initial confrontation with the occupants of the green vehicle. Not meaning to say I can pick him out in the courtroom, but I know size, kind of race.

THE COURT: All of that we can get -- I don't

have any problem with that.

MR. CORBETT: Okay.

THE COURT: But--

MR. CORBETT: And then, but that testimony will establish that they leave the altercation scene, go around the corner. That's where a witness Wanda Rogers picks it up and says, I saw them when they came to the fire station which is around the corner. So then I observed them at the fire station.

Then witness Rogers puts them going back into the neighborhood. That's when the State's other witness will pick up the second part of the altercation when the actual shooting takes place.

So that's how she is seen this close in time together with the other testimony of the crime that took place. So her opportunity -- and she testified--

THE COURT: Well, she can do -- she can testify as to all of that and she can testify as to what she saw and she can testify as to being two black males and she can testify as to one of them being larger than the other. No question about any of that.

The issue here is her ability to say that the individual she saw is the individual sitting next to Mr. Wilder. That's the whole issue here.

MR. CORBETT: Okay. All right. Judge, on -- will you give me the second factor after opportunity?

THE COURT: Degree of attention.

MR. CORBETT: Degree of attention. The witness testified that she was in her residence and could see through her window at the fire station which was well lit and that she indicated that she had known the people on the prior occasions having seen them in the neighborhood. So there was nothing wrong with her degree of attention.

She looked out the window to see what was going on at that fire station. So she -- that was her testimony. She heard the car, I looked out there to see what was going on.

THE COURT: All right. Accuracy of the witness's prior description.

MR. CORBETT: Your Honor, with regard to accuracy of the prior description, her accuracy was bolstered by the fact that she could point out the area where he lived or spent a substantial amount of time. She was able to say that she knew him from the neighborhood and had seen them on a number of occasions various times of the day and her description was accurate.

Her testimony was that he looks the same today

as he did when I saw him that night. And we can present evidence in trial of how he looked the day of his arrest.

THE COURT: Level of certainty demonstrated by the witness at the confrontation.

MR. CORBETT: Judge, from the stand she was direct about there was no hesitancy here in the courtroom today or the day that she talked to the police, I don't know his name, but I can point out where he lives.

There was no hesitancy -- or there was a great degree of certainty in her testimony as to who the defendant was in this case or is in this case.

THE COURT: She says she could point out where he lived? I thought this witness -- that this defendant lived on Sadie Rembert Road.

MR. CORBETT: That's correct, Your Honor, but she knew that she spent time at that mobile home park.

THE COURT: Length of time between the crime and the confrontation. That looks like to me that would be from September the second, 2006 until today.

MR. CORBETT: That's correct, Judge.

THE COURT: Not being any confrontation that she's had with this witness between the time the

crime was committed until today.

MR. CORBETT: Judge, I am...

THE COURT: At least as far as the record is concerned.

MR. CORBETT: Yeah. Judge, I just want to make -- I don't want to state something on the record that's inaccurate in terms of whether or not she--

THE COURT: Well, I mean as far as what she's testified to.

MR. CORBETT: That's correct.

THE COURT: That is what's in the record. Yeah. All right, Mr. Wilder. Let me hear from you quickly.

MR. WILDER: All right. Your Honor, the description that she gave to the police that night was 220-pounds and afro out to here of somebody. Neither one of these guys had an afro out to here.

Mr. Turner is aware of that because he had the security video from over there at Fire Mountain where they showed up that morning, they had close-cropped hair, no -- no afro.

Neither one of them were 220 pounds. The testimony already in the record is that this man weighed about 160. That's -- that's different.

Neither one of them have an Intrepid. My guy drives a white car. He's never driven a green car.

The green car is parked in his yard. It's a car that belonged to his brother so therefore she could never have seen him driving a green car and she says that's what she -- her previous -- and Your Honor, it's just the record is devoid of any certainty of the identification and I believe that the in-court information ought to be suppressed.

One other thing, Your Honor, I want to show you. This is the State's response to my alibi notice. It was given to me August 6 -- August 18th, 2008. Your Honor, it says that the State intends to rely on those two witnesses -- witnesses to establish identity.

That's the State's response to my alibi. We already heard that one of them--

THE COURT: What's that got to do with this?

MR. WILDER: Well, it's got to do with this. Mr. Corbett's arguing other people are going to come in and establish that the chain of events gives rise to identification.

That notice to me in response to my alibi motion notice to them, which was the man was at Fire Mountain and couldn't possibly have committed the offense based on the time the thing came in to law enforcement, says that the State intends to rely on

those two witnesses exclusively.

One of them Mr. Corbett just brought in here and said wasn't going to testify about identity. And the other, Your Honor, you heard her testimony. And I submit that it ought to be suppressed.

THE COURT: Okay.

MR. WILDER: So the idea is for him to now say, well, we're going to rely on all these other witnesses to establish identity, you know, in support of it, is -- is I believe that ought to be suppressed as violative of rule five because rule five requires them to give me the names of any witnesses they intend to call to refute our alibi.

And I did give them notice of alibi and that was their response. And I'd like that to be made part of the record also.

THE COURT: All right. Counsel, we're going to take a recess at this time. What I want to do -- Mr. Campbell is, I think they're getting ready to have a program at sometime or another outside and it's going to be disturbing.

I want to move to the other courtroom so that we can go forward with this without -- we're running way behind on this matter. It's taken far too long to handle these pretrial matters.

And I want to -- I want to move to the other courtroom and let's go ahead and do that. As soon as we get ready, we'll resume in courtroom number two. Thank you.

(Whereupon a recess was had.)

THE COURT: All right. Back on the record with regard to the matter of the State versus Cooper. Counsel, we spent an hour and a half on an issue that we shouldn't have had to even do.

The issue before the Court is the admissibility of the witness Wanda Rogers to point out that the defendant -- point out the defendant as the individual she saw at the trailer park minutes before the crime.

That's the issue, just the sole issue of whether Miss Rogers can testify that she can identify the individual in court as that defendant -- as that person she saw.

MR. CORBETT: Your Honor, I'm sorry to interrupt you. I had everybody come into the courtroom. Do any of them need to be out?

THE COURT: Yeah, I think so. I will tell you why. The same two...

(There was a brief pause.)

MR. CORBETT: I'm sorry, Judge.

THE COURT: The controlling case, there are two cases one is Caldwell, but the more recent case are -- one of the other case is the case of Rice, State versus Rice, 375 SC 302, 652 SE second 406, and what the holding of Rice is that a Court must consider the totality of the circumstances to consider whether identification may be reliable even when the procedure has been suggestive. It sites Biggers for that purpose.

State versus Lewis, 363 South Carolina 37, 609 Southeastern second 515 holds that the Neal versus Biggers analysis should not be extended to protect criminal defendants against the identifications that occurred the first time in court without a pretrial identification.

So what Lewis says and by incorporation Rice says is that the Biggers factors don't apply in this situation. And in fact, quoting Lewis, the Rice case says, accordingly we conclude that Neal versus Biggers does not apply to a first time in-court identification because a Judge is present and can adequately address the relevant problems.

The jury is physically present to witness the identification rather than merely hearing testimony about it and cross-examination offers defendants an

adequate safeguard or remedy against suggestive examination.

Rice goes on to say here, and the facts are frighteningly similar to the case at bar, but Rice says, here the witness only identified Rice at trial, not at any time prior to trial, therefore the factors provided by Neal versus Biggers do not apply.

The protections needed from suggestive pretrial identification are not necessary and an in-court identification because cross-examination and argument.

Rice had the opportunity to cross-examine Feagin regarding her in-court identification. This was the proper remedy. The trial Court did not err when it allowed the witness to make an in-court identification of Rice. Accordingly the motion to suppress the in-court identification was denied.

All right. Anything before we bring the jury in?

MR. CORBETT: Your Honor, are my witnesses supposed to be sequestered during opening statements?

THE COURT: Those two witnesses, the only two that he asked to be sequestered.

MR. WILDER: Only ones that I asked for be sequestered.

THE COURT: Yes. Okay. All right.

MR. CORBETT: Judge, if I may just inquire of defense counsel, do we have any other pretrial motions because I'd like to try to bring some -- I try to keep a folder downstairs with issues and like to give the Court some law if they come up.

THE COURT: Well, he hadn't made them, so they are not pretrial at this point. We are in trial.

MR. CORBETT: Judge, the State's ready for the jury.

THE COURT: All right. Ready, Mr. Wilder?

MR. WILDER: Ready.

THE COURT: All right. Bring in the jury.

(Jury entered the courtroom at 10:29 am.)

THE COURT: All right. Good morning, ladies and gentlemen. And I certainly do apologize for keeping you waiting in your jury room. I had hoped that yesterday afternoon we would be able to take care of all of the preliminary matters that we needed to do and we did work till 5:30 yesterday -- yesterday afternoon and I thought that we had had those matters taken care of and we'd be ready to start promptly this morning.

As it turned out, there were other matters that arose that I did have to deal with and it has taken

us some time to get that -- those matters resolved, but they are resolved as well. And we are now ready to go forward.

And I'll tell you the reason that we came down into this courtroom. There -- Judge James was conducting a trial in his courtroom yesterday for other reasons and sometimes coordination is very difficult, but for reasons he had to cancel court for today leaving this courtroom available and the other courtroom of course was the big courtroom we could use but they are having a Veteran's Day service out on the front lawn and it will disturb us and prevent us from going forward on this matter so we have moved down here just for this morning and then we'll go back into the main courtroom this afternoon.

But that's where we are and we are now ready to proceed with the trial of this case. And Mr. Clerk, I'll ask you to swear the jury, please.

(Whereupon the jury was sworn.)

THE COURT: And again thank you, ladies and gentlemen, and we are ready to go forward. I just told you we have been here working as far as court personnel is concerned since 8:30 this morning, so it hasn't been a situation of keeping you waiting unnecessarily in the jury room while we sat in the

back room drinking coffee.

But as I told you in my initial remarks to you, the first thing that you do in connection with any kind of a case is parties have a right to make an opening statement. An opening statement is not evidence. It is simply the lawyers' views of what they think the evidence is going to show.

But the defendant does not have to make an opening statement, but I will allow him to if he wants to. But I will for that purpose recognize counsel for the State, the Assistant Solicitor, Mr. Corbett. Mr. Corbett?

MR. CORBETT: Thank you, Your Honor.

OPENING STATEMENT

MR. CORBETT: Ladies and gentlemen, good morning. My name is Jason Corbett. I'm one of the Assistant Solicitors here in Sumter County. And I will tell you that I sometimes walk when I talk, and here in this smaller courtroom you may see me bump around or not being exactly sure where I'm supposed to stand here. I will do my best that my jitterativeness (sic) does not distract.

Because ladies and gentlemen, we're here about serious business. This is not an episode of CSI. This is not an episode of law and order. This is not

make believe. This is real life.

This is real life and it's about Brandon Green. On September 2nd of 2006, in the early morning hours, Brandon Green's life ended. And it ended for no good reason. Absolute no good reason.

Why do I say that to you? Because I know that as we go through this course, and in a moment I'm going to talk to you about what the State intends to prove to you. One of the hard things is, why. Why did Brandon Green die on the side of the road from a gunshot wound for no good reason.

And as someone who has done this for a number of years now, I can tell you that evil doesn't have a why. Malice doesn't have a why. Wickedness doesn't have a why. It just is.

On September 2nd, 2006, in the early morning hours, Brandon Green's life came to an end. On that day Brandon Green had been in a party just up the street from where he was living. They left that party in the early morning hours.

When I say early morning, I mean parties that I don't typically go to. Because if it's after 10 it's late to me. But this is about 5:30 in the morning and they were walking home from a party in Cedar Hill Mobile Home Park which is located off Broad Street

down -- sort of across from Shaw Air Force Base.

Brandon Green is walking along with Mary Green, his aunt. And as they are walking there along the roadway, a car approaches them at a high rate of speed coming right beside them.

And some form or fashion Brandon either hits, throws at or the car hits something, a beer bottle or something of that nature. That car is struck. That car stops. Two individuals are in it. And they get out and have words with Brandon about that.

His aunt tells him, come on, let's go. The car pulls off. They're on their way. They start to make the turn to the little street slash drive that goes to where they live and the car comes back by, pulls in, there's words again. This time gunshots are fired.

Brandon is shot in the back. His aunt's there with him for a few minutes because she initially doesn't see any blood. She's unsure why he has collapsed. She's heard the shots but don't know that he's been hit.

So as she's there on the ground trying to get his motion, trying to wake him up, trying to find out what's wrong with him, she realizes how serious it is. She runs to a residence. It's 5:30 in the

morning, people are asleep, so she has to beat on the door to get somebody up. They don't have a phone.

They have to go to another residence and they don't have a phone, and they ultimately make their way -- a residence where they're able to call for help. Sumter County officers arrive shortly thereafter.

And while Sumter County officers are on scene, more than likely is when Brandon Green draws his final breath. A tragedy. This did not have to happen.

So officers do what they do. They begin to gather information. And they begin to gather information from Mary who was there, from the witness who lived up the street, and they began to put this together over time. The descriptions of the individuals, where they're staying, what kind of car they drive.

And sure enough through good old fashioned police work they put the pieces of that puzzle together and it leads them to Wayne Cooper.

Now you're going to hear about another individual in the car, but today we're going to talk about Wayne Cooper. They were placed under arrest. He is talked to, and you will hear about that and you

will hear evidence in this case.

Now, the evidence in this case is going to come from the witness stand right here. It's going to be witnesses. It's going to be people telling you what happened that day, what they saw, what they observed from right there. That's where the testimony is going to come from.

The testimony is going to show you that Wayne Cooper came up in that first altercation, that they drove up the street just a minute, came back by and then he shot and killed Brandon Green.

That's going to be the evidence in the case, ladies and gentlemen, and the witnesses and the other evidence from the stand in this case.

Probably the hardest part of my job is talking to mom's in situations like this. And I always tell them for you, you've already had the hardest day of your life. This is probably going to be the second hardest, to have to sit in the courtroom and to listen to how your child died that day.

So today we're here about Brandon Green, about a young man who was not perfect, in many, many ways imperfect, but a young man who did not deserve to die on the side of the road in Cedar Hill Mobile Home Park that morning. Thank you.

THE COURT: Mr. Wilder?

MR. WILDER: Thank you, Your Honor.

OPENING STATEMENT

MR. WILDER: Well, Mr. Corbett landed on one thing that we share in common and that is talking to mothers, very -- Mr. Cooper who I represent is here with both his mother and his father, seated right behind him.

And the reason we're here is because there have been a misidentification that the evidence that the State has gathered pointed them in the wrong direction, that they arrested the wrong person and through a series of events that I wish they'd turn back and do differently, they have made a case and made a case against the wrong individuals.

Mr. Corbett just told you that this incident took place at 5:30 am on September the second, 2006. September the sixth or September -- September the second, 2006 at 6:12 am, my client punched in for work at the Fire Mountain restaurant in Columbia. 6:12.

He was there with his brother. Now, call -- this incident that we're talking about apparently came into law enforcement at 5:58 am in the morning. 5:58 before we have a police officer being notified

of what happened in the Cherryvale Mobile Home Park.

And you notice Mr. Corbett had to go through this long scenario about, oh well, were out there didn't realize he had been shot, this, that and the other -- if there were a witness standing right there who saw a gun being fired, gunshots, somebody knew there had been somebody shot, somebody didn't go down on the ground and you don't know they're shot.

So now they want to talk about this delay in calling in to law enforcement. Didn't know this, didn't know that. 5:58 am is when we know the police were notified about this.

The first responder from the police on the scene according to their information, M Kennedy at 6:01 am. 6:12 am my client punched in his time clock at Fire Mountain on Garners Ferry Road.

You're going to hear testimony from this gentleman right here, Mr. James -- Jamie Turner who was following up later on the information about what happened that morning, goes to the Fire Mountain and not only did they punch in at 6:12 am, but there is video or was video that Mr. Turner saw that establishes that my client was at the Fire Mountain outside for some period of time before 6:12 am.

And so we come to the question of, how does this

man who they say participated in a crime in Cherryvale Mobile Home Park at 5:30 am get all the way over into Columbia at the Fire Mountain, that location several minutes before 6:12 am when the police were first arriving at the scene at 6:01 am.

Ladies and gentlemen, there are a lot of things that people can do, pretty amazing things. Nobody has ever figured out how to be in two places at the same time.

Therefore, whatever else you hear in this case about the police getting in, asking him questions, whatever, whatever you hear else in this case, remember this, that it is impossible for my client to have been present in Cherryvale Mobile Home Park at the time that they say this took place.

There, I'm going to ask you to listen with great attention, really close scrutiny, about how the police had developed this information. You're going to find out that there is -- there is no evidence that will be given to you about any kind of line-up or show -- photo show-up that was conducted.

The police got this man, they -- they spent several hours in interrogation, they closed the books on this thing. This is not how it happened the way they have made this charge. And so we're going to

ask you to be very attentive to the identification testimony. Who saw what when, where.

I think you're going to find that as you listen to the evidence, you will find that originally they said that there was a older model square-bodied Caprice automobile driven by three black males involved in this.

You're going to find that there was information given to the police that a green Intrepid, Intrepid, Dodge Intrepid with a white bottom, a white bottom given to the police. My client does not own or have access to an Intrepid automobile.

My client does not -- was not even driving any automobile that day. You're going to find I think that when you hear all the evidence that the wrong identification was made, that no name was even put on the person that they thought they saw until several months after the incident.

You're going to find out that when you listen to this evidence that it cannot possibly have been Wayne Cooper who they have identified with having committed this.

No matter what else you hear, I think that you will find there is reasonable doubt at the end of the case you should vote not guilty. Thank you very

much.

THE COURT: All right. Mr. Corbett, you may call your first witness.

MR. CORBETT: Thank you, Your Honor.

MARY GREEN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Green, good morning.

A Good morning.

Q Are you from the Sumter area?

A Yes, sir.

Q How long have you lived in the Sumter area?

A All my life.

Q And let me ask you, back in September of 2006 where were you living?

A Eleven Cedar Hill Mobile Home Park, Sumter, South Carolina.

Q That's located here in Sumter County?

A Yes, sir.

Q Okay. Now, Miss -- now Miss Green, how do you know Brandon Green?

A He's my nephew.

Q Miss Green, I want to talk to you about the early morning hours of September 2nd, 2006. Where had you been

that evening?

A I was at Wanda Rogers' house. She had a get-together that night.

Q And where does Wanda live?

A Cedar Hill.

Q And you say a get-together. Were there -- was it a crowd of people there?

A Yeah, it was a -- yes, it was a good bit of people there.

Q And was Brandon there?

A He was there.

Q And then did you leave -- let me ask you. What time did you leave the party?

A Okay. I left earlier one time around about 2:00 because I walked Isaac Mickens back -- no, he walked with us to my house and I walked him back, so I went home first and I walked him back because he wasn't able to walk home by himself.

Q So at some point in time you left the party and came back?

A Came back.

Q Okay. And when did you leave -- about what time did you leave for the final time?

A Probably about 5:10, 5:15.

Q Who, if anyone, was with you?

A Brandon Green.
Q Now, tell me, what happened as the two of you were walking? I'm sorry, let me stop you there. When y'all left, how were you traveling?
A We was walking.
Q And tell us what happened that evening -- or excuse me, that morning.
A Okay. We was getting ready. Well, Wanda was -- Wanda Rogers was getting ready to put her trash out, so I was standing there a minute talking to her. And Brandon was standing like on the side waiting on me.

So I was like, Wanda, I will see you later because I'm getting ready to go, so I will see you tomorrow. So me and Brandon started walking down the road to go home. And this car was coming real fast.

So I told Brandon, I was like come on, baby, let's get on the other side of the road because this car is coming too fast. So we got on the side of the road. The car was like coming towards us like on our side.

So Brandon did had a beer bottle in his hand. He was taking the beer home to his mama. So Brandon was like, get over, he had his hand out with the beer in his hand like get over, so the bottle must have dropped, so the car went on down and it stopped like in the road in front of Wanda Rogers' house and two guys got out and they was

looking at they car.

And so they was telling -- hollering at Brandon telling him, why you hit my car or something, and Brandon was like, I didn't hit your car, said y'all tried to hit us.

So I was pulling Brandon telling him, come on, let's go. So we heard a shot. So we had our back turn, I didn't know whether they shoot at us or they shot in the air. So Brandon told them, say what y'all shooting for, that ain't nothing, that ain't nothing y'all got, what you shooting for. So I pulled on him, come on baby, let's go, we ain't got no gun.

So we started walking, the car came back again real fast. And they stopped. And they told Brandon, what up or something they was saying. And Brandon must have saw something they had and Brandon had his hand up like, y'all got it, I ain't got nothing, y'all got it.

So I was getting ready to pick up a stick because I thought they was going to get out the car, but they didn't so I heard three shots, so when I looked--

Q Now, let me stop you there for just a moment; okay? All right. Now, you indicated that the car passed close by; is that right?

A Yes, sir.

Q Okay. And there was some incident with a bottle?

A The bottle -- when they passed, Brandon did have a bottle in his hand, but he didn't throw the bottle. The car came so close, the bottle must have hit the car and dropped or whatever. And that when they stopped in the road and they shot.

Q I see. You said the car stopped in the road.

A Uh-huh.

Q Now, about how far from you, do you know?

A The first time the car stopped? It wasn't too far. It was like right there to Wanda Rogers house' where they pulled on the side of the road and stopped.

Q Now, you indicated that there were some words between them?

A Yes, sir.

Q Now, at this point in time what did the car do?

A They -- one of them got back in the car. The other one walked towards in front of Wanda Rogers' house, so the one in the car, they pulled off and left --

Q So the car --

A -- went on out.

Q -- your side?

A Uh-huh.

Q Okay. And then what were y'all doing after that?

A Me and Brandon kept walking.

Q All right. Now, pick me up right there. What

happened as y'all continued walking?

A I heard the car coming back in the park, it was coming real fast back in the park, so I was like -- I call them pig, I was like, pig, car coming back. Oh so when it came back, it pulled, me and pig was in like the grass area and they pulled in the road and stopped right there by us and they asked him, they was saying something to him.

And that when I picked up the stick and I turn around and I see Brandon with his hands up like this here saying y'all got it, I ain't got nothing. And he had his back turned and shot him in the back.

Q Now, where were you in relation to where Brandon was?

A I was right beside him, but I was closer to the car, to like the passenger side, the back seat of the car.

MR. CORBETT: Your Honor, may I have the witness step down?

THE COURT: Yes, sir. Miss green, you may step down.

BY MR. CORBETT:

Q Now Miss Green, I tell you what. I'm going to let you stand right here so the Court Reporter can hear you. Now, if you would please take a moment and look at this picture and tell me if you can identify it.

A Yes, sir.

Q Okay. Tell us what we're looking at here, please.
A Looking at 76 right here. You come on down coming in Cherryvale you're going to turn right here to go to Cedar Hill. This is the park--

THE COURT: Let me ask you to keep your voice up. You're away from the microphone and everybody has got to hear you, so...

THE WITNESS: Okay. This is the fire department here. If you come on around to your right, Wanda Rogers lived right here, right up in here. Come on around, we were right back up over here.

BY MR. CORBETT:
Q Now, you indicated that you had left Wanda's house and were walking. Tell us about where you were the first time the car came by.
A We was about right up in here. Right here. Car came down this direction and it stopped right up over here by Wanda's house in the road.
Q All right. And then you said the car pulled off from that point?
A Yes, then it went on around.
Q And you and Brandon continued walking?
A Kept walking.
Q All right. Which way were y'all going?
A Coming walking towards this way here, about right

here, and the car pulled up and it pulled right there on the side. Me and Brandon were standing right there.

Q Now, did the -- again, use your finger to kind of show me where the car turned or what the car--

A It turned -- the car came, it turned right here in the driveway like coming through. It turned right here and it stopped at -- right there. Me and Brandon was standing right here.

THE COURT: Excuse me. Mr. Wilder, do you want to move over there?

MR. WILDER: I can see.

THE COURT: Okay. All right. Go ahead.

BY MR. CORBETT:

Q Now, when were the shots fired?

A Okay. The first shot was fired when they pulled and stop right here. When they came back and stopped right here they fire like three times.

Q All right. I'm going to let you go back to the witness stand if you would, please.

A (Complied.)

Q Now Miss Green, tell us what happened after the shots were fired.

A Brandon took like -- walked like four step, took four steps. I was asking him, I said you okay, are you okay? He didn't say nothing. So he fell to the ground and I sat

there with him and I tried to wake him up, you know, tried to see if he was okay.

He ain't never woke up, so I got up and I ran across the street to my house to wake my sister and my daughter up to let them know somebody had shot Brandon.

Q Now, from this picture are you able to tell us where you were living at that time?

A Yes, sir.

Q Okay. If you would, please, step down here again. Keep your voice up. Show me where you went to.

A (Complied.) Me and Brandon was here. He was laying here, so I ran here. We was living right here. I ran across the road, this street over here.

Q All right. I'm going to get you to get back on the witness stand for me.

A (Complied.)

Q What did you do when you arrived at your residence?

A I knocked on the door and knocked on the door until I woke somebody up. I think my sister answered and I told her -- nobody never came to the door, they just -- I just heard somebody, you know, in the house.

They got up -- well, they ain't been up by the time, you know, I knock on the door and I ran back down there to him and I sat there with him until the police came.

Q Now, when you ran to the residence, what did you tell

them?

A Told somebody to call 911 because Brandon just been shot.

Q And then you ran back to where Brandon was?

A Yes, sir.

Q Now Miss Green, you indicated the car was traveling this direction and there was some type of altercation here, car stopped, and there were some words.

A Yes, sir.

Q And then you indicated the car pulled on off?

A Yes, sir.

Q Okay. How -- can you tell us about how long it was before the car came back?

A Like a couple of seconds, you know, like... might have been a couple minutes. Probably been a minute, two.

Q When the car came back, how long was the car there before you heard any shots?

A About a couple of seconds. They wasn't even a minute.

Q Now, which side of the car was facing you?

A The one on the passenger side, the passenger's side.

Q What if anything can you tell us about the individuals in the car?

A I couldn't see them. He just had the window down a little bit where I -- the only thing I saw was the end of

a barrel of a gun.
Q Were you able to tell anything about them, if they were male, female?
MR. WILDER: Object to the leading.
THE COURT: It's overruled. He's putting alternatives in there. I will overrule that. Go ahead, finish your question.
BY MR. CORBETT:
Q Any type of descriptive factors about the individuals in the car if you could see them?
A Not in the car. I saw them when they got out of the car.
Q Okay.
A Earlier before they came down.
Q All right. What could you tell us about them?
A One of them was skinny. The other one was kind of chubby.
Q Were you able to tell if they were guys, girls, what?
A They was -- they was guys. I could tell they was guys.
Q Okay. The color of skin, were you able to tell?
A Yeah, they was black.
Q Miss Green, what can you tell us about the car they were in?
A It was a green car, tinted windows and like a silver

little lining going down on the side. I just didn't know the name of the car.

Q That car, had you ever seen it before?

A Oh, yes, sir.

Q Where had you seen it before?

A Right there in the park in Cedar Hill.

Q Now Miss Green, look at that for me if you would, please ma'am. The car you saw that night, how does it compare to the car in that picture?

A Oh, it look like the same car but the windows was tinted.

MR. CORBETT: Your Honor, if I may, I want to mark this for identification.

THE COURT: State's number one for identification only.

(WHEREUPON, State's Exhibit No. 1 was marked for identification only.)

BY MR. CORBETT:

Q And I'm sorry, I interrupted you. You indicated you had seen this car on prior occasions?

A Yes, sir.

Q Okay. In the neighborhood?

A In the neighborhood.

Q Now, you indicated that you had left your residence and ran back to where Brandon was.

A Yes, sir.
Q Were you there when the police arrived?
A Yes, sir.
Q Now Miss Green, let me ask you, with regard to Brandon, what type of weapon did he have?
A He didn't have nothing. He had no kind of weapon.
Q And about what time did you leave Wanda's house that night?
A Between 5:10, 5:15.
Q Now, you had told me that you had seen the car in the neighborhood before. Did you know where the residence it was associated with?
A It live right down the street. I mean, the car was parked in the yard right down the street from where I live.
Q Were you able to point that location out to police?
A Yes, my daughter, me and my daughter, yes.
Q Miss Green, what if anything can you tell us about the time that passed from when you ran to the residence for help until somebody actually got there?
A Could you repeat that?
Q Are you able to tell us anything about the timeframe from the time you ran to get help to when someone actually came on scene?
A It took about -- it was about at least 15, 20

minutes.

Q Thank you, Miss Green. Please answer any questions of Mr. Wilder.

THE COURT: Cross-examination, Mr. Wilder?

MR. WILDER: Thank you.

CROSS-EXAMINATION

BY MR. WILDER:

Q You say you saw Brandon Green get shot?

A Yes, sir.

Q And as soon as you saw him get shot, you ran to ask for help, right?

A Not right then. I sat with him for a while before I went and got help.

Q How long did you sit with him?

A Excuse me?

Q How long did you sit with him?

A Maybe about five minutes trying to wake him up.

Q Five minutes. You spent five minutes there I believe you said it was over here in this location?

A Yes, sir.

Q And after spending five minutes, you ran to this house right here?

A Yes, sir.

Q And you -- and you said, call 911?

A Knocked on the door, tried to wake somebody up to

call them -- to dial 911.
Q All right. Then as far as you know they called 911?
A I ran back. They was trying to wake people up, yes.
Q Okay. How long was it between this time when they were calling 911 before the police arrived?
A How long did it take for them to call 911?
Q No. No. How long did it take before -- after you finished telling them to call 911?
A Uh-huh.
Q How long did it take before police got there?
A Maybe about 10 minutes.
Q Okay. So 10 minutes after you -- after you knocked on the door?
A And ran back.
Q And ran back and then the police showed up.
A No. The police wasn't there when I ran back.
Q Okay. But you -- it was 10 minutes from the time that they -- you told them to call 911 before the police got there. You had already been sitting with him for a while.
A Uh-huh, and I ran back.
Q Took the police 10 minutes?
A About 10 minutes before the police got there.
Q Right. Call 911, 10 minutes later the police show up.

A Yes, sir.
Q Right? Okay. But you had sat with him maybe for five minutes before you went -- before five minutes before you went to do that?
A Yes, sir.
Q Trying to get him to wake up?
A Yes, sir.
Q Okay. I gather you didn't know how bad he was hurt?
A No, sir.
Q All right. So now let's talk about this for just a minute. The party you were at was at Wanda...
A Rogers.
Q Rogers' house and that's right as you turn the corner here going in on the left side? You're going into the park, you go past the fire station, come up here to sort of the left side?
A Wanda house, it's on the left.
Q On the left. Okay. Is it the first one on the corner back up in the bushes here?
A Yes, sir.
Q Okay. And then all these trees here and some more trees and then you look over here there's a fire department?
A It's a fire department right there.
Q Okay. But that's her house back up in the bushes

there, right?
A It's -- it's a tree right there on the side, but it don't cover her whole house.
Q Okay. But this is where she lived right here on the corner?
A Yes, sir.
Q That's where the party was?
A Yes, sir.
Q Okay. And how -- what time did the party start?
A I don't know exactly what time it started because I got there late.
Q Okay. So but it had been going on for some time before you got there.
A Yes, sir.
Q What time did you get there?
A I got there about 11:30.
Q 11:30. Now, you were drinking?
A No, I wasn't drinking that night.
Q You were taking drugs?
A I'm not on drugs.
Q Well, how would you explain how Brandon got marijuana and--

MR. CORBETT: Objection, Your Honor.

THE WITNESS: I don't know. I can't explain that.

THE COURT: Whoa. Whoa. Wait. Wait. Wait. What's your objection?

MR. CORBETT: Lack of foundation for that question.

THE COURT: All right. Sustained.

BY MR. WILDER:

Q So you can't explain how Brandon got marijuana?

MR. CORBETT: Objection.

THE COURT: Objection sustained, Mr. Wilder. Same question.

MR. WILDER: All right.

BY MR. WILDER:

Q Did you know he had crack cocaine in his pocket?

A No, because he don't sell crack cocaine.

Q Let me show you a picture and a bullet that Mr. Ray Mackessy took. Did you see that pack of bullets in the roadway next to where Brandon was?

A No.

Q The whole time you were out there you didn't see them?

A No, because they wasn't there.

Q Okay. So whenever the police arrived and took a picture of a pack of bullets that was over here in this area right there--

THE COURT: All right. Now, there's no evidence

of that, Mr. Wilder.

BY MR. WILDER:

Q So you can't identify that, where that pack of bullets came from?

A No, sir.

Q Now, isn't it a fact that you told law enforcement when they arrived that the individual you saw weighed between 210 and 220 pounds?

A No, sir.

Q And that the individual had an afro?

A No, sir.

Q You said one of them was chubby. Did you estimate that that person weighed 250 pounds?

A No, I did not say how much he weigh.

Q You just don't have an idea as to how much this chubby person weighed?

A No, sir.

Q Could have been 250 pounds?

A I don't know.

Q Don't know. And since you saw this person outside the car, would you give the ladies and gentlemen the height of the person, how tall is this person?

A The skinny one is -- been about five-four, the other one should have been about five-two.

Q And whoever gave the police the height of five-nine

and five-ten that night, you don't know who that was, that wasn't you?

A It wasn't me.

Q Okay. And whoever might have said something about an afro, you didn't see anybody with an afro?

A No.

Q Did you tell the police it was a green Intrepid?

A No, sir.

Q When the police were talking to you, were they taking notes?

A Yes, sir.

Q Could you tell us which police officer was taking notes? Do you see that person in the courtroom?

A I didn't talk -- I talked to Turner. I went to the law enforcement and talked to Turner.

Q And did this man take notes when he was talking to you?

A Yes, sir.

MR. WILDER: Your Honor, I'd ask that they turn over those notes to me.

THE COURT: All right. We'll take -- come up, counsel.

(Whereupon a bench conference was held.)

THE COURT: The motion is overruled -- I mean, the request is overruled at this time. I'll take the

matter up later if anything proves differently.
BY MR. WILDER:
Q Were they running a tape when you talked to Mr. Turner?
A No, sir.
Q Did you see a tape recorder going?
A No, sir.
Q Did they ever ask you to sign a statement as to what happened?
A No, sir.
Q Okay. So they didn't write down any -- they didn't ask you to record anything about what you told them?
A No, sir.
Q Did you observe a sandwich bag in the possession of Brandon Green?
A No, sir.
Q How about a lighter?
A No, sir.
Q So if he had that, you just didn't see it?
A If he had it?
Q Yeah.
A I didn't see it.
Q Okay. Where were -- where were you going with him?
A Where were I going? We was going home.
Q Home. Okay. And what is your relationship to him

again?
A He's my nephew.
Q Nephew. Y'all live right down here in this trailer?
A Yes, sir.
Q Now, I assume that there were people drinking at this party; were they not?
A I guess so. They was on the outside. I was inside.
Q Oh. Wanda was drinking; right?
A I didn't see her drinking.
Q Well, was she intoxicated?
A No, she wasn't.
Q Who at the party was drinking?
A Excuse me?
Q Who at the party was drinking?
A It was a lot of people there. I don't know who was drinking and who wasn't drinking.
Q Well, let's just give me the name -- give the jurors some names of some people who were at the party.
A I was at the party, Brandon was at the party, my sisters was at the party, my daughter.
Q Your sisters. What are your sisters' names?
A Rosa Green, she just came by but she left. And all the other people I didn't know -- I don't know who they was, most of them.
Q Was Rodney Green there?

A My son?
Q Yeah.
A Oh, yeah, Rodney was there.
Q Rodney was there. And Rodney told the police that he saw some things that night?

MR. CORBETT: Objection, Your Honor.

THE WITNESS: He couldn't see nothing.

THE COURT: Sustained. Objection is sustained.

BY MR. WILDER:
Q Rodney had been in a gun fight before; hadn't he?
A No.

MR. CORBETT: Objection.

THE COURT: Wait a minute. Counsel, come up.

(Whereupon a bench conference was held.)

THE COURT: Objection sustained.

BY MR. WILDER:
Q Was Rodney there at 5:15 am?
A Rodney left about 5:00.
Q 5:00. So somehow just 15 minutes before this thing happened Rodney leaves; right? That's your testimony?
A Yeah, Rodney wasn't there. He left.
Q Under oath?
A Yes, he left.
Q Rodney was not there when you left.
A Rodney left before I left.

Q Okay. Now, when the police arrived, Rodney came back; right?

A Rodney came back, yes, because we -- because we called him and told him what happened.

Q So the police did see Rodney when they were asking people questions about what happened?

A Yes.

Q Okay.

A Yes, sir.

Q Now, besides Rodney, who else was at the party?

A It was a lot of people at the party. I don't know all those people name. I don't know who they was.

Q Are you saying you don't -- would you say a lot, how many is a lot?

A About 30, 40 people.

Q Thirty, 40 people. Now, how -- how many of these people arrived by car?

A Excuse me?

Q How many got there by car? How many drove to be there?

A I don't know. I don't know how many drove or who was walking, who was riding.

Q How many cars did you see parked around Wanda's house?

A About 14.

Q Fourteen cars. Okay. Now, at five in the morning there are 14 cars parked in her yard.
A They wasn't there at five. They was there when I got there at 11:30. At 5:00 all the cars was gone.
Q But you were there late?
A I went there late.
Q What time did you get there?
A 11:30.
Q 11:30. Okay. How many cars were there when you left at five?
A Nobody car but Rodney's.
Q Okay. So Rodney was still there, his car was still there?
A When I was there, Rodney still was there. Rodney left before I did.
Q What kind of car does Rodney drive, ma'am?
A Rodney was driving -- I forgot what car he was driving that night.
Q Oh. Can you tell me what color it was?
A It was burgundy.
Q Burgundy. Okay. All right. Was his the only car left in the yard when you left?
A No car was left in the yard when I left. Rodney left just before I did.
Q All right. Where was Rodney -- where did he go?

A Where did Rodney went? Guess he went home.
Q Where does he live?
A 261.
Q 261 what?
A 261.
Q Highway 261?
A Highway 261.
Q So he drives all the way to Highway 261?
A He wasn't--
Q Comes back by the time police are there.
A He -- he didn't got all the way home yet and he wasn't driving, his girlfriend was driving.
Q Well, who called him?
A I don't know who called Rodney.
Q You called him on his cellphone?
A No. I didn't had the cellphone.
Q But he knew to come back?
A Yes, somebody called him and told him what happened.
Q And you knew -- you knew he didn't get all the way home?
A He said he didn't got all the way home yet. He dropped some more boys off. He had more guys in the car with him.
Q Could you give me the names of who went in the car with him?

A No, sir, because I don't know all of the names.
Q So you don't do drugs, huh?
A No.
Q And you weren't drinking that night?
A No, sir.
Q Hadn't had any marijuana to smoke?
A I don't smoke that.
Q But you said you left the party for a while. 2:00 you left?
A Excuse me?
Q You left the party at 2:00 to go somewhere?
A I left earlier, yes, and to walk -- me and Dudie (sic), the uncle.
Q Mickens?
A Mickens, Isaac Mickens.
Q Yeah.
A Me and him and Willy Kelly walked back to my house.
Q Willy Kelly was there, Isaac Mickens?
A Uh-huh.
Q You knew them?
A Oh, yeah, I knew them. They -- they and everybody that was at the party.

MR. WILDER: No other questions.

THE COURT: Redirect?

MR. CORBETT: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Green, you were asked about running down here to your residence to get help; correct?

A Yes, sir.

Q Now, did somebody immediately answer the door when you got there?

A No, sir.

Q And I know that I asked you about some times and Mr. Wilder asked you about some times. Were you -- were you tracking time at this point?

A No, sir.

Q Were you checking your watch on this or anything?

A No, sir, I didn't had on one.

Q Okay. As best you can, describe for us kind of your state once Brandon was shot.

A I was -- I was out of it. I mean, I couldn't believe what was going on and, you know, my mind was -- was -- it was real shocking. I just can't...

Q Let me ask you, do you have any training in ID'ing people by height or weight?

A Excuse me?

Q Do you have any training in identifying people by --

A No, sir.

Q -- height or weight?

A No, sir.
Q That's all the questions I have.
MR. WILDER: No other questions.
THE COURT: All right. Thank you. You may step down.
(Witness left the stand.)
THE COURT: All right. Mr. Corbett, you may call your next witness.
MR. CORBETT: Your Honor, my first witness was sequestered. Does she need to continue to be sequestered?
THE COURT: If you plan to call her again or have some reply or anything, she would be, otherwise she could be -- don't plan to call her again, there would be no -- that's up to you.
MR. CORBETT: Your Honor, we would call Wanda Rogers.
THE COURT: All right.
WANDA ROGERS, after being duly sworn, testified as follows:
DIRECT EXAMINATION
BY MR. CORBETT:
Q Miss Rogers, good morning.
A Good morning.
Q Miss Rogers, do you live here in Sumter?

A Yes.
Q And how long have you lived in Sumter?
A All my life.
Q And Miss Rogers, let me ask you. Back in September of 2006, where were you living?
A 1435 Cherryvale Drive lot number 19.
Q And what is that neighborhood known as?
A Cedar Hill.
Q And do you know Mary Green?
A Yes.
Q And did you know Brandon Green?
A Yes.
Q Let me ask you, on the night of September 1 stretching into the morning of September 2nd, were there any -- was there anything going on at your residence?
A Yes.
Q What was going on?
A We had a house-warming party.
Q And about -- do you recall about what time that began?
A Around seven.
Q And how late were people at your house?
A The latest was about 5:00.
Q Now, did you have occasion to become aware of the shooting of Brandon Green?

A You say occasion?
Q Yes, ma'am. Did you become aware of that?
A Yes.
Q Okay. All right. If you would, please tell us what you saw that night.
A Okay. I heard the car came racing through the park. This car, it was just racing real fast, so I went to the bathroom window and look out that window first. That's when I saw the gentleman walking, so I went to the next window that was my bedroom window and it faces right to the fire station. That's when I--
Q Now, let me stop you there for just a moment. Where do you live in relation to the fire station?
A Right across the street.

MR. CORBETT: Your Honor, may I have the witness step down?

THE COURT: Yes, sir. Please step down.

(Witness complied.)

THE COURT: Please be sure to keep your voice up because you're away from the microphone.

THE WITNESS: Okay.

BY MR. CORBETT:
Q I'm going to get you to stand here. Now, this is an areal photograph. Now, I want you to take a moment and look at that and familiarize yourself with it. And can

you tell us what that's a picture of?
A Cedar Hill Mobile Home Park.
Q Okay. Can you tell us where the fire station is?
A Right here.
Q Okay. From this picture, are you able to tell where your residence is?
A Right here.
Q Okay. Now, all right. I tell you what. I'm going to let you sit back on the witness stand.
A (Complied.)
Q Now, you were telling me about a car in the neighborhood that evening. Is that correct?
A Yes.
Q All right. Where did it go?
A It was parked at the fire station.
Q And who was in the car?
A I didn't know the gentleman name at the time, but it was a gentleman in the car.

MR. WILDER: I object. I'd object and I'd ask that my objection run throughout the testimony based upon previous motion to suppress grounds that I made.

THE COURT: All right. The motion is noted and will run throughout the testimony without further objection. Court has already ruled on that as far as these grounds are concerned. If there's any new

grounds, you'll have to make your objection, Mr. Wilder.

MR. WILDER: Thank you.

BY MR. CORBETT:

Q I'm sorry. Who was in the car?

A Mr. Wayne Cooper.

Q Now, you were telling us at that time you didn't know--

A No. I didn't know it was him. I didn't know his name.

Q Didn't know his name?

A Uh-huh.

Q Okay. Was there anyone else in the car or in the area?

A He was the only one in the car. But the gentleman came walking across the yard and went to the car. He got out of the driver's seat, walked around the car. The gentleman that was walking across my yard got in the driver's side, throw the car in reverse and it went back through the park.

Q All right. Now, let me stop you there for just a moment to make sure I followed you. Okay. When the car pulled up at the fire station -- first of all, let me ask you, do you know what time of day this was?

A I say roughly around 5:15, 5:30.

Q All right. Now, tell -- was it dark outside?
A Yes.
Q Okay. Tell me how is it that you can see something at the fire station?
A The fire station is lit up.
Q Plenty of light at the fire station?
A Yes.
Q Okay. So you see a car go to the fire station?
A Uh-huh.
Q Okay. Was it a car that you -- had you ever seen that car before?
A Yes, the car is known from the neighborhood.
Q From your position was there anything that you could tell us about the car, how it looked?
A It was a green car with dark tinted windows.
Q And it was at the fire station?
A Yes.
Q Okay. Now, you indicated you saw another individual walking?
A Yes.
Q All right. Tell us about that.
A The gentleman was walking across the yard. When I noticed him, I went to the next window and the car was parked at the fire station. He went walking to the car. The driver got out of the car and walked around the car,

got in the passenger side. He got in the driver's side, throw the car in reverse and then went back through the park.

Q And when you say went back through, what do you mean?

A They back up from the fire station and came back by my house and went back down.

Q All right. If you would, I'm going to ask you to step down to just kind of trace which direction they were going as you saw them.

A (Complied.) I saw the car, they was parked at the fire station. They backed up and came back through this and went back down.

Q Thank you. Now, you saw two people that night; correct?

A Yes.

Q Okay. And did you know those individuals?

A I know them from being in the neighborhood, but I didn't know they name.

Q And do you know on how many separate occasions you would have had to have seen -- you had to had seen them in the past?

A It was several occasions.

Q And how would you have seen them prior to this time?

A They live on the back of me, so they had to pass my home to get to their home.

Q Now, the prior occasions that you had seen them, what time of day would you see them?
A In daytime, evening time.
Q Now, you indicated that the car pulled into the fire station, someone got out the driver's side?
A Uh-huh.
Q Is that correct? And what did they do?
A They walk around the car and got on the driver's side of the car and the person that was walking up to the car got in the driver's side.
Q I may not have followed you there initially. When the car pulled into...
A When the car was parked at the fire station, the driver that was parked there driving at the time got out of the driver's seat, walked around the car and got on the passenger side.
Q Okay. Now, the individual that you saw get out of the driver's side and go around to the passenger's side --
A Uh-huh.
Q -- you had -- had you seen that person before?
A Just from the neighborhood.
Q And you testified you did not know their name?
A No.
Q Was the light at the fire station such that you could see them well?

A Yes. I could have seen a figure then. I couldn't see where exactly what they was doing, but I could have see them.

Q Now, the person that you saw get out the driver's side and walk around to the passenger's side, are they in the courtroom today?

A Yes.

Q And who is that?

MR. WILDER: Subject to my objection.

THE COURT: Objection is noted. The record is protected. Same ruling. Proceed.

BY MR. CORBETT:

Q Do you see that person in the courtroom today?

A Yes.

Q And where are they sitting?

A On the defendant side.

Q The gentleman in the white shirt?

A Yes.

Q Now, what did you do after you saw that car?

A I just laid back down and I said about 15, 20 minutes later that's when I got a knock at the door saying call 911.

Q Do you remember who came to your house?

A Yes.

Q Who came to your house?

A Tameka.

MR. CORBETT: Just one moment, please sir.

(Whereupon there was a pause.)

BY MR. CORBETT:

Q Now, you had indicated that you had seen the car from the neighborhood?

A Uh-huh.

Q Did you know what particular residence it was associated with?

A I know the residence was on the back of me, and what was the number of the trailer I couldn't tell you.

Q Now, you had indicated that you were having a party that evening?

A Yes.

Q Okay. And prior to you seeing the car, when had people last been at your house or who were the last people at your house?

A The last ones to left was Mary Green and Brandon Green.

MR. CORBETT: Thank you.

THE COURT: Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:

Q Now, Miss Rogers, let me see if I can get this all -- this is your house right here on the left as you enter the

park?
A Yes.
Q And that's where you were that night?
A Yes.
Q And you say that you could look straight out the window and see the fire station out your bathroom window?
A Out my bedroom window.
Q Bedroom window?
A Uh-huh.
Q So it's your bedroom window that's on that side of the house facing --
A The fire station.
Q -- the fire station. And that's the window you were looking out when you made this identification of the person that you say got out of this car?
A Yes.
Q And you say you saw somebody with an afro?
A Uh-huh.
Q An afro. And this person was chubby?
A He was short and kind of stocky. He was wearing a white T-shirt and black shorts.
Q Short and stocky?
A Uh-huh.
Q Would you say he weighed about 220 pounds?
A Roughly about 215, two -- 210, 215.

Q 210, 215, afro?
A Uh-huh.
Q Now I'm holding my hands out about, what, an inch and a half and afro do kind of sticks out an inch and a half?
A It was like a low-cut afro.
Q Low-cut afro?
A Uh-huh.
Q But stuck out some from the head; right?
A Yes.
Q Okay. And it went all the way around?
A Uh-huh.
Q Okay. Which is what those folks refer to, you know, afro haircut, right?
A Uh-huh.
Q Okay. So that was one of the people?
A Yes.
Q And you -- you saw them out your bedroom window which faces the fire department.
A Uh-huh.
Q At what time of day, 15, 20 or 25 minutes before this -- this happened?
A I'd say about 5:15.
Q 5:15.
A Uh-huh.
Q Okay. So 5:15 you saw the people at the -- at the

fire department?
A Yes.
Q Okay. Well, how long after Mary left was that?
A After Mary left it was roughly -- roughly about 10 minutes.
Q Okay. So Mary is gone for 10 minutes and then you look out the window and you see these people?
A No. When I look out the window is like five minutes after she -- after that, that's when I heard the car come through the park.
Q Okay. So she leaves and five minutes later you heard this car; right?
A Yes.
Q So you look out the bedroom window?
A Uh-huh.
Q You sure it was your bedroom window?
A I look out the bathroom window first then I went to the bedroom window.
Q You sure it's your bedroom window that you saw these people at the fire--
A Yes.
Q Okay. Because that's the window that faces the fire department?
A Yes.
Q That the front of the fire department?

A Yes.
Q Is that your trailer?
A Can I see that picture?
Q Uh-huh.
A This is my trailer from the side.
Q The side towards the fire department?
A From the side toward the fire department. My bedroom is not on this side.
Q Okay. That's the -- that's looking from the fire department back toward your trailer; isn't it?
A That's the side of my trailer looking at the fire department.
Q That's the side of your trailer looking at the fire department. The one with all the bushes and trees in front of it?
A My bedroom is on the front of the house.
Q Ma'am, your bedroom -- your bedroom is on the front of the house, you can't even see the fire department out your window; can you?
A Yes, I can.
Q Oh, you just kind of looking out at an angle?
A I'm looking out the window at the fire station. You showed me a picture from the side of my home.
Q All right. Let's look again. You point out on that picture where the window was you were looking out.

A It was this window. This window right here.
Q On the other side of the steps?
A Yes.
Q Okay.
A That look directly at the fire station.
Q All right. That's your testimony under oath that you made this identification out looking out that window?
A Yes.
Q All right. And this was at night time?
A Uh-huh. Yes, sir.

THE COURT: Need yes or no because she can't pick up uh-huh and huh-uh.

THE WITNESS: Oh, I'm sorry.

BY MR. WILDER:
Q And the distance between your trailer and the fire department is what?
A Could you repeat the question, sir?
Q How much -- how much distance is there between your trailer and the fire department?
A I'm not sure, sir. I never measure it.
Q Well, let's just take a look. That's a trailer length, one, two, three -- three trailer lengths?
A I'm not sure. I never measure it.
Q 1 inch equals... feet. 200 feet?
A I'm not sure, sir. I never measure it.

Q All right. Now, is this your house from another angle?

A This is my house from the front.

Q Right.

MR. WILDER: I'd like this marked for identification, Your Honor.

THE COURT: Defendant's No. one for identification only.

(WHEREUPON, Defendant's Exhibit No. 1 was marked for identification only.)

BY MR. WILDER:

Q And this is the picture I showed you earlier?

A Yes.

Q The direction toward the fire department?

A Uh-huh.

MR. WILDER: I'd like that marked.

THE COURT: Defendant's No. two for identification only.

(WHEREUPON, Defendant's Exhibit No. 2 was marked for identification only.)

BY MR. WILDER:

Q Let's back up a little further, Miss Rogers. Do you see that big tree right there?

A Yes.

Q Is that in between your house and the fire

department?
A No.
Q Same direction, isn't it, toward the fire department? Let's look at this map. Look down here. Here your house is. Okay. Do you see that tree right there?
A Uh-huh. That is not the same tree.
Q Not the same tree, but it is between your trailer and the fire department; isn't it?
A This tree is a little further over.
Q Okay. Is this the -- your house from the other direction?
A Yes.

MR. WILDER: I'd like this marked for identification, Your Honor.

THE COURT: Defendant's No. three for identification.

(WHEREUPON, Defendant's Exhibit No. 3 was marked for identification only.)

BY MR. WILDER:
Q Let's talk about this tree. And you say it's not in between your house and the fire department?
A No.
Q It's just off to one side. Is that right?
A I couldn't hear you, sir.
Q Did you say it's off to one side?

A Yes.
Q Let's see. I have got to get it where the jury can see. Show the jury where that tree is, ma'am, that's in that picture.
A This is my home.
Q Right.
A The tree that you have in this picture is right here.
Q Right there. Okay.
A This is my home.
Q Right.
A It won't be blocking my view to see the fire station.
Q Okay. All right. Now, could you put your finger where you say the tree is again?
A Right here.
Q All right. What's that to the bottom of what you just pointed at?
A To the bottom?
Q Just below what you pointed.
A Right here? It's bushes.
Q Bushes?
A Yes.
Q Okay. Thank you. Bushes at ground level; right?
A Uh-huh.
MR. WILDER: I'd like this marked for identification.

THE COURT: What is it?

MR. WILDER: It's the view she identified as a tree being off to one side.

THE COURT: All right. Defendant's No. four for identification only.

(WHEREUPON, Defendant's Exhibit No. 4 was marked for identification only.)

BY MR. WILDER:

Q Now, give me the names of other people that were at the party.

A They were several people there, sir. It was about two years ago. It was me, Mary Green, Brandon Green, Tameka.

Q Tameka who?

A Green.

Q Green. Okay. These are all friends of yours?

A Yes.

Q Okay.

A Rodney Green.

Q Rodney?

A Duane Thompson. It was --

Q Excuse me. Wayne Thompson.

A Uh-huh.

Q Okay. What time did Duane Thompson leave?

A They left roughly about 3:30, 4:00.

Q What was he driving?
A He was riding with someone.
Q He was riding?
A He left with someone from the party. I'm not sure who he left with.
Q What time did Rodney leave?
A Rodney left about 4:45, 4:50, somewhere in that range.
Q 4:50?
A Uh-huh.
Q And now what was he driving?
A He was with his girlfriend.
Q He was with his girlfriend. Well, what was he -- what kind of car did he come in?
A I think it was the Altima he was driving that night.
Q Altima?
A Uh-huh.
Q What color is that?
A Gray.
Q Gray. Okay. Now, I guess there were people drinking at the party?
A Yes.
Q And probably people taking drugs?
A No.
Q Well, were you drinking?

A No, because I was the host of the party, no.
Q You were the host of the party. Okay. Did Brandon drink?
A No.
Q If he was drinking, you didn't see him drink?
A No.
Q All right. Now, Mary was drinking, though; right?
A Not to my knowledge she wasn't.
Q All right. All right. Now, is this also a picture of your house, ma'am?
A Yes.
Q Can you see the fire department down the road?
A Yes.
Q Okay. And you see all the bushes in between your house and the fire department?
A Yes.
Q Okay.

MR. WILDER: I'd like this marked for identification.

THE COURT: Defendant's No. five for identification.

(WHEREUPON, Defendant's Exhibit No. 5 was marked for identification only.)

BY MR. WILDER:
Q How many people do you think lived behind -- lived at

that time behind you in the trailer park?
A How many people lived behind me?
Q Uh-huh.
A It was from my home.
Q Yes, ma'am. They all live in trailers?
A You want it from my home or the whole trailer park.
Q The whole trailer park.
A It was a -- all -- just about all the trailers were occupied at the time.
Q All right. So however many trailers we see on that picture, they were all probably occupied?
A Yes.
Q Now, of course, you want this thing to be solved, right?
A Yes.
Q Because Brandon was your friend?
A Not only because he was my friend, he didn't deserve to die like that.
Q You want it to be solved.
A Yes.
Q Okay. And it was some two or three months after all this happened before you finally put a name with the person you picked out in the courtroom today; right?
A Yes.
Q All right. So you don't -- you didn't -- at that day

you didn't know what the name was?
A The day I gave my statement?
Q Right.
A No.
Q All right. Did -- you gave your statement to this gentleman right here?
A Yes.
Q And did he ask you to sign it?
A Yes.
Q He did? And so you gave him a statement and you signed it?
A I believe I did sign my statement.

MR. WILDER: Your Honor, I'd move for a copy of that statement at this juncture.

THE COURT: Mr. Corbett?

MR. CORBETT: Judge, there isn't one.

THE COURT: There isn't one? All right.

BY MR. WILDER:
Q All right. Did he take notes --
A Yes.
Q -- when he talked to you?

MR. WILDER: Your Honor, I'd move for a copy of his notes.

THE COURT: All right.

MR. CORBETT: Same objection, Your Honor.

THE COURT: All right. Objection is sustained under rule 5AD 2, not subject to disclosure.

MR. WILDER: Okay.

BY MR. WILDER:

Q Did they make a tape recording?

A Not to my knowledge they didn't.

Q Were you ever asked to pick anybody out of a line-up?

A No.

Q Were you ever shown a photo show-up of pictures for you to pick somebody out of?

A No.

Q Okay.

MR. WILDER: No other questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Now, this was September of 2006; is that correct?

A Yes.

Q And you were testifying about a stocky person. Mr. Wilder was asking you about a stocky person initially.

A Yes.

Q Now, which person is that?

A It was the other acquaintance, Derrick Cooper.

Q And now you testified that someone was walking through your yard?

A That was Derrick.
Q Okay. Now, you were asked a number of questions here about your home and the fire department.
A Uh-huh.
Q The window from which you were looking that we have talked about earlier --
A Uh-huh.
Q -- was -- was your view blocked?
A No, because they had just trimmed the bushes, the limbs that day, so I could have seen directly at the fire station.

MR. CORBETT: That's all the questions I have.

THE COURT: Redirect?

RECROSS-EXAMINATION

BY MR. WILDER:
Q Insofar as the name Derrick goes, you didn't know that name either until two or three months later; did you?
A Yes.
Q Is that what you're saying, you didn't know it until later?
A I didn't know his name until later.
Q That's right, because the night this happened you didn't give any names to the police; did you?
A No.

THE COURT: All right. Thank you. You may step

down.

(Witness left the stand.)

THE COURT: All right, ladies and gentlemen. You have been in the courtroom about an hour and a half now and I think it's -- we'll take just a very short recess, no longer than about 10 minutes, but we're going to be ready to start back in just a few minutes.

I'm going to allow you to go to your jury room. Please do not discuss the case among yourselves and we will be ready to start back in 10 minutes. Thank you.

(Jury left the courtroom at 12:00 pm.)

THE COURT: All right. For the record, I misidentified the actual rule that I made my ruling on with regard to investigator's notes. It's rule five subparagraph -- reading these things is impossible -- subparagraph A2, information not subject to disclosure. All right. All right. Ten minutes, counsel. Let's be ready to start back. Thank you.

(Whereupon a brief recess was had.)

THE COURT: State versus Cooper. Mr. Cooper is present with his attorney, Mr. Wilder. The State is present with Mr. Corbett. Anything with regard --

anything before we bring the jury in, Mr. Corbett?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: Mr. Wilder?

MR. WILDER: No, Your Honor.

THE COURT: All right. Bring the jury in, please.

(Jury entered the courtroom at 12:14 pm.)

THE COURT: Thank you very much. Thank you, ladies and gentlemen, and we are now ready to resume. Mr. Corbett, you may call your next witness.

MR. CORBETT: Thank you, Your Honor. The State would call Tameka Green.

TAMEKA GREEN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Green, good morning.

A Good morning.

Q Miss Green, tell us where -- do you live in Sumter?

A Yes, sir.

Q And how long have you lived in Sumter?

A All my life.

Q Now, back in September of 2006 where were you living?

A Cedar Hill lot 11.

Q And Miss Green, do you remember the morning that Brandon was shot?

A Yes, sir.

Q Okay. At the time that happened where were you?

A The time he got shot I was at home asleep.

Q And what's your relation to Brandon?

A He's my first cousin.

Q Tell me, how were you involved in it that morning?

A When my mom came and knock on the door, she woke us up and I got out of bed with my baby and, you know, came out the front door, and that when I saw my cousin laying down in the middle in -- excuse me -- on the side of the road, and I run next door to knock on the door to see if I could get help to call 911, but nobody wouldn't come to the door.

So I kept knocking and nobody still came to the door. So after I kept knocking for, I couldn't tell you how long, somebody end up coming to the door and I asked them could I -- could I use they phone and they told me that they didn't have a phone.

So that when I run back down the step with my baby and ran to my cousin Wanda house, and knock on the door and nobody came to the door, soon as I knock I was knocking on her door for a couple minutes, too, probably about a minute or so before somebody came to the door, and

her son came to the door and that when I went in there and asked her could she call 911 for me, and she did, could I use the phone to call 911 and then I just ran back down the street where my cousin was and stayed there until the police came.

Q Now, when you say that your mom came and woke y'all up, who are you talking about?

A Mary Green.

Q Miss Green, thank you. Please answer any questions Mr. Wilder has, please.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILDER:

Q How long was it before Rodney got there?

A Before Rodney got to the crime scene?

Q Yeah.

A I couldn't say because I wasn't the one that called them, but after I got to another phone, I didn't use the same phone that I called -- use to call the police off of, I use another one of my cousin phone that was across the street from where I stayed because I went and woke them up, too, and I called Rodney, he was on his way home. He didn't even got home yet.

And then they came back. But by the time he came back, the police and ambulance been there, so... I'm...

Q The police and ambulance got there before Rodney did?
A The police, yeah, the police got there before he did, and if I'm not mistaken, I think the ambulance was there, too.
Q Okay. So Rodney got there at 6:11?
A I--
Q Do you remember that?
A I don't know. I couldn't tell you because I -- I -- I don't know.
Q Well, the police were there by 6:01; right?
A So they say. I don't know.
Q You don't know?
A I don't know what time the police got there. I just know they came.
Q How long did it take them to get there?
A Seem like forever.
Q How long do you think they took?
A I don't -- it could have take like about a good 10 minutes or so.
Q Ten minutes?
A If.
Q Do you think it was 10 minutes between the time that you called and the time they got there?
A Seem like it.
Q Okay. Seemed that way.

A Uh-huh.
Q If I told you it was only three minutes, would you disagree with that?
A No.
Q Okay. So it could be three minutes?
A Could be.
Q Just seemed like longer to you.
A Yes, sir.
Q And of course you went right away to call --
A Not.
Q -- were you?
A I -- when I got out the bed, I looked for my shoes for a minute. I couldn't find them, so I ran out the door with just socks on with my baby in my hand at the same time, so...
Q Pretty quick?
A No, it wasn't too quick. I tried.
Q You tried.
A Yes, sir.
Q Quick as you could.
A Yes, sir.
Q All right. Now, do you remember seeing this box of bullets in the room?
A No, sir. When I was by my cousin, I didn't see nothing.

Q Okay. So if Mr. Mackessy took a picture of it, you wouldn't have known where that was, huh?
A No, sir.
Q Okay. All right. Now, what time did you leave the party?
A I been left. I don't stay out too long so I been left. I left like, hmm, I couldn't tell you what time I left. I know it was way earlier than 5:00.
Q Okay. Now, if there was a box of bullets out there, you just didn't see them?
A No, sir, I ain't seen nothing.
Q All right. Thank you. No other questions.

THE COURT: Redirect?

MR. CORBETT: Nothing on redirect, Your Honor.

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

THE WITNESS: You're welcome.

THE COURT: You may step down.

(Witness left the stand.)

THE COURT: You may call your next witness.

MR. CORBETT: Your Honor, the State calls Theresa Green.

THE COURT: All right.

THERESA GREEN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Miss Green, good morning.

A Good morning.

Q Miss Green, tell me your relationship to Brandon.

A That was my son.

Q Miss Green, do you remember the morning that he was shot and killed?

A Yes, sir.

Q Where were you living at that time?

A Lot 11 Cedar Hill.

Q And when did you first find out about--

A When my sister came and knocked on the door and she hollered calling people saying -- I hear her hollering saying somebody open the door, pig just been shot.

Q Okay. Now, let me stop you there for just a moment. You said your sister knocking on the door.

A Yes, sir.

Q Who is your sister?

A Mary Green.

Q Okay. Just now you used the term pig.

A Yeah, my son, I call him that.

Q All right. That was a nickname --

A Yeah.

Q -- you called him by?

A Uh-huh.

Q And after Mary came to the house, what did you do?
A I tried, I couldn't -- I went to the door, but just seem like I couldn't open the door right then and there, so when I finally got the door open, I run to the front, stand on the front porch and they say, who shot my son.

I was in shock. I didn't really know what to do. Then after that, I took out the back door running to a neighbor house and called 911.

Q So you also went to call 911?
A Yes, sir.
Q And what did you have to do in order to find a phone to call from?
A I had run out the back door to a neighbor and I was started knocking on her door and window and took her a while before she opened the door.
Q Now, before Mary got to your house, what were you doing?
A I was asleep.
Q So you weren't actually outside that evening.
A No.
Q All right. The time this happened?
A No.
Q Miss Green, thank you.

THE COURT: Cross-examination, Mr. Wilder?

MR. WILDER: No questions.

THE COURT: All right. Thank you, ma'am. You may step down.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett, you may call your next witness.

MR. CORBETT: Thank you, Your Honor. We'd call Erin Boland.

ERIN BOLAND, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Boland, good morning. Good afternoon. Investigator Boland, tell us by whom are you employed?

A Sumter County Sheriff's Office.

Q And how long have you been with the Sumter County Sheriff's Office?

A I have been full-time for approximately a year and a half or five and a half years. I was a reserve officer for approximately a year and a half prior to that.

Q So you have been with the sheriff's department full-time for about five and a half years?

A Yes, sir.

Q Okay. Were you with the sheriff's department in September of 2006?

A Yes, I was.

Q Okay. If you would please just tell us what were your duties at that time?

A At that time I was a corporal on patrol.

Q Okay. Just tell us a little bit about what that means when you're a corporal on patrol.

A Corporal on patrol is of course patrolling the neighborhoods, responding to calls for service.

Q Now, in the early morning hours of September 2nd, 2006, did you have occasion to respond to the Cedar Hill Mobile Home Park?

A Yes, I did.

Q All right. If you would please tell us how that came about.

A It was actually near shift change when the call came out a few minutes before 6:00. We received the call, myself and another officer were the closest ones to the area of the call.

We responded. The two of us arrived at approximately the same time, maybe 30 seconds, no more than a minute delay in there. When we arrived we saw a subject on the ground being held onto or hugged tightly by an individual we later identified as Miss Green.

At that point our initial response was to try and provide any assistance, try and determine the type of injuries. Upon our arrival the only injury we could

visibly observe was slight blood trickling from the victim's mouth. No other notable injuries at that point.

Miss Green was very distraught and upset and not wanting to release Mr. Brandon Green at that time for us to check him, check him for signs of injuries. It took a few minutes before we could get her to assist us in doing that.

Upon checking him at one point, she lifted up his shirt and there was a small wound on his back. EMS then responded, worked on Mr. Green, transported Mr. Green to the hospital at which point we shifted gears into securing the crime scene, helping to secure and obtain who witnesses may be and holding it until investigations arrived on scene.

Q Now, when y'all arrived at the scene and were able to get Miss Green to turn Brandon Green loose, what if anything could you tell us about his condition at that point?

A At that point he was completely nonresponsive to us. Because of Miss Green holding him, I was unable to actually check for a pulse or anything. He did have some, for lack of a better term, gurgling that could be observed occasionally and some blood just running down the corner of his mouth, completely unresponsive.

Q Could you see any obvious signs of him breathing?

A Not at that point.
Q And then you indicated that EMS arrived on scene?
A That is correct.
Q Do you know about when they arrived in relation to when you arrived?
A It was within just a matter of minutes. I do not know an exact timeframe.
Q Now, you indicated that once EMS left that you then kind of transitioned into securing the crime scene?
A That's correct. By the time they had left, other officers had also arrived to assist and we transitioned into taping off the crime scene area, trying to determine who was witnesses, who might have been there at the time it occurred and securing them to make sure they're safe and accounted for.
Q Did you yourself have occasion to interview any witnesses or take any statements?
A I did not actually do any interviewing of any witnesses.
Q That's all the questions I have. Thank you.

THE COURT: Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:

Q You arrived did you see this box of ammunition on the street?

A No, I do not recall seeing that, no, sir.
Q Was it there when Mr. Mackessy started to take pictures?
A If he photographed it, I would assume so.
Q So clothing and stuff left on the street from Mr. Brandon Green; isn't it?
A That is correct, it was left by EMS.
Q Now, you filed an incident report, your signature on it?
A I did a supplemental to the incident report.
Q You arrived at 6:01 am?
A That sounds correct, yes, sir.
Q I want to show you a log and make sure it's correct. Tell the jury what that is.
A This is a crime scene log that is kept of everybody who enters a crime scene, what time they entered, what time they exited the crime scene and it has myself and the other deputy arriving at 6:01.
Q The time the call came in was 5:58 am?
A That also sounds correct, there was just approximately a five minute or less timeframe from the time we received it to the time we arrived.
Q Okay. And was Ricky Richards there also?
A He showed up on scene after we did. I do not know exactly what time he arrived on scene.

Q Did you put in your report that it was a dark green Dodge Intrepid y'all were looking for?
A No, I did not.
Q Which one of you signed the official incident report originally? I can't see on this copy, so I just warn you, it might be another one similar to mine...
A The signature is actually worn off here, but I do believe it was Deputy Boland, not myself, but a...
Q Okay. So there are two Bolands that were out there?
A That's correct.
Q That's going to be it. All right. So Deputy Boland signed the incident report, not you.
A That's correct, not me.
Q What's his first name?
A Her first name would be Angela.
Q Angela. She here?
A Yes.
Q Okay. All right. Now -- Angela. All right. Y'all attempt to be as accurate as you can when you respond to a report; correct?
A That is correct.
Q So hopefully when it says that you -- who was the other first responder?
A It was Deputy Emanuel Kennedy.
Q Okay. So when you and Mr. Kennedy arrived, it really

would have been 6:01?
A Yes, sir.
Q For sure.
A We would have got that time from dispatch.
Q Now, were you aware that Mr. Green wasn't pronounced dead until at the ER later?
A Yes, I am.
Q So he was still alive when you got there?
A I'm not a medical professional. I could not tell you if he was or was not.
Q Okay. And I gather since you didn't take any statements, your job would have been just to secure the scene?
A That's correct.
Q Make sure nobody interfered with--
A That's correct.
Q So if a box of bullets was on the ground there in the immediate vicinity of Mr. Green's, where you found him, it would have been there before you got there?
A If it was within the area we initially cordonned off, yes.
Q Did you take pictures?
A No, I did not.
Q There when Mr. Mackessy was taking pictures?
A I remember him being on scene. I was not with him to

know exactly what he was photographing or what he was doing.

Q Responder report says that Rodney Green showed up at 6:11. Did you know Mr. Rodney Green?

A Yes.

Q Okay. And in what connection had you met Rodney Green before?

MR. CORBETT: Objection, Your Honor.

THE COURT: All right. Come up, counsel.

(Whereupon a bench conference was held.)

THE COURT: Objection sustained. Objection is sustained.

BY MR. WILDER:

Q All right. Mr. Green, Rodney Green wasn't there when you got there; right?

A No, he was not.

Q But he showed up a few minutes later?

A Approximately within 10 minutes.

Q Did Mr. Green, Rodney Green, give you information as to what he had seen earlier?

A He did not give any information to me when he arrived on scene. He was very irate. And due to the large size of crowd, we did have to shift our focus into crowd control in addition to securing the scene.

Q Give information to Ricky Richards?

A That would be for Corporal Richards to testify to. I do not know.
Q Okay. At 6:29:15 was a bolo put out for three black males in an older model square-bodied Capri?
A I can -- I cannot testify to that. I was working on securing the scene and not paying attention to the radio.
Q Okay. At 6:04 am did you tell the dispatcher that the witnesses were being very uncooperative?
A I did have radio transmission shortly after arriving. I do remember requesting additional units for assistance. I do not recall the exact transmission or language used in it.
Q Let me ask you if you recognize your voice. (tape played.)
A That is myself, yes, sir.
Q Is that your voice?
A Yes, sir.
Q And so at that time you told the dispatcher that the witnesses who were there were being very uncooperative?
A Yes, sir, that would have been at the time that we were trying to assess Mr. Green's condition.
Q You did try to take information from people who were there?
A At that time we were trying to assess his condition. Miss Green was clutching him very tightly. We were trying

to assess the injuries, what may or may not have caused the injuries.

Q And by 6:44 am a bolo was put out for a green Intrepid?

A If that's what the dispatch log says. I cannot testify--

Q You remember?

A I -- again I was not listening to the radio. I do not know what bolos were put out at what time.

Q I thought you said you didn't have a radio.

A No, I said I was not paying attention to the radio.

Q Okay. Now we understand that you did have a radio, that you did call the dispatcher.

A Yes at 6:04 you have there, that was me when I called for assistance.

Q Do you remember what else you told the dispatcher later on?

A No, I do not.

Q You remember telling the dispatcher that three black males in the car were involved?

A I do not recall the exact information. I gave it to dispatch.

MR. WILDER: No other questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Now, you indicated in your questioning -- excuse me, your answers a moment ago that Miss Green was clutching the victim tightly?

A Yes.

Q And you had radioed in that individuals on scene were being uncooperative?

A That is correct because as I testified to earlier, in trying to assess him, we had trouble doing so due to her clutching him and how she was holding him. We could not fully assess him and there were no obvious signs of injuries from what we could see that she was not obscuring or blocking.

Q And I apologize if you have already touched on this, but is there anything that you can tell us about Mary Green's state of mind?

A Extremely distraught, extremely irate. Oh, almost nonresponsive from grief.

MR. CORBETT: That's all I have, Your Honor.

THE COURT: Anything further, Mr. Wilder?

MR. WILDER: No, Your Honor.

THE COURT: All right. Thank you, sir.

THE WITNESS: Thank you.

THE COURT: You may step down.

(Witness left the stand.)

THE COURT: You may call your next witness.

MR. CORBETT: Your Honor, the State calls Angela Boland.

THE COURT: All right. Mrs. Boland.

ANGELA BOLAND, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Deputy Boland, good morning. Good afternoon.

A Good afternoon.

Q By tell us, by whom are you employed?

A I'm -- currently am with the Sumter County Sheriff's Office.

Q And how long have you been with the Sumter County Sheriff's Department?

A Since March of 2006. Prior to that I was with the Sumter City Police Department, Bishopville Police Department and then in New Mexico.

Q How many years have you had in law enforcement?

A Be 11.

Q Now, if I turn your attention to September the second of 2006, Cedar Hill Mobile Home Park, did you have occasion to respond to that location that morning?

A Yes. I was coming on the shift, shift change 6:00. We generally come out a few minutes early to help relieve

the outgoing shift. There was a call that came out regarding a shooting.

Q Hang on one second. Let me stop you there for just a moment because we had heard from another Deputy Boland a few moments ago.

A Yes.

Q What is your connection to that Deputy Boland?

A We are married. We were married in May of '06.

Q Now, back in September of 2006, what were your duties with the sheriff's department?

A At that time I was a patrol deputy.

Q Are you still a patrol deputy?

A No. Currently I work as an investigator in narcotics and internet related crimes.

Q All right. If you would please tell us a little bit how -- about how you came to be out there that morning and what you observed and did.

A Okay. As I stated, I was coming on the shift. My shift officially started at 6:00. The call came over the radio, I started towards the Cherryvale area. Myself and another deputy, which had been Corporal Ricky Richards showed up about the same time. Corporal Boland and Deputy Kennedy along with EMS was there on scene when we arrived.

Q And what did you do once you arrived on the scene?

A My duty was I tried to keep Miss Green, Miss Mary

Green away so that they could get some information and secure the crime scene. She was extremely upset for obvious reasons, she was very distraught.

And then I maintained the outer perimeter of the -- of the crime scene.

Q And were you the person who completed an incident report?

A Yes. By the time we left, which I was on scene for several hours, and it was part of my duties to write the incident report in which I did.

Q Did you have occasion to talk to witnesses that day?

A I didn't interview any witnesses and I stayed primarily on the -- in one particular corner area of the crime scene, that was my assigned duty. I -- I attempted to speak to Miss Green, Miss Mary Green, but she was unable to give me anything.

The information that I collected for the report would have been from the investigators and the supervisor on scene, the individuals giving me that information.

I wasn't even certain of the victim's name until it was provided to me.

Q So for the purposes of your incident report, you were relying upon information provided from others?

A Yes.

Q Was Brandon Green still on scene when you arrived?

A Yes. EMS was on scene working on the victim when I arrived. They weren't there but for a moment or two and loaded him up and was gone.

Q That's all the questions I have.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILDER:

Q So you would have filled out the incident report?

A Yes, sir.

Q Okay. And you wrote in your handwriting, victim's aunt said that two men in a dark green Dodge Intrepid with silver long bottom and tinted windows followed them and the passenger shot the -- you wrote that.

A Yes, sir.

Q Okay. Who gave you that information?

A It would have come from one of the investigators or somebody on scene, one of the other officers on scene.

Q Could you give the jury an idea who?

A Actually I can't and I apologize for that. Being new to the department, I didn't know everybody on a first name basis as I do now and it was very dynamic situation, but it would have been from a law enforcement that I received that information.

Q Could you tell the jury who told you that it was a 220 to 250-pound black male with short afro hairstyle?

A The same individuals that I would have gotten the information from, that'd have been a general description, and if they had told me a low haircut or if they described that as -- that would have been my terminology, no offense by -- to anybody, but that would have been -- the low afro would have been my terminology.

If it would have been no braids or dreads or waves or anything, that would have been what I would have called it.

Q And that the age of the suspect was between 18 and 30.

A Correct. That would have been the information, it was a broad general -- at that particular time because I wasn't involved in the actual investigation of it, it was the initial information that would have been given and reported on to the incident report. I wasn't privy to any of the investigative information.

Q So you can't tell the jury which one it was that told you that had white T-shirt and black shorts on?

A No. And I wish -- I apologize that I didn't make note of which investigator or which officer on scene would have given me that information. They provided that. And at that time that's what I wrote in the incident report.

Q All right. Then a bolo was put out for a green Intrepid automobile at 6:44 am?

A I assume so, yes, sir, from the testimony I have heard.
Q And that at one point the dispatcher was told that there were three black males in a car that were responsible for this shooting?
A If that's what you have heard. With that type of crime scene there's so many individuals around. And while we do have a radio on, your focus and your concentration is what's going on around you at that moment, and what the other officers and people, and we had a large crowd, so I -- I cannot say for certain what came across. But if he has a -- radio logs, then that would be correct.
Q Now, what would it mean if they were looking for a Chevy Beretta, Jessica, Crown Ford and clear Pickens County. You heard that come across the radio at 6:43 am?
A I don't recall it coming across the radio and I'm not sure what relevance it would have had.
Q Or 797 Siera Echo Yankee, would that be a license tag?
A That sounds like it would be a license tag, yes.
Q So what they were doing was they were checking on a car to see if it had anything to do with the crime?
A That's very possible.
Q Okay. No other questions.
THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Now Officer Boland, if you're asked about radio transmissions and you are working the scene of a crime, do you necessarily know which event those radio transmissions are associated with?

A No. Because at the time we already had the scene secured, there would have been other radio -- other calls for service and other things going on within the county. Not only do we not necessarily pay it as close of attention to it, but there's other officers that are out doing other calls, and so any of the transmissions may or may not have anything to do with the call that we happen to be on, so...

Q Now, I'm going to show you this and ask if you can identify that.

A This would be the -- a copy of the incident report that was written that day, and it has my name across the bottom.

Q And Mr. Wilder a few moments ago was asking you about an afro haircut and a certain weight.

A Correct.

Q Is that on...

A Right. Right in here under a suspect box in that cross-through right there I had originally mistakenly put

the address of the victim, started putting the information down. I crossed that out. This was the description information that was given to me, and it's very broad ranged.

And it just simply -- and down here it shows black hair, short afro-style again, my terminology, no offense to anybody intended. A general height and weight and an age range.

Q Now, I'm going to ask you if you can identify that.

A This here is a page two of the same original incident report again with my signature across the bottom. It indicates that there was a second suspect and then the witness of Miss Mary Green.

Q Okay. So it's page two that has the second suspect.

A Correct.

Q Okay. Do you have any information about the suspect there?

A The only thing that was provided to me about a second suspect was a black male with dark clothing was the only thing that I have listed there.

MR. WILDER: No objection if he wants to admit it.

THE COURT: All right. Wait just a moment. Let him try his case, Mr. Wilder. No comments.

BY MR. CORBETT:

Q So if you're questioned about the short haircut, 220-pound individual, that's one suspect, but there's a second suspect on your report as well?

A Correct.

MR. CORBETT: That's all the questions I have.

THE COURT: Re-cross?

MR. WILDER: Your Honor, if they have the original report, I'd like to get it marked for identification.

THE COURT: All right. Unless there's some questions under the rules, the authentication rules, a copy serves as the original unless it's some question as to its authenticity. Do you have a copy, Mr. Corbett?

MR. CORBETT: Your Honor, let me see if I can get one that's not hole punched. Your Honor, my copy has internal office markings on it.

THE COURT: All right. We'll take care of that. It's duplicate to the same extent as an original unless there's a general question is raised as to the authenticity of the original, and that's under rule 103.

Go ahead and let the reporter mark the one that you have. We'll substitute the one for that. It will be marked as Defense Exhibit number -- what,

number six for identification.

(WHEREUPON, Defendant's Exhibit No. 6 was marked for identification only.)

THE COURT: Give it to the reporter, mark it Defendant's Exhibit six for identification.

MR. WILDER: Your Honor, it appears to be a two page report.

RECROSS-EXAMINATION

BY MR. WILDER:

Q Mrs. Boland, I'm just going to ask you, Defendant's six, that is the report that you signed, is it not, Mr. Corbett was asking you about?

A Yes, this is the same with the exception of the stamps and writing, yes.

Q Thank you. No other questions.

THE COURT: Redirect?

MR. CORBETT: Nothing further, Your Honor.

THE COURT: All right. Thank you. You may step down.

(Witness left the stand.)

THE COURT: All right. Counsel, come up.

(Whereupon a bench conference was held.)

THE COURT: All right. Ladies and gentlemen, we have reached the lunch hour and it is appropriate that we break for lunch at this time. We are going

to do so. And I'm going to allow you to go and get your lunch.

Again I would tell you over the lunch recess do not discuss the case with anyone, do not allow anyone to discuss it with you, and when you are re-assembling in the jury room, do not discuss it among yourselves.

You still have not heard all of the evidence of course that you will hear in connection with this matter and any discussion of the matter among yourselves would be premature.

We are going back into the main courtroom after lunch because the Veteran's Day festivities are concluded and we can go back in there where we will have more room and we will do that after lunch.

And I am going to ask you to please be back in the jury room at 2:15. We will be ready to start at that time. That's about an hour and 15 minutes. It should give everyone time to get lunch.

When you do return, Mr. Reynolds, I'm going to ask if you will serve as the foreman of this jury for me, please. If you will take the foreman's seat when you come back in. All right. Thank you. You are excused, free to go to lunch.

(Jury left the courtroom at 12:59 pm.)

THE COURT: I'm going to wait about two minutes, counsel, to give the jury an opportunity to clear the building before we recess.

(Whereupon the lunch recess was taken.)

THE COURT: Okay. All right. Back on the record with regard to the matter of the State versus Wayne Darnell Cooper. Mr. Cooper is present in the courtroom with his attorney, Mr. Wilder.

The State is present with Mr. Corbett. I understand all the jurors are back from lunch. Anything before we bring the jury in, Mr. Corbett?

MR. CORBETT: Nothing before the jury is brought in, Your Honor.

THE COURT: Mr. Wilder?

MR. WILDER: No, Your Honor.

THE COURT: All right. Bring the jury in, please.

(Jury entered the courtroom.)

THE COURT: All right. Thank you very much, ladies and gentlemen. And thank you for your promptness in being back, and we are now ready to proceed. Mr. Corbett, you may call your next witness.

MR. CORBETT: Thank you, Your Honor. The State would call Investigator Robert Skinner.

ROBERT SKINNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Skinner, good afternoon.

A Good afternoon.

Q Tell us, by whom are you employed?

A Sumter County Sheriff's Office.

Q And how long have you been with the sheriff's department?

A Approximately six and a half years.

Q And what do you currently do with the sheriff's department?

A Currently I'm a criminal investigator for investigative division.

Q Now, were you with the sheriff's department back on September of 2006?

A Yes, sir.

Q And were you investigating -- in investigations at that time?

A Yes, sir, I was.

Q Now I'm going to ask you to turn your attention to September 2nd, 2006. Cedar Hill Mobile Home Park. Did you have occasion to respond to that location?

A Yes, sir, I did.

Q Tell us how that came about.
A On that day I was the primary investigator on call. Dispatch gave me a phonecall, advised me I needed to respond to Cedar Hill Mobile Home Park in reference to a shooting. At that time we did not know the severity of the -- the case.

Responded. Met with the patrol deputies that had already secured the crime scene. They briefed me on what they had at that point in time. When I realized the severity of it and then I believe shortly after we were -- it was confirmed that it was a death, I made calls to my supervisors so they could respond as well.

Q Now, you told us you were the investigator on call?
A Yes, sir.
Q Okay. Tell us what that means.
A Investigator on call, we take turns, we're on rotation. Falls about every seven weeks or so that you become the investigator on call. We respond on weekends or after normal business hours if needed by patrol division to process or to handle certain situations.
Q Now, on this particular case you had testified that you responded to the scene as the investigator on call; correct?
A Yes, sir.
Q And then upon realizing the nature of the crime, you

contacted your superior officer?

A That is correct.

Q Did you take any other steps as part of the investigation?

A When crime scene responded, I informed them of what I had been informed, where the body had been laying and for them to process and photograph. And then after the other investigators responded, I became essentially a helper to patrol with crowd control.

Q Thank you, Investigator Skinner.

A Yes, sir.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Skinner, you go with Mr. Turner over to Fire Mountain?

A No, sir, I did not.

Q Did you talk to Mr. Rodney Green at 6:11 when he arrived at the scene of the crime?

A No, sir, I did not speak to him when he -- excuse me -- arrived on scene.

Q Did you observe a box of bullets close to the body of Brandon Green where he was lying on the--

A If you would show me the photograph, I do recall seeing an empty box.

Q Okay. So when you arrived, you remember seeing a box of bullets?
A An empty box, yes, sir.
Q And crime scene was secured and Mr. Mackessy got there and took pictures of whatever was there.
A That is correct.
Q All right. Now, your recollection of where you saw the box of bullets, would that have been about 50 feet away from where Brandon was?
A That part I do not recall. I want to say the best I can remember it was near where they told me his body had been laying.
Q Okay. What else do you recall seeing in the vicinity of Brandon where he was lying?
A I believe it was -- with the -- Brandon was already removed prior to my arrival.
Q Okay.
A Deputies, patrol deputies showed me where he had been, and there was I believe some articles of clothing, a shirt and possibly even medical gloves or some of the stuff EMS had brought with them.
Q Okay.

MR. WILDER: With the Court's permission, could you step down and look at this diagram?

THE COURT: Yes, sir.

BY MR. WILDER:

Q Mr. Skinner, could you show us, the jury, where the clothing was located in the trailer park that...

THE COURT: Speak up. Got to -- the Court's got to hear you and the--

THE WITNESS: If I'm not mistaken, the articles -- the body was gone, but the articles were in that proximity there.

BY MR. WILDER:

Q Up that road off the side?

A Right there near the corner right there on the edge, yes, sir.

Q All right. But you'd defer, wouldn't you, to whatever the photographs showed about where those things were located? I mean, whatever the picture Mr. Mackessy took was where he saw them; right?

A That would be correct, yes, sir.

Q All right. Because nobody moved them from the time you got there?

A No, sir.

Q All right. And when you come into this trailer park then you come in past the fire station, take a right, go around the curve, and then there's this road up to the right and that's where you say the clothing was located.

A Yes, sir.

THE COURT: Speak up.

THE WITNESS: Yes, sir. Proximity right there on the...

BY MR. WILDER:

Q Okay. All right. Thank you very much. Now you can take the stand again.

A (Complied).

Q Do you remember Ricky Richards coming there?

A Sir?

Q Do you remember Mr. Ricky Richards arriving on the scene that morning?

A I do believe I recall seeing him at the scene, yes, sir.

Q Okay. And he was talking to witnesses and trying to get information; wasn't he?

A I believe so.

Q Okay. Where is he today?

A There he is there.

Q So he's in the courtroom?

A Yes, sir.

Q Right here.

A That is correct.

Q His arm around Mrs. Herod?

A Yes, sir.

Q I won't tell Perry about that. Okay. So he's in the

courtroom present here to testify.

A Yes, sir.

Q In response to a subpoena. You don't know why he is here?

A That's correct.

Q But he is here.

A Okay.

Q All right. Now, what time did he arrive on the scene?

A The -- Richards or myself.

Q The -- Mr. Richards.

A That I could not tell you.

Q You weren't keeping track of that?

A No, sir. There would be on the crime scene log.

Q Okay. And whatever the crime scene log says is accurate; isn't it?

A I wasn't in control of the crime scene log, but it should be, yes, sir.

Q Okay. All right. Now, did you search Mr. Brandon Green, go through his pockets?

A No, sir, he was not there when I arrived.

Q Okay. Did you go through the pockets of any of the clothing--

A No, sir, I did not.

MR. WILDER: All right. No other questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Skinner, you were asked if you saw a box of bullets. Did you see any bullets on the scene?

A No, sir, I believed it was an empty box with the cartridge -- not -- excuse me -- not cartridge, but the cardboard container or wrapper.

MR. CORBETT: That's all the questions that I have, Your Honor.

THE COURT: Re-cross?

RECROSS-EXAMINATION

BY MR. WILDER:

Q Did you secure that box for fingerprint analysis?

A The whole -- the entire scene was protected until Investigator Mackessy responded to process it.

Q Thank you.

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

(Witness left the stand.)

MR. CORBETT: Your Honor, may I step out for 30 seconds to grab a notebook?

THE COURT: Yes, sir.

MR. CORBETT: It shouldn't take me more than 30 seconds.

(Whereupon there was a pause.)

THE COURT: All right. Call your next witness.

MR. CORBETT: Sorry, Judge, I'm not ashamed. I ran up and down the steps.

THE COURT: Take your time, get your breath.

MR. CORBETT: Your Honor, the State would call Ricky Richards.

THE COURT: All right. Come around, Mr. Richards.

RICKY RICHARDS, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Deputy Richards, good afternoon.

A How are you doing?

Q Tell us, by whom are you employed?

A Right now I'm with the Clarendon County Sheriff's Office.

Q And prior to being with the Clarendon County Sheriff's Department, where were you employed?

A I was with Sumter County Sheriff's Office.

Q And how long were you with the Sumter County Sheriff's Department?

A A little bit -- four years, four and a half years, somewhere right around there.

Q And how long have you been with the Clarendon County Sheriff's Department?
A A little over two now.
Q Now investigator -- excuse me, Deputy Richards, when you were with the Sumter County Sheriff's Department, what did you do with the Sumter County Sheriff's Department?
A I was a corporal on patrol, just normal patrol, answering calls, traffic duties, stuff like that.
Q Now, Deputy Richards, did you have occasion to respond to a call at the early morning hours of September 2nd at Cedar Hill Mobile Home Park?
A I don't remember the date exactly, but yes, sir.
Q Okay. If you would please tell us how you came about ending up on that call.
A Well, the area of Cherryvale is actually at that time was my patrol area. I actually had a funeral to go to later that day. I was just in route to my area just like every other morning. Call came out that there was a shooting. I believe I was probably the second, third person on the scene.
Q And what did you observe when you arrived on the scene?
A I observed the victim who was on the ground. The only other deputy I can remember that was there was Erin Boland at the time. I can't remember who the third person

was. Basically what I started doing was trying to tape off the scene, try to secure.

Once that's done, try to ask questions if there are any witnesses. Just normal procedure, you know, what we do on a scene.

Q Now, while you were on the scene, was there any information that you dispatched or put out regarding this particular offense, this incident?

A Yes, sir. I had asked just some people, normal scene, if anything happens, especially anything bad, usually there's a crowd that draws. What I usually do and still do is ask people around, did you see anything, any vehicles out of place, to try to get any information because it was a freshly committed crime, to try to get at least some type of idea of the vehicle, the person, which direction. And I did bolo out a vehicle description at first.

Q And tell us how that came about.

A Just in asking some of the folks that were around they had said they saw a two-toned dark over silver vehicle leaving the area. And just in my mind and just being familiar with cars, I kind of -- what I did was is I thought it was a certain car who matched and I said could this be the vehicle, and a lot of people said it looked like it, it was a larger car.

And as a possibility, I gave out I believe it was a the square-bodied Crown Vic Grand Marquis type that was blue over silver at first.

Q Did that ultimately turn out to be the vehicle you were looking for?

A No.

Q Now, you had indicated that you knew of a car that roughly fit that description.

A Yeah.

Q Is that from working patrol in that area?

A Just from working the area, you know, being involved with the people, just remembering vehicles, it's just... I can't remember my name but I usually try to remember cars and people.

Q So you initially put out that box shade -- two-toned vehicle --

A Yes.

Q -- bolo; is that correct?

A Yes.

Q And then that was later changed?

A Yeah, I -- it was a short time after I had spoken to someone else, and right now I can't recall who exactly that was, it was -- you know, there was a lot of family, a lot of, you know, people upset.

It had come out that it was a green -- a green over

silver at one point and that it -- you know, they believed it had turned around in a yard and then that came out that it was a -- I can't remember what type of car it is now -- I can't remember exactly what vehicle. I know it ended up being a green over silver vehicle.

MR. CORBETT: One moment please, Your Honor. That's all the questions I have, Your Honor.

THE COURT: Cross-examination, Mr. Wilder.

CROSS-EXAMINATION

BY MR. WILDER:

Q Do you have available to you or did you look at a crime log before you got on the stand today?

A No, sir, I haven't looked at a -- anything about the case since I believe the case happened as far as I recall.

Q Okay. Now, do you recall Rodney Green being on the scene at 6:11?

A I recall him being at the scene eventually, yes.

Q Okay. And you got information from him as to what kind of car was involved; didn't you?

A At one point, yes, sir, that was -- I can't remember exactly the time, but I believe you right, yes.

Q Okay. So Rodney Green told you that there was a green Intrepid?

A All I remember is a green over silver vehicle. Intrepid sounds like, yeah, that could have been the

vehicle now.
Q Sounds like it.
A That sounds like the vehicle that they eventually found what it was.
Q So if I told you that your voice came across the air saying that -- that you had been told that a green Intrepid, Dodge Intrepid was involved in this, you wouldn't dispute that; would you?
A Not later on, no. At first, I know I -- I did a different vehicle.
Q You did a different vehicle at first?
A At first.
Q All right. Now, did you ever talk that morning to Wanda Rogers?
A Possibly.
Q Well, would you have put that on the crime log?
A I don't believe I was in charge of the crime log as far as I remember.
Q Did you take notes?
A I probably did then.
Q Where are your notes?
A I didn't keep them. I don't normally keep every note I write.
Q Did you throw away your notes on this case?
A No, I wouldn't say I threw them away, I just say I

don't have them.

Q Where are they?

A I don't know. I don't know where my eighth grade report card is either. I mean, I don't keep every piece of paper I have.

Q You think you may have talked to Wanda Rogers about this case, but you don't have any notes or any information --

A There's a good chance I do.

Q -- of where that might have occurred?

A Yes, sir.

Q Where did you talk to Wanda Rogers?

A It could have been in the yard, the road, it could have been anywhere.

Q You know you talked to Rodney Green, though?

A I know for a fact I talked to Rodney.

Q And you know for a fact that the information about the green Intrepid came from Rodney Green?

A At one point, yes.

Q Now, at one point you radioed the dispatcher and you said the early bolo was misinformation, it's going to be a green Intrepid with a white bottom, a light bottom. Do you recall saying that to the dispatcher?

A I remember a green vehicle with a silver bottom.

Q Let me see if I can ask you to identify your voice.

(Tape played.)
Q Is that your voice?
A Sounds like me.
Q Now, before that at 6:29 you said that there would be a vehicle occupied by three black males. Do you recall saying that?
A Not three, but possibly could have.
Q And where did that information come from?
A From one of the witnesses I'm pretty sure.
Q Rodney Green?
A Either him or I believe I spoke to his mother. I don't know her name.
Q Okay. So let's see. We'd ask -- answer if this is your voice.
(Tape played.)
Q All right. Now, this is very important, sir. Can you tell me--
THE COURT: All right. Don't comment. Just ask the questions.
BY MR. WILDER:
Q Can you tell me if that information about three black males being involved came from Rodney Green?
A No, I can't. I also can tell you that was about a square bodied Impala that a few minutes later I said was misinformation with the three people in it.

Q Where did the information come from? You weren't a witness.

A No, I wasn't a witness, but I'm -- that's my job is to ask people around.

Q Okay. Who did you ask?

A Well, I don't know. There was a bunch of people there.

Q And whatever notes you took, you destroyed them?

A I never said I destroyed them.

Q Well, you don't have them.

A I don't have them right now, no.

Q Well, can you go get them?

A No, I probably couldn't. I know--

Q Have you under subpoena, sir, and I'd like you to be available during my case.

A And I'm here.

THE COURT: All right. We'll take care of that. You just ask the questions, Mr. Wilder.

MR. WILDER: All right.

THE COURT: And you answer one at a time and not argue with eachother.

BY MR. WILDER:

Q Okay. So you think you can go find those notes?

A I never said I think I can go find them. And to be totally honest, I have taken a lot of notes in seven

years. I don't have every note I took.
Q Well, would you look for me when you leave here?
A I'd be glad to go look if that would make you feel better.
Q Thank you, sir. No other questions.
THE COURT: Mr. Corbett?

REDIRECT EXAMINATION

BY MR. CORBETT:
Q Officer Richards, so you arrived on the scene that morning; is that correct?
A Yes, sir.
Q And how would you describe in terms of were other people present?
A As far as where?
Q Not where, but did other people gather up?
A Yes, within a short time.
Q Now, you weren't one of the investigators on the scene?
A No, sir.
Q Okay. And when you first arrived, you were just -- soon as you got there started asking around?
A Normal procedure has been since day one you get to a scene, you try to secure the scene. You put up your crime scene tape, make sure no one disturbs what evidence is there and then if you ask questions, you ask questions of

the people standing around.
Q So if someone were to give you information that they got from somebody else, you wouldn't necessarily know that?
A There ain't no way you could know that.
Q Now, your voice on the radio, I believe the second one that was played was the square body car; is that correct?
A Yeah, the second one was played should have been the first thing I said.
Q All right. And then that was the car that you knew frequented the area?
A Yes, sir.
Q Okay. And then subsequently -- and that was the first -- first transmission we listened to was you correcting that?
A Yeah, the first one was the correction of calling me jumping the gun, whatever you want to call it, it's -- just familiar with the type of vehicle being there, got a call, you know, that I got information that was a two-toned vehicle, that's what I put out to stop the vehicle if that one was around.
Q And then a short time later--
A Yeah. It -- I don't remember exactly what time, but yeah, a short time later.

Q Now, Deputy Richards, did you check any other cars that day or go to any other locations trying to gather any information to pass along?
A No, sir, I stayed pretty much around the scene. The -- the victim in the case has a lot of family around, there was a lot of people upset. We tried to stay there just to -- if nothing else to keep, you know, keep people as, you know, at a minimum. It's a bad enough situation, just to try to keep things as calm as possible.
Q That's all the questions that I have.

THE COURT: Re-cross, Mr.--

MR. WILDER: Your Honor, I don't have any other questions at this time. I would like the witness to stay under a subpoena. I have served him previously with--

THE COURT: All right. You are subject to -- still subject to the subpoena that has been served on you.

THE WITNESS: Yes, sir. If I look for notes--

THE COURT: All right. Whoa. Whoa. Whoa. You're excused.

THE WITNESS: Thank you.

(Witness left the stand.)

THE COURT: Still subject to subpoena, of course.

THE WITNESS: Yes, sir.

THE COURT: All right. Go ahead, Mr. Corbett. Call your next witness.

MR. CORBETT: Thank you, Your Honor. The State calls Cindy Pierson.

CINDY PIERSON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Mrs. Pierson, good afternoon.

A Good afternoon.

Q Mrs. Pierson, if you would please tell us by whom are you employed?

A Sumter County Sheriff's Office.

Q And how long have you been with the Sumter County Sheriff's Office?

A Ten years.

Q And tell us what -- kind of walk us through a little bit of your career with the sheriff's department in terms of what you have done there and what your current duties are.

A When I first started in '98, I was a secretary. In April of '99 I moved into the evidence room and took over that position.

As I was in there, I later become more involved with

the crime scene, so now I'm over the evidence room and I also assist -- assist with crime scene.

Q And Mrs. Pierson, I'm going to ask you to turn your attention to September 2nd of 2006. Did you have occasion to respond to the Cedar Hill Mobile Home Park?

A Yes, sir.

Q Okay. Tell us a little bit about how that came about and kind of start the process of walking us through what you do when you get there.

A I received a call from dispatch approximately 6:50, 7:00 that morning, responded out to Cedar Hill Mobile Home Park. Once I arrived, myself and Sergeant Mackessy spoke with Investigator Skinner. He briefed us of what he had seen or what was at the scene and the areas of where he suspected stuff.

Q What was your initial impression at the crime scene?

A My initial impression, it was roped off, the scene was secure. There was no one around the scene or excuse me inside of the scene. There was people standing to the outside, but as far as the scene being secured, it was very secure.

Q Okay. And what did you observe when you began to work the scene there?

A There was some clothing that was laying on the side of the road or drive -- kind of to the side, not in the

roadway but to the side of the road, and there was a -- a 22 high velocity box that was there, there was the top of the box and the bottom of the box.

Q Were there any rounds near it?

A No, sir.

Q Okay. Any weapons at the scene?

A No, sir.

Q Now, the box that you just mentioned, do you know what connection if any it has to this incident?

A I have no idea if it had any connection at all to this incident. It was just in the vicinity of the actual crime scene itself.

Q What was its condition?

A It looked to be ran over.

Q Now Mrs. Pierson, I'm going to show you these two photos and ask if you can identify those.

A Yes, sir, those were the pictures that I took looking into the crime scene area.

Q And when were these pictures taken?

A September 2nd, 2006.

MR. WILDER: No objection.

THE COURT: Being offered?

MR. CORBETT: Yes, sir, Your Honor, we offer these.

THE COURT: Without objection?

MR. WILDER: No objection.

THE COURT: Being offered into evidence and admitted into evidence as State's exhibit two without objection.

(WHEREUPON, State's Exhibit 2 was admitted into evidence.)

BY MR. CORBETT:

Q I'm going to ask you to identify this for us.

A Yes, that -- those are the markers that we place. When we go to a crime scene, we mark our evidence, so when we do refer to a picture we can tell what item was what.

This picture actually includes marker one, two, three, one being a -- looks to be a bottom of a box. Two would be the Remington top of the box or -- let me check that. And item three was where the body was located along with clothing.

Q And I'm going to ask you...

MR. WILDER: No objection.

MR. CORBETT: Your Honor, we'd offer this as State's number three.

THE COURT: Admitted into evidence without objection as state's three.

(WHEREUPON, State's Exhibit 3 was admitted into evidence.)

BY MR. CORBETT:

Q And look at that for us if you would, please, and tell us what that is.

A This was marker number three. This is the clothing belonging to the victim.

Q And that's a picture you took that day?

A Yes, sir, it is.

MR. WILDER: No objection.

MR. CORBETT: Your Honor, we would offer these as State's number four.

THE COURT: Admitted into evidence as State's number four without objection.

(WHEREUPON, State's Exhibit 4 was admitted into evidence.)

BY MR. CORBETT:

Q I'm going to show you this photo and ask you if you can tell us what that is.

A That's marker two. That is the 22 high velocity Remington box that was found at the scene.

MR. WILDER: No objection.

THE COURT: All right. Being offered into evidence as State's number five and admitted without objection.

(WHEREUPON, State's Exhibit 5 was admitted into evidence.)

BY MR. CORBETT:

Q And take a look at this one, please.
A It's marker one and two. One is the bottom of the box and two is the Remington top.
MR. WILDER: No objection.
THE COURT: State's number six admitted into evidence without objection.
(WHEREUPON, State's Exhibit 6 was admitted into evidence.)
BY MR. CORBETT:
Q Now Mrs. Pierson, was there anything else on the scene that you photographed or any other items that you collected?
A No, sir.
Q Now Mrs. Pierson, the victim, was he present when you arrived?
A No, sir, he wasn't. He had already been taken by EMS.
MR. CORBETT: Your Honor, that's all the questions I have of this witness at this time, but we may need to recall her later in our case.
THE COURT: All right. Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:
Q Well, Mrs. Pierson, you also took pictures of the

general vicinity; didn't you?

A Yes, sir.

Q Okay. Where -- where is that? That in the package? Show you this one. Took that picture?

A Yes, sir.

Q Do you recall taking other pictures like of the neighborhood or the surrounding area?

A Yes, sir.

Q Are they all here on this table?

A All the pictures I took should be in Captain Turner's file.

Q Do you mind? Okay. This one appears to be a picture of the trailer in the vicinity; doesn't it?

A Yes, sir.

Q And this one also is a picture of the road?

A Yes, sir.

Q All right. Now, you got one of the house here, right?

A Excuse me?

Q Which house is this doublewide? Why did you take a picture of that?

A To show -- just showing a reference.

Q Okay. All right. So now those are the -- the pictures you took of the neighborhood, that's all you took?

A Yes, sir.
Q Okay. Now, did -- did you take any pictures of any brush piles out there where somebody freshly cut any brush?
A No, sir, I did not.
Q Didn't see any; did you?
A Don't recall seeing any.
Q Okay. Now, also the -- and in connection with this case, you -- you received some evidence taken by Deputy Browder which was taken off the victim at Tuomey Hospital?
A Yes, sir, I did.
Q Tell the jury what you received from Investigator Browder.
A I received one bag with victim's clothing removed and bagged by the ER. I received a sandwich bag with a small amount of loose change, a lighter, and what appeared to be a baggy of crack cocaine.
Q A baggy of crack cocaine. All right. Now, did you also receive some swabs from his hands?
A From Brandon Green?
Q Yeah.
A Yes, sir, I done GSR kit on him.
Q Okay. And did you send that off to Sled?
A Yes, sir, I did.
Q What's the purpose of a GSR kit?

A To see if the victim or the suspect would have any residue on their hands.

Q From a gun --

A Yes, sir.

Q -- being fired. Now, at some point did you receive residue off of a car that they went and got from Derrick Cooper?

A I did not do that. Sergeant Mackessy processed that.

Q But you're the evidence custodian, so it would have come through your room; wouldn't it?

A Well, we -- he's also an evidence custodian, too, and he can sign in evidence just as well as I can.

Q So did you have occasion to take the GSR kit to Sled?

A Yes, sir.

Q You did that.

A Yes, sir.

Q At the same time that you transported that GSR kit to Sled and Brandon Green, did you transport another GSR kit to Sled that came from Derrick Cooper's car?

A Yes, sir.

Q All right. So you tested -- or there were tests done on the -- both the car and the victim that they say was involved in this; is that correct?

A Yes, sir.

Q All right. Now, you're not the person that actually

runs those tests. Those tests were run by the people at Sled?

A That's correct.

Q And you're not the expert that actually does the examination, whatever it is, I don't even know what it is.

A No, sir.

Q So the expert has to come testify as to what the results were; correct?

A Excuse me. Yes, sir.

Q Okay. Now, you observed, however, that the victim's outer shirt, you found transfer from the bullet around the bullet hole?

A No, sir, I believe Sergeant Mackessy examined that.

Q Okay. So this -- that wasn't you that examined that.

A That's correct.

Q Now, you observed that the EMS people ran over clothes?

A It looked to be -- the clothes looked to be ran over. Now, who ran them over, I could not tell you that because I was not there at that time.

Q And EMS people may have also run over the cartridge box?

A Possibility.

Q Possibility.

A I cannot...

Q And you send the cartridge box off for examination for fingerprints or was that done?
A No, sir, that was not done.
Q So nobody looked at the cartridge box for fingerprints as far as you know?
A That's correct.
Q Now, did they ever send you out to take pictures of Wanda's trailer?
A No, sir.
Q And you heard Wanda Rogers talk about how she could see out of the front window of her trailer all the way around to the fire department which is back over at an angle. You heard her testify to--

MR. CORBETT: Objection, Your Honor.

THE COURT: Yes. Objection sustained.

BY MR. WILDER:
Q Let me ask it this way. You didn't take the picture I'm holding up for Defendant's ID Number one; did you?
A No, sir.
Q Okay. All right. And nobody from law enforcement asked you to take any pictures of her trailer; did they?
A No, sir.
Q Thank you.

MR. WILDER: No other questions.

THE COURT: All right. Redirect?

MR. CORBETT: Your Honor, may I confer with defense counsel for a moment?

THE COURT: Yes.

(Whereupon counsel was conferring.)

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Now Mrs. Pierson, I'm going to hand these to you. I believe Mr. Wilder had referred to them a moment ago. And he asked you why you had taken those pictures. What was your response?

A It was a -- just a reference shot of from where the end of the roadway was to where the actual crime scene occurred.

Q So just some overall view?

A Just an overall view of the -- that general area.

MR. CORBETT: Your Honor, if we may, we are going to offer these into evidence. There's four separate sheets of -- three of them have two photographs or two of them have two photographs, one has a placard on it and one photograph and then one sheet is a single photograph.

THE COURT: Want to offer them as one exhibit or four exhibits?

MR. CORBETT: Your Honor, I think for simplicity if I could offer them separately.

THE COURT: All right. Any objection, Mr. Wilder?

MR. WILDER: No, Your Honor.

THE COURT: All right. Be admitted into evidence as State's number seven, eight, nine and 10.

(WHEREUPON, State's Exhibits 7, 8, 9, 10 were admitted into evidence.)

MR. CORBETT: Your Honor, may defense counsel and I approach?

THE COURT: Yes.

(Whereupon a bench conference was held.)

BY MR. CORBETT:

Q Now, Mrs. Pierson --

A Yes, sir.

Q -- let me go ahead and ask you about the GSR that y'all had talked about briefly. What was your involvement with obtaining the GS -- first of all, tell me what GSR is and tell me what was your involvement in obtaining any tests in this particular case.

A It's a gunshot residue kit.

Q Okay. And tell us what is it that you're looking for in that. Any medical (sic) part -- particles they found on the hands.

Q Okay. And what are those commonly associated with?

A As in firing a weapon.

Q Okay. Now, did you take the GSR samples in this particular case?
A Yes, I did.
Q Okay. Who did you take or what or who did you take those from?
A Brandon Green.
Q Now, let me ask you, was this separate and apart from the morning you were doing the crime scene work?
A Yes, sir, this was done on 9-3-06.
Q And tell us a little bit about how you came to take those samples.
A The body was sent to Newberry for an autopsy. Once myself and Sergeant Mackessy arrived at Newberry, I then went in and we GSR'd his hands for the residue.
Q Now, tell me about the condition of or Brandon Green or particularly his hands at the time you went to do the test.
A His hands were bagged.
Q That--
A Once--
Q Is that normal procedure?
A Yes, it is.
Q All right. Tell us a little bit about how that comes about.
A If someone involved in that type of -- if we can't

GS -- do the gunshot residue right away, if it's -- if the victim is deceased, we'll bag their hands so nothing can transfer.

Q Okay. So when you got to Newberry, what -- what was the condition of his hands?

A His hands were bagged.

Q Okay. And what did you do?

A Cut the bagging off of his hands and then we proceeded to do the GSR.

Q Okay. Now, when you say do GSR, tell me what that means.

A It's the gunshot residue kit. You have -- you swab the hands, there's also like a magnet that you dot the hand which removes any particle from -- it picks up the medical (sic) particles on the hand.

You do a controlled swab and then you also would do a -- another swab using nitric acid and swab the palm of the hand and the back of the hand.

Once we do it, we take them and secure them into a kit, seal it up, and we send it to Sled for further testing.

Q Now, did you test both hands?

A Yes, I did.

Q Okay. And you referenced this kit. Is it something of self-contained situation?

A Yes, sir, it is.
Q Okay. And what did you do with the samples after you took them?
A After I took the samples, I placed them back into the kit, seal it up, and it's in my custody until I send it to Sled.
Q Mrs. Pierson, if you would take a look at that item and tell me if you could identify that, please.
A Yes, sir. This is the GSR kit that was performed on Brandon Green which has been sent to Sled for analysis.
Q Now, when you send it to Sled, is it sealed?
A Yes, it is. When I send it to Sled, this red tape right here, it's placed down the middle. And as you can see, it was initialed and sealed.
Q And it appears to be some yellow tape on it?
A That tape is placed there by Sled after they analyze it.

MR. CORBETT: Your Honor, at this time we would offer the Brandon Green, the gunshot residue kit, for identification.

THE COURT: All right. State's number 11 for identification.

(WHEREUPON, State's Exhibit No. 11 was marked for identification only.)

MR. CORBETT: Your Honor, I believe that's all

the questions I have of this witness at this time, but we may need to recall her.

THE COURT: All right. Subject to recall subject to rule 611C or 611D. Cross-examination again, re-cross, Mr. Wilder?

RECROSS-EXAMINATION

BY MR. WILDER:

Q All right. At the same time that you took that over to Sled, did you take a GSR kit from the front door of a 1993 Chrysler Concord over there?

A Let me look back. Yes, sir.

Q And the results all came back as far as Sled lab number L0613384, report by Ila M Simmons?

A I would not have the report.

Q Do you have the number?

A It's listed on that GSR kit.

Q Okay. Could you read the number on there, please, the L0613384.

A Yes, sir.

Q Okay. So where is the packet that you had with respect to 1993 Chrysler Concord GSR kit?

A It should be in our evidence.

Q Your evidence.

A Yes, sir.

MR. WILDER: I'd like for the State to produce

that so I can have it marked at this time for identification, Your Honor.

THE COURT: All right.

BY MR. WILDER:

Q Number 11 and number 12L0611 -- 13384, those are the two GSR kits you transported to Sled?

A Yes, sir.

Q Okay.

MR. WILDER: I'd like those marked for identification, Your Honor.

THE COURT: Defendant's numbers seven, eight for identification. Is that correct, madam reporter? All right. There's two of them, so take them back, Mr. Wilder. Let her mark them as Defendant's seven and eight for identification.

(WHEREUPON, Defendant's Exhibits Nos. 7, 8 were marked for identification only.)

BY MR. WILDER:

Q And I believe I just heard that Mrs. Simmons is present in the courtroom.

A Miss who?

Q Mrs. Simmons, Ila Simmons. No other questions.

THE COURT: All right. All right. Thank you, Mrs. Pierson. You may step down.

THE WITNESS: Thank you.

(Witness left the stand.)

THE COURT: Come up just a minute, counsel.

(Whereupon a bench conference was held.)

THE COURT: All right, ladies and gentlemen. Before we call the next witness, we are going to take a 10 minute recess at this time. It will be a short recess. We will be ready to go forward in just a few minutes.

Please do not discuss the case among yourselves. We'll be ready to go forward in about 10 minutes. Thank you very much. You may go to your jury room.

(Jury left the courtroom at 3:12 pm.)

(Whereupon a brief recess was had.)

THE COURT: All right. Back on the record with regard to the matter with regard to the matter of State versus Wayne Cooper, 07-GS-43-277. The defendant is present with his counsel. The State is present and represented by Mr. Corbett. Anything before we bring the jury in, Mr. Corbett?

MR. CORBETT: Your Honor, nothing from the State. I will advise the Court it's a little bit out of the ordinary, I'm going to call Mrs. Simmons from SLED a little bit out of order. I will continue to mark my exhibits for identification and then complete the chain afterward.

THE COURT: It's up to you however you wish to present it, Mr. Corbett. Anything before we bring the jury in, Mr. Wilder?

MR. WILDER: No objection and I -- nothing.

THE COURT: All right. Bring the jury in, please.

(Jury entered the courtroom at 3:24 pm.)

THE COURT: All right. Thank you very much, ladies and gentlemen, and we are now ready to proceed. Mr. Corbett, you may call your next witness.

MR. CORBETT: Thank you, Your Honor. The State -- the State calls Ila simmons.

THE COURT: All right. Mrs. Simmons, come around, please.

ILA SIMMONS, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Mrs. Simmons, good afternoon.

A Good afternoon.

Q If you would, please, tell us by whom are you employed?

A The South Carolina Law Enforcement Division in the forensics laboratory trace evidence department.

Q And how long have you been with Sled?
A Almost nine years.
Q And if you would please tell us a little bit about your training and education in that particular field.
A I received a bachelor's of science degree in chemistry from Columbia college. After completing my degree I went to Sled and began working there. My first three years at Sled I worked with a court-qualified and certified trace evidence examiner who taught me how to collect, preserve, and analyze trace evidence.

I had to take written, oral, and practical examinations and pass all of them. And upon that completion of that, I was certified as a trace evidence examiner for Sled.

Q All right.

MR. WILDER: To save time, I will stipulate that she is an expert, qualified to be expert witness in a field of forensic science. She...

THE COURT: All right. You offer her as an expert in what field, Mr...

BY MR. CORBETT:
Q Mrs. Simmons, tell us what is considered your field of expertise.
A Trace evidence.

MR. WILDER: We'll stipulate.

THE COURT: All right. All right. The Court will qualify the witness as an expert in the field of trace evidence. Ladies and gentlemen of the jury, let me tell you what that means.

Ordinarily if the witness is not testifying as an expert, the witness's testimony is limited to those opinions or inferences which are rationally based on the perception of the witness are helpful to a clearer understanding of the witness's testimony or to the determination of a fact in issue and do not require special knowledge, skill, experience or training.

However, if scientific, technical or other specialized knowledge will assist the trier of fact, and that's you in this case, to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education can testify in the form of an opinion.

So basically the difference between a non-expert witness and an expert witness is that an expert witness is allowed to give an opinion. And I have qualified Mrs. Simmons as an expert in the field of trace evidence analysis. All right. Mr. Corbett, you may proceed.

MR. CORBETT: Thank you, Your Honor.

BY MR. CORBETT:

Q Mrs. Simmons, I'm going to show you that and ask if you can tell us what that is.

A Yes, sir. This was a gunshot residue kit that was submitted to our laboratory. It is marked with our laboratory identification number, the item number, and the date that it was opened and my initials.

Q And if you would please tell us a little bit about the gunshot residue kit, what it is you do and what you're looking for.

A Gunshot residue is a mixture of microscopic chemicals that come out of a gun when it's fired. The chemicals are contained within the primer of the cartridge when it's placed in the gun.

When the hammer falls, the firing pin strikes the primer, a small spark is made. This spark is sent into the gunpowder, the gunpowder begins to burn, it builds up pressure and a projectile or bullet is pressed outward out of the muzzle of the gun and eventually strikes a target.

These chemicals come out along with the bullet. The chemicals are very light, they are the consistency of flour. They can get on anything in very close proximity to the muzzle of the weapon when it was fired. Some of the gunshot residue can also wrap back around and get on

the hands of someone firing a weapon.

A gunshot residue kit is comprised of two components. First are particle lifts which are double-sided sticky tape with a handle that are taken over the area of a -- of a hand of someone who may have been firing a gun.

A sample is taken from the palm of the right hand, the back of the right hand. A sample is also taken from the palm of the left hand and another sample from the back of the left hand.

If the -- the kit is completed by using cotton swabs. Cotton swabs are treated with 5 percent nitric acid which is a very dilute acid and they are rubbed across the same areas of the hands and a control swab is collected.

Q Now, on this particular instance did you have occasion to test the contents of that kit?

A Yes, sir, I did.

Q And was it sealed and secure when you received it?

A Yes, sir, it was.

Q Okay.

THE COURT: Just for the record, I don't believe that particular kit has been identified. It's got an ID number on it. Let's put that in the record so we know what we are talking about.

MR. CORBETT: What's been marked for identification as State's number 11.

THE COURT: Okay.

BY MR. CORBETT:

Q And do your records indicate the subject that that test kit came from?

A Yes, sir, it was Brandon Green.

Q Okay. And did you have occasion to test that for gunshot residue?

A Yes, sir, I did.

Q Okay. If you would please tell us the results of your tests.

A No gunshot residue was detected on the areas of the hand that were processed, the right palm, the back of the right hand, the left palm or the back of the left hand.

Q Now, I'm going to show you a copy of this document and ask if you can identify that.

A Yes, sir. When we complete our analysis, we prepare a formal report that is sent back to the -- the head investigator of the case, and this is a copy of my report that was given to the head investigator in the case.

Q And is that an identical copy of the report that you prepared?

A Yes, sir, it is.

MR. WILDER: No objection.

MR. CORBETT: Your Honor, we would offer this as State's Exhibit 12.

THE COURT: State's Exhibit number 12 is admitted into evidence without objection.

(WHEREUPON, State's Exhibit 12 was admitted into evidence.)

BY MR. CORBETT:

Q Now, the envelope here, upon your completion of the test, what do you do with that?

A We replace the particle lifts back into the container. The swabs are consumed in analysis because when they come in, we treat them with an acid and they're -- they basically dissolve into the acid.

So they cannot be returned. But the particle lifts are placed back in here, it is sealed and returned to the agency submitting the kit.

MR. CORBETT: Your Honor, at this time the State would move what was previously been marked as number 11 for identification into evidence.

THE COURT: Any objection?

MR. WILDER: No objection.

THE COURT: All right. Be admitted into evidence as State's number 11 without objection. Have the reporter take the ID marking off of it, please.

(WHEREUPON, State's Exhibit 11 was admitted into evidence.)

BY MR. CORBETT:

Q Now, I'm going to -- let's go through this one more time. Hand you that and ask if you can identify that.

A Yes, sir. This was also submitted. It's a -- this is what I was talking about when I said a particle lift with a handle and a vial. This was also submitted to be analyzed for the presence of gunshot residue.

Q And are you able to tell--

THE COURT: Tell her what she's talking about, how is it identified.

BY MR. CORBETT:

Q All right.

A It is identified because it has our--

THE COURT: No, the Court's identification.

THE WITNESS: I'm sorry.

MR. CORBETT: Your Honor, it's actually marked for identification by the defense.

THE COURT: All right. That's fine.

MR. CORBETT: State does intend to offer it.

THE COURT: All right. But just so we'll know what she's talking about, it's the exhibit that was marked by defense as Defendant's Exhibit number what?

THE WITNESS: Seven.

MR. CORBETT: Seven.

THE COURT: Seven for identification. Okay. Go

ahead.

BY MR. CORBETT:

Q Now, do your records indicate where that test kit came from?

A Yes, sir. I just want to make sure that I have the right item number. It was said to have been taken from the right rear door of a 1993 Chrysler Concord and that is also written on the particle lift or it's typed out on a sticky -- on a sticker and placed on the particle lift.

Q And when this was received by you, was it securely sealed?

A Yes, sir, it was.

Q All right. Now, this plastic packaging over it, what are we looking at there?

A That is just a package. It was also inside an envelope when it was delivered to Sled. That's just the securing package.

MR. CORBETT: Your Honor, we would offer this for identification as State's Number 13.

THE COURT: Identification or in evidence?

MR. CORBETT: May I confer with defense counsel a moment?

THE COURT: Yes.

MR. WILDER: No objection.

MR. CORBETT: Your Honor, we will offer it into

evidence as State's number 13.

THE COURT: All right. State's number 13, formerly defense number seven for ID, but it will be marked as State's number 13 in evidence without objection.

(WHEREUPON, State's Exhibit 13 - was defense 7 for ID was admitted into evidence.)

BY MR. CORBETT:

Q Mrs. Simmons, I am going to hand you what has previously been marked for identification State's number eight and ask if you can identify that.

A Yes, sir. This is also a particle lift that was submitted to the laboratory for gunshot residue analysis.

Q And do your records indicate where that came from, that sample?

A Yes, sir. It came from the right front door of a 1993 Chrysler Concord, and that is also on a sticker on the particle lift as well.

MR. WILDER: No objection.

MR. CORBETT: Your Honor, we would offer this as State's number 14.

THE COURT: Admitted into evidence as State's number 14, that is the exhibit previously marked as Defendant's No. eight for ID is admitted into evidence as State's number 14 without objection.

(WHEREUPON, State's Exhibit 14, was defense 8 ID was admitted into evidence.)

BY MR. CORBETT:

Q Mrs. Simmons, what were the results of the gunshot residue test for items 13 and 14 from the car door?

A There was no gunshot residue found on either sample.

Q Now, Mrs. Simmons, if you would please tell us a little bit about what could cause gunshot residue to still be there or to be removed from something like a car door.

A Gunshot residue, as I said, has a consistency of flour. It's very light, so it can be removed easily. If it were on an object and the object were washed or rinsed or if it were wiped well with a towel, all these things can remove gunshot residue.

Q Would a moving vehicle also have an impact on gunshot residue?

A Yes. Wind can remove gunshot residue, too, because it's particulate matter and it can come off with wind.

Q Now Mrs. Simmons, you were telling us about some of the things that could effect gunshot residue such as washing. Would rain also be one of those things?

A Yes, sir, it can.

MR. CORBETT: That's all the questions I have, Your Honor.

THE COURT: Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:

Q Mrs. Simmons, do you have your report there?

A Yes, sir, I do.

Q If I could direct your attention to the result of item eight for a minute.

A Yes, sir.

Q And you said the results are quantity of metal detected did not indicate the presence of gunshot residue.

A Yes, sir.

Q So, tell the jury what metals were detected by you in your examination.

A When we analyze for the presence of gunshot residue, we're looking for six elements. Three are primarily found in gunshot residue. We're looking for Lead, Barium and Antimony.

We also look for Copper, Strothium and Zinc which are metals that are commonly found every -- in every day contact that people make with their hands.

There was a small amount of -- only a very small amount of Lead found on the back of the left hand. It wasn't anywhere near our threshhold to say that gunshot residue was present.

The way we determined our threshold is in a laboratory setting in a firing range. We'll shoot a

weapon. Then we'll take the gun, the same type gunshot residue from a scientist's hands that was shooting the gun and from that we determine shooting different types of ammunition, different weapons, how much gunshot residue or how much of each one of these metals is going to be produced by shooting a gun, and that's how we develop our thresholds. These metals that we found were nowhere near the thresholds.

Q You said not always.

A Yes, sir.

Q Lead you mentioned?

A Yes, sir.

Q What else did you find in Brandon Green's hands?

A Of the Antimony we only found -- where we are looking for 20 counts of Antimony, we only found one.

Q Antimony?

A Yes, sir.

Q That again is a component of gunshot residue?

A Yes, sir.

Q As is lead?

A Yes, sir.

Q Okay. So, basically when you get over here to the results on the Chrysler Concord, your results are not dealing with quantities, your results say no residue found?

A Yes, sir.

Q No metals?

A Yes, sir.

Q Okay. So in the case of your analysis on Brandon Green, you're saying that don't indicate the presence of gunshot residue based on some other comparisons that you have done, but in the case of the Chrysler Concord there's just no gunshot residue at all?

A Well, on the Concord it was different because particle lifts were taken. And when we analyze the particle lifts, how we analyze those, we don't analyze those for a concentration of metals.

We put them on a very powerful microscope and look at the particle lifts, and we're looking for round particles containing the three elements that we were talking about, Lead, Barium and Antimony.

The microscope can see down a hundred thousand times greater than the human eye can see, so we can see something that you can fit 10 of across the head of a pin, and that's about what gunshot residue is. It's microscopic. You can't see it without this microscope.

And the microscope also tells us what elements are present in these particles. And when we find these particles, then we can say that gunshot residue was found, but we aren't looking at concentration from that

particular situation.
Q Okay. So out of the three components that you looked for on Brandon Green's palm, you found two of them but just not in sufficient quantities for you to say for sure that this gunpowder residue--
A Yes, sir, that's correct.
Q Okay. Now, let's go back up a little bit. You weren't present when the swabs were taken from the hand?
A No, sir, I wasn't.
Q So in terms of how those swabs were received, you'd have to rely on whether Mrs. Pierson did that correctly for those results to really be valid?
A Yes, sir. It is dependent upon how they are collected.
Q And since you weren't there to actually see how that was done, you can't tell the jury whether or not it was correctly done. You're just relying on the procedure.
A Yes, sir.
Q Okay. So if she missed a spot on the hand where the gunshot residue actually was, it wouldn't show up on the test.
A No, sir. If it were missed, it wouldn't. However, if a sample is taken as the kit instructs, the entire area of the hand is collected, it should expect to find anything that's present.

Q Should be.
A Yes, sir.
Q But you had plenty of false negatives and plenty of false positives; haven't you?
A False positives. False negatives, I'm not sure what you mean.
Q Well, when you don't get a result, you can't say for sure that a -- that a gun was not fired?
A No, sir, we can't because there's always the possibility that someone fired a gun, washed their hands and removed the gunshot residue, so we don't know whether or not there was gunshot there and it was removed.
Q Okay. Or you also don't know, because you weren't there, whether or not the area of the hand where the gunshot residue was actually swabbed?
A Yes, sir, I can't say as to how the kit was collected.
Q Now, in the case of the Chrysler Concord, that sample was taken by Ray Mackessy; was it not?
A I'm not certain.
Q You'd have to look at the chain of custody?
A I wouldn't have their chain of custody. My chain of custody begins when it comes into the Sled lab.
Q Okay. But all this came under L0613384?
A Yes, sir, it did.

MR. WILDER: No other questions.

THE COURT: Yes, sir. Redirect?

MR. CORBETT: Yes, sir, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Mrs. Simmons, how about someone who had a gun pointed at them and were shot, any chance that some -- some of these metals could come into contact with that person?

A Yes, sir, about 60 percent of people who sustain a gunshot wound test positive for gunshot residue, even though they do not have a weapon at the time.

Q But your reports indicate the quantities of metals detected did not indicate a presence of gunshot residue?

A Yes, sir. On Brandon Green's hands, yes, sir.

Q Thank you. That's all I have.

THE COURT: Re-cross?

RECROSS-EXAMINATION

BY MR. WILDER:

Q As to what Mr. Corbett just asked you, the amount of gunshot residue on a person who has been shot would vary in -- in proportion to the distance from the gun; would it not?

A Yes, sir.

Q So if it was a closed wound, you would expect -- or closely fired weapon, you would expect more gunshot

residue than a distant wound, you'd expect very little?
A Yes, sir. In fact, if someone is standing beyond maybe a foot to a foot and a half from a .22 caliber gun, you probably would not expect to get gunshot residue on their hands at all.
Q More than a foot and a half?
A Yes, sir.

THE COURT: All right. Thank you, Mrs. Simmons. You may step down. Mr. Corbett, would you like to have this witness excused?

MR. CORBETT: Yes, Your Honor.

THE COURT: Any objection?

MR. WILDER: No objection.

THE COURT: All right. You are excused. Thank you for coming.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett?

MR. CORBETT: Your Honor, the State calls Ray Mackessy.

THE COURT: All right. Mr. Mackessy?

RAY MACKESSY, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:
Q Mr. Mackessy, good afternoon.

A Good afternoon.
Q I'm sorry, Sergeant Mackessy.
A Yes, sir.
Q If you would please tell us by who are you employed?
A Sumter County Sheriff's Office.
Q And how long have you been with the Sumter County Sheriff's Office?
A Twenty-three years.
Q Okay. Do you have any law enforcement experience prior to Sumter County Sheriff's Office?
A Yes, sir, 15 years with Baltimore City Police.
Q So you have better than 30 years in law enforcement then?
A Coming up on 38 really.
Q And if you would, Investigator Mackessy, tell us what's your job duties with the sheriff's department?
A I am currently assigned to the criminal investigations division where I'm supervisor of the crime scene unit.
Q And how long have you been in that capacity?
A Probably since 1988.
Q Now, if I could turn your attention to September 2nd of 2006. Did you have occasion to respond to Cedar Hill Mobile Home Park that day?
A Yes, sir.

Q If you would please tell us a little bit how that came about.

A We arrived on the scene, Cindy Pierson and myself, we were asked to respond there to process the scene. We arrived at the scene approximately 7:18 am and Investigator Skinner briefed us on what evidence that was found at the scene.

I then advised Mrs. Pierson that she was going to be actually doing the scene. She was my assistant and I -- had not done a complete scene by herself, so I wanted to let her do it and I would be there to supervise her on that.

Again, Investigator Skinner showed us the evidence that was present at the scene. We then placed markers, numbered markers, at the scene where the evidence was located. Mrs. Pierson then went ahead and photographed the scene and the individual items of evidence.

Q When y'all arrived, what was your impression of the crime scene?

A There really wasn't much to it. It wasn't that much laying around there. The victim had already been removed prior to our arrival, taken to Tuomey Hospital.

Q And what items did you find that you recall?

A We found the -- the victim's clothing. We also found the top and bottom of a cartridge box, a Remington high

velocity .22 caliber cartridge box. These were designated as -- with the various marker -- numbered markers.

Q Now, the clothing, did you examine them?

A Yes, sir, I later examined the clothing when we had packaged it and took it back to the lab, I examined the clothing and -- and what I found was there was a bullet hole in the clothing in the -- trying to find the section report where that is at -- in the outer shirt, and there appeared there was a bullet hole in the -- in that shirt and there was what I call transfer from a bullet.

When a bullet passes through a piece of clothing, it's already come out of the muzzle of the gun, it has powder and various things on it, and it -- and that transfers on to the clothing when the bullet passes through, and that's what I saw.

Q And those were items that y'all gathered and collected as evidence?

A Yes, sir.

Q Now, the actual clothing also had blood on it?

A Yes, sir, there was blood on the clothes.

Q And when items have blood on it, do you secure it in a...

A Secure it in an orange biohazard bag.

MR. CORBETT: One moment please, Your Honor.

BY MR. CORBETT:

Q Now, you had also indicated a cartridge box on the scene.

A Yes, sir.

Q Okay. What if anything can you tell us about the appearance of that?

A To me it appeared to have been run over. It was in poor condition because of the -- some -- a vehicle had run over. Investigator Skinner had advised us that the -- the ambulance had run over that box, the top and bottom of it when they were coming into the scene originally.

Q Now I am going to show you what has been marked as State's number five and number six. Do those items look familiar?

A Yes, sir.

Q Okay. And did you conduct any examination of that item or those items, excuse me?

A After they were packaged and sent back, we -- Mrs. Pierson took them back to the lab. I looked over the box to see if there was any latent prints on the box. It has a surface which can be examined under infrared forensic light, which I did, and I didn't observe any -- any prints.

I did a visual examination of it and then I examined it under the forensic light and didn't observe any latent prints on the box. Of course, due to the condition of it,

I wasn't expecting any, but I did want to check the box to make sure.

Q Now Investigator Mackessy, let me jump forward a little bit with you if I may, and ask you if you can -- or ask you to look at State's exhibit numbers 13 and 14. Can you tell us what those are?

A State's exhibit 14, 13 and 14 are what we call dab tests out of a gunshot residue kit. I believe this is scanning electron microscopy (sic) is the scientific name for this. And it picks up gun metals.

Q And who -- who completed that sample or collected that sample?

A I took this sample off the -- off the vehicle.

Q When you say off the vehicle, what are we talking about?

A That is the -- that was a Chrysler -- that was a Chrysler Concord which bore a Nascar plate of N2-208, '73 Chrysler Concord.

Q And do you know the date that sample was taken on?

A It was taken on September 6, 2006.

Q Now, Investigator Mackessy, do you know of your own knowledge if there were any weather events that would have affected your ability to get GSR from that vehicle?

A Yes, sir, the day it was towed from -- from the scene on Suzie Rembert Road, I believe, Suzie Rembert Road when

me and Mrs. Pierson were out there, it was raining very hard. That vehicle was really wet.

MR. CORBETT: Your Honor, that's all the questions I have of this witness at this time, but we may need to recall him.

THE COURT: All right. Subject to recall. Cross-examination.

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Mackessy, you have been doing crime scene investigation a long time; right?

A Yes, sir.

Q And what would be the purpose of supervising Mrs. Pierson?

A She was in training to be a crime scene investigator, to be part of what we had -- now has as a three person crime scene team.

Q You were with her when she took the samples from Brandon Green's hands?

A Yes, sir, I was present.

Q Well, was anybody telling you how to go about taking the samples from the Chrysler Concord?

A Was anybody with me to tell me?

Q You just--

A I was by myself.

Q You were doing what you do normally?
A Yes, sir, done it many times on other vehicles.
Q Okay. So when you say you took the sample from the door, you didn't test the interior of the -- like rear window, inside panel, window?
A Yes, sir, it's all along that interior and exterior sides of that window at the base.
Q So when you say it was raining, it wasn't raining on the inside of the car; was it?
A No, it was wet on the outside, but it had dried. We -- they put it in public works shop and secured it there and then dried it and then that's when I conducted the test after it dried.
Q Well, you suggesting that the rain washed off the gunshot residue from the inside of the car?
A No, sir. It was rained on on the outside of the car to my recollection, not on the inside.
Q So you did take a sample from the inside and the outside?
A Yes, sir.
Q The inside was not rained on?
A Not that I remember that it was rained on. The outside was.
Q So the gun had been fired from that car, there should be gunshot residue in there on the panel?

A There could be.
Q Could be?
A Could be.
Q Well, nothing to your knowledge had been done to remove it. And a rain shower certainly don't remove anything from the inside; is it?
A Well, from the time of the incident, which was on the second of September up until the time that the test was conducted, there had been some time passed there, so what was -- what had happened with that vehicle from the second up until the day that I did the test, I don't know.
Q You just don't know.
A I don't know.
Q All right. Now, you're not going to dispute, are you, that these pictures appear to be taken on the role that you were responsible for?
A Okay. I made out that ID shot.
Q Right.
A And Cindy Pierson was the one that took the photographs. The reason my name is at the bottom is that's habit. I'm so used to putting my name on these ID shots that that was just habit.
Q Okay. So all the rest of them we're all looking at -- actually think you had taken the pictures and your testimony is Mrs. Pierson took them?

A Mrs. Pierson took it, and the reason I know that she took it because I saw her take it and the fact that it has the date on the stamps that are digital, and I didn't have digital at the time.
Q All right. Now, when it comes down to fingerprints on the box, there is a way you can burn crazy glue and get fingerprints off of things like cardboard boxes; isn't it?
A Yes, sir.
Q Did you try that?
A I looked. No, I didn't try it. I visually examined the box. Now, when I received the box initially off -- at the scene, it was in very poor condition from being run over.
Q Okay.
A I -- I -- there is a method that -- the methods that you can use on the box. I chose the method of forensic light. I have had success with that and that's what I used.
Q Okay. What do you call it when you burn the glue and it sticks to the fingerprint?
A Okay. It's actually a fuming process using super glue. We place -- we can place that in the tank and the super glue is heated along with the cup of water in the tank to create humidity within the tank. And the super glue adheres to the latent prints on the surface of the

items that you're processing.

Q That wasn't tried?

A No, I didn't -- I didn't choose to use that method, no.

Q Thank you. No other questions.

THE COURT: Redirect?

MR. CORBETT: Yes, sir, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Mackessy.

A Yes.

Q Mr. Wilder was asking you about were you present when Mrs. Pierson did the GSR test from Brandon Green.

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q You were present?

A Yes, sir, I was present.

Q And were those samples collected according to instruction and protocol?

A Yes, sir, they were. There's an instruction sheet inside the kit that you can follow. Of course, Mrs. Pierson had done gunshot residue testing in the past. This wasn't her first one.

She knew how to conduct -- how to conduct a GSR test,

and they were conducted on the areas of the hand where it was supposed to have been conducted.

Q Now, also investigator -- Mr. Wilder was asking you about the car and the interior edge of the car; is that correct?

A Yes, sir.

Q Okay. Now, if a -- if a gun is held out of the window, do you expect to find GSR on the inside?

A On the inside?

Q Yes, sir.

A It's possible. I can't say that there would or wouldn't be, but there's some time passed between the incident and -- I don't know if the car was cleaned or what was done in the mean time, but it -- it's possible. Then again it may not be possible.

Now, the box that you examined, you were asked about different methods of examining the box.

A Yes, sir.

Q You been looking for fingerprints for some time now; is that correct?

A Many years, yes, sir.

Q And when you were checking that box, you indicated that you had used the forensic light?

A Yes, sir. What I normally do is I'll check an object first visually with -- just using a flashlight and a

magnifying glass to see if there is any visible prints on it, and then my next step is usually to use the forensic light which is called rugous and it is a forensic light using ultraviolet light, and normally that's a pretty good source of finding fingerprints if there is any on there, and I didn't observe any.

Q Based on your training and experience, was that a suitable and satisfactory method to look for fingerprints as opposed to this heating of super glue?

A In my impression on this particular item, yes. It depends on what the item is, what I'm looking at.

Q And I'm sorry if I have already asked you this, but what day did you do the gunshot residue test on the vehicle?

A That was conducted on September the sixth of 2006.

MR. CORBETT: Hold on a minute please, Your Honor.

THE COURT: All right, sir.

MR. CORBETT: That's all the questions I have, Your Honor.

THE COURT: All right. Re-cross, Mr. Wilder?

RECROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Mackessy, the whole idea about gunshot residue is when a weapon is fired it's a cloud of vapor or gas and

stuff that comes out of different parts of the weapon; isn't that right?

A Yes, sir.

Q And so one part of the weapon it might come out would be the barrel?

A Yes, sir.

Q But it can also be expelled from the sides of the weapon like out the side of a -- of a revolver chamber so that it can be expelled left and right and top and bottom; right? Can it not?

A Yes, sir, that's correct.

Q Okay. So -- so if -- and I guess that's -- is that why when the Solicitor asked you could there also be residue in the car and you had to answer yeah because it's a -- the -- if a weapon had been fired, it could be expected that or gas could go any direction from that pistol?

A Could go any direction, depends on the wind, where the wind is that night or that day or... it's a lot of variables in there that can effect where the powder goes it's so light.

Q And inside a car is certainly one place?

A Yes, sir, it could blow back inside the car.

THE COURT: All right. Thank you, Mr. Mackessy. You may step down.

THE WITNESS: Yes, sir.

(Witness left the stand.)

MR. CORBETT: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon a bench conference was held.)

MR. CORBETT: Your Honor, the State would call Jamie Turner.

THE COURT: All right. Mr. Turner, come around, please.

JAMIE TURNER, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Turner, good afternoon.

A How are you?

Q If you would please tell us by whom are you employed?

A Sumter County Sheriff's Office.

Q And what is your capacity with the Sumter County Sheriff's Office?

A I'm the commander of the criminal investigation division.

Q And how long had you been in charge of the criminal investigations division?

A Two years.

Q Okay. And how long have you been with the sheriff's

department?
A Eighteen years.
Q And what are your duties with the sheriff's department include?
A From start to now?
Q What -- summarize it for us.
A I start out as a patrol officer. In 1995 I was promoted to investigations and that's where I have been since 1995. I have also acted as the back-up forensics technician to Sergeant Mackessy.

Basically what that means is when he is out, I would take -- do his job. Also I'm a certified diver and I do aquatics investigation when we have something to do with water, and presently I supervise investigation division.
Q Now, if you would please tell us how you became -- came to be involved in the Brandon Green case.
A On September the second I was notified because I was a lieutenant as -- and I usually handle like most major and violent crimes, so I would notify sometimes a little after -- around 7:00 there had been a -- been a death, and my presence was requested.
Q And in which location did you respond?
A Cedar Hill Mobile Home Park.
Q And tell us a little bit about your investigation. What it is you began working on.

A Well, since the crime scene unit was present, I immediately started trying to locate any witnesses. One witness was identified to me and I then located that person and got her information.

She in turn identified a second potential witness and I talked to both of them and I actually asked them to come down to the office where I could talk to them and get them away from that scene out there.

Q And did you in fact do that?

A I did.

Q Okay. And if you would please continue to tell us which direction your investigation led you.

A Well, I first spoke to Mary Green. I received information about the -- what was described to me as a dark green over silver or gray Dodge Intrepid that was -- and that it was two black males driving it, that they were walking home and what had occurred she also pointed out a residence--

MR. WILDER: Your Honor, I'm going to object to hearsay on the strength of -- he's now testifying as to what she told him.

THE COURT: Mr. Corbett?

MR. CORBETT: Your Honor, I will rephrase the question.

THE COURT: All right.

BY MR. CORBETT:

Q So you talked to two witnesses initially.

A That's right.

Q Okay. As a result of those conversations, what did you do next?

A At the scene the -- the description of the vehicle and the possible suspects had already been put out, so there's no need to refine that. I took -- I had them go to the office. As they were going to the office, I went -- I was -- I had information in reference to a residence where this vehicle had been seen at, so I went to that residence which was lot 26 Cedar Hill.

There I knocked on the door. There was no answer at the door. There was a white Plymouth, I believe it's an Acclaim, four door vehicle was parked backed up towards the mobile home. I ran that tag.

This was around 8:30 that morning. I ran that tag, dispatch ran it for me, and it came back to Mr. Wayne Cooper. I then left there and met with Mary Green and Wanda Rogers at the office.

Q Now, let me stop you there for just a moment if I may. The green car, was it at that location?

A No, sir.

Q Okay. I'm sorry. Please continue.

A All right. I met with them, basically I got the same

information that you have already heard from the stand from them of what they -- what happened that morning. There was a -- there was another possible suspect which I located that person and was able to eliminate him as a suspect.

MR. WILDER: Your Honor, I'm going to object. That's a summary conclusion based on who knows what, but it's got to be on hearsay because he's not an eye witness to what happened that night.

THE COURT: All right. I'm going to overrule the objection. I think it's proper, his investigation and you can cross-examine. Proceed.

THE WITNESS: Any way, there was another person that was named as a possible suspect. And I spent Saturday and Sunday interviewing witnesses in reference to that person and doing my interviews and discovery that this -- he was not a suspect or he was eliminated.

Then further information was developed. I also got a call sometime Saturday evening that the green vehicle was back at the mobile home, there was two males and two females seen loading stuff in the vehicle and they left.

They was only there a few minutes, five or 10 minutes and left. They took with it the white

vehicle which when I went back, that white vehicle was gone also.

So Monday we received a phonecall in reference to a female named Latoya -- Latonya Hilton who is the girlfriend of Wayne Cooper. The mother was concerned because she had not heard from her daughter since Saturday. The mother also stated that--

MR. WILDER: Objection, Your Honor.

THE COURT: Objection sustained. You can testify to what you did as a result of the call.

THE WITNESS: Officer went out to Mr. Wayne Cooper's residence and -- to try--

BY MR. CORBETT:

Q State that residence, where is that located?

A I believe it's 905 Suzie Rembert Road which is not far from McLaughlin Ford.

Q When you say McLaughlin Ford, those of us -- or for those who may not know, where is McLaughlin Ford here in Sumter?

A It's about a mile and a half north of the courthouse. If you go out here to Main Street and go straight out, it's on your left-hand side.

Q Okay. And Suzie Rembert Road is in that area?

A Yes, sir.

Q All right. Please continue.

A I was told that -- the officer informed me there was nobody there, but then he informed me that there was...

MR. WILDER: Objection.

THE COURT: Don't testify as to what anybody told you. Testify as to what you observed or what you did as a result of what was told to you.

BY MR. CORBETT:

Q On that trip to Suzie Rembert Road, did you observe any vehicles there at that night?

A I did not.

Q All right. What did you do next?

A Based on the information we sent officers to surveil that location. Approximately 15 minutes after they got there, we received a call that Wayne Cooper and his brother pulled up in the yard.

Q Okay. And what date is this?

A That would be September the fifth.

Q And do you know about what time of day this was?

A It was -- it was probably around 5:00, 4:30, 5:00 in the afternoon. I believe it was about 4:30.

Q Now, your testimony was that you had been talking to a number of different witnesses over the previous two or three days; is that correct?

A Yes, sir.

Q And had you on that -- on the fifth respond to that

Suzie Rembert address again?
A We were at officers -- a number of investigators went to that residence.
Q Now, while at that residence, did you observe any vehicles of interest to you?
A Behind the residence I observed two vehicles.
Q And what were those two vehicles?
A Actually there was a -- it's a small area in the back, and I believe it's a picture of it, but back furthest in the back it was the -- was a Plymouth Concord, dark green with silver or silver bottom or gray bottom and also very short distance away appeared to be tint on the ground.

In front of that vehicle was a white Plymouth Acclaim which was the same vehicle that I had ran the tag on that Saturday morning out at Cedar Hill Mobile Home Park.
Q Now, when you arrived, other than law enforcement, who was present?
A Wayne and Derrick Cooper.
Q Now, at this point in time what did law enforcement do?
A We asked about Miss Hilton and we asked is this the house or the residence that Mr. Cooper listed on his driver's license which was that address, we asked permission to enter the residence. He denied us

permission.

At that time we also hear something inside the house. Believing that somebody was in there and they refuse to answer the door, we then went and had an officer secure a search warrant.

Q Were you present during the execution of the search warrant?

A I was.

Q Okay. I want to talk back again about the cars for just a moment if I may. Tell me about the cars that you found there at the residence.

A Found a green, a dark green Plymouth Concord, four door, with a silver, silver grayish bottom, four door. And parked in front of it was a white Plymouth Acclaim, four door, which was the same vehicle that I saw at Cedar Hill Mobile Home Park on Saturday and ran the tag on it.

Q Now I'm going to show you these and ask if you can tell us what that is.

A This is a close-up picture of the back of a green vehicle with Chrysler, looks like the trunk area, and then also a Nascar tag, a tag that's on that vehicle I believe.

Q Now, a moment ago you were saying Plymouth.

A What?

Q A moment ago you described it as a Plymouth. Is that correct? It's a Concord.

A It's a Plymouth Acclaim and Chrysler Concord. I believe I did make that mistake.

Q Now, Investigator Turner, there had -- you have heard some testimony about a Dodge Intrepid. Tell us what if anything you know about how a Dodge Intrepid looks as compared to a Chrysler Concord.

MR. WILDER: I'm going to object unless he's an expert in car design.

THE COURT: Overruled. Common knowledge testimony. Go ahead.

THE WITNESS: Will -- Plymouth, Chrysler and Dodge are all made by Daimler Chrysler. It's just like GMC, I mean General Motors makes GMC, Oldsmobile and Chevrolet.

So a Dodge Intrepid, four-door Dodge Intrepid and Chrysler Concord is really about -- it's basically the same body style, it's just got two separate names.

It's like a GMC Jimmy and Chevy Tahoe, same thing. They are made by the same people, same parts been off each one of them, it's just that one carries GMC and one carries Chevrolet.

The same way with Chrysler and Plymouth and Dodge. Dodge Intrepid and a Chrysler Concord are very similar and as far as when you looking at them.

BY MR. CORBETT:

Q Now, the picture I had asked you about just a moment ago, where was that returned from or where was that picture taken?

A This was in the back yard of -- of...

Q Suzie Rembert address?

A At Wayne Cooper's residence.

Q And were you present and personally saw that vehicle there?

A Yes, sir.

MR. WILDER: No objection.

THE COURT: All right. Be State's 15? Is that correct? State's number 15 admitted without objection.

(WHEREUPON, State's Exhibit 15 was admitted into evidence.)

BY MR. CORBETT:

Q Investigator Turner, I'm going to show you this picture and ask if you can identify that.

A This is a picture of the vehicle from the front showing the front -- showing a view from the front down the driver's side and from the front down the passenger's side is actually showing the vehicle in the position we found it which is backed up against a privacy fence.

Q And what if anything can you tell about the coloring

of that vehicle?
A It's a -- it's green with a silver what actually looks gray in this picture, a gray bottom. It's two-toned vehicle, the bottom half is gray.
MR. WILDER: No objection.
THE COURT: State's number 16 admitted without objection.
(WHEREUPON, State's Exhibit 16 was admitted into evidence.)
BY MR. CORBETT:
Q Investigator Turner, I'm going to show you this and ask if you can identify that.
A This is a picture of basically standing at the corner of the house looking into the back yard. One is a little closer up picture, but it shows two trash cans, one green, one black, a white Plymouth Acclaim parked in front of the green Chrysler Concord. You can see both vehicles as they were found in the back yard.
Q Now...
MR. WILDER: No objection.
THE COURT: State's number 17 admitted into evidence without objection.
(WHEREUPON, State's Exhibit 17 was admitted into evidence.)
BY MR. CORBETT:

Q Now Investigator Turner, you indicated that y'all had searched in this residence and found those two cars in the back yard; is that correct?

A Oh, yes. When these cars were found, we hadn't searched. We just walked around the side of the house and they were in the back yard.

Q Now, did -- now let's talk about the green car for a moment. Had you been given a description of the vehicle from the morning of the incident?

A Yes.

Q And how does the car compare, not the white car, the green car compare to the description you--

MR. WILDER: Objection.

THE COURT: All right. What's your objection?

MR. WILDER: Your Honor, there is no way he can get in the mind--

THE COURT: Your objection is leading. I don't want to argue. State your objection.

MR. WILDER: Based on hearsay.

THE COURT: All right. What do you say, Mr. Corbett? Ask the question again. Don't answer it.

BY MR. CORBETT:

Q Had you received a description of the vehicle from the morning of the incident?

THE COURT: You don't object to that, do you, Mr. Wilder?

MR. WILDER: No.

THE COURT: All right. You may answer.

THE WITNESS: Yes.

BY MR. CORBETT:

Q Okay. The vehicle that you spotted at Suzie Rembert Road, was it consistent with that description?

THE COURT: Object to that?

MR. WILDER: I guess not.

THE COURT: All right.

MR. WILDER: Let him answer.

THE WITNESS: Yes. Yes.

BY MR. CORBETT:

Q Now, the white car there in the picture, had you seen that car prior to this day?

A Yes.

Q And where had you seen that car?

A Lot 26 Cedar Hill Mobile Home Park.

Q Now, if you would please, tell us about the windows in the green car. Anything out of the ordinary about them?

A Well, you could see, look like somebody had run a 2-inch--

MR. WILDER: Your Honor, I'm going to object

there.

THE COURT: What's your objection?

MR. WILDER: As calls for a speculation on the part of the witness.

THE COURT: All right. He can cover anything that he observed about the -- that he noticed, that he noted by looking at it. Anything of his own knowledge. Go ahead.

BY MR. CORBETT:

Q Investigator Turner, anything you observed about the windows or the glass of that vehicle that was out of the ordinary or looked different?

A There was some small pieces of tint on the ground by the car. And if you looked at the window, it looked like a scraper, there was marks, residue of glue and there was marks in that glue where something had been scraped off the window.

Q Okay. You may have gotten a little bit ahead of me. What if anything did you notice on the ground around the car?

A Little pieces of tint. Window tint.

Q Did you have observe -- occasion to observe any of the trash receptacles in the yard?

MR. WILDER: I'm going to object subject to my motion that I raised previously and I ask that from

this point forward--

THE COURT: Come up.

(Whereupon a bench conference was held.)

BY MR. CORBETT:

Q Investigator Turner, you and other officers were present that day?

A Yes, sir.

Q Okay. And you were executing a search warrant?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q Okay. Did that search include the trash cans in the yard?

A Yes, sir.

Q Okay. What if anything--

THE COURT: All right.

MR. WILDER: Your Honor, that's--

THE COURT: I will sustain the objection with regard to this testimony being offered pursuant to the search warrant based on the search warrant itself, Mr. Corbett.

Now, there may be some other reason it would be admissible, but on the basis of the search warrant itself, let me see that, please, Mr. -- Madam Clerk. Think it's marked three.

THE COURT: All right. Come up a minute, counsel.

(Whereupon a bench conference was held.)

THE COURT: I will sustain the question as asked.

BY MR. CORBETT:

Q Now investigator Turner, let me go back.

MR. WILDER: Excuse me, Your Honor. Did you mean to say you sustained the objection to the question as asked?

THE COURT: Yes.

MR. WILDER: Thank you.

THE COURT: Sustain the objection as the question was asked.

MR. WILDER: Thank you.

BY MR. CORBETT:

Q Investigator Turner, when you approached the vehicle and you told us that there on the ground you saw pieces of window tint.

A I did.

Q Okay. That was just laying out there in the open; is that correct?

A Yes, sir.

Q Okay. Was there any other trash or garbage there just in the open?

A I don't believe so, sir.
Q Ultimately what were the actions taken by the Sumter County Sheriff's Office that day there at Suzie Rembert Road?
A At -- when -- once the search warrant returned, we actually entered the residence and conducted the search, and then they were arrested at that point in time.
Q When you say they, who are we talking about?
A Wayne Cooper and his brother Derrick.

MR. CORBETT: Your Honor, that's all the questions I have for the witness at this time. I may need to recall him on a separate issue.

THE COURT: All right. Cross-examination, Mr. Wilder? The witness will be subject to 611D to be recalled at a later time, but cross-examination at this time?

MR. WILDER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WILDER:
Q Mr. Turner, I'm going to show you a picture. What kind of car is that?
A Can't really tell you, sir.
Q Can't tell me?
A No, sir. Picture is actually too small for me to really tell.

Q Well, try a bigger picture. You got glasses? Put your glasses on.

THE COURT: No comments, just questions, please.

BY MR. WILDER:

Q What kind of car is that a picture of?

A I'm not certain, sir.

Q If I told you that it was a Dodge Intrepid, what would you have to say about that?

A I couldn't say for sure on this one. I would probably agree with you somewhat on this, the tail lights do look similar to a Dodge Intrepid or a Dodge product.

Q Okay. Let me mark those -- have them marked for identification.

THE COURT: Defendant's numbers...

MR. WILDER: 9 and 10.

THE COURT: 9 and 10 for ID.

(WHEREUPON, Defendant's Exhibits Nos. 9, 10 were marked for identification only.)

BY MR. WILDER:

Q So Mr. Turner, I'm not meaning to question your -- your ability to distinguish between cars with your expertise in cars or anything like that.

THE COURT: No comments, Mr. Wilder. Just ask questions. I'm not going to warn you about that again.

BY MR. WILDER:
Q So you can't tell me what kind of car that is?
A Well, this car is not this car. I can tell you that. This car is taken somewhere else. No, I honestly couldn't tell you exactly what kind of car this is. It has similarities to a Dodge Intrepid, but without more looking, I couldn't say so.
Q All right. Now, when you were talking to Miss Mary Green, she indicated you were taking notes.
A Uh-huh.
Q Where are your notes?
A Not with us.
Q You don't have notes with you?
A No, sir.
Q Well, where are they?
A Had Miss Green, she testified what she told me.

THE COURT: No, sir. Don't -- just answer the questions, please.

THE WITNESS: They're not here. They're not with me.

BY MR. WILDER:
Q Mr. Turner, where are your notes in this case?
A They actually in that file right there.
Q All right. You have your notes from where you talked to Miss Mary Green in that file right there?

A Uh-huh.

THE COURT: Is that a yes?

THE WITNESS: Yes.

THE COURT: Okay.

MR. WILDER: Your Honor, I would ask the Court to order Mr. Turner to produce those notes for me.

THE COURT: No, sir. Previously ruled on, Mr. Wilder, and you knew that question had already been ruled upon and I rule the question improper because that question has already been before the Court and the Court has ruled on that matter and I would ask the jury to disregard the question.

BY MR. WILDER:

Q Did you refer to your notes before you testified?

A No, sir.

Q So your notes I guess were made at the time you were talking to Miss Green over two years ago?

A Yes, sir.

Q Did you talk to Rodney Green?

A I spoke to Rodney Green that morning and asked him where was his mother, Mary Green, where was she at.

Q And did Mr. Rodney Green tell you that a green Intrepid was present that morning?

A No, sir. He said -- Mr. Rodney Green told me, my mother is over there. I walked from Rodney Green to his

mother Mary Green.
Q If Rodney Green said anything about a green Intrepid being involved there that morning to Ricky Richards, would you have been present where you could hear it?
A No, sir. I arrived on scene somewhere around 7:20 that morning, so I would not have been there at six -- at 6:15 or whatever time that conversation happened.
Q Did you go to Fire Mountain in Columbia?
A I did.
Q And did you talk to the supervisor at that restaurant on Garner's Ferry Road in Columbia?
A I talked to the manager, yes, sir.
Q The manager. How soon did you get there? What's the earliest day you went to Fire Mountain?
A I spoke to the manager by telephone on the fifth.
Q Okay. And did you physically present yourself at Fire Mountain shortly thereafter?
A Approximately a week -- a week or so later.
Q Did you, when you got there, review the work records of Wayne Cooper?
A I got a copy of them, yes, sir.
Q And did it show that he appeared to work at six--
MR. CORBETT: Objection, Your Honor.
THE COURT: All right. What's your objection?
MR. CORBETT: Hearsay.

THE COURT: All right. Mr. Wilder?

MR. WILDER: Okay. I'll rephrase it.

THE COURT: All right.

BY MR. WILDER:

Q Did you look at a video of him arriving at work with the manager at Fire Mountain?

A Yes.

Q And did you see the picture of both Wayne Cooper and Derrick Cooper arriving at the Fire Mountain for work?

A I did.

Q Okay. Now, do you have the surveillance video? Did you take that into evidence so that we could show the ladies and gentlemen of the jury exactly what time they arrived in the parking lot at Fire Mountain?

A When I asked the manager for a copy, the manager informed me he would have to get -- he could not provide me with a copy because of the type of system, that he would have to get somebody else to provide me with a copy.

After repeated tries, it came up for this system is -- erases itself, and he told me, he informed me several weeks later that he had not done what I asked you to do. So no, sir. I don't have a copy of it.

Q Did you give a copy of the piece of where they arrived --

A No, sir.

Q -- at work? All right.
A I don't have the technology to do it. The manager informed me he didn't have the technology to do it. Somebody else would have to do it by Fire Mountain security specialist, and he told me -- and when I asked -- called back multiple times, it came a point in time when I called, he said it's erased.
Q So you are the only person that we know about that's observed the actual video of these guys arriving at Fire Mountain?
A I believe it's two managers that also observed it and--
Q That work for Fire Mountain?
A That's right.
Q But you're the only person in this courtroom that we know about?
A That's right.
Q Okay. All right. Was the video that you saw time coded?
A It was.
Q What time was on the video when they were in the parking lot?
THE COURT: Hold on a minute. Yes, sir.
MR. CORBETT: Objection, Your Honor.
THE COURT: What's the objection?

MR. CORBETT: Hearsay.

MR. WILDER: I believe--

THE COURT: Wait just a minute. All right.

MR. CORBETT: Hearsay and also this witness's ability to authenticate the tape.

THE COURT: Objection is overruled. He can testify as to what he observed just as if he had observed it in person.

MR. WILDER: Thank you, Your Honor.

BY MR. WILDER:

Q What is the -- was the time code on when they arrived in the parking lot, Mr. Turner?

A What was it or...

Q When you saw it, what you saw when you saw them run the tape, I'm sure you marked that down; did you?

A I did.

Q Okay.

A It's around 6:12.

Q 6:12?

A Uh-huh.

Q Does not the time clock say 6:09?

A The time -- I don't know what the time clock says. I know what the video said.

Q Okay. All right. Tell the ladies and gentlemen of the jury what Wayne Cooper and Derrick Cooper were wearing

when they got to work.
A Wayne Cooper was wearing a dark green shirt and -- like dark blue pants, navy blue pants and Derrick Cooper was wearing dark blue pants with a white button-down shirt.
Q Button-down?
A With a white shirt -- with a white short sleeve shirt.
Q Were either one of them wearing shorts?
A No, sir.
Q Okay. Did either one of them have an afro do?
A I don't know -- I don't -- you talking about afro like 70's afro? Are we talking about an inch, you know.
Q Talking about an inch and a half out around the top of the head and the side.
A What I saw half inch long, but I don't know if you want to say that's an afro or, you know, I -- the terminology, what you call an afro and what I call an afro. The hair I saw was short, close-cut.
Q Short and close-cut?
A And about, you know, one had longer hair than the other. The bigger one, which would be Derrick, had hair looked like a half inch long, maybe a little longer.
Q All right. How much does Derrick weigh?
A How much does he weigh?

Q How much does Derrick weigh on the day that he was taken into custody?

A I would say Derrick probably weighed about around 200 pounds.

Q Did he have an afro?

A No, he had -- his hair was real short then.

Q All right. Now, Mr. Corbett asked you about differences between the vehicle that was reported and what you observed over there on Suzie Rembert Road. Did you happen to say the vehicle described out there had tint on it and the one you saw there had no tint?

A That's right.

Q But your contention I gather is that some time it was scraped off; right?

A It's what appeared to have happened.

Q All right. Tell the jury when it was scraped off.

A I can't answer that.

Q Okay. Were you present when the GSR kit was gathered by Officer Mackessy?

A No, sir.

Q Did you request that pictures be taken from Wanda's trailer over to the fire department?

A No, sir. I mean, I could -- I could see what she saw.

Q Well, did you request that any pictures be taken from

the fire department looking back at her trailer so we could see that there are bushes in the way?
A No, sir, there wasn't no bushes in the way.
Q It's your testimony I take it then that Mary Green did not sign a statement?
A No, sir, she didn't sign a statement.
Q And you didn't ask her to sign a statement?
A No, sir, I didn't ask her to sign a statement.
Q And you didn't ask Wanda to sign a statement?
A I did not.
Q And you didn't take their segments to use by any kind of tape recording or video device; did you?
A I did not.
Q And you didn't ask them to pick anybody out of a line-up that day or ever; did you?
A I did not.
Q Okay. And for the day of this incident and maybe two to three months after that, neither Wanda nor Mary had any names to associate with any particular individual that they had allegedly seen that night; did they?
A No.
Q What's the purpose of a line-up?
A To identify a person.
Q Is the person -- purpose of a line-up to make sure that the witness is not making a mistake?

A Yes.
Q And that's the same purpose that a photo line-up is used for, too, isn't it, is to make sure the witness is not making a mistake about who it is they're looking at?
A Yes, sir.
Q All right. Your investigation revealed that the time came in -- that the first call came in to law enforcement at 5:58 am; did it not?
A Actually there's some other times on there that's actually early like 5:55 when the--
Q What happened at 5:55?
A That's when the first call came -- comes into dispatch. But what happens is they answer the phone and start taking the information. When they start keying in and assigning a case number, then they -- that's when it actually physically is -- it basically is a box that says call received and there's a time stamped in there.
Q Okay. So the earliest we know about a call coming in is actually 5:55 then?
A I believe it's 5:55:58 seconds, something like that, almost 5:56.
Q 5:56. Two minutes before what I suggested.
A That's right.
Q Okay. Well, then the first responder could have gotten there earlier than 6:01?

A No, sir. Once the -- that -- once that process is started, in other words, she receives a call, soon as she starts typing it in, the next thing she does, she gives out the call and she dispatches, another time goes in another box.

Then as the officer -- and it's a long list of them -- as officers arrive at the scene, you'll see like in my case it says I02 and it type -- it gives you a time that I arrived on the scene and it tells you all of the officers that arrive, what time they arrived at that scene.

Q Okay. Is this the crime scene log?

A That's the crime scene log, yes, sir.

Q From this incident?

A Yes, sir.

Q Okay. Now, could you review that and tell the jury where Wanda appears on the scene?

A Apparently Wanda never was inside the scene or in the scene because I do not believe I see her name on this crime scene log.

Q Okay. We see Mary Green there.

A That's right because she was inside the crime scene.

Q Right. And we see Rodney Green there.

A That's right, because he was inside the crime scene.

Q Showed up at 6:11. Correct?

A According to this, yes, sir.
Q But never any Wanda?
A Never any Wanda.
Q When is the first time you laid eyes on Wanda?
A After I arrived and talked to Mary Green and she referred me to her.
Q Did you ever try going in her trailer and taking a picture toward the direction of the fire department?
A No, sir, I did not.
Q There was no way for you to verify whether or not it's even physically capable for her to see out of her bedroom window over to the fire department; is there?
A I could tell you this. I went to the fire department on my way out to meet them and I stood at the fire department front door, and I'm familiar with that fire station because I have been in meetings at that station.

Standing at the front door you can see the whole side of her mobile home under an oak tree. There's a large oak tree.

Q Did you go in her house?
A No, sir, I didn't go in her house.
Q Didn't go in her house?
A No, sir.
Q Was anybody at the scene tested for their state of sobriety?

A Sir, that's something we don't do. You do that on DUIs, you don't do that on murder scenes.
Q Well, fluid was taken from Brandon Green; wasn't it?
A That's right, because he was the victim and that's -- that's a natural -- that's part of the process. But we don't go to people who are victims of robbery and say, we need blood from you to get your blood alcohol to see if you're under the influence of drugs.

That's not a procedure and I don't even believe you can do it even -- I don't even believe you can get a search warrant to do it.
Q So we have no idea as to what blood alcohol content of Mary Green was that night?
A She wasn't drunk.
Q Well, you tested?
A I didn't even smell alcohol on her.
Q Did you test her?
A No, sir.
Q Nor Wanda. Nobody tested Wanda?
A Sir, I don't -- that's -- I don't test witnesses. I can't get a court order to test them. If they want to voluntarily give me blood, I'll ask them that in the future, but I can't do that.
Q All right. Do you agree that there probably residents -- that each one of those mobile homes was

occupied back there in 2006, there were people living in all those mobile homes during that date?

A I would agree, yes, sir.

Q I guess all of them have cars to come and go from that place?

A Yes, sir.

Q All right. So let's just go down here and find out. Can you tell me what kind of car was owned by the second house as you come down here?

A I can't answer that, sir.

Q Okay. All right. So rather than go through each one of them, we just don't know what kind of cars the rest of the people out there owned; do we?

A The only -- only residents was identified to me was lot 26.

Q Okay. So we don't know what other kind of cars might be residing there in that mobile home park?

A No, sir.

Q Now, let's talk about this car for a minute. The one that's depicted on State's exhibit number 16. Show you that.

A Uh-huh.

Q Who is that car registered to?

A I believe it's Betty Jean Cooper.

Q Who?

A I think it's Betty Jean Cooper I think is the name on it.
Q Betty Jean Cooper. You see Betty Jean Cooper in the courtroom?
A I don't know her. That's their mother.
Q Okay. Don't know her?
A No.
Q But if that's Mrs. -- the mother sitting over there, you -- that would be who the car was registered to.
A That's right.
Q Now, when did the license tag that was on that car expire?
A I believe it says eight of '06.
Q Eight of '06. All right. What's the procedure on renewal of license tags? When do you get a notice on that?
A When do I get a --
Q Notice of tax.
A That's right.
Q People send you a notice, you got to go down there and pay it and then you get a new registration and a sticker?
A Yes.
Q Okay. So this one was due to expire the month before the ninth?

A That's right.
Q All right. So technically the license tag on that one had just expired on the first day of September; right?
A That's right.
Q Now, if someone didn't want to be driving a car with a license tag had just expired, they might put it in the back yard; right?
A Yes, sir.
Q Okay. Let me ask you this. Okay. Didn't Wayne here tell you that somebody had just slashed the tires on his car --
A No, sir, he--
Q -- on Suzie Rembert Road?
A He told me that? No, sir.
Q He told you he filed a police report on it; right?
A No, sir.
Q Okay. So you're saying he did not speak to you. Did you take notes when he was talking to you?
A He didn't talk to me. He said he wanted to talk to Captain Barron at the time. He wouldn't talk to me.
Q Okay. All right. I'm not going to ask you about the information on that -- but is that an incident report form that's common to the county, says county incident report?
A Yes.
Q All right. And it reflects -- well, can you tell by

looking at it which officer was involved in taking that information down?

A No, sir, I can't tell you who took this report.

Q Okay. But it is a standard report commonly filed with Sumter Police Department?

A Yes, sir.

MR. WILDER: I'm just going to ask it be marked for identification. I will come back to it later with another witness.

THE COURT: All right. Defendant's exhibit number 11 for identification.

(WHEREUPON, Defendant's Exhibit No. 11 was marked for identification only.)

BY MR. WILDER:

Q Okay. Now, did law enforcement call the Fire Mountain people to standardize a time so that you could check and see if the records there were going to be the same as your standard time?

A Talking about compare what our dispatch time? No, sir.

Q Okay. So is that -- if I understand your testimony correct, you have no recording or no time sheet from Fire Mountain to show what time Mr. Cooper got to work?

A Don't have a recording. I do have a copy of the time sheet.

Q Well, could you produce that, please? I'd like to have it marked for identification. Is this what -- a copy of what you obtained?

A Yes, sir.

MR. WILDER: I'd like to have it marked for identification.

THE COURT: Defendant's no. 12 for identification only.

(WHEREUPON, Defendant's Exhibit No. 12 was marked for identification only.)

MR. WILDER: No other questions.

THE COURT: Redirect?

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Mr. Turner, I want to -- Investigator Turner, excuse me, I want to go back through this question Mr. Wilder asked you about, did you tell when the tint had been taken off of the car. Now, when you arrived, you had -- you testified previously about observing scrape marks; is that correct?

A That's right.

Q And what were the scrape -- how were the scrape marks made?

A On tint there's a glue, and I know this because I took tint off of my truck and I scraped it off. It leaves

a glue residue and you have to clean it off with acetone or something.

And it appeared in this case that that wasn't done, it was just scraped off and there was little pieces, fine pieces of tint, you know, kind of laying around this area of the car.

Q Those fine pieces of tint in the area, how did they appear?

A They were like little torn pieces of paper. I mean, they were very small. It was just pieces that you wouldn't normally pick up. You would pick the large pieces up and this was something you probably wouldn't pick up because either you don't see it because it's just so small.

Q Did -- in terms of -- did they appear weathered or old or anything of that nature?

A I wouldn't say they were -- they -- I can't tell you when they were put down there. It don't appear they had been out in the sun very long.

Q Now, there was some question about Wanda's house and bushes and trees. Did you have occasion to see Wanda's house?

A Yes, sir, you drive right by it.

Q Okay. And you said you had occasion to stand there at the fire department?

A When I left lot 26, I was waiting on them because they had a ride coming to pick them up to meet me at the office. I already talked to Wanda, so I came and I stood at the fire department.

I just stood out in front of the fire department. It's four doors. I sat in the middle door and just looked back at her house, you know.

Q Were you able to see the windows of her house?

A Yes, sir, you could see the windows of her -- you could actually see the whole end of her house and the -- and down the front.

Q Were there any limbs, trees or bushes that obstructed your view of Wanda's windows?

A There's an oak tree there, but it's cut up so you can drive a car under it. You can walk under this -- this tree, this large tree, it's cut under it and you can see under it, you can see her windows.

Q Now, when you spoke to Wanda and Mary that day, you were asked about whether or not you had tested them for sobriety. Was there anything about their mannerism, appearance or anything that suggested to you they were under the influence?

A No, sir.

Q Investigator Turner, tell us again how long you have been in law enforcement.

A Eighteen years and two months.
Q You have had occasion to be around people who were drinking.
A Yes, sir. I was a -- I was actually a traffic officer for years and -- and had extensive training in DUI detection.
Q But so there was nothing about these two people that suggested to you that they were under the influence or needed to be tested?
A Well, I wouldn't have test them, but they weren't under the influence. I mean, I sat right across the table from one -- from both of them. 36-inch table.
Q Now, you were talking to Mr. Wilder about going up to Fire Mountain; is that correct?
A That's right.
Q This is a picture been looking at previously. Can you tell us what this is a picture of?
A That's Cedar Hill Mobile Home Park.
Q Now, in your trips to Fire Mountain as part of this case, did you ever have occasion to time the trip?
A Yes, sir.
Q Tell us a little bit about that.
A First time I did it was like 4:30 in the afternoon. I drove 60 miles an hour. Unfortunately at 4:30 in the afternoon, traffic is quite heavy and I unfortunately

caught every light and took around 32 minutes to make that trip to Fire Mountain. It's a little over 27 miles.

One night I was coming back from Columbia about 11:00 and I actually drove around 70 miles an hour, I was able to do it in a little over 22 minutes, no traffic light -- there was no traffic number one and there was no traffic lights.

I didn't catch a traffic light coming in. I was able to drive straight through. It was a little over 22 minutes.

Q So you traveled a distance from Fire Mountain to Cedar Hill in 22 minutes?

A An average speed of 70 miles an hour. I may -- I put the -- the cruise control on and I never had to kick it off. I was able to drive straight through.

MR. CORBETT: That's all the questions I have, Your Honor.

THE COURT: Re-cross?

MR. WILDER: No other questions.

THE COURT: All right. Thank you, Mr. Turner. You may step down.

(Witness left the stand.)

THE COURT: Counsel, approach a minute. Let's talk about scheduling.

(Whereupon a bench conference was held.)

THE COURT: Tell the jury it is now 5:00 and y'all have been here a long time, even though you were in the jury room for an hour and a half this morning, and I can tell you that the court personnel has been working since 8:30 this morning, so I think it is appropriate that we take our evening recess at this time.

And I am going to excuse you and allow you to go to your homes and families. And I'm going to ask you to be back in the morning at 9:00.

And I do know that we don't have any preliminary matters or matters that we need to do so we can get started right promptly at 9:00 tomorrow morning. So if you would be in the jury room tomorrow morning at 9:00.

Over the evening recess I would tell you again not to discuss the case with anyone because you have got to decide this case based upon what you hear in this courtroom and not on the basis of what anyone else might say.

Do not allow anyone to discuss it with you. If anyone should approach you or try to talk to you about this matter, get their name or their description, report it to the Court, and I will deal with them.

And also, do not discuss the case among yourselves when you are re-assembling in the jury room tomorrow morning. It's still premature for you to begin any discussion of this matter because you have not heard all of the evidence in this case.

Also I would tell you, I don't know whether there will be any publicity about this matter or whether there will be anything in the newspaper or on broadcast media, but if there are, put that newspaper aside or put that broadcast or turn that broadcast media off and do not listen or read anything about this case because you have got to decide this case based upon what you hear in this courtroom.

With those admonitions then I'm going to excuse you now, allow you to go to your homes and families and please be back in the jury room tomorrow morning at 9:00 and I will see you then. Thank you very much. Have a pleasant evening.

(Jury left the courtroom at 5:00 pm.)

MR. CORBETT: Your Honor, may I run to the phone for about 30 seconds just to make sure I can get some children picked up from daycare?

THE COURT: Yeah. Go ahead, quickly. We'll wait just a moment.

(Whereupon there was a pause.)

THE COURT: All right. Mr. Corbett, you got your matter taken care of?

MR. CORBETT: Yes, sir, Your Honor. Thank you.

THE COURT: All right. Mr. Wilder, let me ask you. The Court is troubled about a matter. The Court had previously ruled during en camera hearings that police officers notes were not discoverable.

And I'm concerned about the fact that -- they are also not admissible under 803, and I'm concerned about the fact that this question was asked in apparent disregard of the Court's ruling. I will be glad to hear from you on that.

MR. WILDER: Your Honor, it was occasion when we approached the bench and I asked the Court to order that they be produced under Brady, brady versus Maryland, on grounds that there is exculpatory information in the -- in the notes.

And if I misunderstood something, I apologize, but I thought the Court's ruling was as to that particular witness and then we moved on to a different witness and I was asking for their notes or -- or, no, no. This is the way it was.

Mary Green said that Officer Turner was taking notes, okay. I understand not discoverable during Mary's testimony. But after Officer Turner took the

stand, it's his notes.

THE COURT: It's still not discoverable under rule five, two. It says that this rule does not authorize the discovery or inspection of reports, memoranda or other internal prosecution documents made by the attorney for the prosecution or other prosecution agents in connection with the investigation or prosecution of the case.

Think rule five is very clear. And I thought that I made my ruling very clear on that.

MR. WILDER: Your Honor, my understanding historically for over 30 years of practice is that once a witness takes a stand, if they use notes to either refresh their recollection--

THE COURT: And they didn't.

MR. WILDER: Well, I didn't know that till I started asking. First I had to know that there were notes. And then I had to know whether or not they used them to refresh their recollection or referred to them during testimony.

THE COURT: And they didn't. Obviously it didn't. The whole time he was sitting here he didn't refer to anything.

MR. WILDER: But Your Honor, the point is the only way I know is to ask. And the question I

believe is proper. Now, I'm asking the Court to order them to produce it. That's what I'm asking from the Court under Brady.

Brady is exculpatory information. And my theory of this case, Your Honor, is my client ain't guilty, whatever information was--

THE COURT: You obviously think he's not guilty, Mr.--

MR. WILDER: Right.

THE COURT: Mr. -- and that's your theory of the case or we wouldn't be trying this case.

MR. WILDER: Exactly.

THE COURT: But there are still rules that have got to be followed, Mr. Wilder, and I have ruled on those matters, and if I'm wrong, there's a court that can take care of those rulings.

But it does appear that the question was asked in the presence of the jury in a deliberate attempt to avoid the Court's ruling when the jury was not present.

MR. WILDER: Your Honor, there's no way I would intentionally try to avoid the Court's ruling. But I do have to preserve my objection for appeal unless asked, unless the Court rules that I can't appeal obviously.

And so I am asking and I continue to ask and I will move again now that the jury is gone, Your Honor, for them to produce their notes where they examined each one of these witnesses.

THE COURT: All right. I'm going to do this. Mr. Corbett has already told me that there was nothing exculpatory in the -- in the defense file. I am going to have the notes produced, if any exist, for en camera review by the Court to determine if they're exculpatory -- is anything exculpatory under Brady and that would be an entirely different matter.

But I think that would have been the way to approach the matter instead of doing it in front of the jury to make it look like that the officers were concealing something.

And that -- that causes me concern especially in the view of 803 eight which provides that investigative notes involving opinions, judgments or conclusions are not admissible. And that's what 803 provides.

MR. WILDER: All right. Your Honor, once again -- and I'm not arguing with the Court. I appreciate the Court's ruling on that and I will certainly respect it.

The testimony from Mary Green, if Your Honor

will recall, was that she had signed a statement. Now, them -- we all looked over at Mr. Turner and he kind of goes like this, indicating I think that he disagreed with what Miss Mary Green testified to.

Now, my contention was -- was that if she had signed the statement that had--

THE COURT: Well, they wouldn't ask her -- that's not the question. That wasn't even put to her in front of the jury.

MR. WILDER: Yes, sir, it was. I beg to differ.

THE COURT: That was the time when we were doing in chambers. Was it not in en camera?

MR. WILDER: Was it in front of the jury?

THE COURT: Okay. It was?

MR. WILDER: Yes, sir.

THE COURT: All right.

MR. WILDER: And so what I have, Your Honor, was a difference in the testimony from what--

THE COURT: But you didn't ask him on the stand if she had signed the statement.

MR. WILDER: Well, I asked him about his--

THE COURT: You asked him about his notes. You did not ask him--

MR. WILDER: Oh, yeah I did. I did follow that up with asking him whether or not she signed the

statement.

THE COURT: And his answer was no.

MR. WILDER: Okay. But I -- I have asked.

THE COURT: All right. Well, that's all right. You can ask him if she signed the statement.

MR. WILDER: Yes, sir.

THE COURT: No problem with that because the rule is that once a witness has taken the stand, you're entitled to a copy of that statement. There's no problem with that. You're entitled to that.

I'm talking about the officer's investigative notes which are not discoverable under rule five and which are not admissible under 803 eight.

Those are the things that I have a problem with and that's the notes that he took in connection with any -- whether it was conversations with her or any part of the investigation.

MR. WILDER: No disrespect intended, Your Honor, never intentionally disrespected the Court.

THE COURT: All right. Well--

MR. WILDER: Not in a million years.

THE COURT: Well, the way that it should have been handled, Mr. Wilder, is that if you felt that there is something exculpatory, you should have requested en camera that the Court have the notes

produced to determine whether or not there is anything that makes it exculpatory under Brady rather than do it in front of the jury which makes it look like the officer -- witness not admissible under rule five nor is it admissible -- it's not discoverable under rule five nor is it admissible under 803 eight, and that way I could determine whether there is anything exculpatory that would make it discoverable under Brady.

And I will require the Court to -- I mean, I will require the prosecution to disclose to me any officers' notes that may be in existence so that I can review them to determine their exculpatory nature.

MR. WILDER: Thank you, Your Honor.

MR. CORBETT: Very well, Your Honor.

THE COURT: Now, I want to talk with Mr....

MR. CORBETT: Your Honor, is first thing in the morning soon enough on those notes?

THE COURT: Yes, sir, that will be fine. Now I want to talk with the defendant just a minute about the Fifth Amendment rights. Mr. Cooper, let me ask you to stand, please.

Mr. Cooper, at some point in this trial you may be called as a witness to testify in your own behalf.

I now advise you that you have the right to invoke the protections given to you by the Fifth Amendment to the Constitution of the United States and a similar counterpart provision of the Constitution of the State of South Carolina.

The Fifth Amendment to the Constitution of the United States provides in part that no person shall be compelled in any criminal case to be a witness against himself. This provision of constitutional law means that you cannot be compelled or required to testify in this case.

This is a right and a privilege which the law extends to you. It is a personal privilege and no one can waive this right except you. You have the right not to testify but you also have the right to testify.

The Court will grant you the right to consult with your lawyer before you make a decision. If you elect not to testify, your failure to testify cannot be used by the State as an inference of guilt and your failure to testify cannot be considered by the jury in its deliberations.

If you elect to testify and waive the privilege extended to you by the Constitution of the United States, I advise you now that you will then assume

the role of a witness in this case and you will then waive or give up your constitutional privilege against self-incrimination.

This means if you voluntarily take the witness stand and testify, you will then subject yourself to the same rules that govern other witnesses and you may be examined and cross-examined on any relevant issue in this case and you may be impeached to the same extent as any other witness, all of which is subject to the rules of law and the rules of evidence.

I would further advise you that if you elect to take the witness stand and testify, that this decision on your part must be made freely, voluntarily, intelligently and with knowledge of the protections given to you by the Constitution and with knowledge of the consequences of your election to testify.

Now, I'm not going to require that you give me any answer at this time as to whether you do or do not wish to testify in this case, but I want to give you an opportunity to discuss this matter with your attorney before you give me that answer and that will be after the State rests their case.

But I would ask you now, do you understand what

I have explained to you about your Fifth Amendment rights?

THE DEFENDANT: Yes, sir.

THE COURT: Do you have any questions that you wish to ask me about your Fifth Amendment rights?

THE DEFENDANT: No, sir.

THE COURT: Okay. All right. Then I would advise you to talk with your lawyer about your Fifth Amendment rights sometime between now and the beginning of the defense case tomorrow so that you'll be in a position to answer me whether you do or do not wish to testify in this case. Do you understand that?

THE DEFENDANT: Yes, sir.

THE COURT: Thank you. You may be seated. Anything further before we recess for the afternoon, Mr. Corbett?

MR. CORBETT: Nothing from the State, Your Honor.

THE COURT: All right. Mr. Wilder?

MR. WILDER: Nothing.

THE COURT: All right. Thank you. We'll be in recess until 9:00 tomorrow morning.

(Court in recess for the evening.)

******** November 12th, 2008 ********.

THE COURT: All right. Back on the record with regard to the matter of the State versus Wayne Darnell Cooper. Mr. Cooper is present and in the courtroom with his counsel, Mr. Wilder. The State is present and represented by Mr. Corbett. I'm advised that all the jurors have returned.

Anything before we bring the jury in on behalf of the State, Mr. Corbett?

MR. CORBETT: Yes, sir, just a couple of brief matters, Your Honor. Your Honor, I called two witnesses yesterday, Wanda Rogers and Mary Green. They were sequestered witnesses.

They have since testified and they remained outside of the courtroom all yesterday through that portion of the testimony that impacted on their statements or anything of that nature.

And just wanted to check with the Court to see if it was permissible that they be allowed in the courtroom today.

THE COURT: What would be your -- is there a possibility they might be called in reply?

MR. CORBETT: Your Honor, depending upon what the defense does, there is that slight possibility.

THE COURT: All right. Then they cannot remain in the courtroom.

MR. CORBETT: Very well. Your Honor, the other brief matter that I have is -- and I don't know if this is the appropriate time for it. Dr. Ross is in route to the courthouse now as to testify as to cause of death.

There's some matters in her report that we believe constitute hearsay and I would like to be heard outside the presence of the jury on those matters before that question or that portion of the report is put before the jury.

THE COURT: All right. At that point that you get ready to do that, if you'll just bring that to my attention and I'll send the jury out and we'll take care of that before you ask the question.

All right. Mr. Wilder, anything with regard from the defense before we bring the jury in?

MR. WILDER: Your Honor, yesterday when we had requested that notes--

THE COURT: And I have those notes and I have reviewed them and my Clerk is reviewing them, and as soon as we have made a determination, we will let you know.

MR. WILDER: All right. Your Honor, I would also like to make sure the record reflects that my request pertaining to those notes extends to Ricky

Richards who testified that he made notes also and that he didn't know where they were and I asked him during his testimony if he could go look for them. He said he would.

He's still under subpoena and has not been released from the subpoena, and I would like his notes also turned over to the Court.

THE COURT: All right. I'll have to have you check on those, Mr. Corbett, and see what he found out. Mr. Richards was released yesterday -- no, he wasn't. He was still under subpoena, but we do -- he did say yesterday that he would try to see if he could find his notes, and we need to check on those as well.

MR. CORBETT: Yes, sir, Judge.

THE COURT: Now, let's see if we can -- let me anticipate we'll go a little bit further in that, Mr. Wilder, because I see this coming. Mr. Barron also testified during the en camera hearing with regard to the Jackson v Deno that he did not have any notes. Do you recall that?

MR. WILDER: Your Honor, if he doesn't have any notes...

THE COURT: Okay.

MR. WILDER: He doesn't have--

THE COURT: Well, I'm trying to -- I'm trying to give Mr. Corbett notice of what you may be wanting to look at or what I need to review to determine. And so those are the only two that I know of that might have anything.

MR. WILDER: Your Honor, as you examine the contents of these things, I would ask the Court to be on alert for several situations that -- that I believe have to be.

One is that the State provided me in response to my notice of alibi to them, this notice of alibi, Your Honor, I -- I have made it a record when Mr. -- when Judge Cothran was hearing these motions, but make sure that this alibi follows the case materials, I'd also like to hand up to the Court and ask it be made part of the Court's record during this trial.

It has been filed with the Clerk as of December 18th, 2007. The -- the notice of alibi was served on the State and then after some time on August 18th, 2008 I believe I did make the State's response to that notice of alibi part of the Court's records and you'll notice in there it said also the name of the witness who purportedly provided information to the -- to the deputy concerning the vehicle description is Rodney Green.

And that's the State -- and when I asked Ricky Richards when he was on the stand did he talk to Rodney Green, yeah. Jamie Turner says the only thing Rodney Green told him was there's the mama.

So, you know, what -- what we got, Your Honor, is somewhere in their notes this information that the State disclosed to me on August 18th is -- is going to be there where Rodney Green provides the information about the vehicle description to the police.

THE COURT: Well--

MR. WILDER: That's what I'm looking for.

THE COURT: It may be in the notice. It may be not be. It may be that the officer just recalled that and testified and it may not be in the notes. I mean, that's -- I'll look at the notes with that regard.

MR. WILDER: Okay.

THE COURT: Okay.

MR. WILDER: And that's one other thing I moved for. And then the other thing, of course, is that we heard where bolos came in different types of cars were being looked for and also a description of three black males in a car was also called in.

Some witnesses provided that information to the

police. They're now saying, well, we don't, you know, every witness who has testified so far has said, I don't know who gave that information to us.

So I'm looking for that in their notes because I believe that anything that's inconsistent with a description of my client is exculpatory.

THE COURT: I understand.

MR. WILDER: Thank you.

THE COURT: And the Court's ruling, of course, on the matter with regard to the production of the notes is is two-fold. First under rule five and under rule five they are not discoverable and under 803 subparagraph eight I believe it is they are not admissible.

So that the -- would not have to be produced pursuant to rule five. The next inquiry becomes whether they are discoverable because they contain exculpatory material under Brady.

And the only way to determine that is for the court to review, to determine if the -- there is exculpatory material in the -- in the notes, and I will say that first thing this morning when I came in, Officer Turner gave me his file folder. I have briefly reviewed it. My Clerk is reviewing it in detail right now.

And now that we know what Mr. Wilder thinks might be exculpatory material, we know a little bit more what to look for. And we will review that and I would ask you, Mr. Corbett, to also check about that other witness to see if he found any notes that he might have. All right. Anything else? All right.

MR. CORBETT: Nothing further on this.

THE COURT: Counsel, come up and let me discuss one matter with you that is... what's that juror's name?

(Whereupon a bench conference was held.)

THE COURT: All right. Bring the jury in, please.

(Jury entered the courtroom at 9:19 am.)

THE COURT: All right. Good morning, ladies and gentlemen. And thank you for your promptness in being back here. And we have taken care of the matters that we need to take care of and we are now ready to go forward.

You will recall that the State is still presenting the testimony in the State's case and they have the right and do go forward now. Mr. Corbett, you may call your next witness.

MR. CORBETT: Thank you, Your Honor. The State would call Wayne Dubose.

WAYNE DUBOSE, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Dubose, good morning.

A Good morning.

Q Tell us, by who are you employed?

A I'm employed by the Sumter County Sheriff's Office.

Q And how long have you been with the Sumter County Sheriff's Office?

A I have been with the sheriff's office 12 years.

Q And what's your current duties with the sheriff's department?

A I'm currently assigned to narcotics division, Sumter County narcotics.

Q Now, with the sheriff's department, do you have occasion where you assist in other types of investigations?

A We do. We assist officers on patrol and investigations, other divisions and other departments.

Q Now, let me turn your attention back to September of 2006. Did you have occasion in -- to assist the investigative division in the area of Suzie Rembert Road?

A Yes, sir, I did.

Q Okay. Tell us a little bit how that came about.

A On that particular day Investigator Brown had advised that a couple of us that we were to assist the investigation division, that they had possible location of where two possible murder suspects were going to be or may be at, so we went to that location on Suzie Rembert Road to do surveillance.

Q Now, let me ask you. About where is Suzie Rembert Road?

A It's a -- you have Pooler Street that runs down beside McLaughlin Ford. Actually Suzie Rembert is the first road to the left off of Pooler Street across from Gamecock's Apartments.

Q Okay. Please continue.

A We went to the location, myself, Investigator Brown and another officer, I don't recall who that was. We set up surveillance on the residence. We were there just a short time, and a vehicle pulled into the residence.

At that time we approached the vehicle and removed the two individuals that were in the car from the vehicle and detained them at that time.

Q And did other officers arrive after that fact?

A Shortly after that time we had made contact with investigators and they responded to the scene.

Q Now, how many individuals did you make contact with?

A There were two individuals in the vehicle that

arrived at the house.

Q Now, at that time did you know their names?

A I don't recall if I knew their names. I believe Investigator Brown may have known the names. All I knew is that we were watching this location for a vehicle to arrive and there was possibly be two individuals in that vehicle.

Q And have you since had occasion to know which two individuals you obtained that day?

MR. WILDER: Your Honor, I'm going to now ask that an objection be interposed in that -- on the grounds of the motions I previously filed, heard by the Court relative to the process of arrest and so I would ask that that objection...

THE COURT: Your objection is noted. It was ruled on en camera and the Court has ruled on that, and the previous objections made with regard to those particular grounds are preserved throughout the record.

MR. WILDER: Thank you, Your Honor.

THE COURT: Okay.

MR. WILDER: I don't need to keep making the objection?

THE COURT: Unless there's new grounds that you...

MR. WILDER: Other new grounds.

THE COURT: Yes, sir.

MR. WILDER: Okay. Thank you.

BY MR. CORBETT:

Q Were you -- after the fact were you able to put names with the individuals you detained?

A After making contact with the individuals in the yard, we were able to identify who they were at that time.

Q And do you see one of those individuals in the courtroom today?

A Yes, sir, one of them is the defendant.

Q Now, while you were on the scene did you have occasion to come into close contact with Wayne Cooper?

A Yes, sir. When we approached the scene I went to the passenger's side of the vehicle and actually removed the defendant from the vehicle and I placed him in handcuffs and detained him at that time.

Q Now, at this point in time was there anything about him that seemed out of the ordinary or strange to you, his condition, his physical status?

A No, sir. Nothing apparent to me.

Q Was there anything that caused you to believe that he was under the influence?

A No, sir, not at that time.

Q And then I believe you remained on the scene until

investigators arrived?

A I did. After we took the individuals, detained them, we notified investigations and they responded to the scene and at that time Investigator Brown left to go obtain a search warrant.

Q And you stayed there the entire time?

A Yes, sir.

MR. CORBETT: That's all the questions I have. Thank you.

THE COURT: Cross-examination, Mr. Wilder?

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Dubose, can you tell us did you search the car they were in?

A I personally didn't, but I believe we did look through the car afterwards.

Q Do you recall finding cans of beer in there?

A No, sir, not that I recall. Didn't find any alcohol containers as I recall.

Q You don't recall?

A No, sir, I don't recall finding any alcohol containers.

Q Did you see any pictures that were taken by Mr. Mackessy of alcohol containers?

A No, sir, I haven't seen any pictures that was

photographed that day.
Q Okay. Now, so you're not saying there weren't any alcohol containers in the car; were you?
A I'm saying I don't recall seeing any in the vehicle, no, sir.
Q You don't recall seeing any. Okay. Now, at the time you arrested Mr. Cooper or detained him, whatever the term is you want to use for it, you didn't have an arrest warrant; did you?
A No, sir. He was detained until investigators arrived.
Q Okay. So the whole time you were out there that day, you never saw an arrest warrant signed by a magistrate; did you?
A No, sir.
Q So at no point while he was in your custody did you have an arrest warrant for him?
A No, sir.
Q No other questions.

THE COURT: Redirect?

MR. CORBETT: Nothing on redirect, Your Honor.

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

(Witness left the stand.)

THE COURT: You may call your next witness.

MR. CORBETT: Your Honor, the State would call Trevor Brown.

THE COURT: All right. Mr. Brown?

TREVOR BROWN, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Brown, good morning.

A Good morning.

Q Tell us, by whom are you employed?

A Sumter County Sheriff's Office.

Q And how long have you been with the sheriff's department?

A Going on 11 years.

Q And what's your current duties with the sheriff's department?

A I'm a sergeant assigned to the narcotics division.

Q Now, Investigator Brown, did you have occasion back in September of 2006 to respond to Suzie Rembert Road?

A Yes, sir.

Q If you would please tell us about that.

A I was informed by my Captain Allen Dailey to assist criminal investigations in going on Suzie Rembert Road looking for a possible green in color car or two subjects with the last name Cooper. They was suspects in a

possible murder.
Q And did you go to that location?
A Yes, sir.
Q Okay. Please tell us what happened.
A Well, we get called from other divisions because our cars fit into normal cars. We don't drive like Crown Victorias or Impalas. Our cars fit in like a normal car you would buy on a street.
So we went in that area and looked on -- 905 Suzie Rembert Road. And we were looking for either a green car or the two subjects in another vehicle.
Q And what did you find when you arrived at this location?
A We was able to see the green car behind the house, so we knew they wasn't driving that car. So we just waited till other -- they showed up in another vehicle.
Q And did that in fact happen?
A Yes.
Q Okay. And then what did y'all do next?
A We got out.
Q Ask you, was Investigator Dubose with you?
A He was in another vehicle. I was in my car. He was in his. I think Investigator Alfred Josey (sic) was with him and they got out with the two subjects in the silver car.

Q Okay. Please continue.
A After they got out with him, I made contact with Captain Turner, let them know that the two subject were at the residence, and then that's when investigations arrived.
Q Now, did you have any contact with Wayne Cooper that day?
A Short, was brief.
Q Was there anything about Mr. Cooper's attitude, physical condition or anything that seemed out of the ordinary?
A No, sir.
Q What did you do next?
A After I made contact with Captain Turner, he arrived on the scene, we had a brief discussion about what was going on, and I left, went back to our office and I started typing the search warrant for the residence.
Q And did you obtain that search warrant?
A Yes, sir.
Q And did you return to the residence?
A Yes.
Q Did you have occasion to participate in the search of the residence?
A Yes.
Q Now Investigator Brown, I kind of want to direct your

attention to the outside area in the grounds on the outside area. What if anything did you note or observe outside on the ground?

A We kept knocking on the front door. And a lot of times people don't answer the front door, they answer the back door. So we went to both doors because we hear moving inside the house, so we went to the back of the house. I saw some window tint next to the green car while I was knocking on the back door.

Q Investigator Brown, thank you.

THE COURT: Cross-examination, Mr. Wilder?

MR. WILDER: No questions.

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

(Witness left the stand.)

THE COURT: Call your next witness please, Mr. Corbett.

MR. CORBETT: Thank you, Your Honor. The State would call Investigator Tommy Barron.

TOMMY BARRON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Investigator Barron, good morning.

A How you doing?

Q Good. Investigator Barron, tell us, who do you work for?

A Sumter County Sheriff's Office.

Q How long have you worked for the Sumter County Sheriff's Office?

A Little over 13 years.

Q And prior to that did you have any other experience in law enforcement?

A Yes, sir. Approximately 15, 16 years with two different agencies. I have 27 years of law enforcement experience.

Q And what is your current assignment with the Sumter County Sheriff's Department?

A Criminal investigator.

Q And as a matter of fact, based on your years there, your duties have changed a little bit; is that correct?

A Yes, sir. I actually retired two years ago and came back as an investigator.

Q When you retired, what were your duties?

A I was a captain over the investigative division.

Q Now Investigator Barron, I want to turn your attention to September 5 of 2006. Did you have occasion to go to the address of Suzie Rembert Road that day?

A Yes, I did.

Q Okay. Same location that the other officers have

been testifying about?
A Yes, sir.
Q Okay. Tell us what happened and how you ended up there and what you observed.
A We got a call that they possibly need some assistance, so I went. And basically what I did after a -- search warrants were obtained, I watched the suspects in the house while they were searching the house.
Q Okay. And did you have occasion to make contact with Wayne Cooper?
A Yes, sir.

MR. WILDER: Your Honor, again I'm going to ask my objection to run throughout his testimony based on the illegal seizure argument previously ruled on by the Court.

THE COURT: All right. Anything previously presented to the Court and been ruled on by the Court is preserved without further objection. Anything new would require additional objections. Go ahead, sir.

BY MR. CORBETT:
Q Did you have occasion to make contact with Wayne Cooper that day?
A Yes, sir.
Q Okay. Do you see Wayne Cooper here today?
A Yes, sir, he's sitting over by Mr. Wilder.

Q The same person you had contact with that day?
A Yes, sir, same one.
Q All right. Tell us a little bit about your contact with Mr. Cooper.
A Well, I was in -- in the living room like I said earlier watching the suspects. When they wrap things up, he looked at me and said, you look like someone I can talk to and trust, I want to ride and talk to you.
Q Okay. Now, they had been arrested at this point?
A Arrested or detained. I know he was in cuffs.
Q So he was in cuffs and y'all were taking him downtown?
A Right, he -- Mr. Cooper rode with me, just he and I in my vehicle.
Q Now, you rode with him back to the station?
A Right.
Q Was anyone else in the car with y'all?
A No, sir.
Q Okay. Now, when you got to the station, tell us what you did.
A We got to the station, I took him in my office, shut the door, and at that time before I asked him any questions or what we were going to talk about, I advised him of his constitutional right, miranda rights.

MR. WILDER: Your Honor, at this time I would

ask that the objection pertaining to the statement begin to attach and run.

THE COURT: That objection and the matters raised in the Jackson v Deno hearing are preserved without further objection.

MR. WILDER: Thank you.

BY MR. CORBETT:

Q Now, Investigator Barron, I just handed you this document and I want you to take a few minutes and tell us what that document is.

A This document is a document we use at the Sumter County Sheriff's Office. It's miranda warning waiver of rights. It's listed in five different numbers where the -- the suspect was asked to read each one of his miranda rights, and if he understood it, he would initial it.

And he initial it which indicated to me he understood and that -- and then at the end he was asked to read what we call a waiver of rights and he read that paragraph and he said he understood and he also indicated he understood by signing it.

Q If you would, please, because there at the top -- just read through those first five--

THE COURT: Wait a minute. You going to offer it?

MR. CORBETT: I'm sorry, Your Honor.

BY MR. CORBETT:

Q Investigator Barron, let me ask you, was that form presented to Wayne Cooper?

A Yes, sir.

Q Okay. And did he initial that form?

A He did.

Q Did that in your presence?

A Yes, sir.

Q Did he also sign that form?

A He did.

Q And you -- your testimony is that you advised him of his rights?

A Yes, sir.

MR. WILDER: Subject to our--

THE COURT: Subject to previous objections of -- the miranda warning statement is admitted into evidence as State's number -- and keep the court marking on there, put an additional sticker on there -- State's 18 subject to the objections previously made and ruled on by the Court.

(WHEREUPON, State's Exhibit 18 was admitted into evidence.)

THE COURT: All right. Now you may proceed, Mr...

BY MR. CORBETT:

Q If you would please just walk us through those top five portions.

A Okay. Number one, you have the right to remain silent. And he initialed that. Number two, anything you say can and will be used against you in a court of law. He initialed that. Number three, you have the right to talk to an attorney and have him or her present with you while you're being questioned. He initialed that one.

Number four, if you cannot afford to hire an attorney, one will be appointed to represent you before any questioning if you wish. He initialed that one. And number five, you can decide at any time to exercise these rights and not answer any questions or make any statements, and he initialed that.

Q And what does that next line there tell us?

A The next line says, I understand each of the above rights which I have been read and explained by Captain Tommy Barron of the Sumter County Sheriff's Office at September the fifth, 2006, 8 pm.

Q And then just below that, whose signatures appear?

A Wayne Cooper and then I witness it.

Q And what's the bottom portion of that form say?

A Having been advised of my rights and fully understand my rights, I do wish to answer questions at this time and

I do not wish to have an attorney present.

My decision to answer questions now without an attorney is made freely and is my own choice. No one has threatened me in any way or promised me anything. And that was also signed by Wayne Cooper and witnessed by myself.

Q And is that also dated?

A September the fifth, 2006.

Q And time?

A That's 8:05.

Q And that's PM?

A PM, ma'am. Yes, sir.

Q Okay. And I'm going to ask you to look at this document and tell us if you can identify that.

A Yes, sir. This is a voluntary statement that Wayne Cooper freely and voluntarily gave me concerning the facts surrounding this case.

Q Okay. And let me ask you, whose handwriting is on the form?

A That's my handwriting.

Q Okay. And that's based on what?

A I wrote based on what he told me.

Q Okay. And this interview that you had written out here, was it conducted at the same time the waiver of rights form was completed?

A Yes, sir.

MR. WILDER: Your Honor, subject to our objection.

THE COURT: Admitted into evidence subject to the objections previously made to Jackson v Deno hearing as State's exhibit number 19.

(WHEREUPON, State's Exhibit 19 was admitted into evidence.)

THE COURT: Wait just a minute, Mr. Corbett. Let me talk to the jury just a minute. Ladies and gentlemen of the jury, the Court has admitted into the record of this case a statement alleged to have been made by the defendant.

Before you may consider the statement as evidence for any purpose, you must consider four questions or must determine four questions.

Did the defendant make the statement. Was the defendant warned of his constitutional rights. Did the defendant knowingly and intelligently waive his constitutional rights. And was the statement given voluntarily.

The fact that the Court has admitted a statement into evidence should not be considered by you as any evidence whatsoever that the defendant made such a statement or that the required constitutional

safeguards were in fact provided and waived by the defendant or that the statement was voluntarily given because these issues are for you, the jury, to determine.

The State must prove beyond a reasonable doubt each of the four requirements that I have just stated to you before you may consider the statement as evidence for any purpose whatsoever.

Now, as to the first requirement, did the defendant make the statement, if you conclude that the defendant did not make the statement, you would then completely and totally disregard the statement.

Was the defendant warned of his constitutional rights. When an individual is taken into custody or otherwise deprived of his freedom of action in any significant way by a police or law enforcement officer, he must be warned of his constitutional rights prior to and before any custodial interrogation or custodial questioning.

These rights are, that he has the right to remain silent, that any statement that he does make can and will be used against him in a court of law, that he has the right to select a lawyer of his choice, but if he does not have the money or resources to employ a lawyer, the Court will appoint

and provide a lawyer to represent him without cost or expense to him if he so desires.

That he has the right to consult a lawyer before answering any question or making any statement. And that he has the right to have his lawyer present with him at all times during all interviews and all interrogations.

If you determine that these constitutional warnings were not given to the defendant prior to the interrogation and the taking of the statement or that the defendant was not afforded the opportunities to exercise these rights, you must completely disregard the statement and in that event you cannot consider the statement as evidence in any manner whatsoever.

Next matter you must determine is did the defendant knowingly and intelligently waive his constitutional rights. Before you can consider the statement as evidence in this case, the State must prove beyond a reasonable doubt that the defendant after being given his constitutional warnings knowingly and intelligently waived his constitutional rights and agreed to answer questions and make a statement.

And then you would go to the fourth requirement. Was the statement given voluntarily. The word

voluntarily means that the statement was the expression of the defendant's own free will and was not induced by any pressure, force or fear or the influence or hope or promise of some benefit or reward or extracted by threats, coercion or intimidation.

A statement is not voluntary and may not be used against a defendant unless it is the product of an essentially free and unconstrained choice by its maker.

If the statement is voluntarily, if the defendant was willed to make the statement -- I'm sorry. If the statement was involuntary and against the defendant's will, it may not be used against him.

The ultimate question to be resolved by you with regard to the alleged statement of a defendant is in addition to the questions of whether or not the defendant in fact made the statement and whether or not his constitutional rights were observed and knowingly and intelligently waived by him is, and this is the ultimate question, was the statement the expression of the defendant's own free will made without any compulsion or inducement but representing an essentially free and unconstrained choice by the defendant or was it the product of the overborne will

of the defendant.

With regard to the alleged statement of the defendant, the State must prove by evidence each and every requirement about which I have instructed you beyond a reasonable doubt before you may consider the alleged statement as evidence in this case.

All right. Mr. Corbett, you may proceed.

MR. CORBETT: Thank you, Your Honor.

BY MR. CORBETT:

Q Now Investigator Barron, you had advised us that he had completed this waiver of rights form; is that correct?

A That's correct.

Q And you had listed the five rights that you read to him; correct?

A Yes, sir.

Q And he initialed those?

A Yes, sir.

Q And then there at the bottom he indicated by signing that he understood his rights; is that correct?

A That's correct.

Q And he did not want to have a lawyer present?

A That's correct.

Q And that the statement was given freely?

A Freely and voluntarily, yes, sir.

Q All right. It also contains a part that no one has

threatened me or promised me anything?
A Correct.
Q Okay. Now, when you interviewed Mr. Cooper, did you in any way threaten, coerce or in any way do anything to get him to talk to you?
A No, sir.
Q Okay. Now, let me show you what has been marked State's 19. Tell us about how you came to write out this information.
A After I advised him of his miranda rights, we talked for a little while and -- and I told him that I wanted to get everything in writing that we talked about, and he agreed for me to put it in writing and that's how we got it on the statement form.
Q Now, the information contained in here, where did this information come from?
A The information came from him.
Q Did you add any facts or any descriptive -- descriptions to this statement?
A No, sir, I didn't add anything.
Q Okay. What's on this form, were they his words?
A His words.
Q Okay. Now, if you would there, look just down where it says, before answering any questions. Do you see that segment?

A Yes, sir.
Q All right. That's a pre-printed line on form; is that correct?
A Yes, sir.
Q All right. If you would please read us that line and then also what's inserted in the blank there.
A Before answering any questions or making any statements I have been advised of my miranda rights by Captain Tommy Barron.
Q That's the part that's written in, correct?
A Correct.
Q Okay. Continue, please.
A And I do understand my miranda rights and I am making this statement freely and voluntarily.
Q Now, if you would please read for us Mr. Cooper's statement.
A On Saturday, September the second, 2006 at approximately 5:15 am I was on my way to work when I received a call on my cellphone from my brother, Derrick Cooper. He said that he needed for me to come to his residence to help him get his vehicle started.

I arrived at his residence, Cedar Hill Mobile Home Park. We got his vehicle started. I then decided to ride with him because my vehicle was messing up. My brother was driving a four door Chrysler green in color. We were

leaving out and a black male walking down the street threw a beer bottle at our vehicle striking it on the windshield.

Someone was walking with the black male, but I couldn't tell if the person was a male or a female, only that the person was black. We stopped the vehicle and my brother Derrick asked him did he throw something at our vehicle, and the black male shot at us.

We then jumped into my car and was in the process of leaving when I turned to my left and fired one shot from my gun which I believe was a 22 revolver. I didn't shoot but once because my gun fell apart. We then drove out of Cedar Hill Mobile Home Park and started towards Columbia.

Once we got on to Highway 378 and 76 I tossed the gun out of the window near James Ervin's Auto Sales. We went on to work. We worked at Fire Mountain which is on Garners Ferry Road in Columbia.

Q Now, Investigator Barron, up to this point in time had you been the investigator assigned to this case?

A No, sir.

Q Okay. So you were out there that day assisting other investigators?

A Right.

Q Had you worked this case in terms of interviewing witnesses or talking to other individuals?

A This was the only involvement I had in it. I hadn't talked to anybody else concerning it -- the case as far as witnesses and all go.
Q Okay. So you had not obtained witness statements or interviewed people about this case?
A No, sir.
Q So the information that you just read to us came from Wayne Cooper?
A Yes, sir.
Q Now, was there anything about Mr. Cooper's attitude, physical condition, anything at all that evening that suggested to you that he wasn't voluntarily giving you this statement?
A He voluntarily gave it. He had a good attitude. Nothing suggested anything otherwise.
Q Did he appear to be under the influence?
A No, sir, he wasn't under the influence.
Q Investigator Barron, let me ask you, over the years, have you had other occasions to interview witnesses and take statements from them?
A I have.
Q Okay. Would it be fair to say it's been a large number of times?
A Large number of times.
Q Okay. So this wasn't your first time sitting down

interviewing somebody?
A No, sir, it wasn't.
Q Was there any type of effort to make him give a statement?
A No effort. He volunteered.
Q And it was you who took the statement from him?
A It was me.
Q Did you -- did you talk with any other officers as you were writing this statement out?
A Nobody was in the room but Wayne Cooper and myself.
Q So you were writing it out in the room as he was talking?
A Right.
Q Investigator Barron, let me back up for just a moment. You indicated on scene in Suzie Rembert Road, did you approach him and ask him to talk to you?
A He approached me.
Q Now, the statement that you just read to us, was it signed?
A It was signed.
Q Okay. All right. If you would please read that bottom portion of the pre-printed portion of the form.
A I have read each page of this statement consisting of one page, each page of which bears my initials, and I certify that the facts contained herein are true and

correct and I have received a copy of my statement. This statement was completed at 8:50 pm on the fifth day of September, 2006, signed by Wayne Cooper and witnessed by Captain Tommy Barron, which is myself.

Q And what does the -- what does the line under Mr. Cooper's signature say?

A Signature of person giving voluntarily (sic) statement.

Q Now, did Mr. Cooper indicate whether or not he could read?

A He said he could read.

Q That's all the questions I have.

THE COURT: All right. Cross-examination? Ladies and gentlemen of the jury, I probably should have told you this before and I did not, but I will tell you now because it does apply throughout the trial of this case.

And there have been exhibits introduced into evidence. Any exhibit that is introduced into evidence and made a part of the record of this case will go with you back to the jury room when you retire to reach a verdict.

So do not be concerned if you have not had an opportunity to look at the exhibits or study the exhibits for as long as you would like while you're

sitting there in the jury box because anything that is admitted into evidence will go with you back to your jury room. All right. All right. Mr. Wilder?

MR. WILDER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. WILDER:

Q Mr. Barron, this is a very important case; isn't it?

A Yes, sir.

Q Probably one of the most important kinds of cases that we have in our system of juris prudence or in the law?

A Right.

Q Important case?

A Yes, sir.

Q And you have seen videotapes and recordings of people being interviewed by the police before; haven't you?

A I have seen them before, yes, sir.

Q The sheriff's department owns tape recorders and video cameras; don't they?

A Yes, sir.

Q Okay. And in fact, Mr. Turner was present with you at the law enforcement center while all this was leading up to your interview with Mr. Cooper; wasn't he?

A He was at the law enforcement center but he was not in the office with me and Mr. Cooper. Mr. Cooper

indicated that he wanted to talk to me and that's the reason nobody else was in there because he wanted to speak to me.

Q Just you and him in there with the door shut.

A Yes, sir.

Q Okay. All right. And so naturally since this is the most important kind of case we have, you at least cut on the tape recorder while you were talking to him; didn't you?

A No, sir, I didn't have a tape recorder.

Q Well, you at least had a video camera that you had on him while he was doing the talking with you; didn't you?

A No, sir.

Q So there was no other witness and there's no tape recording, there's no videotape of what happened in that room?

A The witnesses, me and Mr. Cooper.

Q You and Mr. Cooper. Okay. Now let's talk about that for just a minute. I believe you testified that all of the writing in the body of the statement was in your handwriting?

A My handwriting.

Q Okay. And so on this exhibit that the State has put in here, number two--

THE COURT: No, it's--

BY MR. WILDER:

Q Number 19. Okay. Number 19. The only place Mr. Cooper's handwriting appears is his signature in two places; right?

A That's right.

Q All right. Now, do you see his initial anywhere on the paper?

A No, sir. His initial is not on the paper, just his full signature.

Q Okay. So his signature is there in two places where it indicates that somebody's supposed to sign; right?

A His signature is in one place and mine is under his witnessing it.

Q All right. It's on the other form that it occurred twice?

A Yes, on the other form it occurs twice and then he initialed five different places.

Q All right. So on the one that has the information on it, his signature, the only thing that's there in his writing is his signature?

A That's it.

Q No initials?

A No initials.

Q Anywhere?

A No, sir.

Q Okay. Now, it would be possible, would it not, for somebody to put a signature on a blank piece of paper?
A Would it be possible?
Q Yeah.
A That would be possible, but it didn't happen in this case.
Q Didn't happen that way. But it's possible.
A Oh, anything is possible.
Q Okay. Now, how long were you with him that day?
A I'd say 45, 50 minutes, somewhere in that timeframe.
Q I believe you said you met him on Suzie Rembert Road?
A Right.
Q All right. I wonder if you'd take a look at the statement that you say he provided the information for and tell the jury what address he listed or you listed and wrote down as being his address.
A I wrote down 95 Suzie Rembert Road.
Q But that's not where y'all were, were you -- was he?
A I'm not sure of the physical address. That's what I had, 95.
Q In fact, he lives at 905 Suzie Rembert Road; doesn't he?
A He could. That could have been a -- been an error on my part.
Q Well, so you -- you saying you wrote down something

in error in this very important case?

A Yeah, if -- if the address is wrong, that would be an error. But the statement was given voluntarily by your client and that is not in error.

Q Well, suppose he told you he lived at 95. That would be wrong, too; wouldn't it? You just writing down, you -- you testified you're just writing down what he told you, right?

A Right. But I could have wrote -- I could have misunderstood him on the 95.

Q Or he could have not been understanding what he was doing?

A He understood.

Q Well, what about the phone number? Did you verify the phone number up there?

A No, I didn't verify the phone number.

Q How about a social security number, did you verify?

A I didn't verify it.

Q Huh?

A No, sir.

Q All right. So you don't know if that's right or not?

A If he told it to me, I'm assuming that is right.

Q But there are no initials on that page, its pre-printed language on it says there's supposed to be initials on there; doesn't it?

A No, sir. There is--
Q Read it again, please. Pre-printed language, bottom of the page. Out loud to the jury.
A Right. It says I bear my initials and certify that the facts contained herein are true and correct.
Q No initials on the page?
A No initials, his -- his name, Wayne Cooper, that he signed.
Q Okay. Now, how many people total were around Suzie Rembert Road when you were there from law enforcement?
A I can't exactly remember. Seven, eight.
Q There was a big old officer there shouting out y'all going to jail for murder, y'all going to jail for murder; wasn't there?
A I don't recall anybody shouting that out.
Q And he was in handcuffs when you first saw him, right?
A Yes, sir.
Q And whether you call that arrest or detention, he remained in handcuffs till you got him to the law enforcement center; right?
A Correct.
Q Did you let him out while you were talking to him?
A Yes, sir.
Q Did he tell you anything that you didn't write down?

A What he told me is written out.
Q Okay. Let me make sure I understand. You are saying he did not tell you anything that you did not write down?
A I don't recall that he told me anything that I didn't write down concerning the facts of the case.
Q Was he allowed to have a cellphone with him?
A I don't recall him having a cellphone. I didn't give him one.
Q You didn't search the inside of the car that he was in; did you?
A No, sir.
Q And I believe it's your testimony you didn't make any notes about this other one, what's in front of the jury?
A We talked about it and -- and the notes I have, this is -- this is what we talked about and this is what I wrote down.
Q Didn't make any other notes?
A I didn't make any other notes. Wasn't no reason to because he agreed to give me a voluntary statement.
Q All right. Do you see on that waiver form there that's in front of you there's another blank for a witness signature; isn't it?
A There is.
Q But it's blank?
A It's blank.

Q And those -- both are pre-printed forms that you use every day over at the law enforcement; aren't they?
A Pre-printed forms.
Q So all the language about waiving the right to an attorney and all of that, that's all pre-printed in there, ain't nothing -- neither one of you came up with that on your own, it's all part of pre-printed form?
A When you advise somebody of their rights, the rights is going to be the same whether I advise you or Wayne Cooper. It's the same miranda rights.
Q All right. And this particular day is the first time you ever laid eyes on Mr. Cooper?
A Yes, sir.
Q Thank you. No other questions.

THE COURT: Redirect, Mr. Corbett?

REDIRECT EXAMINATION

BY MR. CORBETT:
Q When you were asked about any initial on this statement form --
A Right.
Q -- how many pages were there?
A One page.
Q Okay. So there wasn't a different page that needed to be initialed and then the last page signed?
A That's correct.

Q And that page bears his signature?
A Bears his signature, Wayne Cooper.
Q That's all the questions I have.

THE COURT: Re-cross?

RECROSS-EXAMINATION

BY MR. WILDER:

Q All right. You see where you made a correction about half-way down the page?
A Yes, I scratched through his and then a BE, I scratched through that.
Q And your procedure is to have a person initial any changes on it; isn't it?
A Well, that would be ideally, but it doesn't make it wrong that it's -- it's not that way --
Q Thank you.
A -- because he read his statement, he agreed to it and he signed it.
Q No other questions.

THE COURT: All right. Thank you, Mr. Barron. You may step down. Give those exhibits back to the Court Reporter, please.

THE WITNESS: Okay.

(Witness left the stand.)

THE COURT: Mr. Corbett?

MR. CORBETT: Your Honor, may we approach for a

moment?

THE COURT: Yes.

(Whereupon a bench conference was held.)

THE COURT: Ladies and gentlemen, I have been advised by counsel there are some evidentiary matters that I need to discuss. It's going to take me just a few minutes so I'm going to ask you to go to the jury room.

Please do not discuss the case among yourselves. It's still premature. And this will not take very long, but I do need to ask you to go to your jury room for just a few minutes. Thank you. You may go with the bailiff.

(Jury left the courtroom at 10:08 am.)

THE COURT: All right. Mr. Corbett, tell me what we have got.

MR. CORBETT: Thank you, Your Honor. Your Honor, the State intends to call as its next witness Dr. Janice Ross from Newberry Pathology Associates. Her testimony will pertain to the victim's cause of death. As a result of that autopsy, she prepared a report.

Your Honor, the reason I had wanted to bring this matter to the Court's attention outside the presence of the jury, her report contains what we

believe to be hearsay information.

THE COURT: All right.

MR. CORBETT: Our best estimate is that it probably came from the Coroner's office or something of that nature.

THE COURT: Hold on a minute. Let's find out something. Mr. Wilder, do you have a copy of the report?

MR. WILDER: I have a copy of a portion of it he's referring to.

THE COURT: Do you object to it?

MR. WILDER: Well Your Honor, I believe the case history that was given to the Pathologist is part of what she can testify to. In fact, when you go in and you consult an expert, what the case history is part of it.

THE COURT: Well, that's one of the exceptions to the hearsay rule. No doubt about that.

MR. WILDER: So I think that if he calls her, that it's fair game for me to cross-examine. If he wants to put the report in, that's his choice. But it's fair game for me to cross-examine.

THE COURT: That's not the question.

MR. WILDER: Okay.

THE COURT: The question is, do you object to

the report as written?

MR. WILDER: No.

THE COURT: Okay.

MR. WILDER: The report as written comes in.

MR. CORBETT: Judge, that's my issue with the -- the report as written contains hearsay information. We believe that we should be entitled to redact that portion of the report which is based solely on information that somebody else gave to Dr. Ross.

THE COURT: Well, if -- I've got a problem with your wanting to put in a portion of her testimony and not put in another portion of her testimony, and the State -- and the defense doesn't object to it.

I mean, if you couldn't -- put the witness up, how do you have the right to object to the testimony being hearsay if the defense doesn't object? I'm not sure I understand that idea. Let me see.

(Whereupon there was a pause.)

THE COURT: I am going to allow the report, if offered, as written. I am not going to require it to be redacted. Now, you can put her testimony in. And if Mr. Wilder wants to ask about hearsay, then you can -- you'll have an opportunity to object to it at that point and I can rule on the objection at that point.

But as far as the report is concerned, I'm not going to allow you to redact it to take out the parts that you want, not take out the parts that you don't want.

MR. CORBETT: Very well, Your Honor.

THE COURT: All right. All right. Ready? All right. Bring the jury in.

(Jury entered the courtroom at 10:14 am.)

THE COURT: All right. Thank you very much, ladies and gentlemen. We are now ready to proceed. Mr. Corbett, you may call your first witness -- your next witness.

MR. CORBETT: Thank you, Your Honor. We call Dr. Janice Ross.

THE COURT: All right.

DR. ROSS, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Dr. Ross, good morning.

A Morning.

Q Dr. Ross, by whom are you employed?

A Newberry Pathology Associates.

Q Okay. Dr. Ross, if you would please, take a few moments and tell us about -- well, first of all, let me

ask you, what is your area of practice at Newberry Pathology Associates?

A Forensic pathology.

Q Okay. If you would please, take a few moments and tell us about your education, training and experience in the field of forensic pathology.

A Yes, sir. I have a degree from the University of South Carolina and then my MD after four years of medical school in Upstate Medical Center in Syracuse, New York. I then did four plus years in the field of pathology which is the study of disease.

We've -- are taught how to do an autopsy. We are trained to look at surgery, tissue from surgery to identify cancers and bloodwork to do -- to identify leukemias and anemias. That's the field of pathology.

I further trained in forensic pathology. The word forensic means legal. So we use our knowledge of pathology in areas including such things as homicides, accidents, rapes, anything to do with the legal field.

We are trained to do a forensic autopsy which is a more specific and -- type of autopsy. I have been board certified in three areas of pathology.

MR. WILDER: Your Honor, they can do as much as they want, but we'll stipulate that Dr. Ross is an expert in the field of forensic pathology.

THE COURT: All right, sir. All right. Then based on that stipulation, the Court would then qualify Dr. Ross as an expert witness in the field of forensic pathology and autopsy.

And ladies and gentlemen, again you will recall that I told you that a witness is qualified as an expert, that witness may testify in the form of an opinion whereas normally a witness who is not an expert witness cannot give an opinion.

But a witness who is qualified by training, experience, education can give an opinion when they have been qualified as an expert, and I have qualified Dr. Ross as an expert in the field of forensic pathology and forensic autopsy. Yes, sir.

MR. CORBETT: Thank you, Your Honor.

BY MR. CORBETT:

Q Dr. Ross, have you testified in court before?

A Yes.

Q Fair to say quite a few times?

A Yeah, in the State of South Carolina over 50 times, yes.

Q Okay. And you have done quite a few autopsies; is that correct?

A Yes.

Q Okay. Now, when I say autopsy, is that the correct

term?
A Correct.
Q Okay. And it's been a lot of autopsies?
A Yes.
Q Okay. Have any of those prior cases involved homicides?
A Yes.
Q Now if you would, I'm going to ask you to turn your attention to an autopsy on an individual known as Brandon Green.
A Yes.
Q Do you have -- did -- were you the doctor who performed that autopsy?
A Yes.
Q Okay. If you would please tell us a little bit about the autopsy that you performed and then I'm going to ask you to tell us specifically what you found about cause of death.
A Yes. The body was brought to us in a body bag and we did an external examination including -- including clothing that was present and there was brought to us. Then we do an external examination of the body itself and an internal examination.

We found a single gunshot wound which entered the back of this gentleman. And it went from left to right

and slightly forward to go through the lower lobes of both lungs and the aorta which is the major artery coming off the heart. It caused a lot of bleeding internally into the chest cavity.

MR. CORBETT: Your Honor, I'm sorry, could we have that...

THE COURT: All right. Go ahead.

THE WITNESS: The bullet itself was retrieved from the lower lung -- lower lobe of the right lung. So in the course of the autopsy, it's our duty to document the injuries, document the evidence, and collect fluids for toxicology purposes.

BY MR. CORBETT:

Q Now, in your report, indicates that some clothing was also brought to the autopsy along with the body; is that correct?

A Yes.

Q Okay. Tell us what if anything you noticed about the clothing.

A We were brought the T-shirt that had been cut off the body in efforts to save him. And in that there was a hole in the shirt overlying where the gun -- entrance gunshot wound would be. We found no evidence of soot in or stippling in that gunpowder in -- around that wound indicating that it was a distant gunshot wound.

Q Now, when you say distant, what do you mean by that?
A It depends on the weapon, the caliber, et cetera, but it means that the -- the barrel of the gun is several feet to -- several feet away from the -- the victim.
Q Now when you say distant, it doesn't have to be a hundred yards or anything like that?
A No, could be from maybe 3 feet to 50 feet, you know.
Q Now, Dr. Ross, I'm going to ask you to do this for me if you would, please. And if you need to refer to your diagrams -- could you point on me where the entry wound is?

MR. CORBETT: Your Honor, may the witness step down?

THE COURT: Yes.

THE WITNESS: Yes. Went in the left back about here and pretty much went straight across and slightly forward, so it's internally in the lower lobe of the right lung.

BY MR. CORBETT:
Q Thank you. Dr. Ross, based on your training and experience, what is the cause of death of Brandon Green?
A Cause of death is exsanguination which means to bleed out due to a laceration of the lungs and the aorta due to the gunshot wound of the back.
Q Thank you, Dr. Ross.

THE COURT: Cross-examination?

CROSS-EXAMINATION

BY MR. WILDER:

Q Dr. Ross, did you issue a written report?

A Yes.

Q Do you have that with you?

A Yes, I do.

Q May I see it, please?

A Uh-huh.

Q A portion of it issued right after the -- the examination and sent to law enforcement.

MR. WILDER: Your Honor, I'd like to have that portion of it marked for identification by Dr. Ross.

THE COURT: Well, she'll -- what -- show Mr. Corbett what you wish to have marked.

BY MR. WILDER:

Q Got page four of your -- with your signature on it. That's what I'm looking for.

THE COURT: Do you have a copy that you could use, Mr. Wilder --

MR. WILDER: I--

THE COURT: -- rather than take her original?

MR. WILDER: Markings all over it, so...

THE COURT: All right. If you will pull that one, doctor, we will make a copy of it and give you

yours back.

MR. CORBETT: Your Honor, if I may.

THE WITNESS: Just page four?

MR. WILDER: I want all four pages.

THE WITNESS: All four.

BY MR. WILDER:

Q One, two, three, four which is your report as I understand it.

A Yes, sir.

Q That's your complete report with your signature on it that you initially did; right?

A Yes.

THE COURT: All right. Mr. Corbett, if you'd take those right now or have somebody take those, make a copy of them, there's a clean copy so the doctor can have hers back and we'll wait just a minute so we can get that done.

MR. WILDER: Your Honor, while he's sending for that, I can go ahead if it's all right.

THE COURT: Go ahead.

BY MR. WILDER:

Q All right. Now, Dr. Ross, you sent off samples that you took of occular fluid and other bodily fluids to have them tested for toxicology; did you not?

A Yes, I did.

Q And what's the purpose of all of that? Why do you do that?

A To look for drugs in the system.

Q Okay. And in this case did you find that Brandon Green had high levels of alcohol in his system?

A Yes, we did.

Q Okay. Did you come up with a blood alcohol content?

MR. CORBETT: Objection, Your Honor.

THE COURT: What's the objection?

MR. CORBETT: Your Honor, I don't think this witness did that test.

MR. WILDER: All right.

THE COURT: Lay a foundation.

MR. CORBETT: I'm sorry. My objection is hearsay.

THE COURT: Objection is hearsay? All right. Mr. Wilder, go ahead. I'll hear from you.

MR. WILDER: Your Honor, it's my contention that if she had found that a sufficient level contributed to cause of death, that might have changed her opinion as to what she put in the report, therefore it's subject -- should be allowed as cross-examination.

THE COURT: All right. I think it is proper and I think it's relevant to the facts of this case.

Objection is overruled.

MR. WILDER: Thank you.

BY MR. WILDER:

Q What blood alcohol level was reported to you as being involved with Mr. Brandon Green?

A .213 percent.

Q Now, did he also have THC in his system?

A Yes, he did.

Q And is that from smoking marijuana or one would think?

A Well, it's from ingesting or smoking marijuana.

Q THC is the active ingredient that comes from the cannabis plant of marijuana?

A Yes.

Q Okay. And that was in the bloodstream?

A Yes.

Q Now, the -- I take it that his hands were bagged; correct?

A Yes, they were.

Q And the purpose of bagging the hands I guess is just to make sure that no contaminants got on them and that sort of thing?

A Correct.

Q When was that done? Was that done in your presence?

A It was done before I received him.

Q Did the bag remain on him during autopsy?
A No.
Q Okay. What happened to that...
A We took them off to look at the... to look at the hands and then we did not collect gunshot residue kit, but law enforcement may have who was there.
Q Okay.
A I don't have that report.
Q Well, do you remember whether or not that was done in your presence?
A I don't remember.
Q So you can't -- you can't tell the jury whether you think it was done properly or not; can you?
A Correct.
Q All right. Now, you conducted this autopsy on 9-03-06 at 9 am; correct?
A Yes.
Q And when you summarized the case, you said after a review of the case history or after review of the history and autopsy finding, all -- exsanguination and then you...
A Yes.
Q Had some more language.
A Yes.
Q Okay. Now, had -- so the case history is always a part of what you take into consideration in your thinking

about your opinion about what happened.
A Yes.
Q What case history were you given in this matter?
MR. CORBETT: Objection, Your Honor.
THE COURT: All right. What's the basis of your objection?
MR. CORBETT: The objection is hearsay. He's asking what somebody else told--
THE COURT: How about 803 sub-paragraph four, Mr. Corbett?
MR. CORBETT: Judge, I mean, we believe it's hearsay.
THE COURT: All right. Mr. Wilder?
MR. WILDER: Your Honor, it's an exception to the hearsay rule and it's also part of the witness's report.
THE COURT: But the report is not in evidence.
MR. WILDER: That's correct.
THE COURT: Okay. So you're basing it on the statement that was made to her?
MR. WILDER: I'm saying that -- I'm just going to get her--
THE COURT: You want her to give the -- to testify to the statements that she was told.
MR. WILDER: Just the case history that's part

of her report. That's all I'm going to ask her.

THE COURT: Objection overruled, 803 subparagraph four.

BY MR. WILDER:

Q All right. Dr. Ross, would you read to the jury the cases--

THE COURT: No. No. She's not going to read it. It's not in evidence. You can ask her what she was told and given as a case history, but she cannot read the report without it being in evidence.

BY MR. WILDER:

Q All right. What case history was given to you, Dr. Ross, concerning Brandon Green?

A The Coroner called--

MR. CORBETT: Objection, Your Honor.

THE COURT: Yes, sir.

MR. CORBETT: I believe the ruling of the Court is that she's not going to read it in without it being in evidence.

THE COURT: She's going to -- she can give -- she can give her -- what was given to her as the case history based upon her recollection and she can use a document to refresh her recollection. She cannot read the report.

MR. CORBETT: Thank you.

BY MR. WILDER:

Q Please answer the question, Dr. Ross.

A As Coroner Moore called and explained that this victim was walking home and he was shot by a passers-by in a vehicle.

Q How many passers-by?

A I believe she said three.

Q Three. And what time was given to you as your case history?

A 5:58 am, but on her subsequent authorization form she put down 5:55 am.

MR. WILDER: All right. Your Honor, I have no other questions at this time but I do want to get her to mark the report when it comes back.

THE COURT: You got it, don't you, Mr. Corbett?

MR. CORBETT: Yes, sir, Your Honor.

THE COURT: All right. Be marked for identification only. Go ahead and mark it for identification. Be defense 13 for identification.

(WHEREUPON, Defendant's Exhibit No. 13 was marked for identification only.)

THE COURT: All right. No other questions you say, Mr. Wilder?

MR. WILDER: That's correct.

THE COURT: All right. Mr. Corbett, redirect.

MR. CORBETT: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. CORBETT:

Q Dr. Ross, was there any subsequent reports you received regarding the bloodwork or any other type of bodily fluids that would change the cause of death?

A No, there were not.

Q So the cause of death was gunshot wound?

A Correct.

Q Hits both lungs and the aorta?

A Yes.

Q Now, you had indicated there was some information provided to you by whom?

A Coroner Verna Moore.

Q All right. Now, do you know if Coroner Verna Moore was on scene that morning?

A I believe so. I'm not sure.

Q Do you know?

A I don't know.

Q Okay. So you would not know if EMS had arrived on the scene and removed the body before it was photograph -- the scene was photographed?

A I don't know that.

MR. CORBETT: That's all the questions I have, Your Honor.

THE COURT: Re-cross?

RECROSS-EXAMINATION

BY MR. WILDER:

Q Just to make sure the report has been marked for ID as number 13. Is that the report, Dr. Ross?

A It is.

THE COURT: You are excused. Any objection to have the witness excused, Mr. Corbett?

MR. CORBETT: No objection, Your Honor.

THE COURT: Mr. Wilder?

MR. WILDER: None, Your Honor.

THE COURT: You are excused, Dr. Ross. Thank you very much.

(Witness left the stand.)

THE COURT: All right. Mr. Corbett?

MR. CORBETT: Your Honor, may we approach?

THE COURT: Yes, sir.

(Whereupon a bench conference was held.)

MR. CORBETT: Your Honor, the State calls Cindy Pierson.

THE COURT: All right. Mrs. Pierson.

CINDY PIERSON, after being duly reminded of oath, testified as follows:

DIRECT EXAMINATION

BY MR. CORBETT:

Q Mrs. Pierson, you have previously testified about going out to Cedar Hill -- Cedar Hill Mobile Home Park and working the crime scene there; is that correct?

A Yes, sir.

Q Okay. At some time after that, did you have occasion to go to Suzie Rembert Road to an address there?

A Yes, sir.

Q Okay. Were -- who was on the scene when you arrived?

A There were several officers already on scene when I arrived.

Q Okay. And what were you asked to do at that scene?

A Photograph.

Q Now, I'm going to show you two photos on this sheet. Can you identify that for us?

A That was a piece of tint on the ground.

Q Okay. And where was that picture taken?

A Believe it was 905 Suzie Rembert Road in the back yard.

MR. WILDER: No objection.

THE COURT: Be State's number 20 admitted in without objection.

(WHEREUPON, State's Exhibit 20 was admitted into evidence.)

BY MR. CORBETT:

Q Now, I'm going to show you this document and ask if

you can tell us what that is.
A That's--
Q First of all, tell us -- just tell us where were those pictures taken.
A Suzie Rembert, was located in the back yard.
Q Okay. And is a picture of what?
A A trash can.
Q Okay. Hold right there for just a moment.

MR. CORBETT: Your Honor, may we approach?

THE COURT: Yes. Mr. Wilder?

(Whereupon a bench conference was held.)

THE COURT: All right. All right. Can't talk to her.

THE WITNESS: I need my evidence cards.

THE COURT: All right. Mr. Corbett, proceed.

BY MR. CORBETT:
Q Now Mrs. Pierson, tell us, what are we looking at in those pictures?

MR. WILDER: Your Honor, I'm going to object. I'm going to move subject to my motion to suppress earlier.

THE COURT: All right. Let me see the pictures. All right. Have you seen these? Show them to Mr. Wilder and see if he's got an objection.

MR. WILDER: I have seen them, Your Honor.

THE COURT: All right. You have seen them? Do you object on previous grounds?

MR. WILDER: Well Your Honor, I'd like to ask one question of the witness to find out if -- if she had to open anything to get that picture.

THE COURT: All right. I'm going to sustain -- I'm not going to let you ask the question. I'm going to let Mr. Corbett -- all right. Go ahead, Mr. Corbett.

BY MR. CORBETT:

Q Mrs. Pierson--

THE COURT: Ask if she recognizes that picture, not what's in it, but if she recognizes it, where she took it and under what circumstances.

BY MR. CORBETT:

Q Did you take that picture?

A Yes, sir.

Q Okay. And was that the day you responded to the 905 Suzie Rembert Road?

A Yes, sir.

Q Okay. And you were the one who took that picture?

A Yes, sir.

Q Okay. Did you have to move anything in order to take that picture?

A I believe we opened the container.

MR. WILDER: All right. I object and move to suppress.

THE COURT: All right. Objection is overruled. The law is no right to privacy in regard to trash outside of a dwelling -- no expectation of privacy.

MR. WILDER: Please note my exception.

THE COURT: Objection is noted.

BY MR. CORBETT:

Q Mrs. Pierson, what type of container is that?

A A garbage container.

THE COURT: Was it outside?

THE WITNESS: Yes, sir, it was.

THE COURT: All right.

BY MR. CORBETT:

Q So that was a garbage container outside of the Suzie Rembert Road address?

A Yes, sir.

Q All right. Now, what do we see in that picture?

A I see beer cans and tint.

THE COURT: Offer it if she's going to testify to it. Subject to the objection of Mr. Wilder. The exhibit is admitted into evidence over defense objection. State's number 21.

(WHEREUPON, State's Exhibit 21 was admitted into evidence.)

BY MR. CORBETT:

Q All right. Now first of all, let's take a look at the bottom picture. What does the bottom picture show us?

A The bottom picture shows the -- just the container in an opened manner.

Q Now, what does the top picture show us?

A The top picture actually look over the trash container and photograph what's inside.

Q Okay. And what do we see in that picture?

A There is beer cans and a clump of window tint and miscellaneous trash.

Q Now Mrs. Pierson, did you take that window tint with you?

A Yes, sir, I did.

Q I'm going to show you this document and ask if you can tell me what that is.

A That was a garbage container that was right beside the other one with another piece of window tint inside. The container with miscellaneous trash.

Q And then there's also another picture on that page. I'm not specifically asking you about that, but tell us what the other picture on that page is.

A That was a picture of the vehicle.

Q Did you take those pictures?

A Yes, sir, I did.