

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Laurens County
Honorable Brian M. Gibbons, Circuit Court Judge

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S.C. SUPREME COURT

FRED MADDEN,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001000

APPENDIX

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State of South Carolina)
 County of Laurens) In the Court of General Sessions
) 2010-GS-30-00288,00289
)
)
 State of South Carolina,)
)
 Plaintiff,)
)
 versus)
)
 Fred Lewis Madden, Jr.)
) Date: August 29-September 1, 2011
Defendant.) Laurens, South Carolina

TRANSCRIPT OF RECORD

B E F O R E:

The Honorable Frank Addy, Jr.

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

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 Yates Brown, Esquire
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Claude H. Howe, III Esquire
 D. Kate Anderson, Attorney at Law
 ATTORNEYS FOR THE DEFENDANT

PROVIDED FOR: SCCID

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 Official Court Reporter
 South Carolina Judicial Department

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

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P R O C E E D I N G S

THE COURT: Solicitor, at this point, call your case.

MR. HAMMACK: Yes, sir, Your Honor. The State calls The State of South Carolina versus Fred Lewis Madden, Jr., Indictment 2010-GS-30-288, charged with murder. Indictment 2010-GS-30-289, charged with possession of a weapon during the commission of a violent crime. Your Honor, if I may approach.

THE COURT: Please. Thank you.

(Mr. Hammack hands indictments to the judge)

THE COURT: All right, Ladies and Gentlemen, we are about to begin the trial of the case of The State of South Carolina versus Fred Lewis Madden, Jr. These are Indictments 10-GS-30-288 and 289. These indictments charge Mister Madden with the offense of murder and possession of a weapon during the commission of a violent crime. I'll begin by telling you that the fact that the defendant in this case has been charged and indicted, of course, is not evidence in this case. It is simply the process by which a case is brought into the court. It is nothing more than a mere allegation against the defendant in this case, Fred Lewis Madden.

The Indictment 10-GS-30-288 alleges that Fred Lewis Madden did, in Laurens County on or about the 10th day of

(VOIR DIRE)

9

1 December, 2009, willfully, feloniously and with malice
2 aforethought, kill Ernestine Brown by means of gunshot
3 wounds and that the said Ernestine Brown did die in Laurens
4 County as a proximate result thereof on or about December
5 10, 2009, in violation of the laws so made and against the
6 peace and dignity of this State.

7 Indictment 10-GS-30-289 alleges that Mister Madden
8 did, in Laurens County, on or about December 10, 2009
9 possess a firearm or visibly display what appeared to be a
10 firearm or visibly displayed a knife during the commission
11 of a violent offense, to wit: murder in violation of the
12 laws in this state and against the peace and dignity of
13 this State.

14 Now, again, Ladies and Gentlemen, the fact that an
15 individual has been indicted for a charge is not evidence
16 at all of any of the allegations contained in the
17 indictments. An indictment is merely the means by which a
18 case is brought into this court for prosecution.

19 Now, in this case, Ladies and Gentlemen, The State of
20 South Carolina will be represented by Jack Hammack and
21 Mister Brown. Mister Hammack, if you would turn, face the
22 jury and introduce anyone at counsel table, please.

23 MR. HAMMACK: I am Jack Hammack of the Solicitor's
24 office. Beside me is Assistant Solicitor Yates Brown and
25 Investigator Jawarski Shelton of the Sheriff's office.

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

10

1 THE COURT: Thank you, Mr. Hammack. The defendant in
2 this case will be represented by Chip Howe of the Laurens
3 County Bar. Mister Howe, if you would rise and introduce
4 yourself, Ms. Anderson, and anyone else seated at counsel
5 table.

6 MR. HOWE: Thank you, Judge. I'm Chip Howe. I
7 represent Fred Madden along with Kate Anderson over here.

8 THE COURT: Thank you, Mr. Howe. All right. I have
9 some questions now for members of the jury panel. First of
10 all, is there any member of the jury panel who is related
11 by blood or marriage or has a close business, personal or
12 familial relationship with any of the attorneys involved in
13 this case, either Mr. Hammack or Mr. Brown or Ms. Anderson
14 or Mr. Howe or is there any member of the jury panel who is
15 currently or has previously been represented by any of
16 these attorneys or members of their firms, to your
17 knowledge? If so, please stand. All right, no one is
18 standing.

19 The defendant in this case is Fred Madden. Is there
20 any member of the jury panel who is related by blood or
21 marriage to Mr. Madden or has a close business, personal or
22 familial relationship with Mr. Madden? If so, please
23 stand. Yes, sir. What's your name, please?

24 MR. DENDY: Kenneth Dendy.

25 THE COURT: Okay. And what was your last name, sir?

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

11

1 MR. DENDY: Dendy.

2 THE COURT: Dendy. And that is juror number 38. Yes,
3 sir, Mr. Dendy.

4 MR. DENDY: I been knowing him all his life, his
5 brothers and sisters, the whole family.

6 THE COURT: You are personal friends with the family?

7 MR. DENDY: Yes.

8 THE COURT: And the fact that you know Mr. Madden and
9 his family, do you feel that that could cause you problems
10 in terms of being fair and impartial to both the State and
11 the defendant in this case?

12 MR. DENDY: It's possible.

13 THE COURT: All right. Mr. Dendy, I appreciate that
14 information. You will not be a part of the jury pool on
15 this case. I need you to stay with us, though. Okay? And
16 yes, sir, what's your name, please?

17 MR. BROWN: James D. Brown.

18 THE COURT: Mr. Brown, juror number 18. Yes, sir?

19 MR. BROWN: I been knowing him all my life. I used to
20 work with him and I don't feel like I could be...

21 THE COURT: You don't feel like you could be fair to
22 everyone concerned?

23 MR. BROWN: No.

24 THE COURT: All right. For that reason, Mr. Brown, I'll
25 excuse you from serving on this jury. Thank you very much.

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

12

1 And you were juror number 18, correct, Mr. Brown?

2 MR. BROWN: Yes.

3 THE COURT: Thank you, sir. You may have a seat. Mr.
4 Brown will not serve as a juror on this case. All right,
5 Ladies and Gentlemen, the State alleges that this incident
6 -- sorry, I have another question for you before I get to
7 that. The alleged victim in this case is Ernestine Brown.
8 Is there any member of the jury panel who is related by
9 blood or marriage to the alleged victim, Ernestine Brown,
10 or had a close business, personal or familial relationship
11 with Ms. Brown? If so, please stand. Yes, ma'am, what's
12 your name?

13 MS. BRIGGS: Patricia Briggs.

14 THE COURT: Ms. Briggs, that would be juror number 15.
15 Yes, ma'am. You knew Ms. Brown?

16 MS. BRIGGS: Yes. We're family.

17 THE COURT: You are related to her?

18 MS. BRIGGS: I am.

19 THE COURT: And may I ask how you are related, Ms.
20 Briggs?

21 MS. BRIGGS: Well, to be honest, we are actually close.
22 My grandmother and her mother, but I've got a cousin
23 sitting right there that can tell you how close we are.

24 THE COURT: All right. Ms. Briggs, I will excuse you
25 from service on this case. You'll stay with us, but you

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

13

1 will not serve as a juror. Okay?

2 MS. BRIGGS: Okay.

3 THE COURT: Number 15 will not serve as a juror on this
4 case. Now, Ladies and Gentlemen, the State alleges -- Oh,
5 I'm sorry. Yes, ma'am. What's your name, please?

6 MS. RICHEY: Andretha Richey.

7 THE COURT: Richey?

8 MS. RICHEY: Right. 112.

9 THE COURT: All right. Ms. Richey, juror number 112.
10 Yes, ma'am.

11 MS. RICHEY: I don't know Mr. Madden, but I know the
12 family and I would try to be impartial, but I don't know if
13 I could or not.

14 THE COURT: All right. How do you know the family, Ms.
15 Richey, if I might ask?

16 MS. RICHEY: From town and school and just by being
17 around here.

18 THE COURT: All right, Ms. Richey, and so you feel your
19 knowledge of the family, you are not sure if it would or
20 would not affect you? Is that what you're telling me?

21 MS. RICHEY: Yes, sir.

22 THE COURT: All right. Ms. Richey, I'll excuse you
23 from service on this jury. Jury number 112 is excused.

24 All right now, Ladies and Gentlemen, this incident is
25 alleged to have taken place on December 10, 2009 at

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

14

1 [REDACTED] Highway 308 here in Laurens. I'm told that this is
2 where Highway 49 and 308 meet up, about a hundred yards
3 from there. The incident location is somewhat close to the
4 Sandy Springs Fire Department. Is there any member of the
5 jury panel that has prior knowledge of this particular case
6 or has formed or expressed any opinion concerning this case
7 or the allegations involving this case? If so, please
8 stand. Any prior knowledge of or ---

9 VENIREMEMBER: I read about the case when ---

10 THE COURT: Hold on one second, ma'am. If you would,
11 just come forward and I'm going to ask you to give me that
12 information down here, please.

13 (Judge and veniremember, along with the attorneys,
14 come forward and meet in front of the court reporter)

15 THE COURT: Forgive me, what is your name, please?

16 MS. BROWN: Lashun Brown.

17 THE COURT: Ms. Brown. Okay. You said you had some
18 prior knowledge of this case?

19 MS. BROWN: Yes, just I remembering hearing about it
20 and read about it and Ms. Brown, she told me about it, but
21 it's been about two years ago.

22 THE COURT: So, you heard about it when it took place.
23 Have you any fixed opinion concerning the allegations?

24 MS. BROWN: No.

25 THE COURT: If you were selected as a juror, could you

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(VOIR DIRE)

15

1 be fair to both the State in this case and the defense?

2 MS. BROWN: Yes.

3 THE COURT: Okay. So, you don't really remember any of
4 the specifics or the allegations?

5 MS. BROWN: No.

6 THE COURT: You just remember it happening?

7 MS. BROWN: Yes.

8 THE COURT: All right. Thank you very much for the
9 information. You're good. You can stay with us. Juror
10 number 19 will stay and is available as a potential juror.
11 All right. Anyone else that needs to respond to that
12 question? No one is standing.

13 Ladies and Gentlemen, potential witnesses in this
14 case, and I might duplicate some of these names, I might
15 say them twice, but potential witnesses are the following
16 individuals. I will read out their names to you. Again,
17 not all of these individuals will testify, but these are
18 merely potential witnesses in this particular case. After
19 I finish reading the list, what I will ask is if any member
20 of the jury panel is related by blood or marriage to any of
21 the potential witnesses in this case or has any
22 relationship with any of these witnesses which you feel
23 might cause you to be or might affect your impartiality in
24 this particular case. The following are the witnesses
25 which may be called: Jason Eichman with EMS. Daniel

(VOIR DIRE)

16

1 Dickinson with EMS. Wes Esarove with EMS. Andrew Heiney
2 with EMS. Dr. Michael Panella. Dr. Janice Ross. Jawarski
3 Shelton with the Laurens County Sheriff's Office. Scott
4 Franklin with Laurens Sheriff's Office. Moreno Foggie with
5 the Laurens Sheriff's Office. Robert Wilke with Laurens
6 Sheriff's Department. Ben Blackmon with Laurens Sheriff's
7 Department. Stephanie Williams with Laurens Sheriff's
8 Department. Juan Galarza with Laurens Sheriff's
9 Department. Justin Moody with the Sheriff's Department.
10 Judy Stiles with Laurens Sheriff's Department. Jason
11 Nelson with Laurens Sheriff's Department. Coroner Nick
12 Nichols. Robert McDonald. Albert Brown. Delores Yelverton.
13 Kathy Dowdy. Raye Johnson. Mack Irby. Raphael Jenkins.
14 Melissa Skipper with SLED. Selena Kinard with SLED. Robert
15 Sears with SLED. Jennifer Clayton with SLED. Ila Simmons
16 with SLED. Kenneth Whitler with SLED. Tommy Johnson. Dale
17 Mitchell. Judge Copeland, Tommy Copeland, he's the
18 Magistrate. Victor Foggie. James Cooper. Yvette Foggie.
19 Virginia Roberts. Frank Richardson. Howard Johnson. Ray
20 Walker. Robert McDonald. Keila Brown. Tyrone McDowell.
21 Jason Nelson. Judy Stiles. Laura Madden and Fred Madden.
22 Again, Ladies and Gentlemen, is there any member of the
23 jury panel related by blood or marriage to any of these
24 potential witnesses or has any relationship with any of
25 those witnesses which you feel might affect your ability to

(VOIR DIRE)

17

1 be fair and impartial to both the State of South Carolina
2 and the defendant in this case? If so, please stand. Yes,
3 ma'am, in the purple in the back. What's your name,
4 please?

5 MS. HAUPFEAR: Farrah Haupfear.

6 THE COURT: Ms. Haupfear, that's juror number 59. Yes,
7 ma'am, how do you ---

8 MS. HAUPFEAR: My brother was one of the deputies and I
9 have had a working relationship with several of the other
10 deputies.

11 THE COURT: All right. Ms. Haupfear, I have down that
12 you formerly were employed by law enforcement. Is that
13 correct?

14 MS. HAUPFEAR: Yes, sir.

15 THE COURT: Was that here in Laurens?

16 MS. HAUPFEAR: Yes, sir.

17 THE COURT: Okay. So, you know a number of these
18 witnesses?

19 MS. HAUPFEAR: Yes, sir.

20 THE COURT: Do you feel that might affect your ability
21 to be fair and impartial to both sides in this case?

22 MS. HAUPFEAR: Probably.

23 THE COURT: Very good. Ms. Haupfear, thank you very
24 much for that information. You will not serve on the jury.
25 Thank you. Anyone else? The names that I called out, and

(VOIR DIRE)

18

1 Stephane Williams is one of the potential witnesses and
2 Virginia Robinson is another potential witness. So, again,
3 is there any member of the jury panel that's related by
4 blood or marriage to either Stephane Williams or Virginia
5 Robinson or has any relationship with either of those
6 witnesses that might affect your ability to be both fair
7 and impartial to both parties involved in this? If so,
8 please stand. All right. No one is standing.

9 All right, is there any potential juror or close
10 family member or close friend who's ever been a victim of a
11 serious crime such as murder, voluntary manslaughter, armed
12 robbery, assault and battery with intent to kill, assault
13 and battery of a high and aggravated nature or kidnapping?
14 Is there any member of the jury panel, a family member or
15 close personal friend ever been a victim of any crimes such
16 as that? If so, please stand. All right. No one is
17 standing.

18 Has any potential juror or close family member
19 relative or close friend ever been or is currently a member
20 of a victim's advocacy group such as: MADD, Mothers Against
21 Drunk Driving, CAVE, SADD, Students Against Drunk Driving
22 or any other similar type organization? If so, please
23 stand. No one is standing.

24 Has any potential juror, member of your family or
25 close personal friend ever been a civilian or military law

(VOIR DIRE)

19

1 enforcement officer? If so, please stand. No one is
2 standing.

3 Now, in this case, Ladies and Gentlemen -- All right.
4 Is there any member of the jury panel who has read about
5 this particular case in the newspaper, heard about it in
6 any sort of news media or have had any conversations about
7 this case with anyone and you haven't previously told me,
8 if so, please stand. (No one stands)

9 Is there any member of the jury panel who knows of any
10 reason whatsoever why you could not be fair and impartial
11 to both the State of South Carolina and the defendant, Fred
12 Madden, in this case? If so, please stand. Any reason,
13 whatsoever, that you could not be fair and impartial? All
14 right. No one is standing.

15 Additional voir dire from the State?

16 MR. HAMMACK: Not from the State, Your Honor.

17 THE COURT: Mr. Howe?

18 MR. HOWE: No, Your Honor.

19 THE COURT: All right. Very good. Madam Clerk, if you
20 would give me a jury. Now, Ladies and Gentlemen, the way
21 that we are going to do this, in a moment, the Clerk of
22 Court will generate a list of potential jurors and she will
23 call your names one by one. If your name is called, what I
24 would ask you to do is come forward and stand right down
25 here in front of my court reporter and just turn around and

(JURY SELECTION)

20

1 face the back of the courtroom where the doors are. At
2 that moment in time, the State will be given the
3 opportunity to either seat you or to strike you. The
4 defendant will have a similar opportunity if the State
5 allows you to be seated. What I'll tell you, Ladies and
6 Gentlemen is, if for some reason you are struck from this
7 jury panel, please don't take offense at it. The lawyers
8 have any number of reasons for seating jurors or striking
9 jurors and those reasons can be as many and as varied as
10 there are lawyers throughout this state and so if you
11 happen to be struck, don't hold it against anybody. It's
12 just the way certain lawyers view certain cases. They want
13 certain types of individuals on there. Don't feel offended
14 in any of that.

15 What I ask is that you bring any belongings with you
16 that you brought to court today and just come down forward,
17 stand right here in front of my court reporter, turn and
18 face the back on the courtroom and we will proceed with
19 selecting the jury. The strikes will be five and ten,
20 gentlemen. Madam Clerk, if you will give me a jury.

Jury Selection

22 Clerk of Court: Juror No. 33, Allen D. Cumbie, Jr.
23 (Whereupon, Allen D. Cumbie, Jr., a white male, comes
24 forward)

25 Clerk of Court: What says the State?

(JURY SELECTION)

21

1 Mr. Hammack: Please present Mr. Cumbie.

2 Clerk of Court: What says the defense?

3 Ms. Anderson: Please seat Mr. Cumbie.

4 Clerk of Court: Juror No. 70, Robert P. Key.

5 (Whereupon, Robert P. Key, a white male, comes forward)

6 What says the State?

7 Mr. Hammack: Please present Mr. Key.

8 Clerk of Court: What says the defense?

9 Ms. Anderson: Please seat Mr. Key.

10 Clerk of Court: Juror No. 38, Vickie B. Tumblin.

11 (Whereupon, Vickie B. Tumblin, a white female, comes
12 forward.

13 Clerk of Court: What says the State?

14 Mr. Hammack: Please present Ms. Tumblin.

15 Clerk of Court: What says the defense?

16 Ms. Anderson: Please seat Ms. Tumblin.

17 Clerk of Court: Juror No. 42, Steven L. Elders, II

18 (Whereupon, Steven L. Elders, II, a white male, comes
19 forward)

20 Clerk of Court: What says the State?

21 Mr. Hammack: Please present Mr. Elders.

22 Clerk of Court: What says the defense?

23 Ms. Anderson: Please seat Mr. Elders.

24 Clerk of Court: Juror No. 34, Jim A. Curry.

25 (Whereupon, Jim A. Curry, a white male, comes forward)

(JURY SELECTION)

22

1 Clerk of Court: What says the State?

2 Mr. Hammack: Please present Mr. Curry.

3 Clerk of Court: What says the defense?

4 Ms. Anderson: Please seat Mr. Curry in this case.

5 Clerk of Court: Juror No. 68, Richard L. Kelley.

6 (Whereupon, Richard L. Kelley, a white male, comes forward)

7 Clerk of Court: What says the State?

8 Mr. Hammack: Please excuse Mr. Kelley from the trial
9 of this case.

10 Clerk of Court: Juror No. 36, Karen P. Davis.

11 (Whereupon, Karen P. Davis, a white female, comes forward)

12 Clerk of Court: What says the State?

13 Mr. Hammack: Please present Ms. Davis.

14 Clerk of Court: What says the defense?

15 Ms. Anderson: Please excuse Ms. Davis from the trial
16 of this case.

17 Clerk of Court: Juror No. 98, Paula D. Osborne.

18 (Whereupon, Paula D. Osborne, a white female, comes
19 forward)

20 Clerk of Court: What says the State?

21 Mr. Hammack: Please present Ms. Osborne.

22 Clerk of Court: What says the defense?

23 Ms. Anderson: Please excuse Ms. Osborne.

24 Clerk of Court: Juror No. 19, Lashun E. Brown.

25 (Whereupon, Lashun E. Brown, a black female, comes forward)

(JURY SELECTION)

23

1 Clerk of Court: What says the State?

2 Mr. Hammack: Please present Ms. Brown.

3 Clerk of Court: What says the defense?

4 Ms. Anderson: Please excuse Ms. Brown from the trial
5 of this case.

6 Clerk of Court: Juror No. 21, Elizabeth A. Burke-
7 Smith.

8 (Whereupon, Elizabeth A. Burke-Smith, a white female, comes
9 forward)

10 Clerk of Court: What says the State?

11 Mr. Hammack: Please present Ms. Burke-Smith.

12 Clerk of Court: What says the defense?

13 Ms. Anderson: Please excuse Ms. Burke-Smith.

14 Clerk of Court: Juror No. 22, Jennifer L. Bush.

15 (Whereupon, Jennifer L. Bush, a white female, comes
16 forward)

17 Clerk of Court: What says the State?

18 Mr. Hammack: Please present Ms. Bush.

19 Clerk of Court: What says the defense?

20 Ms. Anderson: Please seat Ms. Bush.

21 Clerk of Court: Juror No. 17, Joshua L. Brooks.

22 (Whereupon, Joshua L. Brooks, a white male, comes forward)

23 Clerk of Court: What says the State?

24 Mr. Hammack: Please present Mr. Brooks.

25 Clerk of Court: What says the defense?

(JURY SELECTION)

24

1 Ms. Anderson: Please seat Mr. Brooks.

2 Clerk of Court: Juror No. 69, Christina L. Kelly.

3 (Whereupon, Christina L. Kelly, a white female, comes
4 forward)

5 Clerk of Court: What says the State?

6 Mr. Hammack: Please present Ms. Kelly.

7 Clerk of Court: What says the defense?

8 Ms. Anderson: Please excuse Ms. Kelly.

9 Clerk of Court: Juror No. 140, William C. Vaughn.

10 (Whereupon, William C. Vaughn, a white male, comes forward)

11 Clerk of Court: What says the State?

12 Mr. Hammack: Please present Mr. Vaughn.

13 Clerk of Court: What says the defense?

14 Ms. Anderson: Please seat Mr. Vaughn.

15 Clerk of Court: Juror No. 56, Dawn S. Hamilton.

16 (Whereupon, Dawn S. Hamilton, a white female, comes
17 forward)

18 Clerk of Court: What says the State?

19 Mr. Hammack: Please present Ms. Hamilton.

20 Clerk of Court: What says the defense?

21 Ms. Anderson: Please excuse Ms. Hamilton.

22 Clerk of Court: Juror No. 139, Marie S. Turner.

23 (Whereupon, Marie S. Turner, a white female, comes forward)

24 Clerk of Court: What says the State?

25 Mr. Hammack: Please present Ms. Turner.

(JURY SELECTION)

25

1 Clerk of Court: What says the defense?

2 Ms. Anderson: Please seat Ms. Turner.

3 Clerk of Court: Juror No. 16, Frances R. Brock.

4 (Whereupon, Frances R. Brock, a white female, comes
5 forward)

6 Clerk of Court: What says the State?

7 Mr. Hammack: Please present Ms. Brock.

8 Clerk of Court: What says the defense?

9 Ms. Anderson: Please excuse Ms. Brock.

10 Clerk of Court: Juror No. 67, Kevin M. Johnson.

11 (Whereupon, Kevin M. Johnson, a white male, comes forward)

12 Clerk of Court: What says the State?

13 Mr. Hammack: Please present Mr. Johnson.

14 Clerk of Court: What says the defense?

15 Ms. Anderson: Please excuse this juror from the trial
16 of this case.

17 Clerk of Court: Juror No. 124, Cobina L. Sloan.

18 (Whereupon, Cobina L. Sloan, a white female, comes forward)

19 Clerk of Court: What says the State?

20 Mr. Hammack: Please present Ms. Sloan.

21 Clerk of Court: What says the defense?

22 Ms. Anderson: Please seat Ms. Sloan.

23 Clerk of Court: Juror No. 147, Brenda G. Wilson.

24 (Whereupon, Brenda G. Wilson, a white female, comes
25 forward)

(JURY SELECTION)

26

1 Clerk of Court: What says the State?

2 Mr. Hammack: Please excuse Ms. Wilson from the trial
3 of this case.

4 Clerk of Court: Juror No. 74, Sandra J. Kitchen.
5 (Whereupon, Sandra J. Kitchen, a white female, comes
6 forward)

7 Clerk of Court: What says the State?

8 Mr. Hammack: Please present Ms. Kitchen.

9 Clerk of Court: What says the defense?

10 Ms. Anderson: Please present Ms. Kitchen.

11 Clerk of Court: Juror No. 4, Robert L. Attaway.
12 (Whereupon, Robert L. Attaway, a black male, comes forward)

13 Clerk of Court: What says the State?

14 Mr. Hammack: Please present Mr. Attaway.

15 Clerk of Court: What says the defense?

16 Ms. Anderson: Please seat Mr. Attaway.

17 Clerk of Court: Juror No. 109, William D. Quinn.

18 (Whereupon, William D. Quinn, a white male, comes forward)

19 Clerk of Court: What says the State?

20 Mr. Hammack: Please present Mr. Quinn.

21 Clerk of Court: What says the defense?

22 Ms. Anderson: Please seat Mr. Quinn.

23 The Court: That's twelve. Let's have one alternate.
24 We'll have one alternate. The strikes will be one for the
25 State, two for the defense.

(JURY SELECTION)

27

1 Clerk of Court: Juror No. 126, John E. Smith.

2 (Whereupon, John E. Smith, a white male, comes forward)

3 Clerk of Court: What says the State?

4 Mr. Hammack: Please excuse Mr. Smith from the trial of
5 this case.

6 Clerk of Court: Juror No.90, Elizabeth Mitcham Rooney.

7 (Whereupon, Elizabeth Mitcham Rooney, a white female, comes
8 forward)

9 Clerk of Court: Will the State challenge for cause?

10 Mr. Hammack: No challenge for cause.

11 Clerk of Court: What says the defense?

12 Ms. Anderson: Please seat Ms. Rooney.

13 The Court: All right. Any issues concerning selection
14 or composition of the jury from the State?

15 Mr. Hammack: No, sir, Your Honor.

16 The Court: Defense?

17 Ms. Anderson: No, Your Honor.

18 The Court: All right. Very good. Ladies and Gentlemen
19 who have been selected on this particular case, what I'm
20 going to ask you to do is adjourn briefly to the jury room.
21 I'll have you back out here in a few minutes. While you
22 are back there, of course, don't discuss this case, which
23 will be incredibly easy, you know absolutely nothing about
24 this case at this particular moment in time. The way we
25 will go about learning about this case is through the

(JURY SELECTION)

28

1 testimony of sworn witnesses, so don't discuss anything
2 concerning the facts or the allegations of this case while
3 we are on break. I'll have you back out here in a few
4 moments. If you will, show them where the jury room is.

5 (Jury out at 12:02 p.m.)

6 The Court: Ladies and Gentlemen of the jury panel who
7 were not selected on this particular jury, I've spoken with
8 the Solicitor and the Public Defender and what I'm going to
9 ask you to do, and I'll be completely frank with you, in
10 all likelihood, you will not have to come back here. We
11 anticipate that this case should take the rest of the week.
12 Sometimes, however, unexpected things do happen and cases
13 can't go forward or they stop mid-trial, and so what I'm
14 going to ask you to do is call back tomorrow night after
15 6:00 to that number that's listed on that little slip of
16 paper and just follow whatever the instructions are. I
17 imagine that the instructions are probably going to say
18 something like, "There's no need for you to come back in,"
19 or maybe "Call back Wednesday night." Whatever those
20 instructions are, simply follow those instructions. Again,
21 assuming that this case goes forward, and I'm assuming it
22 will, odds are you won't need to come back here, but out of
23 an abundance of caution because we don't get a lot of court
24 over here in Laurens, I want to use court as efficiently as
25 possible and that means if something happens to this case,

(JURY SELECTION)

29

1 we are going to try something else. So, call back tomorrow
2 night at that number on your juror information slip and
3 follow whatever those instructions are. With that, y'all
4 are excused for the rest of the day. You'll mail excuses
5 to them?

6 Clerk of Court: Yes.

7 The Court: All right. With that, y'all are excused
8 and I hope I see y'all later, but you are probably hoping I
9 don't see you later, so y'all take care and have a great
10 week if I don't see you again. Thank you very much for
11 coming.

12 (Jury panel released at 12:05 p.m.)

13 (Jury in at 12:06 p.m.)

14 Bailiff: All present, Your Honor.

15 The Court: Thank you very much. The record should
16 reflect that the jury is back. Ladies and Gentlemen of the
17 jury, at this point in time, I'm going to be at liberty to
18 excuse you until 4:00. I'm told by the attorneys that are
19 involved in this case that there are several matters that I
20 need to take up that won't involve you, so instead of
21 having y'all wait back there for several hours on end just
22 twiddling your thumbs and staring at the walls and each
23 other, I'm going to go ahead and excuse you and ask you to
24 be back here at 4:00 this afternoon, at which point I hope
25 we will be in a position to proceed with the trial of this

1 case.

2 Just some general guidelines, and I'll explain this to
3 you in more detail when I see you again, but it goes
4 without saying, Ladies and Gentlemen, that as jurors, you
5 are to perform no independent investigation of any of the
6 facts and circumstances surrounding this incident. That
7 means that you are not to go to the alleged incident
8 location in this case or conduct any kind of internet
9 search, word search, anything like that. That would be a
10 violation of your oath as jurors and a violation of state
11 law for you to undertake such an investigation and I will
12 tell you that there have been certain instances where
13 jurors have taken it upon themselves to research or
14 investigate facts in cases which were in front of those
15 jurors. When the trial judge found out, that trial judge
16 was none too happy. That has never happened to me and I
17 really don't want to find out what I would do to a
18 potential juror if I were to learn that they had conducted
19 any kind of research.

20 With that, I will also ask that you not discuss the
21 case with anybody, including your fellow jurors and friends
22 or family members while we are on any break. You can
23 discuss this case only in the jury room after it has been
24 submitted to you. I will tell you when you will be at
25 liberty to discuss this case, but until then, again, you

(JURY SELECTION)

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1 can't talk about this case with anyone, not your friends,
2 not your relatives, not people that you live with, and the
3 reason for this, Ladies and Gentlemen, is that ultimately
4 your verdict in this case must be based solely on the
5 evidence that you hear from this witness stand. It will be
6 your decision to make and I do not want anything that
7 anybody might say to you to influence, in any way, what you
8 feel like the proper verdict is in this case and that's the
9 reason that I'm prohibiting you discussing this from
10 anyone, including friends or family members.

11 Now, when you come back this afternoon, I anticipate
12 being able to bring you back in here around 4:00. I'll
13 appoint a foreperson at that time and, hopefully, we will
14 be in a position to proceed with this case. The bailiff
15 will show you the best way to get back to the jury room.
16 With that and with those admonitions, I will excuse you
17 until 4:00 this afternoon. Keep those badges on to help
18 identify you as jurors when you come and go from the
19 courthouse, so just hang onto those and wear those any time
20 you are coming or going from the courthouse. I'll see you
21 around 4:00. The bailiff will show you the best way to get
22 to the jury room. With that, see y'all this afternoon.

23 (Jury out at 12:09 p.m.)

24 The Court: All right. We'll be at ease for about five
25 minutes and then we'll boot up with the first witness and,

(MOTIONS)

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1 hopefully, get through with him or her and see how we go.

2 All right, Gentlemen.

3 Mr. Howe: Judge, may we approach?

4 The Court: Sure.

5 (Bench conference off the record)

6 (Brief Break)

7 The Court: All right. We are back on the record in
8 the matter of the State versus Fred Madden. I'm told that
9 there are some issues that we need to take up before we
10 begin with the trial, namely, Jackson v. Denno, some
11 hearsay issues, and the like. At this point, Mr. Hammack,
12 or sorry, Mr. Howe, I'll be happy to hear from you on any
13 motions that you might have or anything that we need to
14 address. Gentlemen.

15 Mr. Howe: Thank you, Your Honor. First of all, as I
16 understand it, there is -- first of all, Judge, we'd be
17 requesting any witnesses for the State be sequestered for
18 purposes of the hearing on the Jackson v. Denno issue.

19 The Court: Any objection on sequestration?

20 Mr. Hammack: No, sir, Your Honor. No objection.
21 Obviously, the lead investigator will be present if
22 that's...

23 The Court: All right. That's no problem.

24 Mr. Howe: I don't know if he's testifying on the
25 Jackson v. Denno hearing or not.

(MOTIONS)

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1 Mr. Hammack: He will be.

2 The Court: All right. Just for purposes of this
3 hearing, I'll allow him to be present -- I believe under
4 South Carolina law he can be present for purposes of the
5 actual trial itself, but just for purposes of this hearing,
6 let me ask if there is no strenuous objection, Mr. Hammack,
7 perhaps he could step out just while we take the testimony
8 of the initial witness.

9 Mr. Hammack: That's fine, Your Honor.

10 The Court: Thank you.

11 Mr. Hammack: I have no problem with that.

12 (Investigator Shelton leaves the room)

13 The Court: And Mr. Howe, is that also a general motion
14 to sequester any additional witnesses or...

15 Mr. Howe: That is, Your Honor. When we get into
16 whatever issues we get into here today, it would be my
17 motion, and I'm sure that will also apply to the defense,
18 with regard to the trial of the case when, when we start
19 the actual trial.

20 The Court: All right. When we start the actual trial
21 with the jury present, is that when you are really seeking
22 to have the witnesses sequestered or are you seeking to
23 have them sequestered this moment in time and going
24 forward?

25 Mr. Howe: I think just for the actual trial, but any

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 witness that's going to testify in these proceedings this
2 afternoon. I believe with the Jackson v. Denno, it will
3 only be law enforcement and once we get into the ---

4 The Court: Hearsay issues.

5 Mr. Howe: --- hearsay issues, I would request that
6 there be sequestration at that time.

7 The Court: All right. But if there are any hearsay
8 witnesses present on those issues, you are okay for them to
9 stick around for Jackson/Denno and I will ask them to step
10 out then?

11 Mr. Howe: Yes, sir.

12 The Court: That's how we'll proceed then, if there is
13 no objection from the State.

14 Mr. Hammack: No, sir, Your Honor.

15 The Court: All right. Mr. Hammack, you want to
16 call...

17 Mr. Hammack: Your Honor, the first -- as I understand
18 it, there are actually two separate statements, one of
19 which is the verbal statement that was taken on the 10th.
20 I'll actually start with that statement. The first witness
21 will be Investigator Justin Moody of the Laurens County
22 Sheriff's office.

23 The Court: Mr. Moody, if you will just come on up. I
24 will put you under oath.

25 (Oath administered by Judge Addy for Mr. Moody)

(PROFFERED TESTIMONY - JUSTIN MOODY)

35

1 The Court: Solicitor.

2 Proffered testimony - Direct Examination of Justin Moody
3 by Mr. Hammack

4 Q Investigator Moody, by whom are you employed?

5 A Laurens County Sheriff's office.

6 Q About how long have you worked there?

7 A Approximately, four-and-a-half years.

8 Q What are your job duties?

9 A Criminal investigations and narcotics.

10 Q How long have you been doing that?

11 A Approximately, three years.

12 Q Back on December 10, 2009, where did you work?

13 A Laurens County Sheriff's office.

14 Q What were your duties then?

15 A Narcotics and criminal investigation duties.

16 Q Did you have the opportunity to get involved in an
17 incident up on Highway 308 in Laurens County near
18 Highway 49?

19 A I did.

20 Q Tell me, what was your involvement there?

21 A I was called in by some other investigators to help
22 for questioning purposes.

23 Q Do you recall if you were present when Mr. Madden was
24 questioned?

25 A I did.

- 1 Q Where did that take place?
- 2 A Laurens County Sheriff's office.
- 3 Q About what time was that?
- 4 A I don't recall right off exactly the time.
- 5 Q Where did it take place at the Sheriff's office?
- 6 A In Investigator Wilke's office.
- 7 Q Do you recall how many people were present?
- 8 A Probably two or three. I couldn't give you a
- 9 definite.
- 10 Q All right. Did you actually get involved in the
- 11 questioning?
- 12 A I did.
- 13 Q All right. Did you personally mirandize Mr. Madden?
- 14 A I did.
- 15 Q Do you recall exactly what you told Mr. Madden?
- 16 A His Advisement of Rights, it's a form we have at the
- 17 Sheriff's office that I read to him.
- 18 Q Was the form filled out that day?
- 19 A No, sir.
- 20 Q But you read off the form?
- 21 A Correct.
- 22 Q What exactly did you read from the form?
- 23 A Could you hand me the form? That's it right there.
- 24 (Indicating)
- 25 Q The form wasn't filled out that day?

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 A No, sir. It was not ---

2 Mr. Howe: Your Honor, I would object to him referring
3 to a form if he says he didn't use one.

4 Mr. Hammack: Your Honor, he states he read off the
5 form, but the form was not filled out that day.

6 Officer Moody: Yeah, that's just the form I always
7 read. I ---

8 Mr. Howe: Your Honor.

9 The Court: Just one second, sir. All right.
10 Solicitor, why don't you see if there is perhaps something
11 that might be able to refresh the witness' recollection as
12 to what he talked or what he said to the defendant in this
13 case.

14 Q So, tell me a little bit about this form. Is it --
15 What's on -- what type of form is it?

16 A It's a Miranda form.

17 Q Where does it come from?

18 A It comes from the Sheriff's office. It's a form we
19 would have, a Miranda Form that that's used for
20 questioning and before questioning.

21 Q Do you routinely use this form?

22 A Yes, sir.

23 Q Can you recall what's on the form? From memory, can
24 you recall what's on the form?

25 A Yes. It's the advisement of rights, his right to

1 remain silent. I just read verbatim from the form.

2 Q So, tell me what those rights are.

3 A You have the right to remain silent, anything you say
4 can and will be used against you in a court of law --
5 I don't have the form right in front of me so, once
6 again, I always read it verbatim from the form.

7 Q Do you recall whether you read all, everything on that
8 form to Mr. Madden?

9 A Just the actual -- the rights on the form. From my
10 recollection, I can't recall right off, but I don't
11 believe anything was filled out at that time.

12 Q Do you know why it wasn't filled out?

13 A At that time, I don't believe Mr. Madden wanted to
14 speak.

15 Q So, when you mirandized him and he said he did not
16 wish to speak, what did you do?

17 A I stopped talking to him.

18 Q Was Lieutenant Shelton present when this took place?

19 A I can't recall.

20 Q All right. Before Mr. Madden decided to quit speaking
21 to you, did he tell you anything?

22 A Yes. He did. He stated that ---

23 Mr. Howe: Objection, Your Honor.

24 The Court: What's the nature of the objection?

25 Mr. Howe: The objection is that he hasn't even

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 established the basis for giving proper Miranda Warnings,
2 number one, and number two, he just testified that he
3 didn't speak, he didn't wish to speak, so even for the
4 purposes of this hearing, I don't see how you can start
5 testimony about what he said.

6 The Court: I understand. Well, we're dealing with the
7 threshold issue here of voluntariness and Miranda. The
8 jury, of course, is not present for these hearings. The
9 Rules of Evidence are, certainly, are not as strict in
10 these matters. I will allow the Solicitor some latitude
11 just so that I can get a better idea of what's going on.
12 If I have to make the ultimate call as to whether or not
13 Miranda was given, then I would want as much information as
14 I can possibly get to determine Miranda and voluntariness
15 and, certainly, you know, Solicitor, if you need to help
16 the witness refresh his recollection, I'm sure that there
17 is a document that you might be able to assist him in that
18 regard, but at the same time, proceed with how you want to
19 proceed, Solicitor.

20 Mr. Hammack: Yes, sir, Your Honor.

21 Q Investigator Moody.

22 A Yes, sir.

23 Q You stated this conversation took place at the
24 Sheriff's office. Do you recall what office it was
25 in?

1 A I believe it was in Lieutenant Wilke's office and
2 Lieutenant Clapscale's office.

3 Q At this point in time, was Mr. Madden in custody?

4 A I don't recall at that time.

5 Q Had he been charged?

6 A I don't recall at that time.

7 Q Was he in handcuffs?

8 A Honestly, I don't recall.

9 Q But he was certainly brought to the Sheriff's office?

10 A He was at the Sheriff's office. Yes, sir.

11 Q Give me a description of Lieutenant Wilke's office.

12 Is it a good-sized office, small office?

13 A It's a mid-sized office. I mean, it's a decent size.

14 Q Do you recall whether the door was opened or closed?

15 A I don't.

16 Q You stated there were a couple of people in the room.

17 Is that correct?

18 A That's correct.

19 Q All right. At any point, did Mr. Madden request
20 anything to eat, anything to drink?

21 A I don't recall that.

22 Q While you were questioning, you were specifically
23 dealing with him, did he tell you at any point he
24 wanted an attorney?

25 A Not at that point. No.

(PROFFERED TESTIMONY - JUSTIN MOODY)

41

1 Q You stated earlier that at some point he asked -- he
2 expressed a desire to quit talking.

3 A Right, sir.

4 Q Do you recall what he said at that point? Did he say
5 anything about an attorney or what did he say?

6 A He just quit talking, literally.

7 Q Did you use any type of force or intimidation to get
8 Mr. Madden to speak to you that day?

9 A No, sir.

10 Q Did you make any kind of threats toward him?

11 A No, sir.

12 Q You stated you read the Advisement of Rights off the
13 form.

14 A Correct.

15 Q The standard form the Sheriff's office uses.

16 A Correct.

17 Q That you use in your cases when you mirandize people.

18 A Correct.

19 Mr. Hammack: Your Honor, I have a form that was filled
20 out just a couple of days later and the subsequent
21 questioning, we will go into shortly. At this time, I
22 would like to refresh the officer's memory with this form.

23 The Court: All right. Show him the form and see if he
24 recognizes it and can identify it.

25 Mr. Howe: Your Honor, I'm going to object to that. I

1 think that goes beyond the threshold and I ask the Court,
2 even for the purposes of this hearing, for him not to lead
3 the witness.

4 The Court: All right. No leading of the witness, but
5 I will allow him to see the form and see if that refreshes
6 his memory.

7 Mr. Howe: And Your Honor, I would also object to the
8 fact that that is not the actual, that's the Miranda form
9 that's on the second statement that we haven't even gotten
10 to yet.

11 The Court: I understand. Proceed, Solicitor.

12 Q Investigator Moody, do you recognize that form?

13 A I do.

14 Q What is it?

15 A It's our Advisement of Rights form.

16 Q Is that the form that was in use back in December of
17 2009?

18 A That's correct.

19 Q Is that the form that's still in use now?

20 A That's correct.

21 Q You stated that you read off a form similar to that?

22 A That's correct.

23 Q What did you read to Mr. Madden?

24 A Off the form, "That you have the right to remain
25 silent." "Anything you say can be used against you in

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 court." "You have the right to talk to a lawyer for
2 advice before we'll ask you any questions and to have
3 him/her with you during the questioning." "If you
4 have no money to pay a lawyer's fee, the court will
5 appoint one to represent you without cost if you
6 wish." "If you decide to answer questions now without
7 a lawyer present, you will still have the right to
8 stop answering at any time. You also have the right
9 to stop answering at any time until you talk to a
10 lawyer." And it's got, "Please initial your response"
11 and "Do you understand each of these rights I have
12 explained to you." Then it has, "Do you want a
13 lawyer?" And then, "Do you want to answer questions
14 now."

15 Q Do you recall if you read those specifically to Mr.
16 Madden?

17 A Yes. His rights were read to him.

18 Q You did that yourself?

19 A That's correct.

20 Q After you read him his Miranda Rights, did he say
21 anything to you?

22 A No.

23 Q At any point during your questioning, did he say
24 anything to you?

25 A Yes. He stated, once again, he stated, as far as the

1 -- they burnt some clothes.

2 Mr. Howe: Your Honor --

3 The Court: I couldn't hear that. I'm sorry.

4 Mr. Howe: Your Honor, this is going to be the
5 objection. I know what he was saying, but you couldn't
6 hear all of it.

7 The Court: I couldn't hear it. If you would repeat
8 that last remark.

9 Officer Moody: He stated after his rights were read to
10 him, that -- in reference to his clothing being burnt.

11 The Court: He referenced his clothes being burned? Is
12 that what he's saying?

13 Q So, after he ---

14 A I -- I-- Just ---

15 Q I understand. Take a second. So, tell me again what
16 happened.

17 A His rights were read to him.

18 Q Okay.

19 A Okay. Then, he was questioned.

20 Q By you.

21 A By me.

22 Q Do you recall what you asked him?

23 A I don't exactly recall what I asked him as far as
24 verbatim, no. I do not.

25 Q What did he tell you?

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 A He stated that some clothes -- that he had burnt some
2 clothes. I did ask him about that day about some
3 clothes, in reference to some clothes, why he burned
4 his clothes and he stated, "it was cold outside."

5 Q Okay. Did you ask him any other questions?

6 A No, sir.

7 Q Did you speak to him about what he might have done
8 when he got back home that morning?

9 A I don't recall whether I did or not.

10 Q Do you recall writing a Supplemental Incident Report
11 in reference to this interview?

12 A I do.

13 Q Back on December 10th?

14 A I do.

15 Mr. Hammack: Your Honor, if I may approach the
16 witness? (Mr. Hammack hands document to the witness)

17 Q What does that appear to be?

18 A Supplemental report, case number, by myself, done by
19 myself on 12/10/2009.

20 Q And what does that reference or what is that about?

21 A It was in reference to Mr. Madden and -- do you want
22 me to read it?

23 Q Yes.

24 A "Detailed statement of investigation: On the above
25 date, after Mr. Madden was taken into custody and

1 mirandized, myself, along with several other
2 investigators brought him back to the Sheriff's office
3 for further questioning. Mr. Madden was mirandized
4 again before questioning. During the interview, Mr.
5 Madden was asked why he threw the clothes that he had
6 on previously when he left the residence into a barrel
7 behind the residence being ■ Easy Road, Laurens, SC,
8 29360, and burnt them. Mr. Madden did state that he
9 did burn the clothes because it was cold outside. Mr.
10 Madden also stated that as soon as he came back to the
11 residence, he took a shower." That's all.

12 Mr. Hammack: If I may approach. (Retrieves document)

13 Q I would assume, based on the report, that that was the
14 sum and substance of your conversation?

15 A Correct.

16 Q Did you have any further conversation with him after
17 that?

18 A No.

19 Mr. Hammack: Nothing further at this point.

20 The Court: Mr. Howe?

21 Mr. Howe: Thank you.

22 Proffered Cross Examination of Officer Moody by Mr. Howe

23 Q Officer Moody, as I understood what you said earlier,
24 you said that you mirandized him and you said that you
25 read from the form. Correct?

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 A Correct.

2 Q And you said that you mirandized him and after you did
3 it, you said he didn't say anything.

4 A Correct.

5 Q All right. Now, and then you say later on he talked.
6 Is that what you are saying?

7 A Correct.

8 Q All right. But a moment ago, when Mr. Hammack was
9 asking you questions, you said you mirandized him and
10 he didn't say anything and then you proceeded to say,
11 but he did say something. Which way is it? Did he
12 say it or not after you mirandized him the first time?

13 A Yes. After I mirandized him the first time, that's
14 when the details, that's when the statement I just
15 read ---

16 Q Now, this Incident Report, Supplemental. Did you type
17 that?

18 A Yes, sir. I did.

19 Q You entered that?

20 A Yes, sir.

21 Q All right. Now, and that would have been something
22 that you would have done December 10, 2009.

23 A Correct.

24 Q All right.

25 A That's the date that's on there.

1 Q Take a minute and look at your form, look at your
2 notes. Even before you look at them, let me ask you
3 this: Those were the notes that you made back in time
4 to try to use so when you came to court and testified,
5 that you would have a good recollection of what
6 happened. That's one of the reasons you take those
7 notes. Isn't that true?

8 A That's correct.

9 Q All right. Now, and now, would you read the entire
10 Supplemental Report that you did.

11 A "Detailed Statement of Investigation: On the above
12 date, after Mr. Madden was taken into custody and
13 mirandized, myself, along with several other
14 investigators brought him back to the Sheriff's office
15 for further questioning. Mr. Madden was mirandized---

16 Q Let me stop you right there. For further questioning.
17 What questioning had taken place before that?

18 A That, I don't recall.

19 Q Then why would you have used the term "further
20 questioning"?

21 A That, I don't recall.

22 Q All right. Continue on.

23 A "Mr. Madden was mirandized, again, before questioning.
24 During the interview, Mr. Madden was asked ---

25 Q Okay. Let me stop you there. Mr. Madden was

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 mirandized again, then, before questioning. So, how
2 many times did you give him Miranda Warnings, then?

3 A To my recollection, once.

4 Q So, you put in your report that he was given Miranda
5 Warnings more than once. Is that not true?

6 A I'm reading over it.

7 Q Yes, sir.

8 A (Witness looks at document) Okay.

9 Q That's what you said.

10 A Go ahead.

11 Q Now, again, so we get this right. Your testimony
12 earlier was, "I gave him Miranda Warnings and he
13 didn't talk." "And I only gave him Miranda Warnings
14 one time."

15 A Correct.

16 Q Okay. But then you're coming into court and telling,
17 under oath, you're telling that later on he did talk.

18 A From my recollection. Yes.

19 Q Okay. And as I heard your testimony, you couldn't
20 tell us what time this took place. Correct?

21 A That's correct.

22 Q You couldn't tell us who the two or three other people
23 in the room were. Correct?

24 A Correct.

25 Q You couldn't tell us how long he was in the room, in

1 Wilke's office. Could you?

2 A No, sir.

3 Q Okay. And you couldn't tell us whether anybody else
4 asked him any questions. Could you?

5 A No, sir.

6 Q You were in there the whole time?

7 A When you speak of the whole time...

8 Q That he was in there.

9 A No. I was not.

10 Q You were not?

11 A No.

12 Q And you couldn't tell us whether or not he was in
13 custody.

14 A No.

15 Q How did he get to the Sheriff's department, to Wilke's
16 office?

17 A I don't know.

18 Q And you can't tell this court, for the purposes of
19 this hearing, what questions you even asked him.

20 A No, sir.

21 Q Did anyone else ask him any questions or was it only
22 you?

23 A Yes, sir. Numerous -- other people were there. I ---

24 Q Numerous other people. Who else asked him questions
25 and who asked him what?

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 A Sir, I don't know. I'm going by my form here, I don't
2 know who asked what. That's something that they would
3 have to tell you.

4 Q Okay. Nobody else was -- you can't even tell us who
5 was in there.

6 A I'm not going to sit here and say something I'm not
7 positively sure of. No, I'm not.

8 Q And let's talk about the Miranda Warnings and the
9 document that Mr. Hammack has used to refresh your
10 memory. That is an Advisement of Rights form. It
11 actually has a place for the person who is being
12 interrogated to sign. Doesn't it?

13 A Yes, sir.

14 Q All right. And your testimony was that even though
15 you read from this document that you didn't see Fred
16 Madden sign any such document.

17 A Not that one, no, sir.

18 Q Okay. And so, although you had the form right there
19 and you were going over it, you had every opportunity
20 to say, "Now that you understand all these rights,
21 would you mind, please, just signing the document."

22 A Right.

23 Q And you didn't do that.

24 A No.

25 Q And you didn't see anyone else from the Sheriff's

1 department, those two or three other people in there,
2 you didn't see them do it either?

3 A No. From my recollection, no.

4 Q And it would have been very simple to do. Correct?

5 A Once again, I don't know if it was done or not, but
6 yes, it would have been very simple to do.

7 Q All right.

8 A But I can't sit here and say if it was done or not. I
9 was not around the whole time.

10 Q And this, and this document was not, I mean, this
11 statement that you say Mr. Madden made, there was no
12 recording of it?

13 A No, sir. I didn't. If there was, it wasn't of mine.
14 No, sir.

15 Q Who else -- you wrote this Supplemental Report and
16 you're the one coming who's coming into court and
17 saying, "I took his statement." Who else was there?
18 Do you even know?

19 A Once again, I will tell you for the fourth or fifth
20 time, I do not know exactly who was in the office
21 right there. There was an investigator, but I'm not
22 going to sit here and tell you exactly.

23 Q Again, if I understand what your testimony earlier
24 was, Mr. Madden indicated that he did not want to
25 speak.

(PROFFERED TESTIMONY - JUSTIN MOODY)

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1 A Correct.

2 Q And you don't -- and that -- but even if he did speak
3 afterwards, you don't even know what questions he was
4 asked.

5 A From any other investigator, no. I do not.

6 Q Okay.

7 Mr. Howe: That's all the questions I have.

8 Mr. Hammack: Just briefly.

9 Proffered Redirect exam of Officer Moody by Mr. Hammack

10 Q Investigator Moody, are you required to have him sign
11 the Rights form?

12 A I'm sorry?

13 Q Does your procedure require you to have that form
14 filled out?

15 A If they are willing to fill it out.

16 Q Would you agree, I know you said earlier that he did
17 not wish to speak, but would you agree that at some
18 point he spoke with you?

19 A Yes, sir.

20 Q And told you the things that you've testified to
21 already?

22 A Yes, sir.

23 Mr. Hammack: Nothing further.

24 The Court: All right. Thank you, sir. You can step
25 down. Do you need the other officer?

1 Mr. Hammack: Jawarski Shelton.

2 Mr. Howe: I do need to ask one question, if I may.

3 The Court: All right.

4 Mr. Howe: Thank you.

5 Proffered Re-Cross exam of Officer Moody by Mr. Howe

6 Q Officer Moody, just so I understand. So, you know
7 that you should get them to sign the Advisement form
8 so that they acknowledge that they understand
9 everything that you've told them. You're supposed to
10 do that.

11 A Correct.

12 Q And it was not done.

13 A Not by myself. No, it was not.

14 Mr. Howe: Thank you. That's all.

15 The Court: All right. Thank you, sir. You can step
16 down.

17 Mr. Hammack: Your Honor, Investigator Moody is not
18 involved in the next statement nor the hearsay issue. If
19 it's okay with Mr. Howe, I'd like to cut him loose so he
20 can head back to work until we need him tomorrow.

21 The Court: That's fine. Without objection, Mr. Moody,
22 I'll see you tomorrow. If you'll come on up, sir, and
23 place your left hand on the Bible and raise your right.

24 (Judge Addy administers the oath to Officer Shelton)

25 The Court: All right, Solicitor.

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 Proffered Direct Exam of Officer Shelton by Mr. Hammack

2 Q Good afternoon, Lieutenant Shelton. By whom are you
3 employed?

4 A Laurens County Sheriff's Department.

5 Q Would you state your full name for the court reporter
6 for the record?

7 A Jawarski Durant Shelton.

8 Q Do you mind spelling Jawarski for her so she can get
9 it right on the transcript?

10 A J-A-W-A-R-S-K-I.

11 Q Thank you, Lieutenant Shelton. Lieutenant Shelton,
12 you stated that you are employed by the Sheriff's
13 office.

14 A Yes, sir. With the investigations division.

15 Q How long have you been there?

16 A Almost twelve years.

17 Q What are your duties with the Sheriff's office?

18 A I go out and investigate crimes with the Sheriff's
19 office and also work meth labs and arson cases.

20 Q Were you involved with the incident that took place up
21 on Highway 308 near Highway 49 on December 10, 2009?

22 A Yes, sir.

23 Q What was your role in that case?

24 A I was the actual lead investigator on the case.

25 Q Did you speak with Mr. Madden that day?

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

1 A Yes, sir.

2 Q Let me ask you this: Do you recall Mr. Madden making a
3 verbal statement that day?

4 A Yes, sir.

5 Q Were you present when that took place?

6 A Yes, sir.

7 Q Do you recall who he made that statement to?

8 A Myself, and if I'm not mistaken, Captain Williams and,
9 I think, Sergeant Moody was also in the office.

10 Q On the 10th?

11 A Yes, sir.

12 Q All right. About what time was that taken?

13 A It was in the afternoon. I can't remember the exact
14 time on that day.

15 Q Do you know if he was under the influence of any
16 alcohol or drugs at that time?

17 A Not that I'm aware of.

18 Q Did he appear to understand what you were saying to
19 him, the questions you were asking him and things like
20 that?

21 A Yes, sir.

22 Q Let me ask you this: Where was it in the Sheriff's
23 office the questioning took place?

24 A It was in the office of Lieutenant Wilke and
25 Lieutenant Plaxico.

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 Q Tell me a little bit about that office, is it a big
2 office, a small office?

3 A It's a larger office to hold two investigators and all
4 their equipment and file cabinets and everything of
5 that sort.

6 Q And about how long do you recall Mr. Madden being in
7 there that day?

8 A Several hours, I think.

9 Q On the 10th?

10 A Yes, sir.

11 Q All right. At any point, did he ask for a break?

12 A No, sir. If I'm not mistaken, no sir, he didn't ask
13 for a break.

14 Q Bathroom, food, drink, anything along those lines?

15 A We gave him several cups of water. He asked for
16 water. We also gave him food on that day.

17 Q Did you threaten him or promise him anything to get
18 him to talk to you on the 10th?

19 A No, sir.

20 Q On the 10th, was Mr. Madden in custody when you spoke
21 to him?

22 A Yes, sir.

23 Q Had he been brought up to the Sheriff's office?

24 A Yes, sir.

25 Q Did you bring him up there or do you know who did?

1 A I can't remember who brought him, but he was
2 transported to the Sheriff's office by another
3 officer.

4 Q Was he in handcuffs?

5 A Yes, sir.

6 Q Do you recall that day, whether he was Mirandized?

7 A Yes, sir. He was.

8 Q Who Mirandized him?

9 A I did, once I spoke to him again.

10 Q Did anybody else Mirandize him?

11 A I think somebody else had, but I did, also.

12 Q About what time was that?

13 A It was that afternoon when I got back up to the
14 office.

15 Q When you Mirandized him, what did you tell him?

16 A I read his rights to him off a little card that I
17 carry. (Indicating)

18 Q Is that the card that you carry?

19 A Yes, sir.

20 Q And how long have you had that card?

21 A Several years.

22 Q Back on December 10, 2009, is that the card that you
23 had?

24 A Yes, sir.

25 Q And you read straight off that card to Mr. Madden?

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 A Yes, sir.

2 Q Tell the Court what you told him.

3 Q "You have the right to remain silent. Anything you
4 say can and will be used against you in a court of
5 law. You have a right to talk to a lawyer and have
6 him present with you while you are being questioned.
7 If you cannot afford to hire a lawyer, a lawyer will
8 be appointed to represent you without cost. If you
9 cannot afford to hire a attorney, one will be
10 appointed to represent you before any questioning, if
11 you want. You can decide at any time to exercise
12 these rights and not answer any questions or make any
13 statements. Do you understand your rights as I have
14 explained them to you? Having these rights in mind,
15 do you wish to talk with us now?"

16 Q Lieutenant Shelton, does your office use a form with
17 those on it?

18 A Yes, sir. We do.

19 Q Was one filled out on the 10th?

20 A No, sir. When we went to get him to fill out a form
21 at that time, he refused to sign a form or do a
22 written statement on that day.

23 Q But you did, verbally, give him those rights that you
24 just read?

25 A Yes, sir.

1 Q And those are verbatim, the way you read them, that
2 you recall?

3 A Yes, sir.

4 Q All right. And he appeared to understand the rights
5 as you read them to him?

6 A Yes, sir. He said he did.

7 Q Did he appear to, basically, understand and comprehend
8 what you were telling him?

9 A Yes, sir. He said he did.

10 Q Okay. Did he, at any point, ask to speak to an
11 attorney?

12 A No, sir.

13 Q Let me ask you this: Were you present when he was
14 questioned by Investigator Moody?

15 A During some of it, yes, sir. I walked out, briefly,
16 to use the restroom.

17 Q But you were present at that conversation?

18 A Yes, sir.

19 Q Okay. And to the best of your knowledge, was Mr.
20 Madden's statement free and voluntary?

21 A Yes, sir.

22 Q Of course, as you stated earlier, it was not a written
23 statement. Correct? It was just a verbal statement?

24 A That's correct.

25 Q Tell the Court what he told you that day.

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 A He stated that he had went over to the residence on
2 308 and he had entered the residence and smelled
3 gunpowder and he left the residence ---

4 Mr. Howe: Your Honor, at this time, I don't know if
5 it's proper, but I object to this because this has never
6 been disclosed to us through our Rule 5 Brady. The only
7 disclosure we've received, was the Supplemental Report that
8 was testified to from Moody where he said the only two
9 things Mr. Madden said were ---

10 The Court: About the clothes.

11 Mr. Howe: --- I burned the clothes, I took a shower.
12 None of this has ever been disclosed to us. I think under
13 the Rules, we would have been entitled to have a full and
14 complete disclosure of the gist of any oral statement.

15 Mr. Hammack: Your Honor, I agree with Mr. Howe on
16 that. Honestly, I think Lieutenant Shelton has got the two
17 dates, and we'll get to the other statement shortly, but
18 honestly, I think Mr. Howe is right on that. The best I
19 can tell from everything I have received, because I've
20 never received any evidence of him saying that on the 10th,
21 just on the 15th, which is the statement we'll get into in
22 just a short time.

23 The Court: I'll hold ruling on your objection in
24 abeyance. I'll see what they have to say.

25 Mr. Howe: Thank you.

1 Q Specifically, what I'm looking for, did he say
2 anything to you about burning clothing?

3 A Yes, sir.

4 Q What did he tell you?

5 A That he had went home and burned his clothes and took
6 a shower.

7 Q Is that, basically, the same thing that he told
8 Investigator Moody when you were present?

9 A Correct.

10 Mr. Hammack: Nothing further on this.

11 The Court: All right. I guess we'll take these
12 statements one at a time. Do you have any questions on
13 this one?

14 Mr. Howe: Thank you. Yes, sir.

15 Proffered Cross Examination of Officer Shelton by Mr. Howe

16 Q Officer Shelton, you were the lead investigator in a
17 murder case. Correct?

18 A Yes, sir.

19 Q All right. And this is the first time you have your
20 suspect in custody for the purposes of questioning.
21 Correct?

22 A Yes, sir.

23 Q And you can't tell this court how long he had been at
24 the Sheriff's office, what time you attempted, you or
25 Moody, or whoever took it or attempted to take this

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 oral statement. Can you, sir?

2 A Well, I was on the scene of the crime.

3 Q I understand. That might be your explanation, but if
4 you can answer the question first, please.

5 A That's correct. I can't say exactly what time it was.

6 Q Thank you. Now, it's your testimony that Mr. Madden
7 was offered the consent form to sign, the Miranda form
8 rather, and that he refused.

9 A That's correct. He didn't sign anything that day.

10 Q All right. And he was offered that and it's your
11 testimony that Captain Williams and Officer Moody were
12 also present when he refused.

13 A Yes, sir.

14 Q So, and as far as you know, the gist of this oral
15 statement, the summary of it, was completed by Officer
16 Moody. Correct?

17 A No, sir. It wasn't completed by Officer Moody.

18 Q Okay. Maybe, maybe -- let's mark this thing. I'm
19 going to go ahead and have it marked for the purposes
20 of this hearing, Judge, so we'll have it.

21 The Court: Please.

22 (Whereupon, a Supplemental Report is marked as Defense
23 Exhibit No. 1, for identification.)

24 Q Officer Shelton, I'm going to show you Defense
25 Exhibit, for identification purposes, No. 1, that was

1 provided to me through discovery. Are you familiar
2 with that document?

3 A Yes, sir. It's a Supplemental that Sergeant Moody
4 did.

5 Q All right. Now, okay. That's a supplemental, that is
6 the only record we have, would you agree, of this
7 verbal statement you contend that Fred Madden made on
8 December 10th?

9 A Without looking at the other paperwork, I'm not sure
10 what else is in the file, as far as what I put in my
11 supplemental, sir.

12 Mr. Howe: Y'all don't have anything else, do you,
13 Jack?

14 (Mr. Hammack looks through documents)

15 Mr. Howe: If we need to take time to look for it, if
16 he needs that to answer that question, Your Honor, I'd ask
17 that Mr. Hammack afford him that opportunity.

18 Mr. Hammack: No. This is the Supplemental
19 Investigator Shelton produced.

20 The Court: If you want to show that to him, that will
21 be fine.

22 (Mr. Hammack hands document to witness)

23 The Court: Mr. Howe, it looks like he's ready to
24 proceed.

25 Mr. Howe: Thank you.

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 Q Mr. Shelton, and just so the Court will have the
2 benefit of it, let's go ahead and have the second
3 Supplemental as a Defense Exhibit, for identification,
4 please.

5 (Whereupon, Lieutenant Shelton's Supplemental Report
6 is marked as Defendant's Exhibit #2, for identification
7 purposes)

8 Q Officer Shelton, I'm showing you Defense Exhibit
9 No. 2, for identification. Take a minute and look at
10 it. There's no reference, whatsoever, to the oral
11 statement taken from Mr. Madden. Is there, sir?

12 A No, sir.

13 Q All right. So, he and -- again, you say you might
14 need the benefit of getting your whole file, I
15 understand that, you know, but would there be any
16 other record, whatsoever, of this oral statement taken
17 from Fred Madden other than what Moody did?

18 A No, sir. It just states what Moody said and what we
19 notated.

20 Q All right. So, you are the lead investigator, but
21 Moody made the record of what Mr. Madden supposedly
22 said. Correct?

23 A Yes, sir, besides what's documented in other notes and
24 things, I guess.

25 Q I'm talking about, now, the oral statement on December

1 10th.

2 A Yes, sir.

3 Q Okay. And the only documentation we have, you would
4 agree, is what Moody said?

5 A Yes, sir.

6 Q All right. Now, and you would agree that in his
7 report, Moody didn't say anything, whatsoever, about
8 Mr. Madden refusing to sign the Advisement of Rights
9 form. You would agree with that. Wouldn't you?

10 A Correct.

11 Q He did say, in his report, that he was taken to the
12 Sheriff's office for further questioning. Tell this
13 court what, if any, questioning that you are aware of
14 that Mr. Madden had undergone before he was brought to
15 Wilke's office.

16 A I'm not familiar with any. I wasn't at the location
17 where he was initially picked up at, at the Easy Road
18 location, because I was at the scene of the crime.

19 Q Okay. As the lead investigator in this case, Officer
20 Shelton, are you aware of any previous questioning and
21 any statement Mr. Madden may have made to anybody with
22 the Sheriff's department?

23 A No, sir.

24 Q Now, again, who, other than Moody, who else was
25 present when Mr. Madden refused to sign this

(PROFFERED TESTIMONY - JAWARSKI SHELTON)

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1 Advisement form?

2 A If I remember correctly, it was Captain Williams,
3 myself, Captain Williams, Sergeant Moody. That's who
4 I remember.

5 Q Okay. Now, again, Officer Shelton, this is your --
6 you would agree that this is the first opportunity
7 y'all had to question Fred Madden about these events.
8 Correct?

9 A Correct.

10 Q And you're telling this court that the only thing that
11 that y'all asked him about were his clothes? Is that
12 what you're saying?

13 A No, sir.

14 Q So, there was a lot more questioning?

15 A Well, we asked him about the events of the day.

16 Q Okay. And you would agree that Moody's version of
17 what y'all asked him does not include any of those
18 other events, whatsoever. Does it?

19 A The information that was in the Supplemental is what
20 he told us. The other events, he didn't say he knew
21 anything about.

22 Q And where is that recording? Where is the records
23 from that? You don't have it. Do you?

24 A No, sir.

25 Q And it couldn't possibly be because all this didn't

1 happen? That could be one version of it. Couldn't it?

2 A All what didn't happen?

3 Q That you didn't ask him -- that he was not asked about
4 the burned clothes and gave the answer that you
5 contend or that Moody contends that he gave. That
6 could be one possible version of that. Isn't that
7 true?

8 A No, sir. He was asked.

9 Mr. Howe: I don't have any further questions for this
10 witness, Judge.

11 Mr. Hammack: Nothing further.

12 The Court: All right. Just a few. If y'all want to
13 interpose any objections, feel free.

14 Examination by the Court

15 The Court: You had said that you questioned him for
16 several hours, I think was what you said earlier. What
17 would be your best guestimate as to the amount of time that
18 the defendant was questioned? Approximately?

19 Officer Shelton: Between two and three hours, maybe.

20 The Court: Two to three hours?

21 Officer Shelton: Yes, sir.

22 The Court: And you said a moment ago, you were not
23 present the entire time the questioning was going on. Is
24 that correct?

25 Officer Shelton: I stepped out to use the restroom.

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1 The Court: All right. Would the same be true of other
2 officers who are also present in that room? Maybe they
3 stepped out or came and went?

4 Officer Shelton: Yes, sir.

5 The Court: All right. And you said you had brought
6 him something to eat. Is that correct?

7 Officer Shelton: Yes, sir. From McDonald's.

8 The Court: Did he request that or did y'all offer that
9 or...

10 Officer Shelton: We offered it because we knew that we
11 were going to be late before going to the Detention Center.

12 The Court: And approximately what time of day was
13 this?

14 Officer Shelton: It was afternoon.

15 The Court: Late afternoon, early afternoon, mid-
16 afternoon?

17 Officer Shelton: Mid-afternoon.

18 The Court: Mid-afternoon. And did you -- were you the
19 officer who brought him in, in cuffs, or was that somebody
20 else?

21 Officer Shelton: It was someone else.

22 The Court: Do you know who that is?

23 Officer Shelton: Not right off, sir.

24 The Court: All right. And do you have a tape recorder
25 or video camera for these kind of situations or an

1 interrogation room?

2 Officer Shelton: Not at that time, we didn't.

3 The Court: All right. But you didn't even have a tape
4 recorder at that time?

5 Officer Shelton: (Shakes head) Huh-uh.

6 The Court: The record should reflect that he indicated
7 that they did not have a tape recorder at that time. And
8 your recollection was that he refused to sign the Miranda
9 warning or the Miranda form?

10 Officer Shelton: He didn't do any paperwork that day.

11 The Court: I'm sorry?

12 Officer Shelton: He didn't do any paperwork that day.

13 The Court: All right. Redirect or Re-cross based on
14 my questions? Mr. Hammack?

15 Mr. Hammack: No, sir.

16 Mr. Howe: Nothing.

17 The Court: All right. Thank you, sir. You can step
18 down or do we need to address the second statement at this
19 point?

20 Mr. Hammack: Your Honor, I still have Captain
21 Williams.

22 The Court: Oh, Okay. On this one? Okay. I'm sorry.
23 Sir, go ahead and have a seat. Let's have Mr. Williams.

24 Mr. Hammack: Your Honor, if I may, the two statements,
25 just so that I can refer to them with Stephane.

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1 (The judge hands documents to Mr. Hammack)

2 Mr. Hammack: Your Honor, if it will be easier, I can
3 just step right here and copy them right quick while we're
4 waiting on him.

5 The Court: All right.

6 (Mr. Hammack makes copies for the Judge)

7 (Captain Williams is administered the oath by The Judge)

8 The Court: Solicitor?

9 Proffered Direct Exam of Captain Williams by Mr. Hammack

10 Q Please state your full name for the record.

11 A Frederick Stephane Williams.

12 Q And can you spell Stephane for the court reporter so
13 she can get it right on the record?

14 A S-T-E-P-H-A-N-E.

15 Q Thank you. Deputy, where do you work?

16 A With the Laurens County Sheriff's office.

17 Q How long have you been there?

18 A I've been with the Sheriff's office nearly eighteen
19 years. Law enforcement time is about
20 twenty-two-and-a-half.

21 Q What are your duties at the Sheriff's office?

22 A I am the Captain of the Investigative Division. Also,
23 the captain of the Narcotics Division.

24 Q Back in December, December 10, 2009, what was your
25 job?

1 A I was Captain of the Investigative Division.

2 Q And what were your duties at that point?

3 A My duties consisted of supervising and managing the
4 case files associated with the investigations of the
5 Sheriff's office.

6 Q Do you get involved in the investigations, also?

7 A I do sometimes, directly. Nearly all indirectly, but
8 sometimes directly.

9 Q Do you recall being involved in the investigation up
10 on Highway 308 near Highway 49, back on December 10,
11 2009?

12 A Yes. I do.

13 Q What was your role in that?

14 A Again, as Captain of the Investigative Division, I
15 learned that there was a death on Highway 308 and I
16 responded, as well as other investigators and other
17 officers, to that location.

18 Q Do you recall on December 10, 2009, whether you spoke
19 to Fred Madden?

20 A Yes, sir. I did.

21 Q Where did that take place?

22 A Just through the investigation, I learned of a, some
23 form of relationship with the deceased and Fred Madden
24 and other things that brought interest to locating him
25 and talking to him and finally had the opportunity of

(PROFFERED TESTIMONY - STEPHANE WILLIAMS)

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1 talking with him at the Sheriff's office.

2 Q Do you know how he got up there?

3 A I think Lieutenant Shelton brought him to the office.
4 I'm not sure, but I think Lieutenant Shelton brought
5 him to the office.

6 Q But he was certainly there in the office.

7 A Yes, sir.

8 Q Do you recall where in the office?

9 A In the --upstairs in one of the investigator's office
10 where we interviewed him.

11 Q Were you present the whole interview there?

12 A Yes, sir. For the most part, yes.

13 Q About what time did you get up there?

14 A I don't know exactly what time it was. Again, this
15 was December 10th. I don't know exactly what time it
16 was, but when I learned that he was there, I went up
17 to make efforts to talk to and interview him.

18 Q Did you know Mr. Madden?

19 A Yes, sir. I do.

20 Q Let me ask you this: Is the office a big office, a
21 small office?

22 A It's one of the bigger offices at the Sheriff's
23 office. I mean, there are some other offices that are
24 much smaller than that one.

25 Q Do you know if Mr. Madden was under the influence of

1 any drugs or alcohol when he was being questioned?

2 A None that I know of.

3 Q Was he offered anything or threatened in any way in
4 exchange for a statement?

5 A No, sir.

6 Q Do you recall him ever asking for a break, or
7 supplying him with food, or a restroom, drinks,
8 anything like that?

9 A Yes, sir. He was very thirsty. He asked several
10 times for something to drink and he was allowed to get
11 water and at some point he wanted something to eat and
12 I asked one of the investigators to get him something
13 to eat.

14 Q Did they do that?

15 A Yes, sir.

16 Q Was he under arrest at that time?

17 A Yes. At that point, he was -- technically, he would
18 have been considered under arrest.

19 Q So, he wasn't free to leave?

20 A No, sir. He was free to not speak with the officers,
21 but not free to leave.

22 Q Was he in handcuffs?

23 A If I remember correctly, he was in handcuffs at first
24 and at some point they was taken off.

25 Q Do you recall whether you actually gave him Miranda

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1 Warnings?

2 A No. Lieutenant Shelton did. I didn't issue a
3 Miranda.

4 Q Did you ever see Lieutenant, or excuse me, Sergeant
5 Moody ---

6 A I did.

7 Q --- give Miranda Warnings?

8 A I know Lieutenant Shelton did. I'm not sure if
9 Lieutenant, I'm sorry, Sergeant Moody did. I know
10 Lieutenant Shelton did.

11 Q Were you present when Sergeant Moody was speaking with
12 Mr. Madden?

13 A Yes, sir.

14 Q But you don't recall if he mirandized him?

15 A I don't know. I know Lieutenant Shelton did, but I'm
16 not sure if Sergeant Moody did or not.

17 Q While you were in there, when Mr. Madden was speaking
18 with Sergeant Moody, did he ask for an attorney at any
19 time?

20 A No. No, sir, he didn't ask for an attorney, but he
21 did say he didn't feel comfortable signing anything.

22 The Court: I'm sorry. Would you say that again? I
23 missed that.

24 Captain Williams: He didn't feel comfortable signing
25 anything at that time.

1 Q Was he forced or coerced in any way to speak with
2 yourself and Sergeant Moody?

3 A No, sir.

4 Q There was no written statement made that day.
5 Correct?

6 A There was not a written statement given that day.

7 Q No audiotape, videotape?

8 A No, sir.

9 Q But you did hear him give an oral statement to
10 Sergeant Moody?

11 A Yes, sir.

12 Q Do you recall what he told Sergeant Moody?

13 A About the same thing while talking to Sergeant Moody,
14 I mean, we all were there. When I say we all:
15 Lieutenant Burns was there, Lieutenant Shelton was
16 there, Lieutenant Blackmon was there, Sergeant Moody
17 and myself, and what he was telling Sergeant Moody was
18 the same thing that we all heard, that he didn't cause
19 the death of ---

20 Mr. Howe: Same objection as before, Judge.

21 The Court: Overruled.

22 Q Do you recall him saying anything specifically about
23 his clothing?

24 Mr. Howe: I ask that he not lead the witness, Your
25 Honor.

(PROFFERED TESTIMONY - STEPHANE WILLIAMS)

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1 The Court: All right. Sustained. Re-ask a different
2 way.

3 Q Do you recall any specific answers to questions by
4 Sergeant Moody?

5 A I know Sergeant Moody asked him about some clothes
6 that were located at a residence where Mr. Madden was
7 living at that time. There were some clothes that
8 were burned that Sergeant Moody asked him about, that
9 there were clothes and did he burn them and his
10 response was, "Yes, he did burn them".

11 Q All right. Do you recall anything else in reference
12 to that conversation?

13 A No, because I don't know if he said why he burned them
14 at that time, but he did say he burned them.

15 Mr. Hammack: I have nothing further at this point.

16 Proffered Cross Exam of Captain Williams by Mr. Howe

17 Q Captain Williams, as you indicated, you are kind of a
18 supervisor over narcotics and investigations, so
19 Shelton and Moody and the other investigators report
20 to you. Correct?

21 A Yes, sir. That's correct.

22 Q And you testified that your role in the case may
23 depend on whether you are there and present taking an
24 active role, but you always take a supervisory role of
25 some sort. Is that correct?

1 A Yes, sir. That's correct.

2 Q And as supervisor, you probably want to make sure that
3 your officers have received proper training to make
4 sure that they know how to take the stand. Correct?

5 A Yes, sir.

6 Q All right. And you would agree that it is very easy
7 to get a statement in writing. Correct?

8 A That depends.

9 Q To put it in writing.

10 A I don't understand what you are asking me.

11 Q Okay. Well, you would agree -- well, let me -- that's
12 the easiest way to make a record of what's going on is
13 to have it in writing.

14 A I mean, if the officer is actually writing the
15 statement, yes. If you are relying on the defendant
16 to provide a written statement, then sometimes it's
17 difficult.

18 Q Okay. Well, maybe a better way to do it is if there
19 is some kind of audio or video. Correct?

20 A Yes. Sometimes it would.

21 Q And y'all don't use that.

22 A Yes, sir. We do.

23 Q You use audio and video equipment to record
24 statements?

25 A Not all statements, but we have it available.

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1 Q Available.

2 A Right.

3 Q So, like on a murder case, it would be available. Is
4 that right?

5 A Well, it wasn't done on this case.

6 Q It wasn't done.

7 A No, sir.

8 Q Okay.

9 A To my knowledge, there was no video recording on this
10 case. When it comes to the interview of Mr. Madden,
11 there was no, to my knowledge, video recording.

12 Q As supervising officer in this case, so somebody is
13 looking at it on down the line and trying to figure
14 out what was said by both law enforcement and
15 defendant, that could very easily have been done in
16 this case. Couldn't it? A video?

17 A Yes, it could have been done.

18 Q And it wasn't done?

19 A No, sir. It was not done in this case. To my
20 knowledge, it was not done.

21 Q And did you ever suggest to the officers there, "Let's
22 record this on audio or video so that later on when
23 the court's reviewing it, we've got a record, a full
24 and complete record?"

25 A I can't remember if I suggested it or not. I just

1 know it wasn't done.

2 Q You can't remember whether you suggested it or not?

3 A I can't remember if I suggested it, but to my
4 knowledge, it wasn't done.

5 Q Okay. Why would you not suggest it?

6 A I don't know.

7 Q Okay. Now, what's been provided to me is a
8 Supplemental Incident Report. I'm going to show you
9 Defense Exhibit #1, for identification for the
10 purposes of this hearing, and as supervising officer,
11 would you tell me whether or not you recognize that
12 document and if you are familiar with it.

13 A Yes. I'm familiar with it. It's a Supplemental
14 Report that appears to be produced by Justin Moody.

15 Q Okay. And have you reviewed that, at any time, before
16 this proceeding today?

17 A I've seen it before.

18 Q All right. And in reading that report, reviewing
19 that, and I'll let you take a minute, but listen to my
20 question first, please. In reviewing that report,
21 would you agree it would be very important to put in
22 there the reason this is just an oral statement is
23 because, and there is no written Miranda warning, is
24 because Mr. Madden refused to sign any kind of
25 advisement form. That would be important to know,

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1 wouldn't it?

2 A It's always better, if the defendant refused, to
3 notate it somewhere.

4 Q Okay. And you would agree that nowhere, whatsoever,
5 has that ever been noted.

6 A To my knowledge, no.

7 Q And your testimony was, and you being present, you
8 don't recall Mr. Madden saying anything other than he
9 burned the clothes?

10 A Well, if we're still speaking of December the 10th.

11 Q Yes, sir.

12 A I don't know if he provided additional information and
13 the reason why he burned them. There was some other
14 information obtained later for the reason for the
15 burning of the clothes, but on December the 10th, I
16 can't remember if he provided that or not.

17 Q Well, if, if, that would be something that would be
18 fairly important that you would remember, wouldn't it?
19 Because you had already gotten a history of what was
20 going on in the case.

21 A I knew there were some clothes that were burned, but I
22 don't know if, at that time, Mr. Madden gave the
23 reason why he burned them.

24 Q Okay. And you were there and present.

25 A I was there.

1 Q And you testified that Lieutenant Burns, Investigator
2 Blackmon were also present.

3 A That's correct.

4 Q And not just you, Shelton and Moody.

5 A That's right.

6 Q Now, and you testified that, in response to Mr.
7 Hammack's questions, that he wasn't threatened in any
8 way.

9 A That's correct.

10 Q Who was leading the interrogation?

11 A Myself and Lieutenant Shelton. Mainly -- both of us,
12 myself and Lieutenant Shelton.

13 Q So, Moody wasn't interrogating?

14 A At some point. Again, you have more than one police
15 officer inside the room and, at some point, Sergeant
16 Moody did take over the questioning or two to Mr.
17 Madden.

18 Q Moody took over the questioning. Why would he have
19 taken over?

20 A I mean, he asked a question. I mean, those questions
21 that he asked were asked from Sergeant Moody. I mean,
22 the questions that Sergeant Moody asked him wasn't the
23 questions I did.

24 Q How long was he in the room and being questioned by
25 all these officers?

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- 1 A I'm sure a couple of hours.
- 2 Q Okay. You indicated that y'all offered him a break
- 3 and offered him food, so he was there for some period
- 4 of time.
- 5 A Well, he asked for something to drink and he asked for
- 6 food.
- 7 Q Now, Burns was there ---
- 8 A And we provided ---
- 9 Q I'm sorry.
- 10 A And we provided it.
- 11 Q Yes, sir.
- 12 A Yes. I made sure of that.
- 13 Q Okay.
- 14 A That's what he asked for and I wanted to make sure
- 15 that's what we gave him.
- 16 Q Yes, sir. And Burns was there and Blackmon was there.
- 17 Did they question him, too?
- 18 A Very little. If they did, very little.
- 19 Q Well, what little did they question?
- 20 A I don't know exactly what those other officers asked
- 21 him.
- 22 Q So, if those officers were there and present during
- 23 the questioning, then we would have their
- 24 recollections of what was said.
- 25 A I'm sure they would remember what they asked.

1 Q Okay. But there was a lot more questioning than just
2 having to do with just burned clothes. Correct?

3 A Yes.

4 Q So, an Incidental -- a Supplemental Incident Report
5 that talks about burned clothes and taking a bath
6 would not be close to being accurate as to what all
7 was asked and what all was said. Would it?

8 A Well, just Moody indicated what was told to him. I
9 think that was the purpose for the Supplemental Report
10 that he produced.

11 Q Okay. I understand. Help me with this: You're
12 questioning a suspect. There's got to be some record
13 of what was said. Where is your report, Supplemental
14 Incident Report, where you asked questions and what
15 was said to you? Do you have one?

16 A No, sir. I don't. Everything that was written in
17 regards to what I did, Lieutenant Shelton would
18 produce that.

19 Q Okay. And you're not familiar with whether or not
20 Blackmon or Burns or Shelton or anybody else has a
21 Supplemental Report or notes about that questioning?
22 Are you?

23 A I felt sure that Lieutenant Shelton did.

24 Q You felt sure, on December 10th?

25 A I think, to my memory, I think Lieutenant Shelton

(PROFFERED TESTIMONY - STEPHANE WILLIAMS)

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1 produced something by way of writing on what
2 transpired on December the 10th.

3 Q Okay. As far as questioning Mr. Madden.

4 A I do.

5 Q Because as supervising officer, you would want him to
6 do that, because it needs to be done. If you take an
7 oral statement from somebody, you need to have down
8 what was said.

9 A Right. I would want that. Yes, sir.

10 Mr. Howe: I don't have any further questions.

11 Mr. Hammack: Nothing further.

12 The Court: All right. Thank you, sir, you can step
13 down. Is that all the testimony with regard to the initial
14 statement?

15 Mr. Hammack: That's all. Yes, sir.

16 The Court: Very well. We'll take a brief recess for
17 lunch. If I were to ask y'all to be back in an hour, at
18 2:30, would that be sufficient time, Gentlemen and Ms.
19 Anderson? (Indicated by nodding) All right. We'll break
20 until about 2:30.

21 (Lunch Break)

22 August 29, 2011 Afternoon

23 The Court: We are back on the record in the State
24 versus Fred Madden. Solicitor, call your next witness, if
25 you could.

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1 Mr. Hammack: Captain Stephane Williams.

2 Mr. Howe: As I understand it, we are going to go
3 straight into the other statement now. Is that what
4 this...

5 The Court: I figured we would.

6 Mr. Howe: That way we could...

7 The Court: That's the way I was thinking we would go
8 because I was assuming a lot of the argument of the first
9 statement would also overlap the second, so I figured we
10 could -- I could keep them separate in my mind if you are
11 comfortable going forward. I would rather take the
12 testimony and then deal with the argument, especially since
13 we're a little pushed for time.

14 Mr. Howe: Okay.

15 The Court: If that's all right.

16 Mr. Howe: I just wanted to make sure where we were
17 heading. Thank you.

18 The Court: Yes, sir. Thank you. Just have a seat,
19 sir. Mr. Williams, you are still under oath from the
20 testimony before lunch. Mr. Hammack.

21 Proffered testimony for the December 15th Statement

22 Proffered Direct Exam of Captain Williams by Mr. Hammack

23 Q Captain Williams, we had you in here earlier. We are
24 going to talk about the statement, now, from
25 December 15, 2009.

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1 A Yes, sir.

2 Q Do you recall being involved in the taking of that
3 statement?

4 A Yes, sir. I was.

5 Q Tell me, tell me, how did that statement come about?

6 A As I stated earlier, on December the 10th, I had an
7 opportunity to talk with Fred Madden and the last
8 thing that I said to him was, when I left, or when he
9 left, was, "If you decide you want to talk to me
10 later, have one of the detention officers notify me
11 and I will come back and talk to you." And so, on
12 December 15th, I got a call from the Detention
13 Center ---

14 Mr. Howe: Objection, Your Honor. Hearsay, even for
15 the purposes of this hearing.

16 The Court: Overruled. Go ahead.

17 A I received a call from one of the Detention Staff that
18 said that Fred requested to talk to me and so I
19 instructed Lieutenant Shelton to go pick him up and
20 bring him to the Sheriff's office.

21 Q And where did y'all meet?

22 A In my office.

23 Q About what time was that?

24 A Sometime that morning, sometime about, before noon.

25 Q All right. Who was present at that questioning?

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1 A Lieutenant Shelton, of course. He brought Fred to the
2 Sheriff's office. Lieutenant Blackmon, Lieutenant
3 Burns and myself.

4 Q All right. Was Mr. Madden under the influence of any
5 drugs or alcohol at that time?

6 A No, sir.

7 Q Did he appear to have any mental condition or problem
8 that would keep him from understanding what was going
9 on?

10 A No, sir. He said that I told him that if he wanted to
11 talk to me later, to call for me, and he said that was
12 just what he wanted to do.

13 Q And it was in your office.

14 A Yes, sir.

15 Q About how long did you have him up in your office?

16 A A couple of hours, maybe.

17 Q Now, on this particular day, on the 15th, did you
18 offer breaks?

19 A I'm sure something to drink. There never was a
20 request for something to eat, but something to drink.

21 Q Restroom break?

22 A Restroom, if needed. I can't remember if he even
23 requested those services.

24 Q Did you make any promises or threats in return for his
25 statement?

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1 A No, sir.

2 Q You said he came over from the Detention Center?

3 A Yes, sir. That's correct.

4 Q So, I assume, at that point, he was under arrest?

5 A Yes, sir.

6 Q How long had he been out at the Detention Center?

7 A Since the 10th and that was the 15th, so five days.

8 Q All right. Do you recall whether you Mirandized him?

9 A Lieutenant Shelton did.

10 Q All right. Do you recall witnessing the Miranda?

11 A I did. There were several witnesses, some of the
12 other officers witnessed that as well.

13 Mr. Hammack: Your Honor, may I approach the witness?

14 The Court: Yes, sir.

15 Q I'm showing you what has been marked as State's
16 Exhibit No. 1. Do you recognize that form?

17 A Yes, sir. I do.

18 Q Do you recognize your signature on that?

19 A I do. I was the first witness here on this Advisement
20 of Rights.

21 Q So, tell me what you see on the form. About what time
22 did this take place?

23 A The time here is 10:51 and that's the a.m. There's a
24 case number and there is also a date, the date being:
25 December 15, 2009. And then it goes into advising a

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1 person of their rights.

2 Q You stated Lieutenant Shelton actually advised him of
3 his rights from the form?

4 A Yes, sir.

5 Q Did you hear him do that?

6 A Yes, sir. I did.

7 Q Did you witness Mr. Madden's signature?

8 A I did witness Mr. Madden's signature. That's right.

9 Q And that's why you signed it as such?

10 A Yes, sir.

11 Q After he was Mirandized, did you ask him any
12 questions?

13 A I did. I wanted to know everything that Fred Madden
14 knew associated with the death of Ms. Brown.

15 Q To the best of your knowledge, did he understand the
16 questions that you were asking him?

17 A Yes, sir.

18 Q Did he understand his rights?

19 A Yes, sir. He did.

20 Q Did at any point, did he ever ask for an attorney?

21 A No, sir.

22 Q Did he ever ask to stop talking to you?

23 A No, sir.

24 Q All right. I'll show you what's been marked State's
25 Exhibit No. 2. Do you recognize that form?

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1 A I do.

2 Q What is that?

3 A This is a volunteered statement that Fred Madden
4 produced, in his own words, of what happened. It was
5 produced, actually typed by Lieutenant Blackmon, at
6 Fred Madden's request.

7 Q Were you present when that occurred?

8 A I was.

9 Q Did you witness Lieutenant Blackmon typing it?

10 A I witnessed him typing it and I also witnessed the
11 signature of Fred Madden.

12 Q And did you understand or did you listen to what
13 Mr. Madden had to say?

14 A I did.

15 Q And did Lieutenant Blackmon type as Mr. Madden said
16 it?

17 A That's right. That's exactly right.

18 Q I don't know if you've had a chance to read over that,
19 but does that appear to be what Mr. Madden told you
20 that day?

21 A (Looks at document) It appears to be. I'd have to
22 read it in its entirety to make sure that it's exactly
23 correct, but it appears to be the same statement that
24 Lieutenant Blackmon produced at the request of Fred
25 Madden.

(PROFFERED TESTIMONY --(DECEMBER 15) STEPHANE WILLIAMS) 92

1 Q All right. Let me ask you this: Do you recall what he
2 told you that day?

3 A I do.

4 Q What did he tell you?

5 A He told me that, that of course, he had been living
6 with Ernestine Brown. He referred to her as Tine, and
7 said that they had been having some problems between
8 the two of them, but he felt that the problem that
9 they was having was because of her daughter. Her
10 daughter was Keila Brown. He said that Ernestine had
11 decided to evict him from her residence. He said that
12 Ernestine said that she was receiving a lump sum of
13 money in some sort of settlement and he said that if
14 he would allow her to evict him, after she received
15 her money, that settlement again, that she would also
16 find somewhere for Keila to live and she would bring
17 him back to live with her and he said that
18 Thanksgiving Day -- I'm sorry. Just before that, he
19 said that Thanksgiving Day, he was going to stay at
20 Mack Irby's House and he said that Ernestine assisted
21 him in getting his clothes and taking him to Mack
22 Irby's residence where he was going to begin to
23 reside. Thanksgiving Day she had prepared a meal and
24 she wanted to bring him a plate and he told her
25 because she was -- I think on the phone, to not bring

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1
2 his plate and so she didn't bring it on Thanksgiving
3 Day. The very next day, she picked him up, brought
4 him back to her residence and he said he spent the
5 night and then the same plate that was prepared, that
6 he got it at that time, the day after Thanksgiving.
7 On December 15th, he said everything was fine until
8 the 10th of December. He said he was riding a Moped,
9 came to Ernestine's residence, and said that the storm
10 door was unlocked, but the front door was open. He
11 said he walked inside and called out for Ernestine.
12 He said he did not get a response and so he walked
13 over to the refrigerator, got him a drink of water,
14 and after he got a drink of water, at some point, he
15 went inside the bedroom and seen her laying there on
16 the floor. He said he seen blood coming from her head
17 and he smelled a strong, I don't know if it was a
18 strong odor, but he said he smelled gunpowder and he
19 said he thought that he would be a suspect and so he
20 got back out of the, walked out of the residence, got
21 back on his Moped and as he was leaving, he met
22 Ernestine's brother. I think his name is Bruce. And
23 he continued on and, at some point, stopped at a gas
24 station, got, I think gas and cigarettes and things of
25 that nature, but he went to Mack Irby's residence and
26 said he -- at some point, I think Mack got a telephone

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1 call. He said he didn't tell Mack Irby what happened,
2 but he thought for sure he would be a suspect. He say
3 he took a shower and later said that the clothes that
4 he had on, he burned them because he thought he would
5 be a suspect and since he smelled gunpowder, that he
6 thought the gunpowder would be inside, would be on his
7 clothes. And so, at that time, he waited for law
8 enforcement to arrive, because he felt that law
9 enforcement would be coming shortly.

10 Q All right. And after he told you all that, is that
11 when his statement was typed up by Lieutenant Blackmon
12 and signed?

13 A That's right.

14 Q He did that contemporaneously as he typed?

15 A No. He gave a statement verbally, first, and asked
16 that one of us actually prepare it and so I asked for
17 Lieutenant Blackmon and for Fred to read and for
18 Lieutenant Blackmon to prepare it for him. And,
19 again, he repeated it again and what's produced on the
20 statement is the exact words that Fred gave to law
21 enforcement.

22 Q Did you give Mr. Madden a chance to read over the
23 statement?

24 A He read over it. Yes, sir.

25 Q Did you give him a copy of it?

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1 A I don't know if he wanted a copy of it. I know he was
2 at least asked if he wanted a copy, but I don't know
3 if he actually took possession of a copy.

4 Q But he did get a chance to read over it?

5 A Yes. He read over it.

6 Q And you witnessed him signing it?

7 A I did.

8 Q Okay.

9 Mr. Hammack: Nothing further right now.

10 The Court: Mr. Howe.

11 Proffered Cross Exam of Captain Williams by Mr. Howe

12 Q Captain Williams, it's your testimony that you told
13 Mr. Madden if he ever wanted to talk to you, to --
14 that you would talk with him again. That was after
15 the December 10th ---

16 A That's correct.

17 Q --- meeting. Is that right?

18 A Yes, sir. That's correct. That's the last thing I
19 told him when he left going to the Detention Center.

20 Q And it's your testimony that somebody from the jail
21 called?

22 A Yes, sir. That's correct.

23 Q Okay. And who was that?

24 A I don't know. I don't know exactly which officer it
25 was, but I believe it was one of the supervisors

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1 there.

2 Q All right. So, that jailor would be important to
3 testify that Fred Madden is the one that requested the
4 meeting. It would had to have come from that jail.
5 Right? That information to you.

6 A Well, I knew and I know that the only way that I knew
7 that Fred Madden wanted to talk with me was from the
8 request of the detention officer there. He requested
9 to them that he wanted to talk to me.

10 Q So, you're telling me this is a murder investigation
11 and after December 10th, when all y'all have is a
12 statement about clothes burning, the little gist of
13 the oral statement, you are telling me that y'all had
14 no more desire to talk to Fred Madden between the 10th
15 and the 15th?

16 A Desire to talk to him.

17 Q Well, did you try to talk with him between the 10th
18 and the 15th? Anybody involved in this investigation?

19 A I don't know. I don't know if anybody made contact
20 with Fred Madden. I know I had left instructions with
21 Fred if he wanted to talk to me again, that I would do
22 so at his request.

23 Q Again, between December the 10th and December 15th,
24 all you had in the way of any kind of statement from
25 Fred Madden was the Supplemental Report completed by

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1 Officer Moody. Is that correct?

2 A That's correct.

3 Q And you are telling this court that y'all were just
4 going to sit and let Mr. Madden contact you, that
5 y'all would make no efforts between the 10th and the
6 15th to contact him?

7 A The case was always under investigation. We was
8 always trying to grab whatever evidence was associated
9 with the death of Ms. Brown, but did any officer
10 employed with the Sheriff's office make contact with
11 Fred Madden between the 10th and the 15th, I don't
12 know. I did not.

13 Q And again, we don't know who the jailor was?

14 A No, sir.

15 Q Now, on the 15th, you were present when the Miranda
16 warnings, that have been referred to, were given?

17 A Yes, sir.

18 Q Okay. In fact, we've been provided, on this
19 particular statement, the Advisement of Rights, and
20 you've been shown that. Correct?

21 A Yes. That's correct.

22 Q All right. Let me make sure we have the same...

23 (Looks at document) Referring to State's Exhibit
24 No. 1, for identification, that's the Advisement of
25 Rights Form. Is that correct?

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1 A Yes, sir. That's correct.

2 Q Okay. And I can't -- your handwriting is about as bad
3 as mine, show me which one is yours.

4 A The first witness here after the Waiver of Rights.
5 (Indicating)

6 Q Yes, sir.

7 A The first signature is mine. That's supposed to be a
8 "f" and then Stephane Williams.

9 Q I got ya. And who's the next one?

10 A That would be James Burns.

11 Q Lieutenant Burns.

12 A Right.

13 Q Okay. Who's also a witness.

14 A Yes.

15 Q And then also -- is that Blackmon?

16 A That's Ben Blackmon.

17 Q Okay. Good. And then I can read Shelton's.

18 A Yes, sir.

19 Q Okay. The -- Then, let me -- You've also been
20 provided the two-page, what's shown as the Voluntary
21 Statement, and that's State's Exhibit No. 2. Correct?

22 A Yes, sir. That's correct.

23 Q All right. And that was the one that you testified
24 was written by Blackmon. Correct?

25 A That's correct.

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1 Q And it would be important to note the time sequence
2 and the date sequence on that statement so that y'all
3 would have an accurate record of when somebody was
4 advised as to their rights and when the statement was
5 actually given and completed. Correct? Correct?
6 That would be important.

7 A Yes. That would be important.

8 Q Okay. All right. Now, the, you would contend that
9 the Advisement of Rights and the Waiver would have to
10 take place before the statement was given. Correct?

11 A I know, because I was present. The Advisement of
12 Rights ---

13 Q First of all, would you agree that the Advisement of
14 Rights and the Waiver would have to take place before
15 this statement was given, because the accused or the
16 person giving the statement has to be advised what it
17 means to give a statement. You would agree that's the
18 way it should be done.

19 A I agree with that.

20 Q All right. Now, and then when a statement is given,
21 on the form -- and that's probably a form provided by,
22 I'm assuming, law enforcement, SLED, or something of
23 that nature. Isn't it?

24 A Yes, sir.

25 Q A standard form that y'all use.

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1 A A standard form. That's right.

2 Q And it indicates when the statement is completed.

3 Doesn't it?

4 A That's correct.

5 Q Okay. Reading -- and we'll pass that up to the Court.

6 Would you read the time and date, the specific time of
7 the Advisement of Rights and when the Waiver was
8 signed.

9 A The time begun, which as I stated earlier, is 10:51,
10 that's in the a.m.

11 Q Okay. And when does it indicate the statement, the
12 Waiver of Rights was completed?

13 A On the form here, it says 11:00 a.m.

14 Q Okay. So, the advisement took place at 10:51. The
15 actual Waiver took place at 11:00 according to the ---

16 A According to the Waiver ---

17 Q And that would have to be accurate. Would it not?

18 A Well, again, I was there.

19 Q Well, let me re-phrase it, then. Would it not be
20 important to make that accurate?

21 A I would always hope that any numbers that's on any
22 Waiver, that's on any Advisement of Rights would be
23 correct. That's not always correct that officers put
24 the correct time.

25 Q Okay. Because you would agree with me, looking at it,

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1 because you were seeing it as you were having this
2 conversation, what time does it show the statement was
3 completed on that form, Captain Williams?

4 A It shows that the statement was completed at
5 10:44 a.m.

6 Q So, the statement is completed at 10:44, according to
7 that, but the advisement took place at 10:51 and the
8 waiver took place at 11:00.

9 A No. What I'm saying is ---

10 Q Is that not what the form shows?

11 A That's what the form shows.

12 Q Okay. Thank you.

13 A I'm also stating that I was present. I know
14 Lieutenant Shelton advised Mr. Madden of his rights
15 prior to obtaining any statement. I know that I was
16 asked by the detention officer to go to the detention
17 facility because Fred Madden wanted to speak to me.
18 Fred Madden wanted to give his side of the story.
19 Okay? The times that are on here, the 10:51 and
20 11:00, the signing of Fred's signature, of Advisement
21 of Rights, again, the time here on the voluntary
22 statement is 10:54, but ---

23 Q 10:44.

24 A I'm sorry. 10:44. I'm sorry. But I know, because I
25 was present, that the advisement was done before the

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1 statement was taken. Even, also, on the statement,
2 there's another waiver that's also indicated before
3 entering of the information provided.

4 Q Okay. I understand your explanation. So, and again,
5 this is a murder investigation and it's important to
6 get these things right and you would agree this isn't
7 right.

8 A Well, any investigation is always important to get it
9 right, to make the best that we can, to make sure that
10 all the numbers are exactly accurate.

11 Mr. Howe: One minute, Judge. (Confers with Ms.
12 Anderson) I don't have any further questions at this time,
13 Your Honor. I don't have any more questions at this time.

14 Mr. Hammack: Nothing further from the State.

15 The Court: Sir, you can step down. Thank you so much.

16 Mr. Hammack: Jawarski Shelton.

17 The Court: You're still under oath from this morning.

18 Proffered Direct Exam of Lieutenant Shelton by Mr. Hammack

19 Q Lieutenant Shelton, as we spoke previously, you were
20 the lead investigator on this case ---

21 A Yes, sir.

22 Q --- in The State versus Fred Madden.

23 A Yes, sir.

24 Q Did you have the opportunity to interview Fred Madden
25 on December the 15th?

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1 A Yes, sir.

2 Q Where did that take place?

3 A At the Laurens County Sheriff's office in Captain
4 Williams' office.

5 Q About what time was that?

6 A I think it was around, between 10:00 and 11:00 a.m.

7 Q All right. Who all was present then?

8 A Myself, Captain Williams, Lieutenant Blackmon, and at
9 the time, when Lieutenant Burns was working at the
10 Sheriff's office.

11 Q All right. To your knowledge, how did it come about
12 that Mr. Madden ended up at the Sheriff's office that
13 morning?

14 A Captain Williams informed me that Mr. Madden had sent
15 word through the jail that ---

16 Mr. Howe: I have an objection to that for the purposes
17 of this hearing.

18 The Court: I understand. Overruled. I don't think
19 that's coming in for the truth of the matter asserted. You
20 can continue.

21 A Captain Williams, my supervisor, had informed me that
22 he had been told by one of the jailors that Mr. Madden
23 wanted to speak with him and sent me out to the
24 Detention Center to pick up Mr. Madden and bring him
25 back to the Sheriff's office.

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1 Q When you got back up there, you stated you went to
2 Captain Williams' office?

3 A Yes, sir.

4 Q To the best of your knowledge, since you went out and
5 picked him up, did Mr. Madden appear to be under the
6 influence of any drugs or alcohol?

7 A No, sir.

8 Q Did he appear to be under any mental condition or
9 physical disability that would have kept him from
10 understanding what was going on?

11 A No, sir.

12 Q All right. At any point during the questioning, do
13 you recall if he asked for a break?

14 A No, sir.

15 Q Any restroom break or anything to eat or drink?

16 A No, sir. Not that I recall.

17 Q All right. Now, Mr. Madden, you picked him up at the
18 jail. Correct?

19 A That's correct.

20 Q So, at that point, was he under arrest?

21 A Yes, sir.

22 Q For what?

23 A The charge of murder and possession of a weapon during
24 a violent crime.

25 Q So, the crime we are talking about here today.

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1 A Yes, sir.

2 Q When you got him back up to the Sheriff's office, did
3 you Mirandize him?

4 A Yes, sir. He was.

5 Q Do you recall whether you used a form or what you did?

6 A Yes, sir. It was by a form that's used by the
7 Sheriff's office.

8 Mr. Hammack: Your Honor, may I approach the witness?

9 The Court: Yes, sir.

10 Q Take a look at State's Exhibit No. 1. What is that?

11 A A form that was used on that date in question.

12 Q What kind of form?

13 A The Advisement of Rights Form with a Waiver of Rights
14 and one that we used on that day.

15 Q Did you actually complete that form on Mr. Madden?

16 A Yes, sir. Myself and Lieutenant Blackmon, Captain
17 Williams and Lieutenant Burns and Lieutenant Blackmon
18 and Mr. Madden also signed it.

19 Q Did you read the rights off that form to Mr. Madden?

20 A That's correct.

21 Q And what did you read to him? Would you read that for
22 the Court? What did you tell him?

23 A Before we/I ask you any questions, you must understand
24 your rights. You have the right to remain silent.
25 Anything you say can be used against you in court.

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1 You have a right to talk to a lawyer for advice before
2 we ask you any questions and to have him/her present
3 with you during questioning. If you have no money to
4 pay a lawyer's fee, the court will appoint one to
5 represent you without cost if you wish. If you decide
6 to answer questions now without a lawyer present, you
7 will still have the right to stop answering any
8 question at any time. You also have the right to stop
9 answering questions at any time until you talk to a
10 lawyer. Please initial your response. Do you
11 understand your rights as I have explained them to
12 you? Do you want a lawyer? Do you understand what
13 your questions are?

14 Q And how did Mr. Madden respond to those questions?

15 A There was an "x" placed in "yes" for the first box.
16 Do you want a lawyer, he checked "no". Do you want to
17 answer questions now, he checked "yes".

18 Q And it goes on. Under, where it says, "Waiver of
19 Rights", what does that say?

20 A "I have read this statement of my rights and I
21 understand what my rights are. I am willing to make a
22 statement and answer questions. I do not want a
23 lawyer at this time. I understand and know what I am
24 doing. No promises or threats have been made at this
25 time, made to me, and no pressure to coercion of any

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1 kind has been used against me."

2 Q Did Mr. Madden sign that?

3 A Yes, sir.

4 Q Did you witness his signature?

5 A Yes, sir.

6 Q About what time did all this take place?

7 A It was first signed off at 10:51 when it was started
8 and signed off at 11:00 a.m.

9 Q And did you write the 10:51 and the 11:00?

10 A That was actually wrote by Lieutenant Blackmon.

11 Q Was any kind of videotape or audiotape made of this
12 statement?

13 A No, sir.

14 Q And you specifically read each of these rights to
15 Mr. Madden?

16 A Correct.

17 Q And he seemed to understand them?

18 A Yes, sir.

19 Q After reading those rights to Mr. Madden, did he give
20 a statement?

21 A Yes, sir.

22 Mr. Hammack: May I approach the witness, Your Honor?

23 The Court: Yes, sir.

24 Q I'm handing you State's Exhibit #2, for identification
25 purposes. What does that appear to be?

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1 A That's a Voluntary Statement.

2 Q From whom?

3 A From Mr. Fred Madden.

4 Q Now, this particular statement, is your name reflected
5 on this?

6 A Yes, sir. It's the Notary Public for the State of
7 South Carolina.

8 Q So, you notarized the statement?

9 A That's correct.

10 Q Were you present when he made the statement?

11 A Yes, sir.

12 Q Did he make an oral statement first or was this typed
13 as you went along or how did this statement come
14 about?

15 A He made the first oral statement and talked about what
16 was in the statement and then it was actually typed as
17 he was telling it again.

18 Q Did he request law enforcement to type it?

19 A It was going to be wrote out and Lieutenant Blackmon
20 asked to type it out exactly as he said.

21 Q So, did he request law enforcement to write it or
22 produce it ---

23 Mr. Howe: Objection. Leading question, Judge.

24 The Court: Sustained. Just re-phrase.

25 Q Were you present when Lieutenant Blackmon typed it?

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1 A Yes, sir.

2 Q Does what's typed there appear to be what Mr. Madden
3 told you that day?

4 A Yes, sir.

5 Q And you were present during the whole questioning?

6 A That's correct.

7 Q When the statement was made.

8 A That's correct?

9 Q And when the statement was typed.

10 A That's correct.

11 Q Did you witness, Mr. Madden, sign this statement?

12 A Yes, sir.

13 Q At any point, was he threatened?

14 A No, sir.

15 Q Coerced?

16 A No, sir.

17 Q Promised anything?

18 A No, sir.

19 Q So, to the best of your knowledge, this was a free and
20 voluntary statement?

21 A Yes, sir.

22 Mr. Hammack: Nothing further, Your Honor.

23 Cross examination of Jawarski Shelton by Mr. Howe

24 Q It's your testimony, Officer Shelton, that you were
25 actually the one that gave the Miranda Warning?

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1 A Yes, sir.

2 Q Okay. But the actual filling in of the Advisement of
3 Rights Form was actually done by Officer Blackmon?

4 A Yes, sir. He filled in the top part and I just read
5 it.

6 Q And Officer Blackmon also typed the statement. Is
7 that correct?

8 A That's correct. He can type a little bit faster than I
9 can.

10 Q So, any of the times that are on there were done by
11 Officer Blackmon and you would agree with all the
12 times that are on these documents?

13 A Yes, sir. We were all in there the whole time.

14 Q You would agree with all the times that are on both
15 the Advisement of Rights Form and the Voluntary
16 Statement as being accurate times?

17 A (Officer Shelton looks at documents) I think that one
18 there may be the beginning time. (Indicating)

19 Q What one may be a beginning time?

20 A Right here. (Indicating)

21 Q Could you read what you are referring to, please?

22 A Right here on the Voluntary Statement, sir.

23 Q The time, 10:44 a.m.?

24 A Yes, sir.

25 Q That's the first time you noticed that. Isn't it?

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1 Isn't it?

2 A Yes, sir.

3 Q Your testimony from a minute ago was that all the
4 times were accurate, but now you're saying, "Well, the
5 beginning -- the statement actually began at 10:44 ---
6 Mr. Hammack: Your Honor, I don't think he said that.

7 He never agreed to that.

8 Mr. Howe: Well, let me ---

9 The Court: Go ahead, Mr. Howe.

10 Q You are saying he began the statement at 10:44?

11 A That's when the computer said it, sir. I don't know
12 -- that's when he opened the box up.

13 Q I'm completely lost. Would you go ahead and explain
14 your answer, please?

15 A When you enter our system, when you open up the
16 statement folder, it generates the time when you open
17 it up.

18 Q When you open the statement form, it generates the
19 time?

20 A Correct. It generates the time when you open it up.
21 When you open the statement.

22 Q So, the computer form then, where it says, "This
23 statement was completed at 10:44 a.m., the computer
24 form then automatically incorrectly enters in the
25 start of the statement? Is that what you are

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1 testifying to?

2 A It opened -- it put that time in there, sir. That
3 wasn't -- he didn't enter that. That was entered by
4 the computer, sir.

5 Q So...

6 A That's not something we put -- instead -- he maybe
7 didn't change it. That's not the time it ended.

8 Q And you're telling this court, under oath, that that's
9 the explanation for why the statement is shown ending
10 at 10:44, when the Advisement of Rights Form, the
11 Advisement of Rights didn't take place until 10:51 and
12 the -- and Mr. Madden didn't sign the Advisement of
13 Rights until 11:00? You're saying because when the
14 computer program starts, it starts and enters that
15 time, 10:44, and that's when you opened the statement
16 form. That's your testimony.

17 A That's when it was opened.

18 Q Yes, sir. That's your testimony under oath?

19 A That's when it was opened up.

20 Q And that testimony is as truthful as anything else
21 you've said to this court before lunch and now?

22 A That's when it was opened up, sir.

23 Q I asked you a question. Is that testimony just as
24 truthful as what you said before lunch and what you
25 are saying now?

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1 A That's when it was opened up, sir.

2 Mr. Howe: Your Honor, I would ask that you instruct
3 the witness to answer the question, please.

4 The Court: My understanding of the question is that if
5 the dialog box or the box to open a statement, if it's --
6 your question, Mr. Howe, if I'm correct, you open that up,
7 it then automatically puts the time in there that you open
8 it up as opposed to what time you would close it out. Is
9 that what you are getting at?

10 Mr. Howe: That's what this witness has testified to
11 and he's referring to the last -- it says, "This statement
12 was completed at 10:44 hours.

13 The Court: All right. Is that how it works, if you
14 open it up at 10:44, it's going to reflect on there 10:44
15 as the time of the statement?

16 Officer Shelton: When you open it up, it automatically
17 puts when you open it and you have to automatically change
18 it and then ---

19 The Court: You mean, manually change it.

20 Officer Shelton: Manually change it. And evidently,
21 he didn't change it.

22 The Court: All right. And the computer automatically
23 does that?

24 Officer Shelton: Correct.

25 The Court: Does that answer your question, Mr. Howe?

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1 Mr. Howe: He's answered the question, Judge. He
2 hasn't answered my question, but he's answered the ---

3 The Court: All right. Ask your question again, then.
4 Let's make sure it gets out.

5 Mr. Howe: I understand his answer now.

6 Q And you are confident that's the way it happens and
7 that's as truthful as anything else you've said here
8 today?

9 A That's what is the logical explanation for it.

10 Q Okay. All right.

11 Mr. Howe: I don't have any further questions.

12 Mr. Hammack: Just briefly, Your Honor.

13 Redirect examination of Officer Shelton by Mr. Hammack

14 Q But your testimony is, the Advisement of Rights
15 occurred first. Correct?

16 A That's correct.

17 Q And then the statement was taken. Correct?

18 A That's correct.

19 Q So, would you agree with me that that time of 10:44 is
20 wrong?

21 A That's correct.

22 Mr. Hammack: Nothing further.

23 The Court: Sir, you can step down. Thank you.

24 (Witness complies)

25 Mr. Hammack: Ben Blackmon.

(PROFFERED TESTIMONY -(DECEMBER 15) BEN BLACKMON) 115

1 (After being duly sworn by the Clerk of Court, Officer
2 Ben Blackmon testified as follows:)

3 The Court: Mr. Hammack.

4 Mr. Hammack: Thank you, Your Honor.

5 Direct examination of Ben Blackmon by Mr. Hammack

6 Q Lieutenant Blackmon, would you give your full name to
7 the reporter?

8 A Michael Benjamin Blackmon.

9 Q And could you spell Blackmon for us so she can get it
10 right?

11 A B-L-A-C-K-M-O-N.

12 Q Thank you. By whom are you employed, Lieutenant
13 Blackmon?

14 A Laurens County Sheriff's office.

15 Q How long have you been working over there?

16 A Since 1999.

17 Q Back in December of 2009, did you get involved in the
18 investigation of the shooting up on Highway 308, near
19 49?

20 A Yes, sir.

21 Q Were you involved in the taking of a statement from
22 the defendant ---

23 A Yes, sir.

24 Q --- Fred Madden?

25 A Yes, sir.

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1 Q Do you remember when that occurred?

2 A I believe it was December 15, 2009.

3 Q How did you come to get involved with that?

4 A I was notified by Captain Williams and Lieutenant
5 Shelton to meet at the Captain's office to assist in
6 typing the statement for Mr. Madden.

7 Q About what time of day was it?

8 A It was sometime between ten and noon.

9 Q Did you get an opportunity to speak to Mr. Madden?

10 A Yes, sir. I did.

11 Q Did he appear to be under the influence of any type of
12 alcohol or drugs?

13 A No, sir.

14 Q Any kind of physical or mental problem that would
15 cause him not to understand what's going on?

16 A No, sir.

17 Q All right. What office was he in at the Sheriff's
18 office?

19 A In Captain Williams' office.

20 Q What size office is that?

21 A A pretty good sized room. It's large enough to have a
22 conference table, a desk, a couch, two desk chairs, a
23 television cabinet. A fairly good-sized office.

24 Q Do you know, if at any point, Mr. Madden asked for a
25 break to go to the restroom, to get anything to drink,

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1 any type of food?

2 A I don't recall anything in particular.

3 Q Do you recall anybody ever threatening him or making
4 him any promises in return for his statement?

5 A No, sir.

6 Q To the best of your knowledge, Mr. Madden was in
7 custody at that point. Wasn't he?

8 A Yes, sir.

9 Q As far as you know he came from out at the Detention
10 Center?

11 A Yes, sir.

12 Q You knew what he was charged with?

13 A Yes, sir.

14 Q I'm going to show you something, a form that's been
15 marked as State's Exhibit No. 1. Do you recognize
16 that form?

17 A Yes, sir. This is an Advisement of Rights Form.

18 Q All right. On that form, do you recall if you had any
19 part in filling this form out?

20 A Yes, sir. I was a witness to this form. Down below,
21 I believe Lieutenant Burns' name and Captain Williams'
22 name, myself and Lieutenant Shelton signed it just
23 below the second witness line.

24 Q Did you place any of the times on the form?

25 A I placed the 10:51 at the top. I believe Lieutenant

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1 Burns placed the 11:00 a.m. at the bottom.

2 Q Were you present when -- excuse me. Did you see
3 anyone read this form to Mr. Madden?

4 A Yes, sir. I believe Lieutenant Shelton went over the
5 actual Rights with Mr. Madden.

6 Q And you were present when he did that?

7 A Yes, sir.

8 Q Did he read this form?

9 A Yes, sir. They went over it together.

10 Q Did you witness Mr. Madden signing this form?

11 A Yes, sir.

12 Q You were present when he did it?

13 A Uh-huh. Yes, sir.

14 Q As a result of this -- let me ask you first: Did
15 Mr. Madden appear to understand what was going on?

16 A Yes, sir.

17 Q Did he give any type of statement as a result of this?

18 A Yes, sir. He give a statement, which I typed it for
19 him.

20 Q Take a look at State's Exhibit No. 2. What does that
21 appear to be?

22 A This would be a voluntary statement given by
23 Mr. Madden to myself and also notarized by Lieutenant
24 Shelton and witnessed by Captain Williams.

25 Q And you signed it also?

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1 A Yes, sir.

2 Q All right. And this occurred about what time?

3 A It was around, if I remember correctly, it was around
4 11:30 or a quarter to twelve in the morning hours.

5 Q You were present when all this took place. Correct?

6 A Yes, sir.

7 Q Was he given this Advisement of Rights before he made
8 this statement?

9 A Yes, sir.

10 Q You were present and saw that occur?

11 A Yes.

12 Q All right. How did you come about typing his
13 statement?

14 A I used Captain Williams' computer. The computer has a
15 program on it called OmniForm. These forms are
16 prepared and leave you blank spaces to type what an
17 individual tells you. The computer also will fill in
18 certain spots. It's computer-generated-time and date
19 stamped, so that's done by the program itself. The
20 parts that you see where I have handwritten, those are
21 parts that we can fill in.

22 Q You are talking about up at the top?

23 A Yes, and on page two, up at the top also.

24 Q Okay. Now, do you recall Mr. Madden requesting
25 someone write this statement for him?

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1 A Yes, sir.

2 Q Did he give a verbal statement first or how did it
3 come about?

4 A I believe they talked to him for a few minutes and
5 then I was asked to take Mr. Madden's statement.
6 After they filled out the Advisement of Rights, they
7 spoke with him for a brief time and asked if I would
8 type the statement for Mr. Madden as he told it to me.

9 Q And did you do so?

10 A Yes, sir.

11 Q Did you type it exactly as he told you?

12 A Yes, sir, to the best of my abilities. Mr. Madden
13 went over the statement and signed it himself.

14 Q Did you witness that?

15 A Yes, sir. If he had needed to make any changes to the
16 statement or alterations, he could have told me and we
17 could have done it there, printed another copy and had
18 him sign it if he did not approve of the words on this
19 statement.

20 Q I know it's fairly lengthy, but read what Mr. Madden
21 told you to type.

22 A "This statement was written by M.B. Blackmon at my
23 request. I got evicted the week before Thanksgiving.
24 The reason I got evicted was because of problems going
25 on in the house with me and Keila Brown. We didn't

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1 get along. The things -- The thing was that Tine told
2 me that I was going to be evicted for a little while
3 until she got her a settlement. When she got her
4 settlement, she was going to help Keila get out of her
5 house. She was going to get evicted, too. Me and her
6 would be back together, because by my being there,
7 Keila Brown would not leave the house because she
8 thought that I was using her mother, which I wasn't.
9 I loved her mother. Then, by me leaving, would keep
10 me out of trouble with Keila Brown, because we didn't
11 get along. She has said over and over again to my
12 sister, Peggy Bannister, that Keila was going to have
13 to get out of her house. She wasn't going to let
14 nobody come there to her house and take over, treating
15 her like she is a child and she, she's the mother.
16 After the eviction note, I left on a Monday and went
17 Mack Irby's house to stay. Me and Tine, both, took my
18 things over there to Mack's house. Thanksgiving, she
19 was supposed to have brought me some food over to
20 Mack's and at the time she said she was talking to her
21 sister on the phone and I told her not to bring it
22 because she was, because she was on the phone and she
23 could bring it the next day. The next day, Tine
24 picked me up and brought me over to her house and I
25 spent the night. The next day, I got the food and she

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1 carried me back home. We talked every day on the
2 phone. Everything was smooth until the 10th of
3 December. I left Mack's house on my way over to
4 Tine's house. I got over there and I parked the Moped
5 and walked up the steps. The door was open, the storm
6 door was unlocked, and I went in and called out her
7 name and didn't get an answer and then I walked to the
8 refrigerator and got a drink of water. I walked back
9 to our bedroom and saw Tine on the floor, eyes was
10 wide open, and I seen some blood coming from her head
11 and I smelt gunpowder and I fled. Leaving the scene,
12 I met her brother, Bruce. He was coming up the road.
13 I kept on going because I panicked. When I seen Tine
14 on the floor, that's what made me a suspect and I was
15 scared. I stopped at the EXXON and I purchased some
16 gas and cigarettes and I got back to Easy Road out to
17 Mack's. I figured if it were gunpowder in the air in
18 Tine's house, it would probably be on my clothes, too,
19 although I didn't kill her. So, I took the clothes,
20 because I thought the gunpowder would stick on my
21 clothes. I took a bath and I took the clothes and I
22 burned them. Then, I didn't tell Mack what was
23 happening even though I knew. I waited on the law to
24 come. Before the law came, I got a phone call and
25 Mack answered the phone and a dude named Ray was on

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1 the phone and he asked what I had done and I said,
2 "Man, I don't know what you are talking about." Then,
3 I knew, because I had just left from the scene of the
4 accident. I was just waiting on the law to come,
5 because I didn't know what other evidence, or who else
6 was over there and I know right then that the evidence
7 was pointed towards me. That is the reason that I
8 fled. I am here today to state my statement that what
9 happened, that I did not kill Ernestine, my loved one.
10 I did not do it, but whoever did, I wish that they
11 would come forward." End of statement.

12 Q And that's what Mr. Madden told you that day?

13 A Yes, sir.

14 Q He read it and signed it in your presence?

15 A Yes, sir.

16 Q If you would, take a look at State's Exhibit No. 1,
17 that you have right there. What's the time on that?

18 A The time that the form was initiated was at 10:51.

19 The time in which it was written down under Mr.

20 Madden's signature at the bottom, it's 11:00 a.m.

21 Q Take a look at State's No. 2, the time on there.

22 A Yes, sir. It says 10:44 a.m., December 15, 2009.

23 Q The Advisement of Rights came first?

24 Mr. Howe: Objection, Your Honor. He's leading.

25 Q What came first?

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1 A The Advisement of Rights came first. The time stamp
2 and the date that is on Exhibit No. 2 was done by a
3 computer. It's not something that I can necessarily
4 change. I would say there, is that the computer was
5 wrong, or the time on the program was wrong on the
6 computer. I was an hour off, an hour back. But the
7 Advisement of Rights was completed first and then the
8 written statement.

9 Q You saw that happen?

10 A Yes.

11 Q Okay.

12 Mr. Hammack: Nothing further.

13 Cross examination of Officer Blackmon by Mr. Howe

14 Q Officer Blackmon, did you discuss your testimony with
15 Captain Williams before you came out here?

16 A No.

17 Q Have you ever discussed with Mr. Hammack before and
18 explained to him why it shows the Statement completed
19 at 10:44 and the Advisement of Rights taking place
20 afterwards at 10:51?

21 A No.

22 Q Y'all never discussed that at all?

23 A Not before today. No, sir. Just now. I may have
24 noticed it myself and I could see where Mr. Hammack
25 was going with it.

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1 Q Yeah. And about that, where he was going with that,
2 the typing for the statement itself, that was done by
3 you. Correct?

4 A Yes, sir. Just this part here.

5 Q And the 10:44 a.m., you say that you are blaming that
6 on a computer. Is that right?

7 A Yes, sir. The time stamp comes from the computer hard
8 drive. When the hard drive is off, then it stamps it
9 wrong.

10 Q Would it not be important to know when a statement was
11 completed?

12 A Right. I understand where you're going also, and once
13 you hit print is when it actually stamps that form.
14 It's not before or after. It is stamped in there once
15 you mash the button to print the statement.

16 Q Who is in charge of designing that computer program?

17 A I don't know.

18 Q Have y'all ever noticed this problem before?

19 A If the time is correct on the computer, then the time
20 is correct on the statement that you print.

21 Mr. Howe: I don't have any more questions.

22 The Court: Thank you, sir. You may step down.

23 Officer Blackmon: Thank you.

24 Mr. Howe: I do have one more question.

25 Continued Cross Examination of Officer Blackmon by Mr. Howe

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1 Q Officer Blackmon, if the Court wanted to see how this
2 was done, do y'all still use that same computer
3 program?

4 A I believe so.

5 Q And you could show us how that's done?

6 A Yes, sir.

7 Q Okay.

8 A I could try.

9 Q Right.

10 A I could try if ---

11 Q If you take my statement at 3:35 or something like
12 that, you -- it's going to show that it was completed
13 at 3:35?

14 A Yes, sir. And see, the computers that we are issued
15 by the Sheriff's office are laptops, so they are
16 portable. The computer that Captain Williams had that
17 we used that day, was a, I guess you would call it a
18 desktop, you know, the ones that stay in your office,
19 and I'm assuming that computer is still somewhere
20 around the office, although there are a few of them
21 that have been updated since then.

22 Q Thank you.

23 A You're welcome.

24 The Court: Thank you, sir. All right. No more
25 witnesses on the Jackson/Denno issues?

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1 Mr. Hammack: No, sir, Your Honor.

2 The Court: Let's go ahead and address those then, in
3 terms of argument that y'all want to make, concerning the
4 two statements and whether or not they should be admitted.
5 Do you want to go first?

6 Mr. Howe: Thank you, Judge. And Judge, I'm referring
7 to the oral statement first and depending on the Court's
8 ruling on that, then we'll make a decision as to what
9 position we take on the second statement. That's why...

10 The Court: Fair enough.

11 Mr. Howe: Judge, with regard to the oral statement, we
12 would submit that there was no credible and clear testimony
13 from officers involved, particularly in this case as you'll
14 recall, the officer who says that he gave Miranda warnings
15 was Moody. No testimony from him that my client made a
16 voluntary statement. In fact, Moody said he didn't want to
17 talk after he gave him a Miranda warning. As I recall,
18 that was Moody's explanation for why he didn't get him to
19 sign an Advisement of Rights and Waiver of Rights form,
20 because he didn't want to talk. Shelton then comes later on
21 and as I understood -- that's what I got from Moody from
22 hearing his testimony. Very confusing, it was, the way he
23 was attempting to explain it. I couldn't tell from his
24 testimony, at first, whether or not he gave Miranda once or
25 twice. The incident report that you have indicates that it

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1 was given twice by him, but clearly, there was nothing to
2 show that my client did it voluntarily. In fact, Moody
3 says he didn't want to speak and that's why he didn't get
4 him to sign the document. Shelton testified, as I
5 understand it, that he gave him Miranda, but he never told
6 this Court, for you to make a decision, whether or not that
7 Miranda took place before or after Moody, exactly when it
8 even took place. We're not sure.

9 So, what that sets up, if my client had invoked his
10 right to remain silent as you can reasonably conclude from
11 Moody's testimony, then it's a classic Edwards v Arizona
12 issue. He's revoked his fifth amendment privilege and the
13 only way it could be triggered again for proper questioning
14 is if there was a Miranda afterwards. Shelton didn't
15 testify, he didn't testify when he did it. He wasn't sure
16 when he did it. You don't have any credible testimony from
17 the witnesses to lay this out for the Court to make a
18 record and findings as to exactly what took place.

19 Judge, you also have the confusion in this case, you
20 had two people who apparently witnessed this statement who
21 aren't even here and present to testify. I realize that's
22 the State's prerogative to decide who to call and who not
23 to call, but again, if the Court is looking to try to make
24 a finding based on a complete record in this case, I would
25 submit we don't have it. And Judge, even though I realize

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1 what was said on the oral statement may very well be an
2 issue, a jury issue, in this case, again, for you to make a
3 finding based on the record, it's still unclear what was
4 said. And to me, it's obvious that this raises credibility
5 questions, it raises a question about whether or not there
6 was a proper Miranda and when that took place and I submit
7 that if you take everything into consideration, the
8 totality of the circumstances in this case, that there is,
9 there are just too many gaps in the record for you to find
10 what you need to find to admit this oral statement.

11 The Court: Thank you, Mr. Howe. Mr. Hammack.

12 Mr. Hammack: Your Honor, I would disagree somewhat.
13 Sergeant Moody was clear on the people present when he gave
14 his statement. Captain Williams and Jawarski Shelton both
15 then testified who the officers were that were present.
16 They said that. The people that were present when he took
17 that statement that we are talking about, they have gotten
18 on the stand and testified as to what they heard.
19 Everybody, or you heard Sergeant Moody say he was
20 Mirandized. You heard Sergeant Moody say he talked briefly
21 about his clothing and then he didn't want to speak
22 anymore. I never heard Sergeant Moody say that -- the way I
23 understood it and I may be wrong -- but the way I
24 understood it from Sergeant Moody on the stand was that he
25 talked about the clothing and he didn't want to speak any

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1 further. Captain Williams referred to that when he was on
2 the stand and that's why they sent him back to the jail and
3 didn't speak with him further. Captain Williams even went
4 so far as to tell him, "if you want to talk, get with me
5 later and we'll talk." But my understanding of the
6 testimony is that, not only was Mr. Madden Mirandized, but
7 law enforcement did what they were supposed to do. When he
8 said he didn't want to talk anymore, they sent him to the
9 jail and didn't talk to him anymore after those two brief
10 statements that Sergeant Moody testified to that ---

11 The Court: Well, hold on. My recollection of the
12 testimony is that the initial statement, the one where we
13 have basically a two-sentence blurb talking about trying to
14 burn clothes in order to generate heat, the testimony was
15 that they were in there for about two hours. That's what
16 they testified to.

17 Mr. Hammack: That's what they testified to. Yes, sir.

18 The Court: And out of that two hour -- I mean,
19 respectfully, Solicitor, if you have an individual who is
20 intending not to talk, and I'm quite certain that the
21 patience of the deputies is perhaps infinite, but I don't
22 know that you would necessarily sit in a room for an hour
23 and fifty-eight minutes waiting for somebody to talk after
24 having Mirandized him and just sit there waiting and then
25 all of a sudden he blurts out that he's burning his clothes

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1 for purposes of ---

2 Mr. Hammack: Your Honor, I'm sorry. I mis-spoke.
3 Honestly, I'd forgotten that Lieutenant Shelton started to
4 go into some further stuff that has never been provided
5 for, well quite frankly, for me or the defense that may
6 have taken place after Lieutenant, excuse me, Sergeant
7 Moody spoke with him. That's my fault, Your Honor. I
8 completely forgot about that part of it, because I didn't
9 even know about it. But, Lieutenant Shelton started to go
10 into that and Mr. Howe, rightfully, made an objection to
11 that and so that is not part of the issue to come in today.

12 Quite frankly, Sergeant Moody took the statement, had
13 witnesses testify it was Mirandized, it was freely and
14 voluntarily given. That after the statement and Sergeant
15 Moody was through with him, that, basically, he was done.
16 He left.

17 Now, other officers, obviously, attempted to question
18 him after that as Lieutenant Shelton attempted to go into
19 it, but it's not before the Court because we are not
20 seeking to use any of that, quite honestly, like I said,
21 that's not appropriate because they hadn't been disclosed.

22 The Court: Do you want to respond to any of that,
23 Mr. Howe?

24 Mr. Howe: Yes, Judge. Again, I don't know when
25 Shelton Mirandized him. I don't know whether it was before

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1 or after, but there's just not enough here to make a record
2 in this case. It's just so confusing and it doesn't make
3 any sense that two hours or more of interrogation and all
4 you get out of it is one little piecemeal statement that --
5 there's even a discrepancy between the two officers.
6 Captain Williams never said that my client said, "I burned
7 the clothes because I was cold." It's just, it's just, it's
8 just so confusing and bizarre that it seems like to me all
9 it's going to do is confuse the jury and I quite honestly
10 don't know how that's going to be addressed with the jury
11 at that time.

12 The Court: All right. You gentlemen would agree that
13 the standard of proof in here, basically, is that the State
14 would have the burden of proving, by a preponderance of the
15 evidence, that Miranda was given. Would y'all agree that
16 that is a correct statement, Gentlemen, at least for
17 purposes of this hearing?

18 Mr. Howe: Yes, sir.

19 The Court: Mr. Hammack, what do you say to the
20 argument that, essentially, the testimony is so completely
21 all over the map -- and forgive me if I'm mis-
22 characterizing your argument, Mr. Howe, but this is how I'm
23 receiving it -- the testimony is so all over the map,
24 especially in light of the very simple solution in terms of
25 a Miranda form. If he refused to sign it, an officer could

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1 easily write down there, "refused to sign", date it, have
2 it witnessed by some of these other officers who are
3 present. Obviously, that would be, I would think, good
4 evidence for the Court to be able to use. Certainly, any
5 modern cell phone that has internet capability most often
6 has the ability to record conversations. Mine can record
7 substantial amounts of voice information. I would think
8 that out of the three to five officers there, it would have
9 been quite easy for one of them to use the "app" on their
10 smart phone, place it in the middle of the table and record
11 what is exactly said. Certainly, it would have been very
12 easy for, if, in fact, the defendant had given a complete
13 narrative of what he had asserted took place, it would have
14 been very easy for someone to have taken notes
15 contemporaneously with his statements. I'm not talking
16 about stenographic notes, but at least jot down what he is
17 saying as it is taking place. Most importantly, wouldn't
18 it be advisable, especially in light of the confusion
19 offered by the Supplemental Incident Report -- I can't
20 remember if that's Defendant's No. 1 or No. 2. I think
21 it's the first one shown, probably Defendant's No. 1.
22 Wouldn't it be best to clear up whether he had been
23 Mirandized previously to the interview and perhaps who
24 Mirandized him at that point in time? I'm happy to hear
25 what you want to tell me on those topics.

1 Mr. Hammack: Your Honor, I can't disagree with you,
2 but as far as I know there is no requirement that
3 statements be audio taped, videotaped or otherwise.

4 The Court: I'm just saying it would be nice.

5 Mr. Hammack: I totally agree, trust me. I've been
6 beating that drum for a while, but as of yet there is no
7 requirement that that take place, and quite honestly, it
8 would be great if they at least made notes. Unfortunately,
9 they didn't and all we've got is a Supplemental Report with
10 a couple of lines saying what was said. Sergeant Moody
11 testified that he Mirandized him before he received that
12 information. He Mirandized him, that's what he was told,
13 and that's what he did.

14 The Court: All right.

15 Mr. Hammack: And you've got the other officers who
16 stated they were present at least for parts of it, but at
17 least they were present and that's what they saw.

18 Court's Ruling on First Statement (December 10, 2009)

19 The Court: All right. I'm called upon to determine
20 whether or not, by a preponderance of the evidence, the
21 Miranda Rights were read to the defendant in this case and
22 the State is correct in asserting that there is no
23 statutory requirement that a form be signed, that a
24 statement be recorded and certainly there are circumstances
25 that I could understand that perhaps it would be more

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1 expedient, or maybe you simply lacked the resources or the
2 ability such as a road-side check or you come upon the
3 defendant and you start questioning him after Miranda. The
4 problem I have with the initial statement, however, is that
5 the testimony of the officers is all over the map and I
6 have a hard time reconciling what I believe to be their
7 genuine and truthful recollections of the events. I have a
8 difficulty reconciling them and they can't all be right.
9 So, I feel that I am forced to conclude that Miranda was
10 not given for purposes of the initial statement to law
11 enforcement. I do not believe that the statement was
12 involuntary. Perhaps that's a bridge we will have to cross
13 at a later point in time depending on how this case
14 proceeds, but I do find that Miranda was not given or at
15 least that the State has failed to demonstrate, by a
16 preponderance of the evidence, or satisfy this Court by the
17 preponderance of the evidence, that Miranda was, in fact,
18 given on this occasion. The timing is completely out of
19 whack, the testimony is inherently contradictory, so that's
20 my ruling on that issue.

21 We're going to have the jury back here in about ten
22 minutes. We'll take a brief break. I'll bring the jury in
23 and release them for the rest of the day. Are you going to
24 challenge the second statement at this point in time, Mr.
25 Howe?

1 Mr. Howe: Your Honor, the only challenge that I could
2 make to the second statement has to do with the timing
3 issue that we've addressed.

4 The Court: I understand.

5 Mr. Howe: And that would be my challenge on that.

6 The Court: I will be more than happy to address that
7 at a later -- after I let the jury go.

8 Mr. Howe: Yes, sir.

9 The Court: I'm going to have them back here tomorrow
10 at 10:00, so that y'all have an opportunity in the morning.
11 I think we are probably going to go a little bit after
12 five, but that will give you an opportunity in the morning
13 to perhaps mark some exhibits and we can get that chore out
14 of the way. We will be at ease for a few moments and then
15 we'll bring the jury in. As soon as I get word that they
16 are all here, I'll release them, we'll go immediately into
17 the other motions that we have to deal with, Gentlemen, and
18 Ms. Anderson.

19 (Brief break)

20 (Jury in at 3:56 p.m.)

21 The Court: The record will reflect that the jury is
22 back. Ladies and Gentlemen of the jury, I appreciate y'all
23 being back and being back so promptly. I realize it's a
24 little bit before 4:00, but y'all made it back sooner than
25 you were expected. Here's where we are: there were certain

1 matters that I'm still taking up, that I'm still hearing
2 concerning this case. I'm not going to keep you back there
3 while we're doing this. What I'm going to ask that you do
4 is report to the jury room tomorrow morning at 10:00. I
5 promise you, by then, we will start the case.

6 Again, what I told you before lunch stills stands.
7 Don't discuss this case with anyone. Do not conduct any sort
8 of independent research, do not conduct any sort of
9 internet search. You'll be placed under oath tomorrow to
10 well and truly try this case and a true verdict render and
11 it would be a violation of your oath to disregard or to
12 violate my instructions to you this evening. So again,
13 please don't talk to anybody about it. Blame it on me.
14 When you go home, I know your husband or your wife is going
15 to ask you questions about this, or your girlfriend,
16 whatever the case may be, will ask you questions about what
17 kind of case you're on. Explain to them, "The Judge told
18 me I can't talk about this. When the case is over with,
19 I'll be more than happy to discuss it with you, honey, but
20 not tonight." With that, I hope y'all have a lovely
21 evening. I'll see you back in the jury room tomorrow
22 morning at 10:00. I know the bailiff will have some coffee
23 back there, perhaps some crackers or maybe some donuts or
24 something, but you may want to go ahead and grab breakfast
25 before you come in. With that, I'll see y'all tomorrow

(ARGUMENT ON SECOND STATEMENT (DECEMBER 15))

1 morning at 10:00. Thank you very much. Everyone else stay
2 seated while the jury is excused.

3 (Jury out at 3:58 p.m.)

4 Argument on the Second Statement (December 15, 2009)

5 The Court: All right, the record should reflect the
6 jury is out. Mr. Howe, let me hear you on the second
7 statement.

8 Mr. Howe: Your Honor, with regard to the second
9 statement, the issue is, we would submit, a question as to
10 whether or not the Advisement and Waiver were given before
11 the statement was actually made. We've heard testimony
12 from Officers Blackmon and Shelton with regard to that. I
13 believe Shelton said that when you begin this program, it
14 starts at whatever time you start downloading the Voluntary
15 Statement Form. Officer Blackmon said, "No, it has to do
16 with whether or not ---

17 The Court: The time stamp on the hard drive or ---

18 Mr. Howe: That's right. The time stamp on the hard
19 drive had to, you know -- and that was the explanation on
20 those and both of those seem contradictory and I'm pretty
21 much baffled that I've been practicing in this circuit this
22 period of time and never have once run into that issue
23 before. So, that's the basis for it. The question, again,
24 is whether or not and, you know, it may very well go to
25 credibility, as well. That's the issues on whether or not

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1 the statement comes in based on that. So, for that reason,
2 Your Honor, we would submit that the statement is in
3 violation of the requirements because the evidence, the
4 record before the Court is that the statement was given
5 before the Miranda warnings.

6 The Court: All right. Mr. Hammack, you want to speak
7 to that, briefly?

8 Mr. Hammack: Yes, sir, Your Honor. All three officers
9 testified that the Advisement of Rights came first. I
10 believe they gave a valid explanation of why it says 10:44
11 and even went on to say it was obviously incorrect. All
12 three of them testified that the Advisement of Rights came
13 first and all three were present when it happened and all
14 three were confident of the order of things. All three
15 testified to that effect and at least two of them testified
16 that, you know, the time on the statement is wrong.

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17
18 The Court: All right. Based upon what has been
19 presented to me from the three officers, I do find with
20 regard to the second statement given on the 15th of
21 December, that that statement was given in compliance with
22 Miranda and accordingly I find that the State has proven
23 that by a preponderance of the evidence. There is, of
24 course, much more convergence in the testimony concerning
25 the second statement than there was in the statement which

1 took, which was given on the date of the incident or
2 shortly thereafter. Of course, Mr. Howe, I will be more
3 than happy to charge the jury on their obligation and what
4 they have to decide. I'm sure that you have something
5 along those lines. If you, at that point in time, feel that
6 is an appropriate charge, I will be more than happy to
7 entertain that and to charge that at that time.

8 Mr. Howe: Thank you, Judge.

9 The Court: All right. Let's go forward with the
10 hearsay issues, if we may. Now, Mr. Hammack, Mr. Howe had
11 requested sequestration. I don't know the witnesses
12 involved, but certainly we have several family members out
13 here and the ones who are not directly involved are more
14 than welcome to stay, but perhaps the others ones, the ones
15 that are going to testify, would need to adjourn to a
16 different room.

17 (Potential witnesses leave the courtroom)

18 The Court: All right. Mr. Brown, do you want to call
19 your first witness?

20 Mr. Brown: Yes, sir, Your Honor. The State calls
21 Kathy Dowdy.

22 (After being duly sworn by the Clerk of Court, Kathy
23 Dowdy testified as follows:)

24 Direct examination of Kathy Dowdy by Mr. Brown

25 Q Ms. Dowdy, would you please just say your name and

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1 spell it for the court reporter.

2 A Kathy Dowdy. D-O-W-D-Y and Kathy is spelled with a
3 "K".

4 Q Thank you, Ms. Dowdy. Ms. Dowdy, where do you live?

5 A I live in Blythewood, South Carolina.

6 Q Where did you live in 2009?

7 A In Greenville, South Carolina.

8 Q And what do you do for a living?

9 A I'm a real estate agent.

10 Q Ms. Dowdy, what's your relationship with the victim in
11 this case, Ms. Ernestine Brown?

12 A She is my older sister.

13 Q Do you have any other brothers and sisters?

14 A Yes.

15 Q Who are your brothers and sisters?

16 A Albert, Phillip, Daneka, Delores, Evan.

17 Q Does Albert go by any other names?

18 A Bruce.

19 Q Do you know the man sitting at the table in the blue
20 suit?

21 A I do.

22 Q Who is that?

23 A That's Fred Madden.

24 Q How do you know Mr. Madden?

25 A At one point in time he was a friend of my sister's

1 and they resided together until she put him out.

2 Q How well do you know Mr. Madden?

3 A I know him pretty well.

4 Q Can you recognize his voice?

5 A Definitely.

6 Q Ms. Dowdy, do you remember December 10, 2009?

7 A I do.

8 Q Where were you December 10, 2009?

9 A The morning of December 10th, I was at my apartment on
10 my way to go get breakfast at Waffle House until there
11 were a couple of police officers from Mauldin Police
12 that had come to my apartment complex because there
13 was a Federal fugitive a loose in our complex.

14 Q So you were living in Greenville County at that time?

15 A I was.

16 Q What time of morning was that?

17 A It would have to be about ten, around 10:00.

18 Q What did you do while you were there at the apartment?

19 A I called and ordered my food and when I realized I
20 couldn't leave out, I called my sister, Ernestine.

21 Q You called Ernestine Brown?

22 A I did.

23 Q And what time did you call Ms. Ernestine?

24 A It had to be after 10, because I was getting ready to
25 walk out of the house after placing the order so it

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1 had to be between 10:00, 10:15, 10:30 that I called
2 her.

3 Q What phone did you call Ernestine, I mean, what phone
4 number did you call?

5 A I called her cell phone.

6 Q In talking with Ernestine, did you realize where she
7 was?

8 A Yes. She told me she was at home.

9 Q What did y'all talk about?

10 A Basically, we talked about the fact that the day
11 before I tried to reach her and couldn't get her on
12 the phone and we liked to talk about that and she, at
13 that point, told me that, the events of the day before
14 and that she had went riding and then, of course, she
15 had some work done on her house and she was looking
16 for some different things to go in the house and then
17 she told me that she had had a conversation with Mr.
18 Madden and ---

19 Q What else did the conversation, what else did y'all
20 talk about in that conversation?

21 A We talked about what was happening at my apartment
22 complex. I told her that there were Mauldin City
23 Police Department Officers, Greenville County, they
24 were all standing in front of my apartment complex,
25 and in front of my building and they had guns drawn

1 and I was telling her a play-by-play of what was going
2 on.

3 Q How long were y'all on the phone?

4 A Had to be at least an hour, if not more.

5 Q Anything strange occur while you were on the phone
6 with her?

7 A Yes. We were talking and then there was a knock at
8 the door and I said, "Who's at the door?" And she
9 said, "I don't know. Let me check." And then I asked
10 her again, I said, "Who's at the door?" And she said,
11 "It's Fred." And I said, "Don't let him in."

12 Q So, you could hear a knock?

13 A I could.

14 Mr. Howe: Your Honor, that would be one of the
15 objections. Do you want me to note when I'm objecting?

16 The Court: That would be helpful. Yes, if you want --
17 the testimony that you are having issues with.

18 Mr. Howe: Yes, sir.

19 The Court: And so, it's going to be the knock and
20 "It's Fred."

21 Mr. Howe: So we can see I have an objection to that.

22 The Court: Very good. I'm going to let him keep
23 going, but each time you get to one, let me know.

24 Mr. Howe: Yes, sir. Thank you.

25 Q So, you could hear a knock on the door?

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1 A Uh-huh.

2 Q What happened next?

3 A I told her, "Don't let him in." And she said, she
4 told me, "Well, I'm all right."

5 Mr. Howe: Same objection, Judge.

6 The Court: The "don't let him in"?

7 Mr. Howe: Yes, sir. From this witness and then -- I'm
8 essentially going to be objecting to all the conversation
9 that they had.

10 The Court: Okay. So, the "don't let me in", "I'm all
11 right."

12 Mr. Howe: Yes, sir.

13 The Court: Keep going, Mr. Brown.

14 Q Continue on with...

15 A And I asked her, I said, "Well, what does he want?"
16 And she said, "I don't know." And at that point, I
17 said, "Well, what is he doing?" And she said, "He's
18 standing here." And I said, "Well, what does he want?"
19 And she said, she asked him, "What do you want?" And
20 he said, "I want to talk." And she said, "What do you
21 want to talk about? You threatened to kill me." And
22 he said, "You hurt me." And at that point, she said,
23 "You don't threaten to kill somebody that you say you
24 love." And so, they got quiet and I asked her, "Are
25 you okay? What are you doing?" And she says,

1 "Nothing." And I said, "Well, what is he doing?" And
2 she said, "Nothing. He's just standing here." At that
3 point, I picked up my cell -- I had my cell phone and
4 I looked down so that I could send her a text message.
5 I sent a text message ---

6 Q Who were you sending a text message to?

7 A I was sending a text message to my little sister,
8 Delores.

9 Q While you were still on the phone ---

10 A Yes.

11 Q --- with Ernestine?

12 A Uh-huh. And I sent her a text message saying to send
13 Bruce out to Tine's house, because Fred threatened to
14 kill her yesterday and he's at the house now.

15 Q And Bruce is ---

16 A Albert.

17 Q That's your brother.

18 A Yes. It is.

19 Q While you were on the phone with her, did the
20 conversation just stay on Mr. Madden being there, or
21 what?

22 A Well, at that point, the officers at the apartment
23 complex that I lived, had knocked on the door and they
24 were trying to evacuate everyone that was in my
25 building so I told her at that point, I said, "Well,

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1 I'm getting ready to go and leave out of here and I
2 put her on speaker phone so I could hear anything that
3 was going on in the background and I asked her, "Are
4 you still there?" And she said, "Yeah, I'm still
5 here." I said, "Well, what are you doing?" And she
6 said, "Nothing." And I said, "Well, what is he doing?"
7 And she said, "Nothing, just standing here." I said,
8 "Okay." And so then, at that point, I was putting on
9 my shoes and Delores tried to beep in, so I just
10 dismissed that phone call so I could continue to stay
11 on the phone with Ernestine. So, when I was putting
12 my shoes on and everything, I said, "Tine, are you
13 still there?" She said, "Yes, I'm still here." At that
14 point, the call dropped and my little sister was on
15 the phone.

16 Q Did you try to call Ernestine back?

17 A I tried to call her back three times. The first time
18 I called her back, it went to voice mail and then the
19 second -- the other two times I tried to call her, the
20 phone just rang and rang and rang.

21 Q Did you ever talk with Ms. Ernestine again?

22 A No. I did not.

23 Q Now, after -- going back, after you heard the knock,
24 could you tell who was in the house besides Ernestine?

25 A Yes. I could hear Fred in the background talking to

1 her. I heard him when he said, "You heard me." He
2 said, "I want to talk." And she said, "What do you
3 want to talk about? You threatened to kill me last
4 night." And he said, "You hurt me." I heard him when
5 he said that, because I knew his voice.

6 Q So, you can positively identify his voice?

7 A Oh, absolutely. On several occasions when her and I
8 had talked on the phone, he had said, "Tell Kathy to
9 keep it in the road," as a, you know, keep everything
10 okay.

11 Q So, in prior conversations with your sister with Fred
12 Madden around, you heard his voice in the background.

13 A Exactly.

14 Mr. Brown: No further questions, Your Honor.

15 The Court: Mr. Howe?

16 Mr. Howe: Then I'm allowed to cross?

17 The Court: Please. Yes.

18 Mr. Howe: Okay.

19 Cross examination of Kathy Dowdy by Mr. Howe

20 Q First of all, Ms. Dowdy, the, do I understand the
21 first thing that you heard her say regarding the
22 testimony concerning Fred Madden was after you said
23 you heard a knock on the door? Is that correct?

24 A I'm sorry. Could you repeat that?

25 Q You said you heard a knock on the door.

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1 A I did hear the door knock.

2 Q Okay. Was the television on or anything in the home?
3 Did you hear any background noise?

4 A No, sir. She didn't have the T.V. on.

5 Q Pardon me?

6 A No.

7 Q The T.V. was not on?

8 A Not at that time when we were talking.

9 Q Okay. And how do you know?

10 A Because she was in her bedroom and we were talking. I
11 would have been able to hear it had it been on.

12 Q The door that you heard the knock on, which door would
13 that have been?

14 A That would have been her front door.

15 Q Now, you said that you heard a knock, then you heard
16 her go answer the door and she told you who was there.

17 A She said it was Fred.

18 Q All right. Did -- and you didn't hear Fred Madden say
19 anything at that time. Did you? You didn't hear
20 another voice at that time. Did you?

21 A I subsequently heard him say, when she asked him, when
22 I said, "What does he want?" and she asked him what
23 did he want, he said he wanted to talk. I did hear
24 that.

25 Q Okay. Now, based on your conversation with your

1 sister, where was she at that point in time?

2 A She had come into the, she had come into the -- she
3 was walking through the house and she had come into
4 the room where she could answer the door.

5 Q And this was an old cell phone. Is that correct?

6 A Yes. To my understanding, she just had a basic cell
7 phone.

8 Q Okay. And it's your testimony that you could actually
9 hear what, hear this conversation?

10 A Yes.

11 Q When she was talking with you, was she on her speaker
12 phone?

13 A No. She was on her cell phone.

14 Q She wasn't on the speaker part of it?

15 A No.

16 Q Your testimony was that, that the voices that you
17 heard said, "What do you want?" "I want to talk."
18 Correct?

19 A That's correct.

20 Q And you, your testimony was then that you heard your
21 sister say something about, "What about threatening to
22 kill." What, specifically, did she say?

23 A "What do you want to talk about? You threatened to
24 kill me last night."

25 Q And what response did you hear at that point in time?

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1 A I heard Fred say, "You hurt me."

2 Q And then what did you hear?

3 A And then nobody was talking and I asked her what was
4 he doing and she said, "He's standing here." So,
5 nobody was talking and then, subsequently, she said to
6 him, "You don't threaten to kill someone that you
7 love."

8 Q And then what did you hear?

9 A They weren't talking at that point. I asked her what
10 was going on. She said, "Nothing". I said, "What is
11 he doing?" She said, "Nothing". And I said, "Why are
12 you still here -- why is he still there."

13 Q You said what, now?

14 A "Why is he still there."

15 Q And what did you hear then?

16 A Nothing. No one was saying anything.

17 Q And what were the last words, then, that you heard in
18 this conversation between the person that you've
19 identified as Fred Madden and your sister, what were
20 the last words that you hear?

21 A Just what I just forestated, that she, she said that
22 you don't threaten to kill someone that you love.

23 Q And that's the last thing you heard.

24 A That's the last thing I heard, because her and I were
25 talking at that time.

1 Q And then you indicated, at that point in time -- well,
2 tell me again, what point in time did you then text to
3 your sister?

4 A I texted to my sister Delores when he came into the
5 house. When she said, "It's Fred," I sent my sister a
6 text.

7 Q And was that text saved? Your text message?

8 A I no longer have that cell phone, but if they need it,
9 they can pull records.

10 Q Right. And do you know whether or not your sister
11 saved the text that came to her?

12 A I'm not sure.

13 Q Did you -- now, did you, at any point in time, ever
14 hear anybody raise their voice or any yelling or
15 screams or loud argument or anything? You didn't hear
16 that, did you?

17 A Their conversation wasn't just regular conversation.
18 They were going back and forth.

19 Q They were not loud?

20 A It was intense. I can't say that it was a yell or a
21 scream or a holler, because that was not the case.
22 That was not her demeanor.

23 Q You never heard her say anything, "he's attacking me"
24 or anything of that nature?

25 A No. I did not.

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1 Q Never heard her say, "He's got a weapon," or anything
2 of that nature?

3 A No.

4 Q You never heard any unusual noise like a gun going off
5 or anything of that nature?

6 A No. I did not.

7 Mr. Howe: I'd like to have one minute, Judge.

8 The Court: Yes, sir.

9 Mr. Howe: No more questions at this time, Your Honor.

10 The Court: No other questions?

11 Mr. Brown: No, sir.

12 The Court: Thank you, Ma'am, you may step down.

13 Mr. Howe: Your Honor, are we going to, again, just
14 make our argument at the conclusion of all the witnesses or
15 make it based on each witness' testimony?

16 The Court: Let's go ahead and hear it on this one,
17 just because I think the issues on this one are going to be
18 somewhat different than the issues on the others. I
19 anticipate the State, the subsequent ones are going to be
20 arguing that any communication heard to them is non-hearsay
21 because it's offered to prove what they subsequently did or
22 what actions they undertook. This is a little bit
23 different, so let's hear from you on that, Mr. Howe.

24 Hearsay arguments - Kathy Dowdy

25 Mr. Howe: Thank you, Judge. First of all, Your Honor,

1 one of the statements that we would argue that clearly
2 should not come in, is the testimony from Ms. Dowdy where
3 she says something to the effect of, "you don't threaten..."

4 The Court: The threat aspect under the 403 analysis?

5 Mr. Howe: That threat, having occurred according to
6 the testimony and all the discovery that's been provided to
7 us, including Ms. Dowdy's statement, that that threat would
8 have occurred hours before and we would contend that,
9 clearly, that does not fall under the exception and I
10 assume the Solicitor is going to argue it's a present sense
11 impression. And so that would be my first argument because
12 he's talking about something that took place earlier and is
13 testimony from this witness as to what supposedly took
14 place between my client and the victim in the case,
15 earlier. I'd say that's not a present sense impression.

16 The Court: Let's try and deal with it this way: I
17 think we're dealing with two different kinds of hearsay or
18 potential hearsay in this case. On the one hand, we are
19 talking about the witness, her sensory observations of the
20 defendant's voice. I believe that you would agree,
21 Mr. Howe, that that would not necessarily be subject to a
22 hearsay objection. I assume that what you are focusing on,
23 primarily, is the substance of what the decedent related to
24 the witness that just testified. Am I correct on that?

25 Mr. Howe: You've got it.

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1 The Court: All right. So, insofar as we are dealing
2 with the fact that she recognized the defendant's voice,
3 what about this substance of what he said? What would be
4 your position on that, Mr. Howe?

5 Mr. Howe: My position on that, Your Honor, would be
6 that it is hearsay, as well, because it's a statement that
7 he made in conversation with her.

8 The Court: How are y'all planning on presenting this?

9 Mr. Brown: Your Honor, we presented it, basically, the
10 way -- the conversation prior to Mr. Madden actually
11 knocking on the door and Ms. Dowdy hearing the
12 conversation, I agree, I think what she told Kathy Dowdy
13 prior to him being there at the house would be hearsay,
14 with regards to the threat. Now, once he's at the house
15 and Ms. Dowdy is listening to the conversation, she's
16 observing, it's her present sense impression, she's hearing
17 conversation as she understands it and we feel that that
18 would be a hearsay exception, where that should come in as
19 what she's heard of the conversation at that point. The
20 State has found a case that seems to be directly on point.

21 The Court: I love cases directly on point. Pass that
22 up, please.

23 (Mr. Brown hands document to Mr. Howe and to the Judge)

24 The Court: What does that case hold?

25 Mr. Brown: That's the case of State v Plyler,

1 270 S.E. 2d 126(S.C. 1980). That case has to do with very
2 similar facts where the defendant's ex-wife is the victim
3 and she and her sister were together that night. The
4 sister goes back to her home. Along her way back, the ex-
5 wife of the defendant calls her on the phone and while they
6 were on the phone, the defendant knocks on the house door.
7 The ex-wife hears this. She was able to recognize the
8 defendant's voice and listens to the conversation that's
9 going on between them. The Supreme Court said that
10 evidence is admissible. The witness identified the voice
11 of the accused as a participant in the conversation and
12 because of that identification, the conversation falls
13 under the exception to the hearsay rule. And as it states,
14 "As a general rule, statements of declarations made by one
15 accused of a crime are admissible against him." So, during
16 that conversation and what Ms. Dowdy heard seems to fall
17 under the ruling in this case from 1980.

18 Mr. Howe: Your Honor, at the appropriate time, I would
19 like to address that case.

20 The Court: I'm assuming that you are going to point
21 out that it's a pre-Rules case?

22 Mr. Howe: It's a pre-Rules case and it's also, in
23 looking at it, it almost appears to be a *res gestae* case
24 and the other thing pointed out, on the first page, it
25 points out that the declarant in that case was subject to

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1 cross examination. The declarant is the victim in this
2 case. That is the declarant with regard to anything she
3 said and again, that appears to be a *res gestae*, excited
4 utterance, case. Also, again, that declarant was, in fact,
5 subject to cross examination. In this case we would
6 contend that, that it's not an excited utterance, because
7 you've already heard the testimony from Ms. Dowdy. That
8 didn't create a situation where this could go in under
9 excited utterance. It has to fall under present sense
10 impression with anything said and it's the declarant
11 relating events as she's, you know, there at the home and
12 some of those events took place before, particularly the
13 testimony concerning the threat. All that took place
14 before the events that Ms. Dowdy testified to that she
15 heard.

16 The Court: All right. Well, as we are all aware, our
17 adoption of the Rules of Evidence changed somewhat the
18 hearsay rules or the way hearsay was handled. Prior to the
19 Rules, of course, it was the rule that once the witness
20 took the stand, anything that that witness had previously
21 said, even though it was technically hearsay was admissible
22 because the primary purpose of or the analysis of most of
23 the courts, I'm trying to remember the case, it's either
24 Cohen or Copeland, but under the Copeland analysis, under
25 the pre-Rules cases, the logic was that once an individual

1 had taken the witness stand, they would be subject to cross
2 examination and hearsay was viewed at that point in time
3 prior to the Rules more along the lines of a confrontation
4 clause type of analysis. You've been doing this longer
5 than I have, Mr. Howe. Feel free to correct me if I
6 stumble on something that's incorrect. With the adoption
7 of the Rules, that former Rule, more or less, fell by the
8 wayside. Now, something has to be a valid exception. It
9 used to be, also, the present sense impression and excited
10 utterance were two separate elements of the same Rule for
11 admissibility.

12 Mr. Howe: And Your Honor, I'm probably still wrestling
13 with how to lay the issue out. I would still contend that
14 any testimony from the witness, Ms. Dowdy, concerning what
15 she contends her sister said about events that took place
16 before ---

17 The Court: I would agree with that. If nothing more,
18 under a 403 analysis, absent some independent evidence of a
19 threat, I don't -- this is not a dying declaration,
20 obviously, because the person is not in fear of impending
21 death and so the only thing that the State could argue is
22 what they are arguing, and that is that it is a present
23 sense impression. What I'm working through in my mind, or
24 trying to work through, Gentlemen, and feel free to help
25 me, but obviously, it is proper for this witness to testify

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1 that, based on representations by her sister and because
2 that's for purposes of identification. So, both her sister
3 identified the defendant at the door and the witness
4 overheard the defendant's voice and recognized the
5 defendant's voice. It's the substance of that exchange that
6 I'm having difficulty figuring out how to present, because
7 Mr. Howe's point is well taken that, at least with respect
8 to some of what the decedent said, that's either going to
9 run afoul of a 403 type of analysis or -- speak to me again
10 on why I should allow what the decedent said into evidence.
11 I know that what the defendant said is certainly relevant
12 for purposes of identification. She can testify as to
13 that. That is, by definition, non-hearsay under 801. How
14 does the State intend to address the hearsay aspects of one
15 side of the conversation in order to get into evidence the
16 non-hearsay 801 statements of the defendant to prove his
17 presence? And I assume that's the primary reason you are
18 seeking introduction of this conversation. How would y'all
19 seek to handle that or why should I allow what the decedent
20 said into evidence under present sense impression. If you
21 want to go back down that road, explain it to me again.

22 Mr. Brown: Your Honor, we will just argue the present
23 sense impression. She's no longer here to testify as to
24 what was going on at that time, but Ms. Dowdy, at the time,
25 that's what she understood, what she could hear off the

1 phone during this conversation. (Mr. Brown speaks with
2 Mr. Hammack) Your Honor, if I may?

3 The Court: Yes, sir.

4 Mr. Brown: What we are trying to seek here is, we
5 understand the conversation required Mr. Madden being
6 there, about the threat at that point. The threat mentioned
7 at that point truly, that was a different time, that would
8 be hearsay. Once he got there, that explains the reason
9 why she called her sister or texted her sister, what she
10 heard, what she sensed while she was on the phone, and that
11 would be our argument as to why that should come in,
12 because that is what she perceived at that time while she
13 was on the phone, that's what she actually heard of the
14 conversation and not something that was stated prior to him
15 being there. It was the conversation at the time that he
16 was there and she perceived that and listened to what they
17 were saying and that's why she did what she did when she
18 called or texted her sister that they needed to come over
19 to the house, that Albert or Bruce, needed to come check on
20 their sister at that point.

21 Mr. Howe: Your Honor, may I? In response, the
22 declarant is the victim in the case. It's not Ms. Dowdy.

23 The Court: Agreed.

24 Mr. Howe: And again, you know, present sense
25 impression: a statement describing or explaining the event

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1 or condition made while the declarant was perceiving the
2 event or condition or immediately thereafter. You know,
3 again, any reference whatsoever to any of the conversation,
4 we object to where there's a discussion where the declarant
5 is talking about a prior threat, even talking about the
6 prior threat with Ms. Dowdy, period. It still does not
7 fall under the present sense impression because it's
8 talking about an event that took place some time ago. It's
9 what this witness is perceiving now. If this witness, I
10 mean, if this witness was saying, "I heard Ernestine, my
11 sister, say, "He's threatening me right now," "You're
12 threatening me right now," that would fall under the
13 present sense impression. That's what this witness was
14 saying, "I'm perceiving a threat as we speak." It still
15 goes back that a threat that was made sometime in the past,
16 that doesn't fall under the present sense impression,
17 because again, the key is not, Ms. Dowdy is not the
18 declarant. In this case, Ernestine Brown is the declarant.
19 And Your Honor, I might note that under 803, it talks about
20 whether or not the declarant is available as being
21 immaterial.

22 The Court: Correct.

23 Mr. Howe: And there is a separate rule, of course that
24 the Court is aware of, where it addresses the issues of
25 when you can get in testimony when the declarant is not

1 available.

2 The Court: Right. Under the present sense impression,
3 whether the declarant is present or not is immaterial if
4 available for cross.

5 Mr. Howe: Yes, sir.

6 The Court: The primary purpose, correct me if I'm
7 wrong, Solicitor, the primary purpose or two primary
8 purposes that you're wanting this actual conversation in,
9 such as the give and take between the two individuals that
10 is overheard by the witness, one of the reasons is to get
11 into this issue of the threat and to, therefore, validate
12 why the witness undertook to text her sister?

13 Mr. Brown: That's correct, Your Honor.

14 The Court: All right. With respect to that, I'm
15 concerned that the prejudicial effect is perhaps going to
16 be outweighed by the probative value. At least that's the
17 way I'm leaning, especially in the case that you've cited,
18 it's somewhat distinguishable in that it appears that you
19 have a third party who was actually a witness to the
20 argument or as the Court put it, the bad blood. Now, the
21 second reason that you are seeking introduction of this
22 statement is to prove the defendant's presence at the
23 scene, I assume, around the time that the incident took
24 place. Correct?

25 Mr. Brown: To put him at the scene at the time that

(HEARSAY ARGUMENTS - KATHY DOWDY)

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1 Ms. Ernestine Brown was alive.

2 The Court: All right. For purposes of that, I think
3 that you can get into the fact that there was a
4 conversation which took place between these individuals.
5 That is valid for purposes of demonstrating the defendant's
6 identity and his location at that residence. She can also
7 identify his voice. Now, as far as the substance of what
8 was said, may I suggest, Solicitor, that you think long and
9 hard about whether or not you want to get into the actual
10 specifics of what was said, because assuming that the
11 primary purpose the State has in presenting this evidence
12 is to show that he was, in fact, at the scene, I would
13 think it would be sufficient for the State to relate the
14 general mood of the conversation without getting into the
15 specific blow-by-blows or verbatim rendition of what was
16 said between the two. As far as what the defendant said,
17 that is fair game for purposes of proving identity of the
18 defendant. But how you choose to present that, let me
19 suggest you put some thought into that, Solicitor, as
20 opposed to actually seeking introduction of the verbatim
21 statements of the victim in this case. Next witness.

22 Mr. Brown: The State calls Delores Yelverton.

23 The Court: I think everybody understands where I went
24 on that last one?

25 Mr. Hammack: Yes, sir.

1 The Court: All right.

2 (After being duly sworn by the Clerk of Court, Delores
3 Yelverton testified as follows:)

4 Direct examination of Delores Yelverton by Mr. Brown

5 Q Ms. Yelverton, would you state your name and then
6 spell it so the court reporter can have an accurate
7 spelling of your name.

8 A Delores Yelverton. It's Y-E-L-V-E-R-T-O-N.

9 Q Ms. Yelverton, where do you live?

10 A I live in Greenville.

11 Q Did you live in Greenville in 2009?

12 A I did.

13 Q What do you do for a living?

14 A I work for the South Carolina Department of Mental
15 Health.

16 Q And what is your relationship to the victim in this
17 case, Ms. Ernestine Brown?

18 A She's my older sister.

19 Q Do you have any other siblings?

20 A I do.

21 Q And who are they?

22 A Kathy Dowdy and Albert Brown.

23 Q Does Albert have another name?

24 A We call him Bruce.

25 Q Do you know the man sitting at the defense table with

(PROFFERED TESTIMONY - DELORES YELVERTON)

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1 the blue suit on?

2 A I do.

3 Q And who is that?

4 A Fred Madden.

5 Q How do you know Fred?

6 A Through my sister, Tine.

7 Q Through...

8 A Through my sister, Tine.

9 Q And is Tine another name for Ernestine? Is that what
10 she went by?

11 A It is. Yes.

12 Q How long have you known Fred?

13 A For just a few years.

14 Q Ms. Yelverton, do you remember December 10, 2009?

15 A I do.

16 Q What were you doing, what did you do, what were you
17 doing that morning?

18 A At the time, I was working for the South Carolina
19 Department of Social Services and I was in my office
20 doing work.

21 Q What happened while you were at your office?

22 A I got a text message from my sister Kathy saying
23 that ---

24 Ms. Anderson: Objection. For the record, this is
25 hearsay.

(PROFFERED TESTIMONY - DELORES YELVERTON)

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1 The Court: All right. That's why we are getting into
2 the problems that you're going to have.

3 Mr. Anderson: Right.

4 The Court: All right. You can keep going, Ma'am. Go
5 ahead and start over so the court reporter can...

6 A Okay. I received a message from my sister Kathy
7 saying that I needed to contact our brother, Bruce, to
8 go and check on our sister, Tine.

9 Q Did she give a reason why she sent you that text?

10 A She said that Fred was at the house and some things
11 that had happened prior to.

12 Q Did you, in fact, call your brother, Bruce?

13 A I did.

14 Mr. Brown: That's pretty much all.

15 The Court: Ms. Anderson, any questions of Ms.
16 Yelverton?

17 Cross examination of Delores Yelverton by Ms. Anderson

18 Q Ms. Yelverton, the information that you received was
19 from a text from Kathy Dowdy that day?

20 A Correct.

21 Q Did you save the text that you received that day on
22 your cell phone?

23 A No. I did not. I had that phone broken into almost a
24 million pieces and so I no longer have it.

25 Ms. Anderson: I have no further questions, Your Honor.

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(PROFFERED TESTIMONY - DELORES YELVERTON)

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1 The Court: Thank you, Ma'am. You may step down. Let
2 me hear from you, Ms. Anderson, on this witness' testimony.

3 Ms. Anderson: Your Honor, it would be the substance of
4 the text, one, is hearsay, and it also violates Rule 805,
5 hearsay within hearsay: She's repeating through the text
6 something she heard that happened the night before in the
7 text to Ms. Yelverton.

8 The Court: Was that the text? I don't think ---

9 Ms. Anderson: That something that had happened, I
10 think was the testimony.

11 The Court: What was the testimony, again, because I've
12 got something different.

13 Mr. Brown: She said that she had a text that Fred was
14 at her house and that something had happened the day
15 before, but didn't go into anything or that something was
16 going on, but she didn't get into specifics of what was
17 said or anything like that.

18 The Court: All right. If you are seeking to introduce
19 this, as I assume that you are, to demonstrate that, in
20 fact, Ms. Yelverton then contacted Bruce to go by there and
21 check on her. Is that why you are trying to get this in?

22 Mr. Brown: Yes, sir.

23 The Court: All right. Then, may I suggest you limit
24 the testimony to: that the text was received from the first
25 witness that we had here today asking that Bruce go and

1 check on the decedent, because we are dealing with the same
2 403 prejudicial effect/probative value. While we are on
3 that topic, it's State v. Mason at 215 S.C. 457 that stands
4 for the proposition that a witness offering proof of
5 threats or the proof that a threat was made must have
6 firsthand knowledge of the threat. Otherwise, it's hearsay
7 and in that case the Court refused to allow testimony of a
8 threat when it was offered by a person who did not actually
9 hear or wasn't party to the threat and so for the purposes
10 of the record, that's where I am on the threat issue and
11 that's one of the reasons I feel like we must limit that
12 testimony, in addition to 403. Next witness.

13 Mr. Brown: The State calls Albert Brown.

14 (After being duly sworn by the Clerk of Court, Albert
15 Brown testified as follows:)

16 The Court: Mr. Brown.

17 Direct examination Albert Brown by Mr. Brown

18 Q Mr. Brown, your name is Albert Brown, right?

19 A Yes. It is.

20 Q Do you go by any other names?

21 A Bruce.

22 Q Who calls you Bruce?

23 A Mostly, my family members.

24 Q Okay. Where do you live?

25 A I live out in Clinton on Apple Orchard Road.

(PROFFERED TESTIMONY - ALBERT BROWN)

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1 Q And what is your relationship to Ms. Ernestine Brown?

2 A My sister.

3 Q And do you have any other siblings?

4 A Yes, I do.

5 Q Who are they?

6 A Denika Harvey, Kathy Dowdy, Delores Yelverton and
7 Phillip Brown.

8 Q And Mr. Brown, do you recognize the man sitting at
9 this table in the blue suit? (Indicating)

10 A Yes, I do.

11 Q Who is that?

12 A Fred Madden.

13 Q How do you know him?

14 A My sister used to talk to him.

15 Q How well do you know him?

16 A I know him well enough. I've been out to my sister's
17 house a couple of times and he was out there. Even
18 once, he come to my house with my sister.

19 Q So, you've seen him enough where you can recognize
20 him?

21 A Yes. I can.

22 Q Mr. Brown, do you remember December 10, 2009?

23 A Yes, I do.

24 Q What were you doing in the morning hours?

25 A I was getting ready -- I was on my way to go check on

(PROFFERED TESTIMONY - ALBERT BROWN)

1 my father, which he stays at Oak Dale Acres. I was on
2 Charlotte's Road and I received a call from my sister,
3 Delores, telling me I needed to go out there and check
4 on my sister.

5 Q Did you go check on her?

6 A Yes, I did. I proceeded on Old Laurens Road. I cut
7 through by the Old Chain Gang Camp and went on out and
8 once I reached 308, I made a left turn, proceeded up
9 the road and I met Fred Madden, the defendant, on his
10 Moped and as I went past him, he turned around and
11 looked at me and I seen him through my rearview
12 mirror.

13 Mr. Brown: Your Honor, just for the purposes of what
14 this hearing is, I think we can stop right there.

15 The Court: All right.

16 Mr. Howe: Your Honor, I think I'm not going to cross
17 at this time on the other issues. I think there is an
18 agreement that there is not going to be any testimony from
19 Mr. Albert Brown as to why he was told to go and check on
20 his sister. The only objection I have is, you know, what
21 his sister told him to go check.

22 The Court: All right. If there was something
23 substantive, but -- So, you don't have a problem so long as
24 the testimony comes out, basically, the way he's testified
25 today that, "I got a call from my sister." She said, "Go

(PROFFERED TESTIMONY - ALBERT BROWN)

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1 check on my sister."

2 Mr. Howe: I would object to her saying, "Go check on
3 her." It would still be hearsay, but I do want to, with the
4 caveat that I understand that's all he's going to say.

5 The Court: All right. Is that your game plan?

6 Mr. Brown: That is. And I will make sure that...

7 The Court: Very good. I think so long as we limit it
8 to the call he received and the request that he go check on
9 his sister. Obviously, that would be introduced merely for
10 purposes of showing why this witness undertook the actions
11 that he undertook to go check on his sister. Thank you,
12 sir, you may step down. Thank you, Mr. Brown.

13 Now, when we met this morning, Gentlemen and Ms.
14 Anderson, it was my understanding that we had an issue
15 concerning the Ruger box. Is that right?

16 Mr. Hammack: Your Honor, I'm seriously considering
17 just agreeing with that. Honestly, I just want to check on
18 one thing.

19 The Court: Very good.

20 Mr. Hammack: I'm pretty confident I'm going to agree
21 with him on that.

22 The Court: I understand. All right. Anything else
23 that we can address this evening? Ms. Anderson, anything
24 that you know of?

25 Mr. Howe: Your Honor, Ms. Anderson has been assisting

(HEARSAY ARGUMENT - MS. ANDERSON)

1 me on the evidentiary phase. I'm going to let her -- I
2 haven't done a very good job of laying out one of the other
3 issues concerning Ms. Dowdy's testimony and I'll let her
4 briefly add to that if you'd like to. (Speaking to Ms.
5 Anderson) Never mind. Can we, maybe, be heard on that
6 briefly in the morning?

7 The Court: Not a problem.

8 Mr. Howe: Okay. Thank you.

9 The Court: I think I kind of indicated what I thought
10 the proper resolution of that and I think you would agree
11 that that probably comes within what the rules would allow.
12 I'm not saying that you have to agree and, obviously, you
13 are going to object and your objection is duly noted.

14 Mr. Howe: Thank you.

15 The Court: If you want to bring it up again, that's
16 fine. I would ask, if we have nothing else this evening
17 and, of course, it has been a rather late day. I know that
18 everyone here is a little bit tired. Would it be possible
19 for y'all to be back in the morning and perhaps go ahead
20 and mark the exhibits that y'all are in agreement with
21 sometime before ten. I'll let y'all figure out when you
22 want to do that. Of course, I'll be here around 9:30 in
23 the event there's anything we need to take up over the
24 course of the evening. Anything else on this case for
25 tonight, Gentlemen, Ms. Anderson?

1 Mr. Hammack: No, sir.

2 Mr. Howe: Nothing.

3 The Court: All right. One thing, I do want to
4 compliment, certainly, those in attendance. I'm always
5 impressed when there are cases of this magnitude and that
6 evoke emotions of this level and I'm quite certain that
7 both the family of the decedent and the family of the
8 defendant are emotionally invested in the outcome of this
9 case. I want to thank you for your conduct today and I'm
10 sure it will continue throughout the course of the trial.
11 This trial will take several days. I want to ask you for
12 purposes of, just so you are aware, there may be times when
13 a witness is testifying and you may not agree with what
14 that witness is saying, you may have issues, you might find
15 it incredible what that witness is testifying to. It's very
16 important that you not engage in any loud sighs, any
17 audible disagreement, anything that would influence that
18 jury over there or indicate to them that you feel like that
19 testimony is inappropriate, for whatever reason. Cases
20 often get reversed for exactly that reason and I think that
21 everyone here, everyone concerned, wants a fair trial for
22 both the State and the victim as well as for the defendant
23 in this particular case and so let me just remind everyone
24 to continue to conduct yourselves as well as you have and I
25 thank you for that. You have my appreciation, everyone,

(HEARSAY ARGUMENT - MR. HOWE)

1 for the way you have conducted yourself today. Let's keep
2 going with that throughout the week and just be mindful of
3 the respect that we need to show the jury. Okay? With
4 that, I will see y'all in the morning.

5 Mr. Hammack: Thank you, Your Honor.

6 (Adjourn for the day)

7 Tuesday, August 30, 2011

8 The Court: We're back on the record in the case of The
9 State versus Fred Madden, 10-GS-30-288 and 289. I'm
10 informed that the jury is present, but there are a few
11 quick matters that we need to put on the record. First of
12 all, it was, I was approached by counsel for the defense
13 and Mr. Brown, a moment ago. Apparently, everyone is okay
14 for potential witnesses to remain in the courtroom through
15 the opening statements. After that point, the game plan
16 will be to take a brief break and at that point we will
17 sequester the witnesses. Is that all right with you,
18 Mr. Howe?

19 Mr. Howe: Thank you, Judge. That is.

20 The Court: All right. Very good. Additionally, you
21 had something you wanted to put on the record?

22 Mr. Howe: Your Honor, concerning the hearsay issues, I
23 just wanted to kind of make sure I was protected on the
24 record and have an understanding as to the Court's ruling
25 in the case. Judge, it's been our position, and I hope we

(HEARSAY ARGUMENT - MR. HOWE)

1 stated it properly, but I'm going to re-state it here
2 today. Any testimony, we would object to any testimony
3 from the witness, Kathy Dowdy, as to what either the
4 victim, Ernestine Brown, told her or what she overheard,
5 what she contends she overheard either Ernestine Brown
6 saying or Fred Madden saying. We take the position, first
7 of all, Judge, that, that all those statements would be
8 hearsay because they are statements made by someone other
9 than the declarant while testifying at the trial or
10 hearing, offered into evidence to prove the truth of the
11 matter asserted. We would contend, first of all, that
12 Ernestine Brown telling Kathy Dowdy anything is hearsay,
13 and as I understand it, the Court is going to very much
14 limit what she would say about, in fact, exclude any
15 reference to threats or anything like that. There is a
16 statement where she's going to testify that Ernestine said,
17 "It's Fred," and we would argue that that does not fall
18 under a present sense impression or any other exception to
19 the hearsay rules.

20 With regard to the statement where the witness Dowdy
21 says that what she heard from Ernestine, Ernestine being
22 the declarant, we would contend that's hearsay and it does
23 not fall under any exception and I'm talking about previous
24 statements there.

25 You also have the issue where she contends that, she

(HEARSAY ARGUMENT - MR. HOWE)

1 says that she heard Fred Madden say certain things and he,
2 being the declarant, I believe, and we would argue that
3 that does not fall under any exception either. That's our
4 position concerning all the statements. I just want to
5 make sure we are noted on the record and I realize we're
6 talking about different issues, but we would contend that
7 the whole thing, that it doesn't come in because it's still
8 hearsay and there's no exception that the Court can find to
9 make a ruling to allow it to come in.

10 The Court: All right. I appreciate your position. My
11 reading of Rule 801(d)(1)(c), basically it says that a
12 statement is not hearsay if it is a statement 1) for
13 identification of a person made after perceiving the
14 person. So, I believe that the statement of the decedent
15 that it was, in fact, Fred, would constitute non-hearsay
16 under that rule as well as, in all likelihood, a present
17 sense impression for purposes of identification.
18 Obviously, there will have to be a foundational evidence
19 presented demonstrating that the witness has enough
20 familiarity with the defendant's voice to identify it and
21 that kind of thing and certainly, that witness would be
22 subject to any cross examination as to foundation or any
23 other issues along those lines, Mr. Howe. I believe that
24 she can testify as to what she heard the defendant say in
25 terms of identifying that defendant. What was the third

(HEARSAY ARGUMENT - MR. HOWE)

1 part of your, that last portion of the hearsay objection?
2 Because I think you referenced something that maybe I did
3 not rule on.

4 Mr. Howe: I think you noted all -- I believe, Judge,
5 anything that the witness stated that, Kathy Dowdy, that
6 Ernestine said to her, that anything that Dowdy says that
7 she heard from Ernestine, anything Dowdy said that she
8 heard from Fred Madden.

9 The Court: Okay. I agree that, and I do agree that as
10 far as what the decedent may have told the witness, the
11 sister, the substance of that conversation is probably not
12 appropriate. I have no idea whether the solicitor intends
13 to get into issues of the tone of the conversation or
14 whether it was argumentative. The proffered testimony
15 yesterday indicated that, obviously, it was not a heated
16 exchange, but it was somewhat -- what's the word I'm
17 looking for to describe it?

18 Mr. Howe: Your Honor, I would anticipate that when the
19 witness testifies, we still may have to address that issue.

20 The Court: We may have to, as well. I agree with you,
21 as well. I think the tone of the conversation would be not
22 angry, but perhaps, cold. Perhaps that's the best word to
23 describe it.

24 Mr. Howe: I believe the witness described it as
25 "tense".

(HEARSAY ARGUMENT - MR. HOWE)

1 The Court: "Tense". I think you are correct. Do you
2 need clarification on something?

3 Mr. Brown: I just wanted to clarify what I can ask. My
4 general idea is that she can testify to her being on the
5 phone with Ms. Brown at that time and they were having a
6 conversation. Through that conversation, a knock on the
7 door, she asks what was that, who was at the door, and Ms.
8 Ernestine Brown says, "Fred Madden", and then based on
9 overhearing that conversation, could you identify that
10 person on the phone, and can she identify Fred Madden.
11 After that, she texted her sister, in general terms, could
12 you get somebody to check on her.

13 The Court: I think that would be acceptable. Yes.
14 That would be acceptable. And; you know, certainly try the
15 case any way you want to, but I think the safest way to
16 approach it would be after your, after the sister hears the
17 knock on the door, was there, you know, did you hear any
18 other voice in addition to that of your sister. Yes.
19 Something like that. Obviously, Mr. Howe, you or Ms.
20 Anderson can object, as appropriate, just to preserve the
21 issue. Anything before we bring the jury in?

22 Mr. Brown: Nothing from the State, Your Honor.

23 Mr. Howe: No, sir.

24 The Court: Very good. Let's go ahead and have the
25 jury, please, sir.

(INTRODUCTORY REMARKS TO THE JURY)

1 (Jury in at 10:09 a.m.)

2 The Court: The jury is back and is seated. Ma'am, in
3 the peach outfit. You are in the lucky seat. What is your
4 name? I'm sorry.

5 Ms. Sloan: Cobina Sloan.

6 The Court: Ms. Sloan, you are going to be our
7 foreperson. Okay? I'll instruct you later on your role as
8 foreperson, but basically, when the case is done, your job
9 is going to be to preside in the jury room over the
10 deliberations. Obviously, your vote counts no more than
11 anybody else's, but your job would be to make sure that
12 everybody has the opportunity to have their fair say while
13 y'all deliberate. Okay, Ms. Sloan?

14 Ms. Sloan: Okay.

15 The Court: And our alternate, I need you to stay in
16 that seat if you would, throughout the trial. The rest of
17 y'all, feel free to move about with the exception of Ms.
18 Rooney. Who's Ms. Rooney? (Raises hand) You can stay right
19 there, Ms. Rooney. If you will just occupy that seat
20 throughout the trial, that will be fine. If you happen to
21 notice anybody having trouble hearing or seeing the
22 witnesses, obviously, the first five seats right here are
23 the prime seating. Make sure that anybody who has trouble
24 hearing or seeing the case or the witnesses is able to,
25 perhaps, occupy those seats.

(INTRODUCTORY REMARKS TO THE JURY)

1 I want to welcome y'all back this morning. We are
2 about to begin the trial of The State of South Carolina
3 versus Fred Lewis Madden, Junior. Before we begin this
4 trial, I want to tell you that this trial is probably going
5 to be different from anything you've come to expect from
6 watching trials on television or reading about them in
7 books or perhaps seeing trials in the movies or how trials
8 are depicted in the media. Very often from watching trials
9 on television or at the movies or reading about them in
10 books, you may have come to expect that trials are always
11 filled with intense drama or riveting circumstances and,
12 certainly, sometimes these things are true. More often than
13 not, though, the trials that I preside over on a weekly
14 basis are often extremely long, they often take a great
15 deal of time and, certainly, they require your attention.
16 Obviously, this trial is not for entertainment. It is a
17 fundamental part of our democracy. It is an effort to make
18 sure that justice is done between the parties and I will
19 tell you that this is often a very slow, deliberate, and
20 repetitive process. The opposite of what you may have come
21 to expect in books.

22 Now, the attorneys who appear before you today are
23 certainly advocates for their clients, but first and
24 foremost, they are sworn to uphold the integrity of this
25 system. I assure you that they will be punctual, they will

(INTRODUCTORY REMARKS TO THE JURY)

1 be polite, they will be diligent in their representation of
2 their respective interests. I will tell you that they have
3 sworn an oath to uphold the honor of this courtroom and
4 this courtroom is a dedicated place of honor. It's
5 dedicated to what many have called the greatest criminal
6 justice system ever conceived by man. In a moment you will
7 take your oath to well and truly try this case. I will ask
8 that you also be as professional, competent, diligent and
9 ethical as the attorneys and as the Court will endeavor to
10 be. I want to thank you for accepting this important
11 responsibility of jury service and I want to thank you for
12 your service here this week. With that, let me ask that
13 you rise and raise your right hands and the Clerk of Court
14 will administer the oath. Madam Clerk.

15 (Oath administered to the jury by the Clerk of Court)

16 The Court: Thank you very much, Ladies and Gentlemen.
17 Madam Foreperson, Ladies and Gentlemen, what I am now
18 saying to you is intended to serve as merely an
19 introduction of this case. It is not a charge on the law
20 that applies in this case. I will charge you fully at the
21 conclusion of the case on the law which applies, but this
22 is merely an introduction or an explanation of the
23 procedure that we are going to use so that you can better
24 understand what's taking place.

25 But first, I would ask that you not take any notes

(INTRODUCTORY REMARKS TO THE JURY)

1 during the course of this trial. It's been my experience
2 that if you are distracted by taking notes, very often you
3 might miss a key aspect of a witness' testimony.
4 Additionally, if you write something down erroneously and
5 take those notes back to the jury room, perhaps that
6 written note might have more of any effect or more of any
7 impact upon your recollection than it otherwise would and
8 if it's erroneous, then obviously, you are interjecting
9 something which is incorrect into the deliberations.

10 Now, Ladies and Gentlemen, the defendant is charged by
11 indictments filed with this court with the offenses of
12 murder and possession of a weapon during the commission of
13 a violent crime. I will explain the elements of these
14 crimes to you later. I will tell you now, an indictment is
15 simply a written charge by which these cases are brought
16 into court. It is not, in any sense of the word, evidence
17 of the allegations contained in the indictments.

18 The defendant in this case, Ladies and Gentlemen, has
19 pled not guilty to these charges and the State therefore,
20 has the burden of proving each and every element of the
21 crimes, beyond a reasonable doubt. It will be your duty,
22 Ladies and Gentlemen, to decide whether the State has met
23 this burden of proof.

24 Your purpose as jurors is to find and determine the
25 facts. You are the sole judges of the facts in this case.

(INTRODUCTORY REMARKS TO THE JURY)

1 If at any time, I make any comment regarding the facts, you
2 must disregard it. You are to determine the facts from the
3 testimony you hear and the other evidence which is
4 introduced in this court. It's up to you to determine the
5 inferences which you feel may properly be drawn from the
6 evidence presented. It's especially important that you
7 perform your duty in determining the facts diligently and
8 conscientiously, Ladies and Gentlemen, because, ordinarily,
9 there is no way to correct an erroneous determination of
10 facts by a trial jury.

11 Now, Ladies and Gentlemen, on the other hand and with
12 equal emphasis, the same law that makes you the judges of
13 the facts of this case, makes me the judge of the law in
14 this case. The law as given by the Court is the only law
15 which you may consider. You must accept and follow it even
16 though you may disagree with it. I can't tell you what the
17 facts are in this case, and you are not permitted to
18 disagree with me about what the law is or what the law
19 should be. Your job is to take the law as I give it to you
20 and apply the facts as you find them to be from the
21 testimony and the evidence presented and after doing that,
22 you will render your verdict, a true and just verdict,
23 under the oath that you have just taken as jurors.

24 Now, until I advise you to begin your deliberations,
25 you must not discuss this case with anyone, including your

(INTRODUCTORY REMARKS TO THE JURY)

1 fellow jurors, friends, family members, or anyone involved
2 in this case. After the case is submitted to you, you must
3 discuss it only in the jury room in the presence of all
4 your fellow jurors. The attorneys and parties in this
5 case, as I mentioned yesterday, have been instructed not to
6 have any contact with you throughout the trial of this
7 case. So, if you see anyone involved in this case coming
8 or going from the courthouse and they don't even say hello
9 to you, again, they are not being unfriendly. They are
10 simply following my instructions to have no contact with
11 you while this trial is going on.

12 Now, during this trial, I don't know if there will be
13 any media present. If there is, I will ask you not to read,
14 watch, listen to any news reports about this case. This
15 includes any on-line news services, anything that might be
16 in the newspaper, on the internet, radio or television.
17 You must not consider anything that you may have read or
18 heard about this case outside this courtroom, whether
19 before or during the trial.

20 Now, Ladies and Gentlemen, it's important that you
21 keep an open mind and not decide any issue in the case
22 until all the evidence has been presented, the parties have
23 made their closing statements and I have given you the law
24 that applies in this case. It is your solemn
25 responsibility to determine the guilt or innocence of the

(INTRODUCTORY REMARKS TO THE JURY)

1 defendant and your verdict must be based solely on the
2 evidence presented to you in this case and on the law as I
3 instruct you during and at the close of the trial.

4 Now, Ladies and Gentlemen, in a moment, the Solicitor
5 will make what's called a opening statement in which the
6 Solicitor will explain to you what the issues are in this
7 case or at least what he contends the issues are. The
8 attorney for the defendant will also be able to make an
9 opening statement if he chooses to do so, although they are
10 not required to do so. I'll tell you that what the lawyers
11 say to you in their opening and their closing statements is
12 not evidence in this case, it's only their contention as to
13 what the issues are or what the evidence will prove. Again,
14 the evidence in this case will be presented to you by the
15 testimony of sworn witnesses from this witness stand and/or
16 by any exhibits which may be introduced into evidence.

17 Now, Ladies and Gentlemen, from time to time during
18 the trial you may hear one of the lawyers say something
19 like, "Your Honor, we object," or "Your Honor, I have a
20 question of law or a matter of law for you to consider," or
21 "Your Honor, can we approach the bench." Sometimes I,
22 myself, might find it necessary to ask that you leave the
23 courtroom and return to your jury room for a short while so
24 that the lawyers and I can discuss a matter of law which
25 has arisen during the course of the trial. The reason I'm

(INTRODUCTORY REMARKS TO THE JURY)

1 asking you to leave the courtroom and return to the jury
2 room is because you are the judges of the facts in this
3 case and because sometimes it's necessary for me to make a
4 comment on what facts have been proven or have been shown
5 to exist in ruling on a matter of law. I ask that you
6 leave the courtroom so that anything I say in commenting on
7 those facts does not affect your evaluation or your finding
8 of what the true facts are in this particular case. Again,
9 I'm not supposed to tell you what the facts are in the
10 case, you can't disagree with me about what the law is in
11 the case, so I ask you to step out of the courtroom for a
12 while so that I can take up those issues of law with the
13 attorneys involved.

14 Now, Ladies and Gentlemen, in determining what the
15 true facts are in this case, you must decide whether or not
16 the testimony of witnesses is believable. It will be my
17 responsibility to rule as a matter of law whether certain
18 testimony is admissible at all or not, but once the
19 testimony is admitted, whether or not you believe it is
20 solely for you to determine. In deciding whether to believe
21 a witness, you have the right to consider the interests of
22 any witness, the bias of any witness, the prejudice of any
23 witness, the opportunity for the witness to have seen the
24 matters and things about which the witness may testify as
25 well as the way the witness acts on the witness stand. You

(INTRODUCTORY REMARKS TO THE JURY)

1 have the right to consider anything that is in the record
2 in this case which will help you evaluate the testimony of
3 the witnesses. That means that it's your duty to pay close
4 attention to the testimony of the witnesses, listen to
5 them, observe them, pay close attention to the attorneys
6 and the Court and make every effort to keep your thoughts
7 from wandering. Please try to give strict attention to the
8 testimony so that at the end of all the testimony and after
9 the argument of counsel and my charge on the law, you can
10 return a true and just verdict under the facts as you find
11 them to be.

12 Now, Madam Foreperson, as I mentioned a moment ago, it
13 will be your obligation to preside in the jury room.
14 Again, your vote counts no more, no less than anyone else's
15 vote on the jury, but your job is to make sure that
16 everyone has an opportunity to have their fair say while
17 the deliberations are being conducted. It will also be
18 your responsibility to sign the verdict form or the
19 indictments after the case is concluded.

20 In order to preserve everyone's rights, I will give
21 the attorneys an opportunity to object to anything that
22 I've said to you in these opening remarks. Any objections
23 from the State?

24 Mr. Brown: Not from the State, Your Honor.

25 The Court: From the defense?

(OPENING STATEMENT - MR. BROWN)

1 Mr. Howe: No, sir.

2 The Court: All right. Very good. We will now resume
3 the trial. Solicitor, your opening statement.

4 Mr. Brown: May it please the Court.

5 The Court: Yes, sir.

6 Opening statement by Mr. Brown:

7 Good morning. Ladies and Gentlemen, we are here today
8 because a lady, Ms. Ernestine Brown, was shot and killed in
9 her home out on Highway 308 here in Laurens County. The
10 man that shot and killed Ms. Brown is seated at that table,
11 Fred Madden. (Indicating) My name is Yates Brown, and I,
12 along with Deputy Solicitor Jack Hammack, will represent
13 the State in this case. It is our honor and privilege to
14 represent the State, to represent its interest and also, to
15 seek justice in this case.

16 During this trial, you will hear that the State has
17 the burden of proof. Our burden is to prove, beyond a
18 reasonable doubt, the crime and charges that are against
19 Fred Madden. We have to prove the elements of those crimes
20 and to prove beyond a reasonable doubt, we have to prove --
21 have proof which will leave you firmly convinced that the
22 defendant is guilty with what he is charged with. It's not
23 all doubt, it's not every doubt, it's not any doubt, it's
24 beyond a reasonable doubt.

25 Now, the defendant, Mr. Madden, has been charged with

(OPENING STATEMENT - MR. BROWN)

1 murder and possession of a weapon during a violent crime.
2 Murder is the killing of any person with malice
3 aforethought, either expressed or implied. In possession of
4 a weapon during a violent crime: the possession of a weapon
5 during the commission of a violent crime is where a person
6 is in possession of a firearm or visibly displays what
7 appears to be a firearm or visibly displays a knife during
8 the commission of a violent crime. Now, those are
9 guideposts that you can take with you and follow throughout
10 this trial as you listen to the witnesses.

11 Now to get to the facts of the case. The State
12 submits to you that on December 10, 2009, Ms. Ernestine
13 Brown was at her home at [REDACTED] Highway 308 here in Laurens
14 County. She was at her house alone that morning. Around
15 10:00, she got a call from her sister, Kathy Dowdy. They
16 are on the phone just talking about what sisters do, just
17 chatting what had gone on that day and during that phone
18 conversation, a knock came at the door of Ms. Ernestine
19 Brown. It was Fred Madden. During that conversation Ms.
20 Kathy Dowdy felt the need that she texted her sister,
21 Delores Yelverton, and asked her to send their brother,
22 Albert Brown, to check on Ernestine. Shortly thereafter,
23 the phone conversation between Kathy Dowdy and Ms.
24 Ernestine dropped. She could no longer talk to Ernestine
25 anymore. The State submits that at that time, or shortly

(OPENING STATEMENT - MR. BROWN)

1 thereafter, Fred Madden shot Ernestine Brown there in her
2 house in her bedroom and left. He left on a blue Moped and
3 traveled down Highway 308 towards Clinton. During that
4 time, at the same time, Albert Brown, the brother of
5 Ernestine was coming to check on her. Albert saw Fred
6 riding down the road, saw him and recognized him. He went
7 on to Ernestine's house while Fred continued on down the
8 road.

9 When Albert reached Ms. Ernestine Brown's house, he
10 went in, didn't hear a response. He went to the bedroom
11 and found her unresponsive. He called 911. In the
12 meantime, Fred Madden is riding down Highway 308, going
13 back to the place he had been staying out on Easy Road,
14 here in Laurens County. He had been staying with a friend
15 of his, Mack Irby. Before he reached Easy Road and that
16 house he had been staying in, he stopped by a gas station,
17 bought a pack of cigarettes and purchased gas to fill up
18 his Moped. Once he got back to Easy Road, he went into the
19 house, took a shower, took the clothes he had on, took them
20 out back to a barrel and set those clothes on fire. A
21 short time after that, law enforcement came to Easy Road
22 and placed him into custody.

23 Folks, you've heard what the State submits are facts
24 in this case. We ask you to watch people that come up here,
25 the witnesses. Listen to what they have to say, take into

(OPENING - MR. BROWN)

1 account what they say and what the time line is and we just
2 ask you to use your common sense during this trial. At the
3 end of the case, we will come back before you and go over
4 what has been presented to you during this case, what
5 you've heard by the witnesses and the whole accounting.
6 But remember, justice is your goal in this case and it's
7 one that you can't fall short of reaching.

8 The Court: Thank you, Mr. Brown. Mr. Howe.

9 Mr. Howe: Thank you, Your Honor. May it please the
10 Court.

11 The Court: Yes, sir.

12 Opening Statement by Mr. Howe

13 Good morning. We briefly introduced ourselves
14 yesterday. I'm Chip Howe. I'm a lawyer here in this county
15 and part of what I do is that I work with the Public
16 Defender's office and that means we represent folks when
17 they get charged with a crime and they don't necessarily
18 have the funds to go out and retain a lawyer. I'm working
19 on this case with Kate Anderson who's sitting over here
20 beside Fred Madden and she works with the Public Defender's
21 office, too, and back over there behind Fred are members of
22 his family, some who may be potential witnesses in the case
23 and they won't be able to stay in the courtroom because the
24 Judge has a ruling that we've all agreed to that all, any
25 potential witness in the case has to leave the courtroom

(OPENING STATEMENT - MR. HOWE)

1 while it's being put to y'all and so that's why some folks
2 will be leaving here in a little while, you know, once we
3 get started with the case.

4 Folks, what you've heard is an opening statement from
5 the State, what they contend. Obviously, if we agreed with
6 that and agreed with those facts, we wouldn't be here, we
7 wouldn't be having this trial. And, obviously, we do, in
8 fact, disagree with the allegations and the claims that the
9 State has made and what the State contends they can prove.

10 Now, the Judge has already told you some basics before
11 we start talking about the facts from our perspective. The
12 Judge has already told you some things. See, most of y'all
13 probably know or heard of, just being citizens of The
14 United States of America in Laurens County, South Carolina,
15 and that is Fred Madden, just like anybody, comes into this
16 courtroom presumed innocent of what he's been charged with
17 and unless and until the State can prove everything they
18 claim, everything they need to prove him guilty of murder
19 and use of that weapon, until that can be proven to your
20 satisfaction, beyond a reasonable doubt, you're to keep the
21 idea that he's presumed innocent. And if you can't find
22 that they've proved all that to your satisfaction, beyond a
23 reasonable doubt, regardless of what you suspect or any
24 suspicions you may have, you are obligated to find Fred
25 Madden, just like any citizen, not guilty of the crime.

(OPENING STATEMENT - MR. HOWE)

1 That's important. That sets us apart from most places,
2 because, normally, when the State or the government, in
3 lots of places, makes a charge, the accused doesn't have
4 these protections that people have fought wars and died
5 for. They don't have this protection, but we do in this
6 country. It's very important. And we all, in this
7 courtroom, the people that do this every day, take this
8 very, very seriously and we're proud of it.

9 Now, that's kind of where we start off with in this
10 case and the Judge has already told you a little bit about
11 that and also, you need to know that Fred Madden, or any
12 person accused of a crime, does not have to prove his
13 innocence. He doesn't have to prove one thing. The burden
14 of proof stays on the government. They are the ones that
15 can go and get the warrant and charge and have police
16 officers complete the work in the case and the burden of
17 proof remains on them, they have to prove it all, beyond a
18 reasonable doubt, to your satisfaction and this is where
19 y'all come in. Y'all have been selected as Fred's jury in
20 this case. Y'all didn't volunteer to do it. You know,
21 it's kind of the luck of the draw to a certain extent: 1)
22 you got picked to come up here to be on the jury panel and
23 then 2) you got selected on this jury. But y'all are the
24 jury, you've been selected. We appreciate the fact that
25 you are going to be willing to listen to all the evidence

(OPENING STATEMENT - MR. HOWE)

1 and will wait until everything is said and done and discuss
2 everything that you've heard and then make a decision in
3 this case.

4 You've heard what the State contends the evidence is
5 in this case and, again, Fred Madden doesn't have to prove
6 one thing, but we think that the evidence is going to show
7 that Fred Madden did not go in there and kill Ernestine
8 Brown. Fred Madden discovered that she was dead and he
9 left. His relationship with her family was not good. He
10 had been living there. In fact, the evidence is going to
11 show, and it's going to be undisputed, he and Ernestine
12 Brown were buying this land together, buying this property
13 together, but he was not there at the time because he was
14 not getting along with her daughter and he was out of the
15 home, but he was still coming over there, still had
16 property and Fred Madden didn't need to go knock on the
17 door when he had a key. He didn't need to go and ask
18 permission to gain entry, so when you hear testimony about
19 there being a knock on the door, keep that in mind.

20 Now, you are also going to hear from witnesses for the
21 State about the theory of how this happened. What you're
22 not going to hear, I contend, is that the State has a
23 weapon, that the State has have any physical evidence, any
24 gunshot residue, any DNA, anything whatsoever that makes
25 Fred Madden guilty of the crime. You are going to hear

(OPENING STATEMENT - MR. HOWE)

1 that there is no eyewitness to what occurred. You aren't
2 going to hear all that.

3 What you are going to hear is that Fred Madden made
4 some foolish decisions after he discovered this. He knew,
5 because of what the family thought of him, he was going to
6 be the person everybody was going to be looking for and so
7 he did go back to his place he was staying and wait on law
8 enforcement and they came and arrested him and later on he
9 told them his side of it and now, Ladies and Gentlemen, you
10 have an opportunity to consider his side of this and not
11 just consider what the State contends. That's all we're
12 asking you to do and that's all an opening statement is, to
13 let you know that. And all I can do on behalf of Fred now,
14 and the entire system, is ask you to keep an open mind and
15 to listen to all the evidence in the case before you make
16 your decision. If you do that, you are doing what you've
17 been selected to do and I appreciate it very much. I know
18 everybody over there (Indicates) appreciates it very much
19 as well as everybody here. Thank you.

20 The Court: All right. Thank you, Mr. Howe. Now,
21 Ladies and Gentlemen, as Mr. Howe alluded to, we are going
22 to take a brief break so that any witnesses in the
23 courtroom can be properly sequestered. This won't take
24 long, probably about five minutes and so when you go back
25 to the jury room, don't get too comfortable. Obviously,

(DISCUSSION - EXHIBITS AND HEARSAY RULING)

1 any time that we are on break, be that a temporary break, a
2 five-minute break, ten-minute break, lunch break, overnight
3 break, whatever, you can't discuss the case until I tell
4 you to. So, again, if you will just adjourn for a few
5 moments. We'll have you back out here in a few minutes.

6 (Jury out at 10:34 a.m.)

7 The Court: All right, the jury is out. Solicitor,
8 well, Mr. Howe, I presume there will be no objection to
9 having the chief investigating officer stay here. I think
10 that's allowed under the rules and I assume that the first
11 witness that you are going to call will probably be the
12 woman who testified yesterday, the sister.

13 Mr. Hammack: Yes, sir.

14 The Court: She can stick around. Anybody who will be
15 testifying, y'all will need to find a place for them to
16 kind of wait this out.

17 Mr. Howe: Yes, sir. Thank you.

18 The Court: We will be at ease for a few minutes.

19 (Brief Break)

20 The Court: I was told that y'all have also marked some
21 exhibits, which, apparently, everyone has agreed to. Is
22 that right Mr. Howe, Mr. Hammack?

23 Mr. Howe: That's correct, Judge, and I do want to --
24 related to the clerk, we also have some photographs that
25 we've gone out and -- we had prints but we printed them in

(DISCUSSION - EXHIBITS AND HEARSAY RULING)

1 color to be consistent. We didn't want to look any worse
2 than the State on this, and we are still working on
3 organizing those, but during the break we will go over
4 those with Mr. Hammack and Mr. Brown.

5 The Court: All right. Very good. But so far as, I
6 assume that if -- I'd rather avoid having to move
7 everything into evidence and then turn to you, but
8 everything you're going to seek to introduce today has
9 been agreed to? Is that right, Gentlemen?

10 Mr. Hammack: We've already gone through the
11 photographs we would seek to introduce. They've already
12 been done. The GSR, the bullets, have already been pre-
13 marked and looked at and the defense, we are working on
14 their pictures now. I've seen the disk, I know what the
15 pictures are probably going to show. I'm just looking for
16 a specific picture.

17 The Court: All right. I shall assume, Mr. Howe, that
18 if the State presents a photograph that is already in
19 evidence or any other item, I will assume it's already in
20 evidence unless I hear otherwise from you and the State
21 will not need to move those items into evidence and can
22 proceed to publish to the jury?

23 Mr. Howe: That's correct, Judge.

24 The Court: All right. Very good. Anything before I
25 bring the jury back in?

(DISCUSSION - EXHIBITS AND HEARSAY RULING)

1 Mr. Hammack: Yes, sir, Your Honor. Could I have just
2 a moment. I during the opening, I closed it all down.
3 (Referring to projector equipment)

4 The Court: All right.

5 Mr. Hammack: I just need to get it back up real quick.

6 The Court: That's fine.

7 Mr. Howe: Your Honor, I do have one additional matter.
8 Again, not to beat a dead horse, but on the hearsay issue,
9 Judge, understanding now the Court's ruling and I was
10 trying to read that as best I could, under 801(d)(1). I
11 would want to point out, Judge, that ruling, as I
12 understand it, has to do with the identification issue. It
13 states at the very beginning that it's when the declarant
14 testifies at the trial and is subject to cross examination,
15 we contend again that the declarants on this hearsay issue
16 are Ernestine Brown and Fred Madden.

17 The Court: I understand it's the -- I understand your
18 position on that and, of course, we do have a lot of
19 overlap with different rules going on here. If your
20 primary concern, and I take it your primary concern here is
21 the identification by the decedent of the defendant, my
22 belief is that that's under present sense impression and
23 the case of, let me give that to you, it's an old case,
24 State v. Rawls, 111 S.C.L.(1820), but there's recent
25 authority from out-of-state, also, indicating that that

(DISCUSSION - EXHIBITS AND HEARSAY RULING)

1 would constitute a present sense impression. I believe
2 it's for purposes of identification, as well. So, yes,
3 that is how I am ruling, that in this case, the decedent
4 who is clearly unavailable, makes the identification of the
5 defendant. I'd like to note for the record, because I
6 don't think I noted it yesterday, but obviously, if the
7 sister were inclined to fabricate that testimony, I would
8 think that she'd be inclined to make the testimony a lot
9 more egregious or a lot more incendiary, if it were to be
10 fabricated. Obviously, there is some level of reliability
11 with that testimony. I know that's not a part of the
12 hearsay analysis, necessarily, but my ruling is that it is
13 both, a present sense impression and the statement
14 identifying the defendant by the decedent would also be one
15 of identification. I understand your position.

16 Mr. Howe: Thank you.

17 The Court: Are we ready to proceed?

18 Mr. Brown: Yes, Your Honor.

19 The Court: Let's have the jury, please.

20 (Jury in at 10:49 a.m.)

21 The Court: The record show reflect the jury is back.

22 Mr. Brown, call your first witness, please, sir.

23 Mr. Brown: The State calls Kathy Dowdy.

24 (After being duly sworn by the Clerk of Court, Kathy
25 Dowdy testified as follows:)

(TESTIMONY - KATHY DOWDY)

1 Direct examination of Kathy Dowdy by Mr. Brown

2 Q Good morning, Ms. Dowdy.

3 A Good morning.

4 Q Please state your name.

5 A Kathy Dowdy.

6 Q I'm going to stand over here so we make sure everybody
7 can hear clearly.

8 A Okay.

9 Q Ms. Dowdy, where do you live?

10 A In Blythewood, South Carolina.

11 Q And where did you live in 2009?

12 A In Greenville, South Carolina.

13 Q What do you do for a living?

14 A I'm a realtor.

15 Q What is your relationship with the victim in this
16 case, Ms. Ernestine Brown?

17 A She's my older sister.

18 Q Do you have any other siblings?

19 A I do.

20 Q And who are they?

21 A Albert Brown, Denika Harvey, Phillip Brown, Brenda Fay
22 Brown, Delores Yelverton and my oldest brother is
23 deceased, Edward Brown.

24 Q Now, does Albert go by any other name?

25 A He goes by Bruce.

(TESTIMONY - KATHY DOWDY)

1 Q Okay. And does Ernestine, is she known by any other
2 name?

3 A Tine.

4 Q Ms. Dowdy, do you recognize the fellow in the blue
5 suit sitting at the defense table?

6 A I do.

7 Q And who is that?

8 A That's Fred Madden.

9 Q How do you know Fred Madden?

10 A He and my sister were in a relationship until she
11 evicted him.

12 Q How well do you know Mr. Madden?

13 A I know him pretty well. They were together for a
14 while. When my sister would call or me and my sister
15 were together and he called, we would exchange
16 conversation.

17 Q So, could you recognize his voice?

18 A Absolutely.

19 Q Ms. Dowdy, do you remember December 10, 2009?

20 A I do.

21 Q Where were you on December 10, 2009?

22 A I was at my apartment at The Vinings at Brookfield in
23 Greenville. That morning I had ordered me something
24 to eat from Waffle House and I was getting ready to
25 leave out to go get it until The Mauldin Police

(TESTIMONY - KATHY DOWDY)

1 Department and Greenville County Sheriff's Department
2 were standing outside of our apartment complex looking
3 for a federal fugitive.

4 Q What did you do while you were there?

5 A Well, since I couldn't leave and I was kind of shocked
6 at what was going on, I called my older sister,
7 because we always talked.

8 Q And by saying you called your older sister, who was
9 that?

10 A I called Tine. Ernestine.

11 Q Where was she?

12 A She was at home.

13 Q What did y'all talk about?

14 A I was picking on her about the fact that I had tried
15 to call her the day before and I couldn't get her on
16 the phone and I asked her -- we talked about her day
17 before and that she had been looking for some
18 different things because she was having work done on
19 her house and we discussed that and then I was telling
20 her about what was going on in my apartment complex
21 and that there were police officers out there with
22 guns drawn. Within a matter of minutes, I had,
23 probably, about 100 to 200 police officers in my
24 apartment complex, just standing outside of my
25 building.

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - KATHY DOWDY)

1 Q Do you remember what time you called Tine?

2 A It had to be around 10:00, because I had ordered the
3 food, probably, about 9:30, so I called her around
4 10:00 when everything started happening.

5 Q That's 10:00 in the morning?

6 A Yes.

7 Q While you were on the phone with Tine, did anything
8 strange happen?

9 A Yes. While we were talking, I was telling her about
10 the events and then there was a knock at the door and
11 I asked her, I said, "Who is it?" She said, "I'm going
12 to check."

13 Mr. Howe: Objection, Your Honor, the...

14 The Court: Subject to the previous ruling that I've
15 made, objection is overruled. You may proceed.

16 A She said, "Let me go check." And I said, "Well, who is
17 it?" And she said, "Fred."

18 Mr. Howe: Same objection, Judge.

19 The Court: Subject to previous ruling.

20 Mr. Howe: Yes, sir.

21 Q Were you still on the phone at this time?

22 A Yes. I was.

23 Q Once she stated that it was Fred, did you hear
24 anything else?

25 A Yes. I initially told her, "Don't answer the door."

(TESTIMONY - KATHY DOWDY)

1 And then she answered the door and I heard her and she
2 said it was Fred. I said, "Well, what does he want?"
3 And she said, "I don't know."

4 Mr Howe: Objection, Judge.

5 The Court: All right. Sustained.

6 Q Was there a conversation that went on?

7 A Yes. There was.

8 Q Could you recognize the voice? Once she opened the
9 door, could you recognize the voice?

10 A I did.

11 Q And who was that?

12 A That was Fred Madden.

13 Q And you could recognize his voice -- why could you
14 recognize his voice?

15 A Because, like I said before, on many occasions, if her
16 and I were together, he would tell her, he'd say, "Is
17 that Kathy?" "Well, tell her to hold it in the road."
18 And so I knew what his voice sounded like.

19 Q Once you realized Fred Madden was at Tine's house,
20 what did you do?

21 A I texted my younger sister, Delores. We call her
22 Dee Dee. I texted her and asked her to have Bruce go
23 check on Tine.

24 Q After you did that, did you stay on the phone any
25 longer?

(TESTIMONY - KATHY DOWDY)

1 A Yes. I did. I stayed on the phone with her until the
2 call dropped. I was telling her what was going on and
3 that they were getting ready to let us leave. When
4 the call dropped, I did try to call back.

5 Q Were you able to reach her again?

6 A No. I tried to call her three times and I couldn't
7 get her on the phone.

8 Q Ms. Dowdy, just for clarification, do you have, have
9 you ever pled guilty to the charge of Habitual Traffic
10 Offender?

11 A I was. I had a DUS.

12 Q And when was that?

13 A That was back in 2006.

14 Q After you got off the phone with her, you never talked
15 with Ernestine again?

16 A I did not.

17 Mr. Brown: No further questions, Your Honor.

18 The Court: Mr. Howe or Ms. Anderson?

19 Cross examination of Kathy Dowdy by Mr. Howe

20 Q Ms. Dowdy, you said you had a DUS. To be convicted of
21 Habitual Traffic Offender, you have to have more than
22 one traffic offense.

23 A That is correct.

24 Q So ---

25 A It was driving under suspension, third offense.

(TESTIMONY - KATHY DOWDY)

1 Q Let's be clear on that. It wasn't just one traffic
2 offense.

3 A No. It was not.

4 Q Because you wouldn't want to mislead the jury about
5 that. Would you?

6 A Of course not.

7 Q Okay. Thank you. Now, Ms. Dowdy, it is true that,
8 that Ernestine and Fred had been together for several
9 years, probably as many as three years. Correct?

10 A That's correct.

11 Q All right. And you also knew that they had actually
12 entered into a contract with John Moore to buy the
13 property out there on 308. Correct?

14 A Not that you are referring to. They actually
15 purchased the property, they were purchasing the
16 property that was beside her home. Her home is owned
17 by her, solely.

18 Q Right. But the property out there on 308, they were
19 buying that together. Correct?

20 A Not the property that she lived in. The property that
21 was adjacent to her home.

22 Q And the property that, I understand your point, but
23 all that property, the whole deal to buy that is why
24 they were out there together. Isn't that correct?

25 A That's not. That's not why they were together. They

(TESTIMONY - KATHY DOWDY)

1 were in a relationship and then she allowed him to
2 come live with her.

3 Q Okay. But the property was acquired where the home is
4 while they were together?

5 A The property beside her home was acquired during the
6 relationship. You're correct.

7 Q And also, the property where they lived together was
8 acquired while that relationship was going on, too.
9 Wasn't it?

10 A They acquired that property separate and apart from
11 that other property you're referring to.

12 Q Separately, but at the same time, while in that
13 relationship. Isn't that correct?

14 A While they were in a relationship, but not at the same
15 time.

16 Q Yes. But while they were in a relationship. So,
17 regardless of whose name it was in, they had their
18 assets together, they were buying property together,
19 they had a relationship, they lived together. Correct?

20 A Their assets were not together. He was giving her
21 money to pay on the property. The property was in her
22 name and his name was associated with the property as
23 a partner.

24 Q Okay. All right. Now, and he kept clothes there, he
25 kept other things there even after this, after this,

(TESTIMONY - KATHY DOWDY)

1 what you've referred to as an eviction. Isn't that
2 true?

3 A He kept his dogs on the adjacent property.

4 Q Okay.

5 A Everything else was removed at the eviction.

6 Q So, it's your testimony that he kept no property in
7 that home.

8 A His dogs were on the adjacent property, to my
9 knowledge.

10 Q All right. Okay. Now, the problem between them, he
11 had a problem and a dispute with Ernestine's daughter.
12 Isn't that right?

13 A There was a disagreement between him and her daughter.
14 That is correct.

15 Q Right. As a matter of fact, you were aware that law
16 enforcement had been called out there, because of the
17 daughter, by Fred Madden on a couple of occasions.
18 You knew that, didn't you?

19 A I knew that Fred and Keila did not get along. I did
20 not know why they were called out there. I was not
21 there. I cannot testify as to, actually, why they
22 were there.

23 Q Okay. Now, the -- and you were also aware that Fred
24 Madden kept a key to the place, to the home.

25 A Not to my knowledge.

(TESTIMONY - KATHY DOWDY)

1 Q Okay. You didn't know, but if I told you, you wouldn't
2 disagree with it. Would you?

3 A I can't, I can't sit here and tell you that he had a
4 key or he did not have a key. Had he gotten a key,
5 there would have been no reason for him to knock.

6 Q Now, the morning of the 10th, you called Ernestine,
7 your sister, on a cell phone. Right?

8 A That's correct.

9 Q And the kind of cell phone that you had was what?

10 A I had a Smart phone.

11 Q Okay. You had a Smart phone.

12 A That's correct.

13 Q All right. And the kind of phone that she had was a
14 basic cell phone, a pre-paid cell phone. Correct?

15 A No. She did not have a pre-paid cell phone. My
16 sister had service with AT&T, which is not pre-paid.

17 Q But it was a cell phone.

18 A It was a cell phone.

19 Q A basic cell phone.

20 A She had just upgraded her cell phone, so it wasn't
21 just a basic cell phone.

22 Q All right. Now, and you're testifying that you heard a
23 knock.

24 A Yes.

25 Q All right. And you don't have any idea what room

(TESTIMONY - KATHY DOWDY)

1 Ernestine was in when you say you heard that knock.

2 Do you?

3 A I know she was in the house and we were talking.

4 Q Okay.

5 A I didn't ask her if she was in the bedroom or if she
6 was in the living room.

7 Q All right. And it's your testimony that you are
8 talking on a Smart phone and she's talking on a
9 regular cell phone and that you can hear a knock.

10 A That's correct.

11 Q Okay. If she were in the bedroom, how far away would
12 that be from the front door?

13 A I'm not really sure.

14 Q Well, you've been in the home. Correct?

15 A Not after the death. I can't tell you exactly how far
16 her bedroom is from the front door.

17 Q Okay. So, but again, it's your testimony that you say
18 you could hear a knock and you were talking on a cell
19 phone.

20 A Yes.

21 Q All right. And it's your testimony then, that you say
22 with you talking on a cell phone and not even knowing
23 what room that Ernestine Brown was in, that you could
24 hear Fred Madden's voice.

25 A I heard his voice once he came into the house. She ---

(TESTIMONY - KATHY DOWDY)

- 1 Q Over the telephone.
- 2 A That is correct.
- 3 Q And she's talking on a cell phone to you.
- 4 A That's correct.
- 5 Q It's your testimony that your cell phone dropped, so
- 6 there must have been some issue with the service.
- 7 Correct?
- 8 A No, sir. There were no issues with my service.
- 9 Q The phone -- that conversation that you had with her
- 10 dropped. Is that right?
- 11 A The call dropped.
- 12 Q All right.
- 13 A Either on her end or my end, but the call dropped.
- 14 Q All right. And despite that, you are telling this jury
- 15 that you could hear anything, when two people are
- 16 talking on a cell phone, you could hear their
- 17 conversation.
- 18 A Exactly.
- 19 Q Now, the television was on. Wasn't it?
- 20 A No. It was not.
- 21 Q Now, how do you know it wasn't ---
- 22 A Because I ---
- 23 Q You don't know. Do you?
- 24 A I did not hear the television in the background.
- 25 Q All right. Have you seen the photograph that the State

(TESTIMONY - KATHY DOWDY)

1 has showing the television on ---

2 A No, sir. I haven't.

3 Q --- when they got there? You haven't seen those?

4 A No.

5 Q Would that change your opinion if you knew that the
6 television was on and there were photographs?

7 A No, sir.

8 Q So, then a police officer or somebody then, apparently
9 came in and decided to watch television when they were
10 investigating this. Is that what you're saying?

11 A No, sir. I never said that. I told you that the
12 television was not on. I could not hear it when I was
13 on the phone with her, but I did hear Fred Madden's
14 voice.

15 Q I understand what you're saying, but again, you're
16 talking on a cell phone ---

17 A That's correct.

18 Q She's talking on a cell phone ---

19 A Uh-huh.

20 Q --- and you're hearing all this.

21 A No different than any other time when my sister was on
22 the phone with Fred and I was on the phone with her,
23 the same voice I heard telling me, "Keep it in the
24 road" when she was in the same room with him, is the
25 same voice I heard on the day that my sister was no

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - KATHY DOWDY)

1 longer here.

2 Q And that was, and that was, of course, when he was
3 speaking to you.

4 A He was speaking to her while she was on her cell
5 phone.

6 Q So, you knew then that somebody was right there beside
7 her.

8 A He was in the room with her.

9 Q That he was talking to you.

10 A No. He was in the room with her, no different than
11 the same day.

12 Q You and your family didn't much care for Fred Madden.
13 Is that right?

14 A I didn't have an opinion of him one way or the other.
15 If my sister liked it, I loved it.

16 Q Okay. So, you're telling this jury that you did not
17 have an opinion, whatsoever, about Fred Madden before
18 these events?

19 A Obviously, if my sister told me she was putting him
20 out, I agreed with her on that respect.

21 Q Okay. You didn't get along with him.

22 A I spoke to him every time he spoke to me.

23 Q And when you were there, and you said you had this
24 long conversation, you didn't hear any commotion, any
25 screams, any yells, anything like that, whatsoever.

(TESTIMONY - KATHY DOWDY)

1 Did you?

2 A No, sir. That was not my sister's manner. She
3 wouldn't have been screaming or yelling. The
4 conversation was intense.

5 Q You didn't hear a struggle, any kind of fight or
6 struggle or anything like that, whatsoever. Did you?

7 A No, sir. I did not.

8 Mr. Howe: No more questions.

9 The Court: Redirect?

10 Redirect examination of Kathy Dowdy by Mr. Brown

11 Q Just to go over a couple of things mentioned on cross,
12 to make sure we understand. Who owned the home that
13 Kathy Dowdy lived in?

14 A That my sister lived in?

15 Q I mean that your sister, Ernestine, lived in.

16 A Ernestine owned the home. She was buying it.

17 Q And what about the property underneath the home?

18 A The property was in her name. She was purchasing that
19 as well.

20 Q What about the adjacent property?

21 A The adjacent property was being purchased by her and
22 Fred Madden. Fred Madden was giving her money to make
23 the payments on the property.

24 Q But to be clear, the house that she lived in was hers.

25 A It was hers.

(TESTIMONY - KATHY DOWDY)

- 1 Q Now, Ms. Dowdy, is it true that the house she lived in
2 is fairly small?
- 3 A It is.
- 4 Q And what type of house was this?
- 5 A It was a mobile home.
- 6 Q How big of a mobile home?
- 7 A It was a decent sized mobile home.
- 8 Q Have you been in that mobile home before?
- 9 A Yes.
- 10 Q Do you know where it's located?
- 11 A I do.
- 12 Q Have you been inside that home?
- 13 A Yes.
- 14 Q Would you recognize it if you saw it?
- 15 A Yes.
- 16 Mr. Brown: May I approach, Your Honor?
- 17 The Court: Please.
- 18 Q Ms. Dowdy, I'm showing you what has previously been
19 marked State's Exhibit No. 6. Take a look at that and
20 tell me what that is.
- 21 A That's Tine's house.
- 22 Q What is that address on that house?
- 23 A [REDACTED].
- 24 Q And where is that house?
- 25 A Highway 308. That's her, that's Ernestine's house.

(TESTIMONY - KATHY DOWDY)

- 1 Q Is that here in Lauren's County?
- 2 A It is.
- 3 Q That house is Ernestine's house.
- 4 A Yes.
- 5 (Mr. Brown publishes exhibit on large screen)
- 6 Q And is that a mobile home?
- 7 A It is.
- 8 Q I'm going to show you now what has previously been
- 9 marked as State's Exhibit No. 7. Take a look at that
- 10 picture and tell me what that is.
- 11 A That's Ernestine's house.
- 12 Q And where ---
- 13 A That's the living room area and that's the kitchen.
- 14 Q Okay. In relation to this picture, where is that door
- 15 (Indicating) compared to the first picture I showed
- 16 you?
- 17 A That's the front door.
- 18 Q That's the front door of the house and then that's the
- 19 inside shot of the front door?
- 20 A Yes.
- 21 Q Okay. And what is this, this part right here?
- 22 (Indicating on photograph projected on screen)
- 23 A That's the doorway to the room.
- 24 Q To whose room?
- 25 A That's the doorway to her room.

(TESTIMONY - KATHY DOWDY)

1 Q So, if she was in that room, what is separating that
2 room from that front door?

3 A A wall.

4 Q A wall in a mobile home?

5 A Uh-huh.

6 Q I'll show you what's been marked as State's Exhibit
7 No. 8, previously, and, again, tell me what that is
8 again.

9 A That's the inside of the house.

10 Q Okay. And what is that actually a picture of?

11 A The doorway.

12 Q The doorway of what?

13 A Of the front of the house and then that's the bedroom.
14 (Indicating)

15 Q So, the third picture I showed you is a picture of her
16 bedroom door? (Publishes photo on large screen)

17 A Uh-huh. Yes.

18 Q Now, Ms. Dowdy, do those photographs fairly and
19 accurately depict what her house looked like?

20 A It does.

21 Q Could you tell if these pictures have been altered in
22 any way?

23 A They have not.

24 Q Okay.

25 Mr. Brown: Your Honor, the State offers to move

(TESTIMONY - KATHY DOWDY)

1 State's exhibits Nos. 6, 7 and 8 into evidence.

2 The Court: Those are in evidence by agreement?

3 Mr. Howe: They are, Judge.

4 The Court: All right. Very good. Fair enough.

5 Q Now, Ms. Dowdy, Mr. Howe alluded to another State's or
6 another picture that was taken the day of this
7 incident that showed the T.V. on in the house.

8 A Uh-huh.

9 Q Could there be a possibility that even if the T.V. is
10 on, that ---

11 Mr. Howe: Objection, Judge. That calls for
12 speculation by her.

13 The Court: Repeat the question, Mr. Brown.

14 Q Is there a possibility, if the T.V. is on, you might
15 not hear it?

16 A There's a possibility.

17 Mr. Howe: Same objection, Judge.

18 The Court: All right. I'll overrule. I think the
19 point's been made.

20 Q And also, during this phone conversation, was there
21 any static or anything ---

22 A No.

23 Q --- that would have interferred with what you heard?

24 A No. The phone call was clear.

25 Q And you really have no explanation of why that call

(TESTIMONY - DELORES YELVERTON)

1 was dropped?

2 A No. I don't.

3 Q Ms. Dowdy, is there any reason why you would make this
4 up?

5 A No.

6 Q Ms. Dowdy, without referring to what was being said,
7 could you clearly hear the conversation?

8 A I did.

9 Mr. Brown: No more questions, Your Honor.

10 The Court: Any re-cross?

11 Mr. Howe: No.

12 The Court: Thank you, Ms. Dowdy. You may step down.

13 Solicitor, call your next witness.

14 Mr Brown: The State would call Delores Yelverton.

15 (After being duly sworn by the Clerk of Court, Delores
16 Yelverton testified as follows:)

17 Direct examination of Delores Yelverton by Mr. Brown

18 Q Good morning, Ms. Yelverton. I'm going to stand here
19 so everybody can hear. If I can hear it, the jury can
20 hear it. Where do you live?

21 A I live in Greenville.

22 Q Greenville. And where did you live in 2009?

23 A In Greenville.

24 Q Greenville. Ms. Yelverton, what is your relationship
25 with the victim in this case, Ms. Ernestine Brown?

(TESTIMONY - DELORES YELVERTON)

- 1 A She was my older sister.
- 2 Q Do you have any other siblings?
- 3 A I do.
- 4 Q Who are they?
- 5 A Kathy Dowdy who is here today, Albert Brown, Denika
- 6 Harvey, Brenda Brown and Phillip Brown.
- 7 Q Quite a large family. Are y'all a close family?
- 8 A Pretty close. Yes.
- 9 Q Do you know the man sitting at that table in the blue
- 10 suit?
- 11 A I do.
- 12 Q Who is that?
- 13 A Fred Madden.
- 14 Q How do you know Fred Madden?
- 15 A Through my sister, Ernestine.
- 16 Q Ernestine? Do you know what their relationship was?
- 17 A They were going together.
- 18 Q How well do you know Mr. Madden?
- 19 A He's been to my house before. I've been over there
- 20 several times and he's been there.
- 21 Q All right. Ms. Yelverton, do you remember
- 22 December 10, 2009?
- 23 A I do.
- 24 Q What were you doing in the morning hours of that day?
- 25 A I was at work that morning.

(TESTIMONY - DELORES YELVERTON)

1 Q Okay. That morning, did you have anything odd happen?

2 A I did. I had received a text message ---

3 Mr. Howe: Objection.

4 The Court: Subject to my earlier ruling, your
5 objection is overruled. You may continue, please, Ma'am.

6 A I received a text message from my sister, Kathy,
7 stating that I needed to get in touch with my brother,
8 Bruce, to go and check on our sister, Tine.

9 Q And just for clarification, what is another name for
10 Bruce?

11 A Albert.

12 Q Did you, in fact, contact Bruce?

13 A I did. I contacted him and he said that he would go
14 out to the house and check on her.

15 Q And that would be going out to Ernestine's house?

16 A Right.

17 Mr. Brown: No further questions, Your Honor.

18 The Court: Ms. Anderson

19 Cross examination of Delores Yelverton by Ms. Anderson

20 Q Ms. Yelverton, do you still have the phone that you
21 received that text on?

22 A No. I don't.

23 Q You said that Fred Madden and Ernestine were going
24 together?

25 A Yeah. They were.

(TESTIMONY - DELORES YELVERTON)

1 Q Going together about three years. Is that about
2 right?

3 A I don't know the approximate time. I know that they
4 were seeing each other.

5 Q And you had the opportunity to go over to the house
6 several times and meet with Fred or to be around Fred?

7 A To be around my sister, yes, and he was there.

8 Q It's true that you didn't much care for Fred.
9 Correct?

10 A I don't know about that part. No.

11 Q Well, do you have an opinion of Fred?

12 A Do I have an opinion of him now?

13 Q Did you have an opinion of him then.

14 A I knew nothing about Fred.

15 Q So, despite them going together for three years and
16 going over to the house to see him and your sister,
17 you don't have an opinion of Fred, then?

18 A No.

19 Ms. Anderson: I have nothing further.

20 The Court: Thank you, Ma'am. You can step down. Mr.
21 Brown.

22 Mr. Brown: The State calls Albert Brown.

23 (Bench Conference off the record)

24 (After being duly sworn by the Clerk of Court, Albert
25 Brown testified as follows:)

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - ALBERT BROWN)

1 The Court: All right, Solicitor. You may proceed.

2 Mr. Brown: Thank you, Your Honor.

3 Direct examination of Albert Brown by Mr. Brown

4 Q Mr. Brown, please state your name.

5 A My name is Albert Brown.

6 Q Mr. Brown, do you go by any other names?

7 A Bruce.

8 Q All right. Mr. Brown, where do you live?

9 A I live in Clinton out on Apple Orchard Road.

10 Q And what is your relationship with Ms. Ernestine
11 Brown?

12 A That was my sister.

13 Q Do you have any other siblings?

14 A Yes. I do.

15 Q Who are they?

16 A Danika Harvey, Brenda Fay Smith, Delores Yelverton and
17 Phillip Brown.

18 Q Do you recognize the man sitting at the table in the
19 blue suit?

20 A Yes, I do.

21 Q Who is that?

22 A Fred Madden.

23 Q And how do you know Fred Madden?

24 A He used to date my sister, Ernestine.

25 Q Do you know him well?

(TESTIMONY - ALBERT BROWN)

1 A I know of him. I've been out there several times and
2 he was there at the house and he's been over to my
3 house once.

4 Q So, if you saw him, you would recognize him?

5 A I could.

6 Q Mr. Brown, do you remember December 10, 2009?

7 A Yes. I do.

8 Q Do you remember the morning hours of December 10,
9 2009?

10 A Yes. I do.

11 Q What were you doing?

12 A I was on Charlotte's Road going up to my father's
13 house and received a call from my sister, Delores
14 Yelverton ---

15 Mr. Howe: Objection.

16 The Court: Subject to the earlier ruling, your
17 objection is overruled. Duly noted. Please continue, sir.

18 A I received a call from my sister, Delores Yelverton,
19 and she called and told me I needed to go out there
20 and check on my sister, Ernestine, and instead of
21 stopping by and checking on my father, I proceeded on
22 Old Laurens Road on up around by the Chain Gang Camp
23 and went out, once I got on 308, I made a left turn,
24 started up towards my sister's house and I met Fred
25 Madden on his Moped. As I passed him, I looked

(TESTIMONY - ALBERT BROWN)

1 through my rearview mirror and I seen him turned
2 around looking at me.

3 Q Okay. So, once you were asked to go out to
4 Ernestine's house -- and tell me again, where does
5 Ernestine live?

6 A She lived out on 308, out towards the end of 308.

7 Q What's that close to?

8 A Highway 49.

9 Q All right. And as you said, you were driving up 308.
10 Who did you pass?

11 A I passed Fred Madden.

12 Q And how did you know that was Fred Madden?

13 A I know because I seen him before and I've seen him on
14 that Moped before, too, as well.

15 Q All right. After you saw him, did you stop?

16 A No, I didn't. I proceeded on to the house.

17 Q What did you do once you got to the house?

18 A Once I got to the house, I knocked on the door and I
19 didn't get an answer so I called on the cell phone and
20 I didn't get an answer, so I went on in and I called
21 out. I didn't get no response, so the bedroom door
22 was shut and so I went to the bedroom door, I kind of
23 cracked it open because it wouldn't go all the way
24 open. She was there laying on the floor.

25 Q Where -- what was her position?

(TESTIMONY - ALBERT BROWN)

1 A Her head was up towards the door and I couldn't open
2 the door all the way because her body was there.

3 Q What did you do after you were able to see her?

4 A Once I seen her there, I checked her pulse and I
5 didn't get a pulse and so I called 911 and they asked
6 me for the address. I had to run out on the side of
7 the road to get the box number and tell them.

8 Q You said the door was hard to get open because she was
9 behind it. How did you get in the room?

10 A I kind of cracked the door some and I was able to
11 squeeze in.

12 Q Okay. And what did you do when you went inside the
13 room?

14 A I checked her pulse, didn't get a pulse, and so I got
15 my phone out and called 911, my cell phone.

16 Q Okay. What was your initial thought?

17 A My initial thought was Fred had murdered her.

18 Q What, so what did you do after you left the bedroom?

19 A I went out by -- when I called 911, they asked me for
20 the address and I went on the side of the road and got
21 the number off the mailbox.

22 Q What time of the morning was that when you got to her
23 house?

24 A I'd say around 11:00 or a little before.

25 Q And that was in the morning?

(TESTIMONY - ALBERT BROWN)

1 A It was in the morning.

2 Q How long was it before somebody came from 911?

3 A It was shortly after she had told me to stay there,
4 someone from Sandy Springs Fire Department would be
5 there and so The Sandy Springs Volunteer Fire
6 Department, they arrived and they checked her out
7 and...

8 Q Mr. Brown, let's go back, briefly. How far up 308, or
9 how far from the house was it when you passed Fred?

10 A It was anywhere from three to four miles when I passed
11 Fred.

12 Q It was on Highway 308?

13 A It was on Highway 308.

14 Q And which direction were you driving?

15 A I was going up 308 towards 49 and Fred was coming down
16 the road from that direction.

17 Q So, y'all crossed paths.

18 A Right.

19 Mr. Brown: No further questions, Your Honor.

20 The Court: Mr. Howe?

21 Cross examination of Albert Brown by Mr. Howe

22 Q Mr. Brown, you told 911 dispatch that you didn't know
23 what happened and you didn't see any weapons. Isn't
24 that right?

25 A That's correct.

(TESTIMONY - ALBERT BROWN)

1 Q Okay. And you told 911 dispatch that you had been
2 trying to get in touch with your sister and that's the
3 reason you rode over there. That's what you told 911
4 dispatch. Isn't that true?

5 A To the best of my knowledge, yes.

6 Q Okay. And so you didn't tell 911 dispatch that you
7 were over there as a result of receiving a
8 communication from Delores Yelverton. You just said
9 you were over there to check on your sister. Isn't
10 that true?

11 A To the best of my knowledge.

12 Q Okay. And the family did not care for Fred. Did
13 they? Your family.

14 A I don't know what you mean by not care for.

15 Q Y'all didn't much care, approve of him being involved
16 with Ernestine, your sister. Did you?

17 A Well that was her choice, not mine.

18 Q Yeah, but you didn't approve of it. Your family
19 didn't approve of it. Did they?

20 A He had been to my house before.

21 Q In fact, she had actually been involved in another
22 long-term relationship. Isn't that right?

23 A Yes.

24 Q And y'all didn't really approve of Fred and so when
25 you got to the home there, there's no question that

(TESTIMONY - ALBERT BROWN)

1 you wanted it to be Fred that had done this. Isn't
2 that true?

3 A He's the only one I seen.

4 Q Yeah. The only one you saw.

5 A That's right.

6 Q Okay. And you also, and seeing him, you didn't see him
7 try to get rid of a gun or anything like that when you
8 saw him. Did you?

9 A No, sir. I didn't.

10 Q In fact, he was moving down the road, he hadn't
11 stopped anywhere, he was actually moving when you
12 crossed paths with him.

13 A That is correct.

14 Q Okay. And so, from the time that you saw him, and
15 that was well over a mile away. Is that right?

16 A That's correct.

17 Q Okay. From the time that you saw him in that area --
18 of course, it could have been searched for any kind of
19 a weapon. Isn't that true?

20 A Say that again?

21 Q That area could have been searched for a weapon,
22 because you could take the Sheriff's office out there
23 and show them where you saw him. Isn't that true?

24 A Yes, sir.

25 Q Okay.

(TESTIMONY - MACK IRBY)

1 Mr. Howe: That's all the questions I have.

2 The Court: Any redirect?

3 Mr. Brown: Yes, Your Honor, just briefly.

4 Redirect examination of Albert Brown by Mr. Brown

5 Q Mr. Brown, you mentioned that, or Mr. Howe mentioned
6 that you saw Fred Madden down the road. Did you see
7 anybody else there?

8 A No. I didn't.

9 Q Did you see anyone else at the house when you got
10 there?

11 A No one else was there.

12 Mr. Brown: No further questions.

13 The Court: Thank you, sir. You may step down. Call
14 your next witness, please.

15 Mr. Brown: The State calls Mack Irby.

16 (After being duly sworn by the Clerk of Court, Mack
17 Irby testified as follows:)

18 Direct examination of Mack Irby by Mr. Brown

19 Q Good morning, Mr. Irby.

20 A Good morning, how are you doing?

21 Q I'm doing all right. Could you please state your name
22 so the court reporter has it.

23 A Mack Irby.

24 Q Mr. Irby, where do you live?

25 A Easy Road, [REDACTED] Laurens.

(TESTIMONY - MACK IRBY)

1 Q Here in Laurens.

2 A Yes, sir.

3 Q And do you live there?

4 A Yes, sir.

5 Q And do you live -- actually, do you know the fellow
6 sitting at the table in the blue suit?

7 A Yes, sir.

8 Q How do you know him?

9 A We grew up together.

10 Q Okay. So, y'all have known each other for a long
11 time?

12 A Yes, sir.

13 Q Mr. Irby, has Mr. Madden ever lived with you?

14 A Sir?

15 Q Has Mr. Madden ever lived with you?

16 A Yes. Yes, sir.

17 Q Was he living with you in 2009, towards the end of
18 2009?

19 A He was staying in my home. I was living in
20 Greenville.

21 Q Were you in and out of that house?

22 A Yes, sir.

23 Q Mr. Irby, do you remember December 10, 2009?

24 A I'm not good at remembering dates and times, so could
25 you bring around to what was supposed to have

(TESTIMONY - MACK IRBY)

1 happened?

2 Q Do you remember the morning where police officers came
3 to your home looking for Fred Madden?

4 A Yes, sir.

5 Q Can you tell me about that morning? Where were you?

6 A I was standing outside.

7 Q Okay. Before that, were you at the house earlier that
8 morning?

9 A Yes, sir.

10 Q Was Fred Madden at that house, too?

11 A Yes, sir.

12 Q Was Fred with you there at the house the whole
13 morning?

14 A He left, but he came back.

15 Q How long did that -- how long was he gone?

16 A Anywhere between thirty to forty-five minutes,
17 something like that time frame.

18 Q Did he tell you where he was going?

19 A No, sir.

20 Q When he got back, where were you?

21 A In my home.

22 Q What did he do when he got back?

23 A He came in. I was on my phone talking, asked me who I
24 was talking to and talking to me and then he went to
25 his room.

(TESTIMONY - MACK IRBY)

1 Q What did he do after he went to his room?

2 A After he went to his room, came back through and asked
3 me was I hungry and I started fixing breakfast.

4 Q Did he ever go back to the bathroom?

5 A I think he did.

6 Q What did he do back in the bathroom?

7 A I don't know. I was in the front room on the phone.
8 I mean, you know.

9 Q Do you know if he took a shower?

10 A I don't know. I mean, he went back there, but I don't
11 know. I mean, it ain't like I came back there to see
12 what he was doing. Like I said, I was on the phone.

13 Q Do you remember giving a statement to law enforcement?

14 A Right.

15 Q (Mr. Brown hands document to the witness) Take a look
16 over that.

17 A I can't read.

18 Q You want me to read it?

19 A Yeah, if you don't mind.

20 Q Mr. Irby, I am going to point to a line here and tell
21 me if you said this to law enforcement. "When Fred got
22 out of the shower --- .

23 Mr. Howe: Objection.

24 The Court: Yes, sir?

25 (Bench conference off the record)

(TESTIMONY - MACK IRBY)

1 The Court: I'll ask that you adjourn to the jury room
2 briefly. We'll have you back out here, hopefully, in just
3 a few minutes. Don't discuss the case, of course.

4 (Jury out at 11:35 a.m.)

5 The Court: All right. The jury is not in the
6 courtroom. Before we dismissed the jury, we had a sidebar
7 and Mr. Howe explained to me that he was objecting to the
8 Solicitor reading the statement to the jury or reading the
9 statement, rather, to the witness. The portion of the
10 statement, I believe Mr. Brown was trying to read to the
11 witness, concerned the witness' alleged statement to law
12 enforcement that the defendant got a shower after he came
13 back to the house. Mr. Howe is objecting, based on the
14 leading nature of that testimony. It's my understanding,
15 Mr. Brown, you are seeking admission or you are seeking to
16 basically try and refresh the recollection of this
17 particular witness. Is that right?

18 Mr. Brown: That's correct, Your Honor.

19 The Court: Did I correctly summarize what you told me
20 at sidebar, Mr. Howe?

21 Mr. Howe: Well, he said he was attempting to impeach
22 him, but now I guess he's attempting to refresh
23 recollection. There is a difference.

24 The Court: There is a difference.

25 Mr. Brown: Your Honor, initially, I tried to refresh

(TESTIMONY - MACK IRBY)

1 his memory and then ---

2 The Court: If that doesn't work, then ---

3 Mr. Brown: If that doesn't work, then impeach his
4 statement.

5 The Court: All right. I think the best course of
6 action, because this witness has indicated he has
7 difficulty reading, the best course of action at this point
8 in time is to go ahead and permit you to read the statement
9 to the witness or at least that portion that you are
10 wanting to use to refresh his recollection. Let's see if
11 that refreshes his recollection. We'll bring the jury back
12 in in a moment once we've figured out if that, in fact, is
13 going to happen. So, you can proceed.

14 Proffered examination of Mack Irby

15 Q Mr. Irby, I want to show you a statement you
16 previously gave to law enforcement and just one line:
17 When Fred got out of the shower and started cooking
18 breakfast, he had on different colored clothes. Do
19 you remember making that statement? Does that refresh
20 your memory?

21 A Okay. What I remember, I say he went to the restroom,
22 you know, but as far as, I can't say I actually seen
23 him take a shower, because I was in one room on the
24 cell phone talking. This is what happened. This is
25 what I seen.

(TESTIMONY - MACK IRBY)

1 Q Could you agree with "the different colored clothes"
2 on the rest of that statement?

3 A As far as his clothes, I don't know what he had on.
4 Wasn't paying no attention to that, what he had on
5 before he left and after he left, after he came back.

6 Q Okay. Do you remember giving this statement to law
7 enforcement, to Lieutenant Robert Wilkie?

8 A Correct.

9 Q Do you remember making a signature on this statement?
10 Did he read this statement back to you?

11 A Yes. He did.

12 Q And is that your signature at the bottom? (Shows
13 witness document)

14 A Yes, sir.

15 Q Is that your initials? (Shows witness document)

16 A Yes, sir.

17 Mr. Brown: Judge, I have no further questions.

18 The Court: All right. I assume when I bring the jury
19 back in, you are going to continue with the same line of
20 questioning or you're going to allow Mr. Howe to cross?
21 What is your plan?

22 Mr. Brown: We'll allow Mr. Howe to cross.

23 The Court: All right. Very good. Let's have the jury
24 back.

25 (Jury in at 11:40 a.m.)

(TESTIMONY - MACK IRBY)

1 The Court: The record should reflect that the jury is
2 back. Mr. Brown, you may continue, sir.

3 Mr. Brown: The State has no further questions of this
4 witness.

5 The Court: Mr. Howe, Ms. Anderson?

6 Mr. Howe: Thank you.

7 Cross examination of Mack Irby by Mr. Howe

8 Q Mr. Irby, when Fred Madden came to stay at your home,
9 actually, Ernestine Brown is the one that gave him a
10 ride over there. Is that right?

11 A Yes, sir.

12 Q And you were there and you saw ---

13 A Yes, sir.

14 Q And they were getting along just fine. Isn't that
15 right?

16 A Yes, sir.

17 Q Okay. In fact, while he lived there, you never saw any
18 indication, whatsoever, that he and Ernestine were not
19 getting along. Did you?

20 A No, sir.

21 Q Okay. As a matter of fact, you were there and you
22 knew that he still talked to her. Didn't you?

23 A I know that she brought him in and was still keeping
24 communication.

25 Q Communication between the two of them.

(TESTIMONY - MACK IRBY)

1 A Yes, sir.

2 Q All right. And when -- and you testified that you
3 don't know exactly everything Fred did when he came
4 back, but you did testify that he was gone probably no
5 more than, I believe you said, thirty to forty-five
6 minutes. Is that right?

7 A Yes, sir.

8 Q That was your recollection of the time.

9 A Yes, sir.

10 Q All right. And when he came back, you can't account
11 for everything he did at all. Can you?

12 A No, sir.

13 Q All right.

14 A No more than fixing breakfast.

15 Q Okay.

16 Mr. Howe: That's all the questions I have.

17 The Court: Thank you Mr. Irby, you can step down.

18 Well, hold on one second. Any other questions, Mr. Brown?

19 Mr. Brown: No further questions.

20 The Court: Thank you, Mr. Irby. You can step down.

21 Call your next witness, please.

22 Mr. Brown: The State calls Dale Mitchell.

23 (After being duly sworn by the Clerk of Court, Dale
24 Mitchell testified as follows:)

25 Direct examination of Dale Mitchell by Mr. Brown

(TESTIMONY - DALE MITCHELL)

1 Q Mr. Mitchell, would you state your name and spell your
2 last name for the court reporter.

3 A My name is Dale Mitchell. M-I-T-C-H-E-L-L.

4 Q Mr. Mitchell, who do you work for?

5 A I'm a volunteer for the Sandy Springs Fire Department.
6 I don't work, I'm retired.

7 Q Is that a volunteer position that you have?

8 A Yes. It is.

9 Q And how long have you worked with the Sandy Springs
10 Fire Department?

11 A Probably since 2007 or 2008 and I'm still doing it.

12 Q So, what is your actual title?

13 A I'm firefighter and first responder.

14 Q To become a firefighter and a first responder, do you
15 have to have any training?

16 A Yes. I do.

17 Q What type of training do you have to have?

18 A I had to go to a 1152 class and that is to qualify me
19 to go into a structure fire. I also took classes in
20 auto extrication, to cut people out of cars in
21 accidents and then I took a, they call it "Flame",
22 it's called "Flammable Liquids/Gas" and all that has
23 to be done down through the South Carolina Fire
24 Academy. You go down and take tests and stuff like
25 that and then, also, I took a First Responder course

(TESTIMONY - DALE MITCHELL)

1 and was tested on that and you have to do hands-on and
2 pass all classes. You have to pass those classes to
3 qualify.

4 Q What kind of classes did you take for First Responder?

5 A You have to go to so many hours of training and
6 supervisor training and book training and then you
7 have to do tests after the so many hours and then you
8 do the hands-on practical test to get your
9 certification.

10 Q And what are they certifying you to be able to do?

11 A Basically, you do first-aid, broken bones or whatever
12 like that, falls, you're taught how to put on collars
13 for spinal stuff, you're taught your CPR and those
14 types of things. There are certain things that we are
15 not allowed to do and EMS does those things.

16 Q Do you remember if you were working on December 10,
17 2009?

18 A Yes.

19 Q And did you get a call that morning?

20 A Yes. I did.

21 Q What time of the morning did you get the call?

22 A It was close to 11:00, I guess.

23 Q And who did you get that call from?

24 A From dispatch on my radio.

25 Q Where were you called to?

(TESTIMONY - DALE MITCHELL)

1 A I was called, I think it was [REDACTED] on 308 and the call
2 came out as a heart attack.

3 Q Was -- what county is that in?

4 A That's in Lauren's County.

5 Q Okay. What time, you said the call came about eleven,
6 what time did you get to the house?

7 A It took me about 10 minutes to get there.

8 Q And once you got to the house, who was there?

9 A It was a gentleman outside the house waving me to come
10 in and that's who it was and he said he was the
11 brother of the victim who was inside and so I, you
12 know, I asked him, "Where is the victim?" He showed me
13 that she was behind a door in the house and so when I
14 went in, I couldn't get the door all the way open
15 because she was up kind of against the door, so I
16 looked in. I could see that she was laying on the
17 floor and on her back and her hands were out to her
18 side and I squeezed in and the other First Responder
19 had to squeeze in. We actually had to pull her back a
20 little bit to get the door all the way open so that we
21 could assess what was going on and I went around to
22 the other side of her and took vital signs. She
23 wasn't breathing and didn't have no heartbeat and so I
24 immediately started CPR.

25 Q Okay. What was your initial impression?

(TESTIMONY - DALE MITCHELL)

1 A Pardon?

2 Q What was your initial impression when you came into
3 the room.

4 A Well, we were told that she had a heart attack so I
5 figured she collapsed because of failure to her heart.

6 Q What did you do to try to revive her?

7 A What did I ...

8 Q What did you do once you got into the room?

9 A I took the vital signs first and she wasn't breathing
10 and didn't have a heart rate. I started CPR. The
11 first thing I did, I started the compression and the
12 other First Responder got the oxygen in the bay for
13 the breathing and then the chief came. He came in
14 after that and I told him to get the AED ready so that
15 we could use it on her.

16 Q Tell me what the AED is.

17 A That's the Automatic Electronic Defibrillator that you
18 put on and it tells you exactly what to do and where
19 to put the patches and initiate a shock to get the
20 heart started again.

21 Q Did y'all actually use that?

22 A Yes. We did.

23 Q How many times did you use it?

24 A We only used it once because right after we used it,
25 EMS came in and when EMS comes in as First Responder,

(TESTIMONY - DALE MITCHELL)

1 they take over right away.

2 Q Did you -- what did you do after they came in?

3 A I just assisted them. I kept doing the compressions
4 because they told me to go ahead and keep doing the
5 compressions and then they hooked up for their work.

6 Q After they took over, did you leave the room?

7 A Yes. I did. After a while I left the room and went.
8 outside.

9 Mr. Brown: Beg the Court's indulgence.

10 The Court: Yes, sir.

11 (Mr. Brown confers with Mr. Hammack)

12 Mr. Brown: No further questions, Your Honor.

13 The Court: Cross.

14 Mr. Howe: Thank you.

15 Cross examination of Dale Mitchell by Mr. Howe

16 Q Good morning, Mr. Mitchell.

17 A Good morning.

18 Q Mr. Mitchell, I believe you -- and the other First
19 Responder from the fire department is Tommy Johnson.
20 Is that right?

21 A Yes, sir.

22 Q Okay. Did y'all get there together or did you get
23 there first?

24 A Well, I got there first and then he came in right
25 behind me.

(TESTIMONY - DALE MITCHELL)

1 Q Okay. And when you got there, there was an individual
2 out in the yard, which I guess you later determined to
3 be Ms. Brown's brother. Is that right?

4 A Yes, sir.

5 Q And he was out in the yard?

6 A Yes.

7 Q And you didn't get any history from him about what was
8 going on, you just proceeded inside to ---

9 A He showed me where she was.

10 Q Okay. But he was the only person there at the scene?
11 There were no other witnesses, no neighbors, anything
12 like that, that you saw?

13 A Not that I seen. No.

14 Q All right. And so the information that you received
15 from dispatch, that's 911. Is that right?

16 A That's right.

17 Q All right. And they relayed to you the information
18 that they had received was that Ms. Brown had a heart
19 attack. Is that correct?

20 A Yes, sir.

21 Q And so y'all proceeded then, to treat this as a heart
22 attack and that's why you had the AED equipment,
23 that's the way EMS came in and that's the way y'all
24 were proceeding with the direct care at that point in
25 time. Correct?

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - DALE MITCHELL)

1 A Yes.

2 Q Because that's the information that had been furnished
3 to y'all.

4 A Right.

5 Q And in your experience in being a First Responder,
6 you've answered other calls, I would assume. Is that
7 correct?

8 A Yes. I have.

9 Q Okay. So, when dispatch provides information, it's
10 important for you to know what the initial information
11 is so that you can know what you've got to be doing.

12 A That's right.

13 Q All right. Now, the door that you came in, do you
14 recall what door you came in to go into the home?

15 A It was the front door.

16 Q The front door.

17 A Yes.

18 Q And you passed through a living room. Correct?

19 A That's right.

20 Q Okay. And in the living room, there was a television
21 and the television was on. Correct?

22 A I didn't pay attention to the television.

23 Q Okay. You were trying to get to the ---

24 A I just asked the brother where she was.

25 Q Okay. So, you didn't pay attention. If it were on,

(TESTIMONY - JASON EICHMAN)

1 you were trying to do your job.

2 A Yes, sir.

3 Q All right. Thank you.

4 Mr. Howe: That's all I have.

5 The Court: Thank you, sir. You can step down. Anybody
6 need a break?

7 Mr. Howe: Yes, sir.

8 The Court: We're going to take a five minute break. I
9 know that y'all have been back there, but we've been out
10 here and court personnel have the need for breaks
11 occasionally, too. Go back there, please. Don't talk about
12 the case. We'll have you back out in a few minutes.

13 (Jury out at 11:54 a.m.)

14 (Brief Break)

15 (Jury in at 12:05 p.m.)

16 The Court: The record should reflect that all jurors
17 are present and accounted for. Mr. Brown, call your next
18 witness, please.

19 Mr. Brown: The State calls Jason Eichman.

20 (After being duly sworn by the Clerk of Court, Jason
21 Eichman testified as follows:)

22 Direct examination of Jason Eichman by Mr. Brown

23 Q Mr. Eichman, would you please state your name and
24 spell it for the court reporter.

25 A Jason, last name is Eichman. E-I-C-H-M-A-N.

(TESTIMONY - JASON EICHMAN)

1 Q Mr. Eichman, who are you employed with?

2 A I'm employed with Lauren's County EMS.

3 Q And how long have you been with Lauren's County EMS?

4 A Since 1999.

5 Q Did you work anywhere else before working with EMS?

6 A Yes. I worked in Wisconsin.

7 Q And what did you do there?

8 A I was a law enforcement officer and also a paramedic
9 there.

10 Q Now, Mr. Eichman, to work for Laurens County EMS, do
11 you have to go through training?

12 A Yes. I had to go to a school for one year, a college-
13 level school to become a paramedic and then another
14 six months to become an EMT before that.

15 Q Okay. And what kind of -- what are you trained to do?

16 A I've been trained in what we call advanced life
17 support. I can put tubes down people's throats, I can
18 start I.V.s, I can do primarily everything they do at
19 the hospital to deal with any kind of serious
20 situation.

21 Q And what is your position in Lauren's County EMS?

22 A I am a Lieutenant Assistant Shift Supervisor.

23 Q So, you're a supervisor for Lauren's County EMS?

24 A Correct.

25 Q Were you working the day of December 10, 2009?

(TESTIMONY - JASON EICHMAN)

1 A Yes.

2 Q Do you remember getting a call that day in the
3 morning?

4 A Yes.

5 Q Where did that call come from?

6 A We got a call from our dispatch for a possible cardiac
7 arrest at a location on Highway 308.

8 Q Okay. Do you know about what time that was?

9 A Right around 11:00. (Looking at document) Actual
10 dispatch time was 10:59.

11 Q And just to clarify, are those your notes?

12 A That is my record.

13 Q And the location you were called to was out on...

14 A Yes. It was [REDACTED] Highway 308.

15 Q That's in Laurens County?

16 A Correct.

17 Q What did you observe when you arrived at [REDACTED] Highway
18 308?

19 A I found one female patient in cardiac arrest. The
20 firefighter on scene was doing CPR.

21 Q When you first pulled up, who all was there at that
22 time?

23 A There were some family members and the fire
24 department.

25 Q And approximately, how many people were in the room

(TESTIMONY - JASON EICHMAN)

1 with the victim?

2 A About one or two firefighters is all that I remember.

3 Q Once you arrived, what did you do?

4 A We took over the scene. We started to try to
5 resuscitate the patient. My partner put a tube down
6 her throat and breathe for her, we continued CPR. I
7 started an I.V. and gave him [sic] some medication to
8 try to start their heart up and after 20 minutes of
9 not being able to start the heart back up, we talked
10 to a doctor and the doctor told us to stop.

11 Q And now, where was the victim when you arrived?

12 A When I arrived, the victim was on the floor. The
13 firefighter had to move her away from the doorway to
14 gain access to the patient.

15 Q And what room did it appear she was in?

16 A It appeared she was in her bedroom.

17 Q You say the fire department had to -- what did they
18 do?

19 A They had to remove her. She was close to the door
20 where they couldn't actually open the doorway and so
21 they had to move her away from the doorway to open the
22 door.

23 Q And then that's when, after they started, you took
24 over ---

25 A Correct.

(TESTIMONY - JASON EICHMAN)

1 Q --- the situation. And again, what did y'all, what
2 did EMS do, what efforts did you take to resuscitate
3 Ms. Ernestine Brown?

4 A We gave her multiple medications, one was adrenaline
5 to try to start her heart. We continued CPR to
6 circulate that throughout her body. We put a tube
7 down her throat and breathed for her. We gave her, we
8 started an I.V. and gave her medication through that.

9 Q What type of medication?

10 A Adrenaline and atropine, which both are used to try to
11 stimulate her heart, make it beat again.

12 Q And how long, how many times did you give this?

13 A We gave her three doses of Adrenaline and three doses
14 of atropine.

15 Q And how much time elapsed while you were trying to
16 revive her?

17 A A total of about 20 minutes.

18 Q After 20 minutes ---

19 A After 20 minutes, we contacted the doctor.

20 Q And where was that doctor?

21 A At Lauren's County Hospital.

22 Q When you contacted the doctor, what did you ask?

23 A I told him the situation, gave him a brief synopsis of
24 what we did and discussed with him if we should
25 continue to treat her and take her to the hospital or

(TESTIMONY - JASON EICHMAN)

1 if we should stop resuscitation efforts there. After
2 that amount of time, there's not much chance of
3 survival and there's no chance that she would be able
4 to have normal brain function.

5 Q Now, is this a normal routine, a standard operation---

6 A Yes.

7 Q --- that you do? And how many, you say you started
8 working -- when did you start working with Lauren's
9 County EMS?

10 A 1999.

11 Q And have you been called out to other responses?

12 A Yes.

13 Q And in those responses when you have this kind of
14 situation, it's routine to call a medical doctor?

15 A Yes. Yes. That would be our standard procedure to
16 contact a doctor in that situation.

17 Q Again, how long did you try to revive Ms. Ernestine
18 Brown?

19 A It was in the neighborhood of 20 minutes. Somewhere
20 in that neighborhood.

21 Mr. Brown: Beg the Court's indulgence.

22 The Court: Yes, sir.

23 (Mr. Brown confers with Mr. Hammack)

24 Q Mr. Eichman, when you first arrived and while you were
25 there working on Ms. Brown, did you notice any

(TESTIMONY - JASON EICHMAN)

1 injuries?

2 A I noticed some blood coming from both of her ears.

3 Q Could you tell what the problem was?

4 A No. Just that there was some blood coming from those
5 ears. My partner was at her head and he was putting
6 the tube down her throat and so he had better access
7 than I did.

8 Q And exactly -- after you finished talking with the
9 doctor, what does it mean to discontinue
10 resuscitation?

11 A That means we stop doing CPR, we stopped breathing for
12 her, we stopped all efforts and we left.

13 Q And after you did that, what does that mean when you
14 stop ---

15 A It means the patient is deceased.

16 Q So, Ms. Ernestine Brown died at that house?

17 A She died at 11:32, pronounced by Dr. Tosey.

18 Q And what date was that?

19 A That was December 10, 2009, or excuse me, yes.

20 Q And she died at what -- she was in that house and died
21 at 11:32 at what address?

22 A The address was [REDACTED] Highway 308.

23 Q In what county?

24 A Laurens County.

25 Mr. Brown: No further questions.

(TESTIMONY - JASON EICHMAN)

1 The Court: Ms. Anderson.

2 Cross examination of Jason Eichman by Ms. Anderson

3 Q Good afternoon, Mr. Eichman. How many members of EMS
4 arrived on scene?

5 A Four.

6 Q Including you?

7 A Yes.

8 Q And when you got there, you mentioned Sandy Springs
9 was already present at the house?

10 A Yes.

11 Q And how many of those were ---

12 A Approximately, two or three. I cannot remember how
13 many of them there were.

14 Q Okay. So, about seven, including EMS and Sandy
15 Springs. Correct?

16 A Yes.

17 Q And a family member.

18 A Yes.

19 Q And when you went into the house, you had to bring
20 some of your equipment with you.

21 A Correct.

22 Q What door did you go into the house?

23 A Front door.

24 Q And when you came through the front door, you found
25 the T.V. on. Correct?

(TESTIMONY - JASON EICHMAN)

1 A I don't know.

2 Q And when you came back through, you were going to what
3 room?

4 A I was going to the bedroom where the patient was.

5 Q Okay. And you already knew that she had already been
6 moved.

7 A I was told when I got there.

8 Q Okay. And again, you were called there for a cardiac
9 arrest.

10 A Correct.

11 Q And y'all had been there for 20 minutes, the seven
12 people you mentioned, the EMS and Sandy Springs and a
13 family member were still at the house.

14 A Yes.

15 Q And to your knowledge, since you were in the bedroom,
16 you wouldn't know where they would be?

17 A Correct.

18 Ms. Anderson: I have no further questions.

19 The Court: Thank you. Sir, you may step down. Call
20 your next witness, please, Mr. Brown. Mr. Hammack.

21 Mr. Hammack: Just briefly.

22 The Court: Yes, sir.

23 (Mr. Hammack and Mr. Howe confer)

24 (Bench Conference Off the Record)

25 Mr. Brown: The State calls Dr. Janice Ross.

(TESTIMONY - DR. JANICE ROSS)

1 (After being duly sworn by the Clerk of Court, Janice
2 Ross testified as follows:)

3 Direct examination of Dr. Janice Ross by Mr. Brown

4 Q Good afternoon, Dr. Ross. Dr. Ross, would you state
5 your full name.

6 A Janice Edwards Ross.

7 Q Thank you. Dr. Ross, what is your occupation?

8 A I am a forensic pathologist and a hospital
9 pathologist.

10 Q And where are you employed?

11 A I'm in Newberry, South Carolina at Newberry Pathology
12 Associates.

13 Q Are you a duly licensed physician and surgeon?

14 A Yes.

15 Q And are you licensed in the State of South Carolina?

16 A Yes.

17 Q How long have you been licensed to practice in this
18 profession?

19 A Thirty-five years.

20 Q Are you presently engaged in this practice?

21 A Yes.

22 Q Where did you receive your training in pathology?

23 A Well, I went to the University of South Carolina for
24 my bachelors degree and got my M.D. from Upstate
25 Medical Center in Syracuse, New York and then did

(TESTIMONY - DR. JANICE ROSS)

1 further training in pathology in Syracuse, New York.

2 Q Is another name for what you do called a medical
3 examiner?

4 A A medical examiner is an appointee by a government,
5 whether it's county or state. It has to be a
6 physician and usually a forensic pathologist. Their
7 duty is to go to the scene of a crime and work up a
8 death investigation.

9 Q And just to be clear, is the work of a medical
10 examiner similar to that of a coroner in some states?

11 A Yes. South Carolina has a coroner system. A coroner
12 is a lay person, usually a non-M.D., not a physician,
13 sometimes they are, but has to be elected through the
14 political parties for a position, again, to go to a
15 scene of a crime or scene of a death and investigate
16 that death.

17 Q Do you specialize in any particular branch or field of
18 medicine?

19 A Yes. Forensic pathology.

20 Q And exactly what does pathology involve?

21 A Pathology is, the word means "study of disease," and
22 we learn to identify diseases and cancers, where we
23 are looking at tissues and diseases under a
24 microscope. We use a laboratory for blood work, et
25 cetera, to help diagnose diseases. We are also

(TESTIMONY - DR. JANICE ROSS)

1 trained to do an autopsy to find the cause of death.
2 A forensic pathologist, which I specialize in, the
3 word forensic means "legal" and so we use our
4 pathology knowledge on legal matters such as
5 homicides, suicides, accidents, a lot of natural
6 deaths and rape cases, that kind of thing.

7 Q And are you a member of any specialized medical or
8 scientific groups or associations?

9 A Yes. The College of American Pathologists and the
10 National Association of Medical Examiners are two.

11 Q And what do you have to do to become board certified?

12 A We have to take a test, a nationally given test, after
13 you have proved you have done specific training in
14 that area.

15 Q Are these extensive tests?

16 A Yes.

17 Q And this certification of The American Board of
18 Pathologists, that's on a National basis?

19 A Yes.

20 Q Doctor, how many autopsies have you performed?

21 A Over 6000.

22 Q You've been a pathologist how long?

23 A Thirty-five years.

24 Q And during your thirty-five years of experience in the
25 practice of pathology, have you had an occasion to

(TESTIMONY - DR. JANICE ROSS)

1 observe any cases that involved death from a gunshot
2 wound?

3 A Yes.

4 Q Have you ever testified in a Court of General Sessions
5 in the State of South Carolina?

6 A Yes.

7 Q Have you testified in that court as an expert in
8 pathology?

9 A Yes.

10 Mr. Brown: Your Honor, the State moves to have Dr.
11 Janice Ross declared an expert in the field of pathology,
12 forensic pathology.

13 The Court: Forensic pathology. Mr. Howe, any voir dire
14 or any objection, or Ms. Anderson?

15 Ms. Anderson: Without objection.

16 The Court: All right. Without objection. Ladies and
17 Gentlemen of the jury, normally a person is not allowed to
18 give opinion testimony. Usually when someone testifies,
19 they have to give testimony as to what they either saw,
20 heard, felt, something that they observed with their
21 senses. There is an exception, however, for people who
22 have or who are qualified because of education or
23 experience. They are permitted to give opinions in certain
24 areas that the court qualifies them in that way. In this
25 case, Dr. Ross, Ladies and Gentlemen, has been qualified or

(TESTIMONY - DR. JANICE ROSS)

1 stipulated to by the defense as an expert in the field of
2 forensic pathology, so she may give her opinion in that
3 area. Of course, that does not mean you have to accept her
4 opinion, but it is evidence for you to use in any way you
5 see fit and give it the appropriate weight and credibility
6 that you feel her opinion may deserve. You may continue,
7 Mr. Brown.

8 Mr. Brown: Thank you, Your Honor.

9 Q Dr. Ross, during the month of December, 2009, did you
10 have the occasion to perform any autopsies that month?

11 A Yes.

12 Q And did you perform an autopsy on Ms. Ernestine Brown
13 on the 11th of December, 2009?

14 A Yes. I did.

15 Q And even though she's from Lauren's County and you
16 work for Newberry Pathology, do you perform autopsies
17 on patients or victims from Lauren's County?

18 A Yes. Our group performs autopsies for and we
19 are authorized by coroners of the State. We do cover
20 probably twenty-five, twenty-six counties over the
21 State of South Carolina.

22 Q So, in order for you to perform an autopsy on Ms.
23 Ernestine Brown, the coroner for Laurens County had
24 to, allowed you to do that?

25 A Yes. He authorizes it. He calls, tells us the story

(TESTIMONY - DR. JANICE ROSS)

1 concerning the victim, and schedules a time with us
2 for the autopsy. The body is then brought to the
3 morgue at Newberry County Memorial Hospital for us to
4 perform the autopsy.

5 Q And who is the coroner of Laurens County that
6 authorized you to do that autopsy?

7 A Nick Nichols.

8 Q He was the coroner at that time?

9 A Yes.

10 Q Dr. Ross, on December 11, 2009, you performed an
11 autopsy on Ms. Ernestine Brown.

12 A Yes.

13 Q And was that the first time you saw Ms. Brown?

14 A Yes.

15 Q At that autopsy?

16 A Yes.

17 Q How long did that autopsy last?

18 A Approximately an hour-and-a-half.

19 Q And where did the autopsy take place?

20 A At, in the morgue at Newberry County Memorial
21 Hospital.

22 Q Is that where all the autopsies take place in
23 Newberry?

24 A Yes.

25 Q Based on that particular autopsy, within the

(TESTIMONY - DR. JANICE ROSS)

1 boundaries of reasonable medical certainty, have you
2 formed an expert opinion concerning the cause of death
3 of Ms. Ernestine Brown?

4 A Yes.

5 Q What is your opinion or what is that opinion?

6 A There were two gunshot wounds of the head and chest.

7 Q Now, with regard to the gunshot wound to the --now,
8 you said chest. Where, during your autopsy, did you
9 find that the bullet entered Ms. Ernestine Brown?

10 A This bullet went in, basically, in the left arm, near
11 the shoulder. It went from left to right and slightly
12 backward. It went through the arm and into the chest.
13 It went through the upper lobe of the left lung and it
14 lodged in the spinal canal of the chest.

15 Q Now, with that shot to the left shoulder, what would
16 have been the, what would that have caused?

17 A Going through the lung, as it did, caused a
18 hemorrhage. It also severed the spinal cord and that
19 would cause an interruption of electrical nerve
20 activity from the brain to the feet, basically, and
21 would have caused instant paralysis and the person
22 would drop on the floor.

23 Q So, if, in this case, if Ernestine Brown was standing
24 when she was shot in the shoulder and the bullet
25 entered her spinal cord, she would have fallen to the

(TESTIMONY - DR. JANICE ROSS)

1 ground or begun to fall to the ground.

2 A Yes. If she was standing, yes, she would fall to the
3 ground.

4 Q And with regard to the second gunshot, where did that,
5 where was that gunshot?

6 A There was a gunshot wound to the head. It went from
7 almost the top of the head, just to the left of
8 midline, it went straight down slightly to the back
9 and slightly to the right, so it went through the left
10 side of the brain and the bullet, itself, was found at
11 the base of the brain, well, in the bone at the base
12 of the brain.

13 Q So, during your autopsy, the bullet was actually still
14 within her, in her head?

15 A Yes.

16 Q And going back to the first gunshot, was that bullet
17 still in Ms. Ernestine Brown?

18 A Yes. It was in the spinal canal.

19 Q Now, with regard to those shots, can you make a
20 determination -- or what were those shots, were those
21 shots fatal?

22 A Yes. Each one, by themselves, would be fatal.

23 Q Dr. Ross, based on your experience and your expertise
24 in forensic pathology, if the victim was shot, with
25 either of those shots, how long would that victim, how

(TESTIMONY - DR. JANICE ROSS)

1 long would it take her to die?

2 A Just a few minutes, maybe up to five or six.

3 Q Based on your experience, outside of a miracle, would
4 you be able to revive her?

5 A If she were right there at the hospital, perhaps.

6 Q Dr. Ross, you mentioned that both bullets were
7 actually still, you found two bullets in the body of
8 Ms. Ernestine Brown.

9 A Yes.

10 Q During your autopsy, did you recover or remove those
11 bullets?

12 A We recovered both of them. Yes.

13 Q I'll show you what has been previously marked as
14 State's Exhibit No. 3. Would you take a look at that
15 and tell me, did you have the opportunity to review
16 that?

17 A Yes. These are the bullets removed from Ernestine
18 Brown at the time of autopsy. We take photographs of
19 them and then seal them in these little plastic bags
20 and sign them.

21 Q And is your signature on the plastic bag? If you need
22 to, we can open it up.

23 A It's on the label. Yes.

24 Q It is on the label?

25 A Yes.

(TESTIMONY - DR. JANICE ROSS)

1 Q Dr. Ross, what would you do -- first of all, can you
2 identify which bullet was found where?

3 A Yes. I can. The bullet there labeled 1 and 2, when
4 we have multiple gunshot wounds, we just number them
5 from top to bottom. It doesn't mean the order that
6 they came in, but what we termed bullet No. 1 was from
7 the head and that's labeled bullet No. 1. And the one
8 in the chest and the spinal cord area is what we
9 called bullet No. 2.

10 Q Are those bullets in substantially the same condition
11 as they were when you first removed them?

12 A Yes.

13 Mr. Brown: Beg the Court's indulgence.

14 The Court: Yes, sir.

15 Q Dr. Ross, with regard to the gunshot to Ms. Brown's
16 head, how, what were the measurements of that wound?

17 A The entrance wound in the skin was .4 inches in
18 diameter.

19 Q And it was how far -- where was it located, again?

20 A In the, close to the top of the head, to the left of
21 the midline.

22 Q And Dr. Ross, what is the measurement of the wound for
23 the second shot near her shoulder?

24 A It measured .38 inches.

25 Q And you testified today, based on your experience and

(TESTIMONY - DR. JANICE ROSS)

1 expertise, that these two gunshots, even taken
2 separately, would have been a fatal gunshot to
3 Ms. Ernestine Brown?

4 A Yes.

5 Q And these two gunshots were the cause of death of Ms.
6 Ernestine Brown?

7 A Yes.

8 Q And you performed this autopsy on December 11, 2009?

9 A Yes.

10 Q Dr. Ross, one final question. Based on the autopsy,
11 did you determine the range from which the gun would
12 have been held to fire the shots?

13 A No, I could not. The clothing on the shoulder, we
14 sent them to SLED, should have been taken to SLED for
15 testing to see if there was any evidence of gunpowder
16 or stippling and the wound in the head, the head hair
17 was quite thick and may have contained soot and so I
18 cannot tell range.

19 Q When you first saw Ms. Ernestine Brown, when she was
20 transported to Newberry, was it obvious that she had
21 been shot, that she had two gunshots?

22 A Well, if you look closely enough. She had clothing on
23 her and she had some blood dried on her face, but you
24 had to look for the gunshot wounds. Yes.

25 Q So, it was not immediately known that she had been

(TESTIMONY - DR. JANICE ROSS)

1 shot or had two bullet holes?

2 A No, sir.

3 Q Thank you.

4 Mr. Brown: Your Honor, I have no further questions.

5 The Court: Ms. Anderson?

6 Cross examination of Dr. Janice Ross by Ms. Anderson

7 Q Dr. Ross, if you would briefly look at the bullets.

8 (Hands bag to witness) You testified these are the two
9 bullets that you retrieved out of the body.

10 A Yes.

11 Q And those bullets are two different colors. Right?

12 A Yes.

13 Q One is blood colored and one is copper-colored?

14 A Yes.

15 Q One has a jacket and one does not have a jacket.

16 Correct?

17 A Correct.

18 Q And you mentioned about distance, you can't give a
19 classification of at what distance the bullets were
20 fired at. Correct?

21 A Correct.

22 Q And in your experience as a pathologist, you would
23 want to know that there had been soot on a gunshot
24 wound because that would help classify a distance,
25 potentially.

(TESTIMONY - DR. JANICE ROSS)

1 A That helps. Yes.

2 Q And that wasn't provided you in this case.

3 A Correct.

4 Ms. Anderson: One moment, Your Honor?

5 The Court: Yes, ma'am.

6 Ms. Anderson: I have no further questions.

7 The Court: Any redirect?

8 Mr. Brown: No questions.

9 The Court: All right. Dr. Ross, you may step down.

10 Any objection, Ms. Anderson, to excusing Dr. Ross from her
11 subpoena?

12 Ms. Anderson: No, Your Honor.

13 The Court: All right. You are free to go. Thank you
14 very much, ma'am. Mr. Brown, do you have another quick
15 witness at this point or should we go ahead and break for
16 lunch?

17 Mr. Brown: Your Honor, I think this would be a good
18 time to take a break.

19 The Court: All right. Ladies and Gentlemen of the
20 jury, we are going to go ahead and take our lunch break at
21 this point in time. It's about twenty minutes until one.
22 I'm going to ask that you be back in the jury room at about
23 1:45. Hopefully, about an hour should be sufficient time
24 to get something to eat. Again, if you go to lunch with
25 one of your fellow jurors or a friend or family member or

1 someone like that, don't discuss the case. You can't
2 discuss the case with anyone. I trust you will have a
3 pleasant lunch and I'll see you back here at about a
4 quarter to two in the jury room. Just go straight to the
5 jury room and I'll see you at 1:45. Thank you.

6 (Jury out at 12:39 p.m.)

7 The Court: All right. We'll be at recess until about
8 a quarter to two.

9 (Lunch Break)

10 The Court: The defendant is present with counsel. The
11 State is present. Anything before we bring the jury out,
12 Gentlemen, Ms. Anderson?

13 Mr. Hammack: Nothing from the State.

14 Ms. Anderson: No, sir.

15 The Court: Let's have the jury.

16 (Jury in at 1:55 p.m.)

17 The Court: The record should reflect that all jurors
18 are back with us. Ladies and Gentlemen of the jury, we are
19 resuming with the trial of this case. I hope y'all had a
20 pleasant lunch and a present break. At this point, Mr.
21 Hammack, call your next witness, please.

22 Mr. Hammack: Your Honor, the State would call Ila
23 Simmons.

24 (After being duly sworn by the Clerk of Court, Ila
25 Simmons testified as follows:)

(TESTIMONY - ILA SIMMONS)

1 Direct examination of Ila Simmons by Mr. Hammack

2 Q Would you please state your name for the record.

3 A My name is Ila Simmons.

4 Q By whom are you employed, Ms. Simmons?

5 A The South Carolina Law Enforcement Division in the
6 Forensic Laboratory Trace Evidence Department.

7 Q How long have you been there?

8 A Twelve years.

9 Q Describe to us what you do at SLED.

10 A We analyze gunshot residue, gunpowder residue. We
11 also perform fiber comparisons, paint comparisons, as
12 well as analyzing glass, arson samples, and explosives
13 samples.

14 Q And how long have you been doing this type work?

15 A Twelve years.

16 Q And what type of special training or study have you
17 done to qualify you for this position?

18 A I have a bachelors degree in science. After
19 completing that I came to SLED. For my first three
20 years at SLED, I worked with a court-qualified,
21 SLED-certified, trace evidence examiner. He taught me
22 how to collect and analyze trace evidence. I had to
23 take written and practical examinations and complete
24 them all to 100% efficiency. After that, I was
25 certified by SLED as a trace evidence examiner. I'm a

(TESTIMONY - ILA SIMMONS)

1 member of the Southern Association of Forensic
2 Science, the American Academy of Forensic Science and
3 I'm also a member of the F.B.I.s Gunshot Symposium
4 where they invite gunshot residue analysts from around
5 the world to come to Quantico and discuss the
6 standards and practices that are going to be put in
7 place for everyone to use when analyzing gunshot
8 residue.

9 Q Specifically on gunshot residue, how many tests have
10 you done?

11 A I've probably analyzed 50,000 gunshot residue samples.

12 Q How do you do that?

13 A We analyze gunshot residue by taking a standardized
14 kit that is submitted to SLED through different
15 agencies and we analyze them and look for the presence
16 of certain organic and inorganic metals.

17 Q How many times have you testified?

18 A Over 200 times.

19 Q Have you written any books or articles on the subject?

20 A No, sir. I haven't.

21 Q How many times have you testified in General Sessions
22 Court in the State of South Carolina?

23 A Probably about 75% of that was in General Sessions.

24 Mr. Hammack: Your Honor, at this time, I'd like to
25 introduce Ms. Simmons as an expert in the field of trace

(TESTIMONY - ILA SIMMONS)

1 evidence, specifically gunshot residue.

2 The Court: Any objection from the defense?

3 Ms. Anderson: No objection.

4 The Court: All right. Ladies and Gentlemen of the
5 jury, as I mentioned a moment ago when we were talking
6 about the doctor, usually a person can't give opinion
7 testimony or a witness has to testify, normally, about
8 things they have observed with one of their five senses.
9 An exception for this rule does exist for people who are
10 qualified as experts in a certain field due to education or
11 experience. In this case, the State and the defense have
12 stipulated that Ms. Simmons is an expert in the field of
13 gunshot residue. Therefore, she may give opinion testimony
14 in this area. Of course, you do not have to accept her
15 testimony, but it is evidence for you to weigh and use in
16 any way that you see fit. Mr. Hammack, please continue.

17 Mr. Hammack: Your Honor, may I approach the witness?

18 The Court: Yes, sir.

19 Q Take a look at what's been marked as State's exhibit
20 Nos. 4 and 5 for identification. Do you recognize
21 those?

22 A Yes, sir. I do.

23 Q What is that?

24 A State's exhibit No. 4 is a gunshot residue collection
25 kit, a standardized kit I mentioned earlier, collected

(TESTIMONY - ILA SIMMONS)

1 from Ernestine Brown. It is marked with my initials,
2 the date that the kit was opened for analysis as well
3 as a unique identification number and item number.

4 Q And what's the other item?

5 A State's exhibit No. 5 is a gunshot residue kit listed
6 as coming from Fred L. Madden and it is also marked
7 with the same specific markings.

8 Q Did you have an opportunity to examine those items?

9 A Yes, sir. I did.

10 Q When did that take place?

11 A I analyzed these in December of '09.

12 Q And where was that done?

13 A At the laboratory in Columbia at SLED.

14 Q How did you go about analyzing those items?

15 A We analyze them for the presence of inorganic metals,
16 that I discussed earlier. We look for lead, barium
17 and antimony and these three elements, in ratio to one
18 another, can help us determine whether or not someone
19 was in the presence of gunshot residue.

20 Q What types of instruments do you use to do this?

21 A We use an instrument called Inductively Coupled Plasma
22 Mass Spectrometer. It's basically a big bean counter.
23 It tells us how many particles of lead are present and
24 how many particles of barium and antimony are present
25 on the samples we are analyzing.

(TESTIMONY - ILA SIMMONS)

1 Q Did you reach any conclusions after analyzing those
2 items?

3 A Yes, sir. I did.

4 Q What were your conclusions as to the one on Ms. Brown?

5 A On Ms. Brown -- when a sample is collected on the
6 standardized kits, a sample is collected from the
7 right palm, a separate sample from the back of the
8 right hand, another sample from the left palm and a
9 sample from the back of the left hand and we found
10 that on the back of the right hand, gunshot residue
11 was not found on that area and on the palm of the left
12 hand, gunshot residue was also not found on that area.
13 However, on the back of the left hand, metals
14 associated with gunshot residue were found.

15 Q And as to the gunshot residue kit on Mr. Madden, what
16 did you find?

17 A Samples were collected from those same areas and no
18 gunshot residue was found on those areas.

19 Q Would it be unusual for a victim to have gunshot
20 residue?

21 A No. About sixty-five to seventy-five percent of
22 people who sustain a gunshot wound, if they are shot,
23 have gunshot residue on their hands, even if it isn't
24 suspected they fired a gun.

25 Q Would it be unusual for it to be on just one area?

(TESTIMONY - ILA SIMMONS)

1 A No, sir. It would not. Depending upon how the hands
2 are being held at the time of the discharge can
3 obscure gunshot residue from getting on other areas.

4 Q So, if there is something obstructing that part of the
5 hand, it wouldn't show up there?

6 A No, sir, because gunshot residue comes out of the gun
7 in a plume-shaped cloud. It comes out like a cone.
8 It's very light, microscopic material and if something
9 were blocking an area of the hand, it wouldn't get on
10 that hand. It wouldn't permeate through clothing or
11 any other objects. It's just too light to go through
12 things.

13 Q As far as Mr. Madden, you stated that there was no
14 gunshot residue?

15 A That's correct.

16 Q Would that be consistent with what you've seen with
17 the defendant's in the case?

18 Ms. Anderson: Objection.

19 The Court: What is the nature of your objection, Ms.
20 Anderson?

21 Ms. Anderson: Your Honor, could we approach?

22 (Bench conference off the record)

23 The Court: Please continue, Mr. Hammack.

24 Q What would destroy gunshot residue?

25 A Gunshot residue has a consistency of salt and so it's

(TESTIMONY - ILA SIMMONS)

1 very easily removed if someone gets gunshot residue on
2 their hands. If someone were to wash their hands, if
3 someone would begin sweating, wipe their hands on a
4 rag, put their hands in and out of clothing, these can
5 all remove gunshot residue.

6 Q What if someone took a bath?

7 A Yes. That would remove gunshot residue.

8 Q Did you test any other items?

9 A Yes, sir. I did.

10 Q What was that?

11 A I analyzed a vest for the presence of gunshot residue,
12 as well.

13 Q Did you find anything on that?

14 A No, sir.

15 Q You mentioned earlier about gunshot residue, the
16 consistency and the way it works, would -- excuse me.
17 You said, specifically, about taking a bath, what
18 about wind, strong wind. How -- are there other ways
19 that gunshot residue could be removed?

20 A Yes, sir. If someone were in a strong wind, that is
21 possible it could remove gunshot residue from the
22 hands.

23 Mr. Hammack: Nothing further, Your Honor.

24 The Court: Ms. Anderson?

25 Cross examination of Ila Simmons by Ms. Anderson

(TESTIMONY - ILA SIMMONS)

1 Q Ms. Simmons.

2 A Yes.

3 Q You just explained different ways that gunshot residue
4 could be removed. Touching different items, different
5 things that come into contact, those are also ways
6 that gunshot residue can be transferred.

7 A Yes, sir. Yes, ma'am.

8 Q And you analyzed front and back tests from the
9 victim's hands.

10 A That's correct.

11 Q And from the defendant's hands.

12 A Correct.

13 Q And from a vest, I believe.

14 A Yes.

15 Q And that was negative.

16 A Yes.

17 Q You performed a GRS test on that.

18 A Yes.

19 Q And that was the vest of the defendant. Correct?

20 A Yes.

21 Q And that was the only evidence you analyzed in this
22 case?

23 A Yes.

24 Q As far as trace evidence, that generally is just, it
25 refers to when different objects touch where a trace

(TESTIMONY - ILA SIMMONS)

1 could be left. Correct?

2 A That's one of them. Yes, ma'am.

3 Q And it's part of the reason why, in your laboratory,
4 as you explained earlier, you have analysis for paint
5 or for firearms or for fire. Different materials
6 leave a trace or DNA.

7 A It can. Yes, ma'am.

8 Q And your lab does analysis for all these. Correct?

9 A Our laboratory does. In my specific department, we
10 don't analyze DNA or firearms.

11 Q Okay. But they can be analyzed at SLED.

12 A Yes.

13 Q Okay. And as far as the items submitted to you, you
14 did not have any testing done on clothing from the
15 defendant other than the vest. Correct?

16 A That was all.

17 Q So, you didn't have testing done on clothing such as
18 socks, shoes, shirts, pants that may have been
19 submitted to SLED from the defendant?

20 A No, ma'am.

21 Q And you didn't do testing on any type of samples taken
22 from a Moped. Correct?

23 A No, ma'am.

24 Q Or any testing done from doorknobs that could have,
25 potentially, been touched?

(TESTIMONY - ILA SIMMONS)

1 A With things like doorknobs, we don't analyze for
2 secondary transfer. If someone were to fire a gun and
3 have gunshot residue on their hands and then touch
4 something, we don't analyze for secondary transfer.
5 Like if someone would go back behind me and take a
6 sample from this area right here after I touched it,
7 because we don't have any scientific validated studies
8 that tell us how much gunshot residue will transfer
9 and so we don't analyze for secondary transfer
10 possibilities.

11 Q Well, you don't analyze it, but none was submitted to
12 you to be analyzed.

13 A No, ma'am.

14 Q But you were given tests from a Moped to analyze?

15 A No, ma'am. No, ma'am. Not from a Moped.

16 Q You would agree that tests were submitted to SLED, but
17 you didn't analyze them?

18 A I did not receive anything from a Moped. No, ma'am.

19 Q And going through the different ways, as you testified
20 earlier, about how gunshot residue can be removed,
21 gunshot residue could likely still be retained on
22 someone after they have touched an object. Correct?

23 A Yes, ma'am.

24 Q After they have washed their hands? Correct?

25 A If their hands aren't washed well, yes, ma'am, it's a

(TESTIMONY - ILA SIMMONS)

1 possibility.

2 Q So, someone could take a shower and there could still
3 be gunshot residue that wasn't washed off every single
4 area and it could still be there?

5 A That is a possibility, but we've found through
6 testing, that if someone shoots a gun then washes
7 their hands, 98% of the time, they come up negative
8 after having shot a gun. If I take, we've taken
9 scientists from our laboratory, allowed them to shoot
10 a gun, allowed them to wash their hands. We know that
11 gunshot residue is present on their hands and then
12 take a GSR kit from the scientists in our laboratory
13 and 98% of the time, it comes back negative.

14 Q But it still could have come back on anything else the
15 alleged shooter touched or it could still be on the
16 shooter's hands even if he did wash them.

17 A That is a --

18 Q It could.

19 A --- remote possibility. Yes, ma'am.

20 Ms. Anderson: I have no more questions for
21 Ms. Simmons.

22 Mr. Hammack: A quick question, Your Honor.

23 The Court: Yes, sir.

24 Redirect examination of Ila Simmons by Mr. Hammack:

25 Q Could you analyze burned clothing?

(TESTIMONY - DEPUTY SCOTT FRANKLIN)

1 A No. There would have been no validity in analyzing
2 burned clothing, because the gunshot residue would
3 have burned up.

4 Mr. Hammack: Nothing further.

5 The Court: All right. Ms. Simmons, thank you very much
6 for coming. No objection to excusing Ms. Simmons,
7 Ms. Anderson?

8 Ms. Anderson: No, sir.

9 The Court: You're free to go. Thank you very much.
10 Call your next witness, please, Mr. Hammack.

11 Mr. Hammack: Yes, sir, Your Honor. The State would
12 call Deputy Franklin.

13 (After being duly sworn by the Clerk of Court, Scott
14 Franklin testified as follows:)

15 Direct examination of Scott Franklin by Mr. Hammack

16 Q Please state your full name for the record.

17 A Scott Franklin, Laurens Sheriff's office.

18 Q How long have you been employed there?

19 A Three years now.

20 Q Were you employed by the Sheriff's office back on
21 December 10, 2009?

22 A Yes, sir.

23 Q Were you dispatched to [REDACTED] Highway 308 here in
24 Laurens?

25 A Yes, sir.

(TESTIMONY - DEPUTY SCOTT FRANKLIN)

1 Q Is that in Lauren's County?

2 A Yes, sir. It is.

3 Q About what time were you dispatched out there?

4 A Approximately, ten, we were dispatched at -- sorry, at
5 11:15.

6 Q About what time did you arrive?

7 A I arrived on scene at 11:35.

8 Q Were you the first officer on the scene?

9 A Yes, sir.

10 Q Was anybody there when you got there?

11 A Yes, sir. An individual said to be the victim's
12 brother. I think have his name here. Oh, yeah, I do,
13 sorry, his name was Albert Brown.

14 Q Was EMS on scene at that point?

15 A Yes, sir.

16 Q What did you do?

17 A We were met at the scene by the supervisor with EMS
18 who stated to us they had a lady inside who was
19 unconscious and bleeding from the ear and so myself,
20 and Deputy Galarza, who arrived shortly behind me went
21 inside and did, in fact, see her laying on the floor
22 there, bleeding from her ear and they had told us that
23 she had since deceased by the time that we had got
24 there, so at that time we cleared back and called for
25 investigations.

(TESTIMONY - DEPUTY SCOTT FRANKLIN)

1 Mr. Hammack: Nothing further.

2 The Court: Ms. Anderson?

3 Ms. Anderson: Just briefly.

4 Cross examination of Scott Franklin by Ms. Anderson

5 Q You testified that by the time you arrived there, EMS
6 had been there?

7 A Yes, ma'am.

8 Q So, let me make sure I have the count right. There
9 were four members of the Sandy Springs Fire Department
10 there, in fact?

11 A I mean, there were several.

12 Q Several.

13 A Several. Yeah.

14 Q Would you agree four or around there?

15 A Yes. I have four noted. Yes.

16 Q And three members of EMS. Correct?

17 A That's right.

18 Q And the victim's family.

19 A Yes. Albert Brown was there, also. Yes.

20 Q And they were all on scene at the mobile home.

21 A Yes.

22 Q And when you went into the house, what door did you go
23 through?

24 A The front door.

25 Q Okay. And you would agree the T.V. was on right there

(TESTIMONY - DEPUTY SCOTT FRANKLIN)

1 at the front door. Correct?

2 A I don't recall the T.V. being on when I walked in
3 through the front door.

4 Q You don't recall? A part of the reason as a first
5 responder, you are there to take, basically, take note
6 of anything of significance when you walk in?

7 A The television wouldn't be significant.

8 Q It wasn't to you at the time to recall if it was on or
9 not?

10 A Well, it wasn't on as far as I recall.

11 Q As far as you recall, it was not on?

12 A No. I don't remember seeing a television.

13 Ms. Anderson: Beg the Court's indulgence just one
14 moment.

15 The Court: Quite all right.

16 Q Officer Franklin, I want to show you what's now been
17 marked as Defendant's Exhibit No. 3, for
18 identification. Do you recognize that picture?

19 A I do.

20 Q And this is a picture of the residence where you
21 entered on December 10, 2009?

22 A Yes.

23 Q And it appears the T.V. is on in that picture.
24 Correct?

25 A Yes.

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Ms. Anderson: Nothing further, Your Honor.

2 Mr. Hammack: Nothing more from the State.

3 The Court: Thank you very much. Officer, you are free
4 to go.

5 Deputy Franklin: Thank you, sir.

6 The Court: Call your next witness, please.

7 Mr. Hammack: Lieutenant Jawarski Shelton.

8 (After being duly sworn by the Clerk of Court,
9 Jawarski Shelton testified as follows:)

10 Direct examination of Jawarski Shelton by Mr. Hammack

11 Q Please state your full name for the record.

12 A Lieutenant Jawarski Shelton.

13 Q By whom are you employed, Lieutenant Shelton?

14 A Laurens County Sheriff's office.

15 Q How long have you worked there?

16 A Almost twelve years.

17 Q What are your duties with the Sheriff's office?

18 A I work in the Criminal Investigations Division.

19 Q How long have you been doing that?

20 A Eight-and-a-half, nine years.

21 Q Back on December 10, 2009, did you work in
22 investigations?

23 A Yes, sir.

24 Q Were you a lieutenant in investigations then?

25 A Yes, sir.

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Q Were you called out to the scene of a shooting up on
2 Highway 308 near Highway 49?

3 A Yes, sir. I was.

4 Q About what time was that?

5 A It was around 11:00, I believe it was, when Lieutenant
6 Richards notified me that they had a lady that was
7 unconscious and that I needed to go ahead and be in
8 route to that scene.

9 Q About what time did you get there?

10 A It was shortly after that, because I was at the office
11 that morning and myself and Lieutenant Plyer got into
12 my vehicle and went that way.

13 Q When you arrived, what did you find?

14 A When I arrived, Deputy Franklin, Deputy Galarza and
15 EMS and Mister Brown was on scene and EMS personnel
16 was on scene and also, the deceased was inside the
17 residence, so I then took over the scene, me being the
18 investigator of that area.

19 Q As a part of your investigation, kind of tell me what
20 you did.

21 A While in route to the scene, I was called and made
22 aware that the deceased had then died so I then called
23 and notified my supervisor that she was deceased and
24 went ahead and made calls to get everything in order
25 as far as notifying SLED's crime scene to go ahead and

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 come and process the scene. Also, to go ahead and get
2 search warrants lined up for that property to get the
3 crime scene processed and also to get everybody in
4 line as far as what needed to be done and when I
5 arrived on scene to see what I had, as far as what
6 needed to be done.

7 Q And who was your supervisor then? Do you recall?

8 A Captain Williams.

9 Q Captain Stephane Williams?

10 A Captain Stephane Williams.

11 Q All right. And once you got everything lined up and
12 you got started, what did you do?

13 A When I arrived on scene, I went in and looked at the
14 situation as far as what was inside the house and just
15 did a preliminary look inside and stepped back out
16 until we got everything in line as far as SLED
17 notified and got the search warrants and then got the
18 coroner notified.

19 Q Did you take any photographs while you were at the
20 scene?

21 A I took a very few. A few, briefly, outside of the
22 residence and I think I may have took a couple of the
23 inside, but that was it.

24 Q I'll show you what's been marked as State's exhibits
25 Nos. 6 and 7 and 8. Would you take a look at those.

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(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Does that appear to be the photographs?

2 A Yes, sir.

3 Q Does that appear to be the crime scene as you saw it
4 that day?

5 A Yes, sir. Just basic preliminary photographs of what
6 I had.

7 Q Let me ask you, specifically, about State's No. 6.
8 What is that?

9 A That's the front of the house as it was when we got
10 there with the house number on the front and the front
11 porch.

12 Q Take a look at State's No. 7. What does that show?

13 A That's the living room, actually facing out the front
14 door.

15 Q And State's No. 8, what does that show?

16 A That's in the living room looking back towards the
17 hall, towards the bedroom door, where the bedroom door
18 is on the left side, the hall closet straight forward.

19 Q I want to ask you, you stated earlier, No. 7 is the
20 front door, No. 8 would be back towards the bedroom.
21 Is that correct? (Mr. Hammack publishes photographs on
22 large screen) Where was the victim found?

23 A In that room right there.

24 (Indicating on large screen)

25 Q So, that's -- and where is that in reference to the

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 front door?

2 A If you -- (indicating on large screen) right there.
3 In that room right there, right behind that door.

4 Q Okay. When you arrived in the residence, where was
5 the victim laying?

6 A She was on the bedroom floor.

7 Q Close to the door, back over towards the middle,
8 where?

9 A She was -- they had actually pulled her back away from
10 the door, but still at the doorway to where they could
11 get in and actually work on her and where they could
12 get inside the door.

13 Q Let me show you what's been marked as State's Exhibit
14 No. 5. Do you recognize that?

15 A Yes, sir. That's a GSR collection kit.

16 Q Did you ever take custody of that?

17 A Yes, sir.

18 Q When was that?

19 A December 10, 2009 at 7:11.

20 Q What did you do with it?

21 A Placed it into evidence.

22 Q All right. After it was placed into evidence, did you
23 have an opportunity to encounter that again?

24 A No, sir.

25 Q Do you recall who took it to the State Law Enforcement

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Division for testing?

2 A I would have to look at the chain of custody. I may
3 have. That may have been some of the stuff I took to
4 SLED. I took some things down to SLED on the next
5 day.

6 Mr. Hammack: Your Honor, may I approach the witness?

7 The Court: Yes, sir.

8 Q What does that appear to be?

9 A It's stuff that was taken to SLED.

10 Q What's listed on there as having been taken?

11 A GSR kit from Fred Madden, some shoes, some socks,
12 pants, shirt from Fred.

13 Q And who took that to SLED?

14 A I did.

15 Q So, you would agree that you delivered that to SLED
16 for testing?

17 A Yes, sir.

18 Q Okay. Let me ask you one more question about this bag
19 before I put it up. Based on what you see on there,
20 who actually took the GSR kit?

21 A Lieutenant Wilkie.

22 Q And he gave it to you?

23 A Correct.

24 Q Okay. The clothing that was taken to SLED, was that
25 clothing that Mr. Madden was wearing when he was

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 arrested?

2 A That's correct.

3 Q To the best of your knowledge, is that the clothing
4 that he was wearing when he allegedly committed this
5 crime?

6 Mr. Howe: Objection, Your Honor, unless this witness
7 has actual knowledge of those events, I'm going to object
8 to his testifying.

9 The Court: Can I hear from you on that? Withdraw?

10 Mr. Hammack: Yes, sir.

11 The Court: All right.

12 Q Let me ask you about a different date, at this point.
13 Did you have an opportunity again, or an opportunity
14 to speak with Mr. Madden?

15 A Yes, sir.

16 Q Take a look at what's been marked as State's Exhibit
17 No. 2. What is that?

18 Mr. Howe: Subject to objection.

19 The Court: This is concerning the earlier matter that
20 we took up yesterday?

21 Mr. Howe: Yes, sir.

22 The Court: All right. Subject to previous ruling,
23 then.

24 A A statement given by Mr. Madden on the 15th of
25 December.

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Q Were you present when that statement was given?

2 A Yes, sir.

3 Q How do you know that?

4 A I notarized it and witnessed it.

5 Q Take a look at what's been marked as State's Exhibit
6 No. 1. Do you recognize that document?

7 A Yes, sir. It's an advisement of his rights.

8 Q What does that mean?

9 A He was given his Miranda rights and he was advised of
10 his rights as being a suspect in a case as he was
11 arrested and he was already under arrest because he
12 was taken into custody on the 10th and he was advised
13 of his rights on this day and he signed and waived his
14 rights.

15 Q Who advised him of his rights?

16 A I did.

17 Q About what time was that?

18 A It was given to him at 10:51 a.m.

19 Q And the rights you advised him, what were they?

20 A "Before we ask you any questions, you must understand
21 your rights. You have the right to remain silent.
22 Anything you say can be used against you in court. You
23 have a right to talk to a lawyer for advice before we
24 ask you any questions and have him/her with you during
25 questioning. If you have no money to pay a lawyer's

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

- 1 fee, the court will appoint one to represent you
2 without cost if you wish. If you decide not to answer
3 questions now without a lawyer, you still have the
4 right to stop answering questions at any time. You
5 also have the right to stop answering at any time
6 until you talk to a lawyer. Please initial your
7 response. Do you understand these rights that I've
8 explained to you." You have a yes or no box and it was
9 checked "yes". "Do you want a lawyer, yes or no." It
10 was checked, "no". "Do you want to answer questions
11 now," with a yes or no box. It was checked "no". Then
12 it says at the bottom, "Waiver of your rights."
- 13 Q Hold on. "Do you want to answer questions now." How
14 was it checked?
- 15 A Yes.
- 16 Q All right. And did you witness Mr. Madden sign this
17 form?
- 18 A Yes, sir.
- 19 Q You were present when he signed it?
- 20 A Yes, sir.
- 21 Q And you read those to him, specifically?
- 22 A Yes, sir.
- 23 Q About what time was that form completed?
- 24 A 11:00 a.m.
- 25 Q All right. Based on that form and after the Miranda

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 warning, did he give that statement?

2 A Yes, sir.

3 Q Do you recall who he gave the statement to?

4 A Myself, Lieutenant Blackmon, Captain Williams and
5 Lieutenant Burns was in the room at that time.

6 Q All right.

7 Mr. Hammack: Nothing further at this point.

8 The Court: Cross?

9 Mr. Howe: Could I have just a moment.

10 The Court: Yes, sir.

11 Cross examination of Jawarski Shelton by Mr. Howe

12 Q Officer Shelton, or it's Lieutenant, isn't it?

13 A Yes, sir.

14 Q Lieutenant, as you said, you were the lead
15 investigator on this case and so it's part of your job
16 to assign, I guess to tell everybody else and
17 coordinate what folks were doing on the case. Is that
18 right?

19 A Yes, sir. We try to split up what we do and help each
20 other.

21 Q And in doing that, you probably want to find out what
22 happened as far as who had been at the location before
23 you got there. Right?

24 A At which?

25 Q Who had actually gone in the home and the way the

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 First Responders and EMS and all that. You'd want to
2 know that. Wouldn't you?

3 A That's actually listed in the report, sir.

4 Q My question was, is that something you'd want to know.

5 A Yes, sir.

6 Q Okay. Thank you for your answer. Now, and you
7 indicated that you had learned that Ms. Brown's body
8 had been moved, slightly. Is that right?

9 A Yes, sir.

10 Q All right. And you learned that from whom?

11 A That was brought to my attention by Deputy Franklin
12 and EMS when I was talking to them on scene.

13 Q Okay. And you also said that you came into the home
14 and you looked around, did a preliminary look, and
15 then stepped back out. Right?

16 A That's correct.

17 Q Okay. And we had the photographs up there showing the
18 living room area. Right?

19 A Yes, sir.

20 Q And in the living room there was, in fact, a
21 television. Right?

22 A Yes, sir.

23 Q Okay. And this has been marked just as Defendant's
24 Exhibit No. 3, for identification, but I'll ask you,
25 did you take that photograph or would that have been

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 taken by SLED agent Skipper, I mean, Wallace?

2 A I can't remember. I'd have to look at the photos I
3 took.

4 Q But you're familiar with that photograph. Right?

5 A Yes, sir. I've seen the photographs.

6 Mr. Howe: And Your Honor, I think by agreement, that
7 would actually be in evidence and these are some that we
8 were going to have the court reporter mark and we're moving
9 along pretty good and so we haven't had to do it yet.

10 The Court: Very good.

11 Mr. Howe: I'd ask that that be introduced into
12 evidence so I can refer to it.

13 Mr. Brown: No objection.

14 The Court: Okay. Without objection from the State, it
15 will be in evidence as...

16 Court Reporter: Defendant's No. 3.

17 The Court: Three. Defendant's No. 3 in evidence,
18 without objection.

19 (Whereupon, a 4x6 photograph is entered into evidence
20 as Defense Exhibit No. 3, without objection.)

21 Q And clearly, that television was on. Correct?

22 A Correct.

23 Q All right. And I'm sure, as the lead investigator in
24 the case, you would have found out that if somebody
25 had come in and cut the television on, like one of the

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 people that got there before you, you would have
2 learned that. That would have been important to know.
3 Correct?

4 A Correct.

5 Q So, and you didn't learn, nobody told you, "Well,
6 yeah, while I was over here, I decided to watch
7 television." They didn't tell you that, did they?

8 A No, sir.

9 Q So, you would agree that when you got there, the
10 television was on.

11 A Correct.

12 Q All right. And as far as you know, that was the
13 situation from the point in time that anybody that you
14 know of that was a witness in this case and entered
15 that home, that the television was on.

16 A Correct.

17 Q Thank you. Now, the, and you did the gunshot residue
18 kit and I believe you've also indicated you took that
19 or had somebody take it and it doesn't really matter,
20 it got taken to SLED. Right?

21 A I took it according to the ---

22 Q Okay.

23 A --- chain of custody.

24 Q All right. You took it. And that was what the
25 witness, SLED agent Simmons, who testified a minute

TRANSCRIPT OF TRIAL OF FRED MADDEN FOR SCCID

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 ago, that's what she did, the gunshot residue tests.

2 Correct?

3 A Yes, sir.

4 Q Okay. You also took, I believe, at the same time,
5 shoes, socks, pants, clothing that was my client, Fred
6 Madden's clothing. Correct?

7 A Yes, sir.

8 Q And also, is it a fair statement that a lot of items
9 were either photographed at that home or other items
10 of clothing, et cetera, were taken to SLED for
11 analysis?

12 A Yes, sir. There was stuff taken and photographed and
13 taken.

14 Q And I know we looked at that and there's some kind of
15 inventory of it, but included in that was some of
16 Ms. Brown's clothing. Correct?

17 A Yes, sir.

18 Q Okay. Included in all that was clothing that was
19 taken from Easy Road where Fred Madden had been.
20 Correct?

21 A I'm not sure.

22 Q You're not sure if any of that was taken?

23 A I'd have to look.

24 Q Okay.

25 A I'd have to look at what was taken.

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 Q All right. I'll -- maybe we'll get to that. I'll move
2 on to something else. We may come back to that. You
3 called in the SLED crime scene person and I believe
4 that's SLED agent, I think she went by Skipper then
5 and her name may be Wallace now. Right?

6 A I still say Skipper.

7 Q Skipper. Let's go with Skipper. Okay? You were there
8 at least part of the time when SLED agent Skipper was
9 at the home on 308?

10 A I was there the entire time.

11 Q The entire time. Okay. Of course, one thing that
12 y'all try to find, any fingerprints, DNA, anything to
13 indicate who might have been present at different
14 times. Right?

15 A Yes, sir.

16 Q Okay. And y'all also would have been looking for a
17 gun. Correct?

18 A That's correct.

19 Q All right. And in doing all this search, isn't it
20 true, among the things that were found there in the
21 home were items of clothing that belonged to Fred
22 Madden, in the home.

23 A Yes. There were some items that belonged to Mr.
24 Madden.

25 Q As well as medication that belonged to Fred Madden,

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 that was in the home.

2 A Yes, sir.

3 Q In fact, there are photographs of that and we'll
4 probably go into them.

5 Mr. Howe: Judge, we'll probably have to take a break
6 and get some of this in.

7 Q You would agree that was done as well. Is that right?

8 A Yes, sir.

9 Q You know, that would at least indicate to you that, at
10 some point in time, Fred Madden had been living there,
11 had stayed there and that's what that would indicate
12 to you, very clearly. Wouldn't it?

13 A I knew he had lived there at some time.

14 Q Okay. And, now, it's true that y'all never found a gun
15 anywhere. Correct?

16 A Correct.

17 Q And isn't it true that y'all searched for a gun.

18 A Correct.

19 Q In fact, I would say, I would ask you, expect you to
20 say, isn't it true y'all searched for a gun all over
21 that house and all over the premises, the land.

22 A Yes, sir.

23 Q And you being the lead investigator, you would have
24 been, I guess, directing various people to conduct
25 that search.

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 A Yes, sir.

2 Q Okay. Who did you have conduct the search to look for
3 a gun?

4 A That was numerous officers that was on scene and --
5 excuse me. Numerous officers and investigators that
6 was out there and the sheriff and other people that
7 were there, we even had officers ---

8 Q You had the Sheriff out there helping you look for it,
9 too?

10 A Yes, sir.

11 Q Okay. All right. So, the sheriff and a lot of
12 officers and folk like that were out looking for the
13 gun.

14 A Yes, sir. We were all trying to find that gun, to see
15 if it was on scene.

16 Q Okay. And did you also have those people, including
17 the sheriff or whomever you used, to search for the
18 gun along the road on Highway 308?

19 Q Yes, sir.

20 Q And could you describe, then, the, where all the
21 search took place on 308.

22 A Down the side of the road, down the creeks, pretty
23 much all the side roads and stuff like that.

24 Q You also searched for the gun at the home on Easy
25 Road, because y'all obtained a search warrant. Isn't

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 that true?

2 A That's correct.

3 Q In fact, as I understand it, the search warrants
4 included the, you got a search warrant for the home
5 where this, you know, on 308. Right?

6 A Yes, sir.

7 Q You got a search warrant for the Easy Road address.

8 A Yes, sir.

9 Q All right. You got a search warrant to take
10 possession of the Moped.

11 A Yes, sir.

12 Q In fact, y'all take it and we'll go into that, y'all
13 took some photographs of the Moped and let SLED agent
14 Skipper and whoever else needed to look at it to see
15 if there was any, any, whether it be gunshot residue,
16 blood, anything on that Moped and y'all found nothing.
17 Correct?

18 A Yes, sir. I can't remember what she found on it
19 without looking at her notes.

20 Q Well, I would imagine as the lead investigator, if
21 something significant had been found on the Moped, you
22 would probably remember that. Wouldn't you?

23 A Yes, sir. But I'm not looking at her notes to see ---

24 Q I understand that. I'm with you on that, but I mean,
25 again, she'll talk later on, I'm sure, but you don't

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

1 remember anything as the lead investigator, any blood
2 or anything like that on the Moped, on any clothes
3 that you recovered of Fred Madden's, on anything on
4 Easy Road, anything on the doorknobs of the home, or
5 anything of that nature.

6 A That's correct.

7 Q All right. Now, you also would have attempted to, as
8 lead investigator, to canvas the neighborhood as they
9 call it, that sounds like police talk, but whatever it
10 is, to go around and ask people in the neighborhood if
11 they saw or heard anything. Correct?

12 A Yes, sir.

13 Q And as far as hearing any gunshots or hearing any
14 screaming or hollering or anything, there was no
15 information on that. Is that right?

16 A No, sir. Nobody heard gunshots.

17 Q Okay. And you didn't talk to any witness that said
18 that they saw Fred Madden with a gun. Correct?

19 A Nobody saw him with a gun.

20 Q Okay. Now...

21 Mr. Howe: Judge, if I could have just one moment.

22 The Court: Yes, sir.

23 Mr. Howe: I believe that's all I have for this witness
24 at this time, Judge.

25 The Court: Any redirect?

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 Mr. Hammack: Briefly.

2 Redirect examination of Jawarski Shelton by Mr. Hammack

3 Q Lieutenant Shelton, how far is it from the location
4 out on 308 to Easy Road?

5 A Several miles, maybe five or six miles. Maybe more.

6 Q And y'all searched up and down 308?

7 A Yes, sir.

8 Q Are you aware of the route that Mr. Madden took?

9 A No, sir.

10 Q But you searched the suspected routes.

11 A Yes, sir. We searched down 308, basically 308, where
12 we knew the victim's brother had seen him at on 308.

13 Mr. Hammack: Nothing further, Your Honor.

14 The Court: Thank you, sir. You can step down. Mr.
15 Hammack, call your next witness, please.

16 Mr. Hammack: Stephane Williams

17 (After being duly sworn by the Clerk of Court,
18 Stephane Williams testified as follows:)

19 Direct examination of Stephane Williams by Mr. Hammack

20 Q Please state your full name for the record.

21 A Frederick Stephane Williams.

22 Q Captain Williams, by whom are you employed?

23 A The Laurens County Sheriff's office.

24 Q How long have you been working there?

25 A I've been with the Sheriff's office nearly 18 years,

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 total years, about 22 1/2 in law enforcement.

2 Q What do you do with the Sheriff's office?

3 A I'm a captain of the investigative division.

4 Q How long have you been a captain?

5 A About ten years.

6 Q Back on December 10, 2009, were you captain of the
7 investigative division?

8 A Yes, sir. I was.

9 Q Are you aware of the incident that took place up on
10 308 near 49 ---

11 A Yes, sir.

12 Q --- involving Mr. Madden?

13 A Yes, sir.

14 Q You were the captain of investigations when that
15 occurred?

16 A Yes, sir. That's right.

17 Q Do you know Mr. Madden?

18 A Yes, sir. I do.

19 Q Did you have the opportunity to ever question
20 Mr. Madden?

21 A I did.

22 Q Do you know when that was?

23 A I talked to Fred Madden on two occasions. One time on
24 December the 10th and one time on December the ---
25 Mr. Howe: Objection, Your Honor. Take up a matter?

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 (Bench Conference off the record)

2 Q On December 10th, did you tell Mr. Madden to get in
3 touch with you if he wanted to speak with you?

4 A Yes, sir.

5 Mr. Howe: I have an objection, Judge.

6 The Court: Subject to my previous ruling. Yes. The
7 record is protected and we will address that later. Go
8 ahead.

9 Q Take a look at State's Exhibit No. 1. What is that?

10 A This is a Advisement of Rights Form.

11 Q When was that filled out?

12 A On December 15, 2009.

13 Q Did you sign that form?

14 A Yes, sir. I did.

15 Q Were you present when the Advisement of Rights was
16 given?

17 A Yes, sir. That's correct.

18 Q Do you know who gave that Advisement of Rights?

19 A Lieutenant Shelton.

20 Q After the Advisement of Rights, did you speak with
21 Mr. Madden?

22 A I did.

23 Q As a result of your discussion with Mr. Madden, was a
24 written statement ever produced?

25 A Yes, sir.

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

- 1 Q Take a look at what's been marked as State's Exhibit
2 No. 2.
- 3 A Yes, sir.
- 4 Q Tell us what that is.
- 5 A This is a Voluntary Statement Form. This is a
6 Voluntary Statement Form that was actually typed by
7 Lieutenant Ben Blackmon, an investigator with the
8 Lauren's County Sheriff's office. This was typed at
9 the request of Fred Madden.
- 10 Q Were you present when it was typed?
- 11 A I was present. That's right.
- 12 Q You witnessed it being typed?
- 13 A I did. I witnessed it being typed and I also
14 witnessed it after the signature of Fred Madden.
- 15 Q So, you signed on there?
- 16 A I did. I also signed as a witness.
- 17 Q You saw Mr. Madden sign it?
- 18 A I did.
- 19 Q Before the written statement was produced, did you
20 have any opportunity to question him about the case?
- 21 A I did. Actually, I had a chance to talk to Fred
22 Madden before the statement was actually produced.
- 23 Q Let me ask you this: where did this take place?
- 24 A It took place at the Sheriff's office, actually in my
25 office.

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 Q About how big was your office?

2 A Maybe 18 by 22 square footage.

3 Q Do you recall who was present when the statement was
4 taken?

5 A Yes, sir.

6 Q Okay. Who was present?

7 A Lieutenant Shelton, Lieutenant Blackmon, Lieutenant
8 Burns and myself.

9 Q All right. About how long did you have Mr. Madden in
10 there talking to him?

11 A Probably a couple of hours.

12 Q Did he ever ask for any breaks?

13 A Not that I remember.

14 Q Ask for anything to drink ---

15 A I'm sure there was some water provided. I'm sure
16 there was no request for any meal or anything to eat,
17 but I'm sure there was water provided.

18 Q Did you ever threaten Mr. Madden or promise him
19 anything in return for his statement?

20 A No, sir. I didn't.

21 Q You stated you talked to him briefly before the
22 statement was typed up.

23 A I did.

24 Q What did he tell you?

25 A Fred told me that -- I wanted to, the best I could, I

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 wanted to know everything that Fred Madden knew about
2 the death of Ernestine Brown. So, I asked him to tell
3 me about it and he said that him and Ernestine was
4 having some problems.

5 Mr. Howe: Judge, I'm going to object. That's not even
6 in response to the question. The question was what he told
7 Fred Madden.

8 The Court: Sustained. Why don't you narrow the scope
9 of the question just a little bit, Mr. Hammack.

10 Q Specifically, when you spoke with Mr. Madden, did he
11 speak to you in reference to that incident that
12 occurred up on 308 on December 10, 2009?

13 A He did.

14 Q What did he tell you occurred that day?

15 A He said that he arrived at the residence of Ernestine
16 Brown. At that time he wasn't living there. He said
17 that when he arrived, he arrived on a Moped. He said
18 when he came to the front door, the door was open and
19 the storm door was unlocked. He said he opened the
20 door and as he was entering the residence, he called
21 for Ernestine. He stated that he never got an answer
22 and so he went to the refrigerator and got a,
23 something to drink. I'm sure he said water to drink.
24 After he got something to drink, he stated he went
25 inside to Ernestine's bedroom and when he got inside

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 the bedroom, he noticed that she was laying on the
2 floor with her eyes open and blood coming from her
3 head. He said that he could smell gunpowder and he
4 said that he left because he felt at that time that he
5 would be a suspect. And so I asked him, "Well, where
6 did you go?" And he said he got back on his Moped and
7 just as he was leaving, he met Ernestine's brother,
8 Bruce, traveling in the direction to Ernestine's,
9 traveling in the direction to Ernestine's residence.
10 And so he said he didn't stop. He continued on and
11 went to a gas station and he said he got to an Exxon
12 gas station and he bought some gas for his Moped and
13 he bought cigarettes. He said after that, he said he
14 went to the residence where he was staying at, which
15 is a residence, I think, is on Easy Road. It's a
16 residence that he was living at the time with Mack
17 Irby. He said he took a shower, he -- the clothes
18 that he had on, he said he felt that the clothes would
19 have gunpowder on them and so he said he took those
20 clothes and he burned those clothes and he said he
21 burned them because he felt that he would be a suspect
22 for the death of Ernestine.

23 Q Did he ever explain to you why he wasn't living at the
24 home?

25 A He did.

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 Q What did he tell you about that?

2 A He said he was evicted from the residence, that he had
3 a relationship with Ernestine and, at some point,
4 there were some problems with the relationship and he
5 was evicted from the residence.

6 Q Okay. And you were present when Mr. Madden gave that
7 statement, the written statement?

8 A I was present the entire time during the -- what he
9 told me. I was also present when the statement was
10 produced. I was also present when Fred Madden signed
11 the statement and I also witnessed the statement by
12 way of my signature acknowledging the fact that I was
13 acknowledging his as well.

14 Q Did Mr. Madden read the statement or have it read to
15 him before he signed it?

16 A The statement was read to him. He repeated exactly
17 what he told me, to Lieutenant Blackmon as Lieutenant
18 Blackmon was preparing the statement by way of typing
19 it. It was read to him. He had the opportunity to
20 get a copy of it, but I can't remember if he actually
21 got a copy of it.

22 Mr. Hammack: Nothing further at this point.

23 The Court: Mr. Howe?

24 Cross examination of Stephane Williams by Mr. Howe

25 Q Captain Williams, now you told part of what Fred

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 Madden told you about the eviction thing. He also
2 told you that, that was something that he and
3 Ernestine had decided to do to work toward getting
4 Keila Brown out of the house. Isn't that true?

5 A Yes, sir.

6 Q Okay.

7 A Yes, sir.

8 Q And so, when he was talking to you about the eviction,
9 he didn't give quite the whole picture of what was
10 going on, what he told you. Right?

11 A He said that he was being evicted from the residence
12 and he said that Ernestine had told him that she was
13 having a, she was going to be receiving a settlement
14 and at that time, Keila Brown, Ernestine's daughter,
15 was also living at the residence and she did,
16 according to Fred, she, that Ernestine told him that
17 as soon as she get a settlement that she was also
18 going to find a place and help Keila also move from
19 the residence and she would bring Fred Madden back
20 with her.

21 Q Okay. So, it was a little more to it than what you
22 were asked just a moment ago.

23 A That's -- yes, sir. That's everything he told me in
24 regards to the eviction.

25 Q Thank you. Now, also, you are supervisor over

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 Lieutenant Shelton and Investigator Blackmon and all
2 those. Is that correct?

3 A Yes, sir. That's correct.

4 Q Okay. Now, the Statement that was obtained, the goal
5 is to get everything as accurate as possible.
6 Correct?

7 A The goal is always, with any investigation, to make it
8 as accurate as possible. That's correct.

9 Q All right. And I guess the best way for anybody to
10 see exactly what was said and in what context and all
11 the conversation that you had with Fred before the
12 statement was typed by Blackmon, the best way to do
13 that is if it were videotaped. That way the jury and
14 everybody could see it. Right?

15 A Well, the Statement was the exact words that ---

16 Q Now, if you can answer my question, first. Wouldn't
17 that be the best way to do it? Yes or no.

18 A That's another way of obtaining statements from ---

19 Q Well, for the jury to see what's going on, wouldn't
20 that be the best way to do it, to videotape it?

21 A I -- I mean, that's another way of recording it.
22 Video is another way of recording what somebody said.

23 Q So, I guess I'm not going to get you to admit that
24 actually having it on camera where you can see it,
25 rather than you coming in here and relating how it

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 happened, I'm not going to get you to admit that would
2 be the best way for the jury to see it.

3 A That's another way and that's ---

4 Q Okay. I've got it.

5 A That's good if ---

6 Q I've got it. I understand where you're coming from.
7 Thank you. Now, let me ask you this: When you talked
8 with Fred before this started, were other people in
9 the room?

10 A I don't know exactly what you're asking.

11 Q When you talked with Fred before y'all started taking
12 it down and typing it up, were all these other people
13 in the room?

14 A Yes, sir.

15 Q Who was in the room?

16 A Lieutenant Shelton, Lieutenant Blackmon and Lieutenant
17 Burns.

18 Q Okay. And Mr. Hammack asked you about the, I believe
19 he asked you about the Advisement of Rights Form and
20 the Waiver of Rights. You didn't do that, but Shelton
21 gave him that. Is that right?

22 A Right.

23 Q Were you there when he did it?

24 A I was there.

25 Q Okay. And what I've been handed, and I don't think

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 it's been marked, but I'll refer to it here, actually
2 it has been. I'm referring to State's Exhibit No. 1.
3 What time does it show the Advisement of Rights began?

4 A It says 10:51. It doesn't say a.m., but I know it was
5 in the morning time.

6 Q All right. Okay. And what time does it show the
7 Waiver of Rights having been signed by Fred Madden?

8 A It has it as being signed at 11:00 a.m.

9 Q All right. What time does it show the Statement, I'm
10 referring to State's Exhibit -- I guess it would be
11 the actual Statement itself, if I can have that?

12 A Yes, sir.

13 (Witness hands document to Mr. Howe)

14 Q State's Exhibit No.2, what time does it show that the
15 Statement was completed? (Hands witness document)

16 A It says it was completed at 10:44 a.m.

17 Q Okay. So, so according to the documents that you
18 have, the Sheriff's office had, the Statement was
19 completed before he was given the Advisement of Rights
20 and before he actually signed and waived those rights,
21 because if my -- if I know how to tell time, 10:44
22 comes before 10:51 and 11:00 a.m. Right?

23 A It would appear that way, but it didn't happen this
24 way. The completion of the Statement says 10:44, but
25 that's somehow in error, because I was there the

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 entire time when the Advisement of Rights was given to
2 Mr. Madden. The time says 10:51 and Fred actually
3 signing the waiver at 11:00. I know the statement was
4 produced after the 11:00, after the Advisement of
5 Rights was given.

6 Q Okay. And that's important, because his Statement has
7 to be voluntary. Doesn't it?

8 A That's right. And it was voluntary.

9 Q All right. And you say -- would you please give us
10 the benefit of your knowledge as to why it shows 10:44
11 as the time of completion?

12 A I don't know exactly, but I think it was computer
13 generated.

14 Q So, you've got a computer program that spits out a
15 time that the interview is completed before the
16 Advisement of Rights has ever stopped. Is that what
17 the Sheriff's office was operating with?

18 A Well, these are two separate forms. One is the
19 Advisement of Rights and another form is the Voluntary
20 Statement. The Advisement of Rights is totally
21 separate and that was done first. After the
22 Advisement of Rights, then this Statement was produced
23 and signed after the Advisement of Rights.

24 Q Well, I understand what you are saying, but again,
25 please explain to me why -- so it's some kind of

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 computer error that spits out the wrong time?

2 A Yes, sir. That's the only reason that this time would
3 appear before the Advisement of Rights was given.

4 Q Are y'all still using that computer?

5 A No. We no longer have that computer, the one that
6 produced this Statement.

7 Q Okay. And again, that's important because his
8 statement has to be voluntary.

9 Q And it was voluntary.

10 Q Or it's no good. Right?

11 A This Statement was totally voluntary.

12 Q Okay.

13 Mr. Howe: That's all the questions I have for this
14 witness.

15 The Court: Anything on redirect?

16 Mr. Hammack: A brief question.

17 Redirect examination of Stephane Williams by Mr. Hammack

18 Q Captain Williams, are you required to videotape
19 statements?

20 A No, sir. We are not required to. No, sir.

21 Q Are you required to audio tape statements?

22 A No, sir. We are not required to audio tape
23 statements.

24 Q Back in December of 2009, did you have the ability to
25 do that?

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 A Well, we didn't have a designated room to, for
2 recording. We have one designated now for recording,
3 but in 2009, we didn't.

4 Q But you do now?

5 A We do have it.

6 Q Is there anything in your policy that says it has to
7 be audio taped?

8 A No, sir.

9 Q Anything that says it has to be videotaped?

10 A No, sir.

11 Mr. Hammack: Nothing further.

12 Mr. Howe: Follow-up question, Judge.

13 Re-cross examination of Stephane Williams by Mr. Howe

14 Q Y'all spend money on a Facebook page. Right? And
15 y'all have a P.R. group. Right? But y'all don't have
16 -- is that true? Both of those questions, are they --
17 could you answer the first one? A Facebook page?

18 A The Sheriff's office has a Facebook page. That's
19 correct.

20 Q Y'all have video -- y'all have a press release to send
21 out information. Right?

22 A We do press releases. That's correct.

23 Q Okay. Y'all have cell phones and everybody's got a
24 cell phone now that you can take a picture. Y'all had
25 those in 2009. Didn't you?

(TESTIMONY - CAPTAIN STEPHANE WILLIAMS)

1 A I'm sure we had the ability to have cell phones that
2 take pictures. That's correct.

3 Q Y'all have a Breathalyzer room where you take somebody
4 when they are charged with DUI where you've got to
5 record things. Right?

6 A At another department. Yes.

7 Q At another department?

8 A Yes. No Breathalyzer at the Sheriff's office.

9 Q Right. The Sheriff's office. You've got the ability
10 to do that. Y'all use it all the time when a
11 Sheriff's Deputy makes a charge.

12 A Yes, sir.

13 Q Okay. And so somebody who's charged with DUI gets,
14 they get filmed in the Breathalyzer room, but y'all
15 have a murder suspect and you are taking a statement
16 from them and y'all, just because you don't have to,
17 y'all don't do it.

18 A There was no video recording on Fred Madden.

19 Q Okay. Thank you.

20 Mr. Howe: That's all.

21 The Court: Thank you, sir. You can step down.

22 Mr. Hammack: Nothing further, Your Honor.

23 The Court: Ladies and Gentlemen, we've been at it for
24 about an hour. It's probably a good opportunity for us to
25 go ahead and take a brief fifteen minute break. I will

(DISCUSSION OF DECEMBER 10 STATEMENT)

1 have y'all back here shortly. Don't discuss the case, of
2 course. If you happen to need to smoke a cigarette, I'm
3 sure the bailiff can make arrangements for y'all to step
4 outside and do that if you need to. Don't talk about the
5 case. We will be at ease for a few minutes.

6 (Jury out at 3:06 p.m.)

7 Discussion of December 10th statement

8 The Court: All right. The jury is out. Mr. Howe, you
9 wanted to put a matter on the record concerning the
10 statement made by that last witness, the comment on the, I
11 believe it was the December 10th Statement.

12 Mr. Howe: I do, Your Honor, and for a couple of
13 reasons. First of all, Your Honor, through discovery, we
14 learned that there was an alleged oral statement made by
15 our client on December the 10th. We addressed that issue
16 and had a very detailed hearing on it and questioning from
17 various witnesses. The Court ruled that that statement
18 would not come in, and I can't, for the life of me, imagine
19 why it was necessary to go into the statement. Captain
20 Williams, from the Sheriff's department, has now testified
21 about having talked to my client on the 10th and now the
22 jury has heard that. I have absolutely no idea what they
23 may think of that. That's why I objected. We had a
24 conference, a sidebar with the Court. I thought we had a
25 clear understanding. Then, the next question, which I was

(DISCUSSION OF DECEMBER 10 STATEMENT)

1 going to object to, would be that the jailor notified him
2 that Fred Madden wanted Stephane Williams notified, Captain
3 Williams, that my client wanted to talk with him. I might
4 have wanted to object to that, but at this stage, I said,
5 "Okay, I don't know if that would be smart for me do." I'm
6 telling you my strategy, what I'm thinking. But then, the
7 first question out of the box after that was, again talking
8 about, did you talk with him on the 10th. That was the
9 very first question. I already had a concern and I've got
10 to protect Mr. Madden. We've got an obligation to protect
11 him in this case. The trial had no reference to any
12 statement on the 10th, particularly when the Court ruled
13 that it wasn't admissible and now we've heard, not only
14 before I objected, we heard reference to it after I
15 objected. And after I thought we had a clear understanding
16 what was going to be referred to. I don't know how they
17 will look at that, but I'm concerned enough about it to do
18 all I have to, to protect the record in this case and I
19 don't know of a curative instruction, unless we come up
20 with something, that will let the jury know that, but I
21 would ask the Court to consider a mistrial in this case
22 based on that. I just don't want the jury to go back there
23 thinking he gave an earlier statement and now it's hard to
24 go back and talk when that statement was ruled
25 inadmissible.

(DISCUSSION OF DECEMBER 10 STATEMENT)

1 The Court: All right. Mr. Hammack, do you want to
2 speak to that, sir?

3 Mr. Hammack: Your Honor, Captain Williams never went
4 into any part of the statement. I was basically laying the
5 foundation as to why Mr. Madden was brought over on the
6 15th to explain why he had been sitting in jail four days
7 and was suddenly brought to the Sheriff's office. Your
8 Honor, it may just be my opinion, but it makes more sense
9 if the jury understands they didn't just go out there and
10 get him out of the blue, that he requested to be brought
11 back to talk to him. I don't know of any other way to ask
12 the question, except Stephane, or Captain Williams, talked
13 to him on the 10th and Captain Williams, specifically, told
14 him, "If you want me, call me". That's the only way I know
15 to address that and that's what happened and that's why he
16 did what he did.

17 Mr. Howe: Judge, just in response, briefly. I thought
18 you had a pretty good solution.

19 The Court: Thanks. My initial impression, Gentlemen
20 and Ms. Anderson, is that what we are dealing with here is
21 quite different from a situation where, perhaps, Mr.
22 Williams had blurted out, "Well, he told me he burned the
23 clothes and because it was cold and took a shower and that
24 was kind of the substance of the statement. That was the
25 actual substance of the statement on the 10th which I ruled

(DISCUSSION OF DECEMBER 10 STATEMENT)

1 inadmissable. So, obviously, we are talking about a
2 situation where there is an allusion to Mr. Williams
3 telling the defendant on the 10th, "If you want to talk,
4 let me know," and that's how, I believe, the jury would
5 take it. I appreciate your motion for a mistrial,
6 Mr. Howe. The law, basically, says I shall only grant that
7 if absolutely necessary or if there is no way to correct
8 any prejudice. I don't know that there is any prejudice
9 and, certainly, if there was any prejudice, based on the
10 orientation of that question or the nature of that
11 question, I feel it's absolutely minimal. I would be more
12 than happy to examine any curative instruction, but in all
13 honesty, I don't know how I should instruct someone to
14 disregard something that wasn't introduced into evidence in
15 the first place and so in that sense, it's probably making
16 it worse if I were to give it a curative instruction, so I
17 don't know that that's really, realistically, a possibility
18 which is probably a part of your point.

19 Mr. Howe: Yes, sir.

20 The Court: At the same time, if you come up with an
21 instruction that instructs the jury on how to un-ring a
22 bell they haven't heard, then that's fine. I'll be happy
23 to give that, too. At the same time, I don't think it's so
24 egregious as to warrant a mistrial at this juncture.
25 Obviously, Mr. Hammack, this is an area that we need to

(DISCUSSION OF DECEMBER 10 STATEMENT)

1 tread very lightly on in the future. I think that the way
2 or I'm quite certain that the way that the jury has taken
3 that testimony is that, obviously, Mr. Williams told the
4 defendant on the 10th, "Call me, let me know if you want to
5 talk," and a couple of days later, Mr. Williams got the
6 message that the defendant wanted to talk and I think
7 that's the way the jury has taken it and I'm quite certain
8 that that's the way that they've received that information,
9 especially since that confession on the 10th has not come
10 into evidence. All right. We are going to afford
11 ourselves a few moments to take a break this afternoon and
12 then we will keep on pushing. Everything okay? All right.
13 How many more witnesses do you anticipate this afternoon,
14 Mr. Hammack or can we just keep on rolling until we get
15 tired?

16 Mr. Hammack: Your Honor, quite frankly, the last one
17 I've got for today is Lieutenant Blackmon and I've got the
18 two SLED agents first thing, my two SLED people and one
19 other witness first thing in the morning.

20 The Court: All right. And then you're done?

21 Mr. Hammack: Yes, sir.

22 (Brief Break)

23 (Jury in at 3:29 p.m.)

24 The Court: All right. The record should reflect the
25 jury is back. Solicitor, if you will call your next

(TESTIMONY - LIEUTENANT BEN BLACKMON)

1 witness, please, sir.

2 Mr. Hammack: Investigator Ben Blackmon.

3 (After being duly sworn by the Clerk of Court, Ben
4 Blackmon testified as follows:)

5 Direct examination of Ben Blackmon by Mr. Hammack

6 Q Please state your full name for the record.

7 A Michael Benjamin Blackmon.

8 Q By whom are you employed?

9 A The Laurens County Sheriff's office.

10 Q What do you do at the Sheriff's office?

11 A I'm a Criminal investigator.

12 Q How long have you been doing that?

13 A I've been a criminal investigator for seven years.

14 Q Lieutenant Blackmon?

15 A Yes, sir.

16 Q Lieutenant, were you an investigator back in December
17 of 2009?

18 A Yes, sir.

19 Q I'll show you what's been marked State's Exhibit
20 No. 1. What is that document?

21 A This is a Lauren's County Sheriff's office Advisement
22 of Rights Form.

23 Q What is reflected on that?

24 A The Miranda rights for a suspect being interviewed in
25 reference to a crime.

(TESTIMONY - LIEUTENANT BEN BLACKMON)

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1 Q Whose, in particular, is that form for?

2 A This would be Mr. Fred Madden.

3 Q Did you fill out that form?

4 A I believe it was read by Lieutenant Shelton. I
5 believe I dated it there with the original time of
6 10:51 and I witnessed it there at the bottom.

7 Q Were you present when that form was completed?

8 A Yes, sir.

9 Q Did you see Lieutenant Shelton complete the form?

10 A Yes, sir. He read the questions to Mr. Madden.

11 Q You saw Mr. Madden sign the form?

12 A Yes, sir. We went over it with him together.

13 Q What time did Mr. Madden sign it?

14 A It's indicated here at the bottom at 11:00 a.m.

15 Q All right. Where was Mr. Madden when that form was
16 done?

17 A We were in Captain William's office.

18 Q Do you recall who was in there?

19 A Yes, sir. Myself, Captain Williams, Lieutenant
20 Shelton and Lieutenant Burns.

21 Q After that form was completed, take a look at State's
22 Exhibit No. 2, do you recognize that?

23 A Yes, sir. This is a statement given by Mr. Madden for
24 which I typed it as he told me the story.

25 Q And does it indicate on there that you are the one who

1 typed it?

2 A Yes, sir. On the very top line, "This statement was
3 written by M.B. Blackmon at my request."

4 Q How did you do that? Explain to me a little bit about
5 how it took place.

6 A Yes, sir. Initially, Mr. Madden was advised of his
7 rights. I sat down at Captain William's computer. As
8 a matter of fact, I was called to, specifically, type
9 a statement. I came in, you know, sat down and
10 basically, I explain to whomever I'm taking a
11 statement from, to tell me their story and as they
12 talk, then I'll type. If I need to slow them down, I
13 ask them to either let me catch up or, you know, let
14 them continue.

15 Q Did you type this as Mr. Madden was telling you his
16 story?

17 A Yes, sir.

18 Q Did you type everything he told you?

19 A Yes, sir.

20 Q Exactly as he told you?

21 A To the best of my ability.

22 Q Read to us what he told you that day.

23 A "This statement was written by M.B. Blackmon at my
24 request. I got evicted the week before Thanksgiving.
25 The reason I got evicted was because of problems going

(TESTIMONY - LIEUTENANT BEN BLACKMON)

1 on in the house with me and Keila Brown. We didn't get
2 along and the thing was that Tine told me that I was
3 going to be evicted for a little while until she get
4 her a settlement. When she got her settlement, she
5 was going to help Keila get out of her house. She was
6 going to get evicted, too. Me and her would be back
7 together because by my being there, Keila Brown would
8 not leave the house, because she thought that I was
9 using her mother, which I wasn't. I loved her mother.
10 And by me leaving would keep me out of trouble with
11 Keila Brown because we didn't get along. She had said
12 over and over again to my sister, Peggy Bannister,
13 that Keila was going to have to get out of her house.
14 She wasn't going to let nobody come there to her house
15 and take over, treating her like a child, and she's
16 the mother. After the eviction, though, I left on
17 Monday and went to Mack Irby's house to stay. Me and
18 Tine, both, took my things over there to Mack's house.
19 Thanksgiving, she was supposed to have brought me some
20 food over to Mack's and at the time she had or she
21 said she was talking to her sister on the phone. I
22 told her not to bring it, because she was on the phone
23 and she could bring it the next day. The next day,
24 Tine picked me up and brought me over to her house and
25 I spent the night. The next day, I got the food and

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1 she carried me back home. We talked every day on the
2 phone. Everything was smooth until the 10th of
3 December. I left Mack's house on my way over to Tine's
4 house. I got over there and I parked the Moped and
5 walked up the steps. The door was open. The storm
6 door was unlocked and I went in and called out her
7 name and didn't get an answer and then I walked to the
8 refrigerator and got a drink of water. I walked back
9 to my bedroom and saw Tine on the floor. Eyes was
10 wide open and I seen some blood coming from her head.
11 I smelt gunpowder and I fled. Leaving the scene, I
12 met her brother Bruce. He was coming up the road. I
13 kept on going, because I panicked. When I seen Tine on
14 the floor, that's what made me a suspect and I was
15 scared. I stopped at Exxon and I purchased some gas
16 and cigarettes and I got back to Easy Road, out to
17 Mack's. I figured if it was gunpowder in the air in
18 Tine's house it would probably be on my clothes, too,
19 although I didn't kill her. And so, I took the
20 clothes and because I thought the gunpowder was on my
21 clothes, I took a bath and took the clothes and I
22 burned them. Then I didn't tell Mack what was
23 happening, even though I knew. I waited on the law to
24 come. Before the law came, I got a phone call and
25 Mack answered the phone and a dude named Ray was on

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1 the phone and he asked what I done -- done, done."
2 'Excuse me.' "And I said, 'Man, I don't know what you
3 talking about,' and I knew because I had just left
4 from the scene of the accident. I was just waiting on
5 the law to come because I didn't know what other
6 evidence or who else was over there and I know right
7 then that the evidence was pointing towards me. That
8 is the reason that I fled. I am here today to state
9 my statement. That's what happened, but I did not
10 kill Ernestine, my loved one. I did not do it, but
11 whoever did, I wish that they would come forward." End
12 of statement.

13 Q Did you read that to Mr. Madden that day or allow him
14 to read it?

15 A Mr. Madden, yes. We provided him with a copy of it.

16 Q Before he signed it, he was allowed to read over it?

17 A That's correct.

18 Q Let me ask you another question: Refer back to page,
19 that first page for me, the Advisement of Rights.
20 Tell me the times on that again.

21 A The time this was originally started was 10:51.

22 Q What time was it completed?

23 A It was completed at 11:00.

24 Q Now, refer to that second thing there, the Voluntary
25 Statement, what time does it say on there it was

1 completed?

2 A 10:44 a.m. on December 15, 2009.

3 Q All right. Which one was completed first?

4 A This was actually completed first, the Advisement of
5 Rights.

6 Q And how do you know that?

7 A Because I witnessed Lieutenant Shelton read the
8 Advisement of Rights to Mr. Madden before I began
9 typing the statement. The computer program that was
10 used date and time stamps the statements as they are
11 printed. If the time is not correct on the hard drive
12 of the computer, it will print the time wrong and it
13 appears to be that this was behind the actual time
14 that this occurred.

15 Q But you're sure, from your recollection, the
16 advisement came first.

17 A Yes.

18 Q And then the statement.

19 A Yes.

20 Q So, what you're saying is, obviously, this 10:44 is an
21 error?

22 A Yes.

23 Q Based on the computer program.

24 A Right.

25 Mr. Hammack: Your Honor, at this time I would like to

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1 move the Statement into evidence.

2 The Court: Any objection?

3 Mr. Howe: Subject to ---

4 The Court: Subject to the earlier ruling.

5 Mr. Howe: Yes, sir.

6 The Court: Subject to the earlier ruling, in evidence.

7 (Whereupon, Mr. Madden's Voluntary Statement, State's
8 Exhibit No. 2, is entered into evidence, subject to an
9 earlier ruling by the Court.)

10 Q One more quick question referring to State's No. 2.

11 A All right.

12 Q Would you read that paragraph for me. (Indicating)

13 A The one below the...

14 Q Just below the statement box.

15 A "I have read each page of this statement consisting
16 of ___ pages, each page of which bears my signature
17 and corrections, if any, and bear my initials and I
18 certify the facts contained herein are true and
19 correct. I further certify that I made no request or
20 the advice or presence of a lawyer before or during
21 any part of this statement nor at any time before it
22 was finished did I request that this statement be
23 stopped. I also declare that I was not told or
24 prompted what to say in this statement. This
25 statement was completed at 10:44 a.m. hours on the day

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1 of December 15, 2009."

2 Q Was Mr. Madden given a chance to read that before he
3 signed it?

4 A Yes. He was allowed to review the whole thing before
5 he signed it.

6 Mr. Hammack: Nothing further.

7 The Court: Mr. Howe:

8 Cross examination of Ben Blackmon by Mr. Howe

9 Q Lieutenant.

10 A Yes, sir.

11 Q Lieutenant Blackmon, the whole process of this
12 interview took how long?

13 A From about ten to twelve, give or take a few minutes.
14 I was called to directly type this statement and not
15 very much else.

16 Q Were you there the entire time for ten to twelve?

17 A Yes, sir.

18 Q Along with Shelton, Burns, Captain Williams?

19 A Yes, sir.

20 Q Okay. And were you actually conducting the interview,
21 then, of Fred Madden?

22 A I was in a position for them to conduct the interview.
23 Shelton was the lead investigator. I didn't, I don't
24 recall actually leading the interview or anything like
25 that.

(TESTIMONY - LIEUTENANT BEN BLACKMON)

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1 Q Can you tell this jury who all questioned Fred Madden
2 before you started typing?

3 A I believe it was Lieutenant Shelton and Captain
4 Williams.

5 Q Okay. And were you making notes on what they were
6 asking?

7 A I was at Captain William's desk. I believe Lieutenant
8 Burns was also, kind of out of the way, making notes.
9 The statement that I took was what Mr. Madden told me.

10 Q Right. So, anything that he told Captain Williams
11 before that may add to or differ from what you typed.
12 Do we have any record of that that you are aware of?

13 A Not that I'm aware of unless notes exist on that
14 matter.

15 Q And those notes would have come from whom?

16 A Either Captain Williams or Lieutenant Shelton.

17 Q And you mentioned Burns was making notes.

18 A Yes, sir. He was also in the room. I'm not sure if
19 he wrote anything down, or whatever, to provide to
20 Lieutenant Shelton as lead investigator.

21 Q Is it a fair statement that several people were
22 questioning Fred Madden?

23 A I would say it would be a fair statement to say that
24 Lieutenant Shelton and Captain Williams directly
25 questioned Fred Madden. If Lieutenant Burns spoke to

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1 him, I don't recall anything specific that he would
2 have brought up or mentioned.

3 Q Is it true that Williams, Captain Williams and Shelton
4 talked with him before you talked with him?

5 A I believe Lieutenant Shelton brought him from the jail
6 to the office and they spoke with him some before he
7 actually came over to the part of the room I was
8 sitting in to narrate his statement.

9 Q And when you refer to "they", are you referring to
10 Shelton and Williams?

11 A Yes, sir.

12 Q Were you listening to that conversation?

13 A They were from here to about where the, where
14 Lieutenant Shelton is sitting now. I was preparing
15 the computer to take the statement. I can't recall
16 anything specific that they asked him that was not
17 included in that statement.

18 Q But you weren't listening closely to what, if
19 anything, they were saying to him?

20 A No, sir. Not directly so much as I was preparing to
21 take as fair a statement as possible from Mr. Madden.

22 Q Okay. Again, just so I get it straight. So, they had
23 conversations with him and you know of no record of
24 those conversations, exactly what he said, that may
25 expand on or in any way modify or clear up anything in

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1 what you talked with him about.

2 A Right. I'm not saying that it doesn't exist. It's
3 just I wasn't privy to it as I wasn't the lead
4 investigator as much as I was to transpose his words
5 to paper.

6 Q And the whole process that you took from beginning to
7 end with Fred Madden on your interview with him, not
8 Captain Williams', not Shelton's, not whatever Burns
9 may or may not have done, was how long?

10 A I would say in the neighborhood of just, a best
11 recollection without having, you know, started and
12 finished within a specific time, I would say a half-
13 an-hour, just because I had to type everything he said
14 and I wanted to get all of his words on paper,
15 regardless of grammar or anything. I wanted to put
16 exactly what he said, so, you know, I don't recall,
17 you know, exactly starting and stopping, but I wanted
18 to make sure everything, his words or his story, was
19 what I typed.

20 Q Did you ever have to stop and correct anything?

21 A If I did, it would have been the, you know, asking him
22 to stop and then back up on a spelling error or
23 something like that.

24 Q Because this is on a computer program, so if you had
25 to erase anything, you would just backspace, delete--

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1 A Correct.

2 Q --- like you do on a computer or a ---

3 A A word processor.

4 Q --- on a word processor.

5 A Right. Right.

6 Q Okay. All right. So, the system you use in doing
7 that --- would you agree with me, it'd be a lot more
8 efficient and make a lot more sense if you would just
9 videotape what was said? That way, you wouldn't have
10 to go back and type it up and all that. Would it make
11 a lot more sense to do it that way?

12 A Well, efficiency versus my opinion versus the position
13 I am in, I don't think that would be a fair enough
14 question to ask me, because I'm not in a position to
15 change it or recommend anything past what my superiors
16 issue me as equipment.

17 Q Okay. So, so, you don't want to rock the boat on
18 this. Do you?

19 A I'm trying to answer your questions to the best of my
20 ability.

21 Q I've got you. I've got you. But you agree, common
22 sense tells us, if you just videotaped it, would be a
23 lot more efficient and quicker than you having to
24 start and stop and type it on a computer?

25 A Which, I do believe that a written document or record

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1 of the incident and allowing them to be able to go
2 over their words and to make corrections, if they
3 wanted, and then to sign it and witness it has
4 sufficed for me in the past.

5 Q I understand that. And the same would hold true for
6 any interview that had been done by Shelton or Captain
7 Williams before you got to talk to them and they were
8 at some distance, as you say, from there, you would
9 agree that, that it certainly would have made sense,
10 you know, in today's modern world with all the
11 equipment that we've got, that just to videotape
12 what's being said to everybody. It makes a lot more
13 sense. Doesn't it?

14 A I understand where you're going, but in this setting,
15 we were in a private office, which, you know, to bring
16 a camera -- I don't have one. I have not been issued
17 a video camera or any recording device that I can use
18 to, you know, accomplish what goal here you're getting
19 to.

20 Q Yeah. Cell phone, none of that kind of stuff.

21 A You mean just a plain, everyday cell phone?

22 Q Yeah, you know.

23 A We were issued a County cell phone.

24 Q Can you take a picture of me and talk to me?

25 A I can probably take a picture of you and I can

(TESTIMONY - LIEUTENANT BEN BLACKMON)

1 probably make a call to you, but I am not the most
2 technologically advanced individual.

3 Q All right. Now, so what we know is that you conducted
4 an interview and you typed it up and he signed it, but
5 we don't know exactly what was said to Captain
6 Williams.

7 A I don't know exactly what was shared with Captain
8 Williams or Lieutenant Shelton. That would be a better
9 question for either one of those.

10 Q And the interview that you are talking about that's
11 been referred to in this courtroom, that was looked at
12 and I think it's State's Exhibit No. 2, is your
13 interview with Fred Madden, not Captain Williams', not
14 Lieutenant Shelton's, your interview.

15 A Right. I would hesitate to say "interview" so much as
16 him sharing with me what he would like on his
17 statement and me typing it to the best of my ability
18 and allowing him to go over it. I don't recall
19 personally questioning him or spending any long period
20 of time, you know, asking about anything that he
21 wasn't sharing with us at the moment.

22 Q But that's what he told you, not what he told Williams
23 and Shelton. You don't know what he told Williams and
24 Shelton.

25 A Those are the words that he told me.

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1 Q Okay. Thank you.

2 Mr. Howe: That's all the questions I have.

3 Mr. Hammack: A quick question.

4 The Court: Yes, sir.

5 Redirect examination of Ben Blackmon by Mr. Hammack

6 Q Is it required that you audio tape a statement?

7 A No. No.

8 Q Is it required that you videotape one?

9 A No.

10 Q I'll refer you back to State's Exhibit No. 2. Did
11 Mr. Madden, after he read it, did he ask you to make
12 any changes, add anything, take anything out?

13 A I -- it -- I don't recall him wanting to make any
14 changes after it was printed. If that were the case,
15 spelling errors or double words, he would have had to
16 initial those or mark through the word and initial
17 them. They have to let me know at a future time that
18 that was his mark and that's what he wanted. If I
19 backspaced and typed a word for a spelling correction
20 or anything like that, I don't recall.

21 Q Looking at that statement, is there any indication on
22 there he wanted you to take anything out or add
23 anything to it?

24 A No. He signed it.

25 Q He read it before he signed it?

(TESTIMONY - LIEUTENANT BEN BLACKMON)

1 A He read it and he signed what was on it.

2 Q So, he had the opportunity to see what was there.

3 A Yes.

4 Q If he had asked you to add something, would you have
5 added it?

6 A Yes.

7 Q If he had asked you to take something out, would you
8 have?

9 A Yes, sir.

10 Mr. Hammack: Nothing further.

11 Mr. Howe: Just one more follow-up, Judge.

12 Re-cross examination of Ben Blackmon by Mr. Howe

13 Q What -- did you give him a copy of his statement?

14 A Sir, I believe we did print two copies and, you know,
15 we hand one over to them and it's up to that
16 individual to do whatever they wish with it.

17 Q Do you recall giving him one, specifically, since you
18 were in charge of his statement?

19 A Specifically, to the best of my ability, I recall
20 printing two copies and letting him sign them and ---

21 Q Letting him sign both copies?

22 A Well, whether -- he's presented with a copy and I have
23 my copy. If he signs his, then it's up to him.

24 Q And when you printed it, did that date that it was
25 completed, that you are now saying is a computer

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1 error, would it show then a different date, I mean, a
2 different time?

3 A It should not, because you print to quantity rather
4 than print and complete that job and then start it
5 again.

6 Q And on that date at 10:44, you had control of that
7 statement. You never noticed that?

8 A Well, on that date, it wouldn't have been 10:44. It
9 would have been later in the day and once you press
10 the print button, it throws the time up there for you.

11 Q Did you notice it the day it ---

12 A Not when we printed it off and allowed him to sign it.
13 I got him to look over it.

14 Q When was the first time you learned that that was
15 wrong?

16 A I noticed it yesterday.

17 Q Thank you.

18 The Court: Mr. Blackmon, you can step down. Thank you
19 very much, sir.

20 Mr. Hammack: Your Honor, I have one more quick witness
21 today.

22 The Court: Very good.

23 Mr. Hammack: He should be here now.

24 The Court: Call your witness.

25

1 (After being duly sworn by the Clerk of Court, Robert
2 Wilkie testified as follows:

3 Direct Examination of Robert Wilkie by Mr. Hammack

4 Q Please state your full name for the record.

5 A Robert R. Wilkie.

6 Q By whom are you employed?

7 A Laurens County Sheriff's office.

8 Q Did you work there back on December 10, 2009?

9 A I did.

10 Mr. Hammack: Your Honor, may I approach the witness?

11 The Court: Yes, sir.

12 Q Take a look at what's marked as State's Exhibit No. 5.
13 What is that?

14 A It's a Gunshot Residue Evidence Collection Kit.

15 Q Can you tell us about who it was taken from?

16 A Fred L. Madden.

17 Q Does it appear that you took that Gunshot Residue Kit?

18 A Yes, sir.

19 Mr. Hammack: Your Honor, at this time, the State would
20 like to move this item into evidence.

21 The Court: Without objection?

22 Mr. Howe: No objection, Judge.

23 The Court: All right. State's No. 5 into evidence.

24 (Whereupon, a Gunshot Residue Kit is entered into
25 evidence as State's Exhibit No. 5, without objection.

1 Mr. Hammack: Nothing further, Your Honor.

2 Mr. Howe: No cross examination.

3 The Court: Thank you, very much, Mr. Wilkie. You are
4 free to go. Solicitor, do you have any other witnesses for
5 this afternoon?

6 Mr. Hammack: Not for today, Your Honor.

7 The Court: All right. Ladies and Gentlemen of the
8 jury, we've moved at somewhat of a quicker pace than I
9 think all concerned, perhaps, anticipated. So, we are done
10 for the day. I'll remind you of what I said before lunch:
11 Of course, you can't talk to anybody about this case until
12 this case is over and done with and a verdict has been
13 rendered, so do not discuss this case with anyone that you
14 may see at home tonight, any of your friends, family
15 members. Certainly don't conduct any type of independent
16 investigation of these facts by any means. I do not know
17 if there have been reporters here in court covering this
18 trial from the local paper. I am aware that the paper is
19 typically published on Wednesdays. If you typically
20 receive the paper in the mornings at your house, please do
21 not look at it tomorrow morning. I'm a creature of habit,
22 too, and I realize that it is sometimes difficult to break
23 those habits if you are used to your morning paper. If you
24 do receive the Advertiser at home, I'm instructing you not
25 to look at it out of an abundance of caution. You can let

1 your spouse or whoever else you reside with take a look at
2 it and make sure it's clean of any sort of mention of this
3 trial, but again, the reason for this Ladies and Gentlemen
4 is, you are to judge this case based solely on the evidence
5 that's been presented through this witness stand.
6 Newspaper articles and that sort of thing are often
7 filtered through other individuals. They emphasize certain
8 facts, they may completely omit testimony. It's your job
9 to make a decision in this case, nobody else's and nobody
10 will be able to criticize your verdict if you follow your
11 oath and so I will tell you it would be a violation of your
12 oath to read or learn anything else about this case outside
13 this courtroom. With that, I trust y'all will have a
14 pleasant evening, and if we could, would it be all right --
15 let's resume about 9:30. Is that okay with everyone? Is
16 that acceptable? I know you have some witnesses coming
17 from out of town, I think you had told me.

18 Mr. Hammack: I'll check with Investigator Chapman and
19 make sure what time she told them.

20 The Court: All right. Y'all hold on for two seconds
21 while we find out what time the witnesses are going to be
22 here.

23 Mr. Hammack: Your Honor, 10:00 is the time the
24 witnesses will be here.

25 The Court: They will be here at 10:00? All right.

1 I'm told that some of these witnesses are coming from out
2 of town. We will resume tomorrow at 10:00 promptly. Okay?
3 So, if y'all could be back in the jury room at 10:00.
4 Again, whatever you had this morning is probably what
5 you'll have waiting for you tomorrow, so if it's coffee or
6 doughnuts or whatever, that's what you will have tomorrow.
7 Eat some breakfast. I'll see you in the morning at 10:00.
8 Jury is excused.

9 (Jury out at 3:59 p.m.)

10 The Court: Anything before we break for the day?

11 Mr. Hammack: No, sir.

12 Mr. Howe: No, sir.

13 The Court: Just for planning purposes, do you
14 anticipate, I'm not holding you to this Mr. Howe, but do
15 you anticipate presenting a defense?

16 Mr. Howe: I do, Your Honor. It would not be lengthy
17 as far as the number of witnesses.

18 The Court: All right. But in terms of testimony, it
19 might take the afternoon?

20 Mr. Howe: Yes, sir.

21 The Court: I'm just trying to figure out the best way
22 -- and let's assume we can get all the testimony in
23 tomorrow and the game plan will be to, we can then discuss
24 charges and such as that and tomorrow, once we finish the
25 testimony, argue and charge Thursday morning?

1 Mr. Howe: Yes, sir. That's what I'm thinking.

2 The Court: That's what we will do. I will see y'all
3 in the morning around 10:00.

4 August 31, 2011 Morning

5 The Court: And we are continuing in the case of The
6 State versus Fred Madden. Anything before we bring the
7 jury out, Gentlemen, Ms. Anderson?

8 Mr. Howe: No, sir.

9 The Court: Let's go ahead and bring the jury in then,
10 please, sir.

11 (Jury in at 10:07 a.m.)

12 The Court: All right. The record should reflect that
13 the jury is back, the defendant is present along with
14 counsel. Ladies and Gentlemen of the jury, Madam
15 Foreperson, I hope y'all had a pleasant evening last night.
16 We're resuming the trial of the case of The State versus
17 Mr. Madden. At this point, Solicitor, if you will call
18 your next witness, please, sir.

19 Mr. Hammack: Melissa Wallace.

20 (After being duly sworn by the Clerk of Court, Melissa
21 Wallace testified as follows:)

22 Direct examination of Melissa Wallace by Mr. Hammack

23 Q If you will, please state your full name for the
24 record.

25 A Melissa Skipper Wallace.

(TESTIMONY - MELISSA SKIPPER WALLACE)

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1 Q By whom are you employed, Ms. Wallace?

2 A I'm employed by The South Carolina Law Enforcement
3 Division, which is commonly known as SLED.

4 Q What do you do for SLED?

5 A I'm assigned to the Crime Scene and Latent Print
6 Department.

7 Q How long have you been employed there?

8 A I've been employed at SLED for just over six years
9 now.

10 Q What, again, what are your duties with SLED as part of
11 what you do with the Crime Scene Department?

12 A I respond to and process crime scenes in all 46
13 counties of the state when requested by state, local
14 or federal agencies. I also process evidence
15 collected from those scenes as well as evidence
16 submitted to our laboratory for latent fingerprints,
17 fingerprint comparisons, footwear comparisons, tire
18 tread comparisons, blood stain patterns and also crime
19 scene reconstruction.

20 Q Back on December 9, 2010 [sic], were you working with
21 SLED?

22 A I was.

23 Q What role were you in then?

24 A I was assigned to Crime Scene and Latent Prints.

25 Q Did you have the opportunity to get involved in a case

1 down here at [REDACTED] Highway 308 in Laurens on that date?

2 A I did.

3 Q Did you go in to assist in the investigation?

4 A I was requested to process the crime scene.

5 Q Did you do so?

6 A Yes. I did.

7 Q About what time did you arrive at the scene?

8 A If I can refer to my notes?

9 Q Please.

10 A (Looking at document) I arrived on scene at
11 approximately 12:47 in the afternoon.

12 Q As part of your investigation, did you produce a
13 diagram or prepare a diagram?

14 A I did. I prepared two.

15 Q Do you have those diagrams with you here today?

16 A I do.

17 Q Could I take a look at them? (Witness hands documents
18 to Mr. Hammack) And these are your original diagrams
19 you prepared?

20 A No. Those are the finished diagrams.

21 Q Okay. Where did you do these?

22 A I did those back at the lab on the computer.

23 Q This accurately depicts what you saw that day?

24 A It does.

25 Q Okay.

(TESTIMONY - MELISSA SKIPPER WALLACE)

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1 (Mr. Hammack shows documents to Mr. Howe, has them
2 marked, and then Mr. Hammack projects document on large
3 screen)

4 Q Agent Skipper, take a look at what's been marked as
5 State's Exhibit No. 9. What does that appear to be?

6 A That is the full diagram of the residence that I
7 completed.

8 Q All right. How do you recognize that?

9 A It's marked with my lab number, the case identifier
10 and it is also the copy I just gave you from the case
11 file.

12 Q How did you prepare that diagram?

13 A It's a Microsoft program called "Visio".

14 Q Explain to me a little bit what you do to make a
15 diagram like this.

16 A It's just a diagraming software. You just create the
17 outer shell of the residence and any identifiers like
18 a driveway to help with orientation. North, of
19 course, which also helps with orientation and we also
20 put a legend on it as well as case indentifiers such
21 as the incident location, the day that we were there,
22 the case number that's given to it by our lab, the
23 victim and suspect information as well as the agents
24 there to assist. My name is also on the diagram.

25 Q Does this diagram appear to be drawn to scale?

- 1 A No. It says, "Not to scale" on it.
- 2 Q Okay. Were there any alterations or deletions to it
- 3 since you produced it?
- 4 A No. There are not.
- 5 Q Let me ask you about State's Exhibit, for
- 6 identification, No. 10. What does that appear to be?
- 7 A This is a 3-D diagram of the small hallway which leads
- 8 into the master bedroom and the laundry room is on the
- 9 right-hand side.
- 10 Q Did you also prepare this? (Shows document on large
- 11 screen)
- 12 A I did.
- 13 Q When did you do that?
- 14 A I don't know the exact date. It was sometime after I
- 15 responded to the scene.
- 16 Q How did you prepare that?
- 17 A It's also a Microsoft program. It's a basic *Microsoft*
- 18 *Paint*, which comes with a general Microsoft software.
- 19 Q Is this diagram to scale?
- 20 A No. It's not.
- 21 Q All right. Does it accurately depict the relationship
- 22 of where things are in the home as you saw them?
- 23 A It does.
- 24 Q Has it been materially altered or anything deleted or
- 25 changed on it?

(TESTIMONY - MELISSA SKIPPER WALLACE)

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1 A Not since I completed it. No.

2 Mr. Hammack: Your Honor, I'd ask to move Exhibits
3 Nos. 9 and 10 into evidence.

4 The Court: Any objection?

5 Mr. Howe: No objection, Judge.

6 The Court: Without objection, 9 and 10 are in
7 evidence.

8 (Whereupon, a diagram of the home is entered into
9 evidence as State's Exhibit No. 9 and a 3-D diagram of the
10 home is entered into evidence as State's Exhibit No. 10,
11 without objection.)

12 Q I also want to ask you about some photographs. First,
13 let me ask you on here, I can see some numbers in red.
14 They are a little hard to see on there. It looks to
15 be a little bit easier on this one. (On large screen)
16 What do those numbers mean?

17 A Those numbers are markers. In this case, markers 1
18 and, I believe, that's 2, indicating bullet holes that
19 we found.

20 Q Do you recall where those holes were in the home?

21 A Marker 1 is on the linen closet door and Marker 2 is
22 on the hot water heater cover in the laundry room.

23 Q Do you recognize this photo or what is depicted in
24 this photo? (Projected on large screen)

25 A That is a photograph of that little hole in the closet

1 door which was indicated by Marker 1.

2 Q Do you recognize this photograph?

3 A Yes.

4 Q What does it depict?

5 A That is a photograph of that water heater cover and
6 the bullet hole just above it, which is Marker 2.

7 Q Do these appear to accurately depict what you saw that
8 day?

9 A They do.

10 Mr. Hammack: Your Honor, I would ask to move these
11 into evidence.

12 The Court: Without objection?

13 Mr. Howe: Without objection.

14 The Court: Without objection, State's 11 and 12.

15 (Whereupon, two photographs depicting bullet holes are
16 entered into evidence as State's Exhibits Nos. 11 and 12,
17 without objection.)

18 Q Let me show you the overview again. It's a little
19 more difficult to see, but on this overview, do you
20 recognize where those items were or where the door you
21 described and the other laundry room you described
22 are?

23 A Yes.

24 Q If you want to get up, that's fine, and point them out
25 for us. That's fine if you want to point it out on

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1 the screen so we can be clear what's where.

2 (Witness complies.)

3 A The linen closet is here. (Indicating on large screen)

4 There is a No. 1 on the door at the opening here.

5 This is the laundry room area and that is Marker 2

6 there. (Indicating)

7 Q Okay. While you're up, can you kind of tell us what
8 things are on here, what door is what and what room is
9 what to the best of your knowledge based on your
10 investigation?

11 A This is the front of the residence and this is the
12 rear of the residence. The front door leads into the
13 dining room/kitchen area and two rear bedrooms. This
14 is the small hallway that I was referring to earlier.
15 This is the lin -- I'm sorry, the laundry room area,
16 the linen closet, the master bedroom and master bath.
17 These are closets here.

18 Q Was the victim's body still present when you arrived?

19 A It was.

20 Q Do you represent that?

21 A It is indicated here by "A", the letter.

22 Q So, the front bedroom?

23 A Yes. The master bedroom.

24 Q Okay. Let's go back to the shots you were talking
25 about, specifically, Marker 1. Again, what does that

1 depict?

2 A Marker 1, which is here on the linen closet door, is a
3 bullet hole which goes into the linen closet and
4 Marker 2 is the bullet hole in the laundry room around
5 the hallway.

6 Q Let's talk briefly about Marker 1. You state there's
7 a bullet hole through the door. What did it go into
8 or where did it go to from there through the door?

9 A It went into a sheet and we recovered the bullet
10 there, in a folded sheet.

11 Q So, you were able to recover that one?

12 A We did.

13 Q And Marker 2 that you speak of, where did that round
14 go?

15 A It went through this panel into the corner of the
16 laundry room and into the bathroom and we recovered it
17 in an exterior wall in the bathroom.

18 Q Now, is that depicted on the larger diagram?

19 A It is. It's a little hard to see. This is Marker 2
20 here, that hot water heater area. It goes through the
21 corner over the washing machine, comes out into the
22 bathroom and strikes a mirror on the wall at what's 5
23 and it shaves off and you can see it here at 6 in the
24 wall.

25 Q Please take a look at what's been marked as State's

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1 Exhibit No. 3. So, you recovered bullets from that
2 location?

3 A We did.

4 Q What did you do with them?

5 A They were packaged and submitted to our -- I'm sorry.
6 We swabbed them at the scene for any DNA and then they
7 were submitted to a laboratory in the firearms
8 department for analysis.

9 Q All right. While you were at the scene, did you take,
10 did you have the opportunity to have any interaction
11 with the victim's body?

12 A I did.

13 Q Did you take a GSR kit from the victim?

14 A I did.

15 Q Take a look at what's been marked as State's 4. Do
16 you recognize that?

17 A I do. State's Exhibit 4 is the GSR kit that I
18 collected from the victim.

19 Q And what did you do with that?

20 A It was submitted to the laboratory, to our trace
21 department.

22 Mr. Hammack: Your Honor, I would move State's No. 4
23 into evidence.

24 The Court: Any objection?

25 Mr. Howe: No objection, Your Honor.

1 The Court: All right. Without objection, State's No. 4
2 is in evidence.

3 (Whereupon, a GSR kit performed on Ernestine Brown is
4 admitted into evidence as State's Exhibit No. 4, without
5 objection.)

6 Q Did you have an opportunity to examine the residence
7 closely?

8 A We did.

9 Q Did you find any signs of forced entry?

10 A We did not.

11 Q Did you check doors?

12 A I did. I also photographed the doors. There was no
13 damage or any sign of forced entry to any of the
14 doors.

15 Q What about windows? Did you check them?

16 A We checked those as well. There was a broken window
17 on the back of the residence, but there appeared to no
18 forced entry on any of those.

19 Q Agent Wallace, did you have an opportunity to search
20 the home for any type of firearms or weapons?

21 A We did.

22 Q Did you locate any guns?

23 A No. We did not.

24 Q Were you involved in any further search of that
25 residence or of that location for a handgun?

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1 A Like I said, we searched the residence for any weapons
2 in the house, as well as any cartridge cases or any
3 other fired bullets.

4 Q All right. Did you find any other bullet holes or any
5 other items of that nature in the home?

6 A We did not.

7 Q Any other, any spent rounds or cartridges anywhere in
8 the home?

9 A No.

10 Q From there, did you have the opportunity to go out to
11 Easy Road?

12 A I did.

13 Q About what time did you arrive out there?

14 A I arrived on Easy Road at 4:38 in the afternoon.

15 Q When you arrived out there, what did you find?

16 A I photographed the scene and we searched the residence
17 for any clothes that appeared to be bloody or anything
18 like that.

19 Q Let me show you some photographs. (Mr. Hammack shows
20 photographs to Mr. Howe) Please take a look at these
21 first three photographs. What does that appear to
22 depict?

23 A The photographs are from the house on Easy Road. The
24 first is a burn barrel. It had some burned debris in
25 it, still smoldering. The second and third are

1 photographs of what appeared to be a burned sheet.

2 Q Okay. Did you have an opportunity to look through the
3 burn barrel to see the contents?

4 A We did.

5 Q Were you able to tell much about what was in there?

6 A No. We weren't.

7 Q Was it still hot?

8 A It was. It was still smoldering.

9 Q After looking through the burn barrel, did you have an
10 opportunity to go into the residence?

11 A We did.

12 Q Did you go back to the bathroom area?

13 A I did.

14 Q Take a look at that photograph. What does that appear
15 to depict?

16 A This is a photograph of one of the bathrooms in the
17 residence. It's a bathtub that has suds still in the
18 bottom of the tub.

19 Q Do all these photographs appear to be a fair and
20 accurate representation of what you saw that day?

21 A They are.

22 Mr. Hammack: Your Honor, I would ask to move these
23 photographs into evidence.

24 The Court: Any objection? Let Mr. Howe take a look at
25 them. (Mr. Hammack complies)

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1 The Court: And Mr. Hammack, if you would, when you are
2 showing the photographs to the witness, if you'd go ahead
3 and get those marked, at least for identification first, so
4 that the court reporter can have an accurate transcript of
5 what is being shown to the witness, if you don't mind.

6 Mr. Hammack: All right. (Mr. Hammack has court
7 reporter mark photographs)

8 The Court: Any objection to those photographs?

9 Mr. Howe: No.

10 The Court: All right. What are those?

11 Court Reporter: Nos. 13-16.

12 The Court: Nos. 13 through 16 are in evidence.

13 (Whereupon, four photographs are entered into evidence
14 as State's Exhibits Nos. 13, 14, 15, and 16, without
15 objection.)

16 Q I'll show you what has been marked as State's No. 13.
17 What is that again?

18 A State's Exhibit No. 13 is a photograph of the burn
19 barrel behind the residence at Easy Road.

20 Q I'll show you State's No. 14. What does that appear
21 to be?

22 A State's No. 14 is a photograph of what appears to be
23 that burned sheet.

24 Q State's No. 15?

25 A State's No. 15 is a close-up photograph of that same

1 sheet.

2 Q And State's No. 16. What does that depict?

3 A State's Exhibit No. 16 is a photograph of that bathtub
4 with the suds still in the bottom.

5 Q Okay. Thank you. Did you have an opportunity to
6 search that residence for any type of firearms or
7 weapons?

8 A We did.

9 Q Did you locate anything at that residence?

10 A We didn't locate a weapon. We collected some
11 clothing.

12 Q Okay. (Mr. Hammack marks two items and shows them to
13 Mr. Howe) Take a look at what's been marked as State's
14 No. 17. Do you recognize that?

15 A I do.

16 Q What is that?

17 A State's Exhibit No. 16, I'm sorry, No. 17. It is the
18 fired bullet which we recovered from that bathroom
19 wall inside the residence on Highway 308.

20 Q Take a look at State's No. 18. What is that?

21 A State's Exhibit No. 18 is the fired bullet that we
22 recovered from the linen closet inside the residence.

23 Q How do you recognize these items?

24 A Both are marked with my initials and the lab number
25 and the item number that is assigned through our

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1 laboratory tech.

2 Q After you left Easy Road, did you have an opportunity
3 to process a Moped?

4 A I did.

5 Q Where was that?

6 A The Moped had been towed to the Sheriff's office's
7 sally port.

8 Q Tell me what you did with the Moped.

9 A We photographed the Moped. We also searched the
10 compartments of the Moped. We swabbed the handgrips
11 on the Moped for any DNA and we tested or I tested a
12 glove for potential blood. It tested negative and
13 that's it.

14 Q Did you ever attempt to test the Moped for gunshot
15 residue?

16 A No.

17 Q Why not?

18 A That's not typically something that we do. We can
19 test objects that -- for instance, if a person fires a
20 weapon from inside a vehicle, we can actually test, we
21 can collect from the car itself, but not for items
22 that are transferred, necessarily.

23 Mr. Hammack: Nothing further at this time.

24 The Court: All right. Are you seeking introduction of
25 State's Nos. 17 and 18?

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1 Mr. Hammack: I will with the next witness, Your Honor.

2 The Court: All right. Very good. I apologize. Mr.
3 Howe, Ms. Anderson?

4 Mr. Howe: Thank you.

5 Cross examination of Melissa Wallace by Mr. Howe

6 Q Do I call you Agent Skipper? Is that what I should
7 call you?

8 A My last name is actually Wallace, but Agent is
9 correct.

10 Q Agent. Okay. Wallace. It was Skipper and now it's
11 Wallace.

12 A Yes, sir.

13 Q Agent Wallace, the -- when you got to the Highway 308
14 home, from what I understand, you did an initial
15 walk-through and took a look at the home. Is that
16 correct?

17 A Yes. That's correct.

18 Q Okay. And you indicated, in questioning from Mr.
19 Hammack, that there was no evidence to you from any
20 forcible entry, I believe I heard you say. Is that
21 correct?

22 A That's correct.

23 Q Okay. A forced entry, if a door were unlocked and
24 somebody came into the home without permission of the
25 owner, that, that still could be an illegal or forced

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1 entry. Is that not true?

2 A By forced entry, I mean that the door is locked and
3 there is damage to the door indicating that it's
4 forced as opposed to just opened.

5 Q Exactly. So, the only thing you found was the door
6 wasn't damaged, in other words.

7 A That's correct.

8 Q Okay. You went through the house and you were not able
9 to get any, either any fingerprints, DNA, or any blood
10 from anything in the home that linked the suspect in
11 the case. Is that not correct?

12 A In situations where the suspect and victim both live
13 in the same residence, we don't typically process for
14 those types of evidence because it makes sense that it
15 would be there if they live there. Their fingerprints
16 should be ---

17 Q Can I just interrupt. Your answer to that, that you
18 didn't find anything? Is that your answer, first of
19 all?

20 A We didn't process for that.

21 Q Okay. So ---

22 Mr. Hammack: Your Honor, she should be able to explain
23 her answer.

24 The Court: She'll be allowed to. I'm sure Mr. Howe
25 will allow her to explain.

1 Q But your answer to that is that you obtained no
2 evidence. Is that correct?

3 A That would be correct, because we didn't process for
4 that evidence.

5 Q Okay. Thank you. Now, when you did your walk-through
6 in the home, did you notice the television was on?

7 A I did.

8 Q Okay. And I'm going to show you Defendant's Exhibit
9 No. 3 and would you take a look at that and tell me if
10 you recognize the, what's in the photograph.

11 A Defense Exhibit No. 3 is a photograph taken from the
12 front doorway of the residence. It shows the living
13 area, or living room area, as well as a T.V. and
14 fireplace.

15 Q And you would agree that that was the situation when
16 you got there? The television was still on?

17 A Yes. That's correct.

18 Q Okay. All right. Now, did you also, as part of what
19 you did, look in the home and see that there were any
20 medications prescribed to Mr. Madden? Did you happen
21 to see those photographs?

22 A Yes. We did see those items in that photograph.

23 Q Okay. I'm going to show you Defendant's -- let me see
24 if I can get them in some kind of order, No. 8. I'll
25 hand that one to you, first. Nos. 9, and 10. Do you

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1 remember seeing those and noticing that information?

2 A State's Exhibit -- I'm sorry. Defense Exhibit No. 8,
3 is a photograph of a prescription bottle prescribed to
4 Fred Madden. Defense Exhibit No. 9 is also another
5 prescription bottle prescribed to Fred Madden and
6 Defense Exhibit No. 10 is a photograph of a
7 prescription bottle, appears to be in a drawer.

8 Q Okay. Did you take those photographs?

9 A I did.

10 Q You did. So, those are actually your photographs and
11 those would fairly represent what you saw when you
12 came to the home?

13 A They weren't out that I recall, but we typically, with
14 prescription bottles, we pick them up so we can
15 document them and actually read the label on them.
16 There should be a photograph of where they were
17 beforehand.

18 Q Okay. I'm with you. All right. Now, you did collect
19 the Gunshot Residue Kit from the victim in the case.
20 Is that right?

21 A That's correct.

22 Q And you also, I believe, looked at and saw a
23 telephone. Is that correct?

24 A A cell phone. Yes.

25 Q A cell phone. Okay. And did you secure the cell

1 phone and take the cell phone down to the SLED lab to
2 check for anything significant that might be on the
3 cell phone?

4 A I photographed the cell phone and it was collected by
5 the Laurens County Sheriff's office.

6 Q So, you did not take the cell phone to do any testing
7 on that, you just photographed it and then turned it
8 back over to the Sheriff's office?

9 A That's correct.

10 Q Okay. Now, the outside of the home, did you or did
11 another SLED agent go outside and look and canvas the
12 area to look for any weapons outside the home?

13 A I did not. I don't recall if anyone else did.

14 Q Did, did you see any other law enforcement officers
15 while you were there at the scene looking for any
16 weapon outside the home?

17 A As I said, I don't recall.

18 Q Okay. Did -- As I understand, after -- and you were
19 at the home, by the way, for what length of time at
20 the 308 residence?

21 A Just over three hours.

22 Q So, while you were there, you did as thorough a job as
23 you can to do what you do. Correct?

24 A That's correct.

25 Q All right. Now, on Easy Road -- first of all, let's

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1 see if we can clarify something. I was looking
2 through some of the documentation in the case and you
3 indicated that it was ■ Easy Road, Clinton, the
4 address that you went to.

5 A That's ---

6 Q That's ---

7 A I'm sorry.

8 Q Pardon me.

9 A I was going to say, that's correct. That's what I
10 have in my notes.

11 Q That's what you had in your notes. If I showed -- do
12 you know whether or not that address was the proper
13 address?

14 A It was ■ Easy Road, but I was unsure of the town.

15 Q All right. Okay. Did you happen to see or view the
16 search warrant for Easy Road? Because I think you
17 participated in the search.

18 A I don't recall.

19 Q Okay. Would you take a look. Tell me if that
20 document would look familiar to you in your training
21 and experience and what you do.

22 A It's a search warrant.

23 Q Okay. Would you agree ---

24 A But I don't remember if I viewed it then.

25 Q Okay. Would you read the address that I've

1 highlighted and tell me the address on the search
2 warrant.

3 A The address on the search warrant is for [REDACTED] Easy
4 Road.

5 Q Okay. Not Easy Road, what town.

6 A It just says in Laurens County.

7 Q Okay. All right. Now, and then I noticed in your
8 notes you said [REDACTED] excuse me, [REDACTED] Easy Road, Clinton.

9 A That's correct.

10 Q All right. So, if the correct address -- and it's not
11 that big a deal, but there again, it's an error if the
12 correct address were actually [REDACTED] Easy Road, Laurens,
13 then you would stand corrected on that, on your notes.
14 Correct?

15 A That's correct.

16 Q All right. Thank you. Now, on the -- at Easy Road,
17 you indicated that you got clothing, which presumably
18 would have belonged to my client, Fred Madden.
19 Correct?

20 A That's correct.

21 Q All right. And you would agree that any testing or
22 anything done with that clothing, including a black
23 vest, indicated nothing that would tie my client to
24 this crime.

25 A I didn't do any testing on the clothes. It was

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1 submitted to the evidence processing department of our
2 laboratory for further testing.

3 Q I've got you. Well, maybe I can put it another way.
4 You didn't see anything significant in the clothing
5 that you saw that you would want to point out to tie
6 him to the crime based on what you did.

7 A I don't recall seeing anything. I don't have anything
8 listed on my notes.

9 Q Okay. You did mention that you went in the bathroom
10 and saw suds in the bathroom.

11 A In the bathtub. Correct.

12 Q Okay. And as a result of that, I guess you would be
13 looking for blood.

14 A That's correct.

15 Q And you didn't find anything.

16 A We processed the bathtub with leucocrystal violet.
17 It's a presumptive test for blood. It reacts to any
18 blood. We did not get a reaction.

19 Q Okay. And you mentioned the trash barrel that's been
20 referred to and you mentioned that the only thing of
21 significance was what appeared to be a fitted sheet.
22 Correct?

23 A That's correct.

24 Q And that's one of the photographs that we have here
25 that Mr. Hammack had you confirm of a photograph that

1 you made. Is that correct?

2 A That's correct.

3 Q Okay. And was the fitted sheet, since it was not
4 completely burned, was that taken to SLED for any
5 testing?

6 A No. It was not.

7 Q Okay. Now, you also, Agent Wallace, went to look at
8 the Moped, you said. Correct?

9 A That's correct.

10 Q All right. I'm going to show you -- we can just use
11 one of them -- Defendant's Exhibit No. 21. Take a
12 look at that. Is that the Moped that you went to
13 examine?

14 A State's Exhibit -- I'm sorry. Defense Exhibit No. 21
15 is a photograph of that Moped. Yes, sir.

16 Q All right. And the Moped, as far as you can tell from
17 that picture, was it essentially in the same condition
18 as shown in that picture?

19 A Yes. It's a true and accurate representation of what
20 I saw that day.

21 Q Okay. And you said it had actually been taken -- the
22 County had it, the Sheriff's office had it. Right?

23 A That's correct.

24 Q All right. So, wherever you looked at it, that was
25 somewhere where the County had it stored?

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1 A It was in the sally port at the Sheriff's office.

2 Q All right. At the old -- okay, over at the annex, the
3 one in town in Laurens, here?

4 A As far as I know. That's the only one I know of.

5 Q Okay. Now, you said that you looked at the Moped and
6 did your examination of that and didn't find any,
7 anything of significance, again, that would tie this
8 crime to Fred Madden. Correct?

9 A I collected two sets of swabs from the Moped handles
10 and they were submitted to our laboratory. I don't
11 know the results of those analyses.

12 Q Those would have gone to what lab?

13 A The SLED lab, the DNA lab.

14 Q DNA.

15 A Yes, sir.

16 Q Okay. You said you looked at a glove and did you test
17 that glove for, to see if there was any blood or any
18 gunshot residue?

19 A I did not test it for GRS, but I did test it for
20 blood. It was negative.

21 Q Okay. Do you know if that glove was taken into
22 evidence by you?

23 A It was not.

24 Q Okay. So, do you know what happened to the glove?

25 A I left it with the Moped.

1 Q All right. And Mr. Hammack, I think, asked you why
2 you wouldn't test the Moped handles for any gunshot
3 residue and you said, "Typically, we don't do that,
4 because it's transferred."

5 A Basically, that's correct.

6 Q And that's what somebody's told you that you do, that
7 you don't, you just don't do that, typically?

8 A That would be correct.

9 Q Have you ever done it?

10 A No, sir.

11 Q Never done it?

12 A No, sir.

13 Q Have you ever been asked to do it?

14 A No, sir.

15 Q Any reason why you couldn't have it done?

16 A As I said before, it's not something that GSR is
17 usually done on, something is not generally tested if
18 transferred. It's usually deposited when a weapon is
19 fired, on an item.

20 Q Not generally. It doesn't mean you couldn't have.

21 A You would have to have a trace to test for that.

22 Q So, if there was any opportunity to do it, it wasn't
23 done because your training tells you don't do it.

24 Correct?

25 A That's correct.

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1 Q All right. And Agent Wallace, I believe that you came
2 to Laurens on this case to go to [REDACTED] Easy Road,
3 Laurens, and the Highway 308 location. You did that
4 all in one day. Is that correct?

5 A I did. The initial scene was for Highway 308. The
6 Moped and the second residence were, in fact, after I
7 arrived on scene.

8 Q And you were never asked to go back and process
9 anything else. Is that correct?

10 A That's correct.

11 Q And you were never asked to go outside the home on 308
12 or go anywhere in the area off 308 to look for
13 anything or do any processing. Correct?

14 A No, sir. I do remember that the Sheriff's office was
15 checking the area off Highway 308 for a weapon.

16 Q Okay. But they didn't ask you to assist in that.

17 A No, sir.

18 Mr. Howe: That's all the questions I have.

19 The Court: Any redirect, Mr. Hammack?

20 Mr. Hammack: Yes, sir, Your Honor. Just briefly.

21 The Court: Yes, sir.

22 Redirect Examination of Melissa Wallace by Mr. Hammack

23 Q Agent Wallace, you say that Fred Madden had items in
24 the home?

25 A That's correct.

1 Q Defense asked you about fingerprints and DNA and all
2 that linking Fred to the crime scene. Why didn't you
3 look for that?

4 A His DNA and fingerprints should be in the house.
5 Finding his fingerprints and DNA in the house doesn't
6 put a weapon in his hand in that specific incidence
7 and pulling the trigger or anything like that. I
8 mean, his fingerprints and DNA should be there at any
9 other point in time as well.

10 Q Why do you say that?

11 A Because he lived there, or recently had lived there.

12 Q Defense asked you about the television. Do you recall
13 it being on?

14 A I do.

15 Q Do you recall if the sound was on?

16 A I don't recall.

17 Q You don't recall it being inordinately loud?

18 A I don't remember.

19 Q So, not enough to get your attention.

20 A No.

21 Q You just noticed it was on.

22 A That's correct.

23 Q All right. You were also asked about a cell phone.
24 Did you find a cell phone at that location?

25 A Yes. There was a cell phone in the master bedroom.

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1 Q Where was it in reference to the victim?

2 A It was near her on the floor.

3 Q Did you ever look at that phone?

4 A Yes, sir.

5 Q What was on the screen?

6 A 911.

7 Mr. Hammack: Nothing further.

8 The Court: Thank you, ma'am. You may step down. Any
9 objection to excusing this witness?

10 Mr. Howe: No, sir.

11 The Court: Thank you very much for coming. Do any
12 members of the jury need a break before we proceed with the
13 next witness? A brief bathroom break or anything? Raise
14 your hands if you do. (No hands are raised) All right.
15 Call your next witness.

16 Mr. Hammack: Your Honor, to be quite honest, the State
17 needs a quick break.

18 The Court: All right. The State needs a bathroom
19 break. We will take a break, then. Don't discuss the
20 case. Adjourn to the jury room. If you need a cigarette,
21 the bailiff will help you get outside to have one and we'll
22 see you in a minute.

23 (Brief Break)

24 (Jury in at 11:13 a.m.)

25 The Court: The record should reflect the jury is back.

1 back. We are resuming the trial of The State versus Mr.
2 Madden. Mr. Hammack, call your next witness, please, sir.

3 Mr. Hammack: Your Honor, the State would briefly
4 re-call Lieutenant Shelton.

5 The Court: All right. Lieutenant, if you will come
6 up. You are still under oath from yesterday's testimony.

7 Direct examination of Jawarski Shelton by Mr. Hammack

8 Q If you would, state your name for the record, please.

9 A Lieutenant Jawarski Shelton.

10 Q Lieutenant Shelton, we spoke briefly yesterday. By
11 whom are you employed, again?

12 A Laurens County Sheriff's office.

13 Q Were you involved in the investigation of this
14 incident we've been trying on 308, near Highway 49?

15 A Yes, sir.

16 Mr. Hammack: May I approach the witness, Your Honor?

17 The Court: Yes, sir.

18 Q Take a look at State's No. 1. What is that?

19 A The Advisement of Rights Form that the Sheriff's
20 office used.

21 Q Do you recognize that form?

22 A Yes, sir.

23 Q What's that form depict?

24 A The Advisement of Rights that Mr. Madden was given on
25 the 15th day of December of 2009.

(TESTIMONY - LIEUTENANT JAWARSKI SHELTON)

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1 Q All right. Did you complete that form?

2 A I actually read the form, but it was actually filled
3 out by Lieutenant Blackmon.

4 Q And you saw Mr. Madden sign it?

5 A That's correct.

6 Mr. Hammack: Your Honor, at this time I would move
7 State's No. 1 into evidence.

8 The Court: Any objection to State's No. 1, subject to
9 your earlier...

10 Mr. Howe: Subject to earlier ---

11 The Court: Reservations.

12 Mr. Howe: Yes, sir.

13 The Court: Your rights are reserved. State's No. 1
14 will be in evidence subject to the Defense' objection from
15 Monday.

16 (Whereupon, an Advisement of Rights Form is entered
17 into evidence as State's Exhibit No. 1, over objection.)

18 Mr. Hammack: Nothing further.

19 Mr. Howe: No questions.

20 The Court: Thank you, sir. You can step down.

21 Mr. Hammack: Your Honor, the State would call SLED
22 agent Ken Whitler.

23 (After being duly sworn by the clerk of court, Ken
24 Whitler testified as follows:)

25 Direct examination of Ken Whitler by Mr. Hammack

1 Q Would you please state your full name for the record.

2 A My name is Kenneth H. Whitler and the last name is
3 spelled W-H-I-T-L-E-R.

4 Q By whom are you employed?

5 A The South Carolina Law Enforcement Division, that's
6 also known as SLED.

7 Q How long have you been working with them?

8 A Since 1997.

9 Q And what do you do at SLED?

10 A I'm a firearms examiner in the forensic laboratory in
11 the firearms department.

12 Q Explain to me what a firearms examiner does.

13 A Basically, it's firearms identification, which means
14 we examine bullets and cartridge cases for the purpose
15 of determining if those ammunition components were
16 fired by the same gun or if a firearm has been
17 submitted, determine if those were fired by a
18 particular gun.

19 Q How long have you been doing this type of work?

20 A I've been a certified examiner since 1991.

21 Q Have you testified in court before as to this type of
22 evidence?

23 A Yes. I have.

24 Q About how many times?

25 A About 240 times.

(TESTIMONY - KENNETH WHITLER)

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1 Q Explain to me just briefly, how do you do these tests?

2 A Well, basically what we use is a comparison microscope
3 and that's basically a microscope that lets you look
4 at two objects at the same time. For example, if you
5 have bullets, you can put one bullet on one stage,
6 which basically just holds the bullet, put another
7 bullet on the other stage and looking through the
8 microscope, you can make them appear side by side so
9 that you can compare the marks on the bullet on the
10 left to the marks of the bullet on the right. In the
11 case of where only bullets are submitted, then you
12 would take whatever bullets were submitted and try to
13 determine if the marks on the bullets compare to each
14 other or identifiable with each other. If there is
15 sufficient agreement of those marks, you are able to
16 say all the bullets were fired by the same gun. If a
17 firearm is submitted, then what we do is we test fire
18 the gun so that we have a known sample, a known
19 bullet, put it on one side of the microscope and then
20 put the question or submitted bullets on the other
21 side and try to determine if those bullets were fired
22 by that particular firearm and we do the same thing
23 with cartridge cases. If we obtain test cartridge
24 cases and you have a firearm, if you don't have
25 cartridge cases -- or a firearm, then you would

1 compare whatever is submitted to determine if they
2 were all fired by the same gun or if maybe multiple
3 guns were involved.

4 Q What type of training do you have for this?

5 A There's no degree in firearms identification. You
6 have to learn it from other qualified examiners. And
7 when I was in the F.B.I. laboratory, I went through
8 their training period, which was approximately two
9 years in length, where you shoot a lot of firearms and
10 examine, literally, thousands of bullets and cartridge
11 cases and you work with, like I said, qualified
12 examiners. When you start your training, you actually
13 work with the examiners. You are, in the beginning,
14 mostly observing. Towards the end of your training
15 period, you're doing most of the work and they're
16 doing the observing of you to determine if you have
17 become competent. In the F.B.I. system, when all the
18 examiners -- you have to work with all the examiners
19 in the unit -- when all of them agree that you're
20 competent, then they give you a series of three tests
21 and if you successfully complete those three tests
22 then you are certified by the F.B.I. laboratory to do
23 their exams. I've successfully completed those tests
24 and was certified in 1991 to do firearms
25 identification. In 1997, I retired from the F.B.I.

(TESTIMONY - KENNETH WHITLER)

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1 laboratory and came to SLED where I do, basically, the
2 same job.

3 Q How many tests would you say you've done since 1991?

4 A It would be thousands.

5 Q How many times have you testified?

6 A Approximately, 240.

7 Q How many times have you testified in the State's
8 Circuit Court here in South Carolina?

9 A Approximate, well over 150.

10 Mr. Hammack: Your Honor, at this time I'd like to move
11 Mr. Whitler -- at this time, I'd like to ... I'm sorry, the
12 word escapes me at this time. I was thinking of something
13 else and it caught me off guard.

14 The Court: Ask that he be qualified as an expert ---

15 Mr. Hammack: I'd ask that Mr. Whitler be qualified as
16 a firearms identification expert.

17 The Court: Any voir dire or objection? No objection?

18 Mr. Howe: (Shakes head)

19 The Court: All right. Again, Ladies and Gentlemen,
20 as I explained yesterday, a person usually, a witness
21 usually cannot give opinion testimony. Normally, they have
22 to testify to something they observed with one of their
23 five senses. An exception, of course, exists for a person
24 who is qualified in a particular area due to education or
25 experience. In this case, Mr. Whitler, the parties

1 stipulate that he is an expert in the field -- give me the
2 field again, Mr. Hammack.

3 Mr. Hammack: Firearms identification.

4 The Court: In the field of firearms identification.
5 They agree that he is an expert in such a field so he may
6 give opinion testimony concerning that particular field.
7 Of course, that does not mean you are required to accept
8 his testimony, but it is evidence for you to use in any way
9 that you see fit and give it the weight and credibility you
10 feel it may deserve. You can continue, Solicitor.

11 Mr. Hammack: Yes, sir, Your Honor.

12 Q Agent Whitler, did you have an opportunity to identify
13 or to examine some evidence that was sent in from the
14 incident that occurred at [REDACTED] Highway 308 here in
15 Laurens involving Mr. Fred Madden?

16 A Yes. I did.

17 Q What date did that take place?

18 A According to the records we have, it occurred on
19 December the 10th, 2009.

20 Q What date did you do your identification?

21 A I conducted my exams during the period of June 21,
22 2010 to June 22, 2010.

23 Q I'll ask you, just briefly, do you go out to the scene
24 where these things occur?

25 A No, sir. Basically I, the evidence is brought to the

(TESTIMONY - KENNETH WHITLER)

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1 laboratory. We take the evidence, which is received
2 in a sealed condition, and we take it to our office
3 where we work on it. After we finish our work on it,
4 we re-seal the evidence and take it back downstairs to
5 what we call the Evidence Control Center and then it's
6 picked up by whoever submitted it.

7 Q Agent Whitler, I'll ask you to take a look at these
8 items.

9 Mr. Hammack: Your Honor, may I approach the witness?
10 The Court: By all means.

11 Q Take a look at State's Exhibit No. 3. Do you recognize
12 that?

13 A Yes. I do.

14 Q How do you recognize that?

15 A It has my initials, the date it was sealed on it, on
16 the various containers.

17 Q Let me ask you to take a look at State's No. 17. Do
18 you recognize that?

19 A Yes. I do.

20 Q And how do you recognize that?

21 A Again, it has my initials and the date on it.

22 Q I'll ask you to take a look at State's No. 18. Do you
23 recognize that?

24 A Yes. I do.

25 Q What is that?

1 A It's a fired bullet.

2 Q How do you recognize it?

3 A Again, it has my initials, the item number and the
4 date I sealed it on it.

5 Q Do all the items appear to be in substantially the
6 same condition they were when you completed your
7 testing?

8 A Yes, sir.

9 Mr. Hammack: Your Honor, I move State's No. 17, No. 18
10 and No. 3 into evidence.

11 The Court: Any objection? Would you show those to Ms.
12 Anderson, please. (Mr. Hammack complies)

13 Ms. Anderson: Without objection.

14 The Court: All right. Without objection, No. 17, No.
15 18 and No. 3 are in evidence.

16 (Whereupon, a packet of bullets is entered into
17 evidence as State's Exhibit No. 3, a bullet is entered into
18 evidence as State's Exhibit No. 17 and a bullet is entered
19 into evidence as State's Exhibit No. 18, without
20 objection.)

21 Q Referring to State's Nos. 3, 17 and 18, did you have
22 an opportunity to test those?

23 A Yes. I did.

24 Q Again, what are they?

25 A State's Exhibit No. 17 is one fired bullet. State's

(TESTIMONY - MELISSA SKIPPER WALLACE)

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1 Exhibit No. 18 is also one fired bullet and State's
2 Exhibit No. 3 has two fired bullets in it.

3 Q Based on your examination, did you produce a report?

4 A Yes. I did.

5 Q Did you reach a conclusion?

6 A Yes. I did.

7 Q What did you conclude?

8 A I compared these four bullets to each other since no
9 firearm was ever submitted and determined there was
10 insufficient agreement of the individual marks on
11 those bullets and so that meant that I could not say
12 that all four bullets were fired by the same firearm.
13 However, the class characteristics, mainly the rifling
14 characteristics on these bullets were similar and
15 while I couldn't say they were fired by the same
16 firearm, they could have been fired by the same
17 firearm or by separate firearms with similar rifling
18 characteristics.

19 Q Did you ever see a firearm to compare with that?

20 A No, sir.

21 Q Based on your examination, could you conclude any
22 types of firearms that may have fired those rounds?

23 A We produce, when no firearm is submitted, a what we
24 call a "List of possible firearms". This is merely a
25 -- it doesn't contain all the firearms in the world,

1 but it's a database of firearm rifling characteristics
2 so that instead of telling an investigator, "Well, you
3 are looking for a gun." We are able to say, "You may
4 be looking for a *Smith & Wesson*, a *Colt*, a *Rossi* or
5 something of this nature." It tries to narrow down
6 their search a little bit. If we give them -- on this
7 list, it's really meant for investigative assistance
8 that if they're out looking and they come up with a
9 gun that's not on the list, we'll tell -- you know,
10 that's a hint that maybe that's not the gun they're
11 looking for, but we also put on there also that if
12 you've got reason to doubt it, then maybe this gun
13 could be different. Give us a call and we'll look at
14 it, but this is merely a list of firearms that have
15 the same rifling characteristics and could have fired
16 it.

17 Q Were you able to determine what caliber bullets these
18 were?

19 A These bullets were consistent with being .38, the
20 bullets that are commonly used in .38 Special and .357
21 Magnum caliber cartridges.

22 Q All right. And why were you unable to determine a
23 particular caliber?

24 A Well, I was able to get it down to, it's most
25 consistent with, it's the same diameter that is used

(TESTIMONY - KENNETH WHITLER)

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1 in those commonly available cartridges. You can't
2 tell if it's a .38 Special or a .357 since a .38
3 Special can be fired in a .357 Magnum firearm. In
4 addition, the bullets are the same diameter.

5 Q You list a number of different types of firearms that
6 are consistent with your tests. Is that correct?

7 A That's correct.

8 Q Was one of them a Rossi?

9 A Yes. It was.

10 Q Is it possible these bullets were fired by a
11 .38 caliber Rossi firearm, then?

12 A Yes, sir.

13 Q Among others, but particularly, a .38 caliber Rossi.
14 Correct?

15 Ms. Anderson: Objection. Could we have a sidebar?

16 The Court: Yes.

17 (Bench conference off the record)

18 The Court: Ms. Anderson, cross examination?

19 Ms. Anderson: Thank you, Your Honor.

20 Cross examination of Ken Whitler by Ms. Anderson

21 Q Good morning.

22 A Good morning.

23 Q Mr. Whitler, do you have the benefit of your notes and
24 your report in front of you?

25 A Yes. I do.

1 Q And noting the question that it could have been fired,
2 potentially, from the Rossi, it also could have been
3 fired from a gun from *American Weapons, FIE, Quality*
4 *Firearms, Llama, Astra, Hy Hunter,*
5 *Rossi (Garcia) (Beistegui),* pardon me if I say that
6 wrong, *Indumil-Llama, Taurus, Charter Arms, Lasserre*
7 *Sa and Herters.* Correct?

8 A That's correct. These, they all have the same rifling
9 characteristics or they make a model with those
10 characteristics, so they all have equal opportunity of
11 having fired the bullets.

12 Q And it could have been fired from a gun not on that
13 list. Correct?

14 A Yes. We try to keep -- the list is maintained by the
15 F.B.I. Laboratory and they try to take, whenever a new
16 firearm is produced, they try to put the new specs in
17 it. However, there is always new guns being produced
18 each year, so until they actually hit the streets or
19 something, it may not be on the list.

20 Q And as you mentioned earlier, the .38 Special or the
21 .357 Magnum cartridges are commonly available
22 cartridges.

23 A Yes. They are.

24 Q And a .38 Special cartridge can be fired, both from a
25 gun chamber for a .38 Special or .357?

(TESTIMONY - KENNETH WHITLER)

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1 A That's correct.

2 Q And, likewise, a gun that's a .357 chamber cartridge
3 or capability of firing a .357 can also fire a .38?
4 Do you want me to re-state my question? That was a
5 little confusing.

6 A Yes.

7 Q I understand. A .38 cartridge can be fired both from
8 a gun that can be chambered for a .38 or .357.

9 A That's correct.

10 Q And conversely, a .357 gun can fire both a .357
11 cartridge or a .38 cartridge?

12 A That's the same question.

13 Q It's the same question, but just conversely.

14 A Let me try to clear it up. A .38 Special and a .357
15 Magnum cartridge use the same diameter bullet. In
16 many cases, they use the same bullet. The only
17 difference is, the .357 Magnum cartridge case is
18 slightly longer, because it has more power. They make
19 it longer so that you cannot put a .357 Magnum
20 cartridge in a .38 Special revolver or handgun,
21 because you have the possibility, due to differences
22 in chamber pressure, you could damage the gun, blow it
23 up, or other problems with it. So, while a .38
24 Special, which is shorter, can be fired in a .357
25 Magnum firearm, the reverse is not true. Unless there

1 is something wrong with the gun, it should not chamber
2 a .357 in a .38 Special.

3 Q And going back to your report on the first page, you
4 meant that the bullets that you reviewed were most
5 consistent with a .38 Special or .357 cartridge?

6 A That's correct.

7 Q And through your analysis, you could't conclude
8 whether the bullets that you looked at were fired from
9 the same gun. Correct?

10 A No, ma'am. They could have all been fired by the same
11 gun. They couldn't have been fired by more than four
12 guns, because that's all the bullets we had, but any
13 combination up to that one to four, could have fired
14 those bullets.

15 Q So, it could have been from one gun, two guns, three
16 guns, or four guns, any combination from the list on
17 the second page of your report or maybe a gun not on
18 that list?

19 A That's correct.

20 Q And again, you answered or testified previously that
21 it was not an all-inclusive list and the report you
22 generated was for investigative assistance only.

23 A Yes, ma'am.

24 Q And a gun was never given to you to analyze. Correct?

25 A That's correct.

(TESTIMONY - JAMES COOPER)

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1 Ms. Anderson: I've no further questions of this
2 witness.

3 The Court: Anything on redirect?

4 Mr. Hammack: No, sir.

5 The Court: All right. Mr. Whitler, thank you very
6 much for coming. Any objection to excusing Mr. Whitner?

7 Ms. Anderson: None.

8 The Court: All right. You are released from your
9 subpoena, Mr. Whitler. Have a great day. Thank you very
10 much for coming, sir.

11 Mr. Hammack: James Cooper.

12 (After being duly sworn by the Clerk of Court, James
13 Cooper testified as follows:)

14 The Court: Mr. Hammack.

15 Direct examination of James Cooper by Mr. Hammack

16 Q Please state your full name for the record.

17 A James Brent Cooper.

18 Q Mr. Cooper, where do you live?

19 A Ekom Beach.

20 Q Is that here in Laurens County?

21 A It's in Laurens County. Yes, sir.

22 Q Where do you work?

23 A At Josten's.

24 Q How long have you worked out there?

25 A Probably about seven or eight years.

- 1 Q Mr. Cooper, do you recognize the gentleman sitting
2 there in the blue suit?
- 3 A I do.
- 4 Q Who is that?
- 5 A That's Fred.
- 6 Q Fred who?
- 7 A Fred Madden.
- 8 Q How do you know him?
- 9 A Fred and I worked together. He's a good friend.
- 10 Q Where did y'all work together?
- 11 A When he was at Josten's. It's been a while back now,
12 I'm not sure exactly the year. It's been a good
13 while.
- 14 Q How well did you know Fred?
- 15 A I know him pretty well.
- 16 Q Mr. Cooper, do you recall purchasing a .38 caliber
17 Rossi?
- 18 A Yes, sir.
- 19 Q When was that?
- 20 A I'm not sure about the date. '09. I mean, '07 maybe.
- 21 Mr. Hammack: Your Honor, may I approach the witness?
- 22 The Court: Yes, sir.
- 23 Q I'll show you what's been marked as State's No. 19,
24 for identification. Do you recognize that document?
- 25 A Yes, sir.

(TESTIMONY - JAMES COOPER)

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- 1 Q What is that?
- 2 A That's where I bought the gun.
- 3 Q And when did that take place?
- 4 A I don't remember the date. I don't see the date on
- 5 here.
- 6 Q Look about mid-way down the page.
- 7 A Oh, in '04.
- 8 Q So, you purchased the gun in 2004?
- 9 A That's correct. Yes, sir.
- 10 Q From where?
- 11 A Oshman's.
- 12 Q Where's Oshman's?
- 13 A It was a sporting goods store in Greenville where the
- 14 old Greenville Mall used to be.
- 15 Q Do you still own that gun?
- 16 A No, sir.
- 17 Q What did you do with it?
- 18 A I sold it.
- 19 Q Who did you sell it to?
- 20 A I sold it to Fred.
- 21 Q Fred who?
- 22 A Fred Madden.
- 23 Q The gentleman sitting there? (Indicating)
- 24 A Yeah.
- 25 Q When was that?

1 A I would say around '07 maybe.

2 Q So, you had it three years or so and then sold it?

3 A Yes, sir. Something like that.

4 Q Le me just ask you briefly; what type of gun was it?

5 A It was a flat, plastic handled, .38 Special, I think
6 it's called.

7 Q Was it a revolver?

8 A Revolver. Yes, sir.

9 Q How many rounds did it have?

10 A Five maybe. I'm not real sure.

11 Mr. Hammack: All right. Nothing further.

12 Mr. Howe: I have no questions.

13 The Court: All right. Thank you, sir. You may step
14 down. Mr. Hammack, call your next witness.

15 Mr. Hammack: Your Honor, the State rests.

16 The Court: All right. Ladies and Gentlemen of the
17 jury, at this point we've received the evidence that we are
18 going to receive from the State. I'm going to have to ask
19 that you adjourn to the jury room for a little while, while
20 I discuss some matters with the attorneys involved. I will
21 then bring you back out here and we will proceed. Again,
22 it's not time for you to discuss the case, so don't talk
23 about it. Adjourn to the jury room, please. We'll have
24 you back as soon as we can.

25 (Jury out at 11:38 a.m.)

(MOTION FOR DIRECTED VERDICT)

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1 (Jury out at 11:38 a.m.)

2 The Court: All right. The record should reflect that
3 the jury is out. Motions at this point in time?

4 Mr. Howe: Yes, sir. If it please the Court.

5 The Court: Yes, sir.

6 Mr. Howe: Judge, at this time we would be requesting
7 that you direct a verdict of not guilty on both charges.
8 On the charge of murder, Judge, we would ask that you
9 direct a verdict of not guilty based on the fact that the
10 State has produced absolutely no evidence, whatsoever. It
11 doesn't even go to credibility. There's no evidence,
12 whatsoever, that our client fired a gun that resulted in
13 the death of the victim in this case. In addition, Judge,
14 there is -- and you've heard all the evidence in the case.
15 There was no testimony, whatsoever, establishing that Fred
16 Madden did anything other than go to that home. There's no
17 evidence that Fred Madden was having a argument or dispute
18 with the victim in the case. There's no eyewitness
19 testimony that anything was going on -- other than based on
20 what you've heard at trial and that the evidence that
21 actually went to trial -- that there was anything other
22 than him being present. The State has not established the
23 time of death. There's an estimate as to time frame. It
24 does not, in any way, eliminate the possibility that this
25 offense could have been committed by someone else. At this

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1 point in time, it's mere speculation and I would argue to
2 the Court that it is, doesn't even achieve the, all the
3 elements necessary to establish a circumstantial evidence
4 case based on the evidence that's been produced in this
5 case. The -- and although this may be somewhat a comment
6 on the evidence, I think it is important that you just
7 heard from the SLED ballistics, gun person, who said that
8 the bullets that he examined could have come from any
9 number of guns and while that goes, I understand, to the
10 weight of the evidence, again, is that enough to give this
11 case to the jury based on that. On the issue, Judge, of
12 murder, of course, we know what the State has to prove the
13 unlawful killing of another human being with malice
14 aforethought. We would argue that there is absolutely no
15 evidence that's been introduced concerning malice
16 aforethought. Now, then, we have the Belcher case where
17 the Supreme Court looked at that, the State cannot argue
18 that there is any inference concerning the use of a weapon.
19 So, we would argue, first of all, that the Court direct a
20 verdict on the issue of murder.

21 On the issue of use of a weapon during the commission
22 of a violent crime, obviously, if you don't have the
23 murder, you don't have the use of a weapon during the
24 commission of a violent crime. So, for all those reasons,
25 Judge, we think that what we've got at this stage, the jury

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1 knows -- the evidence is that Fred Madden went to the home.
2 The evidence is that Fred Madden left the home. The
3 evidence is that Fred Madden took certain actions after he
4 left the home, but those don't go to establish the crime of
5 murder, actions thereafter. You look at what happened at
6 that home at that time and there's no evidence that Fred,
7 that he did this. At best, you've got an argument that he
8 was present and for that reason, Judge, we would
9 respectfully request that you direct a verdict of not
10 guilty on both these charges.

11 The Court: Thank you, Mr. Howe. Mr. Hammack, what's
12 the State's response?

13 Mr. Hammack: Your Honor, taking the evidence in the
14 light most favorable to the State, we feel we have produced
15 enough evidence to get past a directed verdict. Your
16 Honor, there's evidence that Fred Madden arrived at the
17 home while Ernestine was still alive, speaking on the phone
18 with her sister. There's evidence that the sister heard
19 Fred Madden speaking in the home while she was on the phone
20 with her sister placing Mr. Madden and Ms. Brown in the
21 home while Ms. Brown was still alive. Shortly thereafter,
22 or during the conversation, she gets in touch with someone
23 who gets her brother coming. Her brother is on the way,
24 he's already out and on the way there, actually sees Mr.
25 Madden leaving just up the road from the house. He

(MOTION FOR DIRECTED VERDICT)

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1 arrives, he finds his sister unconscious on the floor.
2 Your Honor, there's -- I disagree with Mr. Howe somewhat on
3 the Belcher case. That applies to self-defense cases. The
4 way I read it and, of course, the Court will correct me if
5 I'm wrong, but the way I read it, an inference of malice
6 can still be found if the use of a deadly weapon in self-
7 defense isn't claimed. There's no claim of self-defense in
8 this case. We tried the Belcher case right here, so I'm
9 pretty familiar with it, but as I read it and the way I
10 read it, we can still use that inference if there's no
11 self-defense. Self-defense is not being claimed in this
12 case.

13 Your Honor, I agree with Mr. Howe, this is a
14 circumstantial evidence case and there's no question
15 there's no witness there that saw it happen. We've got
16 Fred Madden in the house with her alive. We've got Fred
17 Madden leaving the scene of the house and her brother
18 coming in and finding her dead. We've got Fred Madden
19 going home, taking a bath, which the testimony was, would
20 destroy the GSR on him. We've got Fred Madden going home
21 burning his clothes, which again, testimony was, you can't
22 test burned clothes and you can't find GSR on them because
23 they've been burned up. Your Honor, you've got testimony
24 from a witness who sold Mr. Madden a weapon consistent with
25 what the firearms expert testified to was used, or could

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1 have been used in this case. And Your Honor, we've got, of
2 course, the statement of Mr. Madden that's basically
3 contradictory to what we're saying, in parts. However,
4 that's the evidence we presented and that's what we've got.

5 The Court: All right. In the light most favorable to
6 the State, Mr. Howe, I have to conclude that the State has
7 sufficient direct and circumstantial evidence which would
8 warrant sending this to the jury, so I will deny your
9 motion for directed verdict of not guilty at this time.
10 Any other motions or matters we need to address at this
11 point, Gentlemen, Ladies?

12 Mr. Hammack: None from the State.

13 The Court: None from the State. I was going to go
14 over Mr. Madden's right to testify since I have typically
15 been doing that. At some point I was going to do that.
16 You indicated yesterday, Mr. Howe, that you anticipated
17 presenting a defense.

18 Mr. Howe: Your Honor, could we have a few minutes and
19 discuss that very thing?

20 The Court: Yes, sir. I figured you might want exactly
21 that. I'll -- you need to discuss it with Ms. Anderson and
22 your client, I assume.

23 Mr. Howe: We do.

24 The Court: All right. Very good. Y'all take a few
25 minutes -- take as much time as you want. Just let me know

(FIFTH AMENDMENT RIGHTS)

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1 when you're ready to proceed and we'll go from there. How
2 about that?

3 Mr. Howe: Yes, sir. Thank you.

4 The Court: Yes, sir. We'll be at ease.

5 (Brief Break)

6 The Court: All right. We are back on the record. The
7 jury is not present. My clerk informs me, Mr. Howe, you
8 want to put something on the record?

9 Mr. Howe: Nothing. Nothing. We were going to talk
10 about something else, about scheduling, but I'm ready for
11 you to examine Mr. Madden concerning his decision.

12 The Court: All right. Very good. I apologize. I
13 must have misunderstood, then. All right. Mr. Madden, if
14 you could, you can stay where you are, but if you would
15 just raise your right hand if you would, please, sir.

16 Fifth Amendment Rights

17 (The Judge administers the oath to Mr. Madden)

18 The Court: (Mr. Madden doesn't respond) I need to ask
19 you some questions. I've got to make sure that your oath,
20 that your responses to me are accurate. This is about your
21 right to testify. Okay? So, do you swear you'll tell the
22 truth?

23 Mr. Madden: Yes.

24 The Court: All right. (Mr. Madden talks to Mr. Howe)
25 I'm not going to elicit any sort of testimony from you,

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1 Mr. Madden, but I do have to ask you a number of questions
2 and that's the reason I needed to put you under oath. Do
3 you understand, sir?

4 Mr. Madden: Yes, sir.

5 The Court: Mr. Madden, at this time I am going to
6 explain to you certain rights that you have. If you don't
7 understand anything I say or you need me to clarify it
8 further, that's perfectly fine. Just indicate to me that
9 you don't understand what I'm saying and I'll give you
10 either time to speak to Mr. Howe or Ms. Anderson or you
11 could ask me to clarify further what I'm explaining to you.
12 Okay, sir?

13 Mr. Madden: Okay.

14 The Court: All right. Now, Mr. Madden, we've reached
15 that point in the trial where you may present a defense if
16 you choose to do so. I inform you that you have the right
17 to claim the protections given to you by the Fifth
18 Amendment of the United States Constitution which states,
19 in part, that no person shall be compelled in any criminal
20 case to be a witness against themselves. This means, Mr.
21 Madden, that you can't be required to testify in this case.
22 You have the right to testify on your own behalf if you
23 choose to do so, however, no one can make you testify. The
24 solicitor can't make you testify, I cannot force you to
25 testify, nor can Mr. Howe or Ms. Anderson make you testify

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1 in this case, that's because the right to testify or not to
2 testify is a personal right. No one can waive this right
3 except for you. Do you understand, sir?

4 Mr. Madden: I understand.

5 The Court: Now, Mr. Madden, if you decide to testify,
6 understand you will be subject to the same rules that
7 govern other witnesses and you may be examined and cross
8 examined on any relevant issue in this case. In addition,
9 if you have any convictions involving dishonesty or false
10 statements or for crimes punishable by imprisonment for
11 more than a year and the Court determines that the
12 probative value of these convictions outweighs the
13 prejudicial effect to you, then the solicitor will be able
14 to introduce those prior convictions or that prior record
15 in order to attack your credibility. If you decide to
16 testify, this decision on your part must be freely,
17 voluntarily and intelligently made with the knowledge of
18 the protections given to you by the Fifth Amendment and the
19 consequences of your decision to testify.

20 Now, Mr. Madden, if you decide not to testify, I will
21 instruct the jurors that they cannot give the fact that you
22 did not testify any consideration, whatsoever, in their
23 deliberations and there is to be absolutely no prejudice to
24 you because you did not testify. Mr. Madden, it's left
25 entirely up to you whether or not you testify. You can

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1 talk with your lawyers, your family, your friends, anyone
2 else, but the final decision is yours to make. Do you
3 understand that, sir?

4 Mr. Madden: I do, Your Honor.

5 The Court: All right. Do you have any questions about
6 anything that I've explained to you?

7 Mr. Madden: No, Your Honor.

8 The Court: All right. And have you discussed with
9 your lawyers whether or not you should or intend to
10 testify? Have you discussed that with them?

11 Mr. Madden: Yes, Your Honor.

12 The Court: And do you need any more time to talk to
13 your lawyers about that decision?

14 Mr. Madden: No, Your Honor.

15 The Court: All right. Now, Mr. Madden, the way I
16 usually prefer to handle this is, if Mr. Howe calls you as
17 a witness in your defense, I will simply assume that you
18 have waived your Fifth Amendment Rights against
19 self-incrimination. Is that acceptable to you?

20 Mr. Madden: Yes, Your Honor.

21 The Court: All right. So, if Mr. Howe calls you as a
22 witness, that will constitute an automatic waiver on your
23 part of your Fifth Amendment Right to remain silent. Do
24 you understand that, sir?

25 Mr. Madden: Yes, sir.

1 The Court: All right. Very good. Is that acceptable
2 to you, Mr. Howe?

3 Mr. Howe: It is, Your Honor.

4 The Court: All right. Very good. May I ask if y'all
5 intend to present a defense?

6 Mr. Howe: We do not.

7 The Court: You do not? All right. Very good. Let me
8 suggest we do this: Let me go ahead and dismiss the jury
9 and ask that they return around 2:00. That way we can take
10 a few minutes to discuss the charge and that sort of a
11 thing. I can get that prepped and ready and we can go
12 straight into closings when they return at 2:00. What I'd
13 like to do, Mr. Howe, if you don't mind, is when I bring
14 them out, just rest on the record and we'll dismiss them
15 for lunch and take up the charges, the charge issues.

16 Mr. Howe: Yes, sir.

17 The Court: Let's go ahead and have the jury.

18 (Jury in at 12:11 p.m.)

19 The Court: The record should reflect that the
20 foreperson is back along with the other members of the
21 jury. At this time, Mr. Howe?

22 The Defense Rests

23 Mr. Howe: Your Honor, the defense rests.

24 The Court: Ladies and Gentlemen of the jury, we have
25 received all the evidence that we are going to receive in

1 this particular case. I apologize for keeping y'all
2 waiting back there for 30 minutes, but there were some
3 matters that I needed to take up with the lawyers. There
4 are some additional matters that I need to take up with
5 them at this point in time and so what I'm going to do is
6 go ahead and release you. You are going to have a much
7 longer lunch today than you had yesterday. I will ask that
8 you be back at 2:00. That will allow me enough time to
9 discuss these issues with the attorneys and then also grab
10 some lunch for myself. So, if you will be back at 2:00,
11 we'll proceed with the trial of the case at that point in
12 time. Again, Ladies and Gentlemen, it's not time to
13 discuss the case yet. It's not time to talk about it.
14 Certainly, you can't talk about it among yourselves or with
15 anyone that you might go to lunch with, so I'll let you
16 know when you can discuss the case. With that, I hope
17 y'all have an enjoyable lunch and I'll see you back in the
18 jury room around 2:00 this afternoon. All right? With
19 that, the jury is excused. Everyone else please stay
20 seated.

21 (Jury out at 12:12 p.m.)

22 The Court: All right. The record should reflect that
23 the jury has left the courtroom. Let's talk about charges.
24 As I'm seeing it -- well, Mr. Howe, let me hear what you
25 want first.

(CHARGE CONFERENCE)

1 Mr. Howe: Your Honor, could we have about one minute.
2 We need to make a couple of copies.

3 The Court: By all means.

4 (Ms. Anderson hands document to the Judge)

5 Charge Conference

6 Mr. Howe: Your Honor, in addressing our request to
7 charge, we assume the Court is going to go with the
8 standard charge on the offense itself. The reasonable
9 doubt charge, we would expect and request that the charge
10 incorporate the Court's holding in the Belcher case
11 concerning the inference of malice based on use of weapon.
12 Despite what, I think, was argued at the Directed Verdict
13 Motion, we think that actually is right and does not apply
14 to just a self-defense case. We would ask the Court to
15 consider that.

16 Judge, we -- additionally, I would be asking the Court
17 to -- I'm assuming you're going to charge, since the
18 Statement is in evidence, that you will have a charge
19 having to do with the Statement and particularly that the
20 jury, as I understand it, still has the right to hear of
21 the voluntariness of the Statement. And then, the other
22 charge, the one in particular, it's probably not anything
23 than in your standard charge, would be our request
24 concerning circumstantial evidence that we passed up to the
25 Court, because we think that's a correct and fair statement

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1 of the law and we would submit that that would be
2 appropriate to do our proposed charge concerning
3 circumstantial evidence.

4 The Court: And that's the old Edwards charge,
5 "exclusion of every other reasonable hypothesis" type
6 language.

7 Mr. Howe: Yes, sir.

8 The Court: Right. And I think Edwards was, if not
9 overruled, at least discontinued in a case in 2004. I'm
10 not sure if that's the correct year, but sometime around
11 there, I think.

12 Mr. Howe: We think it's still appropriate and we don't
13 think it was absolutely struck out.

14 The Court: I understand and I appreciate your
15 position. I will, in all likelihood, decline to charge the
16 Edwards charge and just go with the circumstantial
17 evidence, direct evidence, no difference between the two,
18 the definition that has been used more recently.

19 On the Belcher question, Mr. Hammack, I am more than
20 happy to hear from you on that. I am also somewhat leaning
21 towards agreeing with Mr. Howe that perhaps we are
22 embarking on thin ice by charging that, but I will be more
23 than happy to hear from you, sir.

24 Mr. Hammack: Your Honor, the way I understand the
25 holding is that the "use of a deadly weapon, implied malice

1 instruction" has no place in a murder prosecution where
2 evidence has been presented that would reduce, mitigate,
3 excuse or justify the killing. We don't have that in this
4 case. There's been no self-defense claim, nothing along
5 those lines, no accident. I believe, under Belcher, I
6 think it's appropriate, in this particular case, to charge
7 that.

8 The Court: Mr. Howe, would you care to address that
9 further, the Belcher question?

10 Mr. Howe: Your Honor, I understand the position the
11 State's taken concerning, in attempting to say that the
12 Belcher decision was a very narrow holding. I think, you
13 know, regarding what the Supreme Court is finally doing is
14 realizing these inferences are allowed and I think, you
15 know, my reading of Belcher, you don't get into the issue
16 of malice aforethought just because an allegation of a
17 weapon was involved and whether it be a self-defense case
18 or in any case, any decision in any homicide case. We
19 think the holding of Belcher is beyond the scope of what
20 the prosecution, what Mr. Hammack has argued to the Court
21 and the trend is to get away from these inferences and I
22 really think that's what the Court has told us.

23 Mr. Hammack: Your Honor, I can only rely on what they
24 clearly say is their holding. They say: Under their
25 policy-making role in the common law, we hold that, just

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1 what I told you earlier: the "use of a deadly weapon,
2 implied malice instruction" has no place in a murder
3 prosecution where evidence is presented that would reduce,
4 mitigate, excuse or justify the killing. That's just not
5 here in this case. None of that type of evidence has been
6 presented and it's the way I read the holding, it's still
7 entirely proper to charge that in this case.

8 The Court: Bear with me, I'm reading Belcher again.
9 It's either murder or not guilty. Would that be a correct
10 assessment of how you see it, too, Mr. Howe?

11 Mr. Howe: Yes, sir.

12 Mr. Hammack: Your Honor, if I may. If you look on
13 down in Belcher, the Court also says that a permissive
14 inference charge concerning the use of a deadly weapon
15 remains a correct statement of the law where the only issue
16 presented to the jury is whether the defendant has
17 committed murder.

18 The Court: Upon review of Belcher again, I'm inclined
19 to say that Mr. Hammack is correct. I'm looking at
20 Footnote 9 as well as the sentence in the body of the
21 opinion and it reads "The permissive inference charge
22 concerning the use of a deadly weapon remains a correct
23 statement of the law where the only issue presented to the
24 jury is whether the defendant has committed murder." At
25 the same time, Mr. Howe, I do tend to agree with you that

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1 certainly, a line of cases over the last several years
2 reflects a retreat from the inference language, which of
3 course, used to be the presumption language. Mr. Hammack,
4 you understand that this will, of course, assuming that
5 there is a conviction, be an additional and perhaps the
6 most fruitful ground for a potential appeal.

7 Mr. Hammack: I understand, Your Honor. And Your
8 Honor, I do have the case now that you were speaking of,
9 basically saying that the Edwards instruction is no longer
10 appropriate. If you'd like, I do have it.

11 The Court: What case is that?

12 Mr. Hammack: The State versus Cherry, 361 S.C. 588.

13 The Court: What year was that?

14 Mr. Hammack: It was 2005.

15 The Court: All right. Belcher indicates that the
16 inference of malice instruction is still proper law. I
17 will charge it. I do so with some hesitation, just because
18 I know what the or I realize there may be a possibility of
19 jeopardizing the overall situation in this trial, but that
20 will be a matter for a different court to address. Mr.
21 Howe, do you have a malice charge which you would prefer?

22 Mr. Howe: No, Your Honor.

23 The Court: All right. I'm going to ask you to come up
24 with one, because I don't like the one terribly much in the
25 charge book, but if you could check on something and just

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1 email that to me. Anything else that y'all can think
2 about? I hope to be able to have this worked up in the
3 next 30 minutes or so and I can email it to you so you can
4 make reference to this if you want to integrate it into
5 your closing. I hope to have it worked up in about 30
6 minutes.

7 Mr. Howe: Thank you, Judge.

8 The Court: Anything else y'all can think of?

9 Mr. Hammack: Your Honor, I have the implied malice
10 charge from Judge Anderson's book. I think it's the same
11 one you've got, but I can print it right quick and you
12 could take a look at it.

13 The Court: That would be nice if you would do that.
14 All right. We'll be at ease until around 2:00 and I will
15 see you back then.

16 (Lunch Break 12:30 - 2:00)

17 Afternoon - August 31, 2011

18 The Court: All right. Before we bring the jury in, I
19 would ask that the record reflect that I shared -- Oh, we
20 need Ms. Anderson. (Ms. Anderson enters) The record should
21 reflect that I did email those charges to counsel for the
22 defendant and counsel for the State. Apparently, everyone
23 agrees with the charge as well as the verdict form that
24 I've submitted to y'all. Is that correct, Mr. Howe, with
25 the reservations that you have about the Edwards charge and

1 charge and the malice charge arising from the use of a
2 deadly weapon, with those two caveats.

3 Mr. Howe: That is correct, Judge.

4 The Court: All right. You're okay with the charge,
5 Mr. Hammack?

6 Mr. Hammack: Yes, sir, Your Honor.

7 The Court: Mr. Howe, one more question of you. It
8 occurred to me just after I spoke to you a few moments ago,
9 I did make one correction. I'm okay to not do it, but on
10 page 15 of the charges where I'm instructing them to
11 everything that could potentially be a deadly weapon, I've
12 always found it somewhat -- I realize that's the standard
13 charge, but I've always found it somewhat peculiar that I
14 charge every potential example of a deadly weapon,
15 including: a dirk, a dagger, a slingshot, a razor,
16 gasoline, a molotov cocktail and lighter fluid, especially
17 when there are no facts in evidence to demonstrate that
18 those items could have, in fact, been used and I'm sure
19 that a slingshot could potentially be a deadly weapon, but
20 the only time I think that's ever been documented is
21 probably, and maybe the last time it was used as a deadly
22 weapon, was when David killed Goliath, but I changed page
23 15 to simply say, "I instruct you that a pistol may be a
24 deadly weapon." I'm okay to charge them all, but I'm okay
25 to do what you prefer.

1 Mr. Howe: I'd still prefer that you charge them all,
2 just because that's the charge.

3 The Court: I will do it that way, then. Very good.
4 Anything else before we bring the jury out?

5 Mr. Hammack: No, sir. Nothing from the State.

6 Ms. Anderson: No, sir.

7 The Court: Okay. Let's go ahead and have them,
8 please. He can just go straight in and then we'll go to
9 you. Is that all right?

10 Mr. Howe: Yes.

11 Mr. Hammack: Your Honor, I believe it's State's last
12 argument, because evidence was introduced by the defense.

13 The Court: You would be correct, probably. All right.
14 That is right.

15 (Jury in at 2:04 p.m.)

16 The Court: Let the record reflect that the jury is
17 back. Ladies and Gentlemen of the jury, I hope you had a
18 good lunch. We are now about to begin that portion of the
19 trial where you will receive or hear the argument of
20 counsel in this case. The way that we will proceed is that
21 Mr. Howe, for the defense, will argue first, then the State
22 will have an opportunity to make an argument to you. After
23 that, I will instruct you on the law that applies in this
24 case. I, again, remind you that the argument of counsel is
25 not evidence in this case. The only evidence that you may

(CLOSING ARGUMENT - MR. HOWE)

1 consider in the jury room is the testimony that's been
2 presented as well as any exhibits that have been
3 introduced. Therefore, if your recollection of what the
4 facts are differs from what counsel tells you their
5 recollection is, you should go with what you recall the
6 facts to be, because you are the ultimate finders of fact
7 in this particular case. So, again, if there is any
8 difference between what they say the facts are and what you
9 recall the facts as being, you should go with your
10 recollection as opposed to what counsel represents to you
11 the facts are. With that, Mr. Howe, you are invited to
12 give your closing argument, sir.

13 Mr. Howe: Thank you, Your Honor, if it please the
14 Court.

15 The Court: Yes, sir.

16 Closing argument - Mr. Howe

17 Good afternoon, Folks. Thank y'all again for your
18 patience in this case. Remember when we talked in opening
19 statement, I told you that I appreciated what y'all are
20 here for and appreciate the duty that you have and I thank
21 you. I've watched and y'all have been very patient. Y'all
22 have also been very attentive to the evidence in the case
23 and I appreciate that. I want to thank you on behalf of
24 Fred, Ms. Anderson who has worked on this case with me,
25 Fred's family and the criminal justice system in general,

(CLOSING ARGUMENT - MR. HOWE)

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1 because this is important and y'all have paid attention and
2 did what you're supposed to do.

3 We're now down to closing arguments. That means all
4 the evidence is in. That would be the testimony up here
5 that you've heard as well as the items that the court
6 reporter has there and y'all can take them back to the jury
7 room with you. And I'm speaking now, and this is the last
8 chance that I will have an opportunity to speak to y'all on
9 behalf of my client our my position in this case, because
10 the State has the burden of proof, having to prove, you
11 know, what Fred Madden's been charged with, beyond a
12 reasonable doubt. They get to make the final argument and
13 I have never had a case where, when the State got to go
14 last, I didn't want to jump back up and say, "But what
15 about this, but what about this." But I don't get that
16 chance, because the rules are that they have the burden of
17 proof and so they get the last chance to talk with you, but
18 I'll ask you, Ladies and Gentlemen, once again, to be as
19 attentive as you were before, in listening to me as well as
20 Mr. Hammack for the State, and of course, obviously, you
21 will when the Judge tells you what the law is.

22 Closing arguments are that, they're arguments, but I'd
23 like for you to consider certain things in the case. Now,
24 I've got -- I had to make some notes, because once was a
25 day that I could remember it all, but I can't quite do that

1 anymore, but give me an opportunity if I can, to tell you a
2 few things. We told you at the beginning that Fred Madden,
3 just like any other citizen in the United States of America
4 in Laurens County, South Carolina, comes into this
5 courtroom presumed innocent and unless and until the State
6 can prove to you, his jury, beyond a reasonable doubt that
7 he's committed the two crimes that he's charged with to
8 your satisfaction, beyond a reasonable doubt, no matter how
9 you feel about what may have happened after the event he's
10 claimed to have done, no matter how you feel about whether
11 or not it raises suspicion, then you are obligated to find
12 him not guilty. That's the law. That's the law in this
13 country and remember, we talked about that. That's
14 important.

15 Remember, I told you and the Judge will tell you that
16 the burden stays with the State. We don't have to prove
17 one thing. We don't have to prove anything. We don't have
18 to offer any evidence, we don't have to have any testimony
19 and the Judge is going to tell you the fact that Fred did
20 not testify in this case, that you are not to find him
21 guilty and hold that against him merely because he didn't
22 testify, because the focus is on what the State presents.
23 The burden of proof is with them and that's the way it
24 works.

25 So, with that in mind, you know, I want you to think

(CLOSING ARGUMENT - MR. HOWE)

1 about the charges. He's charged with murder, an unlawful
2 killing of another human being with malice aforethought and
3 the Judge is going to tell you what malice is. He's going
4 to tell you, give his charge on that, and I want you to
5 listen to it. He's going to tell you what circumstantial
6 evidence is, because this is a case where the evidence is
7 circumstantial. He's going to give you an instruction on
8 that and I believe I'm correct in understanding that the
9 Judge is actually going to give you the written charges
10 that y'all can take back to the jury room and see what the
11 law is that he's given you and have an opportunity to look
12 that over. But when he's talking about circumstantial
13 evidence, when you hear him on that, it's not just that the
14 circumstances are such that it raises a suspicion that it
15 might have happened. Each one of those circumstances, each
16 piece of that evidence, has to be found by y'all beyond a
17 reasonable doubt. You can't just speculate about what's
18 going on.

19 Now, I have to kind of guess a little bit about what
20 Mr. Hammack's going to argue, because I don't get to
21 follow. So, I'm going to take a shot at that and take a
22 guess and see, see what he might be saying. I'm sure he's
23 going to tell you that from the State's point of view, that
24 Fred Madden arrived at the home while Ernestine Brown was
25 living. He's going to tell you that and he's going to say

(CLOSING ARGUMENT - MR. HOWE)

1 that's supported by Kathy Dowdy. That's what he's going to
2 say. They aren't going to offer any other witnesses,
3 whatsoever, to support that. No other witness can say that
4 he was there and that he shot her with a gun. No witness
5 can say that. Kathy Dowdy can't even say that. Even if
6 you accept what she says as being absolute truth, there's
7 no evidence that he actually shot a gun and committed this
8 murder. You haven't heard any evidence of that. The State
9 has had the opportunity to go out and gather all the
10 evidence they could in the case and out of that, they don't
11 have anyone who can say that. They don't, obviously, have
12 anyone who saw it. They don't have any physical evidence,
13 whatsoever. Remember, we talked about that. They called
14 in the experts and all that. They don't have any gunshot
15 residue, they don't have any crime scene information, or
16 anything that shows that Fred Madden did this. We have
17 Albert Brown who says he saw him afterwards. They have
18 that. But they don't have anything tying him to it. It
19 still will cause y'all -- y'all are going to have to jump a
20 couple of hurdles and speculate about what exactly went on
21 in the home from which this, you know, what happened with
22 this crime. Y'all are going to have to speculate about
23 that and guess.

24 Part of what you'll do is consider the statement that
25 Fred made to law enforcement. It's in evidence and you'll

(CLOSING ARGUMENT - MR. HOWE)

1 have that and the Judge is going to tell you, you have the
2 right to determine whether or not that's a voluntary
3 statement. That will be your decision based on what you
4 hear and, of course, you have a right to consider whether
5 or not, whether or not he was advised of his rights and
6 have a lawyer, remain silent, and things like that before
7 he talked or afterwards. You have a right to decide
8 whether or not the law enforcement's version of how that
9 took place was in error because of some computer or whether
10 or not there is another explanation, that maybe it wasn't
11 voluntary. But even if you find that it was voluntary and
12 find that it was a voluntary statement, you have a right
13 then to consider what he said. You'll have the statement.
14 You'll be able to read it, his explanation of what
15 occurred. The explanation, at least, that he was able
16 to give to that one officer at that point in time who typed
17 the statement, Officer Blackmon, I believe it was. You'll
18 have a chance to do that.

19 Now, Mr. Hammack I'm sure is going to argue, "Well, we
20 have Kathy Dowdy, she says one thing, Fred Madden says in
21 his statement, another." Well, Ladies and Gentlemen, I
22 would argue to you as fair minded jurors, fair minded
23 citizens in this case hearing the facts, that you should at
24 least give Fred Madden's version of this as much
25 consideration as Ms. Dowdy's, especially when you start

1 factoring in the other things that were going on:
2 television on, two cell phones, a conversation, what she
3 already knew by the time she gave the statement. She knew
4 already that he'd been seen in the area. She already knew
5 all that and I would submit to you that she wanted it to be
6 Fred and she wanted it to be Fred, the person who killed
7 her sister. And I would submit to you that the State,
8 essentially, by that time had made up it's mind. The
9 Sheriff's department investigated this case and made up
10 their mind they had the right person and the entire focus
11 from that point was on him, because -- and you know that
12 because you heard of things that were not done, that were
13 not found, that were not tested. You heard, of course,
14 that there was not, that there was never a gun found. You
15 heard -- I had to bring it out on cross examination as to
16 what, if any, efforts the Sheriff's department made to
17 search and find a gun. That wasn't volunteered by the
18 witnesses. I had to ask that question.

19 You heard also that, from the man who testified today,
20 the SLED agent that had to do with the gun, that it could
21 have been several, two different types of guns, a .357 or a
22 .38 and there was, as I recall the testimony, there were 14
23 different possibilities of the type of gun it could have
24 been and that the bullets that were recovered in the case,
25 he couldn't even tell you that they came from the same gun,

(CLOSING ARGUMENT - MR. HOWE)

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1 different type bullets. You'll have a right to see the
2 bullets and see what they look like and I would ask you
3 again, as fair minded citizens in this case, does that not
4 cause you to have questions? Because what it does, it
5 causes, I would submit, reasonable doubt.

6 The Judge is going to tell you what reasonable doubt
7 it. It's not something I'm just, that you just make up and
8 say there's a possibility. It's a doubt that causes you to
9 hesitate to act and I would submit to you and argue to you,
10 that from what you've heard, the one bit of testimony that
11 attempts to put Fred Madden there when Ernestine Brown was
12 alive, the one bit of testimony that it might have been a
13 .38 or could have been something else, that ought to cause
14 you, as fair minded citizens, to hesitate to act.

15 The State, through the resources of South Carolina Law
16 Enforcement Division had a right to go and test all this
17 and you heard, they tested some stuff, but they didn't test
18 others. It seems like to me they, arbitrarily, decided
19 what to test and what not to test and I would argue to you
20 again, does that not cause you to hesitate before you go
21 out and find a fellow citizen guilty of the crime of murder
22 and use of a weapon during the commission of a violent
23 crime?

24 Now, Mr. Hammack may say, "Well, errors are made in
25 every case. Things are overlooked in every case. You just

(CLOSING ARGUMENT - MR. HOWE)

1 overlook it. You know, things are not done. He's just
2 making up stuff to try to get you off base." You are the
3 jury. You're hearing this case. I would argue to you,
4 y'all are entitled to see and hear and know everything
5 before you go out and find someone guilty of this crime,
6 before you all get together and decide this is the right
7 thing to do, I don't have any reasonable doubt, nothing
8 causes me to hesitate. I argue to you, you cannot do that
9 in this case. You cannot find that there are not things to
10 cause you to hesitate to act. You cannot find it in this
11 case and no matter how you feel about what happened after,
12 what Fred Madden has told you in his statement, no matter
13 how you feel about that, that doesn't constitute murder.
14 No matter how you feel about it, because they've still got
15 to establish that he fired a gun that killed Ernestine
16 Brown, and no matter how you feel about it, how you might
17 speculate about it and say, "Well, it sure looks
18 suspicious, it makes me think." That's not the law.
19 That's not what anybody wants you to do, I hope, but I
20 submit to you that's what the prosecution is going to be
21 asking you to do, to jump a couple of hurdles when it comes
22 time.

23 I'm asking you, because this is all I can say, this is
24 our last chance, that you consider everything fairly. If
25 you do that, then you'll do the right thing in this case.

(CLOSING ARGUMENT - MR. HAMMACK)

1 I appreciate it very much. Thank y'all.

2 The Court: Thank you, Mr. Howe. Mr. Brown, Mr.
3 Hammack?

4 Mr. Hammack: Yes, sir, Your Honor, may it please the
5 Court. Mr. Howe.

6 The Court: Yes, sir.

7 Closing argument - Mr. Hammack

8 Welcome back, guys. On December 10, 2009, Albert
9 Brown walked up to his sister's house. He knocked on the
10 door, didn't get an answer. He walked in and found his
11 sister lying on the floor. He told you he didn't know
12 exactly what was wrong with her. He called 911. You heard
13 the first responder that went to the scene, the first one
14 to see her, the first one to treat her. He was treating
15 her for a heart attack. So, that's what was given to EMS.
16 So, that's what he was treating her for. You heard the EMS
17 worker, the Lieutenant from EMS, who was the next person to
18 work on her. The same thing, he was treating her for a
19 heart attack, because he didn't know. You even heard the
20 pathologist with thirty-five years of experience say,
21 "Yeah, I had to look for the wounds. She had thick hair
22 and she had clothing over the wounds." All of them didn't
23 know. But according to Mr. Madden's statement, he knew.
24 He knew she'd been shot. He went home, burned his clothes,
25 took a bath. You know why Fred knew she'd been shot? He's

(CLOSING ARGUMENT - MR. HAMMACK)

1 the one that shot her. That's how he knew.

2 Mr. Howe is right. You have been attentive. You've
3 listened to everything we've had to say. You've been
4 paying attention and watching. Y'all have listened to the
5 witnesses and I appreciate it and so does the State. We
6 appreciate your attention in the case.

7 Guys, we would submit to you that back on December 10,
8 2009, Ms. Ernestine Brown was in her house. She was on the
9 phone with her sister, Kathy Dowdy, who you saw testify.
10 She hears a knock at the door. She said she goes to the
11 door and says, "Who's there?" Ms. Dowdy heard, "Here's
12 Fred Madden." She knows Fred Madden. She's heard his
13 voice before. She knows who it is. She says Fred Madden
14 was in the house. She can hear him talking. She knows it
15 was Fred. She and Ernestine were still talking on the
16 phone. While Fred's talking, she hears Fred's voice. She
17 knows it's him.

18 Now, the defense wants to make a big deal about the
19 T.V. being on. It must have been, because the picture
20 shows it was on. I can't disagree with that, but you've
21 got five or six different people that didn't even notice.
22 Obviously, it wasn't much of a distraction. They didn't
23 even notice whether it was on or not. They had no idea.

24 Mr. Brown also tells you that on his way over, he sees
25 Fred Madden leaving on his Moped heading back towards Easy

(CLOSING ARGUMENT - MR. HAMMACK)

1 Road, which we're going to talk about in a few minutes. He
2 sees Fred, turns around to look at him, and Fred goes on
3 down the road and he goes on up to Ernestine's to check on
4 her. You hear from the pathologist. She tells you that
5 the victim was shot twice. She said she was shot twice.
6 Once in the shoulder. It went down and hit her spine and
7 she stated, she would have dropped at that point. She was
8 shot in the head. Both wounds would have been fatal. She
9 told you that, both of them. And you hear from law
10 enforcement. In their investigation, they didn't find a
11 gun. That's true, they didn't. They looked for one. I
12 believe investigator Shelton told you they looked up and
13 down 308 the best they could and they looked everywhere
14 they knew to look. They didn't find a gun. That's true.
15 They didn't.

16 You hear investigator Shelton and the other officers
17 talk about the Statement Mr. Madden made. It's in
18 evidence. You're going to get to read it and look at it.
19 Again, the defense talked so many times about the times and
20 the times being different. All three officers told you the
21 same thing: he was advised of his rights first, then he
22 made a statement and the computer program does what it
23 does. The time was wrong. They all agreed on that. The
24 time is wrong on the Statement. There's no doubt about
25 that.

(CLOSING ARGUMENT - MR. HAMMACK)

1 Mack Irby told you that Fred Madden was at his house.
2 That's where he'd been staying for some time. Since the
3 eviction, he'd been staying over there. Fred left the
4 house for thirty, forty-five minutes, something like that
5 and then came back. Fred, himself, tells you in his
6 Statement, which you're going to get to read. As soon as
7 he comes in the house, he goes, takes him a bath, cooks a
8 little breakfast, goes and burns his clothes because he's a
9 suspect, he says. He tells you that. He says he might
10 have gunshot residue or powder or gun powder on his
11 clothes. It's why he burned them, why he bathed.

12 Mr. Howe is absolutely right. We do have to prove the
13 case beyond a reasonable doubt. We have to prove every
14 other case beyond a reasonable doubt. We have to prove
15 that Fred Madden killed Ernestine Brown with malice
16 aforethought, either expressed or implied. It's what we've
17 got to show. The Judge is going to charge you here in a
18 few minutes, you can infer malice from the use of a deadly
19 weapon, which I submit to you a firearm is a deadly weapon.

20 We've also got to prove Mr. Madden possessed a weapon
21 when he committed this crime, when he committed this
22 murder. There's no question the testimony shows that she
23 was shot. She had to be shot with something when she was
24 shot.

25 Investigator Skipper, excuse me, Wallace, was before

(CLOSING ARGUMENT - MR. HAMMACK)

1 you earlier today -- and these are in evidence, you'll get
2 to look at them a little bit closer -- but you can see,
3 based on what she told you, (Indicating on diagram) she
4 told you this is the front door of the house, this is the
5 bedroom where Ernestine was found, but she also told you
6 about a bullet hole here and a bullet hole here and she
7 recovered those and they were sent to SLED, which we are
8 going to get to the testing and all that in just a minute.
9 She recovered those items. She told you she did this
10 diagram based on what she saw that day, she told you what
11 she found. She told you about going out to Easy Road and
12 gathering some clothing and some other items from there.

13 It's going to be up to you to decide back in the jury
14 room using your common sense. It's going to be up to you
15 to make a decision based on what you see. You've got a
16 bullet hole in the laundry room. You've got a bullet hole
17 in the linen closet door. You've got Ernestine Brown
18 laying on the floor on just the other side of this door
19 (indicating) where she fell, where the pathologist said she
20 would have fallen when she was shot in the spine. Right
21 there.

22 I would submit to you, based on the evidence, based on
23 what we see here, Ms. Ernestine Brown was running for her
24 life at that time. As she was running into that bedroom,
25 there were two shots being fired. You heard Agent Wallace

(CLOSING ARGUMENT - MR. HAMMACK)

1 say her phone was right there with 911 on the screen,
2 trying to call for help when she was shot dead right there
3 at the door. She fell where she was shot.

4 Again, Mr. Howe talked to you a little bit about
5 reasonable doubt. It's not all doubt. It's not any doubt.
6 It's beyond a reasonable doubt. The Judge is going to give
7 you a definition of reasonable doubt. It's basically a
8 doubt, it's the kind of doubt that leaves you firmly
9 convinced of the defendant's guilt. Or another definition,
10 I think the Judge will give you, is a doubt which would
11 cause you to hesitate to act. When you get back to that
12 jury room in a few minutes, you're going to be asked to use
13 everything you've brought with you today. You will be
14 asked to use what you saw, what you can see with your eyes,
15 what you can hear with your ears. You're going to be asked
16 to use your common sense, to view all this (indicating) and
17 make your decision based on what you've heard and seen.

18 The last thing I want to talk to you about is
19 circumstantial evidence. Mr. Howe is right. There was
20 nobody there, no eyewitnesses. There was no video camera.
21 We don't have it. If we had it, obviously, I'd be showing
22 it to you. It wasn't there. All we can do is build our
23 case based on what we know. It's all we've got. The Judge
24 is going to tell you circumstantial evidence is just as
25 good as direct evidence. An eyewitness, that would be

(CLOSING ARGUMENT - MR. HAMMACK)

1 great. Circumstantial evidence, again, the Judge will give
2 you a brief definition of it, but it's basically the
3 circumstances that you see and what goes on. What you see
4 and what you understand could have happened. I'm going to
5 tell you a quick illustration of circumstantial evidence
6 and then I'm going to sit down and let y'all hear the
7 charge and get started doing what you came here to do.
8 Little Johnny comes home from school one day. He runs in
9 the kitchen and tells his Mama, "Mama, I need cookies for a
10 bake sale tomorrow at school." So, she says, "Okay, Little
11 Johnny, I'll bake those cookies for you. You go on in the
12 living room, you do your homework, get started working,
13 I'll get them done." So, Mom gets in there and she makes
14 chocolate chip cookies. Little Johnny's sitting there
15 smelling them. They are smelling so good. So, Mama goes
16 back, she takes out the cookies, she puts them on the
17 cooling rack to let them cool a little while. She goes
18 back to the other end of the house to do something. She
19 comes back and there are two cookies missing. So, Mama
20 yells out to Little Johnny who's in the living room, says,
21 "Little Johnny, did you eat those cookies?" "No, ma'am, I
22 haven't had any cookies. I don't know what you're talking
23 about. So, she says, "Okay." So, she walks in there to
24 where Little Johnny is sitting, because she's just not
25 quite sure about that. She walks in and there sits Little

1 Johnny with chocolate on his face and crumbs on his shirt.
2 She didn't need to send a sample of the chocolate anywhere
3 to know where it came from. She didn't need to take
4 samples of the crumbs to know where they came from. Mama
5 knows what happened. She knows who ate those cookies. And
6 in this case, there sits Fred Madden, he had chocolate on
7 his face until he washed it. He had crumbs on his clothes
8 until he burned them. He's guilty and that's what I'm
9 asking you to find. Thank you.

10 The Court: Thank you, Solicitor. All right.

11 Charge on the Law

12 Now, Ladies and Gentlemen, I'm now going to instruct
13 you on the law which applies in this case. I'm going to
14 tell you at the outset that this is not terribly riveting
15 stuff. Traditionally, the way that this is done is, I will
16 simply read to you the law that applies. I will tell you
17 that I will also give you a copy of these instructions that
18 you can use in your deliberations if you feel the need to
19 consult them. Of course, I would ask that you consider the
20 instructions as a whole and don't pay particular attention
21 to one section at the exclusion of another section of these
22 charges.

23 Now, Ladies and Gentlemen of the jury, these
24 indictments charge the defendant of the offenses of murder
25 and possession of a weapon during the commission of a

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1 violent crime. I remind you that the fact that Mr. Madden
2 was arrested, charged and indicted in this case is not
3 evidence in this case and cannot be considered by you as
4 evidence of guilt in this case nor does it create any
5 presumption or inference of guilt. These documents, these
6 indictments, are simply the formal, written instruments by
7 which the charges made against the defendant are brought
8 into the court. They are the formal documents by which
9 this case is brought into this court for your
10 consideration.

11 Now, the defendant, Mr. Madden, in this case has pled
12 not guilty to these indictments and that puts the burden,
13 or puts the plea, that plea puts the burden on the State of
14 South Carolina to prove the defendant guilty. I instruct
15 you that a person charged with committing a criminal
16 offense in South Carolina is never required to prove
17 himself innocent.

18 I charge you that it is an important rule of law that
19 the defendant in a criminal trial, no matter what the
20 seriousness of the charge may be, will always be presumed
21 to be innocent of the crime for which the indictments was
22 issued unless guilt has been proved by evidence satisfying
23 you of that guilt beyond a reasonable doubt.

24 This presumption of innocence does not end when you
25 begin your deliberations, but it accompanies the defendant

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1 throughout the trial until you reach a verdict of guilt
2 based on the evidence satisfying you of that guilt beyond a
3 reasonable doubt. The presumption of innocence, Ladies and
4 Gentlemen, is like the robe of righteousness placed about
5 the shoulders of the defendant. It remains with the
6 defendant until it has been stripped from him by evidence
7 satisfying you of his guilt beyond a reasonable doubt. The
8 presumption of innocence, Ladies and Gentlemen, is not a
9 mere legal theory, it is not just a legal phrase. It is a
10 substantial right to which every defendant is entitled
11 unless you, the jury, are satisfied from the evidence of
12 the defendant's guilt beyond a reasonable doubt.

13 Well, what is reasonable doubt in the eyes of the law?
14 A reasonable doubt is the kind of doubt that would cause a
15 reasonable person to hesitate to act. The State has the
16 burden of proving the defendant guilty beyond a reasonable
17 doubt. Some of you may have served as jurors in civil
18 cases, where you were told that it was only necessary to
19 prove that a fact is more likely true than not true, such
20 as by the greater weight or the preponderance of the
21 evidence.

22 In criminal cases, Ladies and Gentlemen, the State's
23 proof must be more powerful than that. It must be beyond a
24 reasonable doubt. Proof beyond a reasonable doubt is proof
25 that leaves you firmly convinced of the defendant's guilt.

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1 Now, there are very few things in this world that we know
2 with absolute certainty and in criminal cases, the law does
3 not require proof that overcomes every possible doubt. If,
4 based on your consideration of the evidence you are firmly
5 convinced that the defendant is guilty of the crimes
6 charged, you must find the defendant guilty. If, on the
7 other hand, you think there is a real possibility that the
8 defendant is not guilty, you must give the defendant the
9 benefit of the doubt and find him not guilty.

10 Now, Ladies and Gentlemen of the jury, I remind you
11 that during this trial you and I have certain duties to
12 perform. As the trial Judge, it is my responsibility to
13 preside over the trial of this case and I also have the
14 duty to rule on the admissibility of the evidence offered
15 during this trial. You are to consider only the competent
16 evidence before you. If there was any testimony ordered
17 stricken from the record in this case during this trial,
18 you must disregard that testimony. You are to consider
19 only the testimony which has been presented from the
20 witness stand, any exhibits which have been made a part of
21 the record in this case, and any stipulations of counsel.

22 I have the additional duty to charge you the law
23 applicable to this case. As the presiding Judge, I am the
24 sole judge of the law of the case and it is your duty as
25 jurors to accept it and to follow, to accept and to apply

1 the law as I now state it to you. If you already have any
2 idea as to what the law is or what the law ought to be and
3 it does not agree with what I now tell you the law is, you
4 must disregard or abandon this idea, because you are sworn
5 to accept the law and apply the law exactly as I now state
6 it to you.

7 In every case tried in this court before a jury, the
8 jury becomes the sole and exclusive judge of the facts in a
9 case. A trial judge cannot intimate, state, comment on, or
10 make any statement to a trial jury about the facts in a
11 case. Since you, the jury, are the sole judge of the facts
12 in this case, you are not to infer from what I have said
13 during the progress of this trial in ruling upon the
14 admissibility of evidence or otherwise, or anything that I
15 say now during the course of this instruction to you, that
16 I have any opinion about the facts in this case. Ladies
17 and Gentlemen, the law does not allow me to have an opinion
18 about the facts in this case. This is a matter solely for
19 you, the jury, to determine. As jurors, it is your duty to
20 determine the effect, value, weight, and truth of the
21 evidence presented during this trial.

22 Now, Ladies and Gentlemen, there are two types of
23 evidence which are generally presented during a trial:
24 Direct evidence and circumstantial evidence.

25 Direct evidence is the testimony of a person who

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1 claims to have actual knowledge of a fact, such as an
2 eyewitness. It is evidence which immediately establishes
3 the main fact to be proved.

4 Circumstantial evidence is proof of a chain of facts
5 and circumstances indicating the existence of a fact. It
6 is evidence which immediately establishes collateral facts
7 from which the main fact may be inferred. Circumstantial
8 evidence is based on inference and not on personal
9 knowledge or observation.

10 Now, the law makes absolutely no distinction between
11 the weight or value to be given to either direct or
12 circumstantial evidence, nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all of the evidence in
15 the case. After weighing all the evidence, if you are not
16 convinced of the guilt of the defendant beyond a reasonable
17 doubt, you must find the defendant not guilty.

18 Now, Ladies and Gentlemen, necessarily, you must
19 determine the credibility of witnesses who have testified
20 in this case. Credibility simply means believability. It
21 becomes your duty as jurors to analyze and to evaluate the
22 evidence and determine which evidence convinces you of its
23 truth.

24 In determining the believability of witnesses who have
25 testified in this case, you may believe one witness over

1 several witnesses or several witnesses over one witness.
2 You may believe a part of the testimony of a witness and
3 reject the remaining part of the testimony of that same
4 witness. You may believe the testimony of a witness in its
5 entirety or reject the testimony of a witness in its
6 entirety. You may consider whether any witness has
7 exhibited to you any interest, bias, prejudice, or other
8 motive in this case. You may also consider the appearance
9 and manner of a witness while on the witness stand.

10 Now, this case, Ladies and Gentlemen, as I informed
11 you during the trial when we had several expert witnesses
12 testify. Again, the Rules of Evidence ordinarily do not
13 permit witnesses to testify to opinions or conclusions.
14 The exception to this rule exists for witnesses we call
15 "expert witnesses". A witness who, by education and
16 experience, has become expert in some art, science,
17 profession or calling may state an opinion as to relevant
18 and material matters in which a witness claims to be an
19 expert and may also state the reasons for his opinion.

20 You should consider any expert opinion received in
21 evidence in this case and, like any other evidence, give it
22 the weight you think it deserves. If you decide that the
23 opinion of an expert witness is not based on sufficient
24 education and experience or if you conclude that the
25 reasons given in support of the opinion are not sound, or

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1 that the opinion is outweighed by other evidence, you may
2 disregard the opinion entirely. An expert witness'
3 testimony is to be given no greater weight than that of
4 other witnesses simply because that person or that witness
5 is an expert. Further, you are not required to accept an
6 expert's opinion even though it is not contradicted.

7 Now, Ladies and Gentlemen, I instruct you and
8 emphasize to you that the fact the defendant did not
9 testify is not a factor to be considered by you in any way
10 in your deliberations and in your consideration on the
11 question of the guilt or the innocence of the defendant.
12 It must not be considered by you in any manner whatsoever.
13 A defendant has the constitutional right to remain silent
14 and the assertion of this right must not be considered by
15 you in your deliberations. Ladies and Gentlemen, I repeat,
16 under your oath, you are to draw no conclusion whatsoever
17 from the fact that the defendant in this case did not
18 testify. The fact that this defendant did not testify
19 should not even be discussed in the jury room. The burden
20 of proof, as I have stated to you, is on the State. The
21 defendant is not required to prove his innocence. The
22 burden of proof remains on the State to prove guilt beyond
23 a reasonable doubt.

24 Now, Ladies and Gentlemen, a statement alleged to have
25 been made by the defendant has been admitted into evidence

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1 in this case. While the Court has determined that the
2 statement is admissible, I instruct you that you make the
3 ultimate decision of whether or not the defendant made this
4 statement. If the defendant did make this statement, you
5 must determine whether the statement was made by the
6 defendant voluntarily and of his own free will. This means
7 that the statement was not caused by: pressure, force,
8 fear, threats, coercion or intimidation, or by hope or a
9 promise of leniency or a reward of any kind. In determining
10 whether the statement was voluntary, you should consider
11 both the characteristics of the defendant and the details
12 of the questioning. Some of the factors that you must
13 consider are: the age of the defendant, the defendant's
14 education or lack of education, the defendant's mental
15 ability or capacity, the defendant's I.Q. or intelligence,
16 the defendant's background and environment, the place and
17 length of detention, the nature of the questioning, and the
18 advice, or lack thereof, to the defendant of his
19 constitutional rights including, but not limited to: the
20 right to remain silent, that any statement could be used
21 against him in a court of law, the right to have a lawyer
22 present, that if he could not afford a lawyer, a lawyer
23 would be appointed to represent him without any cost to
24 him, and that he could stop making a statement at any time.
25 You must carefully consider all of the surrounding

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1 circumstances before you give any weight to an alleged
2 statement.

3 The State has the burden of proving beyond a
4 reasonable doubt that the alleged statement was voluntary.
5 If you determine it was, you may give the statement any
6 further consideration that you deem proper. You must
7 decide what weight, if any, should be given to the alleged
8 statement. If you determine the alleged statement was not
9 the free and voluntary statement of the defendant, you
10 should not consider the statement at all.

11 Now, Ladies and Gentlemen, as I explained a moment
12 ago, I will give you a copy of these instructions in
13 written form. During your deliberations, you may refer to
14 the instructions to guide your decision-making. You must
15 consider the instructions as a whole and not follow some
16 and ignore others. Please, if you will, when you're done
17 with your deliberations, return these instructions to the
18 Court when you return your verdict.

19 Now, in this case, Ladies and Gentlemen, the defendant
20 is charged with the offense of murder. The State must
21 prove beyond a reasonable doubt that the defendant killed
22 another person with malice aforethought. I instruct you
23 that malice is defined as hatred, ill-will, or hostility
24 towards another person. It is the intentional doing of a
25 wrongful act without just cause or excuse and with an

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1 intent to inflict an injury, or under circumstances that
2 the law will infer, an evil intent.

3 Malice aforethought does not require that malice
4 exists for any particular time before the act is committed,
5 but malice must exist in the mind of the defendant just
6 before and at the time the act is committed. Therefore,
7 there must be a combination of the previous evil intent and
8 the act.

9 Malice aforethought may be expressed or inferred.
10 These terms, "express" and "inferred" do not mean different
11 kinds of malice, but merely the manner in which malice may
12 be shown to exist. That is, either by direct evidence or
13 by inference from the facts and circumstances which are
14 proved. Express malice is shown when a person speaks words
15 which express hatred or ill-will for another person or when
16 the person prepared beforehand to do the act which was
17 later accomplished. For example, lying in wait for a
18 person, or any other acts or preparation going to show that
19 the deed was within the defendant's mind would be express
20 malice.

21 Malice may be inferred from conduct showing a total
22 disregard for human life. Inferred malice may also arise
23 when the deed is done with a deadly weapon. A deadly
24 weapon is any article, instrument, or substance which is
25 likely to cause death or great bodily harm. Whether an

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1 instrument has been used as a deadly weapon depends on the
2 facts and circumstances of each case. The following are
3 examples of instruments which may be deadly weapons: a
4 pistol, a shotgun, a rifle, a dirk, a dagger, a knife, a
5 sling shot, metal knuckles, a razor, gasoline, a fire bomb
6 or molotov cocktail, and lighter fluid.

7 Now, Ladies and Gentlemen, the defendant is also
8 charged with possession of a weapon during the commission
9 of, or attempt to commit, a violent crime. The State must
10 prove, beyond a reasonable doubt, that the defendant was in
11 possession of a firearm, or visilbly displayed what
12 appeared to be a firearm, during the commission of a
13 violent crime. A firearm means any machine gun, automatic
14 rifle, revolver, pistol, or any weapon which will, is
15 designed to, or may be readily converted, to expel a
16 projectile. In order to find the defendant guilty of
17 possession of a weapon during the commission of a violent
18 crime, you must first find the defendant guilty of either
19 committing a violent crime or attempting to commit a
20 violent crime.

21 I charge you that under the laws of this state, the
22 offense of murder is classified as a violent crime.

23 Ladies and Gentlemen, I further instruct you that mere
24 presence at the scene is not sufficient to prove someone
25 guilty of a crime. A defendant's presence where a crime is

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1 being committed or mere association with a person who
2 commits a crime does not make a defendant an accomplice or
3 an aider and abettor of the person committing the crime.

4 The burden is on the State to prove every element of
5 the crime charged. If you find, after reviewing all the
6 evidence, that the State has proved that the defendant was
7 only present at the scene of the crime and that they have
8 not proved, beyond a reasonable doubt, any other
9 participation in the crime, then you must find the
10 defendant not guilty. The law is, that proof of being at
11 the scene of the crime is not sufficient to find someone
12 guilty.

13 Now, Ladies and Gentlemen, there are two possible
14 verdicts that you may find in this case: guilty of murder
15 or not guilty of murder and/or guilty of possession of a
16 weapon during the commission of a violent crime or not
17 guilty of possession of a weapon during the commission of a
18 violent crime. I tell you there is no significance,
19 whatsoever, in the order in which I state these possible
20 verdicts to you. It's simply that one must be stated
21 first.

22 Madam Foreperson, I've prepared a verdict form to help
23 you in guiding your deliberations. The first question asks
24 or the first statement basically says, "We, the jury, in
25 the above captioned case on the charge of murder

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1 unanimously find Fred Lewis Madden, Jr., and there are two
2 blanks here. One blank is for guilty and one blank is for
3 not guilty. If you find that the State of South Carolina
4 has met its burden of proving the defendant's guilt, beyond
5 a reasonable doubt, and all twelve of you agree, you would
6 initial murder here or you would initial guilty here under
7 this first section dealing with the offense of murder.

8 If, however, you find that the State has failed to
9 meet its burden of proving the defendant guilty, beyond a
10 reasonable doubt, of the offense of murder, it will be your
11 job to initial right here next to "not guilty". If you
12 find him not guilty, you would simply proceed to sign the
13 verdict form, knock on the door, let the bailiff know, and
14 we will receive you shortly back into the courtroom.

15 If, however, you find the State has met its burden of
16 proof as I have explained it to you and you find the
17 defendant guilty of the offense of murder, you should then
18 move to the second section. That second section basically
19 asks or basically states, "We, the jury in the above
20 captioned case on the charge of possession of a firearm
21 during the commission of a violent crime, unanimously, find
22 Fred Lewis Madden, and again, your choices are guilty or
23 not guilty. If you find the State has met the burden of
24 proving his guilt, beyond a reasonable doubt, on the
25 firearms charge, it would be your obligation to initial

1 here next to guilty, then sign, knock on the door, let the
2 bailiff know. If, however, you find the State has failed
3 to meet its burden of proving the defendant guilty, beyond
4 a reasonable doubt, on that offense, you would initial not
5 guilty, sign and knock on the door and let the bailiff
6 know.

7 Now, Ladies and Gentlemen, your verdict must be a
8 unanimous one. Again, Madam Foreperson, when the jury has
9 agreed on a verdict, when all twelve have agreed, write the
10 verdict on the verdict form, sign, knock on the door, let
11 bailiff know and we will receive you back into the
12 courtroom.

13 Now, Madam Foreperson, I'm going to ask that you
14 adjourn to the jury room, but don't start your
15 deliberations yet. There are some matters that I need to
16 take up with the attorneys involved. I don't think it will
17 take very long. Basically, I want to be sure I've told you
18 everything I need to tell you with respect to the law and
19 if I've failed to tell you anything or I've said anything
20 erroneously, I will have you brought back out here and re-
21 charge you on that. If, however, I'm satisfied I've given
22 you the correct charge on the law, your queue to begin
23 deliberations will be receipt of this verdict form as well
24 as all the exhibits that have been introduced into
25 evidence. The bailiff will let you know that you can start

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1 your deliberations and I will ask that the alternate step
2 out of the jury room and then the twelve of y'all who are
3 jurors can start your deliberations. Okay? So, with that,
4 don't start talking about the case yet. The bailiff will
5 let you know when you can. If you will, please, just
6 adjourn to the jury room. I imagine you will have this
7 case shortly.

8 (Jury out at 2:50 p.m.)

9 The Court: All right. The record should reflect that
10 the jury is out. Exceptions or additions from the State?

11 Mr. Hammack: None from the State, Your Honor.

12 The Court: And Mr. Howe, you take exception to my
13 charge on malice and the deadly weapon pursuant to the
14 recent case. You also take, of course, exception to my
15 failure to charge the Edwards charge on...

16 Mr. Howe: Circumstantial evidence.

17 The Court: Thank you, sir. Circumstantial ---

18 Mr. Howe: Short of that, Judge, nothing else.

19 The Court: All right. Very good.

20 Mr. Howe: Thank you.

21 The Court: Gentlemen, if you don't mind, take a look
22 again, I've already emailed the verdict form to you, but if
23 you will, just put your eyes on it and also, if you could
24 agree on the exhibits or which exhibits. Make sure that we
25 only send back exhibits which were, in fact, made a part of

1 the record.

2 Mr. Hammack: Yes, sir.

3 (Attorneys check exhibits and verdict form)

4 (Exhibits and verdict form are taken to the jury at
5 2:54 p.m.)

6 (The judge thanks and dismisses the alternate)

7 (At 5:16 p.m., a bench conference off the record is
8 held between the Judge and the attorneys)

9 Note from the jury

10 The Court: All right. If we could, let's go back on
11 the record in the State versus Mr. Madden. The defendant
12 is present with counsel. I've received a communication
13 from the jury and it states, "Your Honor, we cannot reach a
14 conclusion at this time. Would you allow us to take time
15 to reflect and sleep on it. Please, if you allow this,
16 assign a time in which we can meet and reach a decision.
17 Thank you." And it's signed, "The jury". I'm going to --
18 I spoke to counsel before we went on the record. I'm going
19 to allow them the evening and have them back here tomorrow
20 morning. I'll ask them what time they want to be here. If
21 they can't decide, I'll pick a time. Is that acceptable,
22 Mr. Hammack?

23 Mr. Hammack: Yes, sir, Your Honor.

24 Mr. Howe: Yes, sir.

25 The Court: All right. Let's have them here.

(NOTE FROM THE JURY)

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1 (Jury in at 5:19 p.m.)

2 The Court: The record should reflect that the jury is
3 back. Madam Foreperson, I've received the note that y'all
4 sent and apparently, you feel that it would be beneficial
5 if y'all were to take the evening and then reconvene
6 tomorrow and resume your deliberations. Is that correct,
7 ma'am?

8 Ms. Sloan: Yes, sir.

9 The Court: All right. That's perfectly fine with me.
10 I have no problem with that and, of course, no one else in
11 here does either. What time would be best for y'all? Do
12 you have a preference or would you like me to just select a
13 time?

14 Ms. Sloan: If you could do that for us, please.

15 The Court: All right. If we could resume tomorrow
16 morning around 9:30. I think that would probably be
17 beneficial. What we'll do, if you can be back in the jury
18 room at 9:30, the court reporter will take possession of
19 the exhibits and that sort of thing and when the bailiff is
20 informed that everyone is here, all twelve of you are here,
21 we'll bring the exhibits in and you can resume your
22 deliberations at that point in time. Now, as I mentioned
23 yesterday before we took a break, obviously, you are to
24 read no news reports about this. That would include any
25 websites like any local websites that you are in the habit

1 of checking, you are not to read the newspaper or any local
2 papers in the event there is news coverage concerning this
3 and, of course, again, don't discuss this case with your
4 spouses or anyone that you reside with this evening. You
5 can talk to them about it after the case is concluded and
6 with that, I hope that y'all will have a pleasant evening
7 and I'll see y'all back in the jury room tomorrow morning
8 at 9:30. The jury is excused. Everyone else in the
9 courtroom please stay seated.

10 Ms. Sloan: Thank you.

11 (Whereupon, the note from the jury is marked as
12 Court's Exhibit No. 1)

13 (Jury out at 5:22 p.m.)

14 The Court: All right. The jury is out. One quick
15 housekeeping matter: Mr. Howe, your request to charge, the
16 Edwards charge, I asked the court reporter to make that an
17 exhibit and so that's also a part of the record at this
18 point in time.

19 Mr. Howe: Thank you.

20 The Court: It's a Court's exhibit, obviously, and not
21 anything that's going to go back to the jury. I'll see
22 y'all back here tomorrow morning around 9:30 and if I could
23 just request out of an abundance of caution, because
24 obviously the jurors have to get to their parking spaces
25 and get into their cars, if everyone here in the courtroom

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1 could just stick around for a few minutes and afford them
2 some time to get to their cars. I think that that might
3 minimize the possibility of any kind of contact between the
4 people that are here watching this trial, the spectators
5 and the jurors, because, obviously, that's an important
6 thing that we not jeopardize the work that has been done
7 here by any inappropriate contact, so we'll give them about
8 five or ten minutes. As soon as y'all feel enough time has
9 passed, then feel free to let anyone who's a member of the
10 family or any of the parties, let them go on back home.
11 I'll see y'all tomorrow morning around 9:30. All right?

12 Mr. Howe: Thank you, Judge.

13 The Court: Thank you.

14 Morning of September 1, 2011

15 (Jury resumes deliberations at 9:37 a.m.)

16 The Court: I understand the jury has reached a
17 verdict. Anything before we receive the jury back into the
18 courtroom from the defense?

19 Mr. Howe: No, sir.

20 Mr. Hammack: No, sir.

21 The Court: All right. I just want to remind everyone
22 who's here observing these proceedings, of course it would
23 be very inappropriate to have any sort of outburst once the
24 verdict is read. Both sides have done an excellent job
25 presenting their positions and I realize emotions may very

(VERDICT)

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1 well be running high. If you find yourself unable to
2 contain yourself when the verdict is read, whatever the
3 verdict may be, and I have no idea what it is, but if you
4 find yourself unable to contain yourself or control your
5 emotions, feel free just to rise and exit the courtroom at
6 that moment in time, but otherwise, I request that we
7 maintain decorum. With that, let's have the jury, please.

8 (Jury in at 10:27 a.m.)

9 The Court: All right. The record should reflect that
10 the jury has returned. Madam Foreperson, I'm told that the
11 jury has reached a verdict. Is that correct?

12 Ms. Sloan: Yes, sir. We have.

13 The Court: All twelve of you agree on the verdict?

14 Ms. Sloan: Yes, sir.

15 The Court: All right. If you'll hand the verdict to
16 the bailiff, please.

17 (Ms. Sloan hands verdict form to the bailiff, who in
18 turn hands it to the Judge, who in turn hands it to the
19 Clerk of Court)

20 The Court: Madam Clerk, if you will publish, please.

21 Clerk of Court: In the case of the State of South
22 Carolina versus Fred Lewis Madden, Jr., the cases of
23 2009-GS-30-288 and 289. We, the jury, in the above
24 captioned case on the charge of murder unanimously find
25 Fred Lewis Madden, Jr. guilty.

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1 We, the jury, in the above captioned case in the
2 charge of possession of a firearm during the commission of
3 a violent crime unanimously find Fred Lewis Madden, Jr.
4 guilty. Signed by the foreperson of the jury. Ladies and
5 Gentlemen, if that be your verdict, please indicate by your
6 upraised right hands. Thank you.

7 The Court: Let the record reflect that all twelve
8 jurors did raise their right hands. Anything before
9 discharging the jury from the State?

10 Mr. Hammack: Nothing from the State.

11 The Court: From the defense?

12 Mr. Howe: No, sir.

13 The Court: All right. Ladies and Gentlemen of the
14 jury, I realize this has been a very challenging case for
15 you. I appreciate the attention that you have shown. Both
16 attorneys, for the State and the defense, did remark that
17 you were very attentive during the course of this trial. I
18 thank you for that. This is a very difficult kind of case
19 to hear and I apologize if I've caused you any problems in
20 any way for putting you through this, but obviously, our
21 system of justice can't operate without the willingness of
22 twelve people to set aside their personal lives for a while,
23 come in here and hear this kind of evidence and make the
24 kind of decision that you were forced to make in this case.
25 Your jury service for this week is, of course, concluded.

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1 I appreciate your service in this case. Again, I can't
2 thank you enough. I tell you the county does pay you for
3 jury service. It's not a great deal of money and in no way
4 compensates you for the service that you have provided, but
5 it is a modest payment of about \$20.00 a day that you will
6 be receiving at some point. If you need a work excuse or
7 any other kind of school excuse or anything like that, you
8 can visit the clerk's office just down the hall. You're
9 welcome to stay with us. At this point, we will proceed
10 with sentencing. You're welcome to stay with us for that
11 if you want to. I will have to ask that you not stay
12 there. You will need to, basically, leave. The bailiff
13 will show you where you can go and you can come around to
14 the back of the courtroom here and we will have some seats
15 available for you all. If you want to stay, that's fine.
16 If you don't want to stay, you can go about your business,
17 go on home. Again, thank you. I won't keep you any
18 longer. I appreciate your service. Madam Foreperson, I do
19 need you to come forward and sign the verdict form, or sign
20 the verdict on the actual indictments, if you don't mind.
21 The clerk will show you how to do that. The rest of you
22 are free to stay or free to go. Again, thank you.

23 (Jury out at 10:31 a.m.)

24 The Court: Solicitor, I anticipate, Solicitor and Mr.
25 Howe, I anticipate that y'all may need a few moments to get

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1 the folks who may want to speak for your respective sides
2 together and prepare to address the Court and so we will be
3 at ease for a few minutes while y'all discuss that. Okay?

4 (Brief Break)

5 The Court: Any motions, Solicitor?

6 Mr. Hammack: No, sir, Your Honor.

7 The Court: Mr. Howe? I'm sorry. Ms. Anderson, happy
8 to hear from you, ma'am.

9 Motion for a New Trial

10 Ms. Anderson: Yes, Your Honor. The defense asks for a
11 new trial on the grounds as follows: that the State has not
12 presented sufficient evidence to support the verdict in
13 this case and the defendant did not receive a fair and
14 impartial trial.

15 The grounds are the following: first would be the
16 admission of the Defendant's written statement into
17 evidence, where on its face, the time of the Advisement of
18 Rights, the Waiver of Rights, was given after his statement
19 was taken.

20 Next, would be the admission of the State, or the
21 State referring to the oral statement by Mr. Madden, which
22 Your Honor deemed inadmissible. The admission of the
23 written statement and referencing by the State of the oral
24 statement, violates the Defendant's sixth and fourteenth
25 amendment rights to a fair trial, the sixth amendment right

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1 to confrontation under Crawford versus Washington and the
2 corresponding provisions in the S. C. Constitution.

3 We further argue that the jurors should have been
4 charged with the Defendant's proposed circumstantial
5 evidence charge based upon State v. Edwards. The defense
6 would contend that portion of law is still law and should
7 have been charged to the jury.

8 Next, we argue the jury should not have been charged
9 the implied malice, use of a deadly weapon. We argue it
10 constitutes an impermissible burden shifting from the State
11 to the defendant where, during closing arguments, the State
12 only argued malice, basically, from the use of a deadly
13 weapon. That charge violates the defendant's fifth and
14 fourteenth amendment rights and South Carolina Article 1,
15 Section 3.

16 Next, we renew all previously stated Directed Verdict
17 Motions based upon the lack of evidence presented in this
18 case regarding malice aforethought placing the defendant
19 with the use of a deadly weapon. There's been no evidence
20 to support that charge or any testimony saying this
21 defendant committed this crime.

22 Last, we argue any admission of hearsay statements
23 from Kathy Dowdy reciting anything she overheard of
24 Ernestine Brown or Fred Madden. We contend, based on
25 previous arguments, that it constitutes inadmissible

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1 hearsay and should not have been permitted into evidence.
2 Based on those grounds, we are asking Your Honor to award a
3 new trial in this case.

4 The Court: All right, Solicitor? Any response?

5 Mr. Hammack: Yes, sir, Your Honor. As to the written
6 statement, there was sufficient evidence placed on the
7 record from all the officers involved.

8 As to the mistake on the times, clearly, they all
9 three testified the Advisement of Rights was given first
10 and then the statement was taken and they sufficiently
11 explained why the times would have been different.

12 Your Honor, as to the reference to the oral statement,
13 there was no mention of any statement -- Officer Williams
14 made no reference to taking any kind of statement that day,
15 only that he told Fred, if you want to talk to me, let me
16 know, I'll come back to see you. That's all that was said
17 and no mention of any type of statement made by Mr. Madden
18 on that day.

19 As to the Edwards charge, Your Honor, it's clear from
20 the law, State versus Cherry, that is no longer the law in
21 this state and the charge, the Edwards charge is no longer
22 appropriate.

23 Your Honor, again, the State is relied on Belcher for
24 the implied malice charge that was given. It's clear in
25 Belcher that in a case such as this, it's still an

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1 appropriate charge and we would still argue that under the
2 facts of this case it was an appropriate charge and should
3 have been given.

4 Your Honor, on the Directed Verdict Motion, the State
5 has already heard that and taking the evidence in the
6 light most favorable to the State, it was more than
7 sufficient evidence to convict in this case.
8 Circumstantial, I'll give you that, it was circumstantial
9 evidence, Your Honor, but there was evidence that Mr.
10 Madden was there when Ernestine Brown was still alive.
11 There's evidence that Mr. Madden left the residence and was
12 seen shortly thereafter leaving the residence, that he went
13 home, burned his clothing, took a bath because he felt
14 there was gunshot residue or gunpowder on his clothing.
15 Your Honor, there was evidence, sufficient evidence placed
16 on the record placing him there at the time of the crime,
17 his voice was heard there. He was identified by Ms. Dowdy,
18 which is the next section I'm going into. The Court has
19 already ruled on that during the hearsay motions. It was
20 clear from the ruling that that was admissible evidence
21 based on the way it was presented. We didn't go into what,
22 specifically, was said, just that she used it to identify
23 him, that she overheard the conversation. That's how she
24 identified him and that that is why she did what she did in
25 texting her sister and getting Alfred on his way over to

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1 check on Ernestine.

2 The Court: Thank you, Solicitor. Any response?

3 Ms. Anderson: Your Honor, I believe we've submitted
4 all our arguments.

5 The Court: All right. Very good. Taken in reverse
6 order, I do find the admission of the hearsay statements by
7 the first witness who testified, the sister of the
8 decedent, those hearsay exceptions did fall under either
9 Rule 801 or under the "present sense impression".
10 Obviously, that was a mixed bag, but those two exceptions
11 apply. One of those two applied for each of the hearsay,
12 which was admitted, present sense impression mainly, my
13 understanding being that of the identification of the
14 defendant which was stated by the decedent.

15 The Belcher case is the law of the State and did
16 preserve the implied malice in situations such as this
17 where mitigation or evidence of self-defense is absent or
18 any other evidence which would lessen the homicide to
19 voluntary manslaughter or involuntary. Edwards was
20 overruled by Cherry.

21 The admission of the oral statement, again, I find
22 that that was proper as was the admission of the written
23 statement, so I will deny your motions for a new trial,
24 Ms. Anderson.

25 All right. Let's proceed, if we may, to sentencing.

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1 Sentencing

2 The Court: Solicitor, do you have any victim impact
3 evidence or statements that you want the Court to receive?

4 Mr. Hammack: Your Honor, we have three family members
5 who would like to speak when appropriate.

6 The Court: Very good. If they want to come forward.
7 And if you would give me the sentencing sheets, too,
8 please. (Mr. Hammack hands document to the Judge) Thank
9 you.

10 Mr. Hammack: Your Honor, would you like us to come up
11 to the bar?

12 The Court: That would be better. I can probably hear
13 them better and I'm sure the court reporter can get a
14 better record if they can just come forward. They can all
15 come up at the same time if they want to.

16 Mr. Hammack: Your Honor, the first family member that
17 wishes to speak is Ms. Keila Brown.

18 Ms. Brown: My name is Keila Brown. My mother was a
19 very loving mother. She was the stitch in this family.
20 She held us all together. She was there for anybody that
21 ever needed her with an open heart. We're hurt. This hurt
22 us very deeply and we can't get her back.

23 The Court: Thank you, Ms. Brown.

24 Mr. Hammack: Yvette Foggie, Your Honor.

25 The Court: I'm sorry, ma'am. What's your last name,

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1 please?

2 Mr. Wiltshire: Yvette Foggie Carter.

3 Ms. Carter: Yvette Foggie Carter.

4 The Court: Carter. Ms. Carter, happy to hear from
5 you, ma'am.

6 Ms. Carter: Your Honor, my mother was, as my sister
7 stated, a loving woman. She was a very devoted Christian
8 woman. She was a dignified lady and I thank you and the
9 judicial system for ruling out a verdict of guilty on both
10 counts. They let me know, I swear to God, that my mother
11 did not die in vain. She's going to be deeply missed.
12 She's already missed, but I thank the Court that justice
13 will be served. Thank you, Your Honor.

14 The Court: Thank you, Ms. Carter.

15 Mr. Foggie: My name is Victor Foggie and Ernestine was
16 my mother and I'd like to say I loved my mother very much
17 and she loved her family and my mother did not have to die
18 that way and I'd like to say that my mother, she sent us to
19 church a long time ago and now I'm a Sunday School Teacher.
20 I teach my Sunday School kids what a blessing is and I let
21 them know what a blessing it is, is when you can go home
22 on, like, Mother's Day, Easter or a Sunday, and you go home
23 and eat your family dinner with your mother, you, and your
24 child and have your favorite desserts and everything and
25 that is what a blessing is. I explained that to them that

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1 they know what a blessing it is and I will miss my mother
2 very much and it hurts me that I cannot eat dinner with my
3 mother and I can't see her anymore and if I still want to
4 see my mother on Mother's Day now, I have to go to a
5 graveyard and cry.

6 The Court: Thank you, sir.

7 Mr. Hammack: Your Honor, I believe that's it for the
8 family. Oh, one more. I'm sorry. Two more.

9 The Court: That's quite all right. Yes, ma'am.

10 Ms. Yelverton: Your Honor, my name is Delores
11 Yelverton and Ernestine was my older sister. I'm her baby
12 sister and on her birthday, I was able to treat her to
13 lunch in her favorite city. Time has been stolen from me.
14 I will no longer be able to celebrate life with her or
15 celebrate any victory that I may have in my life, but today
16 I celebrate her life and victory in justice and I thank God
17 that I such a relationship with Him that I can celebrate
18 her life and that she will continue to live on. Life is
19 not given to us to be stolen away by malice intent, but in
20 this case, it was and I'm going to miss my sister very
21 dearly, because I loved her so very much and now all I have
22 is memories.

23 The Court: Thank you, ma'am.

24 Ms. Dowdy: Your Honor, my name is Kathy Dowdy.

25 Ernestine was my sister, my best friend, my confidant. Ask

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1 everyone else that knew her, she never met a stranger and
2 she was just an all-around phenomenal woman. I could sit
3 her all day and tell you that. My concern is that we've
4 lost a member of our family that we can never recover and
5 my desire is that her life can never be paid for, but I do
6 ask that his life is not one that he can exactly be able to
7 enjoy the life that she would have been able to, that was
8 taken from her, and so I am asking that he get the maximum
9 sentence, which is life, his natural life, because at this
10 point, something has been taken not just from the family,
11 but from the world, from everyone that she's ever met.

12 The Court: Thank you very much, Ms. Dowdy.

13 Mr. Hammack: Your Honor, if I may approach. The
14 family wanted me to show you a photograph of Ms. Brown,
15 just to place a face with the name that you've been
16 hearing.

17 (Mr. Hammack hands document to the Judge)

18 The Court: Thank you, Solicitor.

19 Mr. Hammack: Your Honor, you've heard all the facts in
20 the case. You've heard what's alleged. The only thing
21 I've got to add is just his prior record and then I'll
22 yield to the defense.

23 Your Honor, he has a prior possession of marijuana
24 with intent to distribute in 1985. It looks like a similar
25 charge of possession of marijuana with intent to distribute

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1 in '87. Resisting arrest in '88. A failure to stop in
2 1990. It looks like a distribution of cocaine around 1990.
3 A criminal domestic violence in 1995. Breach of trust with
4 fraudulent intent in 2002. Receiving stolen goods and
5 driving under suspension in '05 and a failure to stop of
6 law enforcement vehicle in 2009.

7 The Court: All right. Thank you, Solicitor.
8 Solicitor, if I might ask, how old was the victim when she
9 passed?

10 Mr. Hammack: Your Honor, at the time of the incident,
11 she would have been 58 years old.

12 The Court: Thank you very much, Solicitor.

13 Mr. Hammack: Yes, sir.

14 The Court: Mr. Howe, happy to hear from you in
15 mitigation and certainly anything your client or any member
16 of his family may want to say, I'll be more than happy to
17 hear.

18 Mr. Howe: Your Honor, of course it's not a whole lot
19 that we can say that would impact the sentence based on the
20 sentence range that this Court has. I've explained that to
21 Fred. He's known that from the beginning. He's 53 years
22 old, will be 54 this coming December. A high school
23 graduate, army veteran, employed virtually all his adult
24 life and you've heard his criminal history, no violence
25 whatsoever. He has a good family who's been here

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1 supporting him in the courtroom, his mother, his sisters.
2 He has seven children and he has been, Judge, in my dealing
3 with him with this very, very difficult case, he's been a
4 model client as far as cooperating with us, discussing the
5 case, doing everything in a very polite manner, although
6 he's been in jail the whole time and, of course, you have
7 clients in jail that you go see and they're frustrated
8 because they are, in fact, in jail. You can't go out there
9 every day, but Fred was always very patient with us and
10 understanding of what he was facing. Having said all that,
11 Judge, you know, there's not a whole lot that I can say as
12 far as sentencing. I've explained that. I would ask the
13 Court, if you impose the minimum sentence in this case,
14 he's got to somehow live to be in his 80s, as I see it, to
15 survive that sentence and that would be tough. Since he's
16 been in jail, he's discovered that he is diabetic, he has
17 some health issues and that's his situation and we'd ask
18 that you take all that into consideration. Thank you.

19 The Court: All right. Is he insulin dependant or Type
20 I or Type II?

21 Mr. Howe: He's on Insulin.

22 The Court: Okay. So, he's Type II?

23 Mr. Howe: Yes, sir.

24 The Court: Mr. Madden, is there anything that you
25 would care to say, sir?

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1 Mr. Howe: No, sir.

2 Mr. Hammack: Nothing further from the State, Your
3 Honor.

4 The Court: Defense?

5 Mr. Howe: No, sir.

6 The Court: All right. I appreciate the comments from
7 the family of the victim in this case. All I can say to
8 y'all is that your mother, your sister, would be very proud
9 of all of you the way you've stuck together and held
10 together as a family and I know that she was probably the
11 glue that helped keep y'all together. Never lose sight of
12 that. You'll never have anymore brothers, you'll never
13 have anymore sisters. You won't have anybody else that's
14 related by blood to you, so continue to stay together.
15 Celebrate her birthday, not the day that she passed.

16 I've considered everything that's been presented.
17 I've, of course, had an opportunity to observe the trial
18 and the circumstances by which the victim died. I'm forced
19 to conclude that this is a situation that had to have been
20 planned out, had to have been pre-meditated. I'm quite
21 certain that malice was present. I'm quite certain the
22 verdict of the jury is appropriate and I can think of no
23 more serious charge than the one Mr. Madden, or no more
24 serious crime than the one that Mr. Madden has committed.
25 Mr. Madden, you have a substantial prior history that I

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1 simply can't turn a blind eye to and my basic philosophy is
2 that the mandatory minimum should be reserved for those
3 individuals who, with malice, commit a crime, but whose
4 prior contact with law enforcement has been, at the very
5 least, minimal and I can't say that about you, sir. Mr.
6 Madden, the sentence of the Court on the offense of murder,
7 Indictment 10-GS-30-288 is that you be committed to the
8 South Carolina Department of Corrections for the balance of
9 your natural life. The sentence on the weapons charge is
10 that you be committed to the Department of Corrections for
11 five years, concurrent with the murder charge. Mr. Madden,
12 you've taken a life. The rest of yours will be spent in
13 prison. Good luck to you, sir.

14 Mr. Hammack: Your Honor, one other matter I've got, if
15 the Court wishes to make the victim's photo a Court's
16 exhibit, may I substitute a color copy?

17 The Court: If you wish, you may do that or you may
18 simply, I don't know that there's a need to make it a
19 Court's exhibit. If you wish, you can simply return it to
20 the victim's family. At the same time, if you want it to
21 be a permanent part of the record in this case, you can
22 make it an exhibit, too.

23 Mr. Hammack: Your Honor, if the Court doesn't want it,
24 I'll give it back to them. I just want to make sure they
25 get it back.

C-E-R-T-I-F-I-C-A-T-E

Be it known that I, the undersigned Jo Rice, Official Court Reporter for the Tenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing transcript represents a true, accurate and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, before the Circuit Court for Laurens County, South Carolina, so given on August 29 - September 1, 2011 to the best of my skill and ability;

That I am not related to nor an employee of any of the parties hereto, nor a relative or employee of any attorney or counsel employed by the parties hereto, nor interested in the outcome of this action.

IN WITNESS WHEREOF I have here unto set my hand and seal this 26th day of November, 2011.



Jo Rice
Official Court Reporter

4678
RJ

FORM 5

2014 -CP30-206

STATE OF SOUTH CAROLINA

COUNTY OF LAURENS IN THE COURT OF COMMON PLEAS

Frederick S. Maiden # 15471
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention State of South Carolina - County of LAURENS
2. Name and location of Court which imposed sentence General Sessions - LAURENS-S.C.
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - X (a) 2010-GS-30-00288-00289 MURDER Charge
 - (b) NATURAL LIFE
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) AUGUST 29 - SEPTEMBER 1, 2011 - LAURENS-SC
 - (b) _____

RECEIVED

Revised 3/2003

MAR 13 2014

Referred to Johnson/dm

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty NO - AFTER _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES _____
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) YES _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE COUNSEL OF MY LAWYERS
 (b) 14th ~~AMENDMENT~~ - VIOLATES THE DEFENDANT'S SIXTH AMENDMENT
 (c) MERE PRESENCE IS MY CASE

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

- (a) MY LAWYERS FAILED TO DO THEIR JOB TO THE FULLEST
 (b) THE PROCESS, RIGHTS WAS VIOLATED
 (c) I WAS AT THE CRIME SCENE, NO KNOWLEDGE WHAT HAPPEN

X 12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
 (d) any other petitions, motions or applications in this or any other Court? N/A

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A

- (a) the specific nature thereof:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. _____
 ii. _____
 iii. _____
 iv. _____
 (c) the disposition thereof:
 i. _____
 ii. _____
 iii. _____

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. _____
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- None
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. None
- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. _____
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) None
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? YES _____
- (c) your sentencing? YES _____
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

18. If you answered "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 - i. CLAUDE H. HOWE, III ESQUIRE
 - ii. DR. KATE ANDERSON, ATTORNEY AT LAW
 - iii. POST OFFICE BOX 921 - CLINTON, SOUTH CAROLINA 2932
- (b) the proceedings at which each such attorney represented you:
 - i. SAME TRIAL
 - ii. _____
 - iii. _____

19. State clearly the relief you seek in filing this application:

NEW TRIAL - REVERSED

20. Are you now under sentence from any other court that you have not challenged?

NO

STATE OF SOUTH CAROLINA

WILKINSON VERIFICATION

County of LAURENS S.C. 2014 MAR 11 P 3:01

I, Jim, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Fred L. Madden Jr

SWORN to and subscribed before me this 6th
day of March, 2014.

Leahann Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Frederick S. Davidson, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Frederick S. Davidson
Applicant

SWORN or affirmed to and subscribed before me this
6th day of March, 2014.

Ludlow Bryant
Notary Public

My Commission Expires: May 26, 2020

~~STATE V. ODEMS~~

CIRCUMSTANTIAL EVIDENCE CASES

STATE V. EDWARDS, 298 S.C. 272, 275, 379 S.E.2d 888, 889 (1989)

STATE V. LOGAN, 405 S.C. 83, 747 S.E.2d 444 (2013)

STATE V. GRIPPO, 327 S.C. 79, 489 S.E.2d 462 (1997)

STATE V. BOSTICK, 392 S.C. 134, 708 S.E.2d 774 (2011)

STATE V. CHERRY, 361 S.C. 588, 606 S.E.2d 475 (2004)

STATE V. HERNANDEZ, 382 S.C. 620, 677 S.E.2d 603 (2009)

STATE V. ODEMS, 395 S.C. 582, 720 S.E.2d 48 (2012)

STATE V. FOSTER (S.C. 2003) 354 S.C. 614, 582 S.E.2d 426. CRIMINAL LAW 391

STATE V. RICE (S.C. APP. 2007) 375 S.C. 652 S.E.2d 409

STATE V. VICK (S.C. APP. 2009) 384 S.C. 129, 682 S.E.2d 275. REHEARING DENIED CRIMINAL LAW 419 (2)

STATE V. WEAVER (S.C. APP. 2004) 361 S.C. 73, 602 S.E.2d 786

~~STATE V. WEAVER~~

RULE 901. REQUIREMENT OF AUTHENTICATION OR IDENTIFICATION
(S) VOICE IDENTIFICATION - IDENTIFICATION of a voice, whether heard firsthand or through Mechanical or Electronic Transmission or Recording, by opinion based upon HEARING the voice at any time under circumstances connecting it with the alleged speaker.

Third Party Hearsay - guilt evidence alleged prior inconsistent statement concerning Third-Party guilty was inadmissible in prosecution for MURDER STATE V. RICE (S.C. APP. 2007) 375 S.C. 652 S.E.2d 409 REHEARING DENIED CERTIORARI DENIED CRIMINAL LAW 359 HOMICIDE 1034

(6) TELEPHONE CONVERSATIONS - TELEPHONE CONVERSATIONS by EVIDENCE THAT A CALL WAS MADE TO THE NUMBER 475 ASSIGNED AT THE TIME by THE TELEPHONE COMPANY TO A PARTICULAR PERSON OR BUSINESS, IF (A) IN THE CASE OF A PERSON, CIRCUMSTANCES, INCLUDING SELF IDENTIFICATION, SHOW THE PERSON ANSWERING TO BE THE ONE CALLED,

DEFENSE COUNSEL - MERELY ASKED WITNESS WHETHER SHE HAD GIVEN POLICE A STATEMENT CONSISTENT WITH HER TESTIMONY ON DIRECT EXAMINATION, AND ALLOWING STATE TO THEN ADMIT WRITTEN STATEMENT DID NOT REBUT OR EXPLAIN THIS TESTIMONY IN ANY WAY AND STATE, WHOSE SOLE PURPOSE IN SEEKING TO ADMIT STATEMENT WAS TO REHABILITATE WITNESS AND BOLSTER HER CREDIBILITY, FAILED TO MEET REQUIREMENTS OF RULE ALLOWING FOR ADMISSION OF PROB CONSISTENT STATEMENT MADE BY WITNESS BEFORE MOTIVE TO FABRICATE AROSE, TO REBUT AN EXPRESS OR IMPLIED CHARGE OF RECENT FABRICATION OR IMPROPER MOTIVE. STATE V. FOSTER. S.C. 2003) 354 SC. 614. 582 S.E2 126. CRIMINAL LAW 396 (1)

TESTIMONY OF POLICE OFFICER THAT ALL EVIDENCE POINTED TO DEFENDANT BASED ON WHAT WITNESSES TOLD OFFICER DID NOT CONSTITUTE INADMISSIBLE HEARSAY, OFFICER NEVER REPEATED STATEMENTS MADE TO HIM BY INDIVIDUALS AT CRIME SCENE BUT RATHER TESTIFIED ONLY TO CONCLUSIONS BASED ON WHAT HIS INVESTIGATION HAD REVEALED, TESTIMONY WAS IN RESPONSE TO CROSS EXAMINATION AS TO WHY OFFICER DID NOT PERFORM GUNSHOT RESIDUE TEST ON EVERYONE AT CRIME SCENE, AND TESTIMONY WAS OFFERED TO EXPLAIN PART OF HIS

21 NOV 2014 MON. 3171E V. WELIVER, J.C. APP. 2001, 301 J.C.
73, 602 S.E. 2d 786, REHEARING DENIED, CERTIORARI GRANTED
AFFIRMED AS MODIFIED 374 S.C. 313 S.C. 649 S.E. 2d 479
CRIMINAL LAW 419 (3)

IN-TRANSCRIPT

ARGUMENT ISSUE

LINE 23-24

THE TIME APPELLANT ARRIVED, AND THE TIME OF RESPONDENT DEATH. P. 395

2) WHILE ON THE PHONE MS. DOWDY HEARD SOMEONE KNOCK ON
MS. BROWN'S DOOR. SHE ASKED MS. BROWN WHO WAS THERE MS.
BROWN TOLD HER IT WAS FRED. MS. DOWDY ADVISED HER NOT
TO OPEN THE DOOR, BUT SHE OPENED THE DOOR. MS. DOWDY COULD
HEAR APPELLANT'S VOICE. SIR I THE APPELLANT WHY WOULD I
KNOCK ON THE DOOR WHEN I HAVE A KEY TO ENTER. P. 205 LINE 16
P. 200-LINE 15)

3) PAGE 205-LINE 8-9-10- JUST FOR CLARIFICATION DO YOU HAVE,
HAVE YOU EVER PLED GUILTY TO THE CHARGE OF HABITUAL
TRAFFIC OFFENDER,

PAGE 205-LINE 19-20-21-23-24-25- CROSS EXAMINATION OF
KATHY DOWDY BY MR. HOWE.

4) PAGE 207-LINE 16-17-18-19-20-21-22-23-24-25 BUYING
PROPERTY TOGETHER, PHOTOGRAPHS STATE CLOTHES IN THE CLOSET
ALONE WITH OTHER THING ON THE PROPERTY.

5) PAGE 208 TESTIMONY-KATHY DOWDY LINE 5A-6A LINE 8A-LINE 2?
LINE 24-25- PAGE 209 LINE 1A-3A-4-5-6A-7-8A-20A-21-22Q-23
24Q 23-24A-25-Q

PAGE 218-LINE 5Q-6-7-8A LINE 9Q-LINE 13-14Q-16-A

DIRECT EXAMINATION - WITNESS OF DELORIS YELVERTON
1) Page 221 - LINE 20Q-21-22

TESTIMONY ALBERT BROWN

PAGES 223 - LINE 23Q - 24A - LINE 21-22 PAGES 226 - LINE 8Q
10A - LINE 16Q LINE 24A - PAGE 227 LINE 8Q 9-10-11-12 LINE 22Q
23-24-25 PAGE 228 - LINE 1Q-2-3-4-5A LINE 6Q-7-8-9-10-11A
LINE 24Q-25 PAGE 229 LINE 1-2-3-4-5-6-7-8-9-10Q - LINE 11-12-13
14Q-15-16A-17Q LINE 18-19-20A-21Q-22-23-24A - LINE 25Q

DIRECT EXAMINATION OF WITNESS MACK IRBY

PAGES 232 - LINE 14A-15Q-16A PAGE 235 - LINE 21A-22-23-24-
25 - PAGES 237 - LINE 8Q-9-10-11A-12Q 13A-14Q-15
LINE 16A-17Q-18-19-20-21Q-22
LINE 23A-24-25Q

TESTIMONY TIA SIMMONS

PAGE 273 - LINE 15Q-16-17A-18
PAGE 274 - LINE 13Q-15A LINE 16Q-17
PAGE 275 - LINE 8Q 9A-11A-12-13Q-14A
PAGE 276 - LINE 11Q 12A-13Q 14Q 14A-15Q 16A - LINE 17Q-18A
9Q-20A
PAGE 278 - LINE 21-24Q 25A
PAGE 279 - LINE 1-2Q 3-4-5A LINE 14Q-15-16-17A 18Q-19A

TESTIMONY DEPUTY SCOTT FRANKLIN

PAGE 282 - LINE 24A-25Q

PAGE 283 - LINE 1-2A-7A-8Q-10A-11Q-12A-16Q-17-18-19-20Q-21-22A-23Q-24-25A

TESTIMONY OF LIEUTENANT JAWORSKI-SHELTON

PAGE 295 - LINE 15-16-17-18-19-20-21Q-22A

PAGE 296 - LINE 9Q-10-11A-12Q-13-14-15-16A

PAGE 298 - LINE 16Q-17-18A-19Q-20-21-22-23A-24-25Q

Medication found.

PAGE 299 - LINE 1-2A-3Q LINE 13A-14Q-15-16-17Q-18A-19Q-20-21-22A-23Q

PAGE 300 - LINE 20Q-21-22A-23-24Q-25

PAGE 301 - LINE 12Q-13-14-15-16-17-18A

PAGE 302 - ALL THE LINES ON THIS PAGE SIR

DIRECT EXAMINATION OF STEPHANE WILLIAMS

PAGE 314 - PAGE 315 - PAGE 316 SIR READ THESE ~~THREE~~ 3-MAIN PAGES

FIFTH AMENDMENT Rights

PAGE 400 - LINE 21 - Right to Testify

PAGE 402 - LINE 24

PAGE 403 - LINE 1-2-3. My LAWYERS TOLD ME NOT TO TESTIFY, HE SAID WE ARE WINNING, IN SO MANY WORDS!

CLOSING ARGUMENT - MR. HOWE

READ THESE PAGES SIR PAGE 413-414-415-416-417-418-419-LINE 20-2

PAGE 420 - PAGES 421 - PAGE 422. SIR GIVE ME A CHANCE TO PROVE MY CASE OF INNOCENT,

SINCERELY, JARED L. MADDEN JR.

STATE OF SOUTH CAROLINA
COUNTY OF LAURENS

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Fred L. Madden, Jr., #171471,

2014-CP-30-0206

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 11, 2014, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Laurens County Clerk of Court. The Applicant was indicted at the February 2010 term of the Laurens County Grand Jury for Murder (2010-GS-30-0288) and Possession of a Weapon during the Commission of a Violent Crime (2010-GS-30-0289). The Applicant was represented by Chip Howe, Esquire and Kate Anderson, Esquire. On August 29-September 1, 2011, the Applicant underwent trial by jury and was convicted of both charges as indicted. The Honorable Frank R. Addy, Jr. sentenced the Applicant to imprisonment for Life for Murder and five (5) years, concurrent, for Possession of a Weapon during the Commission of a Violent Crime.

A notice of appeal was filed on Applicant's behalf and an appeal perfected. The South Carolina Court of Appeals affirmed the Applicant's conviction and sentence. 2014-UP-032 (Ct. App. filed January 22, 2014). The Remittitur was issued on February 7, 2014.

Attached herewith and incorporated herein are the records of the Laurens County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Counsel of my lawyers"
 - a. "My lawyers failed to do their job to the fullest(sic)"
2. "14th Amendment violated the Defendant's Sixth Amendment"
 - a. "Due Process rights was(sic) violated"
3. "Mere Presence is my case"
 - a. "I was at the crime scene, no knowledge what happen(sic)"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCRCP.

III.

The Respondent interprets the Applicant claims to be claims of ineffective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises

questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

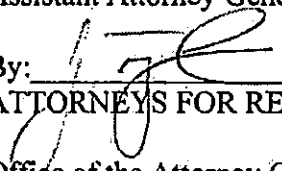
Respectfully submitted,

ALAN WILSON
Attorney General

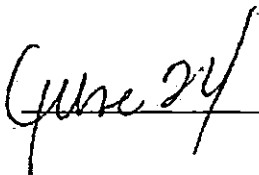
JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

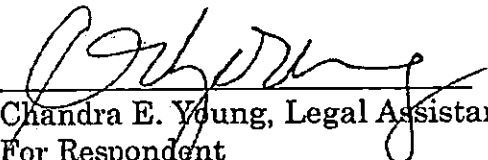
, 2014.

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LAURENS	)	
	)	
	)	2014-CP-30-0206
FRED MADDEN, JR., #171471	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Carson M. Henderson
 109-B Oak Avenue
 Greenwood SC 29646

DATED this 24th day of June, 2014.


 Chandra E. Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LAURENS	)	EIGHTH JUDICIAL CIRCUIT
	)	
FRED L. MADDEN, JR.	)	
(#171471),	)	
	)	
Petitioner,	)	FIRST AMENDED APPLICATION FOR
	)	POST-CONVICTION RELIEF
v.	)	
	)	C/A No. 2014-CP-30-206
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

The Petitioner, while reserving motions filed and to be filed, and while reserving her right to further amend her Application for Post-Conviction Relief, would respectfully allege and show unto the Court as follows:

INCORPORATION OF PETITIONER'S PRIOR PLEADINGS

1. The Petitioner hereby incorporates into this his First Amended Application for Post-Conviction Relief all allegations contained in his pro se Application for Post-Conviction Relief dated March 6, 2014, and filed with the Court on March 11, 2014.

FOR A FIRST ALLEGATION

2. The Petitioner hereby incorporates Paragraph 1 into this his First Allegation as if fully set forth herein verbatim.

3. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to object when witness Kathy Dowdy testified as follows: "He and my sister were in a relationship until she evicted him." (Trial transcript page 201, lines 10-11.)

FOR A SECOND ALLEGATION

4. The Petitioner hereby incorporates Paragraphs 1-3 into this his Second Allegation as if fully set forth herein verbatim.

5. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to ask the Court to strike witness Kathy Dowdy's testimony after the Court sustained the Petitioner's objection to Ms. Dowdy's testimony. (Trial transcript page 204, lines 1-5.)

FOR A THIRD ALLEGATION

6. The Petitioner hereby incorporates Paragraphs 1-5 into this his Third Allegation as if fully set forth herein verbatim.

7. The Petitioner is informed and believes that his trial attorneys were ineffective because they asked witness Kathy Dowdy about the Petitioner being evicted from the Decedent's house. (Trial transcript page 207, line 24 - page 208, line 5.)

FOR A FOURTH ALLEGATION

8. The Petitioner hereby incorporates Paragraphs 1-7 into this his Fourth Allegation as if fully set forth herein verbatim.

9. The Petitioner is informed and believes that his trial attorneys were ineffective because they asked witness Kathy Dowdy a question which elicited a response about the Decedent "putting him out." (Trial transcript page 213, lines 16-20.)

FOR A FIFTH ALLEGATION

10. The Petitioner hereby incorporates Paragraphs 1-9 into this his Fifth Allegation as if fully set forth herein verbatim.



11. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to object when witness Kathy Dowdy testified as follows: “(Q) Ms. Dowdy, is there any reason why you would make this up? (A) No.” (Trial transcript page 219, lines 3-5.)

FOR A SIXTH ALLEGATION

12. The Petitioner hereby incorporates Paragraphs 1-11 into this his Sixth Allegation as if fully set forth herein verbatim.

13. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to object when witness Albert Brown testified as follows: “My initial thought was Fred had murdered her.” (Trial transcript page 226, lines 16-17.)

FOR A SEVENTH ALLEGATION

14. The Petitioner hereby incorporates Paragraphs 1-13 into this his Seventh Allegation as if fully set forth herein verbatim.

15. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to ask the Court to strike the following statement from witness Mack Irby: “When Fred got out of the shower.” (Trial transcript page 233, line 20 - page 237, line 7.)

FOR AN EIGHTH ALLEGATION

16. The Petitioner hereby incorporates Paragraphs 1-15 into this his Eighth Allegation as if fully set forth herein verbatim.

17. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to follow up on the subpoena to Laurens County Sheriff Ricky Chastain for the production of “[a] training records” for the deputies who investigated this case and “[a]ll

training manuals, policy procedure manuals for questioning suspects[.]” (Subpoena attached as EXHIBIT A.)

FOR A NINTH ALLEGATION

18. The Petitioner hereby incorporates Paragraphs 1-17 into this his Ninth Allegation as if fully set forth herein verbatim.

19. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to thoroughly investigate the Decedent’s daughter Kelia Brown’s potential involvement in the death of the Decedent.

FOR A TENTH ALLEGATION

20. The Petitioner hereby incorporates Paragraphs 1-19 into this his Tenth Allegation as if fully set forth herein verbatim.

21. The Petitioner is informed and believes that his trial attorneys were ineffective because they failed to introduce into evidence the telephone calls between the Petitioner and the Decedent on December 9-10, 2009. (Trial counsels’ summaries of these telephone calls are attached as EXHIBIT B.)

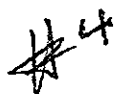
FOR AN ELEVENTH ALLEGATION

22. The Petitioner hereby incorporates Paragraphs 1-21 into this his Eleventh Allegation as if fully set forth herein verbatim.

23. The Petitioner is informed and believes that his trial attorneys were ineffective because they discouraged the Petitioner not to testify because the defense was “winning” at trial.

PRAYER

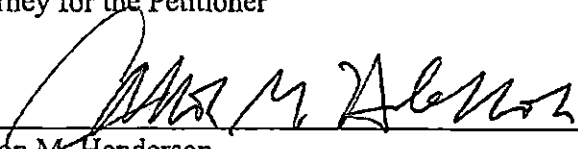
WHEREFORE, the Petitioner prays:



1. That this Court grant judgment to the Petitioner, vacate the Petitioner's conviction, and grant the Petitioner a new trial.
2. For such other and further relief as this Court deems just, proper, and equitable.

THE HENDERSON LAW FIRM, P.C.
Attorney for the Petitioner

By: _____


Carson M. Henderson
109-B Oak Avenue
Greenwood, S.C. 29646
Phone: (864) 229-8000
Fax: (864) 229-8001

Greenwood, South Carolina

February 24, 2019

EXHIBIT A

SUBPOENA IN A CRIMINAL CASE

SOUTH CAROLINA GENERAL SESSIONS COURT		COUNTY Laurens	
STATE		CASE NO. 2010-05-30-288620 289	
<i>Fred Lewis Moody Jr</i>		SUBPOENA FOR ☒ PERSON ☒ DOCUMENT(S) OR OBJECT(S)	
TO: Sheriff Riaty Chestan			
☒ YOU ARE HEREBY COMMANDED to appear in the above named court at the place, date, and time specified below to testify in the above-entitled case.			
PLACE: Laurens County Court House 100 Hillcrest Drive Laurens, SC 29360		COURTROOM General Sessions DATE AND TIME Aug 22, 2011 10 AM	
☒ YOU ARE ALSO COMMANDED to bring with you the following document(s) or object(s). <i>See Below</i>			
LIST DOCUMENT(S) OR OBJECT(S):			
This subpoena shall remain in effect until you are granted leave to depart by the court or by an officer acting on behalf of the court.			
CLERK OF COURT <i>Anna W. Paragutin</i>			DATE
(BY) DEPUTY CLERK <i>Adrian T. Butz</i>			
THIS SUBPOENA IS ISSUED UPON APPLICATION OF THE: ☐ SOLICITOR ☒ DEFENDANT		ATTORNEY'S NAME AND ADDRESS Claude H. Howe, III. 100 Hillcrest Drive, Suite P. Laurens, SC 29360 Phone #: (864) 984-8807	
PROOF OF SERVICE			
SERVED	DATE	PLACE	
SERVED ON (PRINT NAME)		MANNER OF SERVICE	
SERVED BY (PRINT NAME)		TITLE	
DECLARATION OF SERVER			
I certify that the foregoing information contained in the Proof of Service is true and correct.			
Executed on _____		SIGNATURE OF SERVER _____	
DATE		ADDRESS OF SERVER _____	

1) All training records for officers, Moody, Shelton, Plaxico, Wilkie, Foggie, Blackmon

2) All training manuals, policy procedures manuals for questioning suspects.

EXHIBIT B

Fred 684-1063 Ernestine 684-2187

12/9 1:30:20 pm Fred → Ernestine 17

12/9 2:14:00 pm Fred → Ernestine 5

12/9 3:22:58 pm Fred → Ernestine 4

12/10 3:16:13 am Fred → Ernestine 484

12/10 3:25:33 am Ernestine → Fred 81

12/10 4:24:12 am Fred → Ernestine 54

Fred 684-1063

02 F72-8770

12/10 Fred to V 484 3:16

12/10 V to Fred 81 3:25

12/10 Fred to V 54 4:24

~~6:00~~

1

1 STATE OF SOUTH CAROLINA }
2 COUNTY OF LAURENS } IN THE COMMON PLEAS COURT
3
4 Fred Lewis Madden, Jr., }
5 Applicant, } TRANSCRIPT OF RECORD
6 } 2014-CP-30-0206
7 }
8 }
9 }
10 } February 27, 2019
11 } Greenwood, South Carolina
12
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B E F O R E:

HONORABLE BRIAN M. GIBBONS, JUDGE

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

CARSON M. HENDERSON, ESQUIRE
Attorney for the Applicant

JANELL H. GREGORY, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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Direct examination by Mr. Henderson

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1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	A-1	Subpoena and record		21
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1 THE COURT: Are you ready to proceed?

2 MS. GREGORY: Yes, sir.

3 THE COURT: Madam, A.G.

4 MS. GREGORY: Before you is Fred Madden. This is
5 2014-CP-30-0206.

6 He's represented by Carson Henderson, and I believe he
7 has a motion before you, so I'm going to defer to him in
8 the beginning.

9 THE COURT: All right. Mr. Henderson, is your client
10 present?

11 MR. HENDERSON: Yes, sir, Your Honor. My client is
12 sitting over here in the jury box.

13 THE COURT: Okay.

14 MR. HENDERSON: My client has asked me to ask you for
15 a continuance. He says he wants a continuance. As I told
16 my client, I said I'm ready to proceed today. And, again,
17 I don't know whether or not my client wants to participate.

18 THE COURT: Okay.

19 MR. HENDERSON: I mean, it's an all-candor with the
20 Court. But I've told my client he needs to participate,
21 and/but he did want me to ask you to ask for a continuance,
22 and I told him I'll be glad to. I think I'm ethically
23 bound to do that.

24 THE COURT: Yes, sir.

25 MR. HENDERSON: I'm also ethically bound to tell the

1 Court I'm ready to proceed.

2 THE COURT: Okay. Thank you.

3 MR. HENDERSON: So and just let the Court do what you
4 will with that.

5 THE COURT: All right. Thank you.

6 Ms. Gregory, what's the state's position on this
7 continuance request?

8 MS. GREGORY: This case has been pending since 2014,
9 Your Honor. Our witnesses are here. We are prepared to go
10 forward.

11 THE COURT: This action was filed in 2014?

12 MS. GREGORY: Yes, sir.

13 THE COURT: It's 2019.

14 MS. GREGORY: Yes, sir.

15 THE COURT: We're trying the case today. Okay. So
16 the continuance request is denied.

17 And, Mr. Madden, you certainly have a right to
18 participate in the prosecution of this case today. In your
19 best interest you need to participate, but I'm not going to
20 make you participate. This is going to be up to you. But
21 your lawyer is ready; the state's ready.

22 This case has been pending for five years. Witnesses
23 are here I see out in the courtroom. We're going forward
24 with this matter this morning.

25 MR. HENDERSON: And, Your Honor, may I approach?

1 THE COURT: Yes, sir.

2 MR. HENDERSON: This is an original document. I don't
3 know if you have the clerk's files, or would you rather I
4 file that with the clerk in Newberry?

5 MS. GREGORY: I have it.

6 THE COURT: You have it?

7 MR. HENDERSON: Judge, if you could just mark on the
8 document that you've accepted it and that would constitute
9 the filing.

10 THE COURT: All right. Received 2/27/19, B.M.G. Got
11 it.

12 All right. Mr. Henderson, why don't you give me an
13 idea what this case is about like a brief opening
14 statement? Tell me what you're seeking and why, and
15 that'll kind of give me an idea before we start into the
16 testimony.

17 MR. HENDERSON: Absolutely, Your Honor.

18 Of course we're seeking a new trial and to vacate his
19 conviction.

20 Fred was convicted of murder and possession of a
21 weapon by a trial jury in Laurens County and sentenced to
22 his natural life.

23 This is a case, a lot of he-said-she-said, Your Honor.
24 There is some evidence, but a lot of it is
25 he-said-she-said.

1 Mr. Howe and Ms. Anderson represented Mr. Madden at
2 trial, raised a lot of good, good objections. Some of
3 them, they won; some of them, they lost. But the good
4 stuff along those lines was dealt with on direct appeal.

5 Mr. Dudek down at appellate defense was actually the
6 appellate lawyer. As I told my client, he's as good of an
7 appellate lawyer in this state as anybody is.

8 But the Court of Appeals affirmed the conviction. And
9 here on the P.C.R. level I've been looking at what I feel
10 were deficiencies of trial counsel unrelated to the issues
11 that were dealt with objection-wise or also on appeal. And
12 this is a whole new ground of stuff.

13 I filed -- Mr. Madden of course filed a pro se
14 application. And I have amended it alleging, it looks
15 like, ten additional grounds. And some of those grounds
16 have to do with stuff, I believe, that should have been
17 moved to have been stricken, some stuff that should have
18 been objected to.

19 And a lot of it goes toward the investigation by trial
20 counsel and their investigator, Your Honor. I've got trial
21 counsel's file. It's a voluminous file. And there's some
22 stuff in there that they're gathering evidence on that
23 they're doing their investigation and some stuff that seems
24 promising, and yet none of this was brought out at trial,
25 basically to cast dispersions on somebody else who had