

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Horry County
Steven H. John, Circuit Court Judge

RECEIVED

JUN 19 2013

THE STATE,

RESPONDENT S.C. Supreme Court

V.

JIMMY LEE SESSIONS,

APPELLANT,

THE STATE,

RESPONDENT,

V.

CHRISTOPHER M. STEPHENS,

APPELLANT

RECORD ON APPEAL

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

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

DONALD J. ZELENKA
Assistant Deputy Attorney General

Attorney for Appellant

WILLIAM EDGAR SALTER, III
Senior Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211
(803) 734-3727

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J. GREGORY HEMBREE
Solicitor, Fifteenth Judicial Circuit
Post Office Box 1276
1301 2nd Ave.
Conway, SC 29528-1276
(843) 915-5460
Attorneys for Respondent

INDEX

INDEX	i
TRIAL TRANSCRIPT DATED FEBRUARY 2-6, 2009	1
MOTIONS	24
COURT TO JURY	91
OPENING STATEMENTS BY MR. RICHARDSON	96
OPENING STATEMENTS BY MR. GARDNER	100
OPENING STATEMENTS BY MR. FREDERICK	109
TESTIMONY	
JAMES PEARL	
Direct Examination by Ms. Elder	117
Cross Examination by Mr. Gardner	143
Redirect Examination by Ms. Elder	173
RODNEY TURNER, JR.	
Direct Examination by Ms. Elder	181
Cross Examination by Mr. Frederick	190
Redirect Examination by Ms. Elder	202
Recross Examination by Mr. Frederick	203
COLLIQUY	206
TESTIMONY	
MATTHEW CAMPBELL	
Direct Examination by Mr. Richardson	234
Cross Examination by Mr. Gardner	242
Cross Examination by Mr. Frederick	251
Redirect Examination by Mr. Richardson	262
Recross Examination by Mr. Gardner	264
CHRISTY REGINA PEARL	
Direct Examination by Mr. Richardson	265
Cross Examination by Mr. Gardner	286

TERESA GREENE	
Direct Examination by Mr. Richardson	298
ANTWANN HIGGINS	
Direct Examination by Mr. Richardson	302
Cross Examination by Mr. Gardner	332
Cross Examination by Mr. Frederick	333
Redirect Examination by Mr. Higgins	355
DELWYN SMITH	
Direct Examination by Mr. Richardson	358
RICHARD ARROYO	
Direct Examination by Mr. Richardson	369
Cross Examination by Mr. Gardner	389
JOHN IANNONE	
Direct Examination by Mr. Richardson	390
Cross Examination by Mr. Gardner	423
Cross Examination by Mr. Frederick	424
SUSAN SAFFORD	
Direct Examination by Mr. Richardson	433
Cross Examination by Mr. Gardner	437
Cross Examination by Mr. Frederick	438
BOBBY JORDAN	
Direct Examination by Mr. Richardson	445
Cross Examination by Mr. Gardner	451
VINCENT DORIO	
Direct Examination by Mr. Richardson	451
CAROL ANN ALLEN	
Direct Examination by Mr. Richardson	456
Cross Examination by Mr. Gardner	472
Cross Examination by Mr. Frederick	472
Redirect Examination by Mr. Richardson.....	475
SUSAN SAFFORD	
Direct Examination by Ms. Elder.....	476
Cross Examination by Mr. Gardner	482
Redirect Examination by Ms. Elder	485
Recross Examination by Mr. Gardner.....	486

KENNETH W. DAVIS	
Direct Examination by Ms. Elder	491
THOMAS EDWARD DARNELL	
Direct Examination by Ms. Elder	494
Cross Examination by Mr. Gardner	512
COLLOQUY	516
TESTIMONY	
CRAIG BURISS	
Direct Examination by Ms. Elder	530
Cross Examination by Mr. Gardner	542
Cross Examination by Mr. Frederick	545
Redirect Examination by Ms. Elder	560
Recross Examination by Mr. Gardner	562
MICHAEL JOHN PRODAN	
Direct Examination by Ms. Elder	567
COLLIQUY	
TESTIMONY	
MICHAEL JOH PRODAN	
Cross Examination by Mr. Frederick	607
TRACEY J. THROWER	
Direct Examination by Ms. Elder	615
SUSAN ERIN PRESNELL, M.D.	
Direct Examination by Mr. Richardson	620
MOTIONS	643
TESTIMONY	
DONALD C. GIRNDT	
Direct Examination by Mr. Gardner	665
Cross Examination by Mr. Frederick	669
Cross Examination by Ms. Elder	670
Recross Examination by Mr. Frederick	671
ERIC DILORENZO	
Direct Examination by Mr. Gardner	674

Cross Examination by Mr. Frederick	678
Recross Examination by Mr. Frederick	691
Cross Examination by Ms. Elder	724
 JAMES KERNS	
Direct Examination by Mr. Gardner	743
Cross Examination by Mr. Frederick	745
Cross Examination by Ms. Elder	745
 ELIZABETH DUNMORE	
Direct Examination by Mr. Gardner	747
Cross Examination by Mr. Frederick	749
Cross Examination by Mr. Richardson	752
Redirect Examination by Mr. Gardner	754
Recross Examination by Mr. Frederick	755
 JOSHUA O'NEIL BEST	
Direct Examination by Mr. Gardner	756
Cross Examination by Mr. Frederick	761
 EDWARD LEE WASHINGTON	
Direct Examination by Mr. Gardner	764
Cross Examination by Mr. Frederick	766
Cross Examination by Mr. Richardson	776
Redirect Examination by Mr. Gardner	780
Recross Examination by Mr. Frederick	781
 BELAL HARRIS	
Direct Examination by Mr. Gardner	788
Cross Examination by Mr. Frederick	790
Cross Examination by Mr. Richardson	790
Redirect Examination by Mr. Gardner	794
Recross Examination by Mr. Frederick	795
Recross Examination by Mr. Richardson	798
COLLIQUY	801
 TESTIMONY	
 MANUEL JOHN ORTUNO	
Direct Examination by Mr. Gardner	829
Cross Examination by Mr. Frederick	833
Cross Examination by Ms. Elder	842

COREY LEVAR SPARKMAN	
Direct Examination by Mr. Gardner.....	859
Cross Examination by Mr. Richardson.....	862
MAYUR PATEL	
Direct Examination by Mr. Gardner.....	865
Cross Examination by Mr. Frederick.....	879
Cross Examination by Mr. Richardson.....	879
Redirect Examination by Mr. Gardner.....	882
MRUGESH PATEL	
Direct Examination by Mr. Gardner.....	885
Cross Examination by Mr. Frederick.....	892
Cross Examination by Mr. Richardson.....	893
ROY GRANT	
Direct Examination by Mr. Gardner.....	897
Cross Examination by Ms. Elder.....	899
MELISSA GOMEZ	
Direct Examination by Mr. Gardner.....	901
Cross Examination by Mr. Frederick.....	905
Cross Examination by Ms. Elder.....	918
Redirect Examination by Mr. Gardner.....	926
Recross Examination by Mr. Frederick.....	927
COLLIQUY.....	928
TESTIMONY	
ALICE ANN ALSTON	
Direct Examination by Mr. Frederick.....	940
MOTIONS.....	944
CLOSING STATEMENTS BY MR. GARDNER.....	948
CLOSING STATEMENTS BY MR. FREDERICK.....	972
CLOSING STATEMENTS BY MR. RICHARDSON.....	989
CHARGE BY THE COURT.....	1012
MOTIONS.....	1031
SENTENCING.....	1031

INDICTMENTS (JIMMY LEE SESSIONS) 1051

INDICTMENTS (CHRISTOPHER STEPHENS) 1059

CERTIFICATE OF COUNSEL 1071

STATE'S EXHIBIT #16 (PHOTOGRAPH)

STATE'S EXHIBIT #43 (PHOTOGRAPH)

STATE'S EXHIBIT #52 (PHOTOGRAPH)

STATE'S EXHIBIT #53 (PRO-LIFT PRINTS)

STATE'S EXHIBIT #54 (PRO-LIFT PRINTS)

STATE'S EXHIBIT #63 (PHOTOGRAPH)

STATE'S EXHIBIT #64 (PHOTOGRAPH)

STATE'S EXHIBIT #82 (PHOTOGRAPH)

STATE'S EXHIBIT #88 (TENNIS SHOES)

STATE'S EXHIBIT #97 (PHOTOGRAPH OF SHOE)

STATE'S EXHIBIT #98 (SHOE IMPRESSION)

HAVE BEEN FILED WITH THIS COURT

1 Tell me exactly what you did in this particular -- with these
2 two things.

3 A. Okay. I'll start with State's 97, which is the left
4 shoe of -- which is the shoe in this bag. I've got the left
5 and right, but this is just the left shoe that I have ---

6 THE COURT: When you say that bag, what exhibit is
7 that, sir?

8 A. I'm sorry, Your Honor. This is -- the bag is State's
9 Exhibit 88.

10 THE COURT: All right, sir.

11 A. State's 88. The right side of the chart, which is
12 marked known, is the bottoms of the shoe, of the left shoe.
13 The questioned is the -- one of the gel lifts that was
14 submitted to me and asked to compare it to -- to several pairs
15 of shoes.

16 I then applied fingerprint powder to the bottoms of this
17 shoe, as I did with all the shoes. The shoe was then placed
18 on my foot and actually in this case it was placed on someone
19 else's foot because the size was larger than my foot, so I
20 found someone with the same size foot to be able to wear the
21 shoe, and then I took State's Exhibit 98 and I had the
22 individual step onto this transport film, leaving the
23 photograph, or -- if you will, or just a duplication of the
24 outsole of that shoe. I then took State's Exhibit 98, and in
25 order to begin the examination I would then take State's 98

1 and place it over the gel lift, and in this case it was the
2 heel area of the shoe that I found to be consistent. In other
3 words, it corresponded in physical design, size and shape with
4 the left shoe of State's 88.

5 But the transparent overlay is a very common practice
6 that is used when conducting footwear examinations. It just
7 enables me to better see, and to better line up the different
8 lines and the different circles of the shoe.

9 Q. Now the gel lift that you compared it to, is that
10 marked as a particular item number?

11 A. Yes Ma'am.

12 Q. And what is that marked as?

13 A. It would be -- my item is Item 78.

14 Q. And do you have an indication of where that gel lift
15 came from?

16 A. It was indicated as being lifted from a bathroom floor.

17 Q. And I would like to show you State's Exhibit 61 that
18 has been entered into evidence. Is that your Item 78?

19 A. It is. State's 61 is my Item 78, and it bears the
20 S.L.E.D. laboratory number, as well as my initials, on both
21 the back and the front. And State's 61 is a photograph of the
22 questioned impression that is on this chart.

23 Q. Now you said you received other shoes as well; is that
24 correct?

25 A. Yes Ma'am.

THOMAS EDWARD DARNELL - DIRECT BY ELDER

498

1 Q. And did you process those in the same manner?

2 A. I did.

3 Q. And did you compare them to this gel lift here that you
4 got the match on for State's Exhibit 88? Did you compare that
5 to 61 as well?

6 A. Yes Ma'am, I did.

7 Q. And what were your findings in relation to those other
8 shoes?

9 A. The other shoes I found did not make the impression
10 represented on State's 61.

11 Q. So they were excluded?

12 A. That's correct.

13 Q. I want to show you State's Exhibit 17, 87, 85, and 86.

14 A. Yes Ma'am. Each exhibit just mentioned are -- they all
15 bear my initials, as well as the laboratory number, as well as
16 the item number, and these are, in fact, the -- the other four
17 pairs of shoes that I examined.

18 Q. And these were not consistent with State's Exhibit 61;
19 is that correct?

20 A. That is correct.

21 Q. Did you indicate sizes on these as well, in your
22 Report?

23 A. I did. In the report I have, my Item 68 is a -- I had
24 one pair of Nike shoes at size 8. My Item 69 is a pair of
25 Nike shoes, size 12, and then I have a -- my item 70 is

1 another pair of Nike shoes, size 8, and then I have another --
2 my Item 71 is a pair of Nike shoes, size 7.

3 Q. And did you look at any other impressions from the
4 scene that you matched these shoes with, other than what we've
5 been talking about in State's Exhibit 61?

6 A. Yes Ma'am, I did.

7 Q. And what other impressions did you look at?

8 A. I looked at a total of six gel lifts, and I also looked
9 at a total of two taped lifts, and I compared each of those to
10 the five pairs of shoes.

11 Q. And of those items did you find any others consistent,
12 or exclude it in any of those items?

13 A. I found -- my Item 73, as well as my Item 74, 75, 76,
14 were not identified with either of the pairs of shoes that I
15 was asked to look at, to include all five pairs of shoes.

16 And then I had one -- one gel lift, which was my Item
17 77, was actually two partial to render any sort of a
18 conclusion. And then I had -- I had -- my Item 79 on one of
19 the tape lifts, the impressions were not identified with
20 either of the five pairs of shoes. And then I had -- on the
21 second tape lift, which was my Item 80, there was one
22 impression that corresponded in physical design with four of
23 the pairs of shoes, which had the same outsole design.

24 And I might add that, in that particular impression it
25 was extremely partial, which means that all I could say about

THOMAS EDWARD DARNELL - DIRECT BY ELDER

500

1 that particular impression was that the -- it was -- it
2 corresponded in physical design, and I couldn't go into
3 anything further, such as the size or the shape or anything
4 such as that, just because of the amount of impression was so
5 limited.

6 Q. All right. Let me go back to Item 79. You said that
7 was one Pro-Lift that you compared to; is that correct?

8 A. That's correct.

9 Q. And where is that indicated from?

10 A. It was marked, "Lifted from kitchen floor".

11 Q. And you indicated the results of that were what?

12 A. They -- that particular impression was not identified
13 with either of the pairs of shoes that I had.

14 Q. With these that we have -- that we've just talked
15 about?

16 A. That's correct.

17 Q. Now Item 80 is identified as a Pro-Lifter as well; is
18 that correct?

19 A. That's correct.

20 Q. And where is that identified from?

21 A. Same as the other. It's marked "Lifted from kitchen
22 floor".

23 Q. And you indicated that you did find some that were
24 consistent, but it was very partial; is that correct?

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2)
 3 COUNTY OF HORRY) (07-GS-26-2961) (2962) (2963)
 4) (07-GS-26-2974) (2975) (2976)
 5 STATE) (08-GS-26-2698)
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VERSUS

TRANSCRIPT OF RECORD

JIMMY LEE SESSIONS
 and

February 2, 3, 4, 5, 6, 2009
 Conway, S. C.

CHRISTOPHER STEPHENS

B E F O R E:

HONORABLE STEVEN H. JOHN, Judge; AND A JURY.

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

BRADLY COY RICHARDSON, ESQ.
 DONNA ELDER, ESQ.

ASSISTANT SOLICITOR FOR HORRY COUNTY
 ATTORNEY FOR STATE

JOHNNY GARDNER, ESQ.
 ATTORNEY FOR DEFENDANT, SESSIONS

BOBBY G. FREDERICK, ESQ.
 LAURA L. HILLER, ESQ.
 ATTORNEYS FOR DEFENDANT, STEPHENS

DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

VOLUME 3 OF 4
 (SEE VOLUME 1 FOR INDEX)

1 A. I did.

2 Q. And which shoe -- or let me ask you this, were one of
3 the pair of shoes that you found consistent with that Pro-
4 Lifter from the kitchen, also State's Exhibit 88, shoes
5 belonging to Jimmy Lee Sessions?

6 A. Yes, it was.

7 Q. And they were also consistent with a few other pairs;
8 is that correct?

9 A. That's right.

10 Q. And those are from the kitchen?

11 A. Yes Ma'am.

12 Q. Any other items you compared?

13 A. That was all that I had at the time.

14 Q. And just so I understand, the only shoes that you
15 received that matched any of the prints in the bathroom ---

16 MR. GARDNER: Objection to the term matched.

17 Q. That were compared to State's Exhibit 66, were the
18 shoes, State's Exhibit 88, identified as Jimmy Lee Sessions';
19 is that correct?

20 A. That's correct.

21 MS. ELDER: One moment, Your Honor.

22 Q. Agent Darnell ---

23 THE COURT: Just a second.

24 Q. Agent Darnell, you indicated that you could give an
25 opinion of consistent.

THOMAS EDWARD DARNELL - DIRECT BY ELDER

502

1 A. That is correct.

2 Q. Explain to me why that opinion.

3 A. When -- when I conduct a footwear examination, one of
4 the first things I look for is to see if it's the same
5 physical design, then I look to see if it's the same size and
6 shape. That -- those characteristics fall under the class
7 characteristics. The next category of characteristics is what
8 we refer to as random identifying characteristics which makes
9 a particular shoe unique, nicks, cuts on the bottoms of your
10 shoes, things that have been taken away from the shoe, so to
11 speak, or in some cases, things that have been added. If you
12 have a nail on the bottom of your shoe, or a rock or so forth,
13 those types of characteristics are called random identifying
14 characteristics which, like I said, would make a particular
15 shoe unique.

16 In this particular case I was unable to find any random
17 identifying characteristics to where I could positively
18 identify the shoe, however, I could determine that it did
19 consist in that it had the same physical design, same size and
20 the same shape when compared to the questioned impression that
21 I was asked to look at, so therefore my result would be that
22 this shoe certainly could have made this impression, or any
23 other shoe with the same physical size, design and shape.

24 Q. Tell me about wear pattern. How does that affect your
25 examination?

1 A. Wear patterns would actually somewhat fall under the
2 class characteristics to a degree. You know, everyone walks
3 differently on their shoes, and you know -- but one of the
4 most common areas of the shoe that wears would be the heel.
5 You know, most of us will drag our heels somewhat, and cause
6 that heel to wear. Some of us may walk on the sides of our
7 shoes and cause the balls of the shoes to wear, but wear
8 characteristics are taken into consideration whenever I do a
9 comparison, and if I can find wear characteristics, I can't
10 always -- I can't positively identify it with just wear alone,
11 because it's so common, but that does help me, in some cases,
12 to be able to eliminate or include certain shoes when doing a
13 comparison.

14 Q. And did you take into account, when making your
15 comparison on State's Exhibit 88, the Jimmy Lee Sessions
16 shoes', wear pattern?

17 A. I did.

18 Q. And tell me how that factored into your opinion that
19 they were consistent.

20 A. In this particular case, when I made the test
21 impression, and of course -- and then when I could look at the
22 shoe itself, before I even made the test impressions, I did
23 see that there was some wear on the heel. Now, that
24 particular wear pattern is not visible in the questioned
25 impression, which that can be attributed to a number of

THOMAS EDWARD DARNELL - DIRECT BY ELDER

504

1 factors. You have to consider the time frame from when the
2 incident took place, and the time that the shoes were
3 collected or turned in for examination, and you also have to
4 consider the fact that this questioned impression is an
5 accidental impression. In other words, my test impression was
6 made in a controlled environment. The questioned impression
7 at the crime scene was just from normal walking and normal
8 stepping, but in this case I did have some wear in the shoes
9 that I couldn't particularly see in this questioned
10 impression, so because of that I could not really go any
11 further in saying that this shoe, and this shoe only, made the
12 impression, so my result is simply that it could have made
13 (sic) this shoe, or another shoe just like it, with the same
14 design, size and shape.

15 Q. And wear pattern, if that impression was made in June
16 of '06, and these shoes marked as State's Exhibit 88 were
17 being worn until April of May of 2007, would you expect some
18 wear?

19 A. Absolutely, and in fact, the -- whenever I do a
20 footwear comparison, the sooner I get the shoes the greater
21 chance I have of being able to make a positive identified, so,
22 in essence, the longer that the shoes are being worn, or the
23 longer that the shoes are out there, certainly has an affect
24 on whether or not I can make a positive comparison as in this
25 case.

1 Q. And even considering all of that, the wear pattern, you
2 were still able to say consistent the Jimmy Lee Sessions,
3 State's Exhibit 88, shoes, were consistent with the gel
4 imprint, 61, State's Exhibit, from the bathroom at the crime
5 scene?

6 A. Absolutely.

7 MS. ELDER: We have no further questions, Your Honor.

8 THE COURT: All right, Mr. Gardner.

9 MR. GARDNER: Thank you, Judge.

10 CROSS-EXAMINATION BY MR. GARDNER:

11 Q. Agent Darnell, I've just got a couple of questions I
12 wasn't real sure about.

13 A. Yes sir.

14 Q. We have five shoes?

15 A. Yes sir, five pair of shoes.

16 Q. And we have -- is it two prints that had similar
17 characteristics ---

18 A. Yes sir.

19 Q. ---Or consistency?

20 A. That's correct. Of all the ones I looked at there were
21 two that were -- had some sort of correspondence.

22 Q. Okay. I'm not trying to trick you. I really don't
23 know myself, but we've got -- it's two prints taken from the
24 crime scene and five shoes compared ---

25 A. It's ---

THOMAS EDWARD DARNELL - CROSS BY GARDNER

506

1 Q. ---Or a bunch taken from the crime scene, compared, if
2 two are the ones we are talking about?

3 A. Yes sir, there were a number of impressions that were
4 submitted, to include the two that we are talking about, and
5 then there were several pairs of shoes that were submitted.

6 Q. Got you. Okay. And the prints -- one print, if I
7 understood it, is consistent with Exhibit Number -- State's
8 Exhibit Number 88, and the other print is consistent with 88,
9 plus three other sets of shoes ---

10 A. That would be correct, yes sir.

11 Q. ---That we've got here?

12 A. Correct.

13 Q. All right. So that second print is consistent with
14 those shoes, that means it could have been those shoes that
15 made it, could have not been?

16 A. That would be correct. I would have to say that that
17 particular impression that was lifted from the -- I believe it
18 was the kitchen floor, could have been made by either of those
19 four pairs of shoes.

20 Q. Okay All right. And when you talk about general
21 characteristics of a shoe, not the individualized parts of the
22 shoe, size, that doesn't -- when you talk about the size of
23 the shoe, you are not talking about the size that you buy at
24 the store, size eleven, size twelve, size eight; you are
25 talking about the size of the impression it makes, right?

1 A. For this purpose -- for the purpose of this examination
2 that would be correct. I'm talking about the -- just the
3 overall size of the impression of -- would -- corresponded to
4 that shoe. I'm not referring to whether it's a size twelve or
5 eleven or ---

6 Q. Yes, that you might go to a shoe store. Say, I wear a
7 size eleven, so I need a size eleven; we are talking about ---

8 COURT REPORTER: Excuse me, Mr. Gardner.

9 Q. We are talking about something different ---

10 MR. GARDNER: I apologize, Ma'am.

11 Q. That's something totally different. That's the
12 impression it makes?

13 A. That's correct, because one has to understand that the
14 outsoles of shoes -- you could have a size -- it generally
15 goes up a half a size either way. In other words, you can
16 have the -- you can have the outsole on the bottom of a size
17 twelve, and could also be on the bottom of a size eleven and a
18 half, so -- but in this case, I'm not concerning myself with
19 whether the shoe is a size twelve, or whether it's a size
20 eight. I'm simply looking at the size of the impression.

21 Q. That's right, and that's what I thought, so that's what
22 we are looking at. Okay.

23 A. Correct.

24 Q. The other thing is, the imprints taken from the crime
25 scene, some of them -- the majority of them were gel lifters.

1 Is that them right there?

2 A. That was one, yes sir.

3 Q. Okay. That's the gel lifter, and the other ones were
4 tapes. Tape lifters, is that the right nomenclature?

5 A. Yes sir. The manufacturer's name is actually a Pro-
6 Lifter, but it's -- essentially what it -- it's an adhesive
7 tape that was applied to the floor and lifted up.

8 Q. All right. But we can't -- we can't date that to the
9 crime scene? These prints that were lifted with the Pro-
10 Lifters and with the tape, they could have been lift -- they
11 could have been placed at the crime scene way before the
12 actual crime occurred?

13 A. I could certainly -- you know, I would certainly think
14 so. I mean, I have no way of knowing -- I can't look at the
15 questioned impression and tell you when they were put there,
16 or anything such as that, so, yes sir, I would have to agree
17 with you, there. Yes sir.

18 MR. GARDNER: Thank you, sir.

19 THE COURT: All right, Mr. Frederick.

20 MR. FREDERICK: I have no questions. Thank you.

21 THE COURT: All right. Redirect.

22 MS. ELDER: No, Your Honor. We would ask that this
23 witness be excused.

24 MR. GARDNER: No objection, Your Honor.

25 THE COURT: Any objection?

1 MR. FREDERICK: No objection.

2 THE COURT: All right. Very good.

3 All right, sir, you are released from your Subpoena.

4 You may go back to your regular duties.

5 A. Thank you, sir.

6 MR. FREDERICK: Judge, can we approach for ---

7 THE COURT: Absolutely. Y'all come up.

8 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

9 THE COURT: All right, ladies and gentlemen of the
10 jury, we are going to take ---

11 FOREMAN: Some of us are still having a problem hearing.

12 THE COURT: Hearing. All right. So, I'll talk to them
13 in just a minute.

14 Y'all go ahead and take a short break. There's a matter
15 I need to take up with the lawyers outside your presence, so
16 we'll take a break at this time.

17 Thank you.

18 Thank you, sir.

19 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right. Why don't we just take a short
22 break for about five minutes or so, then we will come back and
23 we will deal with the issue that we need to before the jury
24 comes back in. All right.

25 THE COURT: All right, Solicitor.

JURY OUT/ON RECORD

510

1 MS. ELDER: Yes, Your Honor. Before we bring out the
2 jury we have a matter of the N.C.I.C., Your Honor, we want to
3 review on the -- a potential witness that's scheduled to be
4 called this afternoon.

5 THE COURT: All right, Ma'am.

6 MS. ELDER: I have provided that to the Defense
7 attorneys. It's on Craig Burris.

8 Mr. Taylor is also present, Your Honor. He currently
9 represents Mr. Burris on his pending charges.

10 THE COURT: Okay. And what is the record that the
11 State has identified?

12 MS. ELDER: Your Honor, it's my understanding that --
13 going straight his convictions, there is a 2002 conviction in
14 Federal Court for felony possession of a fire -- felon in
15 possession of a firearm that would fall within the ten years.
16 It would fall in the plus one category, Your Honor.

17 THE COURT: When was that?

18 MS. ELDER: It's a 2003 -- I'm sorry, pled guilty -- he
19 was sentenced February 26, '05. He was sentenced to thirty-
20 six months. I think that is on page -- these are very
21 difficult to read, Your Honor. Page seven, I believe counting
22 from the copy I gave the Court.

23 MR. FREDERICK: Page one of the second group, I think,
24 at page one, two ---

25 MS. ELDER: Would you rather me go down all of them,

1 Your Honor? Would that be easier?

2 THE COURT: No Ma'am. No, it's -- this one is -- I'm
3 looking at it.

4 MR. FREDERICK: It's about six or seven pages in it.

5 THE COURT: All right. Felon in possession of a
6 firearm and that was 2/26/05.

7 MS. ELDER: That's when he was sentenced, yes sir, Your
8 Honor.

9 THE COURT: All right. Go ahead.

10 MS. ELDER: Thank you.

11 MR. FREDERICK: Was he not convicted of the conspiracy
12 to distribute cocaine?

13 MS. ELDER: I believe those are indicated as dismissed.

14 MR. FREDERICK: It says unknown.

15 THE COURT: I don't know. I -- what I have in front of
16 me, under conspiracy to distribute crack cocaine greater than
17 five hundred grams, says disposition, 8/28/02, dismissed,
18 conspiracy to distribute cocaine, 8/28/02, dismissed.

19 MR. FREDERICK: I see it.

20 THE COURT: All right. Go ahead.

21 MS. ELDER: Thank you, Your Honor.

22 Continuing on, there is a -- I'm trying to make sure I
23 don't miss any of them, Your Honor. There -- Your Honor,
24 there is a 1996 conviction, toward the back. It's a weapon
25 violation. He received a thirty-three month prison sentence

JURY OUT/ON RECORD

512

1 with three years supervised release. We believe that would
2 fall within the Rule as well.

3 THE COURT: All right. Go to the one that's -- the one
4 that's page one-oh-four ---

5 MS. ELDER: Yes sir.

6 THE COURT: ---And it says Davis Craig, on the front
7 page.

8 MS. ELDER: Yes. That -- it's Craig Davis, Your Honor.

9 THE COURT: Craig Davis. Okay.

10 MS. ELDER: Yes sir.

11 THE COURT: All right. Go to the second page.

12 MS. ELDER: Yes sir.

13 THE COURT: And -- All right. So you are saying that
14 burglary -- or is it -- I'm sorry, was it the second page or
15 was it the third page?

16 MS. ELDER: I believe there's -- page two of four there
17 is indicated a ---

18 THE COURT: I'm sorry. On page --- '84, that was the --
19 okay, so you are saying without the -- without the ten years
20 then. All right. Those convictions. All right.

21 All right, so you went to what page now?

22 MS. ELDER: It's indicated as four of six.

23 MR. FREDERICK: Judge ---

24 THE COURT: Yes sir.

25 MR. FREDERICK: ---Back to the page you were looking

1 at, I just wanted to make sure -- page two of four of the
2 second you were just referring to, it says a bench warrant was
3 issued, disposition pending. That was '92, and I understand
4 if he went to prison on that at some point, then the time
5 would run from the time he was released or the time his parole
6 was done. I'm trying to ---

7 THE COURT: I don't see that. If you would point that.
8 You have to point that out to me. I don't see that in -- on
9 there.

10 MR. FREDERICK: Page two of four ---

11 THE COURT: Yes sir.

12 MR. FREDERICK: ---In the last section you were looking
13 at.

14 THE COURT: The last -- the bottom of that.

15 MR. FREDERICK: It's -- you said Craig Davis. At the
16 bottom of the page, robbery second, murder two, attempted
17 murder ---

18 THE COURT: I must be looking at a completely different
19 page than you are looking at.

20 MR. FREDERICK: Bench Warrant issued.

21 THE COURT: All right. I must be -- page two of four
22 that I have here is from 1984, 3/20/84, robbery first, Class
23 (B) felony, convicted upon plea of guilty.

24 MS. ELDER: Your Honor, if you go past that, that page
25 four -- those four pages, there's another, I believe ---

JURY OUT/ON RECORD

514

1 THE COURT: Another set of four?

2 MS. ELDER: Yes sir, Your Honor.

3 THE COURT: All right. So it's a different set of four
4 pages.

5 MS. ELDER: Yes sir. They divided from Federal
6 convictions, out-of-state convictions, South Carolina
7 convictions.

8 THE COURT: All right. So you are talking about page
9 two now, of that one?

10 MR. FREDERICK: It's page two of four. It must be the
11 one after -- after that. At the bottom of the page I'm
12 looking at it says "Attempted murder two, robbery first,
13 robbery second". The date on that is August 27th, 1992. I
14 says, "Bench warrant issued, disposition pending".

15 THE COURT: And then right after that it says, "Bench
16 warrant vacated" on the next page?

17 MS. ELDER: Yes sir. And I believe he was committed --

18 -

19 THE COURT: 3/25/93, bench warrant vacated.

20 MR. FREDERICK: Yes sir. Yes sir.

21 MS. ELDER: And he was committed following that, for
22 5/21/93 he was committed for a weapons offense, Your Honor,
23 that we would say would be outside of the period.

24 THE COURT: So I would -- that is my understanding of
25 that -- which would bring you up as a bench warrant, and then

1 it was -- bench warrant was vacated the next year.

2 MR. FREDERICK: What was the disposition of the murder
3 and armed robbery charges?

4 THE COURT: Don't see it. But those are from 1993. I'm
5 not going to have them question him from 1993, when there is
6 no indication that he was convicted of those.

7 Continue on.

8 MS. ELDER: I believe the one I was talking about, Your
9 Honor, was in that next group of one through six. It's on
10 page ---

11 THE COURT: One through six.

12 MS. ELDER: Yes sir.

13 THE COURT: Hold on a second. What page are you on?

14 MS. ELDER: Page four.

15 THE COURT: That was the ---

16 MR. FREDERICK: Weapon violation.

17 THE COURT: Well, at the top of the page it's
18 possession of cocaine, sentence two years.

19 MS. ELDER: That was the 1986 conviction, Your Honor.

20 THE COURT: All right. Very good. All right.

21 MR. FREDERICK: The weapon violation was 1996.

22 MS. ELDER: Yes sir, and his sentence would have been
23 thirty-three active months, with three years supervised
24 release. We would recognize ---

25 THE COURT: So that would -- that would come in. All

JURY OUT/ON RECORD

516

1 right.

2 MS. ELDER: Yes sir.

3 THE COURT: All right. Good.

4 MR. FREDERICK: That would count, is that right?

5 THE COURT: Yes sir.

6 MS. ELDER: Yes sir.

7 THE COURT: Yes sir.

8 MS. ELDER: And Your Honor, there's another possession
9 of a weapon in 1995.

10 THE COURT: Fifty-seven months custody, three years
11 supervised release, so that would qualify also then.

12 MS. ELDER: Yes, on page -- that would be page five,
13 Your Honor?

14 THE COURT: On the top of page five.

15 MS. ELDER: Yes.

16 THE COURT: All right.

17 MS. ELDER: And Your Honor -- Your Honor, we would --
18 we would say that would be the extent of those two -- those
19 three convictions would be the extent of what is permissible
20 under the Rule.

21 THE COURT: All right. What's your position, Mr.
22 Gardner?

23 MR. GARDNER: We've been looking at it, Judge, and
24 that's all we see.

25 THE COURT: All right, sir.

1 Mr. Frederick.

2 MR. FREDERICK: That's all I see.

3 THE COURT: All right. Very good.

4 MS. ELDER: Your Honor, there is -- I want to make sure
5 that we are clear. He is under current charges, that those
6 would not be addressed.

7 THE COURT: Okay. What current charges does he have
8 now?

9 MS. ELDER: He's got a pending murder, Your Honor.

10 THE COURT: I'm sorry.

11 MS. ELDER: He's got a pending murder charge.

12 THE COURT: Okay. In the State of South Carolina or
13 where?

14 MS. ELDER: Here, yes sir.

15 THE COURT: Okay.

16 MS. ELDER: He's actually incarcerated right now for
17 that. That murder charge came about this year in -- I'm sorry
18 -- in '08. He gave a statement to police prior to that
19 charge, or that -- him being charged with that offense. He
20 gave us a statement -- statement to the police regarding this
21 case, and what he's going to testify today, in April of '07.

22 THE COURT: All right. What's your position, Mr.
23 Gardner?

24 MR. GARDNER: I think we should be able to impeach him
25 on -- as part of the motivation impeachment that Mr. Frederick

JURY OUT/ON RECORD

518

1 has talked about all week, because he's obviously testifying
2 in hopes of favorable treatment today at ---

3 THE COURT: Well, I don't know if he is or not, but I
4 understand your position.

5 Mr. Frederick.

6 MR. FREDERICK: I don't think there's any doubt about
7 it, Judge.

8 THE COURT: All right. Solicitor, I'm going to allow
9 them to ask -- or you can ask, and certainly they can ask, if
10 he is currently facing murder charges, and then obviously
11 y'all are welcome, or anyone is welcome to point out when he
12 gave the statement, when he was charged, and any differences
13 between the prior statement that he gave before he was
14 charged, and his statement today, whatever testimony he may
15 give today. All right.

16 MS. ELDER: Yes sir.

17 MR. FREDERICK: And Judge, this -- also point out, when
18 he gave the statement he was in jail, and it was not on this
19 charge. It was on another charge. What charge was that that
20 he was being held on?

21 MS. ELDER: He was -- those were the A.B.W.I.K.,
22 kidnapping charges that were dismissed.

23 MR. FREDERICK: It was on -- well, A.B.W.I.K. and
24 kidnapping.

25 THE COURT: Wait a minute. What -- where is that in

1 his -- in the ---

2 MS. ELDER: Your Honor, that -- I believe that is on
3 page -- I don't see -- he may have had it expunged, Your
4 Honor, and taken off. It was -- I know that it was a
5 kidnapping charge. It's referenced in the Report, and it's
6 also referenced in the Report that those charges were
7 dismissed because he passed the polygraph, and he had -- I
8 believe he had an alibi, and he passed the polygraph, Your
9 Honor.

10 MR. FREDERICK: Judge ---

11 THE COURT: Yes sir.

12 MR. FREDERICK: ---She sent a letter to Investigator
13 DiLorenzo in April of 2007, specifically saying that he wanted
14 to talk to him because he wanted help on his kidnapping
15 charge. He said that ---

16 THE COURT: I'm going to allow you to bring that up.

17 MR. FREDERICK: Okay. Just ---

18 MS. ELDER: Are we going to be allowed to get into why
19 that charge was dismissed, and him passing the polygraph?

20 THE COURT: That he has an alibi -- no, not that he
21 passed the polygraph, no. You are not going to mention the
22 word polygraph. He had an alibi, and based upon the evidence
23 the police determined that he was not the person that
24 committed the crime, and therefore the charges were dropped,
25 but you will not mention the word polygraph to this jury.

JURY OUT/ON RECORD

520

1 All right. Ask the jury to come in, please.

2 MS. ELDER: Can Mr. Taylor, who is here, have an
3 opportunity to caution him on the use of that, Your Honor?
4 I have not done so at this time.

5 THE COURT: Well, y'all do it real quick, because the
6 jury is coming in.

7 MR. FREDERICK: Judge, we have a ---

8 MR. GARDNER: If he's the next witness we have a matter
9 of law to be taken up, we alluded to in chambers.

10 Is he the next witness?

11 MR. FREDERICK: Question, Judge, is, if they plan on
12 eliciting ---

13 THE COURT: Go tell them -- go stop the jury.
14 I'm sorry. Go ahead.

15 MR. FREDERICK: If they plan on eliciting testimony
16 about statements made at the Jet Age Night Club, I think it
17 needs to be addressed in limine, because they can tell us if
18 they intend on eliciting those statements or not. If they are
19 just going to ask him about ---

20 THE COURT: Shut the door.
21 Go ahead.

22 MR. FREDERICK: If they are just going to ask him about
23 what he said regarding an alleged conversation at the jail,
24 then we have no problem. If they intend to elicit testimony
25 from him regarding a conversation with Jimmy Lee Sessions at

1 the Jet Age Nightclub, then as we addressed prior to trial, we
2 have a rather serious issue because ---

3 THE COURT: What is that issue?

4 MR. FREDERICK: In his original statement he told them
5 that Jimmy Lee Sessions told him all about the Friendly's
6 robbery at the Jet Age Nightclub. Later, from our
7 understanding -- our investigator has gone and spoken with him
8 -- he's now telling the prosecutors that Jimmy Lee Sessions
9 told him about this murder at the Jet Age Nightclub. His
10 story changed, and if he is to testify as to -- if he were to
11 testify as to what happened, or any alleged conversation at
12 the Jet Age Nightclub, Mr. Gardner and myself have to impeach
13 him with the substance of what he said the first time, because
14 it is clearly an inconsistent statement.

15 THE COURT: Okay.

16 MR. FREDERICK: That would bring in the issue of the
17 Friendly's robbery, Judge, and that puts us in a dilemma that
18 we have no way out of. We either are going to have to impeach
19 his testimony, and tell the jury that there was a discussion
20 about a friendly's robbery that he says that Jimmy Lee
21 Sessions confessed to, or we are going to have to not impeach
22 his testimony, so we are looking at a choice between violating
23 one or the other of two rights.

24 THE COURT: Well, I don't see --- I don't see that,
25 because you would be able to then ask -- and there is no

JURY OUT/ON RECORD

522

1 question from the State that these individuals were not
2 charged with that offense, correct ---

3 MS. ELDER: That's correct, Your Honor.

4 THE COURT: ---And they have not been charged by the
5 State, and that -- that's clearly the case, so you will be
6 able to elicit that testimony, but I don't see that as being -
7 - putting you in a position where you cannot cross-examine the
8 witness.

9 MR. FREDERICK: Just to make sure I'm clear for the
10 record, Judge. We are going to be forced to elicit testimony
11 regarding a prior uncharged robbery.

12 THE COURT: I'm not going to force you to do anything.

13 MR. FREDERICK: If that witness takes the stand, and
14 testifies as to a conversation at the Jet Age Nightclub, then
15 we either have to not cross-examine that witness, and let his
16 testimony stand without challenging it, which violates both of
17 our clients' Fourteen Amendment Right to Confrontation, or we
18 have to challenge that testimony and introduce evidence of a
19 prior uncharged robbery ---

20 THE COURT: Well, not challenging it doesn't violate
21 their rights. That's your decision. That's a tactical
22 decision that you make. You have all the ability, and the
23 right to challenge it in any way you deem proper. That is
24 your choice. I'm not having you make any choice. I'm going
25 to allow the witness to testify, and you can challenge him or

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

523

1 not challenge him, based upon your decision, and your tactical
2 decisions as to what you decide to do or not to do, but that's
3 your choice.

4 MR. FREDERICK: And I would ask the Court, outside the
5 presence of the jury, to allow us to make a record of what we
6 have to impeach that witness with.

7 THE COURT: We can do that when we are done with the
8 testimony today and we have let the jury go. All right.

9 Let's call the jury in.

10 MS. ELDER: Could we bring him out, Your Honor, and
11 have him sit ---

12 THE COURT: I mean, you are going to be asking him that
13 he's currently incarcerated, correct?

14 MS. ELDER: Yes sir, Your Honor. Just like we had with
15 Antwann Higgins. That's ---

16 THE COURT: All right.

17 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
18 JURY.)

19 THE COURT: All right, Solicitor, your next witness,
20 please.

21 MS. ELDER: Your Honor, the State would call Craig
22 Burris.

23 THE COURT: Please come around and be sworn, sir.

24 CRAIG BURRIS, being first duly
25 sworn, testifies as follows:

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

524

1 THE COURT: Go ahead, Solicitor.

2 MS. ELDER: Thank you, Your Honor.

3 DIRECT-EXAMINATION BY MS. ELDER:

4 Q. Your name is Craig Burris; is that correct?

5 A. Yes Ma'am.

6 Q. Where are you currently at?

7 A. J. Reuben Long Detention Center.

8 Q. Is that the Detention Center?

9 A. Yes Ma'am.

10 Q. Now, I want to get a few things out of the way first
11 about your record. You have a conviction for a felon in
12 possession of firearm back -- looks like you were sentenced in
13 2005; is that correct?

14 A. Yes Ma'am.

15 Q. You have another weapon violation, looks like you
16 received the sentence for in 1994; is that correct?

17 A. Yes Ma'am.

18 Q. And another weapon violation in 1995; is that correct?

19 A. Yes Ma'am.

20 Q. And right now you are currently incarcerated for a very
21 serious offense; is that correct?

22 A. Yes Ma'am.

23 Q. And that's murder?

24 A. Yes Ma'am.

25 Q. You were arrested for that August 6, of 2008; is that

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

525

- 1 right ---
- 2 A. Yes Ma'am.
- 3 Q. ---For an offense that occurred around that time?
- 4 A. Yes Ma'am.
- 5 Q. I want to take you -- well, let me ask you this first.
- 6 Did you know Jamilla Hightower and Monica Wall?
- 7 A. Yes Ma'am.
- 8 Q. Do you know who they were?
- 9 A. Yes Ma'am.
- 10 Q. Did you live in the Myrtle Beach area, or grow up in
- 11 the Myrtle Beach area?
- 12 A. I lived in the Myrtle Beach area.
- 13 Q. So did you know them just in passing?
- 14 A. Yes Ma'am.
- 15 Q. Do you recall hearing about their deaths ---
- 16 A. Yes Ma'am.
- 17 Q. ---Sometime in '06 ---
- 18 A. Yes Ma'am.
- 19 Q. ---In June; is that correct?
- 20 A. Yes Ma'am.
- 21 Q. And do you know Jimmy Lee Sessions and Christopher
- 22 Stephens?
- 23 A. Yes Ma'am.
- 24 Q. How well do you know them?
- 25 A. Socialize with them.

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

526

1 Q. Party with them?

2 A. Somewhat.

3 Q. I want to take you back to June of 2006. At some point
4 in time after hearing -- shortly hearing the death of Jamilla
5 Hightower and Monica Wall, did you have a conversation with
6 Jimmy Lee Sessions at the Jet Age?

7 A. Yes Ma'am.

8 Q. What is the Jet Age?

9 A. A little social club.

10 Q. And what kind of things do you do at the Jet Age?

11 A. Listen to music, drink, hang out.

12 Q. And do you recall being there?

13 A. Yes Ma'am.

14 Q. Anything jog your memory about June of '06, that you
15 recall being there at that particular time?

16 A. Well, it was a regular night, just hanging out in
17 there, drinking, socializing.

18 Q. Were you in there -- were you incarcerated thereafter?

19 A. '06?

20 Q. Yes..

21 A. Yes Ma'am.

22 Q. So let me take you to the Jet Age that night, and you
23 had a conversation with Jimmy Lee Sessions.

24 A. Yes Ma'am.

25 Q. What was the general gist of that conversation?

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

527

- 1 A. Hanging out.
- 2 Q. Y'all hanging out together at Jet Age?
- 3 A. Yes, for a few minutes, for a little while. He came
- 4 through, stopped. Like I said, it's just a -- like a pit
- 5 stop. You just come through and hang out, have a couple of
- 6 beers, or whatever.
- 7 Q. And did you see him later that evening?
- 8 A. Yes Ma'am.
- 9 Q. Where did you see him at?
- 10 A. "LeeLee's" house.
- 11 Q. And who is "LeeLee"? Is he associate/friend?
- 12 A. Yes.
- 13 Q. Where does he live?
- 14 A. Sandy Gate, in Myrtle Beach.
- 15 Q. And how did you go -- how did you come to be at
- 16 "LeeLee's" house that night?
- 17 A. I was invited.
- 18 Q. By who?
- 19 A. "Snagger".
- 20 Q. Do you remember if this was a Thursday, Friday?
- 21 A. Thursday night.
- 22 Q. Thursday night, after midnight?
- 23 A. Yes Ma'am. Friday morning.
- 24 Q. That would be Friday morning?
- 25 A. Yes Ma'am.

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

528

- 1 Q. And why did Jimmy Lee tell you to come over there?
- 2 A. So we could party, get high together.
- 3 Q. And did you go?
- 4 A. Yes Ma'am.
- 5 Q. Did you do drugs at that time?
- 6 A. Yes Ma'am.
- 7 Q. What kind of drugs did you do?
- 8 A. Cocaine, Marijuana.
- 9 Q. And did you, in fact, leave Jet Age and go to
- 10 "LeeLee's" house?
- 11 A. Yes Ma'am.
- 12 Q. When you got there who was there?
- 13 A. Jimmy Lee, "LeeLee", I think his girlfriend, somebody
- 14 else, and Chris.
- 15 Q. And Chris Stephens, the Defendant?
- 16 A. Yes Ma'am.
- 17 Q. Do you recall, or do you remember anything about what
- 18 Jimmy Lee Sessions had on that night?
- 19 A. No Ma'am.
- 20 Q. What about Chris Stephens, do you remember any of that?
- 21 A. No Ma'am.
- 22 Q. Okay. You went over to "LeeLee's" house. Did you
- 23 party there?
- 24 A. Yes Ma'am, for a little while.
- 25 Q. What kind of things did you do there?

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

529

1 A. Sniff cocaine and smoke weed.

2 Q. Whose cocaine were you sniffing?

3 A. "Snagger's", Jimmy Lee.

4 THE COURT: You need to speak up just a little bit.

5 A. Jimmy Lee.

6 Q. All right. Did Jimmy Lee Sessions give you the
7 cocaine?

8 A. Yes Ma'am.

9 Q. Did he tell you where he got it from?

10 A. No Ma'am.

11 Q. Tell me about the amount of cocaine he was letting you
12 share with him.

13 A. He gave me about a gram or two, equivalent in the
14 industry about -- about a Hundred Dollars worth.

15 Q. Now, you've got to tell us, is that -- is that normal?
16 Is that abnormal? Do you usually share with your friends like
17 that, and share a Hundred Dollars worth at a time?

18 A. Not really, unless you've got it like that, I mean, a
19 Hundred Dollars, I mean, you don't just throw away a Hundred
20 Dollars unless ---

21 Q. What were you thinking at the time, when he gave you
22 that?

23 A. He was partying, celebrating.

24 Q. Did he tell you what he was celebrating?

25 A. He said he just came off, like, hit a lick, just like a

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

530

- 1 robbery or something.
- 2 Q. And what's a lick?
- 3 A. A robbery.
- 4 Q. Is it a particular kind of robbery?
- 5 A. Yes Ma'am.
- 6 Q. Is it a drug robbery?
- 7 A. Could be.
- 8 Q. And what was he doing while -- he gave you the cocaine;
- 9 is that right?
- 10 A. Yes Ma'am.
- 11 Q. And what was he doing while you were in there partying?
- 12 A. Just partying, moving around, talking to the other
- 13 people that was there.
- 14 Q. And did you have any other conversation about this lick
- 15 that he just hit?
- 16 A. No Ma'am.
- 17 Q. After y'all got through partying what did you do?
- 18 A. Time to go home.
- 19 Q. Was Jimmy Lee and Chris Stephens talking to each other
- 20 there?
- 21 A. Yes Ma'am.
- 22 Q. Do you know what they were talking about?
- 23 A. No Ma'am.
- 24 Q. Where were they in connection with you? If you were in
- 25 one room, where were they?

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

531

- 1 A. In the bedroom, bathroom.
- 2 Q. What were they doing back there; do you know?
- 3 A. No Ma'am.
- 4 Q. How long did you stay there?
- 5 A. Couple of hours.
- 6 Q. Was Jimmy Lee and Chris there with you during that
- 7 time?
- 8 A. Yes Ma'am.
- 9 Q. Were there other people coming out and in?
- 10 A. Chris was going in and out.
- 11 MS. ELDER: One moment, Your Honor.
- 12 THE COURT: Yes Ma'am.
- 13 Q. Before we leave that particular evening, just a general
- 14 question. Why would Jimmy Lee offer to give you cocaine?
- 15 What was y'all's relationship?
- 16 A. That was basically what it was based on.
- 17 Q. Drugs?
- 18 A. Yes Ma'am.
- 19 Q. Had that been going on for a while between you two?
- 20 A. Well, occasionally.
- 21 Q. All right. Y'all hung out. Y'all did stuff like that?
- 22 A. Yes Ma'am.
- 23 Q. All right. So that wasn't the first time?
- 24 A. It wasn't that abnormal.
- 25 Q. All right. Was it the first time he gave you that

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

532

1 much?

2 A. Yes Ma'am.

3 Q. All right. Moving on from that night, after that, did
4 you have an occasion to talk, to have a conversation with
5 Jimmy Lee Sessions about Jamilla Hightower and Monica Wall's
6 deaths?

7 A. Briefly.

8 Q. All right. Tell me about that. Tell me about what
9 that conversation -- how that -- what -- what was that
10 conversation?

11 A. You mean how did it come about?

12 Q. Yes. Let's start there. How did it come about?

13 A. Okay. Well, first of all, me and Jimmy Lee, we have
14 the same nickname. They also call me "Snagger" too. It's a
15 nickname from when I was a child. I used to like watching the
16 cartoon, so ---

17 Q. What cartoon is that?

18 A. "Snagger Puss".

19 Q. Okay. And you have had that since you were a child?

20 A. Yes Ma'am, about four or five years old.

21 Q. And -- all right, so you have a similar nick -- street
22 name, nickname, as Jimmy Lee Sessions?

23 A. Yes Ma'am.

24 Q. All right. So what happened next?

25 A. Well, the word was going around that "Snagger" was

1 alleged ---

2 MR. GARDNER: I'm going to object to the word "going
3 around" as hearsay, Your Honor.

4 THE COURT: Sustained.

5 Q. All right. Don't tell me what other people said; just
6 tell me why you approached, if you did approach Jimmy Lee
7 Sessions.

8 A. Well ---

9 Q. Did you initiate a conversation with him?

10 A. Yes Ma'am.

11 Q. Why did you initiate that conversation?

12 A. Because I wanted ---

13 THE COURT: That's -- don't ask that question. Let's
14 go further, because that will go into the same area that I
15 just sustained.

16 MS. ELDER: Yes sir.

17 Q. When you initiated that conversation, tell me what
18 y'all talked about.

19 A. Well, I was trying to find out a little bit about what
20 happened with Jamilla, you know, the killing.

21 Q. Okay. And what did you find out?

22 A. Well, he said, briefly -- he didn't -- he didn't get
23 into much of it, but he just said it just got out of hand, it
24 was something -- it wasn't meant to happen the way it
25 happened, it got out of hand.

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

534

1 Q. What got out of hand?

2 A. The robbery.

3 Q. Of Jamilla Hightower?

4 A. Yes Ma'am.

5 Q. And what was he talking about, it got out of hand?

6 A. I guess they probably resisted.

7 Q. All right. Did he say what he did to them when they --
8 if they resisted or what they ---

9 A. No Ma'am.

10 Q. Do you have any idea what he meant by saying it got out
11 of hand?

12 A. Yes, I ---

13 THE COURT: Sustained.

14 Q. Tell me again what he said to you.

15 MR. GARDNER: Objection. Asked and answered, Your
16 Honor.

17 THE COURT: I'll allow that. You may ask it.

18 A. Well, he said he went on the robbery, the lick, and it
19 got out of hand, that's all.

20 Q. And the robbery I believe he was referring to, was that
21 Jamilla and Monica?

22 A. Yes Ma'am.

23 Q. Did he use their names?

24 A. He just said the girls.

25 Q. Okay. You knew who he was talking about?

JURY IN
CRAIG BURRIS - DIRECT BY ELDER

535

1 A. Yes. Yes Ma'am.

2 Q. After that conversation with Jimmy Lee, did you make
3 contact with Myrtle Beach Police Department?

4 A. Yes Ma'am.

5 Q. And do you recall how you made that contact?

6 A. Yes Ma'am.

7 Q. Did you send a letter ---

8 A. Yes Ma'am.

9 Q. ---To one of the investigators?

10 A. Yes Ma'am.

11 Q. And on April 5th, 2007, do you recall talking to
12 Investigator Eric DiLorenzo?

13 A. Yes Ma'am.

14 Q. Did you tell him what you just testified to?

15 A. Yes Ma'am.

16 Q. And when you talked to him in April of 2007, you had
17 charges pending?

18 A. Yes Ma'am.

19 Q. And they were dismissed?

20 A. Yes Ma'am.

21 Q. Was that because you provided an alibi for those
22 charges?

23 A. Yes Ma'am.

24 Q. Did it have anything to do with you giving the
25 statement on April 5th, 2007?

CRAIG BURRIS - CROSS BY GARDNER

536

1 A. No Ma'am.

2 Q. And the statement that you gave Detective DiLorenzo
3 back in April of '07, was that prior to you getting your
4 current murder charge in August of '08?

5 A. Yes Ma'am.

6 Q. You didn't have that charge pending then, did you?

7 A. No Ma'am.

8 Q. And the State certainly has made no promise to help you
9 with that charge?

10 A. No Ma'am. No Ma'am.

11 Q. And I believe we even brought you here today?

12 A. Yes Ma'am.

13 Q. Your lawyer is here with you; is that correct?

14 A. Yes Ma'am.

15 MS. ELDER: Just a moment, Your Honor.

16 That's all the questions we have for this witness, Your
17 Honor.

18 THE COURT: Mr. Gardner.

19 MR. GARDNER: Thank you, Judge.

20 CROSS-EXAMINATION BY MR. GARDNER:

21 Q. Mr. Burris, that letter that the Solicitor has talked
22 about, you wrote that to Myrtle Beach -- you were in the jail
23 when you wrote that, correct?

24 A. Yes sir.

25 Q. And in that letter you asked for help on your pending

1 charges in exchange for this information, correct?

2 A. No sir.

3 Q. You deny referring to having information and wanting

4 help for your charges?

5 A. Not -- not in those words though.

6 Q. All right. I'll break it down for you. You sent a

7 letter to the Myrtle Beach Police Department ---

8 A. Yes sir.

9 Q. ---Asking for help on your pending charges?

10 A. Yes sir.

11 Q. Okay. And you told them that you had information about

12 this case?

13 A. Yes sir.

14 Q. All right. And you -- those charges ultimately were

15 dismissed?

16 A. Yes sir.

17 Q. And you've been in the system for a while now, right?

18 A. Yes sir.

19 Q. And you've got this murder charge pending right now?

20 A. Yes sir.

21 Q. And you know how the system works. You help the State,

22 the State helps you, right?

23 A. I guess.

24 Q. Well, we just talked ---

25 A. I never experienced that before, so ---

1 Q. Well, we just went through one, right?

2 A. No sir.

3 Q. Okay.

4 MR. GARDNER: I don't have anything else.

5 THE COURT: Mr. Frederick.

6 MR. FREDERICK: Yes sir. Beg the Court's indulgence.

7 Judge, if you don't mind, just going to move some of
8 this around.

9 THE COURT: Certainly.

10 MR. FREDERICK: Thank you.

11 THE COURT: How about -- and then move the microphone
12 closer to you too.

13 MR. FREDERICK: That was the idea.

14 THE COURT: Very good, sir.

15 CROSS-EXAMINATION BY MR. FREDERICK:

16 Q. Craig ---

17 A. Yes sir.

18 Q. ---So you -- you did know Jamilla, right?

19 A. Yes sir.

20 Q. Did her cocaine taste like cucumbers?

21 A. No sir. I don't -- no sir.

22 Q. Have you ever tasted cocaine like cucumbers?

23 A. No sir.

24 Q. Never?

25 A. No sir.

1 Q. Does that sound pretty crazy?

2 A. Yes sir.

3 Q. Okay. Thank you. I've got to go through a few things.

4 I mean, you -- you've got a record, right?

5 A. Yes sir.

6 Q. We touched on that already. There was a felony in
7 possession. That was in Federal Court, right?

8 A. Yes sir.

9 Q. 2005?

10 A. Yes sir.

11 Q. Weapons violation, 1996, sound right?

12 A. '96.

13 Q. Federal Court again.

14 A. Yes sir.

15 Q. 2005 -- actually let me back up. That felony in
16 possession, 2005 -- 1995, was just a possession of a weapon.

17 A. Yes sir.

18 Q. Does that sound right?

19 A. Yes sir.

20 Q. Okay. The time that you said you were at "LeeLee's"
21 house, that was after these murders were suppose to have
22 happened?

23 A. I'm not sure.

24 Q. Well, you said there was cocaine.

25 A. Yes sir.

CRAIG BURRIS - CROSS BY FREDERICK

540

1 Q. I mean, the idea was, the cocaine came from the
2 murderers, right?

3 A. I believe so.

4 Q. Okay.

5 A. Yes sir.

6 Q. So it would have been afterwards, right?

7 A. Yes sir.

8 Q. Okay. In April of 2007, you sent a letter to
9 Investigator DiLorenzo, saying that you wanted to talk to him?

10 A. Yes sir.

11 Q. Okay. And you told him that you wanted to talk to him
12 because you wanted help on your kidnapping charge?

13 A. Yes sir.

14 Q. Okay. And your interview with him was recorded, right?

15 A. Yes sir.

16 Q. Okay. At the time you were charge with kidnapping?

17 A. Yes sir.

18 Q. What other charges did you have pending at the time?

19 A. Parole violation.

20 Q. Okay. Was there anything else?

21 A. I was being -- I was a suspect in the murder of -- of
22 Jamilla.

23 MS. ELDER: Objection, Your Honor.

24 THE COURT: Sustained. Ask the question you need to
25 ask, Mr. Frederick.

1 Q. Kidnapping, it carries thirty years, doesn't it?

2 A. Yes, I guess.

3 Q. Okay. You don't want to go to prison for thirty years,
4 did you?

5 A. I don't want to go to prison for something I didn't do,
6 period.

7 Q. But you don't want to go to prison for thirty years
8 regardless, do you?

9 A. No sir. No sir.

10 Q. Okay. And you were in jail at the time?

11 A. Yes sir.

12 Q. Fair to say that, at that time you were thinking as
13 hard as you could about how you could get out of that place?

14 A. No, I was just trying to fight my case, that's all.

15 Q. Did you want to get out of jail?

16 A. Of course.

17 Q. Okay. Now, everybody down at the jail at that time was
18 talking about this case, weren't they?

19 A. I can't speak for everybody. I don't know.

20 Q. Just -- I mean, you were there. You were around.

21 MS. ELDER: Objection, Your Honor.

22 THE COURT: Sustained. Rephrase your question.

23 Q. "LeeLee" Washington was talking about this case.

24 MS. ELDER: Objection, Your Honor.

25 THE COURT: I'll allow that question. It's a yes or a

CRAIG BURRIS - CROSS BY FREDERICK

542

1 no answer.

2 A. I don't know.

3 Q. Okay. Fair enough. Hubert Washington had been down
4 there talking about this case?

5 A. I don't know.

6 Q. Okay. And that's a fair answer. If you don't know
7 just say you don't know. That's fair.

8 Now, you also told Investigator DiLorenzo if he could
9 get rid of your kidnapping charge you would give him
10 information about this murder, didn't you?

11 A. Yes sir. Actually my words was, if they could
12 investigate and look into it, because I was in falsely
13 accused, because I wasn't even in the State of South Carolina
14 when the charge -- when the kidnapping happened. I was in New
15 York.

16 Q. Okay.

17 A. I just wanted somebody to look into the matter.

18 Q. And you also said to him, if he could look into your
19 kidnapping charge, and get the Solicitor's Office to listen to
20 you, you would talk to them about what you knew about the
21 Pridgen Road homicide? Fair enough?

22 A. Fair.

23 Q. You wanted them to listen to you?

24 A. Yes sir.

25 Q. Okay. That kidnapping charge got dismissed, didn't it?

1 A. Yes sir.

2 Q. It was dismissed four days after you talked to
3 Investigator DiLorenzo?

4 A. Around thereabout.

5 Q. Thereabouts. Okay. And you were released from jail
6 after it was dismissed?

7 A. No. I went to Florence, supervised release, violation,
8 parole violation.

9 Q. But at some point you got out of jail?

10 A. Yes Ma'am. Yes sir.

11 Q. Okay. Is your attorney present in the courtroom today?

12 A. Yes sir.

13 Q. That's Paul Taylor?

14 A. Yes sir.

15 Q. All right. And now you are charged with murder?

16 A. Yes sir.

17 Q. In August of 2008, you were arrested and charged with
18 murder?

19 A. Yes sir.

20 Q. So you are back in jail again?

21 A. Yes sir.

22 Q. And you don't like being in jail still, right?

23 A. I don't think anybody likes to be in the jail.

24 Q. Fair enough.

25 A. Yes sir.

CRAIG BURRIS - CROSS BY FREDERICK

544

1 Q. Can you describe what jail is like?

2 A. Can I describe. It's hard to say. It's hell.

3 Q. Okay.

4 A. Hell. Like hell.

5 Q. It's like hell.

6 A. Not being able to do anything you want to do, have to
7 listen to, you know, the officers.

8 Q. I understand. It's lonely?

9 A. Can be.

10 Q. Concrete floors?

11 A. Yes sir.

12 Q. Steel bars?

13 A. Steel doors.

14 Q. Meals aren't too good?

15 A. No sir.

16 Q. Separated from your family?

17 MR. RICHARDSON: Your Honor, objection. It's kind of
18 repetitious at this point.

19 THE COURT: Sustained.

20 Q. Bottom line is, you do want to be free?

21 A. Of course.

22 Q. Okay. And you would do just about anything at this
23 point to have your freedom, wouldn't you?

24 A. No sir.

25 Q. You are facing a life sentence in prison, aren't you?

1 A. I believe so.

2 Q. So if you don't get some help on your charges you may
3 never be free again?

4 A. Actually I don't need any help on my charges.

5 Q. Okay. Do you consider yourself to be a violent person?

6 A. No sir.

7 Q. Do you use drugs when you are not in jail?

8 A. Yes sir.

9 Q. But you've been charged with kidnapping, you are
10 charged with murder ---

11 A. Yes sir.

12 Q. ---But you are not a violent person?

13 A. No sir.

14 Q. Did you tell Investigator DiLorenzo that if you had
15 known what kind of money those people had that you would have
16 killed them?

17 A. No. I don't remember that.

18 Q. Are you sure?

19 A. I'm positive. I might have. But I don't remember.

20 Q. Yes or no.

21 A. I don't remember.

22 Q. Craig Burris' interview with Investigator DiLorenzo in
23 June.

24 MR. RICHARDSON: June or April?

25 MR. FREDERICK: April. You are right.

CRAIG BURRIS - CROSS BY FREDERICK

546

1 Beg the Court's indulgence.

2 THE COURT: Yes sir.

3 (MR. FREDERICK PLAYED A PORTION OF A TAPED INTERVIEW
4 GIVEN PREVIOUSLY BY CRAIG BURRIS.)

5 Q. Was that you?

6 A. Yes sir.

7 Q. Okay.

8 A. You said I was -- I would have killed her, or killed
9 them, for the money. I didn't say that. I didn't hear that.

10 Q. I'm sorry. So what you said was more like, if you had
11 had your god damn gun on you you would have damn sure got that
12 money?

13 A. From them, not from Jamilla and them.

14 Q. Okay.

15 A. But ---

16 Q. You would have killed them, you wouldn't have killed
17 Jamilla?

18 A. I didn't say kill anybody.

19 Q. You would have got the money from them?

20 A. Yes.

21 Q. Okay. Fair enough. Did you ever tell Investigator
22 DiLorenzo that you saw a gun, that Jimmy Lee had a gun?

23 A. Not -- not in those words.

24 Q. Let's walk through this, break it down. At first you
25 told them that Jimmy Lee had a gun; is that right, at first --

1

-

2

A. I believe so.

3

Q. ---In the recorded interview?

4

A. I believe so.

5

Q. Okay. And he did -- kept questioning you about that;
you talked to him about it for a while, right?

7

A. Yes sir.

8

Q. You told him you thought it was an automatic gun, sound
right?

10

A. Yes sir.

11

Q. All right.

12

A. I said I had never seen him with a revolver before.

13

Q. And you said you never saw him with a chrome gun?

14

A. Yes sir.

15

Q. All right. A little bit after that you told him you
couldn't pick the gun out of a line-up. He asked you if he
lined up some ---

18

A. Yes sir.

19

Q. ---Guns could you pick it up and you said, no, I
couldn't pick it out of a line-up; is that right?

21

A. Yes sir.

22

Q. All right. A little bit further, after he questioned
you some more, you finally admitted that you never saw a gun?
Do you remember that?

24

25

A. Yes sir.

CRAIG BURRIS - CROSS BY FREDERICK

548

1 Q. Okay. Then you said, well, you just kind of expected a
2 gun?

3 A. Yes sir.

4 Q. And then you said you had a vibe that he had a gun?

5 A. Yes sir.

6 Q. So you lied to the investigator about the gun?

7 A. No, I didn't lie to him. I ---

8 Q. Well, let's go back to the beginning, Craig. When you
9 said he had a gun, was that a lie?

10 A. No sir.

11 Q. Was it the truth?

12 A. Yes sir.

13 Q. So then when he said, you never saw a gun, is that the
14 truth?

15 A. Yes, at the particular time.

16 Q. Okay. You knew that they wanted to hear that Jimmy Lee
17 had a gun, didn't you?

18 A. Not really.

19 Q. You didn't know that that's what they wanted to hear?

20 A. At that time it didn't matter to them, I guess.

21 Q. All right. Let me ask you this, if you think it will
22 help them, you know that will help you; is that right? Fair?

23 A. Yes sir.

24 Q. All right. When you talked to Investigator DiLorenzo,
25 and on direct-examination today, you said you went to "LeeLee"

1 Washington's house the night of the murders, right?

2 A. Yes sir.

3 Q. You told DiLorenzo that you were there all night, and
4 you left sometime before seven in the morning?

5 A. Yes sir.

6 Q. You told him you were there, all there, getting high
7 and partying?

8 A. Yes sir.

9 Q. You know "LeeLee" Washington, right?

10 A. Yes sir.

11 Q. You know Hubert Washington?

12 A. Yes sir.

13 Q. Okay. And you knew at the time that this was a story
14 that "LeeLee" was suppose to tell to the police?

15 A. A story that ---

16 Q. That "LeeLee" was suppose to tell to the police?

17 A. What story?

18 Q. What you told the police, about "LeeLee" Washington's
19 house?

20 A. No sir.

21 Q. You knew at the time there was reward money being
22 offered also?a

23 A. No.

24 Q. Did you know that "LeeLee" has testified in prior
25 proceedings ---

CRAIG BURRIS - CROSS BY FREDERICK

550

1 MR. RICHARDSON: Your Honor, objection.

2 MS. ELDER: Objection.

3 THE COURT: Sustained.

4 The jury will disregard that comment by the Defense
5 counsel. Thank you.

6 Move along.

7 Q. Back in 2007, you discussed all this with "LeeLee",
8 didn't you?

9 A. No sir.

10 Q. You were first interviewed in this case in April of
11 2007, right?

12 A. I believe so.

13 Q. And who all was present at that interview?

14 A. Sergeant DiLorenzo.

15 Q. Was it just him?

16 A. Yes sir.

17 Q. Okay. How long, roughly, how long was that interview?

18 A. I'm not sure.

19 Q. Longer than an hour?

20 A. I'm not sure.

21 Q. Okay. When were you next interviewed by the police?

22 A. I'm not sure. A little while ago.

23 Q. All right.

24 A. But I know I -- I was -- shortly after.

25 Q. Shortly after then?

- 1 A. Probably.
- 2 Q. Okay. And did you talk to the police again since then?
- 3 A. Since then?
- 4 Q. Yes.
- 5 A. Now?
- 6 Q. Well, between then and now.
- 7 A. Talk to the police?
- 8 Q. Police, prosecutors, law enforcement?
- 9 A. Yes, yes, yes sir.
- 10 Q. Okay. When was that, roughly?
- 11 A. Prosecution, about a week, month, about -- in this --
- 12 about a couple of weeks ago.
- 13 Q. Recently ---
- 14 A. Yes sir, recently.
- 15 Q. ---They came and talked to you?
- 16 A. Yes sir.
- 17 Q. You also talked to Defense attorneys?
- 18 A. Yes sir.
- 19 Q. Okay. And an investigator?
- 20 A. Yes sir.
- 21 Q. That was my investigator, right?
- 22 A. I believe so.
- 23 Q. Okay. Last time you talked to the Prosecutor who was
- 24 present at that interview?
- 25 A. Prosecutor, both Prosecutors at the table right there.

CRAIG BURRIS - CROSS BY FREDERICK

552

- 1 Q. Both of these Prosecutors?
- 2 A. Yes sir.
- 3 Q. Okay. Was it just them?
- 4 A. The Detective right there.
- 5 Q. Detective that's sitting in the chair behind them?
- 6 A. Yes sir.
- 7 Q. How long did that interview take, roughly?
- 8 A. I'm not sure.
- 9 Q. More than an hour?
- 10 A. I'm not sure.
- 11 Q. Okay. Was that interview recorded?
- 12 A. I'm not sure about that either.
- 13 Q. Did they tell you they were recording it? Usually they
- 14 will tell you.
- 15 A. I don't think so.
- 16 Q. Okay. Back when you first spoke to the police, April
- 17 of 2007, you were in a cell with Belal Harris, weren't you?
- 18 A. Yes sir.
- 19 Q. Did you tell Belal Harris that you knew for a fact that
- 20 Jimmy Lee Sessions was not responsible for this murder?
- 21 A. No sir.
- 22 Q. Did you tell him that the police would never know that?
- 23 A. No sir.
- 24 Q. Did Belal, or anyone around there, tell you what was
- 25 going on with this case?

1 A. No sir.

2 Q. Did you ask Belal to try and get Jimmy Lee to say he
3 had committed the crime?

4 A. No sir.

5 Q. Were you arguing and fighting with Jimmy Lee at the
6 jail at that time?

7 A. No sir.

8 Q. Did you try to get Belal Harris to help you write a
9 statement on Jimmy Lee, so that he would be charged with the
10 crime?

11 A. No sir.

12 Q. Never asked him for help?

13 A. No sir.

14 Q. Did you go through Belal's paperwork to get Detective
15 DiLorenzo's address?

16 A. No sir.

17 MR. FREDERICK: No further questions.

18 THE COURT: Redirect.

19 MS. ELDER: Thank you, Your Honor.

20 REDIRECT-EXAMINATION BY MS. ELDER:

21 Q. Just a few, Mr. Burris.

22 When you try to help yourself with charges -- you've
23 been in the system ---

24 A. Yes sir. Yes Ma'am.

25 Q. ---And you give bad information to the Prosecutor, or

CRAIG BURRIS - REDIRECT BY ELDER

554

1 to the police, what happens if the information is bad?

2 A. You will be held accountable.

3 Q. Do you get any help for that?

4 A. No Ma'am.

5 Q. And the help you got back in April of '07, was that
6 officers investigating your alibi you gave them?

7 A. That's all it was.

8 Q. And that's all you asked for, isn't it?

9 A. That's it, just somebody to look into the charges that
10 I was being charged with.

11 Q. And you got cleared?

12 A. Yes Ma'am.

13 Q. You were in another state?

14 A. Yes Ma'am.

15 Q. So, also in April of '07, you weren't talking to the
16 police to try to -- there's no way you could predict that you
17 were going to be charged with murder some fourteen months --
18 months later, did you ---

19 A. No Ma'am.

20 Q. All right. ---For a murder that happened fourteen
21 months later?

22 A. No Ma'am.

23 Q. So you didn't even know about what you are facing now?

24 A. No Ma'am.

25 Q. And it wasn't even pending at the time?

1 A. Right.

2 Q. Did you get any money for giving information?a

3 A. No Ma'am.

4 Q. And you talked to me, and Mr. Richardson?

5 A. Yes Ma'am.

6 Q. You talked to the Defense attorneys?

7 A. Yes Ma'am.

8 Q. And you voluntarily did all of that?

9 A. Yes Ma'am.

10 Q. Both sides?

11 A. Yes Ma'am.

12 MS. ELDER: No other questions, Your Honor.

13 THE COURT: Anything on those questions, Mr. Gardner?

14 MR. GARDNER: I would like to explore his prediction
15 about murder, his pending murder charges, whether or not he
16 could predict that, based on the testimony that's in the
17 record.

18 THE COURT: Ladies and gentlemen, go to your jury,
19 please, I mean, go to your jury room, please.

20 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
21 JURY.)

22 THE COURT: All right, Mr. Gardner, ask your questions.

23 MR. GARDNER: Thanks, Judge.

24 RECROSS-EXAMINATION BY MR. GARDNER:

25 Q. You've been in and out of the system for, basically

CRAIG BURRIS - RECROSS BY GARDNER

556

1 your whole life; is that right?

2 A. Pretty much.

3 MS. ELDER: Objection, Your Honor. We ---

4 THE COURT: I understand. You can raise your
5 objections after he gets done. Let him ask his questions.

6 MR. GARDNER: I didn't hear the answer.

7 Q. Did you answer?

8 A. I said pretty much.

9 Q. Yes sir. And you've had many charges, and you've dealt
10 with many prosecutors; is that correct?

11 A. I wouldn't say I've dealt with them, but I've had many
12 charges.

13 Q. All right. And you had another murder charge many --
14 you were charged with murder about -- in 1995, '96, somewhere
15 around there?

16 A. No sir.

17 Q. Other than the pending murder charge you have against
18 you today, how many other murder charges have you had against
19 you?

20 A. None.

21 Q. All right. I thought there was -- when we were going
22 through your N.C.I.C. I thought that you had a prior murder
23 charge that was showing an unknown disposition.

24 MS. ELDER: Attempted.

25 MR. GARDNER: Huh?

1 MS. ELDER: It was an attempt.

2 Q. Attempted murder. Okay. Any other attempted murders?

3 A. Any other attempt ---

4 Q. Well, no murders, only this one. You had another
5 attempt, or had a attempted murder before?

6 A. Yes sir.

7 Q. All right. And you've had many gun charges, and you've
8 had -- you were sus -- you brought out on your own earlier
9 that you were a suspect for a murder, so when the Solicitor
10 asked you, you couldn't predict that you would be charged with
11 murder, wasn't it inevitable that sooner or later you would
12 get charged with murder?

13 A. How you figure that?

14 Q. It's the life style, sir. You got charged with this
15 attempted murder, and you've got many gun charges, you've been
16 in prison most of your life. It's the life style you live.
17 Sooner or later you are going to get charged with murder,
18 correct?

19 A. I don't think so.

20 Q. Well, you are now?

21 A. True.

22 MR. GARDNER: I was going to go into that line of
23 questioning.

24 THE COURT: All right, sir, I'm not going to allow
25 that. Thank you very much.

1 All right. Now, do you have any questions that you
2 wanted to -- and Mr. Frederick, do you have any questions that
3 y'all wanted to ask of this witness that you had brought up
4 that issue before, about the Jet Age Cafe, and the Friendly
5 murders, and you wanted to proffer some testimony?

6 MR. FREDERICK: Yes sir.

7 THE COURT: It didn't appear to me that it ever came up
8 as an issue in this case, but do you still want to do that?

9 MR. FREDERICK: Just a moment.

10 THE COURT: Yes sir.

11 MR. FREDERICK: Judge, it would only take a minute,
12 just to be ---

13 THE COURT: Well, you go ahead and proffer it, but I'm
14 just saying, I don't know what your objection is, because what
15 you were objecting to never came up in his direct-examination,
16 in any shape, manner or form.

17 MR. FREDERICK: I'm trying to -- I'm trying to remember
18 what he said. I heard the Jet Age, but I didn't hear what he
19 said about it.

20 THE COURT: What he said was that -- that at the Jet
21 Age he saw the Defendant, passing, beers, and then later on,
22 at "LeeLee's" house they had the conversation. He didn't say
23 anything about any conversations at the Jet Age, didn't even
24 say they spoke. He said that he saw him, but he didn't even
25 say anything about speaking, talking, anything that the

1 Defendant told him, not a thing.

2 MR. FREDERICK: Yes sir. Then, without looking at
3 transcript, and operating on that assumption, then I don't
4 think we even need to proffer it, because that avoids the
5 problem that we had, that we would have had.

6 THE COURT: He just said he -- that he -- that the
7 Defendant went through the Jet Age Cafe. I mean, he
8 recognized him, but I don't -- do you remember any -- any
9 testimony he said at all about having a conversation, even hi,
10 hello? I didn't hear anything, any kind of conversation, just
11 that, you know, he saw him, and he went through the Jet Age,
12 and talked about drinking beer, and that was -- that was it.

13 MR. FREDERICK: I don't. Your Honor, I think that
14 fixes the problem.

15 THE COURT: All right. Very good. I was going to --
16 it just seemed to me that the issue just never arose.

17 MR. GARDNER: I agree with you, Your Honor. Thank you.

18 THE COURT: All right. Very good.

19 All right. So, Mr. Gardner, do you have other
20 questions, other than the ones I wouldn't allow, that you want
21 to ask?

22 MR. GARDNER: I had one, but I don't have any more.
23 I'm going -- I don't need it.

24 THE COURT: All right.

25 Are you ready with your next witness, Solicitor?

JURY OUT/ON RECORD/BREAK/JURY IN
MICHAEL JOHN PRODAN - DIRECT BY ELDER

560

1 MS. ELDER: Yes sir, Your Honor.

2 THE COURT: All right. Do y'all want to take a short
3 break, for about five minutes, before we call that next
4 witness in?

5 All right. Hold on. Okay. We'll take a break for
6 about five minutes.

7 And gentlemen, we are going to have -- you can secure
8 the witness, but when we come back he'll have to be back there
9 so that I can ask Mr. Gardner if he has any questions, and ask
10 Mr. Frederick if he has any questions before we excuse him,
11 all right.

12 But we'll take a break for about five minutes. Okay.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND WITHIN THE
14 PRESENCE OF THE JURY.)

15 THE COURT: All right, Mr. Gardner, do you have any
16 further questions of Mr. Burris?

17 MR. GARDNER: I do not, Your Honor.

18 THE COURT: Mr. Frederick?

19 MR. FREDERICK: None, Your Honor.

20 THE COURT: All right. Very good, gentlemen. Thank
21 you.

22 MS. ELDER: We would ask that he be released, Your
23 Honor, excused from -- and released back to the ---

24 THE COURT: Is there any objection to him being
25 released from his Subpoena?

JURY OUT/ON RECORD/BREAK/JURY IN
MICHAEL JOHN PRODAN - DIRECT BY ELDER

561

1 MR. GARDNER: No sir.

2 MR. FREDERICK: No objection.

3 THE COURT: Very good. Your next witness, please
4 Ma'am.

5 MS. ELDER: Your Honor, we would call Agent Mike
6 Prodan.

7 THE COURT: Please come around to be sworn, sir.

8 MICHAEL JOHN PRODAN, being first
9 duly sworn, testifies as follows:

10 DIRECT-EXAMINATION BY MS. ELDER:

11 Q. Agent Prodan, where are you currently employed?

12 A. I'm a Lieutenant with the State Law Enforcement
13 Division, assigned to, and as a Supervisor of the Behavioral
14 Sciences Unit.

15 Q. They commonly refer to that as S.L.E.D.?a

16 A. Yes Ma'am.

17 Q. How long have you been with S.L.E.D.?

18 A. Ten years.

19 Q. And in what capacity have you been there with them?

20 A. As a lead agent with the Behavioral Sciences Unit.

21 Q. Prior to that time, where were you employed?

22 A. I was employed with the California Attorney General's
23 Office, Bureau of Investigation. I was the lead agent and the
24 supervisor of the Violent Crime Analysis Unit.

25 Q. And what did you do in that unit?

JURY OUT/ON RECORD/BREAK/JURY IN
MICHAEL JOHN PRODAN - DIRECT BY ELDER

562

1 A. I'm sorry.

2 Q. What did you do in that -- some of your general
3 responsibilities and duties in that Unit.

4 A. Both for California and for S.L.E.D., involving crime
5 scene analyses, consultation on violent crime, investigative
6 techniques and strategies, threat assessment, interviews and
7 interrogation, and what is generally referred to in the media
8 as psychological profiling.

9 Q. Have you had any professional training in those regards
10 to what you do at S.L.E.D. and in California?

11 A. Yes Ma'am.

12 Q. Would you go through some of that training for us,
13 please?

14 A. First started in violent crime training, of course,
15 with the Las Angeles County Sheriff's Department and Police
16 Academy in Violent Crime Investigation, but as a agent for the
17 California Department of Justice, Bureau of Investigation, was
18 a specialized six months program, with the advanced training
19 center in the California Criminalistic Institute, involving
20 crime scene analyses and criminalistic, if you would, that
21 include courses in firearms trajectory, blood spatter
22 interpretation, and forensic pathology.

23 During that time I was selected and spent a one-year
24 Fellowship at the F.B.I. Academy in Quantico, Virginia, at the
25 National Center for the Analyses of Violent Crime. That one-

1 year Fellowship also included courses at the Armed Forces
2 Institute of Pathology on basic and advanced Forensic
3 Pathology courses in Psychiatry in the Law, in the University
4 of Virginia at Charlottesville. There were also courses at
5 the Clark Institute of the Psychology of Aggression in
6 Ottawa, Ontario, Canada.

7 There has been training over a varied of time involving
8 the California Homicide Investigators Association, California
9 Sexual Assault Investigators' Association, the Association of
10 Threat Assessment Professionals.

11 Q. Do you belong to any associations or agencies?

12 A. Yes Ma'am.

13 Q. Tell me some of those.

14 A. Currently I am a member of the International Criminal
15 Investigative Analyst Fellowship, which is a organization, a
16 worldwide organization that standardizes and provides training
17 on criminal investigative analyses profiling.

18 I'm also a member of the Association of Threat
19 Assessment Professionals. I am no longer a member because of
20 my status in South Carolina, but for -- I was, at one time,
21 members of the California Homicide Investigators Association,
22 and California Sexual Assault Investigators' Association.

23 Q. And do you maintain your education, so to speak, or
24 with continuing type education classes?

25 A. Yes Ma'am. The training education is ongoing,

JURY OUT/ON RECORD/BREAK/JURY IN
MICHAEL JOHN PRODAN - DIRECT BY ELDER

564

1 involving, more often than not, in-service training, if you
2 would, with the International Criminal Investigative Analyst
3 Fellowship, certain training programs with the Federal Bureau
4 of Investigation, yearly training and updates with the
5 Association of the Threat Assessment Professionals.

6 There's also -- not formal training, but self-initiated
7 education involving keeping abreast of the literature
8 involving homicide and sexual assault, and violent crime in
9 general, and involving the literature and the texts that are
10 available, not only to law enforcement but the general public.

11 Q. And you've been brought in on cases by law enforcement
12 before; is that correct?

13 A. Yes Ma'am, many times.

14 Q. And have you been qualified as an expert in a court for
15 -- as a Behavioral Science expert, and a Crime Scene Analyst?

16 A. Well, the qualify involving crime scene analysis of
17 specific violent crimes, or criminal sexual behavior, when the
18 term is used crime analyst, that generally refers to a
19 statistical probability, and that's not what my expertise is
20 involved, but I have qualified as a crime scene analyst, or a
21 violent crimes specialists in a number of Superior Courts.

22 Q. And that would include South Carolina as well; is that
23 correct?

24 A. Yes Ma'am.

25 MS. ELDER: Your Honor, at this time I would offer

JURY OUT/ON RECORD

565

1 Agent Prodan as an expert in the field of Crime Scene
2 Interpretation and Analyses.

3 THE COURT: All right. Mr. Gardner, do you wish to
4 question the witness as to his qualifications?

5 MR. GARDNER: Judge, I -- I need to take up a matter
6 with you. I don't know if you want -- if we might be able to
7 handle it here, before we pursue or go forward.

8 THE COURT: All right. Well, I'll be glad to listen to
9 you and we will see what we need to do. Certainly.

10 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

11 THE COURT: All right, ladies and gentlemen of the
12 jury, I need to take up something outside your presence. I'm
13 sorry. Go to your jury room. Thank you very much.

14 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
15 JURY.)

16 THE COURT: For my general information, is there
17 another witness that the State proposes to put up today?

18 MS. ELDER: No sir, Your Honor.

19 THE COURT: All right. Very good.

20 All right. Just hold on a second.

21 All right. Mr. Gardner, you had some objections as to
22 this particular witness.

23 MR. GARDNER: I did, Judge. I didn't know anything
24 about an expert in the field that she has announced for this,
25 and I don't know what he's going to testify. I don't know --

JURY OUT/ON RECORD

566

1 I haven't seen any reports. I haven't seen any
2 interpretations. I don't know anything about this witness.
3 It's a shock to me. It's a surprise to me, and I would just
4 put that on the record.

5 THE COURT: All right. Mr. Frederick.

6 MR. FREDERICK: Judge, yes, more specifically, in all
7 of the voluminous discovery that was provided to us there was
8 a mention in one report that Mr. Prodan met with Salena Mann,
9 Bertang, Hall, Iannone and Caldwell at one point, but no
10 mention of what they discussed or what the result was, no
11 notes, no reports, no anything from that meeting.

12 On August the 22nd, 2006, Investigator DiLorenzo met
13 with S.L.E.D. profilers Caldwell, Prodan and Bodine, and they
14 suggested that they put an informant in Christopher Stephens'
15 cell. This was before he was charged. They -- and that's it,
16 Judge.

17 THE COURT: All right, sir.

18 MR. FREDERICK: I think that they've got a bit more of
19 a discovery obligation than that.

20 THE COURT: In what way?

21 MR. FREDERICK: Judge, I would be shocked if there are
22 no notes, reports, notations of any kind that Mr. Prodan, who
23 sounds very distinguished, has taken during the course of this
24 case. If there is anything that is impeachment material that
25 is Brady material. If there are reports that would tell us

1 the substance of his testimony, or what his conclusions are,
2 that is Brady material. We have received nothing, Judge.

3 THE COURT: All right, Solicitor, what did y'all do to
4 comply with Brady and Rule Five?

5 MS. ELDER: Your Honor, it is actually -- the ones I
6 can just quickly look at, it is mentioned on page thirteen of
7 Salena Mann's Report, that they were talking with Mike Prodan
8 at S.L.E.D.. That was in reference to one of the co-defen --
9 or, I'm sorry, Marshall Stephens, and what they did with him,
10 and the interview they had with him, giving the background
11 information, the Intel information. There was another
12 notation in Eric DiLorenzo's Report from 6/20/06 indicating
13 they met with S.L.E.D., Mike Prodan, Criminal Profilers.
14 There was some information in reference to Antwann and Melissa
15 at that time, and J.B. -- I believe that's Johnathon Best ---

16 MR. RICHARDSON: Joshua Best.

17 MS. ELDER: ---Joshua Best.. Also there was -- Perris
18 was mentioned. There was some victimization, I believe,
19 information that was giving -- given, so S.L.E.D. requested
20 additional information about the buying habits of Jamilla, and
21 when she re-uped. There was also another notation in page
22 eleven of Eric DiLorenzo's Report from 8/18/06 that they --
23 I'm sorry, 8/22/06, they met again with S.L.E.D. Profilers,
24 Caldwell, Prodan, Bodine. That was the reference that Mr.
25 Frederick was referring to. Your Honor, there was no report

JURY OUT/ON RECORD

568

1 made.

2 The discovery -- the Brady material requires that, if
3 any scientific report or expert report is made that we provide
4 that report. A report is not made in this case, Your Honor.
5 He has met with them. There is no impeachment information.
6 He did not receive the statements of the Defendants in this
7 case. He is not being offered to use, or to say that either
8 one of these Defendants committed this crime. He is being
9 offered to interpretate -- interpret what has already been
10 admitted into evidence, Your Honor.

11 THE COURT: All right. Would you inquire of him as to
12 whether or not he has generated any reports or other written
13 documentation regarding this particular matter?

14 MS. ELDER: I will, Your Honor.

15 BY MR. ELDER CONTINUED:

16 Q. Have you generated -- have you generated any reports
17 and provided those to Myrtle Beach Police Department in this
18 particular case?

19 A. No Ma'am.

20 Q. And did you generate, or provide them with reports
21 during the course of this investigation?

22 A. No.

23 Q. And you, I believe, have -- you -- I contacted you in
24 regards to this investigation, and I met with you about a
25 month ago; is that correct -- or, I'm sorry -- about three

1 weeks ago?

2 A. I would say closer to two weeks, but yes Ma'am.

3 Q. Okay. And at that time were you provided a copy of the
4 crime scene photos, by disk?

5 A. Yes Ma'am, I was.

6 Q. And the Autopsy?

7 A. Yes Ma'am.

8 Q. And have you had a chance to review those?

9 A. I did.

10 Q. And is that what you were here to testify in regards --
11 in reference to those materials?

12 A. To the materials pertaining to how the crime occurred,
13 yes Ma'am.

14 Q. And did you issue a report to me in regards to that?

15 A. No Ma'am, I did not.

16 MS. ELDER: Does that satisfy the Court's inquiry, Your
17 Honor?

18 THE COURT: Sir, did you generate for your own use any
19 type of written report of any kind, or written statement of
20 any kind of your own use, when you were going through the
21 information?

22 A. I have what I refer to as case notes, as far as an
23 outline or a bullet format, for my own edification, to keep my
24 thoughts on track.

25 THE COURT: All right, sir. Do you have those with

JURY OUT/ON RECORD

570

1 you?

2 A. Yes sir.

3 THE COURT: All right, sir. Will you -- can you pull
4 those out for me, please?

5 If you would hand those to the Solicitor, please.

6 And approximately when did you generate those notes
7 and/or documents?

8 A. Within the last week, primarily last Wednesday,
9 Thursday, and partial Friday.

10 THE COURT: All right. Was that in anticipation of you
11 testifying here today?

12 A. Yes, Your Honor.

13 THE COURT: As I understand it, to organize your
14 thoughts regarding testimony?

15 A. Yes sir.

16 THE COURT: All right. Do you have someone from your
17 office here, Solicitor?

18 MR. RICHARDSON: Your Honor, I can actually run over to
19 our ---

20 THE COURT: All right. Go over there and make a copy,
21 two copies of those, please.

22 MR. FREDERICK: Judge -- and I don't want to push it,
23 but he's been working on this case since 2006. The notes that
24 she was referencing are the case notes from DiLorenzo and
25 Salena Mann that say each time they've met with Mr. Prodan,

1 and I find it hard to believe that he did not write down
2 anything in that entire time.

3 THE COURT: I'll be glad for you to ask him.

4 BY MR. FREDERICK:

5 Q. Did you?

6 A. I'm sorry, sir.

7 Q. Did you not keep any notes at all?

8 A. There were some original consultation notes, involving
9 when we first met with the investigators, again, information
10 that they had provided to us.

11 Q. That was in 2006?

12 A. Yes sir.

13 Q. Since then have you been consulted in the case?

14 A. Not really, until the Solicitor's Office contacted me
15 within the last two weeks.

16 Q. Okay. But initially, when you met with the Myrtle
17 Beach Police Investigators, you did keep notes at that time?

18 A. Yes sir.

19 MR. FREDERICK: That's all the questions I have,
20 Judge ---

21 THE COURT: All right, sir. Did you have any on those
22 questions, any questions like that?

23 MR. FREDERICK: ---And we would like to ---

24 MR. GARDNER: No sir, not on that issue.

25 THE COURT: All right, sir. Well, just hold on a

JURY OUT/ON RECORD

572

1 second. I'm -- before y'all have any -- I mean, I just want
2 to make sure you've asked the questions you want to ask of
3 this witness regarding that issue. Have you done that, Mr.
4 Gardner?

5 MR. GARDNER: I'm not quite sure. I think that Bobby
6 covered it, Judge. I've been doing this since 1992, and I've
7 never heard of an -- in a criminal case -- having an expert
8 pop up on the witness stand like this. I've never heard of
9 that before.

10 THE COURT: Well, I appreciate that, and I understand
11 that. My question to you is, regarding the issue at hand, do
12 you have some questions you want to ask this witness now?

13 MR. GARDNER: If the issue at hand is whether or not he
14 has notes, or reports, or anything like that prepared as part
15 of his investigation and consultation with the police, I
16 believe that's been asked.

17 THE COURT: All right. Very good.

18 BY MR. GARDNER:

19 Q. There is no other material or paperwork out there, is
20 there?

21 A. I'm afraid I don't know what you mean by other material
22 out there. I'm sure there are police reports from the Myrtle
23 Beach Police Department and laboratory ---

24 THE COURT: Just be a little bit more specific, Mr.
25 Gardner.

1 MR. GARDNER: Yes sir.

2 BY MR. GARDNER:

3 Q. See, I don't know the history behind this. You are an
4 expert, and they are trying to call you as a witness in this
5 case. You understand that, right?

6 A. Yes sir.

7 Q. Okay. And they have consulted with you over the course
8 of the last, I don't know, two and a half years, or how long?

9 A. Well -- okay, go, sir.

10 Q. Some time?

11 A. Yes sir.

12 Q. And did you generate any work product or reports as a
13 result of any of those meetings or investigations?

14 A. No sir. During the course of an ongoing investigation,
15 what typically occurs is, there is a consultation, an original
16 consultation about the crime with the investigators, a -- an
17 analysis is done, if you would, right there, to kind of give
18 an idea of what of what direction the investigation is
19 suggested to go. Depending on the investigation, and the
20 Department, and the investigators, they may contact us as the
21 investigation progresses, with new information. In other
22 words, we found this out, what do you think, and then we offer
23 an opinion. That information is very fluid, back and forth
24 kind of a consultation effort. It's only up until the time
25 when -- when an agency actually asks for a formal analysis

JURY OUT/ON RECORD

574

1 report do we provide one, and in this particular case no
2 formal analysis was asked for until I was contacted by the
3 Solicitor's Office.

4 Q. And that was a couple weeks ago?

5 A. Yes sir.

6 Q. And was a formal analysis prepared?

7 A. No sir, no formal analysis report was prepared, because
8 of the time constraint.

9 Q. Just come on down and say it, or testify to is,
10 basically; is that right?

11 A. It was to -- a certain amount of materials I re-
12 evaluated, reconsidered, if you would, and those are my notes
13 to myself, if you would, to -- as to my thoughts and analysis
14 of what happened.

15 MR. GARDNER: Thank you, sir.

16 THE COURT: All right. Anything else, Mr. Frederick?

17 MR. FREDERICK: No questions.

18 THE COURT: All right. Very good.

19 Now, Solicitor, you have given to Mr. Gardner and Mr.
20 Frederick a copy of those notes that the witness just
21 identified; is that correct?

22 MS. ELDER: That's correct, Your Honor.

23 THE COURT: All right. Very good.

24 All right. All right. What objections to the testimony
25 or any matters you want to bring to the Court's attention at

1 this time, Mr. Gardner, regarding the testimony of Mr. Prodan?

2 MR. GARDNER: He's going to -- he's not going to
3 testify as to guilt; he's going to testify -- I didn't quite
4 understand why he's here. She said -- I know she said it.

5 THE COURT: Can you put it in a nutshell, Solicitor,
6 the essence of the testimony, the essence as to the reason Mr.
7 Prodan is here.

8 MS. ELDER: My -- the process of my direct-examination
9 of Agent Prodan is going to be, show him some of the State's
10 exhibits, tell -- ask him if he has had an opportunity to
11 review them, based on his expert opinion, what do these crime
12 scene photos tell us in reference to victimology, method of
13 operation, motive, things like that, Your Honor. It has
14 nothing to do specifically with the Defendants. He has not
15 reviewed the Defendants, he has not talked with the
16 Defendants, he has not got the Defendants' statements.

17 THE COURT: All right.

18 MR. GARDNER: Now the objection is relevance.

19 THE COURT: All right. Very good.

20 And Mr. Frederick.

21 MR. FREDERICK: Judge, I just ask that we would be able
22 to review the original notes in the case as well. In the
23 interest of allowing our clients to present a complete defense
24 a large part of our defense is impeaching the quality of this
25 investigation, and here we have an expert on the stand, that

JURY OUT/ON RECORD

576

1 was consulted, that had written materials, and they've called
2 him as a witness, and we still have not been provided with the
3 complete discovery.

4 THE COURT: And what have you not gotten?

5 MR. FREDERICK: The original notes that were taken in
6 2006.

7 THE COURT: All right, sir. And that's the essence of
8 your objection?

9 MR. FREDERICK: That, and we would ask to exclude his
10 testimony, because nothing was provided to us prior to five
11 minutes ago.

12 THE COURT: All right. Very good. I find that the
13 dictates of Brady versus Maryland and Rule Five have been
14 complied with by the State of South Carolina in notification
15 to the defense of this matter. The Defense had more than
16 ample opportunity and awareness, based upon the documents that
17 were provided to the Defense a long time ago. This witness's
18 name was in the information. The Defense, if it so had chosen
19 to do, could have investigated this matter. If they did not
20 do so then that is not the fault of the State.

21 Now, regarding the notes that the witness made at the
22 end of last week, I have obviously had those provided to the
23 Defense counsel. We are going to go through the cross-
24 examination of the witness. We will take a short break, and
25 then we will go on to the cross-examination.

JURY OUT/ON RECORD

577

1 Ask the jury to come back in, please.

2 MR. FREDERICK: Judge ---

3 THE COURT: Yes sir.

4 MR. FREDERICK: ---Just for the record, Judge, under
5 Kyles versus Whitley, we are not required to go to their
6 witnesses and get Brady materials.

7 THE COURT: No sir. But I'm saying, they have complied
8 with it by giving you all the information that was required.
9 What you did with it is up to you, but they have given to you
10 the information. Now, whatever you choose to do with it is
11 whatever you choose to do with it, but they gave you the
12 information. They complied with Brady versus Maryland and
13 Rule Five, no question about that.

14 MR. RICHARDSON: Your Honor, Mr. Gardner has indicated
15 the copies that were made were a bit light.

16 MR. GARDNER: One page through -- they are all light,
17 but this one I ---

18 MR. RICHARDSON: I can run downstairs to a better
19 copier, Your Honor.

20 THE COURT: Don't you have somebody else from your
21 staff here and present in the courtroom that can handle that
22 kind of stuff?

23 MS. ELDER: Yes. Yes, Your Honor.

24 MR. RICHARDSON: Yes, we do, Your Honor.

25 THE COURT: Very good.

JURY OUT/ON RECORD

578

1 MR. FREDERICK: And Judge, were we going to take a
2 break before this witness, because we need to review the
3 materials.

4 THE COURT: We are going to take a break after the
5 direct-examination, so you will have the benefit of his
6 direct-examination, and then you can look at the notes, so you
7 will have both of them when you are looking at the notes.

8 MR. FREDERICK: Yes sir.

9 THE COURT: All right.
10 Ask the jury to come back in.

11 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
12 JURY.)

13 THE COURT: All right, Solicitor, you had presented
14 this witness, and then you had presented to the Court a
15 request to allow the witness to be qualified to give his
16 opinion; is that correct?

17 MS. ELDER: That is correct, Your Honor.

18 THE COURT: And as I understand it, there is an
19 objection to that by both Defendants; is that correct,
20 gentlemen?

21 MR. GARDNER: Yes sir.

22 MR. FREDERICK: That's correct.

23 THE COURT: All right. The Court is going to allow the
24 witness to -- and is going to qualify the witness to give his
25 opinion in the areas of Behavioral Science, Violent Crime,

1 Methodology, Motive Behavior.

2 You may proceed, Solicitor.

3 MS. ELDER: Thank you, Your Honor.

4 DIRECT-EXAMINATION BY MS. ELDER CONTINUED:

5 Q. Agent Prodan, could you tell me -- when you receive a
6 call from an investigative agency to assist them with a
7 violent crime, tell me how you start in any analyses that you
8 do.

9 A. The first thing that we ask for is background
10 information on the victim, or victims. It is referred to in
11 certain literatures and on television as a Victimology, the
12 study of the victim. The question that is to be asked is, why
13 was this particular person selected to be the victim of a
14 violent crime, whether that violent crime is a murder, a
15 sexual assault, stalking, whatever. At the same time we
16 insist that the agency does not give us any information at
17 this point about any suspects that they may have developed,
18 desire, suspect, or whatever, because we don't want to have
19 any type of contamination, if you would, on suspect
20 information as to what actually happened during the commission
21 of the violent crime, so the victimology as to why was this
22 person selected, what we are trying to do is an access of
23 risk, of whether a person either has low or no risk of
24 becoming a violent -- of being the victim of a violent crime,
25 and in this particular case would have been murder, a moderate

JURY OUT/ON RECORD

580

1 risk, or at a high risk, and the risk level is based upon the
2 individual victim's circumstances. High risk victims are
3 individuals whose life styles are such that put them at a huge
4 risk of becoming the victim of violent crime. These would be
5 individuals who are involved in criminal organizations and
6 enterprises, criminal gangs, high value, if you would,
7 trafficking in narcotics or dangerous drugs, you know, those
8 types of things, but they would also include people who may
9 not be involved in criminal enterprises, but whose life styles
10 put them at highly risk, individuals who are exceedingly
11 sexual promiscuous, people who are involved in prostitution,
12 where they come in contact with a lot of people who are
13 basically unknown to them, we would consider at a high risk.
14 In other words, they -- they put themselves in a position that
15 they are more susceptible of becoming victims of violence than
16 anyone else.

17 At the other end of the scale you have individuals in
18 low risk, people who were not involved in criminal
19 enterprises, they are not selling drugs, they are not involved
20 in sexual affairs or promiscuity or prostitution. Our
21 experience, and the experience backed up by the research and -
22 - is that the lower the risk of a victim, the more likely it
23 is that a person's -- is a victim because of a person cause,
24 in other words, it's not involving drugs. It's not involving
25 a criminal enterprise. It's involving a personal issue, that

JURY OUT/ON RECORD

581

1 the victim of the murder poses a problem to the individual,
2 and the individual decides, either over a long period of time,
3 or a very short period of time, that this obstacle has to get
4 out of my way, and murder is the result. Now in between are
5 what we refer to as moderate risk victims, victims who don't
6 have a high risky life style, nor a low, but certain
7 circumstances, people whose employment put them at risk,
8 people who work at a convenience store, people who are cab
9 drivers. You can imagine in the criminal statis -- the
10 justice statistics that those are very risky jobs to have,
11 because of the susceptibility of armed robbery, and
12 individuals will fall prey to that, people who find themselves
13 stranded on the highway late at night, no cell phone. You are
14 literally at the mercy of the person who pulls up behind you.
15 You hope it's a State Trooper. It may not be. You also have
16 people who are into what I refer to as maybe dabbling in
17 criminal enterprises. They are not part of some organized
18 crime or outlaw motorcycle group, or you know, Columbian drug
19 cartel, but they are selling drugs, they are committing
20 robberies, they are involved in forgeries and scams, and those
21 types of things. It's not correct to say that because of
22 those things that they are a high risk, but they -- but they
23 do elevate their risks somewhat. In this particular case the
24 background information that was provided to us was that one of
25 the victims was involved in some reasonably moderate illicit

JURY OUT/ON RECORD

582

1 drug sales. Illicit drug sales, by it's very nature, is a
2 risky enterprise. People will, on occasion, try to steal from
3 you, people will, on occasion, will try to rob you. In this
4 particular case it was given to us, and it was confirmed by
5 some of the crime scene photographs, that even the victim
6 considered herself at risk, because she had at least availed
7 herself some type of physical protection, that she had -- had
8 access to a shotgun, so when you have an individual engaged in
9 drug sales, and then arm themselves, you can assume that the
10 person thinks, well, maybe someone is going to try to take
11 away my product or my money, so I will, in some way, try to
12 defend myself from that.

13 MS. ELDER: Your Honor, if I can approach and return
14 these items.

15 THE COURT: Yes Ma'am.

16 Q. And Agent Prodan, when you received the information in
17 reference to the victim, Jamilla Hightower in this case, did
18 you assess a risk level based on those -- that information?

19 A. Yes. Also -- for Jamilla Hightower and also for Monica
20 Wall, because we had two victims in this particular case.
21 Jamilla Hightower's risk we would elevate to a moderate risk
22 level because of her -- her drug trafficking. Again, it was
23 not -- it doesn't rise to the level of multi-national cartels,
24 but it's not a college student selling Five Dollar baggies of
25 marijuana to their dorm mates either, so it has to kind of

1 fall in the middle.

2 Monica's risk level, with the exception of living with
3 Ms. Hightower, was exceedingly low risk. Her risk level was
4 elevated due to her proximity, and living with Ms. Hightower
5 who was involved in this mid to low level drug trafficking.

6 Q. Now once you establish the victimology, as you did in
7 this case, what's the next step?

8 A. The next step is to look at how the crime occurs, and
9 try to discern, based on how the crime occurred, what is the
10 motive for the murder to be committed. The misconception that
11 a lot of folks, perpetuated by some of the media, is that
12 there is such a -- there is a -- there are crimes of murder
13 without motives that -- crimes of violence just happen, that
14 they are just random events. Our experience and our training
15 indicates that that is not the case. There is a motive for
16 murder. There are victims who are selected by the offender
17 for that reason. It is not the type of thing where an
18 individual will just wander -- would just pick a community at
19 random, close their eyes and go, that house, I think I'll rob
20 them for drugs. You have to have some information beforehand,
21 before you can start developing your plan.

22 Q. In reference to this particular case, what did you
23 determine?

24 A. Well, in this particular case, again, the low level
25 drug levels elevates the risk. You look at in how the crimes

JURY OUT/ON RECORD

584

1 were committed, and in this particular case you have a victim,
2 Ms. Hightower, who was a mid-level drug dealer. The murder
3 occurred indoors, at her residence, which the information
4 provided to us was, that was primarily where she would engage
5 in her transactions. She was not a street dealer, if you
6 would. She was not transported, if you like, so they occurred
7 at her residence. The individual, or individuals, brought a
8 weapon to the scene. In other words ---

9 Q. What does that mean?

10 A. Well, it has a sense to do with pre-planning, if you
11 would. You don't -- if you are going to -- somebody had -- if
12 you are going to rob somebody, or you are going to kill
13 somebody, and you already have that plan in your mind, you
14 don't rely on the victim to provide the weapon to kill them,
15 you bring the weapon with you, as opposed to, you go over to
16 an individual's house, there's a confrontation which escalates
17 into a fight, which escalates into someone picking up a table
18 leg and hitting them over the head, so the bringing the weapon
19 to the scene and leaving with the weapon. The victims were
20 killed with what we typically see in a quote, unquote, drug-
21 related murder, a small to medium caliber handgun. Now this
22 is not to say that we don't have individuals killed with large
23 caliber, but most often we see the -- the small or medium
24 caliber handguns used. There was no effort to move or
25 display, or interact with the bodies after they were dead. In

1 other words, they were killed and left where they were killed.
2 There was minimal effort to destroy or conceal any physical
3 evidence. The only physical evidence that was taken from the
4 scene was the weapon used to commit the murders. The shell
5 casings were left at the scene, the bullets were left in the
6 victims, so there was no -- and there was no evidence, at
7 least from the crime scene reports, that anyone had tried to
8 wash bodies, or wipe down surfaces for fingerprints, or those
9 types of things, so having all of those factors leads us to
10 conclude that this was what we refer to as a primary drug-
11 related murder, and the motive for drug-related murders have
12 to do with discipline of the individual. In other words, they
13 are part of an organization and they are breaking the rules,
14 the person is stealing another drug dealer's customers, in
15 other words, you are eliminating your competition, you believe
16 that the individual is cutting in on your territory, which
17 again, is leaning the competition, or the primary factor of,
18 they've ripped you off, they owe you money, you've given them
19 drugs to sell, they are to give you money, they haven't, so
20 that it's kind of a retaliation idea of, well, you owe me
21 money, you haven't don it, and then, of course, you do have
22 individuals who target drug dealers for robbery of their drugs
23 and their money, for the primary purpose is that, unlike
24 robbing a convenience store or a bank, drug dealers, no matter
25 what level, don't report those crimes to the police. If I'm

JURY OUT/ON RECORD

586

1 selling -- no matter what I'm selling, if it's an illegal
2 substance, and I'm robbed, we searched and we can't find one
3 documented report where an individual goes to a police
4 department or a sheriff's department and says, let me tell you
5 about the robbery that I suffered; someone came in and stole
6 my, you know, fourteen pounds of marijuana, at gunpoint; I
7 want you to find this robber, because the person is admitting
8 that they are involved in an illegal enterprise.

9 Now, there's two other reasons for people to be killed
10 in drug-related murders which don't apply in this particular
11 case, and that has to do with an informant, and there was no
12 information provided to us that either of these women were
13 involved in being a documented informant to any law
14 enforcement agency, and then we do have, on rare occasions,
15 what we refer to as an anti-drug advocate, usually a citizen
16 who lives in a particular neighborhood that are -- they are
17 just -- they are just going to -- they are going to beat the
18 drug dealers off the street themselves, they harass drug
19 dealers, they take license plate numbers, they do everything
20 they can to get these people out of their neighborhoods, and
21 the drug dealers just go, this is just bad for business.

22 Neither one of those two factors apply in this
23 particular case.

24 Q. What's the next step in this process?

25 A. So then, if that is the underlying cause, then you try

1 to look at, how did this particular crime occur. You will
2 look at pre-offense behavior, and then you look at offense
3 behavior. The pre-offense behavior is -- someone has to come
4 up with a plan. Someone has to come up with an idea, if you
5 would, of -- to go to this particular location, at this
6 particular time, at this particular place. They actually have
7 to think about bringing a weapon with them. Of course they
8 have to get ammunition for the weapon. They have to approach
9 the location at a time that they perceive is most opportune
10 for them, and then they have to -- in this particular case you
11 have to get inside the residence. The murders occurred inside
12 the residence, so you start at the very beginning, how did
13 they get inside.

14 Q. Well, let me -- before we go to that part, so -- are
15 you saying there has to be some type of premeditation to do
16 this type of a robbery?

17 A. In this particular case, because of how the victims
18 were killed, there had to have been some idea that was
19 conceived outside of the residence. Now, whether that idea
20 was conceived minutes, hours, days, weeks, years, there is no
21 way of knowing, but it -- because this individual brought the
22 weapon to the scene -- it was not a weapon of opportunity from
23 the residence -- this germ, if you would, developed outside
24 the residence, not inside. How long that takes, no one really
25 can tell you.

JURY OUT/ON RECORD

588

1 Q. And you were going into -- getting into the -- getting
2 into the house.

3 A. Yes Ma'am. You have to ask yourself, how did this --
4 how did the person get from outside the house inside the house
5 where the murder occurred. The reports tell us that there was
6 no forced entry, in other words, no one broke down a door or
7 broke down a window and forced their way in. There was no
8 evidence of any struggle at the front door, so you ask
9 yourself, well, how did the door become open. The person had
10 a key, the door was just left unlocked and the person just
11 walked in, or the person approached the front door, knocked or
12 rang a bell and the door was opened by someone on the inside.

13 Q. And we don't know that in this particular case, do we?

14 A. Well, the -- some of the background information given
15 to us was that Ms. Hightower only did her drug sellings if
16 there was previous notification. In other words, her routine
17 was, you make a phone call, you make -- in essence, drug sales
18 by appointment, and then you come over, and that anyone who
19 just knocked on the door would be turned away, but even so,
20 someone would knock on the door, so we don't know. We do know
21 from the crime scene photographs, and from the -- in the
22 Officers' investigation, that no one broke down a door, no one
23 broke in a window to get inside.

24 Q. Now, once you have the offender inside, what is the
25 next step in that analysis?

1 A. The offender has to get control of the victim. You
2 have to gain and maintain control of the victim, and there are
3 various ways to do that. You can -- you can control some
4 victims just by your mere presence, just the fact that you are
5 there. Now this requires a certain type of victim, but there
6 are occasions where just the mere presence of an individual is
7 enough to gain and maintain control. Sometimes you have to
8 make a threat, a verbal threat, sometimes you have to display
9 a weapon and combine it with a verbal threat, sometimes you
10 have to use physical force. In this particular case there was
11 nothing in the autopsy reports, or the photographs, that
12 suggested that either Ms. Wall or Ms. Hightower were the
13 victim of blunt-force trauma, as if they were beaten into
14 submission. There was no injuries to the face, there were no
15 defensive injuries on the hands, there was nothing to suggest
16 that there was a physical struggle. The fact that both were
17 shot strongly suggests that, at some point the offender
18 presents a weapon, and uses the weapon, the fear of injury or
19 death, to gain and maintain control of the two victims.

20 Q. Once -- in this case, when you looked at the crime
21 scene photographs, were you able to make an opinion about, if
22 these two victims were, at some point, under control by the
23 offender?

24 A. Yes Ma'am. The -- again, the fact that there was
25 nothing to suggest that there was a struggle, there was no

JURY OUT/ON RECORD

590

1 overturned furniture, there was cell phones on the floor that
2 did not appear to be disturbed, there was nothing knocked off
3 of tables, and again, there was nothing in the examination of
4 the victims by the prosector of injuries to their hands, or
5 their fingers, or evidence that they had been subjected to any
6 type of blunt-force trauma. Also, there was no indication
7 that either one of these individual -- either one of the
8 victims were bound in any way, so they weren't rendered
9 unconscious by blunt-force trauma, they weren't bound and made
10 compliant through bindings, so the only thing left, if you
11 would, is that the offender presented a weapon, and the threat
12 of that weapon was sufficient to maintain control of these two
13 women.

14 Q. Once you establish that the offender got to this point,
15 that he was able to control Jamilla and Monica, what is the
16 next step in your analysis of this particular case?

17 A. Well, then you would look at what else had happened
18 during the course of the event. Now what was interesting is
19 that in the crime scene photographs there is some clothing on
20 the hallway floor that was reportedly last seen -- Monica was
21 last seen wearing, and it's now in the hallway.

22 Q. If you will take a look at State's Exhibit 6, is that
23 the photograph you are referring to?

24 A. Yes Ma'am. So at this -- it would appear -- and then
25 the fact that Ms. Wall was found nude when she was discovered,

1 at some point the -- Ms. Wall disrobed. She become -- she
2 takes her clothes off, she becomes -- she becomes nude. Ms.
3 Hightower, there is no other type of interaction like that at
4 all. She's fully clothed. The question you ask yourself is,
5 while the individual is having Ms. Wall disrobe, what's Ms.
6 Hightower doing.

7 MR. FREDERICK: Judge -- and I've got to object to this
8 part of this testimony. This is fascinating, but his
9 speculating as to what may or may not have happened ---

10 THE COURT: I sustain that part of it.
11 Continue on, Solicitor.

12 MS. ELDER: Thank you, Your Honor.

13 Q. Let's go -- once we get past that point let's go to the
14 particular scene involving where the victims were located, and
15 in what condition.

16 A. Yes Ma'am.

17 Q. If you will take a look at State's Exhibits 2 and 5,
18 the photographs of Jamilla Hightower, in her bedroom.

19 A. Yes Ma'am.

20 Q. Did you have an opportunity to review those?

21 A. I did.

22 Q. What were your conclusions about those?

23 A. Again, it appears, based on these photographs, that
24 most likely, at gunpoint, she was ordered to lie flat on the
25 floor, the individual put a pillow over her head, and then

JURY OUT/ON RECORD

592

1 fired one shot through the pillow at relatively close range,
2 into her head.

3 Q. What does that method of murder suggest?

4 A. There's two parallel reasons, if you would. One is
5 more emotional, in that it is easier to shoot a pillow than it
6 is to shoot the back of an individual's head. It makes the
7 killing easier, if you would. Some people may refer to the
8 term of de-personalizing someone. It is always easier to kill
9 a thing, or an object, as opposed to it is to a person, so
10 there is an emotional reason for the pillow being over the
11 person's head.

12 There is also practical aspect, depending on the
13 sophistication of the person doing the shooting. You may put
14 the pillow over the person's head and fire through the pillow
15 in an attempt that you believe that you are going to reduce
16 the sound of the recoil, and also it prevents any blow-back of
17 blood onto you, or to your weapon, because the blood, of
18 course, is stopped by the position of the pillow. Both --
19 after that -- after the shooting of Ms. Hightower the
20 individuals just walks away.

21 Q. And that method of killing, would that, in your
22 opinion, involve some prior thinking, or thought process?

23 A. Well, you break it down into, what does the individual
24 -- what choices does the individual have to do. The
25 individual, of course, has to -- as I said already before,

1 pick this particular place, this particular time, this
2 particular location, this particular victim. You have to gain
3 and maintain control of the victim, you have to get them into
4 another room, you have to find the pillow, you have to have
5 the person lie down on the floor, you have to put the pillow
6 over the person's head, then you have to approach the person,
7 extent your arm, and put that pistol in very close proximity
8 of the pillow, and pull the trigger. Those are all the things
9 that the person has to do to get this result.

10 Q. Now, I want to briefly touch back. You indicated, when
11 we were talking about motive, there has to be some motive
12 other than just a drug robbery; is that -- is that correct?

13 A. Well, again, if this was -- if the motive -- if the
14 singular motive is to steal a person's drugs and money because
15 they are a drug dealer you have to ask the question, if drug
16 dealers don't typically go to the police to report those
17 robberies, then why bother killing them at all.

18 Q. Would the perception that the victim drug dealer was
19 not going to give it up, would that be a position?

20 A. If the person committing the robbery -- in other words,
21 whether it be a drug dealer or whether it be a resident of,
22 you know, a person just in their home, or even a bank that has
23 arm guards, if the idea is in the offender's mind that, for
24 us, or me to commit this particular offense we are going to
25 have to kill people because they are not going to, as you say,

JURY OUT/ON RECORD

594

1 give it up, they are not going to surrender, then that thought
2 is already in the person's mind. Again, in this particular
3 case, there is nothing to suggest, in the crime scene photos,
4 or in the autopsy photographs, that either of these two women
5 resisted anybody. If there was any resistance at all it was
6 verbal.

7 Q. Now you indicate there is presence of the gun in the
8 house.

9 A. Yes Ma'am.

10 Q. If somebody knew, or an offender knew that their
11 potential victim was armed, would that be, in your opinion,
12 motivation to carry out the murder?

13 A. Well, definitely it would be a motivation to get
14 control over people very quickly. If you are aware that your
15 target has the capacity, or the ability to arm themselves,
16 then if you are going to continue with -- if you are going to
17 continue with your enterprise your only alternative is to do
18 it very, very quickly, and with enough force to gain -- gain
19 that control as quickly as possible, because you don't want to
20 get into -- as dramatic as it may sound, you don't want to get
21 into a gunfight with someone.

22 Q. Right, and that, be it control in some offender's
23 minds, based on the perception they are not going to give it
24 up, that they are armed, would be the ultimate, murder; is
25 that correct?

1 A. That -- it could lead to that, yes Ma'am.

2 Q. I want you to take a look at what's been marked into
3 evidence State's Exhibit 32, 41, 10, 4, 51, 50 and 49.

4 MR. FREDERICK: Judge, and ---

5 THE COURT: Yes sir.

6 MR. FREDERICK: ---Just for the record, I'm going to
7 renew our objection. This is -- I don't see where this will
8 assist the jury in the facts of this case.

9 THE COURT: Your objection is relevance?

10 MR. FREDERICK: Yes sir. Yes sir.

11 THE COURT: All right. I would overrule the objection
12 and allow it ---

13 MS. ELDER: Thank you, Your Honor.

14 THE COURT: ---The objection of relevance.

15 Q. Would you look through those pictures, Agent Prodan.

16 MR. FREDERICK: Judge, and speculation as well.

17 THE COURT: All right, sir. I overrule the objection
18 on speculation as well.

19 MR. FREDERICK: Thank you.

20 A. Yes Ma'am.

21 Q. You've had an opportunity to review those pictures
22 prior to today; is that correct?

23 A. Yes Ma'am.

24 Q. And I believe all those, in some way or fashion, are
25 the second victim, Monica Wall's room; is that correct ---

JURY OUT/ON RECORD

596

1 A. Yes Ma'am.

2 Q. ---Or that's what you've been told?

3 A. Yes, I have.

4 Q. Now, looking at, specifically, State's Exhibits 10 and
5 49, what opinion do you form based on the manner in which Ms.
6 Wall was murdered?

7 A. Well, the -- there is one -- I should say, there's two
8 striking differences with Ms. Wall, based on the crime scene
9 photographs, in that she is killed in a similar manner. In
10 other words, a person put her down on the floor, put a pillow
11 over her head, extended their arm, put the gun relatively
12 close to the pillow, and fired one shot into her head. The
13 difference -- the significant differences are, there's
14 evidence that she was in another room, her bedroom, and she --
15 -

16 Q. What type of evidence?

17 A. There's -- there was -- there was some -- some feces in
18 the bedroom, and there was reported feces on her person, in
19 her anal area and her buttocks. There was also some notation
20 of feces on her foot, and you can see in the crime scene, in
21 one of the photos, that there is -- there is what was
22 identified as feces on the floor, so it appears that she was
23 moved from the bedroom, where she had defecated, to the
24 bathroom. The person could have shot her in the bedroom, but
25 she was moved to the bathroom for a reason, and then the

1 person then put her down on the bathroom floor and shot her.

2 Q. And what would be the motive in a drug robbery, as we
3 have already talked about, for the murder of this victim?

4 A. She's a witness to the first murder. What is -- what
5 has to be asked is, why is this particular victim nude. It's
6 different.

7 Q. Okay. Are there -- are there any other processes that
8 you went through in looking at these photographs and forming
9 opinion about this particular case?

10 A. It -- again, it was not only just the crime scene
11 photographs, but also referencing the information that was
12 offered in the autopsy protocols.

13 Q. If the prior photos I showed you indicated one shot to
14 Jamilla, one shot to Monica, is that your finding?

15 A. That's my understanding, is that each victim suffered
16 one gunshot wound.

17 Q. And what is the significance of that, if those two
18 shots were fired from the same weapon, if any?

19 A. The real significance is that one gun was used, or I
20 should say, the same gun was used.

21 MR. FREDERICK: Judge, he has not been qualified as an
22 expert in ballistics.

23 THE COURT: Sustained.

24 MS. ELDER: Just a few more questions, Agent.

25 Q. You look through all the crime scene photos. Did you

JURY OUT/ON RECORD

598

1 observe the presence of other personal property that would
2 commonly be subject to, like a burglary or something like
3 that?

4 A. Yes Ma'am.

5 Q. Things like -- such as what?

6 A. Well, there were the cell phones, there was the shotgun
7 in the cupboard, there were some electronics, stereos, videos,
8 if you would, televisions, and the like, and if theft is the
9 ultimate, and the only motive, once the two victims are
10 incapacitated by their death there really isn't anything to
11 stop you from taking whatever you want. Those items were in
12 plain view and they were untouched.

13 Q. What is the significance of finding no drugs, no money,
14 in a house of the mid-level drug dealer?

15 A. It's a reasonable conclusion that the motive was the
16 tak -- the forcibly taking of the money and the drugs, and
17 that the individual was willing to kill to do that.

18 MS. ELDER: One moment, Your Honor.

19 Your Honor, that's all the questions I have for this
20 witness.

21 THE COURT: All right. Mr. Gardner, Mr. Frederick,
22 y'all want some time at this point in time? Gentlemen.

23 MR. GARDNER: I thought that's what we were going to
24 do.

25 THE COURT: All right. Very good.

1 All right, ladies and gentlemen, go to your jury room.
2 I'm going to give the Defense some time before we do the
3 cross-examination, and we will resume when they are ready for
4 cross-examination. Go to your jury room, please.

5 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
6 JURY.)

7 THE COURT: All right, gentlemen, I'm going to take a
8 break for about -- for fifteen minutes, and then we will see
9 where you are at that point in time.

10 Thank you.

11 MS. ELDER: Thank you, Your Honor.

12 MR. RICHARDSON: Thank you, Your Honor.

13 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
14 THE PRESENCE OF THE JURY.)

15 THE COURT: Is the State ready?

16 MS. ELDER: Yes sir, Your Honor.

17 THE COURT: Mr. Gardner.

18 MR. GARDNER: Yes sir.

19 THE COURT: Mr. Frederick.

20 MR. FREDERICK: Yes, Your Honor.

21 THE COURT: Very good. Ask the jury to come in,
22 please.

23 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right. Mr. Gardner.

JURY IN
MICHAEL JOHN PRODAN - CROSS BY FREDERICK

600

1 MR. GARDNER: Thank you, Your Honor.

2 We have no questions at this time.

3 THE COURT: Very good.

4 Mr. Frederick.

5 MR. FREDERICK: Yes sir.

6 CROSS-EXAMINATION BY MR. FREDERICK:

7 Q. Agent Prodan, if nothing was taken from a house in a
8 situation like this, then in your opinion the murders would
9 not be theft?

10 A. If absolutely nothing was taken, then there is no
11 personal gain, if you would, theft motive, so then you would
12 have to ask yourself, why -- why were these individuals
13 killed, so the motive is likely something other than monetary
14 gain, if no property is stolen.

15 Q. Right. So what would your opinion be if you knew that
16 the following day a briefcase full of drugs was found at
17 Jamilla's head? How would that change your ---

18 A. I'm sorry.

19 Q. If, on the following day ---

20 A. Yes sir.

21 Q. ---If the police told you -- and they didn't tell you
22 this, I don't think -- but if they did tell you that a
23 briefcase of drugs had been found ---

24 A. Found where, sir?

25 Q. By Jamilla's head ---

1 A. Okay.

2 Q. ---The body, how would that change your opinion?

3 A. Well, it -- it would change my opinion very little,
4 because no other property was taken, still nothing was taken,
5 so the question you have to ask yourself is, why wasn't this
6 particular item taken, this brief -- as you describe it, a
7 briefcase full of drugs. You can -- there are other
8 explanations, but it still wasn't taken.

9 Q. So, in short, there is always some motive?

10 A. I beg your pardon?

11 Q. You are saying there is always -- in general, there's
12 always a motive?

13 A. There is always a motive. The concept of murder
14 without a motive is a ---

15 Q. Fiction?

16 A. ---A media myth, if you would.

17 Q. Okay. And so, in that scenario that we just described,
18 there would be a motive. It would be something other than
19 robbery, obviously. Is that an accurate statement?

20 A. I mean, the person who conducted, or who committed the
21 crime, their motive would not have been to still drugs if they
22 left drugs sitting there, would it?

23 A. That's -- that's an assumption that they knew that case
24 contained drugs and they didn't take it.

25 Q. Okay. Assuming that.

MICHAEL JOHN PRODAN - CROSS BY FREDERICK

602

1 A. Yes. Assuming that they knew that that particular case
2 had drugs, and they -- in other words, they had knowledge
3 that, if I took this box, it has in it, and they didn't take
4 it, then yes, you would have to say that then there was
5 another motive.

6 Q. And then you would start looking at other factors,
7 other things that could help you identify what the motive was?

8 A. Yes sir.

9 Q. Okay. What would your opinion be if you had
10 information that Jamilla had testified in court against
11 people?

12 A. The question is that, is this a retaliation, based on
13 that testimony. You would have to ask, who was she testifying
14 against, the circumstances, the level of criminality of those
15 individuals, whether her testimony was instrumental in their
16 convictions, and presumably imprisonment. Again, the -- and
17 I'll use the term media myth, the media stories, or the
18 fictional, if you would, is that, because an individual
19 testifies against another individual that somehow it will come
20 back on them and they will be murdered for their testimony.
21 That does happen, but it, more often than not, happens where
22 the victim's testimony is instrumental in a fairly
23 sophisticated organized crime type of venue.

24 Q. Or in the movies?

25 A. It happens much more often in the movies. It does

1 happen in real life, but again, the circumstances require that
2 the testimony is involving, you know, a classic organized
3 crime venue, the classic Mafia type of venue, maybe high level
4 international drug cartels, definitely organized outlaw
5 motorcycle gangs, and some of the more sophisticated street
6 gangs, whether they be African American, Latino, or even
7 Asian, but the mere fact that a person testifies in court --
8 and again, you have to understand, what are the specifics of
9 their testimony. Just the fact that someone testifies in
10 court, and they are killed, it -- more often it happens in
11 stories and fiction.

12 Q. But that's something if, early on in the investigation,
13 if that was information that law enforcement was aware of, it
14 would shape their investigation?

15 A. It could very well shape their investigation, but if we
16 were asked that in a particular case -- it's the same thing as
17 we ask, well, the person -- this is -- the person was killed
18 because they are a police informant. I say, okay, well, what
19 kind of an informant are they, at what level of criminal
20 enterprises are they informing against, and does that
21 enterprise have the capability, and the will to escalate their
22 problems by killing people.

23 Q. It's a starting point.

24 A. That's the starting point.

25 Q. Okay. Thank you.

1 MR. FREDERICK: I have no other questions.

2 THE COURT: Very good. Redirect.

3 MS. ELDER: No questions, Your Honor.

4 Your Honor, we have no further questions of this
5 witness. We would ask the Court to excuse him from his
6 Subpoena at this time.

7 THE COURT: All right. Mr. Gardner, any objection to
8 that?

9 MR. GARDNER: No sir.

10 THE COURT: Mr. Frederick?

11 MR. FREDERICK: No objection.

12 THE COURT: All right, sir, you are released from your
13 Subpoena, and you may go back to your regular duties.

14 A. Thank you, Your Honor.

15 THE COURT: Thank you.

16 All right, ladies and gentlemen of the jury, that will
17 conclude our work for today. We are going to resume tomorrow
18 morning at nine o'clock. I would like for you to be back in
19 your jury room tomorrow morning at 9 o'clock. We will resume
20 the testimony again.

21 Again I remind you, don't talk about the case, don't
22 allow anybody to talk to you about it. Don't look at it on
23 T.V., newspaper, radio, remembering, your job is to decide
24 this case solely on the facts and evidence presented in the
25 courtroom, and from no other source.

1 I'll see you back tomorrow morning, nine o'clock. Thank
2 you very much.

3 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
4 JURY.)

5 THE COURT: All right, Solicitor, is there any matters
6 we need to cover from your perspective at this point in time?

7 MS. ELDER: No sir, Your Honor.

8 THE COURT: Mr. Gardner.

9 MR. GARDNER: I -- would it be proper to inquire how
10 long you think the State might go tomorrow?

11 THE COURT: Do you have any idea, Solicitor,
12 approximation?

13 MS. ELDER: We would ---

14 THE COURT: Do you think by lunch you will be done?

15 MS. ELDER: Yes sir, Your Honor. We should be rested
16 by lunch.

17 MR. GARDNER: The Defense can start at 2:15 tomorrow?

18 THE COURT: Well, I'm not going to say that. I mean,
19 if they come in tomorrow morning and say, we've decided over
20 night that we are done with our case, and we rest, then I'm
21 going to turn to y'all and expect y'all to go forward.

22 MR. GARDNER: All right. Can I anticipate -- are there
23 any more -- I would ask the Court to inquire, or please, if
24 there are any more things that are going to happen tomorrow
25 like this last witness, so I can prepare for it.

1 THE COURT: All right. Let me just ask the question,
2 the witnesses that you have left, did they testify in the
3 previous trial already, or are they new witnesses?

4 MS. ELDER: One of them, obviously, Your Honor, will be
5 the Pathologist. Now that is a different person, but it's the
6 same material.

7 THE COURT: All right.

8 MS. ELDER: The only other new witness tomorrow that is
9 scheduled is Tracey Thrower, Your Honor. He is the firearms
10 expert.

11 THE COURT: Okay.

12 MS. ELDER: He's the only new person, Your Honor.

13 THE COURT: All right.

14 MS. ELDER: Other than, obviously, Dr. Presnell, but
15 that will be the same matter that the other doctor testified
16 to.

17 THE COURT: All right.

18 MR. GARDNER: Thank you, Judge.

19 THE COURT: All right. Mr. Frederick, anything you
20 need to cover at this point in time?

21 MR. FREDERICK: Nothing further.

22 THE COURT: Very good. I'll see y'all back tomorrow
23 morning, nine o'clock.

24 Obviously y'all be here earlier. If y'all have some
25 issues, please let me know before that. Okay.

1 MS. ELDER: Thank you.

2 THE COURT: Thank you.

3 Now please remember, members of the audience, y'all got
4 to stay here for ten minutes, tell the jury exits the
5 building.

6 Thank you very much.

7 MS. ELDER: Thank you, Your Honor.

8 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, FEBRUARY 5,
9 2009, OUTSIDE THE PRESENCE OF THE JURY.)

10 THE COURT: All right. Solicitor, are you ready for
11 the jury?

12 MS. ELDER: Yes sir, Your Honor. We have our first
13 witness in the courtroom.

14 THE COURT: Very good. Mr. Gardner.

15 MR. GARDNER: Yes sir, Judge.

16 THE COURT: And Mr. Frederick.

17 MR. FREDERICK: Yes sir.

18 THE COURT: Ask the jury to come in, please.

19 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
20 JURY.)

21 THE COURT: All right, Solicitor, your first witness,
22 please Ma'am.

23 MS. ELDER: Your Honor, at this time the State would
24 call Agent Tracey Thrower.

25 THE COURT: All right. Please come around to be sworn,

TRACEY J. THROWER - DIRECT BY ELDER

608

1 sir.

2 TRACEY J. THROWER, being first duly
3 sworn, testifies as follows:

4 DIRECT-EXAMINATION BY MS. ELDER:

5 Q. Agent Thrower, where are you currently employed?

6 A. I am employed by the South Carolina Law Enforcement
7 Division, also known as S.L.E.D., in the Forensic Services
8 Building, in the Firearms Department.

9 Q. And what do you do in the Firearms Department?

10 A. I am a firearm and tool mark examiner.

11 Q. And tell me briefly how you examine firearm,
12 projectiles, casings, things like that? What is the process
13 of that?

14 A. If a firearm comes in I visually examine it. I look
15 for any kind of trace materials, if necessary collect those,
16 look at the various aspects of the gun, try to find out if I
17 see anything obviously wrong with it, or damaged, something
18 not safe. I take various measurements and observations,
19 filling out departmental worksheets to document the condition
20 of the firearm, test fire it, same thing with any sort of
21 fired bullet or cartridge case, you know, visual examination,
22 various measurements, and documentation using department
23 worksheets.

24 Q. And do you have any specialized training to do this?

25 A. I do.

1 Q. Could you tell me about that training?

2 MR. GARDNER: Excuse me, Your Honor. If she's offering
3 him for an expert I don't object and I would be willing to
4 stipulate to it.

5 THE COURT: Do you have any objections? Do you wish to
6 question the witness, Mr. Frederick?

7 MR. FREDERICK: No sir. No sir. Thank you.

8 THE COURT: All right. So do you have any objection?
9 You have no objections to the ---

10 MR. FREDERICK: No -- no objection.

11 THE COURT: All right, sir. In what field are you
12 offering Mr. Thrower?

13 MS. ELDER: Your Honor, we are offering Agent Thrower
14 in the field as an expert in Forensic Firearm Analysis.

15 THE COURT: Firearms Analysis; is that correct?

16 MS. ELDER: Firearms, Projectiles, Casings, Your Honor.

17 THE COURT: I'm going to qualify him then to give his
18 opinion in that field of Firearms, Projectiles, Casings, and
19 that area of expertise.

20 MS. ELDER: Thank you, Your Honor.

21 Q. Agent Thrower, did you have an opportunity to examine,
22 in regards to this particular case, State's Exhibit 56, 93,
23 92, and 55?

24 A. Yes, I did. I did examine State's Exhibit 56, 55, 92,
25 and 93.

TRACEY J. THROWER - DIRECT BY ELDER

610

1 Q. And what were you looking for in trying to determine if
2 you have examined those?

3 A. One, I was insuring that the plastic bag still had my
4 heat seal that I placed on them, with the date that I sealed
5 it, and my initials. I was also verifying -- on each of these
6 cartridge cases, I took an electric pencil, or a scribe, and
7 scratched into them my case number, my item number, and my
8 initials, for identification.

9 Q. And what is that to insure?

10 A. To insure that I can recognize this piece of
11 ammunition, or this cartridge case, from any other cartridge
12 case later -- at a later time.

13 Q. And these were presented to you for examination; is
14 that correct?

15 A. That is correct.

16 Q. What type of examination did you perform on them?

17 A. For the cartridge cases, State's Exhibits 55 and 56,
18 visual comparison, using a comparison microscope, in which I -
19 - with a comparison microscope it's -- basically it's two
20 microscopes that are placed side by side that are connected by
21 an ocular bridge, and on this bridge there is a set of
22 eyepieces, so that when I'm looking through these eyepieces I
23 can literally, under the same magnification, visually place
24 these two items side by side, and even overlap them, so that
25 when I -- whatever markings I'm seeing on the primer of the

1 item that's on my left-hand stage, I can place directly
2 visually next to the -- the item that's on my right-hand
3 stage, and compare the markings side by side.

4 Q. And with those two particular cartridge cases, the
5 cases that you have in those exhibits, what were your
6 findings?

7 A. My findings were that State's Exhibit 55 and State's
8 Exhibit 56 were fired by the same firearm.

9 Q. Now, did you also examine two projectiles?

10 A. I did.

11 Q. And those, I believe, I've also handed to you; is that
12 correct?

13 A. Yes. State's Exhibit 92 and State's Exhibit 93.

14 Q. What type of testing did you do on those?

15 A. Similar testing, visual comparison of the microscopic
16 markings that were placed on these two bullets or projectiles
17 as they passed through the barrel of the firearm, placing them
18 side by side visually, under the same magnification, and
19 comparing the striated marks or scratches that were placed on
20 the outside of these bullets as they passed through the barrel
21 of a firearm.

22 Q. And did you draw some conclusions based on your
23 analyses of those two particular exhibits?

24 A. I did.

25 Q. And what was that?

TRACEY J. THROWER - DIRECT BY ELDER

612

1 A. That State's Exhibit 92 and State's Exhibit 93 were
2 also both fired by a single firearm.

3 Q. And did you determine what type of caliber?

4 A. The projectiles I found were most consistent with
5 bullets that are loaded into some forty Smith and Wesson
6 caliber cartridges.

7 Q. And did you issue a report in this particular case?

8 A. I did.

9 Q. And in that Report did you also indicate possible
10 firearms that could have possibly fired those particular
11 exhibits?

12 A. Yes Ma'am, I did.

13 Q. And could you tell us what those are?

14 A. Excuse me while I refer to my notes. The list of
15 possible firearms that could have fired State's Exhibit 92 and
16 93, based on the measurements I took, were Astra, Baretta,
17 Fabrique Nationale, or F.N., Browning, Heckler and Coe, or H &
18 K, Republic Arms, Rugger, Smith and Wesson, Springfield,
19 Incorporated, or Taurus.

20 MS. ELDER: One moment, Your Honor.

21 Your Honor, we have no other questions for this witness.

22 THE COURT: All right. Mr. Gardner.

23 MR. GARDNER: No questions, Your Honor.

24 THE COURT: Mr. Frederick.

25 MR. FREDERICK: No questions.

1 THE COURT: All right, sir.
2 Do you wish this witness to be excused, Ma'am?
3 MS. ELDER: Yes sir, Your Honor.
4 THE COURT: Any objection?
5 MR. GARDNER: No objection.
6 MR. FREDERICK: No objection.
7 THE COURT: All right, sir. You are excused and
8 released to go back to your regular duties.
9 A. Thank you very much.
10 THE COURT: And did you give the exhibits back to the
11 Court Reporter?
12 MR. RICHARDSON: Your Honor, may I approach?
13 THE COURT: Sure. Y'all come up.
14 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)
15 MR. RICHARDSON: She's here, Judge.
16 THE COURT: Very good. All right, your next witness,
17 please, then.
18 MR. RICHARDSON: The State would call Dr. Erin
19 Presnell.
20 THE COURT: All right. Please come around to be sworn,
21 Ma'am.
22 SUSAN ERIN PRESNELL, M.D., being
23 first duly sworn, testifies as follows:
24 DIRECT-EXAMINATION BY MR. RICHARDSON:
25 Q. Good morning, Dr. Presnell.

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

614

1 A. Good morning.

2 Q. Thank you for coming up to see us today. Please tell
3 us about your work, where, specifically, and in what capacity?

4 A. I am a Forensic Pathologist. I work at the Medical
5 University of South Carolina in Charleston.

6 Q. In Forensic Pathology, would you educate us a little
7 bit about what Forensic Pathology is?

8 A. Okay. Well, most people are becoming more familiar
9 with what a Forensic Pathologist is with all the T.V. shows
10 and all, but just to back up a little. A Forensic Pathologist
11 is a physician, so to get to that position you go through high
12 school, then college, and then you go to med school. After
13 med school you decide what specialty you are going into, like
14 Pathology, or Family Medicine, or Pediatrics. I chose
15 Pathology, and Pathology, itself, is a broad general field.
16 It means the study of disease, and most pathologists, or many
17 of them, are surgical pathologists, meaning that if you go to
18 your doctor and you get a biopsy, or the women, a pap smear,
19 or you go to your surgeon and they remove, like some cancer,
20 that tissue goes to the pathologist. They examine it, they
21 look at it in a microscope, and they come up with a diagnosis.

22 Forensic Pathology is a sub-specialty of that field, so
23 you train in General Pathology, and then you can sub-
24 specialize, and that's what I did. I did my Pathology
25 training, and then Forensic Pathology, and Forensic Pathology

1 is kind of similar in that we are studying disease processes
2 that might end in somebody's death, but we also examine
3 traumas that might end in somebody's death, and interpret
4 those traumatic injuries, and of course, we are not just
5 looking at a piece of tissue, or a biopsy, we are looking at
6 the whole body, and of course, the procedure that we use to do
7 that is called the autopsy, where we do the full external and
8 internal, all the organ examination. It's an ancillary
9 procedure. It's like Toxicology studies and all. Ultimately
10 the autopsy is used to come up with the cause and manner of
11 death.

12 Q. Well, Doctor, you've gone through all that schooling,
13 correct?

14 A. Yes.

15 Q. Okay. And I think you stated that Forensic
16 Pathologists perform autopsies. That's what you do?

17 A. Yes.

18 Q. Tell us about any associations or groups with respect
19 to Forensic Pathology to which you belong.

20 A. Well, I'm a member of the Medical Examiner, the
21 Forensic Pathology, the main Forensic Pathology groups,
22 including N.A.M.E., which is the National Association of
23 Medical Examiners, the American Academy of Forensic Sciences,
24 the College of American Pathologists, some of the main
25 national organizations.

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

616

1 Q. And any lectures, articles, or awards given or
2 received?

3 A. Well, I'm at the University, so we teach a fair amount,
4 so there's quite a number of lectures and all, and I have a
5 few papers published, but not too many.

6 Q. What's the purpose in autopsy examination?

7 A. Ultimately to come up with the cause and manner of
8 death, but also, not just the cause, and meaning if somebody
9 has a gunshot it's not really rocket science how they died,
10 but the interpretation of those injuries.

11 Q. And during the course of your duties as a medical
12 examiner, approximately how many autopsies have you performed?

13 A. I would estimate about two thousand.

14 Q. About two -- okay, two thousand. And have you
15 previously testified as an expert in the field of Forensic
16 Pathology?

17 A. Yes.

18 Q. How many times? In the past year how many times?

19 A. Probably a couple of times -- probably twice a month,
20 one to two times a month, for the last ten years.

21 MR. RICHARDSON: Your Honor, at this time the State
22 would seek to have Dr. Presnell admitted as an expert witness
23 in the field of Medical Examination and Cause of Death.

24 THE COURT: Any wish by your client, Mr. Gardner, to
25 voir dire the witness as to her qualifications?

1 MR. GARDNER: No sir.

2 THE COURT: And do you have any objection as to her
3 qualification to give her opinion in this particular case?

4 MR. GARDNER: No sir.

5 THE COURT: And Mr. Frederick, do you wish to voir dire
6 the witness as to her qualifications?

7 MR. FREDERICK: No sir.

8 THE COURT: And do you have any objection as to her
9 qualification to give her opinion?

10 MR. FREDERICK: No objection.

11 THE COURT: All right. Very good. She is qualified to
12 give her opinion in the field of Forensic Pathology and also
13 regarding any autopsy work, and the cause and manner of death
14 that she did in this particular case.

15 MR. RICHARDSON: Thank you, Your Honor.

16 Q. Dr. Presnell, on or about June 10th, 2006, did you have
17 the opportunity to perform autopsies on Jamilla Hightower and
18 Monica Wall?

19 A. Yes, I did. The Coroner of Horry County referred these
20 two cases to us and transported them from Horry County to
21 M.U.S.C. for autopsy.

22 Q. And the purpose of those autopsies were -- was what?

23 A. To find the cause and manner of death, and interpret
24 the injuries.

25 Q. Dr. Presnell, I'm going to show you photographs that

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

618

1 have been marked for identification as State's 99, 100, 101,
2 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113,
3 114, 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125,
4 126. If you will take a moment and look through these
5 photographs and diagrams. Tell me if you recognize those
6 items, Doctor. Take your time, please.

7 A. Okay. These are two groups of photographs taken at the
8 time of autopsy, one on Ms. Hightower and the other on Ms.
9 Wall.

10 Q. Doctor, these photographs and diagrams, do they fairly
11 and accurately depict diagrams you did, or observations you
12 made?

13 A. Yes.

14 MR. RICHARDSON: Your Honor, at this time, I believe
15 without objection, the State would seek to introduce those
16 photographs and diagrams previously identified.

17 THE COURT: All right, State's 99 through 126, is there
18 any objection, Mr. Gardner?

19 MR. GARDNER: No objection, Your Honor.

20 THE COURT: Mr. Frederick.

21 MR. FREDERICK: No objection to any of the exhibits,
22 and they may be published.

23 THE COURT: All right, sir, very good. So 99 through
24 126 are in evidence without objection.

25 (PHOTOS ADMITTED INTO EVIDENCE AS STATE'S EXHIBIT

1 NUMBERS 99 THROUGH 126.)

2 MR. RICHARDSON: Court's indulgence, Your Honor.

3 THE COURT: Yes sir.

4 Q. Doctor, first of all, what's the first thing you did?
5 Let's take Jamilla Hightower first. What's the first thing
6 you did in performing the autopsy of Jamilla Hightower?

7 A. Well, we pretty much follow a standard procedure on all
8 of our cases. They arrive to the autopsy room. We photograph
9 them as is. You know, if they are clothed we have to remove
10 the clothing, look for injuries. In cases of gunshot wounds
11 we take x-rays and -- for the purpose of locating the bullet,
12 so we can find out where it is in the body, so we can retrieve
13 it, so we would do x-rays on her, and then after we do the
14 external documentation we would do the "Y" incision and look
15 again in all the organs, including the brain, dissect the
16 organs, take samples, and obtain samples for toxicology, and
17 then that would be the end of the gross autopsy.

18 A couple weeks later the toxicology results would come
19 back, and also the samples that we took to look under the
20 microscope, and we kind of put every -- we put everything
21 together in the autopsy report, and that would be finalized.

22 Q. Dr. Presnell, I'm going to show you what's been
23 previously marked and entered into evidence as State's 99 and
24 100. I believe you indicated you could recognize those.
25 Could you tell the jury what those are?

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

620

1 A. These are diagrams, or copies of diagrams that I did at
2 the time of autopsy, these two, in particular, on Ms.
3 Hightower.

4 Q. Let's look at State's 99 first. What does 99 show, if
5 anything?

6 A. Am I showing this to anybody?

7 Q. You can just review it.

8 A. Okay. It shows her scars any marks on her. She had
9 kind of skin problem as well, which it just depicts that, but
10 the major thing it depicts is the entrance gunshot wound to
11 the back of her head.

12 Q. And let's see, on State's 99, would you show where the
13 gunshot wound is indicated? I'm sorry.

14 A. You want me to go up there? It's on the back of the --
15 the right back of the head, right here.

16 Q. And the purpose of Diagram 100.

17 A. Diagram 100 is just the -- one is a front and back
18 view, and one is a view of each side, and then we mark on that
19 according to where the injury is, or the -- whatever we find
20 is.

21 And the second one, Number 100, also shows the gunshot
22 wound from a side view, which is, again, on the back of the
23 right side of the head.

24 MR. RICHARDSON: Thank you, Doctor.

25 Q. Dr. Presnell, I'm going to show you now what you have

1 already identified, what's been entered into evidence, State's
2 101, 102, 103 and 104. Now, in State's 101, if you could tell
3 us what this photograph depicts.

4 A. That photograph depicts the back of Ms. Hightower's
5 head prior to us do -- any cleaning it up at all.

6 Q. And Dr. Presnell, would it assist you in coming down so
7 you can show the jury?

8 A. Yes.

9 Q. Okay.

10 MR. RICHARDSON: Your Honor's permission to have the
11 witness ---

12 THE COURT: Any objection?

13 MR. GARDNER: No sir.

14 MR. FREDERICK: No objection.

15 THE COURT: You may do so. Make sure she stands right
16 in front of that microphone, please.

17 Q. Dr. Presnell, right here.

18 A. All right.

19 Q. 101.

20 A. All right. Just for orientation purposes, this is the
21 top of her head. Her face would be -- her face would be right
22 around here. Here you can see her right ear, and there's kind
23 of a bloody spot in her hair right there. That's where the
24 entrance gunshot wound is going to be located. We'll --
25 shaved out and look at it closer in the next couple of

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

622

1 photographs.

2 Q. Dr. Presnell, 102.

3 A. That's a really close-up picture of the wound before
4 it's cleaned up. You really can't appreciate, you know, the
5 characteristics of the wound yet, because you see a bunch of
6 hair and blood, and that's about it.

7 Q. And what's the ruler looking thing right here?

8 A. This is -- the police investigator who attended the
9 autopsy, this would be his ruler that he used to take the
10 picture with.

11 Q. And State's 103.

12 A. This is a photograph of Ms. Hightower. We have cleaned
13 up the wound. We now have our marker, our autopsy marker in
14 it, which has a ruler on it so, you know, you can get -- if
15 you had a question of sizes and all you could get
16 approximation from that, but again, you kind of see the
17 location of it. Here is her face, her ear, and the wound is
18 right at the top of the back of the right part of the head.

19 Q. And State's 104. Just a closer view of that?

20 A. This is a close-up of the entrance wound. It has the
21 characteristics of the entrance wound, entrance gunshot wound.
22 We are not seeing any other marks around the wound, which is
23 significant in trying to determine range of fire, which I
24 suspect we will discuss in a moment.

25 Q. And you state that's an entrance wound. Is there any

1 way you can tell that's an entrance wound?

2 A. Well, I can tell that's an entrance wound because of
3 it's characteristics. It's a defect in the skin, and there's
4 a couple of other things, like abrasion borders and all, but
5 in particular, there is -- in this case, in Ms. Hightower,
6 there is a hole in her head, and there's a bullet in her head,
7 and so there's no other hole, so that really has to be the
8 entrance wound.

9 MR. RICHARDSON: Thank you.

10 Q. And Doctor, I believe we discussed -- I'm sorry, if you
11 will just stay down we will just go through the photographs,
12 if that will assist you.

13 I believe you discussed that there was a bullet in her
14 head. I'm going to hand you State's 105, 106, 107, 108, 109.
15 Just briefly, if you can explain to the jury what each one is.
16 Let's start with this. I believe that's 105.

17 A. Its -- 105. These are all photographs of the x-rays
18 that we took at the time of autopsy. Remember I said we were
19 trying to locate the bullet. It helps us pinpoint where it
20 is. So this is an x-ray of her head, and it shows that round
21 dark -- or excuse me -- lighter object right there, is the
22 bullet, and that's just a front-on x-ray of her head.

23 This is a close-up of the label of x-ray, down at the
24 bottom of the x-ray.

25 Q. That helps identify who the x-ray is of?

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

624

1 A. Right. Yes, the x-ray comes back and it has her name
2 on it.

3 This is a closer picture of the head, front-on, again,
4 showing where the bullet is located.

5 And then we have two side views. That's puts it into
6 perspective. We know that -- you know, where the bullet is in
7 the head from the front view, and now we look at the side
8 view, and we see that it's back toward to back.

9 That's a closer up of the same view. You can also
10 appreciate some skull fractures in here, the separation of the
11 skull, that darker area between the top of the -- at the top
12 of the photograph.

13 Q. And Dr. Presnell, if you would just stay here we'll
14 just keep going through.

15 Finally, with regard to Jamilla, for right now, State's
16 110 and 111, if you could just tell us what these are, and
17 what they depict.

18 A. Well, we'll look at 111 first, and to understand kind
19 of what the diagram is about I need to explain the way that we
20 get into the head, and get to the brain, is we make an
21 incision from behind one ear to behind the other, and then we
22 reflect that scalp forward, so the scalp is covering the face,
23 and then at that point we would cut a little triangle out of
24 the top of the skull, and then take the brain out, so this
25 first photograph is a picture of just the scalp reflected

1 forward. We haven't done anything else except that one
2 incision, and the scalp is forward, so that, in this picture
3 we are looking straight at the person, up here, and these two
4 pictures we are looking at the side, and of course that's the
5 back of her head. The little squiggle marks that we made on
6 there depict areas of hemorrhage. They are primarily
7 associated with the gunshot wound. The little circle, the
8 hole right there -- circle right there is the hole, or the
9 entrance gunshot wound corresponding to the one that was on
10 her scalp, but it's just areas of scalp hemorrhage.

11 Then, remember I said we reflect the scalp forward, and
12 then we take the -- what we call the calvarium, or the top of
13 the skull off, take the brain out, and then we can look at the
14 bottom of the skull, so this part, this part of your skull.
15 We are looking down into it, so this picture right here is
16 looking straight down into it. The teeth would be up here, so
17 we would be looking right up from this direction.

18 And here it's a little difficult to appreciate. It's --
19 but the hatch marks here are areas of skull fractures
20 associated with the gunshot wound, these hatch marks here,
21 along her, up on the front of the head, down on the back of
22 the head, so the back, middle and front of the head has
23 associated skull fractures.

24 Q. And upon -- upon having to do that work, the removal of
25 the piece of skull, you went into the skull, what, if

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

626

1 anything, did you find?

2 A. Well, that kind of goes along with what is the pathway
3 of the bullet. The bullet goes into the head, obviously
4 through the scalp and the skull, into the right side of the
5 brain, through the brain stem, which is what connects your
6 brain to your spinal cord, so through the brain stem, and into
7 the left side of the head, where there it hits part of the
8 bone and kind of bounces back into the brain, and that's where
9 we retrieved the bullet, and of course, along the bullet
10 pathway is -- the brain is disrupted. There is hemorrhage
11 associated with it, and so that would be -- that's the primary
12 finding inside the head.

13 Q. And with regard to Jamilla Hightower, were you able to
14 determine cause of death?

15 A. Yes, it was the gunshot wound to the head.

16 MR. RICHARDSON: Thank you.

17 Q. Dr. Presnell, let's look at State's 112. You have
18 already identified that you recognize this item. If you could
19 just explain that to us.

20 A. All right. This is -- we've moved on to the next
21 victim, Ms. Wall, and then again, this is a diagram that we
22 would do at the time that she gets to autopsy, documenting any
23 marks or injuries on her.

24 In this diagram we've noted that she has some abrasions,
25 or what -- or scratches, we call abrasions, on the knees, on

1 both the right and left knees, a couple of abrasions, and I
2 believe that's all. Most of the other -- all the other things
3 on here are just moles and scars and things like that, but the
4 injuries are the two abrasions on her knees.

5 MR. RICHARDSON: Thank you, Doctor.

6 Q. Let's look at State's 113, 114, and 115. You've
7 identified those as being fair and accurate depictions. If
8 you could just explain to the jury what they are.

9 A. Okay. What you didn -- the diagram you didn't see is a
10 closer-up of the head, depicting a gunshot wound to the back
11 of the right head, not quite as high as Ms. Hightower, down a
12 little bit lower, and so on these photographs -- of course you
13 have to clean up her hair area -- you can see her face is down
14 -- she's facing down on the autopsy table here. The gunshot
15 wound is, again, in the back of the right side of the head.

16 Q. Dr. Presnell, if you will, look at 116 real quick.
17 Would that assist you?

18 A. No.

19 Q. It would not. Okay.

20 A. So again, you can see the location at -- probably a lot
21 better on the photograph than you can on the diagram. It's on
22 the back of the right side of the head.

23 This is just a close-up of this entrance wound. Again,
24 a circular defect. It has abrasion borders. Another
25 characteristic we would look at is beveling, which, anyhow,

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

628

1 all these things indicate that this is an entrance wound.

2 Now what's different with Ms. Wall versus Ms. Hightower
3 is that the bullet exited on Ms. Wall, and so the bullet went
4 into the right side of the head, traveled through the brain,
5 again the brain stem, along the bottom of the left side of the
6 brain, and exited out her -- her front of her face, right
7 under her eyebrow. This is showing you the exit wound.

8 Q. No doubt about it, this is an exit wound?

9 A. Yes.

10 Q. And the other wound is an entrance wound?

11 A. Yes.

12 Q. Dr. Presnell, State's 116.

13 A. This is that diagram of when we were taking the
14 calvarium off the top of the skull, and we are looking down
15 into the base of the brain. Same diagram, different injuries
16 that -- she has a number of skull fractures also associated
17 with her gunshot wound. They are just in a little bit
18 different location, but also we involve all three parts of the
19 base of the skull, including the back, the middle and the
20 front. These lines along here are fractures.

21 MR. RICHARDSON: Thank you.

22 Q. State's 117, 118, 119, and 120, Doctor.

23 A. These are x-rays that were taken of Ms. Wall at the
24 time of autopsy. This is the front head-on x-ray of the head.
25 We are not seeing any of the projectiles. We are not seeing

1 any bullet, and of course that's because it exited.

2 That's a closer view. Someone got a little closer with
3 the camera on this picture, but it's the same x-ray.

4 This is the side view, and you can -- you see that
5 there's no bullets. You can also see the fractures on a lot
6 of her skull area here, see the darker lines are fractures,
7 and that's a closer-up, somebody got closer with the camera.
8 On the front part here, that big dark spot there, is
9 associated with the exit wound. It's a defect in the bone
10 from when the bullet went out.

11 Q. Dr. Presnell, I believe you indicated earlier, on that
12 earlier chart of Monica Wall, that you noticed abrasions on
13 the knees.

14 A. Yes.

15 Q. I'm going to show you State's 121. See if you
16 recognize that.

17 A. This is a closer-up of her right knee, and it's just
18 demonstrating the abrasions, the darker areas, there, there,
19 and there, right around her knee, here, here and here, are
20 scratches, or abraded areas of skin.

21 Q. Doctor, is there any way to date that abrasion?

22 A. This -- what we call this is just a recent abrasion.
23 It happened around the time of death, you know. Whether it's
24 an hour before, or at the time of death we can't really
25 differentiate that with that, but it's not showing any

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

630

1 evidence of healing at this time.

2 Q. And that's how you can tell it's a recent ---

3 A. Yes.

4 Q. Dr. Presnell, I'm going to show you State's 122. I
5 believe you have already identified that. If you could
6 explain it to the jury.

7 A. This is a copy of the diagram that we did, a close-up
8 on Ms. Wall, of -- a closer-up diagram of the head area,
9 depicting the entrance gunshot wound on the back of the head,
10 and the exit gunshot wound on the front of the head, under the
11 left eyebrow.

12 And we actua -- there is also another little finding
13 here, which was the circle that's drawn on the back of her
14 head, is an area of what we would call alopecia, where her
15 hair is missing, in the back, about a four-inch area of
16 missing hair on the back of her head.

17 Q. And Doctor, I'm see right here, a line on the neck.
18 Does that indicate anything?

19 A. Yes. We actually had a couple more findings with Ms.
20 Wall. She had another abrasion. It's on the right side of
21 the neck, and it's depicted by this line on the right side of
22 the neck. It appears -- and we believe we have a photograph
23 of it -- it appears pinched, kind of raised a little bit, but
24 a raised area of abrasion.

25 There are also some internal findings which I -- well,

1 we have some internal findings, and we have that pinched area
2 of abrasion on the neck. We also have some hemorrhage inside
3 the soft tissue of the neck, on the left side.

4 Also, in association with these two injuries are some
5 hemorrhages inside the -- or on the whites of the eyes, and
6 what we would call petechial, or purpura contusions. I
7 think we will see that, and then I can kind of explain what
8 that means -- what we interpret that to mean.

9 Q. Doctor, I'm going to hand you 123, 126, 124, and 125,
10 if these will assist you.

11 A. All right, this ---

12 Q. Just identify each one as you ---

13 A. I'm sorry. This is 124. This is a photograph of the
14 side of her neck. Her head is up this way, her chest is down
15 here, and here we see that darkened red area, on the side of
16 her right neck.

17 125 is a closer-up of that, depicting that kind of
18 pinched abraded area on the right side of her neck.

19 And then the next two are photographs of her eyes.
20 Remember I said there were some little pinpoint hemorrhages
21 and some -- actually some bigger hemorrhages. In the right
22 eye -- and I really don't think that you guys can see this
23 very well on this photograph. They are very, very fine, fine
24 little pinpoint hemorrhages on the right eye. Nothing -- this
25 right here is just the normal red color, very difficult to

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

632

1 appreciate here, but the left eye you can see a little bit
2 better. Those dark maroon areas are areas of hemorrhage,
3 hemorrhage in the eye, the dark maroon areas.

4 Q. Dr. Presnell, the abrasion on the neck, I believe you
5 said these are petechia in the eye.

6 A. Well, the petechia are pinpoint ones, and then when
7 they get bigger they are called puerperae, so these are larger
8 hemorrhages, and pinpoint, petechia, in the right side.

9 Q. But these injuries and hemorrhage, does that indicate
10 anything to you.

11 A. The injuries to the neck, on both the right and left
12 side, and the petechiae, or hemorrhages in the eyeballs,
13 indicate to me some degree of strangulation. Lay terms may
14 say choking, but choking to us is really if you occlude your
15 airway, like you choked on a piece of meat or something, so we
16 would call this a strangulation, not necessarily with your
17 hands or a ligature, but some type of compression on the neck.
18 The whole -- the mechanism, the way that this happens, and it
19 results in the hemorrhages in the eyes, are when there is
20 compression on the neck you press down on the blood vessels.

21 You have two types of blood vessels in your neck, the
22 arteries and the veins, and the arteries take -- go from the
23 heart and take the oxygenated blood to all your organs. The
24 veins, of course, they are the purple ones. They bring the
25 deoxygenated blood back to your heart so it can go to your

1 lungs and get some oxygen. The arteries that are taking blood
2 to -- and we are going to use the head, for example, are much
3 thicker, and more elastic than the veins, which are much
4 thinner, more compressible, that are come -- the veins coming
5 back, so when you put compression on the neck the veins
6 compress first, so if you put enough pressure to compress to
7 veins, but you don't compress the arteries, then the blood is
8 still going to your head, but it can't get out, and that
9 pressure builds, and when that pressure builds, over a period
10 of time, then the little small capillaries in your face can
11 burst, and where you see it best is where your eyes are white.
12 So these hemorrhages, this little hemorrhages in her eyes are
13 indicative that there is compression on her neck, blood is
14 going up, the pressure builds, and she's having bursting of
15 her smaller vessels in her eyes.

16 Q. And you said a period of time, does it have to be a
17 long time?

18 A. No, no, it doesn't have to be a long time.

19 Q. Doctor, I'm going to show you what's been previously
20 admitted into evidence as State's Number 40. This is a
21 picture. It's been identified as being Monica Wall. Now
22 the -- was it a ligature mark or an abrasion, I think you ---

23 A. An abraded area on the side of the -- I mean, it's non-
24 specific, it doesn't really match up with anything.

25 Q. Hypothetically, that straight line, could it have been

SUSAN ERIN PRESNELL, M.D. - DIRECT BY RICHARDSON

634

1 caused by the lip of this shower?

2 A. Yes.

3 Q. And hypothetically, if Ms. Wall was forced down on that
4 shower lip, for a short period of time, would that be
5 consistent with your findings as to the petechia and the
6 abrasion?

7 A. Yes, that could explain it.

8 MR. RICHARDSON: Dr. Presnell, thank you. If you will
9 take the stand.

10 Court's indulgence, Your Honor.

11 THE COURT: Yes sir.

12 MR. RICHARDSON: Your Honor, I apologize. I indicated
13 Number 40 was in evidence. Actually it's Number 10 that is in
14 evidence.

15 Q. Is that the same picture you just saw?

16 A. It appears to be the same, very -- maybe a different
17 orientation.

18 Q. And your hypothesis would be the same on that?

19 A. Yes.

20 Q. Dr. Presnell, finally, I don't it seems like a simple
21 question, but could you tell us the manner and cause of death
22 of Monica Wall?

23 A. Well, with Monica Wall she had the single gunshot wound
24 to her head, and the manner of death is homicide.

25 Q. The homicide being the gunshot wound?

1 A. Homicide being the manner of the death. It's not
2 accident, not suicide, not natural. The cause of death is the
3 single gunshot wound to the back of her head.

4 Q. No doubt about it, Monica Wall had fresh injuries to
5 her neck ---

6 A. Yes.

7 Q. ---Fresh injury to her knee ---

8 A. Yes.

9 Q. ---And a mortal gunshot wound to the back of her head?

10 A. Fatal gunshot wound, yes.

11 Q. And Doctor, I believe I asked you this earlier, but the
12 manner and cause of death for Jamilla Hightower.

13 A. She also had a single gunshot wound to the back of her
14 head. Manner of death is homicide.

15 MR. RICHARDSON: Thank you, Dr. Presnell. If you
16 would, answer any questions the defense may have.

17 THE COURT: All right. Mr. Gardner.

18 MR. GARDNER: Judge, I have no questions.

19 THE COURT: All right. And Mr. Frederick.

20 MR. FREDERICK: No questions, Your Honor.

21 THE COURT: All right. Do you wish this witness to be
22 excused?

23 MR. RICHARDSON: I do, Your Honor, so she can return to
24 her work.

25 THE COURT: Any objection?

JURY OUT/MOTIONS

636

1 MR. GARDNER: No sir.

2 MR. FREDERICK: No objection.

3 THE COURT: All right, Ma'am, you are released from
4 your Subpoena. You may go back to your regular duties.

5 A. Thank you.

6 THE COURT: All right, Solicitor, your next witness,
7 please Ma'am.

8 MS. ELDER: Your Honor, at this time the State of South
9 Carolina would rest.

10 THE COURT: All right. Very good.

11 All right, Mr. Gardner, and Mr. Frederick, do y'all have
12 some matters for the Court at this point in time?

13 MR. GARDNER: We need to take up a matter of law, Your
14 Honor.

15 MR. FREDERICK: Yes, we do.

16 THE COURT: All right. Very good.

17 All right, ladies and gentlemen, the State has finished
18 it's presentation. There are matters of law I need to take up
19 now, so if you would go to your jury room, and I'll call you
20 back out as quick as I can. Thank you.

21 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
22 JURY.)

23 THE COURT: All right, counsel, one thing before we get
24 started into the motions. In looking at the indictments, all
25 of the indictments that bear the name of Monica Wall have her

1 last name spelled W.a.l.l., except one indictment, and that
2 one is (07-GS-26-2975), accessory before the fact of a felony,
3 and that's regarding Mr. Christopher Stephens, and it has the
4 name of Monica Walls. There is an "S" at the end of Wall.
5 That appears to be a typographical error in that particular
6 indictment. Is there any motion from the State at this point
7 in time?

8 MR. RICHARDSON: Your Honor, the State would move to
9 amend the indictment to conform to the facts presented in the
10 case, and with the other indictment.

11 THE COURT: And so as to correct the spelling of the
12 name to be W.a.l.l.; is that correct?

13 MR. RICHARDSON: Yes sir, no "S" on the end.

14 THE COURT: All right.

15 MR. FREDERICK: No objection.

16 THE COURT: All right, Mr. Frederick.

17 There is no objection to that?

18 MR. GARDNER: No sir.

19 THE COURT: All right. Very good. Thank you very
20 much.

21 All right. Mr. Gardner, be glad to hear from you, sir.

22 MR. GARDNER: Thank you, Judge. With respect to the
23 burglary charge, we would move for a directed verdict. I
24 don't believe there was any evidence to address the elements,
25 any evidence that should go to the jury that addresses the

JURY OUT/MOTIONS

638

1 elements of burglary. They went into great detail to
2 establish that you couldn't get into this house without the
3 victim's consent. If in -- whoever went in there obviously
4 had the victims' consent. There is nothing that ties Jimmy
5 Lee to that.

6 I would offer up State versus Hill, 361 S.C. 297, is
7 just one case that addresses that. That case went on to talk
8 about -- distinguish about buildings, but it also talked about
9 consent. That -- there is just no evidence that ties him
10 going into that house without the owner's consent, and I would
11 move that that case -- that we get a directed verdict on that
12 one.

13 THE COURT: All right, Solicitor, be glad to hear from
14 you.

15 MR. RICHARDSON: Your Honor, first of all, the element
16 of intent on a burglary first can be formed once someone is in
17 the house, whether they get in by trickery or ruse. Expert
18 witness yesterday stated that the only way for a defendant to
19 get in was if he had somebody to let him in. There was
20 circumstantial evidence that he went and got the victim's
21 cousin to allow him entry. There was testimony that they
22 would need a door man to get them in the house. And the
23 entering the house with intent to commit a crime there in is
24 clearly established that it can be by ruse, by force. It
25 doesn't need to be proved by kicking of the door in, Your

1 Honor, and the State would submit that there has been
2 sufficient evidence, or there is competent evidence to support
3 the indictment.

4 THE COURT: All right. As to that particular motion,
5 Mr. Gardner, part of the law of burglary first degree is that,
6 if a person enters a building by using deception, artifice,
7 trick or misrepresentation to get consent to enter this is an
8 entry without consent, and also the intent can be shown by
9 acts and conduct of the defendant, or other circumstances from
10 which you could naturally infer, or reasonably infer intent.

11 It's not my job to weigh the evidence in this case. I'm
12 concerned with the existence of evidence. There is evidence
13 contained in this case as to the victim's habit as to entry
14 into the home, what was required to gain entrance into the
15 home. There is evidence that would -- that I believe there is
16 substantial circumstantial evidence that would indicate, from
17 the facts and evidence of this case, that there was either
18 deception, artifice, trick, or misrepresentation used to gain
19 entrance, and that is a reasonable conclusion from the facts
20 and evidence of this case, and once again, it not being my job
21 to weigh the evidence, but only with the existence of
22 evidence, therefore I respectfully decline to grant your
23 motion.

24 Next motion, sir.

25 MR. GARDNER: The other are just proformer motions on

JURY OUT/MOTIONS

640

1 all the other charges, Judge. The burglary motion was the one
2 that I wanted to make for the record. We don't see any
3 evidence of the trickery there, but for the record, Judge, we
4 would move for a directed verdict as to all remaining charges.

5 THE COURT: All right. Very good. And so the other
6 remaining charges would be as to your client, Mr. Sessions,
7 that being the -- accused with the murder of Jamilla
8 Hightower, the murder of Monica Wall, and the armed robbery of
9 Jamilla Hightower. Again, as I indicated, regarding a
10 directed verdict motion, in general a defendant is entitled to
11 a directed verdict when the State fails to produce evidence of
12 the offense charged. Again, as I indicated, I am to look at
13 the existence of evidence, not with it's weight. If there is
14 any direct or substantial circumstantial evidence reasonably
15 tending to prove the guilt of the accused then the case is
16 properly submitted to the jury. A Judge would grant a
17 directed verdict motion when the evidence merely raises a
18 suspicion of guilt by the accused.

19 In this particular case I find -- again, I'm not
20 concerned with weighing the evidence, the credibility or the
21 believability of the witnesses. That is for the jury. It's
22 not my job to judge their credibility or believability, just
23 whether or not the evidence exists. The Court finds that
24 there is more than sufficient evidence that exists in this
25 case, if so believed by the jury, to support a conviction of

1 the Defendant, Jimmy Lee Sessions, on all of the crimes
2 charged against him in this particular matter. Again, that is
3 not a statement as to the weight of the evidence, just the
4 existence of the evidence.

5 Thank you very much.

6 All right. Mr. Frederick.

7 MR. FREDERICK: Judge, we move for a directed verdict
8 on Christopher's charges of accessory before the fact, all of
9 the charges. Judge, the only testimony in the last three days
10 that could even been considered would be James Pearl's
11 testimony that he overheard Christopher and Jimmy Lee talking
12 about robbing the girls the day before, or a few days before
13 the murders happened. There was no testimony that he aided,
14 counseled, procured, assisted, handed him a gun, did anything
15 to assist in setting up or preparing for the robbery, only
16 that they had a conversation about it. The fact that they
17 discussed a robbery does not make him guilty of accessory
18 before the fact, and it's not something that's sufficient for
19 the jury to consider.

20 THE COURT: All right, sir. State.

21 MR. RICHARDSON: Your Honor, I'm going to pass up to
22 you State v. Buckman. I would preface this by saying, once
23 again, this motion should be considered in the light most
24 favorable to the State, and as you have stated time and again,
25 the Court should be concerned with the existence of evidence,

JURY OUT/MOTIONS

642

1 and not judge the weight of it.

2 As to this, the Defendant was charged with accessory
3 before the fact. There was testimony that they were going to
4 hit a lick. They were discussing robberies, and they came up
5 with the name Jamilla, and it was actually Chris Stephens idea
6 to rob Jamilla, and there was some argument over a drug debt.
7 We had testimony. That is testimony, that's evidence that is
8 in the record, that he counseled, aided and abetted, actually
9 told Jimmy Lee Sessions, gotta watch out, she ain't going to
10 give it up easy. Jimmy Lee said, I'll do the robbery, I'll
11 kill her if I have to. There was testimony yesterday that --
12 and while he's not charged with accessory after the fact at
13 this time, there was evidence that he was with Jimmy Lee
14 Sessions, sharing the proceeds after the sale (sic), further
15 showing the -- his involvement in it.

16 The case that I passed up, State vs. Buckman, I believe
17 is pretty much directly on point. While it's not an accessory
18 charge it is a -- it's a ---

19 MR. FREDERICK: Conspiracy.

20 MR. RICHARDSON: It's a conspiracy charge, Your Honor,
21 which is analogous to the -- to the -- to this accessory
22 charge. In that case they basically threw out the murder
23 conviction they had on Mr. Buckman because the State failed to
24 prove that the Defendant was there. If I would have charged
25 Chris Stephens with murder I have to prove that he was there

JURY OUT/MOTIONS

643

1 at the time. If I could prove he was there I would have had
2 him indicted for murder, burg first, armed robbery, but
3 instead, I can prove that he was in the car planning.

4 In this case one witness testified that he heard they,
5 meaning all the Defendants, including Buckman, discussing
6 getting some cheese, meaning money. That's on page six of the
7 case, Your Honor -- and number -- number twelve. The evidence
8 indicated the appellate was -- is involved in a discussion
9 about getting some cheese, meaning money, in front of
10 Demetrius. Appellate was also involved in a discussion about
11 getting a lick, meaning a burglary or robbery. That's exactly
12 on point of what we had today, and the Court indicated the
13 case should go forward on the conspiracy charge.

14 Your Honor, in addition, Rodney Turner, the victim's
15 cousin, knows it was Wednesday when he saw Chris Stephens in
16 an S.U.V., or truck. Consistent, James Pearl said that they
17 were in a Jeep Cherokee. That's an S.U.V.. Rodney Turner
18 puts Chris Stephens at Jamilla's house that same Wednesday
19 night. He's dressed in black, but as Lieutenant Prodan said,
20 time wasn't appropriate, they had too many people there, don't
21 know if he was casing the joint, don't know what happened, but
22 they had another heated discussion because when Jamilla came
23 back inside she was upset. Don't know who else was out in the
24 car, don't know if it was Jimmy Lee Sessions or some other
25 conspirators, but Judge, we have produced sufficient evidence

JURY OUT/MOTIONS

644

1 to send to the jury.

2 THE COURT: All right, sir.

3 Yes sir, Mr. Frederick.

4 MR. FREDERICK: Just, Judge, the case the Solicitor is
5 quoting from is a conspiracy charge. It's not an accessory
6 before the fact charge. It is conspiracy.

7 THE COURT: Yes sir.

8 MR. FREDERICK: And also, on page five of that case,
9 paragraph eight, there was evidence of a -- there was an
10 eyewitness in the case, there was a written statement, in
11 addition to the testimony of the conversation that they had.
12 Rodney Turner did not testify to anything. There was evidence
13 of accessory before the fact, and the mere fact that a
14 conversation was testified to, without more that showed that
15 he assisted, aided, counseled, procured, all the language of
16 the statute, Judge, is not sufficient to go to the jury.

17 THE COURT: All right, sir. I'll just make it clear,
18 I'm not using the case submitted by the Solicitor, the State
19 vs. Buckman in any way. I'm not considering that. What I'm
20 looking at is the law of accessory before the fact, and in
21 essence, regarding accessory before the fact, the State has to
22 prove, beyond a reasonable doubt, that the defendant either
23 advised, agreed, urged, counseled, hired, or in some way aided
24 or abetted another person to commit a crime, and that the
25 defendant was not present when the offense was committed. Aid.

JURY OUT/MOTIONS

645

1 means to help, to promote the course, or accomplishment of, to
2 give support to, or give assistance to. Abet means to
3 encourage or appear to favor or support.

4 Regarding this particular matter, I do find that there
5 is direct-evidence and substantial circumstantial evidence,
6 reasonably tending to prove that the Defendant, Christopher
7 Stephens, abetted the crime in this particular matter. And
8 again, I am not looking at the weight of the evidence. I am
9 looking at the existence of evidence. The evidence exists.
10 Whether or not it's credible or believable, that is, again,
11 the jury's job. That is not my job. But the evidence does
12 exist in this particular case regarding accessory before the
13 fact of a felony, regarding all three counts, the murder of
14 Jamilla Hightower, the armed robbery of Jamilla Hightower, and
15 the murder of Monica Wall, therefore, in using the directed
16 verdict standard that I just reviewed earlier, I do find that
17 there is direct-evidence and substantial circumstantial
18 evidence reasonably tending to prove the guilt of the accused,
19 and therefore I would respectfully decline to grant your
20 motion in this particular matter.

21 Further motions from the Defendant?

22 **MR. FREDERICK:** Nothing further, Judge.

23 **THE COURT:** All right. Is the Defense ready to proceed
24 with witnesses in this case? Mr. Gardner.

25 **MR. GARDNER:** Judge, I would like a short break to find

JURY OUT/MOTIONS

646

1 my witness and go through a couple of things. I didn't
2 anticipate the State resting this early, but if the Court
3 would indulge me with a short recess.

4 MR. FREDERICK: Judge, if we could have a little bit of
5 time we would appreciate it.

6 THE COURT: Okay. Well, I'll give you a little bit of
7 time, but you know I told you yesterday, if the State came
8 this morning at 8:30, or 9:00 o'clock and said they are
9 resting, I expected you to go forward, and I'm expecting y'all
10 to go forward, so I'll see you shortly.

11 Thank you very much.

12 MR. GARDNER: Thank you, Judge.

13 MR. FREDERICK: Judge ---

14 THE COURT: Yes sir.

15 MR. FREDERICK: How long is shortly?

16 THE COURT: Ten minutes.

17 Thank you.

18 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
19 THE PRESENCE OF THE JURY.)

20 THE COURT: All right. Is the State ready to go
21 forward?

22 MS. ELDER: Yes sir, Your Honor. We would go on record
23 -- I'm sorry. We are missing, looks like, Mr. Frederick.

24 (MR. FREDERICK ENTERS THE COURTROOM.)

25 THE COURT: Yes, Solicitor.

1 **MS. ELDER:** Your Honor, we would make a continuing
2 motion in limine that, prior to -- I don't even know if it's
3 going to come up, but prior to the offering of testimony in
4 regards to third-party guilt, that that testimony be proffered
5 outside the presence of the jury prior to it being eliciting -
6 - elicited, in response to Gregory, and the cases that have
7 cited it.

8 **THE COURT:** All right.

9 **MR. FREDERICK:** Judge, that would require us to proffer
10 the testimony of almost every witness.

11 **THE COURT:** All right. Well, ---

12 **MR. FREDERICK:** I think, if the Solicitor wanted to
13 make an objection at the appropriate time. We've already had
14 evidence of third-party guilt that has come in through the
15 prosecution witnesses.

16 **MS. ELDER:** I disagree, Your Honor.

17 **THE COURT:** Well, I think probably before you call each
18 witness we are just going to have to have at least a very
19 short hearing as to the essence of that particular person's
20 testimony.

21 **MR. FREDERICK:** And I guess I have a question about
22 specifically what they are referring to. And does this mean,
23 if we are going to ask the question, did this person commit
24 the crime, you want us to bring that up beforehand?

25 **THE COURT:** Yes sir.

JURY OUT/MOTIONS

648

1 MR. FREDERICK: Okay.

2 THE COURT: Well ---

3 MR. FREDERICK: Also, if we have a witness, and if we
4 point at him and say, you committed the crime, we want to
5 bring that up beforehand?

6 THE COURT: Yes sir.

7 MR. FREDERICK: No problem with that.

8 MS. ELDER: Your Honor, my understanding is, offering
9 of any evidence that somebody else may be -- or point the
10 finger, speculative, that somebody else did the crime, it's
11 under Gregory and third-party guilt, so if somebody takes the
12 stand and says, yeah, I heard Joe was involved in ---

13 MR. FREDERICK: That would be hearsay anyway. We are
14 not going to do that, Judge.

15 THE COURT: Well, let me -- and I had it just a second
16 ago, and I don't know where I put my notes. Tell me the cite
17 again of Gregory, because I wrote it down and now ---

18 MS. ELDER: Yes sir, Your Honor.

19 MR. FREDERICK: And Judge, I think the appropriate case
20 to look at would be Holmes, which limited Gregory.

21 THE COURT: How about give me both of them.

22 MS. ELDER: Your Honor, Gregory is 198 S.C. 98.

23 THE COURT: How about the Southeast cite; do you have
24 that?

25 MS. ELDER: I'm sorry, yes sir. 16 S.E. 2d 532.

1 Also, Your Honor, in reference to that, Gregory has been
2 cited multiple times. I would ask the Court to specifically -
3 - we believe it's directly on point.

4 THE COURT: What's the Holmes cite, Mr. Frederick?

5 MR. FREDERICK: Judge, I'm about to pass the case up to
6 you ---

7 THE COURT: All right.

8 MR. FREDERICK: ---As well as ---

9 MS. ELDER: Your Honor, also they cite, inside of State
10 versus Manfield, that referred to the Southerland case. We
11 believe this is going to be more so, in the -- I would assume
12 what they are going to be offering as evidence. The
13 Southerland case is at 447 S.E. 2d and 866 through 67 is the
14 portions that deal with third-party guilt.

15 THE COURT: Okay. What is the ---

16 MS. ELDER: Your Honor, that ---

17 THE COURT: What is the first page of that particular
18 Decision though? You said it's 447 S.E. 2d. The first page
19 of the Decision would be?

20 MS. ELDER: I'm sorry, Your Honor. I don't know that I
21 have that printed out. I have it documented inside of the
22 Mansfield case. Here it is, Your Honor. It's 862.

23 THE COURT: 862?

24 MS. ELDER: Yes sir. 447 S.E. 2d 862.

25 THE COURT: All right. Very good.

JURY OUT/MOTIONS

650

1 MS. ELDER: And it deals with motive, Your Honor. It's
2 not -- showing that others may have had a motive is
3 inappropriate testimony under third-party guilt, Your Honor.

4 THE COURT: Thank you, sir.

5 MR. FREDERICK: Judge, that is State versus Holmes,
6 State versus Tindall, State versus Mitchell, State vs. Rice --

7 -
8 THE COURT: All right.

9 MR. FREDERICK: ---Which are -- I think those are the
10 cases that follow after Holmes. If you recall, Holmes went to
11 the U.S. Supreme Court, and was remanded back to the South
12 Carolina Supreme Court. There have been a few cases after
13 Holmes that interpreted it.

14 State versus Holmes, Judge, overturned previous South
15 Carolina law which excluded third-party guilt based on the
16 strength of the State's evidence. Holmes made third-party
17 guilt admissible based on the strength of the defense's
18 evidence. It ruled based on the guarantee of a meaningful
19 opportunity to present a complete defense based on due process
20 and the Fourteenth and Sixth Amendments. Any evidence rule
21 that infringed upon a right of the accused, and was arbitrary
22 or disproportionate to the purpose it was designed to serve,
23 was invalid, which is what Holmes said that the prior South
24 Carolina law was.

25 State versus Rice was in October, 2007, basically said,

1 the evidence offered by the defendant as to third-party guilt
2 is limited to facts which are inconsistent with the defenses -
3 - the defendant's guilt. If there is testimony that is
4 inadmissible as substantive evidence of third-party guilt it
5 may, nevertheless, be admissible for impeachment.

6 State vs. Mitchell, in May of 2008, gave an example of
7 something that is not admissible as third-party guilt, which
8 was the defendant going through the telephone book to show
9 that there were other people with the same name.

10 THE COURT: All right. Let's be clear about what we
11 have as far as the issue of third-party guilt, and looking at
12 Gregory, and the number of times that it's been cited, it
13 basically states that evidence offered by an accused as to the
14 commission of the crime by another person must be limited to
15 such facts as are inconsistent with his own guilt, and to such
16 facts as raise a reasonable inference or presumption as to his
17 own innocence. Evidence which can have no other effect than
18 to cast a bare suspicion upon another, or to raise a
19 conjectural inference as to the commission of the crime by
20 another is not admissible.

21 And it says -- goes on and talks about, before such
22 testimony can be received there must be such proof of
23 connection with it, such a train of facts or circumstances as
24 tends clearly to point out such other person as the guilty
25 party, so I don't see any other way but to have a hearing

JURY OUT/MOTIONS

652

1 every time you intend to produce a witness, so that I can
2 make a decision. As the -- Gregory says, before such
3 testimony can be received there has to be this proof of
4 connection, so I don't know any other way around it.

5 MR. FREDERICK: And Judge, just for the record, part of
6 the language that you read is -- the last part, is no longer
7 valid, the "clearly" language, Judge, but ---

8 THE COURT: Okay. Well, I was reading that more to the
9 point that, before the testimony can be received you've got to
10 make a determination is what -- that's more my point, is what
11 I was trying to get to. I mean, do you disagree that that's
12 the threshold?

13 MR. FREDERICK: No sir, and as far as third-party
14 guilt, I mean, we can talk now about the only people I think
15 that it would be relevant to, and they have already called
16 Antwann Higgins as a witness.

17 THE COURT: Okay.

18 MR. FREDERICK: Melissa Gomez will testify that she
19 took a briefcase full of drugs out of the house. Roy Grant
20 will testify that he was also in the house with Antwann
21 Higgins and Melissa Gomez.

22 THE COURT: Okay.

23 MR. FREDERICK: Investigator DiLorenzo would testify
24 that those individuals lied to him about what happened, and
25 that they took a briefcase out of the house with drugs in it.

1 THE COURT: Okay. That's -- and that would be the
2 essence of presenting Ms. Gomez ---

3 MR. FREDERICK: Antwann Higgins.

4 THE COURT: Antwann ---

5 MS. ELDER: He was already ---

6 THE COURT: No. I mean, he's already testified. The
7 other fellow that ---

8 MR. FREDERICK: Best.

9 THE COURT: ---That was in there, the fellow that was
10 in there with him ---

11 MR. FREDERICK: Roy Grant.

12 MR. GARDNER: Roy Grant.

13 THE COURT: ---Do you intend -- do you intend -- yes,
14 do you intend to present him?

15 MR. FREDERICK: Yes sir.

16 THE COURT: Okay. So that would be the reason to
17 present Ms. Gomez, Mr. Best?

18 MR. GARDNER: No sir, Grant. I'm sorry.

19 MR. FREDERICK: Roy Grant.

20 THE COURT: Grant. I'm sorry. Grant. Mr. Grant, and
21 then the investigator?

22 MR. FREDERICK: Yes sir.

23 THE COURT: Okay.

24 MR. FREDERICK: Possibly some impeachment witnesses.

25 THE COURT: Okay. Well, what's your position then,

JURY OUT/MOTIONS

654

1 Solicitor, about the fact that they would present testimony or
2 evidence that would show that there were other individuals
3 certainly at the crime scene before police arrived, and that
4 there were things that were removed. I mean ---

5 MS. ELDER: Your Honor, what -- what Mr. Frederick has
6 outlined to the Court, I don't think would violate Gregory,
7 Your Honor, if that's what they are going to testify to, if we
8 are not going any further than that.

9 THE COURT: Okay. It seems to me then, if that's the
10 point of it, then I don't know that I need to have a hearing,
11 but if -- if you anticipate, or you see that you are going
12 beyond that, Mr. Frederick, or Mr. Gardner, that y'all are
13 going beyond that, y'all need to alert me and let me know.

14 MR. FREDERICK: Judge, that -- I think that's it.
15 Now ---

16 THE COURT: Okay. Well, and I appreciate that, and you
17 may get an unexpected answer. I understand that. But if you
18 do get an unexpected answer, then we may have to stop the
19 proceedings at that point in time, or you may see, from a
20 response that you got, well, now I have to ask this question -
21 --

22 MR. FREDERICK: We would just approach if that
23 happened.

24 THE COURT: ---And if you see that then you need to let
25 me know so that we can discuss whether or not we then have to

JURY OUT/MOTIONS

655

1 have a hearing or not, all right. What I would like to do is,
2 if we don't have to, if we -- if it seems to be that -- and I
3 certainly agree that what you are telling me is proper under
4 **Gregory**. I don't see any problem with it, but if we go beyond
5 that, I don't know what that is, and so I need for you to
6 alert me to that.

7 **MR. FREDERICK:** And Judge, it sounded like part of the
8 concern was that I would be eliciting testimony about what
9 people have heard, what the word on the street was, and I'm
10 certainly not going to do that with any witness.

11 **THE COURT:** Okay. Very good.

12 **MS. ELDER:** Your Honor -- and I apolo -- just so the
13 Court will know, that is -- that is our concern, as well as
14 motive of others, Your Honor.

15 **THE COURT:** All right. Well, and I appreciate that,
16 but ---

17 **MS. ELDER:** Those are my two **Gregory** concerns.

18 **THE COURT:** ---Let's -- let's -- let's just leave it
19 that, from what I've heard so far, Mr. Gardner, Mr. Frederick,
20 I think it comports with **Gregory** that you are certainly
21 welcome, and it's proper to do that, but if you see that it's
22 going beyond that please alert me and let me know. All right.

23 **MR. FREDERICK:** Yes sir.

24 **THE COURT:** Thank you.

25 All right, then is the Defense ready to go forward, Mr.

JURY OUT/MOTIONS

656

1 Gardner, and Mr. Frederick?

2 MR. GARDNER: Yes sir.

3 THE COURT: All right. Very good.

4 MR. FREDERICK: Judge, we had some ground rules we
5 wanted to bring up with the Court.

6 THE COURT: All right.

7 MR. FREDERICK: Mr. Gardner is presenting his case
8 first, and we just wanted to -- Mr. Gardner calls his witness,
9 the order of things, and then I will cross that witness, and
10 then the Prosecutor will cross that witness?

11 THE COURT: That's correct.

12 MR. FREDERICK: Okay.

13 THE COURT: Yes sir.

14 MR. FREDERICK: When Mr. Gardner rests, then I will
15 call witnesses, if I have any, at that time?

16 THE COURT: Yes sir. Now, before you rest, Mr.
17 Gardner, and before you make a decision, or -- I'm not asking
18 you right now whether your client is going to call -- be
19 called or not, but what I'm going to give you is the
20 opportunity to call all your other witnesses, and then you
21 need to let me know you have basically exhausted all those
22 witnesses and now we've come to the point where you've got to
23 make a decision as to whether or not your client is going to
24 testify, and you need to tell me you need to break, because
25 then we will discuss with him, obviously outside the presence

1 of the jury, about his Constitutional Rights and testifying,
2 so if you will just make sure you do that for me, then we can
3 operate in that manner, all right.

4 MR. GARDNER: Yes sir.

5 THE COURT: And Mr. Frederick, we'll do the same thing
6 with your client, if that's agreeable with you, that you can
7 call the witnesses that you intend to call, exhaust those, and
8 then when you get to the point where you had to make a
9 decision whether or not your client is going to testify you
10 let me know that we need to take a break and cover that
11 particular issue.

12 MR. FREDERICK: Yes sir.

13 THE COURT: All right. Very good.

14 All right, ask the jury to come in then, please.

15 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
16 JURY.)

17 MR. FREDERICK: Judge, can we approach?

18 THE COURT: Yes, absolutely. Y'all come forward.

19 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

20 THE COURT: All right, Mr. Gardner, your first witness,
21 please sir.

22 MR. GARDNER: Thank you, Judge.

23 We would call Donald C. Girndt.

24 THE COURT: All right. Please come around to be sworn,
25 sir.

DONALD C. GIRNDT - DIRECT BY GARDNER

658

1 DONALD C. GIRNDT, being first duly
2 sworn, testifies as follows:

3 DIRECT-EXAMINATION BY MR. GARDNER:

4 Q. Good morning, sir. Would you please tell the jury
5 where you are employed?

6 A. Yes. I'm self-employed as a Forensic Consultant. I
7 specialize in areas of footwear identification, fingerprint
8 identification, crime scene analysis, and blood stain pattern
9 interpretation.

10 Q. And prior to this consultation business, where were you
11 employed, sir?

12 A. I was employed as an agent with State Law Enforcement
13 Division in the Crime Scene and Latent Print Unit. I retired
14 from there in December of 1994, and since 1995, I've had my
15 own business. I consult primarily -- excuse me -- with
16 defense attorneys throughout the Southeast, North Carolina,
17 South Carolina and Georgia.

18 Q. All right. And in that capacity at S.L.E.D., can you
19 give the jury the benefit of your educational background, and
20 tell us if you took any specialized training in the area of
21 latent prints and footwear impression?

22 A. Yes. I have an Associate and Bachelor's Degree from
23 the University of South Carolina. I have attended the
24 Criminal Justice Academy for basic police, and fingerprint and
25 crime scene. I have attended numerous other courses over the

1 years, and as an agent at State Law Enforcement Division. I
2 was also training officer there for new agents that came in,
3 so ---

4 Q. You were the training officer at S.L.E.D.?

5 A. Well, what happens is, in the Unit we -- when a person
6 comes in, for the first two years they are assigned to an
7 agent to train them. It takes two years to be competent as a
8 latent print examiner, and in crime scenes, and that's what I
9 did. That's part of the duties.

10 Q. All right. Have you ever testified as an expert
11 witness in the area of footwear identification, or footwear
12 impressions?

13 A. Yes.

14 Q. And in what court, and approximately how many times?

15 A. Well, not in just that area, but in the -- all the
16 areas, because what happens is, when you process a crime scene
17 you may end up doing the fingerprints, the footwear, blood
18 stain pattern, that sort of thing, so over the years I've
19 testified approximately a hundred and thirty times in North
20 Carolina, South Carolina and Georgia, Maryland, and in Federal
21 District Court, in one or more of those areas.

22 Q. All right. Yes sir.

23 MR. GARDNER: Your Honor, at this time I would offer
24 Mr. Girndt as an expert witness in the area of footwear
25 identification and impressions.

DONALD C. GIRNDT - DIRECT BY GARDNER

660

1 MS. ELDER: Your Honor, we have no objection that Mr.
2 Girndt would be qualified to give his opinion in reference to
3 those areas.

4 THE COURT: All right. I'm going to give -- I'm going
5 to qualify him to give his opinion in the area of footwear
6 impressions and identification.

7 MR. GARDNER: Thank you, Your Honor.

8 Q. Mr. Girndt, did you have the opportunity to review the
9 Report made by Agent Darnell?

10 A. Yes, I did.

11 Q. All right. And did you have the opportunity to review
12 the five pairs of tennis shoes that are in evidence?

13 A. Yes, I did.

14 Q. All right. Is there any way to date the prints
15 referred to in his Report, date them to the crime scene?

16 A. No, not the ones that are in the black powder, no.

17 Q. All right. Did you have the opportunity to review
18 other photos of prints taken at the crime scene?

19 A. Yes, I did.

20 Q. And is there any way to date any of those to the crime
21 scene?

22 A. May I see the photo?

23 Q. I'm going to show you what's been marked as State's 16.

24 COURT REPORTER: Stephens, Defendant.

25 Q. Defendant, Stephens', Exhibit 16, in evidence, and ask

1 you, based on your investigation of this case, do you
2 recognize that?

3 A. Yes sir.

4 Q. All right. Can you tell us what that is, sir?

5 A. Yes. This is a photograph that was taken in the
6 bathroom, and it appears to be a footwear impression in fecal
7 material. ---

8 Q. All right.

9 A. ---And this was taken prior to the floor being
10 processed.

11 Q. All right. And is there any way to date that exhibit
12 to the crime scene?

13 A. I would say, as a Crime Scene Analyst, and in viewing
14 this, and knowing some of the facts of the case, I would say
15 that this footwear impression would be contemporaneous to the
16 crime scene. That would be at or near the time of the crime.

17 Q. This footwear impression would be contemporaneous to
18 the crime scene, and how did you come up with that, based on
19 the fecal matter?

20 A. Well, based on the information that I reviewed, in that
21 one of the victims had defecated, and that -- down the
22 hallway, and was drug down the hallway into the bathroom, and
23 this impression -- there's one impression right inside the
24 door, and there's another one right near the body.

25 Q. Yes sir. So the print that you have there that's

DONALD C. GIRNDT - CROSS BY FREDERICK

662

1 contemporaneous with the crime scene, did you compare that to
2 State's 88, the shoes that they say are Jimmy Lee Sessions'?

3 A. Yes sir.

4 Q. And do you have an opinion as to whether or not that
5 print matches, or what is your opinion on that, if you have
6 one?

7 A. My opinion would be that the Sessions' shoes are
8 excluded from producing this print.

9 Q. Jimmy Lee Sessions' shoes are excluded as producing the
10 print that's contemporaneous with the crime scene, based on
11 your investigation?

12 A. In my opinion, yes.

13 MR. GARDNER: That's all I have. Please answer any
14 questions that Mr. Frederick has.

15 THE COURT: Mr. Frederick.

16 MR. FREDERICK: Just a couple, Mr. Girndt.

17 CROSS-EXAMINATION BY MR. FREDERICK:

18 Q. Just to be clear, there was footprint impressions that
19 were taken from different locations; is that right?

20 A. Yes.

21 Q. Okay. And the State's expert, he had found one that
22 was -- could have been consistent with, but didn't match, but
23 could have been consistent with a footprint impression that
24 was taken; is that correct?

25 A. Yes.

1 Q. That one, based on your review of the evidence, was not
2 in the fecal matter; is that right?

3 A. No, not that I'm aware of, no.

4 Q. Okay. But there were some that were in the fecal
5 matter?

6 A. Yes.

7 Q. And those -- you can exclude the footprint that they
8 attribute to Jimmy Lee Sessions' shoe from the ones that were
9 in the fecal matter?

10 A. Yes. All five pairs of the shoes that were submitted
11 are excluded from making this print. Just not -- not the same
12 design.

13 MR. FREDERICK: None of the shoes?

14 A. None of the shoes.

15 Q. Okay.

16 MR. FREDERICK: No more questions. Thank you.

17 THE COURT: Solicitor.

18 MS. ELDER: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MS. ELDER:

20 Q. Did you have an opportunity to review -- you said, I
21 think, Agent Darnell's report; is that correct?

22 A. Report. Yes.

23 Q. And you indicated that -- upon reviewing that, did you
24 also get a chance to review the shoes?

25 A. Yes.

DONALD C. GIRNDT - RECROSS BY FREDERICK

664

1 Q. And the State also provided you an opportunity to
2 review the gel lifts, and the Pro-Lifters from the kitchen; is
3 that correct?

4 A. Yes.

5 Q. And I believe Agent Darnell cooperated with you about
6 his findings as well; is that correct?

7 A. Yes.

8 Q. And in reviewing his report, you obviously noticed that
9 Agent Darnell found a consistent print with that of Jimmy Lee
10 Sessions' shoes, State's Exhibit 88, in the bathroom?

11 A. Yes.

12 Q. And are you disagreeing that that print was consistent?

13 A. No.

14 MS. ELDER: No further questions, Your Honor.

15 THE COURT: All right. Follow up?

16 MR. GARDNER: No, Your Honor.

17 MR. FREDERICK: Briefly.

18 THE COURT: Yes sir.

19 RECROSS-EXAMINATION BY MR. FREDERICK:

20 Q. In your examination of those five pair of shoes, were
21 there similarities or differences between ---

22 MS. ELDER: Objection, Your Honor.

23 MR. FREDERICK: It goes directly to what she asked.

24 THE COURT: I'm going to allow the question. You go
25 ahead.

1 Q. Were there similarities or differences between any of
2 those five pair of shoes?

3 A. Were there similarity? Yes, four of the pair of shoes
4 have basically the same design, pattern.

5 Q. Didn't you actually measure those -- the circles on the
6 bottom of the shoe; is that right, circular pattern?

7 A. I did. I did.

8 Q. Didn't you actually measure those on each of the shoes?

9 A. I did. I found that the circles were basically the
10 same size in each of the shoes.

11 Q. Okay. And also, there was a small star pattern around
12 the edge of them?

13 MR. RICHARDSON: Your Honor, objection. He's gone a
14 little bit further now.

15 THE COURT: I'm going to sustain that objection.

16 MR. GARDNER: I would impose an objection here. I
17 would ask that the State have one -- the same lawyer object
18 that's doing the examination.

19 THE COURT: All right. Let's -- counsel, whoever is
20 going to cross-examination ---

21 MS. ELDER: Yes sir.

22 THE COURT: ---That attorney will be charged with
23 making objections to the Court. All right.

24 MR. RICHARDSON: Yes sir, Your Honor.

25 THE COURT: All right.

DONALD C. GIRNDT - RECROSS BY ELDER

666

1 Q. So four of the five shoes that you looked at, that you
2 examined, had identical patterns?

3 A. Yes sir.

4 MR. FREDERICK: Okay. No more questions.

5 THE COURT: Anything on those questions?

6 RECROSS-EXAMINATION BY MS. ELDER:

7 Q. Are you saying -- he said identical patterns, of those
8 same shoes, four of the same pairs of shoes?

9 A. Oh no, just the same -- the same basic pattern.

10 Q. But -- and again, you are not in disagreement with Tom
11 Darnell's finding?

12 A. Not at all.

13 MS. ELDER: Thank you, Your Honor.

14 THE COURT: All right. Do you wish this witness to be
15 excused?

16 MR. GARDNER: Yes sir.

17 THE COURT: Any objection?

18 MR. FREDERICK: No objection.

19 THE COURT: Any objection, Ma'am?

20 MS. ELDER: No, Your Honor.

21 THE COURT: All right. Sir, you are released from your
22 Subpoena. You may go back to your regular duties.

23 A. Thank you.

24 THE COURT: All right. Your next witness, Mr. Gardner.

25 MR. GARDNER: Officer DiLorenzo, Your Honor.

1 THE COURT: All right.

2 All right, sir, if you would come around to be sworn,
3 please. Thank you.

4 ERIC DiLORENZO, being first duly
5 sworn, testifies as follows:

6 DIRECT-EXAMINATION BY MR. GARDNER:

7 Q. Good morning, sir.

8 A. Good morning.

9 Q. Officer -- do you prefer Sergeant, or Officer, or ---

10 A. Either one is fine.

11 Q. Sergeant though, right?

12 A. Yes sir.

13 Q. Okay. Sergeant DiLorenzo, you are employed with Myrtle
14 Beach Police Department?

15 A. I am.

16 Q. And in what capacity, sir?

17 A. Currently I am a Sergeant in charge of the Training
18 Unit.

19 Q. Back in June of '06 were you so employed in -- by
20 Myrtle Beach Police Department?

21 A. I was.

22 Q. All right. And in fact, you had -- or tell me, did you
23 have anything to do with this investigation?

24 A. Yes sir. I was an investigator assigned to this
25 investigation.

ERIC DiLORENZO - DIRECT BY GARDNER

668

1 Q. All right. Were you the lead investigator?

2 A. At one point in time, yes, I was.

3 Q. Lead investigator of the whole investigation?

4 A. At one point in time I was.

5 Q. Yes sir. Okay. And during the investigation you
6 interviewed James Pearl; is that right?

7 A. Yes.

8 Q. Do you remember how many times you interviewed him?

9 A. At least once.

10 Q. At least once. During your interview with James Pearl,
11 he -- did he tell you that Jimmy Lee Sessions told him ---

12 MS. ELDER: Objection, Your Honor.

13 MR. GARDNER: Judge, that's ---

14 THE COURT: I'm -- y'all come up here and talk to me
15 for just a second.

16 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

17 MR. GARDNER: Judge, at this time I would ask that
18 Sergeant DiLorenzo be declared a hostile witness as to the
19 Defendant, Jimmy ---

20 THE COURT: Under the Rules it's no longer necessary.
21 We have changed those rules some time ago. You can question
22 him as you deem necessary. Thank you.

23 MR. GARDNER: Thank you, Judge.

24 Q. All right. At least one time you interviewed Jimmy Lee
25 -- or James Pearl, right?

1 A. Yes, from what I can recall.

2 Q. All right. And you recall that James Pearl gave you a
3 statement about Jimmy Lee Sessions?

4 A. Yes.

5 Q. All right. And do you remember if he told you how many
6 times that Ms. Hightower was shot?

7 A. I would hate to speculate. I can't remember that exact
8 information off the top of my head. If you provided me with a
9 transcript of the interview I ---

10 Q. Well, does three times -- does that sound familiar?

11 A. Again, I -- I -- sorry, but I can't recite the exact
12 wording of that interview off the top of my head. It was some
13 time ago.

14 Q. Okay. And then he also -- did he talk to you about
15 Monica Wall? This is James Pearl now.

16 A. Specifically ---

17 Q. Let me try -- you interviewed James Pearl ---

18 A. I did.

19 Q. ---About this case?

20 A. I did.

21 Q. Was James Pearl a suspect at the time ---

22 A. Suspect in this ---

23 Q. ---In this crime?

24 A. No, he was not.

25 Q. Okay. He had contacted -- or at some -- some way he

ERIC DiLORENZO - DIRECT BY GARDNER

670

1 was talking to y'all about information about this case?

2 A. Yes sir.

3 Q. And the information he gave you, he talked about Jimmy
4 Lee Sessions, and he told you that Jimmy Lee Sessions ---

5 COURT REPORTER: Excuse me. Excuse me.

6 THE COURT: I'm sorry. Sir, ---

7 A. I'm sorry.

8 THE COURT: ---You are going to have to answer out
9 loud, yes or no. You can't shake your head.

10 A. I'm sorry.

11 THE COURT: That's all right.

12 Q. All right. And he told you that Jimmy Lee Sessions
13 said he shot Ms. Hightower three times. Remember that?

14 A. I remember him saying that he shot, but I -- again, I
15 can't say the exact amount of times, but ---

16 Q. And he said -- or do you remember him saying that he
17 went to -- that he was leaving, and that Monica stepped out of
18 the bathroom door -- you remember that part ---

19 A. Yes sir.

20 Q. ---Or opened the bathroom door ---

21 A. Yes.

22 Q. ---And that Jimmy Lee immediately pushed her back into
23 the bathroom, and shot her? Do you remember that part?

24 A. Yes. I remember something in the interview. Again,
25 the exact wording I can't recall, but yes, I can remember me

1 getting that information from that interview.

2 Q. All right.

3 MR. GARDNER: Thank you, sir.

4 A. Okay.

5 THE COURT: All right. Mr. Frederick.

6 MR. FREDERICK: Yes sir.

7 CROSS-EXAMINATION BY MR. FREDERICK:

8 Q. Good morning.

9 A. Good morning.

10 Q. Jamilla Hightower, she was a drug dealer, right?

11 A. From information that I gathered during the
12 investigation, yes, I learned that she sold drugs.

13 Q. Okay. What level drug dealer would you say that she
14 was?

15 A. That's hard for me to exactly answer, as far as levels.

16 Q. Street level dealer? Was she selling dime bags on the
17 corner?

18 A. Yes, as far as I knew. I -- as far as exact weights, I
19 was never able to pinpoint that information.

20 Q. Nobody gave you information on what type of weight that
21 she had?

22 A. People were giving me information. I don't know --
23 without me seeing with my own eyes, and stuff like that, it
24 would be hard, but yes, I got information that she was selling
25 street level, maybe one step up from street level. Again, I

ERIC DiLORENZO - CROSS BY FREDERICK

672

1 don't know.

2 Q. You had information she was selling kilos at a time,
3 didn't you, or buying kilos at a time, breaking them up and
4 selling them?

5 A. At least half-kilos, I would -- I think I recall.

6 Q. As far as drug dealers go, I mean, that's a pretty good
7 size amount of drugs?

8 A. It is.

9 Q. Okay. Who is Monica Wall?

10 A. I learned that that was Jamilla's live-in girlfriend,
11 or partner.

12 Q. Okay. When this crime first happened, you were under a
13 lot of pressure to solve this murder, weren't you?

14 A. No.

15 Q. No pressure?

16 A. No more than any other murder investigation that I've
17 worked.

18 Q. No more than any other murder?

19 A. Yes. I was a Violent Crime Investigator, so primarily
20 that's what I -- I worked, was violent crimes, and ---

21 Q. There was a lot of media attention given to it?

22 A. There was a lot. Most murders get a lot of media
23 attention.

24 Q. Okay. And on July 12th, 2006, yourself and Salena Mann
25 went to a candlelight vidual on Carver Street?

1 A. I went to a candlelight vidual. Again, off the top of
2 my head I can't say the exact date, but yes, I -- we did go to
3 a candle vidual.

4 Q. Okay. In August, 2006, reward money was offered for
5 information on the murder?

6 A. Yes. There was money given to Crime Stoppers.

7 Q. Okay. There was also a press release announcing the
8 reward money?

9 A. Yes.

10 Q. When was the first warrant signed in this case? When
11 was Jimmy Lee Sessions charged?

12 A. Without looking at my notes, or seeing a copy of the
13 warrant, I wouldn't be able to state off the top of my head.

14 Q. Did you bring your notes with you today?

15 A. I brought a copy of my follow-up Report. I did not
16 bring copies of my handwritten notes.

17 Q. Okay. Does it say, in your follow-up Report?

18 A. Is it okay if I look at my copy of it?

19 Q. Yes. Yes, please.

20 A. I'm sorry, but I don't see that in my file, the exact
21 date, the -- you are speaking about the arrest warrant being
22 signed?

23 Q. Yes. Does May of 2007, sound right?

24 A. That sounds close, if not exact.

25 Q. Okay.

ERIC DiLORENZO - CROSS BY FREDERICK

674

1 A. My follow-up goes up until December 31st of '07.

2 Q. Okay. When you are investigating a murder ultimately
3 you have to charge someone, don't you?

4 A. You have to charge someone at the point you develop
5 probable cause.

6 Q. Well, someone has to be held accountable?

7 A. The guilty party ---

8 Q. Okay.

9 A. ---Or -- excuse me -- the accused party.

10 Q. During your interviews, do you recall telling anyone
11 that you had to charge someone, someone had to be held
12 accountable?

13 A. I don't remember saying that off the top of my head.
14 I'm not saying I didn't say it, but ---

15 Q. Fair enough.

16 Q. Without getting into any specifics, right, early on in
17 this investigation you received a lot of information from many
18 different people, didn't you?

19 A. Yes.

20 Q. Okay. Many of those people had pending charges and
21 were looking for help; is that fair to say?

22 A. There were several people, yes.

23 Q. Okay. There were some other people that probably just
24 wanted to be involved, and honestly wanted to help ---

25 A. Yes.

1 Q. ---Also. Okay.

2 A. Yes.

3 Q. Early on in this case you had to choose from many
4 different theories about how this murder happened; would that
5 be fair to say?

6 A. That would be fair to say.

7 Q. Without getting into specifics, early on in this
8 investigation would you say roughly a total of twenty-three
9 different people were accused of the crime?

10 A. Twenty-three sounds like a high number to me, but it
11 was definitely multiple.

12 Q. Roughly?

13 A. Roughly.

14 Q. Yes. Okay. And we discussed this at a preliminary
15 hearing in this case, didn't we? Do you recall that?

16 A. Yes. Yes.

17 Q. Okay. And it actually turned out to be more than
18 twenty-three, didn't it?

19 A. I never counted.

20 Q. Okay. You had information that Gregory Wilson, a drug
21 dealer, was ripped off by Jamilla?

22 MS. ELDER: Objection.

23 THE COURT: Sustained.

24 MR. FREDERICK: Judge, at this point I think we have a
25 matter of law that we need to take up.

JURY OUT/ON RECORD

676

1 684

2 THE COURT: Ladies and gentlemen, go to your jury,
3 please -- go to your jury room.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: Yes, Solicitor.

7 MS. ELDER: Your Honor, this is -- that is exactly what
8 my motion in limine was about. Mr. Frederick indicated that
9 that was not the purpose of this witness. Now he has already
10 asked the question in front of the jury. Motive that other
11 people, to have hurt or killed Jamilla, are not proper under
12 Gregory, and the line of cases that follow Gregory, and that's
13 exactly what this question elicits.

14 MR. FREDERICK: Judge, we have the right to impeach the
15 quality of the investigation. It's essential that we do so in
16 this case. That is, in large part, our theory of the case,
17 that our case, and defense, rests upon.

18 Judge, we are not going to say, this person committed
19 the crime, that person committed the crime. We may do that
20 with Antwann Higgins and Melissa Gomez, but that's the only
21 people. What I intend to do is walk him through his
22 investigation, and we can proffer the testimony ---

23 THE COURT: Yes. Why don't you go ahead and do that.
24 You might as well go ahead and get started.

25 MR. FREDERICK: Okay.

1 BY MR. FREDERICK CONTINUED:

2 Q. Investigator DiLorenzo, you had information that
3 Gregory Wilson, a drug dealer, was ripped off by Jamilla, and
4 he ordered a hit on her?

5 A. Yes.

6 Q. You had information that Moses, in Pawleys Island, was
7 involved, along with some hit men?

8 A. Yes.

9 Q. You had information that Jamilla was killed because she
10 was suppose to be testifying in a trial against someone?

11 A. Yes.

12 Q. Early on Christopher West was accused of the crime,
13 wasn't he?

14 A. Christopher West was -- if we are speaking about the
15 same person, was a potential witness. I'm not sure where you
16 are ---

17 Q. We will move on. We will ---

18 A. Okay.

19 THE COURT: Well, let's -- you are going to have to
20 deal with these, it sounds like, one by one. The previous
21 ones, before you get to Mr. West ---

22 MR. FREDERICK: Okay.

23 THE COURT: ---Those questions that you've just asked,
24 I think those clearly fall within the main import of Gregory,
25 and all the cases that have followed behind it, and that is,

JURY OUT/ON RECORD

678

1 it's evidence which can have no other effect than to cast a
2 bare suspicion on another, or raises a conjectural inference
3 as to the commission of the crime by another. That's clearly
4 what those are, and I will not allow that.

5 Now, I don't know if you are going to rephrase your
6 question about Mr. West and -- regarding the answer that was
7 given, that he investigated some -- Mr. West, or he received
8 some information from Mr. West. That -- seems that that would
9 be proper. You could ask that, but you can continue on.

10 MR. FREDERICK: Yes sir. And Judge, this -- for the
11 record, our argument is that, what we need to do here is
12 impeach the quality of the investigation.

13 THE COURT: Well, I appreciate that, but the -- what
14 you are actually doing is suggesting to the jury, these are
15 the responsible parties, these are the people that committed
16 the crime, and the way you are asking the questions, and the
17 way you are presenting it, falls clearly within the scope of
18 Gregory, as I just quoted. It's just throwing something out
19 there that casts a bare suspicion upon another, and that's why
20 I will not allow you to ask the questions that preceded the
21 question about Mr. West.

22 All right, sir. Continue on.

23 MR. FREDERICK: Okay. And Judge, I think your ruling
24 would be the same on many of these. To save some time,
25 instead of doing them one at a time do you want me to stop

1 when I ---

2 THE COURT: Well, I don't know what the question is, so
3 I can't give you a ruling that says, no, you can't ask these
4 questions, because I don't know what the questions are. You
5 know, I would -- I think you understand my position about
6 Gregory, but I don't know if that deals with your particular
7 question or not, so I just can't tell you, no, you can't ask
8 those questions. I'm not going to prevent you from asking
9 them, I just -- I can't do that, and wouldn't do that, so you
10 are just going to have to continue on.

11 MR. FREDERICK: Okay. Can I just run through them
12 and ---

13 THE COURT: Yes sir.

14 MR. FREDERICK: Thank you.

15 Q. Phonetia Hightower was a suspect?

16 A. Suspect to the point of having involvement.

17 THE COURT: I would allow that. And I told you, if you
18 wanted to rephrase the question in some way about Mr. West I
19 was going to allow that also.

20 MR. FREDERICK: Okay.

21 Q. Christopher West was a suspect?

22 A. The information I had on Christopher West is that he
23 had information, not as being a suspect.

24 Q. Okay. Did -- based on your investigation, at some
25 point did Jamilla testify in a trial against individuals?

JURY OUT/ON RECORD

680

1 A. I didn't understand that question.

2 Q. During the course of your investigation did you receive
3 information that Jamilla had testified against someone in a
4 trial?

5 A. Yes.

6 Q. Okay.

7 THE COURT: I'll allow that particular question.

8 Q. Was there an individual named Moses, in Pawleys Island,
9 that was a suspect? I'm going backwards now.

10 A. Okay. Yes.

11 THE COURT: I'll allow that question.

12 Q. Was there an individual named Gregory Wilson who was a
13 suspect in this case?

14 A. Yes.

15 THE COURT: I'll allow that.

16 Q. Did you have information that Jamilla had stolen drugs
17 from him?

18 THE COURT: I'm not going to allow that.

19 Q. Were Frankie and Johnathon Oxendine suspects in this
20 case?

21 A. Yes.

22 THE COURT: I'll allow that.

23 Q. Did you, during the course of your investigation,
24 receive information that some unidentified Mexican individuals
25 were involved in this in some way?

1 A. Yes.

2 THE COURT: I'll allow that.

3 Q. Was there an individual named Brandon that was a
4 suspect in this case?

5 A. I'm sorry. You said the name Brandon?

6 Q. Brandon.

7 A. The name Brandon is someone -- I'm sorry.

8 MR. FREDERICK: I'm going to refer you to this. I
9 only had one copy, but they are getting me another one.

10 A. That's fine.

11 COURT REPORTER: Excuse me. I have to hear you.

12 MR. FREDERICK: I'm sorry.

13 Q. Page fourteen, line twenty-four. Do not -- don't read
14 that to the jury. Just ---

15 MS. ELDER: What -- could we have what that is, Your
16 Honor?

17 MR. FREDERICK: Preliminary hearing, Judge.

18 THE COURT: Can you answer the question, sir?

19 A. The answer, according to the preliminary hearing, is --
20 the question was asked, "Teresa Williams told you a guy named
21 Brandon was there on the night of the murder." I answered
22 "Yes". According the my notes Teresa said that she had no
23 knowledge that he was suppose to be there the night of murder.

24 MR. FREDERICK: Would that be a fair answer?

25 THE COURT: Yes sir.

JURY OUT/ON RECORD

682

1 A. Okay.

2 THE COURT: You would have to bring out both of them
3 though.

4 MR. FREDERICK: Okay. Yes sir.

5 THE COURT: All right.

6 Q. Floyd Lowe was a suspect in this case?

7 A. Floyd Lowe was an associate of the Oxendine brothers
8 who were, at one point, named as suspects, according to
9 witnesses.

10 THE COURT: I'll allow that.

11 Q. And two individuals identified as "Showcase" and
12 "Capone" were suspects in this case?

13 A. Those were names given to me as potential suspects,
14 yes.

15 THE COURT: I'll allow it.

16 Q. "Showcase" is Adam Lee Jarrett?

17 A. No. "Capone" is Adam Lee Jarrett. "Showcase" is
18 Adrian Best.

19 Q. Okay. Antwann Higgins was certainly a suspect, wasn't
20 he?

21 A. Yes.

22 Q. Did you receive information in your investigation that
23 there were people from Arkansas that were involved in this
24 crime?

25 A. Yes.

1 THE COURT: Yes sir, I'll allow that.

2 MR. FREDERICK: Okay.

3 Q. For a brief period, Felicia, Jamilla's ex-girlfriend,
4 was a suspect in the case?

5 A. It was a fear she may have had involvement.

6 Q. Okay.

7 THE COURT: I'll allow it.

8 Q. Josh Best was a suspect in this case?

9 A. Yes.

10 Q. And Josh Best was at Jamilla's house from ten-thirty to
11 ten-forty-five on the night of the murder, based on your
12 investigation, wasn't he?

13 A. I'm not sure of the exact timing but that sounds close.

14 Q. Okay. Last phone call made to Jamilla's phone was from
15 Josh Best?

16 A. From what I can recall, yes. Again, I don't want to
17 supersede phone records, but what I can recall off the top of
18 my head.

19 MR. FREDERICK: And did you want me to stop after each?

20 THE COURT: Well, I haven't heard anything that I was
21 going to -- that I would say violates Gregory. It was those
22 initial questions that you asked, so if you can take that as a
23 guideline, I think probably we can proceed along.

24 MR. FREDERICK: Okay.

25 THE COURT: All right. So, I mean, do you anticipate

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

684

1 further questions that would -- that will be of the same
2 nature that I have allowed, or are there any that you see ---

3 MR. FREDERICK: That was it. That was just about --
4 that was just about all of them. They are all basically
5 identical.

6 THE COURT: Then I don't -- then I do not see those as
7 violating Gregory. I was the ones that you had asked right
8 prior to mentioning Mr. West that I would not allow those
9 particular questions.

10 MR. FREDERICK: Yes sir.

11 THE COURT: All right. Very good.

12 Ask the jury to come back in, please.

13 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
14 JURY.)

15 THE COURT: All right, Mr. Frederick, you may
16 continue, sir.

17 MR. FREDERICK: Thank you, Your Honor.

18 THE COURT: Yes sir.

19 CROSS-EXAMINATION BY MR. FREDERICK CONTINUED:

20 Q. Investigator DiLorenzo, was an individual named Gregory
21 Wilson a suspect in this case?

22 A. Yes.

23 Q. Was there an individual named Moses in Pawleys Island
24 that was a suspect in this case?

25 A. Yes.

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

685

1 Q. Let me do this, just in case we need it. I'm going to
2 hand up this and this, which I may refer you to.

3 A. Okay.

4 Q. Did you have information that Jamilla had testified in
5 a trial against some individuals?

6 A. Yes.

7 Q. Christopher West was a suspect in this case at one
8 point?

9 A. Christopher West was a gentleman who potentially had
10 some information regarding this case.

11 Q. Okay. Not a suspect?

12 A. Not that I can recall, no.

13 Q. Okay. Phonetia Hightower was a suspect in this case?

14 A. She was a suspect as having involvement in the case,
15 yes.

16 Q. Okay. Frankie and Johnathon Oxendine were suspects in
17 this case?

18 A. Yes.

19 Q. Early on in the investigation you had some information
20 that some unidentified Mexican individuals were involved in
21 this crime?

22 A. Yes. That's correct.

23 Q. You received information that an individual named
24 Brandon was potentially a suspect in this case? Brandon was
25 there on the night of the murder, is the information you

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

686

1 received? And I refer you to the transcript in front of you,
2 on page fourteen, line twenty-one.

3 Q. Okay. It was there in the preliminary hearing where I
4 stated that yes, he was there on the night of the murder,
5 however, in my investigation notes I have that, according to
6 the witness I spoke about, Brandon was not there.

7 Q. Okay. So you followed up on it?

8 A. Yes.

9 Q. Okay. Floyd Lowe was a suspect in this case?

10 A. Floyd Lowe was a name I was given to being an associate
11 of the -- Johnathon and Frankie Oxendine.

12 Q. Okay. There were two individuals named "Showcase" and
13 "Capone" that were suspects in this case; is that right?

14 A. Yes. Those were names given to me as suspects.

15 Q. "Capone" is Adam Lee Jarrett?

16 A. That is correct.

17 Q. And "Showcase" is Adrian Best?

18 A. That's correct.

19 Q. Antwann Higgins was certainly a suspect, wasn't he?

20 A. At one point he was.

21 Q. Okay. During your investigation you received
22 information that some people from Arkansas were involved in
23 the crime?

24 A. I did receive that information.

25 Q. Felicia, Jamilla's ex-girlfriend, at some point was a

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

687

1 suspect?

2 A. There was, at one point, a theory she may have had
3 involvement.

4 Q. Okay. Josh Best was a suspect in this case?

5 A. He was, yes.

6 Q. And Josh Best, he was at Jamilla's house from 10:30 to
7 10:45 on the night of the murder, wasn't he?

8 A. He was -- we certainly had information he was there
9 that evening. I couldn't say exactly what time, but that
10 sounds approximate.

11 Q. Let's look at page sixteen, line thirteen.

12 A. Of the preliminary hearing transcript?

13 Q. Yes sir.

14 A. You said line thirteen?

15 Q. Yes.

16 A. Okay.

17 Q. The question asked was, were -- Josh Best was at
18 Jamilla's house from 10:30 to 10:45 on the night that this
19 happened, and the response was?

20 A. Yes, I believe it was that time frame.

21 Q. Okay. Josh Best was not there by himself, based on
22 your information, was he?

23 A. That is correct.

24 Q. Okay. "Q" and "E" were identified as being there?

25 A. "Q" and "E" were names that were given to me as being

JURY IN
ERIC DILORENZO - RECROSS BY FREDERICK

688

1 there, yes.

2 Q. Okay. "Q" is Quinson Kilgore?

3 A. That was one of several "Q"s that were identified in
4 this.

5 Q. I think another one is Quinton Fulmer; is that right?

6 A. Yes.

7 Q. Okay. "E", would that be Ernie Mitchum?

8 A. Again, I believe that's one of multiple "E"s that were
9 given to us throughout the investigation.

10 Q. There's different people that go by the name "E"?

11 A. That is correct.

12 Q. Okay. Lamont Garner was identified as being at her
13 house on the night of the murders?

14 A. If you will -- I just don't want to give you the wrong
15 information. If you can bear with me for one second.

16 MR. FREDERICK: Of course.

17 Q. If it would help, on page seventeen, line nineteen.

18 A. Yes. I had gotten information that Lamont Garner was -
19 - was at the house that evening.

20 Q. Okay. And James Pearl was a suspect, was he not?

21 A. James Pearl was given to me as having information or
22 knowledge about the investigation.

23 Q. Was he also a suspect?

24 A. He -- to the point he had knowledge of what had
25 occurred.

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

689

1 Q. Okay. Fair enough. So you had a large volume of
2 information going into this investigation; fair to say?

3 A. Yes.

4 Q. A lot of different people coming forward, pointing --
5 pointing the finger this way, that way?

6 A. Yes.

7 Q. Okay. Ultimately you had to charge someone, right?

8 A. I believe that's fair to say.

9 Q. Okay. You met with Matthew Campbell regarding this
10 case, didn't you?

11 A. I did.

12 Q. Okay. That was on June the 19th?

13 A. Yes, it was.

14 Q. When you met with him his attorney, Billy Monckton, was
15 with him?

16 A. That's correct.

17 Q. Okay. Matthew was turning himself in on a pending drug
18 warrant?

19 A. That is correct.

20 Q. During the -- I don't want to go into specifics.

21 A. Okay.

22 Q. I'm just going to ask you one narrow question, okay?

23 A. Sure.

24 Q. During the course of your conversations with him did he
25 ask you to call his probation officer and tell them -- let

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

690

1 them know he had cooperated?

2 A. No. I don't remember that.

3 Q. It's not in your notes. It's in the recorded
4 interview.

5 A. I don't recall that.

6 Q. Fair enough. Fair enough.

7 You interviewed "LeeLee" Washington regarding this case,
8 didn't you?

9 A. I did.

10 Q. That would have been December 15th?

11 A. Yes. It was December 15th.

12 Q. Salena Mann, was she present?

13 A. She was.

14 Q. Okay. Was she present during most of your interviews,
15 and vice-versa?

16 A. Yes, that's fair to say, not every, but ---

17 Q. Most of them?

18 A. ---Certainly the majority, yes.

19 Q. Okay. "LeeLee" was under the influence during that
20 interview; isn't that true?

21 A. He had said he smoked marijuana prior to the interview.

22 Q. And did he also say he drank alcohol prior to the
23 interview?

24 A. He did.

25 Q. Okay. Now I'm not going to ask you -- just to be

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

1 clear, I'm not going to ask you about what "LeeLee" said.

2 A. Okay.

3 Q. Okay. What I'm talking about, what you did or said.

4 A. Okay.

5 Q. Okay. During this interview, when "LeeLee" didn't tell
6 you what you wanted to hear you threatened to charge him,
7 didn't you?

8 A. I didn't threaten to charge him because he didn't tell
9 me what I wanted to hear, it's because he -- I believed that
10 he wasn't telling me the truth.

11 Q. But you did threaten to charge him?

12 A. I threatened to charge him if he was lying to me, or
13 withholding information, yes.

14 Q. This was after he initially told you what had happened,
15 correct?

16 A. That's correct.

17 Q. All right. You also threatened to charge his wife?

18 A. Yes, but that was for a case outside of this one.

19 Q. Unrelated?

20 A. Unrelated.

21 Q. Understood. But you did threaten to charge her?

22 A. Yes.

23 Q. And that was contemporaneous, at the same time as you
24 threatened to charge "LeeLee"? The order of events, if you
25 will ---

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

692

1 A. Sure.

2 Q. ---"LeeLee" told you what happened, you told him, I
3 need you to be honest with me, I need you to tell me the
4 truth, you told him that he would much prefer, paraphrasing,
5 to be sitting in the witness chair than the defendant's chair,
6 wouldn't he?

7 A. Yes, paraphrasing, that sounds -- sounds right.

8 Q. Then you told him that he had to think about his wife,
9 his wife may get charged also, in an unrelated matter, and
10 told him he needed to be thinking about his kids; does that
11 sound about right?

12 A. That sounds about right..

13 Q. Okay. After that point "LeeLee" told you something
14 different, no specifics, but he told you something different
15 than he told you when he first sat down with them?

16 A. Yes. He expanded on what he had first told me ---

17 Q. Okay.

18 A. ---Gave more information, I guess would ---

19 Q. Provided you with more information?

20 A. Provided me with more information, yes.

21 Q. Okay. Isn't it true that you told "LeeLee" what you
22 wanted him to say, this new information, before he said it
23 back to you? You told him you knew what had happened. You
24 told him, I already know what happened, this is what happened,
25 and then he repeated it back to you?

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

693

1 A. Yes. I was challenging him on him -- challenging him
2 on information that I had been told that he knew, and I was
3 making it clear to him, this is what I had known and, you
4 know, and he recited what I had said.

5 Q. Fair enough. You interviewed "LeeLee" father, Hubert
6 Washington, as well, didn't you?

7 A. I did.

8 Q. That was in November of 2006?

9 A. It was November.

10 Q. Okay. Hubert had pending charges?

11 A. He did.

12 Q. Hubert -- based on your recollection, he didn't have
13 any personal knowledge about the murder, did he?

14 A. No, he did not have any personal knowledge as far as
15 speaking to anyone firsthand who was involved.

16 Q. Okay. You agreed to get Hubert out of jail?

17 A. I did.

18 Q. You told him you were going to give him forty-eight
19 hours after his release before you contacted "LeeLee"?

20 A. Yes.

21 Q. After you spoke to Hubert the Prosecutor, Brad
22 Richardson, gave Hubert a P.R. bond?

23 A. He was given a P.R. bond on a pending charge, yes.

24 Q. Based on a phone call from you to Brad Richardson?

25 A. That is correct.

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

694

1 Q. Okay. And Hubert was released from jail on December
2 13th?

3 A. I can't recite the exact date, but that's ---

4 Q. Let's refer to the preliminary hearing transcript ---

5 A. Okay.

6 Q. ---Page thirty-one ---

7 A. Okay.

8 Q. ---Line eight. The question was, you didn't make
9 contact with "LeeLee" until December 15th, correct?

10 A. I answered, correct.

11 Q. Okay. Forty-eight hours after Hubert was released?

12 A. If he was released on the 13th, without seeing his
13 release date, but I know there was some time after I had
14 talked with him that he had been released, so the 13th
15 sounds ---

16 Q. Sounds right?

17 A. Sounds right.

18 Q. Okay. Fair enough. And just to go back for one
19 second, you had agreed to give Hubert forty-eight hours to
20 speak to "LeeLee" before you contacted him?

21 A. That is correct.

22 Q. Now we've already established you are familiar with
23 Josh Best?

24 A. Yes.

25 Q. It was determined that Josh Best was at Jamilla's house

JURY IN
ERIC DILORENZO - RECROSS BY FREDERICK

695

1 on Thursday night?

2 A. Yes.

3 Q. And that was approximately -- no exact time, but
4 approximately ten-thirty, ten-forty-five?

5 A. Yes.

6 Q. And that last call made to her phone was from Josh
7 Best?

8 A. Again, off the top of my head I believe that was the
9 last phone call. I don't want to supersede phone records, but
10 from what I can recall, yes.

11 Q. Okay. Without getting into specific details, okay, did
12 he give you an accurate description of what happened that
13 night, when he was there, the first time you talked to him?

14 A. He had given us a detailed statement.

15 Q. Okay. Did you have to go back and re-interview him
16 several times?

17 A. Yes.

18 Q. Okay. And each time you did that you got some
19 conflicting information; is that fair to say?

20 A. Yes. There was one point where he wouldn't even speak
21 to me.

22 Q. Okay. But you learned there was also a girl named
23 Ashley, and a girl named Kristen, that were there, and they
24 were there with him?

25 A. Yes. There was actually in Kris -- we had information

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

696

1 that they were with -- there with him.

2 Q. Okay. So now we've got 10:30 to 10:45ish, we've got
3 Josh Best, Ashley, Kristen, "E", whoever that is, and "Q",
4 whoever that is, at least five people that are at the house?

5 A. That's correct.

6 Q. Okay. And another short stocky guy? Not sure if you
7 ever figured out who that was.

8 A. That's correct. Yes, we never figured out who that
9 was.

10 Q. So six people, at least?

11 A. Potentially, yes.

12 Q. Okay. Leon McCrary was there at some point that
13 evening; is that correct?

14 A. Leon McCrary is a name I don't ---

15 Q. Leon McCrary.

16 A. That's a name that doesn't stick out in my head.

17 Q. That's okay. Okay. On April the 5th you went down to
18 J. Reuben Long and talked to Craig Burris?

19 A. Yes.

20 Q. Okay. That was April 5th, 2007?

21 A. Yes, 2007, yes.

22 Q. Okay. He was in jail at the time?

23 A. Yes, he was.

24 Q. Okay. And he sent a request form, it was to you, or it
25 was to Salena, asking to speak to you?

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

697

1 A. Yes. It was either to me or Investigator Salena Mann.

2 Q. Okay. And when inmates are in the jail, if they have
3 information on a case is that how you usually hear from them?

4 A. That's one of many ways, but -- yes, that's one of the
5 ways we hear from them.

6 Q. Is there -- I mean, do they write you a letter, or do
7 they actually have a request form that they can fill out to
8 get sent to you?

9 A. I have never seen a request form. Usually it's a
10 handwritten letter.

11 Q. They just write a note to you ---

12 A. Yes.

13 Q. ---And then the staff at the jail will get it to you?

14 A. Yes. They just mail it to us.

15 Q. Okay. Now, when you talked to Craig Burris did he tell
16 you that, if he could get rid of his kidnapping charge he
17 would give you information about this murder?

18 A. He had given us information on the murder, and that's
19 one of the things he wanted, was his kidnapping charge to be
20 dismissed.

21 Q. So the answer is yes?

22 A. I don't know that -- if it was an exchange, but ---

23 Q. This -- what he said to you, all right. I'm not
24 talking about tit for tat.

25 A. Okay.

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

698

1 Q. What he said to you was, if you can get rid of his
2 kidnapping charge he would give you information about the
3 murder?

4 A. Yes. I believe that's fair to say.

5 Q. Okay. And he requested, more specifically, that you
6 look into it for him, get the Solicitor's Office to listen to
7 him ---

8 A. Uh huh (indicating positive) That's correct.

9 THE COURT: Yes. Yes sir.

10 A. I'm sorry.

11 THE COURT: That's all right.

12 Q. Okay. Now, Craig's kidnapping charge was dismissed,
13 wasn't it ---

14 A. Yes, it was.

15 Q. ---Four days after you spoke with him?

16 A. I don't know exactly if it was four days, but it was a
17 short time after I spoke with him.

18 Q. Okay. Fair enough. You are aware that Craig Burris
19 was fighting with Jimmy Lee Sessions at the jail right before
20 that interview?

21 A. I had no information about ---

22 Q. At any time did you interview an inmate named Belal
23 Harris in reference to this murder, not talking about any
24 other cases?

25 A. I certainly interviewed Belal Harris. I think it was a

JURY IN
ERIC DiLORENZO - RECROSS BY FREDERICK

699

1 combined interview, to speak about several things with him.

2 Q. Okay. Fair enough. Craig Burris, they call him
3 "Snagger"? "Snagger"?

4 A. Yes, "Snagger".

5 Q. All right. Now, back to the beginning, Antwann Higgins
6 and Melissa Gomez, they found the bodies on Friday, June the
7 9th?

8 A. That is correct.

9 Q. Later you find out that there was a third person there,
10 that went in the house also?

11 A. Yes. We had received information there was a third
12 party that ran in before the police arrived.

13 Q. And who was he? Was that Roy Grant?

14 A. Yes.

15 Q. As far as determining the time of death, you did
16 determine that someone had hear fireworks around twelve
17 o'clock that night?

18 A. Yes. That was based on information I learned from
19 another detective.

20 Q. Okay. That was pretty much the best you had to go on
21 though, right, fireworks?

22 A. Yes. That and -- at the time -- oh yes.

23 Q. The autopsy had been done since then, but at the time?

24 A. Sure. Yes. At the time, yes.

25 Q. Okay. About twelve o'clock?

JURY IN
ERIC DILORENZO - RECROSS BY FREDERICK

700

1 A. Yes.

2 Q. Okay. When you were fairly along in this case James
3 Pearl was the only witness to talk to you regarding
4 Christopher's charges of accessory before the fact; isn't that
5 true?

6 A. That is true.

7 Q. There was no other witness to corroborate what he said,
8 was there?

9 A. You are speaking prior to my interview with James Pearl
10 or ---

11 Q. Since you talked to James Pearl, but I understand
12 Christy Pearl has attempted to corroborate his information,
13 and the jury heard from her.

14 A. Okay.

15 Q. Before that time, was there anyone that -- and heck,
16 really, including her, is there anyone that has said anything
17 about Christopher regarding the accessory before the fact
18 charges?

19 A. No.

20 Q. Okay. On December 13th you talked with James Pearl,
21 and that was at the Police Department Annex; is that right?

22 A. That is correct.

23 Q. That's on the old Air Force Base?

24 A. It is.

25 Q. He was brought over there for the interview by Tony

1 Allen; is that right?

2 A. That's correct.

3 Q. Okay. Pearl had just been arrested on some drug
4 charges?

5 A. He had been arrested on charges. I'm -- I believe they
6 were drug charges.

7 Q. Okay. That was the same day that he talked to you
8 about this case; is that right?

9 A. The same day he was arrested he talked to us about the
10 case, yes.

11 Q. And the fact that he wanted help on his charges, that
12 came up, not only on the way there, but it came up during your
13 interview with him, didn't it?

14 A. There was some talk about his charges. I can't
15 specifically remember what we spoke about in regards to help,
16 per se.

17 Q. But you remember that he brought it up?a

18 A. He brought it up, yes.

19 Q. Okay. When a witness has pending charges -- and I
20 understand that y'all, or whoever, doesn't give them promises,
21 right?

22 A. Certainly.

23 Q. I understand -- I understand that, but how does their
24 cooperation affect their charges, typically?

25 A. That's not determined by we, as the police department.

ERIC DiLORENZO - RECROSS BY FREDERICK

702

1 Typically it's a decision that is made by the prosecution.

2 There is some sort of ---

3 Q. What do you tell people when you are interviewing them?

4 A. When I tell them -- excuse me -- about ---

5 Q. When you are interviewing witnesses ---

6 A. Okay.

7 Q. ---Regarding a pending case, something they have
8 information on, they have pending charges, what is your
9 approach? What do you tell them as far as their pending
10 charges? You tell them you are not going to promise them
11 anything?

12 A. Certainly.

13 Q. What else do you tell them?

14 A. I tell them that it would be looked at by all parties
15 involved, the prosecution, could be the Judge, could be
16 different people, could be the witness, or excuse me, the
17 victim, and then it would be favorable for them to give us
18 information and may share -- put a better light on them or
19 their charges.

20 Q. And you know, and they know, that's just how the system
21 works?

22 A. It is.

23 Q. Okay. And it varies from case to case; that's fair to
24 say, right?

25 A. It is.

1 Q. All right. I mean, I'm not trying to lock you into a
2 specific answer on that.

3 A. Okay.

4 Q. It's not possible. But sometimes they will do less
5 time in prison if they help; is that fair to say?

6 A. That is fair to say.

7 Q. All right, sometimes, depending on the case and the
8 circumstances, and how much they help, they may not go to
9 prison at all?

10 A. That's correct.

11 Q. Okay. Prison is a fairly powerful motivator, would you
12 say?

13 A. It certainly could be.

14 Q. Yes. After you talked to James Pearl, and he talked
15 about going to a hotel with Jimmy Lee, right ---

16 A. Yes.

17 Q. ---You went and checked that out, didn't you?

18 A. I did.

19 Q. Okay. You went to the Days Inn on 501?

20 A. I did.

21 Q. You talked with the manager then?

22 A. I did.

23 Q. You looked at the registration records for room 301?

24 A. That is correct.

25 Q. You showed them a picture of James Pearl, didn't you?

ERIC DiLORENZO - RECROSS BY FREDERICK

704

1 A. I did.

2 Q. They didn't recognize it, did they?

3 A. They did not.

4 Q. Did you find that a Mr. Lloyd Lawsland from Altamont,
5 New York was registered to that room?

6 A. I did find that out.

7 Q. Okay. Later you also went to the Knights Inn to make
8 sure?

9 A. That's correct.

10 Q. Looked at the same stuff there?

11 A. I did. Actually, I don't know if the Knights Inn was
12 able to furnish us with those records. We weren't able to
13 corroborate that.

14 Q. Okay. You were not able to corroborate what he had
15 told you?

16 A. Correct.

17 Q. Okay. When you first talked to James Pearl, that day
18 that he came to the annex ---

19 A. Okay.

20 Q. ---Could you describe his demeanor on that day?

21 A. His demeanor, to me, was that he had wanted to get this
22 -- the information he gave us off his chest, he was waiting
23 for the opportunity to do it. He was very ---

24 Q. How did he appear to you, not what was he thinking?

25 A. Okay.

1 THE COURT: I appreciate it, Mr. Frederick. He was
2 answering your question. I'll be glad for you to answer -- to
3 ask the question, but if you have a problem as to the answer
4 then you need to address it to the court, otherwise, he gets
5 to fully explain his answer.

6 MR. FREDERICK: Well, Judge, I would ask the witness
7 not go into his -- his suppositions about what James Pearl was
8 thinking.

9 THE COURT: I think he was directly responding to your
10 question.

11 You are allowed to answer the question.

12 MR. FREDERICK: The question was demeanor, Judge.

13 THE COURT: I appreciate that. I believe he is
14 directly answering your question.

15 You may continue to answer the question if you so
16 choose.

17 A. Thank you.

18 Q. If you would answer the question for us. What was your
19 observations as to his demeanor?

20 A. His demeanor, to me, was that he had information that
21 he had wanted to get off his chest, and was waiting for the
22 right time, place to do so.

23 Q. Okay. Now would you tell me, what were your
24 observations as to his physical demeanor?

25 A. His physical demeanor, from what I can recall, was that

1 he was, I guess, excited.

2 Q. Kind of jumpy?

3 A. Yes.

4 Q. Talked real fast, didn't he?

5 A. He talked very fast ---

6 Q. Yes.

7 A. ---At certain -- certain times.

8 Q. Okay. Now, during that interview, I mean he pretty
9 much acted out the crime for you. He got up out of his chair,
10 in an excited manner, and acted things out, didn't he?

11 A. There was one point in the interview, yes, he started
12 acting things out for us.

13 Q. During that interview he told you that Jimmy Lee had,
14 on his way out of the house, heard the door knob, and then
15 pushed Monica back into the bathroom and shot her? Do you
16 recall that?

17 A. Yes, something to that effect, I do recall.

18 Q. To the best of your knowledge, there was no physical
19 evidence whatsoever connecting these defendants to the crime
20 scene, was there?

21 A. To the best of my knowledge, at the point I had gotten
22 promoted there was no physical evidence. What's been
23 developed since I'm not really up to speed on.

24 Q. Fair enough. No gun was recovered?

25 A. There were guns recovered but they didn't link back.

1 Q. They didn't match?

2 A. Right.

3 Q. Okay. No ballistics matched to any gun?

4 A. Again, up until the point -- I guess to say, up until
5 2007, no.

6 Q. No fingerprints were matched?

7 A. No.

8 Q. D.N.A. evidence was collected, but not matched to these
9 people?

10 A. Again, to my knowledge, no.

11 Q. Okay. During the course of this investigation you
12 spoke with Melissa Gomez and Antwann Higgins, right?

13 A. I did.

14 Q. Both of them?

15 A. I did.

16 Q. Okay. You talked to them several times?

17 A. Yes.

18 Q. You talked to them, I think at least three interviews
19 apiece; is that fair to say?

20 A. That's fair to say.

21 Q. Okay. This was not your first meeting with them, was
22 it?

23 A. It was with Melissa, not Antwann.

24 Q. Okay. Did you have a prior relationship with Melissa
25 Gomez?

ERIC DILORENZO - RECROSS BY FREDERICK

708

1 A. Prior relationship?

2 Q. With Melissa Gomez, based on her mom? Do you remember
3 that?

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

5 Q. I don't want to get into the details, but did you not
6 investigate a case in which her mother was the victim of an
7 assault?

8 A. It is -- it's certainly possible. I was involved in a
9 case. I don't recall being, for lack of a better word, lead
10 on that, but I certainly could have been involved in an
11 investigation involving her mother, certainly.

12 Q. Do you recall, during your first interview with
13 Melissa, stating that you had a special bond with Melissa as a
14 result of that prosecution, and reminding her of it?

15 A. I don't -- would it be -- I can't recall the mother's
16 name, and I don't know if it would be inappropriate for you to
17 ---

18 Q. I don't know her name off the top of my head.

19 A. Okay. If I -- if you have that in a transcript that I
20 said that, then, yes.

21 Q. Okay. It's just not fresh in your mind ---

22 A. It's just not fresh in my mind, that's all.

23 Q. Okay. Fair enough. You also had a prior relationship
24 with Antwann Higgins before this investigation?

25 A. Yes. I -- he had been a -- I had known him prior to

1 this..

2 Q. He was a victim in a case?

3 A. He was a victim in a separate incident.

4 Q. Okay. And you were the investigator in that case ---

5 A. I was.

6 Q. ---Helping him?

7 A. Helping him, yes, as a victim.

8 Q. Okay. Correct. And you talked about this with Antwann
9 also, on the scene. That first time you talked to him you
10 kind of cleared the are, got that out of the way?

11 A. I did.

12 Q. Okay. And you were at the crime scene, of course, on -
13 - was it June 9th?

14 A. On the 9th, yes, I was there.

15 Q. Okay. And you saw Antwann and Melissa there, right?

16 A. Yes.

17 Q. All right. You spoke to them?

18 A. I did.

19 Q. You saw what they were driving?

20 A. What I -- what they were driving?

21 Q. Yes, what they were driving?

22 A. Yes.

23 Q. That was a white Ford Thunderbird?

24 A. Yes, it was.

25 Q. Do you recall who that car belonged to?

ERIC DILORENZO - RECROSS BY FREDERICK

710

- 1 A. A white female. I can't recall the name.
- 2 A. Jill Holland, was it?
- 3 A. Yes. That sounds familiar.
- 4 Q. Okay. Did you search that car on Friday, at the crime
5 scene?
- 6 A. I did not, no.
- 7 Q. Do you know if it was ever searched?
- 8 A. Yes, it -- we had gone back and searched it.
- 9 Q. Did you find a briefcase in it?
- 10 A. Yes. There was something located in the trunk. To say
11 it was a briefcase or ---
- 12 Q. Safe.
- 13 A. ---Safe.
- 14 Q. Did you open it?
- 15 A. I did not.
- 16 Q. The reason that you had to question Melissa multiple
17 times though was because she lied to you; is that fair to say?
- 18 A. Yes. Her stories were inconsistent the different times
19 we had spoken with her.
- 20 Q. Okay. Even during the same interview sometimes ---
- 21 A. Sometimes, yes, she would change ---
- 22 Q. ---They were inconsistent?
- 23 A. Yes.
- 24 Q. Okay. That was a yes, right?
- 25 A. To say lie, more confused about the facts. I don't

1 know -- I can't say she was intentionally ---
2 Q. She gave you conflicting information ---
3 A. She gave us conflicting information..
4 Q. No judgment on her intentions, but she gave you
5 conflicting information?
6 A. Yes.
7 Q. Okay. When you first talked to her did she provide you
8 an alibi for herself and Antwann?
9 A. I can't recall.
10 Q. Did she tell you that her and Antwann were together all
11 day Thursday and Friday?
12 A. Yes.
13 Q. Okay. Did she tell you that they were with ---
14 MS. ELDER: Objection, Your Honor, hearsay.
15 THE COURT: Rephrase your question.
16 Q. Do you recall her giving you an alibi?
17 A. I recall her giving me information on their
18 whereabouts.
19 Q. So basically they provided a place that they were, and
20 witnesses that could put them there;
21 A. That is correct.
22 Q. ---Would that be accurate?
23 A. That would be accurate.
24 Q. Okay. And did she not change her story during the
25 course of the interview?

ERIC DiLORENZO - RECROSS BY FREDERICK

712

1 A. She had given us some information to conflict what she
2 had first told us, so yes.

3 Q. She was confronted with information that didn't match
4 what she said; fair to say ---

5 A. Fair to say.

6 Q. ---And then she would give you a different version?

7 A. That's fair to say.

8 Q. Fair to say. Then she would be confronted with
9 information that didn't match what she said, and then she
10 would give you a different version?

11 A. That is correct.

12 Q. This is pretty much a fair description of how those
13 interviews went, isn't it?

14 A. Yes, that's pretty accurate.

15 Q. Okay. In the end, there was -- to paraphrase, there
16 was no full alibi for Antwann? Was Melissa and Antwann at
17 home together that entire night?

18 A. They were together -- some point of the night there was
19 some point where we couldn't exactly pinpoint -- we couldn't
20 be a hundred percent definitive that they were together the
21 amount of time that they said they were.

22 Q. But she wanted you to believe that they were ---

23 A. Yes.

24 Q. ---Early on in the interview?

25 A. Uh huh (indicating positive) That's correct.

1 Q. And over the course of the interview she was not able
2 to convince you of that; is that fair to say? She changed her
3 story?

4 A. Her information changed, and there was also -- yes,
5 that's fair to say.

6 Q. I mean, Antwann was not at the house. He was out
7 dealing drugs, for example?

8 A. That I don't know, where -- what his whereabouts were.

9 Q. At some point a Search Warrant was executed on
10 Antwann's apartment, wasn't it?

11 A. It was.

12 Q. And who provided the information that led to that
13 Search Warrant?

14 A. I'm not sure. I did not. I wasn't the affiant on the
15 Search Warrant.

16 Q. Okay. Do you recall Melissa drawing a map of the
17 apartment for you?

18 A. No. She didn't draw a map for me.

19 Q. Who did she draw it for?

20 A. Whoever the -- if she did draw a map it would have been
21 for the detective or crime scene investigator who was ---

22 Q. Did you see the map?

23 A. I remember there would be -- talk about a map being
24 drawn. I don't remember ---

25 Q. Did you not discuss it with her during your interview

ERIC DiLORENZO - RECROSS BY FREDERICK

714

1 with her?

2 A. It's possible. Again, without seeing the transcripts I
3 can't recall if we spoke about it or not. I know at one point
4 there was a map drawn.

5 Q. Do you recognize this?

6 A. Yes. I do.

7 Q. What do you recognize it as?

8 A. This would have been the -- a map of "PoPo", what was
9 the tenant occupant of the apartment.

10 Q. Devon Harris?

11 A. Yes, Devon Harris. That would have been a drawing of
12 their apartment.

13 Q. Okay. And who drew it?

14 A. I'm assuming Melissa. Again, I can't recall sitting
15 down with her and watching her draw it.

16 Q. Okay. Y'all were looking for Antwann's gun in the
17 apartment, weren't you?

18 A. Yes.

19 Q. The point in the map was to show you where the gun was?

20 A. Again, I can't tell you exactly what the point of the
21 map was.

22 Q. Okay. You had information that Antwann was carrying
23 guns, didn't you?

24 A. Yes.

25 Q. And that Antwann was a drug dealer?

1 A. Yes.

2 Q. Okay. As a result of that Search Warrant guns were
3 found in his apartment, not matched to this crime, but guns
4 were found in his apartment?

5 A. That is correct.

6 Q. Okay. Ammunition was found in his apartment?

7 A. Yes.

8 Q. Shotgun shells?

9 A. I can't recall shotgun shells, but it's possible.

10 Q. Okay.

11 A. I can't you a definitive yes, no, without seeing crime
12 scene photos and things like that.

13 Q. Well, that's fair, if you don't remember ---

14 A. Okay.

15 Q. ---And if it's not some place you can easily flip to,
16 that's a fair answer.

17 A. Okay.

18 Q. Okay. Some drugs were found in his apartment, not a
19 lot though, right?

20 A. From what I can recall.

21 Q. Okay. Was he charged with anything?

22 A. Not by me.

23 Q. Okay. Ultimately y'all learned that a briefcase with
24 drugs in it had been taken out of that house, didn't you?

25 A. We had learned that there was a briefcase, or I guess a

ERIC DILORENZO - RECROSS BY FREDERICK

716

1 safe, that was removed from the house. What it's contents
2 were, I don't remember.

3 Q. You don't recall the specific information that came to
4 y'all, that there were drugs in that briefcase?

5 A. Oh, yes. I thought you were asking what was ultimately
6 discovered from it.

7 Q. No, talking about the information that you had when you
8 learned about the briefcase. But do you remember when y'all
9 learned about the briefcase?

10 A. I don't specifically remember when we learned about it.

11 Q. But you did learn that there were drugs in the
12 briefcase; you just didn't find drugs in the briefcase later,
13 when the briefcase was discovered at Jill Holland's? That's a
14 long question. Do you follow me?

15 A. If I -- had we received information that there was a
16 briefcase removed from there, that potentially contained, I
17 believe it was either drugs or money, and then it was later
18 recovered out of Jill Holland's car.

19 Q. Okay. Did y'all finally open it up after you got it
20 from Jill Holland's car?

21 A. As far I remember it was. Again, it wouldn't have been
22 me who opened it, or necessarily even directed it to be
23 opened.

24 Q. Let me ask you this, when you recovered it from Jill
25 Holland's car it wasn't at the police station, was it, Jill

1 Holland's car?

2 A. No, it was not.

3 Q. It was at Jill Holland's apartment, wasn't it?

4 A. From what I can recall, yes.

5 Q. Okay. Roy Grant was never charged with anything, was
6 he?

7 A. You said Roy Grant?

8 Q. Yes.

9 A. No.

10 Q. As far as you know?

11 A. As far as I know.

12 Q. Okay.

13 MR. FREDERICK: That's all the questions I have. Thank
14 you.

15 A. Thank you.

16 THE COURT: All right. Solicitor, any questions,
17 please Ma'am.

18 MS. ELDER: Thank you, Your Honor.

19 CROSS-EXAMINATION BY MS. ELDER:

20 Q. Sergeant DiLorenzo, how long did you indicate that you
21 had worked in Violent Crimes?

22 A. I had worked in Violent Crimes approximately three
23 years, up until the time I got promoted.

24 Q. How long have you been a police officer?

25 A. I'm working on my twelfth year.

ERIC DiLORENZO - CROSS BY ELDER

718

1 Q. And during your twelve years on the Police Department,
2 and the years that you've spent in Violent Crimes, is it
3 common for someone who commits murder to leave a business card
4 with their name, address and phone number so that you can go
5 find them?

6 A. Absolutely not.

7 Q. How do you usually solve crimes like that?

8 A. We solve them by speaking to witnesses. We could be
9 talking to informants, physical evidence, a myriad of
10 different ways.

11 Q. You use anonymous tips, don't you?

12 A. We certainly do.

13 Q. You use people who, in the community, might know
14 something?

15 A. Certainly.

16 Q. You encourage people who think they even hear something
17 to call in, don't you?

18 A. Absolutely. Every little bit of information could be
19 the bit of information we are missing, and everything is
20 important.

21 Q. And you publish unsolved crimes, and you put news after
22 news media to get that information out to the community, don't
23 you?

24 A. We do.

25 Q. And you are doing that in an attempt to find who the

1 person is; is that correct?

2 A. That is correct.

3 Q. Who -- the one that is responsible?

4 A. Yes Ma'am.

5 Q. And did you, in fact, do that in this case?

6 A. Yes. We put money out on Crime Stoppers, basically
7 we -- anyone who we came in contact with got a business card,
8 please call us if you have any information.

9 Q. So you were taking all kinds of information in, weren't
10 you ---

11 A. Certainly.

12 Q. ---In an effort to solve this crime?

13 A. Yes Ma'am.

14 Q. So that includes people who may or may not have been
15 credible, or had credible information, right?

16 A. Yes Ma'am.

17 Q. And you took that information anyway?

18 A. We did.

19 Q. And did you follow up on those things?

20 A. To the best we could.

21 Q. All right. And there were a bunch of investigators
22 assigned to this case, correct?

23 A. Multiple.

24 Q. And you had assistance of detectives, investigators,
25 patrol officers, crime scene, all trying to assist in tracking

ERIC DiLORENZO - CROSS BY ELDER

720

1 down this leads; is that correct?

2 A. Yes Ma'am, it is.

3 Q. So all these people that Mr. Frederick went through,
4 Moses, Greg Wilson, Frankie, the Oxendine brothers, these
5 unidentified Hispanics, Brandon, who -- Floyd Lowe, who is an
6 associate, Adriana Breze, Garrett, all of those you received
7 information about?

8 A. Yes, and -- we did.

9 Q. And it wasn't credible information; is that correct?

10 A. That is correct.

11 Q. But through your investigation, through your
12 interviews, you were able to exclude all these people?

13 A. To the best of our ability, sure.

14 Q. You didn't charge any of them?

15 A. We didn't charge any of them, so ---

16 Q. And were there a lot of interviews conducted in this
17 case?

18 A. Yes. Yes, there were. I couldn't count the hours of
19 interviews we did.

20 Q. Unbelievable amount of energy?

21 A. Yes.

22 Q. And those interviews were y'all following up on these
23 phone calls and these people who would just call in with
24 street information; is that correct?

25 A. Yes Ma'am.

1 Q. Tell me how that works. Tell me about what I say,
2 street information? You get that quite a bit?

3 A. Sure. We get street information, people -- anything
4 from leaving voice mails to people who just have information
5 that they hear on the streets and report it to the police.

6 Q. And that information is oftentimes, I heard somebody
7 say that somebody, that somebody, somebody, somebody?

8 A. Certainly. If it was only that amount of people that
9 would be useful to us. Usually it's more than that.

10 Q. "LeeLee" Washington wasn't a suspect, was he?

11 A. No.

12 Q. And during all of these interviews, and phone calls,
13 and informants, and information, the course of this
14 investigation, didn't it all culminate and point to, after you
15 weeded out all the mess, it pointed to two people; is that
16 correct ---

17 A. It did.

18 Q. ---And that is Chris Stephens and Jimmy Lee Sessions?

19 A. Yes Ma'am.

20 Q. And that's who you charged?

21 A. Yes. That's who was charged.

22 Q. And Mr. Frederick asked you about, did you get
23 information that Jamilla -- didn't you say -- Jamilla
24 testified in a trial against somebody. He asked you about
25 that?

ERIC DiLORENZO - CROSS BY ELDER

722

1 A. He did.

2 Q. Would you be surprised to know that she never testified
3 against anybody in a trial ---

4 A. That would not surprise me.

5 Q. ---And that a Jamilla Washington testified against
6 somebody in a trial?

7 A. Yes.

8 Q. You have pending unsolved crimes in the City of Myrtle
9 Beach, do you not?

10 A. We do.

11 Q. Some of those are homicides?

12 A. Yes Ma'am.

13 Q. And some of those are old cases; is that correct?

14 A. Yes Ma'am.

15 Q. So there is no pressure to charge someone who is not
16 guilty of these offenses?

17 A. No, there's -- to say pressure, no, it's doing your
18 job, doing what you swore you said you would do.

19 Q. And, in fact, in this case, y'all didn't make an arrest
20 till almost a year later; is that right?

21 A. That is right.

22 Q. So that's not rushing?

23 A. No Ma'am.

24 Q. Let's talk a little bit about Antwann Higgins and
25 Melissa Gomez. You didn't charge Antwann Higgins, did you?

1 A. No Ma'am, I didn't.

2 Q. You never have?

3 A. No, I have never ---

4 Q. Never charged him and then later dismissed the charges
5 involving in this case, have you?

6 A. No.

7 Q. Never charged Melissa Gomez?

8 A. No.

9 Q. And she came and talked with you, I believe you and
10 Detective Mann -- y'all talked with her; is that correct?

11 A. Yes.

12 Q. And when Mr. Frederick was asking you about
13 inconsistent statements, she wasn't inconsistent about the
14 fact that she and Antwann were over there and they found those
15 bodies, was she?

16 A. No. She was certainly not inconsistent about that.

17 Q. And the issue that appears to be inconsistent is one
18 item; is that right?

19 A. Yes.

20 Q. The briefcase?

21 A. Yes Ma'am.

22 Q. Did she ever explain to you why she took the
23 briefcase -- I'm not asking you what she said -- did she give
24 you an explanation as to why she took the briefcase out of the
25 house?

ERIC DILORENZO - CROSS BY ELDER

724

1 A. I believe because she was scared.

2 Q. And did you ever have any credible information that
3 Melissa and Antwann Higgins, or Roy Grant, took drugs or money
4 from Jamilla Hightower's house after finding her and Monica
5 dead?

6 A. No, no credible information.

7 Q. And, in fact, when you opened the briefcase there was
8 no money; there was no drugs?

9 A. No Ma'am.

10 Q. And the car they were driving in was, in fact, towed
11 from the scene that night?

12 A. Yes, it was.

13 Q. And it was later released to it's owner, Jill Holland?

14 A. That's correct.

15 Q. And it was Jill Holland that called you, or called the
16 Myrtle Beach Police Department, and said, there's something in
17 the trunk that's not normally here ---

18 A. Yes.

19 Q. ---And then you went and retrieved that from Jill
20 Holland; is that correct?

21 A. Yes.

22 Q. So after you arrived on the scene Antwann Higgins,
23 Melissa Gomez, Roy Grant, never had access to that car again,
24 did they?

25 A. No.

1 Q. Let's talk a little bit about James Pearl. You
2 interviewed James Pearl; is that correct?

3 A. I did.

4 Q. I believe that was December 16th, '06; is that also
5 correct?

6 A. That is correct.

7 Q. And you interviewed him at the Myrtle Beach Police
8 Department Annex?

9 A. Yes Ma'am.

10 Q. And do you recall what you said to him prior to
11 initiating your interview with him, regarding any assistance
12 with his charges?

13 A. Yes. I can't be verbatim, but I -- I would have told
14 him that he's down here giving us a voluntary statement, and
15 we couldn't do anything with his pending charges; that's not a
16 decision that we, as the Police Department, can make.

17 Q. In fact, do you recall saying, "I'm going to advise you
18 that you are giving this information here as a good
19 samaritan."

20 A. Yes.

21 Q. Do you recall him saying, I'm going to take these --
22 I'm going to take off these handcuffs, and that's simply for
23 your comfort?

24 A. Yes.

25 Q. And do you recall telling him, "As soon as we are done

ERIC DiLORENZO - CROSS BY ELDER

726

1 those handcuffs are going back on and you go back to the jail
2 cell"?

3 A. Yes Ma'am.

4 Q. And that's prior to him giving you any information;
5 isn't that right?

6 A. That is right.

7 Q. And when he was describing to you, in that interview,
8 and acting out during that interview how Jamilla Hightower and
9 Monica Wall were executed, he was conveying what Jimmy Lee
10 Sessions told him about the murders; is that correct?

11 A. That is correct.

12 Q. Phonetia Hightower. Mr. Frederick asked you a Phonetia
13 Hightower. Is she related to Jamilla; do you know?

14 A. I believe it's her cousin.

15 Q. And she was actually charged in connection with this
16 crime, wasn't she?

17 A. She was.

18 Q. Do you remember what she's charged with?

19 A. I believe it's misprision of a felon -- felony.

20 Q. Why was she charged?

21 A. Charged because she was giving a -- giving us false
22 information to protect one of the Defendants.

23 Q. She was giving you a false alibi for Jimmy Lee
24 Sessions?

25 MR. FREDERICK: Objection, to speculation.

1 THE COURT: I'll overrule the objection.

2 You may continue.

3 A. That was exactly what she was doing, was giving a false
4 alibi for Jimmy Lee Sessions.

5 Q. About where he was the night of Jamilla's murder; is
6 that correct?

7 A. That is correct.

8 Q. And you charged her for that?

9 A. Yes Ma'am.

10 Q. And that's still pending, as far as you know?

11 A. It is still pending as far as I know.

12 Q. Craig Burris, he came and talked with you, I believe in
13 April of '07?

14 A. That sounds right.

15 Q. Okay. And Defense asked you about, he wanted you to
16 look into his pending charge; is that correct?

17 A. That is correct.

18 Q. And that charge was, in fact, dismissed, because he
19 provided an alibi; is that correct?

20 A. That is correct.

21 Q. It was not in favor or exchange for what he gave you?

22 A. No. He had an alibi, which was later corroborated, and
23 the charges were dropped.

24 Q. Reference to the hotel, you indicated, or testified,
25 that you went to the hotel; that's correct, Days Inn, I

ERIC DiLORENZO - CROSS BY ELDER

728

1 believe?

2 A. Days Inn and the Knights Inn.

3 Q. Okay. And you got some records?

4 A. I did.

5 Q. And none of them were in James Pearl or Jimmy Lee
6 Sessions' name, were they?

7 A. They were not.

8 Q. How many hotels are in the Myrtle Beach area?

9 A. Too many to count.

10 Q. And there's more than one Days Inn; is that correct?

11 A. There is.

12 Q. And from your experience on the Police Department, when
13 somebody rents a hotel room for drugs or prostitution they
14 usually pay cash?

15 A. They are always paying cash.

16 Q. And do they ever provide their real name?

17 A. No.

18 Q. In reference to the time of death that you were asked
19 about you indicated that, at one time all you had to do around
20 the time of death was, I believe the neighbor, Teresa Greene
21 indicated she heard something about midnight; is that correct?

22 A. Yes. That was our initial, I guess, time line, to try
23 to get the sequence of events down.

24 Q. And once you got the autopsy results back was that
25 consistent with the time line that you had?

1 A. Not really. I mean, it was -- well, let me take that
2 back. It was within reason, I guess.

3 Q. Was it from midnight on? Do you recall what the
4 autopsy said?

5 A. I don't recall what the autopsy said.

6 Q. All right. Joshua Best, Mr. Frederick asked you about
7 that, that you had some information that he was there from
8 10:30 to 10:45, on Thursday night, which would have been prior
9 to Jamilla and Monica's death; is that correct?

10 A. Yes Ma'am.

11 Q. And he also asked you about, did you know that Joshua
12 Best was the last person to call Jamilla. Well, would it be -
13 - surprise you that, after Joshua Best supposedly left
14 Jamilla's house at 10:45, there were actually three other
15 phone calls? There's a voice mail call, there was a call from
16 somebody in Virginia, and there was a call from somebody named
17 "Black".

18 A. No, that doesn't surprise me.

19 Q. So it doesn't surprise you that Joshua Best was not the
20 last person to talk to Jamilla Hightower?

21 A. No.

22 Q. Were you also aware that, based on the phone records,
23 that Chris Stephens called Jamilla the day before she died?

24 MR. GARDNER: I'm going to object. This is evidence
25 not in the -- facts not in evidence. I don't know about phone

ERIC DiLORENZO - CROSS BY ELDER

730

1 records in evidence.

2 MS. ELDER: Your Honor, they ---

3 THE COURT: I'm going to sustain the -- that particular
4 question, and let's move along.

5 MS. ELDER: Thank you, Your Honor.

6 One moment, Your Honor.

7 Q. Just two more quick questions.

8 A. Yes Ma'am.

9 Q. I picked up -- you said the Days Inn, and you also went
10 to the Knights Inn. Why did you go to the Knights Inn?

11 A. Because they are within the same -- they are on the
12 same frontage road, off of 501. They are ---

13 Q. Did you talk to a witness that said -- gave you
14 information about she, in fact, picked up James Pearl, dropped
15 James Pearl off at the Knights Inn, not the Days Inn?

16 A. Yes Ma'am.

17 Q. And they are very close?

18 A. They are right next door.

19 Q. Okay. And how did you discover that Phonetia had lied
20 and given Jimmy Lee Sessions a false alibi? How did you
21 discover that information?

22 A. Throughout the course of my investigation I learned
23 that from Phonetia.

24 Q. Did she come in and tell you?

25 A. She did. She -- we did a follow-up interview with her,

1 and she told us that she was giving wrong information.

2 Q. That she lied?

3 A. That she lied.

4 MS. ELDER: Your Honor, we have no further questions.

5 THE COURT: All right, Mr. Gardner, re-direct.

6 MR. GARDNER: Yes, Your Honor. Briefly.

7 REDIRECT-EXAMINATION BY MR. GARDNER:

8 Q. Sergeant DiLorenzo, when Ms. Elder asked you about
9 James Pearl acting out the scenario, or the story, it seemed
10 like your memory was refreshed a little bit. Do you remember
11 it now, the story he was acting out?

12 A. I remember him acting it out.

13 Q. He was hyped up, wasn't he?

14 A. I remember him being excited, yes.

15 Q. He was talking real, real fast?

16 A. He was excited.

17 Q. Moving? he was moving? Okay. All right. None of
18 that evidence, or none of his story matches the crime scene
19 evidence, does it?

20 MS. ELDER: Objection, Your Honor. This is not
21 consis ---

22 THE COURT: I'm going to allow the question.

23 Go ahead.

24 A. I don't remember specifically what he was acting out
25 versus what we were able to pinpoint at the crime scene.

ERIC DiLORENZO - CROSS BY ELDER

732

1 That's -- probably be a better question for ---

2 Q. Okay. He told you about how many times that Ms.
3 Hightower was shot, and that was nowhere close to the truth?

4 MS. ELDER: Objection, Your Honor. This is what he
5 covered in direct.

6 THE COURT: I appreciate that, but I'm going to allow
7 him to ask it again.

8 Go ahead.

9 A. I don't think -- from what I can recall I don't think
10 the exact number that he told us was what we found.

11 Q. Okay. All right. And then he told you that Jimmy Lee
12 was leaving and he heard the shower turn off. Remember that
13 part?

14 A. It was either the shower water or the bedroom door or
15 the bathroom door, or a door knob or ---

16 Q. Door knob turned ---

17 A. Yes.

18 Q. ---And opened ---

19 A. Yes.

20 Q. ---And looked at each other eye into eye, and he pushed
21 her right into the bathroom?

22 COURT REPORTER: Excuse me. Your answer.

23 A. I'm sorry.

24 That is correct.

25 Q. And he pushed her right into the bathroom ---

1 A. Yes.

2 Q. ---And shot her?

3 A. Correct.

4 MR. GARDNER: Nothing further.

5 THE COURT: All right. Mr. Frederick, on those
6 questions asked by Mr. Gardner.

7 MR. FREDERICK: I have no questions.

8 THE COURT: All right. Solicitor, on the questions
9 asked by Mr. Gardner.

10 MS. ELDER: No further questions, Your Honor.

11 THE COURT: All right. Do you wish the witness to be
12 excused, Mr. Gardner?

13 MR. GARDNER: Yes sir, please.

14 THE COURT: Mr. Frederick.

15 MR. FREDERICK: Yes, Your Honor.

16 THE COURT: And any objection -- I'm sorry. You have
17 an objection or you ---

18 MR. FREDERICK: No objection.

19 THE COURT: All right. Very good. Do you have an
20 objection to the witness being excused?

21 MS. ELDER: No sir, Your Honor.

22 THE COURT: All right, sir, you are released from your
23 Subpoena and you may go back to your regular duties.

24 A. Thank you, sir.

25 THE COURT: All right, sir.

1 All right, ladies and gentlemen, at this point in time
2 we are going to take a lunch break. I'm going to have you
3 back in your jury room at 2:30. One of the reasons for that
4 is, I have to conduct a short hearing prior to resuming this
5 trial, so I have to have -- give enough time for that to be
6 concluded, so for you -- y'all to be back in your jury room at
7 2:30. Please remember to wear your badges. Don't talk about
8 the case, don't allow anybody to talk to you about it. See
9 you back at 2:30 in your jury room, please.

10 Thank you very much.

11 Everyone else remain seated.

12 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
13 JURY.)

14 THE COURT: Solicitor, is there anything we need to
15 cover before we break?

16 MS. ELDER: No sir, Your Honor, not that I'm aware of.

17 THE COURT: Mr. Gardner.

18 MR. GARDNER: Not that I'm aware of, Your Honor.

19 THE COURT: Mr. Frederick.

20 MR. FREDERICK: No sir.

21 THE COURT: All right. Very good. We will resume back
22 at 2:30. I've got a hearing on a death penalty case at two
23 o'clock, so I've got to -- just for a status conference, so
24 I've got to cover that at 2 o'clock.

25 Spectators in the courtroom, remain in the courtroom for

1 ten minutes, please, before you can leave.

2 Thank you.

3 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK, AND
4 OUTSIDE THE PRESENCE OF THE JURY.)

5 THE COURT: All right. Solicitor, are y'all ready to
6 go forward?

7 MS. ELDER: Yes sir, Your Honor.

8 THE COURT: All right. Mr. Gardner.

9 MR. GARDNER: I am, Judge. I have received news during
10 the lunch break about a witness on -- one of my potential
11 witnesses. I need to talk with you about it. I don't know --
12 it might be better if we did it up there.

13 THE COURT: All right. Well, y'all come on up here.

14 MR. GARDNER: I want to do it before we get the jury
15 back in. The witness isn't coming up for a while ---

16 THE COURT: All right.

17 MR. GARDNER: ---But we've got them right here.

18 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

19 MR. GARDNER: The Defense is ready to go, Judge.

20 THE COURT: All right. Very good.

21 And Mr. Frederick, you are ready to go, sir?

22 MR. FREDERICK: Yes sir.

23 THE COURT: All right. Good.

24 Ask the jury to come in, please.

25 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE

JAMES KERNS - DIRECT BY GARDNER

736

1 JURY.)

2 THE COURT: All right, Mr. Gardner, your next witness,
3 please sir.

4 MR. GARDNER: Officer James Kerns.

5 THE COURT: All right.

6 Please come around to be sworn, sir.

7 JAMES KERNS, being first duly
8 sworn, testifies as follows:

9 DIRECT-EXAMINATION BY MR. GARDNER:

10 A. My name is Patrolman First Class James Kerns. Last
11 name, K.e.r.n.s., and I'm with the City of Myrtle Beach Police
12 Department in Myrtle Beach, South Carolina.

13 THE COURT: Yes sir.

14 MR. GARDNER: Thank you, Judge.

15 Q. Officer Kerns, you just answered my first question.
16 You work for the Myrtle Beach Police Department, and in the
17 capacity as patrolman; is that right?

18 A. Daytime Patrol Division, sir.

19 Q. All right. And how long have you worked there, sir?

20 A. Seven and a half years, sir.

21 Q. So you were working there back in June of '06?

22 A. Yes sir.

23 Q. Do you recall receiving a Report, in that capacity,
24 about this case?

25 A. Yes sir.

1 Q. And as a result of receiving that Report, tell the jury
2 what, if anything, did you do?

3 A. All right. On June 12th of 2006, around 3:40 P.M., I
4 was given a radio call to go to Willow Run Apartments, located
5 at [REDACTED], City of Myrtle Beach, South
6 Carolina, and I was to attempt to locate a Ms. Jill Holland,
7 in Apartment [REDACTED], and also attempt to find a white in color
8 Ford Thunderbird, with a South Carolina license plate of 562
9 Uniform Tango X-ray, which is UTX, in the parking lot.

10 Q. Did you do so?

11 A. Yes sir, I did.

12 Q. And tell us what, if anything, happened next?

13 A. All right. After arriving on the scene, finding the
14 vehicle parked in the parking lot matching the registration, I
15 went to the unit, 10-D, knocked on the door, and spoke with a
16 female who identified herself as a Ms. Jill Holland. I was --
17 I remember seeing on the call screen -- our patrol vehicles
18 have a laptop in most of the patrol cars, and we get our calls
19 a lot by the radio, and then additional information comes over
20 the screen, and on the screen it was telling me that I needed
21 to -- if I could make contact with this -- this young lady
22 that I needed to have her call Detective Salena Mann, which is
23 -- she was a Detective with our City of Myrtle Beach Police
24 Department.

25 After -- I'm sorry, sir.

JAMES KERNS - CROSS BY FREDERICK

738

1 Q. That's okay. Detective Salena Mann, a Detective with
2 the Myrtle Beach Police Department?

3 A. Yes.

4 Q. Okay. And then what, if anything, happened next?

5 A. At that time I gave my cell phone to Ms. Holland to
6 speak to Detective Mann. After she spoke with Detective Mann
7 I got back on the phone. Detective Mann asked me if I would
8 mind doing a Departmental Consent to Search Form, and
9 collecting a written statement from Ms. Holland.

10 Q. Okay. Did you collect that statement?

11 A. Yes sir.

12 Q. All right. And did you inventory the car?

13 A. No sir.

14 Q. Did you look in the trunk of the car?

15 A. No sir.

16 Q. Did you see the safe?

17 A. No sir.

18 Q. Based on your knowledge, do you know if the safe was
19 there?

20 A. No sir.

21 Q. All right.

22 MR. GARDNER: Please answer any questions that Mr.
23 Frederick has for you.

24 THE COURT: Mr. Frederick.

25 MR. FREDERICK: Yes sir, Your Honor.

JAMES KERNS - CROSS BY FREDERICK
JAMES KERNS - CROSS BY ELDER

739

1 CROSS-EXAMINATION BY MR. FREDERICK:

2 Q. The reason for the call was because she had found a
3 safe in her trunk; is that right?

4 A. Yes sir.

5 MR. FREDERICK: Okay. No more questions.

6 THE COURT: Solicitor.

7 CROSS-EXAMINATION BY MS. ELDER:

8 Q. Did Ms. Holland indicate, or do you know that she
9 picked up her car from the police annex that -- earlier that
10 morning at 9 o'clock?

11 A. Yes Ma'am, she did say so.

12 Q. So this was -- you said the same day, after she picked
13 up her car, about 15:40 when she called the safe in?

14 A. I don't know if she called it in. I just received the
15 call from Dispatch, and from Detective Mann.

16 Q. But that was at 15:40. What time would that be?

17 A. That would be 3:40 P.M., Ma'am.

18 Q. All right.

19 MS. ELDER: Thank you. No further questions, Your
20 Honor.

21 THE COURT: Anything on those questions, Mr. Gardner?

22 MR. GARDNER: No sir.

23 THE COURT: Do you wish this witness to be excused?

24 MR. GARDNER: Yes sir.

25 THE COURT: Any objection?

ELIZABETH DUNMORE - DIRECT BY GARDNER

740

1 MR. FREDERICK: No objection.

2 THE COURT: Any objection, Solicitor?

3 MS. ELDER: No sir, Your Honor.

4 THE COURT: All right, sir, you are released from your
5 Subpoena and you may go back to your regular duties.

6 A. Thank you, Your Honor.

7 THE COURT: All right. Who is your next witness?

8 MR. GARDNER: Liz Dunmore, Your Honor.

9 THE COURT: All right.

10 Please come around to be sworn, Ma'am.

11 ELIZABETH DUNMORE, being first duly
12 sworn, testifies as follows:

13 DIRECT-EXAMINATION BY MR. GARDNER:

14 Q. Ms. Dunmore, where do you live?

15 A. [REDACTED].

16 Q. And that's in Myrtle Beach?

17 A. Yes sir.

18 Q. How long have you lived in Myrtle Beach?

19 A. Going on five years, right, sir.

20 Q. All right. Back in June of 2006, where were you
21 living?

22 A. In Sandy Gate.

23 Q. All right. And who lived with you in Sandy Gate?

24 A. My two daughters and fiance.

25 Q. And what was your fiance's name?

- 1 A. Edward Washington.
- 2 Q. Edward Lee Washington?
- 3 A. Yes sir.
- 4 Q. Okay. And back in June do you remember your fiance --
- 5 did there come a time -- well, let me ask you this. Did you
- 6 hear about these murders back in June?
- 7 A. Yes sir.
- 8 Q. All right. And did you and your husband -- you don't
- 9 have to tell me what he said, but did y'all ever have a
- 10 conversation about them?
- 11 A. Yes sir.
- 12 Q. Was that before or after the police started
- 13 interviewing everybody?
- 14 A. Before and after.
- 15 Q. Before and after. All right. Are you familiar with
- 16 Craig Burris?
- 17 A. That name don't ring a bell.
- 18 Q. Okay. All right. Did he ever go to your house?
- 19 A. Okay. Who -- does he have a nickname or ---
- 20 Q. He does, but let me just stick with his name for now.
- 21 Craig Burris, do you have any knowledge of him ever going to
- 22 your house in June of 2006?
- 23 A. No sir.
- 24 Q. Ever going to your house at any time in 2006?
- 25 A. No sir.

ELIZABETH DUNMORE - CROSS BY FREDERICK

742

1 Q. And that's the house that you lived in with Edward Lee
2 Washington ---

3 A. Yes sir.

4 Q. ---And your children?

5 A. Yes sir..

6 MR. GARDNER: All right. Please answer any questions
7 that Mr. Bobby Frederick has for you.

8 CROSS-EXAMINATION BY MR. FREDERICK:

9 Q. Liz, you are familiar with someone named "Snaggers",
10 correct, "Snags"?

11 A. Say that again.

12 Q. "Snags".

13 A. "Snags"?

14 Q. Yes.

15 A. I know a "Snag" and a "Snagger".

16 Q. "Snagger"?

17 A. Uh huh (indicating positive)

18 Q. Okay. When we talked just a little while ago outside
19 you had said that you didn't know Craig Burris as Craig Burris
20 back in June of 2006, right?

21 A. Yes sir.

22 Q. You knew him as "Snagger"?

23 A. Yes sir.

24 Q. You know who we are talking about?

25 A. Yes sir.

1 Q. Not this guy, is it?

2 A. No sir.

3 Q. Craig Burris, a/k/a/, "Snagger". In June of 2006 --
4 are you familiar with the night that we are talking about, and
5 the morning we are talking about? You have been questioned
6 about this before, haven't you?

7 A. Yes sir.

8 Q. Okay. Did Craig Burris, or "Snagger", ever come to
9 your house?

10 A. No sir.

11 Q. Never came into your house?

12 A. No sir.

13 Q. On the night before that morning, were people partying
14 at your house?

15 A. Some people did come to my house that night.

16 Q. Was Craig Burris there partying ---

17 A. No sir.

18 Q. ---Doing cocaine?

19 A. No sir.

20 Q. Okay. Was this guy, Jimmy Lee Sessions, at your house
21 doing bunches of cocaine?

22 A. Well, I can't say what they were doing, but I do know
23 that he was at the house that night.

24 Q. Okay. Did he go into your back bedrooms?

25 A. No sir.

ELIZABETH DUNMORE - CROSS BY FREDERICK

744

1 Q. Okay. Did you hear anybody talking about hitting a
2 "Lick"?

3 A. No sir.

4 Q. Did you hear anybody -- did you see anybody dividing up
5 large amounts of cash and drugs?

6 A. No sir.

7 Q. Okay. Are you positive you never saw "Snagger" at your
8 house that night or the next morning?

9 A. I'm positive.

10 Q. Okay. The bedrooms in your house, how many are there?

11 A. Three.

12 Q. Okay. Who sleeps in them?

13 A. Say that again.

14 Q. Who sleeps in them?

15 A. I sleep in the back bedroom. My daughter -- my
16 youngest daughter slept in the one right beside me, and then
17 my oldest daughter slept in the front bedroom.

18 Q. So were people going into those bedrooms doing drugs
19 where your daughters were sleeping?

20 A. No sir.

21 Q. In your bedroom?

22 A. No sir.

23 Q. Okay.

24 MR. FREDERICK: Beg the Court's indulgence.

25 Q. Did you see Craig Burris, or "Snagger", at all that

1 Thursday, that Friday, early that morning?

2 A. No sir.

3 MR. FREDERICK: Thank you. I have no more questions.

4 THE COURT: Solicitor.

5 MR. RICHARDSON: Yes. Thank you.

6 CROSS-EXAMINATION BY MR. RICHARDSON:

7 Q. Ms. Dunmore ---

8 A. Yes sir.

9 Q. ---Do you remember giving prior sworn testimony you
10 didn't know who came over to your house that morning?

11 A. As far as what Edward told me, there was only two
12 people in my house.

13 Q. We can't get into what Edward told you. Now, in a
14 prior sworn statement, under oath, you said you didn't know
15 was there, you had no personal knowledge. Is that correct?

16 A. I mean, I did not see them, but as far as -- like I
17 said, as far as what "Lee-Lee" said ---

18 Q. Ma'am, I'm just asking you, did you see people at your
19 house that morning?

20 A. No, I didn't see them.

21 Q. And let's see. Edward Lee Washington, "Lee-Lee", where
22 is he right now?

23 A. I have no idea.

24 Q. You have no idea. Do you remember telling Detective
25 Salena Mann after you were awakened you went back to sleep?

ELIZABETH DUNMORE - CROSS BY RICHARDSON

746

1 A. Say that again.

2 Q. Do you remember telling Detective Salena Mann you went
3 back to sleep?

4 A. Yes.

5 Q. Do you remember a few days after that you told Salena
6 Mann that "Snag" -- not "Snagger", "Snag", came to the house
7 asking to use your phone?

8 A. I don't remember that.

9 Q. Do you remember telling Salena Mann that you told him
10 you would let him use the phone, but you didn't want him
11 around your house?

12 A. I do remember telling her that I didn't like them being
13 at the house, yes.

14 Q. Now, are you familiar with the name Nancy Gause?

15 A. Yes.

16 Q. Who is that?

17 A. Christopher's baby's mama.

18 Q. Christopher -- Christopher who?

19 A. I don't know his last name.

20 Q. Is he in the courtroom today?

21 A. Yes sir.

22 Q. Where?

23 A. Sitting at the end table.

24 Q. Chris Stephens. And where -- now you live at [REDACTED]

25 [REDACTED], Apartment [REDACTED]. That's Sandy Gate Village,

1 right?

2 A. Uh huh (indicating positive)

3 THE COURT: You need to say yes or no.

4 A. Yes sir.

5 Q. Nancy Gause, where does she live?

6 A. I believe building 12.

7 Q. Kind of caty-corner from yours?

8 A. Yes sir.

9 Q. You wouldn't want any static around your neighborhood,
10 would you?

11 A. Say that again.

12 Q. You wouldn't want any troubles with Nancy, would you?

13 A. No sir.

14 Q. It would be a bad thing to admit to allowing people to
15 do cocaine in your house, correct?

16 A. Yes, it would be a bad thing.

17 Q. But it's real bad with the children in the house?

18 A. Yes.

19 MR. RICHARDSON: Nothing further.

20 THE COURT: Redirect.

21 REDIRECT-EXAMINATION BY MR. GARDNER:

22 Q. How big is this house? You've said there's three
23 bedrooms there. It's a -- how big is the house?

24 A. Well, it's fairly large.

25 Q. The night that you were -- talked about, the night

ELIZABETH DUNMORE - RECROSS BY FREDERICK

748

1 before the murder, the night of the murder, the following
2 morning after the murder, is it conceivable that somebody
3 could have been in your house and you wouldn't know about it?

4 A. It is possible.

5 Q. And it's possible they would be in there and you
6 wouldn't know that?

7 A. I mean, I was in the back. I was in my back room.

8 Q. Okay. But if they had gone back to the back room you
9 would know about it?

10 A. Yes sir.

11 Q. All right. And if they had come back there doing drugs
12 you would have known about it, right?

13 A. Yes sir.

14 Q. And were you doing drugs?

15 A. No sir.

16 Q. And do you live there now?

17 A. No sir.

18 MR. GARDNER: All right. Thank you.

19 THE COURT: Mr. Frederick.

20 RECROSS-EXAMINATION BY MR. FREDERICK:

21 Q. Liz, you don't live caty-corner from Nancy Gause, do
22 you?

23 A. Not any more, no sir.

24 Q. You moved, didn't you?

25 A. Yes sir.

1 MR. FREDERICK: Thank you.

2 THE COURT: Solicitor.

3 MR. RICHARDSON: Nothing further, Your Honor.

4 THE COURT: Do you wish this witness to be excused?

5 MR. GARDNER: Yes sir, please.

6 THE COURT: Any objection?

7 MR. FREDERICK: No objection.

8 THE COURT: Any objection from the State?

9 MS. ELDER: No sir, Your Honor.

10 THE COURT: All right, Ma'am, you are released from
11 your Subpoena. You can go back to your regular activities.

12 Solicitor, gentlemen, y'all -- y'all come talk to me for
13 just one second.

14 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

15 THE COURT: All right, Mr. Gardner, your next witness,
16 please.

17 MR. GARDNER: Joshua Best, Your Honor.

18 THE COURT: All right.

19 JOSHUA O'NEAL BEST, being first
20 duly sworn, testifies as follows:

21 DIRECT-EXAMINATION BY MR. GARDNER:

22 Q. Mr. Best, back in June of 2006, you were in Myrtle
23 Beach; is that right?

24 A. Yes sir.

25 Q. All right. Are you familiar with the two murders that

JOSHUA O'NEIL BEST - DIRECT BY GARDNER

750

1 occurred on Pridgen Road, back in June ---

2 A. Yes sir.

3 Q. ---Of 2006. All right. And did you go into the home
4 the night that they were murd -- or the day that they were
5 discovered?

6 A. I went there that day, yes sir.

7 Q. The day they were discovered.

8 A. (NODS HEAD AFFIRMATIVE)

9 Q. All right. Was there anybody with you when you went in
10 there?

11 A. Me and this girl named Ashley.

12 Q. I didn't hear what the girl's was.

13 A. Me and this girl named Ashley.

14 Q. Ashley?

15 A. Yes.

16 Q. Okay. Do you know the rest of her name?

17 A. Ashley Morgan.

18 Q. All right. The two of y'all went inside the house?

19 A. Yes.

20 Q. All right. Was there anybody else in -- the ladies
21 were dead, Ms. Hightower and Ms. Wall were dead at the time?

22 A. No. I went there -- when I went there -- they was
23 alive when I went there. I went there earlier that day.

24 Q. Earlier that day?

25 A. Yes.

1 STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
 2)
 3 COUNTY OF HORRY) (07-GS-26-2961) (2962) (2963)
 4) (07-GS-26-2974) (2975) (2976)
 5 STATE) (08-GS-26-2698)
 6)
 7 VERSUS) TRANSCRIPT OF RECORD
 8)
 9 JIMMY LEE SESSIONS) February 2, 3, 4, 5, 6, 2009
 10 and) Conway, S. C.
 11 CHRISTOPHER STEPHENS)
 12)
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9 B E F O R E:

10 HONORABLE STEVEN H. JOHN, Judge; AND A JURY.
 11

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

13 BRADLY COY RICHARDSON, ESQ.

14 DONNA ELDER, ESQ.

15 ASSISTANT SOLICITOR FOR HORRY COUNTY
 16 ATTORNEY FOR STATE

17 JOHNNY GARDNER, ESQ.

18 ATTORNEY FOR DEFENDANT, SESSIONS

19 BOBBY G. FREDERICK, ESQ.

20 LAURA L. HILLER, ESQ.

21 ATTORNEYS FOR DEFENDANT, STEPHENS
 22
 23
 24
 25

DIXIE COX EUBANK
 CIRCUIT COURT REPORTER
 FIFTEENTH JUDICIAL CIRCUIT

VOLUME 4 OF 4
 (SEE VOLUME 1 FOR INDEX)

1 Q. The next day did you go in there?

2 A. No, I didn't.

3 Q. Okay. All right. So the last time you were there they
4 were alive?

5 A. The last time I went there they was alive.

6 Q. And you had Ashley with you?

7 A. Yes, Ashley Morgan.

8 Q. All right. And what time was it that y'all went in?

9 A. I probably went there earlier that day, probably
10 about -- I'm going to say around -- probably around three, but
11 I went back that night, probably about ten-twenty.

12 Q. About ten-twenty?

13 A. Yes.

14 Q. All right. Don't tell me what they said, but did you
15 talk to anybody while you were there?

16 A. I just talked to Jamilla.

17 Q. You talked to Jamilla?

18 A. Yes.

19 Q. And that was about 10:20?

20 A. Yes, about 10:20, between 10:20 and 10:30.

21 Q. All right.

22 MR. GARDNER: Thank you, sir.

23 Please answer any questions Mr. Frederick has for you.

24 THE COURT: All right, Mr. Frederick.

25 MR. FREDERICK: Thank you, Judge.

1 CROSS-EXAMINATION BY MR. FREDERICK:

2 Q. Josh, were you interviewed by the police regarding this
3 murder?

4 A. Yes sir.

5 Q. How many times?

6 A. I would say at least five.

7 Q. A lot of times?

8 A. Uh huh (indicating positive)

9 Q. Okay.

10 THE COURT: You need to say yes or no, please.

11 A. Yes sir.

12 Q. Why were you interviewed so many times?

13 A. They said -- from what they said -- they said I was the
14 last person to see her alive.

15 Q. And did you lie to the investigators about what
16 happened that night?

17 A. There wasn't nothing to lie about. I told them I went
18 there and that was it.

19 Q. Did you tell them who else was there at the house?

20 A. There was quite a few people there.

21 Q. All right.

22 A. Yes.

23 Q. Is part of why they kept bringing you back because they
24 kept finding new information you hadn't told them?

25 A. I don't know -- I don't have any earthly idea about

1 that.

2 Q. Okay.

3 A. Okay.

4 Q. Is it true that you said Ashley was with you?

5 A. Yes sir.

6 Q. Is it true there was a girl named Kristen there also?

7 A. Kristen?

8 Q. Kristen, yes.

9 A. Was with Ashley and them -- was with me and Ashley?

10 Q. Yes.

11 A. Crystal was there.

12 Q. Okay. And you also told the investigators you got

13 there around 10:30?

14 A. Uh huh (indicating positive)

15 Q. Didn't you tell the investigators there was at least

16 three other men that came to the house also?

17 A. Yes sir.

18 Q. Okay. You said there was "Que" ---

19 A. Yes sir.

20 Q. ---And "Yee" ---

21 A. Yes sir.

22 Q. ---And a short stocky guy?

23 A. Yes sir.

24 Q. Okay. Who is "Que"?

25 A. Some guy, he stay around there. Well, I don't really

JOSHUA O'NEIL BEST - CROSS BY FREDERICK

754

1 know him personally, but he -- she said he stay around the way
2 -- around there, somewhere in the Westwind area, or somewhere
3 like that.

4 Q. You don't know his real name?

5 A. No. I don't know his real name.

6 Q. What about "Yee"?

7 A. I don't know "E"'s real name either.

8 Q. Okay. This guy, "Yee", you know him long enough that
9 you could tell the investigators he carries a gun; is that
10 right?

11 A. Who?

12 Q. "Yee".

13 A. I don't know if "E" carries a gun or not.

14 Q. Didn't you tell the investigators?

15 A. No, I did not.

16 MR. FREDERICK: Beg the Court's indulgence.

17 THE COURT: Yes sir.

18 MR. FREDERICK: Donna, June 12th interview with Josh
19 Best.

20 MS. ELDER: Your Honor, I'm objecting. If we could
21 approach.

22 THE COURT: All right. Y'all come forward, please.

23 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

24 MR. FREDERICK: June 12th interview.

25 (AT THIS TIME MR. FREDERICK PLAYS A PORTION OF A JUNE

1 12TH INTERVIEW WITH JOSHUA BEST.)

2 Q. Is that you?

3 A. I don't think that's me there..

4 Q. That's not you?

5 A. Uh uh (NODS NEGATIVE)

6 Q. Okay. Fair enough. That's not you.

7 MR. FREDERICK: I have no other questions, Judge.

8 THE COURT: All right. Very good.

9 Solicitor.

10 MS. ELDER: One moment, Your Honor.

11 Your Honor, we have no questions of this witness.

12 THE COURT: All right. Very good.

13 Any redirect?

14 MR. GARDNER: Nothing, Your Honor, from me.

15 THE COURT: All right, sir.

16 All right. You are excused, sir. Thank you very much.

17 MR. GARDNER: "Lee-Lee" Washington, Your Honor.

18 THE COURT: All right.

19 EDWARD LEE JOSEPH WASHINGTON, being
20 first duly sworn, testifies as follows:

21 DIRECT-EXAMINATION BY MR. GARDNER:

22 Q. Mr. Washington, back in June of 2006, where were you
23 living?

24 A. Sandy Hill Apartments, Myrtle Beach.

25 Q. And who was living there with you?

EDWARD LEE WASHINGTON - DIRECT BY GARDNER

756

1 A. My fiance and my two kids.

2 Q. What's your fiance's name?

3 A. Elizabeth Dunmore.

4 Q. Okay. And you have given statements before about this
5 case; is that right?

6 A. Yes sir.

7 Q. Do you recall talking about a night, the night of the
8 murders, or the morning after the murders, talking to the
9 police and giving a statement about where you were, and who
10 you were with?

11 A. Yes sir.

12 Q. You do. All right. Where were you?

13 A. The night of -- night of the murder?

14 Q. Yes sir.

15 A. I was home.

16 Q. Home. And who all was there in the home with you?

17 A. My two kids and my fiance.

18 Q. All right. Are you familiar with a fellow by the name
19 of Craig Burris?

20 A. No sir.

21 Q. All right. Well, did Craig Burris come to your house
22 during that night of the murder, or the morning of the murder?

23 A. I don't even know who Craig Burris is.

24 Q. Okay. Did anybody come to your house during that time
25 frame?

1 A. No sir.

2 Q. Okay. This is the time frame about the mur -- it would
3 have been the Thursday, or the Friday when the murders took
4 place.

5 A. After the murders?

6 Q. Yes sir, Thursday or Friday.

7 A. The only people came to my house was Marshall and Jimmy
8 Lee Sessions.

9 Q. Okay. And about what time was that?

10 A. Between the hours of quarter to eight and eight-thirty.

11 Q. Okay. All right. Anyone else with them?

12 A. Chris, Christopher Stephens.

13 Q. Okay. All right. Anybody else with them?

14 A. No sir.

15 Q. All right. And you never heard of the name Craig
16 Burris?

17 A. No sir.

18 Q. All right.

19 MR. GARDNER: That's all I have, Your Honor.

20 Please answer any questions Mr. Frederick ---

21 THE COURT: Mr. Frederick.

22 CROSS-EXAMINATION BY MR. FREDERICK:

23 MR. FREDERICK: Hi "Lee-Lee".

24 Q. Over time, since this case started, you have given
25 several different statements; is that right?

EDWARD LEE WASHINGTON - CROSS BY FREDERICK

758

- 1 A. Yes sir.
- 2 Q. Okay. And I'm going to walk you through some of those,
3 okay?
- 4 A. Okay.
- 5 Q. Let's start with this. Where did Christopher live?
- 6 A. At the building caty-corner from me, across from me.
- 7 Q. Same apartment complex?
- 8 A. Yes sir.
- 9 Q. Pretty close to your apartment?
- 10 A. Yes sir.
- 11 Q. Okay. In none of the statements that you gave, or
12 testimony that you gave, have you ever said that Christopher
13 came into your apartment; is that true?
- 14 A. Yes sir.
- 15 Q. Okay. And you never saw Christopher with drugs or
16 money on the morning of Friday, June the 9th, did you?
- 17 A. No sir.
- 18 Q. Okay. Liz, your fiance, she was home on that Friday
19 morning, wasn't she?
- 20 A. Yes sir.
- 21 Q. Okay. I'm going to back up for a minute, okay. Who is
22 Hubert Washington?
- 23 A. That's my father.
- 24 Q. Okay. Did your father tell you what to say to the
25 investigators in this case?

1 A. In somewhat -- somewhat point he did kind of try to
2 like coach me into what to say.

3 Q. Okay. Your father, he didn't have any personal
4 knowledge of this murder, as far as you knew, did he?

5 A. Not that I know of.

6 Q. Was he in jail before he talked to you?

7 A. From my knowledge, yes.

8 Q. And he talked to you before the investigators did,
9 didn't he?

10 A. Yes sir.

11 Q. Do you recall if there was a reward offered for
12 information in this case?

13 A. From what was told to me, yes.

14 Q. Did your father know about that reward?

15 A. That's who told me.

16 Q. Okay. When you first met with Investigator DiLorenzo,
17 this was in December, 2006?

18 A. Yes sir.

19 Q. Did you try to tell him the truth when you first met
20 with him, at first?

21 A. No sir.

22 Q. Well, I'm going to walk you through it, okay. When you
23 first sat down with him the first thing that he asked you
24 about was whether you were intoxicated. Do you remember that?

25 A. Yes sir.

EDWARD LEE WASHINGTON - CROSS BY FREDERICK

760

1 Q. And what did you tell him?

2 A. Yes.

3 Q. Okay. You told him that you had been smoking weed?

4 A. And drinking.

5 Q. And drinking. Okay. You told him you didn't know who
6 committed the murders, didn't you?

7 A. Yes sir.

8 Q. Okay. And after you told him that did DiLorenzo
9 threaten to charge you?

10 A. He said that I can go from the witness chair to the
11 Defendant's chair. If that's threatening then I guess so.

12 Q. Okay. Did he threaten to charge your wife, arrest her?

13 A. He told me that I needed to think about my family.

14 Q. Told you you needed to think about your kids?

15 A. Yes. So basically that's what I got from it, you know,
16 that he was trying to threaten me.

17 Q. Okay. So what he did was, he explained to you the
18 difference between the witness chair and the defendant chair,
19 right?

20 A. Yes sir.

21 Q. And he told you that you were going to be sitting in
22 the defendant chair if you didn't change your story; is that
23 fair?

24 A. Yes sir.

25 Q. Okay. After he did that you told him what he wanted to

1. hear?

2. A. Basically, yes.

3. Q. Okay. And you were in a pretty touch spot right then,
4. weren't you?

5. A. Yes sir.

6. Q. You even told him, at one point, that what you were
7. doing was saving your own behind?

8. A. Yes sir.

9. Q. Okay. Later in this case you talked to our
10. investigator and Mr. Gardner. Do you remember that?

11. A. Yes sir.

12. Q. Okay. And you told them that you had lied to the
13. investigators?

14. A. Yes sir.

15. Q. You told them your father had told you what to say?

16. A. Yes sir.

17. Q. Okay. Did Mr. Gardner or Bill Beam -- that's him,
18. right, Mr. Beam?

19. A. Yes sir.

20. Q. Did they threaten you in any kind of way?

21. A. No sir.

22. Q. Were they mean to you?

23. A. No sir.

24. Q. Okay. Didn't threaten to lock you up?

25. A. No sir.

EDWARD LEE WASHINGTON - CROSS BY FREDERICK

762

- 1 Q. They didn't threaten your family?
- 2 A. No sir.
- 3 Q. You told them the truth?
- 4 A. No, not all the way.
- 5 Q. Tell me the difference.
- 6 A. About some -- something about the drugs, and something
- 7 about who came to the -- who came to the house.
- 8 Q. Then, when testifying in a prior proceeding in this
- 9 case, after that interview, did you tell the truth, under
- 10 oath, in court that day?
- 11 A. Yes sir.
- 12 Q. Okay. Before that testimony, did the police go back
- 13 out and interview you again?
- 14 A. Yes sir.
- 15 Q. And that time it was different investigators, right?
- 16 A. Yes sir.
- 17 Q. First time it was Investigator DiLorenzo ---
- 18 A. Yes sir.
- 19 Q. ---And this time it was Investigator Howling and Mr.
- 20 Holt?
- 21 A. Yes sir.
- 22 Q. Who else was with them?
- 23 A. Solicitor.
- 24 Q. The Prosecutor?
- 25 A. Yes sir.

1 Q. The one sitting at the table behind me?

2 A. Yes sir.

3 Q. Okay. When they came out there to talk to you this
4 time you told them the truth too, didn't you?

5 A. Yes sir.

6 Q. You told them what you testified to in court, right?

7 A. Yes sir.

8 Q. Okay. But they tried to get you to say something
9 different, didn't they?

10 A. Sometimes I felt like that, yes.

11 Q. They wanted you to go back to what Investigator
12 DiLorenzo had you saying?

13 A. Yes, they kept bringing that up.

14 Q. Okay. How does that make you feel?

15 A. Make me feel confused.

16 Q. Like you are between a rock and a hard place, ain't it?

17 A. Yes sir.

18 Q. So the truth is -- and we are talking about Friday
19 morning, right, June 9th?

20 A. Yes sir.

21 Q. Okay. And the truth is that Jimmy Lee and another
22 person -- Jimmy Lee and Marshall were at your house?

23 A. Yes sir.

24 Q. Okay. But they weren't splitting up drugs or money,
25 were they?

EDWARD LEE WASHINGTON - CROSS BY FREDERICK

764

1 A. No sir.

2 Q. The truth is that they got to your house about 8:30 in
3 the morning?

4 A. Yes sir.

5 Q. The truth is that they had a bag of weed ---

6 A. Yes sir.

7 Q. ---That y'all smoked two blunts ---

8 A. Yes sir.

9 Q. ---That you drank some beer ---

10 A. Yes sir.

11 Q. ---That you watched part of a movie?

12 A. Yes sir.

13 Q. What movie was it?

14 A. Mr. and Mrs. Smith.

15 Q. Okay. Did you even watch the whole thing?

16 A. No sir.

17 Q. Okay. The truth is, the only money that you saw that
18 morning was a Dollar bill that you used to break up some weed
19 on to roll a blunt; is that the truth?

20 A. That's the only bills I seen face to face, like was
21 handed to me. That's the only bills -- that's the only bills
22 I could tell that it was a Dollar bill.

23 Q. But you didn't see a bunch of money getting split up?

24 A. Not a bunch of money, no.

25 Q. And you told the investigators that there was Dollar

1 bills that you were rolling weed with, right?

2 A. Yes sir.

3 Q. And they tried to take that and run with it?

4 A. I guess so.

5 Q. I mean, there wasn't a bunch of money that was getting
6 split up?

7 A. No sir.

8 Q. Okay. The truth is that those guys never said anything
9 about hitting a lick, did they?

10 A. No sir.

11 Q. No they didn't?

12 A. No sir.

13 Q. Okay. The truth is that those words came from the
14 investigators?

15 A. Yes sir.

16 Q. And you never said it till Investigator DiLorenzo said
17 it to you?

18 A. Yes sir.

19 Q. The truth is that you told them that the only drugs
20 that you saw them with was that weed that they gave you?

21 A. Yes sir.

22 Q. How much weed was that?

23 A. Like little over a gram, maybe two.

24 Q. About two grams? That's about Forty Dollars worth?

25 A. Not even that. Like Twenty Dollars worth.

EDWARD LEE WASHINGTON - CROSS BY FREDERICK

766

1 Q. Okay. Enough to smoke a blunt or two?

2 A. Yes sir.

3 Q. You rolled two dime bags out of it?

4 A. Yes sir.

5 Q. All right. That's not a lot of weed, is it?

6 A. No sir.

7 Q. Okay. And even though that last time they went down
8 there to talk to you they were pressuring you, you still told
9 them the truth, didn't you?

10 A. Yes sir.

11 Q. And when Jimmy Lee and Marshall were at your apartment
12 they never once mentioned hitting a lick, did they?

13 A. No sir.

14 Q. Who suggested that they did?

15 A. The police.

16 Q. When you were down at the jail, at least one time you
17 talked to Jimmy Lee, didn't you?

18 A. Yes sir.

19 Q. And what did he say to you?

20 A. Not much. He just told me, you know, to tell the
21 truth.

22 Q. He told you to tell the truth?

23 A. Yes sir.

24 Q. No other interactions with him beside that? He hasn't
25 threatened you?

1 A. No sir.

2 Q. Okay. The truth is that you really don't have any
3 information on whether Jimmy Lee robbed Jamilla; is that true?

4 A. Yes sir.

5 Q. And that Christopher never came into your apartment
6 that morning?

7 A. No sir.

8 Q. But Christopher was outside?

9 A. Yes sir.

10 Q. All right. I mean, you saw him, he just didn't come
11 into your apartment?

12 A. Yes sir.

13 Q. Okay. Nobody split up drugs or money?

14 A. No sir.

15 Q. Nobody talked about hitting a lick?

16 A. No sir.

17 MR. FREDERICK: Thank you, "Lee-Lee".

18 I have no further questions.

19 THE COURT: All right, Solicitor.

20 MR. RICHARDSON: Thank you, Your Honor.

21 CROSS-EXAMINATION BY MR. RICHARDSON:

22 Q. Mr. Washington, when you gave that statement to
23 Detective DiLorenzo, then Detective, now Sergeant, what kind
24 of squad car did they take you over to the annex in?

25 A. They ain't -- they ain't take me there. Well, I met

EDWARD LEE WASHINGTON - CROSS BY RICHARDSON

768

1 them, and then they took me in the squad car to wherever I met
2 them at, to the station.

3 Q. But you voluntarily went?

4 A. Yes sir.

5 Q. Were you in handcuffs?

6 A. No sir.

7 Q. Were you told you would be free to leave?

8 A. Yes sir.

9 Q. Did they try and give you something to drink, make you
10 comfortable?

11 A. Yes sir.

12 Q. Did they threaten you in any other way? Did they
13 threaten to beat you up?

14 A. No sir.

15 Q. You gave a statement then, right?

16 A. Yes sir.

17 Q. Now, Mr. Gardner and that Investigator, when they went
18 to talk to you, where were you?

19 A. At the jailhouse.

20 Q. That's J. Reuben Long, right?

21 A. Yes sir.

22 Q. Now the first statement was in December, '06, right?

23 A. Yes sir.

24 Q. The next time you talked to them -- to Johnny Gardner,
25 and to the Investigator for the Defense was when, in August?

- 1 A. Yes, middle of August, middle, beginning of August.
- 2 Q. 2008?
- 3 A. Yes sir.
- 4 Q. And now you are in jail?
- 5 A. Yes sir.
- 6 Q. Do you remember making a statement to Detective Allen
- 7 and Detective Hull. Detective Allen says, "I mean, be
- 8 straight up with me, man." You indicated, "Man, I'm scared.
- 9 I don't want -- I don't want no dude come after me, like, they
- 10 are going to kill me, you know." Do you remember making that
- 11 statement?
- 12 A. Yes.
- 13 Q. Who were you referring to at that time?
- 14 A. The suspects.
- 15 Q. The suspects. Who is that?
- 16 A. Jimmy Lee and Christopher.
- 17 Q. Okay. So you are scared of them?
- 18 A. Not really scared of them, just scared of the
- 19 situation.
- 20 Q. Where are you housed right now?
- 21 A. Georgetown County.
- 22 Q. Okay. So you are far away from them now?
- 23 A. Yes sir.
- 24 Q. You ain't got no reason to be scared of them now?
- 25 A. Yes. Yes, you're right.

EDWARD LEE WASHINGTON - CROSS BY RICHARDSON

770

1 Q. Do you remember telling the Detectives, "When I first
2 got here they were going to put me in the pod with Jimmy Lee,
3 and he was looking at me like he was wanting to do something
4 to me, so I refused to go into the pod."

5 A. Yes sir.

6 Q. And I believe Detective Hull stated, "All right, so
7 he's giving you looks that make you feel like you are
8 threatened?" You said, "Yes, sir." Do you remember that?

9 A. Yes sir.

10 MR. FREDERICK: Judge, just for the record, I'm going
11 to object to dirty looks being threatening.

12 THE COURT: I'm going to allow it. They are in direct
13 response to questions you asked.

14 MR. FREDERICK: Thank you.

15 Q. Mr. Washington, I'm going to ask you if you remember
16 this statement too, and it's long. Detective Allen had asked,
17 "So basically you mentioned discovery earlier. Am I to
18 understand that, through discovery, they got your name and
19 came to talk to you about what happened?" Do you remember
20 him asking you that question?

21 A. Yes sir.

22 Q. Do you remember stating to Detective Hull, Detective
23 Allen, "Well, basically, like when I first came, and when I
24 first got locked up for my charge back in October, I went on
25 P.C., and Chris, he came to P.C., you know what I'm saying, I

1 was death scared. I heard him asking, like, where that boy
2 at. I already knew who he was talking about, you know. They
3 were like, he's in room 240. I'm the only person in room 240
4 he knows about, you know. I heard him talking about kicking
5 that door, and what he was going to do to me, and stuff like
6 that, and he tried to get me to talk to him, and I would never
7 talk to him, but something -- he -- he -- when I did start
8 talking to him he switched it up, like he was going to get on
9 my side, like he was going to do something and did nothing,
10 and stuff like that, you know what I'm saying. I didn't know
11 what to believe then, you know. My head was confused."

12 Do you remember saying that?

13 A. Yes sir.

14 MR. RICHARDSON: Thank you, Mr. Washington.

15 THE COURT: Mr. Gardner, redirect.

16 REDIRECT-EXAMINATION BY MR. GARDNER:

17 Q. Craig Burris wasn't at your house the night we are
18 talking about, the morning we are talking about?

19 MR. RICHARDSON: Objection. Your Honor, objection.
20 That goes beyond scope of redirect.

21 THE COURT: I'm going -- I'm going to allow it. Go
22 ahead.

23 Q. Just tell us the -- what was the truth?

24 A. I don't even know who Craig Burris is.

25 MR. GARDNER: Okay. Thank you, sir.

1 THE COURT: Mr. Frederick.

2 MR. FREDERICK: Briefly, Judge.

3 RECROSS-EXAMINATION BY MR. FREDERICK:

4 Q. "Lee-Lee", didn't you also tell Detective Allen, in
5 that same interview, that you were wrong about Christopher
6 wanting to -- you felt -- you expected that they would be mad
7 at you because you were going to be a witness?

8 A. Anybody expects somebody is going to be mad at them if
9 they are named in their motion in discovery.

10 Q. But then you found out these guys weren't coming after
11 you, right?

12 A. Yes.

13 Q. And that's what you were telling Detective Allen, isn't
14 it?

15 A. Somewhat, yes.

16 Q. All right. And during that last interview, when you
17 talked to Detective Allen, and you told him you weren't
18 changing your story again for them, didn't you?

19 A. Yes sir.

20 Q. And then he tried to feed the story to you again,
21 didn't he?

22 A. Yes sir.

23 Q. He kept telling you what to say, and trying to get you
24 to agree with him?

25 A. Yes sir.

1 MR. FREDERICK: That's all the questions.

2 THE COURT: Solicitor.

3 MR. RICHARDSON: Your Honor, I have no further
4 questions of this witness.

5 THE COURT: All right. Very good.

6 All right, sir, you may step down.

7 Your next witness.

8 MR. GARDNER: Your Honor, I -- if we may approach for a
9 minute to talk about the next witness.

10 THE COURT: All right.

11 Go ahead, sir.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 THE COURT: All right, ladies and gentlemen of the
14 jury, you need to go to your jury room for a little bit,
15 please. Thank you.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right. We'll take a short break.
19 Thank you very much.

20 MR. RICHARDSON: Thank you, Your Honor.

21 (THE FOLLOWING TAKES PLACE AFTER A BREAK AND OUTSIDE THE
22 PRESENCE OF THE JURY.)

23 MR. FREDERICK: Judge, can we approach?

24 THE COURT: Absolutely.

25 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

EDWARD LEE WASHINGTON - RECROSS BY FREDERICK

774

1 THE COURT: All right, Mr. Gardner, who is the next
2 witness that you are going to have?

3 MR. GARDNER: I've got two, Judge, if you can give me
4 one second.

5 THE COURT: All right.

6 MR. GARDNER: We've got the lawyer here for Belal
7 Harris, Your Honor.

8 THE COURT: All right. Why don't you go ahead and
9 let's just move a chair over, and get Mr. Harris and have him
10 sit down over here.

11 Counsel, come up here and talk to me.

12 Yes sir.

13 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

14 THE COURT: All right. The next witness you are going
15 to call is Mr. Harris; is that correct?

16 MR. GARDNER: Yes, Judge.

17 THE COURT: Do we need to cover any issue regarding
18 cross-examination of Mr. Harris about any prior record, or
19 pending charges that Mr. Harris might have?

20 MR. RICHARDSON: Yes sir.

21 THE COURT: All right. And what -- what is it that --
22 I don't know, Mr. Frederick might -- but the State would want
23 to cross-examine Mr. Harris about?

24 MR. RICHARDSON: Your Honor, currently Mr. Harris went
25 straight into the big leagues. He was housed at D.J.J., after

1 being charged with murder, until he moved up to J. Reuben
2 whenever he hit seventeen. He's also got an armed robbery
3 charge pending right now. My office is prosecuting him.
4 Myrtle Beach Police Department arrested him. Definitely goes
5 to bias.

6 THE COURT: All right. So you want to be able to ---

7 MR. RICHARDSON: He's scheduled for trial next month as
8 well.

9 THE COURT: All right. So you want to be able to
10 question him on the fact that he is currently facing murder
11 charges, a murder charge, and an armed robbery charge, ---

12 MR. RICHARDSON: That's correct, Your Honor.

13 THE COURT: ---That your office is prosecuting him for
14 that ---

15 MR. RICHARDSON: That's correct.

16 THE COURT: ---And he was arrested on those offenses by
17 the Myrtle Beach Police Department?

18 MR. RICHARDSON: Yes sir.

19 One second, Your Honor.

20 Your Honor, I'm sorry, one of the cases -- the murder
21 case, I believe, is actually a County case, but the armed
22 robbery is Myrtle Beach ---

23 THE COURT: Okay. So on the armed robbery charge, that
24 he was arrested for those by the Myrtle Beach Police
25 Department?

EDWARD LEE WASHINGTON - RECROSS BY FREDERICK

776

1 MR. RICHARDSON: That's correct.

2 THE COURT: All right. Your intention would not to
3 be -- to go any further than that?

4 MR. RICHARDSON: No sir.

5 THE COURT: All right.

6 Gentlemen, y'all got any response to that? I think
7 that's in keeping as far as -- Mr. Gardner and Mr. Frederick,
8 I think that's in keeping with what I allowed y'all to do with
9 the State's witnesses.

10 MR. FREDERICK: I agree, Judge.

11 THE COURT: All right.

12 MR. GARDNER: I agree too. Fair is fair.

13 MR. FREDERICK: I would just say that it's -- in our
14 questioning, of course, we are going to be very cautious in
15 what we ask this witness, but my understanding is that, at
16 some point the Prosecutor's Office, or some investigators had
17 tried to get him to finger our clients for the robbery he is
18 charged with, and that never happened. I would just want to
19 caution the Court and co-counsel that that issue is out there,
20 and there should be no reason to go into that.

21 THE COURT: Okay. All right. Very good.

22 All right. Let's bring the jury back in, please.

23 MR. BAILEY: Your Honor, if I may ---

24 THE COURT: Yes sir, I'm sorry. Go ahead.

25 MR. BAILEY: If I may briefly ---

1 **THE COURT:** Why don't you go ahead and bring them to
2 the door, and just keep the door closed for a second, okay.
3 Just bring them -- bring them down the hall.

4 Yes sir.

5 **MR. BAILEY:** Your Honor, my client ---

6 **THE COURT:** I'm sorry, just for the record, since we
7 are on the record, if you would state your name and who you
8 represent, please sir.

9 **MR. BAILEY:** My name is Joshua Bailey. I'm here to
10 represent Mr. Belal Harris.

11 **THE COURT:** Yes sir.

12 **MR. BAILEY:** Your Honor, in discussing with my client,
13 and based on the -- what the State has said, if the State is
14 going to elicit specifically what Mr. Harris is charged with
15 my client does not wish to testify.

16 **THE COURT:** All right, sir. Well, I am going to allow
17 the State of South Carolina to ask him if he is currently
18 facing the charge of murder, if he is currently facing the
19 charge of armed robbery, and regarding the matter of the armed
20 robbery, that he was arrested on that charge by the Myrtle
21 Beach Police Department, and I'm using as a basis for that
22 Rule 608, the third part regarding bias, the same grounding
23 and foundation I used to allow the Defense Attorneys to
24 question State witnesses, and in keeping that consistent, I
25 believe it's proper for the State to be able to allow that,

1 and I would allow that in this particular case.

2 MR. BAILEY: Your Honor, my client wishes not to
3 testify.

4 THE COURT: All right, Mr. Gardner, what's your
5 position? What do you intend to do?

6 MR. GARDNER: That's a matter of public record that he
7 has those charges, and ---

8 THE COURT: I appreciate that, sir.

9 MR. GARDNER: ---I intend to call him as a witness to
10 go into the limited questions that I want ---

11 THE COURT: Other than answering the question as to his
12 name, as to other questions that you ask, if he invokes his
13 Fifth Amendment privilege, I am not going to require him to
14 answer those questions. If he invokes the Fifth Amendment,
15 pursuant to advice given to him by his attorney that the
16 responses to those questions would tend to incriminate him,
17 that I will not allow you to go any further, and I will not
18 require him -- you can ask your questions, but I will not
19 require him to answer your questions.

20 MR. GARDNER: I just -- I'm sorry to the Court. I just
21 talked to him and I anticipated that my two or three short
22 questions would be answered. If I can have a moment to
23 consult with the ---

24 THE COURT: Yes sir.

25 (MR. GARDNER CONSULTS WITH HIS CLIENT.)

1 MR. GARDNER: Judge, I believe that justice requires me
2 to call him. He's under Subpoena. It's part of my case, and
3 I think I'm going to call him as a witness.

4 THE COURT: All right. Very good.
5 Bring the jury in, please.

6 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
7 JURY.)

8 THE COURT: All right, Mr. Gardner, your next witness,
9 please sir.

10 MR. GARDNER: Belal Harris, Your Honor.

11 THE COURT: All right.

12 Please come around, Mr. Harris.

13 BELAL HARRIS, being first duly
14 sworn, testifies as follows:

15 DIRECT-EXAMINATION BY MR. GARDNER:

16 Q. Good afternoon, Mr. Harris.

17 Mr. Harris, you were in the same jail cell as Craig
18 Burris; is that correct?

19 A. Yes sir.

20 Q. And did Craig Burris tell you about the testimony that
21 he was going to talk in this case?

22 A. Yes sir.

23 Q. Did he tell you whether or not it would be truthful or
24 not?

25 A. Yes sir.

BELAL HARRIS - DIRECT BY GARDNER

780

1 Q. And what did he tell you it would be?

2 MR. RICHARDSON: I object, Your Honor. That would be
3 hearsay.

4 THE COURT: I'm going to allow it.

5 A. Before -- before they came here?

6 Q. Yes sir.

7 A. About the testimony, they came at me, telling me ---

8 THE COURT: All right, sir. You can respond to the
9 question asked by the counsel, sir. Respond directly to the
10 question he asked.

11 Q. Craig Burris told you he was going to give a statement
12 in this case.

13 A. Yes sir.

14 Q. Did he tell you it was going to be the truth or a lie?

15 A. A lie.

16 Q. Told you he was going to lie to this jury; is that
17 right?

18 A. Yes sir.

19 Q. Said he was going to say that Jimmy Lee Sessions made a
20 statement to him about this case?

21 A. Yes sir.

22 Q. And that never happened?

23 A. No sir.

24 MR. GARDNER: Please answer any questions Mr. Frederick
25 has.

BELAL HARRIS - CROSS BY FREDERICK
BELAL HARRIS - CROSS BY RICHARDSON

781

1 THE COURT: Mr. Frederick.

2 CROSS-EXAMINATION BY MR. FREDERICK:

3 Q. Did Craig Burris get Investigator DiLorenzo's contact
4 information from your discovery?

5 A. Yes sir.

6 Q. He went through your stuff?

7 A. Yes sir.

8 Q. Tried to get you to help him write a statement on Mr.
9 Sessions, didn't he?

10 A. Yes sir.

11 Q. You wouldn't do it, would you?

12 A. No sir.

13 Q. Jimmy Lee never said to you that he committed this
14 crime, did he?

15 A. No sir.

16 Q. Okay. At the time, back when all this was going on
17 with Craig Burris down at the jail, was Craig Burris fighting
18 with Jimmy Lee?

19 A. Daily arguments.

20 MR. FREDERICK: Thank you. No more questions.

21 THE COURT: Solicitor.

22 CROSS-EXAMINATION BY MR. RICHARDSON:

23 Q. Mr. Harris, I know you've got a pending murder charge,
24 right?

25 A. (NODS HEAD NEGATIVE)

BELAL HARRIS - CROSS BY FREDERICK
BELAL HARRIS - CROSS BY RICHARDSON

782

1 Q. You don't have a pending murder charge?

2 A. I don't feel like I have to answer that question.

3 THE COURT: Sir, that is a matter of public record.
4 You need to respond to that question.

5 A. Well, yes sir, I do.

6 Q. And you've got a pending armed robbery charge, correct?

7 A. Yes sir, I do.

8 Q. Who is prosecuting you on those charges?

9 A. Sanford Graves, I guess.

10 Q. And he works for my office, don't he?

11 A. I don't know where he work at.

12 Q. Fifteenth Circuit Solicitor's Office.

13 Let's see. I think you just said that the police talked
14 to Craig Burris right after they talked to you?

15 A. He wrote them.

16 Q. Was it right after they talked -- right after the
17 police talked to you?

18 A. Yes.

19 Q. So he wrote them right after the police talked to you?

20 THE COURT: You need to answer the question, sir.

21 A. Yes sir.

22 Q. Do you remember the time you spoke to the police was
23 July 27th, 2006?

24 A. Yes sir.

25 Q. And you said at this time y'all were in the same cell,

BELAL HARRIS - CROSS BY FREDERICK
BELAL HARRIS - CROSS BY RICHARDSON

783

1 right?

2 A. No sir, I did not say at the same time we was at the
3 cell. They brung -- they brung me warrants July 27th, 2006.

4 Q. I'm sorry. I couldn't understand you.

5 A. They brought me warrants July 27th, 2006. I didn't get
6 to J. Reuben Long Detention Center till November 1st. Me and
7 Craig Burris was roommates during the -- during the late --
8 the late month of November, beginning month of December.

9 Q. And Mr. Burris didn't make any statements until April?

10 A. That's because that's when DiLorenzo came and talked to
11 him. He wrote him when we was roommates.

12 Q. When did you tell the police that Craig Burris was
13 lying?

14 A. When did I tell them?

15 Q. Uh huh (indicating positive)

16 A. April, 2000 -- 2000 and ---

17 Q. Did you tell us in April?

18 A. 2008, when they came and asked me.

19 Q. April -- this past April you told them?

20 A. 2008.

21 Q. Who did you tell?

22 A. Public Defender's Office.

23 Q. I asked you when you talked to the police about this.
24 When did you run out and say, man, you are prosecuting the
25 wrong guy; Craig Burris is lying?

BELAL HARRIS - CROSS BY FREDERICK
BELAL HARRIS - CROSS BY RICHARDSON

784

1 A. I didn't run out the next -- I didn't run out and tell
2 them nothing. They came and asked me. I ain't run out and
3 tell them nothing.

4 Q. So it wasn't -- you didn't tell the police?

5 A. I told some guy named Corey from the Public Defender's
6 Office.

7 Q. My office is prosecuting you, right, and you don't like
8 that, do you?

9 A. Not for something I ain't do.

10 Q. You don't like following the rules, do you?

11 A. Huh. When it's necessary.

12 Q. You follow rules when it's necessary? Well, are there
13 certain rules that you have to follow out at J. Reuben Long?

14 A. Lots of them.

15 Q. And what happens when you don't follow the rules out
16 there?

17 A. You end up in a red uniform.

18 Q. Like you've got on right now? How many different cells
19 have you been assigned to out at J. Reuben?

20 A. I don't know.

21 Q. Would it surprise you to find it's over fifty cells?

22 A. No.

23 Q. Why do you keep having to jump around cells, sir?

24 A. Because I don't get comfortable around too many people.

25 Q. December, 2008, until just last week, you were in the

1 same pod with Jimmy Lee Sessions, weren't you?

2 A. Yes.

3 Q. And as of January 25th, 2009, not just the same pod,
4 who is your cell mate?

5 A. Christopher Stephens.

6 MR. RICHARDSON: Your Honor, I have no further
7 questions for this witness.

8 THE COURT: Mr. Gardner, redirect.

9 MR. GARDNER: Redirect on the time line, Your Honor.

10 MR. RICHARDSON: Your Honor, if I may have time to
11 review that statement. I have not seen it before.

12 THE COURT: Yes sir.

13 REDIRECT-EXAMINATION BY MR. GARDNER:

14 Q. The Solicitor asked you some questions about some
15 dates. I just want to briefly talk about that.

16 (HANDWRITTEN LETTER DATED APRIL 23, 2008, MARKED
17 DEFENDANT, SESSIONS, EXHIBIT NUMBER 1, FOR IDENTIFICATION
18 ONLY.)

19 Let me show you something that has been marked as
20 Defendant's Exhibit 1, for Sessions, and ask you not to read
21 from it, but tell me if you recognize it, and what is it?

22 A. December.

23 THE COURT: You need to speak up, sir.

24 Q. What is this sheet of paper?

25 A. A statement.

BELAL HARRIS - RECROSS BY FREDERICK

786

1 Q. And who wrote that?

2 A. I did.

3 Q. And what is the date that you wrote that?

4 A. April 24th, 2008.

5 Q. All right. Is that the time frame that you were
6 talking with the Solicitor about, when you told the Public
7 Defender's Office.

8 A. (NODS HEAD AFFIRMATIVE)

9 THE COURT: There wasn't a verbal response. Was that a
10 yes?

11 A. Yes sir.

12 THE COURT: All right.

13 MR. GARDNER: All right. That's -- that's all, Your
14 Honor.

15 THE COURT: All right. Mr. Frederick.

16 CROSS-EXAMINATION BY MR. FREDERICK:

17 MR. FREDERICK: Just a moment, Your Honor.

18 THE COURT: Yes sir.

19 Q. So just -- what he just showed you, you did recognize
20 that? That was ---

21 COURT REPORTER: Excuse me.

22 A. Yes sir.

23 MR. FREDERICK: I'm sorry.

24 Q. That was your statement, and it was written on April
25 24th, 2008?

1 A. Yes sir.

2 Q. And this is marked as Defendant's Exhibit 1, Sessions,
3 for identification.

4 COURT REPORTER: Defendant's 20 for I.D., Stephens.

5 THE COURT: All right.

6 (HANDWRITTEN LETTER DATED APRIL 24, 2008, SAME AS
7 DEFENDANT, SESSIONS, ONE, FOR IDENTIFICATION ONLY, MARKED
8 DEFENDANT, STEPHENS, EXHIBIT NUMBER 20, FOR IDENTIFICATION
9 ONLY.)

10 Q. And it's now marked Defendant's Exhibit Number 20.

11 MR. FREDERICK: Your Honor, I would move to admit this
12 as Defendant's Exhibit Number 20. Move to admit this into
13 evidence, Judge.

14 MR. RICHARDSON: Your Honor, the State would object.
15 It moves beyond the content of redirect.

16 THE COURT: Sustained.

17 MR. FREDERICK: Judge, they questioned him on the date.

18 THE COURT: I understand that. I'm not going to allow
19 it into evidence. You can further question him about it if
20 you want to.

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

22 THE COURT: Yes sir.

23 MR. FREDERICK: Thank you.

24 Q. And Belal, at that same time Craig Burris told you that
25 he knew for a fact Christopher Stephens and Jimmy Sessions was

BELAL HARRIS - RECROSS BY FREDERICK

788

1 not responsible for the murders?

2 A. Yes sir.

3 MR. RICHARDSON: Your Honor, once again, I don't
4 believe this covers ---

5 MR. FREDERICK: It's impeachment, Judge. We directly
6 asked Craig Burris this question.

7 THE COURT: You don't need to give me the argument.
8 Just -- your grounds for doing it is impeachment; is that
9 correct?

10 MR. FREDERICK: Yes sir.

11 THE COURT: I'm going to allow it.

12 Q. He said the police would never know?

13 A. Yes sir.

14 Q. He asked you to get Jimmy to tell you that he had
15 committed the crime?

16 A. Yes sir.

17 Q. But at no time did Jimmy state to you that he had
18 committed the crime?

19 A. No sir.

20 Q. At that time Craig and Jimmy were fighting in the pod?

21 A. Yes sir.

22 Q. Craig Burris tried to get you to help him write his
23 statement ---

24 A. Yes sir.

25 Q. ---So that Jimmy would be charged with the murders ---

1 A. Yes sir.

2 Q. ---And you told him you wouldn't do it ---

3 A. Yeah, yeah.

4 Q. ---Because it's not true?

5 A. Told him I couldn't do it.

6 Q. Okay. And he went through your paperwork and got
7 Detective DiLorenzo's address?

8 A. Went through my whole motion of discovery.

9 MR. FREDERICK: Okay. No more questions.

10 THE COURT: Solicitor.

11 MR. RICHARDSON: Very, very briefly. Court's
12 indulgence.

13 THE COURT: Yes sir.

14 **RECROSS-EXAMINATION BY MR. RICHARDSON:**

15 Q. Trying to figure this out, you put in here the date of
16 December 2nd, 2006. Is that when you say you were in the cell
17 with Craig Burris?

18 A. Yes sir.

19 Q. Would it surprise you to find out you weren't placed in
20 a cell with Craig Burris until December 19th, 2006?

21 A. I said that could have been the date. I know we was in
22 the room together in the month of December.

23 Q. No, it says, I was placed in cell number 118 on
24 December 2nd, 2006. It doesn't say could have been. Right
25 before you wrote this letter you were housed with Chris

BELAL HARRIS - RECROSS BY RICHARDSON

790

- 1 Stephens in the same pod, A-1, right?
- 2 A. No sir, I wasn't.
- 3 Q. You are saying you wrote this April of 2008?
- 4 A. Yes.
- 5 Q. You were housed in A-1 with Chris Stephens from, looks
6 like March 26, 2008, till March 31st, 2008.
- 7 A. Pod A-1 is segregated. The top floor come out with the
8 top floor, the bottom floor come out with the bottom floor.
- 9 Q. Y'all don't have any interaction?
- 10 A. No interaction.
- 11 Q. Y'all don't have any interaction. How do you know
12 everything that goes on out there?
- 13 A. I don't try to find out everything that's going on.
- 14 Q. Well, you said you know about the argument going on.
- 15 A. That's cause we all was on the same floor.
- 16 Q. When was that?
- 17 A. In the month of December.
- 18 Q. In the month of December?
- 19 A. 2006. Christopher Stephens wasn't even in the jail
20 yet.
- 21 Q. By the time you wrote this Jimmy Lee Sessions had
22 already been arrested on the murder, right?
- 23 A. Yes.
- 24 Q. Chris Stephens had already been arrested on the
25 murder ---

1 A. Yes.

2 Q. ---Or the accessory charges. I apologize.

3 And you've moved around so much it would be hard to keep
4 up with dates, right?

5 A. Yes.

6 Q. You don't like the police?

7 A. No.

8 Q. You don't like the Prosecutors?

9 A. No.

10 Q. You don't like following rules?

11 A. When it's necessary I follow them.

12 Q. You are wearing red today?

13 A. Yes.

14 Q. Your roommate is Chris Stephens?

15 A. Yes.

16 MR. RICHARDSON: Your Honor, I have no further
17 questions for him.

18 THE COURT: Do you wish the witness to be excused, Mr.
19 Gardner?

20 MR. GARDNER: Yes sir.

21 THE COURT: All right, sir.

22 All right, gentlemen.

23 All right, Mr. Gardner, your next witness, please sir.

24 MR. GARDNER: If I may have the Court's indulgence,
25 Your Honor.

JURY OUT/ON RECORD

792

1 THE COURT: Yes sir.

2 MR. GARDNER: Can we approach?

3 THE COURT: Absolutely.

4 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

5 THE COURT: All right, ladies and gentlemen, y'all --
6 why don't you go to your jury room and be at ease for a few
7 moments. When we get done with this witness I'm going to have
8 to send you out again, but why don't you go -- go to your jury
9 room for a little bit and be at ease.

10 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
11 JURY.)

12 THE COURT: Mr. Gardner, let me understand where you
13 are. You've got one more witness. Who is that now?

14 MR. GARDNER: Judge, that's Corey Sparkman. He's an
15 inmate at the jail.

16 THE COURT: Okay. All right. So, Corey Sparkman.

17 MR. GARDNER: I'm told he's in the building.

18 THE COURT: All right, sir. Now, after that, what is
19 your intention as far as witnesses in this case?

20 MR. GARDNER: It's ---

21 MR. FREDERICK: No more for the second here, Judge.

22 THE COURT: Okay. But you have other witnesses that
23 you intend to call?

24 MR. GARDNER: Yes sir. Four -- four witnesses, Judge.

25 THE COURT: All right. How many witnesses will you

1 then call, Mr. Frederick?

2 MR. FREDERICK: None.

3 THE COURT: All right, sir. When those four witnesses
4 are over with, does the State anticipate reply testimony?

5 MS. ELDER: Your Honor, obviously we know Mr. Sparkman
6 is coming up. We don't know who he is. He was a surprise.
7 He wasn't read out on the witness list, so I don't know what
8 he's going to testify to.

9 As far as Roy Grant, who they've indicated is one of the
10 other witnesses, Melissa Gomez. I don't know who the other
11 two are. We don't anticipate reply on the witnesses that we
12 are aware of, as far as Melissa Gomez and Roy Turner. Again,
13 not knowing what Sparkman is going to testify to, and not
14 knowing who the other two witnesses are it's difficult for the
15 Court -- for the State to say that at this point.

16 THE COURT: All right. Well, I was just trying to get
17 some idea of where we might be.

18 Do y'all have any -- have you anticipated giving to the
19 Court any requests to charge, or not? I'm not saying that you
20 have to, but I'm saying, did you anticipate there was
21 something that you wanted to give to me?

22 MS. ELDER: No, Your Honor, other than the standard
23 charges.

24 THE COURT: All right. Well, we'll review all that.
25 How about you, Mr. Gardner?

JURY OUT/ON RECORD

794

1 MR. GARDNER: I believe, at this point in time, just
2 the standard.

3 THE COURT: All right. Well, okay, we'll talk about
4 that, and we will -- before we leave here today we will talk
5 about that and see what it is that y'all expect the Court to
6 charge, and if there are some other issues then before we get
7 started tomorrow morning y'all can give to me whatever it is
8 that you would like to add to what I might anticipate charging
9 in this particular case.

10 Assuming we get done with Mr. Sparkman today, you don't
11 have anybody else today; is that right?

12 MR. GARDNER: No sir.

13 THE COURT: All right. So those other four witnesses,
14 your best estimate as to how long that will take.

15 MR. GARDNER: I believe -- my best estimate of -- three
16 of them are short and sweet, just like these last few
17 witnesses we had, beginning with the couple of fellows from
18 the jail and that one Myrtle Beach Police Officer, short,
19 sweet, less than an hour, probably.

20 The other one is -- I don't know how long it will take.
21 The State may cross-examine a while. It may go an hour or
22 more.

23 THE COURT: Okay. All right. Well, we'll just see
24 where we are at that point in time, see what time it is, and
25 where we are.

1 I'll just tell you, it's -- I may be guided by the jury
2 as to whether they want to stay Friday until they are done, or
3 they want to come back Monday. We are not working Saturday
4 and Sunday. So we will just see how long that takes, and see
5 where we are, and we will talk to the -- talk to the jury at
6 that point in time and see what they might wish at that point
7 in time. All right.

8 MS. ELDER: Thank you, Your Honor.

9 THE COURT: Is he here? Is he ready to go?

10 MR. GARDNER: Yes sir.

11 THE COURT: All right. Why don't you have him come in
12 and sit down.

13 All right. Ask the jury to come back in, please sir.

14 Did we need to cover -- this is Mr. Sparkman, correct?

15 MR. GARDNER: Yes sir, and I ---

16 THE COURT: Do we need to cover pending charges?

17 MR. GARDNER: I don't know what they are.

18 MR. RICHARDSON: Your Honor, I think right now he's
19 serving a -- he got a twenty year sentence on armed robbery.

20 MR. SPARKMAN: It was twenty years, but I got it
21 returned back to the Supreme Court.

22 THE COURT: So you are awaiting a new trial?

23 MR. SPARKMAN: Yes.

24 THE COURT: All right.

25 MR. RICHARDSON: Who is prosecuting?

JURY OUT/ON RECORD

796

1 MR. SPARKMAN: I don't know. I don't know the
2 prosecutor.

3 MR. GARDNER: Do you have a lawyer?

4 MR. SPARKMAN: Yes, my lawyer is Natasha Hanna with
5 Morgan Martin's law firm.

6 THE COURT: All right.

7 MR. GARDNER: It's going to be very short testimony, I
8 anticipate.

9 THE COURT: Well, I understand that, but ---

10 MR. GARDNER: I know. I -- I didn't know he had a
11 lawyer. I apologize to the Court.

12 THE COURT: Turn them around. Turn them around. Send
13 them back to the jury room.

14 MR. FREDERICK: Judge, we could -- we could call ---

15 THE COURT: Yes. We need to call right now. Anybody
16 got an idea what ---

17 MR. GARDNER: I know the number here is 3172, but I
18 don't know the Beach number.

19 THE COURT: Is that where she is at?

20 MS. ELDER: She's at the Beach, Your Honor. Her office
21 is at the Beach.

22 THE COURT: All right.

23 MR. FREDERICK: Well, we could call this witness in the
24 morning and try to contact her tonight.

25 THE COURT: Yes. I -- now, so Mr. Sparkman is being

1 prosecuted by y'all's office; is that ---

2 MS. ELDER: We are finding out right now, Your Honor.
3 The N.C.I.C. we ran does not indicate that his sentence was
4 set aside, so we sent somebody out to find out.

5 THE COURT: Okay. But originally, no question y'all
6 prosecuted him, or you don't know that?

7 MR. RICHARDSON: Looks like it was in Horry County,
8 Judge.

9 MS. ELDER: Yes sir, Your Honor.

10 THE COURT: All right. Y'all are going to have to go
11 ahead and talk Mr. Sparkman back to the J. Reuben Long
12 Detention Center. Make sure that he's back here tomorrow
13 morning, 8:30, by 8:30. All right.

14 So y'all go ahead and take him on back, and have him
15 back here by -- by 8:30, please.

16 DEPUTY SHERIFF: Yes sir, Your Honor.

17 THE COURT: And you want to send your Investigator out
18 to go start communicating with his lawyer right now?

19 MR. FREDERICK: Yes sir.

20 THE COURT: And alert -- alert the lawyer that they
21 need to be over here tomorrow morning at 8:30.

22 MR. FREDERICK: Yes sir.

23 THE COURT: All right.

24 Yes, Solicitor.

25 MS. ELDER: Your Honor, I obviously don't really care

JURY OUT/ON RECORD

798

1 who they are going to call, but we've got, obviously, a lot of
2 issues with transport, and where these people are. I don't
3 know if they are even aware of where their witnesses are. If
4 they have any other witnesses, other than Corey Sparkman and
5 Roy Grant, that are incarcerated, that we need to assist with
6 in transportation ---

7 THE COURT: Is there anybody else?

8 MR. GARDNER: That's all I've got.

9 THE COURT: So it's just Corey Sparkman and Mr. Grant,
10 are the two remaining witnesses that you have that are
11 incarcerated, that you know about?

12 MR. GARDNER: That's right.

13 THE COURT: All right. Okay. So, you have a total of
14 five witnesses to come, correct, counting Mr. Sparkman?

15 MR. FREDERICK: That's correct, Judge.

16 THE COURT: All right. So you have five witnesses.
17 Those two are incarcerated. The other three, when do you
18 expect that they will be here tomorrow?

19 MR. GARDNER: The airplane lady, I don't know. My
20 brief witness ---

21 MR. FREDERICK: The lady that's coming on the airplane
22 will be here at 10:30. My secretary is picking her up from
23 the airport.

24 THE COURT: Okay.

25 MR. FREDERICK: The other three will be here at nine

1 o'clock in the morning.

2 THE COURT: Okay. All right.

3 MR. RICHARDSON: How about Wilbur Green? Is he
4 incarcerated right now?

5 MR. GARDNER: Wilbur said he's not going to testify,
6 and I just left it alone.

7 MR. FREDERICK: We sent him back.

8 MR. GARDNER: Sent him back.

9 THE COURT: All right.

10 MR. RICHARDSON: And we need the information on the
11 others so we can run the N.C.I.C.s if you don't ---

12 THE COURT: So they -- you will need to -- who are the
13 others, because they -- the State does -- is allowed to run
14 the N.C.I.C. so they can be prepared for cross-examination, so
15 we've got -- we've got Corey Sparkman, we've got Roy Grant ---

16 MR. GARDNER: Melissa Gomez.

17 THE COURT: ---Melissa Gomez. All right.

18 MR. FREDERICK: Manuel Ortuno.

19 THE COURT: Emanuel Ortuno. How do we spell his last
20 name?

21 MR. FREDERICK: He's a S.L.E.D. agent. They've got
22 that.

23 THE COURT: Okay. Well, great.

24 MR. FREDERICK: Billy Lewis.

25 THE COURT: And I'm sorry, the last one?

JURY OUT/ON RECORD

800

1 MR. FREDERICK: Billy Lewis.

2 THE COURT: Billy Lewis. Is that a male or a female?

3 MR. FREDERICK: Male.

4 THE COURT: Male. And Mr. Lewis, is he here, or not
5 here or ---

6 MR. FREDERICK: Not here this afternoon.

7 THE COURT: But I mean ---

8 MR. FREDERICK: He's local.

9 THE COURT: A local person?

10 MR. FREDERICK: Yes sir.

11 THE COURT: All right. And the other -- and the last
12 one is?

13 MR. FREDERICK: Mayur Patel, P.a.t.e.l..

14 THE COURT: Okay.

15 MR. RICHARDSON: That would be six, Your Honor.

16 THE COURT: Okay. Corey Sparkman, Roy Grant, trying to
17 find these names here.

18 MR. GARDNER: Ortuno.

19 MR. FREDERICK: That is six. We mis-counted.

20 THE COURT: All right. Let me -- okay, Ortuno is a
21 S.L.E.D. agent; is that right?

22 MR. GARDNER: That's correct.

23 THE COURT: And then the other ones are, again?

24 MR. GARDNER: Corey Sparkman from the jail, Roy Grant
25 from the prison, Billy Lewis and Patel, local ---

1 THE COURT: Okay.

2 MR. GARDNER: ---And then Melissa Gomez.

3 THE COURT: Melissa Gomez.

4 MS. ELDER: And, Your Honor, we can run N.C.I.C.s on
5 Mr. Sparkman and Mr. Grant. Ms. Gomez, we do not -- we need
6 at least identifying information on Billy Lewis and Mr. Patel.

7 THE COURT: All right. When those people get here in
8 the morning, if you will get their birthdays, and their social
9 security numbers, and give those to the State, please. As
10 soon as they get here in the morning you will get their
11 birthdays and their social security numbers.

12 I assume y'all don't have that right now.

13 MR. GARDNER: No sir.

14 MR. FREDERICK: No sir.

15 THE COURT: All right. So, just as soon as they get
16 here in the morning y'all get that and give that to the State,
17 okay.

18 MS. ELDER: And Your Honor, I -- just tell Your Honor, e
19 I don't know -- Ortuno is the D.N.A. analyst in this matter.
20 We have not put up any evidence for Mr. Ortuno in our case,
21 and none has put up so far that would have to have chain
22 witnesses, Your Honor, because it is D.N.A. evidence.

23 MR. FREDERICK: Judge, the purpose of establishing the
24 chain of custody is to protect the rights of the defendant and
25 insure that the State did not tamper with the evidence. I

JURY OUT/ON RECORD

802

1 think it would be more than fair to expect the State to
2 consent to their own chain.

3 If they would like us to establish the chain, then I'm
4 sure we could do that, and we could go ahead and get a
5 subpoena for every person in their chain of custody, if they
6 want us to do that, but we'll have to get the subpoenas, serve
7 them in the morning, and then make that chain of custody
8 tomorrow afternoon, or whenever we can get here Monday, but ---

9 **THE COURT:** Solicitor.

10 **MS. ELDER:** Your Honor, I don't have a problem,
11 necessarily, the chain, from where it went to (A), to (B), to
12 (C), to (D). I do have a problem with Mr. Ortuno taking the
13 stand, because he is a S.L.E.D. analyst, he received what was
14 given to him, and he cannot testify as to where these things
15 were drawn by crime scene. They had everybody from crime
16 scene up there. They asked absolutely no questions from any
17 of those individuals about where this D.N.A. was pulled from.
18 They had that opportunity and didn't do that. I have a
19 problem with that, Your Honor. I have ---

20 **THE COURT:** I'm going to allow you to explore that on
21 cross-examination. I'm going to allow him to testify.

22 **MR. FREDERICK:** And Judge, I would point out that they
23 consented and stipulated to the chain at the last trial.

24 **THE COURT:** Well, be that as it may, I'm going to allow
25 y'all to call him. You can raise whatever objections you

1 would like to during his testimony.

2 Solicitor, I'll rule on them at the time. There may be
3 something that I may disallow, but my anticipated answer is
4 going to be, I'm going to allow him to testify, but we will
5 see, because I don't know the questions that are going to be
6 asked, nor the objections that you are going to raise, so
7 we'll just have to cover it when he shows up, and we will go
8 from there.

9 MR. GARDNER: Now that we know what the rest of the
10 witnesses are, does the State know now whether or not they
11 anticipate reply?

12 MS. ELDER: Again, Your Honor, Corey Sparkman, I have
13 no idea why he's being called. He wasn't on the witness list
14 read to the jury, so I have no idea what he's testifying to.

15 MR. GARDNER: I can tell you, if it will help. It's
16 impeachment that we learned about today, after one of your
17 witnesses.

18 THE COURT: Well, we'll just -- just hear it. Just
19 from what you know now -- I understand that may change,
20 depending upon what actual testimony comes out. All right.
21 Understanding that, do you now anticipate that you will have
22 reply testimony?

23 MS. ELDER: Possibly one, Your Honor.

24 THE COURT: All right. Very good.

25 All right. Let me call the jury out and send them home,

JURY IN/ON RECORD

804

1 and I'll have them here, back by nine o'clock in the morning.
2 Y'all -- we'll continue to discuss this after they leave.

3 Have them come in.

4 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right, ladies and gentlemen of the
7 jury, we have encountered some difficulties in getting the
8 remaining witnesses here. It's not necessary -- no reason to
9 go into all that, just need -- needless to say, they are not
10 here right now, and it might be some period of time before
11 they arrived, and I'm not sure all of them would arrive so we
12 could conclude the testimony tonight sometime, so with that
13 I'm going to send y'all home, and we are going to come back
14 tomorrow morning, start again at 9 o'clock, and we will resume
15 the testimony of the remaining witnesses in this case,
16 hopefully, from what I've been told, that we will have
17 everybody here tomorrow, and we will be able to go into those
18 and continue on, and finish the testimony and evidence in this
19 case.

20 I will discuss with you when we get done -- because
21 right now I don't know when we will be going to get done
22 tomorrow. We will get done with the testimony and evidence in
23 this case sometime tomorrow. Obviously you understand that
24 doesn't end the case. We've got the closing arguments, the
25 charge on the law, and the submission to you for your

1 deliberations and your unanimous decision in this matter,
2 however long that might take, and obviously that's completely
3 and totally, and solely up to y'all, so just anticipate that
4 tomorrow, when we get done with the testimony and evidence in
5 this case, I will be talking to you about staying tomorrow
6 until this matter is completely and totally finished, that is,
7 you have come back with a unanimous decision on all the
8 matters facing you, for however long that might take, or we
9 might conclude tomorrow when the testimony and evidence is
10 done, and come back Monday morning and finish the case, with
11 the arguments, the charge on the law, and then the submission
12 to you for your unanimous decision in this matter on all the
13 charges facing the Defendants, so anticipate, be thinking
14 about that, because I'm going to be asking you that question
15 sometime tomorrow, so y'all just think about that.

16 Usual caution, don't talk about the case, don't allow
17 anybody to talk to you about it.

18 I'll see you back tomorrow morning nine o'clock.

19 Obviously, don't read the newspaper, T.V., radio. I'll
20 see you back tomorrow, nine o'clock.

21 Thank you very much.

22 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right. Why don't we talk about,
25 counsel, the anticipated charge on the law that you would

JURY OUT/ON RECORD

806

1 expect the Court to give in this particular matter. I mean,
2 in general, obviously we will be talking to the jury about
3 credibility and believability. We will talk to them, give
4 them the general law about direct and circumstantial evidence,
5 following the State versus -- I've never know if it's Grippon
6 or Grippon. I have no idea, but it's G.r.i.p.p.o.n., that
7 case that the Supreme Court has set out direct and
8 circumstantial evidence, the presumption of innocence. I
9 would say to you -- and obviously we will go over it. If your
10 clients decline to testify obviously I'll talk to the jury
11 about that. We will cover that before -- obviously before
12 y'all finish, but I would talk about that, and tell them that
13 it's not part of the case, if they decided not to testify in
14 the case, the basic charge about expert witnesses, that you
15 evaluate all the evidence in the case, you don't afford them
16 any special status, reasonable doubt, the kind of doubt that
17 would cause an ordinary, reasonable person to hesitate to act,
18 a charge on third-party guilt, and let me just read that to
19 you, and y'all can give me your comments about that, either
20 now or in the morning, and that would be, evidence offered by
21 an accused as to the commission of a crime by another person
22 must be limited to facts that are inconsistent with the
23 accused's guilt, and to such facts which raise a reasonable
24 inference or presumption of his innocence. There must be such
25 connection with the crime, such facts or circumstances which

1 tend to point out the other person, or another person, as the
2 guilty person, which tend to point out the other person as the
3 guilty party.

4 Also, we would have a charge -- where did I put that --
5 as to multiple defendants, basically indicating that there are
6 two Defendants in the case, obviously explaining what each of
7 them is charged with, that the case -- each Defendant, and the
8 evidence law concerning that Defendant, and regarding each
9 charge, should be considered separately and individually, the
10 verdict does not have to be the same for both Defendants,
11 could find one Defendant guilty or not guilty, should not
12 control your verdict as to the other Defendant, you can
13 convict one, acquit the other, acquit both, you may convict
14 both, depends upon your view of the testimony and evidence,
15 you take each Defendant, consider the evidence as to that
16 Defendant, and my instructions to you on the law, and then you
17 will write a separate verdict for each Defendant on each
18 charge. So I would do that.

19 Also, the -- obviously the basic law regarding murder,
20 armed robbery, burglary in the first degree, and accessory
21 before the fact.

22 And if y'all remember, I think I read that accessory
23 before the fact charge to you earlier when we were talking
24 about a directed verdict motion, at the end of the State's
25 case.

JURY OUT/ON RECORD

808

1 What else does the State require?

2 MS. ELDER: Your Honor, I don't know that we would have
3 any other additional ---

4 THE COURT: Well, y'all think about it, and whatever
5 you believe that you might have in addition to that, if you
6 can have me something in writing in the morning, please.

7 MS. ELDER: Thank you, Your Honor.

8 THE COURT: Mr. Gardner, anything that you know of
9 right now?

10 MR. GARDNER: No sir.

11 THE COURT: All right. The same. Obviously if you
12 think of something you can have something to me in writing in
13 the morning.

14 And Mr. Frederick, anything that you can think of right
15 now?

16 MR. FREDERICK: I believe I will, but Your Honor, I can
17 bring that in the morning.

18 THE COURT: Very good.

19 MR. RICHARDSON: We prefer to, Your Honor.

20 THE COURT: All right. Good. Yes, that would be fine.
21 I mean, obviously, if you have something now I'll be glad to
22 start looking at it, but I'll be glad for you to give it to me
23 in the morning.

24 MR. FREDERICK: Yes sir.

25 THE COURT: All right.

1 All right. Anything else from the State at this point
2 in time?

3 MR. RICHARDSON: No, Your Honor.

4 THE COURT: From your client, Mr. Gardner?

5 MR. GARDNER: No, Your Honor.

6 THE COURT: From your client, Mr. Frederick?

7 MR. FREDERICK: No sir.

8 THE COURT: All right. Very good.

9 All right. I will -- now, we are going to have that one
10 witness, hopefully, the one inmate here by 8:30, and if we can
11 -- and that's the only person coming from J. Reuben Long, was
12 Mr. Sparkman, correct?

13 MR. GARDNER: That other fellow is coming from
14 Columbia, I imagine.

15 THE COURT: Right. Right.

16 MR. FREDERICK: S.C.D.C..

17 THE COURT: Yes, I mean, but the only one coming from
18 J. Reuben Long was Mr. Sparkman, okay.

19 All right.

20 MR. FREDERICK: We will talk to Natasha tonight.

21 THE COURT: All right. Very good.

22 All right. I'll see y'all back tomorrow morning, and --
23 so y'all be ready to get going right at nine o'clock, please,
24 okay.

25 MS. ELDER: Thank you, Your Honor.

JURY OUT/ON RECORD

810

1 MR. RICHARDSON: Thank you, Your Honor.

2 THE COURT: Thank you very much.

3 (THE FOLLOWING TAKES PLACE ON THE NEXT DAY, FEBRUARY 6th
4 2009, OUTSIDE THE PRESENCE OF THE JURY.)

5 THE COURT: All right, Solicitor, are you ready for the
6 jury?

7 MR. RICHARDSON: We are, Your Honor.

8 THE COURT: All right. Mr. Gardner.

9 MR. GARDNER: Judge, I have a problem with one of my
10 witnesses. I briefly talked to Natasha downstairs.

11 THE COURT: Yes sir.

12 MR. GARDNER: She's on -- enroute, I understand, and
13 the witness is enroute, I understand, but as a result of a
14 conversation with the Solicitor's Office this morning he may
15 not be willing to testify. I'm waiting on the final answer on
16 that.

17 THE COURT: Okay.

18 MR. GARDNER: Evidently the Solicitor, or somebody from
19 the Solicitor's Office, went out to the jail and interviewed
20 him without his lawyer. My understanding. I don't know if
21 that's true or not.

22 MS. ELDER: That's not correct, Your Honor.

23 MR. GARDNER: Okay. Well, the truth is what it is.

24 THE COURT: All right. Well, anyway, so, where is Mr.
25 Sparkman at?

1 DEPUTY SHERIFF: On his way up.

2 THE COURT: He's on his way up now?

3 DEPUTY SHERIFF: On his way up.

4 THE COURT: Okay. Great. Good deal.

5 Well, soon as he gets up here let's bring him in, and
6 then we'll figure out what's -- what's going on.

7 MR. RICHARDSON: Your Honor, I don't know if you want
8 them right now, but I do have two requests on the charge.

9 THE COURT: Yes sir. If you've got them I'll be glad
10 to hear those.

11 Mr. Gardner, anything you've got to add to what we
12 talked about?

13 MR. GARDNER: No sir.

14 THE COURT: And Mr. Frederick, you have something to
15 add?

16 If y'all want to just hand them to me that would be
17 great.

18 MR. RICHARDSON: Yes sir.

19 MR. FREDERICK: Judge, what charge did you say you were
20 going to give on reasonable doubt?

21 THE COURT: Standard ---

22 MR. GARDNER: Hesitate to act.

23 THE COURT: Yes.

24 MR. RICHARDSON: Victor v. Nebraska is what we are
25 requesting, Your Honor.

JURY OUT/ON RECORD

812

1 THE COURT: Victor -- I mean, I'll be glad to read it
2 to y'all.

3 MR. FREDERICK: That's fine.

4 MR. RICHARDSON: Firmly convinced, is the language we
5 would ask.

6 THE COURT: Yes. That's -- I'll be glad to read it to
7 you. Okay.

8 MR. FREDERICK: It's the last charge given ---

9 THE COURT: Well, I've got something -- and I'll go
10 over that with you, because I went back and I've added --
11 added a couple of things that ---

12 MR. FREDERICK: And those are all that we have.

13 THE COURT: Okay. ---Added a couple of things -- in
14 looking in it last night I did add the thing about note-
15 taking. Since we allowed them to -- allowed them to take
16 notes I was going to make a comment about that to them. I
17 think at one point in time I had told them to disregard a
18 statement, so I will just remind them they have to disregard
19 them and they can't use those. I was going to state that the
20 testimony of a witness may be discredited or impeached by
21 showing that they previously made a statement that is
22 inconsistent with their present testimony, earlier
23 contradictory statements are admissible only to impeach the
24 credibility of the witness, and not to establish the truth of
25 the statements, the usual thing -- y'all have had witnesses,

1 obviously, that have had prior records, and that provides, the
2 testimony of a witness may be discredited or impeached by
3 showing the witness has been convicted of a crime for which
4 they could have been imprisoned for more than one year, a
5 crime that involves dishonesty, as to this evidence, is
6 offered only on the issue of credibility and for no other
7 purpose.

8 Let me see. I don't know that I'm going to say that --
9 that there is an informer or who has been granted immunity,
10 but I will certainly tell the jury that they can consider, as
11 far as any, any witness, whether that witness has exhibited to
12 them any kind of interest, bias, prejudice, or any other
13 motive that they might have in giving their testimony. I will
14 certainly explain it to them in that way, that those -- that
15 is part of what they would consider, so I believe that covers
16 the essence, but I don't believe I would couch it in the terms
17 that you have set forth in your Requests to Charge, but ---

18 MR. FREDERICK: Judge, it says -- and it does, it say
19 immunity. That was extra language that wasn't intended, the
20 immunity part.

21 THE COURT: Right. Yes, it says, or a witness who has
22 been granted immunity from punishment, and that really hasn't
23 been part of this case, so -- but --

24 MR. FREDERICK: That's ---

25 THE COURT: ---But I will certainly, you know, talk to

JURY OUT/ON RECORD

814

1 them about, you know, interest, bias, prejudice, motive that
2 they have in giving their testimony. That's certainly part
3 for them -- for the jury to consider.

4 MR. RICHARDSON: And, Your Honor, the only ---

5 THE COURT: Yes sir.

6 MR. RICHARDSON: On the armed robbery charge I just ask
7 that you add in the language that the property can be illegal
8 narcotics, pursuant to State v. Gentry, and that is a case in
9 which someone moved for a directed verdict because what was
10 stolen was narcotics.

11 THE COURT: Well, I don't -- I don't know that I'm
12 going to indicate that, but I'm going to -- it's certainly
13 somebody's personal property, whether it's legal or illegal.

14 MR. RICHARDSON: Yes sir.

15 THE COURT: It's somebody's personal property, so
16 that's not an issue, and I certainly don't expect the Defense
17 to argue that, just because somebody has illegal property it's
18 not their property, I mean, if they say that then obviously
19 I'll probably expand on my armed robbery charge, but I just
20 intend to say that -- that the State has to prove, beyond a
21 reasonable doubt, that a person took the personal property
22 from the person or presence of another, and I may add whether
23 it's legal or illegal property, but I'm not going to say drugs
24 or ---

25 MR. RICHARDSON: Yes sir.

1 THE COURT: ---Or that. I might say legal or illegal
2 property.

3 MR. RICHARDSON: I just went with the straight language
4 from the case, Your Honor.

5 THE COURT: And I appreciate that.

6 MR. RICHARDSON: Yes sir.

7 THE COURT: All right.

8 MR. FREDERICK: Judge ---

9 THE COURT: Yes sir.

10 MR. FREDERICK: ---Our only other issue on the jury
11 instruction is, we would object to the instruction on third-
12 party guilt. The instruction that the Court read yesterday, I
13 think is the test of admissibility, and I believe that, once
14 evidence is admitted, the jury may consider it for any purpose
15 that they see fit, and I don't think that a jury instruction
16 outlining the test of admissibility from the cases would be
17 appropriate, Judge.

18 THE COURT: All right. What -- what would you say that
19 I should tell them about third-party guilt?

20 MR. FREDERICK: Nothing.

21 THE COURT: All right. Well, I respectfully disagree
22 about that.

23 MS. ELDER: And Your Honor, in reference to the third-
24 party guilt -- and I can't recall exactly how you read it
25 yesterday -- but I believe there was some language in the end

JURY OUT/ON RECORD

816

1 of that charge dealing with a presumptive level, and I believe
2 that needs to be also -- I believe the **Mayfield** case
3 indicated that that needs to be an inference level, instead of
4 presumptive.

5 **THE COURT:** And I'm sorry. Say that again, Solicitor.
6 I was thinking about something else.

7 **MS. ELDER:** No problem. The language that Your Honor
8 read yesterday -- I can't recall exactly -- I know that the
9 word -- some presumptive level was in there, I think, toward
10 the end of that charge that Your Honor read yesterday.

11 **THE COURT:** All right.

12 **MS. ELDER:** And I believe that needs to be changed,
13 pursuant to the cases, I believe in **May** -- I believe it's
14 **Mayfield**, Your Honor, that came after **Gregory** -- and change
15 that from a presumptive level to an inference level.

16 **THE COURT:** All right. Let me look at this and see.

17 **MR. FREDERICK:** I have no problem with that.

18 **THE COURT:** All right. All right. Do we know if the -
19 --

20 **MR. FREDERICK:** Judge, could we run through some -- and
21 they may have already done it, but ---

22 **THE COURT:** Sure.

23 **MR. FREDERICK:** ---But need to make the Court aware of
24 where we are with our witnesses.

25 **THE COURT:** Okay.

JURY OUT/ON RECORD

817

1 MR. FREDERICK: Ms. Hanna is talking to Mr. Sparkman
2 right now.

3 THE COURT: Okay.

4 MR. FREDERICK: Manuel Ortuno is here, and he's ready
5 to go forward, and we will probably go ahead and call him
6 first so he can get back to his job.

7 THE COURT: All right, sir.

8 MR. FREDERICK: We have Ms. Gomez, who missed her plane
9 yesterday, called this morning, said that -- her mother
10 called, actually, and said she missed her plane again, and
11 they have put her on the very next plane. Apparently she had
12 some kind of a problem getting through security, and they've
13 put her on the very next plane, and she is going to be at the
14 airport at 12:30. My secretary is still going to be waiting
15 on her at the airport.

16 THE COURT: Okay.

17 MR. FREDERICK: We have two witnesses that are under
18 Subpoena that we subpoenaed -- we actually subpoenaed one of
19 them twice. They are reluctant witnesses. This is Billy
20 Lewis and Mayur Patel, and I don't see him here this morning,
21 Judge. We were very clear they didn't have to sit here the
22 entire week, if they were here when we called them. We called
23 them yesterday and told them to be here at 9 o'clock this
24 morning. We are going to need to check and make sure they are
25 not out there, try to call them one more time. If they are

JURY OUT/ON RECORD

818

1 not here I would ask for a deputy to go and get them. They
2 are local.

3 THE COURT: All right. You've got a copy of your
4 Subpoenas?

5 MR. FREDERICK: Yes sir.

6 THE COURT: All right, sir.

7 MR. FREDERICK: But I would like to check and give them
8 the benefit of the doubt first.

9 THE COURT: All right, sir. Why don't you have them
10 check and ---

11 MR. FREDERICK: There are two of them that the State
12 has ---

13 THE COURT: All right. You want to go out there, Mr.
14 Frederick, and check real quick?

15 MR. FREDERICK: If I could.

16 THE COURT: Yes sir.

17 MR. FREDERICK: Thank you.

18 MS. ELDER: Can we ask the deputies about the status of
19 Roy Grant? Is he downstairs? Did he get here yet?

20 THE COURT: Mr. Grant is not going to get here until --
21 that's the fellow that's coming from Columbia, so he's not --
22 he won't be here until like ten-thirty or something like that,
23 correct?

24 DEPUTY SHERIFF: I don't know about that, but I know
25 he's not down there right now.

1 THE COURT: Okay. I don't expect that he's going to
2 get here until about 10:30, but if we got Mr. -- if Mr.
3 Sparkman is ready then ---

4 DEPUTY SHERIFF: He's back there talking with his
5 lawyer.

6 THE COURT: Okay. So they are not done yet?

7 DEPUTY SHERIFF: No sir.

8 THE COURT: Will you check and see, just see if they
9 are done yet.

10 MR. GARDNER: Whoever that was that was out there is
11 not there anymore. They called and checked the waiting room,
12 looked in our waiting room.

13 DEPUTY SHERIFF: She said he's ready, Your Honor, if you
14 want to ---

15 THE COURT: All right. That's Mr. Sparkman.

16 MR. GARDNER: Natasha is back there?

17 DEPUTY SHERIFF: Yes sir.

18 THE COURT: Do you want to go talk to them for a
19 second?

20 MR. GARDNER: Yes sir.

21 (MR. GARDNER LEAVES THE COURTROOM FOR A FEW MINUTES THEN
22 REAPPEARS.)

23 MR. GARDNER: She asked for two more minutes.

24 THE COURT: All right. So -- but you have somebody
25 that you are ready to go forward with right now?

JURY IN
MANUEL JOHN ORTUNO - DIRECT BY GARDNER

820

1 MR. GARDNER: Mr. Ortuno.

2 THE COURT: Mr. Ortuno?

3 MR. GARDNER: Yes sir.

4 THE COURT: All right. Very good.

5 Why don't we ask the jury to come in. We will take his
6 testimony then we'll go to Mr. Sparkman.

7 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
8 JURY.)

9 THE COURT: All right. Good morning, ladies and
10 gentlemen.

11 All right. Mr. Gardner, your next witness, please sir.

12 MR. GARDNER: Yes sir. Agent Ortuno.

13 THE COURT: All right, sir. Please come around to be
14 sworn, sir.

15 MANUEL JOHN ORTUNO, being first
16 duly sworn, testifies as follows:

17 DIRECT-EXAMINATION BY MR. GARDNER:

18 Q. Agent Ortuno, where are you employed, sir?

19 A. The South Carolina Law Enforcement Division, commonly
20 referred to as S.L.E.D..

21 Q. Yes sir. In what capacity?

22 A. I'm a Forensic D.N.A. Analyst.

23 Q. Yes sir.

24 MR. GARDNER: I'm going to skip down and try to save
25 some time, Judge. We are going to offer him as an expert

JURY IN
MANUEL JOHN ORTUNO - DIRECT BY GARDNER

821

1 witness in the field of Forensic D.N.A..

2 MS. ELDER: Your Honor, we have no objection to Mr.
3 Ortuno. We believe he is qualified to provide his opinion in
4 the area of D.N.A. analysis and forensic testing.

5 THE COURT: All right. And Mr. Frederick?

6 MR. FREDERICK: No objection.

7 THE COURT: All right, sir. He's qualified to give his
8 opinion in the field of D.N.A. analysis, or forensic D.N.A.
9 analysis.

10 All right, Mr. Gardner.

11 MR. GARDNER: Thank you.

12 Q. Agent Ortuno, were you provided with samples for the
13 purpose of testing relative to this case?

14 A. Yes sir, I was.

15 Q. And those were D.N.A. samples taken from the crime
16 scene on Pridgen Road here in Horry County?

17 A. These were samples that were submitted for the -- for
18 analysis to identify, first, as human body fluids, and then if
19 they are human body fluids, to be further analyzed to develop
20 D.N.A. profiles, yes.

21 Q. And you got these items from the Myrtle Beach Police
22 Department?

23 A. That's correct.

24 Q. Did you have an opportunity to examine these items?

25 A. Yes sir, I did.

JURY IN
MANUEL JOHN ORTUNO - DIRECT BY GARDNER

822

1 Q. And did you compare those items with the -- I'm sorry,
2 let me ask this. Did you get D.N.A. samples from Jimmy Lee
3 Sessions and Christopher Stephens?

4 A. Yes sir, I did.

5 Q. And did you do a comparison of the D.N.A. between the
6 samples from Jimmy Lee and Christopher and the items provided
7 to you by Myrtle Beach Police Department?

8 A. Yes sir, I did.

9 Q. And did you form an opinion about that comparison?

10 A. Yes sir.

11 Q. And would you please tell the jury what the results
12 were?

13 A. Which particular items would you like for me to --
14 there are quite a few items.

15 Q. I'll narrow it down -- I'll just narrow it down and go
16 for the end result, the three items, as I understand it, are
17 two -- were taken from the feet of Monica Wall. I believe one
18 might have been the big toe.

19 A. Among the items submitted was a swab collected from the
20 right big toe of Monica Wall. Is that what you are referring
21 to?

22 MR. GARDNER: Yes sir.

23 A. And there was a swab also collected from the left foot
24 of Monica Wall. For those two items, which were S.L.E.D.'s
25 Items 47 and 48, the D.N.A. that was found from Item 47,

JURY IN
MANUEL JOHN ORTUNO - DIRECT BY GARDNER

823

1 which, once again, is the right big toe of Monica Wall, was
2 found to be a mixture, so we identified at least two
3 individuals. In this particular case we have what appears to
4 be one male and one female individual. Both Jimmy Sessions
5 and Christopher Stephens are excluded as possible contributors
6 to this mixture, in other words, their D.N.A. does not match
7 the D.N.A. that was found in the mixture.

8 Q. Yes sir. And that was the sample from the big toe ---

9 A. That was from the big toe.

10 Q. And the other sample was ---

11 A. The second sample was a swab collected from the left
12 foot of Monica Wall. This was also found to be a mixture of
13 at least two individuals. Both Jimmy Sessions and Christopher
14 Stephens are excluded as possible contributors to that mixture
15 as well.

16 Q. Yes sir. Was there a third item involving fingernail
17 clippings?

18 A. Yes. There is S.L.E.D.'s Item Number 53, was
19 identified as fingernail clippings from a right hand of Monica
20 Wall.

21 Q. And ---

22 A. For that item it was also determined to be a mixture.
23 Jimmy Sessions and Christopher Stephens are also excluded as
24 possible contributors to this mixture.

25 MR. GARDNER: Thank you, Agent Ortuno. Please answer

MANUEL JOHN ORTUNO - CROSS BY FREDERICK

824

1 any questions that Mr. Frederick has for you.

2 THE COURT: Mr. Frederick.

3 CROSS-EXAMINATION BY MR. FREDERICK:

4 Q. Good morning.

5 A. Good morning.

6 Q. I would just like to go into a little bit more detail.

7 A. Certainly.

8 Q. Do you have -- do you have your reports with you?

9 A. I do..

10 Q. Okay. And there are at least two D.N.A. reports in
11 this case, aren't there?

12 A. As I understand it there are two, one dated January the
13 28th, the second one dated -- actually January 28th of 2008.
14 The second one is January 22nd of 2009.

15 Q. Okay. So there was one report that was January of last
16 year?

17 A. That's correct.

18 Q. Okay. And then the second report is from January, last
19 month?

20 A. Yes sir.

21 Q. Okay. Now, the reason for the second report is that
22 D.N.A. samples were taken from Jimmy Lee and Christopher; is
23 that right?

24 A. That's correct.

25 Q. All right. And that's happened two months ago?

1 A. Approximately, yes sir.

2 Q. Okay. And the D.N.A. was collected from the scene of
3 the crime in June of 2006, correct?

4 A. That's correct.

5 Q. All right. And in January of 2008, that D.N.A. was
6 analyzed, and a report was issued?

7 A. That's correct.

8 Q. But then in December, two months ago, after the D.N.A.
9 was taken from these two, last month you were asked to re-
10 analyze the D.N.A. again, and this time compare it with these
11 Defendants; is that accurate?

12 A. Not so much re-analyze as simply compare the profiled
13 developed from the standards from the individuals to the
14 previous profiles developed from the evidence, as well as a
15 swab from a left shoe that was also analyzed at this time.

16 Q. Okay. And so it had already been analyzed. Just this
17 time you are specifically comparing it to these guys?

18 A. That's exactly right.

19 Q. Okay. Let's look at some of the specific results. You
20 mentioned Monica's right toe. That was Item 47?

21 A. S.L.E.D.'s Item Number 47 is the right big toe.

22 Q. Okay. And in January of 2008, you were able to
23 determine that the D.N.A. from that sample was consistent with
24 a mixture of at least one male and one female; is that right?

25 A. In the original report dated January the 28th of 2008,

1 Item 47 is consistent with a mixture of at least one male and
2 one female individual.

3 Q. Okay.

4 A. At that point the only standards I had were from
5 Hightower and Wall, and they were deemed to -- they could not
6 be excluded as contributors to this mixture.

7 Q. Jamilla and Monica, from that sample they could not be
8 excluded?

9 A. Correct.

10 Q. So it could have been their D.N.A.; it could have been
11 somebody else's?

12 A. That's correct.

13 Q. But it was one male and one female?

14 A. From the analysis of the D.N.A. that's what it appeared
15 to be, yes sir.

16 Q. So one of them was somebody else's at least, the male?

17 A. That's a good point, yes.

18 Q. And then the same sample, last month it was compared
19 with Jimmy Lee and Christopher's D.N.A.?

20 A. Yes sir.

21 Q. And they were excluded?

22 A. That's correct.

23 Q. So the male whose D.N.A. was found on the foot or the
24 toe was not these guys?

25 A. That's correct.

1 Q. Okay. And as far as you know at least one person,
2 maybe two, but at least one person that left D.N.A. there is
3 still, as of yet, unidentified?

4 A. That's correct.

5 Q. Okay. Now, Item 48, that would be Monica's left foot?

6 A. Yes sir.

7 Q. And in January of 2008, last year, you were able to
8 determine that that D.N.A. was consistent with a mixture of at
9 least two individuals?

10 A. That's correct.

11 Q. Again, Jamilla and Monica could not be excluded from
12 that one, right?

13 A. That's correct.

14 Q. Could have been them, could have been somebody else?

15 A. Yes.

16 Q. Okay. Last month you were able to exclude Jimmy Lee
17 and Christopher as contributors to that sample?

18 A. That's correct.

19 Q. Okay. So that D.N.A. may have come from Jamilla. It
20 could have come from Monica. It could have come from somebody
21 as of yet unidentified, but it did not come from these guys?

22 A. That's correct.

23 Q. Let's look at Item 53. That's the fingernail clippings
24 from the right hand?

25 A. Yes sir.

1 Q. In January of 2008, again, you were able to determine
2 that the D.N.A. obtained from the fingernail clippings was a
3 mixture?

4 A. Yes sir.

5 Q. That Jamilla and Monica could not be excluded from this
6 one as contributors?

7 A. That's also correct.

8 Q. Okay. And last month you were able to exclude Jimmy
9 Lee and Christopher as contributors?

10 A. That's correct.

11 Q. So could have been Jamilla, could have been Monica,
12 could have been somebody else unidentified, but not these
13 guys?

14 A. That's correct.

15 Q. Okay. And you did -- y'all did analyze more D.N.A.
16 than just that, right?

17 A. Yes sir, we did.

18 Q. Okay. And there was -- let's look at Item 61.2, and
19 61.3, and that was a cigarette filter; is that right?

20 A. 61.2 and S.L.E.D.'s 61.3 are both cigarette filters,
21 yes.

22 Q. Okay. Orange cigarette filters, and those were taken
23 from Jamilla's house?

24 A. Yes. As I understand it they were.

25 Q. And this particular sample was not compared to Jimmy

1 Lee and Christopher, was it?

2 A. 61.2, 61.3 were not, no sir.

3 Q. Okay. But in last year, in January, you were able to
4 determine that the D.N.A. on those filters was from
5 unidentified females? Does that sound right?

6 A. That -- yes, that's from the original report, and
7 that's why they were not compared, since they are unidentified
8 females. They would not match ---

9 Q. Right.

10 A. ---Any male subjects.

11 Q. Right. And those profiles though did not match Jamilla
12 or Monica?

13 A. That's also correct.

14 Q. So it was an unidentified person, female?

15 A. Females, yes.

16 Q. Okay. Items 12.1 is another cigarette filter?

17 A. Yes.

18 Q. And in January, 2008, last year, you were able to
19 determine that the D.N.A. obtained from that cigarette butt is
20 consistent with a mixture of at least one male and one female?

21 A. That's correct.

22 Q. Okay. Jamilla could not be excluded, so it could have
23 been her?

24 A. Yes.

25 Q. But Monica was excluded?

MANUEL JOHN ORTUNO - CROSS BY FREDERICK

830

1 A. That's correct.

2 Q. All right. And last month that was compared to Jimmy
3 Lee and Christopher, and they were excluded?

4 A. That's correct.

5 Q. Okay. So it could have been Jamilla, definitely was
6 not Monica. There was also D.N.A. from one male on it, but
7 definitely not these guys?

8 A. That's correct.

9 Q. Okay. Let's look at Items 13.1 and 13.2. Those were
10 cigarette butts also; is that right?

11 A. That's correct.

12 Q. Okay. Those were cigarette butts from the living room?

13 A. They are cigarette butts from the living room, yes sir.

14 Q. And in January of '08, last year, you were able to
15 determine that that D.N.A. was consistent with a mixture of at
16 least two persons?

17 A. That's correct.

18 Q. Okay. Jamilla could not be excluded, but Monica could
19 be excluded?

20 A. That's also correct.

21 Q. Okay. And that was also compared to Jimmy Lee and
22 Christopher, and they are excluded?

23 A. That's correct.

24 Q. Okay. So there is at least two persons -- could have
25 been Jamilla, could have not been Jamilla, was at least one

1 other person, but not these Defendants?

2 A. That's correct.

3 Q. Okay. Item 29.1, that was a swab from the pillow in
4 the bathroom; is that right?

5 A. Yes sir.

6 Q. In January of 2008, last year, you were able to
7 determine that Monica could not be excluded, but Jamilla could
8 been excluded; is that right?

9 A. That's correct.

10 Q. So that very well may have been D.N.A. from Monica?

11 A. That's correct ---

12 Q. Okay.

13 A. ---At least in part, since it's a mixture.

14 Q. It is a mixture?

15 A. It is a mix -- twenty-nine point one ---

16 Q. Yes.

17 A. ---Is a mixture, so at least, in part, it could be
18 Monica.

19 Q. Some of it could have been?

20 A. Right.

21 Q. Okay. But last month you were able to exclude Jimmy
22 Lee and Christopher, right?

23 A. That's correct.

24 Q. Okay. So could have been Monica's D.N.A. on it. Was a
25 mixture, so there was at least one unidentified person whose

1 D.N.A. was on that pillow?

2 A. That's correct.

3 Q. Okay. Item 61.6. That's also ---

4 A. That is also an orange cigarette filter.

5 Q. Okay. And in January, last year, there was a partial
6 profile that was developed from that filter that was a male?

7 A. That's correct.

8 Q. Ultimately that one matched a guy named Leon McCrary,
9 or Leon McClary?

10 A. I do not have that in my report. I don't have his
11 standard. If you have it matching it could have either been
12 from the D.N.A. database or some other source, perhaps some
13 other lab.

14 Q. Okay. That wasn't ---

15 A. I don't -- I don't have that standard, so I can't ---

16 Q. It wasn't you that made that match?

17 A. That's correct.

18 Q. Okay.

19 **MR. FREDERICK:** Say no more.

20 Q. But that was compared to Jimmy Lee's and Christopher's,
21 and they were excluded?

22 A. 61.6 was, and they were excluded.

23 Q. Okay. And just in fairness, when we are talking about
24 cigarette filters, that's not necessarily indicative of
25 anybody that committed a crime, that just says somebody smoked

1 a cigarette, right?

2 A. That's exactly right.

3 Q. Okay. But let's look at 61.7 ---

4 A. Yes sir.

5 Q. ---Also a cigarette filter.

6 A. Also cigarette filter, yes.

7 Q. And in January of last year you were able to determine

8 that that D.N.A. was consistent with a mixture, one male and

9 one female; is that right?

10 A. Yes sir.

11 Q. Okay. Both Jamilla and Monica were excluded as

12 contributors?

13 A. Can be excluded as contributors, yes.

14 Q. Okay. Last month it was compared with Jimmy Lee and

15 Christopher, and they are also excluded as possible

16 contributors?

17 A. That's correct.

18 Q. So we have, on this cigarette filter, D.N.A. from an

19 unknown male, and an unknown female; is that accurate?

20 A. From Item 67? Yes, it's one male and one female. It's

21 consistent with a mixture of one male and one female.

22 Q. Okay. Item 61.1, another cigarette filter?

23 A. Yes sir.

24 Q. Okay. And a profile was developed from that filter,

25 didn't match Jimmy Lee or Christopher?

MANUEL JOHN ORTUNO - CROSS BY FREDERICK

834

1 A. That's correct.

2 Q. Okay. What was Item 67? I wasn't able to find where
3 that was identified.

4 A. Oh. Item 67, S.L.E.D.'s 67 is from the second report,
5 dated January of this year. It is a swab from the left shoe.

6 Q. Okay. That's what that was, the swab from the shoe?

7 A. Yes sir.

8 Q. Profile from a shoe was a mixture of two individuals?

9 A. At least two individuals, yes.

10 Q. At least two individuals. But Jamilla, Monica, Jimmy
11 Lee and Christopher were excluded as possible contributors; is
12 that right?

13 A. That's correct.

14 Q. Okay. So at least two -- at least two unidentified
15 individuals?

16 A. That's correct.

17 Q. Okay. So of all of the D.N.A. that was collected from
18 this crime scene in June, 2006, none of that matched Jimmy Lee
19 or Christopher, did it?

20 A. That's correct.

21 Q. Okay. In fact, they were excluded as possible
22 contributors to every piece of D.N.A. that they were compared
23 to?

24 A. That's correct.

25 Q. Okay. And on several pieces of the D.N.A. there was at

1 least one male, at least one female that were unidentified?

2 A. On several pieces, yes.

3 Q. Okay.

4 MR. FREDERICK: That's all the questions I have. Thank
5 you.

6 A. Thank you.

7 THE COURT: All right, Solicitor.

8 MS. ELDER: Thank you, Your Honor.

9 CROSS-EXAMINATION BY MS. ELDER:

10 Q. Agent Ortuno, I want to refer -- if you can refer to
11 your report, I'm going to ask you about a couple of things
12 that you did analyze. The Defense asked you about Items 40,
13 41. I believe those are fingernail clippings from Jamilla
14 Hightower; is that correct?

15 A. Yes.

16 Q. One is from the right hand, one is from the left hand?

17 A. That's correct.

18 Q. And what were your findings on that?

19 A. There was no D.N.A. profile foreign to Jamilla
20 Hightower from either Item 40 or 41.

21 Q. And you've been doing D.N.A. analyses for a while,
22 haven't you?

23 A. Over ten years.

24 Q. And it involves, usually, things that are submitted to
25 you by the police department; is that correct?

MANUEL JOHN ORTUNO - CROSS BY ELDER

836

1 A. That's correct.

2 Q. And it -- dealing with crimes that happened; is that
3 correct?

4 A. Yes Ma'am.

5 Q. And what do you -- how do you -- normally would you get
6 somebody else's D.N.A. under your fingernails? Would it be
7 from fighting, or striking? Could you get it if you were
8 trying to scratch somebody?

9 A. That would be the easiest way to get it. You can
10 just -- any contact, just by casual incidental contact, as
11 well as more aggressive contacts. This is what you are
12 referring to?

13 Q. If somebody was fighting or scratching you would tend
14 to believe there would be somebody's D.N.A. under their
15 fingernails; is that correct?

16 A. If you are scratching you are most definitely going to
17 have -- I mean, it's very unlikely you would not have, if you
18 were actually scratching, D.N.A. collected from underneath the
19 fingernails.

20 Q. Now, I want to also ask you about Items 52 and 53.

21 A. Yes Ma'am.

22 Q. 52 were -- 52 and 53 were fingernail clippings from
23 Monica Wall; is that correct?

24 A. That's correct.

25 Q. Was there any male D.N.A. found in those two clippings?

1 A. 52, which is the -- which are the fingernail clippings
2 from the left hand of Monica, there was no D.N.A. other than
3 that of Monica, which you would expect.

4 In 53, which is the right hand of Monica, I found a
5 mixture. Jamilla and Monica cannot be excluded as
6 contributors to this mixture.

7 Q. So under Monica's fingernails that D.N.A. found could
8 be her's; is that correct?

9 A. That's correct.

10 Q. And it's another female; is that correct?

11 A. Yes. There is only an indication of a female profile
12 in Item 53.

13 Q. And if she had had some recent contact with her
14 roommate, Jamilla, could she have gotten D.N.A. from Jamilla
15 under that nail as well?

16 A. It's possible.

17 Q. I want to refer you to two items regarding, I believe
18 Item 47, and 48. One, 47, is the swab from the right toe of
19 Monica Wall, and 48 is the swab from the left foot of Monica
20 Wall; is that correct?

21 A. That's correct.

22 Q. And 47, you have indicated, is a mixture of at least
23 one male and one female?

24 A. That's correct.

25 Q. And Jamilla and Monica cannot be excluded; is that

MANUEL JOHN ORTUNO - CROSS BY ELDER

838

1 correct?

2 A. Yes.

3 Q. And there is an unidentified male?

4 A. That's correct, at least one.

5 Q. Tell me how -- well, let me just ask you this. Can --
6 if I was walking through my house, and there had been some
7 males living there prior to that time, on the carpet, on the
8 tile in the bathroom, could I have picked up their D.N.A. on
9 my feet?

10 A. It's possible.

11 Q. All right. And can D.N.A. stay in a house for six
12 months, twelve months?

13 A. Yes.

14 Q. So if a male had been living there it's possible that
15 he could have left some D.N.A. behind on the carpet, in the
16 fibers, and things like that?

17 A. That's possible.

18 Q. There were some other things that Defense counsel asked
19 you about, I believe some cigarette butts; is that correct?

20 A. Yes Ma'am.

21 Q. And they were taken from various places in the house,
22 according to your notations?

23 A. Yes Ma'am.

24 Q. I believe Item 12.1 was from the kitchen table, a
25 cigarette butt from the kitchen table?

- 1 A. That's correct.
- 2 Q. And that was a mixture of male/female; is that right?
- 3 A. That's correct.
- 4 Q. 13.2, that was a cigarette butt from the living room;
- 5 is that correct?
- 6 A. Yes.
- 7 Q. And that was also a mixture of male and female?
- 8 A. That's correct.
- 9 Q. 61.1 is an orange cigarette filter?
- 10 A. Yes Ma'am.
- 11 Q. And that's a mixture of male and female?
- 12 A. 61.1?
- 13 Q. Yes.
- 14 A. Yes. It could be male and a female.
- 15 Q. 61.6 and 61.7, are those also mix -- those are also
- 16 cigarette filters, and they could be male and female?
- 17 A. That is also possible. One moment. Well, 61.6, which
- 18 is a cigarette filter, it's a partial D.N.A. profile, and it's
- 19 identified as from an unidentified male, so it appears to be
- 20 from a male.
- 21 Q. Okay. And 61.7?
- 22 A. 61.7 is a mixture which is consistent with one male and
- 23 one female.
- 24 Q. And these are all cigarette filters; is that correct?
- 25 A. Yes Ma'am.

MANUEL JOHN ORTUNO - CROSS BY ELDER

840

1 Q. And all the other samples, other than the ones I've
2 just asked you about, all those were female contributors; is
3 that correct?

4 A. There were many female contributor profiles, yes,
5 mostly female contributors, other than the ones that you've
6 identified.

7 Q. Other than the ones that I've just mentioned.

8 A. Yes.

9 Q. Is it possible, Agent Ortuno, for someone who is
10 clothed completely, has shoes on, has gloves on, has a hoodie,
11 is it possible that they would have left no D.N.A. on the
12 items that we have submitted to you?

13 A. It's possible that anyone, other than the cigarette --
14 if you were smoking a cigarette I would imagine you should
15 leave saliva, continuing skin cells, but other than the
16 cigarettes no one has to leave D.N.A. anywhere. It's
17 possible, and it's possible they did not.

18 Q. So I could go into somebody's house and not leave any
19 D.N.A. at all?

20 A. It's possible.

21 MS. ELDER: One moment, Your Honor.

22 Q. He asked you if -- I assume anybody can leave D.N.A.,
23 correct?

24 A. That's correct.

25 Q. Even a child?

1 A. Oh yes.

2 Q. So if a male child was in this home the night before,
3 and was in that bathroom where Monica was, could she have
4 gotten his D.N.A. under her foot, or on her foot?

5 A. The child's? I'm sorry. I don't understand.

6 Q. You tested Monica Wall -- samples from her feet; is
7 that correct?

8 A. That's correct.

9 Q. And is it possible, if she was babysitting a male
10 child, she could have picked up his D.N.A.?

11 A. It's -- it's possible.

12 MS. ELDER: No further questions, Your Honor.

13 THE COURT: Redirect, Mr. Gardner.

14 MR. GARDNER: Your Honor, I would ask that Agent Ortuno
15 be excused so he can get back to his regular duties.

16 THE COURT: Any objection, Mr. Frederick?

17 MR. FREDERICK: No objection.

18 THE COURT: Solicitor.

19 MS. ELDER: No objection, Your Honor.

20 THE COURT: All right. Sir, you are released from your
21 Subpoena. You may go back to your regular duties.

22 A. Thank you, Your Honor.

23 MR. FREDERICK: Judge, can we approach for a moment?

24 THE COURT: Absolutely.

25 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

JURY OUT/ON RECORD

842

1 THE COURT: All right, ladies and gentlemen, you need
2 to go to your jury room for a minute, please.

3 Thank you.

4 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
5 JURY.)

6 THE COURT: All right. The next witness, Mr. Gardner,
7 that you would be calling, I believe would be Mr. Sparkman; is
8 that right, Corey Sparkman?

9 MR. GARDNER: Yes sir. That's my understanding.

10 THE COURT: All right. Ms. Hanna, you had some matter
11 you wanted to bring to the Court's attention at this time.

12 MS. HANNA: Yes, Your Honor. There is one issue that I
13 would like to put on the record, by way of background, if I
14 may do so at this time.

15 THE COURT: Yes Ma'am, please.

16 MS. HANNA: I represent Corey Sparkman. I was
17 appointed to represent him on three pending charges that are
18 currently being prosecuted in this particular Solicitor's
19 Office. I met with Mr. Sparkman just last week, so this is a
20 relatively new case for me. I was contacted yesterday at five
21 P.M., and then found out the specific details about why Mr.
22 Sparkman may appear here today. Mr. Gardner was kind enough
23 to call me and share with me the details.

24 THE COURT: Yes Ma'am.

25 MS. HANNA: I arrived at the courthouse this morning,

1 spoke to my client, and I have learned that the Solicitor's
2 Office had already spoken to Mr. Sparkman this morning, so I
3 think that they are aware of what his particular testimony may
4 be.

5 My specific concern, Your Honor, is that Mr. Sparkman
6 does have three pending charges, and while he is here simply
7 today to tell the truth, because it is weighing on his heart,
8 he is greatly concerned about the particular consequences this
9 may have on his pending charges. In light of that Mr.
10 Sparkman does intend to plead the Fifth Amendment on any
11 discussion about those three pending charges. I am aware that
12 the jury may be entitled to know that he is currently
13 incarcerated for those pending charges without any conviction,
14 but I just wanted to put that on the record and express to
15 Your Honor that he does want to testify, to do the right thing
16 and tell the truth here today.

17 THE COURT: All right. Very good.

18 All right. Why don't we -- I certainly understand, and
19 I don't expect the State nor the Defense to inquire of Mr.
20 Sparkman the details of anything for which he may be
21 charged. I will allow it to be presented that Mr. Sparkman is
22 currently facing charges ---

23 And those charges are what?

24 MS. HANNA: There's two drug charges, and a possession
25 of a stolen vehicle.

JURY OUT/ON RECORD

844

1 THE COURT: All right. I'll allow them to present
2 those, and that he is currently being prosecuted by the
3 Fifteenth Circuit Solicitor's Office regarding those three
4 offenses.

5 Now, does Mr. Sparkman have a prior record, convictions
6 of anything?

7 MS. ELDER: Well, Your Honor, there is also an armed
8 robbery that we are prosecuting as well.

9 THE COURT: Okay. So there's armed robbery, possession
10 of a stolen vehicle, and what else?

11 MS. ELDER: Drug charges.

12 THE COURT: Well, what -- okay, drug charges.

13 MS. ELDER: They are possession -- I believe they are
14 possession of cocaine second, Your Honor.

15 THE COURT: Well, we need to know exactly, because
16 they are not going to say, are you facing drug charges. I
17 want specifics, okay, so we need to know the things that he is
18 facing specifically.

19 MS. ELDER: Your Honor, it is my understanding he is
20 facing an armed robbery charge that has come back, and been
21 reversed on appeal ---

22 THE COURT: All right.

23 MS. ELDER: ---A possession of crack, second ---

24 THE COURT: Okay.

25 MS. ELDER: That's all I'm aware of, Your Honor.

1 **THE COURT:** All right. Armed robbery, and a possession
2 of crack. Is that your understanding, Mr. Hanna?

3 **MS. HANNA:** Actually I am fully aware that his armed
4 robbery charge -- he spent seven years in prison and the
5 Supreme Court reversed that decision. I have not been made
6 aware that that charge is pending against him, or that charge
7 has been brought against him again. That decision, to my
8 knowledge, has never been made, and Mr. Sparkman has certainly
9 not ever been informed of that.

10 **MS. ELDER:** Your Honor, he received a bond -- he was
11 actually out on bond for that armed robbery when it was
12 reversed, when he got these new drug charges that he's
13 actually incarcerated for now.

14 When his conviction was reversed, Your Honor, it was
15 reversed on P.C.R.. It wasn't thrown out or dismissed, so it
16 wasn't like the charge ceased to exist.

17 **THE COURT:** Okay. So the Supreme -- it wasn't on
18 direct appeal. It was on a P.C.R. where the Supreme Court
19 granted his Post-Conviction Relief for a new trial?

20 **MS. ELDER:** Correct, Your Honor, and then he got a bond
21 for that when it was reversed.

22 **THE COURT:** All right. So then he was -- and he then
23 received bond. Okay. So -- all right, so I am going to allow
24 them to -- the -- ask him if he is currently facing the
25 offense of armed robbery and the possession of -- is it

JURY OUT/ON RECORD

846

1 cocaine second ---

2 MS. ELDER: Possession of crack second, Your Honor.

3 THE COURT: ---Possession of crack cocaine second, all
4 right, and obviously that he's being prosecuted by the
5 Solicitor's Office for that offense.

6 Now, is there any other prior record or anything else
7 that we are going to be -- you are going to be asking him
8 about?

9 MS. ELDER: Your Honor, there's -- I don't think that's
10 going to be an issue, Your Honor, what his testimony is going
11 to be.

12 THE COURT: All right. Very good. All right.

13 And we are not going to be asking him about the details
14 of the armed robbery nor the crack charge, correct?

15 MR. RICHARDSON: That's correct, Your Honor.

16 THE COURT: All right. Very good.

17 All right. Yes sir, Mr. Gardner.

18 MR. GARDNER: While the jury is out, can I have two
19 minutes to walk across the hall?

20 THE COURT: Yes sir.

21 Who else do y'all have as a witness that is here?

22 MR. FREDERICK: We have one here. We have one that is
23 ignoring our Subpoena, and we would ask that someone from the
24 Sheriff's Department pick him up.

25 THE COURT: All right. Let me have the Subpoena of the

1 person that you are having difficulties with.

2 MR. FREDERICK: And that would be everybody that's here
3 right now.

4 THE COURT: All right. And then we have one on the way
5 from the Department of Corrections.

6 MR. FREDERICK: Yes sir. They said they think he'll be
7 here about ten-thirty, eleven. And we've got one that should
8 be in the air right now. We are expecting her at 12:30.

9 THE COURT: All right.

10 MR. FREDERICK: I'm going to pass up to the Court the
11 first Subpoena we send to him, along with the letter he mailed
12 back to us with the Subpoena ---

13 THE COURT: All right.

14 MR. FREDERICK: ---And then the second Subpoena that we
15 served on him.

16 THE COURT: All right. Now, who served these Subpoenas
17 on him?

18 MR. FREDERICK: Our investigator.

19 THE COURT: All right. And he's not here right now.

20 MR. FREDERICK: He is not.

21 THE COURT: All right, sir.

22 MR. FREDERICK: I'm sorry. Ms. Hiller served the
23 second Subpoena, that's right.

24 THE COURT: I'm sorry. What did?

25 MR. FREDERICK: Laura.

JURY OUT/ON RECORD

848

1 LAURA HILLER: I served the second Subpoena.

2 THE COURT: All right. And could you tell me your
3 name, please Ma'am.

4 LAURA HILLER: My name is Laura Hiller.

5 THE COURT: Laura Hiller. All right, Ma'am. If you
6 would raise your right hand, please.

7 Solemnly swear or affirm to tell the truth, the whole
8 truth, and nothing but the truth, so help you God.

9 LAURA HILLER: I do.

10 THE COURT: All right. It has been presented to the
11 Court a Subpoena to the records custodian of the -- it's the
12 Knight's Inn, slash, America's Best Value Inn; is that
13 correct?

14 LAURA HILLER: Yes, Your Honor.

15 THE COURT: And that individual's name actually is
16 what?

17 LAURA HILLER: His name is Billy Lewis.

18 THE COURT: Billy Lewis. All right. And you
19 personally delivered this Subpoena in the criminal case to
20 him?

21 LAURA HILLER: I did, Your Honor.

22 THE COURT: And it was a Subpoena obviously issued in
23 this case, and signed by the Clerk of Court; is that correct?

24 LAURA HILLER: That is correct.

25 THE COURT: All right. And when did the service of

1 this Subpoena take place?

2 LAURA HILLER: It's on the back of the Subpoena, Your
3 Honor.

4 THE COURT: I'm sorry. All right. I'm sorry. It's on
5 1/29/09, and -- and that you did hand-deliver that Subpoena to
6 him, correct?

7 LAURA HILLER: That is correct, Your Honor.

8 THE COURT: Very good.

9 All right. And you are telling me, Mr. Frederick, that
10 this individual, Billy Lewis, whose name appears on the back
11 of the Subpoena, is not here, and has not responded to the
12 Subpoena; is that correct?

13 LAURA HILLER: That is correct.

14 THE COURT: All right, Mr. Frederick, you are asking
15 the Court's assistance in having Mr. Lewis delivered to the
16 Court; is that correct?

17 MR. FREDERICK: Yes, Your Honor.

18 THE COURT: All right.

19 MR. FREDERICK: Along with the records that are
20 identified in the Subpoena.

21 THE COURT: All right. All right. And the
22 individual's name is Billy Lewis, the address -- and these are
23 the records, so, if you will give us your assistance, sir, I
24 appreciate it very much.

25 All right. Where -- did Ms. Hanna come back from

COREY LEVAR SPARKMAN - DIRECT BY GARDNER

850

1 talking to Mr. Sparkman?

2 MR. FREDERICK: Also, Your Honor, the -- Johnny
3 Gardner.

4 THE COURT: All right. Mr. Frederick, let me give you
5 that other document back.

6 MR. FREDERICK: Thank you.

7 THE COURT: Tell them to come on up.

8 All right. Ask the jury to come back in, please sir.

9 And Mr. Gardner, who is your next witness after Mr.
10 Sparkman?

11 MR. GARDNER: From what I hear -- is -- Mayur Patel is
12 here?

13 MR. FREDERICK: Yes.

14 THE COURT: All right. And basically out in the
15 conference room outside?

16 MR. FREDERICK: He's right outside.

17 THE COURT: Very good.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Mr. Gardner, your next witness,
21 please sir.

22 MR. GARDNER: Thank you, Judge. Corey Sparkman.

23 THE COURT: All right, Mr. Sparkman, if you would come
24 around, please sir, be sworn. Thank you.

25 COREY LEVAR SPARKMAN, being first

1 duly sworn, testifies as follows:

2 **DIRECT-EXAMINATION BY MR. GARDNER:**

3 Q. Mr. Sparkman, good morning. You are out at J. Reuben
4 Long. That's where you are staying now; is that right?

5 A. Yes sir.

6 Q. All right. What is your position out there?

7 A. My position is inside of the B-3 living area, I'm the
8 spiritual leader as far as the Islam and the group on that
9 side over there, on B-3.

10 Q. What does that entail?

11 A. Dealing with the deed of Islam I'm the leader as far as
12 advising -- the spiritual advisor for some of the mission
13 brothers and things like that, so whatever problems that they
14 have, or situations or things, whatever is on their mind, they
15 come to me and we talk about the problem or the situation.

16 Q. Do y'all have regularly scheduled meetings?

17 A. Yes sir. We pray five times a day, and whenever our
18 site or our quarters are out, that's when we actually make
19 congregational salat, which means prayer.

20 Q. And do you know Craig Burris?

21 A. Yes sir, Mr. Burris, yes sir.

22 Q. All right. And how do you know him, sir?

23 A. He is also inside of the congregation, the prayer
24 circle, so whenever we come out to pray all of us meet up
25 together and we discuss, and congregate, and things like that.

COREY LEVAR SPARKMAN - DIRECT BY GARDNER

852

1 Q. Have you had a conversation with Mr. Burris about his
2 testimony in this case?

3 A. Yes sir. It was one of the days that we came out and
4 he looked kind of distorted, and I asked him what was his
5 problem, because that's my duty. Whenever I see a brother
6 that's distorted, or either something is on his mind I
7 actually go to him and ask him what's wrong, if he want to
8 talk about the situation, and he stated to me, he said,
9 something which was dealing with the past, something -- that
10 he was in a situation and he had to do what he had to do, and
11 he told me about his situation as far as him being in J.
12 Reuben Long now, and he said that he was going to have to do
13 what he had to do to get out of the situation.

14 Q. What did he mean by that?

15 A. As far as -- I put two and two together, which what
16 that means, either lie, or tell the truth about something, or
17 whatever, but as far as him talking about the past, he
18 basically lied to get up out of his situation.

19 Q. All right. I just met you this morning. Is that fair?

20 A. Yes sir.

21 Q. All right. I can't help you --- is there any way I can
22 help you out?

23 A. No sir.

24 Q. I don't have the key to the jail, right?

25 A. No.

1 Q. Okay. Did I promise you anything for your testimony?

2 A. No sir.

3 MR. GARDNER: All right. Please answer any questions
4 Mr. Frederick has.

5 THE COURT: All right, Mr. Frederick.

6 MR. FREDERICK: I have no questions, Your Honor.

7 THE COURT: Solicitor.

8 MR. RICHARDSON: Good morning, Mr. Sparkman.

9 A. How are you doing?

10 CROSS-EXAMINATION BY MR. RICHARDSON:

11 Q. This information that you received, did you contact the
12 Solicitor's Office to let us know?

13 A. No sir.

14 Q. And you said that Mr. Burris -- you saw him looking ---

15 A. Disturbed.

16 Q. Distorted -- disturbed?

17 A. Yes sir.

18 Q. He actually told you he couldn't focus on his prayer,
19 right?

20 A. Couldn't focus on -- yes, you are right.

21 Q. And he just said he was in a bad situation?

22 A. Well, he just stated that something was on his mind,
23 and also, basically, I could tell by his facial expression.

24 Q. And facing a murder charge is a bad situation, correct?

25 A. Yes sir.

COREY LEVAR SPARKMAN - CROSS BY RICHARDSON

854

1 Q. He didn't go any further than that though, did he?

2 A. Naw, no, he didn't. He didn't.

3 Q. He said that he would have to do what he had to do?

4 A. Yes.

5 Q. That could have been telling the truth, couldn't it?

6 A. Possibly. But a majority of the time, when he stated
7 his first situation, he basically told what he -- what he was
8 going to do, what he had to do, as far as whether it be a lie
9 or tell the truth, like you say.

10 Q. But he never said that he was going to lie?

11 A. No.

12 Q. Never said he was going to tell the truth?

13 A. No.

14 Q. He asked -- told you, there are some things in mind
15 about the situation, and what I have to do?

16 COURT REPORTER: Excuse me.

17 THE COURT: You have to answer out loud, sir.

18 A. Yes sir.

19 Q. Mr. Sparkman, Mr. Burris wasn't charged with that time
20 until August of this past year, right?

21 A. I don't know.

22 Q. Would it surprise you to learn that he originally gave
23 a statement in this case back in April of 2007 ---

24 A. Yes, it would surprise me.

25 Q. ---Before his murder charge?

1 A. Yes.

2 Q. Now, Craig Burris is in your prayer group, or was in
3 your prayer group, right?

4 A. Yes, he was.

5 Q. He's not in your pod any more, is he?

6 A. No sir.

7 Q. Anybody in this courtroom that is in your prayer group?

8 A. Yes sir.

9 Q. Who would that be?

10 A. Sakim.

11 Q. Sakim?

12 A. Sakim.

13 Q. Sakim?

14 A. Sakim?

15 Q. Okay. And I'm sorry if I mispronounced it.

16 A. No.

17 Q. And who would that be?

18 A. Brother right there, Mr. Sessions.

19 Q. Mr. Sessions. Now, what's the rule on snitching?

20 A. What's the rule on snitching? A snitch is a snitch.
21 That's how I look at it.

22 Q. Good thing or a bad thing?

23 A. It's a bad thing.

24 Q. So it's bad to have to snitch, right?

25 A. Yes.

MAYUR PATEL - DIRECT BY GARDNER

856

1 Q. You are not suppose to tell on a fellow brother?

2 A. You are not suppose to tell on a fellow brother. You
3 are not.

4 Q. So that could be what was disturbing Mr. Burris?

5 A. Possibly. I don't know.

6 MR. RICHARDSON: Thank you. Thank you, Mr. Sparkman.
7 I have no further questions, Your Honor.

8 A. You are welcome.

9 THE COURT: All right. Any redirect?

10 MR. GARDNER: No, Your Honor.

11 THE COURT: Mr. Frederick, anything?

12 MR. FREDERICK: No, Your Honor.

13 THE COURT: All right, sir.

14 Solicitor, anything else?

15 MR. RICHARDSON: No sir, Your Honor.

16 THE COURT: All right, sir.

17 All right. Y'all can -- Mr. Sparkman, go back then.
18 Thank you very much.

19 All right, Mr. Gardner, your next witness is.

20 MR. GARDNER: Billy Lewis, Your Honor.

21 Oh, I'm sorry. Mayur Patel, Your Honor.

22 THE COURT: Mayur Patel. All right.

23 Come around to be sworn, sir. Come on up here. I'm
24 sorry. Come on up here. Thank you.

25 MAYUR PATEL, being first duly

1 sworn, testifies as follows:

2 DIRECT-EXAMINATION BY MR. GARDNER:

3 Q. Good morning, sir.

4 A. Good morning.

5 Q. Thank you for coming.

6 Do you live in Myrtle Beach?

7 A. Actually I live in Pennsylvania, but I just got the
8 hotel now, so I came here for a few days. I was going to stay
9 here.

10 Q. All right. What is the name of your hotel?

11 A. Days Inn.

12 Q. Days Inn, and where is that located?

13 A. It's located on 3650 Waccamaw Boulevard.

14 Q. Can you say that one more time, please. I'm sorry.

15 A. 3650 Waccamaw Boulevard.

16 Q. Waccamaw. The one right -- okay. All right. The Days
17 Inn right over here off of 501?

18 A. Uh huh (indicating positive)

19 Q. All right. And did you bring any records with you
20 today?

21 A. Yes.

22 Q. All right.

23 A. I did bring from the June 6.

24 Q. Sir?

25 A. I bring the record for the June 6.

MAYUR PATEL - DIRECT BY GARDNER

858

- 1 Q. June 6. Okay. Any others, or just June 6?
- 2 A. No. I've got the 6th, 7th, 8th, 9th, 10th.
- 3 Q. 6th, 7th, 8th, 9th, 10th. Okay. Can you show those to
- 4 me, please?
- 5 A. Sure.
- 6 Q. Is that what they are? Is that ---
- 7 A. Yes.
- 8 Q. All right. Is this your only copy?
- 9 A. Yes. This is the only copy we have.
- 10 Q. Do you have other copies ---
- 11 A. We can print out ---
- 12 Q. Those are the ones you brought for court?
- 13 A. Yes. Yes.
- 14 Q. Okay. All right.
- 15 A. This is just for one day.
- 16 Q. This is one day. What day?
- 17 A. June 6th.
- 18 Q. June 6?
- 19 A. Yes.
- 20 Q. Okay.
- 21 A. This is the 9th.
- 22 MR. GARDNER: I would like to have this marked as ---
- 23 A. That is June 8, 9, 10, 11th and 12th.
- 24 Q. Okay. Start with this again. This is the 6th. We've
- 25 got ---

1 A. 6/8, 6/8.

2 Q. 6/8?

3 A. Yes.

4 Q. I'm going to put it back in the envelope.

5 This is ---

6 A. 6/9.

7 Q. 6/9.

8 A. 6/10.

9 Q. 6/10.

10 A. 6/11, and 6/12.

11 Q. All right. I don't think we need the whole -- all of
12 them, but I tell you what I'm going to do. I'm going to put
13 them back in the envelope ---

14 A. Okay.

15 Q. ---And get them marked as Exhibit for identification.

16 A. That's fine.

17 COURT REPORTER: Defendant, Sessions, Two through Six
18 for I.D..

19 THE COURT: All right. Do you intend to introduce
20 those in ---

21 MR. GARDNER: Yes sir.

22 THE COURT: Is there -- well, go ahead and ask your --
23 ask your questions.

24 Q. Mr. Patel, I'm going to hand you back these same
25 things. Now they have been marked for exhibits for the Court,

MAYUR PATEL - DIRECT BY GARDNER

860

1 for identification, Two through Six.

2 (DAYS INN RECORDS MARKED DEFENDANT, SESSIONS, EXHIBIT
3 NUMBERS 2 THROUGH 6, FOR IDENTIFICATION ONLY.)

4 Q. Look at that. I'm going to ask you if you can identify
5 those. All right.

6 A. All right.

7 Q. The same thing?

8 A. Sure.

9 Q. All right. These are records -- were they made with
10 your knowledge, information, and transmitted about the acts or
11 events appearing and contained therein?

12 A. Yes.

13 Q. Okay. All right.

14 A. Actually I was not the owner at that time, so I don't
15 have any idea about it.

16 Q. But it evolved from your company?

17 A. What you say?

18 Q. It is from your locale?

19 A. Yes. It's from my hotel, but it was the old record
20 before I got the hotel.

21 Q. Right. When you got them -- well, let me ask you this
22 question. Did these come out of the records, in fact, are
23 these records kept in the regular course -- of the ordinary
24 course of the regular business?

25 A. Yes sir.

1 Q. And are they made at the time they are entered into?

2 A. Yes sir.

3 Q. And what are they?

4 A. Those are the night audit track when the whole system
5 night audit, at night, with how many people was in the hotel.

6 Q. Okay.

7 A. They did the process on that. Those are the original
8 records for it.

9 Q. And that's the way it's done?

10 A. It's done every day.

11 Q. And these were done that way too?

12 A. Yes.

13 Q. Okay. All right. And that's for the Days Inn?

14 A. That's for the Days Inn.

15 MR. GARDNER: At this time I would offer these as
16 Defendant's Exhibits into evidence, Your Honor.

17 THE COURT: Any objection from the Defendant, Stephens?

18 MR. RICHARDSON: Your Honor, no objection.

19 THE COURT: All right. Any -- from the Solicitor?

20 MR. RICHARDSON: We have an objection, Your Honor.

21 THE COURT: All right. Very good.

22 All right. Do you need to ---

23 All right, ladies and gentlemen, go to your jury room.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JURY.)

JURY OUT/ON RECORD

862

1 THE COURT: All right, Solicitor.

2 MR. RICHARDSON: Your Honor, under the Rule for
3 business records the application -- the Rule requiring
4 authentication: A witness who does not know the manner in
5 which the records were prepared is not a proper authenticating
6 witness. That's State vs. Sarvis, 317 S.C. 102, 450 S.E. 2d
7 606. It's a Court of Appeals case from 1994.

8 Mr. Patel is the present owner of the hotel since he
9 just bought it, didn't own it back in 2006, so he would not
10 know how these records were kept back then, and it's just not
11 a proper authenticating witness in this instance, Your Honor.

12 THE COURT: All right, Mr. Gardner.

13 MR. GARDNER: Thank you, Judge. He testified that the
14 record was made by the person with knowledge, and the
15 information transmitted by that person with knowledge, and the
16 facts appearing thereon. The documents themselves are self-
17 authenticating. He says it was done in the normal course of
18 operation in his hotel, and even went into how that's done.

19 That is -- we have business custodians, and we have
20 people that can introduce business custodians (sic). All they
21 have to do is tell that they recognize it, they know it was
22 done, and it was done within the ordinary course of business.

23 THE COURT: All right. Can you ask Mr. Patel a couple
24 of questions, please. You have identified them as June 6, 7,
25 8, 9, and 10, but not the year. What year?

1 Also, if you could get his exact relationship to the
2 Days Inn, what his position is, if he just purchased it,
3 that -- did he rely upon the previous records of the
4 corporation to buy the business, and did he rely on these
5 types of records to enter into his agreement to buy the -- buy
6 the hotel.

7 MR. GARDNER: Thank you, Your Honor.

8 BY MR. GARDNER CONTINUED:

9 Q. Mr. Patel, what year -- I may not have asked you the
10 year for these.

11 A. Uh huh (indicating positive)

12 Q. What year, do you know?

13 A. It's 2006.

14 Q. 2006. Okay. And what is your position with the hotel?

15 A. I am the General Manager and part partner.

16 Q. General Manager and part partner. As General Manager
17 and part partner, when did you become that, or start to have
18 anything to do with the Days Inn?

19 A. I bought that in 14 November, 2008.

20 Q. 2008. All right. And when you bought it were these
21 records there?

22 A. Yes.

23 Q. All right. And prior to buying this did you have
24 negotiations with the people that were selling it to you?

25 A. For the price?

JURY OUT/ON RECORD

864

1 Q. Yes, or for anything.

2 A. Yes.

3 Q. And did you review information as far as the
4 transaction?

5 A. No. I did not review all this information about the
6 card documentation ---

7 Q. Okay.

8 A. ---But when I got that, the old previous manager, he
9 told me that we've got those kind of the issues.

10 Q. Oh, he did?

11 A. Yes. And he introduced me for that case, and I just
12 started that case during that period.

13 Q. Was he the one that was doing it back in June of 2006?

14 A. Yes.

15 Q. And he told you how it was done?

16 A. He was tell -- he has told me all the history about it,
17 and he says that is the case, and he is going to now --
18 playing from here. He said you have to go into court
19 sometimes, he said it requires that. I said, okay.

20 Q. And is he still -- I mean, are you still doing it the
21 same way?

22 A. Yes.

23 Q. And so you are doing it the same way based on your
24 conversation with the previous General Manager?

25 A. Uh huh (indicating positive)

1 Q. Is that right?

2 A. Yes.

3 Q. And based on that conversation with him that's the way
4 he was doing it back in June ---

5 A. Correct.

6 Q. ---So back to my question. That would be -- would that
7 be the regular course of the business?

8 A. It's regular course of the business because it was the
9 same systems, whatever computer system we are using now, and
10 on that time the software and computer, both are the same
11 thing.

12 Q. And when the information is generated and entered into
13 it's done the same way?

14 A. Uh huh (indicating positive) Yes.

15 THE COURT: All right, Solicitor, if you have some
16 questions I'll be glad for you to ask them.

17 BY MR. RICHARDSON:

18 Q. These documents aren't under a domestic seal, are they?

19 A. No. It was not in seal.

20 Q. Okay. They don't have the -- they don't have the
21 significant of any official from ---

22 THE COURT: They are not self-authenticating documents,
23 and they -- they cannot be introduced under that Rule.

24 MR. RICHARDSON: Mr. Gardner made that argument, Your
25 Honor.

JURY OUT/ON RECORD

866

1 THE COURT: I understand that. These are not self-
2 authenticating documents. They cannot fall within that Rule.
3 It has to to fall within the business Rule.

4 MR. RICHARDSON: Yes sir, Your Honor.

5 BY MR. RICHARDSON:

6 Q. You are relying on what the prior General Manager told
7 you?

8 A. I knew it had a lot of complications, but I can provide
9 them because he was the Manager, and he was Manager for two or
10 three years, so ---

11 Q. He could have doctored the documents?

12 A. What, sir?

13 Q. He could have altered the documents in some way.

14 A. No. He has only the night audit backup.

15 Q. You don't have any idea about the truthfulness of what
16 he told you?

17 A. I don't have any idea about that.

18 MR. RICHARDSON: Your Honor, I still say that the
19 witness does not have knowledge to the manner in which the
20 records were prepared. He's relying on hearsay from the prior
21 Manager, and that Manager, while yes, would be a perfectly
22 good witness at that point, to lay the foundation for these,
23 but at this time the State would maintain it's objection.

24 And further, Your Honor, hearsay evidence cannot be used
25 to prove a signature. I would go forward with that. It's not

1 to prove a signature, but hearsay evidence can't be used to
2 lay that foundation for these are the proper documents; this
3 is the way they were kept back then.

4 THE COURT: All right. Let me -- can you tell me, Mr.
5 Gardner, what it is that you are expecting to ask of this
6 witness, or to show later on, the jury, from these particular
7 records?

8 MR. GARDNER: I Subpoenaed these records, Your Honor,
9 more correctly Bobby had, to -- for the dates June 8 through
10 11, 2006, and it contains the names of the registered guests
11 for those dates, and I plan on asking him if the names Jimmy
12 Lee Sessions, Christopher Stephens, James Pearl or James Davis
13 are contained in any of those dates.

14 THE COURT: All right. And that is the sole purpose
15 for which you are asking to introduce these documents; is that
16 correct?

17 MR. GARDNER: Yes sir.

18 THE COURT: All right, sir. Not as to any signatures
19 contained therein, or identification of a particular person
20 through signature or anything like that?

21 MR. GARDNER: No sir, not -- not in -- and also, not
22 about any specific individual other than the ones that are
23 involved in this case.

24 THE COURT: To see if their names are contained in
25 those records?

JURY IN
DIRECT BY GARDNER CONTINUED

868

1 MR. GARDNER: Yes sir.

2 THE COURT: All right. I'm going to allow the records
3 into evidence under Rule 803-6 regarding records of regularly
4 conducted activity. I do believe that they fall within that
5 particular exception to the hearsay rule, and I'm going to
6 allow them into evidence under that particular exception. as -

7 Just to make sure regarding the previous issue that I
8 stated, these are not self-authenticating documents, cannot be
9 placed in under that Rule. I am not allowing them in under
10 that Rule, but I am allowing them under 803-6.

11 MR. RICHARDSON: Yes sir, Your Honor.

12 THE COURT: All right.

13 All right. Ask the jury to come back in, please.

14 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
15 JURY.)

16 THE COURT: All right, Mr. Gardner, you may continue,
17 sir.

18 MR. GARDNER: Thank you, Your Honor.

19 DIRECT BY MR. GARDNER CONTINUED:

20 Q. And Mr. Patel, these were previously marked for
21 identification, now moving them in for exhibits.

22 THE COURT: All right. So these are Defendant,
23 Sessions, Exhibits 2 through 6, and they are in evidence over
24 the objection of the State.

25 MR. GARDNER: Thank you, Your Honor.

JURY IN
DIRECT BY GARDNER CONTINUED

869

1 THE COURT: All right, sir.

2 (DAYS INN RECORDS PREVIOUSLY MARKED DEFENDANT, SESSIONS,
3 EXHIBITS 2 THROUGH 6 FOR IDENTIFICATION NOW ADMITTED INTO
4 EVIDENCE AS DEFENDANT, SESSIONS, EXHIBITS 2 THROUGH 6.)

5 Q. All right, Mr. Patel, you have a Subpoena for these
6 documents; is that right?

7 A. Yes sir.

8 Q. All right. And these contain the registry, the guests
9 for the hotel, for the dates of June 8, 9, 10, and 11?

10 A. Eleven, yes.

11 Q. Is that right?

12 A. Yes.

13 Q. All right. Have you reviewed those documents, and do
14 they contain the names -- any of the following names? Jimmy
15 Lee Sessions?

16 A. No.

17 Q. Christopher Stephens?

18 A. No.

19 Q. James Pearl?

20 A. No.

21 Q. James Davis?

22 A. No. Not on -- in that list.

23 Q. All right. And when you are saying that list you are
24 talking about all these lists?

25 A. All of these dates.

MAYUR PATEL - CROSS BY FREDERICK
MAYUR PATEL - CROSS BY RICHARDSON

870

1 MR. GARDNER: Thank you, sir. Please answer any
2 questions Mr. Frederick has.

3 THE COURT: Mr. Frederick.

4 MR. FREDERICK: Yes sir.

5 CROSS-EXAMINATION BY MR. FREDERICK:

6 Q. And you did say you weren't working at the motel in
7 2006, right?

8 A. Yes.

9 Q. You started in November of ---

10 A. November 14, 2008.

11 Q. Okay. Is it your practice to check people's I.D.s when
12 they check into the hotel?

13 A. Yes. We always check the I.D.. If somebody else makes
14 the registrations we check the I.D., get his name, and put it
15 in the record.

16 Q. You always do that?

17 A. We will always do that.

18 MR. FREDERICK: No more questions.

19 THE COURT: All right, Solicitor.

20 MR. RICHARDSON: Your Honor, if we may have just one
21 moment to look at these real quick.

22 THE COURT: Yes sir.

23 MR. RICHARDSON: Thank you, Mr. Patel.

24 CROSS-EXAMINATION BY MR. RICHARDSON:

25 Q. You said you just bought the Days Inn, right ?

MAYUR PATEL - CROSS BY FREDERICK
MAYUR PATEL - CROSS BY RICHARDSON

871

- 1 A. Right.
- 2 Q. That was November 14, 2008?
- 3 A. Yes.
- 4 Q. Well, congratulations. Thank you for doing business
5 here in Horry County.
- 6 A. Thank you.
- 7 Q. Prior to that you had no association whatsoever with
8 this Days Inn?
- 9 A. No.
- 10 Q. And these documents, you got them from the prior
11 General Manager, right?
- 12 A. Right.
- 13 Q. Based solely off what he told you?
- 14 A. He just told me about that case, like if you need to go
15 somewhere we have all kinds of records in the upstairs records
16 room.
- 17 Q. But other than that, you weren't there when these
18 records were made?
- 19 A. And he bring the record to me, like, okay, those, they
20 are basically taken out for you.
- 21 Q. So we are relying on his work?
- 22 A. Right.
- 23 Q. You would have no idea if someone used a false name to
24 check into a room, would you?
- 25 A. I don't have any clue for that.

MAYUR PATEL - CROSS BY FREDERICK
MAYUR PATEL - CROSS BY RICHARDSON

872

- 1 Q. And the Days Inn, does it have hard keys, or does it
2 have key cards or ---
- 3 A. It's a key card.
- 4 Q. Do you have maintenance staff there?
- 5 A. Yes, we do.
- 6 Q. Do they have a master key card to get in the rooms?
- 7 A. But they have to sign the key, like key log book, what
8 time they got the key, what time they returned the key.
- 9 Q. How about the maids? Do they have a key card?
- 10 A. They have a key card too.
- 11 Q. So they could get into a room?
- 12 A. They can get in the rooms.
- 13 Q. And who was the Desk Manager back on June 9th, 2006, do
14 you know that?
- 15 A. No.
- 16 Q. This General Manager you spoke to, was he the Desk
17 Manager back at that night?
- 18 A. I don't have any idea about that.
- 19 Q. So we don't know who the Desk Manager was?
- 20 A. No.
- 21 Q. We don't know who he might have handed keys out to ---
- 22 A. No.
- 23 Q. ---Be it room -- be any of the rooms?
- 24 A. No.
- 25 Q. 301, 302, 303. We don't know. 801. We just don't

1 know?

2 A. We don't know that.

3 Q. A lot of people have access to those rooms, right?

4 A. Might be maintenance person, housekeeper, or somebody
5 else, because I was not owner at that time, so I don't have
6 any record for that.

7 Q. Right. You aren't -- you weren't there then. You
8 don't know what quality of employees they had back then?

9 A. No.

10 Q. Would you expect a killer to register under his name?

11 A. I don't have any idea been it.

12 MR. GARDNER: I don't know if he's qualified to answer
13 that, Judge.

14 THE COURT: Sustained. Sustained.

15 Q. And you have no idea -- you weren't even in Myrtle
16 Beach back in June of 2006?

17 A. No.

18 MR. RICHARDSON: Mr. Patel, thank you. Have a good
19 trip back.

20 MR. GARDNER: I just want to follow up one of those
21 questions.

22 THE COURT: Yes sir.

23 RE-REDIRECT-EXAMINATION BY MR. GARDNER:

24 Q. He asked you about conversations, relying on the former
25 General Manager. Do you do your record-keeping the same way?

MAYUR PATEL - RE-REDIRECT BY GARDNER

874

1 A. Yes. We do keep the same way. And he also keep
2 everything same way in the upstairs, in sixth floor room.

3 Q. So there's no doubt in your mind that that's an
4 accurate record?

5 A. No. It's accurate record, because the system and
6 computer system, everything is the same thing way. I am using
7 the same computer system, same software which is offered by
8 the Days Inn franchise.

9 Q. You don't doubt that yours is accurate today, the ones
10 y'all are doing today?

11 A. Right.

12 Q. Conversely, do you have any doubt whether or not the
13 ones that he was doing back in June of '06 are accurate?

14 A. It should be the same way. We have to be the same way.
15 That's right.

16 MR. GARDNER: Thank you, sir.

17 THE COURT: Do you wish this witness to be excused?

18 MR. GARDNER: Yes sir. Thank you, Judge.

19 THE COURT: All right. Any objection? Any objection?

20 MR. RICHARDSON: No, Your Honor.

21 THE COURT: All right, sir.

22 You may step down, sir. You are released from your
23 Subpoena. You may go back to your business, sir.

24 A. Thank you.

25 THE COURT: All right, gentlemen, y'all come and talk

1 to me for a second.

2 MR. RICHARDSON: Thank you, Mr. Patel.

3 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

4 THE COURT: All right. Thank y'all

5 All right, ladies and gentlemen, we are going to have
6 some delay. I don't know that I can go into all the aspects
7 of it, but needless to say, on one of them, or on all of them,
8 that the parties have done everything they were suppose to do.
9 There are other entities or agencies involved and there is
10 some delay on their part, not on the part of the parties in
11 the courtroom.

12 So, we have three witnesses left on behalf of the
13 Defense, and rather than having you sit there, back in the
14 jury room, for an extended period of time while those come to
15 us I'm going to excuse y'all until 12:30. You will be on your
16 own until 12:30. Be back in your jury room at 12:30, and
17 hopefully at that point in time those three witnesses will be
18 present here and we'll go forward with the testimony of those
19 three witnesses. All right.

20 Please remember, don't talk about the case. Don't allow
21 anybody to talk to you about it. Keep your badges on when you
22 are outside the courtroom.

23 Thank you very much.

24 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
25 JURY.)

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

876

1 THE COURT: All right. We'll be at ease until 12:30,
2 and hopefully -- I would expect, Mr. Gardner and Mr.
3 Frederick, y'all will monitor those three witnesses with the
4 necessary parties, and try and make sure everybody gets here.
5 All right.

6 MR. GARDNER: Yes sir. Thank you.

7 MR. RICHARDSON: Thank you; Your Honor.

8 (THE FOLLOWING TAKES PLACE AFTER THE LUNCH BREAK AND
9 OUTSIDE THE PRESENCE OF THE JURY.)

10 THE COURT: What is the status of those three witnesses
11 that we've been awaiting?

12 MR. GARDNER: I have one standing outside the door, one
13 in lock-up.

14 MR. FREDERICK: The other one is in the courthouse
15 parking lot, will be up by the time we finish.

16 THE COURT: Very good.

17 All right. Ask the jury to come in then.

18 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
19 JURY.)

20 THE COURT: All right, Mr. Gardner, your next witness,
21 please sir.

22 MR. GARDNER: Mr. Patel.

23 THE COURT: All right, sir. Please come around and be
24 sworn, sir.

25 MRUGESH PATEL, being first duly

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

877

1 sworn, testifies as follows:

2 DIRECT-EXAMINATION BY MR. GARDNER:

3 Q. Mr. Patel, are you here today under Subpoena?

4 A. Yes, I am.

5 Q. Okay. And do you own a hotel here in Horry County?

6 A. Yes, I do.

7 Q. What's the name of that hotel?

8 A. America's Best Value Inn.

9 Q. Okay. Did you own that back in June of 2006?

10 A. Yes, I did.

11 Q. What was the name of it back in 2006?

12 A. It was Best Value Inn.

13 Q. Okay. All right. In your Subpoena did it ask for you
14 to bring any records with you today?

15 A. Yes, they did.

16 Q. Did you bring those records?

17 A. Yes, I did.

18 Q. Do you have them with you?

19 A. I'm sorry. It's in the office there.

20 THE COURT: Where are they at, sir?

21 A. In the waiting area. They left it over there, I think.

22 Q. Where the Deputy had you over there?

23 A. Yes. Uh huh (indicating positive)

24 Q. And do you off the top of your head what these records
25 will reflect?

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

878

1 A. It's basically a night audit of the hotel.

2 Q. All right. All right. I'm just going to pass it up to
3 you, ask you if you recognize it.

4 A. Yes, these are my records.

5 Q. And what dates do they reflect?

6 A. They are from June the 8th, 2006, June the 9th, June
7 7th -- I mean, June the 10th, and June the 11th, 2006.

8 Q. All right. Of 2006.

9 MR. GARDNER: Going to mark all these together as one
10 exhibit.

11 (NIGHT AUDITS FOR JUNE 8, 9, 10, 11, 2006 MARKED
12 DEFENDANT, SESSIONS, EXHIBIT NUMBER 7, FOR IDENTIFICATION
13 ONLY.)

14 Q. All right. Now, I hand it back to you with this mark
15 on it, and these are the records -- all right, these records -
16 - is it the regular practice of your hotel to make these type
17 of records?

18 A. It is.

19 Q. And were these records kept in the ordinary course of
20 your regularly conducted business?

21 A. It is.

22 Q. Have you had an opportunity to review these records?

23 A. Yes, I did.

24 Q. And do they accurately and correctly reflect -- let me
25 ask you, what do they -- are they reported to reflect, records

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

879

1 of ---

2 A. It's basically the names of the guests who stayed on
3 those nights.

4 Q. Okay. Without telling me anything further, is it an
5 accurate and correct reflection of that?

6 A. It is.

7 MR. GARDNER: At this time, Your Honor, I would move to
8 introduce it as Defendant, Sessions, Exhibit 7.

9 THE COURT: All right. Any objection, Mr. Frederick?

10 MR. FREDERICK: No, Your Honor.

11 THE COURT: Solicitor.

12 MR. RICHARDSON: Yes, Your Honor. If we may approach
13 briefly.

14 THE COURT: Yes sir.

15 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

16 Q. I've still got them, Mr. Patel. Your hotel, in June of
17 2006, the name of it was the Knights Inn?

18 A. No, it wasn't. It wasn't. Uh uh (NODS NEGATIVE)

19 Q. Was the name ---

20 A. It was called Best Value Inn, and due to franchise
21 problems they put America's in the front.

22 Q. All right.

23 A. But it was Knights Inn, I'm guessing before 2000
24 sometime. I wasn't there.

25 Q. Okay. Let me ask you, when did you start -- you said

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

880

1 you weren't there before. When did you start being there?

2 A. We bought it in 2003, January, and every since then
3 it's been America's Best Value Inn, Best Value Inn.

4 Q. Okay. Did it ever have a sign out front that has the
5 name of it?

6 A. Not ever since I've been there, no.

7 Q. All right. Can you tell the Court the address is for
8 it?

9 A. 3622 Highway 501, Myrtle Beach, South Carolina.

10 Q. Can you give me the general area that it's in? Can you
11 describe it for me?

12 A. It's across from that new park. It's about two miles
13 south of Tanger's Outlet Mall.

14 Q. Okay. Are you aware of any Days Inn out there?

15 A. Yes, I am.

16 Q. Is it in the general area?

17 A. It's about a block from us, yes, right next to us.

18 Q. About a block from you?

19 A. Yes.

20 Q. All right. Is there a Knights Inn out there?

21 A. No.

22 Q. Do you know of any Knights Inn?

23 A. No.

24 Q. Has anybody ever referred to your hotel as the Knights
25 Inn?

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

881

1 A. They have.

2 Q. Do you recall any police officers coming and talk to
3 you, and ask about any cases ever before?

4 A. You mean in regards to Knights Inn?

5 Q. Yes sir.

6 A. No. No.

7 Q. Did anybody ever refer to it as the ---

8 A. No.

9 Q. ---Knights Inn ---

10 A. Not the police officer.

11 Q. ---When they came ---

12 A. I don't think so, no.

13 Q. Okay. Did anybody else refer to it as the Knights Inn?

14 A. Some of the guests do from previous stays, yes sir.

15 Q. All right. And there is no Knights Inn in the area?

16 A. Ever since I've been there, no.

17 Q. All right.

18 MR. GARDNER: Your Honor, I would move to offer these
19 records.

20 THE COURT: Objection, Solicitor?

21 MR. RICHARDSON: Judge, the same.

22 THE COURT: All right. I'm going to allow the records
23 in over the objection of the State.

24 (NIGHT AUDIT RECORDS PREVIOUSLY MARKED DEFENDANT,
25 SESSIONS, EXHIBIT NUMBER 7 FOR IDENTIFICATION NOW ADMITTED

JURY IN
MRUGESH PATEL - DIRECT BY GARDNER

882

1 INTO EVIDENCE AS DEFENDANT, SESSIONS, EXHIBIT NUMBER 7.)

2 MR. GARDNER: Okay. So they are in evidence.

3 Q. All right, sir, ---

4 MR. RICHARDSON: Your Honor, if we may have a moment to
5 review those records.

6 THE COURT: Certainly.

7 MR. GARDNER: Do you need these for me to ask you a
8 couple of questions about them?

9 A. No, that's fine.

10 Q. Okay. Your Subpoena asked you if you would look it
11 over and see if it had a list of names on it. Did you have a
12 chance to do that?

13 A. Uh huh (indicating positive) We did.

14 Q. And the names include Jimmy Lee Sessions -- was that
15 one of them ---

16 A. Yes, it was.

17 Q. ---For you to look for.

18 A. Uh huh (indicating positive)

19 Q. Was his name on any of those records?

20 A. No, not on the records, no.

21 Q. All right. Christopher Stephens?

22 A. No, it wasn't.

23 Q. All right. How about James Pearl?

24 A. It wasn't.

25 Q. How about James Davis?

1 A. It wasn't.

2 Q. These records are kept in the normal course of -- of
3 your operation?

4 A. From the last six years, uh huh (indicating positive)

5 Q. They accurately and correctly reflect who was staying
6 there?

7 A. It does.

8 Q. All right. And is there a procedure when people check
9 in at your hotel?

10 A. We normally check driver's license, we put down the
11 address, I.D. number, driver's license number and all that
12 stuff on there. Everything is there.

13 MR. GARDNER: All right. Thank you, sir, and please
14 answer any questions that Mr. Frederick has.

15 THE COURT: Mr. Frederick.

16 CROSS-EXAMINATION BY MR. FREDERICK:

17 Q. Just a couple. So you do check driver's license?

18 A. Yes, we do.

19 Q. Always?

20 A. All of it.

21 Q. Okay. And although the motel is not, at this time,
22 called the Knights Inn, it has been referred to as the Knights
23 Inn?

24 A. Sometimes.

25 Q. Okay. And there is no other motel in that area that's

MRUGESH PATEL - CROSS BY RICHARDSON

884

1 called the Knights Inn, is there?

2 A. No.

3 Q. Okay.

4 MR. FREDERICK: Thank you.

5 THE COURT: Solicitor, any questions?

6 MR. RICHARDSON: Just a few.

7 CROSS-EXAMINATION BY MR. RICHARDSON:

8 Q. Mr. Patel, if I may show you, on Defense Exhibit 7,
9 Sessions, this is Room 301, correct?

10 A. Uh huh (indicating positive)

11 Q. There is no I.D. number on here, correct?

12 A. No. Well, we put it in the computer. This is just a
13 registrar of the guests we log, you know.

14 Q. So you don't have a copy of that now? You don't have -

15 --

16 A. We don't make the copies of the I.D.s, no sir, we
17 don't. We just punch it in.

18 Q. That was cash?

19 A. Excuse me.

20 THE COURT: Show it to him.

21 Q. That was paid for in cash, right?

22 A. Yes, uh huh (indicating positive)

23 Q. Did you work the front desk the night of June 9th?

24 A. I don't believe I did, no. Q. Do you know who worked the
25 desk the night of June 9th?

1 A. I don't remember. I can check it out.

2 Q. Would it be on here?

3 A. I don't know. Let me see the initials on there.

4 There is a scribbling on there, but I can't make out who
5 the -- there's suppose to be a clerk's initials on there, but
6 I can't make out who it is. It was so long ago and I can't
7 tell.

8 Q. Okay. So basically you don't know who was working that
9 night?

10 A. No sir.

11 Q. Who they let in, other than whatever their records
12 reflect?

13 A. Well, they will check the I.D.s before they check
14 anybody in.

15 Q. But you don't keep records of those I.D.s, right?

16 A. No, we don't.

17 Q. There have been numerous drug arrests at that hotel,
18 correct?

19 A. There has been one that I know of.

20 Q. Do you have maintenance workers?

21 A. Yes, I do.

22 Q. And you have, I assume, a cleaning crew?

23 A. Cleaning crew, uh huh.

24 Q. Does the hotel have the little plastic cards, or a hard
25 key?

MRUGESH PATEL - CROSS BY RICHARDSON

886

- 1 A. The card key, plastic card.
- 2 Q. Plastic card?
- 3 A. Uh huh (indicating positive)
- 4 Q. And there's maintenance workers and cleaning crews. Do
- 5 they have those cards too?
- 6 A. Yes, master keys to get in, uh huh (indicating
- 7 positive)
- 8 Q. And there were vacant rooms the night of June 9th,
- 9 2006, correct?
- 10 A. Probably, more -- I guess. I'm not sure. Yes.
- 11 Q. The master key would have got anybody into any of them?
- 12 A. It would, but all the master keys are left in the
- 13 office at night, before the day is out
- 14 Q. Do you know for a fact that all master keys ---
- 15 A. I do. I do. It's in my office locked up. Uh huh
- 16 (indicating positive)
- 17 Q. But the -- whoever is working the front desk, they
- 18 could have put somebody in that room for cash, right?
- 19 A. They wouldn't, because I'm there every morning, not --
- 20 and not in my knowledge. They would never do that. I've got
- 21 cameras there. They would not do that.
- 22 Q. But what time were you there on the morning of June
- 23 10th, 2006?
- 24 A. I'm not sure. That was a long time ago, but ---
- 25 Q. So you don't know for a fact whether you were there or

1 not?

2 A. At night, when they check them in, in the evening,
3 whenever, I'm not sure, you know, but ---

4 Q. You don't remember the night of June 9th, or the
5 morning of June 10th, 2006?

6 A. I don't remember it, no. That's not -- not exactly,
7 no.

8 Q. So we are depending on whatever records ---

9 A. That's it.

10 Q. ---Of whatever clerk, that we don't have testifying?

11 A. I -- I mean, if you are looking for a particular person
12 I can get the record, but if the person didn't stay there
13 there's no way I can get a record of him, you know.

14 Q. If a clerk would take a false name?

15 A. They wouldn't be checked in, because the I.D. has to
16 match, and no I.D. hasn't matched the picture.

17 Q. But that's assuming that this clerk, that you can't
18 make out their initial, that you can't remember who it was ---

19 A. Uh huh (indicating positive)

20 Q. ---Wasn't taking cash under the table?

21 A. I mean, I don't know what you are trying to say, that
22 people are stealing from me. If they are I would usually
23 catch them, but I haven't seen that happen in six years.

24 Q. Well, would you allow drug dealers to check into your
25 hotel?

ROY GRANT - DIRECT BY GARDNER

888

1 A. No, I don't.

2 Q. But there have been drug arrests at your hotel?

3 A. They might have check it in. We don't screen people,
4 but we kick them out. You can ask the deputies. I mean, that
5 hotel was a mess when I got in. It has been cleaned up in the
6 last six years. That is a fact.

7 MR. RICHARDSON: Thank you, Mr. Patel. No further
8 questions.

9 THE COURT: Any redirect?

10 MR. GARDNER: I would ask that he be excused at this
11 time.

12 THE COURT: Any objection?

13 MR. FREDERICK: No objection.

14 THE COURT: Any objection? Solicitor, any objection?

15 MR. RICHARDSON: None, Your Honor.

16 THE COURT: All right, sir. You are released from your
17 Subpoena to go back to your regular activities, sir.

18 Thank you.

19 All right, Mr. Gardner, your next witness, please sir.

20 MR. GARDNER: Roy Grant, Your Honor.

21 THE COURT: All right.

22 ROY GRANT, being first duly sworn,
23 testifies as follows:

24 DIRECT-EXAMINATION BY MR. GARDNER:

25 Q. Mr. Grant, on June 9th of the year 2006, did you go to

1 the house on Pridgen Street that was the scene of these
2 murders involved in this case?

3 A. Yes.

4 Q. All right. Do you remember what time you went there?
5 Early afternoon?

6 A. No. Yes, it was around like six, six o'clock,
7 something like that.

8 Q. Okay. And did you meet anyone when you were there?

9 A. Yes. I obviously met Antwann and -- Antwann and
10 Melissa was there before me, so ---

11 Q. All right. Did you meet -- meet up with them? Did you
12 see them?

13 A. They was there before I got there.

14 Q. They were still there when you got there?

15 A. Yes.

16 Q. All right. So the three of y'all were there?

17 A. Yes.

18 Q. All right. Did y'all go into the house?

19 A. Yes.

20 Q. All right. And how many times did you go in the house?

21 A. Just once.

22 Q. Just once?

23 A. Yes.

24 Q. Okay. Did you get a chance to see -- or let me ask you
25 this. Did you take anything out of the house?

ROY GRANT - CROSS BY ELDER

890

1 A. Naw, no sir.

2 Q. All right. Did you see anybody else take anything out
3 of the house?

4 A. No sir.

5 MR. GARDNER: That's all I have. Please answer any
6 questions Mr. Frederick has for you.

7 THE COURT: All right, Mr. Frederick.

8 MR. FREDERICK: No questions, Your Honor.

9 THE COURT: All right. Solicitor.

10 MS. ELDER: One moment, Your Honor.

11 CROSS-EXAMINATION BY MS. ELDER:

12 Q. Mr. Grant, how did you get to Pridgen Road that night?

13 A. On my mo-ped.

14 Q. On your mo-ped?

15 A. Uh huh (**indicating positive**)

16 Q. And when you went to Pridgen Road on your mo-ped, did
17 you go in -- do you know whose house that was?

18 A. Yes.

19 Q. Jamilla Hightower and Monica Wall lived there?

20 A. Yes. Uh huh (**indicating positive**)

21 Q. Okay.

22 THE COURT: You need to say yes or no, please sir. Was
23 that an answer -- yes or a no?

24 A. Yes. Yes Ma'am.

25 Q. Okay. And you know what Jamilla did for her -- for

1 business, right?

2 A. Yes Ma'am.

3 Q. She sold drugs?

4 A. Yes Ma'am.

5 Q. All right. And were you a client of her's in the past?

6 A. Say that again.

7 Q. Were you a client? Did you do business with her every
8 once in a while?

9 A. No Ma'am. Uh uh (NODS NEGATIVE)

10 Q. All right. Well, when you went to Pridgen Road that
11 night on your mo-ped, you didn't go in that house nineteen
12 hours later -- nineteen hours before that, did you?

13 A. No Ma'am.

14 Q. You didn't execute Melissa -- I'm sorry. You didn't
15 execute Monica Wall and Jamilla Hightower, did you?

16 A. No.

17 Q. You didn't come back nineteen hours later and take
18 anything out of the house, and then escape on your mo-ped, did
19 you?

20 A. No Ma'am.

21 MS. ELDER: No further questions, Your Honor.

22 THE COURT: Mr. Gardner, any redirect?

23 MR. GARDNER: No, Your Honor.

24 THE COURT: Mr. Frederick.

25 MR. FREDERICK: Nothing.

MELISSA GOMEZ - DIRECT BY GARDNER

892

1 THE COURT: All right, sir.

2 Gentlemen.

3 You can step down, sir. Thank you.

4 A. All right.

5 THE COURT: All right, Mr. Gardner, your next witness,
6 please sir.

7 MR. GARDNER: Melissa Gomez, Your Honor.

8 THE COURT: All right.

9 THE COURT: And is she in the back? Where ---

10 MR. GARDNER: I believe she's coming in through that
11 door there. Melissa Gomez.

12 THE COURT: Gentlemen, there is no reason that Mr.
13 Grant cannot be returned ---

14 MS. ELDER: No, Your Honor.

15 MR. GARDNER: No reason, Judge.

16 THE COURT: Very good. Thank you.

17 MELISSA GOMEZ, being first duly
18 sworn, testifies as follows:

19 DIRECT-EXAMINATION BY MR. GARDNER:

20 Q. Good afternoon, Ms. Gomez.

21 Do you -- tell us where you live.

22 A. In Pennsylvania.

23 Q. All right. Back in June of 2006, were you living in
24 Horry County?

25 A. Yes.

1 Q. Are you familiar with Pridgen Road, the house of
2 Jamilla Hightower?

3 A. Yes.

4 Q. All right. Were you there on June 9th, Friday, the
5 year 2006?

6 A. I -- yes. Was it the day that they was found?

7 Q. Yes, the day they were found.

8 A. Yes.

9 Q. All right. And do you know how they were found?

10 A. I found them laying -- Jamilla was laying on the floor
11 and Monica was in the bathroom in my shower.

12 Q. Okay. I guess that's how I should have said it. Who
13 found them. It was you, so ---

14 A. Me, and then -- yes.

15 Q. And that was Friday ---

16 A. Yes.

17 Q. ---June 9th, 2006. Who was with you, if anybody?

18 A. Antwann.

19 Q. Antwann Higgins?

20 A. Uh huh (indicating positive)

21 Q. All right. And you went into the house. Did you go in
22 the house by yourself?

23 A. Yes.

24 Q. All right. And did you come out, or did you stay in
25 the house?

MELISSA GOMEZ - DIRECT BY GARDNER

894

1 A. I came out and told Antwann to come into the house.

2 Q. All right. And did he go in the house?

3 A. Well, he was asking me why, and I told him that he just
4 needs to get into the house because something is wrong.

5 Q. Okay. Did he go into the house?

6 A. Yes, he did.

7 Q. All right. And at some point in time did anybody else
8 go into the house?

9 A. Yes.

10 Q. And who was that?

11 A. Roy Grant.

12 Q. All right. What time did you get there?

13 A. I don't know.

14 Q. Early afternoon, late afternoon, dark time?

15 A. It wasn't dark yet. Later in the afternoon, but it
16 wasn't dark.

17 Q. All right. Okay. How long do you think that you and
18 Roy and Antwann were there?

19 A. Me and Antwann got there first, and Roy stopped by and
20 asked Antwann if Jamilla was there, and he said, no, she's
21 gone, and he came into the house briefly, and then he left.

22 Q. All right. I didn't understand part of what you said,
23 but my question was, how long were you there?

24 A. I was there pretty much the whole night. When -- after
25 the cops were called we was there. I'm not sure what time we

1 left, but we was there pretty much the rest of the night.

2 Q. All right. I'll try to ask it a different way. How
3 long were the three of y'all there when the two of you -- how
4 long were you there before any police officers came?

5 A. About ten minutes, maybe five. I'm not really sure,
6 just long enough for the police to get there. After I told
7 Antwann to call the cops I think my neighbor called the cops,
8 and then they came.

9 Q. You think that's what happened?

10 A. That's what happened.

11 Q. Okay. Did y'all take anything out of the house?

12 A. I took a briefcase out of the house, yes.

13 Q. And was it a safe briefcase?

14 A. A regu ---

15 Q. Was it a safe or was it a briefcase?

16 A. A briefcase.

17 Q. Does it have similar characteristics of a safe?

18 A. I don't know.

19 Q. Okay. All right. Did it have dope in it?

20 A. I don't know what was in it.

21 Q. You didn't look in it?

22 A. No.

23 Q. Did you take anything else out of the house, other than
24 the safe?

25 A. No.

MELISSA GOMEZ - CROSS BY FREDERICK

896

1 Q. All right.

2 MR. GARDNER: Please answer any questions Mr. Frederick
3 has for you.

4 THE COURT: Mr. Frederick.

5 MR. FREDERICK: Yes, Your Honor. Beg the Court's
6 indulgence.

7 THE COURT: Yes sir.

8 CROSS-EXAMINATION BY MR. FREDERICK:

9 Q. Hey, Melissa.

10 A. Hi.

11 Q. When you went into the house did you move any furniture
12 around?

13 A. Yes. Whenever I walked into the house I walked down
14 the hallway, and I realized my nightstand was knocked over so
15 I picked it up and sat it upright.

16 Q. Was there a dresser also?

17 A. No, just the nightstand.

18 Q. Just the nightstand. Okay. Antwann didn't go into the
19 house with you at first?

20 A. Right.

21 Q. Okay. And was that because he was fighting with
22 Jamilla at the time?

23 A. They was arguing. They didn't get along at the time.

24 Q. And so he didn't want to go into the house?

25 A. Right.

1 Q. Okay. Before all of this happened, before the
2 investigation and everything, had you ever met Investigator
3 DiLorenzo?

4 A. No.

5 Q. Okay. In your interviews with Investigator DiLorenzo
6 regarding this case, do you remember him asking you about your
7 mom's case? I don't want to go into detail ---

8 A. Yes.

9 Q. ---About that, but do you remember that?

10 A. Uh huh (indicating positive) Yes.

11 Q. And did he work on your mom's case?

12 A. I'm not sure.

13 Q. Okay. You don't remember him talking to you about it?

14 A. He talked to me about it, but I don't know if he's the
15 one that worked the case or not.

16 Q. Okay. At one point -- and I understand this was a long
17 time ago, I mean, it was a couple of years ago. But in one of
18 the early times when he talked to you do you remember him
19 saying that -- and I think he was just trying to clear the air
20 -- saying that y'all had a special bond because of what he did
21 to help your mother. Do you remember that?

22 A. No, I don't.

23 Q. Okay. Was Salena Mann involved in that case?

24 A. I don't know.

25 Q. You don't know. Okay. When you and Antwann went to

MELISSA GOMEZ - CROSS BY FREDERICK

898

1 Jamilla's house on Friday, June the 9th, what car were you
2 driving?

3 A. It was a white car, one of his friend's car, I believe.
4 He name was Jill. I don't know what kind of car it was.

5 Q. Okay. White Ford Thunderbird?

6 A. It might have been.

7 Q. Okay. And was that Jill Holland?

8 A. Yes.

9 Q. Antwann borrowed the car from her that day?

10 A. Yes.

11 Q. Okay. When you arrived at the house, were the lights
12 on?

13 A. No.

14 Q. Okay. Was the T.V. on?

15 A. I don't believe so.

16 Q. Was there music playing, a radio?

17 A. No.

18 Q. And you also told the investigators that -- to -- you
19 told them you thought it was weird that the lights and T.V.
20 were off, and no music playing.

21 A. Right.

22 Q. Does that sound right?

23 A. Right.

24 Q. Okay. Did the police, at any point after this, search
25 your's and Antwann's apartment?

1 A. What was the question?

2 Q. After this ---

3 A. Okay.

4 Q. ---After June the 9th ---

5 A. Uh huh (indicating positive)

6 Q. ---At some point did the police search your's and
7 Antwann's apartment?

8 A. Yes.

9 Q. Okay. And you remember drawing a map for them of the
10 apartment?

11 A. Yes. Uh huh (indicating positive)

12 Q. And then they got a Search Warrant?

13 A. Yes.

14 Q. Okay. Does this look like the map?

15 A. Yes.

16 Q. Better question would be, is this the map?

17 A. Yes.

18 (MAP MARKED DEFENDANT, STEPHENS, EXHIBIT NUMBER 21, FOR
19 IDENTIFICATION.)

20 COURT REPORTER: Defendant, Stephens, 21, for
21 identification.

22 Q. And who did you draw the map for?

23 A. Either DiLor ---

24 Q. DiLorenzo?

25 A. DiLorenzo or Mann. I'm not sure. One of them.

MELISSA GOMEZ - CROSS BY FREDERICK

900

1 Q. One of the two?

2 A. Yes.

3 Q. Okay. And you gave that to them, right?

4 A. Yes.

5 Q. Okay. This is Defendant's Exhibit, Stephens, 21. We
6 would move to have this admitted into evidence.

7 THE COURT: Any objection, Mr. Gardner?

8 MR. GARDNER: No, Your Honor.

9 THE COURT: Solicitor.

10 MS. ELDER: If we could just take a look at what he's -

11 --

12 THE COURT: Yes, absolutely.

13 MS. ELDER: No objection, Your Honor.

14 THE COURT: All right. Defendant, Stephens, 21 is in
15 evidence without objection.

16 (DEFENDANT, STEPHENS, 21 FOR IDENTIFICATION NOW ADMITTED
17 INTO EVIDENCE AS DEFENDANT, STEPHENS, 21.)

18 MR. FREDERICK: Move to publish this to the jury.

19 THE COURT: Any objection to publication?

20 MR. GARDNER: No, Your Honor.

21 MS. ELDER: No sir, Your Honor.

22 THE COURT: You may do so.

23 Q. When you drew the map for them the purpose of the map
24 was to show them where Antwann's guns was ---

1 A. Yes.

2 Q. ---So they could find the guns when they went into the
3 apartment?

4 A. Yes.

5 Q. Okay. And did they find guns in the apartment?

6 A. Yes.

7 Q. Okay. Did Antwann carry guns?

8 A. On him?

9 Q. Yes.

10 A. Sometimes he did.

11 Q. Okay. And they found some drugs in the apartment, but
12 not a whole lot?

13 A. Right.

14 Q. Were you charged with anything ---

15 A. No.

16 Q. ---As a result?

17 A. No.

18 Q. Was Antwann?

19 A. I'm not sure.

20 Q. Okay. How did you know Jamilla?

21 A. Through Antwann.

22 Q. Okay. How long had you know her?

23 A. Me and Antwann was together for about three years, so I
24 knew her maybe about two. I wasn't real close with her before
25 she moved in, but felt to.

MELISSA GOMEZ - CROSS BY FREDERICK

902

- 1 Q. At the time you were dating Antwann.
- 2 A. Right.
- 3 Q. You are not dating him now, are you?
- 4 A. No.
- 5 Q. Okay. You lived in that house for a period of time,
- 6 right?
- 7 A. Yes.
- 8 Q. Okay. But you had moved out right before this
- 9 happened?
- 10 A. Right.
- 11 Q. Okay. Was it your house at the time?
- 12 A. Yes. My -- most of my stuff was still there, but I was
- 13 just staying with Antwann, but I took my clothes.
- 14 Q. And your name was still on the utilities ---
- 15 A. Right.
- 16 Q. ---But you were going to change that?
- 17 A. Right.
- 18 Q. Okay. Did you have a key to the house?
- 19 A. Yes.
- 20 Q. Antwann, did he also stay at the house for a period of
- 21 time?
- 22 A. He did until him and Jamilla got into an argument.
- 23 Q. Okay. What were they fighting about?
- 24 A. Me and Antwann was fighting, and he hit me and I was
- 25 upset about it, and Jamilla asked me why I was crying, and I

1 told her why, and then she went to Antwann and said, boy, if
2 you want to fight somebody fight me, because I'll put my hands
3 on you; don't fight nobody that's not going to put their hands
4 on you, and that's what they was arguing about.

5 Q. She was upset about it?

6 A. Yes.

7 Q. Okay. Understandably. When you first talked to the
8 investigators -- and you remember you had several interviews
9 with the investigators, right?

10 A. Right.

11 Q. Do you remember how many?

12 A. No.

13 Q. Three, four, does that sound about right?

14 A. I'm not sure.

15 Q. Okay. When you first met with the investigators did
16 you tell them the complete truth about Antwann, the first
17 time?

18 A. About ---

19 Q. Everything, about Antwann.

20 A. I don't think that I told them, at first, that him and
21 Jamilla was arguing ---

22 Q. Okay.

23 Q. ---Didn't get along at the time.

24 Q. And when you first met with them -- and I understand
25 this remembering is from a few years back, and having several

MELISSA GOMEZ - CROSS BY FREDERICK

904

1 interviews, one after the other, may be hard, okay. Do the
2 best that you can. When you first met with them do you
3 remember telling them that Antwann was with you all day
4 Thursday, Thursday night, and Friday?

5 A. Yes.

6 Q. Okay. And you told them that Antwann didn't deal
7 drugs?

8 A. Right.

9 Q. Okay. Later on, after you were confronted with some
10 information, did you tell the investigators that you weren't
11 sure if he was with you that whole time after all, in a later
12 interview?

13 A. I said that he -- whenever I sleep I sleep hard. I
14 said he might have left while I was sleeping.

15 Q. Okay. And so in the later interview you told them it
16 was possible ---

17 A. Right.

18 Q. ---You really couldn't say.

19 A. Right.

20 Q. Okay. Do you remember telling them also, in the later
21 interview, that you weren't sure what days he was with you,
22 and maybe he left you while you were sleeping on Thursday
23 night?

24 A. Right.

25 Q. On Friday, June the 9th -- that's the day after, and

1 the day that you found the bodies -- was Antwann with you that
2 whole day?

3 A. Yes.

4 Q. Okay. What time did he get up?

5 A. I don't know.

6 Q. Was he in the bed still when you got up?

7 A. Yes.

8 Q. Okay. Do you know Roy Grant?

9 A. Yes. I went to school with him, and I worked with him
10 for a brief period of time.

11 Q. Okay. He's not -- he's not out here. I have to ask
12 you a couple of questions. When you saw him at the house on
13 Friday, did he say anything to you?

14 A. No. He was talking to Antwann.

15 Q. Okay. When you first talked to the police, back to the
16 first interview, okay, did you tell the police the truth about
17 what happened on Friday, in the first interview?

18 A. No.

19 Q. Okay. Do you remember what you told them that first
20 time?

21 A. I'm not exactly sure.

22 Q. Okay. Fair enough. On the first time that you spoke
23 with them, do you remember that you told them you went into
24 the house just that one time?

25 A. Right.

MELISSA GOMEZ - CROSS BY FREDERICK

906

1 Q. Okay. And in a later interview do you remember telling
2 them that you went into the house at least three times?

3 A. No.

4 Q. Okay. You told the police that you took -- in the
5 later interview you told them that you took the briefcase out
6 of the house?

7 A. Yes.

8 Q. Okay. And ---

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

10 THE COURT: Yes sir.

11 Q. Does this look like the car?

12 A. Yes.

13 Q. And that's the same car?

14 A. Yes.

15 Q. Do you recognize the apartments where it is?

16 A. Uh huh (indicating positive)

17 Q. Where is that?

18 A. Devon's apartment. That's where we stayed at. I
19 forget what it was called.

20 Q. Is that where Jill Holland lives?

21 A. Who?

22 Q. Jill. Jill Holland.

23 A. No. We -- that looks like Devon's apartment.

24 Q. Okay.

25 THE COURT: Can you identify the ---

1 MR. FREDERICK: Sorry. This was Defendant's Exhibit
2 12, Defendant, Stephens, Exhibit 12.

3 Q. I'm going to show you Defendant, Stephens, Exhibit 14.
4 Is that the briefcase?

5 A. I don't remember.

6 Q. Not sure?

7 A. I'm not sure.

8 Q. You put the briefcase in the trunk of the car, right?

9 A. Right.

10 Q. Okay. And it was this car?

11 A. Yes.

12 Q. Okay. Fair enough.

13 You never told the police that you took drugs out of the
14 house that Friday, did you?

15 A. No. I never told them ---

16 Q. Just the briefcase?

17 A. Right.

18 Q. Okay. You told them -- didn't tell the police that you
19 took a briefcase out of the house with drugs in it?

20 A. Right. I told them later on that I did take a
21 briefcase out the house, but I didn't know what was in it.

22 Q. Okay. And when the police found out about the
23 briefcase, in a later interview -- and they confronted you
24 with it, right?

25 A. Uh huh (indicating positive).

MELISSA GOMEZ - CROSS BY FREDERICK

908

1 Q. At that time you told them that you took the briefcase
2 so you could take it to Jamilla's family, right?

3 A. Right.

4 Q. Okay. But you still told them you didn't know what was
5 in the briefcase?

6 A. Right.

7 Q. Okay. Do you know who Alice Alston is?

8 A. Who?

9 Q. Alice Alston.

10 A. No.

11 Q. You don't know anyone named Alice?

12 A. I know an Alice, but I don't know her last name.

13 Q. Okay. Do you know an Alice that's related to Jamilla's
14 family?

15 A. Yes.

16 Q. Okay. After the murder, didn't you tell Alice Alston,
17 Alice related to Jamilla's family, that you took a briefcase
18 from the house with drugs in it?

19 A. No, I did not.

20 Q. Okay. Did the police, did they ever confront you with
21 drugs being taken out of the house?

22 A. He just asked me what was in the briefcase, and I told
23 him I don't know.

24 Q. Okay. You were never charged with anything in
25 connection with this case, were you?

1 A. No.

2 Q. Okay. On June the 14th, one of the later interviews,
3 you told the investigators that Antwann went back into the
4 house with Roy Grant, but without you. Do you remember that?

5 A. Yes.

6 Q. Okay. You stayed outside?

7 A. Yes.

8 Q. Okay. Did you tell the police that Roy Grant was at
9 Jamilla's house, in the later interview?

10 A. Yes.

11 Q. Okay. Did you tell the police that he went inside the
12 house and helped to take out the drugs?

13 A. No.

14 MR. FREDERICK: That's all the questions I have for
15 this witness.

16 Thank you, Melissa.

17 A. You are welcome.

18 THE COURT: All right, Solicitor.

19 MS. ELDER: Thank you, Your Honor.

20 CROSS-EXAMINATION BY MS. ELDER:

21 Q. Ms. Gomez, tell me again why you went over to that
22 house that night.

23 A. I was going over to tell Jamilla that I was going to
24 switch the electric bill from my name to -- she -- that she
25 could switch it over to her name because me and Antwann was

MELISSA GOMEZ - CROSS BY ELDER

910

1 going to put it in our apartment, in our name.

2 Q. How long had you been living out of Pridgen Road, with
3 Antwann? How long had it been since you lived there?

4 A. I'm not sure.

5 Q. Was it days, weeks, months?

6 A. It was a couple of months.

7 Q. You and Antwann hadn't lived there in a couple of
8 months?

9 A. Right.

10 Q. And this argument that supposedly happened between
11 Antwann and Jamilla about Antwann's interaction with you, that
12 was a couple of months back as well, prior to her death?

13 A. Right. Yes.

14 Q. And when Jamilla would stand up for you Antwann didn't
15 take her up on it now, did he?

16 A. No.

17 Q. They didn't get into a physical ---

18 A. No.

19 Q. ---Brawl right there at the house?

20 A. No.

21 Q. And he didn't pull any kind of weapon on her or
22 anything, did he?

23 A. No.

24 Q. And isn't it true that, either the night that you went
25 over there to get your stuff out of the house, to avoid any

1 controversy with Jamilla he stayed outside?

2 A. Right.

3 Q. And when you went in the house Jamilla and Monica were
4 dead? You found them; is that right?

5 A. Right. But I didn't go there to get my stuff that
6 night. I went to tell her about the electric bill.

7 Q. Right. I understand. I apologize. When you went in
8 the house though they were already dead?

9 A. Yes. Yes.

10 Q. And you are the one who found them?

11 A. Yes.

12 Q. And you called Antwann in to the house; is that
13 correct?

14 A. Yes.

15 Q. And when he came into the house did he go -- were you
16 with him when he went back in the house?

17 A. Yes.

18 Q. What was his reaction to seeing Jamilla and Monica?

19 A. He started crying, I believe, and he was holding his
20 head saying, oh my God, who would have did this, and why would
21 they have done that, and he was ---

22 Q. And he went outside to call 911?

23 A. Yes, I believe so.

24 Q. And he didn't try to take off before the police got
25 there, did he?

MELISSA GOMEZ - CROSS BY ELDER

912

- 1 A. No.
- 2 Q. Did he appear to be upset about their deaths?
- 3 A. Yes.
- 4 Q. And you just said a moment ago when you were
5 testifying, Antwann told Roy, she's gone.
- 6 A. Yes.
- 7 Q. Does that mean that she's dead?
- 8 A. Yes.
- 9 Q. And is that why Roy went inside to look himself?
- 10 A. I believe so, yes.
- 11 Q. Did you see any drugs in that house when you were in
12 there?
- 13 A. No.
- 14 Q. Did you see anybody take any drugs out?
- 15 A. No.
- 16 Q. You knew what business Jamilla was in?
- 17 A. Yes.
- 18 Q. She did drugs -- she sold drugs?
- 19 A. Yes.
- 20 Q. And I know that initially when you talked to police you
21 didn't mention the safe that you took out.
- 22 A. Right.
- 23 Q. It was a little hand -- you could carry it out with
24 you, by yourself, right?
- 25 A. It was what?

- 1 Q. It was a small safe; is that correct?
- 2 A. Right.
- 3 Q. A little fire box thing?
- 4 A. I'm not sure approximately how big it was, but I
- 5 carried it out by myself.
- 6 Q. So you could carry it out by yourself. And it was
- 7 locked, wasn't it?
- 8 A. I believe so.
- 9 Q. When you picked it up it didn't fall open or anything?
- 10 A. No. It didn't fall open.
- 11 Q. Did it have a key in it?
- 12 A. Not that I know of.
- 13 Q. All right. Did you try to open it?
- 14 A. No.
- 15 Q. And when you took it out of the house you put it in
- 16 that white car that belonged to Jill Holland; is that correct?
- 17 A. Yes.
- 18 Q. And you didn't take it out again, right?
- 19 A. Right.
- 20 Q. Nobody else, to your knowledge?
- 21 A. No.
- 22 Q. You locked it in the trunk?
- 23 A. I shut the trunk.
- 24 Q. Okay. And the trunk locked behind it, right?
- 25 A. Yes.

MELISSA GOMEZ - CROSS BY ELDER

914

1 Q. And when you left that night from Pridgen Road you
2 didn't leave in that car, did you?

3 A. No.

4 Q. And you never went back in that car. As a matter of
5 fact, the police took it that night, correct?

6 A. Correct..

7 Q. And did you see that car again?

8 A. No, I didn't.

9 Q. Did you see that white safe again?

10 A. No, I didn't.

11 Q. I'm going to take you to Thursday night, before you
12 found Jamilla and Monica, okay.

13 A. Okay.

14 Q. You told police that, I believe you were at your house
15 at Sandy -- is it Sandy Gate? Is that where you were living
16 at the time?

17 A. I believe so.

18 Q. Okay. And you, in fact, told them that y'all had
19 ordered some food that night, right?

20 A. Yes.

21 Q. Do you remember where you ordered it from?

22 A. No, I don't.

23 Q. Okay. Willow Run. I'm sorry. Is that where you were
24 living? Was it Willow Run?

25 A. I think that might have -- I'm not sure.

1 Q. And you also told police that y'all ordered food, and
2 the food was delivered, and part of your order was missing; is
3 that right?

4 A. I don't remember on that.

5 Q. Okay. If you told police that would -- does that sound
6 right?

7 A. I don't know.

8 Q. When you went to bed that Thursday night was Antwann
9 with you?

10 A. Yes.

11 Q. Did he go to bed also?

12 A. Yes.

13 Q. Do you remember what time that was?

14 A. No, I don't.

15 Q. And do you remember if it was early, late?

16 A. Probably later. We was playing ---

17 Q. Like maybe after midnight?

18 A. No. It wasn't -- it was before midnight, because we
19 was playing the Play Station for a while, and then we laid
20 down. Probably around ten, maybe. I'm not really sure.
21 Maybe nine. I don't know.

22 Q. And if y'all had food delivered, and it indicated it
23 was delivered at 9:52, would you have gone to bed after that?

24 A. Yes.

25 Q. After y'all ate?

MELISSA GOMEZ - CROSS BY ELDER

916

1 A. Uh huh (indicating positive) Yes.

2 Q. And I believe the police asked you, and the Defense
3 asked you about, didn't -- what -- maybe Antwann left after
4 you were asleep. I believe they asked you, you didn't wake up
5 and see him gone; is that correct?

6 A. Correct.

7 Q. And you weren't aware that he left at any point in time
8 that evening, were you?

9 A. No.

10 Q. And, in fact, when police -- when y'all -- when Antwann
11 actually called the police to come to Pridgen Road, after you
12 found the bodies of Monica and Jamilla, he cooperated with the
13 police there, didn't he?

14 A. Uh huh (indicating positive) Yes.

15 Q. And you did too?

16 A. Yes.

17 Q. And they took pictures of y'all?

18 A. Yes.

19 Q. And they took pictures of your shoes?

20 A. Yes.

21 Q. And they even processed your hands for gunshot residue,
22 didn't they?

23 A. Yes.

24 Q. And y'all all voluntarily did that; is that correct?

25 A. Yes.

1 Q. Okay.

2 MS. ELDER: One moment, Your Honor.

3 THE COURT: Yes Ma'am.

4 MS. ELDER: No other questions for this witness, Your
5 Honor.

6 THE COURT: All right. Any redirect?

7 MR. GARDNER: I want to follow up -- yes sir. The
8 answer is yes.

9 THE COURT: All right. Very good.

10 MR. GARDNER: I just have one question. Thank you.

11 REDIRECT-EXAMINATION BY MR. GARDNER:

12 Q. I want to follow up this thing about the night before.
13 You ordered some food and went to bed at some point in time;
14 is that right?

15 A. I'm not sure. We might have. I can't remember.

16 Q. Is that what she was asking you about?

17 A. The food that we ordered, yes.

18 Q. Yes. Ring any bells?

19 A. I'm not sure if we did. I can't remember if we did
20 order pizza, but if we did I don't ---

21 Q. You were agreeing with her. I didn't know -- do you
22 have any independent recollection of what time you went to bed
23 the night before?

24 A. I'm not sure.

25 Q. Do you have ---

MELISSA GOMEZ - RECROSS BY FREDERICK

918

1 A. Sometimes -- it would have been sometime later, because
2 like I said, we was playing the game for a while and then we
3 lay down and went to bed.

4 Q. And you are a heavy sleeper?

5 A. Yes.

6 Q. So once you were asleep you wouldn't know if Antwann
7 left or not, would you?

8 A. No.

9 MR. GARDNER: Nothing further.

10 THE COURT: All right. Mr. Frederick.

11 RECROSS-EXAMINATION BY MR. FREDERICK:

12 Q. Didn't the police confront you with the fact that they
13 saw Antwann out dealing drugs on the corner; do you recall?

14 A. Yes.

15 Q. And that was when you told them maybe he left after you
16 fell asleep?

17 A. Yes.

18 MR. FREDERICK: No more questions. Thank you.

19 THE COURT: Anything on those questions, Solicitor?

20 MS. ELDER: One moment, Your Honor.

21 No further questions, Your Honor.

22 THE COURT: All right. Do you wish the witness to be
23 excused?

24 MR. GARDNER: Yes sir.

25 THE COURT: Any objection?

1 MR. RICHARDSON: No objection, Your Honor.

2 MR. FREDERICK: No objection, Your Honor.

3 THE COURT: All right. Very good. Ma'am, you are
4 released from your Subpoena and you may go back to your
5 regular activities.

6 All right. Is there an issue we need to take up at this
7 point in time?

8 MR. GARDNER: Yes, sir, I think we need to discuss that
9 thing ---

10 MR. FREDERICK: Can we approach?

11 THE COURT: Absolutely.

12 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

13 THE COURT: All right, ladies and gentlemen of the
14 jury, if you would go to your jury room for a few moments,
15 please.

16 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
17 JURY.)

18 THE COURT: All right. Mr. Gardner, regarding your
19 client, Jimmy Lee Sessions, are there -- is there any other
20 matters that you have for the Defense, except for the issue of
21 whether or not Mr. Sessions is going to testify?

22 MR. GARDNER: That is exactly correct, Judge. You've
23 said it correctly.

24 THE COURT: All right.

25 All right, Mr. Sessions, if you don't mind, if you would

JURY OUT/ON RECORD

920

1 raise your right hand, please sir.

2 JIMMY LEE SESSIONS, being first
3 duly sworn, testifies as follows:

4 THE COURT: All right. You can put your hand down.

5 At this point in time I am going to explain to you
6 certain of your Constitutional Rights. If, at any point in
7 time you don't understand what I'm talking about, you have any
8 question about what we are talking about, I want you to stop
9 me. You can raise your hand, tell your attorney, but in some
10 way indicate to me that we need to go over that. Are we in
11 agreement there?

12 A. Yes sir.

13 THE COURT: All right, sir. We have reached the stage
14 of the trial where you may present your defense, and obviously
15 we've been doing that, and as I understand from your attorney,
16 we have called all the other witnesses that can be called on
17 your behalf, or that y'all want to call in your behalf, except
18 for yourself.

19 You have the right to claim the protection given to you
20 by the Fifth Amendment to the Constitution of the United
21 States of America. Now, that Amendment states, in part, that
22 no person shall be compelled, in any criminal case, to be a
23 witness against themselves. That means nobody can make you
24 testify; you can't be forced to testify. Obviously you can
25 testify if you want to. that's your right, but nobody can make

1 you. You understand that?a

2 A. Yes sir.

3 THE COURT: If you decide to testify you are going to
4 be subject to the same rules that you've seen all the other
5 witnesses that have testified in this particular case, that
6 is, you would be examined, or questioned by your attorney,
7 then you would be cross-examined, or asked questions by Mr.
8 Frederick and from the Solicitor; you understand that?

9 A. Yes sir.

10 THE COURT: And if you have any convictions on your
11 record ---

12 And Solicitor, would there be any convictions that y'all
13 would be asking Mr. Sessions about on cross-examination?

14 MR. RICHARDSON: I believe so, Your Honor. I just need
15 to take a moment to look through.

16 THE COURT: All right.

17 MR. RICHARDSON: Yes sir, there will be.

18 MR. GARDNER: There will be, Judge, and the Solicitor
19 and I have talked about that, and I believe that we are aware
20 of that, or do you want him to put it on ---

21 THE COURT: Well, I think we need to put it on the
22 record, so that Mr. Sessions knows exactly what it is that the
23 State would -- would ask about, and then I can tell him the
24 things that I allow them to ask about, so ---

25 MR. GARDNER: Fair enough.

JURY OUT/ON RECORD

922

1 **THE COURT:** ---Solicitor, if would just let me know
2 what the matters are that you would want to question Mr.
3 Sessions about.

4 **MR. RICHARDSON:** Your Honor, he's got 2002 conviction,
5 verdict date on, looks like sell of hallucinogenic or narcotic
6 drugs. He got a six year suspended to three years and three
7 years probation out of New Haven, Connecticut.

8 **THE COURT:** All right, sir.

9 **MR. RICHARDSON:** It looks like he got a larceny one,
10 and possession of drugs, marijuana, conditional discharge, one
11 year in jail, suspended on one year -- one year suspended, two
12 years conditional discharge. I don't know how that comes in.

13 He's got a sale of controlled substance, and sell of
14 illegal drugs. He got a probation revocation on that, two
15 years jail concurrent. That is in 2002 as well.

16 He's got a 1996 guilty plea on possession of a weapon.
17 He got served with eighty-four months, so that would push
18 him ---

19 **THE COURT:** All right, sir, so that would fall within -
20 - the eighty-four months after 1996 then would fall within the
21 ten years.

22 **MR. RICHARDSON:** All right. It looks like he's got,
23 2000, possession of a firearm by a convicted felon, unknown --
24 disposition unknown, 2006, 7/17/96, sixty months ---

25 Is that the same time?

1 Thirty-six months, looks like.

2 THE COURT: That was in 2000?

3 MR. RICHARDSON: Yes sir. Looks like he got a
4 probation violation in 2003, sentenced to twelve months jail
5 time.

6 THE COURT: Now the probation violations we would not
7 ask about, because those go back to the sentence for which he
8 was originally convicted.

9 MR. RICHARDSON: Your Honor, he's got a 1987 receiving
10 stolen goods. That would be a crime of dishonesty.

11 THE COURT: All right, sir.

12 MR. GARDNER: '87?

13 MS. ELDER: That's correct.

14 THE COURT: But it's a crime of dishonesty, is what he
15 is asking, that it be under -- not under the -- not under the
16 statute as far as the ten years, but crime of dishonesty.

17 MR. RICHARDSON: '87, shoplifting, which would also be
18 dishonesty.

19 It looks like an '88 burg second and grand larceny. He
20 got a Y.O.A., but of course, that being a crime of dishonesty.
21 The 1994 possession of crack is out.

22 I know presently he has got -- pending he's got a drug
23 trafficking charge as well, Your Honor ---

24 THE COURT: All right.

25 MR. RICHARDSON: ---For which he was brought back on a

JURY OUT/ON RECORD

924

1 bench warrant.

2 THE COURT: All right. Very good.

3 All right. Mr. Sessions, the Solicitor has gone over
4 those particular matters, and as to the ones -- except for the
5 probation violations, I would allow the State to ask you about
6 those, to the extent that, were you convicted of those
7 particular crimes, and that would be only on the issue of
8 attacking your credibility, believability as with all the
9 other witnesses that have testified in this particular case.

10 Now, if you decide to testify it's got to be your
11 decision. It's your decision to make. You can certainly ask
12 the advice of your attorney. If there happened to be a close
13 family member that was present that you wanted to ask, I would
14 allow you to do that, but you understand it's your decision,
15 and you have to make it knowingly and intelligently, and with
16 knowledge of what we have talked about, and your rights in
17 this particular matter. Do you understand that?

18 A. Yes sir.

19 Q. Now, if you decide to testify I will have, as part of
20 my charge to the jury, that they cannot give that fact any
21 consideration whatsoever. I will tell them that they can't
22 even talk about it in the jury room, that it is not part of
23 this case in any way. Do you understand that?

24 A. Yes sir.

25 THE COURT: Now, it being left up entirely to you to

1 make the decision as to whether or not you want to testify,
2 let me ask you a couple of questions. One, do you understand
3 everything we have talked about?

4 A. Yes sir.

5 THE COURT: Do you have any questions that you need to
6 ask at this time?

7 A. No sir.

8 THE COURT: Do you want to talk to your attorney?

9 A. Yes sir.

10 THE COURT: All right, sir. Very good.

11 (MR. SESSIONS CONSULTS WITH HIS COUNSEL.)

12 A. I'm ready.

13 THE COURT: All right, sir. Now, do you want to
14 testify in this particular case?

15 A. No sir.

16 THE COURT: All right, sir. Very good. Thank you very
17 much.

18 Y'all can have a seat.

19 All right. Now, Mr. Frederick, are there other
20 witnesses that you would intend to call, or you intend to
21 call.

22 I'm sorry, Mr. Gardner.

23 MR. GARDNER: No. I was going to suggest that I may --
24 may we approach on that issue, Judge?

25 THE COURT: All right. Very good. Y'all come around.

JURY OUT
COURT TO DEFENDANT, STEPHENS

926

1 (BENCH CONFERENCE TAKES PLACE OFF THE RECORD.)

2 THE COURT: All right. Go ahead. Yeah. We'll take a
3 short break, for about five minutes. Thank you.

4 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
5 THE PRESENCE OF THE JURY.)

6 THE COURT: All right, Mr. Frederick, are you ready for
7 me to question Mr. Stephens under oath about his right to
8 testify?

9 MR. FREDERICK: Yes, Your Honor.

10 THE COURT: All right. Mr. Stephens, if you would
11 stand, please sir.

12 And if you would raise your right hand, please sir.

13 Do you solemnly swear or affirm to tell the truth, the
14 whole truth, and nothing but the truth, so help you God?

15 A. Yes sir.

16 THE COURT: All right, sir. At this point in time I'm
17 going to explain to you certain of your Constitutional Rights.
18 If, at any point in time you don't understand anything we are
19 talking about, you've got a question about what we are talking
20 about, I want you to indicate to me. You can raise your hand,
21 tell your attorney, but in some way you indicate that to me.
22 All right.

23 A. Yes sir.

24 THE COURT: All right, sir. We have reached the stage
25 of the trial where you can present your defense. Now, you

JURY OUT
COURT TO DEFENDANT, STEPHENS

927

1 have the right to claim the protection given to you by the
2 Fifth Amendment to the Constitution of the United States of
3 America which says, in part, that no person shall be
4 compelled, in any criminal case, to be a witness against
5 themselves. That means nobody can force you to testify.
6 Nobody can make you testify, but you can testify if you want
7 to. Do you understand that?

8 A. Yes sir.

9 THE COURT: All right, sir. Now, in this particular
10 trial, if you decide to testify, you are going to be subject
11 to the same rules that govern all the other witnesses that
12 have testified in this case, that is, you would be asked some
13 questions by your attorney, then you would be cross-examined
14 by Mr. Gardner, and cross-examined by the State. Do you
15 understand that?

16 A. Yes sir.

17 THE COURT: All right, sir. Now, does Mr. Stephens
18 have a record that the State would expect to inquire about?

19 MR. RICHARDSON: Yes sir, he does. He's got a -- let
20 me get the actual date. June, 1997, sentence for
21 distribution, sale, etcetera, of drugs other than crack
22 cocaine, scheduled. He got a G.O.A., six years suspended to
23 probation for eighteen months. That would ---

24 THE COURT: All right.

25 MR. RICHARDSON: Let's see. He's got a -- looks like

JURY OUT
COURT TO DEFENDANT, STEPHENS

928

1 he's got another one from October of '97, for manufacturing
2 and distribution of drugs, cocaine, marijuana, whatever it
3 was, Your Honor, drug distribution charge. He got two years
4 on that.

5 THE COURT: All right, sir.

6 MR. RICHARDSON: And let's see, he's got sale, or
7 possession of a pistol by a certain person, prohibited person
8 under the law. I believe that's under the five year statute,
9 and he got three hundred forty-five day sentence on that.
10 That was in 2001.

11 THE COURT: All right.

12 MR. RICHARDSON: He got an assault and battery high and
13 aggravated nature February 14th, 2001, and let's see, he got a
14 sentence in 2004, so a receipt by South Carolina Department of
15 Corrections on manufacturing, possession with intent, crime --
16 looks like he got five years suspended to one year, and three
17 years probation.

18 THE COURT: All right, sir.

19 MR. RICHARDSON: He also had an unlawful carrying of a
20 weapon charge. Of course that only carries one year, so that
21 would not be subject, Your Honor.

22 THE COURT: All right, sir.

23 MR. RICHARDSON: And I think that's it, Your Honor.

24 THE COURT: All right, sir. Very good.

25 All right. Now, Mr. Stephens, from those ones that the

JURY OUT
COURT TO DEFENDANT, STEPHENS

929

1 Solicitor has covered, those would fall within the statute and
2 the Rule, and I would allow the State to ask you about those,
3 limiting them to the year and the offense for which you were
4 convicted. Do you understand that?

5 A. Yes sir.

6 THE COURT: All right, sir. And in doing so I do find
7 that it's probative value -- as I did with Mr. Sessions --
8 that the probative value of admitting the evidence outweighs
9 the prejudicial effect to you, as it would with all the other
10 witnesses. It's judging credibility and believability.

11 Now, if you decide to testify it's got to be your
12 decision. You can certainly talk to your attorney. If you've
13 got a close family member that you want to ask, or have a
14 question, talk to, I'll be glad to let you do that, but you
15 understand you have to make your decision, and it's got to
16 be -- knowing everything we've talked about, along with the
17 protection given to you by the Fifth Amendment. Do you
18 understand that?

19 A. Yes sir.

20 THE COURT: All right, sir. If you decide not to
21 testify, as I've told Mr. Sessions, I will tell the jury they
22 cannot give that fact any consideration whatsoever. They
23 can't talk about it in the jury room. It's not a part of this
24 case; do you understand that?

25 A. Yes sir.

JURY OUT
COURT TO DEFENDANT, STEPHENS

930

1 THE COURT: It being entirely your decision as to
2 whether or not you want to testify -- first, have you
3 understood everything we've talked about?

4 A. Yes sir.

5 THE COURT: Do you want to ask your attorney any
6 questions at this time?

7 A. I understand.

8 THE COURT: All right, sir. But do you have any
9 questions that you want to ask?

10 A. No sir.

11 THE COURT: All right, sir. Do you want to testify in
12 this particular case?

13 A. No sir.

14 THE COURT: All right, sir. Very good. Thank you.

15 All right. What we are going to do is, I'm going to
16 call the jury back in. I will ask you, Mr. Gardner, if you
17 have anything further on behalf of the Defendant, Sessions.
18 You can tell me that the Defendant, Sessions, rests, and then
19 I will turn to you, Mr. Frederick, and you can call your
20 witness. After that then I will ask if there's anything
21 further, and I will understand, apparently, that the
22 Defendant, Stephens, at that point in time, would rest. I
23 will then turn to the State to see if you have any reply
24 testimony at that point in time. All right.

25 MR. FREDERICK: And Judge, I have a question.

JURY IN/ON RECORD
ALICE ANN ALSTON - DIRECT BY FREDERICK

931

1 THE COURT: Yes sir.

2 MR. FREDERICK: For purposes of the record, we both
3 would renew our motions for a directed verdict at the close --
4 -

5 THE COURT: Well, right, after the State says that they
6 have no reply testimony, then y'all would renew your motions,
7 or make any motions that you have at that point in time, yes
8 sir.

9 MR. FREDERICK: Okay.

10 THE COURT: Very good.

11 All right. Ask the jury to come back in, please.

12 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
13 JURY.)

14 THE COURT: All right, Mr. Gardner, anything further on
15 behalf of the Defendant, Sessions?

16 MR. GARDNER: Defendant, Jimmy Lee Sessions, rests,
17 Your Honor.

18 THE COURT: Very good.

19 All right, Mr. Frederick.

20 MR. FREDERICK: The Defense would call Alice Alston to
21 the stand.

22 THE COURT: Alice -- Ms. Alston, if you would come
23 forward to be sworn, please Ma'am.

24 ALICE ANN ALSTON, being first duly
25 sworn, testifies as follows:

JURY IN/ON RECORD
ALICE ANN ALSTON - DIRECT BY FREDERICK

932

1 DIRECT-EXAMINATION BY MR. FREDERICK:

2 Q. Hello, Alice.

3 A. Hello.

4 Q. Did you speak to Melissa Gomez after these murders took
5 place, in June, 2006?

6 A. Yes, I did.

7 Q. Did Melissa tell you anything about the briefcase that
8 was taken out of the house?

9 A. Yes, she did.

10 Q. Did she tell you that there were drugs in that
11 briefcase?

12 A. No. She said she didn't know what was in there, she
13 just didn't want to leave them in there with Jamilla, or get
14 herself in trouble if it was drugs, but she didn't say what
15 was in the briefcase.

16 Q. Never said what was in the briefcase?

17 A. No.

18 Q. Did you tell Investigator Salena Mann that there was
19 drugs in the briefcase?

20 A. No, I didn't. I said she said that she didn't know if
21 it was drugs or not; she didn't want to leave it in the house
22 because it was in her name.

23 MR. FREDERICK: Okay. Fair enough.

24 (AT THIS TIME MR. FREDERICK PLAYED BACK A PORTION OF A
25 PREVIOUSLY TAPED INTERVIEW WITH THIS WITNESS.)

JURY IN/ON RECORD
ALICE ANN ALSTON - DIRECT BY FREDERICK

933

1 Q. Was that you?

2 A. Yes, it was.

3 MR. FREDERICK: No more questions. Thank you, Alice.

4 THE COURT: All right. Cross-examination, Mr. Gardner.

5 MR. GARDNER: No, Your Honor.

6 THE COURT: Cross-examination, Solicitor.

7 MR. RICHARDSON: No sir, Your Honor. I would just ask
8 if Ms. Alston could take her seat back.

9 THE COURT: All right. Any objection to the witness
10 being excused?

11 MR. GARDNER: None, Judge.

12 THE COURT: All right.

13 MR. FREDERICK: No sir. We would ask that this witness
14 be excused.

15 THE COURT: Very good.

16 All right. Further witnesses on behalf of the
17 Defendant, Christopher Stephens?

18 MR. FREDERICK: None, Your Honor. The Defendant,
19 Christopher Stephens, rests.

20 THE COURT: All right, Solicitor, is there any reply
21 testimony on behalf of the State?

22 MS. ELDER: No sir, Your Honor.

23 THE COURT: All right. Very good.

24 All right, gentlemen, Mr. Gardner, Mr. Frederick, y'all
25 have matters of law that you need to speak to the Court about

JURY IN/ON RECORD
ALICE ANN ALSTON - DIRECT BY FREDERICK

934

1 at this point in time?

2 MR. GARDNER: I believe so, Judge.

3 THE COURT: Very good.

4 All right, ladies and gentlemen, we have concluded the
5 evidentiary portion of this trial. There will be no more
6 testimony or evidence introduced in this case. We are at the
7 stage I do have to speak with the lawyers outside your
8 presence, and I will do that now, but in the interim, when you
9 are back in your jury room I want y'all to discuss one thing
10 for me about this particular case, and that is, what we have
11 left are the closing arguments of the attorneys. Obviously
12 there would be a closing argument from each lawyer, and then
13 you have the charge on the law from the Court, that I would
14 give to you to apply to the facts as you so find them to be in
15 this particular case.

16 After that is done, at that point in time then the case
17 would be submitted to you for your deliberations, discussions,
18 and your unanimous decision on every charge as against each
19 Defendant, remembering, as you heard at the very beginning,
20 there are multiple charges on each Defendant, and you would
21 have to make a unanimous decision on each and every one of
22 them.

23 Once the case is given to you it is yours until you
24 reach a unanimous decision on every single one of those
25 charges. That means you are here until that happens, for

1 whatever time period that may take, and I am not suggesting to
2 you what time period that may take because obviously that's
3 completely and totally up to y'all, but that -- you -- with
4 the understanding that it takes as long as y'all deem
5 necessary, but you are here for that period of time. We
6 will -- you will have the opportunity to give me your opinion
7 as to whether or not you want to continue on today or come
8 back Monday morning. I will take that under advisement, and
9 then I will decide what we are going to do, but I will be glad
10 to hear from you, as I will hear from the attorneys in this
11 matter, and then I will make a decision as to what we are
12 going to do, but understanding that to be the procedure, that
13 would be left for today, or to be faced Monday morning,
14 because I'm not going to break up the closing arguments, the
15 charge, and in sending the case to you. That's going to
16 happen at one point in time. It's either going to happen this
17 afternoon and into the evening, or it's going to happen
18 starting first thing Monday morning, so Mr. Foreman, want you
19 to go back and talk to your jury about that, and see if you
20 can reach a consensus, and if you can't reach a consensus, you
21 can tell me that. All right.

22 Thank you very much.

23 (THE FOLLOWING TAKES PLACE OUTSIDE THE PRESENCE OF THE
24 JURY.)

25 THE COURT: All right, Mr. Gardner, I'll be glad to

JURY OUT/MOTIONS

936

1 hear from you, sir.

2 MR. GARDNER: Your Honor, I would move for a directed
3 verdict as -- on -- to all charges for the Defendant, Jimmy
4 Lee Sessions.

5 THE COURT: All right, sir, as to the charges being
6 faced by Mr. Sessions, that being -- he being charged with the
7 murder of Jamilla Hightower, the murder of Monica Wall, the
8 armed robbery of Jamilla Hightower, and burglary in the first
9 degree, as involving both Ms. Wall and Ms. Hightower, as to
10 those particular matters I would respectfully decline to grant
11 your motion for a directed verdict.

12 As I indicated at the end of the State's case, it's my
13 job to be concerned with the existence of evidence, and not
14 with it's weight, or not with it's credibility or
15 believability. That's going to be the jury's job, to weigh
16 credibility, believability, who do they believe, what do they
17 believe, but I specifically do find that there is more than
18 sufficient direct evidence and substantial circumstantial
19 evidence which reasonably tend to prove the guilt of the
20 accused, and in this matter, and finding that there being --
21 there is, in the Court's mind, more than sufficient evidence
22 that would sustain a conviction should the Defendant be found
23 guilty of all or any of those charges, then I would
24 respectfully decline to grant your motion for a directed
25 verdict.

JURY OUT/MOTIONS

937

1 Further motions on behalf of the Defendant, Jimmy Lee
2 Sessions? Mr. Gardner, anything else?

3 MR. GARDNER: Oh, I'm sorry, Judge, I thought you -- I
4 apologize.

5 THE COURT: No, I said, any other motions?

6 MR. GARDNER: Yes. No others. That's all I have.

7 THE COURT: All right. Very good, sir. All right.

8 All right, Mr. Frederick, motions on behalf of Mr.
9 Christopher Stephens.

10 MR. FREDERICK: Judge, we just renew our motion for a
11 directed verdict on the grounds that it's a fine distinction,
12 but, I mean, I think the test is not whether there is any
13 evidence, but whether there is sufficient evidence to go to
14 the jury, Judge, and again, we just renew our motion on the
15 grounds that a conversation, with nothing more, does not rise
16 to the level of evidence that is sufficient for the jury to
17 consider on the charges of accessory before the fact.

18 THE COURT: All right, sir. Incorporating the
19 definition of accessory before the fact that I talked about at
20 the end of the State's case, and understanding that the three
21 charges against Mr. Christopher Stephens are accessory before
22 the fact of a felony regarding the murder of Jamilla
23 Hightower, the armed robbery of Jamilla Hightower, and the
24 murder of Monica Wall, I find that -- again, looking only at
25 the existence of evidence, and not looking at the weight or --

JURY OUT/MOTIONS

938

1 weight of the evidence, not judging it's credibility or
2 believability, I find that there is more than sufficient
3 direct evidence, and substantial circumstantial evidence that
4 would support a conviction of the Defendant on those three
5 charges, any of those three charges should the jury, in it's
6 mind, in judging the credibility and believability, find the
7 Defendant guilty of all or any one of those three charges, and
8 therefore, finding that sufficient evidence, I would
9 respectfully decline to grant your motion for a directed
10 verdict.

11 Any other motions that you would have at this point in
12 time on behalf of Mr. Stephens?

13 MR. FREDERICK: No other motions.

14 THE COURT: All right. Very good.

15 All right. What we'll -- what we'll do is, I'm going to
16 give the jury about five minutes, and then I'll ask the
17 bailiff to see if they have -- what their opinion is as far as
18 staying the rest of the night, and I will just tell you that
19 my expectation would be -- I would be fairly shocked if a jury
20 went in and came out immediately with a decision. I think
21 this is a case, with all the evidence, that they will need to
22 weigh, and look at for some extended period of time before
23 they reach a decision, so I'm going to keep that in mind when
24 I make the decision as to what we are going to do. All right.

25 Be at ease for about five minutes.

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

939

1 Thank you.

2 (THE FOLLOWING TAKES PLACE AFTER A BREAK, AND OUTSIDE
3 THE PRESENCE OF THE JURY.)

4 THE COURT: All right, gentlemen, we are going to
5 proceed with the closing arguments and the charge on the law,
6 and we are going to submit the case to the jury for their
7 deliberations.

8 As I understand it the Defense is not going to require
9 the State to open on the law, so Mr. Gardner, you would be
10 charged with having the first argument, then I'll turn to you,
11 Mr. Frederick, for the second argument, and then -- which
12 Solicitor is going to be giving the closing?

13 MR. RICHARDSON: I will, Your Honor.

14 THE COURT: All right, Mr. Richardson, you will be
15 giving the last argument, on behalf of the State.

16 MR. FREDERICK: Judge, could we have just a moment?

17 THE COURT: Okay.

18 All right, gentlemen, are y'all ready to go?

19 MR. FREDERICK: We are, Judge.

20 THE COURT: Very good. Ask the jury to come in,
21 please.

22 (THE FOLLOWING TAKES PLACE WITHIN THE PRESENCE OF THE
23 JURY.)

24 THE COURT: All right, ladies and gentlemen, we are
25 going to proceed on to the conclusion of this case this

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

940

1 afternoon and this evening.

2 The first thing that's going to happen, now that the
3 evidentiary portion of the case has ended, we are going to
4 have the closing arguments of the attorneys. As I told you at
5 the beginning now, these closing arguments are not evidence.
6 They cannot be considered by you as evidence in the case --
7 that has already happened -- but they are important. They are
8 each side's summation to you of what they believe the evidence
9 has shown to you during the course of the trial, remembering,
10 of course, that collectively, you are the judges of the facts
11 of this facts of this particular case.

12 After that I will give you the law that you will apply
13 to the facts as you so find them to be in this case, and then
14 I will submit the case to you for your deliberations and your
15 unanimous decision on each and every one of the charges.

16 With that I'm going to turn it over to the attorneys for
17 their closing arguments.

18 Mr. Gardner.

19 MR. GARDNER: Thank you, Judge.

20 THE COURT: Yes sir.

21 MR. GARDNER: If it please the Court, Mr. Foreman,
22 ladies and gentlemen of the jury, first I commend you for your
23 service. It's been a long trial, a long week. We've seen a
24 lot of evidence here. I told you that's what we would do on
25 Monday. Soon you will go back and do your deliberations. I

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

941

1 will point out a few things for you, like the Judge said, that
2 I think are important.

3 One thing as a tool that you can consider using during
4 your deliberation is to look at what the lawyers said at the
5 beginning of the case in their opening statement; did they
6 promise you anything; did they talk about what was important?
7 Look at that, and then compare that with what the evidence
8 was, and then ask them if they've sufficient covered it in
9 their closing. All right.

10 Remember the Solicitor's opening, his power. It was a
11 good opening, but you know what spoke volumes, what rang
12 louder than anything that the Solicitor said in his opening,
13 is what he didn't say. What did he not say? He didn't say
14 anything about D.N.A. evidence, and there's a reason he didn't
15 say anything about D.N.A. evidence. He's wants to get a
16 conviction, and D.N.A. evidence, out of all the evidence we've
17 heard, is the most credible, believable, and absolutely the
18 most reliable evidence that has been put on, and it was put on
19 in the Defense's case, and the D.N.A. evidence excludes Jimmy
20 Lee, and excludes Christopher. What that means is, it was not
21 them. What that means is that the only verdict, based on
22 that, is not guilty. That is the most credible, most
23 believable, the most reliable evidence we have, and the only
24 verdict that you could have with that evidence is not guilty.
25 That, alone, will support your decision for not guilty. That

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

942

1 evidence was put on by the Defense.

2 The Defense also put on a shoeprint expert. We had
3 heard previously from the State's shoeprint expert, and I
4 won't talk about that, but the Defense's shoeprint expert
5 talked about a print that he identified contemporaneous with
6 the crime, and he could do that because it was in fecal
7 matter, and that print excludes, excludes all of the shoes.
8 You may want to look at these if you deliberate -- you may
9 not. That is solely up to you. But the Nike Aire shoe is a
10 popular shoe, and the print format on the bottom of it, it's
11 all -- they are all the same thing. It's circles and circles,
12 and some stars.

13 There is a print in that bathroom, left in fecal matter,
14 contemporaneous with the crime, and it excludes these shoes.
15 The shoes they say are Jimmy Lee Sessions' did not make that
16 print. That is good evidence. That is credible evidence,
17 that's believable evidence, that's reliable evidence, and the
18 only verdict you could support with that evidence is not
19 guilty. That is evidence that somebody was there when it
20 occurred. That's evidence in the bathroom. I suspect that
21 the Solicitor, in his closing, will get up here and will tell
22 you how -- his theory of how it happened in the bathroom, the
23 shooting, and that's fine, but there's a footprint right there
24 near the body, and that footprint is somebody we don't know,
25 and that's evidence of not guilty.

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

943

1 If you don't think it's evidence of not guilty look at
2 that D.N.A. evidence. If they had the match, if they knew who
3 matched that D.N.A. they would be sitting in that chair over
4 there; they would be charged with murder, and the Solicitor
5 would be saying, that D.N.A. evidence alone will convict them;
6 you could only bring back a guilty verdict. Well, the Defense
7 doesn't have to prove anything, but you've got the only
8 evidence you need to bring your -- the only verdict you can
9 bring.

10 I'll talk about the State's shoe expert. He testified
11 he had identified the two prints and it was consistent,
12 consistent, not a match, consistent. Well, I told you you
13 could look at these shoes and there's going to be a lot of
14 shoes that are consistent. I asked him. That means could be,
15 could not be. Okay. That is evidence of reasonable doubt.
16 The other two are reasons -- are evidence of not guilty. This
17 one, to be fair, is evidence of reasonable doubt, could be,
18 could not be. Okay. Reasonable doubt supports only one
19 verdict. The only verdict you can bring back is not guilty.

20 Remember I told you at the beginning about the scales of
21 justice, when we are talking about a civil case. Put the
22 State's shoeprint evidence in there. Could be, couldn't be on
23 those scales. The scales don't move. You don't even get a
24 verdict in a civil case. And we all know, we all agree, that
25 the burden of proof in a criminal case is much higher than it

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

944

1 is in a civil case. What we have there is a verdict of not
2 guilty.

3 Put on top of that that the print that the State's
4 expert talked about could not be dated to the crime scene,
5 could not be dated to the crime, could have been left anytime
6 before that, week before, a day before. We don't know when it
7 was left. Put that on top of it and the only verdict you can
8 bring back is not guilty. That's clear and convincing
9 evidence of not guilty. That's the only verdict you've got to
10 do. That's it. That is your evidence.

11 I had hoped to have the boards, the imaginary boards
12 that I talked about in my opening. We got to the closing
13 quicker than I anticipated. I don't have them. I don't think
14 I need them to illustrate the point, but that is your hard
15 evidence, and your hard evidence supports only one verdict.
16 The truth is the truth, and the truth doesn't change. Science
17 doesn't lie. That's what we've got.

18 Now, I also told you in my opening that you would be
19 asked to decide, or a normal jury, a normal case, asked to
20 decide two questions, whether or not it was a murder, and then
21 decide guilt or not guilt, guilty or not guilty. I went ahead
22 and told you that question number one was already decided.
23 The State will prove, the evidence will show, that the two
24 young ladies were murdered. There is no doubt about that.
25 But the evidence will also show, beyond a reasonable doubt,

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

945

1 that Jimmy Lee, Christopher, did not do it. So, I told you
2 the State would put up a lot of evidence, you would see a lot
3 of pictures, see the video, you would hear from a doctor, but
4 none of that would convict the Defendants, none of that would
5 prove to us who did it. It would show us where they were
6 killed, when they were killed, how they were killed, but not
7 who the killer was.

8 The Doctor, I believe everybody would agree, was
9 credible, believable, and reliable, but she has no idea who
10 killed them. She can't. Just added up to the point that it's
11 a murder, answering question one, the answer to question one
12 the first day we got here, so why do we have the majority of
13 the evidence going to question one? I believe you probably
14 know that.

15 So what is the evidence that goes to question two, the
16 other evidence? We want to evaluate it on that plan that I
17 laid out for you, and the Judge will confirm this with you,
18 credibility means nothing more than believability, and you
19 want reliable evidence, because you are going to make a big
20 decision, an important decision. It's important for the
21 State, important for the Defendants. We want to have informed
22 decisions, and we want to base it on what we think is
23 credible, believable and reliable evidence. If it's not,
24 don't consider it.

25 You put these jailhouse witnesses up there, they don't

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

946

1 pass any credible, believable, reliable tests that you could
2 imagine. All right. If you've got evidence that you think is
3 worthy of consideration in making this kind of decision, it
4 passes your test, it's credible, it's believable and reliable,
5 I ask you to simply -- ask you simply to consider, what
6 question does it answer. If it answers whether or not there
7 was a murder, we know that doesn't help us make the decision
8 we need to.

9 If it answers or addresses question two, guilty or not
10 guilty, the next question is, does it prove, beyond a
11 reasonable doubt, murder. I submit to you it doesn't. I'll
12 give you a clear example of that. S.L.E.D. Agent Darnell, the
13 State's shoeprint expert, okay, not going to disagree with
14 you, in fact, my expert and he agree on that, the -- that the
15 prints that the State took was consistent, not a match,
16 couldn't be time dated to the crime. That they agree on.
17 That's credible, reliable, and it's scientific, believable,
18 and it addresses question two, but it's nowhere near proof
19 beyond a reasonable doubt, nowhere near it. It proves that
20 that shoe could have been a -- if not -- we talked about that.
21 Those are the hard science cases. Those are the hard science
22 facts, information that you've got to go on here, on all of
23 it, you can only bring back a not guilty verdict.

24 I don't want to belabor the point about these snitches,
25 these jailhouse informants and their testimony. I just told

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

947

1 you that that's things that you could use in evaluating. The
2 Judge will tell you at the end, one of the things that you
3 looked at is a witness's prior criminal history, prior
4 criminal record. You can use that in determining whether or
5 not you want to accept his testimony or reject it.

6 Another thing the Judge will tell you is bias. Motive,
7 bias, or interest in the case, does the witness have any of
8 that? If he does, it will affect his credibility. It just
9 makes sense, and you can use that. I ask you to use your good
10 common sense, the sense that you use in your everyday affairs,
11 before you came in here. Just because you had a seat in the
12 jury box doesn't mean that you can't use your common sense.
13 Everybody makes decisions, important decisions, and not so
14 important decisions, every day of their lives, and you use
15 your common sense making that decision, and I ask you, if you
16 had to rely on these jailhouse snitches to make a decision
17 that was important to you, something that affected your
18 business, or your work, or your family, and you had to rely on
19 James Pearl to make the decision, would you think it was
20 credible? I think we all know the answer to that. It's the
21 same principle in this case. James Pearl's story is a true,
22 classic tale of fiction. It is beyond repair. And the
23 problem that you have with all of these jailhouse snitches, in
24 this case especially, can be traced back to the photo -- you
25 may look at it if you want to -- all this stuff goes back to

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

948

1 your jury room with you -- you may not. It's completely up to
2 you. But there is a photo outside the house, with a gang of
3 people out there watching, spectators.

4 Excuse me. I apologize.

5 Officer Arroyo, a Myrtle Beach Police Officer, testified
6 he was the first one on the crime scene. He said it was fifty
7 to a hundred people out there, okay. They had cell phones.
8 They were taking pictures and calling people. That's a big
9 problem with this case. At that time we knew -- the police
10 say it -- knew that they had at least two people that had been
11 in that room that afternoon, that house that afternoon. No
12 doubt about that. We find out, or the Myrtle Beach Police
13 Department find out sometime later, it was at least three
14 people, all right. We've got somebody that's rummaging
15 through the house, by their own admission, although they may
16 tell you they didn't take anything, or maybe they did take
17 something, or yes, I took something but I didn't want to --
18 you know. No doubt they went in the house. No doubt they
19 rummaged through the house. No doubt that they saw the
20 women's bodies where they were laid, what they looked like,
21 and there is no doubt that they filtered back into the
22 community, these people in the house, and there is no doubt
23 that they talked to the interested onlookers, and there is no
24 doubt that these interested on-lookers talked to their friends
25 and relatives and loved ones that are incarcerated in the

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

949

1 jail, or soon to be incarcerated, or may be incarcerated six
2 months later, and there is no doubt that we have a basic
3 framework of information of what happened at the house, and
4 they put -- some of them put it in their hip pocket for future
5 use, some of them play on it immediately. All you've got to
6 do, if you are out at the jail, tell a guard, I've got
7 information on a double-homicide. That gets you a trip to the
8 Myrtle Beach Air Force Base. That's a day out of jail, and
9 that's fraud for the people that live out at J. Reuben Long.
10 If you've got a bail hearing coming up, you get a little bit
11 of that information, you get a low bail. Can't get out of
12 jail till you make your bail. You've got a pending charge
13 when you get arrested, you've got some good information.
14 We've got the gold-rush of information for them. Hell, I've
15 got this information that will get you a low bail, some help
16 on your pending charge, and help on your new charge, and a
17 trip out to the Air Force Base. Everybody wants that.
18 Everybody wants that, and they get it. That's the way the
19 system works. Does it make them any more credible? No, they
20 are still the same person they were. Just because they've
21 been called by the State doesn't make them any more credible,
22 doesn't make them any more believable, doesn't make them any
23 more reliable. You can dress them up. You can do whatever
24 you want to with them, but the question remains, would you
25 rely on their information, or their advice for you to make a

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

950

1 decision affecting your family, your business? I think we
2 know the answer to that is no.

3 I would like for one time, one of these jailhouse
4 snitches to get up on the stand and the very first thing he
5 would say is, yes, the Solicitor didn't promise me anything,
6 but I know he's going to give me something, or he may not, I
7 don't know, but I'm looking forward to it, I want it, that's
8 the reason I'm here, or just be honest about that part. He
9 would catch everybody's attention, everybody might listen to
10 him a little more attentively, at least give him a little bit
11 of a benefit of a doubt, but they won't even tell the truth on
12 that. Can you imagine? You call somebody in there and you
13 ask them a question about anything that you want to know
14 about, and they are going to give you a detailed report, and
15 they say, if just stand by, I've got to tell you this one
16 little bit of information first that's a complete lie, and you
17 know it's a lie, and I know it's a lie, but I've got to tell
18 you that before I start talking about the information that you
19 want. Let me just say that to you. You've got to want to
20 listen to that stuff. You may listen to it, but you are not
21 going to use it for making an important decision. Start off
22 with a lie? That is good enough reason to disregard
23 everything.

24 These witnesses -- what was his actual name? Matthew
25 Campbell. Drug dealer. He -- no credibility on him, and I

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

951

1 won't waste your time talking about. He doesn't pass the
2 test. He's got information. We know where he got it from.
3 None of the information is reliable.

4 Craig Burris, the last witness. It's remarkable the
5 stories they come up with, but you know where they got it
6 from? They got it from the rumor myth generated from people
7 walking through the crime scene, having that information,
8 trading all that information, trying to get good stuff about
9 it.

10 I had some information for you to consider about this
11 case that goes to police investigation techniques, not the
12 best in this case, shoty police work, arguably, and that's
13 just -- it is what it is. The lead Detective on the case, the
14 guy in charge of the whole case when it was going on, he
15 didn't even get called in the case-in-chief. He didn't get
16 called at all by the State. We called him, to talk about
17 these things. We talked to him to find out about these
18 things.

19 And Pearl, his statement. I had to talk to the police
20 officer myself. I had to call him to the witness stand to
21 talk about that statement. That statement has no credibility
22 whatsoever. It doesn't match the forensic evidence, but the
23 police didn't care, they put him up there anyway. It's
24 unbelievable. You know what I mean by it doesn't match. It
25 doesn't match the forensic evidence.

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

952

1 There was talk early, and in Pearl's statement himself.
2 The first thing he said -- one of the first things he said
3 while the Solicitor was talking to him was that, Jimmy said
4 that he killed those girls. The Solicitor said, what about
5 Monica, and Pearl said, Jimmy didn't say anything about
6 Monica. I'm sure somebody caught that when James Pearl was
7 testifying. That's a problem. That's a big problem. Then it
8 gets compounded, because the Solicitor, she said, well, you
9 said them girls, or girls. Pearl said, yeah, that's me,
10 plural; I used the plural, Jimmy didn't use the plural.
11 That's a big problem. Compound that with, he didn't say
12 anything about Monica, the Solicitor has got a big problem.

13 Now, that's Donna Elder, a very good lawyer. She goes
14 on, she doesn't forget that she's got a big problem, goes back
15 into it. Tell me about Monica, and you see Pearl hesitate for
16 a second, and then says -- talks about the bathroom, oh yeah,
17 the bathroom. All right. Where -- and I -- whatever it was
18 that he said, the door opened and he pushed her inside and he
19 shot her. That is not what happened based on the crime scene
20 evidence. The crime scene evidence is the reliable evidence.
21 Whoever shot her had -- dragging her down the hallway. We
22 know that. We know that Pearl was lying about that part.
23 There's no doubt about it.

24 Pearl makes up this story about the -- this confession
25 happened at a hotel room. Well, when the Defense called the

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

953

1 police officer in charge, the head guy, yeah, he went out
2 there. There's two hotel rooms out there -- two hotels out
3 there, one that Pearl says, absolutely they were not staying
4 at, but he may have meant the other one. I think that's the
5 Knights Inn. They went out there, for whatever reason. They
6 can't substantiate his case, can't verify it, but they are
7 going to put him up to testify anyway. They've got to have
8 some kind of evidence, got to have something to connect the
9 crimes to somebody, so that's what they went with. The
10 evidence is not reliable, so I ask that you reject all of it.

11 We put up -- the Defense put up some evidence in this
12 case. Now, at the beginning of the case I wasn't convinced
13 either way what we were going to do, and that's the way these
14 cases work sometimes, because the defense doesn't have to put
15 up anything, but we decided to put up some evidence. We
16 decided to put up these police officers so we could show you
17 everything that we have to consider, and show you how
18 inconsistent some of these police -- these informants were,
19 and how shoty this work was, and how none of this that they
20 had would support a conviction in this case, that the only
21 evidence would support not guilty or reasonable doubt, which
22 is the same thing. We put that up there. As the witnesses
23 from the State started to testify we put up some other
24 witnesses for the credibility, okay. Somebody on the
25 witness -- I mean, on the jury, maybe talking about witnesses,

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

954

1 and they say, Gardner, he's just as bad as the State, he put
2 up jailhouse people too. Well, I did. I anticipate that the
3 Solicitor somewhat -- may say, may not say, but he may say
4 that, he didn't choose the witnesses, but the case chose the
5 witnesses, or something like that. Well, no, he chooses
6 witnesses just like I choose witnesses, and I chose some
7 jailhouse people. The difference between his jailhouse people
8 and the ones that I put up, I'm not trying to prove, beyond a
9 reasonable doubt, two people should be convicted of murder,
10 I'm putting them up there -- what these other jailhouse people
11 said, all right. You know, for example, Belal Harris. I put
12 him up there to impeach Craig Burris. Craig Burris said that
13 Jimmy Lee told him he did this. All right. Belal Harris said
14 Craig Burris told him he was lying. One of those people were
15 lying. What is that about? So we look at our credibility
16 guide, how we figure it out, and that's y'all's decision to do
17 it. I just simply offer some advice to do it. One of the
18 things that I think would ring home the loudest is, Craig
19 Burris is doing it to get help. He has just recently got
20 help. I don't know if it was because of an alibi, or because
21 of whatever, but he reached out to the police, his charge went
22 away. His charge could have went away because he was not
23 guilty, could have went -- I don't know, and it's not
24 important. What is important is the motivation. What
25 motivated him to reach out to the police with this story was

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

955

1 for him to get help, for him to get somebody to look into his
2 case. That's the motivation. That's the bias. So, is his
3 story the truth? Hardly. He wants to get help from the
4 State.

5 What infuriated me was we had -- when I was talking with
6 him -- we had just talked about that, and I thought I was
7 going to get him to admit that he was getting some help here,
8 certainly looking for some help here. That's the way the
9 system works here. He agreed to that, and then he said the
10 most profound thing, the craziest thing, I guess, would be a
11 better way to say it, I don't have any experience with that.
12 Well, you just -- and that's when I just got frustrated and
13 went and sat down. He's got plenty of experience in that, and
14 that's the way the system works, so, judge his credibility
15 based on that.

16 Belal Harris, he's getting nothing for his testimony. I
17 don't have the keys to the jail. I called him to go against
18 the State. Belal Harris says his pending murder charge, or
19 his criminal charges, he's got his stuff, he's getting no help
20 for that. He's getting nothing from me, he's getting nothing
21 from the Defense. That's just something that was important
22 for him to testify to, so I put him up there, and that's what
23 he said, so based on the believability, credibility,
24 reliability, he is much more credible than somebody that's
25 getting favors from the State in exchange for information, in

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

956

1 exchange for information.

2 So we continued to put people up, some of whom may have
3 given you information to help you decide your case, some of
4 whom may not have. I just thought we would put these up there
5 to show a big picture so you have as much information as you
6 could to decide what happened, or, you know, help you decide
7 your decision. We -- we may not know what happened, okay. I
8 submit to you that nobody in this room, this building, knows
9 what happened. Some murder cases are clear, and easy, and
10 open, shut, some murder cases are mysteries. They turn and
11 they move, and they grow, and they expand, and contract, and
12 nobody knows what happened, and sometimes you never know what
13 happened. You have unsolved mysteries. They've got all kinds
14 of T.V. shows nowadays. They've got unsolved myths, and crime
15 scene map, and innocent project this, and all that stuff for
16 those type cases.

17 The Defense doesn't have to prove what happened that
18 night out at Pridgen. The Defense can't prove it. That's why
19 the State has to prove it. I tell you it wasn't these guys.
20 I can't tell you who it was, but I can tell you that there is
21 somebody that Monica scratched when she was being drug down
22 the hallway, when she was defecating on herself. She
23 scratched somebody. She got that D.N.A. under her fingers,
24 and that D.N.A. has been testified, the State's expert
25 witness, the S.L.E.D. agent, that D.N.A. excludes these two

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

957

1 boys. That's not -- what that means is, that's not them.
2 What that means from the science, from the science, that's not
3 them. What that means to y'all is that you have to vote not
4 guilty.

5 I want to talk about the burden of proof for a minute.
6 The burden of proof is always on the State. Just because the
7 Defense elects to put up some evidence should not be
8 confused -- do not let the State confuse you into thinking
9 that the Defense has to prove something. The Defense doesn't
10 have to prove something because, in some cases they can't
11 prove something.

12 Remember another thing that you can look at when you are
13 trying to figure out the credibility of the witnesses. It's
14 the demeanor on the witness stand. How did they act when they
15 got the hard questions. And you know who acted the same, no
16 matter who was asking them the questions, told or gave his
17 information? That was Ortuno, the D.N.A. guy. We don't know
18 who did that. The State doesn't -- and the State has to
19 prove, but don't get confused because someone -- cross-
20 examination from the State to the S.L.E.D. agent about that
21 plug, couldn't it have been this, couldn't it have been
22 walking across the carpet, could that do it? Is it possible
23 that something else might have done something else? Could a
24 baby have done it. That is wild and far out how this stuff
25 has nothing to do with this case. Those are the kind of

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

958

1 questions that looks like that they are looking for reasonable
2 doubt, and an out for them, the State, for the D.N.A.
3 evidence.

4 Reasonable doubt does not go to the State. They don't
5 get reasonable doubt. They have proof beyond a reasonable
6 doubt. They have to do that. Don't be confused about that
7 when they start second-guessing their own State witnesses
8 about it. The truth is the truth, and the truth won't change.
9 Witnesses' testimony, they will change. Human beings are all
10 the same, relatively speaking, when it comes to memory
11 reception. We all know that. The older something is in time
12 the less you may remember it. That's fine. I'm not talking
13 about that stuff, but that's the stuff that will come up in a
14 case. I'm talking about the flat out story telling. Those
15 people will change. What won't change is the truth.

16 One thing that came out, and we put up DiLorenzo. The
17 Defense put up DiLorenzo, not the State. It is -- and it came
18 out on cross-examination by the State, the State cross-
19 examining their own lead investigator, talking about Phonetia
20 Hightower. Now, I'm sure everybody picks up on that, but he
21 was -- got really -- you could tell his demeanor changed. He
22 was excited to tell you that because he was going to tell you
23 that Phonetia had been arrested for giving false information
24 in connection with this case, all right, and went on to
25 describe what it was about, said that it was for giving an

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

959

1 alibi for Jimmy, that's why she was arrested. That's all the
2 evidence in the record we have about that. That isolated,
3 alone, the State could probably use as some type of evidence
4 to try to persuade you that -- well, try to persuade you of
5 guilt, but that's not going to prove guilt. It's going to
6 prove that maybe -- that Phonetia was trying to manufacture an
7 alibi. They arrested her for it.

8 Well, if it's isolated alone, that's the way it looks,
9 but you play it into the middle of this case, it's got
10 reasonable doubt all over it. Plug that little tidbit of
11 information into this case, and it's reasonable doubt. Why do
12 I say that? Because every case, even a complicated one, has a
13 theory, all right, and the theory -- I told you Brad did --
14 Mr. Richardson did a good, powerful opening statement. He's
15 got a good theory of this case. It's got holes in it. It's
16 not his fault. That's the evidence that he was dealt with,
17 okay, but the standard remains the same. We don't adjust the
18 standard, which is beyond a reasonable doubt, based on what
19 we've got. We just don't do that. Okay. But the theory, all
20 right, we've got these two fellows arrested. How are we going
21 to prove they did it? Well, we've got these people coming
22 forward. We know why they are coming forward. We know about
23 the gold rush of evidence. We know about the people wanting
24 to go to the Air Force Base. We know all about the get out of
25 jail free cards.

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

960

1 We've got all that, and that's good, but there is no
2 jury going to believe just a bunch of jailhouse snitches.
3 We've got to have some other stuff. We got anything else?
4 How am I going to get them connected to Pridgen Road? I know
5 what we can do. We can get Phonetia Hightower. That's the
6 theory of the case, that Phonetia is a cousin of the decedent,
7 the victim, Jamilla. The theory of their case, they want you
8 to believe, that she -- that Jimmy came over and picked her up
9 while they were playing cards at Mildred Brown's house, and
10 that they want you to think that Jimmy and Phonetia went over
11 there, and that Phonetia somehow persuaded her cousin to open
12 the door so that Jimmy could go in and take them out, or rob
13 them, or both, or whatever that the State wants you to think.
14 The problem with that is, if the State really believed that
15 Phonetia did that, if they really believed that that was the
16 case, that was the truth, that was what happened, what do you
17 think they would have done?

18 See that man sitting over there to your left of Jimmy,
19 that's Chris, that's Christopher Stephens. He's not charged
20 with murder. He's charged with accessory. What do you think
21 they would have done with Phonetia if they had thought that
22 she drove the car over there? What do you think they would
23 have done with Phonetia if they thought that she helped Jimmy
24 get in the house? She would be charged with murder. She
25 would be sitting over there at the Defense table, charged with

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

961

1 murder, and she's not. She is charged with giving false
2 information. Why do you think that is? Squeeze a little
3 leverage out of her? Maybe. Fits right in there, doesn't it?
4 I don't know. The State didn't call her, probably one of
5 their key witnesses.

6 The State didn't call Mildred Brown, did they? They
7 called Christy Pearl, Christy Pearl, the cousin of James
8 Pearl. One of the things that Christy Pearl said that
9 probably is credible, believable and reliable, one of the
10 things she said, that she cares for her cousin, James, but she
11 don't want nothing bad to happen to him. Well, I bet she
12 doesn't, and nothing bad may happen to him because based on
13 his lies that he told up here in this trial.

14 Put all that information together -- oh, Christy, if I
15 heard the testimony right we've got Ms. Greene, Ms. Greene, I
16 think testified, the lady next door -- I'm not sure how next
17 door -- but she's the one that heard the gunshots or
18 firecrackers, or whatever. She's credible. She's reliable.
19 She's believable, and she's got no dog in the fight. She
20 don't know any of these people, I presume. She's certainly
21 not working off charges. She just heard something and she was
22 talked to talk about it. And she was called by the State for
23 one reason. Y'all know what that was, right? Time of death,
24 twelve o'clock; midnight. That's what I got out of it. If I
25 got it wrong, when y'all go back there y'all do it the way

JURY IN
DEFENDANT, SESSIONS, SUMMATION (GARDNER)

962

1 y'all want to, what I got out of it was the time of death,
2 midnight by the neighbor heard what she thought was fireworks,
3 but it was the wrong night for fireworks; it had to be
4 gunshots.

5 Despite the fact that James Pearl said that Jamilla was
6 shot three times, she was only shot once. If we go with the
7 time of death as midnight, if I remember right I think that
8 Christy said she was partying, they were smoking, there was
9 drinking going on, nobody was really looking at their watches,
10 so nobody knew what time anything was going on. But I think
11 Christy's mother called for her to go get the young'uns,
12 something like that, and she looked at her cell phone and
13 everybody know what most cell phones have on them when you
14 look at it, and that was 4:30, so I don't think Phonetia left.
15 I don't even know if Phonetia was there, just don't know, but
16 if she left, don't you think she left at 4:30, and if she left
17 at 4:30 that's four and a half hours after the gunshots, and
18 if she left with Jimmy Lee to go do the crime, they are late,
19 but if the police really thought that they did all that she
20 would be charged with murder.

21 The Judge is in charge of the law. He rules. Like he
22 said at the beginning of the trial, he's going to conduct the
23 trial. The lawyers do their roles in it, now it's time for
24 you to do your roles in it. Y'all are twelve, fourteen --
25 twelve judges of the facts, that's it. There's a fact, the

1 Judge is going to give it to you to decide. This credible,
2 believable, and reliable, that's y'all, only y'all are the
3 only ones that do that. He's going to give you the facts for
4 y'all to decide. Now if it's a law issue you've got to let
5 him do that. Okay. He's going to charge y'all on the law,
6 and under your sworn duty, your oath that you took, you follow
7 that law, you apply these facts, and when you come back here
8 your verdict will be not guilty. Why will it be not guilty?
9 It will be not guilty because the science says they are not
10 guilty, the D.N.A.. There's somebody out there with Monica's
11 fingernails on them, while she is being drug. That tells you
12 not guilty. There's somebody's footprint in that bathroom in
13 that fecal matter. That tells you they are not guilty. All
14 the rest of the evidence is reasonable doubt, and reasonable
15 doubt is not guilty.

16 Commend you for your service. Thank you for your time,
17 and I -- that is the verdict we will be asking for you to
18 bring back, not guilty.

19 **THE COURT:** All right, Mr. Frederick.

20 **MR. FREDERICK:** May it please the Court..

21 **THE COURT:** Yes sir.

22 **MR. FREDERICK:** Can everybody see that?

23 Well, I want to tell you that every time I walk up here
24 I'm nervous, I'm a little bit afraid, shaking just a little
25 bit, and I imagine that they feel the same way, but, I mean, I

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

964

1 just felt the need to tell y'all that so you know. Mr.
2 Gardner and I, I mean, we've got these men's lives in our
3 hands.

4 I have been told over the years that good lawyers never
5 rely on notes. You don't see Mr. Gardner do it. I promise
6 you you won't see Mr. Richardson do it, but as I give this
7 closing argument -- this has been a long week, and it's been a
8 lot of information, and I very well may turn to my notes as
9 I'm talking to you.

10 You only have the testimony of one single witness to
11 consider in this case regarding Christopher's accessory before
12 the fact charges, and that's the jailhouse snitch, James
13 Pearl. This entire week no other snitch that they put in that
14 stand said anything regarding Christopher Stephens and
15 accessory before the fact.

16 And you are going to have to ask yourself the question,
17 can I convict a person based on weighing the testimony of one
18 witness, and depending on your beliefs the answer to that
19 question may be no, not under any circumstances. The answer
20 to that question could be, it depends on who the witness is,
21 and it depends on what kind of evidence there is to
22 corroborate that witness. The answer to that question has to
23 be no in a case where there is no reliable evidence to
24 corroborate that witness, in a case where we know that the
25 police were telling witnesses what to say, in a case where all

1 of the credible, believable and reliable evidence pointed
2 elsewhere. The answer to that question has to be no. They
3 can take and pick any person in our community, they could pick
4 me, they could pick you, and make a case against you with
5 jailhouse snitches. When that man came in here three days ago
6 and testified to you we all saw, and we all heard what
7 happens. He was lying to us. He came in here and he put his
8 hand on the Bible, and he swore under oath, and then he lied
9 to us, and I'm going to tell you, I need to tell you, that I
10 don't blame him, and I don't think that you should blame him,
11 because he's only doing what he has to do. He's only trying
12 to survive. He was lying to us, but lying is the least of his
13 problems right now.

14 The other day I read a story about a man, a good man, a
15 strong man, who heard the cries, the desperate cries of a
16 drowning man out in the middle of a lake. Immediately he
17 jumped into the water and he swam out to the drowning man to
18 save him. And this story does not have a happy ending. You
19 see, the drowning man grabbed onto the good man, and in his
20 desperation he dragged him down, and both of them died in the
21 lake. That snitch is the drowning man, and he will grab onto
22 anything to save himself. He's like a man out in the middle
23 of the ocean with no life raft, no boat, no life vest, and he
24 is just flailing around, he is just trying to keep his head
25 above water. He will grab onto anything, he will do anything

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

966

1 to save himself. The drowning man has no conscience. The
2 drowning man has no sense of morality or decency. The
3 drowning man is a dangerous man. You ask any lifeguard and
4 they will tell you that the most dangerous part of a rescue of
5 a drowning man is the drowning man himself, because he will
6 grab onto the lifeguard and he will drag him down to his death
7 in a matter of seconds. Lifeguards are trained in what to
8 expect, and how to deal with a drowning man. The training of
9 the lifeguards before they go onto duty can help us here in
10 this case, because James Pearl is the drowning man. He has
11 been to prison, he is going back to prison, and he knows it,
12 and he feels it, and it's as if his life is about to end and
13 he knows it, and he is grasping for any help that he can find.
14 He was sitting in his jail cell and the water was about to
15 close over his head for the last time, and the Prosecutor and
16 the Investigators swam up to him, swam up to him and they
17 offered him hope, and of course he grabbed onto it, and he
18 would do anything, and he would say anything to grab onto it.
19 The Prosecutor and the Investigator swam up to that drowning
20 man and they offered him a hand, and a rescue, and that
21 desperate soul grabbed that hand wildly, and he dragged them
22 under, and now they have lost their moral compass. The
23 Prosecutor and the Investigator got too close to that drowning
24 man, and they offered him something he could not refuse, and
25 now he has dragged them down.

1 The drowning man is grasping one last time to save
2 himself, and he's grasping at you. You see, the drowning man
3 has to convince all of you that he is telling the truth. He
4 has not gotten his deal yet, and he feels that, if he doesn't
5 get his deal that he's going to go down, and he's going to
6 drown in prison, away from his family, and away from his
7 freedom. Remember, the drowning man will grab at anything.
8 He will say anything to save himself. He is the drowning man.
9 Lying is the least of his problems now. Do not let him drag
10 you down, and do not let him make you lose your moral compass.

11 Let's talk about reasonable doubt. You've heard some of
12 this before, but in different courtrooms, and in different
13 types of cases we use different standards of proof. To
14 understand reasonable doubt and what it means I think that we
15 need to place it into context, and so I'm going to talk about
16 some of those standards of proof.

17 The lowest standard of proof would be a scintilla of
18 evidence. It's not enough evidence to prove anything. It's
19 nothing more than a mere suspicion, and it's certainly not
20 enough to convict a person of a crime. A reasonable suspicion
21 is enough evidence for an officer to stop a car on a highway
22 and briefly detain the people in the car just long enough to
23 write them a ticket, to run a computer check and then to let
24 them go. The reasonable suspicion is enough evidence for an
25 officer to pat somebody down if they suspect that they have a

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

968

1 weapon on them. It's not enough evidence to search a person.
2 It's just enough to pat them down, for reasonable suspicion is
3 not enough to convict a person of a crime.

4 Probable cause is enough evidence for an officer to
5 actually search a person, or to search a car. When the Grand
6 Jury indicts the case, just like the indictments you heard
7 read to you at the very beginning of this case, when a Grand
8 Jury indicts a case they have found that there is enough
9 probable cause for a case to go forward to trial. It's enough
10 to get you here, but it's not enough to convict a person of a
11 crime.

12 The standard of proof that most people are familiar with
13 is a standard of proof that we use in civil cases, that's
14 presumption of innocence. A presumption of innocence means
15 that, if one side of the evidence weighs even slightly more
16 than the other side, fifty-one percent, then you can find in
17 that person's favor. If all we were fighting about here today
18 was money, a presumption of innocence would be the standard of
19 proof. Presumption of innocence is not enough to convict a
20 person of a crime.

21 Clear and convincing evidence is the standard of proof
22 that we use in termination of parental rights cases in Family
23 Court. If the State wants to permanently take your children
24 away from you then they have to prove by clear and convincing
25 evidence that you are an unfit parent. Even clear and

1 convincing evidence is not enough to convict a person of a
2 crime.

3 And the last, and the highest standard of proof in our
4 justice system is beyond all reasonable doubt, and this is the
5 standard of proof that we have to use in every criminal case.
6 A reasonable doubt is the kind of doubt that would cause a
7 reasonable person to hesitate to act. It is a doubt for which
8 you could give a reason. Reasonable doubt is a safeguard that
9 is given to all citizens in our Country. It protects all of
10 us. It prevents the conviction of innocent people. Why do we
11 have that safeguard? Why is it that we have a presumption of
12 the innocence in civil cases and reasonable doubt in all
13 criminal cases? The Founding Fathers, in our Constitution,
14 said that the prosecutor has to prove his case beyond a
15 reasonable doubt because they knew, they knew from their own
16 experience way back then with the Crown, they knew that the
17 prosecutors had all of the power, they knew that an innocent
18 person can never prove a negative. They knew that seldom can
19 anyone prove their innocence. Because the prosecutor has all
20 the power he can compel testimony through the threat of
21 prosecution and the promise of freedom. We can't do that, and
22 so the prosecutor has to prove his case beyond a reasonable
23 doubt, because the prosecutor has all of the power. We have
24 the right to a trial by jury, so that you are here to stand
25 between Christopher and the awesome power of the government.

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

970

1 The Founding Fathers said, in the Constitution, that they must
2 prove their case until all doubts are removed from your mind.
3 They have to prove their case until you do not hesitate before
4 reaching a verdict.

5 Reasonable doubt. If you will, imagine that we have a
6 box here. I put a cat into the box, and then I put a mouse
7 into the box with the cat, close the box up tight. I tie it
8 with a string, and we leave. After a few hours we come back,
9 we untie the string, we open the lid, we look into the box,
10 and we see a cat, but we don't see a mouse. Is there any
11 doubt what happened to the mouse? Now just imagine we have a
12 box. Into the box I put a cat, into the box with the cat I
13 put a mouse. We close the box up tight, tie it up with a
14 string, and we leave. We come back in a couple of hours, I
15 untie the string, we open the lid, we look into the box and we
16 see a cat, but we don't see a mouse, but we see a small little
17 mouse size hole in the corner of the box. That hole is
18 reasonable doubt.

19 This case, when we look at the facts in this case,
20 there's not just one hole in the corner, this box is full of
21 holes. The reason that they must have credible, believable
22 and reliable evidence, and they have to give that to you is
23 because we cannot just guess a person into the penitentiary.

24 Fingerprints were taken from the scene, and they didn't
25 match either of these Defendants. Investigator Carol Allen

1 said that she took -- lifted ten fingerprints from the scene,
2 she compared them to Jimmy Lee, she compared them to
3 Christopher, she compared them to Monica's, and she compared
4 them to Jamilla's, and they did not match any of them. That
5 is credible, believable and reliable evidence that someone was
6 in that house.

7 Footwear impressions were taken from the scene, and just
8 last month when they compared them they said that part of the
9 footprint from the shoe that they think is Jimmy Lee Sessions'
10 was consistent with the impression, a partial impression, from
11 the crime scene. He explains that what that means is they
12 don't match, and besides that, the shoe that they think is
13 Jimmy Lee Sessions' has wear marks on it that were not found
14 in the impression.

15 They want him to say, yes, there is a match between
16 these footprints and the shoes that we know, without a doubt,
17 are Jimmy Lee Sessions', but he won't say that because it's
18 not true. That, coming from the State's own expert, during
19 their own case, is credible, believable and reliable evidence.

20 As Mr. Gardner said, you are going to be able to look at
21 the shoes if you choose to, you are going to be able to look
22 at the photos. When you look at those shoes -- there's five
23 pairs of them -- four pairs of them, as our expert testified
24 to, are identical. He measured them. You are going to see
25 the same pattern in them. You are going to see the same stars

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

972

1 going around the outside edge, Nike shoes.

2 I'm not going to look for it right now but there is a
3 photo of the bathroom that shows two footprints pretty much
4 standing in the position that you found Mr. Richardson in
5 during his opening statement. Those footprints, aptly placed,
6 are in, forgive me, the fecal matter. Their expert testified
7 that there was no way he could date those footwear
8 impressions.

9 Common sense -- we didn't need our expert to tell us
10 this. Common sense tells us that when there is fecal matter
11 at the crime scene it's going to dry at some point, and the
12 footprints that were found in the fecal matter were
13 contemporaneous with the crime. What their expert did not
14 tell you is that there were two footprints in the fecal matter
15 that did not match, and were not even consistent with any of
16 those shoes.

17 There was D.N.A. collected from the crime scene. It was
18 compared with both of their D.N.A.. They didn't take their
19 D.N.A. until two months ago. Last month they compared the
20 D.N.A. that they had to both of these guys and he didn't say
21 it's not consistent with, he said it absolutely excluded them,
22 it absolutely excluded them. They were able to say with
23 certainty that there was one unidentified male, and one
24 unidentified female at the crime scene, and it was not either
25 of these two.

1 "LeeLee" Washington, his testimony had no bearing on
2 Christopher's accessory before the fact charge, but we put him
3 up here so that you could see the police's conduct during the
4 investigation of this case. The fact that you heard testimony
5 that the investigators were threatening witnesses and telling
6 them what to say, telling them what to say to you in court, is
7 reasonable doubt.

8 The fact that the testimony of witnesses like James
9 Pearl was bought and paid for by the Prosecution is reasonable
10 doubt. James Pearl, on the day he was arrested, he was
11 interviewed by the police and he repeatedly, repeatedly told
12 them, he admitted to you that he repeatedly told them, when he
13 did not know he was being recorded, that he was going to tell
14 them whatever they wanted to hear, so long as they helped him
15 with his drug charge. In his testimony he learned about the
16 murders by a phone call at 1 o'clock P.M. on Friday, he
17 learned about the murders by a phone call at a cookout Friday
18 night. He went by Jamilla's house to give her money that he
19 owed her at 1 o'clock P.M. Friday. He was with Christy Pearl
20 when he went to the house, but Christy did not mention to him
21 that Jamilla was dead.

22 He says that Jimmy Lee confessed to him in a motel room,
23 Room 301 at the Days Inn, and yet you have the records from
24 the Days Inn. I don't remember the man's name, but there was
25 someone staying in the room who was visiting from New York.

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

974

1 The investigators knew that he had not stayed at the
2 Days Inn. Investigator DiLorenzo told you, after they heard
3 this story from this guy they went and they tried to check it
4 out, they went to the Days Inn, they checked the records, they
5 showed the night manager a photo of James Pearl and they said,
6 no, we've never seen him. James Pearl says, without a doubt
7 it was Days Inn. The investigator says, maybe he was wrong,
8 maybe it was the motel over here cause it's nearby, maybe it
9 was the Knights Inn. You've got those records too.

10 James Pearl is facing drug charges. He's facing charges
11 of threatening the life of a public official. He has a daily
12 drug habit, by his own admission, and he is the drowning man.

13 Christy Pearl came forward, two years later she came
14 forward, in August of 2008, in an attempt to corroborate her
15 cousin's story, and she says they were partying all night at
16 Mildred's house, they were doing cocaine and drinking, but not
17 Christy; she smoked one blunt, but she stayed up all night
18 long, she went down on a serious mission with Mildred and
19 Jamilla late Thursday night, after dark, to the Super 8 Motel,
20 they dropped Jamilla back off at her house and they left her
21 there. No one was at Jamilla's house except for Monica. Of
22 course Josh Best says that he was at Jamilla's house, and no
23 less than six other people were at Jamilla's house.

24 They are saying that the time of death was around twelve
25 o'clock midnight. I have to agree with Mr. Gardner, why else

1 did they put Teresa Greene on the stand, other than to
2 establish the time of death, but Christy saw Jimmy Lee at
3 Mildred's house late Thursday night she says. She doesn't
4 know what time it was, but then she admitted she told the
5 investigator that she did look at her clock on her cell phone,
6 it was around 4:30, it was sometime before then.

7 Christy is told that Jamilla is dead around eight
8 o'clock the next morning, but then she goes by Jamilla's house
9 around one o'clock P.M. with her cousin, James Pearl, who she
10 forgets to mention to Jamilla is dead. Why are we knocking on
11 her door? She says that James Pearl was at Mildred's house
12 Thursday night partying with them, doing coke and drinking,
13 but James Pearl did not mention anything to the investigators
14 about being there.

15 Matthew Campbell, he was on probation, he had charges
16 pending for armed robbery, lynching, pointing and presenting a
17 firearm. He got arrested again on a drug charge, showed up
18 with his lawyer to turn himself in on the drug charge, and
19 talked to the investigators about this case, and because they
20 have the wrong guy his charges were dismissed the following
21 month. Now he has more charges, and here he is.

22 Craig Burris sent a note to the investigator, told him,
23 I'll give you information you talk to the Solicitor's Office,
24 and you get them to listen to me because they have the wrong
25 guy. Four days later his kidnapping charge is dismissed. He

DEFENDANT, STEPHENS, SUMMATION (FREDERICK)

976

1 gets charged with murder, and he's back in jail. Now he's
2 looking at life in prison, and they are allowing him to
3 testify in this case. What could be Craig Burris' motive for
4 testifying in this case, other than trying to shave some years
5 off of his life sentence? He told you himself he was under
6 investigation for this murder and I didn't even ask him that
7 question. He told you he's called "Snagger", the same
8 name they've attributed to Jimmy Lee over here. His rap sheet
9 includes multiple gun charges, violent crimes and drug
10 convictions.

11 You remember at the beginning I told you, I'm not going
12 to point the finger at any one person, and I still can't. I
13 can't tell you this person, without a doubt, committed this
14 crime, because the evidence points to a lot of different
15 people, and a lot of different scenarios.

16 The Prosecutor tells you that greed motivated this
17 killing, greed and lust for drugs, and yet, as I said, they
18 took a briefcase full of drugs out of the house. They got a
19 Search Warrant for Antwann Higgins' apartment, they were
20 looking for guns with a map drawn by Melissa Gomez to show
21 them where the guns were. They found the wrong guns, and they
22 found shotgun shells but no shotgun. They did find a shotgun
23 in Jamilla's house, and they found a small amount of drugs.
24 Nobody got arrested. Melissa has never been charged with
25 tampering with evidence. She was never charged with

1 obstruction of justice, never charged with a drug offense.

2 Most of these witnesses, they've got nothing to do with
3 Christopher. Why do I keep talking about them? Why am I
4 cross-examining them? Because what they are trying to do here
5 is wrong. It's wrong, and this is not justice.

6 Let me ask you a question. If I presented a witness to
7 you, and before that witness testified I told you that I have
8 paid him off, One Thousand Dollars for his testimony, would
9 that change your opinion of that witness, would that make him
10 more or less reliable? Does money change a person's sense of
11 morality, can it change a person's definition of honesty? If
12 I told you I had paid off the witness One Thousand Dollars I
13 think then you would not, and you should not, trust or believe
14 that witness. If I told you I had paid off a witness One
15 Thousand Dollars I think that you would not, and you should
16 not trust me for putting that witness on the stand, because
17 the price that you pay when you pay off a witness is not only
18 that witness's credibility, but your own credibility. And the
19 Prosecutor would say that, I didn't pay off any witnesses, I
20 didn't do that, and let me ask you this, if I offered you Ten
21 Thousand Dollars to go to prison for a year would you take it?
22 And the answer is no, because your freedom is so much more
23 important than your money, and so it is with the snitch, and
24 what we've learned in this courtroom this week is,
25 unfortunately, the currency of the realm here is freedom, and

1 it's so much more valuable than money.

2 Let's talk about power for a minute. We are conditioned
3 to believe, our entire lives, that power over our lives is
4 always vested in someone else, our parents, and our teachers,
5 our bosses, politicians, but I can't think of any better
6 example of the power of the individual in America than a
7 person sitting on a jury. Your verdict has to be unanimous in
8 this case. Each of you has to vote to send Christopher away,
9 or set him free, and that gives each of you a huge power,
10 because if any one of you says no, I don't agree to send
11 Christopher away, then you can stop it, any one of you can
12 stop it. What happens to Christopher is each juror's personal
13 responsibility, and when you go back to the jury room to
14 deliberate you listen to each other's arguments, but no one
15 has to do violence to their personal convictions in reaching a
16 verdict.

17 When I sit down that's -- this is the last that you are
18 going to hear from me. When the Prosecutor is making his
19 argument I can't get back up and I can't rip up anything that
20 he says, I can't argue any more, and the logic behind this is
21 because they do have the burden of proof, and we did put on a
22 case, then they have the right to rebut what we have said to
23 you, and so leave you with the words of the Prosecutor ringing
24 in your ears as you retire to the jury room. I won't be able
25 to get back up no matter how bad I want to, but I know that

1 all of you have been listening this entire trial. I have
2 watched all of you, and I know that you have been paying
3 attention, and you have been taking this so seriously, and I
4 appreciate that, and I know -- I'll ask you this, when you
5 hear the Prosecutor's argument, know that I can respond to
6 every point that he raises, every one, and when you go back
7 into the jury room, because I cannot respond to them and
8 answer those points, I ask that you do it for me.

9 In a few minutes after you hear the Prosecutor's
10 argument, after you hear the Judge's charge on the law y'all
11 are all going to get up, you are going to walk back through
12 the door again, you are going to go back in the jury room and
13 you are going to make your decision about what justice is in
14 this case. This is the hardest part in this trial for me,
15 because I have to entrust this case, and I have to entrust
16 Christopher into your hands, and I can only hope that I've
17 done the best that I could, and I've done everything I could,
18 I've said everything that needed to be said, because this is
19 it.

20 Before I finish I want to share with you the story that
21 you've probably heard before, but that I think is more than
22 appropriate for this time in this case, and it's about
23 transferring the responsibility of this case from us, on
24 behalf of Christopher, to you. It's a story about a wise old
25 man, and a young boy who wanted to show up the wise old man as

STATE'S SUMMATION (RICHARDSON)

980

1 a fool, and one day the young boy, he found a small bird in
2 the forest, and he had a plan. He was going to take the bird
3 to the old man, cupped in his hands, and he would say to the
4 old man, old man, what do I have in my hands, to which the old
5 man would reply, you have a bird, my son, and then the boy
6 would say, old man, is the bird alive or is it dead, and if
7 the old man said the bird was dead, then the boy would open up
8 his hands and the bird would fly freely back to the forest, if
9 the old man said the bird is alive, then the boy would crush
10 the bird, and crush it, and crush it, until it was dead, and
11 so the boy sauntered up to the old man, with the bird in his
12 hands and he said, old man, what do I have in my hands, and
13 the old man said, you have a bird, my son, and with a
14 malevolent grin the boy said, old man, is the bird alive or is
15 it dead, and the old man, with said eyes said, the bird is in
16 your hands, my son, and so, ladies and gentlemen, Christopher
17 is in yours.

18 Thank you.

19 THE COURT: All right. Solicitor.

20 MR. RICHARDSON: Greed. Cold, calculated, malevolent
21 and murderous, greed. I began this case by telling you that's
22 what this case was about, the lust of these two Defendants for
23 drugs and money. That's what drove them to the crime. That's
24 what drove them to plan, scheme, and orchestrate this brutal
25 armed robbery that turned into cruel and terrible murder.

STATE'S SUMMATION (RICHARDSON)

981

1 They got what they wanted that night. Today they must get
2 what they deserve, justice.

3 Folks, in just a few moments Judge John is going to give
4 you the law, and he's going to first start by telling you you,
5 each of you, are the judges of the facts, y'all will take
6 everything you've heard from the witness stand, the hundred
7 and some odd exhibits the State put in, whatever the Defense
8 put in, you will take all that and you will weigh those facts,
9 but first he's going to give you the law which you are to
10 apply to those facts. He's going to tell you about the law of
11 first degree burglary, plain and simple. He's going to tell
12 you that it's entering in a dwelling, a house, with the intent
13 to commit a crime therein, and while therein you injure
14 somebody, you have a weapon, or it occurs at night, folks, we
15 are hitting on all three of those. Two girls were murdered,
16 it was at nighttime. We know a forty caliber handgun was
17 used. No brainer. He will tell you that armed robbery is
18 taking of another's property, and it doesn't matter if it's
19 legal property or illegal property, the mere taking of their
20 property, by force, and using a weapon, it's armed robbery.
21 Once again, we had the forty caliber handgun. The property
22 was taken, the drugs, the money, the cookie jars were gone.
23 There are no drugs in the briefcase. It went to the police,
24 so we know the murderers and the robbers took the drugs out of
25 the house.

STATE'S SUMMATION (RICHARDSON)

982

1 And the Judge is going to tell you what murder is. He's
2 going to tell you that's the unlawful killing of another, with
3 malice aforethought, and that malice can be implied in this
4 case because it occurred during the commission of a crime,
5 because a forty caliber Smith & Wesson handgun was used.
6 There can be no other reason to use that. Once you take that
7 handgun in for an armed robbery and death occurs it's murder.
8 So, folks, it's cut and dry.

9 Now where it gets a little more confusing the Judge is
10 going to have to instruct you on what accessory before the
11 fact of a felony is. And all that is, if you help, aid,
12 assist or counsel, in any way, another with the commission of
13 a crime prior to that crime, and you are not there, then you
14 are an accessory before a fact. That's what we have here with
15 Chris Stephens. I can't put him in there. If I had evidence
16 to put him in the house with Jimmy Lee Sessions he would have
17 a murder indictment, he would have a burglary in the first
18 degree indictment, he would have an armed robbery indictment.
19 All I can prove, and all that I have proved is that he planned
20 it, told Jimmy Lee, you need to be careful, let's rob her, but
21 I can't go in, and so that's why he sits here today with an
22 accessory before the fact to murder, to murder, and to that
23 armed robbery indictment. Folks, that's the law.

24 The Judge is also going to charge you on what the
25 Defense has already talked about, reasonable doubt. That's

1 always a good question for jurors, because even my grandmother
2 listening to the radio when she was a little girl heard all
3 these courtroom dramas on the radio talking about reasonable
4 doubt. What is it? What is it? Judge John will tell you, to
5 prove somebody guilty beyond a reasonable doubt the State must
6 give you evidence that leaves you firmly convinced of their
7 guilt. That's what I did, because my job, my responsibility,
8 as an organ of the State, is to give you the relevant,
9 competent, and admissible evidence, that will help you reach a
10 true and just verdict. It's not the slap up on the stand
11 stuff that has no place in this courtroom, no meaning in this
12 courtroom. It's not to have a police officer read off a list
13 of names of, I heard somebody said so and so, wrote it down
14 that they read that so and so did it. That -- that's
15 ridiculous. That's not my job. My job is to give you the
16 confident, relevant, and admissible evidence, to lead you to a
17 true and just verdict, and that's what we've done.

18 Folks, your job is made a little bit easier, because I
19 believe even the Defense almost consents as to what happened,
20 where it happened, when it happened. Jamilla Hightower and
21 Monica Wall, they were murdered, execution style, right in the
22 house, their house at [REDACTED] Myrtle Beach, South
23 Carolina, about midnight, June 8th, 2006, so we know what
24 happened, we know where it happened, when it happened. You
25 have a couple of ultimate questions left, why did it happen,

STATE'S SUMMATION (RICHARDSON)

984

1 who did it? I've told you, it was for greed, for the lust of
2 drugs and money, and I've proven, who? Chris Stephens planned
3 it, Jimmy Lee Sessions did it. You've got the brains and the
4 braun, the accessory and the murder.

5 You looked at a mountain of evidence. The State called
6 seventeen, eighteen witnesses, and hundred and some exhibits,
7 and I've got to do that, because I have to prove those
8 elements. I can't just say, we know it's murder, let's just
9 jump on to something else. I have to prove every element.
10 That's what I've done. You have learned during the past four
11 days of testimony, Wednesday, June 7th, 2006, three
12 individuals sit in a car, Jimmy Lee Sessions, he's up in the
13 driver's seat, Christopher Stephens, he's in the back, his
14 car, his blue S.U.V., James Pearl -- and James Pearl,
15 unabashedly told you, they were talking about robberies, who
16 they could rob, they needed money for drugs. They had that
17 greed going. They discussed old man Braze, can't do him
18 because he might have a heart attack, how about "Ropper",
19 Matthew Campbell, no, can't do him because, as you saw, he is
20 a snitch, he'll tell on somebody, and then that's when Jamilla
21 Hightower has some of the worse luck in the world. She picks
22 that moment, that June the 7th, in the afternoon to say,
23 there's Chris Stephens, and she rides over to the car on her
24 mo-ped and gets off, and gets to the window and they to
25 arguing, you owe me money, pay me. James Pearl told you that,

1 it was a heated argument, and it ends with Chris Stephens
2 saying all right, fine, I'll pay you, and Jamilla says, fine,
3 gets back on her mo-ped, goes away. Man, Chris Stephens just
4 got called down by a woman, in front of his boys, I know who
5 we'll rob, Jamilla Hightower, soft target, female drug dealer,
6 and she just called me down, let's rob Jamilla, but I can't go
7 in, James, why don't you be the door man, let us in. James
8 says, uh uh, uh uh, I can't do that, Jamilla is my girl, I
9 can't go in there. Jimmy Lee Sessions, he's not so shy. He
10 says, I'll do it, I'll do it. Chris Stephens says, man, you
11 are going to have to be careful, she ain't going to give it
12 up. Jimmy Lee Sessions, that's all right, I'll rob her, and
13 the money is right, and I'll put her down if I have to. I
14 guess he carried out on his promise.

15 Go on forward to that night. James Pearl gets out the
16 car. He doesn't want to hear anymore about it, this planning,
17 this scheming, this orchestrating this robbery that turns into
18 a murder. Chris Stephens knows it can turn into a murder,
19 knows it will turn into a murder because he just said, you are
20 going to have to put her down. Jimmy Lee said, I will.

21 We got on to that night. Rodney Turner, Jamilla's first
22 cousin, goes up to his house -- goes over to her house, [REDACTED]
23 [REDACTED]. He knows it's that night. He remembers the
24 last time he saw his cousin alive. And he goes over there,
25 says, what's up, girl. He's got his little baby boy with him.

STATE'S SUMMATION (RICHARDSON)

986

1 Who else is over there, Lamont Garner, Perris, Devon Harris,
2 one of Jamilla's other cousins. I believe Rodney said there
3 was another young man over there, and while they are there
4 laughing, having a good time, who shows up? Chris Stephens.
5 He's dressed in all black. He's driving an S.U.V. with
6 highbeams on it. We don't know if Jimmy Lee is in that car or
7 not. We -- we don't know who is in the car, don't know how
8 many are in the car, but we know, we know that Chris Stephens
9 is there, and when he comes in and sees all those people he
10 kind of freezes. That's what Rodney said, he kind of freezes.
11 Whoa. That's important because you heard Lieutenant Prodan
12 tell you how the crime occurred, how it was pre-planned, how
13 the robbers were going to pick a time that's appropriate.
14 Folks, that's a myth. It's not appropriate when you've got
15 all that muscle in the house. You've got four guys, two
16 girls, and a little boy. This just ain't the right time to do
17 the robbery, and so he's a little frozen. Got to have some
18 reason to be there, and he calls Jamilla out. Rodney doesn't
19 tell us what goes -- what the conversation is out there. The
20 door was closed. He can't. He's telling the truth, he
21 doesn't know, but he can tell you that whenever Jamilla comes
22 back in the house she's in a different mood, she's disturbed.
23 Maybe she got a vibe, maybe she got a threat, maybe she just
24 noticed that Chris Stephens was wearing all black that night,
25 maybe she saw somebody in the car, but she's scared.

STATE'S SUMMATION (RICHARDSON)

987

1 We move on to the next day, June 8, 2006. Matthew
2 Campbell took the stand and he told you he's got cameras at
3 the house. Folks, y'all know why Matthew's got cameras at the
4 house. He told you he had been robbed before, and he sees
5 somebody outside in a black hoodie. Whoa, let's go see who
6 this is, don't want to be robbed again, and he goes out and he
7 runs into Jimmy Lee Sessions, "Snags", a guy he knows, a guy
8 he says he would not get confused with anybody else in the
9 world, he knows him, says he's got a black hoodie and he's
10 strapped, got a gun on his side, and he said he's geeked up,
11 got somebody else with him. It's not Chris Stephens because
12 Matthew said he knew him, but he's got somebody else with him,
13 and he says, man, we are about to pull a rib, Jimmy Lee is
14 geeked up and he says he's about the pull a rib, got to get
15 light, going to pull a lick, a drug robbery. Matthew says,
16 man, whatever. He doesn't want to get involved. He told you
17 that in June, he didn't want to get involved. So he goes on
18 back in his house, leaves well enough alone. Jimmy Lee is
19 just a short distance from Pridgen Road. Can't go over there
20 yet though. You've heard testimony about other people being
21 over there right now. Maybe Jamilla is not back yet, but
22 can't go over there. It's not appropriate yet, and he doesn't
23 have his key, so that same night -- this occurred sometime
24 around ten o'clock, Jimmy Lee goes over to Dunbar Street.
25 They get a knock at the door. Christy Pearl is sitting at the

STATE'S SUMMATION (RICHARDSON)

988

1 table playing cards. Jimmy Lee comes in. He's got that black
2 hoodie on. What else does he have on? Gloves. He's got
3 gloves on. It's June, 2006, in Myrtle Beach, South Carolina.
4 It's first week. There are kids out there laying out on the
5 beach, taking midnight swims, but Jimmy Lee Sessions feels the
6 need to wear a hoodie, have it pulled up, wear gloves. Folks,
7 there's only one reason for that, and we know why, he doesn't
8 want to leave evidence behind. But he gets Phonetia, she goes
9 right with him, she falls right inline with him, Phonetia,
10 who tries to give him an alibi, and then, as Eric DiLorenzo
11 said, wasn't the sense of her memory serving -- him saying it
12 or not, but charged her with misprision because she admitted
13 to lying about that alibi. She gave a false alibi for one and
14 only -- one and only reason, but she goes with them, and that
15 is important, folks, because as Lieutenant Prodan said, the
16 only way you are getting in Jamilla's house -- and there's no
17 sign of forced entry -- you've got to have a key. Phonetia is
18 that key. Phonetia gets them in. James Pearl told you what a
19 door man does. Jamilla ain't letting just anybody in her
20 house. She lets her cousins in. She will let Rodney in. She
21 will let Phonetia in. We know how Jimmy Lee got in there.

22 Go on to midnight. Those fireworks popped off. It's
23 not fireworks. Those are shots. Don't know -- Ms. Greene
24 heard the echo, and that's why she heard the multiple shots.
25 She thought -- she knows she's hearing shots and that's not

STATE'S SUMMATION (RICHARDSON)

989

1 usual. We know those girls die around midnight, June 8, 2006.

2 And we go on into the morning time, the one time, the
3 one time that Christy Pearl is sure of is 8:05 in the morning.
4 Why? Folks, she's got to get her mama to the bus stop, that
5 same bus stop she had to take to work. She knows that bus
6 schedule. She knows what time she's got to have mama there,
7 because mama will cut your tail if you don't get her where she
8 needs to be. So she drops her off at the bus stop at 8:05 and
9 decides she's going to pull past Dunbar one more time on her
10 way home. She's been up all night. She's tired, but she
11 still wants to see what's happening, so she pulls down Dunbar
12 between eight and nine A.M. in the morning. Now mind you,
13 Jamilla is not found till 6:30 in the evening, dead. Monica
14 is not found till 6:30 in the evening, murdered. But she runs
15 into Phonetia. Mildred Brown walks off and Phonetia walks up
16 and says, girl, they killed Jamilla. Christy said, stop
17 playing. She didn't take her seriously. Phonetia is known to
18 spread rumors, to lie. She's like the little boy who cried
19 wolf. Like the little boy that cried wolf, there's one time
20 that she's told the truth. She knew Jamilla was dead.
21 There's only one reason she would know Jamilla is dead. She
22 took Jimmy Lee over there.

23 And folks, they are trying to point out that, why isn't
24 Phonetia sitting at the table today, and rightfully, y'all are
25 probably wondering the same thing. Folks, I've got the brains

STATE'S SUMMATION (RICHARDSON)

990

1 and the braun. I don't have the silly little key girl at this
2 time. That's for another jury, for another day.

3 We go on later in the evening, folks. Christy, she
4 doesn't take Phonetia. She takes James over to the house,
5 rings the bell. No answer. Six-thirty that evening Antwann
6 shows up and finds them. You heard the shock in his voice on
7 the 911. You heard Delwyn Smith and Officer Arroyo tell how
8 he was shocked when he found his cousin murdered, Monica
9 murdered, and you saw the crowd going out. Calls started
10 going out, out to graduation, out to people at Futrell Park.
11 James Pearl gets a call, you know Jamilla got killed. He
12 thought it was another Jamilla, that Jamilla Washington that
13 had testified in another trial, but they tell him, no man,
14 it's your Jamilla, Jamilla Hightower. He's shook up. But he
15 does get one more call that night, one more, Jimmy Lee
16 Sessions. Jimmy said, yo, man, you my boy, come on, I've got
17 a party for you. This is a boy who he was trying to plan
18 robberies with before, so yeah, they are cool and sit tight at
19 this point. And so James Pearl says, okay, I'll take a ride.
20 He knows what a party means. He's a coke feign. He told you,
21 back then, nineteen years as a drug addict, nineteen years
22 using cocaine, so yeah, that cocaine is calling, he's going,
23 and he gets to the room. Was it Room 301? Don't know. Was
24 it the Days Inn, the Knights Inn? You heard Officer DiLorenzo
25 tell you they checked out the Knights Inn because the

1 information that Phonetia gave them about where she picked
2 James up on that Saturday, June 10th, so it's one of those,
3 those records. Don't know what room they were in actually.
4 He knows the place. He over at a hotel across the waterway.
5 When he gets to the door he walks in and there's a hooker
6 there, whatever you call them, and there's Jimmy Lee Sessions,
7 with his gun, and he's got a plate of cocaine, dinner plate of
8 cocaine, never seen Jimmy Lee Sessions with that much cocaine
9 before. But he's got a dinner plate, and he's letting -- he's
10 letting James Pearl just take it up in a McDonald's straw. He
11 told you how big that McDonald's straw is. That's unusual,
12 but he's just letting him hit it. James Pearl notices, man,
13 that tastes like cucumbers; there's only one place I know of
14 that has cucumber-tasting cocaine -- it must be a cutting
15 agent or something -- but one place it -- man, this is
16 Jamilla's. Naw, man, it ain't Jamilla, naw. He sayed, no
17 man, this is Jamilla's. At that point Jimmy Lee knows the gig
18 is up. He sat there playing the thing right in front of James
19 Pearl. He just made the mistake of giving a cocaine
20 connoisseur stuff that he would know, because James was a
21 customer of Jamilla. And so he pulls him aside, he's got to
22 unburden, and he tells James Pearl, man, I went in to rob
23 them, I had to do them, I had to kill them, had to kill
24 Jamilla. Does Jimmy Lee tell him, one shot, two shots, did he
25 get some of the story wrong? James was high. He remembers