

VOLUME I of II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

VICTOR D. SMITH,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000549

APPENDIX

ADAM SINCLAIR RUFFIN
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

D. RUSSELL BARLOW
Assistant Attorney General
P. O. Box 11549
Columbia, SC 29211

ATTORNEYS FOR RESPONDENT

ATTORNEY FOR PETITIONER

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED SEPT. 19-23, 2011	1
SENTENCING HEARING TRANSCRIPT DATED OCT. 6, 2011	802
<u>ANDERS</u> BRIEF OF APPELLANT	816
<u>STATE V. SMITH</u> , 2013-UP-423 (S.C. Ct. App. filed Nov. 20, 2013)	828
APPLICATION FOR POST-CONVICTION RELIEF	830
RETURN.....	835
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DEC. 11, 2015	842
ORDER OF DISMISSAL.....	943
MOTION PURSUANT TO RULE 59(e) SCRCp, TO AMEND.....	954
ORDER DENYING APPLICANT’S MOTION TO ALTER OR AMEND.....	957
INDICTMENT AND SENTENCE SHEET	958

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND) FIFTH JUDICIAL CIRCUIT

2010-GS-40-12999

State of South Carolina,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Transcript of Record
	)	
Victor Smith,	)	
	)	
Defendant.	)	
	)	
	)	

September 19 - 23, 2011
Columbia, South Carolina

B E F O R E:

The Honorable Casey Manning, Judge, and a jury.

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

Dan Goldberg, Esquire
Carter Potts, Esquire
Attorneys for the State

Christopher Hart, Esquire
Attorney for the Defendant

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

Transcript by:
Hilda M. Jordan, CVR-M
Circuit Court Reporter

I N D E X

1		
2	Voir dire	17
3	Jury selection	37
4	Juror Replaced with Alternate	47
5	Pre-trial Motion	53
6	Alternate seated	104
7	Jury sworn	104
8	Opening statements by the Court	104
9	Opening statements by the State	109
10	Opening statements by the Defense	113
11	Motion by Defense	731
12	Advice of Rights Victor Smith	731
13	Closing by the State	738
14	Closing by the Defense	764
15	Charge on the Law	782
16	Verdict	794
17	Jury polled	795
18	Sentencing Deferred	798
19	Certificate of Court Reporter	800
20		
21		
22		
23		
24		
25		

State v. Victor Smith 9/19/11 - 9/23/11

3

	<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>
1		
2	MOTION HEARING:	
3	Travis Holdorf.....direct.....	68
4	Travis Holdorf.....cross.....	77
5	Travis Holdorf.....redirect.....	88
6	Travis Holdorf.....recross.....	88
7	Dorothy Cronise.....direct.....	90
8	Dorothy Cronise.....cross.....	91
9	Donald Robinson.....direct.....	93
10	STATE'S CASE	
11	Nolan Martin direct.....	119
12	Nolan Martin cross.....	124
13	Nolan Martin redirect.....	125
14	Robert Moreland direct.....	126
15	Robert Moreland cross.....	130
16	Donald Robinson direct.....	132
17	Donald Robinson cross.....	147
18	Dorothy Cronise direct.....	157
19	Dorothy Cronise cross.....	169
20	Dorothy Cronise redirect.....	173
21	Dorothy Cronise recross.....	175
22	Mark Wickham direct.....	176
23	Mark Wickham cross.....	180
24	Wendy Clifton direct.....	183
25	Wendy Clifton cross.....	187

State v. Victor Smith 9/19/11 - 9/23/11

4

1	Kim Hunt direct.....	189
2	Kim Hunt cross.....	194
3	Kim Hunt redirect.....	199
4	Kim Hunt recross.....	201
5	Marvin Shipman direct.....	202
6	Marvin Shipman cross.....	209
7	Kristen Polis direct.....	218
8	Kristen Polis cross.....	229
9	Kristen Polis redirect.....	234
10	Robert Oates direct.....	235
11	Robert Oates cross.....	248
12	Robert Oates redirect.....	257
13	Clay Nichols direct.....	276
14	Clay Nichols cross.....	280
15	Clay Nichols redirect.....	283
16	James S. Smith direct.....	285
17	James S. Smith cross.....	294
18	IN CAMERA EXAMINATION	
19	James S. Smith direct.....	306
20	James S. Smith cross.....	308
21	END IN CAMERA EXAMINATION	
22	James S. Smith continued cross.....	310
23	James S. Smith redirect.....	313
24	James S. Smith recross.....	313
25	Harold Bouknight direct.....	314

State v. Victor Smith 9/19/11 - 9/23/11

5

1	Harold Bouknight	cross.....	324
2	Harold Bouknight	redirect.....	331
3	Harold Bouknight	recross.....	334
4	Stan Richards	direct.....	334
5	Stan Richards	cross.....	373
6	Stan Richards	redirect.....	387
7	Lindsay Thompson	direct.....	392
8	Lindsay Thompson	cross.....	402
9	Terri Gleason	direct.....	407
10	Terri Gleason	cross.....	412
11	Terri Gleason	redirect.....	416
12	Gray Amick	direct.....	417
13	Gray Amick	cross	430
14	Gray Amick	redirect.....	437
15	Gray Amick	recross.....	437
16	Jeremiah Jones	direct.....	438
17	Jeremiah Jones	cross.....	455
18	Jeremiah Jones	redirect.....	471
19	Jeremiah Jones	recross.....	472
20	Allen Fulten	direct.....	474
21	Allen Fulten	cross.....	496
22	Allen Fulten	redirect.....	510
23	Allen Fulten	recross.....	513
24	William Stevens	direct.....	532
25	William Stevens	cross.....	555

	State v. Victor Smith	9/19/11 - 9/23/11	6
1	William Stevens	redirect.....	561
2	William Stevens	recross.....	564
3	Gilbert Gallegos	direct.....	566
4	Gilbert Gallegos	cross.....	573
5	Scott McDonald	direct.....	597
6	Scott McDonald	cross.....	608
7	Scott McDonald	redirect.....	612
8	Scott McDonald	recross.....	614
9	Jazmine Bright	direct.....	616
10	IN CAMERA EXAMINATION OF DARIUS SMITH		
11	DARIUS SMITH		655
12	END IN CAMERA EXAMINATION OF DARIUS SMITH		
13	Jazmine Bright	cross.....	658
14	Jazmine Bright	redirect.....	678
15	Travis Holdorf	direct.....	683
16	Travis Holdorf.....	cross.....	717
17	DEFENSE CASE:		
18	NO EVIDENCE PRESENTED		
19			
20			
21			
22			
23			
24			
25			

State v. Victor Smith

9/19/11 - 9/23/11

7

1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 1	15	698
3	State's Exhibit No. 2	16	702
4	State's Exhibit No. 3	16	708
5	State's Exhibit No. 4	16	710
6	State's Exhibit No. 5	17	121
7	State's Exhibit No. 6	103	128
8	State's Exhibit No. 7	103	128
9	State's Exhibit No. 8	103	129
10	State's Exhibit No. 9	104	129
11	State's Exhibit No. 10	104	191
12	State's Exhibit No. 11	104	135
13	State's Exhibit No. 12	215	245
14	State's Exhibit No. 13	215	228
15	State's Exhibit No. 14	215	222
16	State's Exhibit No. 15	215	222
17	State's Exhibit No. 16	215	222
18	State's Exhibit No. 17	215	222
19	State's Exhibit No. 18	216	222
20	State's Exhibit No. 19	216	222
21	State's Exhibit No. 20	216	222
22	State's Exhibit No. 21	216	223
23	State's Exhibit No. 22	216	223
24	State's Exhibit No. 23	216	223
25	State's Exhibit No. 24	216	237

State v. Victor Smith		9/19/11.- 9/23/11	
1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 25	216	237
3	State's Exhibit No. 26	216	237
4	State's Exhibit No. 27	216	237
5	State's Exhibit No. 28	216	238
6	State's Exhibit No. 29	216	238
7	State's Exhibit No. 30	217	238
8	State's Exhibit No. 31	217	238
9	State's Exhibit No. 32	217	238
10	State's Exhibit No. 33	217	238
11	State's Exhibit No. 34	261	323
12	State's Exhibit No. 35	261	323
13	State's Exhibit No. 36	261	323
14	State's Exhibit No. 37	261	323
15	State's Exhibit No. 38	261	323
16	State's Exhibit No. 39	261	323
17	State's Exhibit No. 40	261	323
18	State's Exhibit No. 41	261	323
19	State's Exhibit No. 42	261	323
20	State's Exhibit No. 43	261	323
21	State's Exhibit No. 44	261	324
22	State's Exhibit No. 45	261	324
23	State's Exhibit No. 46	261	324
24	State's Exhibit No. 47	262	
25	State's Exhibit No. 48	262	

State v. Victor Smith

9/19/11 - 9/23/11

9

	EXHIBITS FOR THE STATE:	ID	EV
1	State's Exhibit No. 49	262	
2	State's Exhibit No. 50	262	
3	State's Exhibit No. 51	262	550
4	State's Exhibit No. 52	262	
5	State's Exhibit No. 53	262	
6	State's Exhibit No. 54	262	
7	State's Exhibit No. 55	262	
8	State's Exhibit No. 56	262	
9	State's Exhibit No. 57	262	
10	State's Exhibit No. 58	263	338
11	State's Exhibit No. 59	263	339
12	State's Exhibit No. 60	263	339
13	State's Exhibit No. 61	263	
14	State's Exhibit No. 62	263	
15	State's Exhibit No. 63	263	
16	State's Exhibit No. 64	263	
17	State's Exhibit No. 65	263	
18	State's Exhibit No. 66	263	
19	State's Exhibit No. 67	263	
20	State's Exhibit No. 68	263	
21	State's Exhibit No. 69	263	342
22	State's Exhibit No. 70	263	342
23	State's Exhibit No. 71	264	342
24	State's Exhibit No. 72	264	342

	State v. Victor Smith	9/19/11 - 9/23/11	10
1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 73	264	342
3	State's Exhibit No. 74	264	342
4	State's Exhibit No. 75	264	342
5	State's Exhibit No. 76	264	342
6	State's Exhibit No. 77	264	343
7	State's Exhibit No. 78	264	343
8	State's Exhibit No. 79	264	343
9	State's Exhibit No. 80	264	343
10	State's Exhibit No. 81	264	343
11	State's Exhibit No. 82	264	343
12	State's Exhibit No. 83	265	343
13	State's Exhibit No. 84	265	343
14	State's Exhibit No. 85	265	343
15	State's Exhibit No. 86	265	343
16	State's Exhibit No. 87	265	343
17	State's Exhibit No. 88	265	343
18	State's Exhibit No. 89	265	343
19	State's Exhibit No. 90	265	344
20	State's Exhibit No. 91	265	344
21	State's Exhibit No. 92	265	344
22	State's Exhibit No. 93	265	344
23	State's Exhibit No. 94	265	344
24	State's Exhibit No. 95	265	344
25	State's Exhibit No. 96	266	344

State v. Victor Smith

9/19/11 - 9/23/11

11

1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 97	266	344
3	State's Exhibit No. 98	266	344
4	State's Exhibit No. 99	266	344
5	State's Exhibit No. 100	266	344
6	State's Exhibit No. 101	266	344
7	State's Exhibit No. 102	266	345
8	State's Exhibit No. 103	266	354
9	State's Exhibit No. 104	266	354
10	State's Exhibit No. 105	266	354
11	State's Exhibit No. 106	266	354
12	State's Exhibit No. 107	266	354
13	State's Exhibit No. 108	267	354
14	State's Exhibit No. 109	267	354
15	State's Exhibit No. 110	267	354
16	State's Exhibit No. 111	267	354
17	State's Exhibit No. 112	267	354
18	State's Exhibit No. 113	267	354
19	State's Exhibit No. 114	267	354
20	State's Exhibit No. 115	267	354
21	State's Exhibit No. 116	267	354
22	State's Exhibit No. 117	267	354
23	State's Exhibit No. 118	267	354
24	State's Exhibit No. 119	267	354
25	State's Exhibit No. 120	267	354

	State v. Victor Smith	9/19/11 - 9/23/11	12
1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 121	268	354
3	State's Exhibit No. 122	268	354
4	State's Exhibit No. 123	268	354
5	State's Exhibit No. 124	268	354
6	State's Exhibit No. 125	268	354
7	State's Exhibit No. 126	268	355
8	State's Exhibit No. 127	268	355
9	State's Exhibit No. 128	268	355
10	State's Exhibit No. 129	268	355
11	State's Exhibit No. 130	268	355
12	State's Exhibit No. 131	268	355
13	State's Exhibit No. 132	268	355
14	State's Exhibit No. 133	269	355
15	State's Exhibit No. 134	269	355
16	State's Exhibit No. 135	269	355
17	State's Exhibit No. 136	269	355
18	State's Exhibit No. 137	269	355
19	State's Exhibit No. 138	269	355
20	State's Exhibit No. 139	269	357
21	State's Exhibit No. 140	269	357
22	State's Exhibit No. 141	269	357
23	State's Exhibit No. 142	269	357
24	State's Exhibit No. 143	269	357
25	State's Exhibit No. 144	269	357

State v. Victor Smith 9/19/11 - 9/23/11

13

	EXHIBITS FOR THE STATE:	ID	EV
1			
2	State's Exhibit No. 145	269	357
3	State's Exhibit No. 146	270	357
4	State's Exhibit No. 147	270	357
5	State's Exhibit No. 148	270	357
6	State's Exhibit No. 149	270	357
7	State's Exhibit No. 150	270	357
8	State's Exhibit No. 151	270	358
9	State's Exhibit No. 152	270	358
10	State's Exhibit No. 153	270	358
11	State's Exhibit No. 154	270	358
12	State's Exhibit No. 155	270	358
13	State's Exhibit No. 156	270	358
14	State's Exhibit No. 157	270	358
15	State's Exhibit No. 158	271	358
16	State's Exhibit No. 159	271	358
17	State's Exhibit No. 160	271	358
18	State's Exhibit No. 161	271	358
19	State's Exhibit No. 162	271	358
20	State's Exhibit No. 163	271	358
21	State's Exhibit No. 164	271	359
22	State's Exhibit No. 165	271	365
23	State's Exhibit No. 166	271	365
24	State's Exhibit No. 167	271	365
25	State's Exhibit No. 168	271	365

	State v. Victor Smith	9/19/11 - 9/23/11	14
1	EXHIBITS FOR THE STATE:	ID	EV
2	State's Exhibit No. 169	271	
3	State's Exhibit No. 170	271	
4	State's Exhibit No. 171	272	318
5	State's Exhibit No. 172	272	317
6	State's Exhibit No. 173	272	317
7	State's Exhibit No. 174	272	319
8	State's Exhibit No. 175	278	
9	State's Exhibit No. 176	331	332
10	State's Exhibit No. 177	331	332
11	State's Exhibit No. 178	516	546
12	State's Exhibit No. 179	516	543
13	State's Exhibit No. 180	516	532
14	State's Exhibit No. 181		704
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

State v. Victor Smith 9/19/11 - 9/23/11

15

	EXHIBITS FOR THE DEFENSE:	ID	EV
1			
2	Defendant's Exhibit No. 1	16	
3	Defendant's Exhibit No. 2	16	
4	Defendant's Exhibit No. 3	16	
5	Defendant's Exhibit No. 4	16	
6	Defendant's Exhibit No. 5	16	
7	Defendant's Exhibit No. 6	465	
8	Defendant's Exhibit No. 7	676	

9

10 EXHIBITS FOR THE COURT:

11	Court's Exhibit No. 1	157

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v. Victor Smith 9/19/11 - 9/23/11

16

1 September 19, 2011

2 (The following exhibits were pre-marked for ID only.)

3 (State's Exhibit No. 1, Advice of
4 rights, was marked for ID only.)

5 (State's Exhibit No. 2, statement,
6 was marked for ID only.)

7 (State's Exhibit No. 3, statement,
8 was marked for ID only.)

9 (State's Exhibit No. 4, statement,
10 was marked for ID only.)

11 (Defendant's Exhibit No. 1,
12 Affidavit/search warrant, was marked for ID only.)

13 (Defendant's Exhibit No. 2,
14 investigator's notes, was marked for ID only.)

15 (Defendant's Exhibit No. 3,
16 statement, was marked for ID only.)

17 (Defendant's Exhibit No. 4, case
18 summary, was marked for ID only.)

19 (Defendant's Exhibit No. 5,
20 investigator's notes, was marked for ID only.)

21 THE COURT: Good afternoon, ladies and gentlemen. How
22 y'all doing. You don't look particularly happy to be here.
23 It's not as bad as it may appear.

24 I'll take this opportunity to welcome each and every
25 one of you. I think Judge Lee gave you a more formal

State v. Victor Smith 9/19/11 - 9/23/11

17

1 welcome this morning when she qualified y'all to serve as
2 jurors here in the Fifth Circuit.

3 So my name is Manning, Judge Manning, and I'll be
4 presiding over this murder case that you will become
5 familiar with momentarily.

6 I hold in my hand what we refer to as an indictment,
7 the State of South Carolina, County of Richland, The State
8 verses Victor Dewaine Smith. It's a charge of murder. The
9 indictment reads as follows, members of the jury, that
10 Victor Dewaine Smith did in Richland County on or about
11 September 27, 2008, feloniously, willfully and with malice
12 aforethought, kill one Ernest Robinson, and that said victim
13 died as a proximate result thereof. That's a little bit
14 about what the case is about. The indictment is not
15 evidence. It's simply a formal way to notify a defendant
16 what he is charged with and let you know what this case is
17 about.

18 Now, I would ask that Victor Smith, the defendant,
19 please stand and face the jury panel, sir.

20 This is Mr. Victor Smith. He is the defendant in this
21 case. Thank you, Mr. Smith.

22 Now, I need to ask you some general questions and one
23 particular question about Mr. Smith, and then I'll ask you
24 about a list of about 50 witnesses. I doubt all these
25 witnesses will be called, but I need to go through each and

State v. Victor Smith 9/19/11 - 9/23/11

18

1 every name for you.

2 Now, the question about Mr. Smith is this. Any member
3 of this jury panel related by blood or connected by marriage
4 or employment or are you a close personal acquaintance of
5 Mr. Victor Smith, the defendant, who just stood up. If so
6 please stand. Anybody on this jury panel know Mr. Smith,
7 seen Mr. Smith, work with Mr. Smith, know anything about Mr.
8 Smith, if so please stand.

9 (No one stands.)

10 Now I'm going to read this long list of potential
11 witnesses to you and ask to each of them, the same questions
12 applies. Are you related by blood or by marriage or
13 employment or are you a close personal acquaintance. And
14 this case was brought by the Richland County Sheriff's
15 Department so we have a lot of members of the sheriff's
16 department whose names I will call. I ask that you listened
17 carefully. What I will try to do is read out the names, ask
18 the question, then read the names again. And if you think
19 you know somebody please let me know. If you're not sure,
20 please let me know. The idea is to try to pick a fair and
21 impartial jury, not only on behalf of State South Carolina,
22 but also on behalf of Mr. Victor Smith.

23 The first potential witness in this case is Ms. Jazmine
24 Bright. Is Ms. Bright present? She is not present. Ms.
25 Jazmine Bright. And then Ms. Wendy Clifton, Dietrich

State v. Victor Smith 9/19/11 - 9/23/11

19

1 Williams, Allen Fulten, F-u-l-t-e-n. All right, I said,
2 Ronald Fisher. All right. Jazmine Bright, Wendy Clifton,
3 Ronald Fisher, Dietrich Williams, Allen Fulten, Kim Hunt,
4 Jeremiah Jones, Mike Jenkins, Jenny Kline, Neal Moore, Nolan
5 Martin, Dr. Clay Nichols, Mona Wickham, W-i-c-k-h-a-m, Larry
6 Payne, Darius Smith, Marvin Shipman, Melissa Rowe, Larry
7 Williams, Mark Wickham, Debra Ashe, Doris Yarbrough from the
8 State Law Enforcement Division, SLED. Somebody stood up a
9 minute ago? And you are who, Ma'am?

10 MS. ASHE: Debra Ashe.

11 THE COURT: Ms. Ashe?

12 MS. ASHE: Yes.

13 THE COURT: Will you stand up so they can take a look at
14 you. This is Ms. Debra Ashe. Thank you, Ms. Ashe. Doris
15 Yarbrough, from State Law Enforcement Division. Lindsay
16 Thompson, also from SLED. Gray Amick, from the Richland
17 County Sheriff's Department, Christine Benson, also from the
18 Richland County Sheriff's Department. Christine Barrickman.
19 Barrickman, B-a-r-r-i-c-k-m-a-n, from the Richland County
20 Sheriff's Department. Patricia Weed, Steven Taylor, Gary
21 Watts, William Stevens. These are all people from the
22 Richland County Sheriff's Department. Capt. J. Standin
23 Smith. Robert Moreland, Sheriff's Department. Sgt. Don
24 Robinson from the Sheriff's Department. Sgt. Stan Richards
25 from the Sheriff's Department. Inv. Kristin M. Polis from

State v. Victor Smith 9/19/11 - 9/23/11

20

1 the Sheriff's Department. Inv. Robert Oates from the
2 Sheriff's Department. Lt. Scott McDonald from the Sheriff's
3 Department. Inv. Timothy Lee from the Sheriff's Department.
4 Oh, I'm sorry. I said Jerry McDonald, it's Jerry Maldonado,
5 Jerry Maldonado. Sgt. Don Robinson. Let me back up just a
6 little bit. Inv. Kristin Polis from Richland County
7 Sheriff's Department. Inv. Robert Oats, Lt. Scott McDonald,
8 Jerry Maldonado, Inv. Timothy Lee, Ann Joe from the Richland
9 County Sheriff's Department. Inv. Travis Holdorf, Holdorf,
10 H-o-l-s-o-r-f, from the Richland County Sheriff's
11 Department. Tina Goff from the Richland County Sheriff's
12 Department, Zen Dozier from the Sheriff's Department, Terri
13 Gleason from the Sheriff's Department. Inv. Gilbert
14 Gallegos, from the Richland County Sheriff's Department.

15 Inv. Gallegos: Gallegos.

16 THE COURT: What?

17 Inv. Gallegos: Gallegos.

18 THE COURT: Gallegos.

19 Inv. Gallegos: Yes.

20 THE COURT: Gallegos, from the Sheriff's Department,
21 William Cedarstaff from the Sheriff's Department. Inv.
22 Dottie Cronise from the Sheriff's Department. Inv. H.
23 Bouknight from the Sheriff's Department, Curtis Burnette
24 from the Sheriff's Department, Dr. Bradley Marcus, and
25 Amanda Webb from SLED. Is that everybody?

State v. Victor Smith 9/19/11 - 9/23/11

21.

1 MR. GOLDBERG: Yes, sir.

2 THE COURT: All right. Now, the question is, it's a
3 lot of names, are you related by blood or connected by
4 marriage or employed or are you a close personal
5 acquaintance of any of those names I called out. It would
6 be unfair if I didn't call them out again. So let me go
7 through them one more time.

8 Jazmine Bright, Wendy Clifton, Ronald Fisher, Dietrick
9 Williams, Allen Fulten, Kim Hunt, Jeremiah Jones, Mike
10 Jenkins, Jenny Kline, Neal Moore, Nolan Martin, Dr. Clay
11 Nichols, Mona Wickham, Larry Payne, Darius Smith, Marvin
12 Shipman, Melissa Rowe, Larry Williams, Mark Wickham, Debra
13 Ashe, Doris Yarbrough, from SLED. Lindsay Thompson from
14 SLED. Gray Amick from the Sheriff's Department, Christine
15 Benson from the Sheriff's Department, Christine Barrickman
16 from the Sheriff's Department. Patricia Weed, from the
17 Sheriff's Department, Steven Taylor from the Sheriff's
18 Department, Gary Watts from the Sheriff's Department.
19 William Stevens from the Sheriff's Department. Capt. J.
20 Standin Smith from the Sheriff's Department, Robert Moreland
21 from the Sheriff's Department, Sgt. Don Robinson from the
22 Sheriff's Department, Sgt. Stan Richards from the Sheriff's
23 Department. Inv. Kristen Polis from the Sheriff's
24 Department, Inv. Robert Oates from the Sheriff's Department.
25 Lt. Scott McDonald from the Sheriff's Department, Jerry

State v. Victor Smith 9/19/11 - 9/23/11

22

1 Maldonado from the Sheriff's Department. Inv. Timothy Lee
2 from the Sheriff's Department, Ann Joe from the Sheriff's
3 Department, Inv. Travis Holdorf from the Sheriff's
4 Department. Tina Goff from the Sheriff's Department, Zem
5 Dozier from the Sheriff's Department, Terri Gleason from the
6 Sheriff's Department, Inv. Gilbert Gallegos?

7 INV. GALLEGOS: Gallegos.

8 THE COURT: All right. From the Sheriff's Department.
9 William Cedarstaff, from the Sheriff's Department, Inv.
10 Dottie Cronise ,from the Sheriff's Department, Inv. H.
11 Bouknight, from the Sheriff's Department, Curtis Burnett
12 from the Sheriff's Department, Dr. Bradley Marcus and Amanda
13 Webb.

14 Did that cover everybody, potential witnesses?

15 MR. GOLDBERG: Yes, sir.

16 THE COURT: All right. And I think I pronounced most
17 of those names correctly enough for you to understand,
18 maybe.

19 So the question, once again, to the panel, are you
20 related by blood or connected by marriage or employment, or
21 are you a close personal acquaintance of any of those names
22 I just called out, if so, please stand.

23 (No one stands.)

24 THE COURT: If you think you know anybody whose name
25 I've just called out, please stand.

State v. Victor Smith 9/19/11 - 9/23/11

23

1 Yes, sir. Your name and your number. You name and
2 your number.

3 JUROR NO. 22: My name is Jason Bradley. I have no
4 idea. I know a Jeremiah Jones.

5 THE COURT: You know a --

6 JUROR NO. 22: A Jeremiah Jones.

7 THE COURT: All right. What about -- is this a fact
8 witness, solicitor?

9 MR. GOLDBERG: Yes, sir.

10 THE COURT: What -- this Jones you know, what does he
11 do, any idea?

12 JUROR NO. 22: No, I don't. I know he goes to St.
13 Andrews Lutheran Church.

14 THE COURT: Beg pardon?

15 JUROR NO. 22: I know he goes to St. Andrews Lutheran
16 Church, because that's where I know him.

17 THE COURT: I don't think this is the same Jones.

18 JUROR NO. 22: All right.

19 THE COURT: I don't think he's a Lutheran. Thank you.
20 Yes, sir. Your name and number.

21 JUROR NO. 196: I have previously worked for Jerry
22 Maldonado.

23 THE COURT: Maldonado.

24 JUROR NO. 196: Maldonado.

25 THE COURT: And what was the circumstances that you

State v. Victor Smith 9/19/11 - 9/23/11

24

1 previously worked for him?

2 JUROR NO. 196: I'm a dry-wall contractor. He built
3 homes.

4 THE COURT: What was that?

5 JUROR NO. 196: He built homes --

6 THE COURT: Okay.

7 JUROR NO. 196: -- and I'm a dry-wall contractor.

8 THE COURT: How long ago was that?

9 JUROR NO. 196: Oh, that's been three or four years
10 ago.

11 THE COURT: All right. The fact that you know the
12 gentleman the way you describe you described for me, you're
13 dry-wall, he was building houses, would that effect your
14 ability to be a fair and impartial juror in the trial of
15 this case?

16 JUROR No. 196: No, Your Honor.

17 THE COURT: You're sure about that.

18 JUROR NO. 196: Yes, Your Honor.

19 THE COURT: And what's your number, again?

20 JUROR NO. 196: 196.

21 THE COURT: Thank you, sir.

22 I'm sure no member of this jury panel served on the
23 Grand Jury in the last three years, is that correct? None
24 of y'all have been on the Grand Jury. Okay.

25 Has any member of this jury panel formed or expressed

State v. Victor Smith 9/19/11 - 9/23/11

25

1 any opinion about this case or as to the guilt of innocence
2 of Mr. Victor Smith, is so, please stand?

3 You know anything about this case, heard anything about
4 this case, know anything about the defendant, is so please
5 stand.

6 Now, is any member of this jury panel aware of any bias
7 or prejudice in connection to this case or any of the
8 parties thereto? Now the parties will be the victim as well
9 as the defendant.

10 Do you know anybody, have you formed or expressed an
11 opinion. Is there any reason why you feel -- why you'd feel
12 uncomfortable serving on a murder case, if so, please stand.

13 My last question for you is this, does any member of
14 the jury panel know of any reason why they cannot give both
15 the state and the defendant a fair and impartial trial in
16 this case, if so, please stand.

17 Any further voir dire on behalf of the state?

18 MR. GOLDBERG: No, sir.

19 Y'all sure? Y'all come up.

20 (Off the record bench conference with counsel and the
21 Court.)

22 THE COURT: Now, members of the jury panel, I ask these
23 questions not to embarrass anybody. It might -- some of
24 these things are sensitive. If you feel uncomfortable
25 answering something in front of everybody, I would invite

State v. Victor Smith 9/19/11 - 9/23/11

26

1 you to come up and speak with me privately.

2 Well, obviously, this is a murder case which is a
3 violent crime, and so I need to ask this question. Have you
4 or any members of your immediately family ever been the
5 victims of a violent crime. That is like a burglary or
6 robbery or an assault, if so please stand. Any member of
7 this jury panel or member of your immediately family ever
8 been the victim of a violent crime, if so please stand. I
9 say violent crime --

10 Yes, sir.

11 JUROR NO. 87: John Gibson.

12 THE COURT: No, no. You raise your hand.

13 JUROR NO. 87: You said any member of my family?

14 THE COURT: Yeah, you or your immediate family.

15 JUROR NO. 87: Immediately family?

16 THE COURT: Yes.

17 JUROR NO. 87: Would cousin be immediate family?

18 THE COURT: Beg pardon?

19 JUROR NO. 87: Cousin.

20 THE COURT: Well, that's good enough, just hold on for a
21 minute. Your name and number, sir?

22 JUROR NO. 117: George Houston, 117.

23 THE COURT: Now, was it you or a member of your family
24 that was the victim?

25 JUROR NO. 117: My nephew.

State v. Victor Smith 9/19/11 - 9/23/11

27

1 THE COURT: Your nephew?

2 JUROR NO. 117: Yes.

3 THE COURT: And what sort of situation was it, if you
4 don't mind telling me?

5 JUROR NO. 117: He was assaulted and killed.

6 THE COURT: He was assaulted and killed. How long ago
7 was that?

8 JUROR NO. 117: We're looking at about six or seven
9 years.

10 THE COURT: Six or seven years ago. The fact that you
11 had a nephew that was killed, would that effect your ability
12 to be a fair and impartial juror in the trial of this case?

13 JUROR NO. 117: I don't think so.

14 THE COURT: You're sure about that?

15 JUROR NO. 117: No.

16 THE COURT: And what's your number again?

17 JUROR NO. 117: 117.

18 THE COURT: Okay. Thank you, sir.

19 Yes, sir, your name and number?

20 JUROR NO. 87: John Gibson, No. 87.

21 THE COURT: Was it you or a family member?

22 JUROR NO. 87: It was my mother. She was attacked
23 Christmas Eve several years ago and sexually assaulted.

24 THE COURT: Would that, could that effect your ability to be
25 a fair juror in this case?

State v. Victor Smith 9/19/11 - 9/23/11

28

1 JUROR NO. 87: I can't say. I'm --

2 THE COURT: If you're not sure, it's okay. There's no
3 right or wrong answer, but if you feel uncomfortable, I'm
4 going to ask you to go back and take a seat in the back.
5 This is very sensitive stuff, so I'll take you off this
6 jury, okay. If you're not sure, it's all right.

7 And your number, once again?

8 JUROR NO. 87: 87.

9 THE COURT: 87. I'm taking 87 off because of the
10 answers he gave.

11 All right. Yes, sir, your name and number?

12 JUROR NO. 257: Jason Taylor --

13 THE COURT: Jakie Taylor?

14 JUROR NO. 257: Jason.

15 THE COURT: Jay Taylor?

16 JUROR NO. 257: Jason.

17 THE CLERK: Jason.

18 THE COURT: Jason. I'm sorry. I can't hear very well.
19 Taylor, right? Mr. Taylor was it you or a family member?

20 JUROR NO. 257: Family member.

21 THE COURT: Who was the family member?

22 JUROR NO. 257: My sister.

23 THE COURT: How long ago was it?

24 JUROR NO. 257: About two years ago.

25 THE COURT: All right. And can you tell me exactly what

State v. Victor Smith 9/19/11 - 9/23/11

29

1 happened or do you want to come up here and tell me?

2 JUROR NO. 257: Like her husband punched her in the
3 face.

4 THE COURT: Oh, okay. Domestic situation.

5 All right. Would that, could that effect your ability
6 to be a fair and impartial juror in this case?

7 JUROR NO. 257: I don't think.

8 THE COURT: Okay. Thank you, sir. You may have a seat.
9 Your name and number, sir.

10 JUROR NO. 242: David Snyder, 242.

11 THE COURT: Mr. Snyder, was it you or a family member?

12 JUROR NO. 242: Family member.

13 THE COURT: Family member?

14 JUROR NO 242: It was a cousin.

15 THE COURT: Cousin, and what happened to your cousin and
16 how long ago was it?

17 JUROR NO. 242: About seven years.

18 THE COURT: Seven years, and what happened to your
19 cousin?

20 JUROR NO. 242: Shot and killed.

21 THE COURT: Shot and killed?

22 JUROR NO. 242: All right. Your cousin shot and killed
23 seven years ago, would that, could that effect your ability
24 to be a fair juror in this case?

25 JUROR NO. 242: No.

1 THE COURT: You're sure?

2 JUROR NO. 242: Yes.

3 THE COURT: All right. Thank you, sir.

4 Your name and number?

5 JUROR NO. 22: Jason Bradley, No. 22.

6 THE COURT: Was it you or a family member?

7 JUROR NO. 22: It was a family member.

8 THE COURT: Who was the family member?

9 JUROR NO. 22: It was my wife's niece.

10 THE COURT: Your wife's niece. What happened, if you
11 want to tell me?

12 JUROR NO. 22: Sure. She was watching a drag race and
13 was killed in an accident.

14 THE COURT: She was watching?

15 JUROR NO. 22: She was killed watching a drag race.

16 THE COURT: All right. Would that effect your ability
17 to be a fair juror in this case?

18 JUROR NO. 22: No.

19 THE COURT: All right. Thank you, sir.

20 Yes, sir. Your name and number, please?

21 JUROR NO. 231: Roy Simpson, 231.

22 THE COURT: All right. Mr. Simpson, was it you or a
23 family member?

24 JUROR NO. 231: Family member.

25 THE COURT: Who was the family member?

State v. Victor Smith 9/19/11 - 9/23/11

31

1 JUROR NO. 231: Nephew.

2 THE COURT: Nephew. How long ago was it?

3 JUROR NO. 231: About 10 or 12 years.

4 THE COURT: All right. Exactly what happened, if you
5 don't mind?

6 JUROR NO. 22: Well, he was killed by -- it was in a
7 high speed chase by police and he was killed.

8 THE COURT: All right. Would that or could that effect
9 your ability to be a fair juror in the trial of this case?

10 JUROR NO. 231: Yes, it will.

11 THE COURT: It would?

12 JUROR NO. 231: Yes, it will.

13 THE COURT: All right. Just go have a seat in the back.
14 What's your number again, please?

15 JUROR NO. 231: 321.

16 THE COURT: Thank you. I'm taking 321 --

17 MR. HART: 231.

18 JUROR NO. 231: 231.

19 THE COURT: Mr. Hart you have it right.

20 MR. HART: Yes, sir.

21 THE COURT: Now, I've got to ask the opposite of the
22 question. In a sense if you need to come up and talk to me
23 privately, please do so.

24 Have you or a member of your immediate family ever been
25 accused of a violent crime, that is, an assault or burglary,

1 something along those lines, if so please stand, and if you
2 want to come up and talk to me privately please stand. If
3 not, you don't have to stand.

4 Have you or any member of a your immediate family ever.
5 been accused of an assault, a robbery, a murder.

6 Ma'am, would you come up and talk to me.

7 (Bench conference with the juror, counsel, and the Court as
8 follows.)

9 THE COURT: Ma'am, your name and number, please.

10 JUROR NO. 218: Carrie Wofford. My brother-in-law, he
11 was accused of possession of drugs -- he robbed two gas
12 stations.

13 THE COURT: Your brother-in-law?

14 JUROR NO. 218: Yes.

15 THE COURT: Y'all got enough.

16 MR. HART: Yes. Thank you.

17 THE COURT: Anything else was you want me to ask or
18 does that cover it for you, Mr. Hart?

19 MR. HART: Yes.

20 THE COURT: Wait a minute. Yes, sir, your name and
21 number?

22 JUROR NO. 66: 66, Stephen Doar.

23 THE COURT: You want to come up and talk to me?

24 JUROR NO. 66: Yes, sir.

25 THE COURT: Come on.

State v. Victor Smith 9/19/11 - 9/23/11

33

1 (Bench conference with juror, counsel and the Court.)

2 JUROR NO. 66: My nephew --

3 THE COURT: Your nephew was accused of something? All
4 right. Y'all come on up.

5 THE COURT: How are you doing today.

6 JUROR NO. 66: All right. How are you, sir.

7 THE COURT: Your name and number?

8 JUROR NO. 66: Stephen Doar.

9 THE COURT: And your nephew was accused of something?

10 JUROR NO. 66: He spent some time in jail for beating a
11 guy.

12 THE COURT: How long ago was that?

13 JUROR NO. 66: At least 10 years.

14 THE COURT: 10 years. All right, would that, could that
15 effect your ability to be a fair juror in this case?

16 JUROR NO. 66: No.

17 THE COURT: You're sure?

18 JUROR NO. 66: No.

19 THE COURT: All right. Thank you, sir.

20 All right. Any further voir dire on behalf of the
21 state?

22 MR. GOLDBERG: No, sir.

23 THE COURT: Mr. Hart anything on behalf of Mr. Smith?

24 MR. HART: Nothing further, Your Honor.

25 THE COURT: All right. Couple of other things.

1 Now, Mr. Smith is being represented in this case by Mr.
2 Chris Hart. Mr. Hart, would you stand up and face the jury
3 panel. Mr. Hart is a local attorney here. Solo
4 practitioner, been around for a little while. I say a little
5 while, I don't want to date him, that is, age him.

6 Now, the question is this. Have you or any member of
7 your immediate family ever been represented by Mr. Chris
8 Hart, if so please stand.

9 Now, have you or any members of your immediate family
10 ever been on the other side of a case involving Mr. Chris
11 Hart, is so please stand.

12 All right. Thank you, Mr. Hart.

13 Now, members of the panel, the state is being
14 represented in this particular case by deputy solicitor Dan
15 Goldberg and Mr. Carter Potts, an assistant solicitor.

16 Have you, the question is, have you or your immediate
17 family ever been represented by the Fifth Circuit
18 Solicitor's office, that is, have you been a victim where
19 the solicitor prosecuted the case, if so please stand.

20 Have you or members of your immediate family ever been
21 a witness in a case prosecuted by the Fifth Circuit
22 Solicitor's Office, if so please stand.

23 All right. I'll ask if you or members of your immediate
24 family know Mr. Goldberg or Carter Potts or have any
25 association with them, if so please stand.

State v. Victor Smith 9/19/11 - 9/23/11

35

1 All right. Thank you, gentlemen.

2 JUROR NO. 206: Yes, sir.

3 THE COURT: Your name is Riley, is it still Riley?

4 JUROR NO. 206: Yes, sir. You didn't ask. I am a
5 friend of Mr. Hart. I just wanted to do know Mr. Hart very
6 well.

7 THE COURT: From the state house? All right. The fact
8 that you know Mr. Hart, of course, I know you know Mr. Hart,
9 would that, could that effect your ability to be a fair
10 juror in this case?

11 JUROR NO. 206: No, Your Honor.

12 THE COURT: Y'all all know Mr. Riley, don't you.

13 JUROR NO. 206: Oh, Lord, don't start.

14 THE COURT: Good to see you, Mr. Riley.

15 JUROR NO. 206: You, too.

16 THE COURT: All right. So the strikes are 5 and 10. Ten
17 for the defendant, five for the state. Are y'all ready.

18 MR. GOLDBERG: State's ready, Your Honor.

19 THE COURT: Madam Clerk, you may give us a jury.

20 MR. HART: Your Honor, before we start, I do recognize
21 some jurors in the audience.

22 THE COURT: All right. Well, point them out.

23 MR. HART: I do recognize Mr. Green.

24 THE COURT: Mr. Green?

25 MR. HART: Yes.

1 THE COURT: Stand up, Mr. Green.

2 And who else?

3 MR. HART: My neighbor.

4 THE COURT: Your neighbor?

5 MR. HART: He lives right down the street from me.

6 THE COURT: Thank you, Mr. Hart.

7 Your name and number, sir?

8 JUROR NO. 97: J.R. Green, No. 97.

9 THE COURT: And how do you know Mr. Hart?

10 JUROR NO. 97: Just socially.

11 THE COURT: All right. How long have you known him?

12 JUROR NO. 97: I would -- probably 10 or so years.

13 THE COURT: All right. The fact that you know Mr. Hart,
14 would that or could that effect your ability to be a fair
15 juror in this case?

16 JUROR NO. 97: No, sir.

17 THE COURT: You're sure about that?

18 JUROR NO. 97: Yes.

19 THE COURT: All right.

20 And your name, the neighbor of Mr. Hart, your name,
21 sir, and your number?

22 JUROR NO. 270: Lonnie Ward, No. 270.

23 THE COURT: All right. How long have you known Mr. Hart?

24 JUROR NO. 270: Oh, 15 to 20 years.

25 THE COURT: 15 to 20 years. Would that or could that

State v. Victor Smith 9/19/11 - 9/23/11

37

1 effect your ability to be a fair juror in this case?

2 JUROR NO. 270: No.

3 THE COURT: You're sure about that?

4 JUROR NO. 270: Yes.

5 THE COURT: What's your number, again?

6 JUROR NO. 270: 270.

7 THE COURT: 270. Thank you, sir.

8 Does that cover everybody?

9 MR. HART: It does.

10 THE COURT: Thank you, Mr. Hart. That covers
11 everything.

12 Madam Clerk, you may give us a jury

13 THE CLERK: Ladies and gentlemen, I'll call your number,
14 your juror number, bring your personal belongings with you
15 up to this microphone. You're going to state your juror
16 number and your occupation, please.

17 No. 19.

18 JUROR NO. 19: No. 19, and I'm a full-time student.

19 THE CLERK: What says the state?

20 MR. GOLDBERG: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. HART: Please seat this juror.

23 THE CLERK: Have a seat in the jury box.

24 No. 15.

25 JUROR NO. 15: Darrius Bolton. I'm employed at Wells

1 Fargo.

2 THE CLERK: What says the state?

3 MR. GOLDBERG: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. HART: Please present the juror.

6 THE CLERK: Have a seat in the jury box.

7 No. 193.

8 JUROR NO. 193: 193. Speech and language therapist.

9 THE CLERK: What says the state?

10 MR. GOLDBERG: Please represent the juror.

11 THE CLERK: The defense?

12 MR. HART: Please seat this juror.

13 THE CLERK: Have a seat in the jury box.

14 No. 66.

15 JUROR NO. 66: Juror 66, Stephen Doar, I work for a
16 home builder.

17 THE CLERK: What says the state?

18 MR. GOLDBERG: Please present the juror.

19 THE CLERK: The defense?

20 MR. HART: Please seat this juror.

21 THE CLERK: Have a seat in the jury box.

22 No. 60.

23 JUROR NO. 60: Colin Dailey, self-employed.

24 THE CLERK: What says the state?

25 MR. GOLDBERG: Please present the juror.

State v. Victor Smith 9/19/11 - 9/23/11

39

1 THE CLERK: The defense?

2 MR. HART: Please excuse this juror.

3 THE CLERK: Have a seat in the back of the courtroom.

4 No. 88.

5 JUROR NO. 88: Jackson, Gitonga.

6 THE CLERK: What says the state?

7 MR. GOLDBERG: Please excuse this juror.

8 THE CLERK: Please have a seat in the back of the
9 courtroom.

10 No. 117.

11 JUROR NO. 117: George Houston, Community Outreach at
12 Wateree Community Action Agency.

13 THE CLERK: What says the state?

14 MR. GOLDBERG: Please excuse this juror.

15 THE CLERK: Have a seat in the back of the courtroom.

16 No. 278.

17 JUROR NO. 278: I'm Susan White, human-resources
18 manager.

19 THE CLERK: What says the state?

20 MR. GOLDBERG: Please present this juror.

21 THE CLERK: The defense?

22 MR. HART: Please excuse this juror.

23 THE CLERK: Please have a seat in the back of the
24 courtroom.

25 No. 254.

State v. Victor Smith 9/19/11 - 9/23/11

40

1 JUROR NO. 254: I'm Juror 254. I run a small
2 investment company.

3 THE CLERK: What says the state?

4 MR. GOLDBERG: Please present this juror.

5 THE CLERK: What says the defense?

6 MR. HART: Please seat this juror.

7 THE CLERK: Have a seat in the jury box.

8 No. 174.

9 JUROR NO. 174: I'm a retired teacher, working
10 part-time.

11 THE CLERK: What says the state?

12 MR. GOLDBERG: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. HART: Please excuse this juror.

15 THE CLERK: Please have a seat in the back of the
16 courtroom.

17 No. 85.

18 JUROR NO. 85: Roddy Furtick. I own a construction
19 company.

20 THE CLERK: What says the state?

21 MR. GOLDBERG: Please present this juror.

22 THE CLERK: The defense?

23 MR. HART: Please excuse this juror.

24 THE CLERK: Please have a seat in the back of the
25 courtroom.

State v. Victor Smith 9/19/11 - 9/23/11

41

1 No. 270:

2 JUROR NO. 270: 270. Lonnie Ward.

3 THE CLERK: What says the state?

4 MR. GOLDBERG: Please excuse this juror.

5 THE CLERK: Have a seat in the back of the courtroom,
6 please.

7 No. 22.

8 JUROR NO. 22: Juror No. 22. I'm an attorney.

9 THE CLERK: What says the state?

10 MR. GOLDBERG: Please excuse this juror.

11 THE BAILIFF: This way, sir.

12 THE CLERK: No. 206.

13 JUROR NO. 206: 206. I'm an attorney.

14 THE CLERK: What says the state?

15 MR. GOLDBERG: Please excuse this juror.

16 THE BAILIFF: This way.

17 THE CLERK: No. 77.

18 JUROR NO. 77: William Fisher. I work for Microtel Inn
19 and Suites.

20 THE CLERK: Does the state challenge for cause?

21 MR. GOLDBERG: Please present the juror.

22 THE CLERK: The defense?

23 MR. HART: Please seat the juror.

24 THE CLERK: Please have a seat in the jury box.

25 No. 135.

State v. Victor Smith 9/19/11 - 9/23/11

42

1 JUROR NO. 135: 135. I'm a program assistant.
2 THE CLERK: Does the state challenge for cause?
3 MR. GOLDBERG: Please present the juror.
4 THE CLERK: The defense?
5 MR. HART: Please seat this juror.
6 THE CLERK: Have a seat in the jury box.
7 THE CLERK: No. 153.
8 JUROR NO. 153: Juror No. 153. I'm an accountant.
9 THE CLERK: Does the state challenge for cause?
10 MR. GOLDBERG: Please present the juror.
11 THE CLERK: What says the defense?
12 MR. HART: Please seat this juror.
13 THE CLERK: Have a seat in the jury box.
14 No. 216.
15 JUROR NO. 216: Matric Rouse. I'm an administrator at a
16 recovery center.
17 THE CLERK: Does the state challenge for cause?
18 MR. GOLDBERG: Please present the juror.
19 THE CLERK: What says the defense?
20 MR. HART: Please seat this juror.
21 THE CLERK: Have a seat in the jury box.
22 No. 245.
23 JUROR NO. 245: Administrative assistant at Ft. Jackson.
24 THE CLERK: Does the state challenge for cause?
25 MR. GOLDBERG: Please present this juror.

State v. Victor Smith 9/19/11 - 9/23/11

43

1 THE CLERK: What says the defense?

2 MR. HART: Please seat this juror.

3 THE CLERK: Have a seat in the jury box.

4 No. 196.

5 JUROR NO. 196: 196. I'm a drywall contractor.

6 THE CLERK: Does the state challenge for cause?

7 MR. GOLDBERG: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. HART: Please excuse this juror.

10 THE CLERK: Have a seat in the back of the courtroom.

11 No. 43.

12 JUROR NO. 43: Juror 43. I work for the American Red
13 Cross.

14 THE CLERK: Does the state challenge for cause?

15 MR. GOLDBERG: Please present this juror.

16 THE CLERK: What says the defense?

17 MR. HART: Please present this juror.

18 THE CLERK: Please have a seat in the jury box.

19 No. 72.

20 JUROR NO. 72: No. 72. I'm an electrical contractor.

21 THE CLERK: Does the state challenge for cause?

22 MR. GOLDBERG: Please present this juror.

23 THE CLERK: What says the defense?

24 MR. HART: Please excuse this juror.

25 THE CLERK: Please have a seat in the back of the

State v. Victor Smith 9/19/11 - 9/23/11

44

1 courtroom.

2 No. 106.

3 JUROR NO. 106: Juror No. 106. Lisa Hamilton.

4 Territory account manager.

5 THE CLERK: Does the state challenge for cause?

6 MR. GOLDBERG: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. HART: Please seat the juror.

9 THE CLERK: Have a seat in the jury box.

10 No. 97.

11 THE COURT: Is that 12?

12 THE CLERK: Yes, sir.

13 THE COURT: We'll select two alternates.

14 JUROR NO. 97. J.R. Green. Assistant Superintendent for
15 Chesterfield County School District.

16 THE CLERK: What says the state?

17 MR. GOLDBERG: Please excuse this juror.

18 THE COURT: You said Chesterfield?

19 JUROR NO. 97: Yes, sir.

20 THE COURT: You're from Chesterfield?

21 JUROR NO. 97: I live in Richland County, sir.

22 THE COURT: You're from Pageland; where are you from?

23 JUROR NO. 97: I live in Columbia. I used to be the
24 assistant superintendent in Chesterfield.

25 THE COURT: Thank you, sir.

State v. Victor Smith 9/19/11 - 9/23/11

45

1 THE CLERK: No. 298.

2 JUROR NO. 298: 298. Warehouse worker.

3 THE CLERK: What says the state?

4 MR. GOLDBERG: Present the juror.

5 THE CLERK: What says the defense?

6 MR. HART: Please seat this juror.

7 THE CLERK: Have a seat in the jury box.

8 No. 115.

9 JUROR NO. 115: 115. Annette Hilgert. I'm a manager at
10 (inaudible).

11 THE CLERK: What says the state?

12 MR. GOLDBERG: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. HART: Please excuse this juror.

15 THE CLERK: Have a seat in the back of the courtroom.

16 No. 89.

17 JUROR NO. 89: Rose Glover. No. 89. Retired accountant
18 at the South Carolina Department of Insurance.

19 THE CLERK: What says the state?

20 MR. GOLDBERG: Please present the juror.

21 THE CLERK: What says defense?

22 MR. HART: Please excuse this juror.

23 THE CLERK: Have a seat in the back of the courtroom.

24 No. 242.

25 JUROR NO. 242: Juror 242. David Snyder. Attorney.

State v. Victor Smith 9/19/11 - 9/23/11

46

1 THE CLERK: What says the state?

2 MR. GOLDBERG: Please present the juror.

3 THE CLERK: Does defense challenge for cause?

4 MR. HART: No.

5 THE CLERK: Have a seat in the jury box.

6 THE COURT: Are there any matters that need to be taken
7 up at this time in connection with the selection of this
8 jury. Anything from the state?

9 MR. GOLDBERG: Beg the Court's indulgence.

10 THE COURT: All right.

11 MR. GOLDBERG: Your Honor, there is one small matter
12 that was brought to my attention. May we approach?

13 THE COURT: Yeah, come on up.

14 (Off the record bench conference with counsel and the
15 Court.)

16 THE COURT: To the remaining members of this jury panel
17 I'd like to take this opportunity to thank each and every
18 one of you for your patriotic duty, that is, showing up for
19 jury duty. I wish you well the rest of the week, and you're
20 free to go back downstairs to the jury assembly room to wait
21 further instructions.

22 Good luck to each and every one of you.

23 (Remaining jury panel out at 3:13 p.m.)

24 THE COURT: All right. To the members of this jury,
25 there are some preliminary matters I need to take up, and I

State v. Victor Smith 9/19/11 - 9/23/11

47

1 need to send y'all to the jury room. Let me tell you this
2 now. Throughout the course of this trial you will hear me
3 say over and over again, please don't talk about this case
4 until the very end once you've heard all the evidence, once
5 you've heard the arguments of the lawyers and only after I
6 tell you what the law is that applies to this case, and give
7 you instructions to begin deliberations. Until then, it
8 would be unfair to the state and unfair to Mr. Smith for
9 y'all to talk about this case in any way, shape or form. So
10 you will hear me say this throughout the course of this
11 trial. There's a reason for it. It's steeped and rooted in
12 the history of how we try cases in this country. It's
13 nothing to do with me or you or anybody else. It's just the
14 way we do business.

15 So I will ask you not talk about the case in any way
16 shape or form yet. And you're free to go to the jury room,
17 but I need to ask Juror No. 135. I need to speak with you.
18 You stay here. Everybody else goes into the jury room. And
19 I'll let you know what we're going to do with the rest of
20 the day momentarily.

21 Y'all are free to go to the jury room, just don't talk
22 about the case.

23 (Jury out at 3:14 p.m.)

24 THE COURT: First of all, Ms. Kelly, you ain't in any
25 trouble. You haven't done anything. Let me tell you that,

1 but it's brought to somebody's attention there's a
2 possibility or they believe that you used to work somewhere
3 with some of the victim's?

4 Tell me, solicitor?

5 MR. POTTS: Yes, sir. At Belk's some years ago with
6 Ms. Gray and her daughter. They just mentioned that you may
7 have worked together. They mentioned it and I have to bring
8 it up.

9 THE COURT: Yeah, they have to bring this to my
10 attention.

11 Do you remember working with these people?

12 JUROR NO. 135: Yes, in Belk.

13 THE COURT: How long ago was it?

14 Juror NO. 135: Oh, I haven't worked there in --

15 THE COURT: Have you seen them since then, have you run into
16 them socially or anything?

17 JUROR NO. 135: Huh-uh. (Negative response.)

18 THE COURT: All right.

19 JUROR NO. 135: I don't think so.

20 THE COURT: Mr. Hart, is there anything you'd like me
21 to ask her?

22 MR. HART: Was there any talk about the case, has she
23 heard anything about this case?

24 THE COURT: Have you heard anything about this case,
25 know anything about this case?

State v. Victor Smith 9/19/11 - 9/23/11

49

1 JUROR NO. 135: No. We worked different shifts, so I
2 didn't --

3 THE COURT: Do y'all still work together?

4 JUROR NO. 135: No, sir. Not in over -- what seven --

5 THE COURT: Seven years ago?

6 JUROR NO. 135: Seven years, at least.

7 THE COURT: All right. Well, go to your jury room right
8 now. I need to talk to the lawyers, but like I said you
9 haven't done anything wrong, so don't worry about it. Okay.
10 (Juror No. 135 to jury room.)

11 THE COURT: Do you have a motion Mr. Hart?

12 MR. HART: I do, Your Honor. I would ask that the Court
13 excuse her based off of --

14 THE COURT: Relax. Out of an abundance of caution I
15 will take her off this jury. I'll explain to her
16 personally. I know she answered the question, but let's not
17 create any difficulty. I assume you oppose it, Solicitor?
18 I'll give you a chance to put that on the record.

19 MR. POTTS: Yes, sir, I will oppose that.

20 THE COURT: You oppose it. But she misunderstood the
21 question when I asked, do you know these people, work with
22 them anything like that.

23 MR. HART: Well, their names were never actually
24 presented to the Court.

25 THE COURT: The juror tells me that she does remember

1 them, and she failed to answer the question and for that
2 reason I'm going to take her off. We still have an
3 alternate. And no harm no foul. It's only out of an
4 abundance of caution. I think she answered the questions
5 correctly, but this is a murder case. Let's not take any
6 chances.

7 I'm going to go bring her out, tell her my decision is
8 a result of a motion and that she hasn't done anything
9 wrong. But this is the way we should conduct the trial, as
10 fair as we can.

11 Ask Ms. Kelly, 135 to come out. I'll bring them back
12 in so everybody can hear. All right.

13 (Ms. Kelly enters courtroom.)

14 THE COURT: Come on in, Ms. Kelly. Like I said, you
15 haven't done anything wrong, but out of an abundance of
16 caution, I'm going to take you off this jury.

17 JUROR NO. 135: Okay.

18 THE COURT: And the question that I asked, do you know
19 these people, work with them, you don't always think about
20 these things, but over the course of the trial if something
21 were to come up it could be a problem.

22 JUROR NO. 135: Okay.

23 THE COURT: And it's not a problem with you. It's not
24 a problem with the case. I don't want you to feel bad about
25 it, but it's my job to do these sort of things.

State v. Victor Smith 9/19/11 - 9/23/11

51

1 So go back down -- you might be lucky getting off this
2 case anyway. They might be through for the week.

3 But I want to thank you for your service.

4 JUROR NO. 135: All right.

5 (Ms. Kelly exits courtroom.)

6 THE COURT: Thank you, now.

7 So now the first alternate becomes a member of this
8 jury, whoever the first alternate was. 298 was it?

9 All right. Are we going to do pre-trial motions this
10 afternoon? I can bring the jury back out, excuse them. Do
11 you want me to do that? Where's our bailiff -- oh, there he
12 is.

13 Bring the jury back out.

14 What time y'all want to start in the morning, 9:30?

15 MR. HART: Yes, sir.

16 MR. GOLDBERG: Yes, sir.

17 MR. POTTS: I'm involved in a felony DUI case as well
18 as a civil matter at 9:30 in the morning --

19 THE COURT: It doesn't matter. We start at 9:30. I can
20 do more than one thing at a time. Thank you, Mr. Potts.

21 (Jury in at 3:17 p.m.)

22 THE COURT: Are you involved in this tomorrow morning,
23 Mr. Potts?

24 MR. POTTS: Your Honor, not on the criminal side, no.
25 Civil side.

State v. Victor Smith 9/19/11 - 9/23/11

52

1 All right. We'll take care of it. I appreciate you
2 bring it to my attention.

3 Well, being from Dillon I'm used to doing several
4 things at one time.

5 We can handle this. No big deal.

6 We'll get here at 9:30. We won't be exactly ready at
7 9:30 anyway. So give it a few minutes.

8 MR. POTTS: Yes, sir.

9 THE COURT: Welcome back, members of the jury. I going
10 to send y'all home. Ask that you be back at 9:30 in the
11 morning. There's some preliminary matters, some pre-trial
12 motions and things I need to take up with the lawyers. The
13 only way I can do that is in your absence anyway. I don't
14 want to keep you back there when you don't need to be here.

15 So I'm going to release you to go home until 9:30 in
16 the morning. When you come back in the morning the bailiffs
17 will show you how to get back through the back hallway.
18 Don't come through the courtroom, use the back hallway.
19 It's a long walk but you'll get used to it.

20 Once again, I remind you not to discuss this case in
21 any way shape or form. I trust you will have a restful and
22 pleasant evening. Be back in the jury room tomorrow morning
23 at 9:30, ladies and gentlemen.

24 Thank you all so much. You're free to go home.

25 (Jury out at 3:20 p.m.)

State v. Victor Smith 9/19/11 - 9/23/11

53

1 THE COURT: All right. I'll give y'all about 10 minutes
2 or so. What pretrial motions do we have? The statement you
3 said?

4 MR. POTTS: Statement by the defendant. Yes, sir, and I
5 believe Mr. Hart has --

6 MR. HART: Yeah. I have a challenge to the search
7 warrant.

8 THE COURT: In about 10 minutes, we'll come back and get
9 started.

10 (Court is recess for break at 3:25 p.m.)

11 (Court in session after break 3:40 p.m.)

12 MR. HART: Before we start, Your Honor, we just ask
13 that the witnesses be sequestered. I think they both were
14 involved in taking the statement.

15 MR. GOLDBERG: Both the lead officers.

16 THE COURT: Oh, yeah, yeah. The lead officers can stay.

17 MR. GOLDBERG: Both of them are lead officers.

18 THE COURT: Everybody but them.

19 MR. GOLDBERG: Investigator Cronise is in the
20 courtroom. She did --

21 THE COURT: She thought she was a juror.

22 MR. GOLDBERG: She needs to be excused.

23 THE COURT: She did what?

24 MR. GOLDBERG: She worked the missing person's case
25 before it was ever any kind of investigation into this

1 defendant. Didn't necessarily participate in the actual
2 investigation once the body was found. She is present now
3 and has been sitting with the family. I don't know if the
4 sequestration will apply to her?

5 THE COURT: Do you want her out, too, Mr. Hart?

6 MR. HART: I'm thinking if they intend to call her for
7 this hearing, if not, then it's okay.

8 MR. GOLDBERG: Not for this hearing, no.

9 THE COURT: Then it's okay.

10 MR. HART: Yes, sir.

11 THE COURT: Let me revisit the whole thing briefly,
12 because I might have been a little bit short, but it's
13 simple. Juror No. 136, Ms. Jones, obviously the reason I
14 excused her because -- I'm not putting anything off on her.
15 This happens all the time, but out of an abundance of
16 caution I should recuse her. And Mr. Hart goes out of his
17 way to point out two potential jurors who he knew that
18 didn't answer the question and you both struck them. You
19 struck both of them. So it's a balancing act.

20 MR. GOLDBERG: Yes, sir.

21 THE COURT: I just wanted to put that on the record. I
22 mean, y'all know that anyway, but for the purposes of the
23 record, it's a balancing act.

24 MR. HART: Yes, sir.

25 THE COURT: You ready solicitor?

State v. Victor Smith 9/19/11 - 9/23/11

55

1 MR. GOLDBERG: Yes, sir.

2 THE COURT: Go ahead.

3 MR. GOLDBERG: Your Honor, this is a statement that was
4 taken in this case by law enforcement. Mr. Smith was
5 developed as a suspect. At the time he was detained in the
6 State of Mississippi, in the Department of Corrections
7 there. Investigators Holdorf and Gallegos traveled to
8 Mississippi. They questioned him at the prison.

9 Mr. Hart tells me he's not challenging the statement.
10 If he's not, then obviously we can skip through some of
11 this, but I'm still asking if that's the case, to some
12 stipulation from the defense that the statement was made
13 freely and voluntarily, and given after he was advised of
14 his appropriate Miranda warnings and etcetera so that for
15 the record it has been preserved so that we can then go into
16 it in our case in chief.

17 If there's a problem with that, I'll be glad to proffer
18 testimony.

19 THE COURT: Mr. Hart?

20 MR. HART: Your Honor, I've had the chance to speak with
21 Mr. Smith. He tells me that when the officers did come see
22 him in Mississippi, that they did read him his rights, and
23 he did give a statement freely and voluntarily.

24 THE COURT: Okay.

25 MR. HART: He did tell me that.

1 THE COURT: So there's no problem with the statement,
2 then?

3 MR. HART: No. He was not forced to give the statement
4 at all.

5 THE COURT: Okay. Then the statement is admitted.

6 MR. GOLDBERG: Yes, sir.

7 THE COURT: And what's the next one, solicitor, is there
8 a search warrant?

9 MR. HART: Yes, sir. That's the one that I'm bringing,
10 Your Honor, under Franks v. Delaware.

11 Your Honor, I believe the investigators in the case
12 went to Judge Newsome to ask for a search warrant and there
13 are several statements in the affidavit getting the search
14 warrant, to secure the search warrant, and we believe that
15 those statements can't be substantiated, and we do have an
16 offer of proof to show that the statements were not accurate
17 at the time they were given.

18 I think the officers went to Judge Newsome on July 21,
19 at approximately --

20 THE COURT: This is Judge Phil Newsome, who might be the
21 chief magistrate or was at some point in time here in
22 Richland County?

23 MR. HART: That is correct, Your Honor.

24 THE COURT: Yeah.

25 MR. HART: At the time that they went it was July 21,

State v. Victor Smith 9/19/11 - 9/23/11

57

1 2009 at 12:30. I think they just got a call the day before
2 that the missing -- I'm sorry, that the body was found in
3 the woods.

4 Here are the statements that was given in the
5 affidavits to secure the warrant. Number one, the victim
6 was seen leaving with Victor Smith, also worked at Beef
7 O'Brady's. From the discovery that I have, Your Honor,
8 there's no one that I've noticed that he was seen leaving
9 with the victim. In addition, specifically, Your Honor,
10 Investigator Holdorf states that on July 20, the day before
11 the requested the search warrant, he says he spoke with Mark
12 Wickham, who is the owner of Beef O'Brady. He stated in his
13 notes, Investigator Holdorf, is that Mark Wickham that on
14 the last night Ernest Robinson worked that he got a ride
15 from Victor Smith, and they were in a dark car. Well,
16 that's a problem, Your Honor, because on July 29, Mark
17 Wickham gives a written statement which says that Ernest was
18 still at work, Victor had already left for the afternoon,
19 which directly contradicts the statement that he used to get
20 the search warrant.

21 In addition, Your Honor, Investigator Holdorf asked
22 Mark Wickham did he hear who Ernest left with that night.
23 Mark Wickham states in a written statement, Ernest left with
24 Wendy Clifton, which directly contradicts the statement had
25 he used to get the search warrant.

State v. Victor Smith 9/19/11 - 9/23/11

58

1 In addition to that there is a statement in the
2 affidavit that says Investigators have spoken to several
3 employees at Beef O'Brady's and have learned that the day
4 Ernest Robinson disappeared that Victor Smith had made
5 mention that his rent money was missing and Ernest was
6 thought to have taken the money. The contradiction comes,
7 Mark Wickham is asked by Investigator Holdorf, did he hear
8 of any issues between Victor and Ernest and Mark Wickham
9 said no. That's statement Number One used in the affidavit.
10 The second statement says, Victor Smith has admitted making
11 statements to being with the victim on 9/27/09, the last day
12 he was seen. Well, that's interesting because Investigator
13 Holdorf didn't interview Victor until four days later on
14 7/24. So I'm not sure who these statements were made to.
15 The third one is, Your Honor, forensic evidence has
16 determined that the shooting did not occur where the body
17 was found and the body was wrapped for transport. That's
18 untrue, Your Honor, because there's been absolutely no
19 forensic evidence to support that statement. None. I don't
20 think they had mentioned any forensic evidence that the
21 state -- that the shooting did not occur where the body was
22 found.

23 Based on that, Your Honor, we would respectfully ask
24 that this search warrant not be allowed in, and that all the
25 evidence that came in pursuant to the search warrant be

State v. Victor Smith 9/19/11 - 9/23/11

59

1 suppressed.

2 THE COURT: What evidence is that, Mr. Hart? I don't
3 know what you mean?

4 MR. HART: It's over 103 pieces of evidence that they
5 secured from this apartment, and we ask that all that
6 evidence be suppressed and not allowed in because the
7 affidavit used to get the search warrant was based off of
8 false information.

9 THE COURT: All right.

10 MR. GOLDBERG: May it please the Court?

11 THE COURT: Yes, sir.

12 MR. GOLDBERG: Your Honor, first of all, before I get
13 into the details of responding to Mr. Hart, I believe what
14 Franks calls for is an allegation of a deliberate falsehood
15 or a reckless disregard to the facts as it pertains to the
16 -- I haven't heard any specific allegations of any kind of
17 deliberate falsehood or reckless disregard at this point,
18 and just as the Court is aware the standard in Franks calls
19 that even if, Your Honor, would find that to be true in
20 regards to the things he mentioned, if there's still
21 probable cause in the affidavit of the search warrant,
22 taking those statements out of it, then it's essentially a
23 harmless error and the search is good. It would be our
24 position that even if those statements were excluded there's
25 still plenty of probable cause to conduct the search. And I

State v. Victor Smith 9/19/11 - 9/23/11

60

1 can go through them one by one, if you'd like.

2 THE COURT: Just respond to what Mr. Hart said.

3 MR. GOLDBERG: Yes, sir. In terms of Victor Smith seen
4 leaving -- excuse me, Victor Smith being the last one to see
5 the victim on that occasion, he referenced how Investigator
6 Holdorf didn't take a statement from the defendant until
7 seven days later. Well, in fact, during the missing
8 person's investigation previous to the location of the
9 remains of the body, by the time line I'd say the incidents
10 alleged to have happened in September of '08, okay. He goes
11 missing, family files a report. There's a missing person's
12 case for several months. The body or the remains are not
13 found until July of '09, about 10 months later. It was, it
14 was sometime after that that Holdorf did go to Mississippi
15 to take a statement, however, in the interim, while the
16 missing person's case was going on, Investigator Cronise,
17 who was working the missing person's case, made contact with
18 an individual working at the jail in Mississippi, and asked
19 them to go speak to the defendant. And we don't intent to
20 offer this statement into evidence in our case in chief, but
21 for the purpose of this, the defendant himself, prior to the
22 location of this body told the investigator in Mississippi
23 that he was with the victim that night, that he was at his
24 house playing video games with the victim that night, which
25 was the last that the victim was ever seen. Now, he doesn't

State v. Victor Smith 9/19/11 - 9/23/11

61

1 say that they were seen leaving together from Beef
2 O'Brady's, but the point is he does put himself with the
3 victim late that night on the last night that he was seen by
4 anyone.

5 As far as no forensic evidence before the shooting
6 didn't occur where the body was found?

7 THE COURT: Well, yeah. Yeah.

8 MR. GOLDBERG: Briefly --

9 THE COURT: Witness say that he shot him.

10 MR. GOLDBERG: Yes, sir. There are eye-witnesses to
11 that effect, as well as, we believe crime scene analysis
12 testimony to support that, as well, in the form of an
13 extreme blood letting in this apartment that was found some
14 10 month last, but mainly it would be our position that it
15 was not deliberate falsehood, that these statements were
16 included, and even if those statements were to be excluded,
17 there would be enough probable cause if you look at the
18 remainder of the affidavit, and what you have here is he was
19 last seen leaving -- the victim was last seen leaving Beef
20 O'Brady's on September 27, 2008. His body was located in
21 this Northstone Apartment complex on Elders Pond Road. The
22 body was found approximately 100 yards from where the
23 defendant had resided with his girlfriend. The defendant
24 and his girlfriend both have their names on the lease at
25 this apartment, 100 yards -- which is the apartment in

1 question in regards to the search warrant. There was
2 testimony or there was evidence to indicate that they had
3 been together that night. They had the defendant's own
4 words to the Mississippi investigator they had been
5 together. Work records show, at this point, that the last
6 day the victim ever went to work was September 27, and never
7 showed up on the 28 or any time after that. Never even
8 picked up his paycheck. As I indicated there would be
9 forensic evidence that the shooting did occur elsewhere.
10 The time frame of the analysis of the bones and how long the
11 body had been in that spot, there will be testimony that
12 that matches up to the time frame that the victim was
13 missing. His race, gender, approximate size all fit with
14 that of the remains found just 100 yards or so away from
15 where the defendant, in fact, lived at the time.

16 There is also some information gathered by Investigator
17 Cronise that a witnesses, a Marvin Shipman had been with the
18 victim, and Allen Fulten, the co-defendant on this case, on
19 the day that the victim went missing. That they had gone to
20 buy some marijuana and that they bought the marijuana and
21 that Marvin Shipman, drove Allen Fulten, the co-defendant,
22 dropped him off at this apartment where the defendant was
23 residing at the time, that Ernest Robinson, the victim, was
24 with them. They made an agreement that Ernest Robinson
25 would come back there to meet up with the co-defendant to

State v. Victor Smith 9/19/11 - 9/23/11

63

1 smoke and hang out after work at that location, and he
2 identifies that as the location where he went, the same
3 apartment, at that same time. It sort of ties the picture
4 that the victim had been in this apartment with a friend, a
5 mutual friend of theirs and that he was going to go back
6 there after work, and this was the same day that he went
7 missing. Just another connection that leads back to the
8 necessity of searching this apartment and I'll point out
9 also that at the time the search warrant was executed,
10 investigators were aware that the defendant's girlfriend,
11 Ms. Jazmine Bright was still living there.

12 THE COURT: And both of their names were on the lease.

13 MR. GOLDBERG: Yes, sir.

14 THE COURT: All right.

15 Mr. Hart.

16 MR. HART: Judge, just a response to that. I don't
17 disagree with anything Mr. Goldberg says. Number one, it's
18 the statement from the defendant, which I've never seen. I
19 didn't know he made a statement in Mississippi to the
20 correction officers. I've never seen it. The first time
21 I'm hearing about it is when he mentioned it just now.

22 THE COURT: Well, didn't your client know that he'd made
23 a statement?

24 MR. HART: He says he didn't. He says he's never seen
25 it. So we've never heard of a statement being made to a

State v. Victor Smith 9/19/11 - 9/23/11

64

1 Mississippi correction officer. This is the first time
2 we've heard of that, still everything that he just
3 mentioned, one of the questions that you asked, Your Honor,
4 was a great question. Wasn't there witnesses who identify
5 Victor Smith as shooting the victim? Absolutely right.
6 There are witnesses. But guess what, the investigator
7 didn't interview those witnesses until after the search
8 warrant, so how did he have this information when he applied
9 for the search warrant. That's the whole point about
10 putting this affidavit that there is forensic evidence
11 identifying that the shooting did not take place where the
12 body was found. At the time of the application of the
13 warrant, that was not true, Your Honor. He did not get that
14 information until after he secured the search warrant, and
15 that becomes a problem, Your Honor. This statement -- so
16 everything that Mr. Goldberg surmised is absolutely right,
17 but it came after the search warrant. It didn't come before
18 the search warrant. That's the problem.

19 THE COURT: All right.

20 Mr. Goldberg?

21 MR. GOLDBERG: It's our position that even if you take
22 these statements out that he specified that there's still
23 plenty of probable cause to have the them search the
24 apartment and I went through the reasons for that just now.
25 But I'll just point out that all of those things that I just

State v. Victor Smith 9/19/11 - 9/23/11

65

1 mentioned, were, in fact, later corroborated by statements
2 by the co-defendants in this case. I understand that's not
3 the issue in front of us, but I think that that's
4 interesting that they have all these other reasons for
5 probable cause and it was corroborated later on to show that
6 there was probable cause to search that apartment and an
7 immediate need to do so.

8 THE COURT: All right.

9 Mr. Hart, anything further?

10 MR. HART: Yeah. I guess I have to ask, is that the
11 process. Under the statute that's not the process, to say
12 well, we want to put some stuff in that we speculate and
13 surmise and hope that it's corroborated later.

14 THE COURT: But it was corroborated later.

15 MR. HART: You're absolutely right. The affidavit, the
16 -- you have to put some accurate and true information in the
17 affidavit. You can't put speculation in there, and
18 basically because here's the statement, Your Honor. The
19 investigators have spoken to several employees at Beef
20 O'Brady's that learned that the day Ernest Robinson
21 disappeared that Victor Smith had made mention that his rent
22 money was missing and Ernest was thought to have it. That
23 was not true, Your Honor. That was not true.

24 THE COURT: Well, how am I to determine whether or not
25 that's true or not?

1 MR. HART: Well, one of the parts of Franks v. Delaware,
2 Your Honor, is if we can offer the -- which we have
3 defendant exhibits, is that we're allowed to have a hearing
4 so we're allowed to cross-examine the investigator about the
5 statements that he put in his affidavit, and that will allow
6 the Court to make a decision --

7 THE COURT: Well, you can do that.

8 Go ahead.

9 MR. GOLDBERG: But actually Franks says the hearing is
10 only required if your to find that with the removal of those
11 statements there wasn't enough probable cause --

12 THE COURT: Okay. Okay.

13 MR. GOLDBERG: -- it's our position that there was.

14 THE COURT: Okay. Anything further?

15 MR. GOLDBERG: Nothing further. We just ask that --

16 THE COURT: Let me look at the statement. You know, if we
17 need to have a hearing on it, we'll have a hearing, but let
18 me examine the statement. Let me look at the statement.
19 We'll see where we are.

20 THE COURT: All right. Anything further on this matter,
21 at this time?

22 MR. GOLDBERG: Not at this time.

23 THE COURT: All right.

24 Anything further, Mr. Hart?

25 MR. HART: I just have the offer of proof that I have,

State v. Victor Smith 9/19/11 - 9/23/11

67

1 Your Honor.

2 THE COURT: Okay.

3 (Documents passed up to the Court.)

4 THE COURT: This is it?

5 MR. HART: Yes, sir.

6 THE COURT: Let's take a break. Let me see y'all back
7 in Chambers for a few minutes before we go any further.

8 MR. GOLDBERG: Yes, sir.

9 THE COURT: Do you have a copy of Franks verses
10 Delaware?

11 MR. GOLDBERG: Yes, I do.

12 THE COURT: All right. Bring it back with you.

13 Y'all come on back.

14 (Court at recess for in chambers conference with counsel and
15 the Court.)

16 (Court in session after in chambers conference at 4:15 p.m.)

17 THE COURT: All right. Thank you. We are ready?

18 I looked at the case, Mr. Hart. I'm not positive we
19 actually need a hearing. We're going to give you one
20 anyway.

21 MR. HART: Thank you, sir.

22 THE COURT: Out of an abundance of caution. All right,
23 and I think you're the moving party.

24 MR. HART: Yes, sir.

25 THE COURT: You may proceed.

1 MR. HART: At this time we call Investigator Holdorf to
2 the stand.

3 THE CLERK: Place your left hand on the Bible and raise
4 your right, please.

5 (WHEREUPON, Travis Holdorf was
6 sworn to tell the truth.)

7 THE CLERK: Have a seat. State your name for the
8 record.

9 MR. GOLDBERG: Your Honor.

10 THE COURT: Yes, sir.

11 MR. GOLDBERG: Actually, I think the procedure calls for
12 the state to put up testimony first. It's our witness.

13 THE COURT: Six one, half dozen another. Let the state
14 go, Mr. Hart, and that way you don't have to lead anybody.

15 MR. GOLDBERG: Thank you.

16 THE COURT: All right. Go ahead, Mr. Goldberg.

17 MR. GOLDBERG: Thank Your Honor.

18 TRAVIS HOLDORF - DIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q State your name, please?

21 A Travis Holdorf.

22 Q And where are you employed?

23 A I'm employed at the Richland County Sheriff's
24 Department.

25 Q What are your duties at the Sheriff's Department?

State v. Victor Smith 9/19/11 - 9/23/11

69

1 A Currently, my duties are, I'm a sex crimes
2 investigator. I also work child abuse cases. Every seven
3 weeks when our shift goes on call, I'm primary for homicide.

4 Q How long have you been with the department?

5 A Since 1994.

6 Q And can you describe some of your other duties since
7 you've been there, as well?

8 A I was on the road for approximately three years. Been
9 an investigator since '97. I worked burglaries, I worked
10 aggravated assaults, drive-by shootings. Just about any
11 case I could think of.

12 Q In regards to the case here before us today, State
13 verses Victor Smith, were you the lead investigator on that
14 case?

15 A I am.

16 Q And did you have an opportunity to participate in
17 obtaining a search warrant for ■ Elders Pond Circle,
18 apartment ■?

19 A Yes, sir.

20 Q Were you the actual affiant in that search warrant?

21 A I'm not the affiant, but I am the writer of this search
22 warrant.

23 Q Okay. And can you describe for the Court a little bit
24 how the process for obtaining a search warrant takes place?

25 A A homicide search warrant especially is one where

1 you're looking at trying to get information on a time
2 deadline. We're -- on this case, we're trying to get the
3 search warrant on before it hits the news that we believe we
4 found Ernest Robinson, and that was done because once we
5 felt that did come out in the news that we would lose any
6 evidence that was in that house if there was any. With a
7 homicide you're getting a bunch of people coming in or
8 giving you information from several different angles, be it
9 forensics, other people at the scene. It's almost like a
10 river flowing into one small spot. It's just an overwhelming
11 amount of information at first.

12 Q. And the date that the body was first located, that was
13 July 20, 2009; is that correct?

14 A Yes, sir.

15 Q Okay, and the search warrant was obtained on the 21?

16 A Yes, sir.

17 Q So can you describe for the Judge the probable cause
18 that you had in the affidavit to seek that search warrant
19 that came up between -- prior to the 21?

20 A Yes, sir. Investigator Cronise, with the sheriff's
21 department, did a great job as far as the missing persons
22 report or the missing person's case. That was important to
23 us. Once we did recover the body, we were able to go on
24 with a lot of the information that she already had, being
25 talking to co-workers, family members, just gathering, as

State v. Victor Smith 9/19/11 - 9/23/11

71

1 best she could at the time, the last moments that we knew
2 about Ernest. And that was -- basically that started on
3 December 11, 2009. he was reported missing. Our case
4 number on that is 08121050-10. He was last seen on
5 September 27, 2008 after he had left his place of
6 employment, which is Beef O'Brady's at 4561 Hard Scrabble
7 Road. This is all going to be in Richland County. It was
8 noted that Victor Smith also worked at the Beef O'Brady's.
9 At the time of Ernest's disappearance he had lived at Elders
10 Pond, Apartment [REDACTED], with a Jazmine Bright.

11 Q And let me ask you this real quick, apartment [REDACTED] at
12 [REDACTED] Elders Pond, what is that in relation to the remains of
13 Ernest Robinson?

14 A I think there's one apartment building between the two.
15 Ernest was found in a wooded area -- not a wooded area, it's
16 a drainage ditch, basically. Basically, there's a fence
17 around this area. He was found in a drainage area,
18 basically.

19 THE COURT: What is the distance?

20 INVESTIGATOR HOLDORF: I'd say maybe 100 yards.

21 MR. GOLDBERG: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (State's Exhibit No. 5, schematic,
24 was marked for ID only.)

25 COURT REPORTER: State's five for ID.

1 BY MR. GOLDBERG:

2 Q Let me show you State's No. 5, here and ask if you
3 recognize what this is a schematic of?

4 A Looks like the layout for Elders Pond.

5 Q Okay. And the building in which you were seeking the
6 search warrant?

7 A It's going to be -- this is Number ■

8 Q And the approximate location of where the remains were
9 found?

10 A I want to say in this area here.

11 Q So we're talking about from here to here?

12 A Yes.

13 Q His apartment to the location of the body?

14 A Yes, sir.

15 Q Okay. Go ahead, proceed.

16 A Victor Smith had been arrested on October 21, 2008 for
17 possession of marijuana and a fugitive from justice warrant,
18 was an NCIC for him. Victor Smith was transported to South
19 Mississippi Corrections Institute in Mississippi where he
20 was currently being held. Victor had made statements
21 admitted to being with the victim on 9/27 of '09.

22 Q Where did that information come from?

23 A That would have been from Investigator Cronise's notes
24 and also from the Mississippi Department of Corrections. As
25 the last day he had been seen. So we had that part, which

State v. Victor Smith 9/19/11 - 9/23/11

73

1 is what we would have gotten from Investigator Cronise. On
2 7/20 of '09 is when we find Victor Smith -- excuse me --
3 Ernest. He was found behind Building Number 16. The body
4 was a black male in the wood line. The body had been
5 wrapped in material and transported to the spot that he was
6 found, as related in our case number at the time of the
7 homicide, which is 09071990-20. Further investigation found
8 that the victim had massive facial trauma, and also had been
9 shot in the head. Forensic evidence has determined that the
10 shooting did not occur where the body was found, the body
11 was wrapped for transportation.

12 Q Can you explain a little bit about how that theory
13 developed?

14 A Sure. Ernest was wrapped in a shower curtain. He was
15 secured by two belts, which would have been consistent for
16 carrying. With the shower curtain and everything else I had
17 information from my lab unit, Sgt. Richards, who said that
18 he did not feel that this incident happened when he was
19 found. That was based upon the lack of blood at the time,
20 and just the way that the head was wrapped, that he did not
21 feel that this was the location where it happened at.

22 Q Was there a gunshot wound to the skull that was clear
23 to the naked eye?

24 A I'm --

25 Q In looking at the skull, did you see a gunshot wound?

1 A At the time I hadn't seen it. I'm going off of what
2 I'm getting from our forensic department. Our lab people.

3 Q Did Sgt. Richards see the --

4 A In his opinion, yes, sir.

5 Q And did he see a hole in the sheet?

6 A No, sir.

7 Q Thank you.

8 A At least not that was relayed to me.

9 Q Okay. And the time frame that the body was out in that
10 area, did you get some information about that as well any
11 correlation to Ernest Robinson?

12 A. We did. The time frame that this body would have been
13 there would have been consistent with the time frame that
14 Ernest had come up missing, that the gender of this person
15 and the race of this person, height and weight of this
16 person was also going to be consistent with Ernest Robinson.

17 Q. All right, and were you aware of who resided in that
18 particular apartment that Victor Smith had resided in at
19 that time that the body was found?

20 A Jazmine still lived there.

21 Q And her relationship to the victim was what?

22 A Child's mother, girlfriend.

23 Q And that was [REDACTED] Elders Pond, Apartment [REDACTED] correct?

24 A Yes, sir.

25 Q Okay. Did you also have an opportunity to speak to

State v. Victor Smith 9/19/11 - 9/23/11

75

1 some of the employees at Beef O'Brady's?

2 A. We did. Myself and Investigator Robinson. Once Ernest
3 was found, you got people that processed the crime scene
4 itself where Ernest was. Our jobs as investigators is
5 trying to talk to people. We would have talked to other
6 neighbors, maybe family members. We would have gone to Beef
7 O'Brady's and tried to get as much as information as we
8 could to further our position.

9 Q And that was on July 20; correct?

10 A. Yes, sir.

11 Q. Okay. What if anything did you learn about Victor
12 Smith and some missing money?

13 A. We talked to Larry Williams who stated that he stated
14 that he'd heard that Victor was missing some money. It
15 doesn't indicate it in my notes, but the impression that we
16 got was that it was felt that Ernest was the one who took
17 the money. That was the rumor or conjecture at the time.

18 Q And that came from what?

19 A I'm going to go with Larry, because that's the person
20 who mentions the money. Some people that we had talked to
21 had mentioned other things.

22 Q You discussed earlier in the process of obtaining the
23 search warrant and the necessity to move quickly and obtain
24 this information. Can you elaborate on that a little bit
25 further?

1 A We felt that whoever put Ernest where Ernest was put,
2 they didn't have a great -- I mean it was done pretty
3 sloppily. It wasn't -- he wasn't hidden. He was just
4 placed in a field. It wasn't very easy to access, but there
5 was no attempt to really cover him up. He wasn't buried.
6 There wasn't a bunch of debris and stuff to kind of mask the
7 body, so that kind of gives you an impression as an
8 investigator that somebody probably didn't do that good a
9 job of cleaning up the crime scene itself where the killing
10 would have happened at. So we felt if we had a chance to go
11 in there without people destroying anything else that we
12 could find it. I mean, you can put chemicals on walls if
13 it's blood. Even you can't see it with the naked eye
14 there's certain things that you can find.

15 Q. Now you heard earlier before we took a break about the
16 arguments about the issue, about this issue. Mr. Hart
17 raised an issue in the affidavit about the victim being seen
18 leaving Beef O'Brady's with Victor Smith on that night. Can
19 you address that?

20 A That's what I have written in my notes. That is not
21 consistent with a statement that he gave later at a time --
22 at the start of this investigation when we were talking to
23 people from Beef O'Brady's, we were trying to move quickly
24 and efficiently. We're not sitting down and taking written
25 statements at the time. We're talking to them and surmising

State v. Victor Smith 9/19/11 - 9/23/11

77

1 what they're saying, and moving to the next person, trying
2 to reach the next person. So if there is a discrepancy from
3 what my notes say to what his actual written statement does,
4 and that was not done intentionally or anything else like
5 that. It was a mistake.

6 Q And his written statement wasn't taken until
7 approximately a week later; is that right?

8 A I was not present when his statement was taken. Again,
9 you have a bunch of people working on the case bringing you
10 information. You're trying to direct people to certain
11 avenues or toward certain events that need to get done, and
12 it's a bit like a three-ring circus.

13 MR. GOLDBERG: Thank you, Your Honor.

14 THE COURT: Mr. Hart.

15 MR. HART: Thank Your Honor.

16 TRAVIS HOLDORF - CROSS-EXAMINATION

17 BY MR. HART:

18 Q Mr. Holdorf, you agree that you and Sgt. Robinson went
19 to Judge Newsome's office on July 20, is that correct?

20 A Would have been the 21.

21 Q The 21?

22 A Yes, sir.

23 Q And you went at approximately 12:28 p.m.; is that
24 correct?

25 A Yes, sir.

1 Q Do you have a copy of the search warrant in front of
2 you?

3 A I do, sir.

4 Q Okay. One of the statements that was used in the
5 affidavit was the victim was seen leaving with Victor Smith,
6 who also worked at Beef O'Brady's?

7 A. Yes, sir.

8 Q. Who did you talk to that told you that?

9 A. Per my notes, it would have been -- from the
10 interpretation I got it was from the owner, himself, which
11 later in his written statement, he does not have that in his
12 written statement.

13 Q Did you say the interpretation that you got?

14 A Yes, sir.

15 Q So it's your testimony it was the owner who told you
16 this; is that correct?

17 A Yes, sir. Again, two to three years later, reading my
18 notes, and the search warrant itself, yes, sir, that's the
19 impression that I got from the owner, Mark Wickham. There's
20 also a Mike Jenkins, there's a Jenny Kline, and also a Larry
21 Williams, all with Beef O'Brady that we talked to. We also
22 would have gotten information from the Investigator Cronise,
23 and the people that she had talked to.

24 Q Right. And let's go back for a second. You talked to
25 Mark Wickham. We're going to come back to him. You said

State v. Victor Smith 9/19/11 - 9/23/11

79

1 Jenny Kline?

2 A Yes, sir.

3 Q When did Jenny Kline tell you that Victor Smith left
4 with Ernest Robinson that night?

5 A She does not say that.

6 Q You also mentioned Larry Williams?

7 A Yes, sir.

8 Q When did Larry Williams tell you that Victor Smith left
9 with Ernest Robinson that night?

10 A He does not say that, sir.

11 Q And who was the last person you mentioned?

12 A Did we go -- Mark Wickham, Mike Jenkins?

13 Q. Mike Jenkins. When did Mike Jenkins tell you that
14 Ernest Robinson left with Victor Smith?

15 A He did not. That would have been something we would
16 have gotten from Investigator Cronise.

17 Q I'm showing you what's been marked as Defense Exhibit
18 No. 2 for identification.

19 A Yes, sir.

20 Q Is that a copy of your investigator notes?

21 A Yes, sir.

22 Q Do you see that highlight part?

23 A Yes, sir.

24 Q Could you read the highlighted part for the Court?

25 A You want me to start with the first sentence?

1 Q Yes, sir.

2 A All right. Mark did not know the cell phone number
3 for E.J. Mark stated he was positive that the last E.J.
4 worked he got a ride home from Victor Smith and they were in
5 a dark car.

6 Q So in your investigator notes you say that Mark Wickham
7 was positive that on the last night E.J. worked, E.J. got a
8 ride from Victor Smith and they were in a dark car; is that
9 correct?

10 A That's what my notes reflect.

11 THE COURT: E.J. is Mr. Robinson?

12 MR. HART: Yes, sir.

13 INVESTIGATOR HOLDORF: Yes, sir.

14 BY MR. HART:

15 Q I'm showing you what has been marked as Defense Exhibit
16 No. 3 for identification; do you recognize that?

17 A Yes, sir, that's the written statement from Mark
18 Wickham.

19 Q Okay. Flip over to that second page for us. Could you
20 read the question and answer from the statement of Mark
21 Wickham?

22 A. Yes, sir. It starts on Page 2. The question: Were
23 either Ernest Robinson or Victor Smith still working? The
24 answer was: Ernest was. Victor had already left that
25 afternoon. The question was asked: Did you leave before

State v. Victor Smith 9/19/11 - 9/23/11

81

1 Ernest Robinson. Response was: Yes. The question: Have
2 you heard who Ernest Robinson might have left with that
3 night? The answer was: He had left with Wendy Clifton, the
4 manager, because they never leave alone. Her time card is
5 also on the sheet I gave you.

6 Q So based off of the statement from Mr. Wickham, it's
7 not possible for him to know if Victor left with Ernest
8 Robinson; correct, based off of his statement?

9 A Based on the statement, that would be correct.

10 Q Also, you said that Victor made statements -- what is
11 the name of the correction officer in Mississippi that he
12 made those statements to?

13 A I'd have to refer to Investigator Cronise.

14 Q Did you give that information to the solicitor's
15 office?

16 A That would be Investigator Cronise who had that
17 information and dealt with that information. I would have
18 gotten -- this is the basics of the conversation, as far as
19 the specifics on who exactly she got that information from,
20 I do not know.

21 Q Sure. Okay. You agree with the statements for into
22 evidence has determined that the shooting did not occur when
23 the body was found and the body was wrapped for transport;
24 is that correct?

25 A. Yes, sir.

1 Q. You agree that the testing on the skeletal remains have
2 come back inconclusive; is that right?

3 A Are you talking about for Ernest's DNA?

4 Q Correct?

5 A Yes, sir, that is correct.

6 Q As we speak today have those remains ever been
7 identified as Ernest Robinson?

8 A They've been identified, and you're asking me kind of a
9 broad question.

10 Q Okay. I'm sorry. Let me clarify my question. Based
11 off the forensic testing of his DNA, have those remains ever
12 been identified as Ernest Robinson?

13 A. If you took the forensic testing by itself, no. If you
14 take the totality of the statements in this investigation
15 yes,

16 Q. Well, let's not talk about the statements. Let's talk
17 only about the testing.

18 A Okay.

19 Q. The testing, has it been identified as Ernest Robinson?

20 A We've not been able to extract DNA from the body to the
21 compare it to Ernest Robinson.

22 Q On the date that you applied for this affidavit did you
23 have that information about the testing?

24 A. Testing takes weeks months. No, sir.

25 Q So when you applied for information, you didn't have

State v. Victor Smith 9/19/11 - 9/23/11

83

1 any information about whether the test was going to come
2 back positive or negative?

3 A No, sir.

4 Q You also make a statement that it appeared that the
5 shooting did not occur where the body was found, and the
6 body was wrapped for transport. You said forensic evidence
7 has determined that. On the date you applied for the search
8 warrant you didn't know when the shooting had taken place;
9 is that correct?

10 A No, sir. That was the reason for the search warrant
11 because we wanted to find where it did take place.

12 Q You said, no that was the reason because -- say that
13 again?

14 A The reason for the search warrant was because it did
15 not happen where he was found. We felt that it happened
16 somewhere else. That's why we wanted to look at Victor
17 Smith's apartment or the apartment he had at the time, was
18 because we felt that based upon the corrections officer
19 saying, giving the information that Victor's admitting to
20 being with the victim the day he's last seen. That they
21 were together at Beef O'Brady's. Right after Ernest
22 disappears, Victor quit showing up at work. He left his
23 work schedule -- was supposed to work the next day and it
24 was very suspicious on how he just didn't show up. I mean,
25 there were a number of things going on that would give a

1 reasonable person the belief that this was a great place to
2 look, and this was where the crime scene would have been.

3 Q Did you mention any of that to Judge Newsome, that you
4 felt that it was the place?

5 A Based upon the totality of the circumstances, it was
6 the reason for the search warrant, itself. There would have
7 been other conversations going on with Judge Newsome. If he
8 had any questions. I couldn't recall if he did have any
9 questions or anything like that, but it does state in the
10 search warrant itself, in the last paragraph, based on the
11 totality of the circumstances, affiant believes the search
12 of this apartment is necessary deferred to this on-going
13 investigation and that the items sought would be found at
14 the place to be searched. This search will aid this
15 on-going investigation. So yes, sir.

16 Q Part of the totality of the circumstances is that you
17 put forensic evidence as determining the shooting did not
18 occur where the body was found; is that correct? That's
19 part of the totality; is that correct?

20 A Yes, sir. And I would have gotten that from Sgt.
21 Richards from our lab, who said he was not shot there. This
22 is not the place where he -- where this assault happened.

23 Q You mentioned something about the gunshot wound to the
24 head. It's possible that the shooting could have taken
25 place where the body was found?

State v. Victor Smith 9/19/11 - 9/23/11

85

1 A According to the information that I got from Sgt.
2 Richards, who I've worked many cases with him, he's not a
3 new person, so it is someone that I trust. He said, no, it
4 did not happen there.

5 Q It's possible that it could have happened?

6 A Anything is possible.

7 Q Let me ask you, you mentioned to Mr. Goldberg that a
8 lot of this was rumor or conjecture about this money. Q
9 Did you mention to Judge Newsome that it was rumor and
10 conjecture?

11 A Judge Newsome's been a judge for a long time. He
12 understands the beginning of these investigations that in no
13 way shape or form do you have a complete investigation. You
14 go with the best that you have. You try to go with good
15 information. We made a mistake and that's all it was. It
16 was an honest mistake. It wasn't trying to mislead Judge
17 Newsome or anyone else. This is going to be a court of
18 record, and as you're talking to other people new things
19 develop

20 Q And I understand Judge Newsome's been around a while,
21 but I'm asking you did he mention to have that it was rumor
22 and conjecture; did you mention that to him?

23 A No, sir.

24 Q Can you tell us who you talked to that said that on the
25 last day Ernest Robinson disappeared, victim makes mention

1 of the missing rent money. Who did he tell that to?

2 A That Victor made mention of the missing rent money?

3 Q The affidavit says that Victor Smith had made mention
4 that his rent money was missing, and Ernest was thought to
5 have taken the money. Who mentioned that?

6 A I'm sorry, Mr. Hart, where are you?

7 Q In your affidavit on the second page, which is the
8 second paragraph.

9 A Yes, sir.

10 Q It says investigators have spoken to several employees
11 at Beef O'Brady's and have learned that the day of Ernest
12 Robinson's disappearance, Victor Smith made mention that his
13 rent money was missing and Ernest was thought to have taken
14 the money.

15 Now, you talked to Mark Wickham; is that correct?

16 A Yes, sir, we talked to a number of people.

17 Q And what did Mark Wickham tell you about the money?

18 A He knew they just hung out together.

19 Q You asked him specifically about money; is that
20 correct?

21 A Yes, sir.

22 Q What does Mark Wickham say about the money?

23 A That -- his answer specifically was, no, I just knew
24 them to hang out together. Ernest just moved around.

25 Q He responded no to what?

State v. Victor Smith 9/19/11 - 9/23/11

87

1 A Did you ever hear of any money issues between Ernest
2 Smith and Victor Robinson. And on this statement, I was not
3 present for this statement.

4 Q I understand. Who did Victor talk to at Beef O'Brady's
5 about the missing money?

6 A I'd have to go -- I don't know specifically that he
7 would have talked to anyone about the missing money. I know
8 that based upon our conversations that we had with Larry
9 Williams, Mark Wickham, Jenny Kline and Mark Jenkins that
10 was the impression we had was this was most likely over
11 missing rent money. At the time when we were talking to
12 people it was just verbal conversations. We're not sitting
13 them down, we're not bringing them into the Sheriff's
14 Department to write their statements out. It's alright this
15 is what you're saying and who else would you know. You're
16 asking questions.

17 Q And I'm about to wrap up. I understand your
18 impressions, but the people you just named, did any of them
19 tell you anything about the missing money?

20 A Larry Williams.

21 Q Larry Williams. What did Larry say?

22 A. And again, I have his conversation would have been
23 paraphrased several weeks after it had taken place. Knew
24 they hung out together at Northstone apartments. E.J. did
25 not have a car. That Victor's girlfriend had what looked

State v. Victor Smith 9/19/11 - 9/23/11

88

1 like a 2000 Altima, dark purple in color.

2 Larry stated that the day E.J. did not show up for work
3 that he'd heard Victor's rent money was missing. And that's
4 all I had written in my notes at that time.

5 MR. HART: No further questions, Your Honor.

6 THE COURT: All right. Mr. Goldberg.

7 MR. GOLDBERG: Very briefly.

8 TRAVIS HOLDORF - REDIRECT EXAMINATION

9 BY MR. GOLDBERG:

10 Q Just to make that clear. He asked you several times
11 who you talked to at Beef O'Brady's that mentioned Victor
12 talking about missing rent money, and that was who?

13 A The people that we had talked to at Beef O'Brady's, we
14 talked to Mike Jenkins, Jenny Kline, Mark Wickham and Larry
15 Williams. The person that I have with the missing rent
16 money is Larry Williams.

17 Q Thank you.

18 MR. GOLDBERG: That's all I have.

19 THE COURT: Go ahead.

20 MR. HART: I'm fine, Your Honor.

21 TRAVIS HOLDORF - RE-CROSS EXAMINATION

22 BY MR. HART:

23 Q I'm glad you mentioned that. Your affidavit says that
24 you talked to several employees who said there as missing
25 rent money; is that correct?

State v. Victor Smith 9/19/11 - 9/23/11

89

1 A Yes, sir, I believe that was the wording on the
2 affidavit.

3 Q How many people is Larry Williams?

4 A Larry is one person.

5 Q You didn't put that in your affidavit to Judge Newsome,
6 you didn't tell Judge Newsome one person told us about
7 missing rent money. You didn't say that did you?

8 A At the time I think we were trying to do our best to
9 paraphrase several conversations that we had with several
10 people. It was never an intentional act to mislead anyone,
11 especially a magistrate or any type of judge.

12 Q I understand what you said, but my question is at any
13 point in time to Judge Newsome, did you say one person told
14 us about the missing rent money; did you ever say that to
15 Judge Newsome?

16 A No.

17 MR. HART: Nothing further.

18 THE COURT: Anything for this witness?

19 MR. GOLDBERG: No, sir.

20 THE COURT: But Judge Newsome was informed about the
21 missing rent money from someone, whether one, two, 10 or
22 whatever, it was mentioned?

23 INVESTIGATOR HOLDORF: Yes, sir.

24 THE COURT: All right. Thank you, sir.

25 Call your next witness.

A It would be just simply to talk to Mr. Smith and find out what he could as to whether or not Mr. Smith had actually seen Mr. Robinson on the 27 or 28 or when the last

State v. Victor Smith 9/19/11 - 9/23/11

91

1 time was that he did see him.

2 Q So you believe that correction officer would have
3 information about a murder case in South Carolina?

4 A I was only investigating it as a missing person, and
5 Victor was the last person from Beef O'Brady's that I had
6 not had a chance to talk to.

7 Q I understand, but I want to talk about your
8 conversation with the Mississippi Department of Corrections.

9 A Yes, sir.

10 Q At what point in this conversation did this Art McClung
11 tell you this?

12 A We went back and forth on the phone several times, and
13 probably it wasn't until June or so that he got back with me
14 to let me know that he had spoken with Mr. Smith, but there
15 was never a formal statement taken.

16 Q I understand. What was said by Mr. McClung?

17 A Mr. McClung said he talked with Mr. Smith. Mr. Smith
18 said that they had gone over to his house, his mother's
19 house and played video games and E.J. left and he hadn't
20 seen him since.

21 Q Okay. Thank you.

22 MR. HART: No further questions, Your Honor.

23 THE COURT: All right. Solicitor?

24 MR. GOLDBERG: Briefly.

25 DOROTHY CRONISE - CROSS-EXAMINATION

THE COURT: Please take a seat. Tell us your full name and spell your last name for the record.

State v. Victor Smith 9/19/11 - 9/23/11

93

1 SGT. ROBINSON: My name is Donald Robinson.

2 R-o-b-i-n-s-o-n.

3 DONALD ROBINSON - DIRECT EXAMINATION

4 BY MR. HART:

5 Q Investigator Robinson, you were the person who applied
6 for the search warrant?

7 A I was the affiant, yes.

8 Q Affiant.

9 A Yes, sir.

10 Q You filled out the affidavit?

11 A Well, Investigator Holdorf filled out the affidavit,
12 put my name in at the top. Signed as an affiant, prepares
13 the documents, it prints out and I take it to the Judge and
14 I affirm and swear it out.

15 Q Did you get a chance to review the affidavit?

16 A Yes. Oh, I was with them the entire investigation.

17 Q And you were present when Investigator Holdorf was
18 explaining this to the Judge Newsome?

19 A We were there together.

20 Q Did you do any explaining to Judge Newsome?

21 A We both, probably discussed, exchanged some details
22 here and there, but primarily Investigator Holdorf maintain
23 most of the conversation.

24 Q Can you tell us who last saw Victor with?

25 A Can I saw affirmatively? I was there at Beef O'Brady's

State v. Victor Smith 9/19/11 - 9/23/11

94

1 when we spoke to those folks there. I don't recall the
2 names, but we spoke to several employees there.

3 Conclusively, I can't say who the last person to see him.

4 Q You said you don't know who?

5 A I couldn't tell the a name. We were there just talking
6 to several different people, several people at one time.

7 Q Have you had a chance to review Mr. Wickham's
8 statement?

9 A No, I have not.

10 Q I'm showing you what's been marked as Defense Exhibit
11 No. 3.. Flip over to the second page on that.

12 A Okay.

13 Q Can you read that question and answer real quickly for
14 us?

15 A In your highlighted area?

16 Q Yes.

17 A Okay. Were either Ernest Robinson or Victor Smith
18 still working was the first questions. The answer: Ernest
19 was. Victor had already left that afternoon. Second
20 question: Did you leave before Ernest Robinson? His answer
21 was: Yes. Have you heard who Ernest Robinson might have
22 left with that night? His answer: He had left with Wendy
23 Clifton, who was the manager, because they never leave
24 alone. Her time card is also on the sheet that I gave you.

25 Q So based on the statement of Mark Wickham, there's no

State v. Victor Smith 9/19/11 - 9/23/11

95

1 way he could have seen who Ernest or Victor left with; is
2 that correct?

3 A Rephrase that question one more time?

4 Q Based off of his statement --

5 A Okay.

6 Q -- he says that he left before Victor; is that right?

7 A Yeah, that's what I read.

8 Q So if he left before Victor, he could not have seen who
9 Victor or Ernest left with that night; is that correct?

10 A That would be correct.

11 Q Do you agree that the remains that were found in the
12 woods, that testing, as we speak today has come back
13 inconclusive; is that correct?

14 A After the first couple of days I was not involved in
15 the case. I don't know what the follow up forensic testing.
16 I don't know what those results are.

17 Q So you --

18 A I haven't been privy to that.

19 Q Okay. All right. Then lastly, it says that
20 Investigators spoke to several employees and they learned
21 about the missing rent money. In Mr. Wickham's statement do
22 you see the question where they ask him about the money?
23 It's on the second page?

24 A It's on the second page?

25 Q In the highlighted area.

1 A You must mean the third page?

2 Q The third page.

3 A Let's see -- Did you ever hear of any money issue
4 between Victor Smith and Ernest Robinson; is that the
5 question you're referring to?

6 Q Yes, sir.

7 A It says: No, I just knew them to hang out together.
8 Ernest just moved around.

9 Q He says he doesn't know anything about that; is that
10 correct?

11 A That's what I would infer from that.

12 Q All right. You heard Investigator Holdorf speaking,
13 and this is the last question, here about several people
14 that you guys talked to at Beef O'Brady's?

15 A Yes.

16 Q Do you know who those several people who mentioned the
17 rent money?

18 A From memory no, I can't recall. I just know we spoke
19 to several different employees and several different topics
20 of discussion over there, but I don't recall who mentioned
21 the money.

22 MR. HART: No further questions, Your Honor.

23 THE COURT: All right. Mr. Goldberg.

24 MR. GOLDBERG: I have no questions, Your Honor.

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

State v. Victor Smith 9/19/11 - 9/23/11

97

1 Anything further?

2 MR. GOLDBERG: I have no more questions, Your Honor.

3 THE COURT: All right. How about your argument, Mr.
4 Hart?

5 MR. HART: Your Honor, based off of Franks v. Delaware,
6 one of the most important parts of Franks v. Delaware is I
7 don't think that the investigators intentionally tried to
8 perjure themselves before Judge Newsome. I do think in a
9 rush to get the search warrant it was a reckless disregard.
10 I do believe --

11 THE COURT: Reckless meaning intentional. Are you
12 saying they were careless or they intended.

13 MR. HART: Well, I'm going by the language --

14 THE COURT: Okay.

15 MR. HART: -- of Franks v. Delaware.

16 THE COURT: Go ahead.

17 MR. HART: Where it talks about the reckless disregard
18 by the affiants and I think that's what has happened here,
19 because when they went to apply for the search warrant, one
20 of the statements is that forensic testing has identified
21 that the body was not shot where it was found. That was not
22 true, Your Honor. Like Investigator Holdorf said, it was
23 conjecture, there was surmise, but he didn't say that to
24 Judge Newsome. We sort of speculate. He gave a definitive
25 statement and based off of that, Your Honor -- and another

1 thing, this statement from Investigator Cronise, today's the
2 first day we've ever seen this. So we will also attach a
3 Motion in Limine and ask that that not be allowed in
4 evidence.

5 THE COURT: All right. Back up a little bit Mr. Hart.
6 Help me out. The statement from who?

7 MR. HART: Investigator Cronise says that she spoke with
8 the Mississippi Correctional Institute --

9 THE COURT: Uh-huh. (Affirmative response.)

10 MR. HART: -- who says that Victor Smith admitted that
11 he was with Ernest Robinson on the last night that Ernest
12 Robinson was seen.

13 THE COURT: All right.

14 MR. HART: We've never heard that before. This is the
15 first we're hearing it. We just got this statement this
16 morning, so we're asking that that statement in the trial
17 not be admitted into evidence, based off of that.

18 THE COURT: All right.

19 MR. HART: Continuing with the Franks v. Delaware
20 motion, Your Honor, we just think it was a reckless
21 disregard. As Investigator Holdorf said, we needed to get
22 to the apartment and get the evidence because we thought it
23 was going to be destroyed, and I think they stretched it a
24 little bit. And based off of that we just ask that the
25 Court suppress the search warrant and all the evidence that

State v. Victor Smith 9/19/11 - 9/23/11

99

1 came in with it, Your Honor.

2 THE COURT: All right.

3 Mr. Goldberg.

4 MR. GOLDBERG: Thank Your Honor. Very briefly. In
5 response to the statement by the Mississippi corrections
6 officer, we will not be seeking to introduce that in our
7 case in chief. It was merely raised today as part of this
8 hearing because it was relevant verses this hearing,
9 however, we don't plan on introduce that in our case in
10 chief.

11 Briefly, in response to his argument, it would be our
12 position that this point that he's relied on here, the
13 portion of the affidavit that talks about Victor Smith being
14 seen leaving with --

15 THE COURT: Seen or rent money. Go ahead.

16 MR. GOLDBERG: -- but well the rent money, obviously we
17 believe that Larry Williams provided some mention of that.

18 THE COURT: All right.

19 MR. GOLDBERG: But as far as leaving Beef O'Brady's that
20 night with Victor Smith, it's our position that even if that
21 statement should be taken out --

22 THE COURT: There's still probable cause for the search
23 warrant.

24 MR. GOLDBERG: Yes, sir. And in regards to the point
25 about the forensic testing of the body, that's not actually

State v. Victor Smith 9/19/11 - 9/23/11

100

1 what the affidavit said. The affidavit said there's
2 forensic evidence. It doesn't say there was testing done,
3 it says there was forensic evidence to determine that the
4 shooting did not occur at that place. It's our position
5 that the crime scene investigator and his wealth of
6 knowledge would be able to make that assertion.

7 THE COURT: All right. Thank you.

8 Anything further, gentlemen?

9 MR. GOLDBERG: Nothing further.

10 MR. HART: Nothing further.

11 THE COURT: Your motion is well considered, well made,
12 but it's denied, Mr. Hart.

13 MR. HART: Yes, sir.

14 THE COURT: For all the reasons that come into play
15 when you look at Franks v. Delaware assuming that part of
16 these statements were made to the master was false, there's
17 still probable cause, I do believe. But very interesting
18 presentation. I thank you both.

19 We will resume in the morning at 9:30.

20 Anybody's position is preserved for the record.

21 Thank you all very much. See you all at 9:30.

22 MR. GOLDBERG: Thank Your Honor.

23 MR. HART: Thank Your Honor.

24 (Court at recess for the evening at 4:56 p.m.)

25

State v. Victor Smith 9/19/11 - 9/23/11

101

1 September 20, 2011

2 (Court in session at 9:36 a.m.)

3 THE COURT: All right. Are we all ready?

4 MR. GOLDBERG: State's ready, Your Honor.

5 THE COURT: All right. There's one preliminary matter
6 that we need to put on the record that was brought to my
7 attention during the break, that there's a series of
8 photographs that the state intends to offer into evidence.
9 What's the number, Mr. Goldberg?

10 MR. GOLDBERG: This morning, there's only five.
11 Seventy-five or so.

12 THE COURT: 75 or so. And Mr. Hart, it's my
13 understanding that you object to each and every photograph?

14 MR. HART: That is correct, Your Honor.

15 THE COURT: You've looked at them all?

16 MR. HART: I've seen them all. Yes.

17 THE COURT: All right. So for right now your objection
18 is overruled.

19 MR. HART: Thank you, Your Honor.

20 THE COURT: All right. And we do this so that he won't
21 have to object to each and every photograph that's being
22 introduced. I think the discussion involved there's a
23 particularly egregious photograph, you might want to
24 specifically object to that as it's being offered, but
25 basically it's a global objection to each and every

1 photograph?

2 MR. HART: That's correct, Your Honor.

3 THE COURT: And basically we put this on the record so
4 you won't have to stand up and object every time to each
5 photograph that's being marked.

6 MR. HART: Yes, sir.

7 THE COURT: Does that cover everything, everybody. I do
8 believe that's our understanding?

9 MR. GOLDBERG: Yes, sir.

10 MR. HART: Yes, sir.

11 THE COURT: All right. Are y'all all ready?

12 MR. HART: I'll renew my motion to sequester the
13 witnesses, Your Honor.

14 THE COURT: Okay.

15 MR. HART: So that would be --

16 THE COURT: Let's see, the two lead officers are to
17 remain, and

18 MR. HART: Everybody else out.

19 THE COURT: -- you want.

20 MR. GOLDBERG: Investigator Cronise, the missing person
21 investigator.

22 THE COURT: Yeah. You want her sequestered also?

23 MR. HART: Yes, sir.

24 THE COURT: All right.

25 MR. HART: Sgt. Robertson is not a lead investigator.

State v. Victor Smith 9/19/11 - 9/23/11

103

1 THE COURT: All right.

2 We'll come get you as you're called.

3 Well, somebody will go get you as you're called. I
4 won't be involved in that.

5 MR. GOLDBERG: Your Honor, not to tell you how to do
6 your job, of course, but yesterday when the ones who were
7 excused, I don't believe the alternate was made aware that
8 he's actually --

9 THE COURT: Okay.

10 MR. GOLDBERG: -- a juror at this time.

11 THE COURT: That's fine. Are we all ready then.
12 Where's my first alternate?

13 THE CLERK: No. 298.

14 THE COURT: Will now become a member of the jury. I
15 will inform them as they come in.

16 Thank you, Mr. Goldberg.

17 MR. GOLDBERG: Yes, sir.

18 THE COURT: Mr. Dexter, you may invite them to come in,
19 sir.

20 (State's Exhibit No. 6, photo, was
21 marked for ID only.)

22 (State's Exhibit No. 7, photo, was
23 marked for ID only.)

24 (State's Exhibit No. 8, photo, was
25 marked for ID only.)

State v. Victor Smith 9/19/11 - 9/23/11

104

1 (State's Exhibit No. 9, photo, was
2 marked for ID only.)

3 (State's Exhibit No. 10, diagram,
4 was marked for ID only.)

5 (State's Exhibit No. 11, aerial
6 photograph, was marked for ID only.)

7 COURT REPORTER: Judge, State's Exhibit Nos. 6 through
8 11 for ID only.

9 THE COURT: Okay.
10 (Jury in at 10:34 a.m.)

11 THE BAILIFF: All members of the jury are present, Your
12 Honor.

13 THE COURT: All right. Welcome back to members of the
14 jury. Juror No. 298, Mr. Wren.

15 MR. WREN: Yes, sir.

16 THE COURT: You will now become a member of the 12
17 person jury. We had to excuse somebody yesterday. And you
18 will take her place. All right.

19 Please swear the jury.

20 THE CLERK: Please stand to be sworn.

21 (WHEREUPON, the jury was sworn.)

22 THE CLERK: Thank you.

23 THE COURT: Now, members of the jury what I will now say
24 is intended to serve as an introduction in the trial of this
25 case. It is not a substitute for the detailed instructions

State v. Victor Smith 9/19/11 - 9/23/11

105

1 on the law which I will give you at the close of the case
2 and before you retire to consider your verdict.

3 This is a criminal case commenced by the state, which
4 sometimes referred to as the prosecution, against Mr. Smith,
5 Victor Smith, I think it is. This case is based on an
6 indictment. I read the indictment to you yesterday. You
7 should distinctly understand ladies and gentlemen, that the
8 indictment is simply a charge and that it is not in any
9 sense evidence in the allegation it contains. The defendant
10 has pled not guilty to the indictment. The state has the
11 burden of proving each of the essential elements of the
12 indictment beyond a reasonable doubt. The purpose of the
13 trial is to determine whether the state has met this burden.
14 Your purpose as jurors is to find and determine the facts.
15 Under our system of criminal procedures you are the sole
16 judges of the facts. If at any time I should make any
17 comments regarding the facts, you are to at liberty to
18 disregard my comments. It is especially important that you
19 perform your duty of determining the facts diligently and
20 conscientiously for ordinarily there is no means of
21 correcting an erroneous determination of the facts by a
22 jury. On the other hand, and with equal emphasis, I
23 instruct you that the law as given by the Court constitutes
24 the only law given for your guidance and it is your duty to
25 accept and follow it. It is your duty to follow the law as

State v. Victor Smith 9/19/11 - 9/23/11

106

1 I give it to you, even though you may disagree with the law.
2 You are to determine the facts from the testimony you hear
3 and the other evidence you hear in court. It is up to you
4 to determine the inferences which you feel may properly be
5 drawn from the evidence. You must not consider anything you
6 may have read or heard outside the courtroom whether before
7 or during the trial. Until this case is submitted to you,
8 you must not discuss it with anyone, even with your fellow
9 jurors. After it is submitted to you, you must discuss it
10 only in the jury room and only with your fellow jurors. It
11 is important that you keep an open mind and not decide any
12 issue in the case until the case has been submitted to you
13 under the instructions of the Court. It is your added duty
14 and -- I haven't selected a foreperson yet, and I will do so
15 momentarily. The foreperson is the leader of the jury.
16 They preside and I will either select somebody or let y'all
17 elect someone sometime during the course of the day. Is
18 that understood.

19 Now, members of the jury during the trial, we have a
20 procedure, it's called objection. That's where either the
21 state or Mr. Hart can bring a possible violation of the
22 rules of presenting evidence. For this reason, you should
23 not hold an objection against the state nor should you hold
24 an objection against the defendant. Nor should you conclude
25 how I rule on an objection that I favor one side or the

State v. Victor Smith 9/19/11 - 9/23/11

107

1 other. My interest in this case, ladies and gentlemen of
2 the jury is that I have no interest except to try and insure
3 that both side receive a fair trial, the state, as well as,
4 the defendant, Mr. Smith, and that's the exact same thing
5 that you have in the case. To be fair and impartial and try
6 to make a fair and just verdict at the end. From time to
7 time it may be necessary for me to sent you out, because I
8 might have to hear some arguments on a point of law either
9 from the state or from Mr. Hart, and the only way I can do
10 that is if I sent you out. So take no special note if I sent
11 you out so I can hear some arguments on the law. You're the
12 judges of the facts, and I make all the decisions on the
13 law. That's the reason for it. So if there's an objection,
14 don't hold it against either side, nor, should you conclude
15 how I rule on the objection that I favor one side or the
16 other. I don't favor anybody. Nor should you. You should
17 hear the case in its entirety and then you go back to the
18 jury room after you've heard the arguments from the lawyers
19 and my instruction on the law. Then you begin your
20 deliberations. Until that time, as I've already said, don't
21 talk about the case in any way shape or form.

22 With that in mind, I'll invite your keen attention to
23 the opening statements on behalf of the parties, that is the
24 state, as well as, the defendant, Mr. Smith, by Mr. Hart.

25 I think we'll hear from Mr. Potts, I do believe, on

State v. Victor Smith 9/19/11 - 9/23/11

108

1 behalf of the state followed by Mr. Hart.

2 Mr. Potts, you may proceed, sir.

3 MR. HART: Just briefly before we start, I don't know if
4 I heard anything about presumption of innocence in regards
5 to Mr. Smith in your opening?

6 THE COURT: Beg pardon?

7 MR. HART: In your opening remarks, the presumption of
8 innocence. I didn't know if I heard that or not.

9 THE COURT: Well, I think I said it. But I'll be happy
10 to repeat it.

11 MR. HART: Yes, sir.

12 THE COURT: Any defendant in this country is presumed
13 innocent until proven, beyond a reasonable doubt, as I
14 instructed them earlier, Mr. Hart, it's okay. And like I
15 said, don't hold that against -- he's just doing his job.
16 Don't hold that against Mr. Hart or the defendant. He
17 didn't quite hear what I said, but y'all heard me, did you
18 not?

19 Okay. You're shaking your head as if you did.

20 In this or any other case, a criminal defendant in this
21 country is presumed innocent until proven beyond a
22 reasonable doubt. That's the standard.

23 You may proceed, Mr. Potts.

24 MR. POTTS: Thank Your Honor. May it please the Court?

25 THE COURT: Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

109

1 MR. POTTS: Good morning, ladies and gentlemen. When
2 Ernest E.J. Robinson's body was found, July 20, 2009, only
3 85 percent of the skeleton was there. His friends hadn't
4 seen him in nine months. His boss, Mark Wickham, hadn't seen
5 him in nine months. His co-workers hadn't seen him in nine
6 months. Richland County Sheriff's Department didn't know
7 where he was. His friends, his family, his neighbors,
8 almost nobody knew where he was. Only four people he
9 thought were his friends knew where Ernest Robinson was.
10 Barry Smith, Caroline , Allen Fulten, and the defendant
11 Victor Smith, only they knew where Ernest Robinson was.

12 You see back on September 27, 2008, Victor Smith, the
13 defendant, was sure that E.J. had done something against
14 him, whether real or imagined. So he invited E.J. over to
15 his house. E.J. came after work, smoked some pot, played
16 some video games, and when the time was right Allen Fulten,
17 Barry Smith, Jeremiah Jones, and the defendant, attacked
18 E.J. Robinson. At first they beat him with their fist.
19 When he was on the ground, they kicked him. Soon he picked
20 up a brick and began to bash him in the face. Then they got
21 a dumbbell, lifted it up, dropped it on his back, heard a
22 pop. When they were all finished Victor went and got a gun
23 knelt down next to E.J. and shot him once in the head.

24 When Nolan Martin found E.J.'s body just 100 yards away
25 from Victor's apartment 85 percent of his bones were there.

State v. Victor Smith 9/19/11 - 9/23/11

110

1 His face was gone, fingers, gone. Entire left foot was
2 gone. He had a 9 millimeter hole in the side of his head.

3 Ladies and gentlemen, because of their actions that
4 night Victor Smith was charged with murder. I have here in
5 front of me the copy of the indictment. I'm going to read it
6 to you. At the Court of General Sessions convened on
7 February 10, 2010, the Grand Jurors of Richland County upon
8 their oath found that Victor Wayne Smith, did in Richland
9 County on or about September 27, 2008, feloniously,
10 willfully, and with malice aforethought kill one Ernest
11 Robinson, and that said victim died as a proximate result
12 thereof all in violation of SC code of laws 16-3-10.

13 Now, Mr. Smith is charged with murder. Murder is very
14 simple. Basically, it's the unlawful killing of persons
15 with malice aforethought. And what malice, malice is a term
16 of art. What it means is that your heart is void of social
17 duty. Your heart is fatally bent on mischief. Okay.

18 Now, your role is to be the judges of the facts.
19 You're all wearing your own, metaphor, black robes. Your
20 job is to determine what happened that day. My job, along
21 with Deputy Solicitor Goldberg, is to prove to you beyond a
22 reasonable doubt that Victor Smith murdered Ernest Robinson.

23 Now, beyond a reasonable doubt is a high standard.
24 It's the highest standard there is in law. You're going to
25 ask yourself, well, what is reasonable doubt. There are a

State v. Victor Smith 9/19/11 - 9/23/11

111

1 few things in life that we know for certain. It doesn't
2 mean beyond all doubt. It doesn't mean you don't have a
3 doubt in your mind. But doubt that leaves you firmly
4 convinced. If you knew for certain what happened that
5 evening, you'd be an eyewitness. You'd be on our witness
6 list and you wouldn't be sitting in the jury box. That's
7 why we're going to prove to you beyond a reasonable doubt.

8 Now, further -- you will hear from Ernest's friends,
9 people telling you about how he disappeared December 27.
10 You're going to hear about Richland County's investigation.
11 Investigator Holdorf, Investigator Cronise. Investigator
12 Cronise started with the missing persons investigation,
13 because for those first nine months before the body was
14 found there wasn't a murder investigation. It was an
15 investigation of a missing person. Then based on her
16 evidence the investigation continued.

17 Now, you're also going to hear from Gray Amick from
18 Richland County, and he's going to tell you that body, by
19 the time they found it they couldn't get any DNA off of it.
20 So if you're wondering to yourself how do we know that's
21 Ernest Robinson.

22 Well, you're going to hear from Bill Stephens at the
23 Coroner's Office. He's going to tell you he's an
24 anthropologist. They look at bones, they can tell you all
25 sorts of things about them. And you're also going to hear

State v. Victor Smith 9/19/11 - 9/23/11

112

1 from Jeremiah Jones, Barry Smith, and Allen Fulten. They're
2 going to tell you their own versions of what happened that
3 night. They're going to tell you about the plan; beat up
4 E.J. and see if he stole Victor's rent money. They're going
5 to tell you about the brick and about the gun. They're also
6 going to tell you about how they tried to clean it all up.
7 They're going to tell you how they got bleach and scrubbed
8 the carpet. They're going to tell you how the spot painted
9 on one of the walls. Tell you about how this all happened
10 in Victor's apartment. They're going to tell you about how
11 they took Victor's shower curtain and wrapped E.J. up.
12 They're going to tell you how they took the belts out of
13 their pants and tied his body up. They're going to tell you
14 how they walked 100 yards, dumped the body into the ravine.

15 You're also going to hear from Richland County CSI Stan
16 Richards, and they're going to tell you how they went to
17 Victor's apartment, Apartment [REDACTED] Northstone. When they got
18 there the back bedroom had little tiny spots of paint all
19 over the walls, and how when they removed the carpet the pad
20 was brown, the kind of brown you get when you have dried
21 blood.

22 Now, these co-defendants, and I call them
23 co-defendants, because Jeremiah Jones, Barry Smith, and
24 Allen Fulten, they're part of the murder, too. They're not
25 coming forward today and they're not coming to talk to you

State v. Victor Smith 9/19/11 - 9/23/11

113

1 out of the goodness of their hearts. They are all charged
2 with murder, because in this state the hand of one is the
3 hand of all. It didn't matter who shot, didn't matter who
4 shot E.J. Fact of the matter, is they were all working
5 together. What was a surprise was they knew it from the
6 beginning, it doesn't matter who pulled that trigger. As
7 far as the law is concerned is that they all did it. So
8 don't think they're coming to you because they're great
9 guys, they're not. But they are going to talk to you.

10 Finally, you're going to hear what Victor told other
11 people. You're going to hear that he told Investigator
12 Holdorf that E.J. came over to his house that night after
13 work, and that he was the last person to see E.J. alive, and
14 you're also going to hear from his girlfriend, about how one
15 night he woke her up and told her that he shot Ernest
16 Robinson.

17 Ladies and gentlemen of the jury, Ernest Robinson's
18 death is no long a secret. He is no longer the skeleton in
19 the closet. I ask you to shine a light on what happened
20 that day. I ask you to expose what happened. I'm going to
21 ask you for the final verdict that speaks the truth, the
22 verdict of guilty. Victor Smith killed Ernest Robinson.

23 Thank you very much.

24 THE COURT: Mr. Hart.

25 MR. HART: Good morning, ladies and gentlemen. I sat

1 there as I listened to the government make their opening
2 remarks, and I waited and I waited, and I waited for them to
3 tell you the three most important things in this trial.

4 Number one, ladies and gentlemen, they left out an
5 important part in their remarks. The evidence will show, in
6 this case, that the remains have never been positively
7 identified as Ernest Robinson's. They failed to tell you
8 that.

9 Secondly, you won't hear any physical evidence that
10 connects Victor Smith to this crime. Over 100 pieces of
11 physical evidence. Nothing connects Victor Smith to this
12 crime. They failed to tell you that. I waited and they
13 didn't tell you.

14 Number three, and this point, it is not the most
15 important point, it's definitely one of them. October 21,
16 2008, you may wonder why is that date so important? We
17 believe the evidence is going to show -- they say the crime
18 happened September 27, 2008. The evidence is going to show
19 that a police responded to this apartment on October 21,
20 2008, approximately three weeks later. But the evidence
21 wasn't recovered as you will hear, until July, 2009.
22 Approximately three weeks later. They failed to tell you
23 that. They failed to show you and here's why. If you will
24 hear -- if the evidence was there in July of 2009, it was
25 there on October 21, 2008, when the police responded, and

State v. Victor Smith 9/19/11 - 9/23/11

115

1 you will hear that they searched that apartment and they
2 didn't get any evidence out of that apartment.

3 But what's even more striking about October 21, ladies
4 and gentlemen, you will hear on this date, Victor Smith, he
5 left that apartment, on October 21, 2008, and he's never
6 been back to that apartment since then.

7 Here's why we believe the government didn't tell you
8 that in opening remarks and that's because the wrong person
9 is on trial here. Ladies and gentlemen, the wrong person
10 sits at that table, Victor Smith. It's unfortunate that
11 we're here today because something happened, but Victor
12 Smith is not responsible for it, ladies and gentlemen.

13 As noted by Judge Manning, Victor Smith is presumed
14 innocent and that presumption remains with him unless you,
15 as jurors, find him guilty beyond a reasonable doubt.

16 Let me mention at the very beginning, something that
17 scares me and something that I'm afraid of in this case.
18 You will see a lot of evidence come into this courtroom.
19 Over 103 pieces of physical evidence. You will probably see
20 a lot of photographs concerning this case. Here's what
21 scares me about that. That evidence was taken from the
22 apartment where Victor Smith lived. That evidence was taken
23 from the apartment that was listed in his name. But we
24 stand firmly that Victor Smith didn't have anything to do
25 with what took place.

1 Now, ladies and gentlemen, here's the critical issue in
2 this case. It goes back to what we talked about in the
3 beginning. Will they bring into this courtroom that says
4 those remains that were found in the woods belonged to
5 Ernest Robinson? They have to prove that to you beyond a
6 reasonable doubt. Secondly, is there any physical evidence
7 that links Victor Smith to this crime? We don't believe
8 you're going to hear any evidence, ladies and gentlemen, and
9 they have to prove that to you beyond a reasonable doubt.

10 And lastly, October 21, 2008, the date Victor Smith
11 left that apartment and never showed up again. Can they
12 prove to you beyond a reasonable doubt that the crime
13 happened before October 21, 2008?

14 We don't expect the evidence to do that, ladies and
15 gentlemen. We don't expect to hear any physical evidence
16 that connects Victor Smith to the crime. Absolutely none.

17 The government wants you to do the job that they didn't
18 do. They want you to piece this puzzle together to convict
19 Victor Smith. This entire case will come on this, ladies
20 and gentlemen. Their entire case will rest upon -- see,
21 while the government was speaking they didn't call out the
22 real names of the people that will come and take the stand
23 that you can expect to hear from. Smurf, Man-man,
24 Franchise, and Jazzy. That's who we're expecting to hear
25 from ladies and gentlemen, and we don't expect the evidence

State v. Victor Smith 9/19/11 - 9/23/11

117

1 to show that Victor Smith's fingerprints, his hair, his
2 clothing, his skin. Nothing is going to connect him to this
3 crime, but we do expect to hear from these people right
4 here. We expect them to bring those people in here to take
5 the stand and you won't be able to believe one word that
6 comes out of their mouths. Here's why. We expect that when
7 the police first talked to them they didn't tell the truth.
8 So what makes them tell the truth now? Each one; Smurf,
9 Man-man, Franchise, and Jazzy. We expect them to have their
10 very own personal version of the truth, ladies and
11 gentlemen.

12 Secondly, we expect the Sheriff's Department to take
13 the stand. We're going to ask some questions, and as you
14 will see, we will ask them some very straightforward
15 questions, very direct questions. We ask you to pay very
16 close attention to how they respond to the questions that
17 come to them. We believe that we expect you to hear how
18 they will dance and how they will circle around the answer,
19 but it's a very straightforward questions.

20 The government in this case has the burden of proof.
21 It's beyond a reasonable doubt. They must prove this case to
22 you beyond a reasonable doubt.

23 Let's stop for a second and let's talk about reasonable
24 doubt. Reasonable doubt is that doubt that causes you to
25 hesitate to act. It's that doubt that causes you to say,

State v. Victor Smith 9/19/11 - 9/23/11

118

1 hey, wait a minute. Something's not right about this case.
2 Something's wrong with the details of this case. It makes
3 you say, wait a minute, that witness, something's not right
4 about that witness. Ladies and gentlemen, when you have that
5 doubt the law requires you to resolve that in favor of
6 Victor Smith.

7 Let me tell you about Victor. Stand up for a second,
8 Victor.

9 Victor was born and raised right here in Columbia. He
10 attended Ridgeview High School. He has the full love and
11 support of his family and his friends.

12 At the end of this trial, ladies and gentlemen, you
13 will boil this thing down to one thing, did the government
14 prove this case to you beyond a reasonable doubt.

15 In closing, ladies and gentlemen, we believe the
16 evidence will show that the wrong person is on trial. That
17 Victor Smith should not be here. Therefore, we ask you to
18 hold the government to their burden of proof, of proving
19 this case to you, beyond a reasonable doubt.

20 We ask you to carefully consider all of the evidence,
21 but you know what is more important to that as they failed
22 to tell you in opening remarks those three important things,
23 we ask you to consider the lack of evidence in this case.
24 We're confident that after considering all the evidence you
25 will conclude that Victor Smith shouldn't be here.

A I'm a professional land surveyor. I work for Cox and

State v. Victor Smith 9/19/11 - 9/23/11

120

1 Dinkins. I've been surveying for about seven years. I
2 moved here from Greenville about five years ago.

3 Q When you say surveyor, professional surveyor, can you
4 tell us a little bit about what that entails?

5 A We go out and measure distances, with an electronic
6 distance measuring machine and angles and verify how far
7 things are apart, basically.

8 Q Generally, what is the purpose of that now days?

9 A A lot of times it's for closing surveys and design
10 surveys if people want to design, design work for engineers,
11 and stuff like that.

12 Q And you said you've been in that about seven years?

13 A Yes, sir.

14 Q And were you doing that kind of work back in July of
15 2009?

16 A Yes.

17 Q And actually, specifically, July 20, 2009, were you
18 working a job out in the Elders Pond area of Richland
19 County?

20 A Yes.

21 Q Is that out in the Northeast part of town off of
22 Hardscrabble Road?

23 A Yes.

24 Q Let me show you what's been marked as State's No. 1 for
25 identification. Do you recognize this item?

State v. Victor Smith 9/19/11 - 9/23/11

121

1 A Yes, I do.

2 Q And what is that?

3 A That's a plat of the Northstone apartments.

4 Q And is that where you went to on July 20, 2009?

5 A Yes, sir.

6 MR. GOLDBERG: At this time, we'd offer State's No. 1
7 into evidence.

8 MR. HART: No objection.

9 THE COURT: Without objection. No. 1 --

10 MR. GOLDBERG: Excuse me. State's No. 5. Thank you.

11 THE COURT: Number five.

12 (State's Exhibit No. 5, plat, was
13 marked and entered.)

14 BY MR. GOLDBERG:

15 Q Now, can you just describe to the jury a little bit
16 about your response to that area, where you were going and
17 what you were doing?

18 A I was surveying the retention pond area for the
19 apartment complex, which is actually down in here.

20 Q Okay. Make sure you keep your voice up, sir, so the
21 jury can hear you.

22 As you were walking around in that area what, if
23 anything, did you observe?

24 A As I was walking around, I noticed something laying on
25 the ground. It appeared to be wrapped up in something and I

1 had a belt tied around it.

2 Q Did it appear to be something natural, possibly a
3 person?

4 A Yes. Not a land feature.

5 Q Not a land feature. Once you saw that what did you do?

6 A First thing I did, I called my co-worker on the radio
7 and got him to come down to verify what we thought it was.

8 Q And you said you were down near a detention pond, was
9 this actually in the detention pond?

10 A It was not in it. The body was on a slope going down
11 towards the detention pond.

12 Q Can you describe the detention terrain around where
13 this was found?

14 A There was a lot of underbrush, a lot of young pine
15 trees and a lot of pine needles covering the area.

16 Q So is it fair to say it was pretty thick?

17 A It was really thick.

18 Q Upon seeing this, what did you do; did you approach it,
19 touch it, alter it in any way?

20 A I did not touch it at all.

21 Q You said you called one of your co-workers?

22 A He come down there. He did not touch it at all.

23 Q And did y'all confer about what you thought it was?

24 A Yes, sir.

25 Q Okay. And at that point what did you decide was the

State v. Victor Smith 9/19/11 - 9/23/11

123

1 best course of action?

2 A At that point, I called my supervisor at Cox and
3 Dinkins and he drove to the site to verify what he thought
4 it was.

5 Q And what did you believe it to be?

6 A It appeared to be a body.

7 Q And based upon that was the Sheriff's Department
8 notified?

9 A My supervisor, when he arrived on the site, verified
10 what he thought it was and he called.

11 Q How long did it take for the Sheriff's Department to
12 respond out there?

13 A Probably five minutes.

14 Q Did you touch or alter the body in any way?

15 A We actually walked back up the hill. We stayed by the
16 buildings up here. We did not go back down to the site.

17 Q And would that be by Buildings 15 and 16?

18 A I believe -- I can't really see which one -- we stayed
19 about right there.

20 Q And once the Sheriff's Department arrived, did you go
21 back down and show them what you're found?

22 A Yes.

23 Q After that did you have any additional involvement?

24 A We helped the crime scene investigators located the
25 best possible way to get inside the detention pond area.

1 Q Okay. You didn't actually see or collect anything?

2 A I did not actually pick up anything.

3 Q And can you describe a little bit about what you saw
4 again; was around these bones, what it was wrapped in?

5 A It appeared to be some kind of plastic. You could make
6 out the outline of a skeleton, but it had what looked like a
7 belt wrapped around it, cinched real tight.

8 Q All right. Thank you. That's all I have. Please
9 answer any questions Mr. Hart has.

10 THE COURT: Mr. Hart.

11 NOLAN MARTIN - CROSS-EXAMINATION

12 BY MR. HART:

13 Q Mr. Martin, how long were you out there before you saw
14 --

15 A I think it might have been a day.

16 Q You'd been out there a whole entire day?

17 A Actually, it's like all these sites.

18 Q About what was the temperature?

19 A I think it was pretty warm, probably in the 90s.

20 Q I'm sorry, go ahead?

21 A Think it was probably in the 90s.

22 Q This was around July?

23 A Yes, sir.

24 Q Summertime? Do you remember anything dealing with the
25 humidity, how -- was it real thick and muggy?

State v. Victor Smith 9/19/11 - 9/23/11

125

1 A No, sir, I do not remember.

2 Q Did you notice any animals, wild animals, maybe possums
3 or anything in the woods?

4 A No, sir.

5 Q And after you contacted the investigators that was it,
6 you had no more involvement; is that correct?

7 A Yes, sir.

8 Q Okay. Thank you.

9 MR. HART: No further questions.

10 THE COURT: All right. Anything further for this
11 witness?

12 MR. GOLDBERG: Briefly, Your Honor.

13 THE COURT: Yes. Go ahead.

14 NOLAN MARTIN - REDIRECT EXAMINATION

15 BY MR. GOLDBERG:

16 Q You said the detention pond down there, was there a
17 fence or anything around that?

18 A Yes, sir, there is a fence around the detention pond.

19 Q And there is also a fence separating the buildings from
20 the area you were in?

21 A Yes, sir.

22 Q All right. Thank you, sir.

23 THE COURT: Anything further, Mr. Hart?

24 MR. HART: Nothing further.

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

1 MR. GOLDBERG: May this witness be excused, Your Honor.

2 THE COURT: Any objection?

3 MR. HART: No objection.

4 THE COURT: All right.

5 Call your next witness.

6 MR. POTTS: State calls Robert Moreland.

7 (WHEREUPON, Robert Moreland was
8 sworn to tell the truth.)

9 THE CLERK: Have a seat in the witness box and state
10 your name for the record, please.

11 MR. MORELAND: Robert Moreland.

12 ROBERT MORELAND - DIRECT EXAMINATION

13 BY MR. POTTS:

14 Q Deputy Moreland, please tell the jury a little bit
15 about yourself?

16 A I'm with the Richland County Sheriff's Department. I'm
17 a field training officer. I've been with the department for
18 over six years.

19 Q What were your duties back on July 20, 2009?

20 A July 20, 2009, I was a field training officer, training
21 Deputy Taylor.

22 Q Were you on duty that day?

23 A I was.

24 Q And you responded to a call?

25 A I did.

State v. Victor Smith 9/19/11 - 9/23/11

127

1 Q Please tell me about that?

2 A We got a call that came in, I believe, at 14:51, which
3 is 2:51 in the afternoon, p.m., for what appeared to be a
4 found body. Responded to, I believe it was [REDACTED] Elders Pond
5 Circle behind Building 16. I responded there, made contact
6 with the complainant, who was a Mr. Martin. He was on a
7 surveying crew. While, I guess, while they were on a survey
8 he found what appeared to be human remains. He had two
9 other guys on his crew, they can come and they looked --
10 well, he was looking at it, also. This was going to be
11 human. So made contact with him, showed me where the body
12 was located. Me and my partner walked down too and looked
13 at it. This is going to be human.

14 Q Is it unusual to be called like that?

15 A Well, we get them every now and then. I wouldn't say
16 it was unusual.

17 Q How often is it human remains?

18 A Most often it's going to be a dog or a deer. but not
19 very often is it human.

20 Q Once you saw the remains did you make any sort of
21 preliminary -- did it look human?

22 A Well, yeah, it looked human to me.

23 Q Now, what did you do at that point?

24 A At that point we left the area, stepped back out,
25 initiated a crime scene. Put the tape up, started a crime

State v. Victor Smith 9/19/11 - 9/23/11

128

1 scene log. Started making the note cases that needed to be
2 made to the crime scene. Lab units and also the
3 investigators and the coroner's office and also I think EMS.

4 MR. HART: Yeah, we'll renew our objection to the
5 photographs, Nos. 9, 7, and 8.

6 THE COURT: Basis?

7 MR. HART: And specifically State's Exhibit No. 6, I
8 believe they are highly prejudicial and it outweighs the
9 probative value.

10 THE COURT: Overruled.

11 MR. HART: Thank you, Your Honor.

12 THE COURT: All right.

13 BY MR. POTTS:

14 Q Now, I want to show you what's been marked as State's
15 Exhibit Nos. 6, 7, 8, and 9.

16 A All right. No. 6, is basically how the body was lying
17 in the woods.

18 MR. POTTS: Your Honor, we offer State's No. 6 into
19 evidence.

20 THE COURT: Yes. They're in, over his objection. Nos.
21 6, 7, 8, and 9.

22 (State's Exhibit No. 6, photo, was
23 marked and entered.)

24 (State's Exhibit No. 7, photo, was
25 marked and entered.)

State v. Victor Smith 9/19/11 - 9/23/11

129

1 (State's Exhibit No. 8, photo, was
2 marked and entered.)

3 (State's Exhibit No. 9, photo, was
4 marked and entered.)

5 BY MR. POTTS:

6 Q Six, is the body you saw there that day?

7 A Yes, sir.

8 Q It's true and accurate and reflects?

9 A Yes, sir.

10 Q And then what are the other ones?

11 A This one is No. 9. And this is kind of a wooded area
12 elevated behind the building looking down. We had to go down
13 a bank to actually get to where the body was back in the
14 woods.

15 No. 7, and again this is looking back from the body in
16 the trees where the body was at actually lying.

17 Q A little bit closer than the previous one?

18 A Oh, yes, sir.

19 Q Okay.

20 A And No. 8, is down near the body looking back up toward
21 where Building 16 would be.

22 Q Okay. All that's accurate reflections of what you saw
23 that day?

24 A Yes.

25 Q So after you had sealed the scene with the crime tape

1 --

2 A Yes, sir.

3 Q -- and called the CSI and the investigators, did you do
4 anything else?

5 A No, sir. Only other thing I did was do the initial
6 report.

7 MR. POTTS: Beg the Court's indulgence one second.

8 THE COURT: Yes.

9 MR. POTTS: No further questions. Answer any questions
10 Mr. Hart has for you.

11 ROBERT MORELAND - CROSS-EXAMINATION

12 BY MR. HART:

13 Q Deputy Moreland, you don't know how long that the
14 remains had been out in the woods do you?

15 A I have no idea.

16 Q You don't know who all had access to the remains,
17 correct?

18 A I do not.

19 Q Do you remember the approximate temperature during that
20 time?

21 A Warm. It was July 20, so --

22 Q South Carolina in July is pretty hot?

23 A It's pretty warm.

24 Q And most times in July it's pretty muggy and humid?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

131

1 Q When you arrived did you notice any foul smell at all?

2 A I didn't.

3 Q You didn't. Okay. I want to go back to -- Do you agree
4 what I'm pointing to on State's Exhibit No. 5, that's the
5 detention pond, correct?

6 A Yes.

7 Q Would you be able to identify where approximately where
8 the body was found?

9 A 16 is the building and down this way.

10 Q About right there. And you agree that's pretty close
11 to those apartment complexes, isn't that right?

12 A Yes, sir.

13 Q Did you ever receive a call about a foul smell at all?

14 A Before -- I do not work that area. I was just there
15 that day with a trainee. I have no clue what type calls
16 that they've had there within the past. I did not
17 personally.

18 Q Okay. And you don't have any knowledge of anyone
19 calling about a foul smell?

20 A I do not, no, sir.

21 Q Okay.

22 MR. HART: No further questions, Your Honor.

23 THE COURT: Anything on redirect, Mr. Potts?

24 MR. POTTS: No, Your Honor.

25 THE COURT: You may step down, Officer Moreland.

1 MR. POTTS: Your Honor, may he be excused?

2 THE COURT: Yes. I'm sure. Any objections?

3 MR. HART: No objection.

4 THE COURT: You may call your next witness.

5 MR. GOLDBERG: State calls Sgt. Robinson.

6 (WHEREUPON, Donald Robinson was
7 sworn to tell the truth.)

8 THE CLERK: Have a seat in the witness box. State your
9 name for the record.

10 MR. ROBINSON: My name is Donald Robinson.

11 DONALD ROBINSON - DIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q Sgt. Robinson, where are you employed?

14 A Richland County Sheriff's Department.

15 Q How long have you been with the department?

16 A 19 years.

17 Q And can you describe what your duties have been over
18 those 19 years?

19 A Over the 19 years. I started out as a uniform officer
20 on patrol, and from that point I was promoted to
21 investigative division. I've been an investigator probably
22 14 years now. I'm currently the sergeant over the burglary
23 unit, supervisor of the burglary unit. I've been sergeant
24 over narcotics, before. I've been over the major crimes
25 unit, as well.

State v. Victor Smith 9/19/11 - 9/23/11

133

1 Q Back in July of 2009, what were your duties then?

2 A Back in 2009, I was still a supervisor of our major
3 crimes unit and also a supervisor -- we have a shift of
4 investigators that work on the evening shift. And I was
5 supervisor of that, as well.

6 Q When you say major crimes, what does that entail?

7 A Major crimes is a unit where we receive and assign
8 cases, probably the most heinous crimes, anywhere from
9 murder to aggravated assault. Shootings, stabbing, stuff
10 like that. Armed robberies.

11 Q Back on July 20, 2009, did you respond out to [REDACTED] Elder
12 Pond Circle?

13 A I did.

14 Q Is that here in Richland County?

15 A It is in Richland County.

16 Q Okay, and what was the nature of the call you responded
17 to?

18 A Initially, it was a group of surveyors that were there
19 -- they were doing surveyor work on the property behind the
20 apartment complex, and we were there because they had found
21 a -- turned out to be later on a body wrapped in a shower
22 curtain type material, in the woods in the area where they
23 were doing their work.

24 Q Upon arriving on the scene what was your first action?

25 A The first thing I did was I arrived there. I saw the

State v. Victor Smith 9/19/11 - 9/23/11

134

1 uniformed division has responded prior to my arriving. First
2 thing I did was made sure the crime scene was roped off,
3 made sure it was secure, no one else could enter. Secured
4 that area and then I started organizing the coroner's
5 office, organizing with our forensic unit to a point where I
6 could look at that item to see if there was some validity to
7 their claim, what they had found. I did observe it. And --

8 Q I'm sorry. Can you describe a little bit of the
9 terrain of where these remains were found?

10 A Sure. There's a -- I guess the building of the
11 apartment complex --

12 Q You're referring to State's No. 5?

13 A This photo right here, you can see these two buildings
14 of the apartment complex on the side here there is a chain
15 link fence that runs -- it's right beside these AC units,
16 which is maybe 10 to 12 feet behind these AC units on these
17 buildings, just on this side over here is a large -- trash
18 area or dump area for the apartments. Just on the other
19 side of the fence you will see where the slope takes a
20 drastic decline in there and leads into an irrigation pond
21 or detention pond right here in this little back section
22 here. So there's a little stretch of woods in that declines
23 and works it's way into the detention pond. That would be
24 maybe 40 feet in width, 40 to 50 width with all pine trees
25 and heavy brush. Pine trees are fully grown there and it's

State v. Victor Smith 9/19/11 - 9/23/11

135

1 not small brush. It's a wooded area.

2 Q Let me show you what's been marked as State's No. 11,
3 and ask you if you recognize this; what do you recognize
4 this to be?

5 A This looks like the apartment complex.

6 MR. GOLDBERG: At this time, I'd offer State's No. 11 in
7 evidence.

8 MR. HART: No objection, Your Honor.

9 THE COURT: Is it a photograph?

10 MR. GOLDBERG: Yes, sir.

11 (State's Exhibit No. 11, photo, was
12 marked and entered.)

13 BY MR. GOLDBERG:

14 Q Go ahead --

15 A I see the top of the buildings, but this is the office
16 area right here. This is the fence line where there chain
17 link fence is, right here. The garbage cans there. These
18 two buildings right here by the fence. There's one little
19 gate area right there where you can actually walk through
20 and access to get to the fenced area.

21 Q And also the area from that fence behind the building
22 to where the remains were found, is that flat surface or
23 does it have some sort of a bank?

24 A This right here is flat, but once you hit that fence it
25 starts to decline. And right here, right there is where the

1 body was laying.

2 Q Did you have any chance to observe the body and see
3 what everybody else was about, what was your next move?

4 A The next move from our standpoint is coordination.
5 What we do is we speak to each witness, people that called
6 in, secured everything, and we got our forensics unit, have
7 them there, have them respond and start to take over the
8 investigation part of that body.

9 Q In fact, did Sgt. Richards respond to the scene?

10 A He did.

11 Q Is he the sergeant over the crime scene unit?

12 A He is.

13 Q Based upon his observations at that point, what did you
14 learn about the nature of the injuries to the victim?

15 MR. HART: Objection, Your Honor.

16 Sgt. Robinson can't talk about the observations of Sgt.
17 Richards.

18 THE COURT: What was the question?

19 MR. GOLDBERG: The question was based upon conversations
20 with Sgt. Richards, and observations of the body what did
21 you observe about injuries to the body.

22 THE COURT: What's your objection?

23 MR. HART: That's just a backdoor way of getting hearsay
24 in.

25 THE COURT: Just tell us what you saw.

State v. Victor Smith 9/19/11 - 9/23/11

137

1 A When I was there, I conferred with Sgt. Richards on the
2 scene. I, myself, I didn't get too close to the body. The
3 closest that I had gotten was about two and a-half, three
4 feet to it, but I didn't open it up and examine it and all
5 that stuff like that. I left that part to Sgt. Richards and
6 his unit. I didn't want to disturb and contaminate that.

7 Q Once you did that, did you actually go around to
8 different apartments in complex?

9 A We did. We did what is referred to as a canvas. What
10 we do is try to go to each apartment in each building to try
11 to locate any possible witnesses. Any one who may have
12 heard anything, seen anything. Any one who could help with
13 the investigation at all.

14 Q And what was the results of that canvas?

15 A It was -- some people. We tried to do well. We left
16 cards there. We spoke to a few people, one or two people in
17 that time frame, and we just didn't get anything that really
18 helped out.

19 Q At some point, did you then make contact with
20 Investigator Holdorf?

21 A Oh, yes.

22 Q Why is it you contacted him?

23 A Once I knew that we had a body, and I knew there was
24 the potential for a murder investigation, the first thing I
25 do is I call in -- we have what's called a primary and a

State v. Victor Smith 9/19/11 - 9/23/11

138

1 secondary, and the way our evening shifts run and the way we
2 handle things is Investigator Holdorf is the primary
3 assigned to my shift. So as a supervisor, what we do is we
4 get the call. I kind of direct traffic as to which
5 investigator to assign things, which investigator to handle
6 things at the moment. But once we knew that the potential
7 is there for a murder investigation we call in the primary,
8 and the primary is the one that's going to come in, take
9 over, and run with it and is the primary investigator of
10 this murder will assign a secondary to help him and then for
11 the first few days I remained involved and make sure it's
12 going in the direction of the investigation and kind of fold
13 it into him to take over. He's fully capable to handle the
14 full investigation.

15 Q So Holdorf would have been the primary?

16 A That's correct.

17 Q While you were still involved in the investigation did
18 you learn about a missing persons case in that area?

19 A I did. I learned through out investigation with
20 Holdorf.

21 Q And who did you learn the subject of that missing
22 person to be?

23 A The subject was Ernest Robinson. I think he went by
24 the nickname of E.J.

25 Q And what, if anything, did you learn about E.J. in that

State v. Victor Smith 9/19/11 - 9/23/11

139

1 area?

2 A I had learned that E.J. was sort of temporarily
3 residing with, I guess, Victor Smith --

4 MR. HART: Objection, Your Honor.

5 THE COURT: Basis?

6 MR. HART: Hearsay, Your Honor.

7 THE COURT: What did he learn as a result of the
8 investigation. That's not hearsay. Overruled. This is
9 police work. Go ahead.

10 A Through the investigation I learned that Ernest was
11 actually living in the apartment complex. He was living
12 with Victor Smith and Victor Smith's girlfriend, Jazmine
13 Bright, I believe is her name. We also learned that he was
14 a current employee of Beef O'Brady's on Hardscrabble.

15 BY MR. GOLDBERG:

16 Q Now, on State's 11, kind of orient the jury to what
17 they're looking at here.

18 A Okay. The pond here, this is the apartment complex.
19 Yeah, this is the complex here. This is the area we're
20 talking about, where the body was found behind these woods.
21 When you come out of the neighborhood, and come back up
22 Elders Pond, right back down there, you'll approach
23 Hardscrabble Road, in Northeast Columbia, is a very private
24 area. I think this right here would be Beef O'Brady's, if
25 I'm not mistaken. Yeah, that's a little shopping center

1 here.

2 Q And you learned that Ernest Robinson was, in fact, an
3 employee of Beef O'Brady's?

4 A Yes, sir.

5 Q I believe you said he was known to hang out with Victor
6 Smith?

7 A They were friends of some sort.

8 Q The next day, July 21, 2009, what did you locate?

9 A That morning on the 21, that's when we had our
10 briefing. That was a Monday morning. What we do when we
11 have a briefing is we have other supervisors that we advise
12 on what we'd learned. We had the captain, our chief, deputy
13 chief. We have an advisement issue, we meet with the
14 forensic supervisors, all the ones that participated at the
15 scene, and we have a briefing. We get everybody together
16 and we determine the strategy of the investigation. Who are
17 the potential suspects, and devise a plan of attack, who to
18 go, where to go. What we do is also, we solicit the help of
19 other investigators. It won't be just me or him. When you
20 have a situation like this you can have five or six, seven,
21 eight investigators coming in to help. Everybody has a
22 task. You kind of coordinate that and get everybody going.
23 So you may have people going in different directions when
24 you have this kind of case. And the whole purpose of that
25 is so you can get through this as quick as possible.

State v. Victor Smith 9/19/11 - 9/23/11

141

1 Q What information did you learn during that briefing
2 about the nature of the body, how it got to the point that
3 it was?

4 A What I had learned was I learned that it was confirmed
5 that it was a body --

6 MR. HART: Objection, Your Honor. Again, during the
7 investigation --

8 THE COURT: Y'all approach, please.

9 (Off the record bench conference with counsel and the
10 Court.)

11 THE COURT: Members of the jury, there's a matter of law
12 that I need to take up. The only way I can do that is in
13 your absence. Please don't talk about this case. I'll
14 bring you back out, shortly.

15 (Jury out at 11:38 a.m.)

16 THE COURT: Yes, sir, Mr. Hart.

17 MR. HART: Yes, sir. Thank Your Honor. Please the
18 Court. My objection is based off the question that Mr.
19 Goldberg asked Sgt. Robinson; what did you learn through
20 your -- this was the interview of -- I'm sorry, this was the
21 briefing on 7/21/2009. Well, if he doesn't have direct
22 knowledge of it, someone told him this. He's --

23 THE COURT: You're saying when you use an out of court
24 statement for the truth of the matter asserted. Okay. Go
25 ahead.

1 MR. HART: He's saying it was a body. He's using it for
2 the truth of the matter asserted, because he wants to show
3 that this was an actual body.

4 THE COURT: All right.

5 MR. HART: So it is hearsay, Your Honor.

6 THE COURT: That's your position. Solicitor?

7 MR. GOLDBERG: It's our position it's not --

8 THE COURT: I agree. Overruled.

9 Let's take a short break.

10 (Court in recess at 11:39 a.m.)

11 (Court in session after break at 11:55 a.m.)

12 THE COURT: As I was walking down on the hall one of
13 the jurors asked the bailiffs whether or not they could take
14 notes. Usually, in my preliminary instructions I tell them
15 not to, when they come in as a result of that I say, no,
16 I've asked you not to take notes. Just use your memory, so
17 y'all can make a fair decision, and the usual thing, if you
18 take notes you write down an error or mistake you do more
19 harm than help. So that's what I'll tell them.

20 MR. GOLDBERG: Yes, sir.

21 THE COURT: Everything else is okay, anything we need to
22 take up before they come back in?

23 MR. GOLDBERG: No, sir.

24 THE COURT: I'll mention that and tell them what the
25 bailiffs said to me.

State v. Victor Smith 9/19/11 - 9/23/11

143

1 So, bring them in.

2 (Jury in at 11:56 a.m)

3 THE BAILIFF: All jurors are present, Your Honor.

4 THE COURT: Welcome back.

5 Members of the jury, as I told you this morning that
6 there is an objection and I have to send you out, don't hold
7 that against anybody, that's just the way the procedure
8 works, that's the way you have to do it. The only way I can
9 hear legal arguments is in your absence. On occasion I
10 bring the lawyers up and we try to whisper, but sometimes
11 you can't accomplish something up here at the bench so I
12 have to send you out. Don't hold that against the state,
13 don't hold that against the defendant.

14 As I was coming back to the courtroom, one of the
15 bailiffs said that some member of the jury had asked whether
16 or not it would be permissible to take notes. Let me tell
17 you in this case, I'm not going to allow you to take notes.
18 There's a time honored tradition and history in this state
19 where jurors don't take notes, because if your were to write
20 down a mistake or error in your notes, it might be more --
21 it might be -- it wouldn't help you as much as not taking
22 them at all.

23 It's a time honored system for you to listen carefully
24 and individually and collectively. If you do so, I'm sure
25 at the end of this trial you will be able to make a fair and

1 just decision. That's the important thing. So if you take
2 notes, I would have to look at some of your notes and share
3 with the lawyers and everything else that would complicate
4 things in my opinion. Like I said, it's a time honored
5 tradition that you listen carefully, individually, and then
6 collectively you will be able to make your decision. It's
7 worked this way for about 200 years. All right.

8 Any exceptions or additions?

9 MR. GOLDBERG: No, sir.

10 THE COURT: All right.

11 MR. HART: No, sir.

12 THE COURT: All right. You may resume your direct
13 examination, Mr. Goldberg.

14 MR. GOLDBERG: Thank you.

15 DONALD ROBINSON - CONTINUED DIRECT EXAMINATION

16 BY MR. GOLDBERG:

17 Q Sergeant, I believe we left off, you were talking about
18 a briefing at the Sheriff's Department on July 21, 2009; is
19 that right?

20 A That's correct.

21 Q And what did you learn about the nature of the way the
22 body was wrapped?

23 A Well, I learned through the briefing as well, but I saw
24 the body that day. So what I observed that day was that the
25 body was in a -- I guess it was a curtain or a shower

State v. Victor Smith 9/19/11 - 9/23/11

145

1 curtain type material. Also, on one end it was -- and it
2 was strapped on the ends, not the far ends, but on two
3 areas. It was like a belt looped in and a strap came
4 across, almost like a handle. Like handles. That was the
5 way I observed it and thought that day and it was confirmed
6 through the briefing that we had, as well.

7 Q So after the briefing what did you next do?

8 A After the briefing?

9 Q Yes, sir.

10 A After the briefing that's when we just started
11 gathering together to try follow up leads. We spoke to
12 Investigator Holdorf. He was confining with Investigator
13 Cronise. I confirmed the details of some of the
14 investigation.

15 Q Did you apply for a search warrant at this location?

16 A I did.

17 Q And which location was that?

18 A That was the Elders Pond apartment and the apartment
19 number -- if you can give me the search warrant I can tell
20 you the apartment number. I can't remember the actual
21 numerical address.

22 Q Do you recognize this?

23 A Yes.

24 Q What is that?

25 A Apartment [REDACTED]

1 Q Did you, in fact, get that search warrant signed by a
2 judge?

3 A I did.

4 Q And that was for [REDACTED], apartment [REDACTED] at [REDACTED] Elders Pond
5 Circle?

6 A That's correct.

7 Q Did you actually participate in the execution of that
8 search warrant?

9 A I did, to initiate it and to begin it, and then once we
10 were able to secure the scene at the search warrant
11 location. This is the way we execute search warrants of
12 this kind of style. What we do is we take the search
13 warrant, we as investigators, and we go to that scene. We
14 will take the forensics people along with us. We'll
15 immediately go to that location, enter, secure it, and then
16 let the forensics people come in and take over. So we --

17 Q This particular scenario, is that, in fact, what
18 happened?

19 A Yes.

20 Q The forensic unit did respond to that apartment?

21 A. That's correct.

22 Q And once they respond it's fair to say it's primarily
23 the forensic unit's job to go to work on that apartment; is
24 that right?

25 A That's right. What they will do is the forensic unit

State v. Victor Smith 9/19/11 - 9/23/11

147

1 will then absolutely take control over that search warrant
2 location, until it is completely done. They will do all the
3 CSI work, is what they call it. All that process. Once they
4 have concluded with the actual processing of that scene,
5 then we come back behind them again, and we go back and
6 examine it and interpret it, and explain it all to us, the
7 stuff that they have collected what they've seen, and we go
8 back and make sure that everything is there, done to our
9 satisfaction. And we go back and look at it one more time,
10 and then we conclude the search warrant.

11 Q And once that search warrant execution was concluded in
12 this matter, did you have further involvement in the active
13 investigation of the case?

14 A I did a little bit. I went with Investigator Holdorf,
15 we went to Beef O'Brady's and did a follow up investigation
16 there. Met with a couple of employees there.

17 Q Primarily, the investigation was turned over to
18 Investigator Holdorf; is that right?

19 A That's correct.

20 Q Okay.

21 MR. GOLDBERG: I believe that's all I have. Thank you.

22 THE COURT: Mr. Hart.

23 MR. HART: Thank Your Honor.

24 DONALD ROBINSON - CROSS-EXAMINATION

25 BY MR. HART:

1 Q Sgt. Robinson, you said you responded to, you went to
2 about 20 different apartments after you learned it was
3 remains out in the woods; is that correct?

4 A Yeah, we went to, primarily those buildings in the
5 front and then another building across. If you want me to
6 I'll show you exactly which ones.

7 Q Sure, go ahead.

8 A Okay. Let's see -- we went to these buildings here,
9 this building here.

10 THE COURT: And you're referring to State's Exhibit No.
11 11; is that correct?

12 MR. ROBINSON: Yes, that's correct, sir.

13 THE COURT: All right.

14 A Let's see, there were several of us there. I, myself,
15 went to these two here. I went to some there. Some of the
16 other guys might have gone to these other ones. I'm just
17 not 100 percent sure which ones they went to.

18 BY MR. HART:

19 Q And when you visited these apartments, you didn't learn
20 of anybody complaining of a foul smell at all?

21 A No.

22 Q Okay. Let's go back here -- what I want to show you
23 now has been marked as State's Exhibit No, 5, here. Let's
24 see if we can get this -- you'd agree that where this X mark
25 is on State's Exhibit No. 5, is about where the remains were

State v. Victor Smith 9/19/11 - 9/23/11

149

1 discovered; is that correct?

2 A It's pretty close.

3 Q And about -- what's the estimation between where the
4 remains were found and the closest apartment complex is?

5 A It's really not that far. If you go up the hill and
6 then -- if you go up the hill and then come back here, these
7 AC units are behind that house, the fence is probably only
8 probably 10 to 12 feet from the building, maybe 15 feet, and
9 then you go down the slope maybe another 15 feet. Somewhere
10 right around that distance.

11 Q And at the time that you actually went to the scene to
12 see those remains it was July, 2009?

13 A Yes.

14 Q You'd agree during July it's pretty hot in Columbia?

15 A It's nasty.

16 Q It's pretty humid in Columbia?

17 A That's correct.

18 Q And during that time you didn't receive any calls of a
19 foul smell at all?

20 A None whatsoever.

21 Q From that particular apartment closest to the remains?

22 A From the canvas that I did, I didn't learn of any
23 particular notifications from the residents that I did.

24 Now, I can't say if any other calls that responded during
25 that time frame, but also you have to consider, too, it's

1 like I mentioned here on the side of this building was a
2 garbage collection area, too.

3 Q Yes, sir. Well, throughout your investigation you
4 didn't learn of any foul smells from those closest
5 apartments to the remains?

6 A I did not, no.

7 Q Okay. I'll also show you what's been marked as State's
8 Exhibit No. 6. And you identified that earlier, correct?

9 A Yes.

10 Q And State's Exhibit No. 6, whatever it's wrapped in is
11 pretty bright; is that correct?

12 A Yes, very colorful.

13 Q Pretty colorful?

14 A Yes.

15 Q No reports of anybody saying they saw something bright
16 down in the woods, did they?

17 A Not that I know.

18 Q And you say where this was found was pretty close to
19 those apartment complexes; is that correct?

20 A It's close the way the terrain goes, but it's still, I
21 guess, distance wise, yes.

22 Q And I'm glad you mentioned the terrain. As far as when
23 you got there, you saw those remains, they were not covered
24 under any brush were they?

25 A Any brush, no. Most of that area was all pine trees.

State v.. Victor Smith 9/19/11 - 9/23/11

151

1 Q Yes, sir.

2 A So there was pine straw around but not a lot of
3 underbrush.

4 Q I'm showing you State's Exhibit No. 6, again. This is
5 how you saw the remains when you got there; is that correct?

6 A Yes.

7 Q No one had to do any uncovering of the remains; is that
8 correct?

9 A Not from the top. Scattered on the sides, but nothing
10 from the top.

11 Q And this is my last question on smells. Did you have
12 to go through training where you smelled decomposed body;
13 did you guys have to do that, autopsy or anything?

14 A Did we have to go through -- no.

15 Q Have you ever smelled a decomposed body?

16 A Oh, I have smelled it before, not from a training
17 perspective, but I've been around plenty that have --

18 Q You would agree that a decomposing body smells pretty
19 bad; is that right?

20 A It's pretty putrid, sometimes.

21 Q At the time that you responded to the scene you didn't
22 know how long that body had been out there; is that right?

23 A That's correct.

24 Q You also said when you responded you roped off access
25 to where the remains were; is that correct?

1 A I just made sure that it was done.

2 Q Okay. Sure. You made sure it was done.

3 A That's correct.

4 Q But before that you admitted that anybody had access to
5 that area at that point in time?

6 A Before we responded?

7 Q Yes, sir.

8 A Well, they potentially could have. There's a gate
9 between these two buildings that leads to that fence, and
10 the gate was supposed to be secured with a chain, but I'm
11 not sure how well it was all the time.

12 Q Yes, sir. One thing I want to talk about is the layout
13 of this apartment complex. When you responded, did you have
14 a chance -- looking at State's Exhibit No. 5, did you have a
15 chance to look at the whole entire complex?

16 A What do you mean to look at the entire complex?

17 Q Like all the apartments, all of them?

18 A Did I look at them?

19 Q Well, not go inside of them, but the area, the parking
20 lot and how they were located next to each other.

21 A Well, I kind of knew how it was configured.

22 Q Okay, and you're familiar with this; is that correct?
23 On State's Exhibit No. 5, could you point out Apartment [REDACTED]?

24 A [REDACTED] I believe, if I'm not mistaken, this is [REDACTED] here.
25 I can tell you more with the other picture, but this -- this

State v. Victor Smith 9/19/11 - 9/23/11

153

1 is right here. It's that one, it's right there.

2 Q So you'd agree that State's No. 5, where I'm pointing
3 to now is Building No. 6?

4 A Yes.

5 Q And Apartment [REDACTED] is inside of this particular
6 building; correct?

7 A You access it from this side. It is here, downstairs,
8 right there.

9 Q Also looking at State's Exhibit No. 5, in order for
10 someone to carry a body out of this building to where the
11 body was found, you would either have to go through that
12 front part of the lot and around by the trash cans; that's
13 one possible way?

14 MR. GOLDBERG: Objection. It's calling for speculation.

15 THE COURT: Sustained.

16 BY MR. HART:

17 Q Also, looking at Building [REDACTED], you can see the distance
18 between where Building [REDACTED] is and where the body was found;
19 is that correct?

20 A You can tell the difference.

21 Q Okay. The other thing I want to talk about is you went
22 and got the search warrant and you responded initially at
23 the beginning of the search; is that correct?

24 A That's correct.

25 Q How much time did you spend on site doing that search?

1 A 30 minutes, maybe.

2 Q Maybe 30 minutes. And the evidence was seized from
3 this apartment on July 2009; is that right?

4 A Yes.

5 Q Okay. So July 2009, you agree that evidence was seized
6 from Apartment [REDACTED]; that's important?

7 A I didn't collect it, so --

8 Q But you agree that evidence was taken from that
9 apartment --

10 A Well, the --

11 Q -- July, 2009?

12 A -- the search warrant, if I understand it, was a two
13 day search warrant. It was held overnight so the evidence
14 could have been collected initially and submitted the day
15 after -- probably a two day situation. I wasn't involved in
16 that part. So that's the forensics people that did that.

17 Q Okay. I understand. Let's say a two day process.
18 Within those two days in July 2009, you learned through your
19 investigation that evidence was seized from Apartment [REDACTED];
20 is that right?

21 A Yes.

22 Q Okay. Throughout your investigation you know that the
23 police responded to this apartment on October 21, 2008; is
24 that correct?

25 A I don't know about all that. I don't know about that.

State v. Victor Smith 9/19/11 - 9/23/11

155

1 Q You don't have knowledge of that; you never learned
2 that through your investigation?

3 A They may have. I wasn't privy to that part of it, so
4 --

5 Q Okay. Sure. But if the evidence was seized on July
6 2009, you'd agree that it was also there on October 21?

7 MR. GOLDBERG: Objection.

8 A Well, that's an assumption.

9 THE COURT: Sustained. Speculation.

10 BY MR. HART:

11 Q When you saw this body when you first got -- you don't
12 know what had happened to the body did you?

13 A No, I could just see the condition the body was in.

14 Q And whatever happened to the body, you don't know where
15 it happened; is that correct?

16 A At that time, no, I didn't.

17 Q Thank you.

18 MR. HART: No further questions.

19 THE COURT: Anything on redirect?

20 MR. GOLDBERG: No, sir.

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

22 How long is your next witness. If you go longer than 15
23 minutes, I'll have to stop you.

24 MR. GOLDBERG: May we approach?

25 THE COURT: Yeah, yeah, come on up.

State v. Victor Smith 9/19/11 - 9/23/11

156

1 (Off the record bench conference with counsel and the
2 Court.)

3 THE COURT: Members of the jury, the next witness is
4 probably going to be a little bit longer than 15 or 20
5 minutes. And it has nothing to do with this trial, but I
6 have an appointment at 1:15 somewhere in the city that I've
7 got to be to. Probably got to be there about 1:00 o'clock
8 or so. So by the time I stop leave will be problematic for
9 me to get there. It has nothing to do with the case. I've
10 explained it to the lawyers. I'm going to stop, at this
11 point in time, okay. And y'all will have a little long
12 lunch break today. I'm going to let you go to lunch now and
13 I'll ask that you be back at 2:00 o'clock. Okay, 2:00
14 o'clock. Remember just don't talk about the case. Hope you
15 don't get wet during lunch. If you go back, I'll speak to
16 you briefly about electing a foreperson and I want to gauge
17 you and see if y'all can go a little bit late this
18 afternoon. Well, think about it. I don't mean late to 7:00
19 or 8:00 o'clock, but probably 5:30, 6:00 -- maybe 7:00. Let
20 me know if you have children and things you have to be at.
21 Let me know and I'll come chat with you about it in a
22 minute. Don't go anywhere yet. Just go to the jury room,
23 but that's sort of what the plan is going to be.

24 (Jury out at 12:15 p.m.)

25 THE COURT: We'll be at ease until 2:00 o'clock.

State v. Victor Smith 9/19/11 - 9/23/11

157

1 MR. GOLDBERG: Yes, sir.

2 (Court in recess for lunch at 12:16 p.m.)

3 (Court in session after lunch at 2:11 p.m.)

4 (Court's Exhibit No. 1, forelady
5 selection, was marked.)

6 THE COURT: Are we all ready?

7 MR. GOLDBERG: Yes, sir.

8 MR. HART: Yes, sir.

9 THE COURT: Bring the jury in.

10 (Jury in at 2:11 p.m.)

11 THE BAILIFF: All jurors are present, sir.

12 THE COURT: Welcome back, Madame Forelady and members of
13 the jury. I trust you had a pleasant. I had a hot dog from
14 Five Guys, or a cheese dog. I'll probably have indigestion,
15 but anyway this case will resume as the state calls their
16 next witness.

17 MR. GOLDBERG: Yes, sir. The state calls Investigator
18 Cronise.

19 (WHEREUPON, Dorothy Cronise was
20 sworn to tell the truth.)

21 CLERK OF COURT: Have a seat in the witness box, state
22 your name for the record.

23 MS. CRONISE: My name's Dorothy Cronise.

24 DOROTHY CRONISE - DIRECT EXAMINATION

25 BY MR. GOLDBERG:

State v. Victor Smith 9/19/11 - 9/23/11

158

1 Q Investigator Cronise, where you employed?

2 A Richland County Sheriff's Department.

3 Q How long have you been there?

4 A. I started my law-enforcement career there in 1974 as a
5 juvenile officer working missing persons, missing children,
6 and occasionally sex crimes. From there I went to State Law
7 Enforcement Division, retired from there after being
8 director of their missing persons clearing house for the
9 state and came back to the Sheriff's Office in 2003, working
10 in missing persons again.

11 Q. All right. So you were working missing persons back in
12 2008; is that right?

13 A. Yes, sir.

14 Q. Okay. Can you describe for this jury a little bit in
15 general about how these missing persons investigations take
16 place?

17 A. Missing persons is a really unique part of
18 law-enforcement, and, as I'm sure you all know, missing
19 persons is not a crime. If you're an adult you can go
20 wherever you want to go whenever you want to go and there's
21 nothing anybody can say or do to stop you. But when you
22 have a loved one or we even get next door neighbors that
23 file reports, whenever someone suspects that something isn't
24 quite right, they normally will file a report with our
25 agency. We follow up on it from there to determine what has

State v. Victor Smith 9/19/11 - 9/23/11

159

1 happened to the loved one, and to try to make sure -- the
2 first part is to try to ensure the loved one's safety and
3 then try to get them back in touch with the party that is
4 searching for them.

5 Q The reports that are initially made by people who care
6 about missing persons, are they always made immediately when
7 someone is missing?

8 A No. No, they're not. The reasons for people leaving
9 and the reasons for people making reports is just as varied
10 as the individuals and often times you will have folks that
11 don't make a report because they don't want to be
12 embarrassed if the person turns up the next day and they
13 feel silly for having made it, or they're not sure what's
14 happened and they're trying to give the person time to work
15 through whatever it is they may be dealing with at the time,
16 and they hold off on making those reports for varying
17 reasons.

18 Q Were you assigned a missing persons investigation
19 relating to an Ernest Robinson?

20 A Yes, I was.

21 Q And when did you begin that investigation?

22 A I was assigned that case December 29, I think is when I
23 actually got it. It had been reported earlier. I think
24 another investigator had it temporarily and then he went out
25 on leave and then I took it from there.

1 Q Did you have any -- what were the basis of the
2 information provided to you to start your investigation?

3 A In the report pretty much all that we had was was E.J.
4 Melvin Robinson, black male. I think he was 26 years of
5 age, at that point in time. Roughly six feet tall, 130
6 pounds, thin build. The last place, I believe his mother
7 had made the incident report and the last place she knew of
8 him being was at his employers at Beef O'Brady's on
9 Hardscrabble Road.

10 Q Do you recall when she filed this incident report?

11 A The incident report itself was filed on December 10.

12 Q Of 2008?

13 A 2008, yes, sir.

14 Q Had you, in fact, had some contact with her prior to
15 that date?

16 A Yes, sir, I did.

17 Q What was the nature of that contact?

18 A She wanted some help in trying to locate her son. She
19 was concerned that she hadn't heard form him. You know, I
20 had to impress upon her that there are certain procedures
21 that we deal with missing persons that must be followed,
22 paper work that has to be filed, paper work that has to be
23 signed by the person that is doing the reporting to get them
24 entered into the national crime information center computer
25 system so that there's nationwide access, if that person is

State v. Victor Smith 9/19/11 - 9/23/11

161

1 found anywhere in the United States that they can be located
2 and we can be notified, but we need that paper work in order
3 to do that?

4 Q Do you recall approximately when that conversation took
5 place?

6 A That would probably be mid-October.

7 Q And based upon your information then, how long had E.J.
8 been missing?

9 A She said she last heard from him or he had been last
10 seen at his place of employment, Saturday night, September
11 27.

12 Q 2008?

13 A 2008; yes, sir.

14 Q And you were speaking earlier about some of the reasons
15 why people delay in reporting. Did you get any indication
16 why there was a delay in this case?

17 A Yes, sir, I did.

18 Q What was that?

19 A In speaking with Ms. Ashe, Deborah Ashe is E.J.
20 Robinson's mom. She had -- her voice was shaking, she was
21 nervous. It was obvious she was anxious and she was upset,
22 and she had not heard from him in such a long time. She
23 knew this was out of character for her son, and she really
24 and truly had not reported sooner because she was afraid to
25 find out the answer.

1 Q Is that uncommon?

2 A No, sir.

3 Q So once you got the case, where did you go from there
4 to start working?

5 A Started out where he was employed at Beef O'Brady's. I
6 spoke with Mr. Wickham and Ms. Wickham, who are the owners.
7 Got information about his employment records, the last day
8 he had been at work, which I believe was the 27. He was
9 supposed to come back to work on the 28, and he did not
10 show. He also had an outstanding paycheck that he had not
11 picked up. Now, realize that this is in September, and he's
12 missing and this is January when I'm conducting the
13 investigation. So I'm not sure exactly sure when his
14 paycheck was due to him, but he did not get back to pick it
15 up.

16 Q Just for clarification this is some three and a-half,
17 four months after he's gone missing. There's no indication
18 of a crime at this point, no crime scene, no body; nothing
19 at this point?

20 A No, sir. No, sir. This is purely to help to try to
21 locate to ensure that he is safe.

22 Q And so what did you learn from your investigation from
23 Beef O'Brady's?

24 A I spoke with a co-worker of his, Jenny Kline, I believe
25 it was, at Beef O'Brady's. And in speaking with Ms. Kline,

State v. Victor Smith 9/19/11 - 9/23/11

163

1 and the Wickham's they all felt that this was totally out of
2 character for E.J. not to show up, not to call. Just was
3 not like him at all, and they felt highly concerned that
4 there may be a problem, but they did not know exactly what,
5 but they were concerned.

6 Q Did you learn about another employee at Beef O'Brady's
7 who had stopped coming to work at well?

8 A Yes, sir.

9 Q Who was that?

10 A According to the records, Victor Smith was supposed to
11 be at work the next day. He did show up for a little while
12 and then left and had not returned to work.

13 Q Okay. Were you able to obtain an address for Mr.
14 Smith?

15 A Yes, sir, I did.

16 Q What was that?

17 A It's on Elders Pond Road.

18 Q And is that an apartment?

19 A Yes, sir.

20 Q What apartment in particular?

21 A I'd have to look at my notes to tell you. I think it's

22 [REDACTED]

23 Q Do you have those in front of you?

24 A No, sir, I don't.

25 Q If I show you your notes will it help refresh you

1 recollection?

2 A Yes, sir.

3 (Documents passed to the witness.)

4 A Apartment [REDACTED]

5 Q That's what you had initially.

6 A Yes, sir, those were from the work notes, work
7 applications that I had gotten from Mr. Wickham, the
8 employee's.

9 Q All right. Did Mr. Robinson, to your knowledge, have
10 any kind of on-line accounts, bank accounts, My Space,
11 anything like that?

12 A. Yes, sir, he did. He had a bank account with Bank of
13 America. I went to Bank of America, spoke with them there.
14 Let them know what the case was all about, that no, this was
15 not a criminal case, and if I needed subpoena for
16 information then I would need to get that if that was what
17 the bank called for, but at this point, all I'm trying to do
18 is locate Mr. Robinson and ensure that he is where he wants
19 to be. The bank checked their records. I believe his
20 account had been closed by then. For 45 days the bank
21 closed the account. There was an outstanding negative
22 balance on the account that I believe had been outstanding
23 since August of '08, and the bank, because of the
24 inactivity, and I guess you'd call it overdraft on the
25 account, they closed it. He also had a My Space account,

State v. Victor Smith 9/19/11 - 9/23/11

165

1 which I don't think he had used since maybe August or
2 September, early September.

3 Q Is it uncommon in this kind of situation to check local
4 jails and detention centers for missing persons?

5 A Yes, sir. We would check jails.

6 Q And those results were?

7 A Those were negative.

8 Q How about local hospitals?

9 A Checked all the hospitals. They had nothing on a John
10 Doe or an E.J. Robinson, because I always asked for both,
11 because often times if somebody presents in the ER they may
12 have been in an accident and they don't have any
13 identification or something is stolen from them. They may
14 just enter them as a John or a Jane Doe at the hospital. So
15 I asked both by his name and by his description.

16 Q And Providence Northeast, I believe he actually had
17 been there some months prior?

18 A He had been. I think it was for -- I don't know if it
19 was a cold or some type of infection he had, and he came to
20 the ER to be treated.

21 Q Were there any other parts of the state of South
22 Carolina that you focused your investigation on?

23 A Flyers were sent to Myrtle Beach area. I don't know
24 exactly when that was done. Again, I'd have to go back to
25 the notes, but they were sent there. I believe one of the

State v. Victor Smith 9/19/11 - 9/23/11

166

1 acquaintances of E.J. had told their family here in Columbia

2 --

3 Q You can say exactly what had been told.

4 A Just that he had been sighted.

5 Q Was there ever any response to that?

6 A No, sir. There was no response to the flyers that were
7 sent to the Myrtle Beach area.

8 Q What about the Oliver Gospel Mission?

9 A Oliver Gospel Mission is a facility downtown that
10 provides shelter at night and jobs during the day for men
11 who are homeless, and they only provide the services for
12 men, but they do find jobs for them during the day. You can
13 go by and try -- if you need somebody to paint your house or
14 clean your yard you can go by and they will help you to do
15 that. They have labor there and you will pay them.

16 Q Did you look there for Mr. Robinson?

17 A Yes, sir, I did.

18 Q Any results?

19 A None.

20 Q Baptist Hospital?

21 A Negative. Again, with the John Doe or with his name
22 there was no record.

23 Q Tell this jury a little bit about the role dental
24 records can play in this type of an investigation?

25 A When you're working a missing person's case, as I

State v. Victor Smith 9/19/11 - 9/23/11

167

1 mentioned earlier, you've got the National Crime Information
2 Center computer. And they have rules and regulations that
3 everybody has to follow so that all the information is
4 current, up to date, so that, you know, if you were reported
5 missing today, and you were found next week that we'd clear
6 your record out, and that way you wouldn't be stopped, you
7 know, if you had a traffic ticket or something you wouldn't
8 be unduly confined to your car while we were checking on it.
9 So there are rules that we have to follow. Part of those
10 rules are that after you've been missing for 30 days, you
11 have to have an update of that record, and you have to put
12 any dental records, fingerprints, anything that you have --
13 and we simply call it packing the record, so that you've got
14 every bit of information on that missing person that you can
15 possibly get your hands on in that computer record just in
16 case, because also what NCIC does -- can I go into a little
17 more detail?

18 Q Sure.

19 A What NCIC does is say a person is reported missing here
20 in South Carolina and bones show up in Indiana, they do a
21 cross-reference every night so if those bones are entered in
22 Indiana and it happens to be a person from South Carolina it
23 will cross-reference and send us a message so that we can,
24 in turn, contact the Indiana law enforcement agency that has
25 that information and try to find out if, in fact, the person

State v. Victor Smith 9/19/11 - 9/23/11

168

1 in Indiana is our missing person. So those records
2 cross-reference, and putting the dental in is -- dental
3 records have played such a big part in identifying our folks
4 over the years, over the last 37 years. It's been a very
5 big part when you don't have a complete person.

6 Q And that being said, did you enter dental records for
7 Ernest Robinson into NCIC?

8 A Mr. Robinson, as far as I could find out never went to
9 the dentist and there were no dental records as such,
10 because he never went to the dentist.

11 Q Palmetto Richland?

12 A Yes. When they're again, asking under name and John
13 Doe and nothing.

14 Q Did you make contact with a Melissa Rowe?

15 A Yes, sir, I did.

16 Q And who is Melissa Rowe?

17 A Melissa Rowe and her husband Michael were friends of
18 Mr. Robinson's that I had learned of from another person
19 that worked at Beef O'Brady's, Mr. Jenkins, I believe it
20 was. And I called them to see if they had heard from him or
21 had seen him.

22 Q Had they heard from him?

23 A They had seen him with a gentlemen by the name of
24 Marvin Shipman on September 27.

25 Q As a result of that did you speak -- without going into

State v. Victor Smith 9/19/11 - 9/23/11

169

1 what he said, did you speak to Mr. Shipman?

2 A I called Mr. Shipman.

3 MR. GOLDBERG: Beg the Court's indulgence.

4 THE COURT: Yes, sir.

5 MR. GOLDBERG: All right. Thank you. That's all.

6 THE COURT: Mr. Hart.

7 MR. HART: Thank you, Your Honor.

8 DOROTHY CRONISE - CROSS-EXAMINATION

9 BY MR. HART:

10 Q I just have a few questions. Were you involved in
11 actually going to the scene where the remains were found, at
12 all?

13 A I went out there, but I did not make contact with the
14 remains, no.

15 Q You never went back into that wooded area?

16 A I did go back into the wooded area. Yes, sir. It was
17 a steep hill. I got down part of the way, but that was as
18 far as I could get.

19 Q As you approached the body down there did you notice
20 any kind of smell at all?

21 A A little bit. Yes, sir.

22 Q There was a little bit?

23 A Yes, sir.

24 Q Have you ever smelled a decomposed body before?

25 A Yes, sir.

1 Q Okay. Can you describe that smell to us?

2 A I don't know that there really is anyway to describe
3 that.

4 Q It's probably the most horrific thing you will ever
5 smell?

6 A It is. Yes, sir.

7 Q Were you able to identify how closely the body was
8 located to the apartments?

9 A Honestly, no, sir.

10 Q You don't remember any of that information?

11 A No, sir. It did not appear to be that far, but I didn't
12 measure or anything like that. No, sir.

13 Q Did you notice that the remains were wrapped in a very
14 bright and flowery, I guess, cloth?

15 A I did not get that close. I could see it, but I
16 couldn't tell if it -- I don't remember the colors to be
17 honest with you. No, sir.

18 Q Well, I'm glad you didn't get that close. About how
19 close did you get so you could see the remains wrapped up?

20 A I could not see the remains as such. I could see the
21 curtain. I could see something laying there where everybody
22 was.

23 Q And in relation to between the apartment and the body
24 how close were you to this body; tell us where you were,
25 where you could see the shower curtain?

State v. Victor Smith 9/19/11 - 9/23/11

171

1 A Probably from here to the rail right there.

2 Q From here to the rail right there?

3 A Yes, sir.

4 Q And you could see definitively that bright flowery --

5 A I could see it, but I wouldn't say vividly, because
6 there's all kinds of underbrush and everything there.

7 THE COURT: Let the record reflect that's approximately
8 30, 40 feet. How far is it?

9 MR. HART: Yes, sir.

10 THE COURT: Something like that so we'll have some
11 reference.

12 MR. HART: Yes, sir.

13 THE COURT: Would that be fair enough?

14 A About 30 feet.

15 BY MR. HART:

16 Q When you were doing this missing persons report, you
17 spoke to Ms. Ashe; is that correct?

18 A Yes, sir.

19 Q Do you remember her mentioning that it wasn't unusual
20 for Ernest to go missing for a couple of months?

21 A Yes, sir.

22 Q So she mentioned that. This is not the first time that
23 this had happened?

24 A No, sir. And that may have played a part in why she
25 waited.

1 Q Okay. I want to get some clarification because I
2 wasn't sure on these dates. You were first assigned the
3 case in December of what?

4 A 2008.

5 Q 2008, but what date in December?

6 A The 29, I believe.

7 Q The 29.

8 A I believe is what's on my assignment sheet.

9 Q Okay. And also, I think Investigator -- did the prior
10 report; is that correct?

11 A He did the original incident report.

12 Q Okay. You also mentioned something about Ernest bank
13 account. Did you ever get a chance to personally view his
14 bank account statements?

15 A They would give me the information in making an
16 assessment as to whether the account had been used. I did
17 not get a subpoena or search warrant for the records,
18 themselves, no, sir.

19 Q So you don't have the statements here for us to view or
20 look at that activity, do you?

21 A No, sir, I do not.

22 Q. You were talking on direct about the dental records of
23 the actual remains. Have you had a chance to review the
24 results of the remains that were found in the woods?

25 A No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

173

1 Q Do you have any knowledge of the results?

2 A No, sir. I mean, I know that -- I asked specifically if
3 there was any dental work because I knew that the
4 information that I had said he didn't have any.

5 Q And to your knowledge you don't know if any
6 identification has come up about the remains?

7 A No, sir.

8 Q You mentioned Melissa Rowe, right?

9 A Yes, sir.

10 Q And Melissa Rowe mentioned that, I think Ernest
11 Robinson was last seen with Marvin Shipman; is that correct?

12 A Yes, sir.

13 Q She never mentioned that he was last seen with Victor
14 Smith, did she?

15 A She did not have a name. I believe in my notes, I
16 believe it states that he was with another African-American
17 male, around 20, but they did not have a name nor did Mr.
18 Shipman ever give me a name.

19 Q All right. Thank you.

20 A Yes, sir.

21 THE COURT: All right. Anything on redirect?

22 MR. GOLDBERG: Just briefly, Your Honor.

23 THE COURT: Yes, sir.

24 DOROTHY CRONISE - REDIRECT EXAMINATION

25 BY MR. GOLDBERG:

State v. Victor Smith 9/19/11 - 9/23/11

174

1 Q In regards the bank account he asked you about, if I
2 showed you your notes would that refresh the dates involved
3 in that?

4 A Yes.

5 Q I believe it's the middle paragraph there.

6 A According to Mr. Tommy Mabry at the Bank of America,
7 the account had been closed by the bank on December 9, 2008.
8 And it had a negative balance since August of 2008, and
9 there had been no activity on the account or the debit card.
10 On 9/25/08, someone came into the bank at 1:07 p.m. and
11 tried to verify the debit card, but it was unknown if that
12 was Mr. Robinson or someone else. I did not get any video
13 or anything.

14 Q That was on September 25?

15 A 25, yes, sir.

16 Q And had anyone logged into his on-line banking account
17 at any point?

18 A He last logged in according to my notes I got from Mr.
19 Mabry that day, he last logged in on September 5, 2008.

20 Q And again, based upon your conversations with Beef
21 O'Brady's, was there a paycheck waiting on him?

22 A Yes, sir there was.

23 Q Was it ever picked up?

24 A No, sir, it was not.

25 Q Thank you.

State v. Victor Smith 9/19/11 - 9/23/11

175

1 THE COURT: Anything further, Mr. Hart?

2 MR. HART: Nothing. I'm sorry.

3 DOROTHY CRONISE - RECROSS EXAMINATION

4 BY MR. HART:

5 Q Melissa Rowe.

6 A Yes, sir.

7 Q Do you remember getting any information from Melissa
8 Rowe that she may have seen Ernest after September 27?

9 MR. GOLDBERG: Objection, Your Honor. I believe that's
10 outside the scope.

11 THE COURT: He's right about that.

12 MR. HART: Thank you, Your Honor.

13 THE COURT: Sustained.

14 Anything further?

15 MR. GOLDBERG: No.

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

17 Go ahead.

18 MR. GOLDBERG: State calls Marvin Shipman.

19 Can I have just a moment, Your Honor?

20 THE COURT: Yes.

21 MR. POTTS: Your Honor, state calls Mark Wickham.

22 THE COURT: Who?

23 MR. POTTS: Mark Wickham.

24 THE COURT: Okay. Wickham?

25 MR. POTTS: Yes, Your Honor.

1 (WHEREUPON, Mark Wickham was sworn
2 to tell the truth.)

3 THE CLERK: Have a seat in the witness box and state.
4 your name for the record, please.

5 MR. WICKHAM: My name is Mark Wickham.

6 MARK WICKHAM - DIRECT EXAMINATION

7 BY MR. POTTS:

8 Q Mr. Wickham, please tell the jury a little bit about
9 yourself?

10 A. I'm the owner of Beef O'Brady's in Northeast Columbia.
11 I've had it for about eight and a-half years. On
12 Hardscrabble Road.

13 Q Now, as the owner of Beef O'Brady's, What do you do
14 there?

15 A. It's a family sports pub. We've been part of the
16 community for a long time. Although it has alcohol and
17 stuff is more family oriented. Lots of TVs, all sports all
18 the time and as an owner I'm in the kitchen cooking, out
19 front. Whatever I've got to do as a manager/owner.

20 Q So you also manage the restaurant?

21 A Yes.

22 Q Do you have a lot of turn-overs at Beef O'Brady's?

23 A Not a lot. I have some. Yes. I have a core of people
24 that have been with me.

25 Q Now, are you familiar with Ernest Robinson?

State v. Victor Smith 9/19/11 - 9/23/11

177

1 A I am.

2 Q How do you know him?

3 A He worked for me for a year, two years, year and a-half
4 somewhere, but he was one of my cooks. My line cooks.

5 Q Okay. Did you know him outside work at all?

6 A A little bit. His family and ours were in Pop Warner
7 Leagues or his cousin or one of his relatives was a player.
8 So I'd see him at the football fields on Saturday mornings a
9 lot.

10 Q Did you ever interact with him as an employee at the
11 games or whatever?

12 A I did. He'd usually come up to me first if he saw me.
13 My wife was with me, too, so he always made it a point to
14 come up and say hi.

15 Q How was he as an employee?

16 A Excellent. Always on time. Never an issue. Did what
17 he was told to do, helped out where he had to, stayed later
18 if he needed to. He was a good employee.

19 Q Did he often not show up?

20 A That never happened other than the last day.

21 Q Now, do you remember September 27, 2008?

22 A I remember that Sunday, yes, very much.

23 Q Well, what about Saturday?

24 A The Saturday night I worked that night. E.J. was
25 working that evening. I left about 10:00 o'clock. It was a

1 busy night. I had a closing manager also.

2 Q Who would that be?

3 A Wendy Clifton. So she actually closed with him. I was
4 there until about 10:00 o'clock that evening.

5 Q Okay. Now, was that the last time you saw Ernest?

6 A That was the last time I saw him. Yes.

7 Q Okay. That was the 27?

8 A Right.

9 Q Now, why do you recall that?

10 A Well, the next morning was a busy morning, and he had
11 not shown up. You know, it's just one of those unwritten
12 rules, if somebody doesn't show up we're going to get busy.
13 That happened, so I wasn't real happy. So I had a cook and
14 myself in there trying to take care of 100 people as well
15 as, another one that showed up. He never showed up, so I
16 was not happy. No.

17 Q Now, are you familiar with Victor Smith?

18 A Yes.

19 Q What was -- how do you know him?

20 A He worked for me, also, for approximately a year, maybe
21 less. But he was also one of those cooks that showed up
22 that morning. He was late, but he was there.

23 Q And how long did he spend there at the restaurant that
24 morning?

25 A Maybe an hour at that.

State v. Victor Smith 9/19/11 - 9/23/11

179

1 Q What happened?

2 A Well, we got real busy. I was already upset that E.J.
3 was not there. He had come in late, distracted, whatever
4 you want to call it, and after a few minutes or however long
5 when you have a rack of tickets you don't really pay
6 attention, but it wasn't very long, he just kind of
7 disappeared. Next thing you know, somebody said he went in
8 the restroom and he's gone.

9 Q Now, did you ever see Victor again?

10 A Only the following Friday when he picked up his final
11 paycheck.

12 Q He picked up his paycheck?

13 A Right.

14 Q What about E.J.?

15 A I never saw E.J. again.

16 Q Did you have a paycheck for him?

17 A I did.

18 Q He ever pick it up?

19 A Never picked it up.

20 MR. POTTS: Beg the Court's indulgence?

21 THE COURT: Yes, sir.

22 BY MR. POTTS:

23 Q Is it unusual, in your business, for someone not to
24 pick up a paycheck?

25 A Very. Very.

1 Q E.J. always had gotten his paycheck before?

2 A Right. I have a different influx of people there. The
3 cooks usually -- they depend on that money. That's money
4 for their necessities to live. To some of my front of the
5 house people it's just entry and college students. Usually,
6 the back of the house, every one of them, since I've been
7 there, it is their dependency. They need that money.

8 Q Now, describe E.J. briefly as an employee?

9 A You know, E.J. was a quiet guy. I never had an issue
10 with E.J. He was very easy-going. In the kitchen
11 atmosphere when it gets going, sometimes it gets heated back
12 there. As a manager you've got to direct and make sure your
13 people are on their game when they need to be on their game,
14 and keeping pace and sometimes we get a little more verbal
15 with them, and E.J. wasn't excluded from that, but he --
16 there was never an issue where he got any kind of violent or
17 back talk. I think -- the only thing I can every remember
18 him saying is, Mark, you sure are being difficult today.
19 And that's about as much as I ever got from him as far as
20 being a problem.

21 Q And were you being difficult?

22 A Yes. Yes.

23 Q Thank you. Answer any questions Mr. Hart has for you.

24 MARK WICKHAM - CROSS-EXAMINATION

25 BY MR. HART:

State v. Victor Smith 9/19/11 - 9/23/11

181

1 Q I just have a few questions for you. You said Victor
2 was a line cook, also; right?

3 A Yes, he was.

4 Q You remember on this particular day that Victor was
5 asked to wash some dishes; that was a conversation about
6 whether he should be washing dishes or not?

7 A That's part of the on-going, it's really busy and if
8 you're not going to help why don't you go wash dishes.

9 Q Okay. Remember Victor not wanting to necessarily wash
10 dishes?

11 A Again, it was busy. So if he didn't it really wasn't
12 my concern. My concern was to take care of my guests in the
13 restaurant.

14 Q Did he ever confide in you about some classes that he
15 was taking?

16 A Not to my knowledge.

17 Q He never told you about any restaurant classes he was
18 taking?

19 MR. POTTS: Defense already asked him --

20 THE COURT: What? This is cross-examination. Did he
21 ask about any classes; is that the question?

22 MR. HART: Yes, Your Honor.

23 THE COURT: Overruled.

24 BY MR. HART:

25 Q Do you remember Victor having to sign a form saying

1 that he could not be rehired at Beef O'Brady's?

2 A Yes.

3 Q And he signed the form; is that correct?

4 A He did.

5 Q Did you have any knowledge of Victor going to work at
6 the Waffle House after Beef O'Brady's?

7 A I had no knowledge of that.

8 Q Did you have knowledge that he worked at the Waffle
9 House before coming to Beef O'Brady's?

10 A Before I hired him I could not tell you that. I don't
11 know. I have so many employees that come and go in two
12 years, like we talked about the turn-over.

13 Q Okay. I want to go back to the last night you say you
14 saw Ernest. You say you left early; is that correct?

15 A Early in the evening about 10:00 o'clock; correct.

16 Q So at that point in time you don't know who Ernest left
17 the job with; is that right?

18 A No.

19 Q I believe -- do you remember giving a statement to the
20 Sheriff's Department at all?

21 A I do.

22 Q Do you remember talking to any investigators?

23 A I do.

24 Q Do you remember telling any of the investigators that
25 Ernest left with Victor Smith?

State v. Victor Smith 9/19/11 - 9/23/11

183

1 A I did not tell anybody that I was positive. I did tell
2 somebody that that's what I heard.

3 Q But you never told anybody that you were positive?

4 A No.

5 Q Okay.

6 MR. HART: Your Honor, I think that's all.

7 THE COURT: Anything on redirect?

8 MR. POTTS: No, Your Honor.

9 THE COURT: You may step down, Mr. Wickham.

10 I'm sure he wants to be excused?

11 MR. POTTS: Yes, sir.

12 THE COURT: Any objection, Mr. Hart?

13 MR. HART: No, sir. No objection.

14 MR. GOLDBERG: State calls Wendy Clifton.

15 (WHEREUPON, Wendy Clifton was sworn
16 to tell the truth.)

17 THE CLERK: Have a seat in the witness box and state
18 your name for the record.

19 MS. CLIFTON: Wendy Marie Clifton.

20 WENDY CLIFTON - DIRECT EXAMINATION

21 BY MR. POTTS:

22 Q. Hi, Ms. Clifton, how are you?

23 A I'm fine. How are you?

24 Q I'm doing all right. Now, Ms. Clifton, would you mind
25 telling the jury very briefly a little bit about yourself?

1 A I'm a manager at Beef O'Brady's. I've been there for
2 five years, come tomorrow.

3 Q Come tomorrow?

4 A Yes.

5 Q Happy Anniversary.

6 A Well, thank you.

7 Q So you've been working there for five years. Do you do
8 anything besides manage?

9 A I'm the bartender, as well.

10 Q Did you know Ernest Robinson?

11 A Yes, I did.

12 Q Can you tell me about him?

13 A Well, he was a cook and I was a manager. He was a real
14 good guy. I mean, I never had any problems with him. He
15 was pretty quiet, kept to himself a lot, but he was always
16 on time. If we needed him to come in to cover somebody's
17 shift he would come in, you know. And when he would say
18 something funny, I would laugh. He hardly ever said
19 anything at all, so nine out of 10 it was pretty funny what
20 he said. He was an all round good guy.

21 Q. Do you remember September 27, 2008?

22 A Vaguely, yes.

23 Q. Were you working that night?

24 A. Yes, sir.

25 Q. Did you close that evening?

State v. Victor Smith 9/19/11 - 9/23/11.

185

1 A Yes.

2 Q Tell me about that. What's involved in closing?

3 A Well, when I close normally I'm the last one there
4 because I have to check the cooks out and I normally let me
5 service leave if there's no customers in the restaurant. So
6 I normally close up by myself, but a cook normally stays
7 with me so I don't have to walk out and leave, you know, by
8 myself, being a female.

9 Q About what time is this happening?

10 A Normally, between 11:30 and -- about 11:00, 11:30.

11 Q Now, who was with you that night when you closed?

12 A E.J.

13 Q Now, why E.J.?

14 A Well, there's only a few people actually that I would
15 let stay with me to close, so depending on the two closers
16 that were in the kitchen, I would choose which one. I'd ask
17 them, can you stick around for a minute, I'm almost done.
18 And he was -- if he was working I would always go to him,
19 because he was more -- I just always felt safe with him.

20 Q So you closed the restaurant with him?

21 A Yes.

22 Q What happened afterwards?

23 A I set the alarm as normal and we both walked out the
24 front door. And I checked the door like I always do to make
25 sure it's locked and I looked at him. I said, are you good.

1 He said, yeah. I said, do you need a ride, and he was like
2 no, I'm good. And he proceeded to walk, like through our
3 parking lot and I walked across to my car, and by the time I
4 got situated and got in my vehicle and pulled out he was
5 already across the street going towards the Elders Pond
6 area.

7 Q Now, did he always walk that way?

8 A He walked that way quite a bit. If not, somebody would
9 come get him.

10 Q Now, do you know Victor Smith?

11 A Yes.

12 Q Do you know if he had any relationship of any sort with
13 Ernest?

14 A. As far as I -- as far as I know, they were friends at
15 work. I know they hung out after work hours, as well.

16 Q So how was their relationship leading up to the 27?

17 A I mean, for a while it was normal, like two friends,
18 two guys getting along at work. Every day business, but the
19 week leading up they seemed like there was a little tension.
20 They didn't seem like they were clicking or talking as much
21 as they used to.

22 Q Ms. Clifton, it is true that in the past you have been
23 convicted of filing a false police report?

24 A Yes, sir.

25 Q Does that have anything to do with your testimony

State v. Victor Smith 9/19/11 - 9/23/11

187

1 today?

2 A No, sir.

3 Q Thank you. Please answer any questions Mr. Hart may
4 have for you.

5 THE COURT: Yes, sir.

6 MR. HART: Thank Your Honor.

7 WENDY CLIFTON - CROSS EXAMINATION

8 BY MR. HART:

9 Q Ms. Clifton, I just have a few questions for you. You
10 said when you closed that evening you closed with Ernest; is
11 that correct?

12 A Yes.

13 Q You didn't close with Victor; is that right?

14 A No.

15 Q And when you left Ernest left with you?

16 A Yes.

17 Q Ernest didn't leave with Victor?

18 A No.

19 Q You also say you saw Ernest walk over across the street
20 toward Elders Pond apartments, right?

21 A Yes. Going in that direction.

22 Q And it's not unusual for you to see him going in that
23 direction?

24 A No, sir.

25 Q. You also described the relationship between Victor and

State v. Victor Smith 9/19/11 - 9/23/11

188

1 between Ernest, you said you noticed some tension. Did you
2 ever witness any arguments between the two?

3 A No, sir.

4 Q Did you ever witness any disputes over money or
5 anything between the two?

6 A No, sir.

7 Q Thank you, Ms. Clifton.

8 THE COURT: Anything on redirect?

9 MR. POTTS: No, Your Honor.

10 THE COURT: You may step down, Ms. Clifton.

11 MR. POTTS: Your Honor, may she be excused?

12 THE COURT: I'm sure there's objection.

13 MR. GOLDBERG: No objection.

14 THE COURT: You're excused. Call your next witness.

15 MR. POTTS: State calls Marvin Shipman.

16 MR. GOLDBERG: We apologize, Your Honor. Our witness is
17 apparently not here. We'll call a different witness at this
18 time.

19 THE COURT: Very well.

20 MR. GOLDBERG: State calls Kim Hunt.

21 (WHEREUPON, Kim Hunt was sworn to
22 tell the truth.)

23 THE COURT: Have a seat in the witness box and state
24 your name for the record, please.

25 MS. HUNT: It's Kimberly Hunt.

State v. Victor Smith 9/19/11 - 9/23/11

189

KIMBERLY HUNT - DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Ms. Hunt, good afternoon.

A Hey.

Q Where are you currently employed?

A At Northstone Apartments.

Q Where is that located?

A It's right off of Hardscrabble, over in the Northeast side of town.

Q What's the address of that apartment complex?

A It's [REDACTED] Elders Pond Circle.

Q And what do you do at Northstone Apartments?

A I'm the property manager.

Q Tell the jury a little bit about what that entails?

A A lot. Collecting rent, taking care of the residents, making sure they're happy, taking care of the property, enforcing the rules.

Q How long have you been employed there?

A Three years.

Q Okay. Fair to say you started around December, 2008?

A Yes, December 1.

Q Okay, and at that time, when you started did you have access to all the records indicating who was living in what apartment --

A Yes.

1 Q -- and so forth?

2 A I did.

3 Q And at that time, December, 2008, who's name was on the
4 lease of apartment [REDACTED], at [REDACTED] Elders Pond Circle?

5 A Jazmine Bright and Victor Smith.

6 Q All right. And at some point in December of 2008, did
7 you actually come in contact with Ms. Jazmine Bright?

8 A Yes.

9 Q What was the nature of that contact?

10 A She had claimed that her apartment had been broken in
11 to. She actually didn't make the initial contact with me.
12 It was someone else I didn't know. They came up to the
13 office and said that her apartment had been broken into, and
14 I asked if they had called the police and they said no. And
15 at that point, a few minutes later, Jazmine came in and said
16 the same thing. I asked her if she called the police and
17 she said no. I asked her why and she wanted to know why I
18 didn't do anything about it, and wanted to do what I was
19 going to do. She left my office, and I then called the
20 police and reported the break-in.

21 Q Okay, and when you did that, did you actually go over
22 to apartment [REDACTED] and look around?

23 A Once the police officer arrived, I did.

24 Q And what was the point of you going over there?

25 A To secure the apartment.

A Exactly.

Q What kind of damage did you observe?

A The front door looked like it had been broken in or
kicked in. The back door looked like it had been kicked in.
And the master bedroom door.

Q Okay. Was Ms. Bright there at that time?

A She did, she was actually the one that pointed out all these things.

Q Now, I want to show you what's been marked as State's Exhibit No. 10, and ask you if you recognize that?

A I did. That is the floor plan to our two bedroom.

MR. GOLDBERG: Okay. At this time I'd offer --

THE COURT: What's that?

MR. GOLDBERG: It's the floor plan to the apartment. At this time, I'd offer State's No. 10 into evidence.

THE COURT: Any objection?

MR. HART: Oh, no objection, Your Honor.

(State's Exhibit No. 10, floor plan, was marked and entered.)

BY MR. GOLDBERG:

Q A little bit hard to see here. Now if you could just kind of describe for the jury there where the front entrance to that --

1 A The front entrance is here.

2 Q Okay. So the damage was right there in the front?

3 A The damage was right here at this door, at this patio
4 door, which this area is enclosed.

5 Q Okay.

6 A And to this door.

7 Q All right. Now, how much of this apartment -- is this
8 layout with apartment [REDACTED] and how it appeared at that time?

9 A Yes, it's exactly the plan.

10 Q Okay. Now, what parts of the apartment in December,
11 2008, did you go into?

12 A We entered the front door and we walked into the living
13 area. At that time, Jazmine showed us the back door, the
14 police officer and Jazmine and some of her friends were
15 standing right here. And we looked at the back door. She
16 came over and showed us where the bedroom door had been
17 kicked in, and then we walked with the police officer and
18 saw the front door.

19 Q Okay. At any point in time did you enter that first
20 bedroom on the right?

21 A That bedroom was closed.

22 Q Okay. Are there surveillance cameras on the property?

23 A No.

24 Q Was there one that was --

25 A There's one that's supposed to look like one, yeah.

State v. Victor Smith 9/19/11 - 9/23/11

193

1 Q. So it's not operational. After this incident here
2 where you checked out the apartment, did Jazmine continue to
3 live in [REDACTED]?

4 A Yes.

5 Q Did you ever have any other interactions with her about
6 this burglary incident?

7 A No.

8 Q Were you ever approached about moving her to a
9 different apartment?

10 A Yes. She did -- that same exact day she came up to the
11 office and asked could she move to another apartment and I
12 told her that that was not something that we could do.

13 MR. GOLDBERG: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 BY MR. GOLDBERG:

16 Q The doors you said were damaged, can you describe what
17 the damage was like a little bit?

18 A The front door, most of the damage that I saw was to
19 the wall behind the door, like it'd been --

20 Q Inside the apartment?

21 A -- inside the apartment. The same for the bedroom
22 door, the back door was mostly just around the lock area.

23 Q All right. Thank you very much.

24 A Okay.

25 THE COURT: Mr. Hart.

1 MR. HART: Thank Your Honor.

2 KIMBERLY HUNT - CROSS-EXAMINATION

3 BY MR. HART:

4 Q I just have a few questions for you.

5 A Okay.

6 Q As the property manager you say you started December 1,
7 2008?

8 A. That's correct.

9 Q. Would you say that some of the duties as property
10 manager is to walk around the premises and inspect the
11 premises?

12 A Yes, that's exactly right.

13 Q Would you say between December 1, 2008 to July 2009,
14 that you had walked around the premises to inspect the
15 premises?

16 A I have.

17 Q Can you tell us how many times you walked around that
18 property between December of '08 and July of '09?

19 A That's hard to tell, because I do walk when I show
20 apartments, but as far as just walking apartments myself,
21 probably once a week.

22 Q Once a week?

23 A Uh-huh. (Affirmative response.)

24 Q So that's roughly six or seven months between December
25 '08 and July 2009, you walked the property about once a

State v. Victor Smith 9/19/11 - 9/23/11

195

1 week. At any point in time when you walked around the
2 premises did you ever notice any kind of foul smell at all?

3 A No.

4 Q Did you, at your office, did you ever receive any
5 reports of a foul smell from the residents?

6 A No.

7 Q Did you ever notice anything in a wooden area behind
8 the apartment complex when you were walking around?

9 A That area is not really accessible, unless I go behind
10 the fencing. So that's really not within my realm of my job
11 to do that.

12 Q Sure. Once of the things I wanted to mention, to ask
13 you about, you said the police responded December 22, 2008;
14 is that correct?

15 A That's correct.

16 Q You don't remember seeing Victor Smith at that time?

17 A Huh-uh. (Negative response.) No.

18 Q In fact, you've never seen Victor Smith?

19 A I've never seen him.

20 Q Never seen him before, right?

21 A No.

22 Q And when you went to the apartment with the police,
23 Victor Smith was not there, right?

24 A No, he was not.

25 Q When they got to the apartment, how long did the police

1 stay there, approximately?

2 A Maybe 20 minutes.

3 Q 20 minutes.

4 A 25 minutes.

5 Q And the police, they actually went inside the
6 apartment?

7 A Uh-huh. (Affirmative response.) Went inside.

8 Q Let's talk real briefly about State's Exhibit No. 10.
9 What I'm pointing to on State's Exhibit No. 10 is the patio;
10 is that correct?

11 A Yes.

12 Q And you're saying that someone broke into the back door
13 of the patio?

14 A I'm saying that was what was reported.

15 Q Yes, ma'am, but what you saw was that there was damage
16 to that back door?

17 A Exactly.

18 Q Okay. And what I'm pointing to now on State's Exhibit
19 No. 10, this is the front door; is that correct?

20 A That's correct.

21 Q And there was damage to that front door?

22 A Yes, and to the wall.

23 Q And to the wall?

24 A Uh-huh. (Affirmative response.)

25 Q Approximately, what's the square footage of that

State v. Victor Smith 9/19/11 - 9/23/11

197

1 particular apartment?

2 A It's 1040 square feet.

3 Q About --

4 A 1040.

5 Q And are there apartments above them?

6 A There are apartments above them.

7 Q Apartments adjacent to it?

8 A Yes.

9 Q Do they share adjoining walls?

10 A Yes.

11 Q Is it unusual for you to receive noise complaints from
12 neighbors; is that unusual?

13 A In that particular apartment community, I don't receive
14 very many noise complaints?

15 Q It's a pretty quiet neighborhood?

16 A Yes, very quiet.

17 Q Have you ever received any gunshot reports?

18 A No.

19 Q Since you've been the manager you've never received any
20 gunshot reports?

21 A No.

22 Q So it would be unusual for you to receive a gunshot
23 report in that particular area?

24 A Very much so.

25 Q Once of the things as the property manager, do you --

1 do you do random checks on the apartments?

2 A Only if we're asked to. A maintenance request, we
3 would go in.

4 COURT REPORTER: Could you keep your voice up, please.

5 MS. HUNT: Okay. I'm sorry.

6 BY MR. HART:

7 Q When you walked into that apartment on December 22,
8 2008, did you notice any large stains in the living area?

9 A No.

10 Q Did you notice any blood splatter on the walls?

11 A No.

12 Q Did you notice any blood splatter on the ceiling?

13 A No.

14 Q Can you tell us, as the property manager, are you
15 trained to walk into apartments and notice if something's
16 out of place, for instance, if it's unusually dirty?

17 A Correct.

18 Q You look for those type of things?

19 A Yes.

20 Q Did you walk down the hallway at all?

21 A Well, you'd have to go down the hall on the way to get
22 to the living area.

23 Q When you walked down the hall, did you notice any
24 stains on the carpet at all?

25 A It was dirty.

State v. Victor Smith 9/19/11 - 9/23/11

199

1 Q Did you notice any blood on the walls as you were
2 walking down the hallway?

3 A No.

4 Q Did you ever go into the bathroom in December?

5 A No.

6 Q You say you never went into the bathroom?

7 A No.

8 Q And you never went into that first bedroom because it
9 was closed?

10 A That's correct.

11 Q Did you ever learn whey Jazmine didn't call the police
12 on that day?

13 A I never did.

14 MR. HART: I think that's all I have, Your Honor.

15 THE COURT: Anything on redirect, Mr. Goldberg?

16 MR. GOLDBERG: Yes, sir.

17 KIMBERLY HUNT - REDIRECT EXAMINATION

18 BY MR. GOLDBERG:

19 Q I'll show you here what's been marked as State's No. 5,
20 and admitted into evidence. This has already been testified
21 to as a kind of schematic of the Elders Pond area of the
22 Northstone Apartments. Mr. Hart asked you about the
23 premises, and just to orient you to what's already been
24 testified to, this will be your office here, right?

25 A That's correct.

State v. Victor Smith 9/19/11 - 9/23/11

200

1 Q And then the buildings throughout the complex?

2 A Yes.

3 Q Mr. Hart asked you about the premises and walking the
4 premises, so what is your interpretation of the premises,
5 using this, what would that mean, where would you be going?

6 A That would be the street area around the fronts of the
7 apartments here. Around the fronts of the apartments in the
8 back and the back side of the middle row of the apartments
9 and in front of the apartments on the back row.

10 Q In fact, if I may, we'll use the overhead, here. All
11 right. Again, this is already in evidence, but that's your
12 office, right?

13 A This is the office.

14 THE COURT: What exhibit is that?

15 MR. GOLDBERG: I'm sorry. My apologies. It's number --
16 State's No. 11.

17 THE COURT: All right.

18 BY MR. GOLDBERG:

19 Q Go ahead.

20 A From my office I would walk the street in the area
21 around this way.

22 Q Okay. Was it ever your job in any way to walk behind
23 the buildings in any way?

24 A If I did walk behind buildings it would be the open
25 area behind these buildings here.

State v. Victor Smith 9/19/11 - 9/23/11

201

1 Q Okay. Did you ever or have you ever gone into this
2 part?

3 A I have never gone back there.

4 Q All right. And isn't there, in fact, a fence back
5 there?

6 A Yes. There is a fence that runs along -- that closes
7 off that area.

8 Q Okay. Is there a garbage dump in the Northstone
9 Apartments?

10 A There is a dumpster right in there, where the office
11 is.

12 Q Okay. He asked you about when you went into apartment
13 [REDACTED], in December, took a look around, whether or not you
14 observed any stains, blood on the walls; did you see
15 anything like that? I believe you said no; is that right?

16 A That's correct.

17 Q But you never had an opportunity to go to the front
18 bedroom on the right did you?

19 A That's correct.

20 Q Thank you. That's all.

21 THE COURT: Mr. Hart?

22 MR. HART: I just have a few more questions.

23 KIMBERLY HUNT - RECROSS EXAMINATION

24 BY MR. HART:

25 Q That back area where the dumpster is, people go back

State v. Victor Smith 9/19/11 - 9/23/11

202

1 there, right, to dump their trash; is that correct?

2 A The dumpster is not in the back. It's right in front
3 of the office. It's right here.

4 Q Oh, I'm sorry. Looking at State's Exhibit No. 11. So
5 you say -- I'm pointing -- your office is here?

6 A My office is in this building right here, and the
7 dumpster is right here.

8 Q Okay. This wooded area back here, there's no dumpster
9 back here?

10 A No.

11 Q Okay. Thank you.

12 THE COURT: All right. Anything further for this
13 witness?

14 MR. GOLDBERG: No, sir.

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

16 MR. POTTS: State calls Marvin Shipman.

17 THE COURT: Okay. I'll take your word for it.

18 MR. POTTS: Thank Your Honor.

19 (WHEREUPON, Marvin Shipman, Jr. was
20 sworn to tell the truth.)

21 THE CLERK: Have a seat in the witness box, state your
22 name for the record, please.

23 MR. SHIPMAN: Name's Marvin E. Shipman, Jr.

24 MARVIN SHIPMAN - DIRECT EXAMINATION

25 BY MR. POTTS:

State v. Victor Smith 9/19/11 - 9/23/11

203

1 Q Mr. Shipman, where did you grow up?

2 A I grew up right here in Columbia, South Carolina.

3 Q Where'd you go to high school?

4 A I went to high school at Richland Northeast.

5 Q Do you know Ernest Robinson?

6 A I did.

7 Q How do you know him?

8 A I've been friends with him since probably ninth, tenth
9 grade high school, '98, '99.

10 Q Did you happen to see him on September 27 --

11 A I did.

12 Q -- 2008?

13 A I did.

14 Q Was that the last time you saw him?

15 A Last time I saw him.

16 Q Where did you see him that day?

17 A I picked him up right at the apartment complex right by
18 -- where he lived, this little apartment complex in front of
19 Building ■ I believe it's Northstone.

20 Q You believe it's Northstone?

21 A Right.

22 Q Was he alone?

23 A No, he was not.

24 Q Describe the person he was with?

25 A Kind of short, light skinned guy, slender. Appeared to

1 be fairly younger than me.

2 Q Do you have a name for him?

3 A Allen.

4 Q Now, why did you pick them up?

5 A I mean, E.J. was my home bud, so I went -- he wasn't
6 out of the ordinary for me and him to just get up and drink
7 a beer or something like that or whatever.

8 Q What was your purpose that day?

9 A Just to chill with him, smoke, drink.

10 Q Okay. When you say smoke, what do you mean by that?

11 A Just smoke weed. No secret.

12 Q That's fine.

13 A Yeah.

14 Q Where did you go?

15 A Went and picked him up at Northstone. We got some weed
16 over by Richland -- not Richland -- over by Columbia Mall.

17 Q Can you describe that transaction for me, real quick?

18 A Pulled up, went and bought some weed. Little dude
19 jumped out the car. Somebody he knew or whatever. They
20 basically they go half on a 20 bag, so --

21 Q What are you say half on a 20 bag?

22 A That means E.J. put up \$10, Allen put up \$10, so --

23 Q So they bought a \$20 bag?

24 A Basically.

25 Q And did you see how much money he gave Allen. A I

State v. Victor Smith 9/19/11 - 9/23/11

205

1 did. He sat in the front seat of my car. He was basically
2 no more than a foot from me. When we got to where we were
3 going to make the transaction, he opened his wallet. I
4 looked right in his wallet. He had one single bill.

5 Q What bill was that?

6 A It was a \$10 bill he was about to use.

7 Q Okay. Now, after you guys bought this 20 bag of weed,
8 where did you go?

9 A We went to another friend's house, smoked, drank,
10 smoked a blunt or two. Just to let loose. Just kind of sat
11 around and smoked some weed basically.

12 Q Did y'all do that for the rest of the day?

13 A Almost. Well, I did that for a period of time, but I
14 did end up dropping E.J. off at work and I dropped the other
15 guy back at Northstone.

16 Q Okay. And you dropped E.J. back off at work. You
17 remember what time that was?

18 A I believe he had to work at about 5:00 or 6:00, because
19 it was a little later in the day. He had to work, like that
20 night, basically, he was -- he worked in a kitchen, so you
21 go to work around 5:00 or 6:00 to, basically, close, you
22 know. Probably stay there until 10:00 or whenever they
23 close.

24 Q And you dropped the other guy off at --

25 A Northstone.

1 Q -- the same place you picked him up?

2 A Yes. Correct. In front of Building ■

3 Q Do you know what E.J.'s plans were for the evening?

4 A I do.

5 Q What were they?

6 A Well, they went half on a bag. So whenever you buy
7 some weed, you're going to smoke it. You're not going to
8 just give it to somebody for free, basically. So I dropped
9 E.J. off first, and E.J. was in the front seat. He turned
10 around to the dude and he said, here, man, hold the weed.
11 When I get off work I'll come to your house and we're going
12 to smoke it.

13 Q Okay. And then you went and dropped the other guy off?

14 A In front of Building ■

15 Q Okay. Have you ever seen E.J. again?

16 A No.

17 Q Have you ever seen Mr. Allen again?

18 A I did.

19 Q Now, without going into what he said, describe where
20 you were and what it was like?

21 A I went -- I was at a -- at the time it was an Alltel
22 store, it's now Verizon. Alltel and Verizon merged, so it's
23 not an Alltel store. Basically walked in, saw him. And
24 when he saw me, he said -- his whole demeanor just changed,
25 like the color from his face fell. He just looked at me like

State v. Victor Smith 9/19/11 - 9/23/11

207

1 really, really scared. He looked at me, basically, like I
2 was the police or the police just pulled up and we were
3 smoking.

4 Q Did you ask him anything?

5 A I did.

6 Q What did you ask him?

7 A I walked straight up to him, I looked him in the face,
8 I asked him where's my home boy.

9 Q And by home boy, who did you mean?

10 A E.J.

11 Q Okay. Now, how close were you and E.J.?

12 A I've known E.J. since ninth, tenth grade. We shared
13 lockers together. I mean, I've known him forever. He could
14 have called me for anything, basically.

15 Q Did you guys talk often?

16 A Yeah. I mean, even when he moved away from Columbia we
17 talked. I still -- it wasn't nothing new for him to call me
18 on Friday, Saturday night, he was at the house, just got off
19 work. He knew I wasn't working. We'd just sit on the phone
20 and talk for a little while. He's telling me what he's
21 doing, I'm telling him what I'm doing, basically.

22 Q So even when he was out of town you guys still stayed
23 in touch?

24 A In almost 10 years I've known him, it's never been a
25 time I didn't talk to him for more than a month. Not even a

1 month. I'd talk to him at least one, twice a month.

2 Q But since September 27?

3 A Haven't seen him.

4 Q Now, in the past you've been convicted for auto
5 breaking?

6 A Yep.

7 Q And pointing and presenting?

8 A Yep.

9 Q Does that have anything to do with your testimony
10 today?

11 A No. I mean, I'm not no great person. I did what I did
12 and I stand up for my own accounts that I did what I had to
13 do. But what I'm here for today ain't got nothing to do
14 with me. It's got to do with E.J. and his mama. That man
15 had a mama just like I did, you know what I'm saying. It
16 really bothered me --

17 MR. HART: Objection, Your Honor.

18 THE COURT: Basis.

19 MR. HART: Scenario.

20 THE COURT: Overruled.

21 BY MR. POTTS:

22 Q Please continue, sir?

23 A I mean, E.J. was a real kind of quiet guy, didn't
24 really bother nobody. I've known him since the ninth, tenth
25 grade of high school. I shared locker with him. I could

State v. Victor Smith 9/19/11 - 9/23/11

209

1 have left money around him in the car. He was one of the few
2 people I could trust. Flat out trust. I know I could leave
3 anything around him, call him with anything and it would
4 stay between me and him.

5 Q Did you ever know E.J. not to pick up his pay check or
6 not call home?

7 A No.

8 Q Thank you. No further questions. Answer any questions
9 Mr. Hart has.

10 THE COURT: Yes, Mr. Hart.

11 MR. HART: Thank you, Your Honor.

12 MARVIN SHIPMAN - CROSS-EXAMINATION

13 BY MR. HART:

14 Q I just have just a few brief questions for you. Not
15 many. When you picked up Ernest on that particular day,
16 Victor Smith wasn't there was he?

17 A No.

18 Q I'm sorry?

19 A No.

20 Q Have you ever seen Victor Smith before?

21 A I have.

22 Q Now, Allen is also known as Smurf; is that correct?

23 A I'm not sure of that. I mean, I can't answer that
24 truthfully.

25 Q You don't know?

1 A I don't know him by anything but what E.J. called him
2 that day.

3 Q Did E.J. ever call him Smurf?

4 A No.

5 Q He didn't, okay. Well, E.J., he told you he had to go
6 to work that day, right?

7 A Yes.

8 Q I'm sorry?

9 A Yes, correct.

10 Q And Allen didn't have to go to work that day, did he?

11 A Correct.

12 Q But Allen had money; is that correct?

13 A I did not see him with any substantial amount of money.

14 The only money I actually physically saw was the \$10 that
15 he put on the weed, basically. So I can't say that he had
16 any money or any substantial amount of money or anything
17 like that.

18 Q But you saw him with the \$10?

19 A I knew he had it, he basically -- that's \$10 coming
20 from my right shoulder over.

21 Q Sure. Let's go back to -- you said you felt
22 comfortable enough with E.J. that you could leave money
23 around him; is that correct?

24 A Correct.

25 Q You felt comfortable enough that you could leave

State v. Victor Smith 9/19/11 - 9/23/11

211

1 anything around him?

2 A I've never had a problem with E.J. stealing anything
3 out of my car or anything. I'm not no saint or nothing,
4 okay. I ride with money, I ride with drugs, whatever you
5 want to call it, plain and simple, but E.J. wouldn't take
6 nothing from me. I've never him steal. I've never seen him
7 portray any type of distinguishing thing that would make me
8 think, oh, this guy's a criminal or will steal something.

9 Q Sure. Do you remember telling Ernest that you didn't
10 like Allen; do you remember telling him that?

11 A I sure do.

12 Q About smoking weed, you say you guys were smoking weed
13 on that particular day, right?

14 A Right.

15 Q And you say you smoke weed; is that right?

16 A Correct. I smoke weed for 10 years so you can't sit
17 there and try to say my weed affect me in anything
18 substantially. It wasn't no super high grade weed, it
19 wasn't no super high grade weed -- basic regular weed. I
20 smoke weed and drink and drive every day. Well, I used to.
21 You know what I'm saying. It's nothing new for me to smoke
22 and drink, so -- I was not in a state of being to where
23 somebody who does not do drugs might think, oh, he's under
24 the influence and might have seen or heard something
25 incorrectly. So the state of mind that I was in was nothing

1 out of the -- abnormal for me.

2 Q And calm down, Mr. Shipman, I don't want to attack you.
3 I just want to ask you a few questions.

4 A No problem at all.

5 Q I don't want to attack you, but I do want to talk
6 briefly about smoking weed.

7 A Okay.

8 Q Are you saying when you smoke weed, it doesn't do
9 anything to you, it doesn't change you at all?

10 A It makes me feel different.

11 Q How often do you smoke?

12 A When I used to smoke, I used to consume maybe 10 to 20
13 blunts a day. I could probably smoke an ounce of weed in
14 two to three days. I could drink a gallon of beer and a
15 pint of liquor in a day and still function and go to work to
16 where none of my managers see that I'm incoherent or
17 anything.

18 Q So a pint of liquor and how much beer?

19 A A gallon.

20 Q A gallon of beer, every day?

21 A Yes.

22 Q Do you remember giving a statement to the police?

23 A I do.

24 Q Had you smoked that day?

25 A The day I gave the statement to the police?

State v. Victor Smith 9/19/11 - 9/23/11

213

1 Q Yes.

2 A No, they got lucky and contact me before I started my
3 normal procedure.

4 Q What time do you normally start smoking?

5 A It depends on how much weed I got, how much money I
6 got.

7 Q On average. Let's talk about average. What time do
8 you normally start smoking?

9 A I can start smoking between 11:00 and 1:00 o'clock in
10 the afternoon. Sometimes I might night smoke until 2:00 or
11 3:00.

12 Q When was the last time you smoked?

13 A At least -- almost a year and a-half, probably.

14 Q So you smoked 10 to 20 blunts a day, correct?

15 A Give or take. Give -- money, yeah.

16 Q Drink a pint of liquor and a gallon of beer, correct?

17 A Correct.

18 Q And you're saying today you just stopped?

19 A Well, I'm saying I'm on probation. You can call my
20 probation officer and I can take a drug test right now and
21 my system will be positive. I can go piss in a cup right
22 now if that's how you feel. No, no --

23 Q Just answer my questions.

24 A Okay, just ask me, but you're not going to sit here and
25 make a seem like I'm under some influence or I'm high and

1 doing something or something for somebody. That man had a
2 mama like I do, man. I want his mama to know the truth.
3 Plain and simple. I got to live with knowing everyday that
4 I saw him in the front seat of my car and I never ever saw
5 him again.

6 A Yes, sir. Yes, sir. I appreciate it. Thank you.

7 Q You say you're not smoking because you're on probation?

8 A Yes. I'm not smoking just because of that, because of
9 personal choices, because what I've seen, the things I've
10 been through, it just made me realize it wasn't for me and
11 it's only going to lead to trouble.

12 Q Thank you for your time.

13 THE COURT: All right. Anything on redirect?

14 MR. GOLDBERG: Nothing, Your Honor.

15 THE COURT: All right. You can step down, Mr. Shipman.

16 MR. SHIPMAN: Can I say something?

17 THE COURT: It depends.

18 MR. HART: No further questions from the defense.

19 THE COURT: You need to tell me something or what?

20 MR. SHIPMAN: I'd just like to make a general
21 statement.

22 THE COURT: No. We just can't do that Mr. Shipman, but
23 we understand your feelings for Mr. Robinson.

24 MR. SHIPMAN: I just want to basically send my
25 condolences to the family.

State v. Victor Smith 9/19/11 - 9/23/11

215

1 MR. HART: Objection, Your Honor.

2 THE COURT: Overruled. That's all. He misses his
3 friend, loves his mother. That's understandable. No harm
4 in that. He request to send condolences to the mother of
5 Mr. Robinson.

6 You may step down, Mr. Shipman.

7 MR. SHIPMAN: Thank you.

8 MR. POTTS: Your Honor, may he be excused?

9 THE COURT: You may be excused.

10 Let's take a short break. Please don't talk about the
11 case. I'll bring you back out -- I'll give you a chance to
12 refresh yourselves, okay.

13 (Jury out for break at 3:28 p.m.)

14 THE COURT: Well, are we ready?

15 (State's Exhibit No. 12, was marked
16 for ID only.)

17 (State's Exhibit No. 13, was marked
18 for ID only.)

19 (State's Exhibit No. 14, was marked
20 for ID only.)

21 (State's Exhibit No. 15, was marked
22 for ID only.)

23 (State's Exhibit No. 16, was marked
24 for ID only.)

25 (State's Exhibit No. 17, was marked

State v. Victor Smith

9/19/11 - 9/23/11

216

1 for ID only.)

2 (State's Exhibit No. 18, was marked

3 for ID only.)

4 (State's Exhibit No. 19, was marked

5 for ID only.)

6 (State's Exhibit No. 20, was marked

7 for ID only.)

8 (State's Exhibit No. 21, was marked

9 for ID only.)

10 (State's Exhibit No. 22, was marked

11 for ID only.)

12 (State's Exhibit No. 23, was marked

13 for ID only.)

14 (State's Exhibit No. 24, was marked

15 for ID only.)

16 (State's Exhibit No. 25, was marked

17 for ID only.)

18 (State's Exhibit No. 26, was marked

19 for ID only.)

20 (State's Exhibit No. 27, was marked

21 for ID only.)

22 (State's Exhibit No. 28, was marked

23 for ID only.)

24 (State's Exhibit No. 29, was marked

25 for ID only.)

for ID only.)

for ID only.)

for ID only.)

for ID only.)

THE COURT: All right. Mr. Hart, have you seen those
ures?

THE COURT: All right. Let's go on the record. You
 ct because --

THE COURT: Okay. So he objects to all of them so we'll have to make an objection specifically to each and every one of them. I think that should cover it. These exhibits -- are --

COURT REPORTER: Twelve.

THE COURT: 14 through 33.

MR. GOLDBERG: 14 through 33. Photographs and memos. Twelve and 13 are -- I don't believe there's any objection. The cutting from a piece of carpet and a bath mat.

MR. HART: It is. The objection is pursuant to the search warrant.

THE COURT: Okay. So we've covered all the exhibits that are proposed to be introduced?

MR. GOLDBERG: Yes, sir.

THE COURT: Bring the jury in, sir.

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

THE BAILIFF: All jurors are present, sir.

THE COURT: Thank you.

Welcome back, members of the jury. This case will resume when the state calls their next witness.

MR. GOLDBERG: Thank Your Honor.

State calls Kristen Polis.

(WHEREUPON, Kristen Polis was sworn
to tell the truth.)

THE CLERK: Take a seat in the witness box, and state your name for the record, please.

MS. POLIS: My name is Kristen Polis.

KRISTEN POLIS - DIRECT EXAMINATION

BY MR. GOLDBERG:

Q Where are you currently employed?

A With the Richland County Sheriff's Department in the

State v. Victor Smith 9/19/11 - 9/23/11

219

1 Crime Scene Unit.

2 Q How long have you been there?

3 A I've been with the Sheriff's Department since October
4 of 2002, and I've been in the Crime Scene Unit for five
5 years.

6 Q Can you describe for the jury a little bit about your
7 education and training and background that led you to be a
8 crime scene analyst?

9 A Yes. I have a Bachelor's Degree in Criminal Justice in
10 Psychology and a Master's Degree from USC in Social Work.
11 After joining the crime scene division, we actually have an
12 in-house training program that all of the investigators have
13 to complete. It's self-paced, meaning you read, you test,
14 you do practical exercises, basically, on every area of
15 processing that we have to perform, and you're tested to
16 make sure that you are proficient on each level. It took me
17 20 months to complete that from beginning to end. And
18 during that time, also working and handling calls. In
19 addition to that in-house training I've also done a number
20 of external trainings where you go for conferences and
21 training that are much more in-depth on different topics.
22 Basic fingerprint, advanced fingerprint, basic photography,
23 blood stain analysis and a number of other topics that I've
24 completed training courses on. I'm also certified through
25 the International Association of Identification as a crime

State v. Victor Smith 9/19/11 - 9/23/11

220

1 scene investigator, and that is another body of material
2 that you have to read and study and you're tested on to
3 determine if you are proficient in that area.

4 MR. GOLDBERG: Your Honor, at this time, I'd offer
5 Investigator Polis as an expert in crime scene analysis.

6 MR. HART: No objection.

7 THE COURT: Without objection. So admitted.

8 MR. GOLDBERG: Thank you.

9 BY MR. GOLDBERG:

10 Q Investigator Polis, back on July 21, 2009, were you
11 dispatched out to [REDACTED] Elders Pond Circle?

12 A I was contacted by my supervisor, Sgt. Richards, and
13 requested to respond there and assist. There were some
14 other investigators already at that location, and I was
15 called to come assist them.

16 Q Was there a particular apartment you went in reference
17 to?

18 A We went to apartment [REDACTED].

19 Q. Okay. And at that point, what was your knowledge about
20 what the incident was that you were investigating?

21 A I would have been briefed when I arrived there, and I
22 knew that we were searching that location to determine if a
23 crime had occurred in the apartments, specifically, a
24 homicide had taken place in that apartment.

25 Q And once you responded to the apartment what did you

State v. Victor Smith 9/19/11 - 9/23/11

221

1 do?

2 A The first thing I did was I took a set of photographs.
3 We use both 35 millimeter film and digital photography in
4 our work, and I used the 35 millimeter camera and took a set
5 of photographs of the apartment, the entire location, and
6 then we completed some additional processing. Mostly what
7 we were doing at that point was searching and trying to see
8 what we could locate in that apartment.

9 q Okay. I want to show you what's been marked as State's
10 Exhibit No. 10. It's already in evidence. Does that appear
11 to be about the layout of the apartment --

12 A Yes.

13 Q -- that you entered that day?

14 A Yes.

15 Q Okay. And was there a particular area that you focused
16 on or was it throughout the apartment?

17 A Throughout the apartment.

18 Q So I want to show you what's been marked as State's
19 Exhibits for identification, 14 through 23. Take a look at
20 those, please. See if you recognize them?

21 A. Yes.

22 Q In general what do you recognize those photographs to
23 be of?

24 A These are some progress of the outside, the front door
25 and the living area and front bedroom of this apartment.

1 Q Apartment [REDACTED]?

2	A	Yes.

3 Q And do those photographs fairly and accurately depict
4 how that location appeared back on July 21, 2009?

5 A Yes.

6 MR. GOLDBERG: At this time, we'd offer State's Exhibits
7 14 through 23, I believe. 14 through 23 into evidence.

8 THE COURT: 14 through 23. Your objection has been
9 noted.

10 MR. HART: Thank Your Honor.

11 THE COURT: Certainly.

12 (State's Exhibit No. 14, photo, was
13 marked and entered.)

14 (State's Exhibit No. 15, photo, was
15 marked and entered.)

16 (State's Exhibit No. 16, photo, was
17 marked and entered.)

18 (State's Exhibit No. 17, photo, was
19 marked and entered.)

20 (State's Exhibit No. 18, photo, was
21 marked and entered.)

22 (State's Exhibit No. 19, photo, was
23 marked and entered.)

24 (State's Exhibit No. 20, photo, was
25 marked and entered.)

State v. Victor Smith 9/19/11 - 9/23/11

223

(State's Exhibit No. 21, was marked
and entered.)

(State's Exhibit No. 22, was marked
and entered.)

(State's Exhibit No. 23, was marked
and entered.)

BY MR. GOLDBERG:

Q. If you'll come down this way for me. I'm going to hold
these up and just have you describe a little bit for the
jury what it is that we're looking at.

THE COURT: Let me suggest that you stand on the other
side so she can talk back toward the court reporter.

MR. GOLDBERG: All right.

A This is just the front of Building ■ and then each of
these would be a separate apartment.

BY MR. GOLDBERG:

Q All right.

A Front door of Apartment ■

THE COURT: All right. What number is that, the exhibit?

MR. GOLDBERG: First one was 23. This is 21.

A This is the front door of apartment ■

BY MR. GOLDBERG:

Q Okay, State's No. 22?

A The front hallway, when you open the front doorway,
this is what you're looking at. The kitchen area is off to

1 the side. This is a door to a bedroom right here.

2 Q And that would be the first bedroom to the right?

3 A Right.

4 Q State's No. 20?

5 A And this is that -- the same bedroom that I was
6 referencing here that you see when you come in the front
7 door. This is this bedroom right here, and we've labeled it
8 Bedroom No. 1.

9 Q All right. And State's No. 18?

10 A This is the inside of Bedroom No. 1, when you come
11 inside and look to the right, this is along that wall and
12 what you see, a window in the front of the building.

13 Q All right. State's 17?

14 A This is the other corner. This is the same window.

15 Q And State's 16.

16 A This is that same first corner.

17 Q Can you describe the condition of the floor at this
18 point in time, when you first entered the room, any rugs or
19 anything of that nature?

20 A As you can see here, this is the main carpet that's
21 installed in the entire room. It has kind of a larger area
22 rug, and this is a smaller area rug with a kid's theme, kind
23 of a cartoon on top of it. Two rugs on top of the regular
24 carpet in the room.

25 Q And were those rugs actually pulled back?

State v. Victor Smith 9/19/11 - 9/23/11

225

1 A They were.

2 Q Okay. I want to show you finally, State's 14.

3 A And this is that same large rug that I was pointing to,
4 folded back, this is the carpet beneath it.

5 Q All right. Thank you. You can have a seat.

6 Now, in State's 14, here, where the carpet that was
7 pulled back, I notice there's a large area that was circled?

8 A Yes.

9 Q And a marker with a No. 2. Is that correct?

10 A Correct.

11 Q Can you tell the jury a little bit about what that is
12 and what that indicates?

13 A We located that stained area and collected a swab from
14 the area, which we tested and because it was a large stain,
15 it's just a general large circle that encompasses that whole
16 area that appears to be the one stain.

17 Q What do you mean you swabbed that area?

18 A We take a swab, which is nothing but a Q-tip on a long
19 stick, okay. They're packaged and they're sterile, and
20 they're swabs. We take that and distilled water and we can
21 collect a sample from carpeting or really any surface that
22 we really think there maybe something there that we want to
23 test.

24 Q And this particular instance is it fair to say you were
25 looking for blood among other things?

1 A Yes, any bodily fluids, anything that could give us
2 DNA.

3 Q Is there a presumptive test that can be conducted on
4 stains at a crime scene to determine if a stain is, in fact,
5 blood?

6 A There are several presumptive tests basically that can
7 be used, and what they tell us is this particular stain or
8 swab behaves like blood does. It's presumptive, meaning
9 when we get a positive reaction from this test we presume it
10 to be blood, we treat it as blood, but we still collect
11 swabs from that area. And they will go to our DNA lab for
12 further testing, and they will actually confirm that they
13 are, in fact, blood.

14 Q And did you in fact do -- do this presumptive test on
15 any of those stains at that location?

16 A Yes. I collected a swab from the area that you just
17 saw in the photograph.

18 Q And, in fact, did you mark that with this little No. 2
19 marker?

20 A That's right, from that area, the general area.

21 Q And that's where you took the swab from?

22 A Yes.

23 Q And what was the result of that test?

24 A It had a positive reaction. The test was called
25 Phenolphthalein.

State v. Victor Smith 9/19/11 - 9/23/11

227

1 Q So in lay terms that means what?

2 A It's a positive presumptive test for blood, meaning we
3 will treat it as blood, and, again, as I said before there
4 will be further testing that will confirm that that was, in
5 fact, blood. These test tell us basically that the stain
6 we're looking at behaves as blood does, but it doesn't tell
7 us if it's animal blood, human blood. It doesn't give us
8 any specifics about male or female blood. All of that would
9 be determined in our lab. It was a positive presumptive
10 test.

11 Q Are there any other resources that you use such as
12 alternative light sources?

13 A Me, personally no.

14 Q Did you observe any other types of stains on the
15 carpet, discoloration or anything of that nature?

16 A The carpet itself was dirty. It was soiled in each
17 room, and there were several areas that were tested in the
18 apartment.

19 Q Were there certain areas of that carpet that were
20 lighter than others, prior to your testing?

21 A You're referring to the stain?

22 Q Yes.

23 A Yes, there were. The carpet itself looked lighter and
24 there were places where the reddish brown color was darker
25 in some areas than others.

State v. Victor Smith 9/19/11 - 9/23/11

228

1 Q Would that be consistent with some sort of cleaning
2 product being used?

3 A That's a possibility. Yes.

4 Q All right. I want to show you what's been marked as
5 State's No. 13, for identification. Have you look at that;
6 do you recognize that?

7 A Yes.

8 Q What do you recognize that to be?

9 A This is a bath mat that we collected out of the rear
10 bedroom. This is not the bedroom that we were looking at in
11 the photographs that you saw. There's a second bedroom --
12 That would be this bedroom back here, that we were
13 searching. That particular bath mat was on a laundry cart
14 and we collect it, I collected it from that area.

15 MR. GOLDBERG: At this time, we'd offer State's Exhibit
16 13 into evidence.

17 MR. HART: Same objection, Your Honor.

18 THE COURT: All right. So noted. No. 13 admitted.

19 MR. GOLDBERG: All right.

20 (State's Exhibit No. 13, bath mat
21 was marked and entered.)

22 BY MR. GOLDBERG:

23 Q And once you collected this bath mat, what did you do
24 with it?

25 A Sgt. Richards, my supervisor, who was on scene with us

State v. Victor Smith 9/19/11 - 9/23/11

229

1 that day tested an area on this particular rug, and then
2 after he completed his test I packaged it in the bag that
3 you see here, and prior to leaving the scene I turned that
4 item over to him on what we call a Chain of Custody Form,
5 which basically documents who has custody of different items
6 of evidence, and that rug was turned over to him.

7 Q You indicated that Sgt. Richards is your supervisor; is
8 that correct?

9 A Yes.

10 Q And is it fair to say that he was in charge, more or
11 less of this overall crime scene investigation that day?

12 A Yes.

13 Q Did you return to the apartment after the 21?

14 A No, I did not.

15 Q I believe that's all I have. Thank you.

16 THE COURT: Mr. Hart.

17 MR. HART: Thank Your Honor. Please the Court?

18 THE COURT: Yes, sir.

19 KRISTEN POLIS - CROSS-EXAMINATION

20 BY MR. HART:

21 Q. Investigator Polis, how are you doing?

22 A Great. Thank you.

23 Q You mentioned something about the DNA lab you guys have
24 at the Sheriff's Department, right?

25 A Yes, sir.

1 Q That's actually a nationally recognized lab, right?

2 A It's accredited, yes, sir.

3 Q You guys do a great job there.

4 A We try to.

5 Q Yes. One of the things I want to mention is you talked
6 about the large reddish brown stain area. You can visibly
7 see that area when you walk into the room; is that correct?

8 A Once the carpet was pulled back. Yes, sir. That
9 entire area was covered with the carpet you saw in the
10 pictures.

11 Q Right. You don't know how long that area had been
12 covered do you?

13 A No, sir.

14 Q You mentioned a bath mat; you collected a bath mat?

15 A Correct.

16 Q And you tested that bath mat?

17 A Sgt. Richards tested a stain on that bath mat.

18 Q Are you familiar with the results on that bat mat?

19 A I'm not. Not off the top of my head, sir.

20 Q Okay. Well, tell us exactly what items did you collect
21 that you are familiar with the testing?

22 A The two items that I collected were the swab that
23 tested positive with the Phenolphthalein from Evidence
24 Marker 2 beneath the rugs in the front bedroom.

25 Q And you say that's a presumption that there's blood

State v. Victor Smith 9/19/11 - 9/23/11

231

1 indicated, right?

2 A Correct.

3 Q And based off the results you would agree none of them
4 tested positive for Victor Smith blood; is that correct?

5 A I don't know who -- that is a presumptive test that
6 tells us yes, we think we have blood or no, this is not
7 behaving as blood would behave with these particular
8 chemicals. It doesn't tell us human or animal, male or
9 female. Any further information at that point. It is when
10 we complete out portion it is submitted to our DNA section
11 and they would make determinations on who this would come
12 back to; who it matches.

13 Q Okay. So you aren't familiar with the final results of
14 the --

15 A No, sir.

16 Q But you are familiar with DNA evidence in general?

17 A Yes. The collection of DNA evidence.

18 Q And these types of crimes, it's possible to match the
19 person's DNA up to the crime scene?

20 A At time, yes, sir.

21 Q It's possible you could -- like their skin; is that
22 right?

23 A Skin cells at times, yes, sir.

24 Q The hair, possibly?

25 A At times. Yes, sir.

1 Q And if there's clothing it's possible you can get some
2 DNA off their clothing, right?

3 A At times, yes, sir.

4 Q You can collect the hair; is that right?

5 A There's times that hair can be collected. Yes, sir.

6 Q And that can be analyzed to see if it matches a
7 particular suspect; is that right?

8 A They can attempt a test on it. You know, the details
9 of this test and how it would come back to an individual are
10 complicated and beyond what I can testify to in the scope of
11 my training.

12 Q But to be able to match the DNA that you get from the
13 scene you have to have the DNA from the suspect; is that
14 right?

15 A Ask me that one more time?

16 Q To match or try to match the DNA from the scene you
17 have to have DNA from a suspect or a witness, a person; is
18 that correct?

19 MR. GOLDBERG: Objection, Your Honor. That's calling
20 for information beyond the scope of her knowledge. She's
21 already said that she's not qualified --

22 THE COURT: I think it's a very simple question. Ask it
23 again?

24 MR. HART: What I asked it to try to see if the DNA
25 matches up you have to have --

State v. Victor Smith 9/19/11 - 9/23/11

233

1 THE COURT: You have to have a subject, I think is the
2 question.

3 MR. HART: Correct.

4 A You have to have something to compare it to. There's a
5 data base called DODIS.

6 BY MR. HART:

7 Q Yes.

8 A It has suspects profiles -- I'm saying suspect
9 profiles, but it has DNA profiles that are known and then,
10 you know, there are times that suspects are identified and
11 things are compared to that. But, yes, you would have to
12 say this is the same as this.

13 Q And you mentioned you have a wide range of experience
14 in DNA training?

15 A Collection.

16 Q Collection. Okay. You also mentioned there was an
17 area that was discolored that looked as if it had been
18 lightened; is that correct?

19 A The stain itself lightened, as well as, portions of the
20 carpeting where, you know, the color of the fabric was
21 different in one area than in another.

22 Q And how long did you spend in this apartment, when you
23 got there, how long were you in the apartment?

24 A That day just shy of two hours. Me, personally.

25 Q How long had you been in the apartment before you

State v. Victor Smith 9/19/11 - 9/23/11

234

1 noticed the lightening of the carpet, the different stains
2 that appeared to be lightened?

3 A I did not document that. We searched the entire
4 apartment. I don't know if we searched the living room
5 first. I don't know the order or the time that I observed
6 that.

7 Q Would you say -- and I'm about to wrap it up here. I
8 don't have many more questions for you, but it's important
9 to know that when you notice that the carpet appeared to be
10 lightened, would you say you had been in the apartment an
11 hour?

12 A I cannot say that with any certainty.

13 Q All right. Thank you.

14 A You're welcome.

15 THE COURT: Anything on redirect?

16 MR. GOLDBERG: Just very briefly.

17 THE COURT: Yes, sir.

18 KRISTEN POLIS - REDIRECT EXAMINATION

19 BY MR. GOLDBERG:

20 Q You testified earlier in looking at these photographs
21 that when you walked in the room there were area rugs down,
22 right?

23 A Right.

24 Q The areas with the stains to be tested later on were
25 located --

State v. Victor Smith 9/19/11 - 9/23/11

235

1 THE COURT: What exhibit are you on?

2 MR. GOLDBERG: I'm sorry. State's 16 and 17.. Thank
3 you, sir.

4 THE COURT: All right.

5 BY MR. GOLDBERG:

6 Q The areas that you tested later and swabbed were
7 located where in connection to these two rugs?

8 A Below the two rugs.

9 Q Thank you.

10 MR. GOLDBERG: That's all I have.

11 THE COURT: Anything further for this witness?

12 MR. HART: Nothing further, Your Honor.

13 THE COURT: You may step down Officer Polis.

14 Call your next witness.

15 MR. GOLDBERG: State calls Investigator Oates.

16 (WHEREUPON, Robert Oates was sworn
17 to tell the truth.)

18 THE CLERK: Have a seat in the jury box and state your
19 name for the record, please.

20 MR. OATES: Robert Oates. O-a-t-e-s.

21 ROBERT OATES - DIRECT EXAMINATION

22 BY MR. GOLDBERG:

23 Q Investigator Oates, where are you employed, sir?

24 A Richland County Sheriff's Department.

25 Q Can you describe for this jury a little bit about your

1 background in law enforcement and your career?

2 A First of all, I have 15 years total law enforcement
3 experience. Seven of those 15 I have operated as a crime
4 scene investigator within the crime lab. Crime Scene Latent
5 Print Division. While in the Crime Scene Latent Print
6 Division, I have had extensive training in latent print
7 development, latent print development, forensic photography,
8 advanced forensic photography, blood pattern analysis,
9 advanced blood pattern analysis, crime scene reconstruction,
10 evidence collection and crime scene processing.

11 MR. GOLDBERG: At this time, I'd offer Investigator
12 Oates as an expert in crime scene analysis.

13 MR. HART: No objection.

14 THE COURT: Without objection.

15 BY MR. GOLDBERG:

16 Q Did you have an opportunity to respond to the scene on
17 ■ Elder Pond Circle on July 20, 2009?

18 A Yes.

19 Q What was the nature of that call?

20 A Found remains. Got a call from the region deputies.

21 Q When you responded to that location, what did you do?

22 A I first made contact with the deputy in charge, Deputy
23 Ard, who was in control of the crime scene log, securing the
24 crime scene. And then once I made contact with Deputy Ard,
25 I then entered the crime scene and Deputy Ard instructed me

State v. Victor Smith 9/19/11 - 9/23/11

237

1 where the found remains were located.

2 Q I'll show you what's been marked as State's Exhibit
3 Nos. 24 through 33. Can you take a look at those and see if
4 you recognize them?

5 A Yes.

6 Q Generally, what do you recognize those items to be?

7 A That's my initial photographs from my initial arrival
8 at the scene. From the front of Building 16 all the way to
9 where the remains were located.

10 Q And do these photographs fairly and accurately depict
11 how those locations appeared on July 20, 2009?

12 A Yes.

13 MR. GOLDBERG: Your Honor, at this time --

14 THE COURT: Your objection is noted, Mr. Hart.

15 MR. HART: Yes, sir.

16 THE COURT: They're admitted.

17 MR. GOLDBERG: Thank Your Honor.

18 (State's Exhibit No. 24, photo, was
19 marked and entered.)

20 (State's Exhibit No. 25, photo, was
21 marked and entered.)

22 (State's Exhibit No. 26, photo, was
23 marked and entered.)

24 (State's Exhibit No. 27, photo, was
25 marked and entered.)

State v. Victor Smith

9/19/11 - 9/23/11

238

1 (State's Exhibit No. 28, photo, was
2 marked and entered.)

3 (State's Exhibit No. 29, photo, was
4 marked and entered.)

5 (State's Exhibit No. 30, photo, was
6 marked and entered.)

7 (State's Exhibit No. 31, photo, was
8 marked and entered.)

9 (State's Exhibit No. 32, photo, was
10 marked and entered.)

11 (State's Exhibit No. 33, photo, was
12 marked and entered.)

13 BY MR. GOLDBERG:

14 Q You indicated that the area had been marked off with
15 crime scene tape; is that right?

16 A Yes, sir.

17 Q Looking at State's 32 and 33, the yellow tape in those
18 pictures?

19 A Yes, that's crime scene tape.

20 Q And that crime scene tape was where, obviously, in
21 connection to these buildings?

22 A Basically, behind the building before you enter the
23 rear area where the remains were located.

24 Q And in State's 33, there's a fence right here; is that
25 right?

State v. Victor Smith 9/19/11 - 9/23/11

239

1 A Yes. There's a fence in the back of the building.

2 Q What's on the other side of that fence?

3 A It's an area, a drop down area that has small pine
4 trees and thick underbrush.

5 Q You said small pine trees and thick underbrush?

6 A Yes.

7 Q Okay. Is it a flat terrain; is it an embankment?

8 A It's an embankment.

9 Q Okay. As you entered the crime scene there, is it fair
10 to say the top of that embankment?

11 A Yes, at the very top.

12 Q Could you see the remains or the so-called remains or
13 anything like that from that vantage point at that time?

14 A No, sir, it was covered.

15 Q In fact, if you look at State's 31, is that a pretty
16 good depiction of what it looked like down that embankment?

17 A Yes.

18 Q So you made your way to the crime scene, you made your
19 way down that embankment and what happened from there?

20 A My sergeant, Sgt. Stan Richards arrived. We then made
21 our way down the embankment to observe the human remains and
22 the area surrounding the human remains for any possible
23 evidence.

24 Q State's 30, 29, 28, 27 -- all the way through 24. If
25 you could show the jury as you're discussing what those

1 items are?

2 A Okay, the first photograph, Exhibit 29. Exhibit 29 is
3 going to be like a mid-range photograph of the actual area
4 in which the human remains were found. You can see the
5 remains were wrapped in flowery patterned type of cloth
6 underneath underbrush or the pine trees.

7 Q Okay.

8 A Kinds of gives an idea of what it looked like when we
9 first approached.

10 Q Okay.

11 A Now, the next photograph, Exhibit 28, is a little bit
12 more of a close up photograph of the actual remains and what
13 they looked like, and the surrounding area around those
14 remains.

15 Q All right. Next.

16 A And, again, Exhibit 27, photograph, again, a little bit
17 closer view of photograph of the remains and the cloth it
18 was basically wrapped in, and also there is a black belt
19 that is visible around the leg area or bones of the actual
20 remains.

21 Q Okay. And the black belt that you speak of, is that
22 what kind of runs along the length of the remains; is that
23 fair to say?

24 A Yes.

25 Q All right.

State v. Victor Smith 9/19/11 - 9/23/11

241

1 A Here is Exhibit No. 26. This photograph is a close-up
2 of the actual black belt around the human remains, legs or
3 ankles, that area.

4 Q And examining that belt, does it appear to be a, like a
5 material is flat, is it braided; how does this one appear to
6 be?

7 A It appears to be braided.

8 Q This one?

9 A Oh, excuse me. This one appears to be flat or solid.

10 Q Okay. Is there, in fact, a braided one in there, as
11 well?

12 A Yes, there is.

13 Q Okay, and what is that?

14 A It's Exhibit No. 25. It's a close-up photograph of
15 another belt.

16 Q Second belt?

17 A Second belt. Yes.

18 Q All right.

19 A Exhibit No. 24. This is going to be a photograph after
20 the body removal arrived, and the body was taken away from
21 the scene, I photographed the ground where the body had been
22 for documentation purposes. That's the photograph you see
23 there.

24 Q Okay.

25 A Exhibit 30. This is -- and the bottom of the

1 embankment where the body was located, there was a perimeter
2 fence. I took a photograph of that to kind of give an idea
3 of the area as far as where the body was located. The fence
4 was nearby.

5 Q Okay. Now, as you proceeded down here and observed the
6 body, were there an number of other items, other than trees
7 and brush, non-natural items that you observed in that area
8 and collected?

9 A Yes, there were.

10 Q And what were they?

11 A I collected a piece of metal underneath the body that
12 was there. A cigar filter that was underneath the body.
13 Small bones that were underneath the body. A 12 ounce Bud
14 Lite beer can that was lying approximately three feet from
15 the body. A plastic clear colored unknown type kind of knob
16 type of object. Those were underneath the body. A Bud Lite
17 beer bottle cap that was underneath the body, and
18 approximately a four foot long piece of tubing that was
19 actually attached to that chain link fence, the bottom
20 perimeter fence.

21 Q Did you actually -- you talked about your experience
22 with latent print analysis earlier?

23 A Yes, sir.

24 Q Can you tell the jury a little bit about what latent
25 print analysis is and what that means?

State v. Victor Smith 9/19/11 - 9/23/11

243

1 A Latent print analysis basically is the study or science
2 of finger prints. After a fingerprint is developed
3 determining a type of fingerprint in order for it to be
4 catalogued or filed. Each one of us has different
5 fingerprints. No has the same fingerprints. They are very
6 unique, and what we do with that is we develop a fingerprint
7 from a crime scene. We then can use a computer to analyze
8 the ridges. We all have friction ridges on our fingers.
9 Each one of them is a little round circle within our
10 fingers, and to put it simple, and each one is unique. So
11 then we can use that in the computer with different
12 characteristics in those fingerprints in order to find out
13 an identification of a person.

14 Q The items you just referenced, that you collected near
15 the body; the beer can, the cigar filter, as I just read
16 off. Did you, in fact, test those for fingerprints?

17 A I did.

18 Q And what was the results of that?

19 A I did not develop any fingerprints.

20 Q Is that uncommon?

21 A It's not uncommon.

22 Q And why is that?

23 A Well, when -- in our fingers we have sweat glands, and
24 when we sweat, basically that water comes to the surface,
25 and fingerprint or sweat is 95.9 percent moisture, so if

1 it's out in humidity, heat or whatever it can dissipate.

2 Okay. Or it can dry up, basically, okay.

3 Q Was that the extend of your involvement on July 20?

4 A On July 20, yes, sir.

5 Q Did you actually respond back out to that location on
6 July 21?

7 A I did.

8 Q And did you go to, in particular, apartment [REDACTED] at [REDACTED]
9 Elders Pond Circle?

10 A Yes, I did.

11 Q What was the nature of your visit to [REDACTED]

12 A Basically, to assist the other crime scene
13 investigators in searching the interior of the apartment.

14 Q And can you talk -- well, actually did you collect any
15 evidence on the 21?

16 A No, sir.

17 Q And when you say assisting others, what does that mean?

18 A Manpower. Basically, we spread out -- the more
19 investigators we have on the scene we can spread out and
20 cover more area, and that's why I was there that day.

21 Q How about July 22, did you actually go back to that
22 apartment that day, as well?

23 A Yes, I did.

24 Q And what you do this day?

25 A To help with manpower again basically. Collect, help

State v. Victor Smith 9/19/11 - 9/23/11

245

1 collect some evidence, assisted other investigators.

2 Q What exactly was located while you were there that day?

3 A Some blood stains in Bedroom No. 1, as soon as you walk
4 into the residence on the right, the first bedroom, we found
5 some blood stains on the carpet, and facing the wall there
6 was some blood stains and on the ceiling there was some
7 blood stains that were found.

8 Q Did you assist Sgt. Richards in collecting those items?

9 A I did. I helped him in photographing those items.

10 Q All right. I want to show you what's been marked as
11 State's No. 12 for identification and see if you recognize
12 this. Recognize that?

13 A Yes.

14 Q And what do you recognize that to be?

15 A It's the piece of the carpet that was in that first
16 right bedroom.

17 Q All right.

18 MR. GOLDBERG: Your Honor, at this time, I'd offer
19 State's No. 12 into evidence.

20 MR. HART: Same objection.

21 THE COURT: All right. State's No. 12 is in. Your
22 objection is noted.

23 (State's Exhibit No. 12, piece of
24 carpet, was marked and entered.)

25 BY MR. GOLDBERG:

1 Q Before I show the jury what that piece of carpet looks
2 like, can you describe how this whole room of carpet got
3 down to this little square right here?

4 A Okay. I had a request from -- this was after we
5 collected the carpet. We collected the whole carpet from
6 the room.

7 Q The entire front bedroom carpet?

8 A The entire front bedroom carpet. We took it with us,
9 entered it into evidence. I had a request from
10 investigators to take a section of that carpet. There was
11 an impact point for possible gunshot in the carpet, and I
12 was ordered or asked to cut out a section of that carpet
13 around that impact point. I located it. I measured off my
14 12 by 12 piece of carpet and circled the actual impact point
15 or bullet hole from the actual carpet.

16 Q I was just going to ask you what is an impact point?

17 A Yeah. Bullet hole.

18 Q All right. And once you cut out this section of carpet
19 what did you do?

20 A I placed it into evidence just like the main piece of
21 carpet.

22 Q Did you have any further involvement in testing it in
23 any way?

24 A No, I didn't.

25 Q And when you initially entered that bedroom on the

State v. Victor Smith 9/19/11 - 9/23/11

247

1 right, that front bedroom on the right, were there items
2 covering up the floor?

3 A In certain areas, yes.

4 Q I'll show you what's already been marked into evidence,
5 State's No. 16?

6 A Yes.

7 Q Is that how the room appeared when you walked in?

8 A Yes, it is.

9 Q Those rugs in the middle of it?

10 A Yes.

11 Q And State's No. 14?

12 A Yes.

13 Q And what do you see in 14?

14 A Basically, the room is full of children's bed, toys,
15 items.

16 Q What's the position of the rug in 14?

17 A Basically, we had rolled back the carpet in this
18 photograph here, and we had -- well, I'm sorry. This part
19 of the carpet is discolored. That's why we used a magic
20 marker -- not a magic marker, a permanent marker to actually
21 show the identification of the discoloration in the carpet
22 of the reddish brown stain.

23 Q And in fact that's underneath where those rugs had been
24 located?

25 A Right.

1 Q All right. And Sgt. Richards was with you on both
2 those occasions, the 21 and the 22?

3 A Yes, he was.

4 Q Was he your supervisor at the time?

5 A He was. Yes.

6 MR. GOLDBERG: Beg the Court's indulgence?

7 THE COURT: Yes, sir.

8 BY MR. GOLDBERG:

9 Q After the 22, any further involvement in the case other
10 than the cutting of the carpet, of course?

11 A No, sir.

12 Q All right.

13 MR. GOLDBERG: That's all I have for him.

14 THE COURT: Mr. Hart.

15 MR. HART: Thank Your Honor.

16 ROBERT OATES - CROSS EXAMINATION

17 BY MR. HART:

18 Q Investigator Oates, you have any experience with human
19 decomposition?

20 A Just responding to those type of incidents. Not any
21 background or any pathology.

22 Q In your experience as an investigator, have you ever
23 had the opportunity to smell the decomposing body?

24 A Yes.

25 Q Would you describe the smell to us?

State v. Victor Smith 9/19/11 - 9/23/11

249

1 A It's kind of hard to put in words. It's a acidic type
2 of odor. Very strong type of odor that's very noticeable.

3 Q You say it's very noticeable?

4 A Oh, yes.

5 Q One of the things you mentioned on the 22, you were
6 inside the apartment on the 22; is that correct?

7 A Yes.

8 Q And you mentioned that there were blood stains on the
9 carpet?

10 A Well, reddish brown stains, yes.

11 Q Did you collect those stains?

12 A I didn't collect those stains. Another investigator
13 collected those stains. I did observe the investigator used
14 Phenolphthalein, a chemical used to test for blood, a blood
15 presumptive type of test.

16 Q Have you seen the final results of that testing?

17 A The Phenolphthalein?

18 Q Yes.

19 A They're automatic, on the scene. We can tell by the
20 chemical change on the actual cotton swab with the chemicals
21 and the blood.

22 Q Right. You tested on the scene but you also tested it
23 additionally when you get back --

24 A Right. Of course, I was not present for that. I have
25 not received those results.

1 Q You have not received those, seen those tests?

2 A Right. No, sir.

3 Q Also the carpet you mentioned, on that particular piece
4 of carpet you said there was an impact point; is that
5 correct?

6 A Right. Appeared to be an impact point. Yes, sir.

7 Q What I'm showing you has been marked as State's Exhibit
8 No. 12. What I'm showing you is State's Exhibit No. 12, and
9 you're saying what you have circled here is the possible
10 impact point?

11 A Right. Yes, sir.

12 Q There's no way to tell if that was a gunshot point is
13 it?

14 A At that point that is the only area in the carpet where
15 the actual reddish brown stain was located that was
16 disturbed.

17 Q You also had a chance to observe the padding under that
18 point; is that correct?

19 A Right. Yes.

20 Q And the padding wasn't disturbed, was it?

21 A To my knowledge there was some disturbance to the
22 actual padding.

23 Q In the same area --

24 A I can't tell you if it's the same, I didn't do any
25 measurements.

State v. Victor Smith 9/19/11 - 9/23/11

251

1 Q And you didn't recover a gun when you were in that
2 apartment did you?

3 A No, sir.

4 Q You didn't recover any bullets, did you?

5 A No, sir.

6 Q Are you familiar with any gunshot residue test on the
7 carpet in that apartment?

8 A No, sir. Not in the apartment, no, sir.

9 Q One of the things -- do you have your report with you?

10 A Yes, sir.

11 Q Page 2. You have a number of items that are listed
12 here. You signed off -- you collected these items; is that
13 correct?

14 A What page are you referring to, sir?

15 Q Page 2 of your Crime Scene Investigation Analysis
16 Report.

17 A This is on the 20?

18 Q Yes, sir, this is on the 20?

19 A Okay.

20 Q And you collected those items?

21 A Yes, I did.

22 Q Did you test those items?

23 A Yes. That afternoon I went back to the lab and tested
24 those items.

25 Q And you would say it's approximately 10 items you

1 collected?

2 A Eight.

3 Q Eight. You have eight?

4 A Yes, sir.

5 Q Okay. Number nine is a hair brush; is that correct?

6 A Yes.

7 Q And number 10 is a swab from Deborah Ashe?

8 A Yes.

9 Q And you're familiar with who Deborah Ashe is; that's
10 Ernest Robinson's mother; correct?

11 A Yes. To my knowledge, correct.

12 Q You collected a piece of metal on 7/20; is that
13 correct?

14 A That's correct.

15 Q And you tested it?

16 A Yes, sir.

17 Q You would agree that test if negative for Ernest
18 Robinson; is that correct?

19 A It tested negative for any fingerprints. That's all I
20 tested it for was fingerprints.

21 Q Well, let me ask you this --

22 A Yes.

23 Q -- today, do you have any physical testing that says
24 that piece of metal came back to Ernest Robinson?

25 A Huh-uh. (Negative response.) No.

State v. Victor Smith 9/19/11 - 9/23/11

253

1 Q Is it fair by putting negative by Ernest Robinson; is
2 that fair?

3 A It was negative for fingerprints. That's all I tested
4 it for.

5 Q What I'm asking you is it fair that I put negative for
6 Ernest Robinson?

7 MR. GOLDBERG: Judge --

8 THE COURT: Asked and answered. It doesn't connect
9 anybody to the metal. Asked and answered.

10 MR. HART: Thank you, sir.

11 BY MR. HART:

12 Q Is that fair; what I wrote, is that fair?

13 A Yes.

14 Q Is it fair to say it did not come back positive for
15 Victor Smith?

16 A I do not have any documentation saying it did.

17 Q Number two. Cigar filter underneath the body; is that
18 correct?

19 A That's correct.

20 Q Is it fair to say that cigar filter came back negative
21 for Victor Smith?

22 A I don't have any documentation saying it did.

23 Q Okay. There were small bones underneath the body?

24 A Right.

25 Q You said to be returned to the coroner's office, right?

1 A Yes, sir.

2 Q When you mentioned the small bones, was that part of
3 the skeletal remains?

4 A Yes, sir.

5 Q Is it fair to say that the small bones that were
6 recovered have not been identified as Ernest Robinson; is
7 that fair to say?

8 MR. GOLDBERG: Objection.

9 A I don't --

10 MR. GOLDBERG: The witness is not qualified to answer
11 that question. It's beyond the scope of his knowledge.

12 THE COURT: Right. Crime scene analysis. Ask about
13 crime scene analysis.

14 BY MR. HART:

15 Q Are you familiar with the results of the bones?

16 A No, sir.

17 Q Okay.

18 THE COURT: Go ahead.

19 BY MR. HART:

20 Q Number four. It was a 12 ounce empty Bud Lite beer
21 can; right?

22 A Yes.

23 Q Is it fair to say that you don't have any results that
24 tested positive for Victor Smith on that beer can?

25 A Right. Yes.

State v. Victor Smith 9/19/11 - 9/23/11

255

1 Q Is it fair to say you don't have any results on that
2 beer can for Ernest Robinson; is that fair to say?

3 A That's correct. Yes.

4 Q Five is a plastic clear colored unknown type of knob
5 that was underneath the body?

6 A Right.

7 Q You collected that?

8 A Yes.

9 Q Is it fair to say that number five that you collected
10 that there's no results that come back to Ernest Robinson?

11 A Right. I have no results that say that.

12 Q Number six, which is a Bud Lite beer bottle cap that
13 was underneath the body, right?

14 A Yes.

15 Q Is it fair to say that that came back negative for
16 Victor Smith?

17 A Right. I have no analysis that says that.

18 Q Is it fair to say that it came back negative for Ernest
19 Robinson?

20 A Again, I have no analysis --

21 Q Okay.

22 A -- that would say that.

23 Q Number seven, you collected approximately four feet
24 long plastic tubing; is that correct?

25 A Yes.

State v. Victor Smith 9/19/11 - 9/23/11

256

1 Q Is it fair to say that that came back negative for
2 Ernest Robinson?

3 A Right. The analysis that I performed.

4 Q Is it fair to say that it came back negative for Victor
5 Smith?

6 A Right. I do not have that information.

7 Q Okay. Number eight, you have listed as an unknown type
8 piece of cloth.

9 A Yes.

10 Q You said item submitted to evidence for DNA analysis.
11 Is it fair to say that number eight came back negative for
12 Ernest Robinson?

13 MR. GOLDBERG: Objection. He already testified he
14 didn't perform any analysis on that.

15 THE COURT: You got redirect. I'm going to let him
16 answer. You can clear it up. Go ahead, Mr. Hart.

17 BY MR. HART:

18 Q I want to be fair to you. Do you have any knowledge
19 about the results of number eight, the test results?

20 A No, sir.

21 Q Okay. All right. Number nine, which is the brown
22 wooden hair brush.

23 A Right.

24 Q Do you have any knowledge of that results of that?

25 A No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

257

1 Q The swab that was taken from Deborah Ashe, do you have
2 any knowledge of that?

3 A No, sir.

4 Q Thank you. You mentioned there were some area rugs
5 that was covering the floor; you don't know how long they
6 were there do you?

7 A No, sir.

8 Q Investigator, I thank you for your time.

9 THE COURT: All right. Mr. Goldberg.

10 MR. GOLDBERG: Thank you.

11 ROBERT OATES - REDIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q The four foot long piece of plastic, the Bud Lite beer
14 cans, the cigar filter, the piece of metal, the bottle cap,
15 and the knob. You did, in fact, test those for
16 fingerprints, correct?

17 A Yes. For fingerprints, yes.

18 Q And they were negative?

19 A Right. Negative for fingerprints.

20 Q The other items you mentioned the plastic tubing the,
21 the Bud Lite beer can, the other items you mentioned you
22 forwarded on to the DNA lab?

23 A Yes.

24 Q So the only tests that you performed were for
25 fingerprints?

1 A Correct.

2 Q And they were negative?

3 A Correct.

4 Q Thank you.

5 THE COURT: Anything further for this witness?

6 MR. HART: Nothing further, Your Honor.

7 THE COURT: You may step down, Investigator Oates.

8 MR. OATES: Thank you.

9 THE COURT: Solicitor you can call your next witness at
10 9:30 in the morning. Okay.

11 MR. GOLDBERG: Yes, sir.

12 THE COURT: I look at this jury, they look tired and I
13 am. So it's my decision, I'm going to send you home now.
14 You've heard approximately 10 witnesses today. That's a lot
15 to absorb.

16 So I'm going to ask you once again, not to discuss this
17 case in any way, shape or form. I hope you have a pleasant
18 and restful evening. Be back in the jury room at 9:30 in
19 the morning. Thank you all so very much.
20 (Jury out at 4:50 p.m.)

21 THE COURT: Anything further this afternoon, gentlemen?

22 MR. GOLDBERG: No, sir.

23 THE COURT: Y'all get a good night's sleep. See you at
24 9:30 in the morning.

25 Anything we need to take up before we go, any

State v. Victor Smith 9/19/11 - 9/23/11

259

1 logistical problems?

2 MR. GOLDBERG: The only logistical issues I can think of
3 are we'll have some of the co-defendant's transported
4 tomorrow to testify, so it's be a little herky-jerky with
5 bringing them up and down.

6 THE COURT: Okay. That's fine.

7 MR. GOLDBERG: And then from a scheduling standpoint
8 there is one witness we know we will not be able to put up
9 tomorrow and we'll have to put up on Thursday.

10 THE COURT: An expert or --

11 MR. GOLDBERG: No.

12 THE COURT: That's fine.

13 MR. HART: In addition to that, Your Honor, is those
14 co-defendant's can be transported at the same time.

15 MR. GOLDBERG: We've asked them to make sure that they
16 are separated.

17 THE COURT: We'll try not to put them in the same --

18 MR. GOLDBERG: Separated from one another and your
19 client.

20 MR. HART: Yes, sir.

21 MR. GOLDBERG: Thank you.

22 THE COURT: Any questions -- I think it's 2:15 or
23 something I've got to go do some interview. Thank goodness
24 it was quick today. In and out in a hurry. Anyway, get a
25 good night's sleep. See you in the morning.

State v. Victor Smith 9/19/11 - 9/23/11

260

1

MR. GOLDBERG: Thank Your Honor.

2

MR. HART: Thank you, Your Honor.

3

(Court in recess for the evening at 4:54 p.m.)

4

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

State v. Victor Smith 9/19/11 - 9/23/11

261

1 September 21, 2011

2 (Court session at 9:52 a.m.)

3 (State's Exhibit No. 34, photo, was
4 marked for ID only.)

5 (State's Exhibit No. 35, photo, was
6 marked for ID only.)

7 (State's Exhibit No. 36, photo, was
8 marked for ID only.)

9 (State's Exhibit No. 37, photo, was
10 marked for ID only.)

11 (State's Exhibit No. 38, photo, was
12 marked for ID only.)

13 (State's Exhibit No. 39, photo, was
14 marked for ID only.)

15 (State's Exhibit No. 40, photo, was
16 marked for ID only.)

17 (State's Exhibit No. 41, photo, was
18 marked for ID only.)

19 (State's Exhibit No. 42, photo, was
20 marked for ID only.)

21 (State's Exhibit No. 43, photo, was
22 marked for ID only.)

23 (State's Exhibit No. 44, photo, was
24 marked for ID only.)

25 (State's Exhibit No. 45, photo, was

State v. Victor Smith

9/19/11 - 9/23/11

262

1 marked for ID only.)

2 (State's Exhibit No. 46, photo, was

3 marked for ID only.)

4 (State's Exhibit No. 47, photo, was

5 marked for ID only.)

6 (State's Exhibit No. 48, photo, was

7 marked for ID only.)

8 (State's Exhibit No. 49, photo, was

9 marked for ID only.)

10 (State's Exhibit No. 50, photo, was

11 marked for ID only.)

12 (State's Exhibit No. 51, photo, was

13 marked for ID only.)

14 (State's Exhibit No. 52, photo, was

15 marked for ID only.)

16 (State's Exhibit No. 53, photo, was

17 marked for ID only.)

18 (State's Exhibit No. 54, photo, was

19 marked for ID only.)

20 (State's Exhibit No. 55, photo, was

21 marked for ID only.)

22 (State's Exhibit No. 56, photo, was

23 marked for ID only.)

24 (State's Exhibit No. 57, photo, was

25 marked for ID only.)

State v. Victor Smith

9/19/11 - 9/23/11

263

1		(State's Exhibit No. 58, photo, was
2	marked for ID only.)	
3		(State's Exhibit No. 59, photo, was
4	marked for ID only.)	
5		(State's Exhibit No. 60, photo, was
6	marked for ID only.)	
7		(State's Exhibit No. 61, photo, was
8	marked for ID only.)	
9		(State's Exhibit No. 62, photo, was
10	marked for ID only.)	
11		(State's Exhibit No. 63, photo, was
12	marked for ID only.)	
13		(State's Exhibit No. 64, photo, was
14	marked for ID only.)	
15		(State's Exhibit No. 65, photo, was
16	marked for ID only.)	
17		(State's Exhibit No. 66, photo, was
18	marked for ID only.)	
19		(State's Exhibit No. 67, photo, was
20	marked for ID only.)	
21		(State's Exhibit No. 68, photo, was
22	marked for ID only.)	
23		(State's Exhibit No. 69, photo, was
24	marked for ID only.)	
25		(State's Exhibit No. 70, photo, was

State v. Victor Smith

9/19/11 - 9/23/11

264

1 marked for ID only.)

2 (State's Exhibit No. 71, photo, was

3 marked for ID only.)

4 (State's Exhibit No. 72, photo, was

5 marked for ID only.)

6 (State's Exhibit No. 73, photo, was

7 marked for ID only.)

8 (State's Exhibit No. 74, photo, was

9 marked for ID only.)

10 (State's Exhibit No. 75, photo, was

11 marked for ID only.)

12 (State's Exhibit No. 76, photo, was

13 marked for ID only.)

14 (State's Exhibit No. 77, photo, was

15 marked for ID only.)

16 (State's Exhibit No. 78, photo, was

17 marked for ID only.)

18 (State's Exhibit No. 79, photo, was

19 marked for ID only.)

20 (State's Exhibit No. 80, photo, was

21 marked for ID only.)

22 (State's Exhibit No. 81, photo, was

23 marked for ID only.)

24 (State's Exhibit No. 82, photo, was

25 marked for ID only.)

State v. Victor Smith

9/19/11 - 9/23/11

265

1 (State's Exhibit No. 83, photo, was
2 marked for ID only.)

3 (State's Exhibit No. 84, photo, was
4 marked for ID only.)

5 (State's Exhibit No. 85, photo, was
6 marked for ID only.)

7 (State's Exhibit No. 86, photo, was
8 marked for ID only.)

9 (State's Exhibit No. 87, photo, was
10 marked for ID only.)

11 (State's Exhibit No. 88, photo, was
12 marked for ID only.)

13 (State's Exhibit No. 89, photo, was
14 marked for ID only.)

15 (State's Exhibit No. 90, photo, was
16 marked for ID only.)

17 (State's Exhibit No. 91, photo, was
18 marked for ID only.)

19 (State's Exhibit No. 92, photo, was
20 marked for ID only.)

21 (State's Exhibit No. 93, photo, was
22 marked for ID only.)

23 (State's Exhibit No. 94, photo, was
24 marked for ID only.)

25 (State's Exhibit No. 95, photo, was

State v. Victor Smith

9/19/11 - 9/23/11

266

1 marked for ID only.)

2 (State's Exhibit No. 96, photo, was

3 marked for ID only.)

4 (State's Exhibit No. 97, photo, was

5 marked for ID only.)

6 (State's Exhibit No. 98, photo, was

7 marked for ID only.)

8 (State's Exhibit No. 99, photo, was

9 marked for ID only.)

10 (State's Exhibit No. 100, photo,

11 was marked for ID only.)

12 (State's Exhibit No. 101, photo,

13 was marked for ID only.)

14 (State's Exhibit No. 102, photo,

15 was marked for ID only.)

16 (State's Exhibit No. 103, photo,

17 was marked for ID only.)

18 (State's Exhibit No. 104, photo,

19 was marked for ID only.)

20 (State's Exhibit No. 105, photo,

21 was marked for ID only.)

22 (State's Exhibit No. 106, photo,

23 was marked for ID only.)

24 (State's Exhibit No. 107, photo,

25 was marked for ID only.)

(State's Exhibit No. 108, photo,
was marked for ID only.)

(State's Exhibit No. 109, photo,
was marked for ID only.)

(State's Exhibit No. 110, photo,
was marked for ID only.)

(State's Exhibit No. 111, photo,
was marked for ID only.)

(State's Exhibit No. 112, photo,
was marked for ID only.)

(State's Exhibit No. 113, photo,
was marked for ID only.)

(State's Exhibit No. 114, photo,
was marked for ID only.)

(State's Exhibit No. 115, photo, was marked for ID only.)

(State's Exhibit No. 116, photo,
was marked for ID only.)

(State's Exhibit No. 117, photo,
was marked for ID only.)

(State's Exhibit No. 118, photo,
was marked for ID only.)

(State's Exhibit No. 119, photo,
was marked for ID only.)

(State's Exhibit No. 120, photo,

State v. Victor Smith 9/19/11 - 9/23/11

268

1 was marked for ID only.)
2 (State's Exhibit No. 121, photo,
3 was marked for ID only.)
4 (State's Exhibit No. 122, photo,
5 was marked for ID only.)
6 (State's Exhibit No. 123, photo,
7 was marked for ID only.)
8 (State's Exhibit No. 124, photo,
9 was marked for ID only.)
10 (State's Exhibit No. 125, photo,
11 was marked for ID only.)
12 (State's Exhibit No. 126, photo,
13 was marked for ID only.)
14 (State's Exhibit No. 127, photo,
15 was marked for ID only.)
16 (State's Exhibit No. 128, photo,
17 was marked for ID only.)
18 (State's Exhibit No. 129, photo,
19 was marked for ID only.)
20 (State's Exhibit No. 130, photo,
21 was marked for ID only.)
22 (State's Exhibit No. 131, photo,
23 was marked for ID only.)
24 (State's Exhibit No. 132, photo,
25 was marked for ID only.)

State v. Victor Smith

9/19/11 - 9/23/11

269

1 (State's Exhibit No. 133, photo,
2 was marked for ID only.)
3 (State's Exhibit No. 134, photo,
4 was marked for ID only.)
5 (State's Exhibit No. 135, photo,
6 was marked for ID only.)
7 (State's Exhibit No. 136, photo,
8 was marked for ID only.)
9 (State's Exhibit No. 137, photo,
10 was marked for ID only.)
11 (State's Exhibit No. 138, photo,
12 was marked for ID only.)
13 (State's Exhibit No. 139, photo,
14 was marked for ID only.)
15 (State's Exhibit No. 140, photo,
16 was marked for ID only.)
17 (State's Exhibit No. 141, photo,
18 was marked for ID only.)
19 (State's Exhibit No. 142, photo,
20 was marked for ID only.)
21 (State's Exhibit No. 143, photo,
22 was marked for ID only.)
23 (State's Exhibit No. 144, photo,
24 was marked for ID only.)
25 (State's Exhibit No. 145, photo,

State v. Victor Smith

9/19/11 - 9/23/11

270

1. was marked for ID only.)

2 (State's Exhibit No. 146, photo,

3 was marked for ID only.)

4 (State's Exhibit No. 147, photo,

5 was marked for ID only.)

6 (State's Exhibit No. 148, photo,

7 was marked for ID only.)

8 (State's Exhibit No. 149, photo,

9 was marked for ID only.)

10 (State's Exhibit No. 150, photo,

11 was marked for ID only.)

12 (State's Exhibit No. 151, photo,

13 was marked for ID only.)

14 (State's Exhibit No. 152, photo,

15 was marked for ID only.)

16 (State's Exhibit No. 153, photo,

17 was marked for ID only.)

18 (State's Exhibit No. 154, photo,

19 was marked for ID only.)

20 (State's Exhibit No. 155, photo,

21 was marked for ID only.)

22 (State's Exhibit No. 156, photo,

23 was marked for ID only.)

24 (State's Exhibit No. 157, photo,

25 was marked for ID only.)

(State's Exhibit No. 170, photo,

State v. Victor Smith 9/19/11 - 9/23/11

272

1 was marked for ID only.)

2 (State's Exhibit No. 171, photo,

3 was marked for ID only.)

4 (State's Exhibit No. 172, photo,

5 was marked for ID only.)

6 (State's Exhibit No. 173, photo,

7 was marked for ID only.)

8 (State's Exhibit No. 174, photo,

9 was marked for ID only.)

10 THE COURT: I understand we're up to 174 photographs
11 for ID?

12 MR. GOLDBERG: Most of the photographs, there's a couple
13 of others.

14 THE COURT: I'm sorry. All right, Mr. Hart, any
15 objections to anything before we get started?

16 MR. HART: To those -- I'll just renew my objections.

17 THE COURT: Okay. Everything.

18 MR. HART: Yes, sir.

19 THE COURT: Okay. So Mr. Hart, once again, objecting to
20 everything that's been admitted and we'll just note that for
21 the record so you don't have to jump up and down every time,
22 but if -- whenever you need -- if I say, okay, I'll know
23 you're objecting like we did yesterday.

24 MR. HART: Yes, sir.

25 THE COURT: Invite the jury in.

State v. Victor Smith 9/19/11 - 9/23/11

273

1 MR. HART: Your Honor, I don't know if you want to do it
2 as each witness comes on, because we may have to take the
3 jury out, but one thing, I'm not sure when Investigator
4 Holdorf is going to testify. If he's going to testify
5 today, but there's some statements that were taken from
6 Victor Smith and it has the Mississippi Department of
7 Corrections on it, and we'll need to redact that part of it
8 the statement.

9 MR. GOLDBERG: We're not planning on putting him up this
10 morning. We can address all that before he goes up.

11 MR. HART: Well, the other thing is Jeremiah Jones may
12 possibly testify this morning, and he had a mental
13 evaluation so we may have to take up some question about
14 his competency. I will be attempting to question him on his
15 mental evaluation. I want to make sure there will be no
16 objection

17 THE COURT: He's not the defendant. Help me out here.

18 MR. GOLDBERG: Yeah. I would object to the relevance of
19 that. He was examined for his competency to stand trial as
20 a defendant. He was found competent to stand trial. I
21 don't understand how that would impair his ability to
22 testify as a witness in this case.

23 MR. HART: And that's fine, Your Honor, but what we want
24 --

25 THE COURT: I'm going to give you a chance to do your

State v. Victor Smith 9/19/11 - 9/23/11

274

1 job, whatever it is, and if we have to take 10 to 15 minutes
2 to do so, we'll do it.

3 MR. HART: Okay, also, during my cross examination I
4 want to question him about that mental evaluation.

5 THE COURT: No. I don't think I'm going to -- I don't
6 think I'm going to do that. He's been found competent,
7 unless you have an expert, Mr. Hart, that says he's not
8 competent, we -- it's like a Blair Hearing. He's been found
9 competent. I don't you can go back behind that. I'll let
10 you put your position on the record, but I'm disinclined to
11 let you go into whether or not he's competent as a witness
12 when he's been found competent, competent as a defendant.

13 MR. HART: Well, the issues that are coming in the
14 cross-examination are the credibility of him as a witness,
15 because during the mental evaluation --

16 THE COURT: All right. Stop. Do you have an expert that
17 says, will be able to question whether or not he's
18 competent?

19 MR. HART: Yes, sir. He was found competent, Your
20 Honor. The question now is not his competency. During the
21 mental evaluation it was determined that he was malingering,
22 which means he was lying. We believe that that is
23 information that we can bring out in the cross for the jury
24 to be the judges of his credibility --

25 THE COURT: We'll take that matter up when we get to it,

State v. Victor Smith 9/19/11 - 9/23/11

275

1 okay. That's the only way to do it, anyway. I mean, we'll
2 do it in camera if we have to. We'll make a record, we'll
3 let you cross examine him, let the state examine him. We'll
4 let you make a full ruling at that time, after I've heard
5 everything.

6 MR. HART: Yes, sir.

7 THE COURT: But, I mean, I think it's kind of pre-mature
8 to make a decision based on somebody -- that's the cleanest
9 way to do it.

10 MR. HART: Yes, sir.

11 THE COURT: It allows you to do your job and they
12 object, we'll make a record in case it ever comes upon
13 appeal.

14 MR. HART: Yes, sir.

15 THE COURT: Bring the jury in.

16 (Jury in at 9:56 a.m.)

17 THE BAILIFF: The jurors are all present, Your Honor.

18 THE COURT: All right. Welcome back members of the jury.
19 I hope you had a pleasant and restful evening. This case
20 will resume with the state calling the next witness.

21 MR. GOLDBERG: Thank Your Honor. Then state calls Dr.
22 Clay Nichols.

23 (WHEREUPON, Clay Nichols was sworn
24 to tell the truth.)

25 THE CLERK: Have a seat in the witness box and state

State v. Victor Smith 9/19/11 - 9/23/11

276

1 your name for the record, please.

2 THE COURT: You live in Raleigh is it?

3 DR. NICHOLS: No. We work in Chapel Hill.

4 THE COURT: That's right. I knew it was some place in
5 North Carolina.

6 DR. NICHOLS: Clay Nichols. N-i-c-h-o-l-s.

7 CLAY NICHOLS - DIRECT EXAMINATION

8 BY MR. GOLDBERG:

9 Q Dr. Nichols, can you give this jury a little bit of a
10 background on your profession training and experience?

11 A I received my Bachelor of Science degree from the
12 University of Oklahoma in 1981. I received my MD degree,
13 also from Oklahoma in 1985. After that I entered a
14 residency program in anatomic and forensic pathology at
15 MUSC, completing that in 1990. Then I was on the faculty at
16 MUSC where I was an Associate Professor until 2000. After
17 that I entered into private practice here in the Columbia
18 area and as part of my private practice duties I was the
19 Chief Medical Examiner for Richland County. I currently am
20 the Deputy Chief Medical Examiner for the State of North
21 Carolina. I am board certified by both the -- in both
22 anatomic and forensic pathology and hold unrestricted
23 licenses to practice both in North Carolina and South
24 Carolina.

25 Q And in light of that can you tell this jury a little

State v. Victor Smith 9/19/11 - 9/23/11

277

1 bit about what a pathologist does?

2 A A pathologist is a licensed physician like any other
3 physician, but rather than seeing patients as part of their
4 practice, we see parts of patients. Anytime the tissue is
5 removed at time of surgery or biopsy is performed and sent
6 to a pathologist and examined looking for the presence or
7 absence of disease. Another thing a pathologist does is
8 performance of an autopsy. A forensic pathologist must have
9 specific training dealing with people who die suspicious or
10 unnatural deaths.

11 MR. GOLDBERG: Your Honor, at this time, I'd offer Dr.
12 Nichols as an expert in forensic pathologist.

13 MR. HART: No objection, Your Honor.

14 THE COURT: Without objection, so admitted.

15 BY MR. GOLDBERG:

16 Q Doctor, back in July of 2009, where were you employed?

17 A I was the Chief Medical Examiner for Richland County,
18 and I was also part of the Professional Pathology Services,
19 which is the pathology group for both Baptist and Richland
20 Hospitals.

21 Q Specifically, on July 21, 2009, did you have an
22 opportunity to perform an autopsy on a John Doe subject?

23 A I consulted with Bill Stevens with the examination of
24 the skeletal remains. Yes.

25 Q Okay, and can you describe for the jury a little bit

1 about that?

2 A Essentially, the skeleton had a gunshot wound to the
3 right side of the head, approximately here, and it came out
4 the left side of the head. As a result of the gunshot wound
5 and further examination it was determined that the decedent,
6 the John Doe died as a result of the gunshot wound. Bill
7 Stevens will testify later for more specific information
8 about more possible injuries.

9 Q And again with regards to the gunshot wound what was it
10 you concluded was the cause of death?

11 A The gunshot wound through the head, of course, would be
12 a fatal injury. X-rays were taken and I'm sure that a bullet
13 or a fragment of a bullet were not present and no metallic
14 objects were identified.

15 MR. GOLDBERG: I'd like to have this marked for ID.

16 COURT REPORTER: No. 175, for ID.

17 (State's Exhibit No. 175, photo,
18 was marked for ID only.)

19 BY MR. GOLDBERG:

20 Q All right. I'll show you State's No. 175 for ID only
21 and just have you look at that and ask you if you recognize
22 that?

23 A Yes.

24 Q What do you recognize that to be?

25 A That is the exit wound through the left side of John

State v. Victor Smith 9/19/11 - 9/23/11

279

1 Doe's skull.

2 Q Okay, are there any other remarkable injuries that you
3 notice on that side of the skull?

4 A Yes. There's a linear skull fracture going essentially
5 from the eye socket to the fractures caused by the gunshot
6 wound.

7 Q And is there, in your opinion, any way to determine if
8 this linear fracture, where it took place in terms of time
9 compared to the gunshot wound?

10 A When the skull was fractured or other bones are
11 fractured, there will be a gap, you can actually see a
12 breakage there. And if a second injury occurs that will
13 also cause and those lines intersect, the second set of
14 fractures will not cross the original fracture line. So if
15 you see an intersection of fractures and one is longer and
16 keeps on going through, and one stops at that fracture line,
17 you know the one that goes all the way through or continues
18 through that was a fracture that occurred before the second
19 injury.

20 Q So is it your opinion here today, that the linear skull
21 fracture was, in fact, inflicted prior to the gunshot wound?

22 A Yes, it was.

23 Q Thank you, Doctor, that's all I have.

24 THE COURT: Are you planning to introduce that?

25 MR. GOLDBERG: No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

280

1 THE COURT: Okay. Mr. Hart.

2 MR. HART: Thank you.

3 CLAY NICHOLS - CROSS-EXAMINATION

4 BY MR. HART:

5 Q Dr. Nichols, you're familiar with the decomposition of
6 the human body; is that correct?

7 A Yes, sir.

8 Q Okay, and describe the very first stage of the
9 decomposition stage?

10 A Decomposition begins when a person dies, and what that
11 means is the tissue starts to break down and bacteria and
12 organisms both inside and outside the body start to use the
13 body as a food source. So any sort of bacteria in the gut
14 start to grow, you begin to turn green, gray green. There
15 is often a foul odor and bloating. Depending on the
16 circumstances such as the weather, the amount of heat
17 present such as somebody dies in a car during a hot day,
18 that can happen almost instantaneously. In a colder
19 environment that can take up to months, perhaps, years to
20 occur.

21 Q And one of the things you mentioned was the foul odor.
22 Describe to us this odor of the decomposing body?

23 A Oh, it's terrible. It gets up your nostrils. If
24 anybody's smelled a dead cat or a dead dog, it smells very
25 similar to that.

State v. Victor Smith 9/19/11 - 9/23/11

281

1 Q The second stage of decomposition is what we call
2 putrefaction?

3 A Putrefaction. Yes.

4 Q Describe that to us?

5 A That's where the tissue actually start to break down.
6 Often times there is a leakage of fluid from the body that
7 can be mistaken for bleeding, it's not. It's called putrid
8 fluid, and the body really starts to basically disintegrate.

9 Q And even in that second stage, that's when the body
10 starts to change color, right?

11 A It can change color even in the first stage and often
12 times the first stage, second stage, third stage can occur
13 simultaneously.

14 Q And even in the second stage there's still a foul odor
15 coming from the body; is that correct?

16 A That's correct.

17 Q Okay. Maybe some bloating has taken place also?

18 A Certainly.

19 Q Now, the third stage is what you call the black
20 putrification; is that right?

21 A Some people do.

22 Q But that's essentially, once again, color change where
23 recognizing facial features start to disappear. There's the
24 continuation of bloating, any sort of what's called
25 marbling, which is decomposition of the veins that make them

State v. Victor Smith 9/19/11 - 9/23/11

282

1 stand out more than before. That disappears in this stage.

2 The body is pretty much black by this time.

3 Q And one of the fourth stage is that butyric
4 fermentation?

5 A Oh, that's -- yeah. That occurs, once again, what that
6 indicates is a lot about smell and fluids.

7 Q About how long -- let's say from your knowledge and
8 training, about how long would a decomposing body release an
9 odor?

10 A They can release an odor for a year or two.

11 Q Okay. The remains that you examined, under your expert
12 training, is it possible that that body could have been
13 decomposing after September 27, 2008?

14 A I didn't actually examine the decomposing body. Bill
15 Stevens did most of the forensic and anthropology work and
16 the examination of the skeleton. I consulted with him about
17 the gunshot wound to the head.

18 Q Okay. And you said there was a gunshot wound. Are you
19 familiar with the different size of bullets?

20 A Oh, yes.

21 Q Nine millimeter?

22 A Yes.

23 Q Twenty-two?

24 A Yes.

25 Q Can you say from examining that skull, what size

State v. Victor Smith 9/19/11 - 9/23/11

283

1 possibly the bullet was?

2 A Would be medium caliber. The exit wound is 0.348, so
3 that could be a 357, a nine millimeter, a 38, something in
4 between.

5 Q There was no bullet that was identified; is that
6 correct?

7 A That is correct.

8 Q As far as you examining these remains you listed those
9 remains as a John Doe; correct?

10 A That's correct.

11 Q You never received any information on a positive
12 identification on those remains?

13 A That is correct.

14 Q Let me ask you, today as we speak, have you ever
15 received a positive identification on those remains?

16 A No, I haven't.

17 Q Do you know who those remains belong to?

18 A I do not.

19 Q Thank you.

20 THE COURT: Anything on redirect?

21 MR. GOLDBERG: Yes, sir.

22 CLAY NICHOLS - REDIRECT EXAMINATION

23 BY MR. GOLDBERG:

24 Q He asked you about the positive ID. Did you have any
25 involvement in the case after you performed your examination

1 on July 21?

2 A No, I did not.

3 Q Okay. And as far as odor, are there a number of
4 variables that go into how pungent that odor can be at the
5 time?

6 A Yes, there is.

7 Q Once again, can you give us some examples of that?

8 A Well, once again, the hotter it is the quicker the
9 odors are produced. If a body is in an enclosed space the
10 odors tend to amplify. If the body is in a closed space, it
11 tends to dispartate. If it's a windy area the odors will
12 still be produced but be pulled away in the direction of the
13 wind. Depending on how much fat is present that could have
14 an indication factor as far as odors produced.

15 Q Well, let's say hypothetically if a body was wrapped in
16 a sheet in a shower curtain would that have an impact on how
17 far the odor would spread?

18 A The odor would tend to be concentrated under the sheet,
19 but it would also tend to shield the odors from dissipating
20 into the environment.

21 Q Thank you.

22 THE COURT: Anything further, Mr. Hart?

23 MR. HART: Nothing further, Your Honor.

24 THE COURT: All right. Doctor, you may step down.

25 DR. NICHOLS: Always a pleasure.

State v. Victor Smith 9/19/11 - 9/23/11

285

1 THE COURT: It's good to see you again.

2 Have a safe trip back to Chapel Hill, Doctor.

3 DR. NICHOLS: Always a pleasure, Judge. Thank you.

4 THE COURT: All right. You may call your next witness.

5 MR. GOLDBERG: State calls Maj. Stan Smith.

6 (WHEREUPON, Stan Smith was sworn to
7 tell the truth.)

8 THE CLERK: Take a seat in the witness box and state
9 your name for the record.

10 MR. SMITH: James Standing Smith. S-t-a-n-d-i-n.

11 STAN SMITH - DIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q Morning.

14 A Good morning.

15 Q Where are you employed, sir?

16 A Richland County Sheriff's Department.

17 Q Tell this jury a little bit about your background,
18 training and experience?

19 A I finished the University of South Carolina in 1983
20 with a degree in Criminal Justice. My first job out of
21 college was with the Richland County Sheriff's Department.
22 So I've been there off and on for 27 years.

23 Q And what have been your duties at the Sheriff's
24 Department during that time?

25 A I started out as a uniform patrol officer, worked

State v. Victor Smith 9/19/11 - 9/23/11

286

1 shifts like regular officers answering calls. In 1987, I
2 was promoted to investigator. From that point I sort of
3 rose through the ranks working various property crimes
4 sections. I started working homicides back in 1989 was my
5 first one. Through the years I've been involved in
6 homicides off and on. Presently I'm the Major with the
7 Criminal Investigative Division, which means I'm sort of
8 over this section, and I still involve myself in major
9 crimes, including homicides.

10 Q Back in July of 2009, what were your duties at that
11 point?

12 A At that particular time, I was a captain in the
13 Criminal Investigative Division and my primary focus was
14 major crime and homicides.

15 Q Did you become involved in an investigation regarding
16 some remains that were located in the Elders Pond area of
17 Richland County?

18 A Yes, sir, in July of 2009, I became involved in that
19 matter.

20 Q What was the nature of your involvement at the outset?

21 A Of course, I'm advised any time a homicide occurs, or,
22 in this case, had occurred and the remains were found. So
23 obviously we knew there was foul play afoot, at the time the
24 remains were found. I was advised by my Lieutenant, Scott
25 McDonald, of the finding of the remains.

State v. Victor Smith 9/19/11 - 9/23/11

287

1 Q Did it come to your attention that there had actually
2 been a missing persons report had been done or an
3 investigation in that area?

4 A Yes. Very fortunately in this case, it's not the case
5 in other matters, but we had a pretty thorough missing
6 persons investigation that had been done in this area, by
7 Investigator Cronise, and everything seemed to match up,
8 specifically logistically with regard to that missing
9 person, that this individual could be that missing person.

10 Q When you saw logistically what are some of the things
11 you're referring to?

12 A Ernest Robinson is the individual in question and he
13 had worked at Beef O'Brady's which was near where the body
14 was found and was known to have been residing in an
15 apartment at this apartment complex, called Northstone
16 apartments off of Hardscrabble Road. Investigator Cronise
17 investigation had actually pinpointed the day, the last day
18 he was seen and frequenting and being picked up, I believe
19 from that particular apartment, and that particular
20 apartment was in very close proximity to where the remains
21 were found.

22 Q Was that apartment [REDACTED]?

23 A Yes, I believe that's correct; [REDACTED]

24 Q And where was [REDACTED] in connection to where the remains
25 were found?

State v. Victor Smith 9/19/11 - 9/23/11

288

1 A You could probably throw a rock from [REDACTED] to where the
2 remains were found.

3 Q Was it also learned from Investigator Cronise there was
4 an individual named Marvin Shipman that Mr. Robinson had
5 been with on that day?

6 A That was a piece of the critical information because we
7 interviewed Shipman and Shipman was able to provide a story
8 where he had picked the victim up. He was in the company of
9 another individual who he described to us. He was later
10 identified as Mr. Allen. But his -- Mr. Shipman's
11 description that he picked the victim up from that apartment
12 complex took him to work and then later returned Mr. Allen
13 later back to that apartment, that proved to be critical.

14 Q And that was apartment [REDACTED]

15 A Yes, sir.

16 Q Okay. And did you, in fact, learn who was residing at
17 [REDACTED] at that time?

18 A Yes. We learned the defendant, Victor Smith, and his
19 -- I'm not sure if it's his common law wife or his wife,
20 Jazmine resided at that location?

21 Q In fact, Jazmine Bright was still living there at the
22 time, right?

23 A Yes, she was.

24 Q Based on that, was a search warrant obtained?

25 A Yes. We felt like probable cause existed, based on the

State v. Victor Smith 9/19/11 - 9/23/11

289

1 fact that where he -- Victor Smith -- excuse me, Ernest
2 Robinson had last been living, had been picked up. That in
3 conjunction with the proximity of where he was found and the
4 fact that it was foul play indicated by the remains produced
5 a probable cause to get a search warrant for the apartment.

6 Q And was that search warrant, in fact, obtained and
7 executed?

8 A Yes. The search warrant was actually executed on the
9 21.

10 Q Were you present at the time?

11 A Yes, sir, I was. It was about 1:45 in the afternoon.
12 Myself, McDonald, Sgt. Robinson, Gallegos, and Investigator
13 Holdorf were all present.

14 Q Okay, and did you participate in the actual search or
15 did your investigation lead you in a different direction?

16 A I departed soon because there was a lot of forensic
17 searching that took place that's not necessarily my
18 expertise. Myself and Investigator Gallegos went to the
19 Waffle House where Jazmine was known to be employed, trying
20 to make contact with her there.

21 Q Well, was Jazmine there at the time of the search?

22 A We learned at the Waffle House that she was actually, I
23 think, at a family wedding in North Carolina. She wasn't
24 there.

25 Q And in your search for Jazmine, were you made aware of

1 any other individuals that may have some information about
2 that apartment?

3 A A friend named Dietrich was mentioned as a friend of
4 hers. Ironically, about that time we were getting that
5 piece of information an individual named Dietrich Williams
6 came by the apartment where the investigators were
7 conducting the search, said that he had been asked to check
8 on the property while Jazmine was away and he would --
9 Dietrich would provide some critical information about the
10 identity of the individual who Marvin Brack (sp) had told us
11 about, Allen.

12 Q You mean Marvin Shipman?

13 A Marvin Shipman. I'm sorry.

14 Q And then Allen, the name he gave you is what?

15 A Shamar Allen is what he said initially.

16 Q Based upon that information did you then conduct an
17 investigation to determine exactly who Shamar Allen was?

18 A Yes. We had some information about Shamar Allen which
19 specifically got us the correct identity, which would
20 actually become Allen Shamar (sp) Fulten. We were able to
21 interview him. We located him that afternoon and actually
22 interviewed him at the Richland County Sheriff's Department.

23 Q And, in fact, at the time Allen Fulten had actually
24 been arrested on an unrelated burglary; is that correct?

25 A He had been, and actually Dietrich Williams knew about

State v. Victor Smith 9/19/11 - 9/23/11

291

1 this and that particular information linked us up to our
2 burglary detectives who told us, yes, indeed, they had
3 arrested him and he was currently in the Alvin S. Glenn
4 Detention Center. So it made him easy for us to go find.

5 Q And so you took a statement from him?

6 A We did.

7 Q Without going into all the details of what he told you,
8 based upon your statement or the statement that he provided
9 you, who else did you turn your attention to in the
10 investigation to, what other subjects?

11 A The defendant Victor Smith, his brother Darius, and an
12 individual known to us only at that time by the nick-name of
13 Man.

14 Q Did you eventually learn who Man was?

15 A We did. We -- through some information, again, I
16 think, actually both in conjunction with Allen and Dietrich
17 we learned about a relative, where a relative worked, where
18 he lived and we got him identified as Jeremiah Jones.

19 Q Okay. At that point, was Allen Fulten, had he been
20 charged with any sort of crime other than the burglary at
21 that point in time?

22 A Not as of yet, no.

23 Q Okay. After that did you make contact with Man or
24 Jeremiah Jones?

25 A We did find Man on the -- the afternoon of the 22, we

State v. Victor Smith 9/19/11 - 9/23/11

292

1 were able to locate him in an area behind Parkland
2 Apartments where we were told he frequented. We made
3 contact with him, asked him to come in for an interview. He
4 was not arrested at that time. He came in for an interview
5 and he would ultimately provide us critical information, as
6 well.

7 Q And, again, based upon the statement he gave who were
8 the subjects who were most crucial to you involved in this
9 case?

10 A Victor Smith, the defendant; Darius, his brother. He
11 also implicated Allen further, and himself.

12 Q Is that Allen Fulten?

13 A Yes.

14 Q Was Mr. Jones actually charged with murder?

15 A He was charged with murder after he was interviewed,
16 yes, because he admitted direct involvement in the murder.

17 Q Considering that did you then make efforts to go back
18 and speak to Allen Fulten again?

19 A Yes. We -- often times when you interview somebody and
20 they're involved, they will minimize, say just a little bit,
21 but make themselves sound as good as they can. That was the
22 case with him in this instance. We went back and
23 interviewed him and sort of confronted him with some of the
24 information that Jeremiah Jones told us and he would give a
25 second statement.

State v. Victor Smith 9/19/11 - 9/23/11

293

1 Q Upon getting that statement from him, was he placed
2 under arrest?

3 A Yes.

4 Q He was charged with murder?

5 A He was already under arrest, but he was charged with
6 murder.

7 Q He was already under arrest for murder?

8 A He was already incarcerated, yes, sir.

9 Q Right, but he was charged with murder?

10 A That's correct.

11 Q And to your knowledge was Darius Smith ever charged, as
12 well?

13 A He was.

14 Q Okay, and what was he charged with?

15 A Murder.

16 Q You talked about someone who is a supervisor over these
17 kinds of incidents, would it have been your job to conduct
18 every last detail of the investigation in this case or would
19 that have been assigned?

20 A That's virtually impossible with the number of
21 homicides that we have of violent crimes, unfortunately, but
22 I sort of supervise them in an overview type -- I was a
23 little more involved in this one maybe more than some of the
24 others. But I rely on experienced detectives, such as
25 Investigator Holdorf to make the right call. I have the

1 most confidence in individuals like Holdorf that work these
2 homicides.

3 Q Thank you, sir.

4 THE COURT: Mr. Hart.

5 MR. HART: Thank Your Honor.

6 STAN SMITH - CROSS-EXAMINATION

7 BY MR. HART:

8 Q Investigator Smith, did you respond on the 20 when the
9 remains were found?

10 A I don't believe I actually went to the location; no,
11 sir.

12 Q So you never saw where the body was located?

13 A Afterwards, during the search of the area it was
14 pointed out to me, as over a fence area at the rear of the
15 complex.

16 Q Right.

17 A I knew where it was. I don't think I went that day
18 that he was found.

19 Q Okay. And the body was located pretty close to the
20 apartments?

21 A Yes, sir.

22 Q Do you remember the temperature back then in July;
23 you'd agree it's pretty hot?

24 A Yes.

25 Q Pretty humid in Columbia?

State v. Victor Smith 9/19/11 - 9/23/11

295

1 A Yes, it is.

2 Q You don't know how long that body had been in the
3 woods, do you?

4 A Of my own -- it was fully discussed and we rely heavily
5 on our friends at the coroner's office and I think Bill
6 Stevens rendered an opinion that it had been nearly a year.
7 So I based my knowledge on what he advised us of.

8 Q Sure. Did you secure any of the evidence from the
9 outside where the remains were found?

10 A Did I personally?

11 Q Yes?

12 A No, sir.

13 Q Did you secure any evidence from the inside?

14 A Not personally, no, sir.

15 Q When that search warrant was conducted, and you say you
16 were there; right?

17 A I was there initially.

18 Q How much time did you spend there?

19 A Just a brief period of time.

20 Q Okay. Brief, 15 minutes?

21 A May have been; maybe not that long.

22 Q Maybe not?

23 A There was nobody there. The search was going to be
24 conducted primarily for forensic evidence. Again, that's
25 not my expertise.

1 Q Sure.

2 A Based on the fact that Jazmine wasn't there, my next
3 goal was to then do what I do and go to try to interview
4 witnesses and she was a witness.

5 Q So you want to say 15 minutes, approximately?

6 A I have no specific recollection of it.

7 Q What is important is, do you think it was more than 15
8 minutes?

9 A I just really don't know. It was a brief period of
10 time. Whether it was 10, 15, 20, I really don't recall. My
11 file doesn't -- is not that specific.

12 Q You said you received information that Ernest Robinson
13 lived in those apartments. You didn't receive that Ernest
14 lived with Victor, though, did you?

15 A Let me review my notes, here. In my notes, I just
16 wrote reference Dottie Cronise's follow-up. It doesn't
17 specifically say that. However, the information that she
18 had received from Marvin Shipman was indicative of the fact
19 that he had picked him up from those apartments. So our
20 belief was he had a direct link to those apartments whether
21 he lived there or not.

22 Q Okay. Now, you said when you were there Dietrich
23 Williams showed up to that apartment, right?

24 A He actually showed up while I was gone.

25 Q While you were gone?

State v. Victor Smith 9/19/11 - 9/23/11

297

1 A I had gone to the Waffle House.

2 Q You said -- I'm sorry, I didn't mean to cut you off.

3 A I was notified by Nextel, I believe by Lt. McDonald
4 that this individual had shown up, and it was sort of ironic
5 because we were just being told about him at the Waffle
6 House.

7 Q Right. He'd come to check on the apartment?

8 A That's right.

9 Q And you never received information that he actually
10 lived in that apartment?

11 A That Dietrich did?

12 Q Correct?

13 A No, sir.

14 Q Are you aware that

15 Q. Sure. Your department responded to this apartment,
16 October 21, 2008; right?

17 A (No response.)

18 Q Do you have knowledge of that?

19 A Is that involving a child?

20 Q No.

21 A Is that involving another drug type situation? I'm not
22 sure what you're referencing?

23 Q I'm just asking are you familiar with --

24 A I know we have some law enforcement involvement, I
25 think, on two other occasions, but I'm not sure which one

1 you're referencing.

2 Q Are you aware they also responded to this apartment on
3 December 22, 2008?

4 A Again, I knew we responded a couple of times. One
5 involved a child, an incident involving a child and one
6 involved some narcotics activity, but I don't know the
7 dates.

8 Q Okay. What I want to talk about briefly is the
9 statement that you took from Allen Fulten. Now, the process
10 at the Sheriff's Department for taking statements from
11 witnesses and suspects, you guys have a process; is that
12 right?

13 A We have sort of a protocol, depending on whether
14 they're custodial or not.

15 Q Well, Allen Fulten, when you took his statement, he was
16 in custody; is that right?

17 A Yes, sir.

18 Q He was in handcuffs?

19 A He was brought to the Sheriff's Department in
20 handcuffs.

21 Q When you questioned him was he in handcuffs?

22 A Usually, we take the handcuffs off when they get there
23 and we're talking to him.

24 Q Did you ever offer him anything to eat; Allen Fulten?

25 A I don't recall whether I did or not. He was very

State v. Victor Smith 9/19/11 - 9/23/11

299

1 cooperative.

2 Q Did you ever offer him anything to drink?

3 A We have that available if he asked for it. I don't
4 know whether I did at the time. My notes don't reflect
5 that. My notes reflect that he freely waived his rights
6 after he was advised of his rights. He agreed to talk with
7 us.

8 Q How long was he questioned for, Allen Fulten, and you
9 have a copy of the very first statement in front of you
10 there?

11 A No, I don't.

12 Q You don't have a copy of it?

13 A No, sir.

14 Q You didn't bring your copy?

15 A I just brought my follow-up.

16 Q So you don't have the copy?

17 A No, sir.

18 Q But you're familiar that the first thing you did is you
19 read them their rights?

20 A I did, yes, sir.

21 Q And you have them check off and make sure they
22 understand --

23 A That's right.

24 Q -- those rights? Did you ever ask Allen about his
25 education, though?

1 A It's my practice to ask the individuals that are
2 advised if they can read or write. If they understand what
3 we're saying. That's my practice in every interview and he
4 seemed to be articulate and understand what he was reading
5 and what he was being told. So that's my practice, and this
6 case; again, he talked to us freely and voluntarily, and he
7 seemed to be forthcoming as far as what he was saying. He
8 understood what he was saying. He was actually smart enough
9 to minimize his involvement in that first interview. So I
10 think he understood what was going on.

11 Q Can you tell us the educational level of Allen Fulten?

12 A No, sir.

13 Q You can't?

14 A No, sir.

15 Q That very first statement, Allen Fulten didn't tell the
16 truth in that first statement, did he?

17 A Not the whole truth, no, sir. Specifically, about his
18 culpability.

19 Q And you had to go back to the detention center to pick
20 him up; right?

21 A That's right.

22 Q Bring him back to the Sheriff's Department; right?

23 A That's correct.

24 Q And confront him with him lying; right?

25 A After we interviewed another co-defendant, who, again,

State v. Victor Smith 9/19/11 - 9/23/11

301

1 contributed more culpability to him than he had, himself;
2 that's correct.

3 Q In the first statement Fulten gave you his very own
4 version of the truth; is that right?

5 A He gave a version that wound up not being the truth.

6 Q Right. Even in the second statement, he still didn't
7 tell the entire truth; did he?

8 A I don't have the statements in front of me. I know in
9 the second statement he implicated himself to some degree
10 with regard to the assault. Again, I don't have it in front
11 of me.

12 Q Let's go to the first statement because the first
13 statement is extremely important.

14 THE COURT: Y'all approach.

15 (Off the record bench conference with counsel and the
16 Court.)

17 BY MR. HART:

18 Q Also, you took a statement from Jeremiah Jones; is that
19 correct?

20 A (No response.)

21 Q Jeremiah Jones is also known as Man; right?

22 A I'm trying to answer your first question, so bear with
23 me. I was involved in the interview I'm trying to see if I
24 took the statement. At least if you give me the verbal
25 version, I don't know if I actually took the statement or

1 not.

2 Q But you say you were there during the process?

3 A Yes. Yes.

4 Q And during that process was Jeremiah Jones in
5 handcuffs?

6 A He had come in voluntarily. He was not under arrest.

7 Q You say he came in voluntarily?

8 A Yeah, we asked him to come to the Sheriff's Department.
9 He was not under arrest.

10 Q How did he get there?

11 A He was transported in an un-marked car, I believe. I'm
12 not sure whose car it was.

13 Q You say he came in voluntarily in an un-marked car; was
14 he in handcuffs in that un-marked car?

15 A He came in voluntarily. He was not under arrest. So I
16 don't believe he was in handcuffs; no, sir. If he'd been in
17 handcuffs he wouldn't have been coming in voluntarily.

18 Q Did you ever ask Jeremiah Jones about his educational
19 background?

20 A Same answer before. He seemed to be articulate and
21 understood what was going on. I don't know if I
22 specifically asked him what grade he finished.

23 Q Are you familiar with Jeremiah Jones educational level?

24 A No, sir.

25 Q Okay. Do you ever ask any of the suspects or witnesses

State v. Victor Smith 9/19/11 - 9/23/11

303

1 do they have any mental health issues?

2 A It depends --

3 MR. GOLDBERG: Objection, Your Honor. Relevance.

4 THE COURT: How is this relevant, Mr. Hart?

5 MR. HART: Because we need to know the level of
6 education of the suspects.

7 THE COURT: How is it relevant?

8 MR. HART: It's relevant because if they aren't
9 competent or if --

10 THE COURT: No. Y'all come over here -- members of the
11 jury go to the jury room and don't talk about this case.

12 (Jury out at 10:30 a.m.)

13 THE COURT: All right. Mr. Hart, I understand that you
14 want to be sure that Mr. Jones or somebody may be
15 incompetent, but this is the same subject that we discussed
16 earlier that had been found competent, so Mr. Hart help me
17 out. What are you aiming at?

18 MR. HART: Well, Your Honor, I don't even want to go
19 into the competency, but it's very important if you take a
20 statement from a suspect that --

21 THE COURT: Well, you're expressing your opinion right
22 now.

23 MR. HART: Well, I questioned him about it, whether he
24 knows --

25 THE COURT: He said he didn't. He said he didn't. If

State v. Victor Smith 9/19/11 - 9/23/11

304

1 he didn't check -- go ahead, Mr. Hart, I'm not upset or
2 anything, but --

3 MR. HART: I'm not --

4 THE COURT: You questioned him about whether or not you
5 questioned about educational level of someone who's
6 statement he took. You want to go -- you want to go into
7 the competency of Mr. Jones through this officer. I'd asked
8 you earlier whether or not you had an expert who was willing
9 to come in and say, in my opinion Mr. Jones ain't competent,
10 the statement should be thrown out or something. You've got
11 to help me out a little bit.

12 MR. HART: Well, I wasn't asking about any competency
13 issues, Your Honor. What I'm concerned about is when you
14 take a statement from a suspect, whether those suspects can
15 read, whether they can write. That's very important, and I
16 wanted to ask him about the educational. I was going down
17 the question -- there was an objection that I never got to
18 get to which led me to the mental health issue, but I don't
19 have to have him about that, but I do want to cross-examine
20 him about whether he questioned those suspects about
21 education.

22 THE COURT: I think the answer was no. I think he
23 answered that have you not?

24 MR. SMITH: Yes, sir.

25 THE COURT: He didn't ask about his educational

State v. Victor Smith 9/19/11 - 9/23/11

305

1 background, he doesn't know how far he went in school, but
2 you want this witness to try to suggest that Mr. Jones is
3 not competent.

4 MR. HART: No, sir.

5 THE COURT: Well. I'm just -- I don't care one way or
6 the other, but relevancy, if you're going to ask this
7 officer about whether or not, in his opinion, Mr. Jones was
8 competent. Help me out, Mr. Hart?

9 MR. HART: Your Honor, I don't want to ask about the
10 competency, but if the process of the Sheriff's Department
11 is to get the suspects to read the statement and sign the
12 statement and make sure they understand it, it's important
13 that --

14 THE COURT: Well, why don't you ask him that.

15 MR. GOLDBERG: Well, Your Honor, Mr. Jones, himself, is
16 going to testify.

17 THE COURT: Yes.

18 MR. GOLDBERG: Cross-examine him about it.

19 THE COURT: This is -- I see what you're getting at, Mr.
20 Hart, but you're trying to get it in through the wrong
21 witness.

22 MR. HART: Yes, sir.

23 MR. GOLDBERG: Well, I agree with that, but we would
24 also maintain our objection.

25 THE COURT: Objection. I said we were going to do it in

State v. Victor Smith 9/19/11 - 9/23/11

306

1 camera and what you're trying to seek and what you're trying
2 to do, and you don't have to reveal your tactics to me or to
3 anybody else, but whatever it might be, Mr. Hart --

4 MR. HART: I just want to make sure I can cross-examine
5 this witness on whether he knows the educational level --

6 THE COURT: The answer was no, three or four times. He
7 didn't ask.

8 Is that correct?

9 MR. SMITH: Yes, sir.

10 MR. HART: Well, no, he said that's standard for them to
11 ask, so he did say yes. Yes, that's standard for us to ask.

12 THE COURT: I'm going to take a break. Now, you want to
13 ask him -- you getting -- what do you do, you ask him the
14 educational level of -- I tell you what. Right now, ask
15 him, In Camera, what you want to ask him. That's the
16 easiest thing to do.

17 Go ahead and make a record of it now.

18 IN CAMERA EXAMINATION OF STAN SMITH

19 BY MR. HART:

20 Q The process when you're taking these statements is, as
21 the investigator you write the questions; is that correct?

22 A Yes, sir.

23 Q You write the answers; right?

24 A Yes, sir.

25 Q The suspects, they don't write the questions do they?

State v. Victor Smith 9/19/11 - 9/23/11

307

1 A No, sir.

2 Q And they don't write the answers?

3 A No, but they articulate, they tell us what the answer
4 is.

5 Q I understand.

6 A We type what they say.

7 Q Now, what is the process for questioning suspects about
8 their educational level when you take a statement?

9 A If it's apparent to me that they're forthcoming and
10 understand the questions, and it's a give and take
11 conversation, I don't specifically ask them myself what
12 grade they finished. If it's apparent to me there's
13 deficiency in their communication and they don't understand
14 what I'm saying and they can't explain themselves, then that
15 may be another issue. In this case that wasn't the case.
16 They were very forthcoming, they were clear, they understood
17 the questions. They understood -- the responses were
18 intelligible to me. That's the standard I go by.

19 Q And --

20 A If somebody told me they only finished the ninth grade
21 I'm not going to stop talking to him and questioning him if
22 he understands what I'm saying.

23 Q Thank you.

24 A That sort of gets into a slippery slope if they
25 understand what I'm saying and articulate it to me then I'm

State v. Victor Smith 9/19/11 - 9/23/11

308

1 going to continue to talk to them.

2 Q All right.

3 MR. HART: I have nothing further.

4 THE COURT: Anything on further direct?

5 IN CAMERA EXAMINATION OF STAN SMITH

6 BY MR. GOLDBERG:

7 Q If you look -- I'll refer you to Page 3 of your
8 follow-up with reference, I think it's the last paragraph
9 where Man was located, he was not under arrest. Do you see
10 where I'm at?

11 A Yes, sir.

12 Q It says that present were: Holdorf, Gallegos, and the
13 investigative officer being you, correct?

14 A That's correct.

15 Q And then it -- two sentences later does it not say Man
16 will be interviewed by Holdorf and Gallegos; is that right?

17 A Yes.

18 Q I guess my question is Holdorf and Gallegos actually
19 took the written statement from him; correct?

20 A Again, I was looking at my notes for that, but I think
21 that's correct. Yes, sir.

22 Q You participated in speaking --

23 A In the initial --

24 Q -- and they conducted --

25 A When we initially made contact with him I was involved

State v. Victor Smith 9/19/11 - 9/23/11

309

1 and apparently I turned him over to them.

2 THE COURT: So I gather from that that Maj. Smith did
3 not take the statement?

4 MR. GOLDBERG: It appears that he was present for part
5 of it, but didn't actually type the statement or sign it as
6 Holdorf and Gallegos did.

7 THE COURT: I think there's a way to get to what you
8 want, but I don't think this the right witness, but go ahead
9 and ask your question.

10 BY MR. HART:

11 Q You did take a statement --

12 THE COURT: Go ahead, go ahead.

13 MR. HART: Well, I've asked him about the education
14 level. I did.

15 THE COURT: Okay.

16 MR. HART: I did.

17 THE COURT: So we're finished with that part, then?

18 MR. HART: Yes, sir.

19 THE COURT: We're good?

20 MR. HART: Yes, sir.

21 THE COURT: And I think the questions I heard in the
22 last In Camera were innocuous.

23 MR. HART: Yes, sir.

24 THE COURT: Anything else?

25 MR. GOLDBERG: No, sir.

State v. Victor Smith 9/19/11 - 9/23/11

310

1 THE COURT: First of all, this is really -- this was
2 tense, high drama, that sort of thing, but and I think you
3 were appointed on this case weren't you?

4 MR. HART: Yes, sir.

5 THE COURT: You're doing a good job. Let's take a break
6 relax and we'll come back in about 10 minutes.

7 END OF IN CAMERA EXAMINATION OF STAN SMITH.

8 (Court in recess for short break at 10:37 a.m.)

9 (Court in session after break at 10:52 a.m.)

10 THE COURT: All right, Mr. Hart, you know his
11 educational practice. Just make those points and move on
12 with this specific thing. You can get Mr. Jones later on.

13 MR. HART: Yes, sir.

14 THE COURT: All right. Are we ready then?

15 MR. GOLDBERG: Yes, sir.

16 MR. HART: Yes, sir.

17 THE COURT: All right. Bring the jury in.

18 THE BAILIFF: Be glad to, Your Honor.

19 THE COURT: All right.

20 (Jury in at 10:53 a.m.)

21 THE BAILIFF: The jurors are all present, Your Honor.

22 THE COURT: Thank you.

23 Mr. Hart, you may continue.

24 MR. HART: Thank you.

25 STAN SMITH - CONTINUED - CROSS-EXAMINATION

State v. Victor Smith 9/19/11 - 9/23/11

311

1 BY MR. HART:

2 Q Mr. Stan Smith, when we left off you were saying you
3 did not know the education level of Jeremiah Jones; is that
4 correct?

5 A That is correct.

6 Q Let me ask you -- I just have a few more questions for
7 you. When you take a statement from a suspect or a witness,
8 you're the one that writes the questions; is that correct?

9 A That's correct.

10 Q And you're the one who writes the answers; is that
11 right?

12 A The answers they articulate to us, yes, sir.

13 Q The suspect, they don't write the questions?

14 A In this case, type, but yes, sir.

15 Q And they don't write the answers; is that correct?

16 A Yes, sir.

17 Q Okay. Lastly, you're here to testify today based off
18 of your investigation and what you have to present for us
19 today you don't have any physical evidence that links Victor
20 Smith to this crime, do you?

21 A The physical evidence, I would consider actually, and
22 you may disagree with this, but I would consider the
23 proximity of the body in relation to his apartment, physical
24 evidence. I would consider that highly significant.

25 Q Okay, well, let me ask you this. You don't have any

State v. Victor Smith 9/19/11 - 9/23/11

312

1 DNA that belongs to Victor Smith that connects him to this
2 crime do you?

3 A These were skeletal remains.

4 Q I understand. So do you --

5 A No, sir. Well, skeletal remains you wouldn't have DNA.

6 Q Well, let me ask you specifically about Victor Smith's
7 DNA. Do you have any DNA that connects Victor Smith to this
8 crime?

9 A None that I'm aware of, no, sir.

10 Q Do you have any fingerprints that connect Victor Smith
11 to this crime?

12 A Well, again, the crime occurred at his apartment. So
13 it's sort of difficult to answer. It's his apartment where
14 it occurred, again, there's skeletal remains of the victim.
15 So the answer is no, but it's no with an explanation.

16 Q No, you don't have any fingerprints?

17 A No, sir.

18 Q Okay. From what you have from your investigation, do
19 you have any physical test that identify those remains as
20 Ernest Robinson?

21 A None that I'm aware of.

22 Q Thank you.

23 THE COURT: All right. Anything on redirect?

24 MR. GOLDBERG: Yes, sir.

25 THE COURT: All right.

State v. Victor Smith 9/19/11 - 9/23/11

313

STAN SMITH - REDIRECT EXAMINATION

BY MR. GOLDBERG:

Q He kept asking you if there was any physical evidence linking Victor Smith to this crime. Can you expound on your answer a little bit about that?

A Yes. Obviously, there was evidence in the apartment of the assault and blood and that kind of thing, and it was his apartment, although his DNA and his fingerprints might not be involved on the skeletal remains, for instance, it occurred in his apartment. So there is a physical link if you look at it on the reverse side.

Q And how many homicides have you looked at in terms of investigator, approximately?

A Probably about 150.

Q Ballpark. Majority, minimum, small amount, big amount; how many of those have had DNA that exclusively solved the case?

A Very few.

Q All right. Thank you.

MR. HART: I just have one question.

THE COURT: All right. Go ahead.

STAN SMITH - RE-CROSS - EXAMINATION

BY MR. HART:

Q You mentioned the items coming out of Victor Smith's apartment, are you aware that Victor Smith left that

1 apartment on October 21 and never returned; are you aware of
2 that?

3 A Yes, sir. I'm also aware that the homicide occurred
4 before that.

5 Q Thank you.

6 A Yes, sir.

7 THE COURT: All right. You may step down Maj. Smith.

8 MR. SMITH: Yes, sir.

9 MR. POTTS: State calls Investigator Bouknight.

10 Your Honor, may this witness be excused?

11 THE COURT: Oh, no. That's fine. I'm sure there's no
12 objection.

13 MR. HART: No objection.

14 (WHEREUPON, Harold Bouknight was
15 sworn to tell the truth.)

16 THE CLERK: Have a seat in the witness box and state
17 your name for the record, please.

18 MR. BOUKNIGHT: Investigator Harold Bouknight.

19 HAROLD BOUKNIGHT - DIRECT EXAMINATION

20 BY MR. POTTS:

21 Q Investigator, where are you currently employed?

22 A At the Richland County Sheriff's Department Crime Scene
23 Unit as a Senior Analyst.

24 Q Can you briefly tell the jury about your experience and
25 training in that regard?

State v. Victor Smith 9/19/11 - 9/23/11

315

1 A I've been in law enforcement for almost 15 years. I
2 have an Associate's Degree in Criminal Justice from
3 Midland's Technical College. I've been in crime scene for
4 approximately six years. Since I've come into crime scene
5 I've gone through in-house training, which took
6 approximately a year and a-half, which included reading and
7 testing, both written and practical testing and there is a
8 crime scene process in photography, evidence collection,
9 comparison of footwear, fingerprints, tire ware and blood
10 stain analysis and crime scene reconstruction. I've also
11 attended outside training courses in fundamentals in Crime
12 Scene Investigation, Crime Scene Reconstruction, Blood Stain
13 Pattern and Analysis -- Advanced Blood Stain Pattern
14 Analysis, and Complex Latent Print Examination.

15 MR. POTTS: Your Honor, I ask at this time that the
16 witness be certified as a crime scene analyst expert.

17 MR. HART: No objection, Your Honor.

18 THE COURT: Without objection.

19 BY MR. POTTS:

20 Q Investigator, when did you first get involved in this
21 case?

22 A I first became involved on the July 21, 2009.

23 Q What were you doing that day?

24 A I went to an autopsy at Richland Memorial Morgue.

25 Q What is your role during an autopsy?

1 A During an autopsy we're there to take photographs if
2 there is any physical injuries or anything like that to the
3 body and collect any pertinent evidence whether it be from
4 the body or clothing or any items like that that may be of
5 evidentiary value.

6 Q And is that what you did that day?

7 A Yes, sir. I took photographs of the bones and things
8 like that and then collected some head hairs, some
9 multi-colored material, some fragments of fabrics, t-shirt,
10 underwear, a black belt, a black braided belt, and then some
11 debris that fell off the items that I collected.

12 Q I'm going to show you what has been marked as State's
13 Exhibit No. 173. Recognize that?

14 A Yes, sir.

15 Q How do you recognize that?

16 A It's got my initials and the date that I sealed it
17 across here in my writing.

18 Q Still sealed, by the way?

19 A Yes.

20 Q Would this be something that you collected at the
21 autopsy?

22 A Yes. Belts.

23 Q Can you identify those?

24 A Yes, sir. That's the black belt and the black braided
25 belt I collected.

State v. Victor Smith 9/19/11 - 9/23/11

317

1 THE COURT: What number is it?

2 MR. POTTS: Your Honor, this is State's Exhibit No. 173.

3 Can I place this into evidence at this time?

4 THE COURT: Two belts, right?

5 MR. POTTS: Yes, Your Honor.

6 (State's Exhibit No. 173, two
7 belts, was marked and entered.)

8 BY MR. POTTS:

9 Q This would be the solid belt you collected?

10 A Yes.

11 Q And the braided belt you collected?

12 A Yes.

13 Q I'm also going to show you what's been marked as
14 State's Exhibit No. 172; do you recognize that?

15 A Yes, sir. That's a shower curtain. It's marked with a
16 case number and my initials.

17 MR. HART: Same objection, Your Honor.

18 THE COURT: What number is it?

19 MR. POTTS: It's State's 172.

20 THE COURT: 172 shower curtain.

21 MR. POTTS: Shower curtain, Your Honor.

22 (State's Exhibit No. 172, shower
23 curtain, was marked and entered.)

24 BY MR. POTTS:

25 Q This would be the shower curtain you collected at the

1 autopsy?

2 A Let me see it. Yes, sir.

3 Q With a floral pattern?

4 A Yes, sir, multi-colored.

5 Q I'm also going to show you what's State's Exhibit No.

6 171; do you recognize that?

7 A Yes, sir. It's some fabric, and it's also got my
8 initials on it.

9 Q Once again, is that what you collected at that autopsy?

10 A Yes, it is.

11 Q From the appearance of the package?

12 A Yes.

13 THE COURT: That moves in?

14 MR. POTTS: Yes, sir.

15 THE COURT: That's 171.

16 MR. POTTS: 171, Your Honor.

17 THE COURT: Fabric?

18 MR. POTTS: Yes, Your Honor.

19 And I offer this into evidence at this time.

20 THE COURT: All right. Objection is noted. State's 171.

21 (State's Exhibit No. 171, fabric,
22 was marked and entered.)

23 BY MR. POTTS:

24 Q And you also collected --

25 MR. POTTS: This is State's No. 174, Your Honor.

State v. Victor Smith 9/19/11 - 9/23/11

319

1 THE COURT: All right.

2 BY MR. POTTS:

3 Q Did you collect this item?

4 A Yes, I did.

5 Q What is it supposed to be?

6 A A sheet.

7 THE COURT: 174, sheet.

8 MR. POTTS: Yes, Your Honor.

9 THE COURT: Moved into evidence.

10 MR. POTTS: Thank you.

11 (State's Exhibit No. 174, sheet,
12 was marked and entered.)

13 BY MR. POTTS:

14 Q Is this the sheet you collected?

15 A Yes, sir.

16 Q This would be the sheet wrapped around the body?

17 A Yes, sir.

18 Q Now, what did you do with these items once you
19 collected them?

20 A After I collected the items I -- if they're not
21 immediately turned into our evidence custodian they are put
22 in my secure locket in our Crime Scene where only myself and
23 my supervisors have access to it. Then they're packaged and
24 turned into evidence to be held.

25 Q And in this case you sealed them all?

1 A Yes, sir.

2 Q And you kept control until you turned them in to
3 evidence?

4 A Yes, sir.

5 Q And would the be your involvement in this case?

6 A No, sir.

7 Q What did you do next?

8 A On the 22 of July, I responded to Elders Pond Circle,
9 apartment [REDACTED], and assisted in collecting items from that
10 same. Mainly I collected 13 swabs from some stains that
11 were located in the bathroom.

12 Q So was your main focus the bathroom?

13 A Yes, sir.

14 Q Now, who was in charge that day?

15 A Sgt. Richards was also out there.

16 Q Did you do anything else but take swabs?

17 A I -- we just looked under the carpet and things like
18 that for any type of projectile. At that point that was all
19 I'd done. I went back out later that afternoon and searched
20 for any weights and clothing with Sgt. Richards.

21 Q Did you find any?

22 A No, sir.

23 Q 34 through 46. Let me know if you can identify those.

24 THE COURT: Did you say 34 to 47?

25 MR..POTTS: 46, Your Honor.

State v. Victor Smith 9/19/11 - 9/23/11

321

1 A Yes, sir, these are photographs of the stains that I
2 collected swabs from.

3 BY MR. POTTS:

4 Q Okay. They truly and accurately depict swabs of the
5 area that you saw that day?

6 A The stains that I collected swabs from. Yes, sir.

7 MR. POTTS: Your Honor, we'd offer State's Exhibit Nos.
8 34 through 46 into evidence.

9 THE COURT: They're in. Objection is noted.

10 MR. POTTS: Thank Your Honor.

11 BY MR. POTTS:

12 Q I'm going to show the jury No. 34?

13 A Yes, sir.

14 Q Can you describe what that is?

15 A This is from inside the bathroom looking out, and it
16 shows stain Number 48 next to the light switch.

17 Q Okay. So the inside of the bathroom looking out?

18 A Yes, sir.

19 Q Okay. Would that be State's Exhibit No. 35?

20 A Yes, sir. This is above the towel rack between the
21 medicine cabinet and the shower and shows stains 36 through
22 40.

23 Q Okay. And that would be State's Exhibit No. 36?

24 A Yes, sir. This shows 40 through 44.

25 Q And this is another picture of the bathroom?

1 A Yes.

2 Q Um --

3 A Now, these are close-ups of all of those stains that we
4 just discussed so you can see they're basically shape and
5 size of that stains.

6 Q And that would be photographs -- sorry -- State's
7 Exhibits No. 37 through 46; correct?

8 A Yes, sir.

9 Q So each one of them shows the swabs you took?

10 A It shows the stains I took.

11 Q Stains you took from each one. And what numbers were
12 these swabs; you have numbers by them?

13 A Numbers 36 through 48.

14 Q Okay. Now, did you test any of these swabs to see what
15 they were?

16 A I did test the swabs using phenolphthalein and I had
17 positive reactions on stains 36, 37, 38, 39, 41 and 42.

18 Q What do you mean by positive reaction?

19 A It's -- phenolphthalein is a presumptive test for
20 blood. It's a three part process and if there is blood
21 present a positive reaction it turns a pinkish color, and on
22 those swabs that I named, 36 through 39, 41 and 42, the swab
23 did change to a pinkish color.

24 Q So even though you took -- let me see -- 12 different
25 swabs -- 12 or 13 --

A Thirteen.

A Six.

MR. POTTS: Beg the Court's indulgence, please.

(State's Exhibit No. 43, photo, was

State v. Victor Smith

9/19/11 - 9/23/11

324

1 marked and entered.)

2 (State's Exhibit No. 44, photo, was

3 marked and entered.)

4 (State's Exhibit No. 45, photo, was

5 marked and entered.)

6 (State's Exhibit No. 46, photo, was

7 marked and entered.)

8 BY MR. POTTS:

9 Q No further questions. Answer any questions Mr. Hart
10 may have.

11 THE COURT: Mr. Hart.

12 MR. HART: Thank Your Honor.

13 HAROLD BOUKNIGHT - CROSS-EXAMINATION

14 BY MR. HART:

15 Q Investigator Bouknight, did you respond to the area
16 where the body was found, the remains?

17 A No, sir.

18 Q So you didn't collect any evidence from out there?

19 A No, sir.

20 Q When you actually responded to the house to collect
21 those swabs and the pictures and all the evidence that you
22 collected, how long were you in the house?

23 A According to my paper work probably about four and
24 a-half hours.

25 Q Four and a-half hours. How long did it take you to

State v. Victor Smith 9/19/11 - 9/23/11

325

1 notice the items that you collected when you got into the
2 house; how long did it take you?

3 A I don't recall. I believe we were searching the whole
4 area and as we were noticing stains we would mark them and
5 then photograph them.

6 Q And you're aware that your department searched this
7 particular apartment on October 21?

8 A No, sir.

9 Q You don't have any knowledge of that?

10 A No, sir.

11 Q You don't have any knowledge that they searched this
12 apartment on December 22 of the same year?

13 A No, sir.

14 Q And you're in crime scene investigation, right?

15 A Yes, sir.

16 Q Did you ever receive any evidence from this apartment
17 from October 21 to test?

18 A No, sir.

19 Q Did you ever receive any evidence to test from December
20 22, 2008, to test?

21 A No, sir.

22 Q Did you notice any stains in the carpet when you got
23 there?

24 A Not on top of the carpet, no, sir.

25 Q Did you notice any lightening of the carpet when you

1 got there?

2 A I don't recall.

3 Q What about the blood; where did you get the blood from
4 exactly?

5 A The blood?

6 Q Yes. The blood. You say you took some swabs?

7 A All the swabs I took were from inside the bathroom.

8 Q Inside the bathroom?

9 A Uh-huh. (Affirmative response.)

10 Q And you say you did test those swabs?

11 A Yes, sir.

12 Q Going back over your notes again, you said 36, 37, 38,
13 39 and 41 tested positive and --

14 A And 42.

15 Q -- 42, also?

16 A Yes, sir.

17 Q Let's talk about the lab at the Sheriff's Department.
18 You guys are nationally recognized; is that correct?

19 A We're accredited.

20 Q That's correct. You guys do a great job over at the
21 Sheriff's Department?

22 A Yes, sir.

23 Q You do the best you can do?

24 A Yes, sir.

25 Q From 36, which tested positive for blood, you do a

State v. Victor Smith 9/19/11 - 9/23/11

327

1 preliminary test; correct?

2 A That's what phenolphthalein is, it's a presumptive
3 test.

4 Q And then what you do is go to the Sheriff's Department
5 and do another test; is that right?

6 A No, sir.

7 Q That's it, You stop there?

8 A Yes, sir. I send it in to our DNA analysis section and
9 a DNA analyst will test to see if it is, in fact, blood.

10 Q Okay. From the items you collected, you said you
11 collected from the victim some head hairs; is that right?

12 A Yes, sir.

13 Q As you speak today, do you have any results that say
14 the head hairs belonged to Ernest Robinson?

15 A No, sir, I do not.

16 Q You say you collected a multi-colored shower curtain;
17 is that right?

18 A Yes, sir.

19 Q When you take a shower your body is exposed; is that
20 correct?

21 A. Yes, sir.

22 Q. Did you ever collect any results that says that Victor
23 Smith's DNA was on that shower curtain?

24 A No, sir.

25 Q Any test results that says Ernest Robinson's DNA was on

1 that shower curtain?

2 A No, sir.

3 Q Like the colored fabric, any test results that
4 indicate that was Ernest Robinson's DNA on the fabric?

5 A No, sir.

6 Q Victor Smith on the light colored fabric?

7 A No, sir.

8 Q Fabric fragments. What was that; do you know exactly
9 what it was?

10 A I'm not sure. That's why just fabric fragments.

11 Q When you analyze the evidence, did you notice any odor
12 at all coming from it?

13 A I don't remember one, too much.

14 Q The fabric fragments --

15 A Yes, sir.

16 Q -- any DNA to indicate Ernest Robinson?

17 A Not that I'm aware of?

18 Q Any test results to indicate Victor Smith?

19 A No, not that I'm aware of.

20 Q You also collected a t-shirt; is that right?

21 A Yes, sir.

22 Q The t-shirt was over the skeletal remains?

23 A It was -- if I may check my notes?

24 Q Sure.

25 A Some of the arm bones were still in the t-shirt.

State v. Victor Smith 9/19/11 - 9/23/11

329

1 Q Any DNA to indicate it was Ernest Robinson's skeletal
2 remains in that t-shirt?

3 A Not that I'm aware of, sir.

4 Q Any DNA to connect Victor Smith to that t-shirt?

5 A No, sir. Not that I'm aware of.

6 Q You mentioned underwear, and this is important, you
7 said the skeletal remains the legs were through a pair of
8 underwear; is that right?

9 A I -- Yes, sir. Leg bones were through underwear.

10 Q Any results indicating Ernest Robinson remain with that
11 underwear?

12 A Not that I'm aware of, sir.

13 Q Any results indicating Victor Smith with that
14 underwear?

15 A No, sir.

16 Q You mentioned a black belt, also.

17 A Yes, sir.

18 Q Any results indicating Ernest Robinson on that black
19 belt?

20 A No, sir.

21 Q Victor Smith?

22 A No.

23 Q A black braid belt; any results indicating Ernest
24 Robinson?

25 A No.

1 Q Victor Smith?

2 A No, sir.

3 Q There was some debris. Could you tell what that debris
4 was that you collected?

5 A No, sir. I have no idea what it was.

6 Q Any results indicating Ernest Robinson?

7 A No, sir.

8 Q Results for Victor Smith?

9 A No, sir.

10 Q If you can -- can you review your check list; am I
11 right?

12 A Yes, sir.

13 Q You have two pages on your check list?

14 A Yes, sir. My major scene check list.

15 Q Could you go to the second page of your check list?

16 A Yes, sir.

17 Q This -- the second question before the last one, it
18 indicates the time of death was determined; is that right?

19 A Yes, sir.

20 Q And you indicated, no?

21 A I did.

22 Q Which means you couldn't tell from those remains when
23 the person passed away?

24 A Correct.

25 Q Thank you.

State v. Victor Smith 9/19/11 - 9/23/11

331

1 THE COURT: Redirect.

2 MR. POTTS: Just briefly, Your Honor.

3 HAROLD BOUKNIGHT - REDIRECT EXAMINATION

4 BY MR. POTTS:

5 Q Mr. Hart talks about the t-shirt and the underwear
6 found?

7 A Yes, sir.

8 Q You collect those; correct?

9 A Yes, sir, I did.

10 COURT REPORTER: State's 176 for ID.

11 (State's Exhibit No. 176,
12 underwear, was marked for ID only.)

13 COURT REPORTER: State's 177, for ID.

14 (State's Exhibit No. 177, t-shirt,
15 was marked for ID only.)

16 BY MR. POTTS:

17 Q I'm going to show you what's been marked as State's
18 Exhibit No. 176. Can you tell me what that is?

19 A Yes.

20 Q Do you recognize that?

21 A Yes, sir. It's marked underwear.

22 Q And I'll show you State's Exhibit No. 177; do you
23 recognize that?

24 A It's marked t-shirt. Yes, sir.

25 MR. HART: Same objection, Your Honor.

1 THE COURT: Noted.

2 MR. HART: Yes, sir.

3 THE COURT: So 176, underwear; 177, t-shirt?

4 MR. POTTS: That's correct, Your Honor.

5 BY MR. POTTS:

6 Q Is that a t-shirt you collected that day; showing
7 State's 177?

8 || A It appears to be.

9 Q Is that the same?

10 A Yes, sir.

11 MR. POTTS: Your Honor, I'd like to move State's 177
12 into evidence.

13 THE COURT: All right. That's the t-shirt?

14 MR. POTTS: That's the t-shirt, Your Honor.

15 (State's Exhibit No. 177, t-shirt,
16 was marked and entered.)

17 BY MR. POTTS:

18 Q And I'm going to show you 176, would that be the
19 underwear you collected that day?

20 A Yes, sir.

21 MR. POTTS: Move to introduce State's Exhibit No. 176 --

22 (State's Exhibit No. 176,
23 underwear, was marked and entered.)

24 THE COURT: State's No. 176 and 177. They are in.

25 MR. POTTS: Thank Your Honor.

State v. Victor Smith 9/19/11 - 9/23/11

333

1 BY MR. POTTS:

2 Q Did you find any pants?

3 A No, sir.

4 Q Did you find any shoes?

5 A No, sir.

6 Q They weren't there to collect, were they?

7 A Not at the autopsy.

8 Q Now, can you briefly describe to the jury the
9 difference between CSI on TV and your actual job?

10 A On TV things they do happen a lot quicker because they
11 have to fit into an hour show, and some of what they do is
12 scientifically correct, but it just happen that way in real
13 life just because the evidence is not always there. And
14 they always find the key piece of evidence or the suspect
15 always leaves a key piece of evidence or something like
16 that, but sometimes we will process entire houses and not
17 get fingerprints or something like that.

18 Q It's your job to collect the evidence?

19 A Yes.

20 Q You don't do any analysis of the evidence?

21 A Outside of presumptive testing for blood, no, sir.

22 Q You leave that to --

23 A Dr. Amick, yes, sir.

24 MR. POTTS: Nothing further, Your Honor.

25 THE COURT: Anything further, sir?

State v. Victor Smith 9/19/11 - 9/23/11

334

1 MR. HART: Just real quickly.

2 THE COURT: Go ahead.

3 HAROLD BOUKNIGHT - RECROSS EXAMINATION

4 BY MR. HART:

5 Q You mentioned CSI and you mentioned that things go a
6 lot quicker; right?

7 A Yes, sir.

8 Q This case is about three years old, do you agree with
9 that, it happened back in 2008?

10 A I -- I got involved in 2009.

11 Q Well, you were involved in this about two years; is
12 that right?

13 A Yes, sir.

14 MR. HART: No further questions.

15 THE COURT: All right. Anything further for this
16 witness?

17 MR. POTTS: Nothing from the state.

18 THE COURT: You may step down Investigator Bouknight.

19 MR. BOUKNIGHT: Thank you, sir.

20 THE COURT: Call your next witness.

21 MR. GOLDBERG: State calls Sgt. Richards.

22 (WHEREUPON, Stan Richards was sworn
23 to tell the truth.)

24 THE CLERK: Have a seat in the witness box and state
25 your full name for the record, please.

State v. Victor Smith 9/19/11 - 9/23/11

335

1 MR. RICHARDS: Stan Richards.

2 STAN RICHARDS - DIRECT EXAMINATION

3 BY MR. GOLDBERG:

4 Q Sgt. Richards, can you tell the jury a little bit about
5 your background, training and experience?

6 A Yes. I spent about 20 years, plus, in the military.
7 Retired from the United State Army. While there I had an
8 opportunity to further my education. I attended Gainesville
9 College while in there and studied history. I also
10 completed my degree process at St. Lillal University while
11 in the military in criminal justice. I also attended Wallyn
12 Baptist University at Fairbanks, Alaska, studying sociology,
13 and I attended the U.S. Army Command General Staff College.
14 I studied quantitative analysis. I'm a graduate of the
15 Northeast Georgia Police Academy, as well as, the South
16 Carolina Criminal Justice Academy. I've been trained in a
17 lot of disciplines, some of those are blood pattern
18 analysis, latent print processing, crime scene photography,
19 basic fingerprint, crime scene techniques for investigation
20 and ridgeology, which is another form of fingerprints.
21 Advanced crime scene photograph, latent verification and
22 examination, shoe and tire track impressions, forensic
23 question document examination, forensic shooting
24 reconstruction, comparison and examination of footwear, DNA
25 procedures, crime scene reconstruction, complex latent print

1 examination, advanced blood pattern analysis, shooting
2 incident documentation and reconstruction, forensic
3 anthropology and archeology, advanced crime scene
4 reconstruction, and I've attended seminars in forensic
5 anthropology and forensic pathology and DNA overview
6 seminars. I am a Certified Crime Scene Investigator,
7 Certified Footwear Examiner, and Certified Blood Stain
8 Pattern Examiner through the International Association for
9 Identification. I'm also a current member of the
10 International Association for Identification. A member of
11 the South Carolina Division of the International Association
12 for Identification. I'm a member of the International Crime
13 Scene Investigation Association, the Association for Crime
14 Scene Reconstruction, and the International Association for
15 Blood Stain Pattern Analysis.

16 Q Thank you, sir.

17 MR. GOLDBERG: At this time, we'd offer Sgt. Richards as
18 an expert in crime scene analysis and blood stain pattern.

19 MR. HART: I don't think I have any objections, Your
20 Honor.

21 THE COURT: Thank you, Mr. Hart.

22 So admitted.

23 BY MR. GOLDBERG:

24 Q Sgt. Richards, all that being said, can you explain to
25 this jury in lay terms what it is you do on a daily basis?

State v. Victor Smith 9/19/11 - 9/23/11

337

1 A Yes. I supervise 13 individuals for the Crime Scene
2 Unit from Richland County Sheriff's Department and I've done
3 so as a supervisor for about 5 years now. I've been with
4 the Crime Scene Unit for almost 10 years. My job is the
5 operational sergeant right now for the unit. I have three
6 full-time latent print examiners and then I have 10 crime
7 scene investigators, who we have on the road at any time
8 24/7.

9 Q Now, we're talking about analyzing crime scene, I
10 believe the phrase you use is crime scene processing?

11 A Yes, sir.

12 Q What does that mean?

13 A Crime scene processing -- the book definition is that
14 we observe, identify, collect, and preserve any physical
15 evidence at a crime scene. We take that physical evidence
16 whenever possible and try to reconstruct the crime scene, as
17 best we can when we have enough physical evidence to do so.

18 Q Back in July of 2009, July 20, to be precise, were you
19 called out to the Elders Pond area of Richland County in
20 reference to an incident?

21 A Yes, I was.

22 Q What was the nature of the call you received?

23 A I met with Investigator Oates, at [REDACTED] Elders Pond
24 Circle in a wooded area behind Building No. 16. Upon
25 arrival I met with him and a Sgt. Robertson, and briefed

1 that there were some surveyors that had found some skeletal
2 remains down an embankment behind that building. We went
3 down the embankment, Investigator Oates and myself. After
4 insuring that crime scene security had been set up, and did
5 identify that they were skeletal remains. At that time, I
6 asked Deputy Coroner Dozier, who was also on the scene, to
7 come down and take a look, as that's his job as a coroner.
8 We did so, and when we got down and was looking at what we
9 had, which was mainly skeletal remains, I also requested
10 Deputy Coroner, Bill Stevens, to respond to the scene,
11 because he's an anthropologist and an expert in that type of
12 scene.

13 Q I want to show you what's been marked as State's 60,
14 59, and 58, and ask if you recognize those?

15 A Yes. This is the building and the embankment. I believe
16 this should be Building 16. The embankment behind Building
17 16, and the wooded area down at the bottom of the embankment
18 where we found the skeletal remains.

19 Q And these pictures fairly and accurately depict how
20 that scene appeared on July 20?

21 A It does.

22 MR. GOLDBERG: At this time we'd offer them in evidence.

23 THE COURT: Any objection?

24 MR. HART: Same objections, Your Honor.

25 THE COURT: All right. 58, 59, 60 are in.

State v. Victor Smith

9/19/11 - 9/23/11

339

1 (State's Exhibit No. 58, photo, was
2 marked and entered.)

3 (State's Exhibit No. 59, photo, was
4 marked and entered.)

5 (State's Exhibit No. 60, photo, was
6 marked and entered.)

7 MR. GOLDBERG: Thank you.

8 BY MR. GOLDBERG:

9 Q And in State's 60, is that how the remains appeared
10 when you walked down the embankment?

11 A Yes. That's the initial appearance; yes.

12 Q Okay. All right. You indicated you had notified Bill
13 Stevens to come out there and you walked down to examine --
14 once you got down there how did you proceed?

15 A Yes. After Mr. Stevens arrived, we did go back down
16 the embankment, and I observed the remains wrapped in two
17 types of cloth. One possibly a shower curtain. The best
18 that I could tell. Two black belts tied together and
19 running on the ground the length of the victim. One end of
20 the belt was at shoulder level and the other end appeared to
21 be tied around the victim's ankles. A cloth was completely
22 covering the victim's head. I saw no defects on the cloth
23 at that time. That means no holes in it that I could tell.
24 Deputy Coroner Stevens determined at that time that this was
25 a black male, possibly a one year old decomposition at that

1 time. He did locate impact at that point or injuries to the
2 left and right side of the victim's rear skull.

3 Q Now, when you said that the remains had these two belts
4 tied together --

5 A Yes, sir.

6 Q -- and they were running on the ground the length of
7 the victim; can you describe in a little more detail what
8 that appeared to be?

9 A Well, it started out the shoulder level. All I saw was
10 the belts running down the side the length of the victim as
11 the skeletal remains were lying on the ground and the end at
12 the bottom appeared to be tied around the ankles.

13 Q You said that skull was completely covered by a fabric?

14 A Yes, sir.

15 Q There were no impact point on that fabric?

16 A No, defects in the fabric. No, sir.

17 Q What is an impact point?

18 A Impact point could be anything that perforates an
19 object or a surface.

20 Q And after removing fabric was there, in fact, an impact
21 point on the skull?

22 A Yeah, there was 2. Mr. Stevens found one on each side
23 of the head.

24 Q Okay. At that point, what did you do?

25 A Investigator Oates identified and marked some items and

State v. Victor Smith 9/19/11 - 9/23/11

341

1 photographed the scene around the remains. He also prepared
2 a field sketch with approximate measurements. I established
3 GPS location at that time. The remains was transported to
4 the morgue for autopsy. And Investigator Oates collected
5 the items that he had marked and I canvassed the area in and
6 around where the remains was in an effort to see if there
7 was some type of projectile there because of the impact that
8 we saw, using a metal detector, but that was with negative
9 results.

10 Q Was that the extent of your involvement on the 20?

11 A It was.

12 Q Did you, in fact, return to that area on the 21?

13 A Yes. On the 21, then, about 2:00 o'clock in the
14 afternoon, arriving about 2:30, myself, my supervisor, Lt.
15 Dolcey (sp) and Investigator Polis, Investigator Oates
16 responded to ■ Elder Pond Circle Building ■ Apartment
17 ■. We did this pursuant to a search warrant that had been

18 Q I want to show you some pictures, here, State's 69
19 through 102 for ID, and just have you flip through those and
20 see if you recognize what they are?

21 A These are photographs depicting the outside front of
22 the apartment, the outside rear of the apartment, plus the
23 interior of the apartment in the way that we found it when
24 we first arrived, and the way we found it when we left that
25 afternoon, because we had to make some identifying marks

State v. Victor Smith 9/19/11 - 9/23/11

342

1 within the structure of the apartment.

2 Q Do these photos fairly and accurately depict how that
3 scene appeared on July 21?

4 A Yes, sir.

5 MR. GOLDBERG: At this time, we'd offer State's 69
6 through 102 into evidence.

7 MR. HART: Same objection.

8 THE COURT: All right. State's 69 through 102.

9 MR. GOLDBERG: Thank you.

10 THE COURT: They're in. Objection is noted.

11 MR. GOLDBERG: Thank you.

12 (State's Exhibit No. 69, photo, was
13 marked and entered.)

14 (State's Exhibit No. 70, photo, was
15 marked and entered.)

16 (State's Exhibit No. 71, photo, was
17 marked and entered.)

18 (State's Exhibit No. 72, photo, was
19 marked and entered.)

20 (State's Exhibit No. 73, photo, was
21 marked and entered.)

22 (State's Exhibit No. 74, photo, was
23 marked and entered.)

24 (State's Exhibit No. 75, photo was
25 marked and entered.)

State v. Victor Smith 9/19/11 - 9/23/11

343

1 (State's Exhibit No. 76, photo, was
2 marked and entered.)
3 (State's Exhibit No. 77, photo, was
4 marked and entered.)
5 (State's Exhibit No. 78, photo, was
6 marked and entered.)
7 (State's Exhibit No. 79, photo, was
8 marked and entered.)
9 (State's Exhibit No. 80, photo, was
10 marked and entered.)
11 (State's Exhibit No. 81, photo was
12 marked and entered.)
13 (State's Exhibit No. 82, photo, was
14 marked and entered.)
15 (State's Exhibit No. 83, photo, was
16 marked and entered.)
17 (State's Exhibit No. 84, photo, was
18 marked and entered.)
19 (State's Exhibit No. 85, photo, was
20 marked and entered.)
21 (State's Exhibit No. 86, photo, was
22 marked and entered.)
23 (State's Exhibit No. 87, photo, was
24 marked and entered.)
25 (State's Exhibit No. 88, photo, was

State v. Victor Smith

9/19/11 - 9/23/11

344

1 marked and entered.)

2 (State's Exhibit No. 89, photo, was

3 marked and entered.)

4 (State's Exhibit No. 90, photo, was

5 marked and entered.)

6 (State's Exhibit No. 91, photo, was

7 marked and entered.)

8 (State's Exhibit No. 92, photo, was

9 marked and entered.)

10 (State's Exhibit No. 93, photo, was

11 marked and entered.)

12 (State's Exhibit No. 94, photo, was

13 marked and entered.)

14 (State's Exhibit No. 95, photo, was

15 marked and entered.)

16 (State's Exhibit No. 96, photo, was

17 marked and entered.)

18 (State's Exhibit No. 97, photo, was

19 marked and entered.)

20 (State's Exhibit No. 98, photo, was

21 marked and entered.)

22 (State's Exhibit No. 99, photo, was

23 marked and entered.)

24 (State's Exhibit No. 100, photo,

25 was marked and entered.)

State v. Victor Smith 9/19/11 - 9/23/11

345

1 (State's Exhibit No. 101, photo,
2 was marked and entered.)

3 (State's Exhibit No. 102, photo,
4 was marked and entered.)

5 BY MR. GOLDBERG:

6 Q. All right. We'll go through the pictures a little bit
7 again. Can you describe for the jury the nature of your
8 business that day at the apartment?

9 A Yes. As I stated, we were there pursuant to a search
10 warrant that had been initiated for that apartment. When we
11 started the photographing using digital camera and 35
12 millimeter camera, which was protocol at that time. Searched
13 for trace evidence was initiated using alternate light
14 sources, observations and phenolphthalein, which is a
15 presumptive test for blood that we used. That first day, we
16 located and marked and photographed and tested three
17 possible stains. Investigator Polis marked a stain on the
18 carpet in the first bedroom to the right after you enter the
19 apartment. Later that bedroom was marked as Bedroom No. 1.
20 The stain was tested using phenolphthalein and tested
21 positive reaction. Stains were observed on the Southeast
22 wall of Bedroom No. 1, photographed and I marked the red
23 stains No. 3 and tested it. The stain were then signed over
24 to me from Investigator Polis, along with a map that she had
25 collected from Bathroom No. 2 -- Bedroom No. 2, rather. And

State v. Victor Smith 9/19/11 - 9/23/11

346

1 the stains on the bath mat were tested also with
2 phenolphthalein and was negative results. So basically what
3 we did, we tested three different areas that first day; that
4 was No. 1, No. 2, and No. 3. That was a hallway when you
5 first enter, the first bedroom wall, a stain on the wall on
6 the first bedroom, and a bath mat that we collected out of
7 the second bedroom. The first -- on the wall going in, the
8 hallway wall was positive with phenolphthalein, a
9 presumptive test for blood. The second test was positive in
10 the first bedroom. The bath mat was negative, but I
11 collected the bath mat anyway.

12 MR. GOLDBERG: Your Honor, may the witness step down?

13 THE COURT: Sure.

14 BY MR. GOLDBERG:

15 Q Sergeant, I'd like for you to kind of pick out some of
16 the key photos here, and describe for the jury what you see.
17 Just make sure on the back you know which particular exhibit
18 it is that you're referring to.

19 A Well, Exhibit No. 69 and 70 depict the rear of the
20 apartment, Apartment [REDACTED]. Pursuant to the search warrant
21 that we were initiating that day or executing that day.
22 Exhibit No. 71 is the front door to Apartment [REDACTED] Exhibit
23 No. 66, 65, 63, 62 and 61, depict the general condition of
24 the apartment itself, which was really in the kitchen area,
25 the dinning area and the living room area. Like any normal

State v. Victor Smith 9/19/11 - 9/23/11

347

1 living place, it had been lived in. Nothing spectacular or
2 out of place when I saw it. The majority of the rest of
3 these photographs are depicting the apartment in that
4 fashion. Bedroom No. 1, which is the bedroom that we
5 entered when we first went down the hallway, first bedroom
6 to the right.

7 Q I'll stop you right there. On State's No. 10, that's
8 been admitted into evidence. That's the front door; is that
9 right?

10 A Yes.

11 Q Is that this bedroom here that you're referring to?

12 A It is.

13 Q Go ahead?

14 A Exhibit No. 74 and 75 will show you what the bedroom
15 looked like from the inside. Had a lot of children's toys
16 and mats on the floor. There seemed to be a play area in
17 the bedroom. Now, a closer look, Exhibit No. 79, will show
18 you what we marked as No. 2, and a line drawn around a stain
19 that's on the carpet. This is in Bedroom No. 1. That's one
20 of the first things we noticed. You can see No. 2, there
21 depicting where we took the swabs from, also.

22 Q And now where was that in connection to the rugs and
23 mats that were on the floor when you first walked in?

24 A Well, the mat, you can see a portion of the mat that
25 was there to begin with draped over that. We pulled the mat

1 back and this was the stain that was on the carpet. This
2 depicts No. 83, Exhibit No. 83, depicts the bathroom that's
3 adjacent to Bedroom No. 1. That's the way we found it so
4 you can see how it looked before we began processing it.
5 And this is Bedroom No. 2, which is the second bedroom down
6 the hallway on the right. This is the way we marked them.
7 Marked Bedroom No. 1 and No. 1 was that bedroom of course
8 Bedroom No. 2, so you can tell which is which. And this
9 Exhibit No. 88 and 89 depicts the way the Bedroom No. 2 was
10 found. Lived in, of course, all the items around.

11 Q In fact the bath mat that was collected came from that
12 room; is that correct?

13 A It did. Exhibit No. 90, you can see -- I guess it's a
14 dirty clothes hamper. This is where the bath mat was that we
15 collected out of Bedroom No. 2. This is marked Item --
16 Exhibit No. 96. This is the stain that I marked as No. 1,
17 as we first entered the apartment on the right side of the
18 hallway wall. This is what you will be seeing as we go
19 through the photographs, marked and the stains of this next
20 one. Exhibit No. 97, depicts the wider view of that so you
21 can tell the relationship to the entrance of the apartment.

22 Q And did you do a test on that swab with
23 phenolphthalein?

24 A Yes.

25 Q What was the results on that?

State v. Victor Smith 9/19/11 - 9/23/11

349

1 A The results on the test, as No. 1 on that day and No. 2
2 on the carpet on the floor, both were positive with
3 phenolphthalein. And I assume you've been told what
4 phenolphthalein is so I won't go into it.

5 Q Thank you.

6 A Okay, this is going to depict to you later on when we
7 started marking -- this is Exhibit No. 98. Later on we
8 started marking each stain we found on the wall in Bedroom
9 No. 1. And Exhibit No. 100, gives you a better view of the
10 bath mat which we collected from Bedroom No. 2.

11 Q Is that the multi-colored floral pattern?

12 A It is. That's on the first day.

13 Q Okay. And essentially most of the July 21, 2009; is
14 that right, you were there for an extended period of time.

15 A Yes. We were there from about 2:30 in the afternoon
16 until about 4:30 in the afternoon. Basically, what we did
17 was assess, observation and some searching and we did make
18 the three distinctions which was the bath mat, of course,
19 and the two stains that were swabbed in order to get an
20 assessment of what we were going to do the following day.
21 Around 16:30 we secured the apartment. It was secured also
22 with deputies on scene for the night, and we left in order
23 to come back the next day and continue processing.

24 Q And just so we're clear, in that front bedroom on the
25 right, and I'm referencing State's 75, 77, and 78, the rug

1 that was on the floor in the front bedroom, is it fair to
2 say that the stains that you found were underneath that rug?

3 A Yes.

4 Q So when you first walk into that bedroom on the right,
5 would the stains that you located have been visible to the
6 naked eye with the rugs being present?

7 A Not the entire stain, no.

8 Q All right. And you said you returned back to the
9 apartment the next day on July 22; is that right?

10 A Yes, we did.

11 Q All right. And what was the purpose of going back there
12 the next day?

13 A We continued our processing. I returned there with Lt.
14 Elsey (sp) my supervisor, Investigators Bouknight and Oates
15 and upon arrival we made sure security was still in place
16 and the evidence taken we had placed over the door the
17 previous night had not been tampered with and it was in
18 place. So everything was secured. Myself and Investigator
19 Bouknight on entering the apartment, we searched two sofa's
20 and a chair in the living room for a possible weapons that
21 we had been asked to do. We found none. It was negative.
22 A thorough search of the apartment then, for trace evidence
23 revealed stains that were located, as I've already indicated
24 in the first bedroom on the right which was marked Bedroom
25 No. 1. And the adjacent bathroom to Bedroom No. 1.

1 Pursuant to the stains that were located the previous day,
2 myself, Lt. Elsey, and Investigator Bouknight and Oates
3 removed and collected the carpet from Bedroom No. 1.

4 Q The entire carpet?

5 A The entire carpet. We found the stain, the stain being
6 as large as I saw it, we collected the whole carpet, because
7 if you can't process the best that you can to do everything
8 that you need to do on scene, if you have the opportunity to
9 take the items with you, then that's what you do. That's
10 protocol. So we took the whole carpet.

11 Q Approximately how big was that carpet?

12 A I'm estimating that the room was probably 10 by 10;
13 something of that nature, yes.

14 Q Pretty large?

15 A Yes, it was pretty large.

16 Q Okay.

17 A We located a consistent, after taking the carpet up
18 from the bedroom, we located a consistent stain to the
19 padding. The padding always goes underneath the carpet so
20 something, a liquid, had saturated through the carpet onto
21 the padding below the stain. So now, we've got two stains.
22 One on the carpet and one on the padding. An examination of
23 the stain on the carpet revealed a damaged area perforating
24 a small defect in the carpet that had perforated the carpet.
25 I mean had went through the carpet, but did not go through

1 or did not even penetrate the padding below the carpet.

2 Q I want to show you real quick, State's No. 12, that's
3 already been admitted into evidence. That's the perforation
4 you saw in the middle of that circle; is that right?

5 A It is.

6 Q All right. Go ahead.

7 A An area rug, an area rug also located there in Bedroom
8 No. 1 was collected. That was the area rug that we looked
9 at in the photographs. Myself and Investigator Oates at
10 that time processed Bedroom No. 1, locating a lot of stains
11 on the Southeast wall and the South corner door, interior
12 side of the door in Bedroom No. 1, and some stains on the
13 ceiling. Investigator Bouknight then processed the adjacent
14 bathroom to Bedroom No. 1. Myself and Investigator Oates,
15 located, marked, photographed stains located on the
16 Southeast wall, marked 4 through 33. We photographed each
17 and we tested each with phenolphthalein. We located, marked
18 and photographed stains on the ceiling of Bedroom No. 1,
19 which we marked No. 34 and 35, there was an additional stain
20 later that we marked as No. 49 on the Southeast wall, as
21 well. So the majority of the stains that we marked,
22 photographed, and took swabs from were on that Southeast
23 wall. That means if you enter the bedroom from the hallway
24 it's to the your right. It's the wall that separates the
25 hall from the bedroom. That's the majority of the stains.

State v. Victor Smith 9/19/11 - 9/23/11

353

1 Down that wall at the bottom of the interior side of the
2 door and in the corner of the door and behind the entrance
3 to the bathroom. You want me to continue?

4 Q Go ahead?

5 A Stains in South corner of the Bedroom No. 1 and
6 interior door and corner of the wall were located, marked
7 and photographs and they were indicated as No. 51 through
8 61. Investigator Bouknight, as I said earlier, he processed
9 the adjacent bathroom. He had marked and photographed and
10 collected stains from Markers 36 through 48. All the stains
11 located and marked were swab tested with, like I said,
12 phenolphthalein, a presumptive test and I took possession of
13 all of those and they will be eventually turned into
14 evidence for submission to DNA.

15 Q Now, that you've described it, let's look at it.

16 A Okay.

17 Q You have previously reviewed what's been marked as
18 State's 103 through 164; correct?

19 A I have.

20 Q And do these photos fairly and accurately depict how
21 the apartment appeared on July 22?

22 A Yes. I believe most of those photographs will depict
23 individual stains that were marked and it's going to show as
24 three through 61.

25 Q All right.

1 MR. GOLDBERG: At this time, we'd offer State's 103
2 through 164 into evidence.

3 MR. HART: Same objection.

4 THE COURT: All right.

5 MR. GOLDBERG: May the witness step down?

6 THE COURT: Yes.

7 (State's Exhibit No. 103, photo,
8 was marked and entered.)

9 (State's Exhibit No. 104, photo,
10 was marked and entered.)

11 (State's Exhibit No. 105, photo,
12 was marked and entered.)

13 (State's Exhibit No. 106, photo,
14 was marked and entered.)

15 (State's Exhibit No. 107, photo,
16 was marked and entered.)

17 (State's Exhibit No. 108, photo,
18 was marked and entered.)

19 (State's Exhibit No. 109, photo,
20 was marked and entered.)

21 (State's Exhibit No. 110, photo,
22 was marked and entered.)

23 (State's Exhibit No. 111, photo,
24 was marked and entered.)

25 (State's Exhibit No. 112, photo,

State v. Victor Smith 9/19/11 - 9/23/11

355

1 was marked and entered.)

2 (State's Exhibit No. 113, photo,
3 was marked and entered.)

4 (State's Exhibit No. 114, photo,
5 was marked and entered.)

6 (State's Exhibit No. 115, photo,
7 was marked and entered.)

8 (State's Exhibit No. 116, photo,
9 was marked and entered.)

10 (State's Exhibit No. 117, photo,
11 was marked and entered.)

12 (State's Exhibit No. 118, photo,
13 was marked and entered.)

14 (State's Exhibit No. 119, photo,
15 was marked and entered.)

16 (State's Exhibit No. 120, photo,
17 was marked and entered.)

18 (State's Exhibit No. 121, photo,
19 was marked and entered.)

20 (State's Exhibit No. 122, photo,
21 was marked and entered.)

22 (State's Exhibit No. 123, photo,
23 was marked and entered.)

24 (State's Exhibit No. 124, photo,
25 was marked and entered.)

State v. Victor Smith

9/19/11 - 9/23/11

356

1 (State's Exhibit No. 125, photo,
2 was marked and entered.)
3 (State's Exhibit No. 126, photo,
4 was marked and entered.)
5 (State's Exhibit No. 127, photo,
6 was marked and entered.)
7 (State's Exhibit No. 128, photo,
8 was marked and entered.)
9 (State's Exhibit No. 129, photo,
10 was marked and entered.)
11 (State's Exhibit No. 130, photo,
12 was marked and entered.)
13 (State's Exhibit No. 131, photo,
14 was marked and entered.)
15 (State's Exhibit No. 132, photo,
16 was marked and entered.)
17 (State's Exhibit No. 133, photo,
18 was marked and entered.)
19 (State's Exhibit No. 134, photo,
20 was marked and entered.)
21 (State's Exhibit No. 135, photo,
22 was marked and entered.)
23 (State's Exhibit No. 136, photo,
24 was marked and entered.)
25 (State's Exhibit No. 137, photo,

State v. Victor Smith 9/19/11 - 9/23/11

357

1 was marked and entered.)

2 (State's Exhibit No. 138, photo,

3 was marked and entered.)

4 (State's Exhibit No. 139, photo,

5 was marked and entered.)

6 (State's Exhibit No. 140, photo,

7 was marked and entered.)

8 (State's Exhibit No. 141, photo,

9 was marked and entered.)

10 (State's Exhibit No. 142, photo,

11 was marked and entered.)

12 (State's Exhibit No. 143, photo,

13 was marked and entered.)

14 (State's Exhibit No. 144, photo,

15 was marked and entered.)

16 (State's Exhibit No. 145, photo,

17 was marked and entered.)

18 (State's Exhibit No. 146, photo,

19 was marked and entered.)

20 (State's Exhibit No. 147, photo,

21 was marked and entered.)

22 (State's Exhibit No. 148, photo,

23 was marked and entered.)

24 (State's Exhibit No. 149, photo,

25 was marked and entered.)

State v. Victor Smith

9/19/11 - 9/23/11

358

1 (State's Exhibit No. 150, photo,
2 was marked and entered.)

3 (State's Exhibit No. 151, photo,
4 was marked and entered.)

5 (State's Exhibit No. 152, photo,
6 was marked and entered.)

7 (State's Exhibit No. 153, photo,
8 was marked and entered.)

9 (State's Exhibit No. 154, photo,
10 was marked and entered.)

11 (State's Exhibit No. 155, photo,
12 was marked and entered.)

13 (State's Exhibit No. 156, photo,
14 was marked and entered.)

15 (State's Exhibit No. 157, photo,
16 was marked and entered.)

17 (State's Exhibit No. 158, photo,
18 was marked and entered.)

19 (State's Exhibit No. 159, photo,
20 was marked and entered.)

21 (State's Exhibit No. 160, photo,
22 was marked and entered.)

23 (State's Exhibit No. 161, photo,
24 was marked and entered.)

25 (State's Exhibit No. 162, photo,

State v. Victor Smith 9/19/11 - 9/23/11

359

1 was marked and entered.)

2 (State's Exhibit No. 163, photo,

3 was marked and entered.)

4 (State's Exhibit No. 164, photo,

5 was marked and entered.)

6 BY MR. GOLDBERG:

7 Q All right. Let's show them what we've got.

8 A This is Exhibit No. 103. It will show you, if you can
9 see it from there, this is the carpet with the line we put
10 around the stain on the floor. That's the wall that the
11 majority of the stains were found. That along with the
12 opposite side, interior side, of the doorway. In that
13 corner.

14 Exhibit No. 104, again, will show you the marked stain
15 and the rug that was pulled back to see the stain on the
16 carpet in Bedroom No. 1 and it was marked No. 2, by us.

17 This is No. 105, will show the carpet that is turned
18 over and the underside of the carpet itself, and the stain
19 and you can see the underside has been marked where the
20 defect is.

21 Q The defect being the impact point that you referred to?

22 A The impact point in the carpet. The same exhibit
23 number 110, will show you the same thing as the rug from the
24 opposite side as it was pulled up. We won't go into all of
25 those.

1 This is Exhibit No. 113. That's the surface defect we
2 were talking about in the carpet.

3 Exhibit 114, closer view. After the carpet was pulled
4 up and we started taking a look at the mat that was below
5 the carpet and we started tearing portions of the matting up
6 to see what we had below the matting.

7 Exhibit No. 115, we were looking for where the defect
8 was in relationship to the mat that was below the carpet in
9 relationship to the ceiling below that to make sure that we
10 hadn't missed something in the padding and we had some type
11 of defect in the ceiling, which we did not.

12 Exhibit No. 116, shows again, where we took the padding
13 up. We have several pictures of that.

14 This -- Exhibit No. 118, will show you after the
15 padding and the carpet was taken up the cement below with
16 the stain to scale. That scale will show you approximately
17 five foot in length. The Southeast wall, the Bedroom No. 1,
18 that I've already discussed with the majority of the stains.

19 Exhibit No. 121 will show you this again. It was
20 marked. Each one individually photographed, each one
21 individually swabbed and tested.

22 And I'm not going to go through all these. I'm going
23 to show you one, Exhibit No. 122, stain number four, and
24 this is what you're going to see stain number four through
25 61. They are going to look different. Some of them's going

State v. Victor Smith 9/19/11 - 9/23/11

361

1 to have different directionals to them, but these were
2 stains that were marked, and swabbed, and photographed.

3 When I talked to you, when I testified about stains on
4 the Southeast wall, I also indicated there were some stains
5 on the interior of the door, the entrance to the bedroom,
6 and also in the corner. This is what depicts that, is
7 Exhibit No. 149.

8 So what I'm seeing in bloodstain pattern analysis is
9 the stain that come across the Southeast wall, down low to
10 the doorway, the interior side of the door and continuing in
11 the corner, to come around on that wall to the entrance to
12 the bathroom.

13 Exhibit No. 151 and 150 who the same thing. It's a
14 little bit easier to see.

15 Exhibit No. 160 and 161, just to show we did look at
16 the rest of the walls, naturally. We found what we felt
17 might have been a defect in the wall, one of the walls in
18 the Bedroom No. 1, which was the wall in the bedroom
19 adjacent to the front of the apartment, and not being able
20 to tell what might have being able to tell what might have
21 made that defect, because we wanted to make sure we did not
22 have some type of projectile in there, but we did not.

23 Q Thank you, sir. You can have a seat.

24 Approximately how long were you there processing the
25 scene on July 22?

State v. Victor Smith 9/19/11 - 9/23/11

362

1 A Okay. We arrived there at 9:00 o'clock, and we
2 processed until approximately 1:00 o'clock in the afternoon,
3 but we left at that time, making sure the doors were secure.
4 We had security in place and we photographed and initialed
5 evidence tape on the door. However, we did return again on
6 the 22 at about 3:00 o'clock that afternoon.

7 Q What was the purpose of returning that afternoon?

8 A Myself and Investigator Bouknight returned that
9 afternoon at the request of Investigator Gallegos. We
10 found, of course, that everything was in place, security was
11 in place. He and I, and Investigator Bouknight and myself
12 initiated a search for clothing with possible trace evidence
13 and a 40 or a 45 pound weight that we had been asked to look
14 for in the apartment. I tested a pair of black and gray
15 shorts and a couple pair of tennis shoes, using
16 phenolphthalein, some stains which I noticed on there, which
17 were negative for presumptive test for blood. A search for
18 the weights was also negative. We found no weights. And at
19 that time, Investigator Bouknight and myself, we secured the
20 doors with evidence tape and made sure security was in
21 place, and we departed the scene for that day.

22 Q When you say you initiated a search for clothing that
23 may have contained trace evidence, can you tell the jury a
24 little bit about what trace evidence is and how that search
25 works?

State v. Victor Smith 9/19/11 - 9/23/11

363

1 A Yeah. I think I indicate that just about at the
2 beginning of each one of my analysis reports. Trace
3 evidence can be anything from blood, of course, which we
4 were looking for and found, thought we had found. We had to
5 say it was possible blood at that time because we only do a
6 presumptive test, but other trace evidence could include
7 hair, fibers -- anything that's hard to see. So we do that
8 through two or three different ways. Number one is
9 observation, of course. You are looking at things, you're
10 going to see some items. Number two, we use alternate light
11 sources. That could be anywhere from bright white light,
12 which we use in most of our flash lights, to crime scene
13 lights that we have that we bring out to crime scenes using
14 different lenses and light sources and wave lengths of light
15 in order to look for different things like blood or like
16 semen, or spittle or fibers or hair. That's looking for
17 trace evidence, and each time we came out we initiated a
18 trace evidence search.

19 Q And on this particular day, the second time you went
20 there, the 22, those were taken, too?

21 A Yes.

22 Q Did you then come back to the apartment on the
23 following day, on the 23?

24 A Yes. On the 23, I arrived back there about 10:00
25 o'clock in the morning. I returned there with Sgt. Robinson

State v. Victor Smith 9/19/11 - 9/23/11

364

1 and Investigator Gallegos, and Investigator Holdorf. Upon
2 arriving, we entered the apartment I photographed some
3 painting supplies which were located in a closet in Bedroom
4 No. 1. Sgt. Robinson and Investigator Holdorf searched the
5 apartment for probative paper work concerning their
6 investigation. I tested several stains on two sofas and one
7 chair in the living room for trace evidence. I also used
8 phenolphthalein in testing those for possible blood and I
9 have negative results with that. However, I did locate on
10 the -- what appeared to be white paint on two sofas and
11 Investigator Gallegos collect miscellaneous paper work from
12 Bedroom No. 2. Once their search was completed, and I
13 completed what I had to do, I secured the residence and
14 turned the master key over to the apartment management.

15 Q You previously reviewed State's 165 through 168. Do
16 they fairly and accurately depict the appearance of the
17 apartment on day 3?

18 A Yes, the ones you have in your left hand, the two you
19 have in your left hand are Bedroom No. 2. That was the
20 search for miscellaneous paper work by the investigators.

21 Q And 167, and 168?

22 A Exhibit 167 and 168, depicts the paint, the paint pan,
23 the paint brushes I found in the closet of Bedroom No. 1.

24 MR. GOLDBERG: Your Honor, at this time we offer 165
25 through 168 in evidence.

State v. Victor Smith 9/19/11 - 9/23/11

365

1 MR. HART: Same objection.

2 MR. GOLDBERG: All right.

3 (State's Exhibit No. 165, photo,
4 was marked and entered.)

5 (State's Exhibit No. 166, photo,
6 was marked and entered.)

7 (State's Exhibit No. 167, photo,
8 was marked and entered.)

9 (State's Exhibit No. 168, photo,
10 was marked and entered.)

11 BY MR. GOLDBERG:

12 Q I just want to ask you a couple more questions about
13 the nature of crime scene investigations and this one in
14 particular. You said you did use alternative light sources;
15 correct?

16 A That's correct.

17 Q Okay. The defect, I believe as you referred to in
18 State's No. 12, that you examined; that's the carpet,
19 correct?

20 A Correct.

21 Q That's in the front bedroom on the right?

22 A Yes.

23 Q I believe you testified that underneath that defect
24 there was a good deal of what appeared to be reddish brown
25 stains; is that right?

State v. Victor Smith 9/19/11 - 9/23/11

366

1 A Yes. All underneath the carpet itself, was a whole
2 large stain. It was stained underneath on the padding also,
3 yes.

4 Q On the padding and the cement as well?

5 A Yes.

6 Q And the defect in that carpet could that be consistent
7 with a gunshot?

8 A Could be. Yes.

9 Q Okay. Would it be uncommon for a gunshot like that to
10 have gone all the way through the carpet into the padding
11 and into the cement?

12 MR. HART: Calls for speculation, Your Honor.

13 MR. GOLDBERG: As an expert.

14 THE COURT: He's an expert.

15 MR. GOLDBERG: Yes, sir.

16 THE COURT: He's allowed to give his opinion.

17 Go ahead.

18 A It's not uncommon to find that a projectile would have
19 stopped in a certain area if after going through a first
20 substrate, being whether it's a wall or it's a person. It
21 could have stopped -- they do different things. It could
22 have went all the way through and even fragmented in the
23 cement, which we found no evidence of anything like that,
24 but to answer your question, could it have? Sure.

25 BY MR. GOLDBERG:

State v. Victor Smith 9/19/11 - 9/23/11

367

1 Q Okay, and you did not find the projectile?

2 A No.

3 Q Nor any defects in the padding nor in the cement?

4 A No.

5 Q Was there any other evidence that you observed in the
6 apartment anywhere that indicated aside from what you found
7 on day three, any indication of a clean up at some point?

8 A Well, yes. Aside from what I found on day three, but
9 after finding that it would indicate what we found and saw
10 in the bedroom, Bedroom No. 1, was probably -- you could
11 tell that most all the stains that were on the wall had been
12 painted over. But it wasn't painted so well that the --
13 what we now know is blood, did not come through. It did
14 come through. So we were able to see those stains just by
15 observation without using any type of materials to enhance
16 the blood that was on the wall. So that attempt was there.
17 You could see that very obviously. It appeared to me, of
18 course, that the stain on the carpet, also, there was an
19 attempt to clean that because -- well, you can tell when
20 something tried to be cleaned. And that's what I observed
21 as far as the cleaning was concerned.

22 Q Were there some areas of the carpet that had lighter
23 areas of discoloration as compared to the rest of the
24 regular color of the carpet?

25 A Are you talking about around the stains itself?

1 Q Yes, sir?

2 A Sure. Yes.

3 Q Is it fair to say that in processing a crime scene such
4 as this one, that your goal is to gather as much evidence as
5 you possibly can; is that fair?

6 A Absolutely.

7 Q Okay. Please explain to the jury a little bit about
8 your role in processing the crime scene, gathering evidence
9 every day, in the every day execution of it and how that
10 compares to some of the things that we might see on
11 television?

12 A I'm asked that a lot. Everywhere I go. I will tell
13 you that physical evidence is physical evidence. If you can
14 find it. You have to search for it, you have to know where
15 it is, you have to use the right materials and you can find
16 it when it's there, but you don't always find everything
17 that you're trying -- that you're looking for. Take, for
18 instance, DNA. DNA comes off of your hands and skin cells
19 or it could be hair, could be blood source or whatever, but
20 it's not always there. It can be destroyed, it can be moved
21 and wiped away just like fingerprints can. DNA,
22 fingerprints, things of that nature, are fragile evidence.
23 Most people will come up to you and say, well, you touched
24 this therefore you've got your fingerprints on it. It's
25 hard to find a suitable fingerprint to make a comparison

State v. Victor Smith 9/19/11 - 9/23/11

369

1 with, and that's just an example. So you have to search for
2 what you're looking for, and our job is to try our best to
3 find everything that we possibly can to employ what
4 techniques that we have available to us in order to find
5 physical evidence, if we need to.

6 Q Your crime scene unit is separate from just about every
7 other unit at the Sheriff's Department; correct?

8 A Yes. We are a member of the forensics division, but we
9 are, of course, a separate unit in crime scene, just like
10 DNA is separate, firearms is a separate section. We're all
11 separate sections.

12 Q The average Richland County Sheriff's deputy that's out
13 patrolling this community, are they trained in the same way
14 that you and your staff are to process a crime scene?

15 A Depends on what the crime scene is. Crime scene --

16 Q Let's say, for example, they are responding to just a
17 burglary complaint or some sort of narcotics complaint?

18 A If it's a burglary complaint, we do offer and insist on
19 going through the different regions and training the
20 deputies to know what to look for in order to help collect
21 things that might be destroyed or altered if left there for
22 a time trying to wait on us to respond. So they are trained
23 to do things like DNA collection and latent print
24 processing.

25 Q Is it fair to say that for, say for a burglary, that

1 the most important place to examine would be the entrance
2 point?

3 A Sure. Yes.

4 Q Or the exit point?

5 A Yes.

6 Q Hypothetically, if there was a narcotics complaint
7 would there typically be a detailed -- MR. HART: Objection,
8 Your Honor. He's calling wide speculation. He's an expert
9 --

10 MR. GOLDBERG: May we approach?

11 THE COURT: Yes.

12 (Off the record bench conference with counsel and the
13 Court.)

14 BY MR. GOLDBERG:

15 Q Again, if a line deputy was called out in reference to
16 a narcotics complaint would they put in the same kind of
17 crime scene processing that you and your unit conduct in
18 that kind of situation?

19 A No.

20 Q It's not their job to do that, is it?

21 A No, it isn't.

22 Q Based upon all the evidence that you examined in the
23 apartment over a three day period, the swabs that were
24 taken, photos that were taken, search that was conducted,
25 the numerous hours that you spent there, how would you

State v. Victor Smith 9/19/11 - 9/23/11

371

1 classify the event that took place in that front right
2 bedroom?

3 A First of all, I would say that assessing the scene and
4 then going through the processing techniques that we do, I
5 found, number one, I did not find any overlapping events in
6 the bedroom. I found a major event with overlapping event
7 segments, smaller segments that happened. I had spatter on
8 the walls. Spatter means a force. Bloodstains put into
9 flight with some type of force at the blood source. I had
10 large blood stains on the carpets that saturated through the
11 padding, that saturated through the cement. I even had
12 stains in the adjacent bedroom. So with all that being said,
13 and all those things that come into play in a bloodstain
14 analysis, that was a dynamic blood letting event inside that
15 room.

16 Q And again, I think this has been gone over with the
17 other investigators, your job on these particular occasions
18 is to collect evidence; is that correct.

19 A (No response.)

20 Q Your job isn't to test the evidence with the exception
21 to the phenolphthalein that we've all heard about several
22 times; is that right, at that point while you're at the
23 scene?

24 A Yes. If we have the opportunity to take something back
25 and obviously if it's something that can't be done by

State v. Victor Smith 9/19/11 - 9/23/11

372

1 anybody but the lab personnel that's involved in it, say DNA
2 personnel, they have to do it. We have no option in that.
3 We have the abilities to do certain things, but why would
4 you want to do certain things in the middle of a crime scene
5 processing when you can take those items back to the lab and
6 have it done in an environment, a lab environment. So
7 that's what we do. We process what we have to, we collect
8 what we need to and take it back for processing in the lab.

9 Q In an instance like this, the preferable course of
10 action would be to collect the majority of those items and
11 take them back for the lab test; correct?

12 A Yes.

13 Q And you commented a moment ago that the event in the
14 front right bedroom, I believe you call it a dynamic blood
15 letting type of event. Would that be consistent with an
16 extremely violent occurrence?

17 A Based on the spatter, and it was spatter on the walls,
18 that is a blood pattern. Based on the spatter that was on
19 the walls and the saturation and the amount of saturation
20 that I found on the floor, there was a forceful blood
21 letting event that happened in that room. Yes.

22 Q Thank you.

23 THE COURT: Members of the jury, do y'all need to get up
24 and stretch or something like that. Take your time,
25 stretch. Let's get up and do it together. This is probably

State v. Victor Smith 9/19/11 - 9/23/11

373

1 the last witness before lunch. I'm going to let Mr. Hart
2 examine him.

3 All right. Mr. Hart.

4 MR. HART: Thank Your Honor.

5 STAN RICHARDS - CROSS-EXAMINATION

6 BY MR. HART:

7 Q Investigator Bouknight, one of the things you mentioned
8 when you were asked about the difference between TV and real
9 life, one thing you said is that you have to find evidence;
10 is that right?

11 A That's our job, to look for evidence. Yes.

12 Q The evidence has to be there; is that correct?

13 A I said it, I didn't say the evidence has to be there. I
14 said we look for the evidence. If it's there, that's our
15 job to try and find it. It's not always there.

16 Q Well, I'm not trying to trip you up. I'm just asking?

17 A Okay. Yeah.

18 Q If the evidence is there, you're going to collect it;
19 is that right?

20 A We're either going to collect the evidence ourselves or
21 we're going to take the items that we believe should be
22 looked at further back to the lab and have it looked at by
23 the people back there.

24 Q Sure. And in this particular case you collected over
25 100 pieces of evidence; is that right?

1 A Sounds about right. Yes, sir.

2 Q And on CSI they use alternative light sources, don't
3 they?

4 A Yes, sir.

5 Q You use alternative light sources, didn't you?

6 A Yes, sir.

7 Q You use different instruments that the naked eye may
8 not be able to see; is that correct?

9 A Yes, sir.

10 Q That's called crime scene investigation?

11 A It is.

12 Q CSI; is that right?

13 A Yes, sir.

14 Q Do you have any knowledge of the police searching this
15 apartment on October 21?

16 A Who searching it?

17 Q Your department. Not your -- do you have any knowledge
18 about the Sheriff's Department searching this apartment on
19 October 21?

20 A Before our arrival?

21 Q Yes, sir?

22 A No.

23 Q Do you have any knowledge of the Sheriff's Department
24 searching this apartment on December 22, 2008?

25 A Aside from our involvement?

State v. Victor Smith 9/19/11 - 9/23/11

375

1 Q Yes, sir.

2 A No.

3 Q Now, when other departments do a search and you're not
4 involved, they may collect evidence and bring to your
5 department for testing; is that correct?

6 A It's possible.

7 Q Now, if they bring it you're going to test it?

8 A Someone is going to test it.

9 Q Somebody is going to test it.

10 A Not particularly the CS unit. Yes. It may -- let me
11 rephrase that.

12 Q Sure?

13 A If they go out on their own and their own, whatever
14 they're doing in their own investigation, and they collect
15 whatever they believe to be evidence and they bring it back
16 and submit it to our evidence room, which is proper
17 procedure. If they mark that to be processed then it will
18 be picked up by one of the lab sections, be it DNA or us for
19 latent prints and be processed, or they can submit a request
20 for us to do that. Other than that, we wouldn't know it was
21 there. That's proper procedure.

22 Q Right. And also you mentioned about the carpet having
23 some brownish stains on it; is that right?

24 A Yes, sir.

25 Q Showing you what's been marked as State's Exhibit No.

1 104. You testified earlier about that, right?

2 A Yes, sir.

3 Q There was an area rug that was on top of the area?

4 A Yes.

5 Q Did you guys collect that area rug?

6 A I believe we did. Yes, we did.

7 Q And that was for Bedroom No. 1; is that correct?

8 A That's correct.

9 Q You also responded to the scene where the remains were
10 found?

11 A Yes, sir.

12 Q You had a chance to view the remains where they were?

13 A I did.

14 Q Have you ever smelled a decomposing body before?

15 A Yes, sir, I have.

16 Q Can you describe to us what it smells like?

17 A Well, first thing that comes to my mind would be an
18 autopsy, which none of you probably have been to, either.

19 So that would be a bad example. It's a putrid type smell.

20 Q Very noticeable?

21 A Very noticeable.

22 Q I'm going to show you what's been marked as State's
23 Exhibit No. 11. Do you recognize this at all?

24 A Well, it looks like an apartment complex, sir.

25 Q Do you recognize it as the apartment complex where the

State v. Victor Smith 9/19/11 - 9/23/11

377

1 remains were found?

2 A No.

3 Q You don't recognize this as that?

4 A Not that view, no, sir.

5 Q Not that view?

6 A No, sir. I haven't seen that before.

7 Q All right. Do you remember how close in proximity those
8 remains were to the very nearest apartment?

9 A I would have to estimate that from the back of the
10 nearest apartment at the top of the embankment, it was
11 probably 20 feet, maybe, 25 feet, then the embankment went
12 downhill --

13 Q Right.

14 A -- for some distance, and that'd probably be another 25
15 to 30 feet down the embankment, to the bottom of it. And
16 that's ballpark guess.

17 Q And you went out there back in July?

18 A Yes, sir.

19 Q You agree in Columbia, South Carolina, it's pretty hot
20 in July?

21 A Yes, sir.

22 Q Pretty humid?

23 A Yes, sir.

24 Q And those factors affect the decomposition of a body;
25 is that correct?

1 A I'm sure it would.

2 Q When you saw the body it wasn't covered under any brush
3 or pine straw was it?

4 A No, sir.

5 Q And actually when you saw it, those remains, they were
6 wrapped in a very bright flowery pattern; do you remember
7 that?

8 A Two different types of cloth. One being in some type of
9 -- appeared to be a flowery type pattern. Yes, sir.

10 Q But visibly you could see that flowery pattern?

11 A When I got down to it, yes, sir.

12 Q You also say that when you were out in the wooded area
13 where the remains were found you used the metal detector?

14 A After the remains were removed; yes, sir.

15 Q You didn't find any weapons, did you?

16 A No, sir.

17 Q You didn't find any bullets?

18 A No, sir.

19 Q Did you use a metal detector inside the home?

20 A No, sir.

21 Q But in the home you didn't find any weapons?

22 A No, sir.

23 Q You didn't find any bullets?

24 A No, sir.

25 Q You talked about the carpet, I think you mentioned on

State v. Victor Smith 9/19/11 - 9/23/11

379

1 State's Exhibit No. 12, and let me make sure I'm correct.

2 This is the carpet you're saying is perforated; right?

3 A Yes.

4 Q What there any, what you guys call GSR, but it's
5 gunshot residue?

6 A Right.

7 Q Did you perform any test on that carpet for gunshot
8 residue?

9 A At the scene?

10 Q At all, period?

11 A Yes, sir.

12 Q Anything come back positive for what you guys call GSR?

13 A I do not have a report in front of me, but I -- if you
14 would like for me to say I don't believe they got anything
15 on the test that they conducted on that carpet, which was
16 for lead, copper, nickel and lead residue.

17 Q And those are the things you look for on the GSR,
18 gunshot residue, right?

19 A Those are things we look for in gunshot residue, along
20 with maybe bullet flash -- items that may come off a bullet
21 after impact of a substrate.

22 Q And none of that came up positive?

23 A No.

24 Q And you mentioned the padding?

25 A Yes, sir.

1 Q And did you mention that the padding was perforated or
2 not?

3 A It was not perforated, it was not penetrated.

4 Q And that pad -- did you test the padding for what you
5 call gunshot residue or GSR?

6 A Not that I'm aware of.

7 Q There were no testing done on that?

8 A Not that I'm aware of.

9 Q Okay. Sure. Once of the things that you mentioned is
10 about trace evidence?

11 A Yes, sir.

12 Q And you would agree that in this kind of case, trace
13 evidence is extremely important?

14 A Trace evidence is always important. Yes, sir.

15 Q Whether someone's blood, hair, skin is present at a
16 crime scene is important?

17 A It is.

18 Q What I want to do is look at your -- you did a crime
19 scene investigation analysis report, and your narrative,
20 your conclusions -- IO stands for investigating officer?

21 A It does. Yes, sir.

22 Q Okay. And it indicates you collected a number of items
23 from the apartment; is that right?

24 A Yes, sir.

25 Q Could you go to your Page 1 for me?

State v. Victor Smith 9/19/11 - 9/23/11

381

1 A What date are you talking about, sir?

2 Q Okay. I'm glad you mentioned that. This is July 27,
3 2009?

4 A 22?

5 Q 27?

6 A 27?

7 Q Yes, sir.

8 A All right, sir.

9 Q Do you have that in front of you?

10 A I do.

11 Q Okay. You notice on your report where you have swab
12 indicated?

13 A Yes.

14 Q That was from the carpet --

15 A In Bedroom No. 1.

16 Q -- in Bedroom No. 1. Is it fair to say that there is
17 no DNA that matches Ernest Robinson for that particular
18 piece of evidence?

19 A I have no idea. I do not. Let me explain -- I do not
20 have the report that was generated from our DNA section. We
21 do not do analysis for those things.

22 Q Well, let me be thorough. I'm sorry. Let me be fair
23 here.

24 A All right.

25 Q Do you have any results that indicate Ernest Robinson's

State v. Victor Smith 9/19/11 - 9/23/11

382

1 DNA on that particular piece of evidence?

2 A No.

3 Q Do you have any evidence that indicates Victor Smith's
4 DNA on that particular piece of evidence?

5 A No.

6 Q You also mentioned an area rug that was collected,
7 right?

8 A That's correct, sir.

9 Q And this is the area rug that was covering the carpet;
10 correct?

11 A Yes, sir.

12 Q Correct. And this is swab -- well, this is one of the
13 swabs you took?

14 A That's correct.

15 Q Do you, as Investigator Bouknight --

16 A I'm not Bouknight.

17 Q -- I'm sorry. Invest -- Richards.

18 A Yes.

19 Q It's been a long week.

20 A I'm sure.

21 Q Do you, Investigator Richards, have any evidence with
22 you today that you can tell this jury that Ernest Robinson's
23 DNA was on that area rug?

24 A No.

25 Q Victor Smith?

State v. Victor Smith 9/19/11 - 9/23/11

383

1 A No.

2 Q Now, that carpet, that's the whole piece of carpet that
3 you guys cut out of that bedroom, right?

4 A That's correct, sir.

5 Q The entire piece?

6 A Yes, sir.

7 Q With you, today, do you have any evidence to tell this
8 jury that Ernest Robinson's DNA was on that carpet?

9 A No.

10 Q Victor Smith?

11 A No.

12 Q You also took a bath mat; is that correct?

13 A That's correct.

14 Q The bath mat came out of Bedroom No. 2?

15 A Correct.

16 Q Just to make sure we're clear on that. Investigator
17 Richards, do you have any evidence that links Ernest
18 Robinson's DNA to that bath mat?

19 A No.

20 Q Victor Smith?

21 A No.

22 Q Next you took a swab No. 1. This is the Northwest wall
23 at the entrance?

24 A That's the hallway coming into the apartment. Yes,
25 sir.

1 Q And I want to make sure I'm fair about this. Did you
2 mention to Mr. Goldberg that that's one of the first things
3 you can see when you walk into the house?

4 A I showed the photograph stating that that's the -- what
5 you see when you come in the entrance of the apartment.

6 Q As soon as you walk in, you see that?

7 A On the right.

8 Q It's noticeable?

9 A It is.

10 Q Is that a fair statement that the swab that you took
11 off the Northwest wall was noticeable?

12 A Yes, sir.

13 Q Is that fair?

14 A Yes, sir.

15 Q Is it fair to say that it presumptively tested positive
16 for blood?

17 A It did.

18 Q Do you have any results from what you tested that the
19 Northwest wall DNA had Ernest Robinson's DNA on it?

20 A I do not test for DNA, sir.

21 Q I'm sorry. What you have with you today --

22 A No.

23 Q Victor Smith?

24 A No.

25 Q I think you mentioned swabs -- and this is No. 235; is

State v. Victor Smith 9/19/11 - 9/23/11

385

1 that correct?

2 A Correct, sir.

3 Q And you said that it presumptively tested positive for
4 phenol --

5 A Yes.

6 Q And I want to be fair. Did you say to Mr. Goldberg
7 that that was one of the first things that you noticed, the
8 phenol -- that swab, the blood on the wall in the bedroom?

9 A Yes, when you walked in.

10 Q Yes, sir.

11 A Of course, you notice the stain on the floor afterward
12 we pulled the rug up. Yes. And the stain on the wall.
13 Yes.

14 Q Okay.

15 A During the assessment period. Sure.

16 Q Okay. With you, today, do you have any evidence that
17 links Ernest Robinson to No 2 through 35?

18 A No.

19 Q Victor Smith?

20 A No.

21 Q And I think this was your last indication on your crime
22 scene analysis report. Swabs 49 through 61, you indicated
23 presumption of phenol -- which is blood?

24 A Presumptive test for blood. Yes, using phenol -- yes,
25 sir.

1 Q What you have with you today, any information that says
2 that belongs to Ernest Robinson?

3 A No.

4 Q Victor Smith?

5 A No.

6 Q I think the solicitor asked you -- could you step down
7 for a second?

8 A Sure.

9 Q Let me ask you to go through all these pictures. Could
10 you take the time and go through all the pictures, and tell
11 us which one of these pictures indicates Ernest Robinson?

12 A I don't have anyone's photograph.

13 COURT REPORTER: I'm sorry. I couldn't hear the answer.

14 A I said, I don't have anyone's photographs.

15 THE COURT: I think you need to repeat the question as
16 well as the answer.

17 MR. HART: Sure.

18 BY MR. HART:

19 Q Could you take your time and go through these pictures
20 and what you have today, could you show us any results that
21 indicate positive for Ernest Robinson?

22 A You're asking me if the evidence that I depict in the
23 photograph indicates these two individuals you've been
24 asking me about; is that correct?

25 Q Right now, I'm asking about Ernest Robinson?

State v. Victor Smith 9/19/11 - 9/23/11

387

1 A The answer is no.

2 Q You can't going through those pictures?

3 A No.

4 Q Can you go through those pictures, and show us any
5 positive results for Victor Smith?

6 A I can't show you positive results from these
7 photographs of the items that were tested for Victor Smith.

8 Q Thank you. You can return to your seat.

9 THE COURT: All right. Mr. Goldberg?

10 STAN RICHARDS - REDIRECT EXAMINATION

11 BY MR. GOLDBERG:

12 Q The original purpose for you responding to Apartment
13 [REDACTED] was as a result of a search warrant being granted for
14 that apartment; is that correct?

15 A That's correct.

16 Q And the reason for that, was that to try and locate a
17 potential crime scene?

18 A Yes. That was based on -- as I read the search warrant
19 information that was gathered by the investigators that were
20 was probable cause that there was a crime scene in that
21 apartment.

22 Q When you have a situation like that, when you were sent
23 to a specific location, pursuant for a search warrant to
24 look for a crime scene, are you and your unit trained to
25 look for blood and trace evidence in those situation?

1 A Yes.

2 Q Line officer, road deputies who are not trained, when
3 they respond to a call, are they trained to instantly look
4 for trace evidence?

5 A No.

6 Q The remains that you observed, I believe that you
7 testified earlier about a stone's throw away from Apartment

8 [REDACTED]

9 A Yes, sir.

10 Q I believe you've already answered this, but what, if
11 anything, did you observe about the skull of the remains?

12 A After it was pointed out to me by Deputy Coroner, Bill
13 Stevens, I observed the impact points on both sides of the
14 skull.

15 Q Were those impact points consistent with possibly being
16 a gunshot wound?

17 A Yes.

18 Q So in your expert opinion, the fact that there was a --
19 I think you said, dynamic blood letting event in that front
20 right bedroom, that there was a defect in the carpet,
21 correct, in that bedroom, and that defect was consistent
22 with gunshot wound -- or gunshot; is that right, or a
23 gunshot, is that right?

24 A Could be, yes.

25 Q Coupled with the blood splatter that you observed, I

State v. Victor Smith 9/19/11 - 9/23/11

389

1 believe you testified --

2 MR. HART: Your Honor, he's leading here.

3 MR. GOLDBERG: Well, I'm asking him --

4 THE COURT: Stop. Both of you relax. I think he's
5 laying the ground work for an opinion he's going to solicit
6 from this expert.

7 MR. HART: Yes, sir.

8 THE COURT: Right now, your objection is overruled.

9 Go ahead, sir.

10 MR. GOLDBERG: Thank you.

11 BY MR. GOLDBERG:

12 Q -- blood letting event, the defect in the carpet in the
13 same room, you testified that is consistent with gunshot,
14 correct?

15 A Defect?

16 Q The defect?

17 A Could be.

18 Q The spatter on the wall could be consistent with a
19 violent event; correct?

20 A The blood spatter on the wall is spatter itself. That
21 is a forceful type blood pattern. And it is the predominate
22 blood stains that were on the wall were larger than what you
23 would ordinarily see with a gunshot. So it's consistent
24 with a blunt force trauma pattern. Yes, sir.

25 Q If you take all that into account, in your expert

State v. Victor Smith 9/19/11 - 9/23/11

390

1 opinion, is it fair to say that that bedroom, that first
2 bedroom on the right was the scene where someone got shot in
3 the head; is it possible?

4 A Is it possibly? Absolutely.

5 Q Is it consistent?

6 A Yes.

7 THE COURT: Anything further, Mr. Hart?

8 MR. HART: Nothing further.

9 THE COURT: All right. You may step down, Sgt. Richards.
10 Can I see y'all just a second.

11 (Off the record conference with counsel and the Court.)

12 THE COURT: Are y'all ready to go to lunch, ladies and
13 gentlemen? I sending you whether you're ready to go or not.
14 I think y'all need a break, anyway. I'd say go about an
15 hour and a-half. Be back at 2:15. That should give you
16 enough time to go downstairs and get into your cars and
17 everything.

18 All right, I'll remind you once again, don't talk about
19 this case. Have a good lunch. I'll see you back at 2:15.

20 (Jury out for lunch at 12:40 p.m.)

21 THE COURT: Gentlemen, anything we need to take up at
22 this time?

23 MR. GOLDBERG: Nothing.

24 MR. HART: No, Your Honor.

25 THE COURT: Let's see, how many more witnesses you got

State v. Victor Smith 9/19/11 - 9/23/11

391

1 today, Mr. Goldberg?

2 MR. GOLDBERG: Six.

3 THE COURT: Six?

4 MR. GOLDBERG: Yes.

5 THE COURT: None of them will be as long as Stan
6 Richards was?

7 MR. GOLDBERG: Well, three of them will be the
8 co-defendants.

9 THE COURT: We'll have three short and three long, then,
10 I guess?

11 MR. GOLDBERG: Well, one of them is the DNA analyst.

12 THE COURT: Well, whatever. We'll take a break if we're
13 tired. We'll see how it goes. We might go late tonight to
14 about 6:00; is that all right with you?

15 MR. GOLDBERG: Yes, sir.

16 THE COURT: All right. Y'all have a good lunch.

17 MR. GOLDBERG: Thank you.

18 (Court in recess for lunch break at 12:41 p.m.)

19 (Court in session after lunch break at 2:22 p.m.)

20 THE BAILIFF: Your Honor, we have all the jurors.

21 THE COURT: Looks like we have all the jurors. Is
22 everybody ready?

23 MR. GOLDBERG: Yes, sir.

24 MR. HART: Yes, sir.

25 THE COURT: Invite the in.

State v. Victor Smith 9/19/11 - 9/23/11

392

1 THE BAILIFF: Be glad to, Your Honor.

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

3 THE BAILIFF: The jury is all present, Your Honor.

4 THE COURT: Welcome back, Madam Forelady, members of the
5 jury. I've got to confess that I've been looking at y'all
6 so long, you'd make a pretty good team picture.

7 This case will resume with the state calling their next
8 witness.

9 MR. GOLDBERG: Thank you, Your Honor. State calls
10 Lindsay Thompson.

11 (WHEREUPON, Lindsay Thompson was
12 sworn to tell the truth.)

13 THE CLERK: Have a seat in the witness box, state your
14 name for the record, please.

15 MS. THOMPSON: Lindsay Thompson.

16 LINDSAY THOMPSON - DIRECT EXAMINATION

17 BY MR. GOLDBERG:

18 Q Ms. Thompson, good afternoon. Could you tell this jury
19 a little bit about your background, training and experience?

20 A Yes. I graduated with an undergraduate degree, a B.S.
21 in Biology and Forensic Science with a minor in Chemistry
22 from Virginia Commonwealth University. I also graduated
23 with an M.S. Master's of Science Degree from Virginia
24 Commonwealth University in Biology with my Thesis being
25 Forensic Biology Research.

State v. Victor Smith 9/19/11 - 9/23/11

393

1 Q And after that where did you go to work?

2 A I began working at SLED.

3 Q The state law enforcement division?

4 A South Carolina State Law Enforcement Division. Yeah.

5 Q How long are you employed there?

6 A Just under four years.

7 Q And while you were employed at SLED what were your
8 duties there?

9 A I was a DNA analyst. I would receive cases from
10 throughout the state. I would work items of evidence as it
11 came in. I would develop a DNA profile from those items of
12 evidence. I would then compare those profiles to noted
13 profiles, individuals, either victims or suspects or other
14 individuals related with the case. Then I would write a
15 report. I would review peer reports as needed, and testify
16 when necessary.

17 Q Can you tell the jury a little bit about what DNA
18 analysis means, kind of what that means in lay terms?

19 A Sure. DNA stands for deoxyribonucleic acid, which is a
20 chemical that is found in almost every cell of your body,
21 the only exception being red blood cells. DNA is genetic
22 information that is passed down from generation to
23 generation. You get half from your mom and half from your
24 dad. They each give you a random half of their DNA, so that
25 makes you individual, unique to your brothers and sisters,

1 as well.

2 Q So in terms of taking that and applying it to crime
3 scene investigations and things of that nature, how do you
4 come into the fold?

5 A I'm sorry. Can you --

6 Q Sorry. I'll rephrase it. Explain to the jury a little
7 bit about what you do when you're given a sample to run a
8 comparison on?

9 A Okay. When I receive a sample that is an evidence
10 sample I would take whatever substrate that that evidence
11 came on. If it's a swab, so it looks like a Q-tip, maybe
12 has blood on it or some other body fluid or might be what's
13 considered touch DNA. That Q-tip, itself, we don't analyze.
14 We have to add some chemicals that takes the DNA out of the
15 cells off the Q-tip into a liquid. Then we have to see how
16 much DNA we got. The next step is just quantitative,
17 finding out how much DNA is there. Then the final step uses
18 that information on how much DNA we have and we make this
19 profile. We look at fragments along your entire DNA strand.
20 We look at 15 total fragments that are known to be highly
21 individual from person to person. We want them to be
22 different so that way we can individualize. We look at
23 those 15 locations and if we get information from the
24 evidence sample, then we develop the same profile, perform
25 the same steps on known standards, which means DNA that

State v. Victor Smith 9/19/11 - 9/23/11

395

1 comes from a person we know when we get those 15 locations
2 that that is that person's DNA. We know what their profile
3 looks like, and we compare the two, does the evidence match
4 or not.

5 Q At this time, we'd offer Ms. Thompson as an expert in
6 DNA analysis.

7 MR. HART: No objection, Your Honor.

8 THE COURT: Without objection.

9 BY MR. GOLDBERG:

10 Q Turning your attention to the case at hand. Did you
11 receive some items back in August of 2010 and perform some
12 DNA testing on?

13 A May I refer to my information?

14 Q Sure. You generated some notes and report as part of
15 this process?

16 A Yes.

17 Q Go ahead.

18 A My report is dated in August 2010. The items in this
19 case, I did receive two molars and a femur in this case.

20 Q And when you receive items in a case like this what
21 type of testing are you going to perform on those items?

22 A For bones, we have to perform a specific type of
23 process that gets the DNA from within the bone, itself. So
24 if I was speaking about a Q-tip swab and getting the DNA off
25 of that, we have to use some additional chemicals and

1 methods that actually take the DNA out of bone. We have to
2 crush that bone up, and basically you end up -- you don't
3 have the original substance any more, because we had to
4 utilize that to be able to get the DNA.

5 Q And you say bones; does that include teeth?

6 A Yes.

7 Q Such as a molar?

8 A Yes.

9 Q Okay. And when you received those two molars and the
10 femur in this case, had those items been tampered with or
11 how did you receive them?

12 A No. When those items come to SLED, when they are
13 turned in to SLED by whatever agency is submitting to SLED,
14 the individual who brings them in puts them in a heat-sealed
15 pouch. That pouch, itself, when it's sealed by heat, cannot
16 be opened unless you cut into it. When I receive those
17 pouches in DNA, when they come to me, I check to make sure
18 that seal's in tact with the original signature. If it's
19 not, I don't process it.

20 Q All right. When you received the molars how did you
21 proceed with examining them?

22 A I would have gone through what we call the extraction
23 process, getting the DNA out of the teeth, the molars
24 themselves. In this case, molar is usually the best
25 location to look for DNA from remains, from bones. So I did

State v. Victor Smith 9/19/11 - 9/23/11

397

1 begin with one molar, so as not to waste evidence. I did
2 begin with the molar. I ran the process where I took the
3 DNA out, I saw how much there was. There was a very, very
4 small amount. Typically, we don't get results from that
5 small amount, but being that we don't have any
6 identification in this case, I definitely took it forward to
7 find out if we could get that profile that I was talking
8 about. I did not. Therefore, I ran the same analysis that
9 was submitted in this case. On the second molar that was
10 submitted in this case, I did get what we call a partial
11 profile. A partial profile is when you get some of the
12 information from the 15 locations, but not all of the
13 information. In this case I got one number out of a
14 possible total of 30 to -- at each location. So I got one
15 number total, which is not enough for any kind of
16 identification. But I know there is DNA there.

17 Q And what type of DNA, where does it come from, is there
18 any way to tell if it was an animal or human or anything of
19 that nature?

20 A Yes.

21 Q Both the quantitative of how much DNA is there and the
22 final profile, both of those procedures only work on human
23 DNA. So there's definitely DNA.

24 Q So I understand you correctly there's two molars, one
25 of them, your findings from what you extracted were so small

1 essentially there was no DNA profile to be obtained;
2 correct?

3 A Correct.

4 Q And the other one was a partial profile, however is it
5 your testimony that that partial profile was not enough to
6 compare to any other samples or standards?

7 A No, it was not.

8 Q Okay, and just to take it a step further, had there
9 been a known standard or had there been anything out of that
10 molar to compare it to anything you would have needed a
11 known standard to compare it to?

12 A Yes, I would have.

13 Q And you never got one in this case; correct?

14 A No, I did not.

15 Q All right. Can you talk about the likelihood of
16 extracting usable DNA that can be compared to a known
17 standard from a molar as compared to a femur?

18 A Generally, you're going to get more DNA from a molars
19 than you will from a femur, which is why I went to those
20 items first, in this case. Again, when I take the DNA out
21 of the bone, I destroy the sample in doing so, and
22 therefore, because of that, I'd already destroyed two
23 samples and the traditional method of DNA analysis that we
24 perform wasn't yielding results from the most likely source
25 of DNA. I didn't want to destroy the femur as well and not

State v. Victor Smith 9/19/11 - 9/23/11

399

1 obtain results. There are some methods of DNA analysis that
2 you may be able to obtain a profile, it's not an individual
3 because it traces back to a male line or a female line. So
4 through your mother and female relatives or father and male
5 relatives, if you're a male. But in -- because it's a line
6 and not an individual person, that's not the traditional
7 method that we go to first. SLED doesn't perform either of
8 these other types of analysis. We did send out what I had,
9 and the little bit of DNA that I had from both molars to
10 another agency to see if they could obtain at least a male
11 line profile, and I don't have those results, but we did
12 send that out.

13 Q And that would have been the Richland County Sheriff's
14 Department, in this case, correct?

15 A Yes.

16 Q And the line of testing, the traditional line of
17 testing that you're referring to, is that Identifiler?

18 A The chemistry kit that we purchase is called
19 Identifiler. The method is called Short Tandem Repeat
20 analysis or STR analysis. It means that the fragment that
21 we're looking for comes from what we call nuclear DNA. The
22 DNA that it comes from is found in every cell in your body.
23 The testing that would be done for -- either the male line
24 or female line looks for smaller fragments, which can be
25 useful in cases where degradation has happened. Degradation

1 means chopping up of the DNA making it into smaller
2 fragments, so we look for fairly large fragments, and if
3 things like UV light, water exposure, bacteria. If those
4 things get to DNA, they start chopping it up at random
5 locations. Since we're looking for fragments and it chops
6 in the middle of the fragments that we're looking for then
7 we don't get results. The other testing looks for small
8 fragments, which makes it more likely in cases where the DNA
9 may have been chopped up and may not have been chopped up in
10 these smaller fragments, so it's more likely to get results
11 in those types of cases.

12 Q The smaller fragments that you indicated go towards
13 either the mother's line or the father's line, do you have
14 the capability to run those tests or at that time did you
15 run those types of tests at SLED?

16 A No, at SLED we didn't run those tests, at the time that
17 I worked there.

18 Q And does that involve using a Y-filer?

19 A Yes, but a male line is known as a Y-filer kit.

20 Q And you were commenting about degradation. Is it fair
21 to say in your opinion that bones that have a prolonged
22 exposure to an outdoor environment and that could cause the
23 DNA strand to be chopped up?

24 A Yes.

25 Q So obviously there are incidences where the DNA is so

State v. Victor Smith 9/19/11 - 9/23/11

401

1 degraded that you just can't get DNA?

2 A Correct.

3 Q Is there any indication to suggest that the testing
4 you've done on these items is DNA that belongs to Ernest
5 Robinson, can you say that conclusively?

6 A No. I cannot say that.

7 Q Is there any indication that this DNA testing that this
8 DNA belongs to any other person particularly?

9 A No. I cannot say that -- that these bones belong to any
10 person or individual. Again, I did not get DNA results.

11 Q Can you talk a little bit about the degradation
12 principle molars as compared to femurs and how they are
13 aligned in the body and how that could be affected in terms
14 of the environment they're in?

15 A Well, again, exposure leads to degradation, so during
16 decomposition of a body the muscle and fat is going to be
17 removed from bones and depending on the environment and the
18 wound and the exposure to flies and animals and bacteria and
19 whatnot, all of that will eventually will be removed.

20 Molars are contained within the jawbone, so they are going
21 to have an extra layer of protection from the environment
22 longer than you would expect the femur to have exposure to
23 the environment. So you would expect the molars to be
24 protected longer from things that would chop up the DNA than
25 you would a femur.

1 Q Is it your opinion that the best chance you had to
2 obtain a usable DNA profile from these items that were
3 submitted to you were from the molars?

4 A Yes.

5 MR. GOLDBERG: Beg the Court's indulgence?

6 THE COURT: Yes, sir.

7 BY MR. GOLDBERG:

8 Q That's all my questions. Thank you.

9 A Thank you.

10 THE COURT: Mr. Hart.

11 MR. HART: Thank Your Honor.

12 LINDSAY THOMPSON - CROSS-EXAMINATION

13 BY MR. HART:

14 Q I have a few questions for you.

15 A Okay.

16 Q Your report, you said, you had three pages in your
17 report; is that correct?

18 A Yes.

19 Q Okay. And you received this case back in -- it says
20 the analysis was conducted on August 2010, but do you
21 remember when you received the actual evidence?

22 A The results of the report were printed on August 19,
23 but the -- the first submission -- and I'm not sure if
24 that's the only submission -- looks like the submission was
25 on August 7, 2009.

State v. Victor Smith 9/19/11 - 9/23/11

403

1 Q August 7, 2009. And this DNA process, it's a pretty
2 lengthy process; isn't that right?

3 A Well, between cases coming in, getting assigned, the
4 analyst working through their backlog before they get to the
5 next case and then working the case itself, it ends up being
6 a fairly lengthy process. Yes.

7 Q And it's quite exhaustive; is that right?

8 A I'm sorry?

9 Q Quite exhaustive, which means you cover just about --
10 you don't leave any stones unturned?

11 A Try not to.

12 Q Try not to. When you started this process you remember
13 you listed the analysis as -- as a John Doe; is that
14 correct?

15 A That's how it came in. We didn't know the identity.

16 Q And that's how you started this analysis back on August
17 7, 2009; is that right, started as a John Doe?

18 A That's how it was submitted. Yes.

19 Q And you took your time analyzing, I think you analyzed
20 items submitted -- Item 2.11, which is a molar; is that
21 correct?

22 A Correct.

23 Q And you have a reference which says see DNA analysis
24 and the results of 2.11 was that there was no DNA profile;
25 is that correct?

1 A Correct. No DNA profile developed.

2 Q You also listed 2.1.1, which is the extract from the
3 molar?

4 A Right. That liquid that the DNA is in, so it's no
5 longer the tooth itself, but it's the liquid it's in. The
6 liquid that contains the DNA.

7 Q You sent that to the Sheriff's Department?

8 A I sent it to the Sheriff's Department for additional
9 analysis.

10 Q Have they advised you of any results at all?

11 A No. I didn't get any kind of results from that. I
12 don't get results from them.

13 Q No one followed up with you to tell you the results?

14 A No. I just submit my report for what I've done.

15 Q Then there's 2.2, which is also done; is that correct?

16 A Yes.

17 Q And you say the partial DNA profile developed from 2.2
18 is insufficient for reliable interpretation; is that
19 correct?

20 A Correct. We had one location.

21 Q One thing I want to discuss real briefly here is the
22 STR, the Short Tandem Repeat?

23 A Uh-huh. (Affirmative response.)

24 Q Explain to us how detailed that process is?

25 A Detail the process?

State v. Victor Smith 9/19/11 - 9/23/11

405

1 Q Well, I guess the steps in the STR?

2 A Okay. We utilize a kit that looks at 15 locations
3 across your entire DNA set strand. The kit, itself, will
4 create copies of those 15 fragments only and not the rest of
5 your DNA strands. If there's anything to make a copy of.
6 Again, it looks for specific fragments and if that fragment
7 is chopped, it can't make a copy of the entire fragment, so
8 it doesn't make a copy at all, which is what happened in
9 this case.

10 Q Okay. And you mentioned that out of the possible 30
11 there was only one?

12 A Number. Yes.

13 Q What number that appeared?

14 A Right. You can get two numbers at each location, and
15 there's 15 locations, potentially.

16 Q And just talking about as your expert knowledge of DNA
17 and there are other forms of DNA, correct, like for instance
18 hair; you can extract DNA from hair?

19 A It's the same DNA, though. It is nuclear DNA that's
20 found in every cell of your body. Your body contains the
21 same DNA in every cell.

22 Q Right. I guess what I'm asking, it's possible to
23 extract DNA from a person's hair strands?

24 A Yes.

25 Q Okay. Sure. And skin, skin cells you can extract DNA

1 from the skin cells?

2 A Potentially, yes.

3 Q Of course, blood; you can extract DNA from a person's
4 blood?

5 A Yes, from the blood itself, yes.

6 Q In this case, did you receive any hair strands from the
7 Sheriff's Department to analyze?

8 A No, I did not.

9 Q Did you receive any skin cells?

10 A No, I did not.

11 Q What about any blood?

12 A No, I did not.

13 Q Did you receive any fibers and carpet to analyze?

14 A No, we don't -- in DNA analysis we don't ID fibers.

15 Q Okay. Sure. Thank you. I appreciate you telling me
16 that. When you finish your report and you analyze all the
17 items that you have received, did that John Doe change at
18 all?

19 A No, I did not develop a profile in this case.

20 Q When you ended your report it was still a John Doe?

21 A Correct. Even if I had developed a profile it would
22 still be a John Doe.

23 Q Thank you for mentioning that. At the end of your
24 report, did you have anything indicating that the items you
25 analyzed belonged to Ernest Robinson?

State v. Victor Smith 9/19/11 - 9/23/11

407

1 A No.

2 Q Specifically, 2.1, anything indicating Ernest Robinson?

3 A No, nothing in my report at all.

4 Q 2.2?

5 A No, sir.

6 Q Thank you.

7 THE COURT: All right. Anything on redirect?

8 MR. GOLDBERG: No, sir.

9 THE COURT: All right. You may step down, Ms. Thompson.
10 Call your next witness.

11 MR. POTTS: State calls Terri Gleason.

12 THE COURT: Who is that, again, Solicitor?

13 MR. POTTS: Terri Gleason, Your Honor.

14 (WHEREUPON, Terri Gleason was sworn
15 to tell the truth.)

16 THE CLERK: Have a seat in the witness box and state
17 your name for the record, please.

18 MS. GLEASON: Terri Gleason.

19 TERRI GLEASON - DIRECT EXAMINATION

20 BY MR. POTTS:

21 Q All right, Ms. Gleason, where do you work?

22 A I work with the Richland County Sheriff's Department in
23 their Forensics Unit.

24 Q Can you describe the training you've had?

25 A Yeah. Actually, work for them as a firearms and tool

State v. Victor Smith 9/19/11 - 9/23/11

408

1 mark examiner. To give you a little bit of background, I
2 have an underground degree, Bachelor of Arts in both
3 Criminal Justice and Psychology from the University of
4 Georgia, and a Master of Science from the University of New
5 Haven. In July of 1999, I joined the Georgia Bureau of
6 Investigation, State Crime Lab, in Atlanta, Georgia. At
7 that time, I underwent an extensive training program dealing
8 extensively with firearms and tool mark examination. In
9 addition to receiving certification from the state, I also
10 received certification from the Federal Bureau of
11 Investigation in muzzle to target distance determination,
12 and from the bureau -- from the Bureau of Alcohol, Tobacco
13 and Firearms, in firearm restoration. To date, I've logged
14 over 3500 hours on a comparison microscope, completed over
15 2500 weapon examinations and approximately 800 actual
16 firearm and tool mark cases. I'm also a member of our
17 professional organization, which is the Association of
18 Firearm and Tool Mark Examiners.

19 MR. POTTS: Your Honor, at this time, I'd like to offer
20 Ms. Gleason as an expert in firearms and tool mark
21 examination.

22 MR. HART: No objections, Your Honor.

23 THE COURT: All right. Firearms and what?

24 MR. POTTS: Tool mark examination.

25 THE COURT: All right. So admitted without objection.

State v. Victor Smith 9/19/11 - 9/23/11

409

1 BY MR. POTTS:

2 Q Now, did you have an opportunity to examine State's
3 Exhibit No. 12, already in evidence?

4 A Yes. I recognize and identified as State's Exhibit No.
5 12. And it's my Item 93, which was one piece of light
6 carpet with a small defect that I examined. I received that
7 on the 18 September, 2009 into the crime lab.

8 Q What were you looking for?

9 A In this case, we were asked to see if we could examine
10 the defect to the carpet and determine if it was consistent
11 with the passage of a bullet.

12 Q Based on your examination what did you determine?

13 A The first examination I did was just a visual
14 examination. It's a circular defect. It doesn't appear to
15 be consistent with any kind of tearing or cutting. So
16 visually it is what I would expect to see if a bullet were
17 to pass through, however, I went on to do additional
18 chemical testing to see if there was anything in terms of
19 residue from the bullet or from the -- the discharge of the
20 firearm and the gasses that would be released from the
21 gunpowder or the primer in the cartridge. I was not able to
22 find any kind of positive chemical results that would
23 suggest that a bullet had passed through that area. So
24 beyond it's physical characteristics I did not get any kind
25 of positive result for the passage of a bullet.

1 Q So visually it would be consistent with a bullet, the
2 indentation would be consistent with a bullet?

3 A Correct. The fact that it was a circular defect is
4 what I would expect to see if a bullet passed through
5 carpet.

6 Q Now, chemically, what are you looking for, is that
7 gunshot residue?

8 A We have several things we can look for. We can look
9 for residue actually from the bullet itself. If it's a lead
10 bullet we look for white around the hole. If it's a
11 jacketed bullet, we could either look for copper or nickel
12 residues from that jacket as it passes through, and then we
13 also look for things that could singe fibers around the hole
14 and will look for lead and nitrates, or nitrites, I'm sorry,
15 products from combustion of the carpet itself.

16 Q Now, these things you're looking for, are they fragile?

17 A Fragile in the sense that, you know, if we're doing
18 testing in a shirt or a piece of paper just the movement
19 itself can cause the pattern to start falling off and to
20 change the pattern. If it's a stable condition, such as the
21 box that you saw that it was packaged in, at that point it
22 would be stable. As long as it's not being jostled around
23 or exposed to the elements in any way.

24 Q Now, these nitrates and copper, nitrites and copper,
25 and so forth, if you fired a bullet through one surface and

State v. Victor Smith 9/19/11 - 9/23/11

411

1 into this carpet, would you still expect to see gunshot
2 residue in these elements?

3 A Generally speaking the residues that are going to be --
4 come after the discharge of the firearm are going to fall
5 onto the top surface that it comes in contact with. So this
6 passing through a pillow --

7 Q What about a head?

8 A I'm sorry?

9 Q What about a head?

10 A Passing through a head, yes, you would expect all of
11 the residues to be on the surface of the head. It would not
12 continue through into another secondary target.

13 Q Now, is possible something could go through a secondary
14 target?

15 A Um -- using a head as an example I would say it's very
16 unlikely, if you're using something like a thin sheet or a
17 piece of paper. Something that would not have much of an
18 area in which the material could reside, but you could get
19 some passage.

20 Q Now, does washing the surface, does that affect blood
21 from the GSR?

22 A Absolutely. When you think about the fact that just
23 wind or moving a shirt around or a piece of paper is
24 actually going to cause some of the gunpowder to move. If
25 you're vigorously scrubbing an area or doing any kind of

State v. Victor Smith 9/19/11 - 9/23/11

412

1 physical motion that could remove some of that particulate
2 that it lift what you would find.

3 MR. POTTS: Beg the Court's indulgence?

4 THE COURT: Yes, sir.

5 BY MR. POTTS:

6 Q Now, when placing something on top of the second
7 surface, like a rug or something like that, would that
8 impair the collection of this residue?

9 A Can you explain that a different way? Are you talking
10 about just --

11 Q Well, if you place something on top of the object with
12 the residue on it, and moving that about, would that affect
13 the -- would that affect the, I guess, the staying power of
14 this residue?

15 A Well, again, if you're putting something like a wash
16 cloth or a carpet and you're moving it around, that again is
17 going to be an abrasive action that could definitely move
18 material from the pattern.

19 MR. POTTS: No further questions. Please answer any
20 questions Mr. Hart has.

21 THE COURT: Mr. Hart.

22 MR. HART: Thank you, Your Honor.

23 TERRI GLEASON - CROSS-EXAMINATION

24 BY MR. HART:

25 Q Item No. 3 -- correct me if I'm wrong. Item 3 is what

State v. Victor Smith 9/19/11 - 9/23/11

413

1 we have marked as State's Exhibit No. 3 -- I mean No. 12?

2 A Yes, sir.

3 Q And you have it in your report as Item No. 3?

4 A Item 93.

5 Q Item 93. Yes. And this is what you observed and this
6 is what you tested?

7 A Yes, that's correct.

8 Q Can you explain a little bit about the process of
9 testing for GSR or gunshot residue?

10 A Sure. Like I said, the first thing I'm going to start
11 with is doing a visual, a physical, visual exam using just
12 the naked eye or a stereoscope, which is just basically a
13 glorified magnifying glass. With that, I'm going to be
14 looking for any kind of partially burned or unburned
15 gunpowder that might have been on the material or a white
16 burn material around the hole. That would be consistent
17 with the passage of a bullet visually, because a lot of
18 heavily leaded firearm barrels will have residue, so the
19 bullet might be coated, it might leave a little white area
20 on the entry. I did not find anything at that point.

21 So then we went to some of the chemical testing. We
22 have several different types of test we can do. We have the
23 Sodium Rhodizonate Test that will look for lead, either from
24 the base of the bullet or if it's a lead bullet, the bullet
25 itself. Also from some of the primary compounds in the

1 cartridge. We will spray several chemicals in various
2 orders and we'll look for a color change to show us where
3 that lead or the vapors lead might have been. That test was
4 negative.

5 We also have what's called the Griess Test, which will
6 look for areas on the carpet that perhaps gunpowder had hit
7 and perhaps bounced off or if there was burned gunpowder and
8 that struck. It's actually looking for nitrates, which is
9 one of the products of combustion of the gunpowder. And,
10 again, we're looking for a color change. In this case, it's
11 an orange particulate that we're looking for, and that was
12 also negative.

13 And the final test that we do is called DTO or
14 Dithiooxamide, it's looking for copper and nickel compounds
15 from the jacketing material. That would be seen just as a
16 wipe around the hole and that was also negative.

17 Q Pretty much what you have explained is a very thorough
18 process?

19 A Yes.

20 Q There are many different steps involved in those
21 processes?

22 A That's correct.

23 Q Did you ever receive a gun to analyze?

24 A No, I did not.

25 Q Did you ever receive any bullets to analyze?

State v. Victor Smith 9/19/11 - 9/23/11

415

1 A No, I did not.

2 Q You also mentioned that it's possible for this gunshot
3 residue to go into the walls; that's possible also?

4 A Go into the walls?

5 Q Like a splatter onto a wall; did you say that?

6 A I don't believe so. What it will do is dependent on how
7 close the muzzle of the firearm is to surrounding surface.
8 So depending on the weight and the type of particle that's
9 leaving the firearm, they will each travel a certain
10 distances. So yes, if it's close to a wall it could go to
11 the wall, if it's close to the carpet it could go to the
12 carpet.

13 Q And you also mentioned about if another item is placed
14 on top of where the gunshot residue landed, is it possible
15 for the GSR to transfer onto that other item?

16 A Yes. Depending on what type of surface it is and how
17 abrasive the two are. If one's placed on top and one's
18 loose enough on the other, it's possible that one could be
19 transferred onto the other surface.

20 Q So there's an area rug on top of -- showing you again,
21 State's Exhibit No. 12, if there was an area rug that was
22 placed on top of this area, is it possible that the gunshot
23 residue could be transferred to the area rug?

24 A It would be possible -- I haven't don't any testing.
25 Most likely all you would get if there was partially burned

State v. Victor Smith 9/19/11 - 9/23/11

416

1 or unburned gunpowder particles those might possibly, if the
2 bottom side of the area rug was somewhat abrasive that it
3 had pockets for it to fit in, the residue is around the
4 bullet wipe and the chemical parts that would have been
5 brought up would not have transferred.

6 Q And did you ever receive an area rug to test for GSR?

7 A I did not. No.

8 Q You never received that?

9 A (No response.)

10 Q And last few questions, your results failed to reveal
11 the presence of unburned gun powder parts?

12 A Correct.

13 Q Also failed to reveal the presence of partially burned
14 gun powder parts?

15 A Correct.

16 Q Thank you.

17 THE COURT: Redirect.

18 TERRI GLEASON - REDIRECT EXAMINATION

19 BY MR. POTTS:

20 Q If you were given an area rug without identification of
21 a particular area, how likely do you think it would be for
22 you to find anything?

23 A Very unlikely. If there's not any kind of defect for
24 us to start with, I mean, we could do a general glance at
25 it, but I would not expect to find -- if we're given a lot

State v. Victor Smith 9/19/11 - 9/23/11

417

1 of surface with no place to start I wouldn't expect to find
2 any positive results.

3 Q Thank you.

4 MR. POTTS: No further questions.

5 THE COURT: Anything further, Mr. Hart?

6 MR. HART: No, sir.

7 THE COURT: You may step down.

8 MS. GLEASON: Thank you.

9 THE COURT: Call your next witness.

10 MR. GOLDBERG: State call Gray Amick.

11 (WHEREUPON, Gray Amick was sworn to
12 tell the truth.)

13 THE CLERK: Have a seat in the witness box and state
14 your name for the record, please.

15 MR. AMICK: My name is Gray Amick.

16 GRAY AMICK - DIRECT EXAMINATION

17 BY MR. GOLDBERG:

18 Q Investigator Amick or Dr. Amick?

19 A Either one is fine.

20 Q Where are you currently employed, sir?

21 A Richland County Sheriff's Department.

22 Q How long have you been employed there?

23 A Since 2004.

24 Q What are your duties at the Sheriff's Department at
25 this time?

1 A Currently I'm the DNA supervisor of the Forensic DNA
2 Laboratory.

3 Q Can you describe for the jury what that entails?

4 A Sure. It's basically running the day to day operations
5 of the Forensic DNA Laboratory. I also function as an
6 analyst. As an analyst I receive cases, evidence, and
7 standards in cases and try to develop DNA profiles, author
8 reports and testify in Court.

9 Q Tell the jury a little bit about your background,
10 training and experience?

11 A Sure. I have a B.S. in Biology in 1989, and a Ph.D in
12 Biochemistry in 1993 from University of South Carolina.
13 From there I was employed by the State Law Enforcement
14 Division, currently known as SLED. I worked there for 11
15 years and in 2004, I was hired by the Sheriff of Richland
16 County to start up their DNA laboratory. I have performed
17 validations in the field of DNA and serology as well as
18 authored the current protocols at the Richland County
19 Sheriff's Department and involved in continuing education in
20 the field every year.

21 MR. GOLDBERG: At this time, I'd offer Dr. Amick as an
22 expert in the field of DNA analysis.

23 MR. HART: No objection.

24 THE COURT: Allowed without objection.

25 BY MR. GOLDBERG:

State v. Victor Smith 9/19/11 - 9/23/11

419

1 Q I want to turn your attention to a specific case that
2 you would have received it the summer of 2009. Did you
3 receive approximately about 80 to 90 different items?

4 A Yes, I did.

5 Q Okay.

6 A On Case No. 09071990-20.

7 Q That's correct. Did you generate a report as a result
8 of your efforts on that case?

9 A I did.

10 Q Okay. Are you referring to your notes on that?

11 A I am.

12 Q And in your report, who did you list as the victim in
13 this particular case?

14 A Ernest Robinson.

15 Q Okay. Can you describe for the jury the nature of the
16 work that you did with the items that you received?

17 A Yes. Pretty much just like any other case. We will
18 receive items of evidence in a case like this and potential
19 suspects or victims or people involved in the case. And we
20 simply attempt to develop a DNA profile from each of those
21 and see if the individuals involve either match or don't
22 match that evidence.

23 Q In this case, you received an abundance of samples; is
24 that right?

25 A We did.

1 Q With a variety of results on those samples?

2 A Yes.

3 Q And when you say that you are examining those samples
4 in an effort to find a DNA profile, what is it exactly that
5 you're doing and seeking to do?

6 A Well, DNA is a molecule on every human body that is
7 unique to every individual except for identical twins. So
8 we exploit that in this field to try to identify somebody
9 according to their DNA profile. So it's kind of like a
10 molecular fingerprint. So we'll extract the DNA from the
11 swabs from a crime scene and attempt to, like I say, get
12 that profile and make that comparison.

13 Q And in this case, did you receive a swab, I believe
14 labeled as Item No. 41, your Item No. 41, that was from an
15 area rug?

16 A I did.

17 Q And did you perform any testing on that?

18 A I did.

19 Q What was the results of that?

20 A Item 41, there was no blood detected on Item 41.

21 Q Item No. 42, swab from a carpet; what did you find out
22 about that?

23 A Item 42, blood was indicated on Item 42.

24 Q And when blood is indicated on Item 42, what do you do
25 with that sample in order to attempt to discover some sort

State v. Victor Smith 9/19/11 - 9/23/11

421

1 of DNA profile?

2 A So what we do -- I kind of left this out. We may do
3 some preliminary serology, which is identify the body fluid.
4 So in the case of 41, we attempted to identify blood that
5 was inaccessible, so the analysis pretty much stops at that
6 point. Item 42, blood was indicated on that item so we
7 would go further in an attempt to get a DNA from it.

8 Q All right. Do you want to read off the list of items
9 here, numbers 47, 50, 51, 58, 59, 62, 63, 71, 73, 75, 76,
10 77, 78, 79, 80 and 87. I believe those would correspond for
11 being swabs from a bedroom as well as other various
12 locations in the crime scene. Did you perform an analysis
13 on all those items?

14 A I believe so.

15 Q And what was the nature of the results from that
16 analysis?

17 A I had a little trouble following all of those. I'm
18 thinking there was no DNA distracted from 47, 50, 51, 58,
19 59, 62, 63, 71, 73, 75, 76, 77, 78, 79, 80 or 87. If those
20 are the ones you're talking about.

21 Q Yes, sir. When it says there was no DNA extracted from
22 those items, what does that mean?

23 A That means we attempted to get DNA from those items,
24 but there wasn't DNA on them. So there was no DNA extracted
25 from those items, so we stopped at that point, you can't get

1 a DNA profile.

2 Q Is that uncommon?

3 A No. It's just one of the potential outcomes of the
4 test.

5 Q All right. And I want to refer you to the next set of
6 items in your report in which you indicated that DNA was, in
7 fact, extracted. Which items were those?

8 A DNA was extracted from Items 17, 18, 19, 20, 22, 23,
9 42, 43, 46, 89 and 91.

10 Q Okay. And upon getting that DNA extraction what did
11 you do with that?

12 A At that point, I ran the kit that will give us the DNA
13 profile. It's called Identifiler, and attempted to get the
14 DNA profile from those items.

15 Q I believe Items, 17, 18, 19, and 20, were actually swabs
16 from the stains obtained at the bathroom of this location.
17 Did you reach any conclusions about those swabs, 17 through
18 20?

19 A 17, 18, 19, and 20 are -- were from the same unknown
20 individual, unknown male individual.

21 Q Okay. And Item 43, I believe, is also a swab from,
22 according to your report, the swab from number one right
23 wall entrance. Is there a conclusion that you reached about
24 that?

25 A Yes.

State v. Victor Smith 9/19/11 - 9/23/11

423

1 THE COURT: I'm going to stop you right there. Members
2 of the jury, I'm going to give you a short break to refresh
3 yourselves. Don't talk about this case. Go get a drink of
4 water, coffee or soda or something. I'll bring you back in
5 about 10 minutes. You need to go refresh yourselves. Trust
6 me on this; I'm looking at you.

7 We'll take a little short break.

8 (Jury out at 3:09 p.m.)

9 THE COURT: It's my job to keep the jury alert. It's
10 tough after lunch, folks. There's no criticism of anything
11 that's going on. Let's take a little break as well and
12 freshen up a little bit.

13 (Court at recess for afternoon break at 3:10 p.m.)

14 (Court in session after short break at 3:20 p.m.)

15 THE COURT: See if they're ready.

16 THE BAILIFF: Yes, sir.

17 (Jury in at 3:20 p.m.)

18 THE BAILIFF: Jury is present, Your Honor.

19 THE COURT: You're all right, ladies and gentlemen.

20 Solicitor, you may continue.

21 MR. GOLDBERG: Thank Your Honor.

22 GRAY AMICK - CONTINUED DIRECT EXAMINATION

23 BY MR. GOLDBERG:

24 Q Dr. Amick, I believe we were referring to certain items
25 in which DNA had been extracted from those items,

State v. Victor Smith 9/19/11 - 9/23/11

424

1 specifically we had mentioned Items 17, 18, 19, 20, 22, 23,
2 42, 43, 46, 89 and 91. And you indicated that on some of
3 those items there was a DNA profile developed. Can you talk
4 about what that is?

5 A Yes. So 17, 18, 19, 20, 43 and 89, I got a DNA profile
6 from an unknown male individual. And the same unknown male
7 individual from all those swabs or all those items.

8 Q And that means exactly -- tell us what that means?

9 A That means that I got a DNA profile and I didn't have
10 anybody like a victim or suspect standard to say, okay, this
11 person matches this profile. I didn't know who it is. So it
12 get out on the report saying I got a profile on these items
13 and it's from an unknown male. One thing we can tell about
14 a profile is whether it's male or female, so that's
15 basically what you get with the report. Unknown male
16 individual.

17 Q So the next step would hopefully be to have some known
18 standard to compare it to; correct?

19 A That's correct.

20 Q And at this particular time you did not have anything
21 to compare it to; correct?

22 A That's correct.

23 Q Were there, in fact, some other items of evidence,
24 specifically some molars that had been collected in which
25 there was an effort to try and extract some DNA?

State v. Victor Smith 9/19/11 - 9/23/11

425

1 A There was.

2 Q Okay. Did you try to extract that DNA or how did that
3 process take place?

4 A No, I didn't. It was a little unique in that our
5 laboratory at Richland County, we don't do extractions from
6 bone or teeth. So I collaborated with my colleagues over at
7 SLED, and Lindsay Thompson, I think, was the analyst at the
8 time, was assigned the case, and the agreement was for them
9 to extract the DNA or attempt to extract the DNA and then
10 transfer those extracts to me to run a different type test,
11 which they don't offer. So we don't do the extraction, but
12 we offered a certain typing. They did the extraction, but
13 they did not do that typing, and so we collaborated.

14 Q She testified a little bit earlier and she referenced
15 Identifiler and Y-filer as different methods in performing
16 testing. What method were you using?

17 A We use both of those. What I was referring to was
18 Y-Filer. Y-Filer is another kit to attempt to get a DNA
19 profile, but it's specific for the male individual. So it
20 only will amplify or only will develop a profile from male
21 individuals. So the attempt was made to run that kit on
22 some of the evidence and on this -- these molars, these
23 teeth and see if they matched up.

24 Q And specifically that was Items 98, 99, 101, and 102,
25 which I believe you have them as two molars and some sort of

1 reagent. What's a reagent?

2 A Reagent blank.

3 Q Reagent, excuse me.

4 A Right.

5 Q What is that?

6 A That's a control, basically, so the two molars are
7 self-explanatory and the two controls were also submitted to
8 our lab because the extraction was done in a different lab.
9 So I have to run her controls in my lab to make the test
10 valid.

11 Q So was it fair to say that the molars, SLED extracted
12 the DNA, they sent it to you for testing to try and get a
13 DNA profile from; is that right?

14 A Correct.

15 Q And in regards to these molars were you able to obtain
16 a DNA profile?

17 A No, we were not. There was no interpretable Y
18 chromosome DNA profile developed on these items.

19 Q Is that uncommon?

20 A No. It's -- again, one of the possible results. It
21 depends solely on the condition of the sample that we're
22 talking about, as far as whether you may or may not get a
23 DNA profile from it.

24 Q And when you were talking about the Y-filer, is that
25 particular to the male line of genealogy; is that right?

State v. Victor Smith 9/19/11 - 9/23/11

427

1 A That's right. So in this case, I think that the molars
2 -- the molars are from the body that was being tried to
3 identify, and the -- I think there was an uncle, a paternal
4 uncle that was identified. So your Y STR profile is
5 identical to any paternal relative. So my Y profile would be
6 the same as my fathers and my sons. So we had identified or
7 investigators had identified a paternal male relative, an
8 uncle, and we ran his Y-filer profile in an attempt to match
9 it to the molars, but we didn't get anything from the
10 molars, basically.

11 Q Okay. Did you perform any testing on a femur in this
12 case?

13 A No, I did not.

14 Q Does your lab have the capability to extract DNA from a
15 femur?

16 A No, we do not.

17 Q So in order to test any sort of DNA extraction from a
18 femur to develop a profile you would have had to have gotten
19 the extraction from somewhere else; is that correct?

20 A Correct, just like the molars situation.

21 Q Such as SLED?

22 A Right.

23 Q Now, I notice in your report there's a number of items
24 in which no analysis was performed. Are you familiar with
25 the concept of representatives sampling, something of that

1 nature?

2 A I am.

3 Q Can you describe for the jury what that entails?

4 A Yes. There were lots of swabs taken at this scene and
5 usually on these types of cases, these types of scene, we
6 will consult with the investigator and the crime scene
7 investigator and try to determine which samples to try to
8 run, basically. And from this scene, after talking to the
9 crime scene people it was determined to take representative
10 samples, which means if have a wall or then you have to be
11 -- a bed sheet with stains are all in one area that one can
12 reasonably conclude are from the same individual. You would
13 sample one or two of those, or test one or two of those
14 swabs from that area instead of testing everything, and that
15 determination was made -- like I said, with the crime scene
16 investigators in this case as to what to run to potentially
17 try to ID, you know, probative pieces of evidence.

18 Q Your report list a number of items submitted. the item
19 number is different from the swab number that the crime
20 scene unit created; is that right?

21 A That's correct.

22 Q All right. You referenced earlier that there were six
23 different swabs in which you determined that the DNA profile
24 was from the same unknown male individual?

25 A That's correct.

State v. Victor Smith 9/19/11 - 9/23/11

429

1 Q And just to make sure those items were from a swab from
2 stain numbers, 36, 37, 38, 39; correct?

3 A That's right.

4 Q And that would be the crime scene numbers 36 through
5 39?

6 A That's right.

7 Q And then also, as well, swab number 1, right wall
8 entrance?

9 A That's correct.

10 Q And swab number 60?

11 A That's correct.

12 Q Let's talk a little bit in general to the jury about
13 DNA testing in your world on a day to day basis as compared
14 to some of the things that we might see on television when
15 we got home at night?

16 A Well, it's a lot slower in my world. It is -- I
17 actually don't watch a lot of the television shows, but it's
18 more of a deliberate process and you don't always get an
19 answer, I guess, kind of in the context of this case. You
20 may attempt to, you may have a good plan, and say, okay, we
21 can try to figure this out in this way, and you just may not
22 get a DNA profile, and therefore you don't have any real
23 interpretable data to write a conclusion about. And that's
24 kind of where this case landed in that we attempted many
25 different swabs and a couple different kits, and basically

1 ended up with several of the swabs. All we could say was
2 they were from an unknown individual. So to compare it to
3 Hollywood or whatever, it doesn't always -- you don't always
4 get the answer, I guess, would be my answer to that
5 question.

6 Q And it's fair to say in this case efforts were made to
7 obtain a known standard to compare to the DNA profile you
8 had, however you were unable to get them, right?

9 A That's right.

10 Q And in the time since you have run this DNA lab at the
11 Sheriff's Department since about 2004?

12 A Four; correct.

13 Q Approximately, how many cases have you had involving
14 bones and getting a positive DNA match on those?

15 A Well, we've probably been involved with maybe count on
16 one hand cases that involve extraction of DNA from bones.
17 When we established the laboratory that was our experience
18 from SLED and that's one of the reason why we didn't put
19 resources into offering that as a service. So we have very
20 few of these a year, basically.

21 Q Thank you, Doctor, that's all I have.

22 THE COURT: All right. Mr. Hart.

23 MR. HART: Thank Your Honor.

24 GRAY AMICK - CROSS-EXAMINATION

25 BY MR. HART:

State v. Victor Smith 9/19/11 - 9/23/11

431

1 Q Dr. Amick, approximately total, how many samples did
2 you test and have knowledge of, you, yourself?

3 A. When you say tests, attempt to get DNA profile?

4 Q Yes, sir. That's right.

5 A All right. Hang on a second. About 20 samples. I ran
6 different kits on them to try to get DNA profiles on, and
7 another 16 I ran and didn't get any DNA from. So put those
8 together, around, approximately 40 items we tried to get DNA
9 from and didn't get it or went ahead and ran the kits and
10 either got something or didn't get a profile from. So
11 approximately 40.

12 Q 40. In your report, you have approximately 101 items;
13 is that correct?

14 A 102; correct.

15 Q 102 items. What is the 102 -- explain to us that SLED
16 reagent blank?

17 A Reagent blank.

18 Q Yes, sir.

19 A Like I said before, because SLED did the extraction of
20 those molars at their lab, for me to run it at my lab, I
21 have to run some other controls. So there are two controls
22 that they ran there that I have to run at my lab as quality
23 control measures.

24 Q And you mentioned that it was difficult to get -- to
25 extract DNA from the items that were submitted. If you go

1 to Page 3 of your report under Examinations and Results,
2 specifically the DNA extracted from 17, 18, 19, 20, 22, 23,
3 42 43, 46, 89 and 91. You indicate that DNA was extracted
4 from those items, right?

5 A That's correct.

6 Q And then -- help me out here if I'm correct. Once you
7 extract that DNA, you amplified it, you took it a step
8 further; is that correct?

9 A That's correct.

10 Q And you also typing attempted at genetic -- I'm not
11 going to pronounce that other word. Loci?

12 A Loci.

13 Q Loci. Thank you. And that's an additional step that
14 you took to try and identify this DNA; is that correct?

15 A That is the amplification step.

16 Q Okay. Also, the next paragraph, you extracted DNA from
17 91, 98, 99, 101 and 102, you were able to extract DNA from
18 those items; correct?

19 A That's correct.

20 Q. And you took it a step further by amplifying it to try
21 and identify it; is that right?

22 A I tried a different kit on those, the Y-filer kit; yes.

23 Q All right. Now, you mention on 42, that blood was
24 indicated on Item No. 42; is that right?

25 A That's correct.

State v. Victor Smith 9/19/11 - 9/23/11

433

1 Q So all of your testing you never received any results
2 that the blood belonged to Ernest Robinson; is that correct?

3 A That's correct.

4 Q You never received any results that the blood on 42
5 belonged to Victor Smith; is that correct?

6 A That's correct.

7 Q You also mentioned that -- also looking at Page 3 of
8 your report on the conclusions, you mentioned that the DNA
9 profiles developed from 17, 18, 19, 20, 43, 89 are part of
10 the same unknown male; is that correct?

11 A That's correct.

12 Q Now, you mentioned that you received some DNA from
13 Ernest Robinson's uncle?

14 A I don't remember the -- I think it was a paternal
15 uncle. Kenneth Robinson, uncle, paternal is how I have it
16 listed. Item No. 91.

17 Q And that's on Page 2 of your report?

18 A That's correct.

19 Q So there some type of control to compare in the
20 extraction of the DNA that you got; right?

21 A Well, that's a standard, not a control.

22 Q Oh.

23 A Just semantics, but we only ran the Y-filer kit on
24 that, so -- Yes, he was run, and if you'll look on Page 3 --
25 because I didn't get any profile from the evidence the

1 statement I made was no Y chromosomes on DNA profile was
2 developed from evidence in this case to compare to the Y
3 chromosome developed from Kenneth Robinson. So we -- we
4 only ran the Y-filer kit on him, and so therefore we were
5 only trying to compare it to the items we ran Y-filer to.
6 If that makes sense.

7 Q Well, let's sum up what you just mentioned.

8 A Okay.

9 Q To sum it up, what we ran on Kenneth Robinson didn't
10 match anything from the DNA that you got submitted to you,
11 that was submitted to you, rather?

12 A Well, I don't want you to get confused. It didn't
13 match anything that we ran that same kit on, which was the
14 molars. We didn't run the same kit on him to compare it to
15 the other items, 17, 18, 19, 20, 43 and 89. So I can't -- I
16 can't say that he didn't match those because we didn't run
17 that kit to make that comparison. We were simply running
18 him to try to match him to the molars.

19 Q You didn't test it at all?

20 A We didn't test him with that kit, so we can't make a
21 conclusion on those items.

22 Q Sure. Now, you said that you did not have the
23 capability to test molars at the Sheriff's Department; is
24 that right?

25 A Correct. We don't have that in our protocol.

State v. Victor Smith 9/19/11 - 9/23/11

435

1 Q So the molars that you received you sent to SLED?

2 A They -- I don't recall if we ever received them or they
3 went directly to SLED, but they did the extraction.

4 Q SLED did the extraction?

5 A Correct.

6 Q Did anybody in your department sent the DNA profile
7 from Kenneth Robinson over to SLED for collaboration?

8 A I don't think so, and I don't know.

9 Q You were asked about whether there were times when you
10 do the DNA testing and you don't get any results. There are
11 times when you do DNA testing and it matches a suspect; is
12 that correct?

13 A That's correct.

14 Q It happens quite often?

15 A And the exclusions happen quite often, too. I mean,
16 it's an exclusionary art in an inclusionary process. So I
17 usually don't have to come to Court on the ones we have
18 exclusions on, but when there're inclusions and they're in
19 the reports, those are the ones that usually people know
20 about more so, but yes you do get inclusions and exclusions.

21 Q And you have a wide array of experience in DNA. There's
22 instances where people have been exonerated and released
23 from jail because of DNA?

24 A That's correct.

25 Q Is that right. You listed in your report, the incident

1 date of 7/20/2009, that's what you have as the incident
2 date; correct?

3 A Correct.

4 Q The date that you received the items is October 22,
5 2009; is that correct?

6 A No. That's the date of my report.

7 Q Oh, that's the date of your report.

8 A Yeah.

9 Q Okay. Do you remember the date you received the items?

10 A It's going to be on or about August 17, 2009.

11 Q August 17 -- and since you've had a lot of time to test
12 and analyze the items submitted; is that correct?

13 A I began to testing at that date and finished that
14 testing and issued the report in October. So I was done
15 with the case at that point; yes.

16 Q I think you were qualified. You did a very thorough
17 job; am I right?

18 A If you say so.

19 Q In your report you listed Ernest Robinson as the
20 victim; is that correct?

21 A Yes.

22 Q Based off of your testing from all the items you tested
23 and analyzed you can't say positively that the items
24 submitted were from Ernest Robinson, can you?

25 A I cannot say that he matched anything from the evidence

State v. Victor Smith 9/19/11 - 9/23/11

437

1 that I ran. That's correct.

2 Q Thank you.

3 THE COURT: Anything on redirect?

4 MR. GOLDBERG: Yes, sir.

5 GRAY AMICK - REDIRECT EXAMINATION

6 BY MR. GOLDBERG:

7 Q You also can't say that he didn't match anything
8 either; is that right?

9 A That's correct. I didn't -- I never developed a profile
10 of Ernest Robinson.

11 Q And I believe he asked about the uncle as well, the
12 sample give to you by the paternal uncle. Again, just to
13 make sure I understand. You didn't have a usable profile to
14 compare to the uncle's profile; is that correct?

15 A That's correct.

16 Q Thank you.

17 THE COURT: Anything further of this witness?

18 GRAY AMICK - RECROSS - EXAMINATION

19 BY MR. HART:

20 Q It is -- you say you didn't have a usable profile from
21 the uncle; is that correct?

22 A From the evidence to compare to the uncle.

23 Q Oh. All right.

24 THE COURT: All right. You can step down, sir.

25 All right. Next witness.

1 MR. GOLDBERG: State call Jeremiah Jones.

2 MR. HART: May we approach, Your Honor.

3 THE COURT: Sure.

4 (Off the record bench conference with counsel and the
5 Court.)

6 (WHEREUPON, Jeremiah Jones was
7 sworn to tell the truth.)

8 THE CLERK: Have a seat in the witness box. State your
9 full name for the record, please.

10 MR. JONES: Jeremiah Jones.

11 JEREMIAH JONES - DIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q Mr. Jones, good morning.

14 A Good morning.

15 Q Good afternoon. I can't remember where we are. Mr.
16 Jones, I want to talk to you a little bit about the events
17 that took place back in 2008; okay?

18 A Okay.

19 Q Did you know an individual named Ernest Robinson, known
20 as E.J.?

21 A Yes, sir.

22 Q How did you know him?

23 A As a friend to Victor Smith.

24 Q Victor Smith. Is that the defendant here in the
25 courtroom today?

State v. Victor Smith 9/19/11 - 9/23/11

439

1 A Yes, sir.

2 Q Were you friends with Victor Smith?

3 A Yes, sir.

4 Q All right. Where did Victor Smith live at that time; do
5 you remember?

6 A At Northstone.

7 Q Is that [REDACTED] Elders Pond?

8 A Yes, sir.

9 Q And do you recall which apartment was that?

10 A Apartment [REDACTED] --

11 Q [REDACTED]?

12 A Yes, sir.

13 Q And did Jazmine Bright live there, as well?

14 A Yes, sir.

15 Q And that was his lady-friend?

16 A Yes, sir.

17 Q Back in -- around September 27, 2008, do you remember
18 having some contract with Ernest Robinson back then?

19 A Yes, sir.

20 Q And can you tell the jury a little bit about what you
21 were doing that day; what was going on?

22 A Me and Franchise were talking and --

23 Q Who's Franchise?

24 A His brother, Victor Smith brother.

25 Q Darius Smith?

State v. Victor Smith 9/19/11 - 9/23/11

440

1 A Yes, sir.

2 Q Okay. Do you have a nick-name?

3 A They call me Man.

4 Q Okay. What did they call Victor Smith?

5 A Slim.

6 Q Okay. All right. Go ahead?

7 A And we was like chillin and all that and somebody took
8 Mr. Victor money out his room. So he came back to he house
9 after he left with his baby mama.

10 Q Who came back to that house?

11 A Victor Smith.

12 Q Okay.

13 A So he came back to his house. He went in the room and
14 he asked who took his money. So he looked at me because I
15 was at the house. So he like, you took my money. I was
16 like, no. So he was like, who all was at the house. I told
17 him; Smurf -- Smurf is Allen Fulten and E.J. was at the
18 house. He waited until Smurf came over to the house so
19 Smurf knocked at the door, he said, don't open the door. So
20 went to open the door and he was like, you took my money.
21 He was like, no. Smurf said, Allen Fulten said he ain't took
22 his money.

23 Q And this is -- this is Victor Smith confronting Allen
24 Fulten; is that right?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

441

1 Q Okay. Go ahead.

2 A So he let Allen Fulten come in the house. He let Allen
3 Fulten come in the house, so Allen Fulten said let him make
4 a phone call --

5 MR. HART: Objection, Your Honor.

6 Can you approach just real quickly?

7 THE COURT: Sure.

8 (Off the record bench conference with counsel and the
9 Court.)

10 THE COURT: You may continue, sir.

11 JEREMIAH JONES - CONTINUED DIRECT EXAMINATION

12 BY MR. GOLDBERG:

13 Q There was a conversation going on between Allen Fulten
14 and Victor Smith about the money?

15 A Yes, sir.

16 Q What happened after that conversation?

17 A Then Allen Fulten said E.J. took the money. So Mr.
18 Vic over there, Mr. Victor Smith said don't worry about it.
19 Wait until tonight.

20 Q And did you understand him to mean by wait until
21 tonight?

22 A I thought he was going to talk to him, but he did
23 something else. Other things.

24 Q Okay. Did he indicate what he was going to do to E.J.
25 to get him to get his money?

1 A Yeah. He said he was going to kill him.

2 Q Okay. Did you give a statement to law enforcement back
3 in July 2009?

4 A Yes, sir.

5 Q Were you advised of your rights by law enforcement
6 before you gave that statement?

7 A Yes, sir.

8 Q And did you waive those rights?

9 A Yes, sir.

10 Q And did you give that statement to law enforcement
11 freely and voluntarily?

12 A Yes, sir.

13 Q Okay. Initially, when you talked to law enforcement,
14 did you tell them that someone other than Victor Smith had
15 shot E.J.?

16 A No, sir.

17 Q You didn't? You didn't tell them someone else --

18 A Yeah. Yeah. I thought Allen Fulten shot him.

19 Q Okay. And why did you tell them that at first?

20 A Because I was trying to save that man from getting in
21 trouble.

22 Q Which man?

23 A Mr. Victor Smith.

24 Q Why would you try to save Victor Smith?

25 A Because me and him was like brothers. So I would try

State v. Victor Smith 9/19/11 - 9/23/11

443

1 to keep him out of trouble.

2 Q Where were you living at that time?

3 A At his house.

4 Q And eventually after indicating that it was Allen
5 Fulten that had shot him, did you then tell law enforcement
6 that that was, in fact, not the case?

7 A Yes, sir.

8 Q Okay. And then did you describe to them what actually
9 happened on July 27?

10 A Yes, sir.

11 Q Okay. So describe for the jury what happened?

12 A It was like, we was at the house, me and Franchise went
13 to the store.

14 Q Whose house were you at?

15 A It was Smith house. Victor Smith.

16 Q Okay.

17 A So we was at his house and me and Darius went to the
18 store. That when Victor call us and tell us to come back to
19 the house because E.J. was on the way. So we walked back to
20 the house. We sit right there. We sit right down, we sit
21 by the chair.

22 Q Now, when you came in the house, what room did you go
23 into?

24 A The first room on the right.

25 Q First room on the right. All right. And who all was

1 in the room at that time?

2 A It was Victor Smith, Allen Fulten, Darius Smith and
3 myself.

4 Q Okay. At some point did Ernest Robinson arrive there?

5 A Yes, sir.

6 Q And do you know where he came from?

7 A He came from his job.

8 Q Where did he work?

9 A At -- I forgot.

10 Q At a restaurant?

11 A Yes, sir.

12 Q Did he have his uniform on when he came in?

13 A Yes, sir.

14 Q All right. What else did he have when he came in?

15 A He had some food.

16 Q So when Ernest Robinson arrived, did he come in that
17 front bedroom on the right?

18 A Yes, sir.

19 Q And what happened when he came in there?

20 A He sat down right in the middle by the snake cage.

21 Q There was a snake cage in the room?

22 A Yes, sir.

23 Q Okay. How was that secured?

24 A It was like the snake right there and they had a little
25 tool box right there and they put the snake on top of it.

State v. Victor Smith 9/19/11 - 9/23/11

445

1 Q Was there a brick as part of that, at all?

2 A Yes, sir.

3 Q All right. Now, while he was in there and while all of
4 y'all were in the room, what happened at this point?

5 A Just talking and we started smoking a little bit.

6 Q Drinking a little bit?

7 A Yes, sir.

8 Q Smoking a little bit of weed?

9 A Yes, sir.

10 Q Hanging out?

11 A Yes, sir.

12 Q How long did that go on; do you remember?

13 A For a good minute -- it gone on for a good minute, and
14 then Allen Fulten and E.J. start talking and they get into
15 it.

16 Q Do you remember what they were getting into it about?

17 A No, sir.

18 Q Okay. All right. Go ahead.

19 A They start talking. E.J. said he was going beat Allen
20 Fulten. Fulten said he was going to beat E.J. So that went
21 on -- Smurf looked to his left and he -- Victor Smith had
22 looked at him with a mean look and said, are you going to do
23 him.

24 Q Okay. So just to make sure we're clear, Allen Fulten
25 and E.J. were going back and forth a little bit?

1 A Yes, sir.

2 Q And at some point you said that Victor Smith looked at
3 Allen Fulten?

4 A Yes, sir.

5 Q And what kind of look did he give him?

6 A Give him a mean look.

7 Q And after he gave him that mean look, what did Allen
8 Fulten do?

9 A He hit him right in his face.

10 Q Hit who in the face?

11 A E.J.

12 Q What happened when he hit him in the face?

13 A They went -- Allen Fulten, Darius Smith and Victor
14 Smith jumped on him.

15 Q Okay. Did Allen and E.J. start fighting?

16 A Yes, sir.

17 Q Was there blood involved?

18 A Yes, sir.

19 Q Who was the blood coming from?

20 A From E.J.

21 Q And you said Victor Smith was part of the assault?

22 A Yes, sir.

23 Q Was Allen Fulten part of the assault?

24 A Yes, sir.

25 Q Was Darius Smith part of it?

State v. Victor Smith 9/19/11 - 9/23/11

447

1 A Yes, sir.

2 Q Were you part of it?

3 A No, sir.

4 Q You didn't hit him at all?

5 A No, sir.

6 Q You don't remember telling the Sheriff's Department
7 that you all jumped on each other a little bit.

8 A I didn't mean to tell that because I didn't took part.
9 I just stand right there.

10 Q You were just standing there?

11 A Yeah.

12 Q Now, as this was going on, describe for us the assault
13 that took place on E.J.?

14 A The assault took place on E.J. where they jumped on
15 him, and they were beating him and then Victor Smith told me
16 to pick up the brick and hit the man over the head. So I
17 hit the man over the head two times and the brick broke.

18 Q Victor Smith told you to hit E.J. with a brick?

19 A Yes, sir.

20 Q And you hit him twice?

21 A Yes, sir.

22 Q Why did you hit him?

23 A Because -- I don't know, because the man said he was
24 going to hit me with the brick.

25 Q If you didn't do it?

1 A Yes, sir.

2 Q And what did you say happened to the brick?

3 A The brick broke.

4 Q What happened to E.J. when he got hit by the brick?

5 A He just stumbled a little bit, and he tried to get up.

6 He tried to get up and tried to get to the door. Victor

7 Smith pulled the man back.

8 Q Was that where E.J. and Victor kind of tussled?

9 A Yes, sir.

10 Q What was Allen Fulten doing during this?

11 A Right there, standing. Darius Smith was standing right

12 there, too. They was not tussling and Mr. Victor Smith got

13 the man on his back and just break the man's back.

14 Q So Victor Smith broke the man's back?

15 A Yes.

16 Q How did he do that?

17 A He bent the man's back back.

18 Q Are you talking about E.J.?

19 A Yes, sir.

20 Q When Victor Smith did that to E.J. what, if anything,

21 did you hear?

22 A I heard pop.

23 Q What happened after that?

24 A He stopped moving right there. Then he -- Mr. Victor

25 Smith got the 40 pound weight and he dropped it on his back.

State v. Victor Smith 9/19/11 - 9/23/11

449

1 Q On E.J.'s back?

2 A Yes, sir.

3 Q What did you see happen to E.J. when he did that?

4 A I was stunned. I didn't know it was going to go down
5 like that. I thought man was going to talk to him, see if
6 he took the money.

7 Q What did you believe the plan to be that night?

8 A I was -- I was terrified what he did. I was terrified.
9 Thought that I would keep it a secret. He said that I would
10 keep it a secret, nobody wouldn't know nothing about it.

11 Q After he struck him, after Victor Smith struck him with
12 the weight, did you see Allen Fulten have the weight?

13 A Yes, sir.

14 Q Did he strike E.J. with the weight?

15 A Yes, sir.

16 Q Was E.J. moving, at this point?

17 A No, sir.

18 Q What was that next thing you saw Victor Smith do?

19 A Grabbed the gun and shot him right in the head.

20 Q Who did he shoot in the head?

21 A E.J.

22 Q Where was E.J. when he was shot?

23 A Right there in the room.

24 Q Was he standing up or was he on the ground?

25 A He was on the ground, dead.

1 Q The left side of his head?

2 A Yes, sir.

3 Q What was your reaction to seeing the gunshot?

4 A I couldn't believe it. He shoot the man over nothing.

5 Q What, if anything, did Victor Smith tell you to do
6 after that?

7 A Wrap the man up and get the belt so -- took the curtain
8 rod, took the curtain, and wrapped the man up in the
9 curtain.

10 Q The shower curtain?

11 A Yes, sir.

12 Q Did you do that?

13 A Yes, sir.

14 Q Was there a sheet involved, also, to wrap him up in?

15 A Yes, sir.

16 Q What kind of belt did you have?

17 A I had like a belt, like a black belt, like thin belt
18 and took it from around my waist and tie it around the man.

19 Q You said it was a black belt?

20 A Yeah, it was a black belt with a metal piece with it.

21 Q Once E.J. was wrapped up, what did you do with him?

22 A Took the man out back. Mr. Victor Smith threwed the
23 man over fence, over the fence and told me that if I don't
24 do it he going to kill me.

25 Q I'll show you a photograph here. I can't find my

State v. Victor Smith 9/19/11 - 9/23/11

451

1 picture, but you said take the man out the back?

2 A Yeah, take the man out the back.

3 Q Out the back of the apartment?

4 A Yes, sir.

5 Q And what was it like behind the apartment?

6 A It was like -- it was like he was behind the apartments
7 but it was in the house, like he threw the body over the
8 thing. Back in --

9 Q So --

10 A -- back in the --

11 Q This is State's No. 11, already in evidence. This is
12 the Northstone apartment complex, okay. Is that Building
13 or thereabouts?

14 A Yes, sir.

15 Q So is the back of it here or is it over here?

16 A The back is right over here where we took the man.

17 Q Okay. That -- you're talking about where you took him
18 eventually?

19 A Yeah.

20 Q What is it like over in that area?

21 A It was like nothing but woods and fence.

22 Q And who did you take E.J. over there with?

23 A With Allen Fulten.

24 Q Okay. When you took the body over there what did you do
25 with it?

1 A Put it in the woods.

2 Q You left it there?

3 A Yes, sir.

4 Q Where was Jazmine during all this?

5 A In her room.

6 Q Did you ever see her during the assault?

7 A No, sir.

8 Q After you took the body out to the wooded area, did you
9 go back to the apartment?

10 A Yes, sir.

11 Q And what, if anything, did Victor Smith tell you then?

12 A Clean up. Clean up the blood.

13 Q So what did you do?

14 A Clean up the blood.

15 Q How did you go about doing that?

16 A Taking the -- he went and get something from the job
17 and tell us to clean up with the for us to clean up with the
18 chalk and all that. He got carpet cleaner and made up clean
19 and white paint, start painting the walls and ceiling.

20 Q After you gave this statement to law enforcement were
21 you placed under arrest?

22 A Yes, sir.

23 Q What were you charged with?

24 A Murder.

25 Q Is that charge still pending?

State v. Victor Smith 9/19/11 - 9/23/11

453

1 A Yes, sir.

2 Q Do you want to be here today?

3 A No, sir.

4 Q Are you hopeful that something good may come out of it?

5 A Yes, sir.

6 Q Back in 2009, were you convicted of two counts of
7 malicious injury to personal property?

8 A Yes, sir.

9 Q Does that have anything to do with what you saw and
10 what you observed on September 27?

11 A No, sir.

12 Q You mentioned the shower curtain earlier. I want to
13 show you what's been marked as State's 172, that's already
14 in evidence. Recognize that?

15 A Yes, sir.

16 Q What do you recognize that to be?

17 A The blood on it.

18 Q That actual item, itself. What is it?

19 A Shower curtain.

20 Q Is that the one that you used to wrap him up in?

21 A Yes, sir.

22 Q All right. State's No. 173, that's already in
23 evidence, do you recognize either of these items?

24 A Yes, sir.

25 Q What do you recognize this to be?

1 A My belt.

2 Q I'm sorry?

3 A My belt.

4 Q Your belt?

5 A Yes, sir, and Allen Fulten belt.

6 Q Is that the belt that was used to wrap up the body?

7 A Yes, sir.

8 Q Did you know that Victor Smith was going to shoot E.J.
9 Robinson that night?

10 A No, sir.

11 Q What did you think he was going to do to him?

12 A Thought the man was going to talk to him to see if he
13 took his money.

14 Q You think maybe he'd rough him up a little bit?

15 A Rough him up too much.

16 Q The man that you know as Victor Smith, also known as
17 Slim, that you saw shoot Ernest Robinson; do you see him in
18 the courtroom today?

19 A He right there.

20 Q Can you describe what his shirt looks like?

21 A Blue with white on it.

22 Q When you -- when the assault was taking place, do you
23 remember if E.J. said anything, was making any sound?

24 A He said stop, stop.

25 Q Thank you.

State v. Victor Smith 9/19/11 - 9/23/11

455

1 THE COURT: Mr. Hart.

2 MR. HART: Thank Your Honor.

3 JEREMIAH JONES - CROSS-EXAMINATION

4 BY MR. HART:

5 Q Mr. Jones, what name do your friends call you?

6 A Man.

7 Q How'd you get that name?

8 A My mama.

9 Q Your mama gave you that name?

10 A Yes, sir.

11 Q Let me tell you from the beginning, I've got to ask you
12 some personal questions that is not meant to embarrass you
13 or disrespect you, but I've got to ask you those questions.

14 A Yes, sir.

15 Q It's important. One of the first questions I want to
16 ask you is; tell us about your education level?

17 A My education level --

18 Q Yes, sir.

19 A -- is -- I can't really -- I don't remember.

20 Q You don't remember your education level?

21 A No, sir.

22 Q Tell us how well you can read?

23 A I can read a little bit.

24 Q Just a little bit?

25 A Yes, sir.

1 Q How well can you write?

2 A Write pretty good.

3 Q You gave a statement to the police; is that correct?

4 A Yes, sir.

5 Q So you say you can -- I want to make sure I'm fair with
6 you, all right. So you say you can read a little bit?

7 A Yes, sir.

8 Q Is that fair?

9 A Yes, sir.

10 Q You say you can write very well?

11 A Yes, sir.

12 Q If you can read a little and write very well, tell us
13 how you're able to read what you write?

14 A I read what I write because I have somebody go over it
15 with me.

16 Q So you need assistance?

17 A Yes.

18 Q You have somebody with what you write?

19 A Yes.

20 Q Do you remember giving a statement to the police?

21 A Yeah.

22 Q Who wrote that statement?

23 A The investigation did.

24 Q You didn't write it did you?

25 A No, because I told them I couldn't write, I couldn't

State v. Victor Smith 9/19/11 - 9/23/11

457

1 read like that.

2 Q Say it again, what did you tell them?

3 A I couldn't write, I couldn't read like that.

4 Q You told them -- what did you tell them?

5 A I couldn't write, I couldn't read like that.

6 Q You say you told the investigator who took your
7 statement, I couldn't write; right?

8 A Yeah.

9 Q I couldn't read like that? So is it fair to say you
10 really don't know what's in that statement; is it fair to
11 say that?

12 A I told them and they wrote it for me.

13 Q Did you get a chance to read over the statement?

14 A Yes.

15 Q Did you understand it?

16 A I understand -- they got me understand -- they told me
17 about it. They told me about the statement and I couldn't
18 understand so they wrote it down.

19 Q You say you couldn't understand the statement so they
20 explained it to you?

21 A Yeah.

22 Q But you couldn't understand it for yourself?

23 A No, I couldn't understand it for myself.

24 Q Is that fair?

25 A Yeah.

1 Q Did you explain to the investigator that you could not
2 understand for yourself?

3 A Yeah.

4 Q You told him the investigator that?

5 A Yeah.

6 Q Did you sign the statement?

7 A Yes, sir.

8 Q Even after you told them you could not understand it
9 you signed it?

10 A Yeah.

11 Q He allowed you to sign the statement?

12 A Yeah.

13 Q Let me ask you, when police picked you up you were
14 walking down Parklane; is that right?

15 A Yeah.

16 Q They stopped you on Parklane?

17 A They stopped me at my home boy house.

18 Q At your home boy house. Did you voluntarily go to the
19 police station and give a statement?

20 A No.

21 Q When they picked you up, did they put you in handcuffs?

22 A No.

23 Q What did they do?

24 A They put me in the truck.

25 Q And then what?

State v. Victor Smith 9/19/11 - 9/23/11

459

1 A And they asked me some questions.

2 Q And then what?

3 A They took me to the investigation office.

4 Q When you were at the investigation office, could you
5 walk around the Sheriff's Office like you wanted to?

6 A No.

7 Q How many people had access to this apartment?

8 A Two.

9 Q Two. Who are the two people?

10 A His baby mama or his little brother.

11 Q You lived there, right?

12 A Yeah.

13 Q So it's three?

14 A I ain't had no access -- I ain't had no key. He gave
15 his brother a key or his baby mama a key. So I didn't --

16 Q So -- I'm sorry. Just slow down. I don't want to try
17 to trip you up. Just relax.

18 THE COURT: Just let him finish his answer.

19 MR. HART: Yes, sir.

20 BY MR. HART:

21 Q Who all lived in the apartment?

22 A It was me, Victor, Allen Fulten and his baby mama. His
23 brother used to come over there and stay and then go back to
24 his baby mama house.

25 Q What's his baby mama's name?

1 A Whose?

2 Q Victor's?

3 A Jaz.

4 Q Does Allen also go by Smurf?

5 A Yes, sir.

6 Q Did you ever have a conversation with Jaz when Victor
7 wasn't around?

8 A No, sir.

9 Q You've never talked to her when he wasn't around?

10 A No.

11 Q The size of this apartment. Showing you what's been
12 marked as State's Exhibit No. 10. Take a look at that. You
13 can look at it. Take your time looking at it. That first
14 bedroom that you walk into, that's the bedroom that you
15 lived in; is that right?

16 A Yes, sir.

17 Q And that's the bedroom Smurf lived in?

18 A Yes, sir.

19 Q The bathroom that's attached to the bedroom that you
20 and Smurf lived in, that was the bathroom for the two of
21 you?

22 A Yes, sir.

23 Q Did you get a chance to see the shower curtain that the
24 police, I mean, the prosecution showed to you?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

461

1 Q The shower curtain came from the bathroom that you
2 used?

3 A Yes, sir. When we would always take a shower.

4 Q You and Smurf lived in the bedroom -- y'all were boys,
5 y'all hung out together?

6 A Yes, sir..

7 Q Y'all pretty tight?

8 A We pretty.

9 Q When y'all was arrested, you and Smurf was housed in
10 the same dorm?

11 A Yes, sir.

12 Q Y'all were able to talk in that dorm, is that right?

13 A No. We were not in the same dorm. I was in a
14 different dorm than where he was.

15 Q Let's be clear. When you were arrested, you and Smurf
16 went to the same dorm?

17 A No. We did not went to the same dorm.

18 Q Y'all have never been in the same dorm?

19 A No.

20 Q As far as Ernest, you knew that Ernest had a job; is
21 that right?

22 A Yes, sir.

23 Q You knew that Victor had a job?

24 A Yes, sir.

25 Q You knew that Jaz had a job?

1 A Yes, sir.

2 Q You didn't have a job did you?

3 A No.

4 Q You was unemployed?

5 A Yes, sir.

6 Q Smurf, Smurf, didn't have a job?

7 A No, sir.

8 Q He was unemployed?

9 A Yes, sir.

10 Q He didn't have a source of income?

11 A No, sir.

12 Q So out of this group, the two people who didn't have
13 income was you; right?

14 A Yeah.

15 Q And Smurf; right?

16 A (No response.)

17 Q The statement that you gave, how long were you
18 questioned?

19 A I was just questioned for a good 10 minutes.

20 Q Ten minutes?

21 A Yes, sir.

22 Q So the statement that you gave to police took a total
23 of 10 minutes?

24 A Yes, sir, because they had to go check on to the other
25 people, too.

State v. Victor Smith 9/19/11 - 9/23/11

463

1 Q So from beginning to finish, 10 minutes?

2 A Yes, sir.

3 Q You mentioned that you were smoking that night you say
4 this incident happened; how often were you smoking?

5 A Not often. Not -- I just smoked a couple -- like three
6 or four blunts a day.

7 Q You say you smoke three or four blunts a day?

8 A Yes, sir.

9 Q You were smoking the day you gave the statement?

10 A No, sir.

11 Q You just decided not to smoke on that particular day?

12 A I was not -- when they came and got me I was not high.

13 Q I understand, but on that particular day you just
14 decided not to smoke?

15 A Yes, sir.

16 Q You said when you saw what happened to E.J., what's the
17 word you used, because I want -- what's the word you told
18 the prosecutor that you used?

19 A I was shocked.

20 Q You were shocked. After the incident because of the
21 shock did you call the police?

22 A No, because I was scared of Mr. Victor Smith because I
23 thought he was going to come to my house.

24 Q Because of your shock the next day did you call police?

25 A No, sir.

1 Q A month after the incident did you call the police?

2 A No, sir.

3 Q At what point in time did you voluntarily go to the
4 police and say let me tell you what happened; when did you
5 do that?

6 A Nothing.

7 Q You didn't tell them anything until they picked you up?

8 A No.

9 Q That first statement that you gave you didn't tell the
10 truth, did you?

11 A I did tell the truth.

12 Q You told the truth on the first statement?

13 A Yes, sir.

14 Q You want some time to think about that?

15 A I told them the first time, I said, Victor shot him --

16 Q You also made statements that Smurf shot E.J. also;
17 right?

18 A Yes, sir.

19 Q So --

20 A But I wasn't trying to say it was him, I was trying to
21 say Victor Smith was start being the trouble.

22 Q I understand. I understand what you're trying to say.
23 Let's do this. You gave a statement that Victor shot E.J.
24 right?

25 A Yes.

State v. Victor Smith 9/19/11 - 9/23/11

465

1 Q You gave a statement that Smurf shot E.J. right?

2 A Yes, sir.

3 Q One of those is not true; is that correct?

4 A Yes, sir.

5 Q So when you gave your statement at first, you didn't
6 tell the truth, did you?

7 A I did tell the truth. I said, Mr. Victor Smith shot
8 him, but I switched my story I was trying to say Victor
9 Smith --

10 Q Say again -- you switched your story, right?

11 A I was trying to say Victor Smith.

12 Q One thing he asked you was that did you participate in
13 the beating?

14 A No, sir.

15 Q You never participated in the beating; right?

16 A No, sir.

17 THE COURT: Mr. Hart, that's for ID?

18 MR. HART: It is.

19 (Defendant's Exhibit No. 6,
20 statement, was marked for ID only.)

21 COURT REPORTER: Defendant's 6, for ID.

22 BY MR. HART:

23 Q I'm going to show you what's been marked as Defendant's
24 Exhibit for ID. I'm going to give you a chance to read over
25 this. I want to give you a chance to look over that

1 statement. Take as much time as you need.

2 Have you had a chance to look at it. That's the
3 statement you gave to police?

4 A Yeah.

5 Q That first highlighted question, don't read it aloud, I
6 want you to read it to yourself.

7 THE COURT: What page are we talking about?

8 MR. HART: I'm sorry. Page 3 of Defendant's Exhibit No.
9 6.

10 THE COURT: All right.

11 BY MR. HART:

12 Q Don't read it aloud. I want you to read that statement
13 to yourself. Now, the question I ask you is you said you
14 didn't participate in hitting or beating E.J.; is that
15 right?

16 A Yeah.

17 Q That's not what you told the police is it?

18 A No.

19 Q Something different than what you just testified to; is
20 that right?

21 A I meant to say I hit the man two times. I ain't said
22 six times. They put that in my statement.

23 Q The police put that in your statement?

24 A Yeah. I ain't hit the man six times. I only hit the
25 man two times.

State v. Victor Smith 9/19/11 - 9/23/11

467

1 Q You didn't tell them to put that in your statement?

2 A I ain't put that in my statement. I ain't hit the man
3 six times.

4 Q Well, who put that in your statement?

5 A The police did. The investigation did.

6 Q They did that without your permission?

7 A Yeah.

8 Q Without your authority?

9 A Yeah.

10 Q But you still signed the statement?

11 A Yes, sir.

12 Q So you're saying the police did something wrong with
13 your statement?

14 A Yes, sir.

15 Q Is that fair?

16 A Yes, sir.

17 Q That's fair. Now, you remember meeting with the
18 solicitor's office back last year in November?

19 A I can't remember.

20 Q How many times have you met with the solicitor's
21 office?

22 A I can't remember.

23 Q You can't remember how many times you met with them?

24 A No, sir.

25 Q Have you met with them at least one time?

1 A I don't know. I can't remember.

2 Q Did you meet with the solicitor this week?

3 A This week?

4 Q Yes, sir.

5 A Yes.

6 Q Did you talk to Mr. Goldberg this week before this
7 trial?

8 A Yes, sir.

9 Q Was Mr. Potts in the room with you?

10 A Yes, sir.

11 Q So you met with them this week; is that right?

12 A Yes, sir.

13 Q Back in November, did you meet with Mr. Goldberg?

14 A I don't know. I can't remember.

15 Q You can't remember?

16 A No, sir.

17 Q You can't remember meeting with Mr. Potts?

18 A No, sir.

19 Q When you met with Mr. Goldberg this week, they asked
20 you if you were going to testify against Victor, didn't
21 they?

22 A Yes, sir.

23 Q You didn't want to testify here today, did you?

24 A I did because I want the family to hear the truth.

25 Q I'm glad you mentioned that. Did you want them to hear

State v. Victor Smith 9/19/11 - 9/23/11

469

1 the truth back when this happened?

2 A Yes, sir.

3 Q You did, but you didn't go tell the police did you?

4 A No, sir.

5 Q Let's talk about why you are here testifying here
6 today. How long have you been at the detention center?

7 A Twenty-six months.

8 MR. GOLDBERG: Your Honor, may we approach?

9 THE COURT: Sure.

10 (Off the record bench conference with counsel and the
11 Court.)

12 BY MR. HART:

13 Q Man -- that's your name; right?

14 A Yes, sir.

15 Q You mama gave you that name. Let's talk about why
16 you're here today testifying against Victor. You've been in
17 the jail for 26 months?

18 A Yes, sir.

19 Q That's not a pleasant place to be is it?

20 A No.

21 Q You don't get to choose what kind of food you eat do
22 you?

23 A No.

24 Q You don't get to choose when you eat do you?

25 A No.

1 Q You don't get to choose when you take a shower do you?

2 A No.

3 Q They tell you when you can take a shower?

4 A Yes, sir.

5 Q One of the most basic human functions you don't have
6 control over do you?

7 A No, sir.

8 Q You don't get to see your family in jail do you?

9 A I see them behind the little visit thing.

10 Q You don't get to touch them?

11 A No, sir.

12 Q You don't get to hug them?

13 A No, sir.

14 Q You don't get to give your mama a kiss on the cheek do
15 you?

16 A No, sir.

17 Q You enjoy being out of jail don't you?

18 A Yes, sir.

19 Q You want to get out of jail don't you?

20 A Yes, sir.

21 Q You would love for the solicitor to cut you a deal so
22 you can go home; isn't that right?

23 A No, sir.

24 Q You don't?

25 A No.

State v. Victor Smith 9/19/11 - 9/23/11

471

1 Q You want to stay in jail?

2 A Yeah.

3 Q You do?

4 A I belong in there.

5 Q You belong in jail?

6 A Yeah.

7 Q Thank you.

8 MR. HART: No further questions.

9 THE COURT: All right. Redirect.

10 JEREMIAH JONES - REDIRECT EXAMINATION

11 BY MR. GOLDBERG:

12 Q Victor Smith, for a time, was good to you; is that
13 right?

14 A Yes, sir.

15 Q Gave you a place to live?

16 A Yes, sir.

17 Q Was your friend?

18 A Yes, sir.

19 Q Treated you like a brother; is that right?

20 A Yeah, he treated me like a brother, some times.

21 Q Sometimes. Treated you like a brother on the night of
22 September 27, 2008?

23 A No.

24 Q Who told you to hit E.J. with a brick two times?

25 A Mr. E.J. -- Mr. Victor Smith.

1 Q Who told you to wrap E.J.'s body up in a shower
2 curtain?

3 A Mr. Victor Smith.

4 MR. HART: Asked and answered. This is nothing new.

5 THE COURT: This is redirect. He's going back over some
6 of the things you mentioned on cross, Mr. Hart. Relax.

7 You may continue.

8 BY MR. GOLDBERG:

9 Q Who told you to use your belt to wrap up the body in
10 that shower curtain?

11 A Mr. Victor Smith.

12 Q Who told you to take that body and dump it in the
13 woods?

14 A Mr. Victor Smith?

15 Q Why did you do all that?

16 A Nothing. I did it for nothing. The man said he was
17 going to kill me if I wouldn't do it.

18 Q Victor Smith said that?

19 A Yeah. He pointed the gun at me.

20 Q Thank you.

21 THE COURT: Anything further, Mr. Hart?

22 JEREMIAH JONES - RECROSS - EXAMINATION

23 BY MR. HART:

24 Q That's an incredible statement. You say Victor pointed
25 a gun at you?

State v. Victor Smith 9/19/11 - 9/23/11

473

1 A Yes, sir.

2 Q You never told police that he pointed the gun at you?

3 A No, but he pointed the gun at me. He know he did.

4 Q That's important to know. You never mentioned that to
5 the police. This is the first time you mentioned it?

6 A No.

7 Q You didn't tell Investigator Holdorf, you didn't tell
8 him that did you?

9 A Yes, I did.

10 Q You told him that?

11 A Yes.

12 Q Thank you.

13 THE COURT: Can I see y'all for just a second.

14 (Off the record bench conference with counsel and the
15 Court.)

16 THE COURT: Ladies and gentlemen, I'm going to send you
17 to your jury room for just a few moments. It's a matter I
18 have to take up. I'll bring you right back out. All right.
19 (Jury out at 4:30 p.m.)

20 THE COURT: Mr. Jones, you may step down. Take a five
21 minute bathroom break. We'll come back and finish the day
22 with the last witness of the day?

23 MR. GOLDBERG: Yes, sir.

24 THE COURT: Go refresh yourselves, and we'll come back.
25 (Court in recess for short break at 4:31 p.m.)

State v. Victor Smith 9/19/11 - 9/23/11

474

1 (Court in session after short break at 4:40 p.m.)

2 THE COURT: All right. Keep your seats. Keep your
3 seats.

4 Where are the bailiffs?

5 Tell them to bring the jury in.

6 Is there anything we need to take up before they come
7 in?

8 MR. GOLDBERG: Just from a logistical standpoint, I
9 believe this will be our last witness for the day.

10 THE COURT: Okay. All right.

11 (Jury in 4:41 p.m.)

12 THE BAILIFF: All jurors are present.

13 THE COURT: Thank you.

14 Solicitor, you may call your next witness.

15 MR. GOLDBERG: Thank you, Your Honor.

16 State calls Allen Fulten.

17 THE COURT: Come around, Mr. Fulten.

18 (WHEREUPON, Allen Fulten was sworn
19 to tell the truth.)

20 THE CLERK: Please have a seat and give your full name
21 for the record.

22 MR. FULTEN: My full name is Allen Shamar Fulten.

23 ALLEN FULTEN - DIRECT EXAMINATION

24 BY MR. GOLDBERG:

25 Q All right, Allen, the acoustics in this room are not

State v. Victor Smith 9/19/11 - 9/23/11

475

1 very good. So make sure and try to keep your voice up so
2 everybody can hear you, okay?

3 A Yes, sir.

4 Q Where are you from?

5 A Columbia, South Carolina.

6 Q Have you lived in Columbia your whole life?

7 A Majority, yes, sir.

8 Q Where else have you lived?

9 A North Carolina.

10 Q Okay. Where were you living back in July of 2009?
11 Excuse me, scratch that. Back in September of 2008; where
12 were you living?

13 A I was staying at a place on Hardscrabble Road.

14 Q Here in Columbia?

15 A Yes, sir.

16 Q Was that at the Northstone apartments?

17 A Back and forth, yes, sir. That wasn't my permanent
18 residence, but yes, sir.

19 Q Okay. So tell us a little bit about the different
20 places that you were staying back and forth?

21 A Well, I stayed at my mother's for a while. I got
22 kicked out of my mother's house. Me and my father had some
23 -- couldn't see eye-to-eye. So I really started staying --
24 well, I stayed with my brother and my mom, and after that I
25 really was bouncing from place to place.

1 Q And at some point did you also spend some time with
2 Victor Smith?

3 A Yes, sir.

4 Q Apartment [REDACTED]?

5 A Yes, sir.

6 Q Back in September of 2008, September 27, 2008, did you
7 hang out with Ernest Robinson?

8 A Yes, sir.

9 Q Was he known as E.J.?

10 A Yes, sir.

11 Q And what was your name then?

12 A Smurf.

13 Q Why did they call you Smurf?

14 A Because I used to be little.

15 Q On the 27, did you end up hooking up with E.J. at some
16 point?

17 A Yes, sir.

18 Q Who else was with y'all?

19 A When we actually got there there was E.J. and a friend
20 was named Marvin.

21 Q Marvin?

22 A Yes, sir.

23 Q Was that kind of earlier in the day?

24 A Yes, sir. That was pretty early.

25 Q What did y'all get together for?

State v. Victor Smith 9/19/11 - 9/23/11

477

1 A To smoke weed.

2 Q To smoke weed?

3 A Yes, sir.

4 Q In fact, did you -- did Marvin drive y'all to go get
5 some weed?

6 A Yes, sir.

7 Q And who bought the bag of weed that day?

8 A E.J. bought the weed.

9 Q And was it for just him?

10 A No, it was for all of us.

11 Q All of you. Okay. After you got the weed, what did
12 you do?

13 A Well, we smoked for a little while, but we had to go
14 get Marvin's car from Bush River Road. So we had to go out
15 there.

16 Q All right. And once he got his car where did y'all go?

17 A We took it back to Marvin's house first.

18 Q And from there. Smoke some more weed. And E.J. said
19 he had to go to work.

20 Q So were you in Marvin's car at this point?

21 A Yes, sir.

22 Q And where did he drop you off at?

23 A He dropped me off at Northstone apartments.

24 Q And whose apartment was that?

25 A Jazmine.

1 Q And who also lived there?

2 A Victor.

3 Q Victor Smith?

4 A Yes, sir.

5 Q Okay. So Marvin dropped you off there. Where was
6 E.J.?

7 A He was in the car.

8 Q Okay. Did E.J. stay with you at the apartment?

9 A No, sir, they had to work. Marvin took him to work.

10 Q Do you know where he worked?

11 A He worked at Beef O'Brady's.

12 Q Okay. Did you have a plan to meet up with each other
13 later that night?

14 A He was going to come over.

15 Q To where?

16 A To Victor's house. We was going to finish smoking the
17 weed.

18 Q After work?

19 A Yes, sir.

20 Q So you get dropped off at the apartment and E.J. goes
21 to Beef's. While you're at the apartment what happened?

22 A When I first got there, nobody answered the door. So I
23 knocked on the side door. I stayed outside for quite a
24 while knocking on the door, but nobody ever came to the
25 door. But they was inside just nobody answered. So I sat

State v. Victor Smith 9/19/11 - 9/23/11

479

1 on the steps for a while, and they finally came and opened
2 the door and I went in.

3 Q And who was inside?

4 A Victor, his brother, Darius, Jeremiah and the baby's
5 mother, she was in her room.

6 Q Is that Jazmine?

7 A Yes.

8 Q Okay. Did you end up having a conversation with Victor
9 Smith?

10 A Yes, sir.

11 Q What was that about?

12 A It was about the missing rent money.

13 Q Whose money?

14 A Victor and Jazmine's.

15 Q And what was that conversation?

16 A He said some money had came up missing and he
17 questioned about did I know anything about had I stole it.

18 Q Victor questioned you about it?

19 A Yes, sir.

20 Q What did you tell him?

21 A I told him, no.

22 Q After that conversation took place, did you stick
23 around?

24 A No. Actually, he said everyone that was there was
25 going to have to leave. So I tried to call around to see if

1 I could get someone to come get me, but I couldn't get in
2 contact with nobody.

3 Q You didn't have a car at the time?

4 A No, sir.

5 Q Where did you end up going?

6 A Actually, I ended up staying.

7 Q What happened while you stayed?

8 A Well, we sat around. Victor got drunk, you know. We
9 talked about he was trying to make plans to question E.J.
10 when E.J. came home from work or came over from work.

11 Q Now, you said he got drunk. Did y'all stay at the
12 apartment the whole time?

13 A No, sir. He got drunk, first at the apartment, and
14 then we went over to a friend's house across the street.

15 Q What happened at the friend's house?

16 A We went over there and we drank some more and I smoked.

17 Q Just you or was Victor drinking and smoking also?

18 A No. I just smoked. Victor was drinking with the guy.

19 Q What, if anything did ask the guy for?

20 A He asked him for some duct tape.

21 Q Did he get the duct tape?

22 A No, sir. The man asked him was he going to fix
23 something so Victor told him yeah. The man didn't have any
24 duct tape anyway.

25 Q Okay. Did y'all stay at that apartment much longer?

State v. Victor Smith 9/19/11 - 9/23/11

481

1 A No, sir. Not much. Took a couple more shots and went
2 back to the apartment.

3 Q Couple shots of liquor?

4 A Yes, sir.

5 Q When you say you went back to the apartment, that's

6 [REDACTED]?

7 A Yes, sir.

8 Q That's Victor's apartment?

9 A Yes, sir.

10 Q Now, when you got back to Victor's apartment, what if
11 anything, did he say to you about E.J. and the money?

12 A Well, he said, he figured that E.J. had stolen it. So
13 (inaudible)

14 Q I'm sorry, I didn't --

15 A So he said --

16 Q Sorry. Don't mean to interrupt. The court reporter is
17 telling me --

18 THE COURT: You have a strong voice. About right there.

19 BY MR. GOLDBERG:

20 Q A little bit too close to the mike. So -- all right.
21 Let's try again. What did Victor say about E.J. and the
22 money?

23 A He said he figured E.J. had stolen the money. So what
24 the plan was, when E.J. came over he was going to question
25 him about it. Beat him up and make him pay the money.

1 Q And did you also mention something about the two of
2 them at work?

3 A Yes, sir.

4 Q What was that?

5 A I don't know the full extent but he said they had
6 problems at work.

7 Q Victor and E.J. were having problems at work?

8 A Yes, sir.

9 Q Okay. So he was going to confront him about the money
10 when he came by the apartment?

11 A Yes, sir.

12 Q And what did he say he was going to do if he didn't get
13 the money?

14 A He was going to beat him up. He was going to make him
15 pay it.

16 Q What, if anything, did Victor say to you about your
17 involvement in beating up E.J.

18 A Well, he said he wanted me to start it off. He wanted
19 me to hit him first. So first I told him -- really, it's
20 not my rent money. I don't stay there, so -- I don't need
21 to hit nobody. But he told me -- my brother used to stay
22 there and my brother got arrested.

23 Q Your brother?

24 A Yes, sir.

25 Q What is his name?

State v. Victor Smith 9/19/11 - 9/23/11

483

1 A His name is Aziz Fulten.

2 Q Okay.

3 A 'And since my brother left, what I wanted to do was
4 sleep. It was like, you know, calling me a faggot, pussy.
5 So first, I was like, you know, faggot, pussy, you know, I
6 could take that. And it was you know just egging me on, you
7 know, and was like, well, I ain't going to be nobody's
8 faggot and pussy. So I figured, I told him I would do it.

9 Q What did you think would happen to you if you didn't do
10 it?

11 A At that point, I really didn't know, at that point.

12 Q Did E.J. eventually come back to the apartment?

13 A Yes, sir, he came over late at night.

14 Q After he got off work?

15 A Yes, sir.

16 Q And what happened when he got there?

17 A Well, he came to the door, let him in, came in the
18 room, first bedroom on the right when you first walk in. So
19 he sat down. He was eating.

20 Q He was eating?

21 A Yes, sir.

22 Q Who all was in the room at that time?

23 A Me, Victor, his brother, Darius and Jeremiah.

24 Q And E.J.?

25 A And E.J.; yes, sir.

1 Q Okay. What happened after E.J. finished eating; were
2 y'all smoking, drinking?

3 A Yes, sir. We smoked about three or four blunts.

4 Q A blunt is like a cigar with marijuana; is that right?

5 A Yes, sir.

6 Q What happened after you smoked the blunts?

7 A After we smoked it was like what the plan was, Victor
8 was going to give me a signal and I was going to hit him.
9 So we smoked about three or four blunts, and that's when
10 Victor nudged me and gave me the signal. So at first I kind
11 of froze up. So I didn't do nothing. Sitting there
12 contemplating, you know, I really didn't want to do it.
13 Like I said, it ain't my rent money. So probably a couple of
14 minutes go by. I guess he figured I was going to back out.
15 So he nudged me again. So that time, I didn't hesitate. I
16 hit him. Punched him in the nose.

17 Q What happened when you hit him in the nose?

18 A He got up.

19 Q Did he fight back?

20 A Yes, sir.

21 Q What happened when he started fighting back?

22 A They rushed him.

23 Q I'm sorry?

24 A They rushed him.

25 Q Who did?

State v. Victor Smith 9/19/11 - 9/23/11

485

1 A Victor and Jeremiah first.

2 Q You say rushed him what do you mean by that?

3 A Like ran at him and punched him.

4 Q Who did you see hit E.J.?

5 A Victor.

6 Q What did he hit him with?

7 A First he punched him with his fists.

8 Q And when he punched him where did E.J. end up?

9 A He ended up on the floor by the couch.

10 Q And can you describe for the jury what happened over
11 the next few minutes, how the assault took place?

12 A Well, after that, he was on the floor. He was
13 punching, kicking him. His brother Darius was sitting down
14 playing video game. So he got up and went over there and
15 started kicking him. But he didn't have on no shoes, so I
16 guess his feet hurt. So he went and put on some shoes and
17 came back and started kicking him. After that, he
18 instructed Jeremiah to hit him with a brick. There's a
19 brick on top of the snake cage they keep in the room.

20 Q Victor instructed Jeremiah to do that?

21 A Yes, sir. It was like, hit him with the brick. So
22 Jeremiah -- he didn't want to hit him with the brick. So
23 Victor told him either hit him or I'm going to hit you. So
24 he hit him. He told him to hit him again. And he hit him
25 again with the brick. This time when they hit him with the

1 brick, the brick broke, snapped in half. So after that --

2 Q What happened to E.J. when they struck him that time?

3 A He's on the floor now, but he's on his stomach, but
4 he's still breathing. I want to say like a light snore.

5 Q Okay. And did Jeremiah continue to hit E.J.?

6 A No, sir, that was it.

7 Q How about Victor?

8 A He climbed on his back.

9 Q On E.J.'s back?

10 A Yes, sir.

11 Q What did he do when he was on E.J.'s back?

12 A I don't know, a wrestling move?

13 Q What?

14 A Just like a wrestling move or something. Just like
15 bending his leg back.

16 Q Was E.J. saying to doing anything at this point?

17 A No, sir, just breathing.

18 Q So as Victor was bending his leg back, what happened
19 after that?

20 A Well, he got up. Victor got up and told -- it's like a
21 pair of 45 dumbbells in the room -- I guess that's what you
22 call it, weights. He instructed his brother to hit him with
23 it. At first his brother really didn't want to hit him with
24 it, like I said, E.J. was already snoring, so there really
25 wasn't any need to do anything else to him. So he

State v. Victor Smith 9/19/11 - 9/23/11

487

1 instructed his brother. He brother dropped it.

2 Q The weight?

3 A Yes, sir.

4 Q On E.J.?

5 A Yes, sir.

6 Q Where did he hit him with it?

7 A In the head.

8 Q What happened after that?

9 A He hit him again.

10 Q You said that was Victor's brother?

11 A Yes, sir.

12 Q So after he struck him with the weight, what happened
13 to E.J. after that?

14 A E.J. still snoring.

15 Q Can you describe a little bit more about what that was
16 like?

17 A Snoring?

18 Q Yeah?

19 A Like a rasp or a rattle. Kind of like -- (witness
20 indicates by making noises.)

21 Q. What did you see Victor do after that?

22 A He went and got his pistol.

23 Q Where was it?

24 A Under the couch. He kept it under the couch, his sofa.

25 Q What did he do with it?

1 A He shot him. He shot him one time in the side of the
2 head. I don't know which side.

3 Q Who did he shoot?

4 A He shot E.J.

5 Q In the head?

6 A Yes, sir.

7 Q When he shot him in the head what did you do?

8 A It was like -- everybody freaked out. It was like
9 complete -- like bedlam, it was just --

10 Q Like what?

11 A Bedlam, complete confusion. Everybody screaming and
12 cussing, just like no order.

13 Q Did somebody take control of the situation at that
14 point?

15 A Actually, no, not at first. His brother asked him
16 like, you know, what the frick is you thinking. We were just
17 supposed to beat him up, you know. So after that Victor
18 just pointed the gun like at me, you know, you going to shut
19 up, you're going to help or I'm going to kill you. So I
20 didn't have nothing else to say after that.

21 Q Did he say that to anybody else in the room?

22 A To Jeremiah. But he told his brother, his brother was
23 straight. He said, I don't have to say nothing to you
24 because we're family. So --

25 Q Did you see him point -- you said he pointed the gun at

State v. Victor Smith. 9/19/11 - 9/23/11

489

1 you?

2 A Yes, sir.

3 Q Did he point it at anybody else?

4 A Besides Jeremiah, no, sir.

5 Q But he pointed it at Jeremiah?

6 A Yes, sir.

7 Q What did you say Victor said about his brother?

8 A He said he didn't have to worry about him saying
9 nothing, he was family.

10 Q Once all that was done; what happened after that?

11 A He instructed us to strip him.

12 Q Tell the jury a little bit about how that went down?

13 A So I took off his shoes, Jeremiah took off his pants,
14 Victor took off his shirt and -- after that they went out
15 down the hallway, Victor and Darius went out in the front
16 room. So after that they came -- I don't know what they
17 talked about. I stayed -- me and Jeremiah stayed in the
18 room. They came back in after while. I stepped out.

19 Q Where did you go?

20 A I stepped out in the front room.

21 Q Okay.

22 A So I stayed out there to get some fresh air and get my
23 thoughts together and I came back and they was wrapping him
24 up. So they wrapped him up, you know, like a shower
25 curtain, and I can't remember exactly if it was a sheet or a

1 cover. It was one of the two.

2 Q What happened to E.J.'s body after it got wrapped up?

3 A They searched him and took his folder.

4 Q Instructed who to do that?

5 A First he told me and Jeremiah, but I told him I was
6 sick, I couldn't do it.

7 Q What do you mean you were sick?

8 A I just felt like -- actually, I threw up.

9 Q You threw up?

10 A Yes, sir.

11 Q Where did Victor tell them to put E.J.?

12 A Just behind the apartments. It was like some -- behind
13 the apartments it's like a whole bunch of woods. I don't
14 know about now, but then it was a whole bunch of woods.

15 Q So once they went to take the body what did you do?

16 A He instructed me to clean up. Start trying to clean
17 up?

18 Q How did you do that?

19 A With just regular household, you know, cleaning
20 supplies, Clorox. He had a little can of Resolve, so I did
21 the best I could.

22 Q Would you say there was a little bit of blood or a lot
23 of blood?

24 A It was a lot.

25 Q What happened when they got back from taking the body

State v. Victor Smith 9/19/11 - 9/23/11

491

1 to the woods?

2 A He instructed Jeremiah to assist me in cleaning up.

3 Q Victor instructed you?

4 A Yes, sir.

5 Q Did he help?

6 A Jeremiah, yes, sir.

7 Q How long would you say you tried to clean?

8 A Well, me and Jeremiah, we cleaned the whole night
9 throughout the next morning.

10 Q What happened the next morning?

11 A Victor had to go to work. So he told us to just say
12 over. Actually, before he went to work, he gave me some
13 money to go to the store to get some more cleaning supplies,
14 because what we had wasn't enough. He said he wanted it
15 clean when he got home from work. So I went and got some
16 more carpet cleaner and we stayed and we scrubbed all day
17 until he got off from work.

18 Q And did you see him later that day?

19 A Yes, sir, when he got home from work he brought some
20 paint.

21 Q Brought some what?

22 A Paint.

23 Q Paint?

24 A Yes, sir.

25 Q What, if anything, did Victor say about painting?

1 A He just wanted to spot paint.

2 Q Did you do that?

3 A Yes, sir.

4 Q Who helped you?

5 A Jeremiah.

6 Q Once you were done with the clean up, did you stay
7 around the apartment at that time?

8 A No, sir. I actually got in contact with my mother and
9 I told her I wanted to stay on my birthday, which was coming
10 up in North Carolina with my sister. So once I told my mom,
11 I asked her to meet me at the store, and she asked me
12 actually paid for me a ticket to go spend my birthday with
13 my sister.

14 Q So where did you go?

15 A North Carolina.

16 Q All right. Now, you spoke to the Sheriff's Department
17 on two different occasions about this incident; is that
18 right?

19 A Yes, sir.

20 Q Now, the first time you talked to them --

21 A I lied.

22 Q You lied?

23 A Yes, sir.

24 Q Why?

25 A Because I was already -- I was already incarcerated for

State v. Victor Smith 9/19/11 - 9/23/11

493

1 a burglary.

2 Q You were arrested for a burglary?

3 A Yes, sir.

4 Q In connection with this?

5 A Unrelated. Yes, sir.

6 Q Are those charges still pending?

7 A Yes, sir.

8 Q And that's the burglary first degree?

9 A Yes, sir.

10 Q And a grand larceny, too, correct?

11 A Yes, sir.

12 Q So you got arrested for burglary --

13 A Yes, sir.

14 Q -- and where were you being held?

15 A I was held at the Alvin S. Glenn Detention Center.

16 Q So did the Sheriff's Department come get you?

17 A Yes, sir. They came out to the jail.

18 Q And they asked you questions about this incident?

19 A At first they took me down to the station on Two Notch.

20 Q And they questioned you about this incident?

21 A Yes, sir.

22 Q And you lied?

23 A Yes, sir.

24 Q What did you tell them?

25 A Well, I told them some of the truth, but I didn't

State v. Victor Smith 9/19/11 - 9/23/11

494

1 really tell them everyone that was involved, what actually
2 happened.

3 Q And how come?

4 A Because, like I said, I was already being charged and
5 you know when they questioned me about a murder, it was
6 like, no, I don't really want to be associated with a murder
7 and still fighting my charges. So I tried to like shun it
8 off.

9 Q Did they come back and speak to you a couple of days
10 later?

11 A Yes, sir.

12 Q What did you tell them on that occasion?

13 A They took me back to the station back on Two Notch
14 again.

15 Q Did you speak to them, freely and voluntarily?

16 A Yes, sir.

17 Q Did they promise you anything?

18 A No, sir.

19 Q Did you understand their questions?

20 A Yes, sir.

21 Q Why did you elect to tell them the truth on that
22 occasion?

23 A I just felt like -- I don't know, I just felt like, you
24 know, ain't no need to hide. When they talked to me, it was
25 just like, you know, you've got a chance to tell the truth.

State v. Victor Smith 9/19/11 - 9/23/11

495

1 Your mama tell you sometimes it's better to tell the truth
2 if it's going to hurt in the long run. So I figured I might
3 as well get it off my chest.

4 Q Had it been bothering you?

5 A Yes, sir.

6 Q How come?

7 A I've never been involved in nothing like that before.
8 I wasn't raised like that, so to even be associated with it
9 just went different.

10 Q How well did you know E.J.?

11 A I didn't know none of them too well.

12 Q And as a result of what you told them in that
13 statement, that second statement, were you charged with
14 murder?

15 A Yes, sir. At that time.

16 Q Is that charge still pending?

17 A Yes, sir.

18 Q Have you been promised anything for your testimony here
19 today?

20 A No, sir.

21 Q Are you hopeful that you might get something out of it?

22 A Yes, sir.

23 Q You said your charge of burglary was still pending
24 correct?

25 A Yes, sir.

1 Q And you also were convicted of burglary at one time in
2 Pennsylvania back in 2007; is that right?

3 A Correct.

4 Q That would have been shortly before you came back to
5 Columbia, I guess?

6 A Yes. I came back in 2008.

7 Q And you're still incarcerated at the county jail?

8 A Yes, sir.

9 MR. GOLDBERG: Beg the Court's indulgence?

10 THE COURT: Yes, sir.

11 BY MR. GOLDBERG:

12 Q The man that you know as Victor Smith; he had a
13 nickname, right?

14 A Yes, sir.

15 Q Slim?

16 A Yes, sir.

17 Q Do you see him in the courtroom here today?

18 A Yes, sir.

19 Q Can you point him out; describe the shirt that he's
20 wearing?

21 A Yeah. A yellow and blue shirt between the young lady
22 and the young man in the suit.

23 Q Is that the man that pulled the trigger on September
24 27?

25 A Yes, sir.

State v. Victor Smith 9/19/11 - 9/23/11

497

1 Q Thank you.

2 ALLEN FULTEN - CROSS EXAMINATION

3 BY MR. HART:

4 Q Smurf, you break into people's houses; right?

5 A No, sir.

6 Q You've got a burglary in Pennsylvania; right?

7 A Yes, sir.

8 Q You've got a burglary in Columbia, South Carolina?

9 A Yes, sir.

10 Q As you just mentioned you've got a grand larceny,
11 pending charges?

12 A Yes, sir.

13 Q Grand larceny is when you steal something from somebody

14 --

15 A Yes, sir.

16 Q -- is that correct?

17 A Yes, sir.

18 Q One of the things you mentioned is that Victor
19 threatened you --

20 A Yes, sir.

21 Q -- to beat up E.J.; right?

22 A No, he didn't threaten me to beat E.J. up.

23 Q He told you to beat E.J. up?

24 A He instruct me to hit him first. It wasn't a threat.

25 Q You mentioned that he called you, and excuse me

1 language, a faggot and a pussy?

2 A Yes, sir.

3 Q He told that to you, E.J. wasn't there was he?

4 A No, sir.

5 Q You could have left the house?

6 A Yes, sir.

7 Q You didn't leave at that time, did you?

8 A No, sir.

9 Q There was nothing keeping you from leaving that house
10 was there?

11 A No, sir.

12 Q You decided to stay of your own free will?

13 A That's right.

14 Q You say when you stripped E.J., what all did you take
15 off E.J.?

16 A Shoes.

17 Q You just took his shoes off?

18 A Yes, sir.

19 Q You left everything else on?

20 A I did. Yes, sir.

21 Q What was on E.J. when you finally saw him?

22 A What you mean?

23 Q Clothing wise?

24 A Before or after we stripped him?

25 Q After?

State v. Victor Smith 9/19/11 - 9/23/11

499

- 1 A He was naked.
- 2 Q He was naked?
- 3 A Yes, sir.
- 4 Q Didn't have any more clothes on at all?
- 5 A No, sir.
- 6 Q When they wrapped him up he didn't have any clothes on?
- 7 A No, sir.
- 8 Q You mentioned that you and E.J. went with one of E.J.'s
- 9 friends to buy weed; is that right?
- 10 A Yes, sir.
- 11 Q You gave E.J. some money to buy weed; is that right?
- 12 A No, sir.
- 13 Q You never gave E.J. \$10?
- 14 A I never said anything about giving E.J. any money.
- 15 Q Y'all didn't go half on the weed?
- 16 A No, sir.
- 17 Q How many people had access to this apartment?
- 18 A As far as being about to access on their own?
- 19 Q Yes, sir.
- 20 A Victor, his baby mother, Jazmine, and his brother
- 21 Darius.
- 22 Q And you lived there?
- 23 A No, sir.
- 24 Q You didn't live in that first bedroom?
- 25 A No, sir. I frequented. I didn't stay there. I didn't

1 get mail, I didn't pay rent. No, sir.

2 Q Well, let's talk about did you spend the night there?

3 A Yes, sir, I spend the night on several occasions.

4 Q Man spent the night there?

5 A Jeremiah on several occasions, yes, sir.

6 Q Jeremiah goes by Man?

7 A Yes, sir.

8 Q And both of you stayed in that very first bedroom; is
9 that right?

10 A Sometimes, yes, sir.

11 Q You mentioned that E.J. was wrapped in a shower
12 curtain?

13 A Yes, sir.

14 Q That shower curtain was in the bathroom connected to
15 the very room that you and Man stayed in; is that right?

16 A That we slept in when we stayed over. Yes, sir.

17 Q And you and Jeremiah, Man, y'all were boys?

18 A Not really boys. Associates, I knew them.

19 Q Y'all weren't really boys?

20 A We weren't close like that.

21 Q Y'all didn't hang out, smoke together?

22 A Yeah, when we were over there, yes, sir, but never
23 alone, outside, no, sir.

24 Q When y'all get arrested y'all was in the same dorm?

25 A No, sir. We didn't get arrested together.