

IN THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM MARION COUNTY
Court of Common Pleas

Appellate Case No. 2022-001735

The Honorable George M. McFaddin Jr., Circuit Court Judge

Tyrell Woods.....Petitioner,

v.

The State of South Carolina Respondent.

**APPENDIX
VOLUME II OF III**

ALAN WILSON
Attorney General

MARK FARTHING
Senior Assistant Attorney General

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

Attorneys for Respondent

RANEE SAUNDERS
ELIZABETH FRANKLIN-BEST

Elizabeth Franklin-Best, P.C.
3710 Landmark Drive, Suite 113
Columbia, South Carolina 29204

Attorneys for Petitioner

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 ORIGINAL

VOL II of II

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM MARION COUNTY

D. Craig Brown, Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

TYRELL WOODS,

APPELLANT

APPELLATE CASE NO. 2014-001130

RECORD ON APPEAL

DAVID ALEXANDER
Appellate Defender

ALAN WILSON
Attorney General

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

DONALD J. ZELENKA
Senior Assistant Deputy Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

Attorney for Appellant

(803) 734-3727

Attorneys for Respondent

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JAMES LEE - REDIRECT BY MR. CLEMENTS

1 A: Yes, sir.

2 Q: And that was the date you said you got two warrants?

3 A: Yes, sir.

4 Q: Is that correct?

5 A: Correct.

6 Q: And when did you get the remainder of the warrants?

7 A: On the 16th.

8 Q: On the 16th? Now, he -- he talked to you about talking to

9 somebody on the 12th. Let's back up to the 4th when he was

10 asking you about that. Did you take any statements from

11 anyone on the 4th yourself?

12 A: No, sir.

13 Q: How many other investigators were out there?

14 A: Four or five.

15 Q: Okay. And did you talk to Shawn Davis on the 4th?

16 A: No, sir. I think it was Detective Rouse that talked to

17 Shawn Davis.

18 Q: Okay. And did you talk to him on the 12th? Shawn Davis?

19 A: Yes, sir.

20 Q: Do you recall where that was?

21 A: Probation office.

22 Q: Okay. Do you recall who was with you?

23 A: Detective Watson.

24 Q: Okay. And I think Mr. Wilson was asking you about

25 showing two photo lay-downs?

JAMES LEE - REDIRECT BY MR. CLEMENTS

- 1 A: Correct.
- 2 Q: That was shown to Shawn Davis?
- 3 A: Yes, sir.
- 4 Q: Okay. And I think you told Mr. Wilson that one photo
- 5 lay-down had Marco Sanders in it?
- 6 A: Correct.
- 7 Q: And how many other individuals?
- 8 A: Five.
- 9 Q: And one photo lay-down had Tyrell Woods in it?
- 10 A: Correct.
- 11 Q: And how many other individuals?
- 12 A: Five.
- 13 Q: All right. And as a result of the showing those line-ups
- 14 to Shawn Davis on the 12th, what did you then go do?
- 15 A: I -- I went and signed a warrant on them.
- 16 Q: You went and signed a warrant on them? On who?
- 17 A: Both Tyrell and Marco.
- 18 Q: One on Marco and one on Tyrell?
- 19 A: Yes, sir.
- 20 Q: Okay. And that was based on your investigation up to
- 21 that point; is that correct?
- 22 A: Correct.
- 23 Q: And I think Mr. Wilson asked you about looking at the
- 24 video. Did you look at the video?
- 25 A: Any particular date?

JAMES LEE - REDIRECT BY MR. CLEMENTS

1 Q: Just any -- I'm not asking the date. Just did you have a
2 chance to watch that video?

3 A: Yes, sir.

4 Q: Once Bart Cave got it to work?

5 A: Correct.

6 Q: Where did you first look at it? At SLED or in Marion?

7 A: SLED.

8 Q: At SLED?

9 A: Yes, sir.

10 Q: All right. Did you go get warrants on anybody else after
11 looking at that video?

12 A: No, sir.

13 Q: Did you recognize anyone on that video?

14 A: Yes, sir.

15 Q: Who?

16 A: Marco.

17 Q: Hold on. Stop. Don't answer that question yet.

18 THE COURT: Mr. Wilson? Mr. Floyd?

19 (Whereupon, a bench conference is held in the presence of
20 the jury but out of the hearing of the jury as follows.)

21 MR. CLEMENTS: I don't want to make a mistake. We've had
22 an in-camera hearing on this; right?

23 THE COURT: And I've already ruled on this.

24 MR. WILSON: Yes, sir.

25 MR. CLEMENTS: Okay.

JAMES LEE - REDIRECT BY MR. CLEMENTS

1 THE COURT: But your objections are so noted.

2 MR. WILSON: Yes, sir.

3 THE COURT: I just wanted to make sure.

4 MR. CLEMENTS: Okay. All right.

5 (Whereupon, the bench conference ends.)

6 THE COURT: Mr. Wilson?

7 MR. WILSON: Yes, sir.

8 THE COURT: Come here for a minute, you and Mr. Floyd.

9 (Whereupon, a bench conference is held in the presence of
10 the jury but out of the hearing of the jury off the
11 record.)

12 THE COURT: All right. Before you go any further, Mr.
13 Clements, Mr. Wilson, any objection or anything you want to --

14 MR. WILSON: Your Honor, just subject to our previous
15 objections.

16 THE COURT: All right.

17 MR. FLOYD: Yes, Your Honor. Subject to objections
18 previously made.

19 THE COURT: Subject to both defense counsels' previous
20 objections, those objections are overruled, and you may
21 continue, Mr. Clements.

22 MR. CLEMENTS: Thank you, Your Honor.

23 Q: Detective Lee, did you recognize anyone on that video?

24 A: Yes, sir.

25 Q: Who? Both individuals or one individual? How many

JAMES LEE - REDIRECT BY MR. CLEMENTS

1 individuals --

2 A: Both.

3 Q: -- did you recognize? Both?

4 A: Both.

5 Q: And who were they?

6 A: Marco Sanders and Tyrell Woods.

7 MR. CLEMENTS: Please answer any other questions defense
8 counsel may have.

9 THE COURT: Mr. Wilson?

10 MR. WILSON: Just a couple things.

11 RECROSS EXAMINATION

12 BY MR. WILSON:

13 Q: This is -- you said that you recognized Marco Sanders and
14 Tyrell Woods from the video; right?

15 A: Right.

16 Q: And this -- this is after you had already had them
17 arrested and in jail and charged with these offenses; right?

18 A: One of them was in there in jail.

19 Q: Okay. And so at that point, what you're saying is that
20 the two people that you saw in the video that you had already
21 arrested those -- I mean you had already issued arrest
22 warrants for the two people that you thought committed the
23 crime. Is that fair?

24 A: Correct.

25 Q: All right. So were you going to find some different

JAMES LEE - RECROSS BY MR. WILSON

1 people on the video?

2 MR. WILSON: I don't have any other questions.

3 A: Well, I don't know how much of the video you're going to
4 look at.

5 Q: I'm sorry?

6 A: I don't know how much of the video is going to be shown.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: I don't have anything further.

9 THE COURT: Sir, you may step down. Thank you.

10 THE WITNESS: Thank you, sir.

11 MR. SALEEBY: We'd call Scott Hardee.

12 MR. CLEMENTS: Your Honor, we want to ask that Detective
13 Lee be still kept under subpoena at this time.

14 THE COURT: All right.

15 MR. CLEMENTS: In case we need to call him again.

16 THE COURT: All right. So granted.

17 MR. SALEEBY: Come around please, sir, and be sworn by
18 the clerk.

19 THE CLERK: Sir, you can come around and let me swear you
20 in, please, sir.

21 THE WITNESS: Okay.

22 THE CLERK: Place your left hand on the Bible and raise
23 your right hand please, sir. Do you solemnly swear or affirm
24 the testimony you are about to give in the trial of this case
25 shall be the truth, the whole truth, and nothing but the

26

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 truth, so help you God?

2 THE WITNESS: Yes, ma'am, I do.

3 THE CLERK: Thank you. You can have a seat in the
4 witness box.

5 SCOTT HARDEE, being first duly
6 sworn, testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. SALEEBY:

9 Q: Tell us your name, please, sir?

10 A: Leland Scott Hardee.

11 Q: And, Mr. Hardee, where do you live?

12 A: I live in Florence County.

13 Q: How long have you lived over in Florence?

14 A: 42 years.

15 Q: What you please give the ladies and gentlemen -- will you
16 tell us who you're working for now?

17 A: I work for the South Carolina Law Enforcement Division,
18 commonly known as SLED.

19 Q: How long have you worked for SLED?

20 A: Since May 2nd of 2008.

21 Q: 2008?

22 A: Yes, sir.

23 Q: Going on six years then?

24 A: Just over six years.

25 Q: And what kind of assignments have you had at SLED?

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 A: When I started in May of 2008, I was assigned to the Pee
2 Dee region as a regional field agent and investigator. Six
3 months after that, we had some changes go about SLED
4 structurally inside, and I was reassigned to the crime scene
5 unit out of Columbia, but I worked regional. After crime
6 scene, on April 1st of 2013, I was reassigned to the arson
7 unit, and that's where I am currently.

8 Q: Prior to working for SLED, did you have any other law
9 enforcement experience?

10 A: Yes, sir. I was hired in April of 2000 with the Florence
11 Police Department. I went through the academy. After that, I
12 was assigned to patrol. A year after patrol, I was assigned
13 to crime scene where I stayed until 2005. Then I took a
14 little hiatus, came back about four months later, and started
15 back over on patrol, and my last position with Florence before
16 I went to SLED was as a school resource officer.

17 Q: Were you working in the crime scene section of SLED July
18 2012?

19 A: Yes, sir.

20 Q: Did you -- were you ever asked to participate in any
21 manner in the investigation into the death of Mr. Rowell?

22 A: Yes, sir, I was.

23 Q: Did you actually come to Marion County on July the 4th of
24 2012?

25 A: No, sir, I did not.

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 Q: What were you asked to do with regard to the first thing
2 that you were asked to do to assist the Marion Sheriff's
3 Department?

4 A: On July 20th of that same year, I was asked by Lieutenant
5 Darren Miles of the Marion County Sheriff's Office to process
6 a vehicle at the Wateree Correctional facility in Sumter
7 County.

8 Q: And did you do that?

9 A: Yes, sir. I responded out there approximately 1:25 that
10 afternoon, where myself and my partner, Melinda Warley, with
11 detectives James Lee and Neil Rouse. They had obtained a
12 search warrant for a vehicle that was at that location for us
13 to process.

14 Q: All right. And in processing that vehicle, what did you
15 do?

16 A: Standard procedure for us, we photograph the vehicle
17 before anything is touched, before anything is removed. We
18 always photographed -- photographed the scene as it is before
19 we do anything. After that, we do a search. If we see
20 anything, we'll photograph it again -- anything of probative
21 value. After that, we'll start to -- after we document the
22 scene with notes, photographs, we'll start collecting the
23 evidence or processing stuff on scene or stuff that to be
24 taken back to headquarters to the forensics lab for further
25 analysis by someone that is an expert in that field.

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 Q: Did you yourself personally recover anything in that
2 vehicle that would indicate that Mr. Sanders had been it or
3 had use of it or Mr. Woods had been in it and had use of it?

4 A: We collected evidence, but I would not know what that
5 evidence -- who that evidence belonged to. That would have to
6 be sent back for further analysis.

7 Q: And if there was anything that SLED discovered, you're
8 not aware of it?

9 A: No, sir.

10 Q: But you personally didn't find anything?

11 A: No.

12 Q: That was connected to either of these two people in the
13 vehicle?

14 A: No, sir, not to my knowledge.

15 Q: All right. I'm going to show you two photographs which
16 have been entered into evidence as State's Exhibit 17-A and B
17 and ask you to identify those.

18 A: All right. This is the -- this is the vehicle that we --

19 Q: Just hold them up and show them to the jury.

20 A: My apologies. This is the white Ford Expedition that
21 myself and my partner, Melinda Warley, processed at Wateree
22 Correctional.

23 Q: And you have the driver's license -- I mean not the
24 driver's license, but the license plate. Is that visible in
25 that photograph?

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 A: Yes, sir, it is.

2 Q: I think that's A. And were you able to determine fro the
3 DMV who was the registered owner?

4 A: We -- I didn't run the actual DMV, but I believe the
5 registered owner was on scene and was being interviewed by the
6 Department of Corrections, as well as Investigators Rouse and
7 Lee.

8 Q: Is that Valerie Commander?

9 A: Yes, sir.

10 Q: Did you -- as you said, each item that you collected is
11 sent back and you don't know what the disposition of those
12 was?

13 A: No, sir.

14 Q: I will ask you if you were asked to do any further
15 participation in this investigation?

16 A: Yes, sir. Later, I was asked by Tom Darnell with the
17 latent print department to come to Marion to collect major
18 case prints and buccal swabs from Tyrell Woods.

19 Q: All right. Well, let's talk about that. So Tom Darnell
20 is who and does what at SLED?

21 A: He has retired and came back. He was a lieutenant and he
22 came back as a latent print examiner.

23 Q: And did -- and you also referred to -- you were asked to
24 do that by him and you said you took what you called major
25 case prints, and what's that mean in law enforcement speak?

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 A: Okay. Major case prints. Basically, when anyone is
2 arrested or applies for a certain job such as law enforcement,
3 teachers, lawyers, nursing, and stuff like that, daycare
4 workers, you normally get what we call a ten-print card. It's
5 a form you see in, like, when people are being booked in on TV
6 where you just get pretty much from this knuckle to the tip of
7 the finger of the fingerprints. Major case prints goes a
8 little bit further.

9 We go and get an 8 1/2 x 11 sheet of paper and we try to
10 print every aspect of that person's hand, whether it's the
11 side here or right here. Anywhere any part of the hand that
12 can touch something, like, you might just use the palm of your
13 hand to open a door or you might use this part to hold a gun
14 with. And so that's what major case prints involve. We get
15 every aspect. So if we get prints off of something, then we
16 can use those parts of the hand to identify those prints that
17 you normally wouldn't get just on the fingertips.

18 Q: And did you, in fact, come to Marion County on November
19 the 16th of 2012?

20 A: Yes, sir. That was the day.

21 Q: And did you take some major case prints?

22 A: Yes, sir.

23 Q: All right. And these were from one individual?

24 A: Tyrell Woods.

25 Q: And do you see Mr. Woods in this courtroom today?

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 A: Yes, sir. He's sitting over there.

2 Q: And what you identify him for the judge and the jury?

3 A: He would be that gentleman right there with the -- with

4 the shirt with the stripes -- vertical stripes.

5 Q: And -- and it was his hands that you took this print from

6 -- these prints from; is that correct?

7 A: Yes, sir.

8 Q: His hands?

9 A: Yes, sir.

10 Q: This is State's Exhibit Number 42. Take a look at that

11 and tell the members of the jury what it is?

12 A: Okay. Do you mind if I remove them from the --

13 Q: That's fine.

14 A: Okay. All right. This is what I was talking about.

15 These are the prints that I took.

16 Q: If you'll hold them up so that the jurors over here can

17 see them too.

18 A: When he be better if I stepped out?

19 Q: You're referring to State's Exhibit Number 42.

20 A: What it be easier if I stepped out?

21 THE COURT: Hold on a second.

22 MR. FLOYD: Subject to my prior objection.

23 THE COURT: Subject to prior objection over defense

24 counsels' objection.

25 Q: You can step down.

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 A: Okay.

2 THE COURT: They are admitted into evidence.

3 Q: Tell us what they are and tell us how you obtained them,
4 what you physically did?

5 A: Okay. And as you can see right here, like I said, it's
6 an 8 1/2 x 11 sheet of paper. It's actually called card
7 stock.

8 THE COURT: He's going to move down there. I'm going to
9 make him move.

10 THE WITNESS: Your Honor, I apologize.

11 A: And what we do basically, we'll get pretty much printer's
12 ink. You get a roller and you roll the entire hand, including
13 the back of the hand, and then basically we just ask the
14 person to lay their hand down. In this case, it was the left
15 hand. And you just lay it down like that. In this case, as
16 you'll see, most of the time when you see something, there's
17 always a little piece of the hand that doesn't touch that
18 surface. In this case, we get a piece of PVC pipe, we rubber
19 band it just like this, kind of wrapped around, and that way
20 you get the entire hand.

21 We -- once we're done with that, we do this right here
22 with the entire hand and then we spend the rest of the time
23 rolling. Like right there is an example. And we just go
24 about getting every aspect of that hand. The same thing with
25 the right hand. And we also roll the ten-print fingerprint

SCOTT HARDEE - DIRECT BY MR. SALEEBY

1 cards the same way as what I was referring to so that we'll
2 have our copy of the ten-print cards for comparison with.

3 Q: And when you call it a ten-print card, that's ten
4 fingers?

5 A: Yeah. Ten-print cards, right and left fingers. Then we
6 get another aspect of the thumb and then we'll get the four
7 fingers together.

8 Q: And after you had collected these from Tyrell Woods, you
9 took them to Tom Darnell to see if he could make any
10 comparisons?

11 A: Yes, sir.

12 Q: Thank you. Please answer any questions counsel has for
13 you.

14 THE COURT: Cross examination, Mr. Wilson.

15 CROSS EXAMINATION

16 BY MR. WILSON:

17 Q: Agent Hardee, your first -- your first involvement was on
18 the 20th?

19 A: Yes, sir.

20 Q: All right. And -- and you are a crime scene specialist
21 or a crime scene investigator. Is that what your title role
22 would be?

23 A: Yes, sir. My rank is -- it was special agent, and crime
24 scene investigator is what I was assigned to.

25 Q: All right. And you had been doing that for a period of

SCOTT HARDEE - CROSS BY MR. WILSON

1 time before this occurred?

2 A: Yes, sir.

3 Q: All right. And this wasn't your first time doing this?

4 A: No, sir.

5 Q: All right. And how many -- how many crime scenes prior
6 to this white car would you think that you had done? Just
7 give us some general idea.

8 A: Are you talking about all crime scenes?

9 Q: Yes, sir.

10 A: Or just -- okay.

11 Q: All of just whatever.

12 A: Probably close to 600.

13 Q: Okay. So hundreds?

14 A: Yes, sir.

15 Q: Literally hundreds. All right. So you knew kind of what
16 to look for and what to expect and kind of what you needed to
17 do with whatever you found?

18 A: Yes, sir.

19 Q: Okay. Now -- so let's talk about that for a minute.

20 Now, you went out to this white car at Wateree Prison and you
21 took a lot of photographs and you found some items in there
22 that you thought at least were something that needed to be
23 analyzed and looked at; right?

24 A: Yes, sir.

25 Q: In fact, you found some cigarette butts in there and --

SCOTT HARDEE - CROSS BY MR. WILSON

1 and you requested that those cigarette butts be analyzed?

2 A: Yes, sir.

3 Q: All right. And the reason that you wanted them analyzed
4 is because whoever -- if Marco Sanders had been smoking one of
5 those cigarettes in that car, then his DNA or saliva may very
6 well be on the butt of that cigarette; right?

7 A: Yes, sir. That was a possibility.

8 Q: The other thing is you took a bunch of fingerprints or
9 attempted latents I guess we would call it?

10 A: Actually, we did not process that vehicle for latents.

11 Q: So you didn't do any latents?

12 A: No.

13 Q: Is there any particular reason?

14 A: Well, you had the actual scene happenn on July 4th here in
15 Marion.

16 Q: Okay.

17 A: Well, the vehicle was discovered or it was brought to my
18 attention on July 20th.

19 Q: Okay.

20 A: So you had a period of time between there. Then on top
21 of that, from my understanding at that time, the owner of the
22 vehicle had relations with one of the defendants and so any
23 fingerprints they would have had could have been explained on
24 that vehicle.

25 Q: Okay. Well, but what did -- right. Okay. But wouldn't

SCOTT HARDEE - CROSS BY MR. WILSON

1 you still want to know if Marco Sanders' fingerprints were
2 anywhere on that because he was supposed to be the driver of
3 that vehicle so -- and if he had been the driver I mean -- and
4 we don't know how many days according to the police, but if he
5 had been the driver of that vehicle, wouldn't you expect to
6 find his fingerprints in the vehicle unless it had been
7 cleaned or something? Wouldn't you expect to find his prints
8 in that car?

9 A: It's a possibility.

10 Q: Okay. Maybe on the window? On the steering column? On
11 the dashboard? On the glove compartment? All of those places
12 which a fingerprint could possibly be?

13 A: Right. And one problem that you run into sometimes with
14 that aspect is the texture of the surface or the material of
15 the surface. Fingerprints tend to adhere better to metal,
16 glasses. If you have a textured surface, the textured surface
17 would break up the print.

18 Q: Okay.

19 A: And so you might not get a good print.

20 Q: All right. But you also did swabs like on various items
21 inside of the vehicle; is that correct?

22 A: Yes, sir.

23 Q: And the purpose of doing the swabs was so that, you know,
24 you can pick up the DNA of anybody who might have maybe
25 touched that or if they put saliva on it or whatever else on

SCOTT HARDEE - CROSS BY MR. WILSON

- 1 the steering wheel or on the dashboard or on the console or
2 whatever. You would swab those items and if that person, you
3 know, if they -- for instance, had a sweaty hand and he's
4 holding the steering column, then his DNA would likely be on
5 that steering column?
- 6 A: It stands a very good chance.
- 7 Q: Okay. And so you did that and you preserved those things
8 and you actually sent them to SLED to be tested, did you not?
- 9 A: Yes, sir.
- 10 Q: Right?
- 11 A: I did.
- 12 Q: And were they ever tested?
- 13 A: That I can't tell you. I made a submission, but I didn't
14 receive any report saying anything would not be tested or they
15 were sent back not tested. I wasn't made privy to that
16 information.
- 17 Q: Okay. You also did a set of swabs from the driver's seat
18 of the white Ford Expedition; correct?
- 19 A: You know what number that is so I can confirm?
- 20 Q: I think it's your 78. Would that have been right?
- 21 A: One set of swabs from the driver's seat controls of the
22 white Ford expedition. Yes, sir.
- 23 Q: Okay. And you did the exterior rear driver's side door?
- 24 A: Yes, sir.
- 25 Q: And a set of swabs from the interior rear passenger door?

SCOTT HARDEE - CROSS BY MR. WILSON

1 A: Yes, sir.

2 Q: A set of swabs from the interior rear driver's side door

3 and the armrest of the white Ford vehicle?

4 A: Yes, sir.

5 Q: One set of swabs from the exterior front passenger side

6 door?

7 A: Yes, sir.

8 Q: One set of swabs from the front passenger seat control of

9 the white vehicle?

10 A: Yes, sir.

11 Q: All right. And you did one of the swabs from the

12 interior front passenger door armrest of the white Ford

13 Expedition?

14 A: Yes, sir.

15 Q: One set of swabs from the interior rear passenger side

16 door release of the white Ford Expedition?

17 A: Yes. Yes, sir.

18 Q: Okay. And then you got one cigarette butt from a cup

19 holder of the white Ford expedition?

20 A: Yes, sir.

21 Q: One cigarette butt from a cup holder of the white Ford

22 Expedition? I assume that's two separate cigarette butts?

23 A: Yes, sir.

24 Q: One cigarette butt from a cup holder in the white Ford

25 Expedition?

SCOTT HARDEE - CROSS BY MR. WILSON

- 1 A: Yes, sir.
- 2 Q: You've got one partially smoked cigar from the white Ford
3 Expedition?
- 4 A: Yes, sir.
- 5 Q: One partially chewed on straw or coffee stirrer from the
6 white Ford Expedition?
- 7 A: Yes, sir.
- 8 Q: One Swisher Sweet cigar partially unwrapped from the
9 white Ford Expedition?
- 10 A: Yes, sir.
- 11 Q: One copper-colored fabric headrest protector from the
12 driver's seat of the white Ford Expedition?
- 13 A: Yes, sir.
- 14 Q: One tan leather work glove with a blue cuff recovered
15 from an Advance Auto Parts plastic shopping bag located on the
16 rear passenger floorboard of the white Ford Expedition?
- 17 A: Yes, sir.
- 18 Q: Okay. And one pair of Dickey's size 38 khaki shorts
19 recovered from the white Ford Expedition?
- 20 A: Yes, sir.
- 21 Q: One brown leather belt with a silver buckle through the
22 loops of the khaki shorts recovered from the white Ford
23 Expedition?
- 24 A: Yes, sir.
- 25 Q: Plus you took multiple, multiple pictures of the content

SCOTT HARDEE - CROSS BY MR. WILSON

1 of the vehicle?

2 A: Yes, sir.

3 Q: And you took all of these items and you requested that
4 DNA touch be done on all of these items that I just read or --
5 and/or saliva?

6 A: Yes, sir. And ownership.

7 Q: And ownership. And -- and to your knowledge, you don't
8 know if these were ever actually done. Now, once you request
9 them, is SLED obligated to do them or your request doesn't
10 mean anything when you send it up there? You just send it up
11 there and somebody decides later that, well, we ain't got time
12 to do that so we ain't messing with it?

13 A: I can't testify to that department's standard operating
14 procedures or protocols. We make the request, but I know from
15 my own experience that investigators will get together and
16 solicitors will get together and they'll decide what would be
17 probative and what will not, and that's based on my
18 department.

19 Q: So the --

20 A: But --

21 Q: I'm sorry.

22 A: Sometimes -- I mean we'll make a request, but you have an
23 expert in that other department that knows more than I do
24 about DNA, and what their decisions are is out of my scope.

25 Q: Okay. Your job is not to decide what the expert does in

SCOTT HARDEE - CROSS BY MR. WILSON

1 deciding whether he's going to do the DNA or not do it or
2 whether the Sheriff's Office decides they're not going to do
3 it or the Solicitor's Office decides they're not going to do
4 it. Your job is to go out and collect it and then make the
5 request and then you've done your job?

6 A: Yes, sir.

7 Q: And that's what you did?

8 A: Yes, sir.

9 Q: And you gave them all this stuff?

10 A: Yes, sir.

11 Q: And as far as you know, you don't -- you haven't seen any
12 results from it, have you?

13 A: No, sir.

14 Q: All right. And just let me ask you -- you said earlier
15 that different surfaces are more prone to -- to have
16 fingerprints than some other surfaces. In fact, glass would
17 be an excellent conductor or place to collect a fingerprint?

18 A: Right. I mean you're going to still have the secretions
19 from your fingers and they're going to get on this and get on
20 this, whatever, but it's the surface on the process that
21 collects them. If you have your fingerprint on the zipper,
22 your print is going to be broken up because of the surface of
23 the zipper. If you have it on leather, the leather is a
24 porous material and it's going to absorb -- I'm sorry. It's
25 going to absorb the oils. But if you have it on, like, wood

SCOTT HARDEE - CROSS BY MR. WILSON

1 or glass, it's not porous; it's going to leave a better print
2 that you'd be able to more readily identify as opposed to
3 getting a print off of something that's been absorbed by the
4 oils.

5 Q: Let me ask you something. A smooth surface like this --
6 like the top of this laptop -- would that be a surface that
7 you might have less trouble finding a print -- a fingerprint
8 on it say?

9 A: Less trouble as opposed to?

10 Q: As opposed to something that's grainy.

11 A: Like a brick?

12 Q: Like a brick.

13 A: Yes. That would be a better surface to try to get a
14 print off of than a brick.

15 Q: And glass -- say, for instance, the glass in a screen
16 door. If somebody put their palm and pushed that screen door
17 open, could you collect that glass? Could you collect a print
18 from that glass?

19 A: Well, you should be able to, but I have to stipulate that
20 there are circumstances where you have people that sweat more
21 than others, and if a person sweats more, they're going to
22 have sweatier hands. The sweat is going to leave a better
23 print as opposed to a person who doesn't secrete a lot of oils
24 from their skin. A person that wears a lot of lotion on their
25 hands would be -- their hands would be more moist. They'll

SCOTT HARDEE - CROSS BY MR. WILSON

1 leave a print more so than a person who has dry skin or a
2 person that works as a brick mason or a person that works as a
3 sales associate at sporting goods store because a brick mason
4 -- their hands get rubbed. They get scraped. So you're going
5 to have trouble.

6 There's a lot of circumstances that go -- that are
7 involved in getting a latent print. You can't just say like
8 on TV someone touches their forehead which is normally a
9 greasy area of the body and they put it on a piece of glass,
10 you're going to get a print every time. They may have --
11 their hands may be all scratched up from having to work with
12 forms or work in a nursery, landscaping, a brick mason, a
13 carpenter. Those can really mess up a person's hands --

14 Q: Okay.

15 A: -- as opposed to someone that's -- they spend all day in
16 school, just riding around, typing on a computer or something.

17 Q: If a -- if a person -- if a print is placed on something,
18 how long would it stay there?

19 A: There's been no definite time frame. I mean you have to,
20 again, look at the circumstance behind it. If the -- if the
21 fingerprint is on the inside of the window inside the --
22 inside the house and it's normally a 70 degree house or a 75
23 degree house as opposed to being on the outside of the house
24 on the window where you get rain, pollen, dust, hot sun, and
25 everybody knows the sun -- it dries out everything, and so if

SCOTT HARDEE - CROSS BY MR. WILSON

1 you have -- and which a fingerprint is mostly moisture with a
2 few amino acids and oils. When you have the sun beating down
3 on it, it's going to dry that moisture really fast.

4 Q: So if it's inside in a controlled environment, then it's
5 more likely to last longer than if it's on the outside in the
6 hot sun or in the weather?

7 A: It has a better chance, especially in the South Carolina
8 heat.

9 Q: But you say that there is no magical amount of time, like
10 a week or a month or a year --

11 A: No.

12 Q: -- or however long?

13 A: It's not two weeks, fourteen days. After that fourteen
14 days, the fingerprint disappears into oblivion, no.

15 Q: Okay. So after fourteen days, it would be gone?

16 A: No. I'm saying it wouldn't be. There's no magical
17 number.

18 Q: Okay. Okay. Nothing further. Thank you so much.

19 A: You're welcome.

20 THE COURT: Mr. Floyd, any cross examination?

21 MR. FLOYD: Thank you, Your Honor. Just a couple of
22 questions.

CROSS EXAMINATION

24 BY MR. FLOYD:

25 Q: The major case prints that you referred to earlier that

SCOTT HARDEE - CROSS BY MR. FLOYD

1 you took, where did you take those? Here?

2 A: I took them here at the courthouse.

3 Q: In the courthouse?

4 A: Downstairs.

5 Q: Downstairs? And who was with you? Who was present?

6 A: Tony -- Lieutenant Tony Flowers of the Marion Police
7 Department.

8 Q: Okay.

9 A: I believe Lieutenant Chris Smith with the Marion Police
10 Department were the ones that were with me at the time.

11 Q: As far as you recall, that was -- that was it?

12 A: There may have been a couple of other people, but I
13 didn't know their names.

14 Q: Okay. But they were all local law enforcement you
15 believe?

16 A: Yeah. I believe. It was in that long conference room
17 downstairs by the front door.

18 Q: Okay. All right. Thank you very much.

19 A: You're welcome.

20 THE COURT: Any redirect?

21 MR. SALEEBY: Just one question.

22 REDIRECT EXAMINATION

23 BY MR. SALEEBY:

24 Q: Did I understand you to tell Mr. Wilson that it was your
25 understanding that the owner of the vehicle had a relationship

SCOTT HARDEE - REDIRECT BY MR. SALEEBY

1 with one or more of the defendants and, therefore, you didn't
2 process it for prints because it wouldn't tell you anything
3 you didn't already know?

4 A: Yes, sir.

5 Q: All right. Thank you.

6 MR. SALEEBY: That's it, Your Honor.

7 THE COURT: Mr. Wilson, anything else?

8 MR. WILSON: No, sir.

9 THE COURT: Mr. Floyd?

10 MR. SALEEBY: I ask if he could be excused, sir.

11 THE COURT: Hold on. Mr. Floyd, anything else?

12 MR. FLOYD: Nothing, Your Honor.

13 MR. SALEEBY: Excuse me, sir.

14 THE COURT: Sir, you may step down. Thank you.

15 THE WITNESS: Thank you, sir.

16 THE COURT: Any objection to him being excused, Mr.

17 Wilson?

18 MR. WILSON: No, Your Honor.

19 THE COURT: Mr. Floyd?

20 MR. FLOYD: No objection.

21 THE COURT: All right. Agent Hardee, you are excused.

22 You have no further responsibility under your subpoena. Thank
23 you for being here.

24 THE WITNESS: You're welcome, sir.

25 THE COURT: All right.

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 MR. CLEMENTS: Justina Hayes.

2 THE CLERK: Place your left hand on the Bible and raise
3 your right hand. Do you solemnly swear or affirm the
4 testimony you are about to give will be the truth, the whole
5 truth, and nothing but the truth, so help you God?

6 THE WITNESS: Yes, ma'am.

7 THE CLERK: Thank you. Have a seat in the witness box.

8 JUSTINA HAYES, being first duly
9 sworn, testifies as follows:

10 DIRECT EXAMINATION

11 BY MR. CLEMENTS:

12 Q: Good afternoon.

13 A: Good afternoon.

14 Q: Can you please state your name for the record and tell
15 this jury where you work?

16 A: My name is Justina Kelly Hayes and I work at Marion
17 County Detention Center.

18 Q: All right. How long have you worked there?

19 A: I started November 16th of 2011.

20 Q: Okay. And in what capacity do you work there?

21 A: At this point in time, I work in central.

22 Q: Okay. And were you working there in 2012?

23 A: No, sir. I was working in booking in 2012.

24 Q: Okay. And as part of booking, what -- what are some of
25 your duties in booking that you do?

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 A: As the inmates come in or the subjects come in from sally
2 port to intake, we pat them. We get all the information from
3 the police officers and we put it into our computer, which is
4 LawTrack, and we do the process of booking them in. After
5 their paperwork is completed, then we fingerprint.

6 Q: Okay. And what type of training do you have that's
7 required to qualify you to take fingerprints?

8 A: We -- all the booking officers went through a training
9 class with our captain and there's a couple of other people
10 and Rihanna Herring from the Sheriff's Department.

11 Q: Okay. And do you recall taking the fingerprints of a
12 Marco Sanders?

13 A: Yes, sir.

14 Q: Do you know about what date that was?

15 A: It was November 19th, 2012.

16 Q: Okay. Do you know where Mr. Sanders came from to be
17 booked into the Marion County Detention Center?

18 A: In I think New Jersey.

19 Q: Okay.

20 A: He was transported in.

21 Q: All right. Do you know who transported him?

22 A: Only -- there's only one I can remember. Charlie Watson.

23 Q: Charlie Watson was one of those?

24 A: Mm-hmm.

25 Q: Okay. And he was transported from New Jersey into the

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 Marion County Detention Center. Do you remember if it was
2 daytime or nighttime?

3 A: It was early morning.

4 Q: Early morning? Okay. And so you booked in Mr. Sanders
5 at that time?

6 A: Yes, sir.

7 Q: Okay. Did you have an occasion to take fingerprints from
8 him?

9 A: Yes, sir.

10 Q: Okay. Can you please explain to this jury the process
11 you use and how you physically did the process of taking his
12 fingerprints?

13 A: The first thing we do is give the subject some soap to
14 wash their hands off, and then we give them paper towels and
15 they dry their hands. We pull the system up. It tells you
16 exactly which finger to lay on at a time. When you place the
17 finger on there, if it's a good print, it turns green. If
18 not, it will be -- it will come up poor scan. It won't -- if
19 the print is not good, it will not scan it.

20 Q: When you say it, what are you --

21 A: The finger --

22 Q: Explain what you're talking about?

23 A: The fingerprint. If the fingerprint is not good, say
24 there's something wrong, that machine will not take a picture
25 of it. It will not let us process.

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

- 1 Q: So you use a machine?
- 2 A: Yes, sir.
- 3 Q: And you electronically take the fingerprints?
- 4 A: Yes, sir.
- 5 Q: Okay. All right. And you don't have to use inkpads or
- 6 anything like that?
- 7 A: No, sir. The only time we have to do that is if there's
- 8 something wrong with the -- like, the fingerprints or maybe
- 9 there's a smudge on one where there's a cut. Sometimes if
- 10 there's a cut or something, the computer will not pick up that
- 11 print.
- 12 Q: Did you have any problems with the computer when you
- 13 fingerprinted Mr. Sanders or anything come up --
- 14 A: No, sir.
- 15 Q: -- red? I guess you said it's green if it's good.
- 16 A: Green if it's good.
- 17 Q: Red if it's not?
- 18 A: They all come up red, yellow, and green.
- 19 Q: Okay. Did you have any reds during this process?
- 20 A: No, sir.
- 21 Q: Did you have any yellow ones?
- 22 A: No, sir.
- 23 Q: All of them were green?
- 24 A: Yes, sir.
- 25 Q: Okay. I'm going to show you what's been marked State's

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 Exhibit 41. I think they're in evidence without objection.
2 And I would ask if you can identify this for me, if you could?
3 A: Yes, sir. That's our booking cards that our computer
4 prints out -- that our machine prints out. You have to print
5 them.
6 Q: Okay. And is there anything on there to indicate that
7 you were the person doing this?
8 A: Yes, sir. It's got on the back of it right here PFC
9 Justina K. Hayes.
10 Q: All right. And you -- if you can --
11 MR. CLEMENTS: Your Honor, I'd ask for her to be able to
12 step down in front of the jury.
13 THE COURT: Go ahead.
14 (Whereupon, the witness complies.)
15 Q: Can you explain to the jury what the prints are and what
16 the different blocks are and explain how you did that?
17 A: Okay.
18 Q: Speak up where all the jury and the court reporter can
19 hear you.
20 A: Yes, sir. The first steps here you see -- this is the
21 right thumb and the left thumb. Actually, the right and left
22 thumb is took twice. The first time you do both thumbs at one
23 time. Then after you do both thumbs at one time, you go to
24 each individual finger starting with your right thumb. You do
25 your right thumb, pointer finger, the middle -- I can't

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 remember the name of it is. And then your ring finger and
2 your pinkie finger, and then you go to the left hand, thumb,
3 pointer -- what's that?

4 Q: Middle finger.

5 A: And your middle finger, ring finger, and pinkie. And
6 then they're not showing it on here, but we actually do what
7 they call a slap, and it's this whole one side of your hand,
8 and then we also do a palm and it gets from here to here. And
9 these right here are where you have to put all four fingers on
10 that machine. You do these four and then these four. So each
11 finger is took at least two prints of, including the palm and
12 the slap. But every print is took twice.

13 Q: Okay.

14 THE COURT: Ms. Hayes, as you're testifying, make sure
15 everyone as far back can see. I know you're not --

16 THE WITNESS: I'm sorry.

17 THE COURT: -- used to standing in front of so many
18 individuals, but make sure they can see.

19 THE WITNESS: Yes, sir.

20 Q: You can have a seat back.

21 (Whereupon, the witness complies.)

22 Q: Now, after you take these prints, what did you do with
23 it?

24 A: We actually save them in our system and then Rihanna
25 Herring from the Sheriff's Department -- she comes over, she

JUSTINA HAYES - DIRECT BY MR. CLEMENTS

1 makes sure that everything that's in the LawTrack for the
2 subject matches the same thing that's on the card -- the
3 computer so that way we can make sure the information is
4 correct.

5 Q: All right. And they're maintained there in case SLED or
6 somebody needs them?

7 A: Yes, sir. And she sends them off where they -- where
8 they go to SLED or AFIS.

9 Q: Okay. All right. Do you see the individual whose
10 fingerprints you took here on State's Exhibit 41 in this
11 courtroom?

12 A: Yes, sir.

13 Q: Can you please point him out and describe him for the
14 record?

15 A: Mr. Marco Sanders. He's in a white shirt, black tie,
16 gray pants, and a pair of brown glasses.

17 Q: Thank you.

18 MR. CLEMENTS: May the record reflect she identified the
19 defendant Sanders.

20 THE COURT: So noted.

21 MR. CLEMENTS: Thank you.

22 THE COURT: Cross examination, Mr. Wilson?

23 MR. WILSON: Thank you, Your Honor.

24 CROSS EXAMINATION

25 BY MR. WILSON:

JUSTINA HAYES - CROSS BY MR. WILSON

1 Q: Now, I just have a couple of questions.

2 A: Yes, sir.

3 Q: This is a part of the booking process. Anytime somebody
4 is arrested and they're brought in, y'all do this?

5 A: As long as it's not a child support bench warrant or a
6 bench warrant, yes, sir.

7 Q: Y'all don't do it for those people?

8 A: No, sir.

9 Q: For the child support people and --

10 A: No. Not child support or bench warrant.

11 Q: But anybody else who comes through there and they're
12 arrested, they go through that process and they have to be
13 fingerprinted?

14 A: Yes, sir. Even down to a public drunk --

15 Q: Okay.

16 A: -- or anything like that.

17 Q: And let me ask you this. Do y'all also look at tattoos
18 and markings on the body to help you identify those people?

19 A: Yes, sir.

20 Q: Okay. And did you look at Marco Sanders to determine
21 whether he had tattoos?

22 A: I cannot recall, but I know if we ask and if so, it
23 should be stated on the booking report.

24 Q: Okay. Where is that report?

25 A: It's in the computer LawTrack. I do have a copy.

JUSTINA HAYES - CROSS BY MR. WILSON

1 Q: Okay.

2 A: It's in my car. I don't have it with me.

3 Q: Okay.

4 MR. WILSON: Your Honor, Can I ask her to either get that
5 or come back?

6 THE COURT: Mr. Clements?

7 MR. CLEMENTS: We have no objection to that whatsoever,
8 Your Honor.

9 THE COURT: All right.

10 MR. CLEMENTS: She can go get it now or however you
11 decide would be the appropriate way.

12 THE COURT: I want you to finish her cross examination
13 and then she can go get it. Once you retrieve it, if there's
14 any additional questioning from the State or defense counsel,
15 I'll allow it.

16 Q: And what I'm asking is this. When a person is arrested
17 and they come through, you look at and want to get their
18 fingerprints, which is what you just showed us on a
19 fingerprint card, but you also want to know if that person has
20 any body markings?

21 A: Yes, sir.

22 Q: Or that you can put down so that if that person is ever
23 in question again, you'll know how to identify that
24 individual?

25 A: Yes, sir.

JUSTINA HAYES - CROSS BY MR. WILSON

1 Q: Okay. And tattoos is a big part of that?

2 A: Tattoos and scars.

3 Q: Tattoos and scars? And so you make a note of those
4 things and you put those things in the computer so that if
5 that person is ever arrested again or if you're looking for
6 that person, then when you find them, you know that's the
7 right person?

8 A: Yes, sir.

9 Q: And if they don't have the markings, then it might not be
10 the right person?

11 A: It's a possibility.

12 Q: Okay.

13 MR. WILSON: No other questions, Your Honor.

14 THE COURT: Mr. Floyd, anything?

15 MR. FLOYD: I don't have any questions.

16 THE COURT: Anything else?

17 MR. CLEMENTS: None, Your Honor.

18 THE COURT: You may step down, ma'am, and I'd ask that
19 you go retrieve the document that you referred to.

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. In the meantime, call your next
22 witness.

23 MR. SALEEBY: Your Honor, we'd call Bart Cave to the
24 stand.

25 (Whereupon, there is a pause in the proceedings until the

BART CAVE - DIRECT BY MR. SALEEBY

1 witness enters the courtroom.)

2 MR. SALEEBY: Okay. Come around and be sworn, please,
3 sir.

4 THE CLERK: Place your left hand on the Bible and raise
5 your right. Do you solemnly swear or affirm the evidence you
6 are about to give in the trial in this case shall be the
7 truth, the whole truth, and nothing but the truth, so help you
8 God?

9 THE WITNESS: Yes, ma'am.

10 THE CLERK: Thank you. You can have a seat in the
11 witness box.

12 BART CAVE, being first duly
13 sworn, testifies as follows:

14 DIRECT EXAMINATION

15 BY MR. SALEEBY:

16 Q: Tell us your name, please, sir?

17 A: Bart Cave.

18 Q: And Mr. Cave, who do you work with?

19 A: The South Carolina Law Enforcement Division.

20 Q: And how long have you worked with SLED?

21 A: Eight years.

22 Q: And what section are you currently working in?

23 A: The computer crimes center.

24 Q: Okay. What other sections of SLED have you worked in in
25 your eight years?

BART CAVE - DIRECT BY MR. SALEEBY

1 A: IT.

2 Q: IT? Information technology?

3 A: Yes, sir.

4 Q: In addition to that, who did you work with? What other

5 sections?

6 A: That's the only two sections I've worked with at SLED.

7 Q: IT and computers?

8 A: Yes, sir.

9 Q: We say computer, but do you do things in the computer

10 section other than computers?

11 A: Yes, sir. We do forensic imaging of computers, cell

12 phones. We also do DVR systems. We also look at internet

13 history for threats and hacking and anything that's related to

14 any kind of electronic media device as far as stored on flash

15 drives, SD cards, cameras, any types of devices.

16 Q: So yours is a technological specialty?

17 A: Yes, sir.

18 Q: You probably understand and can use a smart phone?

19 A: Yes, sir.

20 Q: Now,, there has been some testimony previously about

21 during the conduct of this investigation a DVR player was

22 submitted to SLED?

23 A: Yes, sir.

24 Q: All right. And would that eventually make its way to

25 you?

BART CAVE - DIRECT BY MR. SALEEBY

1 A: It did.

2 Q: Okay. I'm going to show you what's been introduced into
3 evidence as State's Exhibit Number 28 and ask you if you can
4 identify this as the device?

5 A: Yes, sir. That's the device that was logged in our unit.

6 Q: All right. What did you do initially to determine
7 whether or not you could reproduce or view what was saved or
8 recorded on this device?

9 A: We first identified what kind of storage media was inside
10 of it.

11 Q: What kind of what?

12 A: Storage media.

13 Q: Storage media? What's that mean?

14 A: Either a hard drive or a solid-state memory or wherever
15 it stores the video at once it records it. When we opened it
16 up inside, we found a hard drive located inside, and that's
17 where all the files were stored at.

18 Q: All right. And did you try then to see if you could
19 access the files on the hard drive and view the images that
20 were recorded there?

21 A: We did. And we found out that it was proprietary.

22 Q: And proprietary means what?

23 A: That you can only use it with certain software and
24 hardware, and the only way it would play was within a working
25 DVR, and that one had damaged motherboard in it and so we

BART CAVE - DIRECT BY MR. SALEEBY

1 weren't able to do it from that specific model.

2 Q: When you got this, it wasn't working?

3 A: Correct.

4 Q: All right. And you said something called a motherboard
5 wasn't working?

6 A: Correct.

7 Q: All right. And did that have anything to do with the way
8 -- potentially with the way it had been disconnected or cut?

9 A: Yes. It had been cut and it looked like it had been, you
10 know, thrown on the floor or something because it was not
11 working.

12 Q: So the images were still on this, but you weren't able to
13 access them because the equipment had been damaged?

14 A: Correct.

15 Q: So what did you and Detective Lee do to try to see if you
16 could find the device to help you get into those images?

17 A: We contacted the company that manufactured that device
18 and asked them about how we could view it if the item was
19 damaged, and what they informed us is the only way we could
20 view it was if we got an identical unit and took the hard
21 drive out and put in that hard drive, and that would let us
22 see the images that were there. And that's what we were able
23 to do successfully.

24 Q: So Mr. Lee brought you a similar Bunker Hill security
25 system DVR player from Harbor Freight as well?

BART CAVE - DIRECT BY MR. SALEEBY

1 A: Yes, sir. That's correct.

2 Q: And that enabled you to be able to produce or to collect
3 those images and to produce a recording?

4 A: Correct.

5 Q: I'm going to show you I think once been introduced into
6 evidence as State's Exhibit Number 18, but I'm going to ask
7 you if you recorded the events on a DVD that could be played
8 for the jury?

9 A: Yes, sir, I did.

10 Q: All right.

11 MR. SALEEBY: And, Your Honor, I think it's in over
12 foundation, but we move it again if it's not.

13 THE COURT: Any objection, Mr. Wilson?

14 MR. WILSON: No, sir.

15 THE COURT: Mr. Floyd?

16 MR. FLOYD: None, Your Honor.

17 THE COURT: All right.

18 Q: All right. In addition to making this -- let me back up
19 on that. You were able actually to record the events on this
20 recorder from what time in the morning until what time in the
21 afternoon, if you recall? Or in the evening?

22 A: From 7:28 until 8:03.

23 Q: 7:28 in the evening?

24 A: Yes, sir.

25 Q: Until 8:03?

BART CAVE - DIRECT BY MR. SALEEBY

1 A: Yes, sir.

2 Q: Now, there were more events collected and stored images
3 stored earlier in the day; correct?

4 A: Yes, sir. Earlier in the month, there was previous days
5 on there, but the date we were in reference to was just that
6 specific day.

7 Q: All right. Did you make DVDs of the whole day in case
8 they were useful?

9 A: We just did the one for that day.

10 Q: For that day?

11 A: Yes, sir.

12 Q: But you did make them for the entire day?

13 A: Yes, sir.

14 Q: All right. And gave copies to us and passed copies to
15 the defense?

16 A: Yes, sir.

17 Q: But the one you have here is restricted to the evening
18 hours on July 4th?

19 A: Correct.

20 Q: All right. Were you also able, given your technological
21 capability, to make still photographs from the moving images
22 on the DVD?

23 A: Yes, sir.

24 Q: I'm going to show you State's Exhibit Number 19-A through

25 R --

BART CAVE - DIRECT BY MR. SALEEBY

1 A: Yes, sir.

2 Q: -- and just ask you to look at them and not tell us what
3 they are now, but ask you if those are the still images that
4 came off of that DVD and we'll go from there.

5 A: Yes, sir. These are the images.

6 MR. SALEEBY: And, Your Honor, I think these were over
7 objection based on foundation, but just out of an abundance of
8 caution, we'd move for their introduction now.

9 THE COURT: All right. Any objection at this time, Mr.
10 Wilson?

11 MR. WILSON: No, sir.

12 THE COURT: Mr. Floyd?

13 MR. FLOYD: No, Your Honor.

14 THE COURT: All right. State's Exhibit 19-A through R
15 admitted into evidence without objection.

16 Q: Simply stated, in layman's terms, how are you able to
17 take the contents that were on the DVR player and put them on
18 a DVD? Was it anything hyper-technical or we might do it in
19 everyday life?

20 A: It was not hyper-technical. We've got a tech services
21 division and we -- that's where they do video enhancements at,
22 and we took it over there and they've got where they pretty
23 much just hook up the DVD player through another DVD player
24 and as it plays through, they can record what's being played
25 through there and that's how we made the recording.

BART CAVE - DIRECT BY MR. SALEEBY

1 Q: And you worked with them on making the recording and
2 making the stills?

3 A: Yes, sir.

4 Q: All right.

5 MR. SALEEBY: If you will bear with us a moment, Your
6 Honor, we need to set up the screen so we can project this.

7 THE COURT: All right.

8 (Whereupon, there is a pause in the proceedings.)

9 MR. CLEMENTS: Your Honor, while they're setting that up,
10 I have the booking report --

11 THE COURT: Mr. Wilson, did you want to look at that?

12 MR. CLEMENTS: -- for Mr. Wilson. We do not object to
13 him introducing it into evidence.

14 THE COURT: All right.

15 (Whereupon, there is a pause in the proceedings.)

16 THE COURT: All right. While we're doing this, I've been
17 informed that one of the jurors needs a break for a minute.
18 I'm going to let you step to the jury room. Do not discuss
19 the case. We'll get you back out here as quickly as possible
20 to continue the trial. Okay? Do not discuss the case. Go
21 ahead.

22 (Whereupon, the jury exits the courtroom at 12:18 p.m.)

23 THE COURT: All right. We'll stand down for just a
24 couple of minutes. Mr. Godbolt, when you get all this -- it
25 looks like he's got it set up. If not, finish that and we

BART CAVE - DIRECT BY MR. SALEEBY

1 will -- Mr. Cave, you can step down, but do not discuss your
2 case. Do not discuss your testimony at all. We'll get you
3 back up here as soon as we reconvene.

4 THE WITNESS: Yes, sir.

5 (Whereupon, there is a break in the proceedings from
6 12:19 p.m. until 12:27 p.m.)

7 THE COURT: All right. Bring me the jury back, please.

8 (Whereupon, the jury enters the courtroom at 12:27 p.m.)

9 THE COURT: All of the jurors are back and presently
10 seated in the jury box. Mr. Saleeby, you may --

11 MR. SALEEBY: Thank you, Your Honor.

12 THE COURT: You may continue. Mr. Cave, I remind you
13 that you are still under oath.

14 THE WITNESS: Yes, sir.

15 CONTINUED DIRECT EXAMINATION

16 BY MR. SALEEBY:

17 Q: This would be State's Exhibit Number 18. And just to
18 make sure that we know what we're seeing, you took what had
19 been recorded from the entire day and what you have condensed
20 it down to is a period of time in the afternoon; is that
21 correct?

22 A: Yes, sir.

23 Q: And it will start at approximately what time? Well, will
24 the date -- will the time and the minutes be shown on the
25 date?

BART CAVE - DIRECT BY MR. SALEEBY

1 A: Yes, sir, it should.

2 Q: All right. And it would start at what time?

3 A: It should be 7:28.

4 Q: What time?

5 A: 7:28.

6 Q: 7:28?

7 A: Yes, sir.

8 Q: All right. And will it run approximately -- does it run

9 continuously or just when you see activity is your highlight

10 film?

11 A: It's going to -- it's going to show when there's

12 activity.

13 Q: I beg your pardon?

14 A: It will be activity.

15 Q: All right. When there's activity?

16 A: Yes, sir.

17 Q: Okay. Will what you have recorded stop at 7:48?

18 A: No, sir.

19 Q: All right. What time did the -- what time did the device

20 quit recording?

21 A: At 8:03.

22 Q: 8:03? All right. Well, let's start with playing this.

23 THE COURT: And again, this is Exhibit 18?

24 MR. SALEEBY: Exhibit 18.

25 THE COURT: Thank you.

BART CAVE - DIRECT BY MR. SALEEBY

1 MR. SALEEBY: And, Your Honor, if you would, just check
2 and ask the jurors if they all can see it.

3 THE COURT: Can everybody see the screen? I had a
4 concern about that. Thank you. Please move that, Mr.
5 Godbolt.

6 MR. SALEEBY: Do we need to dim the lights perhaps?

7 MR. GODBOLT: It might help.

8 THE COURT: I think we're okay. Before we play it, is
9 there any difficulty in seeing what's on the screen by anybody
10 in the jury box? Okay.

11 (Whereupon, State's Exhibit Number 18, the surveillance
12 video, is brought up on the screen in open court,
13 started, and then stopped.)

14 Q: All right. What's the time there, sir? Can you see it?
15 Do you need to step down?

16 A: I can't see the screen from here.

17 (Whereupon, the witness exits the witness stand.)

18 Q: I'll just ask you if this indicates the date, the month,
19 the day, the year, the hour, the minutes, and seconds?

20 A: It does.

21 Q: And this would be 7/4/2012 at 7:27 --

22 A: Correct.

23 Q: -- :55 p.m.?

24 A: Yes, sir.

25 Q: All right.

BART CAVE - DIRECT BY MR. SALEEBY

1 THE COURT: Can you all see in my far right corner over
2 there okay? Okay.

3 MR. SALEEBY: All right. If you would, play it, please.

4 (Whereupon, State's Exhibit Number 18, the surveillance
5 video, is played in open court. NO SOUND TO TRANSCRIBE.)

6 MR. SALEEBY: Stop it, please.

7 Q: If you could, stay right there at 7:48:44. At what time
8 did the device quit recording?

9 A: At 8:03.

10 Q: 8:03?

11 A: Yes, sir.

12 Q: P.m.?

13 A: Yes, sir.

14 Q: Approximately 15 minutes?

15 A: Yes, sir.

16 MR. SALEEBY: Can you take it back to where you started,
17 please?

18 Q: I'm going to have you start again. I'm going to stop it
19 at certain places.

20 A: That's fine.

21 Q: And just ask you if you were able to take stills --

22 A: Okay.

23 Q: -- that you've shown -- that you'll be able to show us.

24 (Whereupon, State's Exhibit Number 18, the surveillance
25 video, is played again in open court.)

BART CAVE - DIRECT BY MR. SALEEBY

1 MR. SALEEBY: Stop. Proceed just a little bit. Stop it,
2 please.

3 Q: Do we have a still of this vehicle at approximately 7:28?
4 A: Yes, sir.

5 MR. SALEEBY: Proceed.

6 (Whereupon, the video resumes playing.)

7 Q: These are shot from a camera in two different locations;
8 correct?

9 A: Correct. One on the front and one on the back.

10 MR. SALEEBY: Stop.

11 Q: Doesn't that in a few seconds -- 7:29 -- have a still
12 here?

13 A: Yes, sir.

14 Q: All right, sir.

15 MR. GODBOLT: Go ahead?

16 MR. SALEEBY: Right.

17 (Whereupon, the video resumes playing.)

18 Q: At 7:29 -- it's now 7:36. All right. So seven minutes
19 have transpired; is that correct?

20 A: Yes, sir.

21 Q: And you've got this based on activity?

22 A: Correct.

23 (Whereupon, the video continues playing.)

24 MR. SALEEBY: Stop. 7:36:51. Move.

25 (Whereupon, the video resumes playing.)

BART CAVE - DIRECT BY MR. SALEEBY

1 MR. SALEEBY: Stop.

2 Q: 7:37:23. Approximately a minute later; correct?

3 A: Yes, sir.

4 MR. SALEEBY: Move.

5 (Whereupon, the video resumes playing.)

6 MR. SALEEBY: Stop. Proceed.

7 (Whereupon, the video resumes playing.)

8 MR. SALEEBY: Stop right there.

9 Q: All right. That's 7:48. That's approximately ten

10 minutes?

11 A: Yes, sir.

12 Q: All right. That's ten minutes from the last activity

13 that you recorded?

14 A: Yes, sir.

15 Q: You're only recording when you see people coming up? All

16 right.

17 MR. SALEEBY: Proceed.

18 (Whereupon, the video resumes playing.)

19 MR. SALEEBY: Stop.

20 Q: Do you have a still of that particular image or something

21 close to it?

22 A: Yes, sir.

23 MR. SALEEBY: We don't have zoom capacity?

24 MR. GODBOLT: Not with this.

25 MR. SALEEBY: That's fine. Proceed. Stop. Proceed.

BART CAVE - DIRECT BY MR. SALEEBY -

1 (Whereupon, the video resumes playing.)
2 MR. SALEEBY: Stop. Proceed.
3 (Whereupon, the video resumes playing.)
4 MR. SALEEBY: Stop.
5 (Whereupon, the playing of the video is stopped.)
6 Q: All right. Now, sir, what I would like to do since we've
7 introduced these into evidence is to have you identify them.
8 You may need to stand here because you might not be able to
9 see. I'm going to have Mr. Godbolt project on here State's
10 Exhibit 19-A.
11 (Whereupon, State's Exhibits 19-A through 19-R are
12 projected on the screen in open court one at a time as
13 indicated by counsel.)
14 MR. SALEEBY: Can you zoom in on the vehicle? Thank you,
15 sir.
16 Please go to 19-B. That's fine.
17 19-C. I'd like you to zoom in on the individual.
18 19-D.
19 19-E. And please zoom in on the individual.
20 19-F.
21 19-G. And zoom in, if you would, please.
22 19-H. Can you zoom in on the area that's illuminated?
23 19-I. Once again, zoom in on the individual face first
24 and then right hand side.
25 19-J. I want you to go to the face first. Right hand

BART CAVE - DIRECT BY MR. SALEEBY

1 next. Right hand. Other right. And then left hand.

2 Illuminated. Was that H?

3 MR. GODBOLT: J.

4 MR. SALEEBY: J? Go to K, please. Once again, left
5 hand. And the right hand. And the face.

6 19-L.

7 Go to 19-M.. Face. Left hand.

8 19-N. Left hand. Right hand.

9 19-O. I'd like you to take the individual in the black
10 shirt and do face first. Head. Now, right hand. And now,
11 the individual at the top of the stairs.

12 19-P. Please focus on the area that's illuminated or
13 highlighted.

14 19-Q. And go right to the illuminated. Top of the body
15 as well.

16 And 19-R. Once again, focus on the two individuals.

17 Thank you.

18 Mr. Cave, that's all the questions I have for you.

19 Please answer any questions counsel has for you.

20 THE WITNESS: Yes, sir.

21 (Whereupon, there is a pause in the proceedings as the
22 screen is removed and the witness returns to the witness
23 stand.)

24 THE COURT: All right. Cross examination, Mr. Wilson?

25 MR. WILSON: Thank you, Your Honor.

BART CAVE - CROSS BY MR. WILSON

CROSS EXAMINATION

1
2 BY MR. WILSON:

3 Q: Agent Cave, now, let me see if I understand. You got
4 this video on -- on July the 5th? When did you receive it?

5 A: I don't have that exact intake sheet with me in front of
6 me as far as the day we received it. I've got that the day we
7 viewed it was August 2nd.

8 Q: Okay. So the first time that you looked at or anybody
9 that you know of looked at the content of the video was August
10 the 2nd?

11 A: Yes, sir.

12 Q: And -- and you had -- somebody came from Marion County
13 and got it from you sometime after you received it originally;
14 is that correct?

15 A: Yes.

16 Q: All right. Who was it that came and got the video
17 recorder from you? Who came and got it?

18 A: James Lee.

19 Q: Okay. And what was the purpose of Mr. Lee getting the
20 video recorder from you? Now, you're the expert; right?

21 A: Yes, sir.

22 Q: And as an expert, your job is to find out what's going on
23 with things and do a report and tell us how to fix it or what
24 the issues are with it, but in this case, that's not what
25 happened; right?

BART CAVE - CROSS BY MR. WILSON

1 THE COURT: Was that a question, Mr. Wilson?

2 MR. WILSON: Well, yes, sir. That's what I asked him.

3 Q: That's not what happened?

4 A: Right. What -- the reason why he took it back was to --
5 was to try to locate a similar unit so that we could remove
6 the hard drive out of one and put it in another to make it so
7 we could actually view the video.

8 Q: And you couldn't have done that?

9 A: No, sir. Because we didn't have the resources for
10 finding that. We talked to the company -- with Bunker Hill.
11 They -- that's when they said that we needed to find a similar
12 unit for, you know, to put it in there so that we could play
13 it since the motherboard was damaged.

14 Q: Well, SLED couldn't have gotten one from the
15 manufacturer? Is that what you're saying? Y'all couldn't do
16 that?

17 A: Well, our normal process that we go through when we have
18 an issue like that is it goes back to the local agency, and
19 when it went back to them, they had a location for where one
20 was at and they were wanting to verify that and they were
21 going to provide that for us.

22 Q: Okay. So -- all right. But what you needed was a new
23 unit so that you could take the hard drive out of the old unit
24 and put it in the new unit, right?

25 A: Correct.

BART CAVE - CROSS BY MR. WILSON

1 Q: Okay. So what I'm not understanding is -- what is the
2 difficulty in just ordering the new unit from the
3 manufacturer, taking the hard drive that you had, and putting
4 it in the new unit? Why would you need to give it back to
5 Marion and have them keep it for two weeks and then bring it
6 back to you?

7 MR. SALEEBY: Your Honor, I thought he answered that
8 questions. Well, he said that was SLED's standard operating
9 procedure. I think --

10 MR. WILSON: He did not --

11 THE COURT: Hold on a minute.

12 MR. SALEEBY: But I thought that he had. That's the same
13 question twice.

14 THE COURT: I'll allow it. Go ahead and answer the
15 question, Mr. Cave, if you know.

16 A: When we contacted Marion back and let the -- let Mr. Lee
17 know that it was -- that we were going to need -- that that
18 was what we would need, and that's when he said that he had a
19 location in Marion that he could get one of those units from,
20 and he wanted to take that to verify it was the same model
21 whenever he brought it back so that whenever we swapped it
22 out, there wouldn't be any issues.

23 Q: Okay. So why was there two weeks? Did it take two weeks
24 to do that? Two weeks from the day that he picked it up until
25 he brought it back. Did it take two weeks to go to Dillon or

BART CAVE - CROSS BY MR. WILSON

1 Marion or wherever he picked up the second unit and bring it
2 -- and get it to you?
3 A: I can't answer that question because I wasn't the one
4 that took it.
5 Q: So it was gone from your possession for two weeks?
6 A: Correct.
7 Q: And you have no idea what happened to it during those two
8 weeks?
9 A: Correct.
10 Q: All right. And did you make a copy of whatever was on
11 the hard drive so that you now know that whatever was on the
12 hard drive when you saw it two weeks later was on there when
13 you gave it to them?
14 A: Yes, sir. We did a forensic image of it.
15 Q: Okay. And where is that?
16 A: We've got a copy of the EL1 file on our server.
17 Q: Okay.
18 A: And then -- and that's what we used as our working copy
19 when we put -- we didn't put the original drive into the
20 secondary machine.
21 Q: Mm-hmm.
22 A: We did a clone drive. So that way it's a -- it was a bit
23 by bit image and that way we weren't working off of the
24 original evidence.
25 Q: So -- well -- so -- well, then I'm confused because I

BART CAVE - CROSS BY MR. WILSON.

1 thought the whole idea was that you didn't -- you couldn't get
2 the hard drive out and it would only play in another machine.
3 So what you're telling me now is that you actually did take
4 the hard drive out and you made a clone of the hard drive
5 before they came and got it and kept it for two weeks. Is
6 that what you're saying now?

7 A: Well, when we got it to preview it in our previous DVR
8 systems, we could take out the drive and the company would
9 provide us with a player so that way we wouldn't have to
10 actual have the physical DVR system to play them in. But when
11 I contacted them, they said that was not the case for that
12 unit. So we did make an image of that drive.

13 Q: Okay. How could you make an image out of it? How could
14 you make the image of it and not see it? I mean is that what
15 you're saying? You could make an image of it, but you
16 couldn't see what the image was that you were making?

17 A: No. We can see the image, but we couldn't see the video
18 files. The image is just a -- is just a folder that contains
19 all the files located on the drive.

20 Q: Right.

21 A: For the videos to play, you had to have their proprietary
22 software and player to play it, and it won't do it outside of
23 their DVR box. It has to be inside their box to play that --
24 the video.

25 Q: Okay. All right. Now, let's go to when you got it back.

BART CAVE - CROSS BY MR. WILSON

1 Two weeks later, you got it back; correct? Or theirs back?

2 And when you got it back two weeks later, did they bring to
3 you the new box and the old box?

4 A: On the -- as far as them -- they brought us back a new
5 box --

6 Q: Mm-hmm.

7 A: -- and it was -- and that's what -- we were able to open
8 it up and the drive just connected right in there.

9 Q: Okay.

10 A: And -- but as far as the chain -- Mr. Saleeby, do you
11 have the chain of where the --

12 MR. SALEEBY: I don't know that you can ask me a
13 question.

14 THE COURT: Hold on. Your job is to answer his
15 questions.

16 THE WITNESS: That's fine. That's fine.

17 A: We did. Yes. When they brought it back, we swapped the
18 drive out. That's what we did.

19 Q: Okay.

20 A: Then it worked.

21 Q: All right. But -- all right. So -- so let me see if I'm
22 clear -- that I understand what you did. You -- when you got
23 the DVR the first -- you had it until July 18th up there at
24 SLED, and you then -- is that correct, first of all?

25 A: Yes.

BART CAVE - CROSS BY MR. WILSON

- 1 Q: All right. And you then went into it and took out the
2 hard drive?
- 3 A: Correct.
- 4 Q: And you made a copy of the hard drive?
- 5 A: Correct.
- 6 Q: So when you gave -- when you gave Marion County whatever
7 you gave them on the 18th, that was not the original? That was
8 a copy. Is that what you're saying?
- 9 A: No, sir. We gave them back the original.
- 10 Q: Okay. So they had the original. So Marion County had
11 the original?
- 12 A: Correct.
- 13 Q: All right. So now -- so now you -- so when Marion County
14 has the original, you have a copy or a clone I think you
15 called it, which you kept at SLED?
- 16 A: Correct.
- 17 Q: All right. Now, did you bring that clone to play today
18 too so that we know that the clone is identical to what you
19 got when you got the property back?
- 20 A: No, sir.
- 21 Q: Okay. All right. Now, let me see if I understand it.
22 You were also trying to -- you said that there were some
23 enhancements made to the video; right?
- 24 A: Yes, sir.
- 25 Q: All right. And did you make the enhancements or did

BART CAVE - CROSS BY MR. WILSON

1 somebody else make them?

2 A: Our tech services division made them.

3 Q: Okay. So you didn't even do that?

4 A: No. I was -- I was there when it was being done.

5 Q: Okay. That's good. You were there when it was being
6 done, so you saw these enhancements being made. Were you the
7 one directing them as to what to enhance?

8 A: Yes, sir.

9 Q: Okay. And were you instructed by law enforcement -- that
10 is Marion County Sheriff's Office -- as to what it was that
11 they wanted you to focus in on? Or by the Solicitor's Office?

12 A: Yes, sir.

13 Q: Okay. And what was it that they wanted you to focus in
14 on?

15 A: The vehicle to get a clearer description of what type of
16 vehicle it was.

17 Q: Okay.

18 A: The individuals' faces.

19 Q: Okay.

20 A: And the items that they were carrying as they entered the
21 home.

22 Q: Okay. Did they ever tell you to focus in on the arms of
23 the individual to see if there were tattoos on the person?

24 A: No, sir.

25 Q: Okay. They never asked you to do that?

BART CAVE - CROSS BY MR. WILSON

- 1 A: All we looked at was the -- was the weapons.
- 2 Q: Okay.
- 3 A: And the -- and the faces.
- 4 Q: All right. All right. Do you have the capacity -- that
- 5 is with your technology -- to look at the arms -- inside or
- 6 outside of the arms to determine if there is anything on the
- 7 arms or inside of the arms?
- 8 A: The problem we'd have with that was the quality of the
- 9 video. As you could tell when they zoomed in earlier, the
- 10 more you zoomed in, the more pixilated it became. And so it
- 11 would have been harder to see or describe, you know.
- 12 Q: Yeah. In fact, the more you blow it up, the more
- 13 difficult it is to tell what's there --
- 14 A: Correct.
- 15 Q: -- in that photograph. And the reason for that is is
- 16 that the pixel quality of that photograph is very poor, is it
- 17 not?
- 18 A: Correct.
- 19 Q: All right. And -- and -- and that makes it -- and when
- 20 the pixel quality is poor, as you try to enhance it or you try
- 21 to blow it up, then it blurs so that you can't really get a
- 22 clearer picture.
- 23 MR. SALEEBY: Your Honor --
- 24 Q: Would that be a fair statement?
- 25 THE COURT: Hold on a minute.

BART CAVE - CROSS BY MR. WILSON

1 MR. SALEEBY: I just didn't find a question in there. It
2 was an eloquent statement.

3 THE COURT: Let him -- let him finish what he's saying.
4 He may be getting to a question in there.

5 THE WITNESS: Okay.

6 THE COURT: Restate your question, Mr. Wilson.

7 MR. WILSON: Yes, I will. Thank you.

8 Q: What I'm simply asking you is is it true that whenever
9 you have a picture and the pixel count for that picture is of
10 low quality that the more that you try to enhance it or blow
11 it up, if you will, the more blurred it becomes?

12 A: Correct.

13 Q: All right. And that's kind of what happened in this
14 case, is it not?

15 A: When they tried to blow it up, yes.

16 Q: Okay. And the more they tried to blow it up to get a
17 clear picture of the faces of the individual, the more blurred
18 the photographs become?

19 A: Correct.

20 Q: Fair? All right. And now -- and you indicated that at
21 no point in time did anybody from law enforcement or the
22 Solicitor's Office for that fact -- right? -- tell you that
23 they wanted you to focus and see if there are tattoos on these
24 individuals or specifically on any of these individuals?

25 A: I don't specifically remember them asking about the

BART CAVE - CROSS BY MR. WILSON

- 1 tattoos.
- 2 Q: Okay. And if they asked you to look or to enhance it,
3 you would have done that, would you not?
- 4 A: Correct.
- 5 Q: All right. And, in fact, you wanted to accommodate them
6 in any way that you could to try to assist them in preparing
7 this for court?
- 8 A: Correct.
- 9 Q: Okay. And -- and it's not unusual -- is it? -- for the
10 prosecutor to ask you to enhance things and to make them
11 clearer so that you can bring it and present it?
- 12 A: Correct.
- 13 Q: Okay. Let me ask you in regards to -- well, let me
14 rephrase that. I haven't even asked it yet, but let me ask it
15 this way. In regards to photographs and videos like this,
16 now, the type of -- of camera that was used or DVR system that
17 was used -- and I don't even know if that's the right word.
18 You'll have to help me with that. The box that's used to
19 record these things in -- what would that be called? The
20 surveillance box?
- 21 A: That's the DVR box.
- 22 Q: Okay. That DVR box is only capable of taking certain
23 quality pictures? Is that -- would that be fair?
- 24 A: Correct.
- 25 Q: All right. And is that because it's a cheaper brand or

BART CAVE - CROSS BY MR. WILSON

1 is it because it's an older model or both?

2 A: It's kind of depending on the manufacturer.

3 Q: Yes.

4 A: It's depending on the -- and pretty much it is I guess
5 depending on I guess the price of it.

6 Q: All right.

7 A: The more you pay, of course, you can get a higher quality
8 camera which will be able to zoom in and be a higher, you
9 know, quality. And, of course, the cheaper ones you get would
10 be, of course, of lower quality.

11 Q: Okay. All right.

12 MR. WILSON: Bear with me, Judge, one second.

13 Q: Let me ask you did you ever make any kind of case notes
14 about what you did with this video equipment?

15 A: Yes, sir.

16 Q: All right. Let me show you this and just ask you to look
17 at it and just for the purposes of maybe if you don't
18 remember. Is that kind of a log of what you had or did?

19 A: That's -- this is the chain from Marion County from where
20 they -- they brought it to us.

21 Q: Okay. Now -- and --

22 MR. SALEEBY: We have no objection to its introduction,
23 sir.

24 MR. WILSON: I'm not offering it, but I appreciate that.
25 Thank you.

BART CAVE - CROSS BY MR. WILSON

1 Q: I'm just wanting to ask you in terms of dates are you
2 certain about the dates of when you got it and when you gave
3 it back to them? That's all I'm trying to find out. Are you
4 certain that it was on the 18th?
5 A: No. I'm not certain it was on the 18th. It looks like on
6 here that it came from someone else at SLED and not from me.
7 Q: Okay. So you actually didn't have it on the 18th when
8 they picked it up?
9 A: Correct.
10 Q: Somebody else at SLED had it?
11 A: Correct. It looks like it may have come from the lab.
12 Q: Okay. And so they got it from the lab; they didn't get
13 it from you. So now, when did -- when was it that you made
14 the clone?
15 A: On the -- whenever we did the -- I've got an imaging
16 worksheet here from where we --
17 Q: Okay.
18 A: That would have been on August 2nd.
19 Q: Okay. So you made it on August -- the clone on August
20 2nd?
21 A: Yes, sir.
22 Q: Well, now I'm confused because the video -- the original
23 was picked up on the 18th from SLED by Marion and taken back to
24 Marion. So you didn't make the clone until they brought it
25 back?

BART CAVE - CROSS BY MR. WILSON

1 A: - Correct. Because on the 18th, it was not at my division.
2 It was over at the lab.

3 Q: Okay. Well, that's -- that was -- my original question
4 was -- was the clone made before you gave the device back to
5 Marion to go find a machine that it would play on, and I
6 thought your answer was that you did. That you had made the
7 clone first. But now you're telling me that that's not true;
8 right?

9 A: I didn't receive it until that -- August 2nd. That's
10 whenever it was first brought to me. The 18th -- that was when
11 the lab had it.

12 Q: Okay. So when Marion come and got it on the 18th, there
13 was no clone?

14 A: Correct. That was when they got it from the lab. That's
15 not my department.

16 Q: That's right.

17 A: That's a different department.

18 Q: Okay. They brought it back on August 2nd, and when they
19 brought it back on August 2nd, that's when you made the clone?

20 A: Correct.

21 Q: So you were cloning whatever they brought back on August
22 2nd, not what they gave you or what was brought to SLED on July
23 the 4th or the 5th whenever it was first brought?

24 A: Right. That was -- that was at our lab division, which
25 is not where my office is located.

BART CAVE - CROSS BY MR. WILSON

1 Q: Okay.

2 A: That was a different department.

3 Q: And do you have any idea what Marion County did with the
4 device from July 18th until August 2nd when they brought it
5 back to SLED?

6 A: No, sir.

7 Q: All right. Thank you, sir.

8 THE COURT: Mr. Floyd?

9 MR. FLOYD: No questions for this witness, Your Honor.

10 THE COURT: Any redirect?

11 REDIRECT EXAMINATION

12 BY MR. SALEEBY:

13 Q: Mr. Cave, I'm not going to ask you about clone drives and
14 hard drives because I, quite frankly, don't know much about
15 that. I would like to ask you this because I think I used the
16 terminology which may be confusing, but when we talk about
17 enhancements, are we talking about distorting or any way
18 changing or manipulating the images that are on that DVD when
19 you made these stills?

20 A: No, sir. That was just a way to try and highlight them
21 and to make it more clear what the item was that we were
22 trying to focus on.

23 Q: All right. So, for example, State's Exhibit Number 19-K.
24 That's as good a quality as you could have gotten from that
25 camera at that time, but the image has not been distorted

BART CAVE - REDIRECT BY MR. SALEEBY

1 other than the --

2 MR. WILSON: Your Honor --

3 Q: -- highlight here --

4 THE COURT: Hold on.

5 Q: Is that correct?

6 THE COURT: Hold on a minute. Yes? You're got an
7 objection?

8 MR. WILSON: Yes, sir.

9 THE COURT: What's your ground?

10 MR. WILSON: Leading.

11 THE COURT: Restate your question.

12 Q: Other than the highlighted areas, has anything been done
13 to distort the quality of this picture?

14 A: No, sir.

15 Q: On State's Exhibit 19-L, other than the highlighting, has
16 anything been done to distort the image on that?

17 A: No, sir.

18 Q: So when we talk about enhancements, we're talking about
19 highlighting?

20 A: Correct, sir.

21 Q: All right.

22 MR. SALEEBY: That's all the questions I have, sir.

23 THE COURT: Mr. Wilson, anything?

24 MR. WILSON: No, sir.

25 THE COURT: Mr. Cave, you may step down. Thank you.

1 MR. SALEEBY: I would ask if he could be excused.

2 THE COURT: Any objection, Mr. Floyd?

3 MR. FLOYD: No objection.

4 THE COURT: Mr. Wilson?

5 MR. WILSON: No, sir.

6 THE COURT: Sir, you are free to go. You have no further
7 responsibility under your subpoena. Thank you for being here.

8 THE WITNESS: Thank you, sir.

9 THE COURT: Can the lawyers approach for a minute? While
10 the lawyers are approaching, ladies and gentlemen, I've been
11 informed that the Clerk's Office has your lunch here. I'm
12 going to ask you to step to the jury room and lunch will be
13 brought in in just a minute. During lunch, do not discuss the
14 case. My instructions remain the same. Do not discuss the
15 case.

16 (Whereupon, the jury exits the courtroom at 1:06 p.m.)

17 (Whereupon, a bench conference is held off the record.)

18 THE COURT: All right. We'll resume at two o'clock.
19 We'll resume at two o'clock.

20 (Whereupon, there is a break in the proceedings from 1:08
21 p.m. until 2:08 p.m.)

22 THE COURT: Mr. Wilson, can you, Mr. Floyd, and Mr.
23 Clements approach for a minute, please?

24 (Whereupon, a bench conference is held off the record.)

25 THE COURT: All right. What we discussed up here at

1 sidebar is some issues with -- with Mr. Sanders and Mr. Woods
2 communicating. My instruction is to Mr. Sanders and Mr. Woods
3 that the only lines of communication that they have are with
4 their lawyers only and not with each other. Am I clear about
5 that, Mr. Sanders? Am I clear about that?

6 THE DEFENDANT SANDERS: Yes, sir.

7 THE COURT: Okay. Am I clear about that, Mr. Woods?

8 THE DEFENDANT WOODS: Yes.

9 THE COURT: Sir?

10 THE DEFENDANT WOODS: Yes.

11 THE COURT: Okay. All right. I wanted to make sure that
12 was clear. All right. Anything from the State before I bring
13 the jury out?

14 MR. CLEMENTS: No, Your Honor.

15 THE COURT: Mr. Wilson?

16 MR. WILSON: Yes, sir. Perhaps. I don't know what order
17 they intend to call these witnesses, but I know Mr. Saleeby
18 showed us a -- some guns that -- pictures or photographs of a
19 gun that I assume that they intend to use as props when the
20 SLED agent testifies -- the ballistics expert testifies about
21 shell casings I assume, and I would object to -- to him using
22 those photographs. No -- no guns were ever recovered in this
23 case and -- and my concern is that there are two guns on the
24 -- on the --

25 THE COURT: On the video.

1 MR. WILSON: -- on the video and -- and -- and it -- what
2 I think -- what I think it does is adds -- I think it confuses
3 the issue with the jury as to whether or not these guns are
4 the guns that -- even though I know that we'll explain it to
5 them that, no, these guns are just props, I just don't think
6 that it's necessary, first of all, and I have certainly seen
7 experts testify hundreds of times about ballistics without
8 using copies or images of the kind of gun that was actually
9 used. So I just don't think it's necessary, and I think it's
10 prejudicial to my defendant to -- to allow the use.

11 THE COURT: Well, anything, Mr. Floyd?

12 MR. FLOYD: Your Honor, we would just join in that
13 objection.

14 THE COURT: Well, I'm going to see how the testimony is
15 elicited and how it comes out before I make a decision on
16 whether or not I'm going to allow them to be --

17 MR. SALEEBY: Your Honor, could we put our position just
18 for you?

19 THE COURT: Yeah. I'm sorry. Go ahead. Go ahead, Mr.
20 Saleeby.

21 MR. SALEEBY: What's different from most of the cases
22 that Mr. Wilson is talking about is in this case we have
23 pictures, stills and video, of people carrying weapons. We
24 have evidence that two separate weapons were fired, one a .22
25 and one a 9mm. There's no prejudice involved, and what Mr.

1 DeFreeese will be able to do is talk about the general
2 appearance of a semi-automatic handgun or the general
3 appearance of a revolver or where the ammo is stored in the
4 clip in the butt of a semi-automatic as opposed to a cylinder.

5 I mean I could have asked him to take off his sidearm and
6 do that, but I didn't think the Court would want me to do
7 this; so I thought that this would be the most benign way to
8 do it. And I understand you're reserving your ruling. I just
9 wanted to let you know what our thinking was.

10 THE COURT: And I apologize for not asking you that
11 before that, and I'm glad that you put that on the record and
12 I appreciate you doing so, but I'll see how the line of
13 questioning goes. And you can certainly ask him questions
14 referring to those exhibits at the time that you feel
15 appropriate and move to enter them into evidence, and I'll
16 make a ruling at that time.

17 MR. SALEEBY: Thank you, sir.

18 THE COURT: All right. Anything else from Mr. Wilson or
19 Mr. Floyd?

20 MR. WILSON: No, sir, Your Honor.

21 MR. FLOYD: No, sir.

22 THE COURT: Bring me the jury, please.

23 (Whereupon, the jury enters the courtroom at 2:14 p.m.)

24 THE COURT: All right. Madam Forelady and ladies and
25 gentlemen of the jury, I hope you all had a good lunch and are

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 ready to proceed this afternoon. Solicitor, you are
2 recognized at this time. Call your next witness, please.

3 MR. CLEMENTS: Thank you, Your Honor. May it please the
4 Court. We'd call Investigator -- retired -- Neil Rouse.

5 THE CLERK: Do you solemnly swear or affirm the evidence
6 you are about to give in the trial of this case will be the
7 truth, the whole truth, and nothing but the truth, so help you
8 God?

9 THE WITNESS: I do.

10 THE CLERK: Thank you.

11 NEIL ROUSE, being first duly
12 sworn, testifies as follows:

13 DIRECT EXAMINATION

14 BY MR. CLEMENTS:

15 Q: Good afternoon.

16 A: Good afternoon, sir.

17 Q: Can you please tell this jury who you are and where you
18 worked and how long you worked there?

19 A: How long? I'm Neil Rouse. I'm with the Marion County
20 Sheriff's Office. I've worked for the Sheriff's Office for
21 seven years, 17 years or so with Mullins Police Department,
22 and five years with the Dillon County Sheriff's Office.

23 Q: And you're retired now recently from the Marion County
24 Sheriff's Department?

25 A: That's correct. Twenty-six years.

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 Q: You retired as a detective?

2 A: Yes, sir.

3 Q: Okay. Were you called out on July 4th, 2012, out to Phil
4 Court road?

5 A: I was.

6 Q: And about the whole investigative team come out there,
7 did they not?

8 A: That's correct.

9 Q: Okay. Now, when you went out there on the scene when you
10 got there, can you tell this jury briefly what all you found
11 there and about what time you arrived?

12 A: I'm not exactly sure what time I arrived. When I
13 arrived, I went around to the side of the house. I never went
14 up into the crime scene. I just looked through the door and
15 walked back around and began to start talking to folks that
16 were at the scene.

17 Q: Was the crime scene secured by crime scene tape when you
18 got there?

19 A: Yes, sir, it was.

20 Q: Were there several other law enforcement officers present
21 on site?

22 A: Yes, sir.

23 Q: Okay. And you began to talk to some of the neighbors and
24 friends that were there?

25 A: That's correct.

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 Q: Okay. Did you get any written statements from anybody
2 having any statements to write down?

3 A: Yes, sir, I did.

4 Q: Okay. Did you get a written statement from Lafayette
5 Reed?

6 A: I did.

7 Q: Did you get a written statement from Shawn Davis?

8 A: I did.

9 Q: Okay. And after talking to Mr. Reed and talking to Mr.
10 Davis, what were you interested in looking for?

11 A: After talking to those two gentlemen, I -- my attention
12 turned to two black males and a white SUV that we were looking
13 for at that time.

14 Q: Okay. And did you alert the rest of the Sheriff's
15 Department that's what y'all were looking for?

16 A: That's correct.

17 Q: Okay. Now, the investigation continued on. Were there
18 more than -- than one possible suspect that was pursued in the
19 investigation?

20 A: Yes, sir. There were several. Several investigators
21 talked to different people. I'm not sure exactly who all
22 talked to who, but there was several people of interest at
23 that time.

24 Q: And were those leads exhausted --

25 A: They were.

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 Q: -- and ended?

2 A: They were.

3 Q: Okay. Now, did you -- did you participate in getting the

4 warrants or not?

5 A: No, sir, I didn't.

6 Q: Okay. All right. At some point in time, did you ever go

7 to SLED for any purposes during this investigation?

8 A: Yes, sir. On September 18th, 2013, I went up with

9 Detective Lee to SLED and looked at the video.

10 Q: Now, was that 2013 --

11 A: '12.

12 Q: -- or 2012?

13 A: '12.

14 Q: 2012?

15 A: Yes, sir.

16 Q: Okay. Did you also go up there for another purpose at

17 that time -- the second time?

18 A: To pick up evidence from SLED.

19 Q: Okay. So if SLED is not here, how do y'all transport

20 evidence to SLED?

21 A: Either the -- either the detective or whoever the case

22 agent is or Mr. Eddie Sawyer will take it.

23 Q: And y'all will go up there and take it and look -- and

24 drop it off where?

25 A: At SLED headquarters at SLED in Columbia.

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 Q: And when SLED gets finished with evidence, do they
2 maintain it there from then on?

3 A: No, sir.

4 Q: What do they do with it?

5 A: We take it back. We pick it back up.

6 Q: Y'all pick it back up and take it back?

7 A: That's correct.

8 Q: So you were doing that quite often in any number of
9 cases? If you were going to Columbia, you might take
10 something or bring something back?

11 A: That's correct.

12 Q: Okay. Now, when you went up on September of 2012, did
13 y'all have anybody arrested for this crime at that time?

14 A: No, sir, not at that time.

15 Q: You sure? In September of 2012, was anyone arrested?

16 A: Yeah. Yeah. We had Tyrell Woods arrested.

17 Q: Okay. And at that time, did you know where Marco Sanders
18 was? Had he been arrested anywhere else?

19 A: Not that I'm aware of. Not then.

20 Q: No?

21 A: Not at that time. Not that I'm aware of.

22 Q: Could he have been?

23 A: He could have been.

24 Q: Okay. All right. That wasn't your part in the
25 investigation?

NEIL ROUSE - DIRECT BY MR. CLEMENTS

1 A: No, sir.

2 Q: Okay. Now, you went to SLED and you knew that Tyrell had
3 been arrested and you knew that were other warrants out;
4 right?

5 A: That's correct.

6 Q: Who were the other warrants on?

7 A: Marco Sanders.

8 Q: Okay. When you looked at that video, what, if anything,
9 made you think the warrants were the right person or the wrong
10 person?

11 A: I knew it was Marco Sanders from the video.

12 Q: You recognized him on that video?

13 A: That's correct.

14 Q: How -- how long had you recognized -- how long had you
15 been knowing Mr. Marco Sanders?

16 A: Since December '93.

17 Q: Okay. And how old was he then?

18 A: Twelve years old.

19 Q: Twelve years old? All right. Are you -- do you know any
20 other people in his family? Know anybody else?

21 A: Yes, sir. I knew about all of his family.

22 Q: Okay. And was that based on being in the community for
23 as long as you've been?

24 A: That's correct.

25 Q: Okay. All right.

NEIL ROUSE - CROSS BY MR. WILSON

1 MR. CLEMENTS: I beg the Court's indulgence one moment.
2 Please answer any questions Mr. Wilson or Mr. Floyd may have.

3 THE COURT: Mr. Wilson?

4 MR. WILSON: Thank you, Your Honor.

5 CROSS EXAMINATION

6 BY MR. WILSON:

7 Q: Now, Detective Rouse, let's go back to July the 4th. You
8 talked to an individual by the name of Shawn Bart Davis?

9 A: That's correct.

10 Q: Okay. And Shawn Bart Davis is a criminal; right?

11 A: That's correct.

12 Q: There ain't no question about that?

13 A: No, sir.

14 Q: All right. And Shawn Bart Davis -- you took a statement
15 from him --

16 A: I did.

17 Q: -- at some point on the 4th or the 5th?

18 A: On the 4th.

19 Q: Okay. But then you saw him again on the 5th?

20 A: Yes, sir. We were still out there when the time changed
21 from -- from twelve to one. We were out there at that time
22 and we come back up and talked to him again.

23 Q: So you saw him. You took a statement from him on the
24 night of the 4th?

25 A: That's correct.

NEIL ROUSE - CROSS BY MR. WILSON

1 Q: Now, was that statement taken at the scene or did y'all
2 do that down at the police station?

3 A: I took it at the scene.

4 Q: All right. Took it at the scene. And you knew when you
5 took that statement that he was a criminal and that he was on
6 probation at the time. You knew that, didn't you?

7 A: No, sir. I didn't know he was on probation.

8 Q: Well, you found out. Well, you could have easily found
9 out he was on probation if you wanted to; right?

10 A: Yes, sir.

11 Q: Okay. In fact, on the 12th, y'all actually go to his
12 probation office and meet with him at the probation office?

13 A: No, sir, I didn't.

14 Q: You didn't go?

15 A: No, sir.

16 Q: Well, who went?

17 A: Detective Lee, as far as I know.

18 Q: Okay. And at that time -- well, let me back up. You
19 took -- when is the first time that you showed a set of
20 photographs, what we call -- commonly call a line-up -- when
21 is the first time you showed a line-up to Bart Davis?

22 A: I never did.

23 Q: You never did?

24 A: No, sir.

25 Q: You didn't show him a line-up on July the 5th?

NEIL ROUSE - CROSS BY MR. WILSON

- 1 A: No, sir, I didn't.
- 2 Q: You talked to him on July 5th?
- 3 A: Yes, sir, at the scene.
- 4 Q: Okay. Did you, in fact, not only talk to him, but you
- 5 actually accused him of being one of the culprits in the case,
- 6 did you not?
- 7 A: No, sir.
- 8 Q: Well --
- 9 A: Not that I recall, I don't.
- 10 Q: Let me show you this. Take a look at it. Don't tell me
- 11 what it is. Just take a look at it and see if your signature
- 12 is on that before I show it to the solicitor.
- 13 A: Yes, sir.
- 14 Q: Okay. You recognize that?
- 15 A: Yes, sir.
- 16 Q: Now, does that refresh your memory about whether or not
- 17 you talked to him and actually accused him of being a party to
- 18 all of this?
- 19 A: No, sir, it does not.
- 20 Q: It does not refresh your memory?
- 21 A: It does not say I accused him of anything.
- 22 Q: Well, you read him his Miranda rights telling him he had
- 23 the right to have a lawyer, the right to remain silent. You
- 24 told him that?
- 25 A: That's -- that's protocol. I do that to everybody I talk

NEIL ROUSE - CROSS BY MR. WILSON

1 to in case they say something they shouldn't have said. He'll
2 be covered and I'll be covered.

3 Q: But you do that --

4 A: That's protocol.

5 Q: Did you do that with Mr. Godbold?

6 A: Yes, sir.

7 Q: You read him his Miranda?

8 A: Yes, sir.

9 Q: Where's his form?

10 A: I don't have it with me.

11 Q: All right. Who else? Who else you did that with?

12 A: I do it pretty much with everybody I talk to.

13 Q: Okay. Now, on the 5th, you're aware that there was a
14 line-up given to him, aren't you? You were aware of that?

15 A: I'm aware of it, yes.

16 Q: And you were also aware that he couldn't pick anybody out
17 of the line-up. You are aware of that too, aren't you?

18 A: Yes, sir.

19 Q: But then on the 12th, when he's at his probation office,
20 y'all go back to him again with another line-up?

21 A: Yes, sir.

22 MR. CLEMENTS: Objection, Your Honor. That's been asked
23 and answered, and he asked him if he saw him on the 12th and
24 he's already answered no, he did not. Now, he's saying y'all
25 did this, y'all did that.

NEIL ROUSE - CROSS BY MR. WILSON

1 THE COURT: Mr. Wilson?

2 MR. WILSON: Yes, sir..

3 THE COURT: State your question without stating facts. I
4 mean I understand your line of questioning. You're certainly
5 allowed to lead, but don't state facts that aren't in
6 evidence, please.

7 MR. WILSON: Yes, sir.

8 Q: Let me ask you this way. Is there any question that on
9 the 12th of July of 2012 a line-up was shown to Bart Davis by
10 the Sheriff's Office?

11 A: It was.

12 Q: All right. And -- and it was in that time -- it was at
13 that time that Bart -- that Bart Davis is the one who told you
14 that Marco Sanders and Tyrell Woods were supposed to be the
15 people?

16 A: No, sir. He didn't tell me anything. I wasn't there.

17 Q: You weren't there? Well, it was after that that you went
18 and got the arrest warrants?

19 A: No, sir. I didn't get the arrest warrants.

20 Q: Okay. Who got the arrest warrants?

21 A: Detective James Lee.

22 Q: Okay. Is there any question that that arrest warrant
23 didn't occur until Bart Davis said that those were the two
24 people?

25 A: That's correct.

NEIL ROUSE - CROSS BY MR. WILSON

1 Q: All right. And do you even know how Bart Davis would
2 know whether or not they were the two people?

3 A: I wouldn't know how he would know, no.

4 Q: Right. And -- but in spite of that, arrest warrants were
5 received and these people were arrested. No question about
6 the fact they were arrested; right?

7 A: That's correct.

8 Q: All right. Now, other than -- and you say that -- well,
9 let me go back to the video now. You say that -- that you
10 looked at the video and that the two people on the video is
11 Marco Sanders and Tyrell Woods; is that right?

12 MR. FLOYD: I object, Your Honor. That's a question -- I
13 mean he's stating a fact that's not in evidence.

14 MR. CLEMENTS: I object, too.

15 MR. FLOYD: The witness did not say that.

16 MR. CLEMENTS: I object, too. I join in with the
17 objection.

18 THE COURT: Rephrase your question. The objection is
19 sustained.

20 MR. WILSON: I'm asking now what did he say.

21 Q: What did you say about who is on the video?

22 A: I said it was Marco Sanders. I didn't know Tyrell Woods
23 at that time.

24 Q: Very well. So you said that Marco Sanders was on the
25 video?

NEIL ROUSE - CROSS BY MR. WILSON

- 1 A: That's correct.
- 2 Q: And this is -- this is -- and when did you -- when was it
- 3 that you saw the video?
- 4 A: September the 18th.
- 5 Q: September 18th of what year?
- 6 A: 2012.
- 7 Q: 2012. So two months later; right?
- 8 A: Right.
- 9 Q: And after Mr. Sanders had been arrested; right?
- 10 A: I'm not sure when he was arrested.
- 11 Q: All right. His name was -- his picture was put in the
- 12 newspaper -- wasn't it? -- on the 12th and on television and
- 13 everywhere else when y'all served that arrest warrant; isn't
- 14 that true?
- 15 A: It could have been. I didn't -- I didn't put it in. I
- 16 don't know.
- 17 Q: Okay. You wouldn't deny that, would you?
- 18 A: No, sir.
- 19 Q: All right. And so everybody in Marion County at that
- 20 point would have known who the suspect was?
- 21 A: Sir, I can't answer --
- 22 MR. CLEMENTS: Your Honor --
- 23 THE COURT: Hold on. What's your objection?
- 24 MR. CLEMENTS: He's already asked Detective Rouse, and
- 25 Detective Rouse said he didn't know if it was in the paper or

NEIL ROUSE - CROSS BY MR. WILSON

1 not. He didn't put it in there; so how would he know that
2 everybody in Marion County would know?

3 THE COURT: Objection sustained.

4 Q: Let me ask you, Detective Rouse, and then I'm going to be
5 through. Did you ever -- did you personally ever have any
6 conversations with Bart -- Shawn Bart Davis where he told you
7 that Marco Sanders and Tyrell Woods or Marco Sanders or Tyrell
8 Woods was involved?

9 A: No, sir, I did not.

10 Q: Now, you said that you'd known Marco Sanders since 1993
11 and he was twelve years old?

12 A: That's correct.

13 Q: Then you know that he has tattoos, don't you?

14 A: Mr. Wilson, I don't -- I didn't look at his -- I don't
15 look at his tattoos. I look at the face.

16 Q: You don't look at his tattoos?

17 A: No, sir.

18 Q: So you just look at his face and you say that's his face,
19 but you don't know whether he has tattoos and you've known him
20 since 1993?

21 A: That's correct.

22 Q: When is the last time you've seen his arms or his hands?

23 A: It's been a long time.

24 Q: How many years?

25 A: Probably four or five years since he's --

NEIL ROUSE - CROSS BY MR. WILSON

1 Q: Four or five --

2 A: -- since I've seen his arms and hands.

3 Q: Okay. All right. But now, you are privy to his booking

4 report over at the jail, aren't you? If you wanted to go get

5 it?

6 A: If I wanted to, yes, sir.

7 Q: Yeah. You could go get it, and you could look at it and

8 see whether or not there were tattoos, couldn't you?

9 A: I would -- I would -- I could see pictures of his face

10 too.

11 Q: Okay. Have you made the effort to go over there to see?

12 A: No, sir, I didn't.

13 Q: No. You still haven't, have you?

14 A: No, sir.

15 MR. WILSON: No other questions.

16 THE COURT: Mr. Floyd?

17 MR. FLOYD: Your Honor, I don't have any further

18 questions --

19 THE COURT: Any redirect?

20 MR. FLOYD: -- of Mr. Rouse.

21 MR. CLEMENTS: Your Honor, we'd ask that Mr. Rouse be

22 released from his subpoena.

23 THE COURT: Sir, you may step down. Thank you.

24 THE WITNESS: Thank you, sir.

25 THE COURT: Any objection to him being released?

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1 MR. WILSON: No, sir.

2 THE COURT: Mr. Floyd? Mr. Floyd, any objection to him
3 being excused?

4 MR. FLOYD: No objection.

5 THE COURT: Mr. Rouse, you're free to go. You have no
6 further responsibilities under your subpoena. Thank you for
7 being here. Call your next witness.

8 MR. SALEEBY: Your Honor, we're going to call Dan
9 DeFreese to the stand. He's coming upstairs right now.

10 (Whereupon, there is a pause in the proceedings until the
11 witness enters the courtroom.)

12 MR. SALEEBY: Mr. DeFreese, if you could come around and
13 stand in front of the Clerk of Court and be sworn in, we'd
14 appreciate it.

15 THE CLERK: Do you solemnly swear or affirm that the
16 evidence you are about to give in the trial of this case will
17 be the truth, the whole truth, and nothing but the truth, so
18 help you God?

19 THE WITNESS: I do.

20 THE CLERK: Thank you. Have a seat in the witness box.

21 DAN DEFREESE, being first duly
22 sworn, testifies as follows:

23 DIRECT EXAMINATION

24 BY MR. SALEEBY:

25 Q: Tell us your name, please, sir?

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1 A: My name is Frank Dan DeFreese. That's D-E capital F-R-E-
2 E-S-E.

3 Q: Mr. DeFreese, where do you work?

4 A: I work for the South Carolina Law Enforcement Division in
5 the forensic services laboratory in Columbia.

6 Q: And do you work in any particular division of the
7 forensic service laboratory?

8 A: I do. I'm assigned to the department where we do the
9 analysis of firearm and tool mark evidence.

10 Q: How long have -- or just give me the benefit of your
11 experience and your training in firearms identification?

12 A: My principle training in firearms identification I
13 received at SLED. That after my employment, I began a course
14 of instruction that lasted approximately two and a half years.
15 I studied with Lieutenant Millard Cate. Lieutenant Cate
16 established the SLED laboratory when SLED itself was
17 established in 1947. I also studied under Lieutenant Carl
18 Stokes. After that period, I began accepting cases for
19 examination on my own and testifying as to my results.

20 Q: How many years have you been doing it?

21 A: For 47.

22 Q: Forty-seven? Okay. And how many times --

23 MR. WILSON: Your Honor, in order to save time, I would
24 stipulate that Mr. DeFreese is a very well-qualified expert in
25 the field of firearms and tool mark identifications, and we

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1 would have absolutely no objection to his testimony as an
2 expert in that field.

3 MR. FLOYD: I have no objection, Your Honor.

4 Q: So 47 years and you started when you were 15?

5 A: I started when I was 20.

6 Q: I was trying to help you out. Tell the members of the
7 jury what the craft of firearms identification consists of?

8 A: Well, there are many things that we actually do, but
9 principally we are asked to -- to identify ammunition
10 components back to the firearms in which they were fired or
11 with other ammunition components. And by that, I mean fired
12 bullets and fired cartridge cases to identify them back to the
13 guns in which they were fired, or there are certain other
14 things regarding the safety and handling and functioning of
15 firearms which we also do, but our principle request is to
16 identify either bullets and cartridge cases with themselves or
17 back to the firearm that fired them.

18 Q: How do you compare cartridge cases to each other?

19 A: It's done under a comparison microscope which has two
20 sets of objective lenses, and it permits us to look at two
21 items at the same time and to manipulate the images of those
22 two items so that we can see the markings on one side by side
23 with the markings on the other to see if the same individual
24 markings are present. And these are markings that are left on
25 -- for instance, on a cartridge case, they are left by the gun

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1 that fired the cartridge case at the time of firing. The same
2 way with a bullet -- the markings that are left on the bullet
3 as it proceeds out of the barrel of the gun. By looking at
4 those markings, it's possible to identify a bullet back to the
5 gun barrel in which it was fired when the bullet is recovered
6 in sufficiently undamaged condition.

7 Q: What part of the firearm leaves identifying marks on a
8 cartridge case?

9 A: On a cartridge case, the breech face is probably the
10 largest single area. The breech face would be the face of the
11 bolt or the face of the slide or the recoil plate on a
12 revolver. It'll be that portion that actually holds the
13 cartridge into the gun's chamber. Markings are also left by
14 the firing pin itself firing the pin that projects just
15 forward of the breech face and strikes the cartridge or the
16 primer of the cartridge as the case may be, and it leaves an
17 impression which is sometimes capable of being identified.

18 And in the case of repeating firearms, it's possible
19 sometimes to identify either the extractor or the ejector
20 mark, and the extractor is a -- a hook-like mechanism that
21 grabs the rim of the cartridge and withdraws the cartridge
22 from the gun. And when the cartridge is sufficiently removed
23 from the chamber, it's struck by the ejector, which causes the
24 cartridge case to be pivoted out of the gun and expelled from
25 the gun.

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1 Q: You have in front of you three boxes, from your left to
2 right, 20-A, B, and C.

3 A: Yes, sir.

4 Q: And I'd like you to take a look at those and, first of
5 all, tell me whether you've seen them before.

6 A: Yes, sir, I have.

7 Q: And where have you seen them?

8 A: I examined these at our laboratory in Columbia.

9 Q: 20-A, B, and C?

10 A: Yes, sir.

11 Q: Can you tell us what they are?

12 A: They are three fired 9mm Luger caliber cartridge cases.

13 Q: Can you hold them up and show them so the members of the
14 jury can see them?

15 MR. SALEEBY: Or if the Court will permit, I'll just put
16 them in my hand and walk by.

17 Q: Are the other two identical to this one?

18 A: They are. All three are Federal brand 9mm Luger caliber
19 brass cases. They are fired cartridge cases.

20 Q: That's 20-A, B, and C I believe?

21 A: Yes, sir.

22 Q: They are all you said what millimeter?

23 A: 9mm. It's a cartridge known as the 9mm Luger or 9mm
24 Parabellum.

25 Q: 9mm refers to what for those not familiar with weapons?

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1 A: 9mm refers to the diameter of the bullet. The bullet
2 itself is approximately 9 millimeters in diameter.

3 Q: Okay.

4 A: It's about 35 ½ calibers.

5 Q: And when you say Luger, what's that mean?

6 A: That's really the name of the cartridge. This cartridge
7 was first used in the Luger semi-automatic pistol when it was
8 adopted in 1908, and it's a cartridge that since then it's
9 been known worldwide as the 9mm Luger in some places and as
10 the 9x19mm. In others, it's the 9mm Parabellum. They're all
11 the same cartridge.

12 Q: In terms of standard 9mm ammunition, how common or
13 prevalent is this out in the trade?

14 A: It's very common. It's probably the most popular or most
15 widely-distributed pistol cartridge in the world.

16 Q: You examined all three of them?

17 A: I did.

18 Q: And what can you tell us as to whether they were similar
19 or different?

20 A: I found matching breech face impressions on all three
21 cartridge cases. I found sufficient individual
22 characteristics that I could conclude that all three of those
23 cartridge cases were fired by the same firearm.

24 Q: 20-A, B, and C, which there's been testimony were found
25 outside the door -- side door of Mr. Rowell's house, were

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1 fired by the same weapon?

2 A: Yes, sir.

3 Q: It's a 9mm cartridge. Is that a semi-automatic or a
4 revolver cartridge?

5 A: Most of the firearms chambered for 9mm Luger caliber
6 cartridges are either semi-automatic or fully automatic, but
7 there are other firearms that have been made -- other types of
8 firearms that have been made chambered for 9mm Luger.

9 Q: Are those relatively rare?

10 A: They're relatively uncommon. They're -- they're -- it's
11 a cartridge particularly well-adapted to semi-automatic and
12 fully automatic firearms, and they're not well-adapted to
13 single shots and revolvers.

14 Q: So primarily a semi-automatic weapon cartridge?

15 A: Primarily. There are other types, like there are
16 revolvers and single shots and rifles. There are --
17 practically every kind of firearm made can be made in that
18 caliber, but they're not encountered in the numbers that you
19 see as semi-automatics or fully automatics.

20 Q: Turn to your right please and look at the item that's --
21 I believe it's State's Number 30. That's correct?

22 A: Yes, sir.

23 Q: Have you seen that before?

24 A: I have.

25 Q: Can you tell us what it is?

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1 A: State's Exhibit 30 is a fragment of a .22 lead bullet
2 that has some traces of copper plating left on it.

3 Q: And when you say that it's a .22, what's that refer to?

4 A: That refers to the bullet's diameter. The bullet is
5 approximately 22/100ths of an inch in diameter. It's a
6 smaller diameter bullet than the 9mm bullet.

7 Q: All right. And that's a -- would come from what sort of
8 a cartridge case?

9 A: Well, this bullet weighs less than the weight of a .22
10 Short caliber bullet. The .22 Short Rimfire caliber bullet
11 and the .22 Long Rimfire caliber bullet use a bullet of
12 approximately 30 grams. The .22 Long Rifle caliber uses a
13 bullet of between 36 and 40 grams. This bullet is so damaged
14 that it weighs less than the weight of a Short; so it could be
15 the residue of either a .22 Short or a .22 Long or a .22 Long
16 rifle caliber bullet.

17 Q: If a weapon had been produced, would you -- would there
18 -- was this projectile in such condition that you would have
19 been able to match it to anything?

20 A: I don't know. This -- this bullet was very horribly
21 damaged. It has a few marks on it, but very little of the
22 original markings that would have been placed there by the gun
23 barrel remain, and if -- if I had been submitted the correct
24 gun, I don't know whether I would have been able to identify
25 this bullet back to that firearm or not.

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1 Q: No weapons -- no weapon or weapons were ever submitted to
2 you to compare to either the cartridge cases or the
3 projectile?

4 A: That's correct.

5 MR. SALEEBY: Your Honor, can I display this to the jury?

6 THE COURT: Yes, sir.

7 Q: This is a bullet or damaged bullet or bullet fragment.
8 Is that how you refer to it?

9 A: Yes, sir. It's a bullet fragment.

10 Q: Of course, this would be the item of evidence that Dr.
11 Tormos testified was taken from the head of Mr. Rowell. Now,
12 it's a .22 caliber?

13 A: Yes, sir.

14 Q: The shells are 9mm?

15 A: Yes, sir.

16 Q: Could the same weapon have fired both those cartridge
17 cases and that projectile?

18 A: No, sir.

19 Q: All right. Now, if you would please, Mr. DeFreese, for
20 those who are familiar with weapons, this may be redundant,
21 but if you aren't, I would like you to explain to the members
22 of the jury the difference between the operation -- first, the
23 operation -- we will talk about appearance -- the operation of
24 a revolver as opposed to the operation of a semi-automatic
25 handgun.

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1 A: All right, sir. Semi-automatic handguns and revolvers
2 are both pistols; they're both handguns. A revolver is a
3 manually-operated handgun. That is, all the energy that the
4 mechanism of the gun requires in order to be cocked and fired
5 is supplied by the shooter. And depending on the kind of
6 revolver, the shooter either manually cocks the hammer and
7 then pulls the trigger to fire it, or in the case of what's
8 known as a double action revolver, a single long pull of the
9 trigger will cock the hammer and fire the firearm.

10 The principle characteristic of a revolver is a revolving
11 cylinder that's usually located right in the middle of the
12 gun. That cylinder has a number of chambers into which
13 cartridges are placed. A revolver has one barrel; for the
14 most part, and it shares a common barrel where the rear of the
15 barrel is not chambered for the cartridge because the cylinder
16 is.

17 All of the cartridges go there, and during the firing
18 sequence, the cylinder is rotated to bring it into -- the
19 chamber into a line-up with the barrel. The hammer will
20 strike the cartridge causing the bullet to be propelled out of
21 the cylinder. It jumps a small gap and enters the barrel.
22 Then the rifling imparts the spin on the barrel and then the
23 bullet proceeds outward. And the next shot -- the cylinder
24 rotates up again, the hammer strikes again until all the
25 cartridges within the cylinder are fired.

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1 Most cylinders hold anywhere between about five and about
2 nine rounds. Each time the gun is fired, nothing is ejected
3 from the firearm except the bullet and what's left of the
4 propellant gases that are behind the bullet.

5 Q: The stuff that comes out of the end of the barrel?

6 A: Correct.

7 Q: What happens to the cartridge cases?

8 A: The cartridge case remains in the cylinder until it is
9 manually removed by the shooter. And when all of the
10 cartridges in the cylinder are expended, then the cylinder is
11 either opened or the cartridges are ejected from the cylinder.
12 They have to be manually removed, and they have to be manually
13 replaced. This could happen anywhere.

14 Whereas in the case of the semi-automatic pistol, the
15 semi-automatic pistol has one barrel with an integral chamber.
16 Each time a semi-automatic pistol is fired, a cartridge is
17 placed in the chamber, the mechanism strikes the cartridge and
18 causes it to fire. The bullet is propelled out of the barrel,
19 and then a short time later, the cartridge case, which now has
20 no bullet and no powder in it, is extracted and ejected from
21 the firearm, and another cartridge is removed from the
22 magazine and placed into the chamber to propel it -- to
23 prepare the gun for the next firing.

24 In the case of the semi-automatic firearm, some of the
25 energy of the cartridge is used to function the gun. That is,

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1 it's used to load the gun and prepare it for the next firing.

2 It's also used to cock the gun.

3 So in the case of a semi-automatic firearm, every time
4 it's fired the bullet and the propellant gases go out of the
5 barrel and a cartridge case is extracted and ejected from the
6 firearm, and then it's prepared for the next shot. In the
7 case of a semi-automatic, one pull of the trigger for each
8 shot fired.

9 Q: If any 9mm cartridges, 20-A, B, and C, were fired by a
10 semi-automatic weapon, they would have been ejected; is that
11 correct?

12 A: They would have been automatically ejected from the
13 firearm itself without any action on the part of the shooter.

14 Q: And the ammunition of a revolver is in the cylinder.
15 Where is the ammunition of a semi-automatic go to be fed into
16 the firing area?

17 A: In most semi-automatic pistols in popular distribution
18 today, the ammunition is actually enclosed in a box magazine
19 that goes into the grip of the pistol. So the shooter's hand
20 is surrounding the frame -- the grip frame and the magazine is
21 within that.

22 Q: What would be the difference in the appearance of a
23 revolver and a semi-automatic?

24 A: Most semi-automatic pistols are relatively flat. Their
25 thickness from one end to the other is fairly uniform. Some

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1 have barrels that stick forward of the slide, but the slide is
2 pretty much the -- the same thickness from start to finish,
3 and the slides are usually about as wide as the frames.

4 In the case of revolvers, the principle thing you notice
5 about a revolver is the cylinder itself, which makes up
6 usually the central-most part of the gun. And most revolvers
7 have a grip that's not -- it doesn't have to be oriented with
8 respect to the -- to the cylinder because nothing is in the
9 grip except something to hold onto and in some cases the
10 hammer spring. But it's usually located somewhat farther back
11 than the cylinder, and the barrels on most revolvers are
12 fairly small in diameter. That they're usually about the same
13 diameter as the frame, and the frame on a revolver is not
14 nearly as wide as it usually is -- as the slide on a semi-
15 automatic pistol is.

16 Q: Did you at my request -- have you after my request had an
17 opportunity to view the DVD -- not the -- the disc -- the DVD
18 of the scene that was reproduced or made at SLED?

19 A: Yes.

20 Q: And have you also had an opportunity to view some still
21 photographs, which I will identify for the Court as State's
22 Exhibit H, I, K, and Q. I'll just show them to you and ask if
23 you've had a chance to look at this.

24 A: Yes, sir, I have.

25 Q: I would also ask you if you had the opportunity at my

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1 request to produce some photographs of some generic weapons
2 not at all related to this case, but that would help you
3 illustrate your testimony and compare those standard weapons
4 with what we see in the photographs that were taken off of the
5 DVD?

6 A: Yes, sir.

7 MR. SALEEBY: Your Honor, at this point, we would move
8 into evidence the introduction into evidence of State's
9 Exhibits 45-A to E for illustrative purposes only, fully --
10 fully advising the Court and everyone else that these are not
11 weapons involved in this case. They are photographs of
12 weapons that would help them show his testimony in a clearer
13 manner.

14 THE COURT: Mr. Wilson, any objection?

15 MR. WILSON: Yes, sir.

16 THE COURT: Same objection as stated previously?

17 MR. WILSON: Yes, sir.

18 THE COURT: Mr. Floyd?

19 MR. FLOYD: Your Honor, I don't have any objections.

20 THE COURT: Without objection from Mr. Floyd and over the
21 objection of Mr. Wilson, I am going to allow the photographs
22 admitted into evidence, 45-A through E, for illustrative
23 purposes only. For illustrative purposes only.

24 Q: Mr. DeFreese, I would ask you would it be easier for you
25 to show the photographs seated or easier for you to step down

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1 in front of the jury?

2 A: Probably easier to step down.

3 Q: All right.

4 MR. SALEEBY: May he, sir?

5 THE COURT: He may. Mr. DeFreese, as you're speaking to
6 this jury, please make sure that you speak loud enough for my
7 court reporter to hear down here because your back is going to
8 be turned to her. Okay?

9 Q: If you would, let's start with 45 so you can just
10 familiarize the jury with the difference between semi-
11 automatics and revolvers.

12 A: All right. State's Exhibit 45-A is a picture of the
13 right-hand side of a Hi Point semi-automatic pistol. This is
14 the Hi Point model C9 in 9mm Luger caliber. This shows it
15 with the slide forward or this is what's known as the slide
16 being in battery. That's the position it would be in if it
17 had a loaded cartridge in the barrel and the gun were prepared
18 to fire.

19 Q: You said a 9mm Luger?

20 A: Yes.

21 Q: Is that -- would that weapon fire the same projectiles as
22 20-A, B, and C?

23 A: Yes.

24 Q: All right, sir. I'm sorry to interrupt you. Go ahead.

25 A: State's Exhibit 45-B shows that same pistol with the

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1 slide retracted. This is the slide in its rear-most position
2 or locked in its rear-most position. Every time this pistol
3 is fired, the slide moves backwards and forwards, and as it
4 does that when it moves backwards, it expels the fired
5 cartridge case from the ejection port, which is located about
6 in the middle of the slide. After it does that, it grabs the
7 top of the next cartridge that's in the pistol's magazine and
8 rakes it out of the magazine and forces it into the chamber
9 and closes so that it looks like the image of State's Exhibit
10 45-A again.

11 Q: If I fire a semi-automatic and it's working properly,
12 there's no way the fired cartridge case remains in the weapon;
13 is that correct? It's automatically ejected?

14 A: If it -- if it's working as it should, each time it's
15 fired the cartridge case is extracted and ejected. And it
16 can't fire again until that takes place.

17 State's Exhibit 45-C is the right side of a Harrington
18 and Richardson .22 Long Rifle caliber revolver. It's also
19 known as an H&R revolver.

20 Q: Would that weapon fire the same projectile that we have
21 in State's Exhibit Number 30?

22 A: Yes.

23 Q: All right. Please go ahead.

24 A: The revolver in this case has its hammer forward. It's
25 in its resting position, and if the revolver were loaded, the

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1 shooter could simply make one long pull of the trigger, which
2 would cause the hammer to be cocked, the cylinder to be
3 rotated to bring the next cartridge into alignment with the
4 barrel, and when it was pulled sufficiently, it would drop the
5 hammer to fire the cartridge.

6 State's Exhibit 45-E shows that same revolver with the
7 hammer cocked or the hammer manually cocked. This would be
8 for firing in what's known as the single action mode where the
9 only thing the trigger does is actually just fire the hammer,
10 the hammer having been manually cocked by the shooter. During
11 the cocking sequence, the hammer makes the mechanism
12 controlling the cylinder bring the next chamber into alignment
13 with the barrel and prepare it for firing. This would require
14 a much lighter trigger pull. It requires less effort simply
15 to make the hammer go forward than it does to cock it and then
16 drop the hammer.

17 State's Exhibit 45-D shows that same H&R revolver from
18 the rear. At this point, you can see the rear of the cylinder
19 and there are nine holes -- nine chambers within the cylinder,
20 each of which is capable of holding one cartridge. So after
21 placing up to as many as nine cartridges in this firearm, the
22 shooter can fire nine bullets. And at that point in time, the
23 fired cartridge cases have to be manually removed.

24 Q: They would not --

25 A: They would not expel each time it's fired.

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1 Q: They remain in the cylinder until somebody takes them
2 out?

3 A: Correct.

4 Q: Now, I'm going to show you two photographs. Keep those
5 there. But I'm going to show you State's photographs 19-H and
6 19-Q and ask you to focus on the weapons. If I can hold
7 these, how would choose to do it? You choose how to do it,
8 but the areas that are highlighted -- tell us what you can
9 tell in your expertise about the weapons that you see
10 highlighted there?

11 A: In State's Exhibit 19-Q, we can see the side or the
12 profile that is consistent with that of a semi-automatic
13 pistol such as I am representing in State's Exhibit 45-A.
14 That's like looking at it from the side.

15 In State's Exhibit 19-H, the pistol is being held in an
16 upward mode where we can see from the top down, and there
17 you'll notice the thickness of the pistol is fairly uniform
18 from front to back, which is also consistent with what you
19 would see on a semi-automatic pistol such as the one depicted
20 in State's Exhibit 45-A.

21 So the pistol or the handguns in State's Exhibits 19-H
22 and 19-Q are consistent and their profile and dimensions would
23 be a semi-automatic pistol.

24 Q: I will now show you photographs 19-I and 19-K and ask you
25 if you can render an opinion on those particular weapons using

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1 State's 45-C to E?

2 A: State's Exhibit 19-K shows a handgun with a cylinder
3 located in the approximate middle of the firearm in the same
4 way as the handgun depicted in State's Exhibit 45-C. State's
5 Exhibit 19-I shows the side profile of the frame of the
6 handgun, which is essentially a similar, if not identical,
7 side profile to that State's Exhibit 45-C where you see a flat
8 frame with a central cylinder.

9 Q: And tell us about the barrel or the end of that weapon?
10 If you could, show that to the jury in either of these two
11 photographs and tell us what you see there?

12 A: State's Exhibit 19-K shows it very well. There is
13 something attached to the barrel of the revolver depicted in
14 State's Exhibit 19-K. Most revolver barrels appear about like
15 that in State's Exhibit 45-C. That is, they are a long,
16 slightly tapered, tubular barrel. Something has been attached
17 to this barrel.

18 Q: In your experience in firearms identification, have you
19 seen items like that or similar to that before?

20 A: I have. I've seen in essence homemade silencers or
21 homemade sound reducers that have been attached to firearms in
22 various fashions.

23 Q: Which look similar to that?

24 A: Yes, sir.

25 Q: All right. Thank you, Mr. DeFreese. Have a seat up

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1 there, please, sir, and answer any questions counsel has for
2 you.

3 THE COURT: Mr. Wilson, cross examination.

4 MR. WILSON: I just have a few questions.

5 CROSS EXAMINATION

6 BY MR. WILSON:

7 Q: Let me ask you are you telling us that the two guns that
8 you saw in those photographs were the two guns that fired the
9 shots? The three shells that were in the yard and the -- and
10 the cartridge that you said was badly damaged?

11 A: I'm not saying --

12 Q: Are you saying that those two weapons fired those shots?

13 A: I can't say that they did, but I'm saying they could
14 have.

15 Q: They could have?

16 A: Yes, sir.

17 Q: But you don't know that they did?

18 A: No, sir.

19 Q: You're not testifying that they did?

20 A: I can't tell from looking at a photograph of a gun that
21 it fired a particular cartridge case.

22 Q: In fact, any 9mm gun -- any 9mm gun could have fired
23 those shells that were found on that ground? Those three
24 shells that we're talking about -- any gun that's capable of
25 firing 9mm slugs?

DAN DEFREESE - CROSS BY MR. WILSON

1 A: Yes, sir.

2 Q: Okay. And there are probably a million of them?

3 A: Certainly.

4 Q: If not hundreds of millions? And with the .22 or the
5 smaller caliber guns you were saying, you're saying that, as I
6 understand it, with the -- with the slug that was damaged,
7 that that slug you couldn't tell whether it -- are you saying
8 you could tell that it was a .22 or was it a .25 or do we
9 really know? As it's damaged, can you tell us for a fact that
10 it was, in fact, a .22 before it became damaged?

11 A: Yes. Yes.

12 Q: All right, sir.

13 A: It was -- it was a .22. It was a .22 of the type loaded
14 in .22 Rimfire cartridges.

15 Q: Okay.

16 A: But I can't tell because of its reduced weight whether it
17 once was a .22 Short or a .22 Long or a .22 Long rifle
18 cartridge from which it was -- was fired.

19 Q: And is that because of the weight of it has changed?

20 A: Yes. Because the weight of it is less than the weight of
21 a .22 Short.

22 Q: Okay. And is the .22 Short the smallest of the .22
23 calibers?

24 A: Of the commonly available ones, yes.

25 Q: Okay. Now, is there any way for you to tell us how long

DAN DEFREESE - CROSS BY MR. WILSON

1 those three -- how long it had been since those three shells
2 had been fired?

3 A: No. But there was no evidence of, like, severe corrosion
4 or tarnish or something consistent with extensive exposure to
5 the weather.

6 Q: Okay.

7 A: But I can't tell.

8 Q: When did you get the cartridges?

9 A: I actually opened the container on July the 9th of 2012.

10 Q: Okay.

11 A: That's when I began my examination, and if you bear with
12 me, I may have -- I probably received it a short period of
13 time before that. No. Actually, I received the container on
14 July the -- I received it the first time on July the 9th, and
15 then turned it back over to Sabrina Fellers and her -- you
16 know, we got it back from her on July the 11th.

17 Q: Okay. Now, Sabrina Fellers -- why did you turn it over
18 to her?

19 A: There was something else that she needed to do to it and
20 I don't recall what that was.

21 Q: Do you know whether or not these shell casings that
22 you've identified whether or not they had ever been sent for
23 fingerprints?

24 A: Since Sabrina had them, I -- she would have been in a
25 position to do the fingerprint service on them.

DAN DEFREESE - CROSS BY MR. WILSON

1 Q: All right. Now, you -- as I've understood it, you
2 indicated that with the revolver that you would have to
3 manually take the shell casings out and you would have to
4 manually put them in?

5 A: Correct.

6 Q: So you would have to handle the cartridges in order to
7 put them in and you would have to handle the cartridges to
8 take the out?

9 A: Yes, sir. Normally.

10 Q: And with the -- with the 9mm, which is a semi-automatic,
11 while you wouldn't have to handle the cartridges to have them
12 ejected, you would have to handle them to put them into the
13 cylinder before they're ejected?

14 A: You would have to handle them to load the magazine. Yes,
15 sir.

16 MR. WILSON: I don't have any other questions.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: I don't have any questions.

19 THE COURT: Any redirect?

20 MR. SALEEBY: No, Your Honor. We'd call our next
21 witness.

22 THE COURT: Sir, you may step down. Thank you.

23 MR. SALEEBY: Your Honor, I'd ask if Mr. DeFreese can be
24 excused.

25 MR. WILSON: No objection.

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1 MR. FLOYD: No objection.

2 THE COURT: All right. Without objection, sir, you're
3 excused. You are free to go and have no further
4 responsibility under your subpoena. Thank you for being here.

5 MR. SALEEBY: I think he's driving our next witness; so
6 he may have to stay.

7 (Whereupon, there is a pause in the proceedings until the
8 witness enters the courtroom.)

9 MR. SALEEBY: Your Honor, we'd call Mr. Tom Darnell to
10 the stand. Mr. Darnell, come on in. If you would, walk to
11 the front of the courtroom and have the clerk of court swear
12 you in.

13 THE CLERK: This way, please, sir. Do you solemnly swear
14 or affirm the evidence you're about to give in the trial of
15 this case will be the truth, the whole truth, and nothing but
16 the truth, so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Thank you. Have a seat in the jury box.

19 THOMAS DARNELL, being first duly
20 sworn, testifies as follows:

21 DIRECT EXAMINATION

22 BY MR. SALEEBY:

23 Q: Tell us your name, please, sir?

24 A: My name is Thomas Edward Darnell. Last name is spelled
25 D-A-R-N-E-L-L.

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 Q: Mr. Darnell, where are you employed?

2 A: I work at SLED in Columbia in the forensic crime lab.

3 Q: How long have you worked at SLED?

4 A: I've been there -- the first time, I was there about 20
5 years, and then I actually retired and I've gone back to
6 working there. I've been back there about two years now.

7 Q: You just can't quit?

8 A: Can't quit.

9 Q: Before you worked at SLED, where did you work?

10 A: I worked at the Richland County Sheriff's Office in
11 Columbia. I was there for about eight years.

12 Q: What kind of work did you do in Richland County?

13 A: In Richland County, I was a uniformed officer responding
14 to calls. I also was in the warrant division and did a lot of
15 the investigations in searching for individuals wanted for
16 various crimes.

17 Q: When you got to SLED, what division were you assigned to?

18 A: I was in the latent print crime scene department.

19 Q: And how many years?

20 A: I was -- I was at SLED during that time about 20 years.
21 I think about 17 of that I actually spent in the latent print
22 crime scene department.

23 Q: Tell us what training you've had in latent print
24 identification?

25 A: When I first started at SLED, I had to complete an in-

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1 house training program which lasted about -- it took about 18
2 months. Once I completed that, I had to attend numerous,
3 numerous courses, take numerous classes in-state, as well as
4 some out-of-state classes. I had to also attend the FBI
5 academy in Quantico, Virginia, where I had to complete a
6 course in latent print processing and comparisons.

7 Once I completed all my training -- and actually, there
8 -- there also consists of ongoing training. As we go
9 throughout our career, we continuously go to training to keep
10 up to speed with the various things that might come about.
11 And I've been deemed competent by SLED to conduct latent print
12 examinations.

13 Q: How long have you been conducting these latent print
14 examinations at SLED independently without -- without somebody
15 having to correct or change your work?

16 A: Probably about -- since the time I was there before and
17 the time I'm there now, I would say roughly about -- about 18
18 to 20 years. You know, once we reach a certain level in our
19 training, once we are deemed competent, then we are able to
20 conduct examinations independently of someone else's
21 assistance. So about 18 to 20 years.

22 Q: And that's what you do all day every day other than
23 showing up in court?

24 A: Yes, sir.

25 Q: Have you been qualified to testify in courts of general

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1 sessions in the state of South Carolina?

2 A: Yes, sir.

3 Q: And have you been qualified in other courts as well?

4 A: I have.

5 MR. SALEEBY: Your Honor, we're going to submit that Mr.
6 Darnell is well-qualified to testify in the area of latent
7 print identification.

8 THE COURT: Mr. Wilson?

9 MR. WILSON: I have no objections.

10 MR. FLOYD: No objections.

11 THE COURT: Ladies and gentlemen, this witness has been
12 submitted as an expert in latent print identification. My
13 prior charge that I gave to you on expert testimony is the
14 same for him as well. Okay? Mr. Saleeby?

15 MR. SALEEBY: All right.

16 Q: Mr. Darnell, we see a lot of stuff on television, but I'd
17 like you to tell us in practical laymen's terms what the craft
18 of fingerprint identification consists of?

19 A: Basically to start with, we all have fingerprints. You
20 have a pattern on your fingers -- on the end of your fingers
21 that only you have. Okay? The patterns might be the same as
22 the person sitting next to you, but what makes it unique is
23 that you have individual characteristics within that pattern
24 that will not be found in any other person. It has never been
25 found to have -- for there to be two individuals with the same

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1 fingerprint.

2 We mentioned in the mentioning of television, and in
3 television, you know, you always get -- you always leave
4 fingerprints, you always get prints at crime scenes, and that
5 doesn't always happen. Fingerprints are primarily -- well,
6 let me back up. A latent print -- a latent print is a -- is a
7 chance -- what we refer to as a chance impression.

8 Q: It is a what?

9 A: Chance.

10 Q: A chance?

11 A: C-H-A-N-C-E. It's a chance impression and, in fact, the
12 word latent means hidden or invisible.

13 Q: Okay.

14 A: Latent is spelled L-A-T-E-N-T. A latent print is simply
15 the moisture that exudes from the pores in your skin that when
16 you touch a surface, you may leave a -- leave that pattern
17 behind or you may not depending on the surface and depending
18 on how much you're perspiring. But in some cases you get --
19 you get prints; in some cases, you don't.

20 Q: How do you go about testing a particular object? What do
21 you do with that object to try to see if there is a latent and
22 if you can lift it off?

23 A: When we collect -- or when we collect evidence to process
24 for latent prints, keep in mind the word latent means hidden
25 or invisible. Depending on whether it's a porous item or a

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1 non-porous item will determine what technique -- what
2 technique you might -- you might use. There are -- there are
3 several different techniques you can use in trying to develop
4 latent prints. Some techniques you can use one behind the
5 other. Some techniques once you use that particular process,
6 you can't use anything else. Okay?

7 So we have to look at the evidence to determine, first of
8 all, if it's -- if it's a porous item or if it's non-porous
9 and determine what's the best way. What's the best chance
10 I've got of getting a latent print to be able to develop this
11 hidden print, if you will, to be able to enhance it to where
12 we can see it?

13 Most -- most commonly, you're probably -- you're probably
14 familiar with the black fingerprint powder that you see a lot
15 of times on the -- on the television shows. We use black
16 powder. We use various chemicals depending on what we're
17 trying to develop. So there are just a number of techniques
18 out there to use, and we just try to make -- make the best --
19 best judgment on what would be the best and what would give us
20 the chance of getting the best result.

21 Q: Other than the black powder, what might you use?

22 A: Well, we've got various dye stains that we could use. We
23 use super glue. The super glue fuming technique we use. We
24 use -- there are blood staining chemicals out there. There
25 are chemicals that we can use to develop on adhesive sides of

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1 tape and that sort of thing. So there's just a number of
2 things that we could use.

3 We have various light sources, alternate -- what we call
4 alternate light sources that we have to use those in
5 conjunction with a fluorescent dye stain basically that --
6 that the print would actually glow where we could see it. And
7 in that case, if we developed a print off the light source, we
8 would use photography to be able to document that latent
9 print.

10 Q: Mr. Darnell, once you've got this latent, this unknown
11 print that would come off of some object that was brought to
12 you, what do you then have to compare it with? The unknown?

13 A: We would get a known fingerprint card. A known
14 fingerprint card is simply where black ink -- well, this day
15 and time it's mostly done by digital means, but it's where the
16 -- where the pattern on your finger is simply recorded onto a
17 known card and it would have your name on it and your personal
18 information. And then we would compare the latent print to
19 the -- using the known card, and whenever we're comparing
20 those -- those prints to each other, we're looking for the
21 individual characteristics within those patterns to be able to
22 determine if that -- if that pattern is unique to that
23 individual or not. And then once we come to that conclusion,
24 then we can report our findings as to whether a print was made
25 by a certain individual or whether it was not made by a

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1 certain individual.

2 Q: In laymen's terms the print card, whether it be done by
3 ink or digitally, is the known?

4 A: That's correct.

5 Q: And the latent that you get from a scene or from an
6 object is the unknown?

7 A: Yes, sir. That's correct.

8 Q: All right. I'm going to show you some items one at a
9 time and ask you if you received these at SLED in the conduct
10 of -- and were able to use these for comparison purposes.
11 The first is State's Exhibit Number 40, which has been
12 testified to was taken by Kukila Stanley at the autopsy of Mr.
13 Rowell.

14 A: Yes, sir. This -- this is the post-mortem fingerprints
15 of Mr. Rowell that I examined as part of my examination. It
16 has my initials on the top.

17 Q: All right. So in addition to third parties, is it
18 standard operating procedure to do elimination prints that
19 come from scenes that might belong to the victims?

20 A: That -- that's standard procedure, yes, sir.

21 Q: Next I'll show you State's Exhibit Number 41, which is a
22 print card with the name of Marco Sanders on it taken here at
23 the Marion County Sheriff's Department.

24 A: Yes. I can -- this is a -- the known card that I used in
25 comparing to the latents in this case. It has my initials in

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1 the top right-hand corner as well.

2 Q: Yes, sir.

3 A: Go ahead. I'm sorry.

4 Q: State's Exhibit Number 42 is a print card that Mr. Hardee
5 testified that he took here in this courthouse from Tyrell
6 Woods. I'll ask you if you can identify that and if you used
7 it?

8 A: Yes, sir. I can identify these. These are what we refer
9 to as major case prints. Major case prints would be not only
10 the fingerprint card but the palm -- palm prints as well. And
11 this -- this also has my initials in the top right-hand
12 corner.

13 Q: Now, what I didn't ask I don't believe is when you get a
14 latent and you get an unknown and a known, what is it you're
15 looking to to see whether they match or can't match?

16 A: The -- the raised portions of skin on your -- on your
17 fingers where they form the pattern -- within that pattern,
18 you have individual characteristics which make it unique.
19 Okay? You have three basic patterns. You have an arch, you
20 have a whorl, and you have a loop, and you have variations of
21 that.

22 But what makes the print unique is that we look for what
23 we call ending ridges where a ridge will -- will just start
24 out flowing from one side of the finger and it will just come
25 to a stop. And then we have what's called bifurcations, a

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1 forking ridge where the ridge is -- it starts out as one ridge
2 and it splits into two. Or we might have just dots. We might
3 have a dot that might appear somewhere in that -- in that
4 fingerprint pattern.

5 So we're looking for those ending ridges, those
6 bifurcations, the forking ridges, the dots, and different --
7 and sometimes you have -- you have variations of those three
8 basic characteristics, but we look for those because that's
9 what makes the print unique. Okay?

10 We may all -- we may all have a loop or a whorl or an
11 arch in our -- in our fingers as sitting to the person next to
12 you, but what makes it unique is those characteristics that we
13 look for. That makes it unique and that makes it unique to
14 that individual and that individual alone.

15 Q: At my request, did you prepare a couple of exhibits that
16 would help you illustrate your testimony?

17 A: Yes, sir.

18 Q: All right. I will -- I will bring those up later, but I
19 just wanted to get that point in. I will ask you if you had
20 the occasion regarding this particular investigation on or
21 about I think the 5th of July of 2012 to receive a number of
22 items at SLED to be processed to possibly locate latents?

23 A: Yes, sir.

24 Q: And did anybody assist you in going through those items
25 and worked there with you to see what y'all could produce?

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1 A: Yes, sir.

2 Q: Well, who?

3 A: That was Agent Fellers. Sabrina Fellers. She actually

4 worked the crime scene here in Marion County, and then she

5 returned to SLED with all the evidence that she collected. I

6 assisted her with the -- with the processing of -- of the

7 evidence that she collected from the crime scene.

8 Q: Were you able to collect some identifiable prints from

9 some of the items brought to you?

10 A: Yes, I was.

11 Q: Were you unable to get some identifiable prints from some

12 other items?

13 A: Yes. That's correct.

14 Q: All right. When you do that, what's your -- what's your

15 protocol? What's that referred -- what do you call that on

16 your report?

17 A: The ones that are of no value?

18 Q: Yes.

19 A: We refer to those as no value for identification.

20 Q: And tell the jury what that means?

21 A: No value for identification -- what that means is that,

22 again, these unique characteristics that I'm looking for, the

23 ending ridges, the bifurcation, and the dots, I have to have

24 sufficient clarity. I have to have sufficient clarity and

25 sufficient detail to be able to compare to be able to say that

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1 a print was identified to someone. Okay?

2 The ones that are of no value, what that means is that
3 there was ridge detail, there was a print there, but there was
4 not enough detail, not enough clarity for me to be able to
5 tell that that -- or who that print belonged to. I could only
6 tell you that the print belongs to someone, but I can't tell
7 you who. So basically, it just lacks the sufficient clarity
8 that is needed when I make a comparison.

9 Q: And I use this just for example. This is State's Exhibit
10 Number 28, which was identified as a DVR player seized at the
11 scene. Do you recognize that as an item that you tried to get
12 prints off of?

13 A: Yes, I do.

14 Q: And what was the result of your effort?

15 A: The results when I processed this particular item was
16 that there were lots of areas of ridge detail or fingerprints
17 present. I could see that there were some prints. It had
18 been handled by someone, but they were of no value for
19 identification. As I stated, that just -- it just wasn't
20 enough clarity for me to be able to tell whose they were.

21 Q: What's the minimum number of points of identification
22 that you have to have before you make that call?

23 A: There -- there is no minimum number of points required in
24 this country. There are some countries in this world that
25 have a minimum number, but our country does not recognize a

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1 minimum number required. That is that the Federal Bureau of
2 Investigations is that way, and it's also supported by our
3 International Association for Identification.

4 So basically, there are no set number of points required.
5 You have to look at the whole print. You look at the whole
6 print and the clarity and you look at the points that you do
7 have and use your training and your experience and your
8 background to be able to make that call.

9 (Whereupon, State's Exhibit Number 27 is shown to the
10 witness.)

11 Q: This is State's Exhibit Number 20 [sic.]. Ms. Fellers
12 testified there were some papers on the front porch that she
13 recovered. Did you test that for fingerprints?

14 A: Yes, I did.

15 Q: And what can you tell us? Were you able to make a
16 comparison with a known set of prints?

17 A: Yes, I was. On this particular item, I developed a
18 latent print that was identified to -- to Mr. Samuel Rowell.

19 Q: These prints matched the deceased?

20 A: Yes, sir.

21 Q: The papers on his porch?

22 A: Correct.

23 Q: I'm getting ready to show you four boxes of Black & Mild
24 cigars, State's Exhibits 21, 22, 23, and 24. I want you to
25 take a look at those, please, sir.

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1 A: Yes, sir. I recognize each of these by my initials on
2 the box of cigars.

3 Q: Did you make an effort to lift the prints off of those?

4 A: I did.

5 Q: And what can you tell us about -- were you able to make a
6 comparison to State's Exhibit Number 21?

7 A: Yes, I did. I developed one print that was identifiable
8 on State's 21, and that print was identified to Mr. Tyrell
9 Woods.

10 Q: 21 to Mr. Woods?

11 A: Yes, sir.

12 Q: State's Exhibit 22?

13 A: State's 22, yes, sir. Identified Tyrell Woods on that
14 box of cigars as well on State's 22.

15 Q: One print?

16 A: Yes, sir.

17 Q: When you say one print, you mean one finger?

18 A: Yes, sir. One -- one -- one finger, and in that
19 particular case, it was his left thumb. I'm sorry. I stand
20 corrected. That was on Marco Sanders. I apologize.

21 Q: Which one is that?

22 A: State's -- the one you just got back. State's 22? Is
23 that my Item 5?

24 Q: I can't tell.

25 A: It should be on it.

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1 Q: You tell me.

2 A: That's Item 4. Item 4 is Tyrell Woods. State's 21.

3 Q: Is Tyrell Woods?

4 A: Yes, sir.

5 Q: All right. How about 21?

6 A: I'll have to look at it myself here. I'm sorry. State's

7 21 is also Tyrell Woods.

8 Q: And we have a lot of them here; so I'll try to slow down

9 a little bit. State's Exhibit Number 23?

10 A: State's 23 is -- is where I had Marco Sanders. State's

11 23 I developed one print and it was -- it was the left thumb

12 of Marco Sanders.

13 Q: And these are cigar boxes?

14 A: Yes, sir. On -- on State's 23.

15 Q: Marco Sanders?

16 A: Yes, sir.

17 Q: Take a look at State's 24.

18 A: State's 24 I developed one -- two -- three prints on

19 State's 24, all three of which were identified to Marco

20 Sanders.

21 Q: So Mr. Sanders' prints were on 23 and 24, and Mr. Woods'

22 prints on 22 and 21, and you say three of Mr. Sanders' fingers

23 were on State's Exhibit 24?

24 A: That's correct.

25 Q: I believe the testimony was they were found in the

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1 pillowcase in the living room. State's Exhibit Number 25 is

2 the Crown Royal which I think was found in the pillowcase.

3 Did you have occasion to process that box?

4 A: Yes, I did. This -- State's 25 is actually my Item 13.

5 I developed -- I have Tyrell Woods identified one time. I

6 have Tyrell Woods a second time, a third time, a fourth time

7 -- four times. I have Tyrell Woods four times on State's 25.

8 Q: So four of his fingers?

9 A: Yes, sir.

10 Q: On his hand?

11 A: Yes, sir.

12 Q: On this box?

13 A: Yes, sir.

14 Q: Mr. Woods. Did you get a cardboard box that came out of
15 the kitchen area and did you test it for possible prints?

16 THE COURT: What's that exhibit number?

17 MR. SALEEBY: Excuse me, Your Honor. It's 26.

18 THE COURT: Thank you.

19 MR. SALEEBY: And I think there's a portion cut out of
20 it. I might have noted it as 26-A.

21 Q: Tell the jury what -- that might be an illustrative
22 thing. You might be able to show them how you did what you
23 did to test this.

24 A: On this particular item, I did develop a -- one print on
25 there that was identified to Tyrell Woods, and this is -- this

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1 would be what I was referring to as something that was porous
2 -- a cardboard box -- and it was sprayed with a chemical that
3 reacted with the amino acids in the perspiration, and it
4 turned the print into a purple -- purplish color. And I
5 developed one print on this box that was identifiable, and it
6 was identified to Tyrell Woods on this Crown Royal cardboard
7 box.

8 Q: Mr. Woods. Did you receive a few items of duct tape?
9 A: Yes, sir.

10 Q: I'll try to identify them if possible. I think it would
11 be State's Exhibit Number 31 taken from the head, 49 [sic.]
12 taken from the feet. I think that's probably your number. I
13 believe it would be State's Exhibits I think 31 and 33.

14 A: Yes, with these, sir. This is some of the duct tape that
15 I examined, State's 31 and State's 33, the tape that I
16 examined and I processed for prints.

17 Q: All right. Did you find some matches there?
18 A: I did.

19 Q: All right. We'll talk about that in a minute. This is
20 35. I believe this is from the hands. Did you examine that
21 and were you able to find anything identifiable there?

22 A: On State's 35, the prints that I did develop were of no
23 value for identification.

24 Q: Not enough detail?
25 A: Not enough clarity and not enough detail.

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1 Q: All right. Okay. But on these two, 31 and 35 [sic.],
2 you found something?

3 A: Yes, sir.

4 THE COURT: 31 and 33.

5 MR. SALEEBY: 31 and 33. My pardon.

6 THE COURT: Just clarification for the record.

7 Q: What did you find on State's Exhibit 31, the duct tape
8 from the head of Mr. Rowell?

9 A: I developed one latent print that was identified to
10 Tyrell Woods on the adhesive side of the tape. I developed a
11 second print that was identified to Tyrell Woods on the
12 adhesive side of the tape.

13 Q: All right. Two prints from Mr. --

14 A: Yes, sir.

15 Q: -- Woods?

16 A: Yes, sir. Just those two that were identifiable.

17 Q: Is this -- is this your -- is State's Number 32 for
18 identification your method of preserving what you actually
19 lifted?

20 A: Yes, sir, it is.

21 MR. SALEEBY: Your Honor, we would move this into -- move
22 for the introduction of this at this time.

23 THE COURT: What's the exhibit number?

24 MR. SALEEBY: Number 32.

25 THE COURT: Any objection, Mr. Wilson?

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1 MR. WILSON: That's the box? Is that what he's -- I have
2 no objections.

3 MR. FLOYD: No objection.

4 THE COURT: Without objection, State's Exhibit 32
5 admitted into evidence.

6 Q: Two prints on this belonging to Mr. Woods?

7 A: Yes, sir.

8 Q: All right. Let's talk about State's Exhibit Number 33,
9 duct tape that came from the feet of Mr. Rowell. Did you
10 examine that and what did you find?

11 A: I did examine it. I did process it for prints. I have
12 Tyrell Woods identified on the non -- on the non-adhesive side
13 of the tape on one print. On a second print, I have him -- I
14 have Tyrell Woods on the non-adhesive side of the tape. On a
15 third print, I have Tyrell Woods on the non-adhesive side of
16 the tape. On the -- on a fourth print, I have Mr. Tyrell
17 Woods on the adhesive side of the tape. On a fifth print, I
18 have Tyrell Woods identified on the adhesive side of the tape.
19 On a sixth print, I have Tyrell Woods identified on the
20 adhesive side of the tape. And finally, on a seventh -- a
21 total of seven prints, I found Tyrell Woods identified on the
22 adhesive side of the tape. So a total of seven different
23 times I identified Tyrell Woods.

24 Q: Is State's Exhibit 34 for identification what you
25 preserved of the seven prints of Tyrell Woods that you found

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1 on the duct tape that came off the feet of Mr. Sam Rowell?

2 A: Yes, sir. Those are the areas that I developed the
3 prints on and I packaged them so that we could be able to see
4 them today, and they're preserved in that box as I -- as I --
5 as I placed them.

6 MR. SALEEBY: Your Honor, at this time we move the
7 introduction of State's Exhibit Number 34.

8 THE COURT: Any objection, Mr. Wilson?

9 MR. WILSON: No, sir.

10 MR. FLOYD: No objection.

11 THE COURT: Without objection, State's Exhibit 34
12 admitted into evidence.

13 Q: Mr. Darnell, at my request, did you prepare a couple of
14 exhibits which would assist you in showing how you do what you
15 do with regard to making identifications?

16 A: Yes, sir.

17 Q: I know you said that before; I'll ask you again. I'm
18 going to show you Number 43 first and ask you if this is
19 something you prepared to testify from?

20 A: Yes, it is.

21 MR. SALEEBY: We move the introduction of State's Exhibit
22 Number 43.

23 THE COURT: Any objection, Mr. Wilson?

24 MR. WILSON: No, sir, I don't have any.

25 THE COURT: Mr. Floyd?

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1 MR. FLOYD: No objection, Your Honor.

2 Q: I'll show you State's Exhibit Number 44 and ask you if
3 you can use that to illustrate your testimony?

4 A: I can.

5 MR. SALEEBY: We move the introduction of State's Exhibit
6 Number 44.

7 THE COURT: Mr. Wilson, any objection?

8 MR. WILSON: Other than cumulative. I mean it's already
9 been testified to.

10 THE COURT: Can I see them?

11 MR. SALEEBY: Both of them, sir?

12 THE COURT: Yes.

13 MR. SALEEBY: Thank you.

14 THE COURT: All right. Over objection of defense
15 counsel, I'm going to allow it to be admitted. They are --
16 previously admitted Number 43. Each show a known print as
17 well as a latent print, each of which are for illustrative
18 purposes. However, on each exhibit they are showing different
19 portions or different parts of the defendant's print for
20 illustrative purposes of a known and latent print. Therefore,
21 I will allow them into evidence.

22 Any objection from you, Mr. Floyd? I didn't hear from
23 you on it.

24 MR. FLOYD: No objection.

25 THE COURT: Okay. You may continue, sir.

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 MR. SALEEBY: Thank you.

2 Q: Mr. Darnell, tell us what State's Exhibit Number 43 is?

3 MR. SALEEBY: And then with permission of the Court, I'm
4 asking him to step down so that he can illustrate it closer to
5 the jury.

6 THE COURT: Sir, you may step down. Please make sure --
7 when you're speaking to the jury, you're going to have your
8 back to my court reporter. Please make sure you speak loud
9 enough and make sure as you're talking to the jury that
10 everybody can see. You may step down.

11 (Whereupon, the witness complies.)

12 Q: The first thing I want you to do is tell us what that is?

13 A: State's 43 is a -- what we refer to as simply a charted
14 enlargement. The charted enlargement is simply prepared so
15 that I can demonstrate and explain and show you, the jury, how
16 I reached my conclusion. When I examine the print, which
17 obviously isn't this large, we have means to enlarge prints
18 and those kind of things to be able to assist us whenever we
19 make our comparisons. Basically --

20 Q: First, tell us whose -- who is the known print?

21 A: The known print on State's 43 is Mr. Marco Sanders.

22 Q: And what item did the unknown or the latent come from?

23 A: The latent print came from one of the -- a cigar box that
24 I previously testified to.

25 Q: Do you know which number it was or your number?

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 A: It was Item 6 was my item that the latent print came
2 from.

3 Q: Item 6 is State's 24.

4 A: State's 24.

5 Q: That's your 6. All right. I'll get out of your way and
6 you can tell us what you did?

7 A: Okay. Well, you see a bunch of red lines and red numbers
8 and you see the labels at the top. The labelled known print
9 is -- like I said, that's a known print. I know whose print
10 that belongs to based on the card that I had that had the name
11 Marco Sanders at the top.

12 The latent print is the latent print that I developed on
13 the cigar box. Okay? The red lines simply point to any
14 ridges, the bifurcations -- the bifurcations being the ridges
15 splitting in two. And I think I may have -- I'm not sure if I
16 have a dot on this or not, but basically that red line is
17 pointing to those characteristics that make that print unique
18 to this individual and this individual alone.

19 Q: Are you looking at these side by side in what's called a
20 comparison microscope? Or not? I'm sorry.

21 A: Well, I will be using magnification to be able to look as
22 I do my comparison. We have means of putting it up on the
23 screen -- on computer screens, and in this case, the quality
24 was such that I didn't have to -- didn't have to enlarge it
25 too big. I was able to look using just magnification at my

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 desk.

2 The numbers simply correspond with one of the
3 characteristics which I have chosen to point out. You see
4 I've got ten marked. I'm not going to go over all ten. In
5 fact, there's actually about 20 points in this particular
6 latent. When compared to this finger, there's actually about
7 20 points that match up.

8 Q: There are 20 that match up, but you've only illustrated
9 ten?

10 A: I'm only illustrating ten. Keep in mind this is nothing
11 but a -- just a demonstration. It's just an enlargement so I
12 can tell you, the jury, and show you, the jury, how I reached
13 my conclusion.

14 I can take each -- I can take any number and go from -- I
15 can go from one to seven or one to six, one to -- whichever.
16 I can start with any number and I will have the same number of
17 black lines or -- the black lines are the ridges that were
18 developed. I will have the same number between the two. So,
19 in other words, I don't have to start with one. I can start
20 with ten and go backwards if I have to.

21 But just to keep this one relatively simple, if you look
22 at point number 1, it's what I refer to as an ending ridge.
23 You can see where the 1 -- the red line is going to the -- to
24 the black line, and the black line simply comes to a stop.
25 It's simply a straight line and a straight ridge and it comes

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 to a stop. Again, the number 1 just points to a ridge that is
2 just a black line that comes to a stop. That's all that one
3 is showing you. Okay?

4 Now, I'm going to go from 1 to -- let's just skip over to
5 8. Let's go from 1 to 8, and I've got a total of two black
6 lines, two ridges between the number 1 point and the number 8
7 point. And the number 8 is also pointing to an ending ridge.

8 These are the types of things I'm looking for whenever
9 I'm doing a comparison. If I have -- if I have anything
10 whatsoever that I cannot explain, if I have a discrepancy
11 between these two that I cannot explain, then that would lead
12 me to the opinion that this print was not made by the same
13 person. In this particular case, there were no discrepancies
14 whatsoever when I did this comparison.

15 And I've actually got some points unmarked. There are
16 some points on here that are -- that are clear and that you
17 can be able to see. If you look just above the 5 -- if you
18 look just above the 5, I've got a ridge that ends, like a
19 short ridge here. You have an end here and an end here.
20 That's also right here, there and there. I didn't -- I didn't
21 mark that on purpose, and the reason I didn't mark it is
22 because I didn't want to clog up this chart with a bunch of
23 red lines and then you wouldn't be able to tell what was what.
24 So I purposely left some unmarked.

25 Q: Mr. Darnell, since we have two of these and you can make

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 some of the same points with this one, I'm going to show you
2 State's Exhibit Number 44 and ask you to use the same sort of
3 presentation. And I'll move this so they can see it for the
4 jury. Tell us, first of all, what that is, who is the known
5 print, and where did the unknown come from?

6 A: State's 44 is another second charted enlargement that I
7 was asked to prepare, and this particular known print is from
8 the left thumb of Tyrell Woods.

9 Q: And it came from what SLED item?

10 A: It came from SLED Item 49.

11 Q: And that would be State's Exhibit 34. That's -- that's
12 the tape from the feet that you made this?

13 A: Yes, sir.

14 Q: All right.

15 A: Yes, sir.

16 Q: Tell -- and that's Tyrell Woods?

17 A: Yes, sir.

18 Q: And that's his thumb print?

19 A: That's correct. It's the left thumb.

20 Q: All right, sir. Go ahead.

21 A: The -- the latent print, again, is from the -- this
22 particular print is from the non-adhesive side of the tape.
23 Okay? I developed several prints from both the non-adhesive
24 as well as the adhesive side. This particular one that I just
25 chose as the chart was from the non-adhesive side of the duct

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 tape that came from the victim's feet. The known print,
2 again, is the left thumb from the card that had the name
3 Tyrell Woods at the top.

4 Same thing. I've got -- I've got a red line and I've got
5 red numbers all on this chart. I've got ten points marked.
6 Again, there are actually 20 -- over 20 in this particular
7 print as well. Again, I didn't want to clog it up with
8 numbers and lines; so I kind of skipped several.

9 Real quick, right here on number -- if you look at number
10 9 and number 3. If you look at number 9 and number 3 on both
11 -- both sides, you'll see what we refer to as an enclosure.
12 In other words, it's sort of like a -- the ridges start out
13 from one side and opens up into two. The ridges on the left
14 side opens up into two and they actually close together. It's
15 sort of like a circle -- like an island, so to speak. Can
16 everyone see that?

17 That's 9 and 3. You can see the same -- same shape and
18 the same pattern on the latent print as well as on the known
19 print. That's on number 9 and number 3.

20 And also in this particular print, remember I mentioned
21 about having dots -- what we call dots. There's actually a
22 dot in this one as well. Number 6 -- number 6 points to a dot
23 that you can see there on the latent as well as the known
24 standard. And again, as I'm doing these comparisons, I have
25 to be able to find that same characteristic in both, and I

THOMAS DARNELL - DIRECT BY MR. SALEEBY

1 have to be able to count the same number of ridges between the
2 points to be able to determine that this print was made by
3 this individual and no other individual, which was true in
4 this case.

5 Point number 6 is a dot. That's the dot.

6 Q: How many total points of identification did you find?

7 A: This one had -- I've got about 20 on this one.

8 Q: And how many did you mark for the jury?

9 A: I just marked ten.

10 Q: So there are ten others in there that you didn't do to
11 keep from that being too cluttered?

12 A: That's correct. And again, this is from the non-adhesive
13 side of the tape from the victim's feet, and this was the left
14 thumb.

15 Q: All right. I will let you take a seat. I think we've
16 shown enough of that.

17 (Whereupon, the witness returns to the witness stand.)

18 Q: Did you ever get a roll of duct tape to be able to test?

19 A: No, sir.

20 Q: Did you ever find any identifiable lifts that didn't
21 belong -- on any of these items or any other items submitted
22 that didn't belong to either Mr. Rowell, Mr. Woods, or Mr.
23 Sanders?

24 A: No, I did not. All the prints that I developed that were
25 identifiable were identified to Mr. Woods, Mr. Sanders, or Mr.

THOMAS DARNELL - CROSS BY MR. WILSON

1 Rowell.

2 MR. SALEEBY: Thank you. Please answer any questions
3 counsel has for you.

4 THE COURT: Cross examination, Mr. Wilson.

5 MR. WILSON: Thank you very much.

6 CROSS EXAMINATION

7 BY MR. WILSON:

8 Q: Mr. Darnell, how many -- how many lifts would you say you
9 considered during this process in which you were analyzing
10 these latents? How many different latent lifts did you
11 actually consider?

12 A: Well, when I examined the evidence, I considered -- I
13 considered everything that I developed.

14 Q: Okay. And you were sent -- you were sent -- from Ms.
15 Fellers, you were sent multiple latents to review or to look
16 at and try to compare; right?

17 A: Actually, in this case, all the latents that I looked at
18 were latents that I developed on items of evidence that were
19 collected at the crime scene and then were brought to SLED by
20 Ms. Fellers.

21 Q: Okay. But she brought them to you is what I'm asking.
22 You didn't go to [sic.] Phil Court and lift the latents
23 yourself, did you?

24 A: No, sir, I did not.

25 Q: Okay. So somebody brought them to you, whether it was

THOMAS DARNELL - CROSS BY MR. WILSON

1 Ms. Fellers or whoever it was. These latents were brought to
2 you and then it was your job to review them. Let me ask you
3 this. Did you know what kind of establishment this was before
4 you started doing the lifts?

5 A: No, sir.

6 Q: Okay. Did you find any print anywhere that belonged to
7 anybody, period, other than Marco Sanders and Tyrell Woods and
8 Mr. Rowell? Any print in that whole house of everything that
9 was brought to you? Just one?

10 A: Well, I wasn't at the house, but of the items that were
11 brought to me, the only individuals that I -- that I was able
12 to identify were Mr. Sanders, Mr. Woods, and Mr. Rowell.

13 Q: In fact, what you say in your report is every other
14 latent print lift that they tried to make and bring to you was
15 of no value except for Marco Sanders and Tyrell Woods. That's
16 what you -- that's right?

17 A: That -- that -- that is correct and that -- these are --
18 these are -- again, these were prints that I -- that I
19 developed, that I processed, and that I examined, and that I
20 looked at and made the conclusion that there were a lot of
21 prints I developed that were of no value. That was a call
22 that I made and that was a call that I reported on in my lab
23 report.

24 Q: Twenty-four separate lifts, 8.1 on your list. You got
25 your list there with you?

THOMAS DARNELL - CROSS BY MR. WILSON

1 A: Yes, sir.

2 Q: No value?

3 A: That's correct.

4 Q: And what was 8.1 from?

5 A: It was from a cigar box. Black & Mild cigar box.

6 Q: Black & Mild cigar box, print on it you can't identify?

7 A: I couldn't identify it to anyone. No, sir.

8 Q: And even if you had a comparison you said and even if you

9 had a standard, you couldn't match it against anybody?

10 A: Right. Because it was -- it lacked sufficient clarity

11 and detail to be able to compare it to anyone.

12 Q: Same thing with 9.1?

13 A: That's correct. Yes, sir.

14 Q: And what is 9.1?

15 A: 9.1 is off of another cigar box.

16 Q: Another cigar box with another print that you can't

17 identify. Don't know because there ain't enough clarity?

18 A: I have -- there's not enough clarity. I can't tell whose

19 it is.

20 Q: 13.3 -- what's that from?

21 A: 13.3 is a print off of the Crown Royal box. Again, it

22 was of no value for identification.

23 Q: You can't tell. 13.6?

24 A: No value for identification.

25 Q: 13.7?

THOMAS DARNELL - CROSS BY MR. WILSON

1 A: No value.
2 Q: 13 -- well, 15.1?
3 A: No value.
4 Q: 15.2?
5 A: No value.
6 Q: 18.1?
7 A: No value.
8 Q: 18.2?
9 A: No value.
10 Q: 25.2?
11 A: No value.
12 Q: 25.3?
13 A: No value.
14 Q: 25.4?
15 A: No value.
16 Q: 25.5?
17 A: No value.
18 Q: 25.6?
19 A: No value.
20 Q: 25.7?
21 A: No value.
22 Q: 25.8?
23 A: No value.
24 Q: 25.9?
25 A: Again, no value.

THOMAS DARNELL - CROSS BY MR. WILSON

1 Q: 25.10?
2 A: No value.
3 Q: 39?
4 A: No value.
5 Q: 48.2?
6 A: No value.
7 Q: 48.5?
8 A: No value.
9 Q: 48 -- I'm sorry. 49.4?
10 A: No value.
11 Q: 49.5?
12 A: No value.
13 Q: 49.8?
14 A: No value.
15 Q: No value?
16 A: That's correct.
17 Q: The only prints of value that you found in this whole
18 thing belonged to these two people and nobody else on no other
19 prints --
20 MR. SALEEBY: Is that a question?
21 MR. WILSON: Yes, it is.
22 Q: Is that correct?
23 A: That is correct, but, like, I also identified Mr. Rowell
24 on one particular item. But yes, sir. That -- that would be
25 a correct statement.

THOMAS DARNELL - CROSS BY MR. WILSON

1 Q: Now, let me ask you the only -- the only standards that
2 the State sent you belonged to Marco Sanders and Tyrell Woods,
3 didn't they? And Mr. Rowell?

4 A: Yes, sir. That would be correct.

5 Q: And so even if you had -- which you say you didn't. Even
6 if you had sufficient ridge detail, you didn't have anybody to
7 compare them to because you weren't given that?

8 A: Well, the fact that they were of no value meant that I
9 didn't really need anybody else's cards, and that was the only
10 -- those were the only cards that I received.

11 Q: Okay. When -- when was it -- when was it -- well, let me
12 go back. Let me -- let me go back for a minute. Item 39 on
13 your list --

14 A: Okay.

15 Q: -- was a print from the front door of the house; correct?

16 A: Yes, sir. I got one latent lift from the front door.

17 Q: Okay. And that was of no value?

18 A: Yes, sir.

19 Q: Okay. And you got number 25 -- you got nine latent lifts
20 off of the DVR -- the surveillance camera thing that you had
21 to consider; right?

22 A: Yes, sir. I got nine -- I actually think it's ten.

23 Q: Okay.

24 A: Ten areas of ridge detail that I -- that I was able to
25 develop and then I had to get those photographed to be able to

THOMAS DARNELL - CROSS BY MR. WILSON

1 look at them closer.

2 Q: But not a one of those ten latents on that DVR were you
3 able to say belonged to either Marco Sanders or Tyrell Woods?

4 A: That's correct.

5 Q: All right. And at some -- let me ask you in regards to
6 -- I think it's 23 and 24. Let me make sure. 23 and 24 --
7 State's -- State's Exhibit 23 and 24. Those were the two
8 packs of cigarettes that you say you found the print of Marco
9 Sanders?

10 A: On State's 23, yes, sir. That was Marco Sanders. And
11 State's 24, also Marco Sanders. Correct.

12 Q: All right. And now, when those two Black & Mild cigar
13 boxes were sent to you, did you find anything else on -- any
14 latents on those that you could not identify on those two
15 particular items?

16 A: Nothing else on State's 23. On State's 24, I got the
17 three that were identified to Marco Sanders.

18 Q: Okay. Any -- any others?

19 A: No, sir.

20 Q: No others?

21 A: Not according to my report, no.

22 Q: Okay. Now, let me ask you if -- if the -- if law
23 enforcement or SLED or the Solicitor's Office or anyone in
24 this case has shown you a video of two individuals going into
25 the house on that day?

THOMAS DARNELL - CROSS BY MR. WILSON

1 A: No, sir. I have not seen a video.

2 Q: You weren't asked to look at it?

3 A: No, sir.

4 Q: All right. All right. And let me ask you about prints

5 in general. If an individual goes into a house where there is

6 a glass door and they touch that glass door, is it possible

7 that the print could be left there?

8 A: It is possible. Yes, sir.

9 Q: Okay. And did you receive a print, to your knowledge, or

10 a latent I should say, to your knowledge, to be compared from

11 the glass door of Mr. Rowell's house?

12 A: Not to my knowledge. I've got here where I received the

13 one latent lift that said from front door.

14 Q: The front door?

15 A: From front door. I think that was where I had one that

16 came in, but that was -- I think that was it.

17 Q: And that was of no value?

18 A: Yes, sir.

19 Q: Okay. All right. Let me ask you about this. The

20 solicitor was asking you about this duct tape and -- and --

21 and I understood you to say you found some prints on it, but

22 you didn't find Marco Sanders' prints on that?

23 A: No, sir.

24 Q: And if -- if -- if you -- because this has a sticky

25 substance to it, if you touch it, there is a higher chance

THOMAS DARNELL - CROSS BY MR. WILSON

1 that you are going to have your prints on it. Wouldn't that
2 be fair?

3 A: I think that would be a fair statement. I mean it --
4 it's -- it's a good chance that you could possibly leave a
5 print there. It certainly is a possibility.

6 Q: Okay. And -- and what if you're carrying it and holding
7 it in your hand for a period of time? Would that be likely to
8 leave a print or a palm print or a thumb print or a hand print
9 or any kind of print?

10 A: If you're holding tape and --

11 Q: Yes, sir. A roll of tape.

12 A: Like just an unused roll?

13 Q: Yes, sir.

14 A: Depends on how you're -- how you're holding it. You
15 know, again, latents are left by chance. You know, it's not
16 like watching CSI where you always get -- you always get
17 prints, you know, but it is possible. It certainly is
18 possible, but it just depends on how you hold it and how long
19 you hold it and how -- again, how you're perspiring because
20 that's most of what your print is going to be moisture. It's
21 about 99% moisture. So -- but is it possible? Sure, it's
22 possible.

23 Q: All right. Now, you weren't present obviously when any
24 of the prints or the latents were lifted; so you don't know
25 actually where they were lifted from other than what somebody

THOMAS DARNELL - CROSS BY MR. WILSON

1 marks on a piece of paper and they send to you?

2 A: I -- all I can go by is what was submitted.

3 Q: All right.

4 A: Anything that came from the scene. Yes, sir, that would
5 be correct.

6 Q: And you don't know how it got there other than when you
7 got it, you looked at it, and that's what you had?

8 A: Yes, sir. That's correct.

9 MR. WILSON: No other questions.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: Thank you, Your Honor.

12 CROSS EXAMINATION

13 BY MR. FLOYD:

14 Q: Good afternoon. How are you?

15 A: Good, sir. How are you?

16 Q: Good. Now, you stated a little earlier that you said you
17 made the call to declare those items of no value items; is
18 that correct?

19 A: Yes, sir.

20 Q: That was your call?

21 A: Yes, sir.

22 Q: Okay. And that was based on your opinion; is that right?

23 A: Yes, sir. And -- but I -- but I might add that we do
24 have quality control measures in place where all of our case
25 work is -- is reviewed by a second examiner. That's

THOMAS DARNELL - CROSS BY MR. FLOYD

1 required per policy; so that would have been done in this case
2 as well.

3 Q: But -- but you make the call on that? You base that call
4 on your opinion of what you see?

5 A: That's correct.

6 Q: Is that correct?

7 A: Correct. I would make the call. I would render the
8 results and then, again, a second person -- a second qualified
9 person would review the work that I --

10 Q: Okay.

11 A: -- that I made the call on.

12 Q: Now, on any given print, some other forensic scientist --
13 is it possible for them to have another opinion about
14 something and reach a different conclusion than you?

15 A: Well, I mean, you know, I guess that would -- I guess
16 that's possible. I mean it depends on -- it depends on the
17 individual. It depends on what kind of a -- you know, we've
18 got a hypothetical situation here where we're talking about
19 it. I don't know what the person's experience level might be.
20 I don't know what the person's background or training or, you
21 know, things like that. I mean someone with 20 years of
22 experience versus someone with two years of experience, you
23 can very certainly have a difference of opinion. And that
24 does happen from time to time. We have policies in place to
25 -- how to deal with that, but -- but based on experience

THOMAS DARNELL - CROSS BY MR. FLOYD

1 levels, you can certainly -- you can certainly have a
2 difference of opinion.

3 Q: Certainly. The -- the standard cards that you received
4 with the prints from Mr. Woods and Mr. Sanders -- did you
5 receive those directly from the people who collected those or
6 how did you receive those?

7 A: I received Mr. Woods' major case prints straight from
8 Scott Hardee.

9 Q: Okay.

10 A: I'm trying to recall. I believe the card on Marco
11 Sanders may have been logged into SLED evidence downstairs in
12 our evidence control section, and I would have picked it up
13 from -- from there in a sealed envelope.

14 Q: And Mr. Woods' prints were delivered directly to you from
15 Mr. Hardee?

16 A: Yes, sir.

17 Q: Is that correct?

18 A: Yes, sir.

19 Q: All right. Thank you very much.

20 THE COURT: Any redirect?

21 MR. SALEEBY: Just a couple of questions to clarify.

22 REDIRECT EXAMINATION

23 BY MR. SALEEBY:

24 Q: The items that you've identified prints on, the four
25 cigar boxes, the Crown Royal, the Crown Royal box, the duct

THOMAS DARNELL - REDIRECT BY MR. SALEEBY

1 tape -- did you, yourself, personally process those items to
2 see if you could get latents?

3 A: Yes, I did.

4 Q: All right. And is there any doubt in your mind that the
5 identifications that you made are true and accurate?

6 A: No. There is no doubt in my mind whatsoever.

7 MR. SALEEBY: That's all I have, sir.

8 THE COURT: Mr. Wilson, anything further?

9 MR. WILSON: Nothing further, Your Honor.

10 THE COURT: Mr. Floyd?

11 MR. FLOYD: Nothing further, Your Honor.

12 THE COURT: Sir, you may step down. Thank you.

13 THE WITNESS: Thank you.

14 MR. SALEEBY: May he be excused, sir?

15 THE COURT: Any objection?

16 MR. WILSON: Without objection, Your Honor.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: No objection.

19 THE COURT: Sir, you are excused. You are free to go and
20 have no further responsibility under your subpoena. Thank you
21 for being here.

22 THE WITNESS: Thank you, sir.

23 THE COURT: Can the lawyers approach a minute, please?

24 (Whereupon, a bench conference is held off the record
25 regarding scheduling.)

1 THE COURT: All right. Ladies and gentlemen, what I am
2 going to do right now is I am going to excuse you all for the
3 balance of today. Okay? There are some matters that I need
4 to take up outside of your presence, and rather than have you
5 sit back there for a while and it may push us up closer to
6 five and it's starting to look like there's some additional
7 testimony, I'm going to let you go for the balance of today.

8 I'm going to ask that you be back up here tomorrow
9 morning at 9:30 -- at 9:30. During your overnight break, my
10 instructions remain the same. Do not -- do not discuss the
11 case at all with anybody. You're to decide -- hold it down,
12 please. You're to decide this case based solely -- based
13 solely upon the testimony and evidence that is presented in
14 this courtroom and nowhere else.

15 Thank you all. I will see you at 9:30 in the morning.
16 Everybody else remain seated while the jury exits the
17 courtroom.

18 (Whereupon, the jury exits the courtroom at 4:10 p.m.)

19 THE COURT: All right. At sidebar up here, I inquired of
20 the State as to how many more witnesses they anticipated
21 calling. The State had indicated to me here at sidebar in the
22 presence of Mr. Wilson and Mr. Floyd that they did not think
23 -- that they didn't think they were going to call any more
24 witnesses. However, they wanted overnight to consider whether
25 or not they were going to call any more additional witnesses

1 before they rested in this case. Is that correct, Mr.
2 Clements?

3 MR. CLEMENTS: That's correct, Your Honor.

4 THE COURT: All right. In any event, at this time if the
5 State were to rest tomorrow morning at the outset, there would
6 certainly be some motions that both defense counsel would need
7 to make. At that time, it would be the Court's responsibility
8 to advise the defendants of their right -- their right to
9 testify and present a defense. Rather than wait until in the
10 morning to do it, I'm going to do it this afternoon, and I'll
11 do it again in the morning. The reason I'm doing it in the
12 late afternoon is to give them the overnight to think about
13 it, as well as talk about it with their lawyers, if they so
14 desire, when we do break here for the balance of the
15 afternoon.

16 Therefore, at this time I'm going to ask if -- Mr.
17 Sanders, if you would, please stand. Please, sir? Mr. Woods,
18 if you would, stand. Madam Clerk, would you swear them,
19 please?

20 THE CLERK: Raise your right hand, please. Do you
21 solemnly swear or affirm that your answers to the following
22 questions shall be the truth, the whole truth, and nothing but
23 the truth, so help you God?

24 THE DEFENDANT SANDERS: I do.

25 THE DEFENDANT WOODS: I do.

1 THE CLERK: Thank you.

2 THE COURT: All right. Sir, you are -- please remain
3 standing for me. You are Marco Siara Sanders?

4 THE DEFENDANT SANDERS: It's Siara.

5 THE COURT: Siara. Excuse me. And you are Tyrell Woods?

6 THE DEFENDANT WOODS: I am.

7 THE COURT: All right. At this time, what I am going to
8 do is explain to you certain of your rights. I'm sure your
9 lawyers have talked to you about it, but I'm going to advise
10 you of them as well. If you do not understand anything that I
11 say, please let me know. If you want me to explain anything
12 in more detail, please let me know as well. Do you
13 understand, Mr. Sanders?

14 THE DEFENDANT SANDERS: I do.

15 THE COURT: Do you understand, Mr. Woods?

16 THE DEFENDANT WOODS: Yes, sir.

17 THE COURT: Okay. Now, we are about to reach the stage
18 of the trial where you may present your defense. Let me
19 advise you that you each have the right to claim the
20 protections given to you by the Fifth Amendment to the
21 Constitution of the United States. That amendment states in
22 part that no person -- no person shall be compelled in any
23 criminal case to be a witness against himself. This means
24 that you cannot be required to testify in this case.
25 You have the right to testify on your own behalf.

1 However, no one -- and I repeat no one can make you testify.
2 This is a personal right and no one can waive this right
3 except you. If you decide to testify, you will be subject to
4 the same rules that govern other witnesses and you may be
5 examined and cross examined on any relevant issue in this
6 case.

7 In addition, if you have any convictions involving
8 dishonesty or false statement or for crimes punishable by
9 imprisonment for more than a year, and this Court determines
10 that the probative value of admitting this evidence outweighs
11 its prejudicial effect to you, the prosecutor or the solicitor
12 will be able to introduce your record to attack your
13 credibility.

14 If you decide to testify, this decision on your part must
15 be freely, voluntarily, and intelligently made with knowledge
16 of the protections given to you by the Fifth Amendment and the
17 consequences of your decision to testify. If you decide not
18 to testify, I will instruct the jurors that they cannot --
19 that they cannot give the fact that you did not testify any
20 consideration whatsoever and that there is to be absolutely no
21 prejudice to you because you did not testify.

22 It is left entirely up to you whether or not you testify.
23 You may talk with your attorney, your family, friends, or
24 anyone else, but the final decision will be left entirely up
25 to each of you. Do you understand what I've explained to you,

1 Mr. Sanders?

2 THE DEFENDANT SANDERS: With all due respect, Your Honor,
3 I do not -- I wish to waive my Fifth Amendment rights.

4 THE COURT: Well, I'm going to -- I'm going to give you
5 the overnight to talk with your lawyer.

6 THE DEFENDANT SANDERS: I already know I'm not going to
7 testify.

8 THE COURT: Okay. Well, I'm going to ask you again in
9 the morning anyway. Okay? Mr. Woods, do you understand what
10 I've explained to you, sir?

11 THE DEFENDANT WOODS: I do.

12 THE COURT: Okay. Do you have any question, Mr. Sanders,
13 about what I've explained to you?

14 THE DEFENDANT SANDERS: No, sir.

15 THE COURT: Mr. Woods?

16 THE DEFENDANT WOODS: No, sir.

17 THE COURT: All right. What I'm going to do is I'm going
18 to give each of you the overnight to speak with your lawyers
19 concerning these rights that I've advised you of, and I will
20 further question you in the morning. And I know, Mr. Sanders,
21 that you've indicated that you don't wish to testify, but I'm
22 going to ask you again in the morning just to make sure.

23 At this time, we are going to break for the balance of
24 today. Anything from the State before we break, Mr. Clements?

25 MR. CLEMENTS: Your Honor, back last Thursday, you were

1 argued several motions that -- that Mr. Wilson filed on behalf
2 of Mr. Sanders.

3 THE COURT: Yes, sir.

4 MR. CLEMENTS: And you ruled on the majority of them, but
5 he had a motion -- he had two motions, but basically he's
6 moving the same thing but stating it two different ways in
7 regard to the order of final argument, and I would like to go
8 ahead and take that up now if we can so we know what we're
9 going to deal with in the morning.

10 THE COURT: Well, I mean it depends on whether or not
11 they put up any evidence.

12 MR. CLEMENTS: Yes, sir.

13 THE COURT: I mean my understanding of the law is is if
14 they do not put up any evidence, then they get last argument.
15 If they do put up evidence, for instance if Mr. Woods puts up
16 evidence, they both forfeit that right --

17 MR. CLEMENTS: Okay.

18 THE COURT: -- as well as if Mr. Sanders puts up
19 evidence, the State would get to go last in their argument.

20 MR. CLEMENTS: If either one puts up evidence, they both
21 forfeit?

22 THE COURT: That's my understanding of the law. Mr.
23 Wilson, do you have anything to the contrary on that?

24 MR. WILSON: No, sir, I do not.

25 THE COURT: I mean I know what your argument was, but do

1 you have anything as far as law to -- and I understand what
2 you had asked for.

3 MR. WILSON: No, sir.

4 THE COURT: But I think the law is clear on that, and
5 certainly respecting your request, but that's my reading of
6 the law. Anything from you, Mr. Floyd?

7 MR. FLOYD: Your Honor, I believe that to be the case as
8 well.

9 THE COURT: Okay.

10 MR. CLEMENTS: So if they -- if they decide --

11 THE COURT: If they --

12 MR. CLEMENTS: -- to put up --

13 THE COURT: The State would get the final argument.

14 MR. CLEMENTS: All right.

15 THE COURT: Otherwise, they would if they don't --

16 MR. CLEMENTS: Yes, sir.

17 THE COURT: -- put up anything. All right. I would ask
18 that the lawyers be back here at nine o'clock in the morning
19 at the latest. I've told -- asked the jury to be back here at
20 9:30. Have the defendants back here, please, and I would ask
21 that you all do today what you did yesterday for about 30
22 minutes to allow the lawyers to talk with their clients for
23 about 30 minutes. That's not very long, and I understand
24 security has been here longer than I've been here all day and
25 longer than anybody else, but that just gives some additional

1 time for everybody to kind of clear out of here as well. So I
2 would ask that you all do that for about 30 minutes to allow
3 them to talk to their lawyers. Okay?

4 All right. Nine -- nine o'clock in the morning for court
5 personnel. We'll resume at 9:30.

6 MR. CLEMENTS: Thank you, Your Honor.

7 THE COURT: Thank you.

8 (Whereupon, the proceedings adjourn for the day at 4:19
9 p.m.)

10 MAY 22, 2014

11 (Whereupon, the proceedings resume at 10:03 a.m.)

12 THE COURT: All right. We had broken yesterday
13 afternoon. The State had asked for the overnight to decide
14 whether or not they were going to put up any additional
15 witnesses. We had spoken back in chambers. Myself, Mr.
16 Clements, Mr. Saleeby, Mr. Wilson, Mr. Floyd, and Mr. Meetze
17 conveyed to me back in chambers that the State did not intend
18 to put up any more witnesses. Is that correct, Mr. Clements?

19 MR. CLEMENTS: Your Honor, it is.

20 THE COURT: Okay.

21 MR. CLEMENTS: And at this point, the State intends to
22 rest.

23 THE COURT: All right. At this time, Mr. Wilson, Mr.
24 Floyd, I'm going to allow you to -- since the jury is not in
25 here and when the jury comes back in here, Mr. Clements is

1 going to rest again in front of the jury, but at this time I
2 will allow you, followed by Mr. Floyd, to put any motions on
3 the record that you so desire.

4 MR. WILSON: Your Honor, first I would make a motion for
5 a directed verdict on the charge of murder, attempted murder,
6 armed robbery, possession of a weapon in the commission of a
7 violent offense, and criminal conspiracy on the grounds that I
8 don't think that the evidence when taken as a whole is
9 sufficient to submit to the jury. And while there -- I think
10 there is certainly some evidence, I don't think that when you
11 look at the -- the actual credibility of that evidence that
12 it's sufficient to be submitted to the jury. So I would ask
13 for a directed verdict on those charges on that -- on those --
14 on that grounds.

15 THE COURT: Thank you, Mr. Wilson. Anything else?

16 MR. WILSON: Yes, sir. In addition to that, I would also
17 ask, Your Honor, for a dismissal of the charge of criminal
18 conspiracy. I know previously I raised that issue with the
19 Court that that was charged through a direct bill of
20 indictment that was never served on the defendant and,
21 therefore, I would submit to the Court that it would be
22 improper to submit that charge to the jury, and I would ask
23 the Court to dismiss that charge before submission to the --
24 before submitting the indictment to the jury.

25 THE COURT: Okay. Thank you, Mr. Wilson. Mr. Floyd?

1 MR. FLOYD: Thank you, Your Honor. Your Honor, we would
2 also move for a directed verdict on each individual count set
3 forth in the indictment on the grounds that when you view the
4 evidence in the light most favorable to the State, Your Honor,
5 that there is insufficient evidence to submit those counts to
6 the jury. And also, Your Honor, we would join in the motion
7 for dismissal of the count of criminal conspiracy.

8 THE COURT: Any argument in response, Mr. Clements?

9 MR. CLEMENTS: Your Honor, in regards to the directed
10 verdict motion on all charges by both defendants, I think
11 there's sufficient evidence on all charges to go to the jury.
12 With regards to the motion on the conspiracy charge being
13 dismissed as having not been served on the defendant, I was
14 not aware of any case law or statute that supports that
15 motion. So, Your Honor, I think that that motion should be
16 denied as well.

17 THE COURT: All right. As it relates to the -- each
18 defendant's motion for directed verdict, the trial court --
19 under the law, State v. Williams, 303 S.C. 274, the trial
20 court is concerned with the existence or nonexistence of
21 evidence, not its weight -- not its weight. Furthermore, if
22 there is any direct evidence or any substantial circumstantial
23 evidence reasonably tending to prove the guilt of the accused,
24 then the case should be submitted to the jury.

25 Under State v. Kelsey, 331 S.C. 50, the Court believes

1 based upon the testimony that's been elicited throughout the
2 trial of this case that there certainly is existence of
3 evidence reasonably tending to prove the guilt of each of
4 these defendants as to each of these charges. And, therefore,
5 the Court believes based upon the facts and testimony elicited
6 from this stand that the case should be submitted to the jury
7 as it relates to each of the offenses charged in this case.

8 Furthermore, with regards to Mr. Wilson's motion for the
9 dismissal of the conspiracy charge which was joined in by Mr.
10 Floyd, I previously ruled upon that. My ruling remains the
11 same on that, but your objection, as well as your directed
12 verdict motions, are so noted for the record. All right.

13 MR. WILSON: Thank you, Your Honor.

14 THE COURT: Now, at this time -- and I had done this
15 yesterday, and that is question the defendants regarding their
16 constitutional rights. I am going to go back through those
17 again and ask them again. I know Mr. Sanders put on the
18 record he did not want to testify, but we're going to go
19 through that again because I wanted to give them the overnight
20 break to make that decision. Okay?

21 Mr. Woods, would you stand, please? Madam Clerk, would
22 you swear them again, please?

23 THE CLERK: Raise your right hands, please. Do you
24 solemnly swear or affirm that your answers to the following
25 questions shall be the truth, the whole truth, and nothing but

1 the truth, so help you God?

2 THE DEFENDANT SANDERS: I do.

3 THE DEFENDANT WOODS: I do.

4 THE CLERK: Thank you.

5 THE COURT: All right. Again, sir, you are Marco Siara
6 Sanders?

7 THE DEFENDANT SANDERS: Yes, sir.

8 THE COURT: And, sir, you are Tyrell Woods?

9 THE DEFENDANT WOODS: I am.

10 THE COURT: All right. I advised you of these rights
11 yesterday, but I'm going to go through them again in their
12 entirety. Okay?

13 Now, at this time, I am going to explain these rights to
14 you as I explained them to you. At the conclusion of me
15 explaining them to you, if you do not understand them, let me
16 know. If you want me to explain anything further at the
17 conclusion of this, please let me know as well. Do you
18 understand that, Mr. Sanders?

19 THE DEFENDANT SANDERS: I do.

20 THE COURT: Mr. Woods?

21 THE DEFENDANT WOODS: I do.

22 THE COURT: All right. We have now reached the stage of
23 the trial where you may present your defense. You have the
24 right to claim the protections given to you by the Fifth
25 Amendment to the Constitution of the United States, which

1 states in part that no person -- no person shall be compelled
2 in any case -- in any criminal case to be a witness against
3 himself. This means that you cannot be required to testify in
4 this case.

5 You have the right to testify on your own behalf.
6 However, no one can make you testify. This is a personal
7 right and no one can waive this right except you. If you
8 decide to testify, you will be subject to the same rules that
9 govern other witnesses, and you may be examined and cross
10 examined on any relevant issue in this case.

11 In addition, if you have any convictions involving
12 dishonesty or false statement or for crimes punishable by
13 imprisonment for more than one year, and this Court determines
14 that the probative value of admitting this evidence outweighs
15 its prejudicial effect to you, the solicitor will be able to
16 introduce your record to attack your credibility.

17 If you decide to testify, this decision on your part must
18 be freely, voluntarily, and intelligently made with knowledge
19 of the protections given to you by the Fifth Amendment and the
20 consequences of your decisions to testify. If you decide not
21 to testify, I will instruct the jurors that they cannot --
22 that they cannot give the fact that you did not testify any
23 consideration whatsoever and that there is to be absolutely no
24 prejudice to you because you did not testify.

25 It is left entirely up to you whether or not you testify.

1 You may talk with your attorney, your family and friends or
2 anyone else, but the final decision will be left entirely up
3 to you. Do you understand what I've explained to you, Mr.
4 Sanders?

5 THE DEFENDANT SANDERS: Yes, I do.

6 THE COURT: Mr. Woods?

7 THE DEFENDANT WOODS: I do.

8 THE COURT: Do you have any questions about what I've
9 explained to you, Mr. Sanders?

10 THE DEFENDANT SANDERS: No, sir.

11 THE COURT: Mr. Woods?

12 THE DEFENDANT WOODS: No.

13 THE COURT: Have you discussed with your lawyer whether
14 you should or should not testify, Mr. Sanders?

15 THE DEFENDANT SANDERS: Yes, I have.

16 THE COURT: Mr. Woods?

17 THE DEFENDANT WOODS: Yes.

18 THE COURT: All right. Do you wish to talk to your
19 lawyer anymore at this time, Mr. Sanders?

20 THE DEFENDANT SANDERS: No, I do not.

21 THE COURT: Mr. Woods?

22 THE DEFENDANT WOODS: No, sir, I do not.

23 THE COURT: Sir?

24 THE DEFENDANT WOODS: No, sir.

25 THE COURT: Okay. Do you wish to testify, Mr. Sanders?

1 THE DEFENDANT SANDERS: No, sir.

2 THE COURT: Mr. Woods?

3 THE DEFENDANT WOODS: No, sir.

4 THE COURT: All right. Anything further at this time,
5 Mr. Wilson?

6 MR. WILSON: No, sir.

7 THE COURT: Mr. Floyd?

8 MR. FLOYD: No, sir.

9 THE COURT: All right. You all may be seated. Thank
10 you. Now, before I bring the jury out, let me put this on the
11 record as well, and this is what we've been doing and why we
12 hadn't started or why we didn't start at 9:30.

13 Myself, Mr. Clements, Mr. Saleeby, Mr. Wilson, Mr. Floyd,
14 and Mr. Meetze were back in chambers going through the charge
15 in this case. Each of the lawyers have seen the charge, and I
16 will at this time -- but certainly will give you an
17 opportunity at the conclusion of the charge to make any
18 objections that you believe are necessary, but it's my
19 understanding after having gone through this charge in its
20 entirety in chambers that there are no objections at this
21 time. Are there? But I want it on the record. Any objection
22 from the State?

23 MR. CLEMENTS: No objections from the State, Your Honor.

24 THE COURT: Mr. Wilson?

25 MR. WILSON: I have no objections.

1 THE COURT: Mr. Floyd?

2 MR. FLOYD: No objections, Your Honor.

3 THE COURT: All right. One other thing that has not been
4 discussed -- I mean we discussed it in chambers, but it was
5 not given to the lawyers for them to view, and that is the
6 verdict forms. I have instructed my law clerk to do separate
7 verdict forms for each defendant -- for each defendant. But
8 as soon as they're available and certainly before they go back
9 to the jury room, you all will have an opportunity to review
10 them as well.

11 Now, at this time, I am going to bring the jury out. The
12 State, from what we previously discussed, is going to rest in
13 their presence. I am going to instruct them that it's now the
14 defense -- I'm going to turn to the defense and if you intend
15 to rest, which you've indicated you are, I'll let you do that,
16 as well as you, Mr. Floyd.

17 But I want you all to certainly make a note -- I mean you
18 can do it in the presence of the jury -- that you renew all
19 your previous motions, each of you, and I will make a point to
20 state that my rulings remain the same. Okay? And then I will
21 instruct the jury that we're going into closing arguments and
22 I'll recognize Mr. Clements, which will be followed by Mr.
23 Wilson and then Mr. Floyd, and I'll charge them on the law.

24 Anything else before I bring the jury in, Mr. Clements?

25 MR. CLEMENTS: No, Your Honor.

1 THE COURT: Mr. Wilson?

2 MR. WILSON: No, sir.

3 THE COURT: Mr. Floyd?

4 MR. FLOYD: Nothing.

5 THE COURT: All right. Bring me the jury, please, if you
6 will.

7 (Whereupon, the jury enters the courtroom at 10:15 a.m.)

8 THE COURT: Good morning, Madam Forelady and ladies and
9 gentlemen of the jury. I appreciate your patience back there
10 this morning. I greatly appreciate you all being back here
11 this morning when I asked you to be here. We are now prepared
12 to continue with the trial of this case. I am going to
13 recognize you, Mr. Clements.

14 MR. CLEMENTS: Thank you, Your Honor. If it please the
15 Court, at this stage the State would rest.

16 THE COURT: All right. All right. Ladies and gentlemen,
17 the State has rested its case, and now at this time I'm going
18 to turn it over to defense counsel. Mr. Wilson, you're
19 recognized, sir.

20 MR. WILSON: Your Honor, at this time the defense for
21 Marco Sanders would rest.

22 THE COURT: Well -- and also note for the record prior to
23 you resting that you're renewing all prior motions --

24 MR. WILSON: Yes, sir.

25 THE COURT: -- at the end of the State's case, as well as

1 at this time.

2 MR. WILSON: I am. That is correct.

3 THE COURT: And the Court's rulings remain the same on
4 those issues. Mr. Floyd?

5 MR. FLOYD: Thank you, Your Honor. At this time, Your
6 Honor, we would rest on behalf of Tyrell Woods.

7 THE COURT: All right. Certainly, again renewing your
8 motions at the conclusion of the State's case and now as well;
9 correct?

10 MR. FLOYD: Thank you, Your Honor.

11 THE COURT: And the rulings of the Court remain the same.
12 All right. Ladies and gentlemen, you have heard all the
13 testimony that's going to be presented in this case. At this
14 time -- at this time, we are going to move into closing
15 arguments. The State -- Mr. Clements -- I assume Mr. Clements
16 is going to do closing arguments for the State -- will open,
17 followed by Mr. Wilson on behalf of Mr. Sanders and either Mr.
18 Floyd or Mr. Meetze on behalf of Mr. Woods.

19 I will remind you all, ladies and gentlemen, that closing
20 arguments is not evidence in this case. It is not evidence in
21 this case. At the conclusion of the closing arguments, ladies
22 and gentlemen, I will then charge you on the law applicable to
23 this case.

24 At this time, Mr. Clements, you are recognized for
25 closing argument.

CLOSING ARGUMENTS

MR. CLEMENTS: Thank you, Your Honor. May it please the Court. Good morning.

THE JURY: Good morning.

MR. CLEMENTS: As I told you when we first met on Monday, I am Ed Clements, and with Dudley Saleeby, we represent the State of South Carolina. We had the burden of proof in this case. And we have reached the end here where are going to give you a summation of what we believe the facts have shown in this case that we presented for you to judge. You are the judge of the facts in this case, as Judge Brown is the judge of the law.

I want to talk to you a little bit about the law and what these charges are, but the law is not what I tell you it is. Neither will the law be what Mr. Floyd or Mr. Wilson tell you, unless what we tell you agrees with what Judge Brown charges you with. He is going to give you the law.

Now, the law in this case, these charges, the first thing you got to think about is murder. Sam Rowell was shot in the head with a .22 bullet, his body was taped up in his home, and he was robbed there. The judge is going to tell you murder is when you kill someone with malice aforethought. You can infer from the circumstances and the facts that malice is there, and I submit to you that these facts certainly tell you that it's murder when someone is bound up with duct tape and executed.

1 Also, you've got to look at the law of attempted murder.
2 Eddie Godbold went up to see his friend and knocked on the
3 door and got response and walked by the side door and heard
4 his friend, Sam Rowell, say, "Eddie, they're trying to rob me,
5 open the door." And he goes to the door, the door flies open,
6 and somebody start shooting at him and he runs. He's shot at
7 three times with a 9mm. They attempted to murder him. We
8 believe the facts will bear that out, and listen carefully to
9 the law as Judge Brown charges it to you.

10 Burglary 1st degree is when you break into someone's home
11 armed with a weapon and either enter or remain there when it's
12 dark in the nighttime, and we have both of those sets of facts
13 here. We have two individuals who were armed, as you saw on
14 the video. You saw Marco and Tyrell walk into that home with
15 two pistols, one with a revolver and one with a 9mm, and they
16 remained in here until it was dark. So they had an intent to
17 commit a crime as they were stacking up items to steal and
18 they killed Sam Rowell when he got home. So those are the
19 facts. Listen carefully to that law on burglary 1st and apply
20 that law to those facts.

21 Armed robbery. Simply when you go and you take something
22 away from someone while you're armed with a weapon and you
23 take their personal property away. It doesn't matter whether
24 you keep it very long or not. Well, the facts in this case
25 show that Sam Rowell was found on the floor of his home taped

1 up with all of his pockets pulled out except for I believe the
2 left front. The remaining pocket were all pulled out as you
3 will see and have seen in the pictures and heard the
4 testimony. And they took things out of his pockets.

5 How do we know that? Because he always carried a wallet.
6 That's what his friends and family said and that wallet was
7 never found, but the contents of his wallet were found out on
8 the corner of Wahee and Foxworth where Tyrell and Marco threw
9 those out the window probably as they rode by after they took
10 the money and things they wanted to keep. So those elements
11 of armed robbery, listen to the law as Judge Brown gives it to
12 you and apply those facts and you'll see we have armed robbery
13 here.

14 Possession of a weapon during the commission of a violent
15 crime. You saw them on the video. You saw Marco go in there
16 with the roll of duct tape and the gun and had the little
17 homemade silencer it looks like on there. It looks like a
18 bottle like this taped onto the barrel. And you saw him wave
19 -- in the video, you saw him wave Tyrell to come up, and
20 Tyrell comes up and he's got the 9mm, and when they walk in
21 the door, Tyrell is like that right behind Marco, and you see
22 them go in that home armed and they're breaking in and they
23 have the intent to commit a crime.

24 That's what burglary is and you're going to hear about
25 that. And armed robbery -- you're going to hear about that

1 and they robbed him and they took those items from him and
2 they shot him and killed him. Those three things are violent
3 crimes and when they had the weapon in their possession while
4 they committed those three violent crimes. Those are the
5 facts that I want you to apply to the law of possession of a
6 weapon during the commission of a violent crime when Judge
7 Brown gives you the instructions on that law.

8 And then we have conspiracy. Conspiracy is basically
9 where you got two people that agree to do some criminal act
10 together and they have a scheme or a plan that they execute.
11 And you saw that on the video when you saw Marco, the uncle,
12 wave Tyrell up to follow him in, and they had that plan and
13 they acted together and you saw them as they had their stance
14 and they went in. They weren't sure if anybody was going to
15 be there, but they checked at that time you saw the video or
16 see the pictures where Tyrell went up and knocked on the door.
17 The uncle sends the nephew over there to make sure no one is
18 there after the Expedition rolls by and then they leave and a
19 few minutes later, you know by the time on video, they come
20 back and that was their plan they had agreed together to do.
21 So when you listen to the law on conspiracy Judge Brown
22 charges you with, judge those facts. Look at those facts and
23 relate them to that law, and we've got the crime of
24 conspiracy.

25 Now, the judge is going to charge you on some other

1 aspects of the law and he's going to talk about the
2 credibility of the witnesses. And that just means
3 believability. Can you believe it? You know, did they have
4 the position and were in a spot to see what they say they saw?
5 Did they hear what they say they heard? Did they know what
6 were talking about? Were they consistent?

7 You judge them by their demeanor. You saw them on the
8 witness stand and you heard what they testified to and it's
9 what you believe that they said is credible or not, and the
10 judge is going to tell you you can believe all of what a
11 witness says or none of what a witness says. The judge is
12 also going to tell you that you can believe part of what a
13 witness says. You know, if you think, well, they got that
14 wrong or they're confused on that, you can believe part of
15 what they say and some of it you can say, well, maybe they're
16 not being truthful about that. That is what you do when you
17 judge the facts and you judge the credibility of the
18 witnesses. That is your duty and that is your job to do.

19 Experts. They are a little bit different than regular
20 lay witnesses. They can give you their opinion. Because of
21 their experience, because of their training, because of their
22 education, they can offer an opinion in their particular field
23 of study or employment. And you heard from experts. Listen
24 to the law the judge gives you on that and apply that to those
25 facts and apply that to the testimony you heard from the

1 experts about fingerprints and about guns and about other
2 things, and you judge that. And again, that's what you judge
3 it to be. I'll tell you my opinion in my closing summation as
4 Mr. Wilson and Mr. Floyd will, but it's your job to judge
5 those witnesses and their credibility. An expert, police,
6 layperson, that's for you.

7 Now, that's all I'm going to tell you about the law other
8 than the law is as he gives it to you. Not as I think it is,
9 not as you think it is, not as the defense counsel thinks it
10 is, not as we think it should be. We've got to take it as it
11 is and Judge Brown is going to give you that law.

12 Now, let me talk to you a little bit about this
13 situation. This is not a "what happened." We all know what
14 happened. That's clear. This is about who did it, and the
15 first thing I want to point out to you -- now, I beg your
16 indulgence a moment as I set up this diagram for you to see
17 and then I'm going to take it down. I'm going to make just a
18 couple of points on that.

19 (Whereupon, there is a pause in the proceedings.)

20 MR. CLEMENTS: And I appreciate you bearing with me on
21 this. Y'all have been so attentive through this entire trial,
22 and we appreciate that and the defense appreciates that
23 because both the State and these defendants deserve your full
24 attention, and you've given it and I thank you for that.

25 This is State's Exhibit Number 1, and I wanted to just

1 remind you -- I mean I think the testimony was this is a dead-
2 end road, but you can see it here on this diagram that's in
3 evidence. This is Phil Court. This is where Sam Rowell
4 lived. And this is Sandy Land Road. There's only two ways in
5 and out of there. You come in Sandy Land Road and then you --
6 it dead-ends into Phil Court. Right there is where Sam Rowell
7 lived. And that comes from Highway 9. Or you can come off of
8 Highway 9 and you turn on Phil Court and there's a dead-end
9 there. One way in on Phil Court and one way in and out on
10 Sandy Land Road. Those are the only two ways to get to Sam's
11 house. If you go further, it's a dead-end.

12 Wahee and Foxworth up here. That's where the cards
13 belonging to Sam Rowell were found and his driver's license.
14 You could either leave his residence and turn here and go down
15 Sandy Land or go down Phil Court. Now, Lafayette Reed told
16 you he went down Phil Court. He went all the way up here to
17 the T-Mart trying to find where they went and he didn't see
18 them.

19 Well, we know that when they left, he said they turned on
20 Sandy Land Road, they went here, and evidently they at some
21 point in time ended up here at Foxworth and Wahee. So the
22 most logical, quickest route would have been for them to leave
23 here, turn on Highway 9, turn on Foxworth Road, and follow it
24 all the way up here to this intersection to get back close to
25 Marion.

1 Now, this is in evidence. The other two diagrams are in
2 evidence. I encourage you if you need to to take these back
3 in the jury room with you and look at them and study them.
4 We've got the two maps, this one and the close-up, and we've
5 got the diagram that was made by SLED Officer Fellers of Mr.
6 Rowell's residence. So I invite you to take those back and
7 study them if you need them. Thank you, Mr. Saleeby.

8 Well, as I said, it's a "who did it." And we've got a
9 video that shows it, and you're welcome to watch that and you
10 can see it again as many times as you want. We have the
11 equipment here ready if you request to see it. But it shows
12 two persons and two guns and a roll of duct tape, and that's
13 what you need to focus on in my opinion. Those two faces,
14 those two guns, and that roll of duct tape, and we've got a
15 few witnesses that I want to talk to you about.

16 Eddie Godbold. He was there. He went to see his friend.
17 His friend didn't answer the door. He came out, heard the
18 voice, and then went to the door, and then the gun started
19 shooting. And what did he say? He ran, not to his car
20 because you could see that from that side door. He went
21 around the corner and hid on the steps and waited until
22 everything got quieted down.

23 And he was a very important part of what happened, the
24 reason being is because when he got there, that's when those
25 two men panicked, rushed away, left the two bags -- the two

1 pillowcases they had been using as bags that they took off of
2 Mr. Rowell's bed that they put in the cigars and put in the
3 Crown Royal and put in other stuff. They left those.

4 And what did they leave there in that bag with those
5 cigar boxes? Fingerprints. You heard testimony from this
6 witness stand about those fingerprints and whose fingerprints
7 those were. And you've got several prints of Marco on a
8 couple of cigar boxes. You've got several prints of Tyrell on
9 a Crown Royal box, on a cigar box, all that went in that
10 pillowcase so they could tote it off, and most importantly,
11 all over that duct tape -- all on the sticky side of that duct
12 tape.

13 Now, ladies and gentlemen, there ain't but one way for
14 your fingerprints to get on the sticky side of the duct tape.
15 That means you've got to be pulling it off and using that to
16 tape something up. And Tyrell was using that duct tape and
17 rolling it off to tape up Sam Rowell. He taped up his ankles,
18 taped up his feet, and then ultimately, after Sam cried out to
19 Eddie to help him, stuffed underwear in Sam's mouth and taped
20 up his head. There's no way on earth for those fingerprints
21 to get on that sticky side of that tape except that Tyrell
22 handled that tape.

23 Now, the defense may get up and legitimately ask, well,
24 why wasn't Marco's fingerprints on that tape? Well, you
25 remember Mr. Saleeby asked the SLED agent did you ever receive

1 a roll of tape, and he said no. We just got the tape off the
2 body. When Marco was handling that roll of tape when he was
3 walking in that house, you can see him on the video. He was
4 holding that in his left hand, and he was holding that on the
5 inside of the roll. And if we had the inside of that roll, it
6 could have been tested, and we don't know what it would have
7 shown. Maybe nothing because you don't always get
8 fingerprints, but maybe Marco's fingerprints were on it. But
9 we know he was holding it inside the roll and on top.

10 Now, I would submit to you when they started pulling that
11 tape off and putting it on Mr. Rowell that that got rid of
12 Marco's thumbprint on that roll, but it left Tyrell's and we
13 have his fingerprints on the inside of the tape, the sticky
14 side, and we have it on the outside of the tape.

15 Now, I believe as the prosecutor for the State that the
16 person that had the revolver, that had the .22, was Marco
17 Sanders. We believe the video shows that. We believe Marco
18 Sanders, being the uncle, that he was in charge. That he was
19 calling the shots, so to speak, and that Tyrell Woods, who is
20 much younger, his nephew, was following in behind Marco and
21 probably doing what Marco said.

22 And if you look at all these facts, what makes sense is
23 that Marco had the gun on Sam Rowell and said tape him up.
24 Here's the tape, Tyrell. So Tyrell tapes him up and wraps up
25 his feet and hands. And why did they need to do that, you

1 know, if they were going to keep him there? I don't know.
2 Were they going to leave him there or were they going to take
3 him away and shoot him somewhere else? Well, we don't know.
4 But they didn't want to leave all that evidence, but they got
5 interrupted by Eddie..

6 So Tyrell is taping up Sam and he hears Eddie out there
7 and Sam calls out to him. So Tyrell with a 9mm -- we saw him
8 walking in the door with a 9mm. He shoots out and shoots at
9 Eddie and misses him. And the 9mm shells get ejected like Mr.
10 DeFreese said. Three shots Eddie heard; three shells got
11 ejected out, one right by on the concrete and then two out on
12 the grass a little further. It goes with what we know about
13 Tyrell. He had the 9mm.

14 Now, after that, Eddie hid. He waited a few minutes and
15 everything was quiet. He kind of snuck back to his car, but
16 what else was going on at that time? We know that down the
17 road -- State's Exhibit 5-D. A little bit down the road from
18 Sam Rowell's house, there's a tree. And State's Exhibit 5-E,
19 looking back on just a little bit on the side of the tree, we
20 heard about there's a cut there, a little dirt road area off
21 the main dirt road, and that's looking back at Sam's house.
22 And I think Lafayette said there is the side door right there.
23 Well, that's where he had to go to turn around to pursue that
24 white SUV.

25 So what happened when Eddie came up and they lost sight

1 of him and they didn't know if he ran to a phone to call the
2 police and deputies were going to come swooping down on them?
3 They didn't know. All they knew was they had to get out of
4 there.

5 So this white SUV, State's Exhibit 19-A that you saw,
6 it's pretty clear that's an Expedition on that picture. They
7 probably parked down there by that tree because you know the
8 time sequence. They knocked on the door; nobody came. They
9 went. Several minutes passed, about the time it would have
10 taken to go down the road. And you saw them pass by. Go down
11 the road and park by that tree and make their way up running
12 across the field and come up to Sam's door with their guns and
13 their duct tape.

14 So after Eddie came, they knew they needed to get out of
15 there. So Marco with the .22 -- we heard from the pathologist
16 it was a contact -- near contact wound. He put his gun right
17 there on Sam's head, helpless and taped up, mouth taped up,
18 hands taped up, feet taped up, completely and totally
19 helpless, and Marco executes him. The only thing that Sam had
20 is he knew who he was looking at and he would have told who it
21 was had he lived, but they didn't let him live. They shot him
22 and they took off.

23 And in their haste, what did they do? How did they
24 really mess up? They left the pillowcases with all the items
25 they were going to steal and their fingerprints all over them.

1 Now, Mr. Wilson I imagine is going to get up here -- I
2 would if I was him -- and say you got all these items, you
3 heard me with Mr. Darnell talking about this item no value for
4 identification, this item no value for identification, blah,
5 blah, blah, blah, blah. You can't say that that was from
6 Marco Sanders or Tyrell Woods' fingerprints that you couldn't
7 identify. No, he couldn't, but you know what else he can't
8 say? He can't say that those smudged or not enough ridge
9 detail or whatever it was that made them be unable to be
10 identified, he cannot say that those fingerprints weren't
11 Marco Sanders or weren't Tyrell Woods. But there were plenty
12 of other fingerprints right there with them that he matched
13 up.

14 So if you hear that after I sit down, I'd submit to you
15 respectfully Mr. Wilson is a great attorney, but sometimes the
16 best attorney in the world all he can do is blow smoke. So
17 I'm telling you that's smoke. He may say Marco Sanders could
18 have been there anytime. Tyrell Woods could have been there
19 anytime.

20 You heard him ask all these questions trying to make it
21 look like Mr. Rowell had this juke joint there at his house,
22 and all the responses that I heard were, well, you know, they
23 used it for events like family reunions or people would rent
24 it out for weddings or whatever. I never heard anything from
25 this witness stand, not questions mind you, but any witness

1 from this witness stand under oath. I never heard anybody
2 tell you that's a juke joint and people are in and out of
3 there all the time.

4 So if he says the fingerprints could have been put there
5 any time because we don't know how long they last, that is
6 true, but what you have that you've brought to this courtroom
7 with you that we depend on is your common sense, your
8 experience, your good judgment, and I invite you to exercise
9 your common sense and your good judgment and your experience
10 and say that argument doesn't make any sense. They got their
11 fingerprints on there because they were loading those things
12 in that pillowcase. You know?

13 We know when they were there because we saw them on the
14 video walk in with their guns, with their duct tape, and
15 that's when they started gathering up the loot and they left
16 those bags. And you've got the pictures here and I could go
17 through all of them with you, but I will go through and I'll
18 show you a couple here. I don't want to belabor this.

19 13-A. They got the stuff stacked up there ready to take.
20 They had the fingerprints on the Crown Royal box.

21 13-B. There's the pillowcase there.

22 13-D.

23 13-E. What do you see in that pillowcase? Crown Royal
24 box. Tyrell's fingerprints on cigar boxes. You got cigar
25 boxes with Tyrell's fingerprints and Marco's fingerprints. A

1 lot of other items in there.

2 On 13-F, Axe hygiene kits, things that make you smell
3 good.

4 And here is State's Exhibit 13-G, the recorder. You
5 heard about that. They tried to get fingerprints off of that.
6 No value for identification. It could have been smudged. It
7 could have been not enough detail, but they just weren't
8 enough that they could identify. Well, we cannot say to you
9 that the fingerprints there that they couldn't identify -- I
10 can't tell you that was Marco Sanders' fingerprints on there,
11 but I can't tell you it was not. I cannot tell you that it
12 was Tyrell Woods' fingerprints on here, but I cannot tell you
13 it was not. But it's right there in proximity on the couch
14 with the pillowcases. On a couch was this video recorder.
15 They were all in close proximity.

16 And you heard from the witnesses that Mr. Rowell always
17 kept this at the foot of his bed. And you heard that the
18 entrance that was probably used to get into the house was the
19 two windows in Mr. Rowell's bedroom. They were raised partway
20 up. Dust was displaced. You know, you get dusty windowsills,
21 and if somebody crawls in, they're going to wipe some of that
22 dust off. And you saw the blinds in the pictures I believe
23 pulled down and tied to the side.

24 And you saw the evidence of where this was cut off the
25 monitor to be carried away. Well, it didn't get carried away,

1 and what did that result in? It gives us this, and this tells
2 us exactly who did it. You've got State's Exhibit 19-A.
3 You've got an Expedition -- white Expedition riding by that
4 house at 7:28:27. What do we know about a white Expedition?

5 Well, Lafayette Reed said a white Expedition almost ran
6 him off the road and it couldn't have come from any other
7 direction or any other place because there was not an entrance
8 in the direction it came from. That was a dead-end. You saw
9 that on the map. He was coming by Sam's house about to turn
10 in to check on Sam, and that car was already on that road, and
11 what did he say? All of a sudden, lights came on.

12 And I submit to you those lights came on because Marco
13 and Tyrell had run back to that Expedition after Eddie
14 startled them and they shot Sam and ran. They knew they had
15 to go. They took his wallet and whatever else money they got
16 off of him and whatever else they might could have held in
17 their hands, but they weren't able to come up and take their
18 Expedition back up to the house and load up the stuff they
19 left.

20 But they ran to that Expedition and they got in and they
21 backed out onto that road. They didn't have their lights on.
22 Pulled out and all of a sudden said we got to go and they cut
23 the lights on and they floored it, and they went by and they
24 almost ran Lafayette off that road, and then they took off and
25 they went on Foxworth Road, and they got to Foxworth and Wahee

1 and threw Sam Rowell's stuff out as they went.

2 But here, 19-B, riding past.

3 19-C. You got Tyrell there going up to check and see if
4 anybody's there. You saw him on the video knock on the door.
5 Nobody answered.

6 Here he is knocking. 19-D.

7 Here he is in 19-E walking away -- walking back to the
8 Expedition. And that was at 7:37:36.

9 At 7:48:14, we got this still photograph where Marco --
10 there he is. And you remember seeing on the video he's doing
11 this, waving at Tyrell to come on.

12 And Mr. -- Mr. Wilson's made all kind of questions and
13 issue about tattoos. Tattoos. That -- that's really just
14 fluff. If he had tattoos or not, it doesn't make any
15 difference. You can't see his left arm on that video well at
16 all at any time other than only his hand, and it's far enough
17 away and he's dark-skinned enough that you might can't see
18 those tattoos. You know?

19 But look closely at that video. Do tattoos matter to
20 you? If you really think it's an issue, which I don't -- I
21 just think it's blowing more smoke. I thought I saw a tattoo
22 on the shoulder because I can see the right side and I'm not
23 real sure, but look at that and see if you think tattoos had
24 to be an issue. The left arm -- he's walking and you see his
25 hand, but you don't really see his arm out.

1 So, you know, that's neither here nor there. You can
2 look at his face. You can look at his build. You can look at
3 his size. And you can say that's Marco Sanders. I'm sure
4 once you saw the video the first time, you went, whoa, there
5 they are.

6 You got Neil Rouse, who knew Marco for a long time. He
7 saw that video. I think he said it was, like, September 18th
8 or something when he went up to SLED and he saw it. He didn't
9 see anything that changed his mind for him to go back to
10 Marion County Sheriff's Office and say we got warrants on the
11 wrong man. You know, we better call New York or New Jersey to
12 let him go. We got the wrong man. No. He didn't do that.
13 He saw him and said that's Marco.

14 So they were able -- after he got arrested in New York,
15 they were able to transport him back. Charlie Watson
16 transported him back you heard from Justina Hayes and checked
17 him in. I think it was like November 18th -- November 19th. I
18 can't remember exactly, but I think it was the 18th of
19 November. He got checked in and she took his fingerprints,
20 and I think the date is on the card so check that out if I'm
21 wrong. I think it's the 18th. It could have been the 19th,
22 but check the card out and check it. Okay?

23 But here he is and you can see that gun and that homemade
24 silencer in his hand right there on State's Exhibit 19-G, and
25 then there's that roll of duct tape. He's holding it in his

1 hand. And you really don't get close enough to see tattoos,
2 but you can look at the video and it might show that tattoo.
3 I think I saw it on the video, but I cannot see it on the
4 pictures. I can tell you that.

5 State's Exhibit 19-H. There he is walking up, and here
6 comes Tyrell with the 9mm right there.

7 Here's State's Exhibit 19-I. And before he walks up,
8 there you see what Mr. Darnell talked about taped onto that
9 gun and that it was a revolver. He could tell it was a
10 revolver.

11 And there, 19-J, we highlighted that duct tape in his
12 hand. Same duct tape that taped Sam Rowell up.

13 State's Exhibit 19-K. There he is waving the gun. Come
14 on, Tyrell. Come on. We've got to hurry. Nobody's here. We
15 got to get in so we can get out.

16 State's 19-L. There he is. You can see the duct tape.
17 You can see his face. You can see his build. You can see
18 that gun.

19 State's 19-M. And as you heard testimony, as you zoom in
20 on these things, the pixels on it aren't quite as clear on
21 this, but that video is a lot clearer. You remember what that
22 video looked like. Look at that video.

23 I'm going to skip a couple of these. Y'all can take them
24 back in the jury room and look at them as long as y'all need
25 to look at them.

1 State's Exhibit 19-D. There's Tyrell and there's the
2 9mm.

3 The last one I want to show you -- 19-R. There they are
4 going in the house. They got a plan. Marco is going in the
5 door and Tyrell has got his back-up. They didn't think
6 anybody was there, but they knocked on the door and checked
7 earlier. But they may not be sure.

8 Well, all this evidence you can take back in the jury
9 room with you and look at it, and you can look at these
10 pictures of Sam Rowell and see exactly what they did to him.
11 You know, we believe he came in the back door because that's
12 where his shoes were. He took off his shoes, walked around in
13 socked feet, and got himself a cup of coffee.

14 And then -- this is State's Exhibit 11-A. There's his
15 feet with no shoes. And then they jumped him.

16 State's Exhibit 11-B. Pockets being turned out where
17 they robbed him.

18 State's Exhibit 11-C. Pockets pulled out where they
19 robbed him.

20 State's Exhibit 11-D is a rope of duct tape where they
21 secured him where they could handle him.

22 State's Exhibit 11-E. There he is shot, and they had
23 moved him and turned him over to check him out.

24 State's Exhibit 11-F is what they did after he cried out
25 to Eddie for help. They stuffed his underwear in his mouth.

1 And you saw pictures where he had underwear that looked
2 similar on his -- in his bedroom. They grabbed it and taped
3 him up, and there's a closer view -- State's 11-G. What a
4 horrible way to go, to be helpless, bound up, and then be
5 executed by being shot in the head.

6 Now, there's one piece of law that's going to be most
7 important in this case maybe than some of the rest. As y'all
8 think about who did what, we believe that they had a plan that
9 they executed together, and we believe Tyrell is the one that
10 bound up Sam and we believe Marco is the one that shot him.

11 Well, let me tell you about the most important bit of the
12 law. Not that any of it is unimportant; it's all important.
13 But to me, I really want you to listen carefully to all the
14 law the judge gives you. And he's going to talk about
15 something called accomplice liability. The hand of one is the
16 hand of all. That's what that means.

17 And that is when two people do something together and
18 they agree to do something together that they're both
19 responsible for what each other does because they're doing it
20 together. They're doing it together.

21 If Mr. Saleeby and I decided, man, we're going to go rob
22 a store over here, and we go to Martin's store and I pull the
23 gun out of my pocket and I shoot Mr. Martin over there at the
24 store. Who's guilty of the murder? According to the law in
25 South Carolina, both are because Mr. Saleeby -- I talked him

1 into going over there with me to do it and we were going to
2 rob that place together, and you can naturally think that out
3 of an armed robbery, somebody might wind up getting shot and
4 killed, and you're part of it, you're guilty. The hand of one
5 is the hand of all. That is the law and Judge Brown is going
6 to tell you about that.

7 So everything that Marco did on July 4th, 2012, in the
8 commission of these crimes, everything he did Tyrell Woods is
9 guilty of. By the law of South Carolina, the hand of one is
10 the hand of all, and they did it together. On July 4th, 2012,
11 everything that Tyrell Woods did in the commission of those
12 crimes, Marco Sanders is guilty of. The hand of one is the
13 hand of all, and they did it together. They did it together.

14 I'm about to be done and I appreciate your attention.
15 I've just got a few more things I want to remind you of, but
16 my mind is not near as good as all twelve of your minds.
17 Y'all remember everything that came from this witness stand.
18 And if it didn't come from this witness stand, it's not
19 evidence. If it's just questions, it's not evidence. It's
20 the answers from this witness stand that are the facts you
21 judge.

22 They went out to the scene that night, law enforcement
23 officers, several of them, and responded as quickly as they
24 could. And one came. And then a couple more. And then some
25 more. And then the investigators came and they talked to the

1 people out there. And after they talked to those people, all
2 they knew -- all they had to go on is we're looking for a
3 white SUV. Two black males at least because Eddie said Sam
4 said they are robbing me.

5 You kept hearing Mr. Wilson keep trying to confuse him
6 about -- well, how many was there? There's one? There's two?
7 You know? And we cleared that up. He said there was two
8 there because Sam said "they." When you say "they", that
9 means more than one. So at least two.

10 Well, they went back and they started spreading the word
11 throughout law enforcement we're looking for a white SUV.
12 We're looking for two black males. Well, Mr. Rouse said that
13 was all the information they had to go on. And you heard that
14 JJ, Mr. Nichols, talked to James Lee just a couple days after
15 that, and he talked to him and he said, man, I saw -- on July
16 3rd, the day before, I saw them over there at Martin's Exxon
17 station. I saw Marco Sanders driving a white Expedition with
18 Tyrell with him. And he's known him for years, and he told
19 them that so they started looking at them.

20 Mr. Wilson wanted to make a big, big to-do out of JJ
21 Nichols wrote a statement way on down the line in August. JJ
22 didn't remember when it was. I had to show it to him to say
23 does that refresh your recollection. Oh, yeah. It was
24 August. That's when I wrote it. Well, why did you write it?
25 Well, James came and said, you know, y'all wanted me to write

1 it. And James testified that it was we asked them to get JJ
2 to do a report or write a statement of what he told James so
3 we had something in writing. But he told him before July 12th.
4 He told him I saw them driving so they started looking.

5 They went to Tyrell's mother and talked to her. And what
6 did James Lee say? After he talked to her, we went back and
7 started looking at a Valerie Commander who was supposed to be
8 his girlfriend -- Tyrell's girlfriend. They ran DMV and sure
9 enough, she has a white Ford Expedition. They go to check it
10 out and look at it, you know, and Scott Hardee -- he processed
11 that car and looked at it and collected swabs and did other
12 things and said, well, a lot of these things they just weren't
13 tested.

14 All right. Here comes the smoke. You hear about they
15 didn't test that and they should have tested this and they
16 should have -- you know. Well, we already knew that Tyrell
17 and Marco had been in that car because they verified that with
18 Valerie Commander that they had had use of her car and had had
19 it. So we already knew that.

20 So if they had wasted the resources to go test all that
21 stuff that was collected that Scott Hardee said it wasn't
22 processed, and it came back Marco Sanders and Tyrell Woods and
23 we presented it here in the courtroom, guess what the defense
24 would have said. Of course, it's going to be there. They had
25 use of her car. Tyrell and Valerie were boyfriend and

1 girlfriend. So we didn't waste time with that. So don't pay
2 attention to that smoke screen. Okay? Because that's just
3 that.

4 But they had an SUV and they had two people driving it
5 and they checked it out. And you heard they talked to another
6 individual at Probation and Parole, and after talking with
7 him, they went and got warrants on the 12th. James said he got
8 a warrant for murder on Marco and a warrant for murder on
9 Tyrell. And then on the 16th, he went and got the remainder of
10 the warrants.

11 Now, they continued to investigate and they continued and
12 they kept working. James even went and bought a unit, which
13 is what the company told him to do, so that they could see
14 what was on that video because it had been damaged by Marco
15 and Tyrell. And when they got it and they went and they
16 looked at it, what did they see? They saw Marco Sanders.
17 They saw Tyrell Woods. They knew them. They had known them.
18 If it had been somebody else, they'd have gotten an
19 investigator to find out who it was, but when they saw it,
20 they went, "We've got the right men."

21 We had all this other evidence. We had enough for
22 warrants. We got the warrants, but we continued to look into
23 it and make sure. And we made sure because we made sure we
24 checked that video and saw what was on that video. And if you
25 don't do anything else, if you've got some time, look at that

1 video and it is clear that it is Tyrell Woods and Marco
2 Sanders. The arrest warrants are confirmed. Their minds were
3 not changed.

4 And we brought it to you. We've brought you the
5 fingerprints. We've brought you the testimony. We've brought
6 you the video. We've brought you the still photographs and
7 other pictures. And we've presented to you the facts because
8 we have the burden of proof, and we embrace that burden.
9 We're happy to embrace that burden. Just like on the first
10 day I told you Marco had on a long-sleeved white shirt and I
11 told you he was clothed with the presumption innocence just
12 like that white shirt, and it was my job and Mr. Saleeby's job
13 to remove it.

14 And we have, and now it's up to you to take the facts
15 that comes from this evidence and this witness stand, not from
16 what I say, not from what Ralph Wilson says, and not from what
17 Scott Floyd says, but what these sworn witnesses say and this
18 evidence and these fingerprints and these photos and this
19 video. And then listen to the law from Judge Brown and then
20 it's your duty to bring back a verdict that speaks the truth.

21 And the verdict in this case that speaks the truth is
22 that on July 4th, 2012, Marco Sanders shot Sam Rowell in the
23 head and he killed him with malice aforethought and he's
24 guilty of murder, and that Tyrell Woods participated with him
25 in concert with him together, and he's guilty of murder. And

1 that Marco Sanders and Tyrell Woods took Sam Rowell's wallet
2 and things out of his pockets and stole from him and committed
3 burglary 1st and they're guilty of burglary 1st and they're
4 guilty of armed robbery and they're guilty of possession of a
5 weapon, a 9mm and a .22, during the commission of those
6 violent crimes, and they're guilty of conspiracy.

7 Sam Rowell didn't deserve that. I don't know that anyone
8 would ever deserve that, to be executed like that and bound in
9 duct tape in your own home, the place where you're supposed to
10 be most comfortable, most secure, on the 4th of July when we
11 celebrate and recognize the inalienable rights that our
12 creator endowed us with: life, liberty, and the pursuit of
13 happiness. And Sam Rowell's life was taken and his liberty
14 was taken and his pursuit of happiness was destroyed by Marco
15 Sanders and Tyrell Woods, and he didn't deserve it, but,
16 ladies and gentlemen, he deserves justice and we ask that you
17 give it to him.

18 THE COURT: Mr. Wilson, you're recognized.

19 MR. WILSON: Thank you, Your Honor.

20 THE COURT: Mr. Wilson?

21 MR. WILSON: Yes, sir.

22 THE COURT: Let her get out of here before you start, if
23 you don't mind.

24 MR. WILSON: Yes, sir.

25 THE COURT: So it won't interrupt you.

1 MR. WILSON: Yes, sir. Thank you.

2 (Whereupon, the deputy clerk of court exits the
3 courtroom.)

4 THE COURT: All right. Go ahead.

5 MR. WILSON: All right. Thank you.

6 Ladies and gentlemen, let me start by saying that I know
7 we've now been here four days, and I said to you at the outset
8 that I know when you got your summonses to come to court and
9 to participate in this jury process that you probably were
10 concerned about having to come down here and sit all week away
11 from your families, away from your home, away from your jobs,
12 and listen to a bunch of lawyers go at it back and forth, but
13 I also told you how important this process is. And it is true
14 it is important. It is important to both the State of South
15 Carolina, it's important to Marco Sanders, and it's important
16 to Mr. Woods.

17 I also said to you that you stand between the State of
18 South Carolina and a defendant. You're it. You are justice
19 in Marion County. You represent justice. You have no friends
20 to reward. You have no enemies to punish.

21 Let me also say there is no question somebody murdered
22 Mr. Rowell. That is not the issue here. Nobody is
23 disagreeing with that. Nobody is saying that Mr. Rowell was
24 not murdered. That's not what we're here about. What we're
25 really here to determine is whether or not Marco Sanders

1 participated in the murder of Mr. Rowell.

2 Now, the solicitor said to you that it was the 4th of
3 July, and we were celebrating life, liberty, and the pursuit
4 of happiness. All good words and all famous words, but there
5 is another word that he left out. Justice. Because we should
6 also be looking for that. Life, liberty, and the pursuit of
7 happiness are hollow words unless there's justice and
8 fairness. And the framers of our Constitution also had
9 justice. They made sure, and they set up this whole system of
10 the jury system and the court system so that justice would be
11 a part of the American way and a part of life, and it's
12 something that we are to take seriously.

13 Also at the outset when we were talking and His Honor was
14 giving you the preliminary remarks when you were first seated
15 as jurors, and he was telling you that if you make an
16 erroneous finding of fact that that really is almost
17 impossible to correct. If His Honor makes a ruling and it's
18 wrong, the Supreme Court or somebody else will deal with that.
19 If I make an error, His Honor will straighten me out and get
20 me back on track.

21 You are the sole judges of the facts. You are the sole
22 judges. The twelve of you left will decide what the facts are
23 in this case.

24 Now, I want to start by talking about a word that you
25 heard throughout this trial -- presumption of innocence. What

1 does that mean? Well, it means this. That every defendant
2 who is charged with any crime is presumed to be not guilty of
3 that crime, and that until and unless the State of South
4 Carolina can bring you some evidence through witnesses and
5 exhibits and bring them in this courtroom, not what somebody
6 says on the street, not what they read somewhere that's in the
7 newspaper what people said, but that they can bring witnesses
8 who satisfy you beyond a reasonable doubt that, in fact, the
9 accused -- and in this case, my client, Marco Sanders --
10 committed a murder. And in this case, specifically committed
11 the murder of Mr. Rowell.

12 Probably the only thing that the State and I agree on
13 thus far is that this case is about who did it. So let's talk
14 about who did it.

15 There are only two things that the State contends connect
16 Marco Sanders to this case. Two things that they contend.
17 One, they say they have a video, which you have seen. And
18 two, they say we have two cigar boxes where his prints are on
19 the two cigar boxes. Those are the two things that they say
20 connect Marco Sanders to this crime. So let's talk about
21 those two things.

22 First, let's talk about the video. You've seen the
23 video. I've seen the video. The only thing you can tell from
24 that video is yes, there are two black men on that video.
25 That's it. You look at that video and you look at the

1 defendant who is sitting there -- been there all week long --
2 and I promise you there are a hundred men or a thousand men in
3 Marion County that fit that very description of those -- of
4 one of those men going in there.

5 Now, I assume based on what the solicitor has said that
6 he's saying that the taller dark male is supposed to be Marco
7 Sanders. And they could have just as easily brought you any
8 other tall, dark male and said, okay, he fits the description
9 because any male six foot, 200 pounds or 220, would probably
10 fit that description. You cannot see that video well enough
11 to tell who is there, which is why -- which is why they
12 brought two police officers in here to say, oh, well, we
13 looked at the video and we saw him.

14 Well, ladies and gentlemen, if it's Marco Sanders on that
15 video and if that video is clear enough, you would know for
16 yourself. You don't need somebody to tell you who was on
17 there. The only reason that they had them to try to tell you
18 who is on there is because they know that you can't figure it
19 out by looking at it for yourself. That's why they had those
20 two officers come in and tell you that. Did you hear anybody
21 else say that other than the two police officers who were
22 responsible for arresting Marco Sanders and putting him in the
23 jail in the first place before they had the video?

24 So what are they going to now say? They've already had
25 them arrested, they've already put them in jail, and then they

1 get a video and it's the right man on there and say, oh, well,
2 that's him. What else are they going to say? Oh, no, well,
3 we got the wrong guy. We done arrested the wrong guy and
4 brought him back here so now we've got to start all over
5 again. No. Oh, yeah, we know that's him. Of course, that's
6 what they're going to say.

7 You look at that video. Find the tattoo on that video of
8 the -- of the black man that goes into that house first. Find
9 one. Just one tattoo. It doesn't exist.

10 Another thing about the whole black man that goes into
11 the house first, that's the man that's carrying the roll of
12 tape. Okay? That man is carrying the roll of tape. Now, if
13 Marco Sanders is the man carrying the roll of tape, you will
14 see on the video that that man's hand is all around that tape.
15 Did you hear one piece of evidence, one bit, who says Marco's
16 DNA was on that tape? That his fingerprints were on that
17 tape? Not one.

18 Now, if he is the guy, which the State is trying to get
19 you to believe, that has the roll of tape bringing it into the
20 house, if he's got it in his hand carrying it, his hand --
21 that man's hand is wrapped all around that whole roll of tape.
22 The solicitor says, well, we didn't find a roll of tape so we
23 couldn't get the underside of it. No. But what we do know is
24 this. What we do know is this. Somebody peeled off that roll
25 of tape because they wrapped it around Mr. -- Mr. Rowell's

1 feet and hands and mouth.

2 So if Marco Sanders had handled that tape, then his --
3 then when they tore it off, that piece would have gone onto
4 Mr. Rowell. And so when they're doing all this DNA work and
5 they're doing all of this fingerprinting work, Mr. Marco
6 Sanders' fingerprints were going to be on that tape. His
7 fingerprints are not on the tape because he wasn't there. He
8 didn't do it.

9 You're going to have the video. You can ask for it and
10 you can watch it. It's in -- it's into evidence. You can
11 watch it as much as you want and you can look at it. And
12 you've had the opportunity to see this defendant sitting over
13 there. Look at him and look at that video. Find those
14 tattoos on that video. Because you can't change that. You
15 either have tattoos or you don't, and once you get them,
16 they're there. You can't make them go away just because
17 you're on TV or on video.

18 What happened here is this. There was a rush to judgment
19 by the State in this case. They had some criminal guy who was
20 charged with something else who was at his probation office
21 who told them, oh, yeah, it must be Marco Sanders and -- and
22 -- and Tyrell Woods or somebody. So what do they do? They
23 just -- nothing else. At that point, they had absolutely
24 nothing else. Nothing. There are no fingerprints. There's
25 no video. There is nothing. The only thing that they admit

1 that there was this criminal who told them, well, that's who I
2 think it was, and they don't even bring that criminal in here
3 to tell you that he told them that. And then they, based on
4 that, go out and get arrest warrants and arrest Marco Sanders
5 and put him in jail. Everything else followed from there.

6 Now, let's talk about the white car. And you remember I
7 asked Ms. Fellers, who was the SLED agent who collected a lot
8 of that stuff, about what she collected and what she did with
9 it. She had all of these things that she had sent to SLED
10 that she collected from this white car, the white car that
11 they claim was being driven in this incident.

12 Now, there are cigarettes in the car. There's cigars in
13 the car. Cigar boxes in the car. All kinds of stuff in this
14 car. I read you a whole list of stuff. Not one single piece
15 of that was ever tested by SLED to determine whether Marco
16 Sanders was ever in that white car. Not one piece.

17 And you heard every one of those experts say, oh, yeah,
18 yeah, yeah, if we -- if you touch a window, we can get a
19 fingerprint off that. Or if you touch the steering column, if
20 he's driving that car, you know, and he puts his hand on that
21 steering column, will you be able to get DNA from that? Will
22 you be able to get fingerprints from the door or from the
23 window? Oh, yeah, yeah, you can get them. Not one print of
24 Marco Sanders from that car. Not a single one. Not a single
25 piece of DNA from Marco Sanders on that car. Nothing.

1 Then -- then what happens? Let's go -- let's talk for a
2 minute about the white car some more because there is no
3 question that there is a white car on the video. So it would
4 just seem to me -- and I know I'm not the brightest fellow in
5 the world, but it would just seem to me that if you're wanting
6 to connect the person to the car that you would want to find
7 whatever evidence is in the car. They even went to the
8 trouble of actually getting a search warrant, going and
9 searching the car, taking pictures of the interior of the car,
10 doing all of these things with the car, and then they don't
11 have it tested.

12 Well, why not? Maybe because they didn't want the
13 results. I don't know why they didn't do it. I'm not privy
14 to that. Neither was Marco Sanders. We don't get a say in
15 that. That's what the State chose to do for whatever their
16 reasons.

17 Now, let's talk about the cigar boxes. They said, oh,
18 well, yeah, okay, Mr. Wilson, but we got -- we got two cigar
19 boxes with fingerprints on them, and those two cigar boxes
20 were found in the home of Mr. Rowell. Well, when did those
21 prints get on those boxes? When? May? June? July? Who
22 knows?

23 Folks, this is a -- you call it whatever you like -- juke
24 joint, club, lounge. It doesn't matter. Party house. I
25 don't care what you call it. People are in and out of there

1 buying stuff, liquor, beer, cigarettes, whatever it is that
2 they were selling out of that place. In and out of there.
3 Buying stuff. Selling stuff. Selling liquor. Even -- even
4 Mr. Goldbold and Mr. Reed, all -- everybody who testified, oh,
5 yeah, yeah, yeah, they have people -- 40 -- 30 -- 40 -- 50
6 people in there at a time.

7 But you know what's the amazing thing? Think about this
8 for a second. The amazing thing is everybody admits that this
9 was a party house, but not a single print -- not a single
10 print found in that house other than they say Marco Sanders.
11 Not a single print. There were 29 prints on -- on the DV --
12 on the DVR alone. Or nine. I take that back. Nine on the
13 DVR alone. Well, we can't identify none of them. There are
14 prints all over the place, but they can't identify a single
15 print of any other person.

16 You find that incredible? In fact -- in fact, there was
17 only one print found of Mr. Rowell who lived there. That was
18 probably by accident. Not a single print of another living
19 individual was found in that house.

20 You see, the defendant, Marco Sanders, has no burden of
21 proof. He doesn't have to prove to you anything. The State
22 has to do that. They have to prove to you beyond a reasonable
23 doubt that Marco Sanders participated in the murder of Mr.
24 Rowell. And, folks, they have not done that. They have not
25 done that. There is no proof here to convict Marco Sanders of

1 anything. Two prints on a cigar box when you're running a
2 commercial business selling stuff to any and everybody who
3 comes and goes is not proof of murder. It's not.

4 His Honor will tell you that you have to look at each of
5 these cases separately because these are separate defendants.
6 And if one participates, that doesn't mean necessarily the
7 other one participated. It does not mean that. And just
8 because the State charges someone, it doesn't mean that that
9 person is guilty.

10 Whenever I do a closing argument, I always sit down and I
11 think of ten other things that I wish I had said, but you've
12 heard all of the evidence, you've seen the video, and you've
13 heard all of the witnesses. There are twelve of you, and the
14 twelve of you collectively are much smarter and have a much
15 better memory than what I have, and I just ask you to trust
16 your own instincts and your own judgment about what happened.

17 As I said earlier, you have no friends to reward. You
18 have no enemies to punish. You have but one responsibility --
19 to find the verdict that speaks the truth. And really, you
20 know, when I think about it and look at it, really you ask
21 yourself, well, who's on trial? Well, really the State is on
22 trial. The State is on trial because the State is the one who
23 is responsible to prove something to you. So what you're
24 really judging is whether the State has met its burden,
25 whether or not they have proven their case beyond a reasonable

1 doubt.

2 That's what you're really judging. Have they brought you
3 proof that satisfies you as an honest juror who is seeking the
4 truth beyond a reasonable doubt? Have they left you firmly
5 convinced based on everything that they have presented that,
6 in fact, Marco Sanders is guilty? And the answer will be no.
7 They have not done that job. They have not brought you
8 sufficient evidence, and Marco Sanders should not be
9 convicted.

10 You know, the thing about justice is is that for a long
11 time when I was growing up, you know, as a boy over in Horry
12 County, I always thought that justice meant, you know, the
13 police, and it meant the judges, and it meant the lawyers, but
14 there's nothing further from the truth actually. It's really
15 the hearts and the minds of the citizens. You. That's really
16 where real justice is. That's really where real truth is
17 because you are the fact-finders of our system, and we simply
18 ask you to truly try the issues in this case between the State
19 of South Carolina and Marco Sanders, and to render a verdict
20 that speaks the truth, a verdict of not guilty as to all these
21 charges. Thank you so much.

22 THE COURT: All right. Mr. Floyd, you're recognized,
23 sir.

24 MR. FLOYD: Thank you, Your Honor. Good morning, ladies
25 and gentlemen.

1 THE JURY: Good morning.

2 MR. FLOYD: You know, I was kind of fortunate in this
3 trial because of the order of things and the questions of
4 witnesses. I got to follow behind Mr. Ralph Wilson here, who
5 is such an excellent lawyer, and he does such a fine job of
6 cross examination so I didn't really have to do that much work
7 with the witnesses because he had already gotten to them by
8 the time I got to it. And I tried not to re-plow the same
9 ground, so to speak, that he went over and did the
10 examination, and I'm going to try as much as I can to avoid
11 doing that in closing with y'all today, but if I cover points
12 that he's already been over, I'm just trying to be thorough.

13 Of course, we've heard the term reasonable doubt several
14 times in this trial and, of course, that's just the kind of
15 doubt that would cause a reasonable person to hesitate to act.
16 That's what reasonable doubt is defined as. I want to talk to
17 you about the evidence and submit the reason why I believe
18 that certainly there's ample reasonable doubt in this case,
19 and that you should find Mr. Tyrell Woods not guilty of these
20 charges.

21 Over the last few days, I think we heard from -- I don't
22 know -- 19 or 20 witnesses. I didn't keep a full count, but I
23 think it was somewhere around there, give or take one or two,
24 and most of those people were witnesses who might have
25 assisted at the scene in some capacity. The 9-1-1 operator

1 might have taken a phone call. They might have secured the
2 scene and assisted with the initial investigation, collected
3 evidence, but they played very limited defined roles and, of
4 course, those -- those folks didn't really have any personal
5 knowledge of who might have been involved in these particular
6 crimes that we're dealing with in this -- this trial.

7 Now, the closest thing that we have to an eyewitness in
8 this case is Mr. Eddie Godbold, and he testified that on that
9 evening of July the 4th, he went over to Mr. Rowell's house and
10 went to a side door and heard Mr. Rowell call for help. He
11 was standing there and heard gunshots, perceived he was being
12 shot at, and wisely got himself away. But, of course, he
13 couldn't see who was in the house. He couldn't describe them.
14 He couldn't be sure how many people were inside. So he didn't
15 really identify anyone.

16 And the other witness we had that was in close proximity
17 to that residence at the time was Mr. Lafayette Reed. Now, he
18 was Mr. Rowell's neighbor, and he stated he heard gunshots.
19 Shortly thereafter, he was almost hit by a speeding white SUV,
20 and he actually thought it was an Escalade or a Navigator at
21 first I believe he testified, and then actually got out his
22 car and tried to chase it down, but in spite of that, he
23 couldn't identify anybody. He didn't know how many people
24 were in there. He couldn't describe them. He couldn't tell
25 if they were male or female or whatever.

1 So both of those statements were turned over on July the
2 4th, which was actually the evening of the occurrence, and we
3 know from testimony of Detective James Lee that the arrest
4 warrant for Mr. Woods on the murder charge was issued just
5 eight days later on the 12th of July. So really what evidence
6 other than two people who couldn't identify anyone did the
7 State have at the time?

8 The only thing we can be sure of from the testimony that
9 we heard is that on July the 5th this probationer named Shawn
10 Davis was shown a photo line-up and he failed to identify
11 anybody in that first line-up he was given, but then on July
12 the 12th of 2012, he was shown two other photo line-ups and
13 supposedly picked out Mr. Tyrell Woods and Mr. Marco Sanders.
14 But we don't really know the circumstances that he made that
15 identification. We don't know what basis he made it on, and
16 the reason we don't know is because even though they used his
17 information to issue warrants, the State didn't call him to
18 testify. I mean we're only left to -- to wonder and
19 speculate.

20 And we also heard testimony from Detective Lee and former
21 Deputy Nichols that Nichols had reported to Detective Lee
22 within a few days after July the 4th that he had seen Marco
23 Sanders driving a white SUV around. In fact, I think right
24 across the street from here, right across from the courthouse.
25 And I believe he identified that as a white Ford Expedition

1 trimmed in gold. He said that Tyrell Woods was a passenger in
2 that vehicle I believe.

3 When he actually made the statement we don't actually
4 know that because, unfortunately, no one who was doing the
5 investigation wrote it down. They didn't make a record of it.
6 So once again, we're left to speculate about that, but we know
7 he didn't give a written statement about it until August the
8 23rd, which is -- I don't know -- probably six or seven weeks
9 after July the 24th -- I mean July the 4th weekend.

10 But just assuming Deputy Nichols was right about that and
11 giving him the benefit of the doubt and say he did see them in
12 a white SUV, what does that really mean to prove this case? I
13 mean we all know from personal experience from driving or
14 being passengers in cars, you know how prevalent SUVs are in
15 any community around here. I'm sure we can drive around
16 Marion today and we would see God knows how many SUVs driving
17 around and, of course, white is a very popular color for any
18 car or any type of automobile.

19 But -- but just based on that information, law
20 enforcement went on July 27th of 2012 -- after they developed
21 information that there was a white SUV belonging to that lady
22 named Valerie Commander, they went out there to I believe
23 Wateree Correctional Institute, and they collected all the
24 evidence Mr. Wilson referred to later out of that car to
25 forensically test to supposedly try to tie that car to Mr.

1 Woods or Mr. Sanders apparently. Once again, those tests
2 weren't done. I don't believe that car was ever forensically
3 tied to either one of these individuals.

4 And certainly there's really no evidence that that
5 particular SUV was even tied to the crime scene. We don't see
6 plate numbers on that video of the car that was actually on
7 the scene, and we don't know what Ms. Commander's plate
8 numbers were. We don't have any evidence that they went out
9 there and tried to collect tire tracks off of that SUV or
10 anything of that nature to try and match that particular car
11 that they claim they saw Mr. Woods in with that crime scene.
12 It just wasn't done.

13 So really what other evidence does that leave us with in
14 the case? And, of course, we come down to the video and, of
15 course, everyone has seen the video. You've all seen it.
16 I've seen it. Everyone in the courtroom I believe has seen
17 the video. But we do see a white SUV pull up near the
18 residence. That's one of the first things we see when we
19 watch the video and when it's pulling into view. You can look
20 at it. You can look at the video and look at the trim on that
21 vehicle. See if it has gold trim. I think you'll find that
22 it doesn't, but I think you'll find that the testimony was the
23 SUV that Deputy Nichols claimed that he saw Mr. Woods in was a
24 gold-trimmed SUV. It doesn't even match what's shown on the
25 video.

1 And, of course, the State claims that Tyrell Woods I
2 believe was -- their contention is he's the person wearing the
3 dark shirt in the video and on the photographs that they've
4 showed you. When the two individuals are actually entering
5 the residence, guns in hand, they're saying he's second in
6 line. But, you know, I want you to watch that individual on
7 that video and see if you can see his face. I don't believe
8 you can really see his face.

9 But I tell you what you can see on that video about that
10 individual. You can see his skin tone. You can see that very
11 well. He's wearing a short-sleeved shirt and you can see his
12 neckline and something on the side of his face. Look at his
13 skin tone. Look at Mr. Woods. He's sitting right there. The
14 person you see in that video is significantly lighter-skinned
15 than Mr. Woods, who is sitting right here in front of you.
16 It's easy enough to look at and I invite you all to look at
17 that video. Check that out because that will show you whoever
18 that was is not Mr. Tyrell Woods.

19 Now, what we finally get to is the fingerprint testimony
20 that was given by Mr. Thomas Darnell and, of course, Mr.
21 Darnell gave his opinion that there were a number of
22 fingerprint samples that he lifted that belonged to Tyrell
23 Woods, and then that was his opinion and that's what his
24 testimony is is his opinion. He gave -- he was sent samples
25 from the tape and the cigarette boxes. He was sent palm

1 prints and fingerprints. He was sent Mr. Woods' fingerprints
2 and Mr. Sanders' fingerprints and Mr. Rowell's fingerprints
3 and that was it. And so that's what he compared everything
4 to.

5 You saw what he -- as an example what he showed you he
6 compared was a partial print, but regardless, he says he did
7 tests and it was his opinion that some of those fingerprints
8 belonged to Tyrell Woods. And he says he has a scientific
9 basis for the opinion and certainly he's entitled to do that
10 because he's qualified as an expert, but, you know, just
11 because someone is qualified as an expert witness, that
12 doesn't make his word the undisputed truth.

13 We don't have to believe everything an expert says just
14 because they say it. I mean he said himself on the stand, you
15 know, there were other experts in his field, other people who
16 do what he does, and they might disagree with him on the
17 identity of any particular fingerprint because science, even
18 though it is science, is not always an exact thing. You know,
19 there's differences of opinion in the world of science.

20 I mean you can have one individual suffering a set of
21 symptoms go to two different doctors and one doctor says that
22 one illness is causing these symptoms and one doctor will say,
23 no, it's something else. They might even prescribe you
24 completely different medications. It's a matter of opinion.
25 Two people with the same education, the same background, can

1 reach different conclusions.

2 I mean, you know, we have all kinds of, you know,
3 scientific theories that we all just from our general
4 knowledge know about. You know, we have the evolution, man-
5 made global warming, and those things are set forth by
6 scientists based on what they believe is scientific opinions,
7 but lots of people don't believe that. They don't have to.
8 And in the same vein, we don't have to take Mr. Darnell's word
9 as the absolute truth in this case.

10 But we just ask you to please review all the evidence in
11 this case and review it carefully and consider it carefully,
12 and we hope that you reach the conclusion, as we believe you
13 should, that Mr. Tyrell Woods is not guilty of these charges.
14 Thank you very much for your attention.

15 THE COURT: All right. Ladies and gentlemen, everybody
16 in the jury okay? Does anybody need a break? We've been
17 going for about an hour and a half. Okay. I've indicated one
18 of you may need a break there. Because my charge is going to
19 take about 25 -- 20 to 30 minutes as well.

20 So what I am going to do before I give you the charge,
21 I'm going to ask you to step -- let you step to the jury room.
22 Do not -- do not discuss the case. I'll get you back out here
23 in just a minute. Okay?

24 (Whereupon, the jury exits the courtroom at 11:48 a.m.)

25 THE COURT: All right. We'll stand down for just a few

1 minutes. If you need to go to the bathroom, you better go now
2 because once I start my charge, you will not be allowed to
3 leave this courtroom.

4 Mr. Wilson, Mr. Floyd, and Mr. Clements, if y'all want to
5 look at these verdict forms?

6 (Whereupon, there is a break in the proceedings from
7 11:49 a.m. until 12:07 p.m.)

8 THE COURT: All right. Anything from the State before I
9 bring the jury back out for my charge?

10 MR. CLEMENTS: No, Your Honor.

11 THE COURT: Mr. Wilson?

12 MR. WILSON: No, sir.

13 THE COURT: Mr. Floyd?

14 MR. FLOYD: Nothing, Your Honor.

15 THE COURT: All right. Bring me the jury, please, sir.

16 (Whereupon, the jury enters the courtroom at 12:09 p.m.)

17 CHARGE ON THE LAW BY THE COURT

18 THE COURT: All right. Madam Forelady and ladies and
19 gentlemen of the jury, it is now my duty as the trial judge
20 under the constitution of this state to charge and instruct
21 you on the law applicable to this case. It is your duty as
22 jurors to accept and apply the law as I will now state it to
23 you. Furthermore, it is your exclusive duty to decide all the
24 issues of fact in this case, and to determine the effect,
25 value, weight, and truth of the evidence.

1 Both the State and the defendants have a right to expect
2 that you will carefully consider and evaluate the evidence and
3 apply the law of this case to it, so that in the end both the
4 State of South Carolina and the defendants will receive a fair
5 and impartial trial. I want you to understand that when I use
6 the word defendants, I refer to Mr. Marco Sanders and Mr.
7 Tyrell Woods.

8 The charges alleged in the indictment are: murder; armed
9 robbery; burglary 1st degree; attempted murder; possession of a
10 firearm during the commission of a violent crime; and
11 conspiracy.

12 To these charges, the defendants have entered pleas of
13 not guilty. These pleas of not guilty places the burden of
14 proof on the State to prove the guilt of the defendants to
15 you, the jury, beyond a reasonable doubt.

16 I charge you that there are two different defendants in
17 this case, each of whom is charged with the offenses as
18 previously stated. The case of each defendant and the
19 evidence and the law concerning that defendant should be
20 considered separately and individually. Your verdict does not
21 have to be the same for both defendants.

22 The fact that you may find one defendant guilty or not
23 guilty should not control your verdict as to the other
24 defendant. Where more than one person is charged with a
25 crime, if the evidence warrants it, you may convict one and

1 acquit the other, or you may acquit both, or you may convict
2 both. It will depend upon your view of the testimony and
3 evidence. You must take each defendant and consider the
4 evidence as to that defendant and my instructions to you on
5 the law. You will then write a separate verdict of guilty or
6 not guilty for each individual defendant.

7 Now, as I mentioned previously, the indictment in this
8 case alleges six separate and distinct offenses against each
9 defendant. You must decide each charge separately on the
10 evidence and the law applicable to it, uninfluenced by your
11 decision as to any other charge. The defendants may be
12 convicted or acquitted on any or all of the offenses charged.
13 As stated previously, you will be asked to write a separate
14 verdict of guilty or not guilty for each charge alleged in the
15 indictment as to each defendant.

16 I remind you that the fact the defendants were arrested,
17 charged, and indicted in this case, is not evidence in this
18 case and cannot be considered by you as evidence of guilt in
19 this case, nor does it create any presumption or inference of
20 guilt. The indictment is simply the formal written instrument
21 which contains the charges made against the defendants. It is
22 the formal document by which this case is brought into this
23 court.

24 It is vital to understand that the defendants are
25 presumed under the law to be innocent of these charges. The

1 defendants have no obligation to prove their innocence. It is
2 a fundamental rule of our law that a defendant, irrespective
3 of the seriousness of the charges against him, is always
4 presumed innocent of the crimes for which he is charged,
5 unless and until his guilt has been proven by evidence that
6 satisfies you, the jury, beyond a reasonable doubt.

7 The presumption of innocence is not a mere legal theory
8 or a legal phrase. The presumption of innocence is very
9 important, and you need to understand that this presumption
10 accompanies the defendants from the time of their arrest and
11 appearance in this court and continues with the defendants
12 even after you retire to the jury room to deliberate. In
13 other words, the defendant receives the benefit of the
14 presumption of innocence until the very end of this trial,
15 when you, the jury, will deliberate upon the evidence and
16 decide whether the State has proven their guilt beyond a
17 reasonable doubt.

18 Now, what is a reasonable doubt? A reasonable doubt is
19 the kind of doubt that would cause a reasonable person to
20 hesitate to act. Proof beyond a reasonable doubt is proof
21 that leaves you firmly convinced of the defendant's guilt.
22 There are very few things in this world that we know with
23 absolute certainty, so in criminal cases the law does not
24 require proof that overcomes every possible doubt. However,
25 if, based on your consideration of the evidence, you are

1. firmly convinced that the defendant is guilty of the crime
2. charged, you must find him guilty. If on the other hand, you
3. think there is a real possibility that he is not guilty, you
4. must give him the benefit of the doubt and find him not
5. guilty.

6. Jurors, please understand that reasonable doubt may arise
7. from evidence which has been presented in the case or from the
8. lack of evidence in the case. It is your responsibility to
9. determine whether or not reasonable doubt exists as to the
10. guilt of the defendants.

11. I charge you that the defendants are entitled to every
12. reasonable doubt arising in the whole case. If, upon any
13. issues of fact essential to conviction and a verdict of
14. guilty, you have a reasonable doubt as to how that issue
15. should be resolved, it would be your duty to resolve that
16. reasonable doubt in favor of the defendants.

17. Now, during this trial, you and I have had separate
18. duties to perform. As the trial judge, it is my
19. responsibility to preside over this trial, and I also have the
20. duty to rule upon the admissibility of the evidence offered
21. during the process of this trial. In that regard, you are to
22. consider only the competent evidence before you, and you are
23. to disregard from your mind any testimony ordered stricken
24. from the record of this case during the progress of the trial,
25. if there was any. And you are to consider only the testimony

1 which has been presented from this witness stand, together
2 with any exhibits admitted into the record of this case and
3 any stipulations of counsel made into the record.

4 Furthermore, I have the additional duty to charge you on
5 the applicable law of this case and in that regard, I am the
6 sole judge of the law of this case. It is your duty to accept
7 and apply the law as I state it to you. If you have any
8 preconceived ideas as to what the law is, or what the law
9 ought to be, and it does not agree with what I tell you the
10 law is, you are obligated under your oath to abandon these
11 preconceptions because you are sworn to accept the law
12 precisely as I state it to you.

13 Now, in this trial, you, ladies and gentlemen, are the
14 sole and exclusive judge of the facts, and I am the judge of
15 the law. Do not infer that I have any opinion about the facts
16 in this case from anything I have said during the course of
17 this trial in ruling upon the admissibility of evidence or
18 otherwise, or from anything that I say during the course of
19 this charge to you. In this regard, the law simply does not
20 permit me to have an opinion about the facts. As jurors, it
21 is your duty alone to determine the effect, value, weight, and
22 truth of the evidence presented during the course of this
23 trial.

24 Now, in determining what the facts in this case are, you
25 must judge the credibility, which simply means the

1 believability, of the witnesses and the value of weight to be
2 given to their testimony. You alone must decide the force,
3 effect, and truth of the testimony.

4 Now, in making this decision there are many things you
5 may, and should, take into consideration, such as the
6 appearance and manner of the witness on the stand, a
7 characteristic often referred to as the demeanor of the
8 witness. Was the witness forthright or hesitant? Was the
9 witness' testimony consistent or did it contain discrepancies?
10 What was the ability of the witness to know the facts about
11 which he or she testified? Did the witness have a cause or
12 reason to be biased and prejudiced in favor of the testimony
13 that he or she gave? Was the testimony of the witness
14 corroborated or made stronger by other testimony and evidence
15 or was it made weaker or impeached by such other testimony and
16 evidence.

17 As jurors, please understand you have the right to
18 believe a small portion of a witness' testimony and discard
19 the larger portion or vice versa. You may believe all of a
20 witness' testimony or none. You may believe the testimony of
21 a single witness against that of many witnesses or the other
22 way around.

23 In exercising your mental processes and attempting to
24 decide the truth, the law simply requires that you exercise
25 your good judgment, your common sense, your sense of logic and

1 reason, and your experiences in life. You then apply these
2 attributes to the evidence and apply the law as I state it to
3 you, and thus arrive at a verdict.

4 Now, there are two types of evidence which are generally
5 presented during a trial, direct evidence and circumstantial
6 evidence. Direct evidence is the testimony of a person who
7 claims to have actual knowledge of a fact, such as an
8 eyewitness. It is evidence which immediately establishes the
9 main fact to be proved.

10 Circumstantial evidence is proof of a chain of facts and
11 circumstances indicating the existence of a fact. It is
12 evidence which immediately establishes collateral facts from
13 which the main fact may be inferred. Circumstantial evidence
14 is based on inference and not on personal knowledge or
15 observation.

16 The law makes absolutely no distinction between the
17 weight or value to be given to either direct or circumstantial
18 evidence. Nor is a greater degree of certainty required of
19 circumstantial evidence than of direct evidence. You should
20 weigh all of the evidence in the case. If, after weighing all
21 the evidence, you are not convinced of the guilt of the
22 defendant beyond a reasonable doubt, you must find the
23 defendant not guilty.

24 Now, there have been evidence -- or there has been
25 evidence presented that witnesses have made prior statements

1 which were not consistent with the witnesses' present
2 testimony. You may use this evidence to decide whether to
3 believe the witness. You may also use evidence of the earlier
4 contradictory statements to determine the truth of those
5 statements. It is up to you to decide whether to believe the
6 earlier statements or the testimony given at trial.

7 If a witness is shown to have knowingly testified
8 untruthfully concerning any material matter, you may consider
9 this in determining whether to trust the witness' testimony as
10 to other matters. You may reject all testimony of that
11 witness or give all or part of the testimony the weight you
12 think it deserves.

13 Now, ladies and gentlemen, during the course of this
14 trial, you heard the testimony of police officers. Please
15 understand that the testimony of a police officer is not
16 entitled to more weight than that of any other witness. You
17 are the sole judges of the credibility of a witness, and you
18 are not to give more weight to a police officer's testimony
19 solely because he or she is a police officer. Rather, you
20 should judge an officer's testimony by the same standards that
21 you apply to all other witnesses.

22 In this case you also heard the testimony of individuals
23 who were qualified as experts. The rules of evidence
24 ordinarily do not permit witnesses to testify to opinions or
25 conclusions. An exception to this rule exists for witnesses

1 we call expert witnesses. A witness who, by education and
2 experience, has become an expert in some art, science,
3 profession, or calling may state an opinion as to a relevant
4 and material matter in which the witness claims to be an
5 expert, and may also state the reasons for the opinion.

6 You should consider any expert opinion received in
7 evidence in this case and, like any other evidence, give it
8 the weight that you think it deserves. If you decide that the
9 opinion of an expert witness is not based on sufficient
10 education and experience, or if you conclude that the reasons
11 given in support of the opinion are not sound, or that the
12 opinion is outweighed by other evidence, you may disregard the
13 opinion entirely.

14 Furthermore, an expert witness' testimony is to be given
15 no greater weight than that of other witnesses simply because
16 the witness is an expert. Further, you are not required to
17 accept an expert's opinion, even though it is not
18 contradicted.

19 Now, I instruct you and I emphasize to you all, ladies
20 and gentlemen, that the fact that the defendants did not
21 testify is not a factor to be considered by you in any way in
22 your deliberations and in your consideration on the question
23 of their guilt or innocence. It must not be considered by you
24 in any manner whatsoever.

25 A defendant has the constitutional right to remain

1 silent, and the assertion of this right must not be considered
2 by you in your deliberations. I repeat, under your oath, you
3 are to draw no conclusion whatsoever from the fact that the
4 defendants in this case did not testify. The fact that the
5 defendants did not testify should not even be discussed in the
6 jury room. The burden of proof, as I have stated to you, is
7 on the State. The defendants are not required to prove their
8 innocence. The burden of proof remains on the State to prove
9 guilt beyond a reasonable doubt.

10 Now, in order to establish criminal liability, criminal
11 intent is required. For example, the mental state required to
12 be proven by the State for a particular crime might be
13 purpose, intent, knowledge, recklessness, or criminal
14 negligence. Criminal intent must be proven by the State
15 beyond a reasonable doubt. Criminal intent is always a matter
16 that must be determined by the jury from the circumstances
17 surrounding the situation.

18 There is no way to prove intent to a mathematical
19 certainty. There is no way that medical science can dissect a
20 person's brain and determine what the person had in mind. So
21 the law says that criminal intent may be inferred from the
22 circumstances shown to have existed. This is how you make a
23 determination of whether or not the element requiring intent
24 was present. It is not necessary to establish intent by
25 direct and positive evidence, but intent may be established by
26 inference in the same way as any other fact by taking into

1 consideration the acts of the parties and all the facts and
2 circumstances of the case.

3 Criminal intent is a mental state, a conscious
4 wrongdoing. It is up to you to determine what each defendant
5 intended to do based on the circumstances shown to have
6 existed.

7 Criminal intent can arise from action or a failure to
8 act. It may arise from negligence, recklessness, or an
9 indifference to duty or to consequences that is considered by
10 the law to be the equivalent of criminal intent.

11 Now, an issue in this case, ladies and gentlemen, is the
12 identification of the defendants as the individuals who
13 committed the crimes charged. The State has the burden of
14 proving identity beyond a reasonable doubt. You must be
15 satisfied beyond a reasonable doubt of the accuracy of the
16 identification -- excuse me -- of the defendants before you
17 may convict them.

18 Identification testimony is an expression of belief or
19 impression by a witness. You must determine the accuracy of
20 the identification of the defendants. You must consider the
21 believability of each identification witness in the same way
22 as any other witness. You may consider whether the witness
23 had an adequate opportunity to observe the offender at the
24 time of the offense. This will be affected by things like how
25 long or short a time was available, how far or close the

1 witness was, the lighting conditions, and whether the witness
2 had the chance to see or know the person in the past.

3 Once again, I instruct you the burden of proof on the
4 State extends to every element of the crime charged, and this
5 specifically includes the burden of proving beyond a
6 reasonable doubt the identity of the defendants as the
7 individuals who committed the crime. If, after examining the
8 testimony, you have a reasonable doubt as to the accuracy of
9 the identifications, you must find the defendants not guilty.

10 Now, is -- now, if a crime is committed by two or more
11 people who are acting together in committing a crime, the act
12 of one is the act of all. A person who joins with another to
13 commit an unlawful act is criminally responsible for
14 everything done by the other person which happens as a
15 probable or natural consequence of the acts done in carrying
16 out the common plan and purpose.

17 For example, two people can be guilty of a larceny or
18 stealing of farm equipment, valued at more than \$2,000, when
19 two go to the scene and only one drives the equipment away.
20 If two or more people are together, acting together, assisting
21 each other in committing the offense, the act of one is the
22 act of all or, as it is sometimes said, the hand of one is the
23 hand of all.

24 Prior knowledge that a crime is going to be committed,
25 without more, is not sufficient to make a person guilty of

1 that crime. Mere knowledge that another person is going to
2 commit a crime, even if the defendant is present when the
3 crime is committed, is not sufficient to convict the defendant
4 as a principal. Guilt as a principal is shown by actual or
5 constructive presence at the scene as a result of prior
6 arrangement. Therefore, a finding of a prior arranged plan or
7 common scheme is necessary for a finding of guilt as a
8 principal. The State must prove beyond a reasonable doubt by
9 competent evidence the theory of the hand of one is the hand
10 of all.

11 A principal in a crime is one who either actually commits
12 the crime or who is present aiding, abetting, or assisting in
13 committing the crime. When a person does an act in the
14 presence of and with the assistance of another, the act is
15 done by both. Where two or more, acting with a common plan or
16 intent, are present at the commission of a crime, it does not
17 matter who actually commits the crime. All are guilty. The
18 hand of one is the hand of all.

19 Present at the commission of a crime means to be
20 sufficiently near to aid and abet and assist in the commission
21 of the crime. However, mere presence at the scene of a crime
22 is not sufficient to convict one as a principal on the theory
23 of aiding and abetting. Intent is also a necessary element,
24 for there must have been a common design or intent to commit
25 the crime and the crime must have been committed pursuant

1 thereto with the person aiding and abetting by some overt act.

2 Intent means intending the result which actually occurs,
3 not accidentally or involuntary. Intent may be shown by acts
4 and conduct of the defendant and other circumstances from
5 which you may naturally and reasonably infer intent. The
6 State must prove these elements beyond a reasonable doubt.

7 Now, the defendants are charged with the murder of Mr.
8 Sam Rowell. The State must prove beyond a reasonable doubt
9 that the defendants killed Mr. Rowell with malice
10 aforethought.

11 Malice is hatred, ill will, or hostility towards another
12 person. It is the intentional doing of a wrongful act without
13 just cause or excuse and with an intent to inflict an injury
14 or under circumstances that the law will infer an evil intent.

15 Malice aforethought does not require that malice exists
16 for any particular time before the act is committed, but
17 malice must exist in the mind of the defendant just before and
18 at the time the act is committed. Therefore, there must be a
19 combination of the previous evil intent and the act.

20 Malice aforethought may be express or inferred. These
21 terms, express and inferred, do not mean different kinds of
22 malice but merely the manner in which malice may be shown to
23 exist. That is either by direct evidence or by inference from
24 the facts and circumstances which are proved. Express malice
25 is shown when a person speaks words which express hatred or

1 ill will for another or when the person prepared beforehand to
2 do the act which was later accomplished; for example, lying in
3 wait for a person or any other acts of preparation going to
4 show that the deed was within the defendant's mind would be
5 express malice. Malice may be inferred from conduct showing a
6 total disregard for human life.

7 The defendants are also charged with armed robbery. In
8 order to prove this offense, the State must first prove beyond
9 a reasonable doubt that the defendants took personal property
10 from the person or presence of another person. Property is in
11 the presence of a person if it is within the person's reach,
12 inspection, observation, or control so that the person could,
13 if not overcome with violence or prevented by fear, keep
14 possession of the property.

15 The State must also prove beyond a reasonable doubt --
16 excuse me -- that the defendants carried the property away
17 intending to permanently deprive the owner of the property and
18 to keep the property for the defendants' own use. The
19 slightest removal of the property or the complete possession
20 of the property, even for an instant, by the defendants is
21 sufficient to show the taking and carrying away of the
22 property. The taking and carrying away of the property must
23 have been done with violence or by putting the owner of the
24 property in fear of violence.

25 Finally, the State must prove beyond a reasonable doubt

1 that the defendants were armed with a deadly weapon during the
2 robbery. A deadly weapon is any article, instrument, or
3 substance which is likely to cause death or great bodily harm.
4 Whether an instrument has been used as a deadly weapon depends
5 on the facts and circumstances of each case.

6 The following are examples of instruments which may be
7 deadly weapons: a pistol, a shotgun, a rifle, a dirk, a
8 dagger, a knife, a sling shot, metal knuckles, a razor,
9 gasoline, a fire bomb or a Molotov cocktail, and lighter
10 fluid. A gun may be a deadly weapon even if it is not
11 operating.

12 The defendants are also charged with first degree
13 burglary. The State must first prove beyond a reasonable
14 doubt that the defendants entered a dwelling without consent.

15 A dwelling is any building or portion of a building in
16 which a person ordinarily sleeps. A building constructed as a
17 dwelling that has never been occupied cannot be considered a
18 dwelling for purposes of burglary. But a building is a
19 dwelling even if the residents are temporarily absent from the
20 building.

21 Now, in order to prove that the defendants entered the
22 dwelling, the State does not have to show that the defendants'
23 entire body entered the dwelling. The smallest entry is
24 sufficient. It may be any part of the body, such as a hand or
25 foot, or even an instrument, such as a hook or other

1 instrument. In addition, the State does not have to prove
2 that force was used to gain entry. If a person enters a
3 building by using deception, artifice, trick, or
4 misrepresentation to get consent to enter, this is an entry
5 without consent.

6 Next, the State must prove beyond a reasonable doubt that
7 the defendants intended to commit a crime, either a felony or
8 a misdemeanor, at the time of the entry. The mere entry into
9 a dwelling without consent is not burglary. If the intent to
10 commit a crime is formed after the entry, it is not burglary.
11 On the other hand, if the defendant intended to commit a crime
12 at the time of the entry, it is a burglary even if the intent
13 was abandoned after the entry. It does not matter that the
14 intended crime was not completed. Intent may be shown by acts
15 and conduct of the defendants and other circumstances from
16 which you may naturally and reasonably infer intent.

17 Finally, the State must prove beyond a reasonable doubt
18 that when entering, while in the dwelling, or when fleeing,
19 the defendants or an accomplice was armed with a deadly weapon
20 or explosive. A deadly weapon is an article -- is any
21 article, instrument, or substance which is likely to cause
22 death or great bodily harm. Whether an instrument has been
23 used as a deadly weapon depends on the facts and circumstances
24 of each case.

25 As stated before, the following are examples of

1 instruments which may be deadly weapons: a pistol, a shotgun,
2 a rifle, a dirk, a dagger, a knife, a sling shot, metal
3 knuckles, a razor, gasoline, a fire bomb or Molotov cocktail,
4 and lighter fluid. A gun may be a deadly weapon even if it
5 is not operating.

6 Now, the defendants are also charged with the attempted
7 murder of Eddie Godbold Jr. Now, in order to prove this
8 crime, the State must prove beyond a reasonable doubt that the
9 defendants attempted to kill Mr. Godbold Jr. with malice
10 aforethought, either express or implied.

11 Malice is as I have explained earlier in this charge.
12 Furthermore, malice aforethought may be express or inferred as
13 I have also explained earlier in this charge.

14 If facts are proved beyond a reasonable doubt sufficient
15 to raise an inference of malice to your satisfaction, this
16 inference would be simply an evidentiary fact to be considered
17 by you, the jury, along with the other evidence in the case,
18 and you may give it the weight you decide it should receive.

19 A specific intent to kill is not an element of attempted
20 murder, but there must be a general intent to commit serious
21 bodily injury. Intent means intending the result which
22 actually occurs, not accidentally or involuntarily. Intent
23 may be shown by acts and conduct of the defendant and other
24 circumstances from which you may naturally and reasonably
25 infer intent.

1 Evidence of the character of the act, the character of
2 the instrument used, the manner in which it was used, the
3 purpose to be accomplished, and the resulting wounds or
4 injuries, if any, may be considered in determining the intent
5 with which the act was committed. Intent may also be inferred
6 when it is demonstrated that the defendants voluntarily and
7 willfully commit an act, the natural tendency of which is to
8 destroy another's life.

9 Now, the defendants are also charged with possession of a
10 weapon during the commission of, or attempt to commit, a
11 violent crime. The State must prove beyond a reasonable doubt
12 that the defendants were in possession of a firearm or visibly
13 displayed what appeared to be a firearm during the commission
14 of a violent crime. A firearm means any machine gun,
15 automatic rifle, revolver, pistol, or any weapon which will,
16 is designed to, or may be readily converted to expel a
17 projectile.

18 In order to find the defendants guilty of possession of a
19 weapon during the commission of a violent crime, you must
20 first find the defendants guilty of either committing a
21 violent crime or attempting to commit a violent crime.
22 Murder, armed robbery, and burglary 1st degree are violent
23 crimes. The State must prove beyond a reasonable doubt that
24 the weapon furthered, advanced, or helped in the commission of
25 the crime.

1 Now, the defendants are also charged with conspiracy.
2 The State must prove beyond a reasonable doubt that the
3 defendants combined with one another for the purpose of
4 committing an unlawful act or of committing a lawful act by
5 unlawful means.

6 There must be a mutual understanding, agreement, or
7 common intention and plan. Mere passive knowledge of or
8 consent to the criminal conduct of another is not enough to
9 make a person a conspirator. There must be guilty knowledge
10 and participation.

11 Similarly, the mere fact that the defendants may have
12 associated with each other or met with one another and
13 discussed common aims and interests does not necessarily
14 establish proof of the existence of a conspiracy or that the
15 defendants were involved in a conspiracy.

16 On the other hand, it is not necessary that the agreement
17 be a formal one, or that it be in writing, or that the persons
18 hold a meeting and expressly state the terms of the common
19 plan, or that the agreement be stated in words between them.
20 The agreement of a criminal conspiracy may come into being
21 through an implied, mutual understanding. The willful,
22 intentional, and knowing adoption by two or more persons of a
23 common plan is sufficient. No overt act needs to be shown to
24 establish a conspiracy. A conspiracy may be shown by
25 circumstantial evidence and the conduct of the parties.

1 Now, in order to convict the defendants of conspiracy,
2 the State must prove beyond a reasonable doubt not only that
3 the defendants knew of the unlawful conduct, but that the
4 defendants agreed to combine with the other person for the
5 purpose of accomplishing the unlawful conduct.

6 Now, ladies and gentlemen, I am now drawing near the end
7 of my charge and I want you to clearly understand that you are
8 not partisans or advocates for the State of South Carolina or
9 the defendants. It is your duty by your joint deliberations
10 to determine the truth in this case, giving to the defendants
11 the benefit of every reasonable doubt on each and every issue.
12 Then, to the facts which you determine to be true, you should
13 take and apply the law which has been given to you by this
14 Court and thus arrive at a verdict which speaks the truth in
15 this case.

16 In fact, the word verdict, which has a Latin derivative,
17 means a true saying. Thus, when you have accomplished these
18 responsibilities you will have satisfied your oath as jurors
19 and you will have discharged your duty to this Court.

20 Now, once you retire to the jury room, the bailiff will
21 give the verdict form to you, Madam Forelady -- the verdict
22 forms. When you, the jury, arrive at a verdict as to the
23 offenses charged in this case, the forelady will select the
24 verdict as to the charge on the verdict form.

25 If the State has failed to prove the guilt of the

1 defendant beyond a reasonable doubt, your verdict will be "not
2 guilty." Likewise, if the State has proven the guilt of the
3 defendant beyond a reasonable doubt, your verdict will be
4 "guilty." Once a decision has been made, the forelady will
5 check whichever choice is the verdict of the jury as to the
6 charge.

7 The verdict that you render in this case, ladies and
8 gentlemen, must be the verdict of each and every juror. It
9 must be your unanimous verdict. All twelve jurors must agree
10 on the verdict which you authorize the forelady to write for
11 the jury.

12 Now, ladies and gentlemen, I want you to further
13 understand that the order in which the choices of verdict
14 appear on the verdict form are not suggestive of any verdict
15 on the part of the Court. The verdict in this case is to be
16 determined by you, the jury, not the Court. Furthermore,
17 ladies and gentlemen, please understand that even though I
18 will give the verdict form or verdict forms to the forelady,
19 it is not her verdict alone; it is the verdict of all twelve
20 of you and I emphasize again it must be unanimous.

21 Now, I am also going to give a copy of these instructions
22 in written form to you. During your deliberations, you may
23 refer to the instructions to guide your decision-making. You
24 must consider the instructions as a whole and not follow some
25 and ignore others. Please, Madam Forelady, make sure that

1 these instructions are returned to the Court at the time the
2 verdicts are rendered.

3 I am now going to ask you all to retire to the jury room,
4 but do not begin your deliberations until you are told --
5 until you are told to do so. Before I let you go to the jury
6 room, does everybody on the jury feel okay? Anybody not
7 feeling well? I know some of you may be hungry. We've
8 ordered lunch and it will be here very shortly. Is everybody
9 -- does anybody not feel okay? If you don't feel okay, raise
10 your right hand. All right.

11 The law, ladies and gentlemen, requires at this time that
12 I now consult with the attorneys to make sure that I have not
13 left anything out of these instructions. After I have checked
14 with the attorneys, the bailiff will bring in a copy of these
15 instructions and the verdict forms and instruct you to begin
16 your deliberations.

17 Also, Madam Forelady, should you all have any questions
18 during your deliberations, it will be your responsibility to
19 write that question on a piece of paper, knock on the door,
20 let the bailiff know that you have a question, give it to him,
21 and he will get it to me and I'll answer it the best I see
22 fit. Okay?

23 Once you all have been instructed to deliberate and once
24 you all have reached verdicts, please -- I am giving you all
25 two verdict forms. One will say verdict form, State of South

1 Carolina versus Marco Sanders, and the other verdict form will
2 say the State of South Carolina versus Tyrell Woods. Okay?
3 It will be for each of the six counts. You will be asked to
4 answer not guilty or guilty as to each count as it applies to
5 each defendant.

6 Once you all have reached a verdict as to each count on
7 each defendant, Madam Forelady, if you will, you check
8 whichever is the verdict of the jury. Again, it must be
9 unanimous. You date and sign as the foreperson on each
10 verdict form. Knock on the door and let the bailiff know that
11 you've reached a verdict and we will get you back into this
12 courtroom as quickly as possible. Okay?

13 I'm going to at this time ask you to retire to the jury
14 room. Again, do not -- do not begin deliberations until you
15 are instructed to do so. Please step to the jury room.

16 (Whereupon, the jury exits the courtroom at 12:51 p.m.)

17 THE COURT: As the jury is exiting the courtroom, can the
18 lawyers come up here for just a minute, please?

19 (Whereupon, a bench conference is held off the record.)

20 THE COURT: Any exceptions, objections to the charge to
21 the jury from the State?

22 MR. CLEMENTS: None from the State.

23 MR. WILSON: No, sir.

24 THE COURT: Mr. Wilson?

25 MR. WILSON: No, sir.

1 THE COURT: Mr. Floyd?

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

3 THE COURT: All right. If you all -- I'm going to make
4 these changes on the verdict form as to the caption. If you
5 all, in the meantime if you haven't already done so, make sure
6 all the exhibits are together so that they can be taken back
7 to the jury.

8 Give me my jury list, please. The jury list.

9 (Whereupon, there is a pause in the proceedings as the
10 exhibits are checked by counsel, and lunch is delivered
11 to the jurors in the jury room.)

12 (Whereupon, the alternate jurors are brought into the
13 courtroom at 1:08 p.m. and released from jury service.)

14 THE COURT: All right. I've excused the two alternates.
15 If security would, make sure that they get to their car safely
16 and get out of here if they so desire. Okay?

17 All right. You can take the items of evidence in. Take
18 the items of evidence in and take that in lastly, please, sir.

19 (Whereupon, the evidence and verdict forms and charge are
20 delivered to the jurors and deliberations begin at 1:11
21 p.m.)

22 THE COURT: All right. We'll stand at ease. Lawyers, if
23 you -- I would ask that you stay on the premises. If you so
24 -- if you leave, please make sure the clerk or my law clerk --
25 the deputy clerk of court or my law clerk has a way to get in

1 touch with you.

2 MR. WILSON: Yes, sir.

3 THE COURT: But stay in close proximity so we can get you
4 back here as quickly as possible if need be. Okay. We'll
5 stand at ease right now. Thank you.

6 (Whereupon, there is a break in the proceedings from 1:11
7 p.m. until 1:49 p.m.)

8 THE COURT: All right. I have received a note from the
9 jury, which I am going to mark as a Court's exhibit,
10 indicating that they wanted to see the video. I have summoned
11 Mr. Godbolt and he has graciously come back up here and set
12 everything up. Anything from the State before I bring the
13 jury in?

14 MR. CLEMENTS: No, Your Honor.

15 THE COURT: Mr. Wilson, anything?

16 MR. WILSON: No, sir.

17 THE COURT: Mr. Floyd?

18 MR. FLOYD: Nothing, Your Honor.

19 THE COURT: Will you mark this, Madam Court Reporter,
20 Exhibit 1? All right. Bring me the jury, please, sir.

21 THE BAILIFF: Yes, sir.

22 THE COURT REPORTER: It would be Court's 3.

23 THE COURT: Court's 3. That will be Court's 3. I'm
24 sorry.

25 (Whereupon, the jury enters the courtroom at 1:50 p.m.)

1 THE COURT: All right. All the jurors are present. Mr.
2 Golbolt?

3 MR. GODBOLT: Everybody can see it?

4 THE COURT: Sir? Can everybody see okay? Thank you. Go
5 ahead, Mr. Godbolt.

6 (Whereupon, the surveillance video marked as State's
7 Exhibit Number 18 is played in open court.)

8 MR. GODBOLT: That's it, Judge.

9 THE COURT: All right. Madam Forelady, pursuant to
10 y'all's request, we've shown the video. I'm going to ask that
11 you step back into the jury room and continue your
12 deliberations.

13 (Whereupon, the jury exits the courtroom at 1:54 p.m.)

14 THE COURT: All right. We'll stand at ease.

15 (Whereupon, there is a break in the proceedings from 1:55
16 p.m. until 2:43 p.m.)

17 THE COURT: All right. It's my understanding that we
18 have a verdict in this case.

19 I will remind everybody that whatever the verdict is to
20 keep your emotions in check. Failure to do so could result in
21 you being held in contempt of court and sentenced to a period
22 of incarceration. If you do not feel as though you can keep
23 your emotions in check, you are advised to leave the courtroom
24 at this time.

25 Anything from the State before I bring the jury out?

1 MR. CLEMENTS: No, Your Honor.

2 THE COURT: Mr. Wilson?

3 MR. WILSON: Nothing.

4 THE COURT: Mr. Floyd?

5 MR. FLOYD: Nothing, Your Honor.

6 THE COURT: All right. If you will, bring me the jury,
7 please..

8 (Whereupon, the jury enters the courtroom at 2:44 p.m.)

9 THE COURT: All right. Madam Forelady, have you all
10 reached a verdict?

11 THE FORELADY: Yes.

12 THE COURT: As it relates to each defendant, you've
13 reached a verdict?

14 THE FORELADY: Yes.

15 THE COURT: All right. Madam Clerk, if you would, get
16 the verdict, please.

17 (Whereupon, the clerk complies.)

18 THE COURT: All right. The verdicts appear to be in
19 order. I would ask that the defendants, along with their
20 attorneys, stand to receive the verdict. Madam Clerk, you may
21 publish the verdicts.

22 THE CLERK: Thank you, sir.

23 VERDICTS OF THE JURY AS TO DEFENDANT MARCO SANDERS

24 THE CLERK: State of South Carolina, Court of General
25 Sessions, County of Marion. State of South Carolina versus

1 Marco Sanders, defendant. Indictment Number 2013-GS-33-00256.

2 Verdict Form.

3 As to the charge of murder of Sam Rowell, we, the jury,
4 unanimously find the defendant, Marco Sanders, guilty.

5 As to the charge of armed robbery, we, the jury,
6 unanimously find the defendant, Marco Sanders, guilty.

7 As to the charge of burglary 1st degree, we, the jury,
8 unanimously find the defendant, Marco Sanders, guilty.

9 As to the charge of attempted murder of Eddie Godbold
10 Jr., we, the jury, unanimously find the defendant, Marco
11 Sanders, guilty.

12 As to the charge of possession of a firearm during the
13 commission of a violent crime, we, the jury, unanimously find
14 the defendant, Marco Sanders, guilty.

15 As to the charge of conspiracy, we, the jury, unanimously
16 find the defendant, Marco Sanders, guilty.

17 Signed, Earline Williams, Foreperson. Dated 5/22/2014.

18 As to Marco Sanders, is this unanimous say you one, say
19 you all?

20 THE JURY: Yes.

21 THE CLERK: Thank you.

22 THE COURT: Mr. Wilson, anything from you at this time
23 before we read the verdict for Mr. Woods?

24 MR. WILSON: No, sir.

25 THE COURT: All right. Madam Clerk, you may continue.

VERDICTS OF THE JURY AS TO DEFENDANT TYRELL WOODS

THE CLERK: Thank you. State of South Carolina, County of Marion in the Court of General Sessions. Indictment Number 2013-GS-33-00256. State of South Carolina versus Tyrell Williams [sic].

As to the charge of murder of Sam Rowell, we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

As to the charge of armed robbery, we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

As to the charge of burglary 1st degree, we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

As to the charge of attempted murder of Eddie Godbolt Jr., we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

As to the charge of possession of a firearm during the commission of a violent crime, we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

As to the charge of conspiracy, we, the jury, unanimously find the defendant, Tyrell Woods, guilty.

Signed, Earline -- excuse me -- Earline Williams, Foreperson. Dated 5/22/2014.

As to Tyrell Woods, does the jury find -- unanimously find this verdict?

THE JURY: Yes.

THE CLERK: Thank you.

1 THE COURT: Mr. Floyd, anything from you at this time?

2 MR. FLOYD: Nothing, Your Honor.

3 THE COURT: Anything from the State?

4 MR. CLEMENTS: No, Your Honor.

5 THE COURT: All right. Does the State have sentence
6 sheets ready?

7 MR. CLEMENTS: Your Honor, Mr. Fitzlee McEachin has gone
8 down to get those.

9 THE COURT: All right. I would ask that the defendants
10 be taken into custody at this time, please.

11 THE DEFENDANT SANDERS: Your Honor, may I say one thing?

12 THE COURT: You need to speak to your lawyer. I don't
13 want you to say something that could be used against you in
14 your appeal.

15 THE DEFENDANT SANDERS: I'll see you in appellate court
16 is all I wanted to say.

17 THE COURT: Sir?

18 THE DEFENDANT SANDERS: I'll see you all in appellate
19 court.

20 THE COURT: All right. Ladies and gentlemen of the jury
21 -- will you step back while I address them? Hold on just a
22 minute. Okay?

23 You all, ladies and gentlemen, have fulfilled your
24 responsibilities as jurors this week. I want to thank you for
25 your service. Jury service, as I told you at the outset,

1 never comes -- never comes at a convenient time. I can't tell
2 you how valuable your -- valuable your service as jurors is.
3 I hope you learned this week this is not television. This is
4 not television.

5 It's my understanding that a check will be mailed to you
6 for your service this week. I will go ahead and tell you
7 don't be planning on laying some large ticket item aside with
8 this check. Okay? The truth of the matter is you can't be
9 paid for your services. Okay? You can't be paid for it, but
10 a check will be mailed to you for your service this week. If
11 you need a work excuse, you need to go to the Clerk's Office
12 and they'll provide a work excuse to you.

13 Now, I told you throughout this week until you began your
14 deliberations today you were not to discuss the case with
15 anybody. Okay? My instructions to you now are you can
16 discuss the case if you so desire. Okay? If anybody asks you
17 about the case, you can discuss it with them if you want to,
18 but you are not required to. If somebody asks you about the
19 case and you tell them you don't want to talk about it and
20 they do not leave you alone, you let the Clerk's Office know
21 and the Court will handle it I promise you. Okay? But you
22 are not -- nobody can make you talk about it if you don't want
23 to.

24 At this time, as I told you, you all have fulfilled your
25 responsibilities as jurors. You all are free to go at this

1 time. However, if you so desire, you can stay because what is
2 going to take place now is sentencing, and that will be
3 conducted by myself here in the courtroom. If you want to go,
4 now is your time to go. If you do -- if you do want to go,
5 I'd ask that law enforcement see that they get -- get to their
6 cars and get out of here. Okay? Thank you.

7 (Whereupon, the jury exits the courtroom at 2:52 p.m.)

8 THE COURT: All right. Mr. McEachin --

9 MR. SALEEBY: Mr. Clements has gone to get the sentencing
10 sheets, sir.

11 THE COURT: Okay. Mr. Wilson, if you would like, you and
12 your client can sit down.

13 MR. WILSON: Yes, sir.

14 THE COURT: Mr. Woods -- excuse me. Mr. Floyd, Mr.
15 Meetze, you and your client can sit down while we are waiting
16 on sentence sheets if you so desire.

17 (Whereupon, there is a pause in the proceedings.)

18 THE COURT: All right. Mr. Clements?

19 MR. CLEMENTS: May it please the Court, Your Honor. I
20 have the six sentencing sheets for Mr. Marco Sanders. Mr.
21 McEachin will be bringing the sentencing sheets up to Mr. --
22 for Mr. Woods.

23 THE COURT: You want to say something, Mr. Meetze?

24 MR. MEETZE: Your Honor, I think before sentencing I do
25 think that we would like to make some post-trial motions.

1 THE COURT: Okay. All right. Mr. Wilson, do you have
2 any motions you want to make?

3 MR. WILSON: Yes, sir.

4 THE COURT: I'll wait on those sentence sheets. I'll be
5 happy to hear from you, Mr. Wilson.

6 MR. WILSON: Yes. Thank you, Your Honor. Your Honor, at
7 this time, I would move for a judgment of acquittal
8 notwithstanding the verdict and ask -- or in the alternative,
9 I would ask for you to grant us a new trial.

10 I think that the verdict in this case, one, by the fact
11 that the verdict was as quick as it was, less than an hour and
12 a half, and I think that, after four days of testimony and 40+
13 exhibits, I think that that was really fast and I think that
14 the verdict may be subject to passion or caprice or some type
15 of prejudice in some way, and I am certain about that. So on
16 those grounds, I would ask the Court to grant us either an
17 acquittal or a new trial.

18 I would also renew all the motions that we made at the
19 end of the State's case and those motions that we -- I would
20 renew all those motions that we made at the end of the
21 defense's -- when the defense rests.

22 THE COURT: Okay. Mr. Floyd?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: I'd be happy to hear from you.

25 MR. FLOYD: Thank you, Your Honor. Your Honor, on behalf

1 of Mr. Tyrell Woods, we would renew all motions that we
2 previously made in this case, and also, Your Honor, move for a
3 new trial based upon the verdict being inconsistent with the
4 evidence used in the trial, Your Honor.

5 THE COURT: All right. Based upon the testimony and --
6 Mr. Wilson indicated --

7 MR. WILSON: Yes, sir.

8 THE COURT: Stay seated. But after four days of
9 testimony, I will note that that we started the testimony in
10 this case on Tuesday morning about eleven o'clock. Actually,
11 that's when we started opening statements in the case. We had
12 one full day of testimony yesterday and we took no testimony
13 today, but the trial has been going four days and I understand
14 that.

15 And having said that, based upon the testimony that was
16 elicited from this stand, as well as the numerous exhibits
17 that were admitted during the course of this trial, the Court
18 does believe that there was more than sufficient evidence --
19 more than sufficient evidence for this jury to convict each of
20 these defendants as to each of these counts -- as to each of
21 these counts.

22 And therefore, I am respectfully denying your motions --
23 your motion for a new trial, as well as Mr. Floyd's motion for
24 a new trial. However, your motions and objections are
25 certainly noted for the record. They are noted for the

1 record. You each renewed all prior motions which I have ruled
2 upon. This Court's rulings remain the same, but I want it
3 abundantly clear that all such motions were made, were ruled
4 upon by this Court, and the Court stands by all of its
5 previous rulings. But your objections and motions are so
6 noted --

7 MR. WILSON: Thank you, Your Honor.

8 THE COURT: -- each of you for the record.

9 MR. FLOYD: Thank you.

10 MR. CLEMENTS: May it please the Court, Your Honor.

11 THE COURT: Hold on just a minute.

12 (Whereupon, there is a pause in the proceedings.)

13 THE COURT: All right. Captain Barr, can you come here a
14 minute?

15 (Whereupon, a bench conference is held with courtroom
16 security off the record.)

17 THE COURT: All right. Will you pass the sentence sheets
18 up, Mr. Clements, on Mr. Woods?

19 MR. CLEMENTS: Yes, Your Honor. And when you're ready, I
20 have their prior criminal histories, and also there are three
21 members of the family that would like to address the Court at
22 the appropriate time.

23 THE COURT: What I'm going to do -- I am going to
24 sentence Mr. Woods first in reverse order from what we've done
25 as far as the way we've gone here. The only reason Mr. Wilson

1 went first throughout the trial was because his client was
2 named first in the indictment. Okay? But I'm going to
3 sentence Mr. Woods first and then I'm going to ask that he be
4 removed from the courtroom. He's closest to the door so they
5 can take him out, and then I'm going to sentence Mr. Sanders.
6 All right.

7 So at this time, Mr. Clements, I'll hear from you with
8 regards to Mr. Woods' prior record, and then I'm going to hear
9 from the family, and then I will turn it over to you, Mr.
10 Floyd and Mr. Meetze and Mr. Woods prior to imposing sentence.
11 Okay? All right. Mr. Clements, happy to hear from you with
12 regards to anything on Mr. Woods.

13 MR. CLEMENTS: Thank you, Your Honor. If it please the
14 Court. Mr. Woods was young at the time of this offense, and
15 he pled guilty 10/27/2008 to burglary 2nd degree. He got a YOA
16 not to exceed six years. As far as his juvenile record, he
17 had a receiving stolen goods in 2008, possession of marijuana
18 28 grams or less or 10 grams or less of hash, first offense,
19 in 2007. He had a disorderly public conduct in 2007, and he
20 had a status of incorrigible/ungovernable beyond the control
21 of parents it looks like in 2005, an assault and battery by a
22 student upon a school employee in 2005. Also, Your Honor, he
23 had a disturbing schools in 2004, assault and battery by a
24 student upon a school employee in 2004, and a public
25 disorderly conduct that was dismissed in 2004.

1 THE COURT: I'll be happy to hear from any family
2 members. They can come right here to the side and I'd be
3 happy to hear from them.

4 MR. CLEMENTS: If y'all will, come step up and stand
5 beside me. And if you would, please state your name for the
6 record and your relationship to Mr. Rowell.

7 MS. MARGARET ROWELL GALE: Margaret Rowell Gale, and Mr.
8 Rowell was my father.

9 THE COURT: I'd be happy to hear from you, please, ma'am.
10 Please direct any comments to the Court. Okay?

11 MS. MARGARET ROWELL GALE: Your Honor, I ask you to
12 please do not allow these men to do this to anyone else. You
13 are the judge of Marion County and these are your residents.
14 My father was a loving, kind man, and he tried to show society
15 to give these men a second chance to show them that everyone
16 deserves a second chance and can be good if that is their
17 choice.

18 We have a huge void in our lives. My father was a pillar
19 of this community. I was eight months pregnant when he was
20 brutally taken away from us. I ask you please do not allow
21 anyone else's family to go through this.

22 THE COURT: All right. Thank you, ma'am.

23 MS. MARGARET ROWELL GALE: Thank you.

24 MR. CLEMENTS: Please, if you will, step up here. State
25 your name and your relationship to Mr. Rowell.

1 MR. DAVID ROWELL: David Rowell.

2 THE COURT: Yes, sir. Please direct any comments to me,
3 Mr. Rowell.

4 MR. DAVID ROWELL: How you doing, Your Honor?

5 THE COURT: Well. Thank you.

6 MR. DAVID ROWELL: This is only a fraction of the love
7 that my father -- there's a -- there's a quote, you know.
8 There's too much power for one man. Well, this is a lot of
9 love for one man. This is only a fraction of the family. The
10 family is way bigger than this, and he's missed all across the
11 country. He raised us. He raised us the right way. Although
12 we went astray, we did certain things, but we -- we knew
13 there's a fine line. They crossed the line and, you know,
14 they should be punished for it. And I don't know how this
15 comes out or how you might take it, but I support the death
16 penalty. I'm done.

17 MR. CLEMENTS: State your name, please. And this is the
18 son as well.

19 MR. CHRIS ROWELL: Chris Rowell.

20 THE COURT: Yes, sir, Mr. Rowell.

21 MR. CHRIS ROWELL: Sam Rowell was my father. We miss
22 him. My father was not a perfect man, but he was a good man.
23 He was a giving man, and he was always giving people things.
24 If somebody asked him for something, if he had it, he would
25 give it without anything in return because that's who he was.

1 There are three things I know -- there are many things
2 that my father loved, but the main three were God, the family,
3 and coffee. He was a preacher for many years. He built this
4 house on Phil Court to be a family house. We had family
5 reunions every year. We had family come from all across the
6 country because it was important for him that we knew who our
7 family was, and we shared that love with all of our family.
8 And there was hardly any time that you would find him without
9 a cup of coffee.

10 I remember -- I think I was twelve and he made me upset
11 and I decided to run away from home. So I packed a bag and
12 went and sat on the corner of the street. And after 30
13 seconds of looking for me, he found me, and after he put fire
14 into my behind, he said I'm doing this because I love you. I
15 can't go to him and have those conversations with him and him
16 tell me that I'm right or that I'm wrong or maybe I should
17 rethink what I'm doing. That -- the wisdom that he gave to
18 us, we don't have that anymore.

19 The -- what we have gone through through this process has
20 been very hard. Sleepless nights, uncontrollable tears,
21 listening to old voice messages just to hear his voice. The
22 -- the way it has affected my mother, his wife of 40+ years,
23 yes, there's a void in our family. There has been a major
24 breach in our family that may never be repaired. We have been
25 robbed of our loved one, our father, my mother's husband, a

1 brother, and a friend. We have been robbed to be able to hug
2 the one that we love, to talk to the one that we love. We
3 have been robbed of the opportunity to say good-bye or to say
4 I'm sorry. We don't have the ability to do anything.

5 But with everything that's been done, Your Honor, with
6 everything that has come forward in this courtroom, we pray
7 that you and this court punish these men for what they've done
8 to the highest extent of the law, and we thank you for it.

9 THE COURT: All right. Anything else at this time, Mr.
10 Clements?

11 MR. CLEMENTS: Your Honor, I spoke to many people about
12 Sam Rowell, and everyone said what a wonderful man he was and
13 how he would give people the shirt off his back, and I talked
14 to so many people he had helped in this community, and those
15 that aren't related to him that were close friends that sat
16 down and talked with me with tears rolling down their cheeks
17 about how much they miss Sam Rowell and what a good man he
18 was.

19 And, Your Honor, I would just echo what Chris has said.
20 Punish these defendants to the highest extent of the law.

21 THE COURT: All right. I'll tell you I'm going to
22 deviate from what I said I was going to do. I'm going to hear
23 from Mr. Wilson. I mean I've heard -- anything else from the
24 State? I'm going to just go ahead and sentence both at the
25 same time, but I'm going to hear from each of them before I

1 impose sentence. Mr. Wilson, I will hear from you at this
2 time.

3 MR. WILSON: Your Honor, I don't know that there is a lot
4 that I need to say. The Court heard all the evidence and the
5 testimony in this case, and I've been doing this a long time,
6 and the jury considered this. I think that, during the course
7 of this trial, the jury paid very close attention to the
8 witnesses and the testimony, and I was well-pleased with that.

9 Obviously, you know, we didn't like the outcome or the
10 decision, but the jury is the finder of fact and those are the
11 facts that they found and they made a decision, and I accept
12 that. I would say that on behalf of the defendant that, you
13 know, he has maintained his innocence throughout this process,
14 and I simply ask the Court to take into consideration the fact
15 that his age and that he maintains his innocence and that you
16 be as merciful with him as you can under the circumstances.

17 Now, he has indicated to me that -- that he had something
18 that he wanted to say to the Court. So I don't know how the
19 Court's position on that is, but he wants to speak to the
20 Court.

21 THE COURT: All right. Before I hear from him, I want to
22 know what his prior record is, please, Mr. Clements.

23 MR. CLEMENTS: Thank you, Your Honor.

24 THE COURT: And then I'll hear from him.

25 MR. CLEMENTS: 1997, he got burglary 2nd degree non-

1 violent with a YOA. In '99, he had a distribution of
2 marijuana and it looks like a possession with intent to
3 distribute first offense of controlled substance conviction.
4 Disorderly conduct in the same year. Then it looks like in
5 2002, he had a distribution of crack cocaine or PWID. That
6 was a non-conviction. Excuse me. There's some other non-
7 convictions.

8 In 2003, he had grand larceny \$5,000 or more, breaking
9 into auto or tanks where fuel is stored conviction where he
10 got five years. It looks like he had one -- two -- three --
11 four of those, along with two petit larceny convictions and a
12 grand larceny value \$5,000 or more conviction. He got five
13 years for all those concurrent.

14 Then in 2003, he got a burglary violent 2nd degree
15 conviction. He got two years suspended to five years with
16 five years' probation, along with a grand larceny \$5,000 or
17 more conviction. At the same time, breaking into an
18 automobile/fuel tanks where fuel is stored conviction, three
19 counts. He got five years on each of those. Unlawful
20 carrying of a weapon conviction, one year. Resisting arrest
21 conviction, one year. Petit larceny conviction, 30 days.
22 Another petit larceny conviction, 30 days. All in 2003.

23 And, Your Honor, it looks like 2008, he had a receiving
24 stolen goods more than 1,000 but less than \$5,000, and then in
25 2009, February 27th, 2009, he got a conviction for burglary

1 violent 2nd degree conviction where he got five years.

2 THE COURT: And that was when? The last one?

3 MR. CLEMENTS: It was 2009, Your Honor.

4 THE COURT: All right.. Mr. Sanders, I'll be happy to
5 hear from you at this time. However, I don't want you to say
6 anything that could certainly affect any appellate rights that
7 you may have, and I know that your lawyer has advised you of
8 that.

9 THE DEFENDANT SANDERS: Yes, sir.

10 THE COURT: But I will be happy to hear from you at this
11 time. Please direct your comments to me.

12 THE DEFENDANT SANDERS: Well, Your Honor, I know I have a
13 long record. I know I've been in trouble quite a few times
14 with the law. I just want the victim's family to know that I
15 understand. You know what I'm saying? That, you know, there
16 is a time and season for everything, and there's two things in
17 this world; there's love and hate, you know. And I know this
18 is a crime of hate, but for the love of God, I didn't kill
19 nobody. I understand that, you know, we go through some
20 things, but under the eyes of God as my witness, I'm an
21 innocent man.

22 But I -- I just hope that you can forgive the
23 circumstances. I understand the loss because I've been there.
24 I understand the pain and hurt y'all are going through because
25 I was a friend of the family. And, well, for me to go through

1 what I'm going through, I know y'all's feelings because I'm
2 losing all of my kids just as well as your father. But I just
3 ask y'all only one thing. That y'all just -- y'all just learn
4 how to forgive. I know it's hard to forgive. I know it's
5 hard to forgive, but God said you got to learn how to forgive.

6 But I'm going to ask you don't forgive me because I -- I
7 haven't done anything. I'm just asking you to forgive the
8 circumstances. I pray for each and every one of y'all. May
9 God bless y'all.

10 THE COURT: Thank you, Mr. Sanders. All right. Mr.
11 Floyd, I'll be happy to hear from you, sir.

12 MR. FLOYD: Thank you, Your Honor. Your Honor, Mr. Woods
13 has been in the county detention center now I think for 673
14 days. He was 19 when he got arrested on this charge and he's
15 21 now or very close to it.

16 Your Honor, obviously, he pled not guilty and maintained
17 his innocence throughout the trial. You know, the jury made
18 their decision and we respect it, and beyond that, I probably
19 don't need to comment on any facts.

20 THE COURT: Yes, sir.

21 MR. FLOYD: Your Honor, we -- I can only tell you about
22 my personal experiences with Mr. Woods. Certainly, we've met
23 in preparation for this case, you know, over the course of the
24 last year or so, and I've had many occasions to meet with him
25 and I can only say, you know, Your Honor, that his behavior

1 towards me has always been very cooperative and he's been an
2 easy person to work with and very, very polite and courteous
3 to me and Mr. Meetze, Your Honor, every time we've ever met
4 with him. Your Honor, we just ask if you'd consider his very
5 young age and give him as much mercy as you can.

6 THE COURT: All right. Mr. Meetze, anything you want to
7 say?

8 MR. MEETZE: No, sir, Your Honor.

9 THE COURT: Mr. Woods, you can speak, and I will advise
10 you as I did Mr. Sanders that I will be happy to hear anything
11 you wish to say to me, but certainly don't want you to say
12 anything -- and I know your lawyers have advised you of such
13 -- not to say anything that could affect any appellate rights
14 you may have.

15 THE DEFENDANT WOODS: Yes, sir. I don't want to really
16 say too much, but I know that it's not going to change no
17 one's perspective of me at this time right now. But I will
18 say that these last couple of days of coming up here to court,
19 I been around the officers. I been around my lawyer as well.
20 Your Honor, it's not in my character to kill or commit such
21 crimes. It's not. Anyone will tell you that. That's not the
22 kind of person I am, and so I want to tell the family that I
23 am innocent, you know, that I didn't do it and I believe that
24 -- I believe that they -- they will believe that.

25 Your Honor, there's -- there's not much to say, but I --

1 I do want to let you know that I -- I'm aware of the court
2 system and I'm really not a fool. So me going through trial
3 wouldn't be to play with the system; it would be to plead my
4 innocence the way I have. If I really believed I was guilty,
5 I wouldn't have went through the whole process. I just want
6 to tell the family that -- that I am sorry and just for being
7 in this.

8 THE COURT: Mr. Clements, anything else?

9 MR. CLEMENTS: Your Honor, there is a pending armed
10 robbery charge on Mr. Tyrell Woods on Liston Phillips on Jones
11 Avenue here in Marion that also happened earlier in the day on
12 July 4th. He was here available for us to testify under Rule
13 404(b) if we sought to do that, but that might have some
14 impact on the severance issue. So we chose not to present
15 that evidence at this time, but he does have that pending
16 armed robbery. Mr. Phillips picked him out of a photo lay-
17 down and was willing to come testify, and he saw -- he called
18 law enforcement and told him he knew who did it after he saw
19 his picture in the news after the arrest of Sam Rowell [sic.].

20 But that -- that is still pending against Mr. Woods, and
21 I would draw the Court's attention to -- I know you looked at
22 the video all week. It appears that Mr. Woods has been
23 wearing the same pair of shoes he had on in that video.

24 MR. WOODS: Your Honor, can I speak?

25 THE COURT: No, sir. If your lawyer wants to say

1 something, I'll be happy to hear from him.

2 MR. MEETZE: Your Honor, Mr. Woods just conveyed to me
3 that the shoes are not the same.

4 THE COURT: I understand. Well -- and that's not
5 anything that was in evidence. I understand that.

6 First of all, these types of cases are never easy --
7 never easy for the lawyers that are involved, the juries that
8 have to sit in here and listen to the evidence and make a
9 decision on these cases, because they are decisions that
10 affect other people's lives. When I became a judge, one of my
11 mentors, so to speak, told me that sentencing was probably the
12 most difficult part of this job, and in the four years that I
13 have been on the bench, I've come to learn that real quickly.
14 Sentencing never is easy.

15 It is unfortunate of what brings us and everybody into
16 this courtroom today for such a -- what appears to be, based
17 upon the evidence that was presented in this courtroom, a very
18 cold and calculated and planned ordeal.

19 In the number of years that I did criminal defense work
20 before I was elected to this position, I represented many
21 individuals such as Mr. Wilson and Mr. Floyd and Mr. Meetze
22 are doing right now. While I understand what you have said,
23 Mr. Woods, most of my clients were very cordial to me in my
24 representation of them, as I'm sure they have been to Mr.
25 Wilson and you have been to Mr. Meetze and Mr. Floyd.

1 But that book that sits on the counter or right up here
2 in front that everybody places their left hand on when they
3 come into this courtroom before they take that witness stand
4 to be sworn -- that book says that all of us -- all of us are
5 capable of anything, and if we don't feed ourselves those good
6 things, it results in the tragic decisions that bring so many
7 young people into this courtroom and absolutely not only
8 destroys their lives on this earth, but the many people that
9 care about them, as well as others.

10 This jury has sat here the last few days, has listened
11 very intently, and been very observant in what went on in
12 here, and I appreciate that and I know that the lawyers, as
13 well all parties involved here, appreciate that.

14 SENTENCES BY THE COURT

15 THE COURT: Therefore, based upon the evidence that's
16 been presented and based upon the verdicts that's been
17 rendered in this case, the following sentences apply to each
18 of these defendants.

19 On Indictment 2013-GS-33-256, possession of a weapon
20 during the commission of a violent crime, the sentence of the
21 Court is that the defendants be committed to the State
22 Department of Corrections for a period of five years.

23 Criminal conspiracy under the same indictment number, the
24 sentence of the Court is five years.

25 On attempted murder under the same indictment and as to

1 each defendant, the sentence of the Court is 30 years.

2 On armed robbery under the same indictment number as to
3 each defendant, the sentence of the Court is 30 years.

4 On the murder charge -- murder conviction under the same
5 indictment as to each defendant, the sentence of the Court is
6 life imprisonment.

7 Under the same indictment number as to burglary 1st
8 degree, the sentence of the Court as to each defendant is life
9 imprisonment.

10 THE DEFENDANT SANDERS: So, Your Honor, what happens --

11 THE COURT: Each of these sentences are to run
12 consecutively. Consecutively. That is the sentence of the
13 Court.

14 THE DEFENDANT SANDERS: We got to die two times and then
15 come back and do 70 years?

16 MR. MEETZE: Your Honor?

17 THE COURT: You can talk to your lawyer. Yes, sir, Mr.
18 Meetze?

19 MR. MEETZE: Before you leave the bench, I do want to
20 clear up one thing for the record. I know that the Court
21 indicated that what we say now and what lawyers say at all is
22 not evidence, but --

23 THE COURT: Correct.

24 MR. MEETZE: -- I made an attempt to convey some
25 sentiments for my client, Mr. Woods, and I didn't do a good

1 job of it and I wanted to clear that up for the record.
2 Obviously, what he wanted me to convey to the Court was that
3 he was not in that video so the shoes he's got on now were not
4 in that video.

5 THE COURT: I understand. I understand. That's the
6 sentence of the Court. Thank you.

7 (Whereupon, the proceedings end at 3:32 p.m.)

8

9 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 769 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Marion County, South Carolina, on the 19th
13 through 22nd days of May, 2014.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16

17 s/ Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 September 9, 2014

22

23

24

25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE	)	2013-GS-33-256
	)	
	)	
	)	
State Of South Carolina	)	)
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
Tyrell Woods	)	)
<u>DEFENDANT</u>	)	November 16, 2012
		Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., JUDGE.

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

ED CLEMENTS, SOLICITOR
Attorney for the State

SCOTT P. FLOYD, CHIEF PUBLIC DEFENDER
Attorney for the Defendant

KESHIA REED
Official Court Reporter

I N D E X

(WHEREUPON, no witnesses were called.)

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1 MR. CLEMENTS: Your Honor, this is Mr. Tyrell
2 Woods. He's represented by Mr. Scott Floyd. He has been
3 charged with murder along with Mr. Marco Sanders.
4 Mr. Tucker's gone down to get the warrant number, I'm
5 sorry I don't have that up here. But what we're here for
6 this morning is Mr. Woods is being housed in the
7 department of corrections I think from probation
8 violation; is that correct?

9 THE DEFENDANT: That's correct.

10 MR. CLEMENTS: Or parole violations and SLED
11 went to go take major case prints from him. And my
12 understanding is Mr. Woods asked the SLED agent do I have
13 to do this. And they said, no, you don't have to. And he
14 says, well, I prefer to talk to my attorney before I do
15 this. So I talked to Mr. Floyd. We decided to bring him
16 this morning and put this matter on the record. If
17 Mr. Woods talks to his attorney and still decides that he
18 does not want to submit major case prints, we would ask
19 pursuant to Schmerber vs. California, and we have the SLED
20 officer here this morning, that we be allowed to take the
21 major case prints being that it would not be a matter that
22 would be that intrusive as something that needs to be done
23 for the investigation and it would certainly be less
24 intrusive than drawing blood. So that's the issue right
25 now before the Court. And I'm not sure if Mr. Floyd had a

1 chance to talk with him or not.

2 MR. FLOYD: Your Honor, I have not. He's been
3 in the department of corrections. And I was speaking with
4 other gentleman in there, but I'll be glad to take him
5 right now and speak to him.

6 THE COURT: Okay, thank you.

7 MR. CLEMENTS: And if this not resolved, Your
8 Honor, then we would need you to make a ruling. Thank
9 you, Your Honor. The warrant numbers for Mr. Woods murder
10 2012A3310100041. He has also has a warrant for burglary
11 first 2012A3310100045, armed robbery would be the same
12 number ending in 46, possession of a weapon during the
13 commission of a violent crime the same number ending in
14 47, and that's it, Your Honor.

15 (WHEREUPON, off the record.)

16 (WHEREUPON, back on the record.)

17 MR. CLEMENTS: Please the Court, Your Honor,
18 we're back with Mr. Woods. Mr. Floyd has informed me he
19 has talked with him and at this time Mr. Woods does not
20 want to agree to having his fingerprints.

21 And, Mr. Floyd, you mind if I put the reason on
22 the record?

23 MR. FLOYD: Your Honor, I can tell you basically
24 he feels it is intrusive because he has been arrested in
25 Marion County. He's in the department of corrections

1 system. He already has a conviction. So he feels there,
2 obviously, fingerprints on him already in the system that
3 they can use to accomplish this without forcing him to do
4 another round of fingerprints.

5 MR. CLEMENTS: May I address that Your Honor?

6 THE COURT: Yes, sir.

7 MR. CLEMENTS: Your Honor, I understand what
8 Mr. Woods is saying. He is correct we do have
9 fingerprints of his on file. The problem is is that when
10 we go to trial and we believe that we already have a match
11 on his fingerprints actually at the scene based on
12 matching them to prior fingerprints that have been drawn
13 from him. At trial when that fingerprint analyst talks
14 about that and he is asked where did you get his
15 fingerprints to make the comparison and he says, well, we
16 got them because of his prior criminal history, then we
17 have jeopardized him. And so that is why we want to draw
18 a fresh set of fingerprints, so that it will not be
19 possible that his criminal history come up and the jury
20 hears about it so that he will be prejudice. We're trying
21 to prevent that.

22 THE COURT: Have you explain that to him?

23 MR. FLOYD: Your Honor, he understands that, but
24 certainly we don't have to bring that up in a trial. I
25 mean, we can easily handle that during the course of a

1 trial I believe.

2 THE COURT: Anything you need to add to it?

3 MR. CLEMENTS: Your Honor, we're just trying to
4 do things the right way and in the process to make sure we
5 protect his rights.

6 THE COURT: All right. I'm going to go ahead
7 and order that he give over his fingerprints.

8 MR. CLEMENTS: Thank you, Your Honor. Mr.
9 McEachin just reminded me of something too. Also, Your
10 Honor, we also have his DNA on file, so if the issue comes
11 up and I don't think it will today. But if the issue
12 comes up about wanting to get a buccal swab from Mr.
13 Woods, we would also ask for that under Schmerber vs.
14 California as well.

15 THE COURT: Any objections to that?

16 THE DEFENDANT: May I speak?

17 THE COURT: If you think it's wise to do.

18 THE DEFENDANT: I don't have no problem with
19 giving up my fingerprints. I just ask that if they take
20 them, if they do have to take them, could it be
21 electronically taken instead of putting them on paper.
22 Because I do understand that they can be lifted and I do
23 believe that they already have enough in the system for
24 them instead of getting them on paper. So I would give
25 them -- I would volunteer if they could get them

1 electronically.

2 THE COURT: Can you do that?

3 MR. CLEMENTS: No, sir, Your Honor. We have the
4 guy here and he has his ink pad and his paper, but I don't
5 know of any way to electronically ---

6 THE COURT: How about your lawyer sits with you
7 while that's being done and monitors the situation, make
8 sure that it's done properly and stores properly and
9 carried out of here properly. Would you be okay with it
10 then?

11 THE DEFENDANT: I guess so, Your Honor.

12 THE COURT: You can sit there with him.

13 MR. FLOYD: Yes, sir.

14 THE COURT: Any problem with the swabs?

15 MR. FLOYD: We're fine with that, Your Honor,
16 and I'll be glad to sit with him.

17 THE COURT: Do that and that way it can give him
18 some comfort.

19 MR. FLOYD: Certainly.

20 MR. CLEMENTS: Thank you, Your Honor.

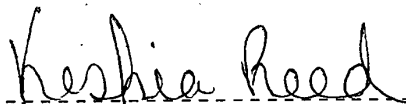
21 END OF REQUESTED TRANSCRIPT
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter and Notary Public
in and for the State of South Carolina At Large, do hereby
certify that the above-entitled cause was heard as
hereinafter set out; that I was authorized to and did
transcribe the said proceedings; and that the foregoing
and annexed paged, numbered 1 through 8, inclusive,
constitute a true and accurate transcription of my
stenographic report of the said cause taken during the
said hearing. In the Court of General Sessions for Marion
County, South Carolina, on the 16th day of November, 2012.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto. In witness
whereof, I have hereunto affixed my signature this 16th
day of May 2014.



Keshia Reed, Court Reporter

STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2013-GS-33-256

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
MARCO SANDERS AND TYRELL WOODS,	)	
	)	
Defendants.	)	

May 13, 2013
Marion, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge

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

ED CLEMENTS, Esquire
Attorney for the Plaintiff

RALPH WILSON, SR., Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

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1	<u>E X H I B I T S</u>			
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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 MAY 13, 2013

2 (WHEREAS this matter was scheduled for a motion hearing,
3 the applicant appeared along with his counsel of record.

4 The hearing began at 11:51 a.m.)

5 THE COURT: Yes, sir?

6 MR. CLEMENTS: May it please the Court, Your Honor. This
7 is Indictment 2013-GS-33-256, the State of South Carolina
8 versus Marco S. Sanders and Tyrell Woods. Mr. Sanders is
9 represented by Mr. Ralph Wilson, Sr., of the Horry County Bar.

10 Your Honor, this is a six-count indictment that charges
11 murder, armed robbery, burglary in the first degree, attempted
12 murder, possession of a firearm during the commission of a
13 violent crime, and conspiracy. Your Honor, all of these
14 charges occurred on July 4th, 2012, and have been indicted by
15 the Marion County Grand Jury on May the 9th, 2013.

16 Mr. Wilson is here, Your Honor, pursuant to our request,
17 Your Honor, for Mr. Sanders to allow us to swab him for DNA.
18 We have Agent Fellers [phonetic] with SLED here to take those
19 swabs, to take them back to Columbia. Your Honor, we thought
20 we would have a -- a possibility that there would be a consent
21 to do this. Mr. Wilson has talked with his client and his
22 client prefers we have a hearing. Your Honor, I'm prepared to
23 go forward with that and would like to call Investigator Neil
24 Rouse of the Marion County Sheriff's Office to the stand.

25 THE COURT: All right.

NEIL ROUSE - DIRECT EXAMINATION BY MR. CLEMENTS

1 THE CLERK: Do you solemnly swear to tell the truth, the
2 whole truth, and nothing but the truth, so help you God?

3 THE WITNESS: I do.

4 THE CLERK: Thank you.

5 NEIL ROUSE, being first duly sworn,
6 testifies as follows:

7 DIRECT EXAMINATION

8 BY MR. CLEMENTS:

9 Q: Can you please state your name for the record and tell
10 the Court what your occupation is?

11 A: Detective Neil Rouse. I'm a detective with the Marion
12 County Sheriff's Office.

13 Q: How long have you been working with the Marion County
14 Sheriff's Office, Detective Rouse?

15 A: I'm in my sixth year now.

16 Q: And did you have occasion to be involved in the
17 investigation of the murder that occurred in Marion County on
18 July 4th, 2012, where Mr. Samuel Rowell was killed?

19 A: I did, sir.

20 Q: And who -- what other detectives worked with you on that
21 case?

22 A: Detective James Lee is the lead investigator on the case.
23 He and I worked it together.

24 Q: And Detective Lee, is he on vacation or he retired?

25 A: He -- since this case has been developed, he's retired.

NEIL ROUSE - DIRECT EXAMINATION BY MR. CLEMENTS

1 Q: Okay. All right. But he's available to come out for the
2 trial; is that correct?

3 A: He is. Yes, sir.

4 Q: Okay. Now, when y'all responded to the -- to the crime
5 scene, what did y'all do in regards to forensics? Did Marion
6 County handle that or did y'all call SLED in?

7 A: No, sir. We called SLED in to do the forensics.

8 Q: And did SLED do the forensics?

9 A: Yes, sir, they did.

10 Q: Do y'all receive reports back at the Marion County
11 Sheriff's Office in regards to what findings you had?

12 A: We do.

13 Q: Okay. And what are some of the things -- items of
14 evidence -- physical evidence that SLED looks for in their
15 forensic examinations?

16 A: They look for fingerprints, DNA, and things like that.

17 Q: All right. And let me ask you this, Detective Rouse.
18 Was there surveillance videos throughout his house?

19 A: Yes, sir, there was.

20 Q: And were the suspects in the murder case -- did they
21 appear on the surveillance video?

22 A: Yes, sir, they did.

23 Q: And were y'all able to identify them or have probable
24 cause of who you thought they were?

25 A: Yes, sir. We identified them.

NEIL ROUSE - DIRECT EXAMINATION BY MR. CLEMENTS

1 Q: And -- and who did you identify the individuals as?

2 A: Marco Sanders and Tyrell Woods.

3 Q: All right. And did you get any -- any results back from

4 SLED in regards to any fingerprints being found at the scene?

5 A: Yes, sir, we did.

6 Q: And were the fingerprints identified to any individuals?

7 A: To Marco Sanders and Tyrell Woods.

8 Q: All right. Were any items swabbed for DNA and submitted

9 to SLED lab?

10 A: Yes, sir, they were.

11 Q: Have you received any information back from that yet?

12 A: Only on -- several items come back, yes, sir.

13 Q: All right. And do you need any DNA standards from Mr.

14 Sanders to make a comparison to these items?

15 A: We do, sir.

16 Q: Okay. Is that why you're seeking a swab from him?

17 A: Yes, sir.

18 Q: Okay. And again, he was identified on the surveillance

19 video and identified in fingerprints relating to the scene?

20 A: That's correct.

21 Q: Okay. Detective Rouse, at this time I would ask you to

22 answer any questions Mr. Wilson has.

23 MR. CLEMENTS: That's all I have at this time. I think

24 we have established probable cause.

25 MR. WILSON: I just have a couple of questions.

NEIL ROUSE - CROSS EXAMINATION BY MR. WILSON

CROSS EXAMINATION

1
2 BY MR. WILSON:

3 Q: Let me ask you in regards to the video, did you
4 personally identify Mr. Sanders as one of the perpetrators?

5 A: Yes, sir, I did.

6 Q: Did you know him before this incident occurred?

7 A: I've been knowing Mr. Sanders since 1993.

8 Q: Okay. And it was based on that knowledge that you
9 identified him from the video then?

10 A: That's correct.

11 Q: Okay. And let me ask you in regards to the fingerprints,
12 you said that there was some fingerprints found in this case.
13 Were they found at the scene of the crime or at some other
14 place? That is the fingerprints of Mr. Sanders.

15 A: They were found in the residence of Mr. Sanders at the
16 scene.

17 Q: The fingerprints were found in the residence of Mr.
18 Sanders?

19 A: Correct. I mean Mr. Rowell.

20 Q: Mr. Rowell? All right. And you said one other thing
21 that I need to ask you about. You said that you wanted --
22 that you needed these swabs in order to compare to some other
23 materials. What are the other materials that you found that
24 you need to compare?

25 A: We found DNA off of the coffee cups, the coffee cup lids,

NEIL ROUSE - CROSS EXAMINATION BY MR. WILSON

1 and such items as that in the -- in and around Mr. Samuel's.

2 Q: Okay. So you have DNA, but you've not -- you don't have
3 a -- you don't have a source to test it to?

4 A: That's correct.

5 Q: Okay. And that's what you need?

6 A: Yes, sir.

7 MR. WILSON: I don't have any other questions. Thank
8 you.

9 MR. CLEMENTS: Just one other thing.

10 REDIRECT EXAMINATION

11 BY MR. CLEMENTS:

12 Q: Was Mr. Rowell taped up with duct tape?

13 A: Yes, sir, he was.

14 Q: And are you -- is part of the investigation an attempt to
15 determine if there is any DNA on this duct tape?

16 A: That's correct, Your Honor -- I mean sir. Yes, sir.

17 Q: And -- and there has been DNA found on the duct tape, but
18 they haven't compared it with anyone yet?

19 A: They have, Your Honor.

20 Q: Okay. All right.

21 MR. CLEMENTS: That's all the questions I have, Your
22 Honor. Unless His Honor has any questions for Detective
23 Rouse, I'm done.

24 THE COURT: Anything further, Mr. Wilson?

25 MR. WILSON: Just one last question if I might, Your

NEIL ROUSE - RECROSS EXAMINATION BY MR. WILSON

1 Honor.

2 RECROSS EXAMINATION

3 BY MR. WILSON:

4 Q: With regard to the duct tape that you said that was
5 found, was Mr. Sanders' prints found on the duct tape?

6 A: I'm not sure about his fingerprints on it. I'm not sure
7 about that.

8 Q: All right. Do you know where his specific -- if his
9 fingerprints were found in the house, was Mr. Sanders'
10 fingerprints found in Mr. Rowell's house someplace?

11 A: That's correct.

12 Q: But not in the vehicle?

13 A: No, sir.

14 Q: In the house?

15 A: In the house.

16 Q: All right.

17 THE COURT: You may step down.

18 MR. CLEMENTS: If it please the Court, Your Honor?

19 THE COURT: Yes, sir.

20 MR. CLEMENTS: Your Honor, in Schmerber v. California I
21 think it's really sort of like a glorified search warrant,
22 Your Honor, and we have to provide probable cause for a search
23 warrant, and the State in this instance, as in Schmerber, is
24 asking to get material from the body of Mr. Sanders, which is
25 a whole lot less intrusive in this matter because all we're

1 asking to do is to take a swab from the inside of his cheek.
2 We're not asking to draw blood, which I think is what was
3 asked for in Schmerber.

4 But this equates pretty much to a search warrant which we
5 have to have probable cause for. I believe we've established
6 that we've got probable cause and that there has been an
7 identification on surveillance video of being Mr. Sanders.
8 Mr. Sanders has his fingerprint on several items that were
9 there in the home and there are several things that DNA swabs
10 were collected from and we wish to test those against Mr.
11 Sanders. I believe we have established probable cause and it
12 would be proper to allow the State to take a swab of Mr.
13 Sanders to make these DNA comparisons.

14 THE COURT: Mr. Wilson?

15 MR. WILSON: Your Honor, I'm not aware of -- several of
16 -- one of the things is is that in the motion for discovery
17 that I have, I don't recall there being a fingerprint of Mr.
18 Sanders in the house. That I know that there was allegedly a
19 print found in a white vehicle that -- that was one of the
20 items or one of the vehicle -- or was the vehicle that was
21 supposed to have been used in the alleged robbery, but I'm not
22 aware of any prints that -- of Mr. Sanders that was found in
23 the house, and the identification -- I'm not -- I've seen the
24 video and I guess, you know, obviously I understand the
25 officer is testifying based on his knowledge and his

1 experience with seeing Mr. Sanders that he believes that the
2 person in the video is Mr. Sanders and -- but I would think
3 that -- that they have -- if they have what they say they
4 have, then I don't know that there is a need anyway for -- for
5 the DNA. If they've got fingerprints in the house and if they
6 have a video, then why are we doing the DNA anyway? I mean I
7 just -- I'm not real clear, but anyway, our position is is
8 that it's not warranted and the search warrant should -- that
9 their request should be denied.

10 RULING OF THE COURT

11 THE COURT: All right. Based upon what I've heard here
12 today, I believe the State certainly has met its burden of
13 establishing probable cause to take the buccal swab from Mr.
14 Sanders and, therefore, I will sign an order authorizing such
15 to be done. Anything further from the State at this time?

16 MR. CLEMENTS: Your Honor, we have the SLED agent here
17 right now ready to take the swab and head back to Columbia,
18 and we have it here on the record and if you wish for us to
19 prepare an order, we will do so, but it is on the record.
20 Unless Mr. Wilson objects, I think we've covered it
21 sufficiently, but we don't have that written order and don't
22 need to hold the SLED agent any longer. Unless Mr. Wilson
23 objects, I would ask that we just proceed with the order as
24 you've enunciated it here in court on the record.

25 MR. WILSON: Of course, given your verbal order, that's

1 -- that's sufficient.

2 THE COURT: Okay.

3 MR. WILSON: He agrees with that.

4 THE COURT: All right. So granted.

5 MR. CLEMENTS: Thank you, Your Honor. And, Your Honor,
6 we will be -- Mr. Wilson and I have agreed to have the bond
7 hearing for Mr. Sanders. We will be doing that next Friday,
8 Your Honor.

9 THE COURT: Okay.

10 MR. CLEMENTS: And we'll go ahead and put that on the
11 record and lock us in.

12 MR. WILSON: Thank you, Your Honor.

13 THE COURT: Thank you.

14 (Whereupon, the proceedings end at 12:01 p.m.)

15

16 --- END REQUESTED TRANSCRIPT ---

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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF MARION	)	CASE NO. 2013-GS-33-256

STATE OF SOUTH CAROLINA,	)	
	)	
Plaintiff,	)	

-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	

MARCO SANDERS AND TYRELL WOODS,	)	
	)	
Defendants.	)	

May 8, 2014
Marion, South Carolina

B E F O R E:

THE HONORABLE D. CRAIG BROWN, Judge

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

ED CLEMENTS, Esquire
Attorney for the Plaintiff

RALPH WILSON, SR., Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

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1	<u>E X H I B I T S</u>			
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3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 MAY 8, 2014

2 (WHEREAS this matter was scheduled for pre-trial motions,
3 the defendant appeared along with his counsel of record.
4 The hearing began at 11:03 a.m.)

5 THE COURT: All right. Is the State ready to proceed?

6 MR. CLEMENTS: We are, Your Honor.

7 THE COURT: Is defense counsel ready to proceed?

8 MR. WILSON: I am, Your Honor.

9 THE COURT: All right. We are -- Mr. Sanders, you can
10 have a seat in that chair right beside your lawyer. We are
11 here on Indictment 2013-GS-33-256. Is that the only
12 indictment number, Mr. Clements?

13 MR. CLEMENTS: Your Honor, that is the only indictment
14 number.

15 THE COURT: All right. It's the State of South Carolina
16 versus Mr. Marco Sanders. Mr. Wilson, defense counsel, is
17 here with his client. He had forwarded -- Mr. Wilson
18 forwarded several motions to my law clerk I think yesterday.
19 We are here to address the numerous motions filed by Mr.
20 Wilson.

21 Prior to us beginning this hearing today, I inquired of
22 Mr. Clements and Mr. Wilson as to whether or not they had
23 discussed these various motions to determine what they could
24 agree upon and what they could not agree upon. At this time,
25 I am going to defer to Mr. Clements to convey to the Court

1 what they can agree upon, giving Mr. Wilson follow-up if Mr.
2 Clements for whatever reason leaves something out. After
3 that, I will defer back to Mr. Wilson, since they are his
4 motions, to begin addressing the motions that they cannot
5 agree upon. All right. Mr. Clements?

6 MR. CLEMENTS: Your Honor, if I may put one other thing
7 on the record?

8 THE COURT: Okay.

9 MR. CLEMENTS: Your Honor, this is the State of South
10 Carolina versus Marco Sanders and Tyrell Woods.

11 THE COURT: Okay.

12 MR. CLEMENTS: Which we do intend on trying these
13 gentlemen together pursuant to how the Court rules on some of
14 the motions today, but I would like to note for the record
15 that Mr. Vick Meetze is an attorney and that he and Mr. Floyd
16 represent Mr. Tyrell Woods and he is present in the courtroom
17 here while these motions are being argued even though their
18 motions do not certainly go to both defendants. It goes for
19 Mr. Wilson's defendant, but he is present here I guess
20 protecting Mr. Woods' interest.

21 THE COURT: All right.

22 MR. CLEMENTS: Your Honor, first we have -- there has
23 been a motion filed of notice of the defendant's assertion of
24 the insanity defense.

25 THE COURT: Hold on a minute.

1 MR. CLEMENTS: Do you want to take them ---

2 THE COURT: I'm going to -- well, are y'all agreeing on
3 that?

4 MR. WILSON: No, sir.

5 MR. CLEMENTS: No, sir.

6 THE COURT: Well, what I said is I want to hear from you
7 first on what y'all agree upon.

8 MR. CLEMENTS: Oh, okay.

9 THE COURT: And then I'm going to address the ones that
10 you don't agree upon. I'm going to let Mr. Wilson argue his
11 point on the ones y'all don't agree upon and then I'll hear
12 from you in response to what y'all don't agree upon, but first
13 of all, I want to hear what you agree on.

14 MR. CLEMENTS: My -- my mistake, Your Honor. I was just
15 going through them in the order we had them, telling you where
16 we were on each one.

17 THE COURT: Okay.

18 MR. CLEMENTS: Your Honor, there's also -- there's some
19 motions that we agree in part on, but we have a couple of
20 little issues. Can I go ahead and go forward with those?

21 Your Honor, Mr. Wilson made a motion to permit the
22 accused to appear in civilian clothing and without restraints
23 in all proceedings and we do agree, Your Honor, that Mr.
24 Sanders should be able to come to the courtroom where there is
25 any jurors possibly present in civilian clothes, Your Honor,

1 and we all -- we both agree on that. And, Your Honor, we
2 would also say, Your Honor, that we would -- I think we've
3 reached an agreement that as long as there's restraints that
4 are unseen by the jury that are under his clothes that we can
5 agree on that.

6 THE COURT: All right. Is that correct, Mr. Wilson?

7 MR. WILSON: That is correct, Your Honor.

8 THE COURT: All right.

9 MR. CLEMENTS: Also, Your Honor, what I would add to this
10 for the benefit of law enforcement is we want to be sure that
11 Mr. Sanders is brought into the courtroom early enough where
12 potential jurors or jurors don't see him getting out of a van
13 like he's coming from the jail, and they have a holding cell
14 downstairs and they can bring him early enough that he can be
15 placed there and that he not be brought in and out of the
16 courtroom where it is evident to jurors in their presence that
17 he's shackled.

18 THE COURT: All right. Okay.

19 MR. CLEMENTS: Motion to preserve the evidence, Your
20 Honor. We have agreed that we will preserve evidence and are
21 preserving any evidence that we're not going to present at
22 trial and that it would be available for Mr. Wilson if he
23 needs it for trial. Is that correct, Mr. Wilson?

24 MR. WILSON: That is correct.

25 THE COURT: Hold on a minute. All right. What have you

1 got next?

2 MR. CLEMENTS: Your Honor, there's a motion to produce
3 DNA evidence data testing protocols and, Your Honor, we have
4 talked about that and there is -- we do not believe there is
5 any DNA evidence against Mr. Sanders. We want to ascertain
6 that that is absolutely certain and if there's not, there's
7 not an issue, but if there is, we are in agreement to inform
8 our SLED scientists to please talk with Mr. Wilson and talk
9 about the data testing protocol and provide him access to
10 that. We just provided him the report that we received.

11 THE COURT: All right. Is that correct, Mr. Wilson?

12 MR. WILSON: That is correct, Your Honor. The -- just
13 out of an abundance of caution is that my concern is is that
14 we had a Schmerber hearing I think back in May of last year
15 and at that hearing it was my understanding that they wanted
16 saliva and other bodily fluids and wanted to test against
17 something and I'm not sure what it was that they were testing
18 against. I haven't gotten any results and I just want to make
19 sure that if they tested something, I want to know what it was
20 that they tested and what the results of those tests were.

21 MR. CLEMENTS: And, Your Honor, I believe that to be the
22 duct tape that was around the hands and feet and head of the
23 victim and if it was the item, we would ascertain that for
24 certain.

25 THE COURT: All right. All right.

1 MR. CLEMENTS: Your Honor, there's also a motion to
2 present -- produce forensic evidence and information, and I
3 think that's a motion for DNA, but also -- I think there's
4 also fingerprints and stuff which we do believe that has been
5 produced or at least the test results, but if there's anything
6 else that was part of the process that Mr. Wilson needs, we
7 will -- he knows who our SLED and officers are that conducted
8 those tests and we will certainly ask them to -- to make their
9 data available to Mr. Wilson if he needs it. But I think the
10 biggest concern was the DNA.

11 MR. WILSON: And that is correct, Your Honor. Again,
12 this goes back to the last motion that I was just arguing. We
13 were just concerned that there's some things that may have
14 been tested that they didn't get a positive result regarding
15 the defendant, but we don't have any information and I'm just
16 wanting to know that there is nothing else out there if
17 there's nothing else out there.

18 THE COURT: You'd be entitled to that.

19 MR. WILSON: Yes, sir.

20 MR. CLEMENTS: Yes, sir.

21 THE COURT: All right.

22 MR. CLEMENTS: All right. Your Honor, there's other
23 motions I think we have a little more disagreement on and we'd
24 like to take those up, Your Honor, at this time.

25 THE COURT: All right. Mr. Wilson, I'll let you address

1 them. Address each one individually.

2 MR. WILSON: Yes, sir.

3 THE COURT: And then I'll hear from Mr. Clements in
4 response or reply to each one as you address each one
5 individually.

6 MR. CLEMENTS: I misstated one, Your Honor. I had it
7 covered up. There's a motion to sequester the witnesses and
8 we talked about that and as long as it goes to both sides, we
9 don't care.

10 THE COURT: Mr. Wilson?

11 MR. WILSON: That's fine. I -- originally, my intent was
12 to sequester only three witnesses of the State's, but I don't
13 have any objection to sequestering everybody. I just didn't
14 want to inconvenience everybody by being sequestered. There
15 are only three people that I'm concerned about, but that's not
16 -- I don't have any objections.

17 THE COURT: Okay.

18 MR. CLEMENTS: And, Your Honor, that -- when I say
19 everyone, I was leaving my lead investigator and my victim's
20 family out.

21 MR. WILSON: Absolutely.

22 THE COURT: All right. Anything else on that response?

23 MR. CLEMENTS: Your Honor, I think now we're just down to
24 the motions we have some disagreement on.

25 THE COURT: All right. Well, let -- I'll tell you what.

1 Let's do it in this order. The motion to -- and this is just
2 the order that I printed them off in ---

3 MR. WILSON: Yes, sir.

4 THE COURT: --- when I got them from your office.

5 MR. WILSON: Yes, sir.

6 THE COURT: Motion to seal defendant's visitation log.

7 MR. WILSON: Yes, sir. Would you like for me to address
8 that first?

9 THE COURT: Yes, sir.

10 MR. WILSON: Thank you. Your Honor, the motion is based
11 on the fact that obviously the defendant is now housed at J.
12 Reuben Long where he's been for several months. We -- what
13 we're attempting to do is we are in the process of getting
14 ready for trial now, which means that if we wanted to have an
15 expert go out and talk to the defendant or if we had various
16 witnesses that -- that I wanted to use and if they visit the
17 defendant at jail, then their names are going to be on the log
18 of the jail because that's the procedure that the jail has.
19 If you go there for whatever your reasons are, even lawyers,
20 you must sign in and you must sign out.

21 I don't want the State to have access to that and -- you
22 know, because I think that -- for instance, if we followed a
23 process where we decide that we want to -- which I filed a
24 motion asking the Court to allow me to do -- to use a defense
25 of insanity and I know we'll be able to have later, but one of

1 the things that I may very well do is have a psychiatrist go
2 out to the jail or a therapist go out to the jail, a
3 psychologist go out to the jail to meet with this defendant.
4 I don't know what they're going to find and what they're going
5 to say, but I don't want the State having access to that
6 knowledge or that information about that person having visited
7 so that they could then call the person who might have
8 something negative to say about the defendant.

9 So I don't -- I don't want to put the defendant in that,
10 and he's not free so he can't come to my office to visit and
11 the only way that I can do anything for him is to go to the
12 jail to visit with him. So I'm asking the Court to seal his
13 log so that the State can't see who goes -- who visits him.
14 You know, obviously, I'm not asking the Court to allow
15 anything unusual at Horry County Detention Center. I'm simply
16 saying I don't want the State to be able to know who is going
17 in and out visiting him, especially during this critical
18 period shortly before the trial.

19 THE COURT: All right. Anything else on that issue?

20 MR. WILSON: No, sir.

21 THE COURT: Mr. Clements? Can you -- before you talk can
22 y'all close those blinds? All that -- or turn them up because
23 it's affecting my ability -- maybe it's my contacts instead,
24 but it's hard to see.

25 MR. CLEMENTS: Your Honor, since you've got me standing

1 before you and Mr. Wilson, it might be a blessing that you
2 can't see us, but ---

3 MR. WILSON: Speak for yourself.

4 MR. CLEMENTS: Your Honor, if it please the Court, we are
5 somewhat concerned about that. Certainly, there is a
6 visitation log. All we can get from that are names. That
7 doesn't mean those people would be willing to talk to us or we
8 could ever get any information from them, but we would have a
9 name and that name -- that knowledge of just having that name
10 I don't think would be prejudicial to the -- to the defendant
11 at all, but it might possibly be prejudicial to the State.

12 When we respond on discovery -- on Rule 5 and we send
13 them discovery, we always include a request for the notice of
14 alibi by the defendant, but we also include a request for
15 notice of insanity defense. And according to Rule 5 of the
16 South Carolina Rules of Criminal Procedure regarding
17 disclosure in criminal cases, Section F says that upon written
18 request of the prosecution, which we sent months and months
19 ago, the defendant shall within ten days or at such time as
20 the Court may direct notify the prosecution in writing of the
21 defendant's intention to rely upon the defense of insanity at
22 the time of the crime or to enter a plea of guilty but
23 mentally ill, which we just received I think my secretary said
24 at 6:49 last night.

25 And then it goes on to say that if the defendant fails to

1 comply with the requirements of the subdivision, the Court may
2 exclude the testimony of any expert witness offered by the
3 defendant on the issue of his mental state. And to seal the
4 visitation logs, we wouldn't even know who was coming so we
5 would have no preparation whatsoever and that kind of goes
6 back to the old days of trial by ambush and I think it would
7 be violative of the spirit of the discovery rules if those
8 logs were closed to us or we ---

9 And I understand that Mr. Wilson made a motion before
10 that Your Honor heard. You didn't find anything that was
11 appropriate or required having a mental evaluation at the
12 state hospital and we went from there. So we -- we're just
13 kind of in the dark and if this insanity defense was able to
14 be asserted at this late date, we need to know a name or we
15 would be completely unprepared and in the dark and I don't
16 think that would -- that would be in the interest of justice
17 whatsoever.

18 So, you know, also we got -- I understand that Mr. Wilson
19 says that, you know, his man was in New Jersey when this
20 happened, but has provided us with no witnesses because I
21 don't think his client has provided him with any alibi
22 witnesses. He just said he was in New Jersey. But if we got
23 people coming in and we got a name and we saw this person was
24 from New Jersey, well, then maybe this is his alibi witness,
25 but we wouldn't know that if the visitation logs were sealed.

1 So we don't think that's necessary. We don't think that
2 would protect any fundamental right of the defendant in this
3 case and would just be in violation of the spirit of the rules
4 of discovery for South Carolina criminal court.

5 MR. WILSON: Your Honor, briefly in response, the -- the
6 difference is is that the defendant is incarcerated so he's at
7 the mercy of the State. He can't go and come as he pleases.
8 If he was free on bond, you know, the State wouldn't know who
9 I spoke to or what witnesses he talked with or which experts
10 he met with. They'd have no way of knowing and they have no
11 right to know. The only reason that they have access to him
12 is because he's incarcerated and he can't -- he's not free to
13 go out and do things on his own. That in and of itself
14 prejudices this defendant and so what you're -- what we would
15 be saying based on what the solicitor's logic is is if you're
16 incarcerated, then you don't have the same rights that you do
17 as if you were free and that's obviously not true.

18 This defendant is incarcerated. He still has the same
19 rights not to have evidence incriminate him that -- that the
20 State can gain access through keeping him in prison. In fact,
21 that would encourage the State in order to get information
22 about them is to keep them locked up so they can find out
23 everything that's going on with the defendant and that's not
24 proper. That is not proper and they're not supposed to be
25 able to gain information simply by keeping them locked up.

1 THE COURT: Anything in response, Mr. Clements?

2 MR. CLEMENTS: I beg the Court's indulgence one moment.
3 Your Honor, I don't know of any legal precedent to what Mr.
4 Wilson is arguing, but I do know that the rules say that
5 within ten days the defendant shall serve notice of alibi
6 defense, within ten days the defendant shall serve notice of
7 an insanity defense, and that in a reasonable time the
8 prosecution should receive written notice of any names and
9 addresses of witnesses upon which the defendant intends to
10 rely to establish an alibi defense. We haven't received any
11 of that. It might be the only way we get it is from a jail
12 log and certainly we would know -- we might know who he is
13 talking to, but we don't know who he's talking to outside or
14 who Mr. Wilson talked to who doesn't go to the jail. So he
15 doesn't have to have them go to the jail. He can talk to them
16 and then he can go talk to his client.

17 But my biggest concern with this would be as to how it
18 would be in violation of our lack of notice on alibi or lack
19 of notice on insanity, and there is a continuing duty to
20 disclose under Rule 5(e)(3). There's a continuing duty to
21 disclose by both parties, to promptly disclose name and
22 addresses of additional witnesses, and that is what I am
23 concerned with.

24 THE COURT: All right.

25 MR. CLEMENTS: Not so much that we know if his mama or

1 his grandma or his cousin or his lawyer visits him.

2 And another concern, Your Honor, I have -- and Mr. Wilson
3 has never done this to my knowledge to us, but we've had this
4 done by other defense attorneys, which is in violation of the
5 rules of discovery. They have an expert go talk to a
6 defendant and under the rules we'd be entitled to a report and
7 what the defense attorney does is they instruct that expert do
8 not do a report so that way we don't have to turn it over to
9 the prosecution.

10 And I don't think Mr. Wilson would do such a thing. He's
11 a much more honorable man and has much more integrity than
12 that, but that has happened to us in the past. So I just
13 raise that as a potential issue in general, not specifically
14 Mr. Wilson.

15 MR. WILSON: Judge, the first concern I ---

16 THE COURT: Listen. We're not going back and forth and
17 back and forth and back and forth. We'll be here all day. I
18 mean I've given each of you two opportunities to argue your
19 position and I've heard enough and I'm going to make a
20 decision on it. Okay?

21 MR. WILSON: All right, sir.

22 THE COURT: All right. Based upon what I've heard, I am
23 going to deny defense counsel's motion to seal the visitation
24 log. I do not believe that there would be any prejudice to
25 the defendant by this Court's order of -- failure to order

1 such logs to be sealed. There may be names of individuals
2 that visit this defendant at the detention center. I mean
3 it's not a situation wherein substance of any conversations
4 are being recorded between them that would -- would possibly,
5 in fact, prejudice the defendant.

6 And as to the situation, I understand your argument, Mr.
7 Wilson, but defendants that are incarcerated have access to
8 telephones and those telephone conversations between
9 defendants and whoever they call are recorded and they -- that
10 -- we're not even getting into that situation here. We're not
11 even getting into that situation here, but I do not believe
12 that there would be any prejudice to the defendant by simply a
13 notation of who visits him while he's at J. Reuben Long
14 Detention Center.

15 So I'm going to respectfully deny your request on that
16 matter, but your objection is so noted for the record.

17 MR. WILSON: Thank you, Your Honor.

18 THE COURT: All right. Hold on just a second. All
19 right. Next matter we're going to deal with is defendant's
20 motion -- notice of motion and motion to sever. Mr. Wilson,
21 I'll be happy to hear from you on that issue.

22 MR. WILSON: Yes, sir. Your Honor, in this case,
23 obviously, there is two defendants and there is a video which
24 alleges to -- which purports to show that the two defendants
25 were the individuals who committed the crime. My concern is

1 is that, one, the video is of poor quality and so it makes it
2 almost impossible to look at the video and actually pick out
3 an individual as being that person on the video. That's my
4 concern.

5 Now, what happens as a result of that is that you have
6 two defendants who are going to trial. You have a substantial
7 amount of evidence -- forensic evidence against one of the
8 defendants and very little, if any, against the second
9 defendant, which is my client, and my concern is there are two
10 people on the video. There is no -- almost little evidence
11 against my client and he's sitting at the table with this
12 other person who there is mountains of evidence against. The
13 natural inclination is is if there are two people on the
14 video, then he must be the other person because there ain't
15 nobody else here other than the two of them.

16 And -- and the spillover from what will come in about the
17 other defendant really I think prejudices my client so that
18 he's not going to be able to get a fair trial -- a fair,
19 impartial trial with a jury who hears the evidence and then
20 sees a video with two males on the video. That's what my
21 concern is and that's why we would -- we would like to have a
22 trial separate and distinct from the co-defendant, Mr. Woods.

23 THE COURT: All right. Thank you, Mr. Wilson.

24 MR. WILSON: Yes, sir.

25 THE COURT: Mr. Clements?

1 MR. CLEMENTS: Your Honor, of course, I disagree with the
2 characterization of the evidence submitted by Mr. Wilson.
3 Also, the description of the body of evidence submitted by Mr.
4 Wilson. I think we got a whole lot to try his client on.

5 Granted, that videotape is not of the quality of my
6 television that I have hi-def on, but it certainly is of the
7 quality of what I used to look at when I was younger and we
8 had antennas sitting on top of the TV. It's much better in
9 some respects and his client is on it all over the place with
10 his -- with his facial exposure looked at dead on, profile,
11 turning different ways, whereas the co-defendant only has his
12 profile on the surveillance video, and Mr. Sanders is shown
13 there with his gun and a roll of duct tape and a bullet-proof
14 vest on and it's clear. You know, you can see it from several
15 different angles as he turns his head and moves around on that
16 video.

17 There is fingerprints there and there's been eyewitness
18 identification. All that is potential evidence and I do not
19 think that there is any Bruton issues. There are no
20 statements by either defendant. There's nothing of that that
21 will give rise to having to have a severance of these two
22 parties and it would just be a tremendous burden on the State
23 with our lack of court time and our lack of resources and our
24 lack of money to have to try these individuals separately when
25 it would be exactly the same case and exactly the same

1 witnesses two times in a row.

2 There is -- there is nothing I would see to say
3 severance. I mean Mr. Wilson said his guy said he was in New
4 Jersey. So, you know, there's twelve of them. The jury is
5 going to identify him on that video and say yeah, that's him.
6 Not what they're going to identify and say, yeah, that's Mr.
7 Woods. Yeah, that's his fingerprint. Why is it there? Or
8 yeah, he's been identified by a witness.

9 THE COURT: All right.

10 MR. CLEMENTS: As the State presents all that or presents
11 part of that, it has no bearing on whether Mr. Woods is
12 sitting there or not.

13 THE COURT: Let me ask this question, Mr. Wilson. What
14 specific -- what specific trial right of your client would be
15 being impaired, so to speak?

16 MR. WILSON: Well, basically, the Fourteenth Amendment,
17 the Sixth Amendment. His right to have a fair and impartial
18 trial, that's what being impacted because there is -- and I
19 don't want to get too specific about what that defense is, but
20 as best I know, the only evidence that exists that says that
21 my defendant was in the house was there was supposed to be a
22 fingerprint on a cigar box which was found in the house, which
23 was one of these little, small cigar boxes which could have
24 come from anywhere. I mean I don't know where it come from
25 and I don't know how it got there, but maybe Mr. Woods put it

1 there.

2 I don't know how it got there, but my point is there is
3 no overwhelming evidence. There is a person who is supposed
4 to be an eyewitness which is at best a dubious character and
5 -- and we'll deal with that obviously at trial, but my point
6 is all of the forensic evidence that the State has collected
7 suggests that Mr. Woods was present. It does not suggest --
8 there is no DNA evidence, there is no -- no other physical
9 evidence which places my client at that crime scene. None.

10 MR. CLEMENTS: With the exception of the videotape, Your
11 Honor.

12 MR. WILSON: Even ---

13 THE COURT: Well, let me ask this, Mr. Wilson.

14 MR. WILSON: Yes, sir.

15 THE COURT: Under State v. Dennis, 137 S.C. 275, I as the
16 trial judge am required -- required to issue a cautionary
17 instruction to the jury that they should consider the evidence
18 and they should consider the evidence separately as to each
19 defendant so that no prejudice will result to your client.
20 Are you not assuming that they can't abide by that instruction
21 of the Court?

22 MR. WILSON: I certainly -- I know the Court will charge
23 them on that and I know that the jury will try to do that, but
24 I think it's really difficult, you know, when -- when you're
25 -- when a jury has all this information about one co-defendant

1 who -- where the evidence might be overwhelming and then
2 there's the second co-defendant who is sitting there and
3 there's only one thing or a very minor thing which attaches
4 him to the whole situation, but at the same time there's a
5 video with two people on it and there are two people sitting
6 at the table.

7 That's what my -- and I -- I -- yeah, I do think that
8 that's going to be really difficult for the jury when they
9 hear all of the evidence about the one fellow to separate that
10 completely and say okay, yeah, there are two people on the
11 video, but I just think it's going to be difficult for them to
12 do that. I do.

13 THE COURT: Let me ask you this, Mr. Clements. Do the
14 facts and circumstances of this particular case arise out of a
15 single chain of circumstances?

16 MR. CLEMENTS: Your Honor, it was a single chain of
17 circumstances. Two people going into the home ---

18 THE COURT: Are the cases as they relate to each
19 defendant proved out of the same evidence?

20 MR. CLEMENTS: Yes, sir. Absolutely.

21 THE COURT: Same witnesses?

22 MR. CLEMENTS: Same witnesses, the same videotape, the
23 same set of fingerprints taken by SLED, same duct tape that
24 was wrapped around the victim's head and hands and feet.

25 THE COURT: And each of them are indicted for the same

1 offenses?

2 MR. CLEMENTS: Yes, Your Honor.

3 THE COURT: All right. All right. Pursuant to State v.
4 Tucker, 324 S.C. 155, and considering the factors set forth
5 there, whether or not the charges in the case arises out of a
6 single chain of circumstances, are proved by the same
7 evidence, are of the same general nature, and no real right of
8 the defendant has been prejudiced, based upon what I've heard
9 here today, the Court is respectfully denying defendant's
10 motion to sever, but your objection and arguments are so noted
11 for the record.

12 All right. Next motion, defendant's assertion of the
13 insanity defense.

14 MR. WILSON: Yes, sir.

15 THE COURT: Mr. Wilson, I'd be happy to hear from you.

16 MR. WILSON: Yes, sir. May it please the Court. Your
17 Honor, we filed a motion some weeks back requesting an
18 evaluation ---

19 THE COURT: Right.

20 MR. WILSON: --- of the defendant.

21 THE COURT: Which I heard.

22 MR. WILSON: The defendant at that time informed me that
23 he had had some issues when he was in grade school and that he
24 had later gotten on Social Security disability as a result of
25 some mental issues that he had. And what we're doing is this

1 is a furtherance of that. Of course, we had a hearing. The
2 Court denied his request to go to the state hospital for the
3 evaluation, but the defendant is still going to pursue ---

4 THE COURT: That defense?

5 MR. WILSON: --- that defense and so we're asking the
6 Court to allow us to continue with that defense if he chooses
7 to continue with it from this point forward.

8 THE COURT: All right. Hold on. Anything further by way
9 of argument on that?

10 MR. WILSON: No, sir.

11 THE COURT: Mr. Clements?

12 MR. CLEMENTS: Your Honor, I don't mean to be redundant
13 so -- and I've said a lot about that already and I just say
14 pursuant to Rule 5, South Carolina Rules of Criminal
15 Procedure, Section F, I would say that ship has sailed.

16 THE COURT: Hold on just a minute. All right. In
17 reviewing Rule 5, it also says here the Court may -- the Court
18 may for good cause shown allow late filing of the notice.

19 MR. CLEMENTS: That is correct, Your Honor.

20 THE COURT: All right. Now, having addressed that in the
21 rule, what additional information, Mr. Wilson, do you have or
22 does defense have that may warrant good cause at this stage,
23 please, sir?

24 MR. WILSON: I don't have anything in addition to what we
25 submitted at the hearing that we had back in ---

1 THE COURT: It was a couple of months ago probably. I
2 don't remember exactly.

3 MR. WILSON: I think it was in April. It was in April.
4 I'm pretty sure it was in April.

5 THE COURT: It seems like a couple months ago.

6 MR. WILSON: Yes, sir.

7 THE COURT: Anything further in response, Mr. Clements?

8 MR. CLEMENTS: No, Your Honor.

9 THE COURT: Well, based upon the rule and, again, I want
10 to note for the record and I know it was abundantly clear on
11 the record at the time that I asked Mr. Wilson at the time
12 that he made his motion for an evaluation about his ability to
13 communicate with the defendant, about his opinion as to
14 whether or not the defendant understood their discussions, et
15 cetera.

16 MR. WILSON: Yes, sir.

17 THE COURT: At the time, Mr. Wilson indicated that he
18 believed his client understood what was going on. That he had
19 had no -- absolutely no problems whatsoever communicating with
20 him. Has any of that changed, Mr. Wilson?

21 MR. WILSON: No, sir.

22 THE COURT: All right. All right. Pursuant to Rule 5, I
23 am going to respectfully deny defendant's request. I do not
24 believe that good cause has been shown at this stage of the --
25 of the pending proceedings against the defendant. I do not

1 believe that good cause has been shown to warrant such a late
2 notice at this point in time.

3 MR. WILSON: Judge, just my ---

4 THE COURT: Yes, sir.

5 MR. WILSON: I know when we filed the original motion to
6 send him to the state hospital, it was really to have him
7 evaluated for competency for one thing and -- and this second
8 part now is actually the actual part where we're -- where he's
9 alleging that he wants or may want to use the defense of
10 insanity, which would be a little bit different not only what
11 the evaluation would have shown if he had actually gone, but
12 -- I'm sorry.

13 THE COURT: Go ahead.

14 (Whereupon, the defendant and counsel confer.)

15 MR. WILSON: Judge?

16 THE COURT: Yes, sir.

17 MR. WILSON: He says he wants me to withdraw the motion.
18 He's innocent. He wants me to withdraw it so I would withdraw
19 it.

20 THE COURT: All right. Had he not withdrawn it, the
21 Court still would deny it, but in light of what you have
22 discussed with your client here in the courtroom and the fact
23 that he's conveyed to you that he wants you to withdraw it,
24 I'll allow it to be withdrawn.

25 MR. WILSON: Thank you, Your Honor.

1 THE COURT: Hold on just a minute. All right. The next
2 matter, motion to suppress eyewitness identification or, in
3 the alternative, for an in camera hearing. Mr. Wilson?

4 MR. WILSON: Yes, sir. Judge, there is -- there -- as
5 far as I know, there is one, possibly two, witnesses who would
6 attempt to identify the defendant and I would think that --
7 giving it second thought, that probably the better course
8 would be to wait until we actually start the trial and then do
9 an in camera hearing at that point, but I guess more than
10 anything else, I'm making the motion so that I'm making the
11 State aware that that's my request that we have an in camera
12 hearing before any witness testifies as to the identity of the
13 individual on the tape as being the defendant.

14 THE COURT: Okay.

15 MR. WILSON: Or him being in the house.

16 THE COURT: Mr. Clements?

17 MR. CLEMENTS: Your Honor, we would agree that this would
18 be most appropriate at an in camera hearing at the time of
19 trial when the issue comes up, if it comes up as to the
20 witnesses that he anticipates it may. Some of those witnesses
21 -- all those witnesses may be called or none of them or one of
22 them.

23 THE COURT: All right. Well, I'll defer pending -- or
24 when we get into trial of the case. I certainly believe that
25 an in camera hearing on that matter probably would be

1 necessary if it arises. All right?

2 The next motion, motion to change order and method of
3 closing.

4 MR. WILSON: Yes, sir. Your Honor -- and -- and
5 actually, Judge, actually these two motions -- the last two --
6 I think there is only two left. Right? One is a motion to
7 change the order and method of closing; the other is the
8 motion to require the State to open fully on the law.

9 THE COURT: Yes, sir. Right.

10 MR. WILSON: They're -- they're very -- they're --
11 they're kind of companion motions, but -- but what I'm asking
12 is this -- is that in South Carolina, we have always had the
13 rule that the State gets the last argument unless the
14 defendant puts evidence in and -- but now the circuit court
15 rules have changed for civil court in more recent years and
16 now the plaintiffs in those cases get to go first and last.

17 And what -- what I am suggesting -- and the other thing
18 is in 46 of the states in the United States now as I
19 understand it, that is kind of the way it works. What I'm
20 saying is is that if the -- if the plaintiff in a civil case
21 -- and it would seem to me that -- that it's the -- the right
22 is a lot more important in criminal court than it is in civil
23 court and if the plaintiff has to go first and last, then, you
24 know, I would think that the argument would be that we should
25 always get the advantage even if we put up evidence of the

1 State having to go first and then the State having to go last,
2 which would require the State to open fully on the law, and --
3 and then they would be limited to only arguing -- when they
4 come up the second time after our final closing, they would be
5 limited to arguing issues that were raised by the defense in
6 their closing argument.

7 So -- so what I'm -- what I'm asking the Court to do --
8 and I know that there is no ruling as I'm -- as far as I'm
9 aware of in this state as we speak that says that that should
10 change and that we should do it that way, but what I am saying
11 is is that most of the other states are now doing it that way
12 and that I think that it should change for South Carolina and
13 that we should do it that way as well, especially since the
14 civil rule is already in effect and they're doing it that way
15 in civil court and it would seem to me that -- that here in
16 criminal court, the defendant's rights would be paramount to
17 those of a plaintiff in a civil case.

18 And -- and so I think it would be fair to require the
19 State to open fully on the law, even if the -- even if the
20 defense puts evidence in, to open fully on the law and the
21 facts and then to be required to only respond to issues -- new
22 matters that are raised by the defense in their closing
23 argument.

24 THE COURT: All right. Thank you, Mr. Wilson. Mr.
25 Clements?

1 MR. CLEMENTS: A couple of things, Your Honor. In the
2 inimitable words of the great Isaac Lee Johnson, if it ain't
3 broke, don't break it. The plaintiff goes last in civil court
4 because they have the burden of proof. We have the burden of
5 proof and I think that's when jury arguments go on is the
6 burden of proof. Except for the fact if the defendant puts up
7 no evidence, then he gets to go last, but other than that, the
8 burden of proof is on the State. If the defense puts up
9 evidence, the State should go last. They've got the burden of
10 proof.

11 As far as opening fully on the law, I don't know if I've
12 ever opened fully on anything. Whether I intended to or not,
13 I always forget something. So to say, well, you've got to do
14 this fully and then when you come up you can only respond to
15 something they said, well, you know, then -- then that would
16 require a whole lot more argument than would be necessary
17 because you've going to be responding to what they said on a
18 lot of things. Then if you're required to open fully, you're
19 going to have to say it all twice. You've got to anticipate
20 what they say -- what they're going to say and you've got to
21 not forget anything that you should say if you're going to
22 open fully.

23 And according to -- to case law, State v. Rodgers, 269
24 S.C. 22, 235 S.E.2d 808, it says that the State is entitled
25 but not required to open the closing argument to a jury and

1 unless the defendant has offered no evidence. So if the
2 defendant offers evidence, we get to go last and we can -- if
3 we request it, we can choose to open on the law, but I don't
4 think we can be required to according to the case law. And I
5 may be wrong. Something might have changed.

6 THE COURT: Well, what year was that case?

7 MR. CLEMENTS: That was a '77 case, but I don't know that
8 anything has changed.

9 THE COURT: Okay.

10 MR. CLEMENTS: Not in State v. Rodgers.

11 THE COURT: That's State v. Rodgers?

12 MR. CLEMENTS: It's State v. Rodgers.

13 THE COURT: 269 S.C. what?

14 MR. CLEMENTS: 22. 235 S.E.2d 808.

15 THE COURT: All right. Anything else on that issue, Mr.
16 Wilson?

17 MR. WILSON: No, sir.

18 THE COURT: All right. All right. I'll look at that a
19 little more closely for you I mean.

20 MR. WILSON: Judge, the only other thing I would ask is
21 that all of the motions that I have filed, whether we agreed
22 or disagreed with the State or whether the Court ruled on them
23 at all, that they be made a part of the record. That all of
24 the motions be made a part of the record.

25 THE COURT: Well, you can file them.

1 MR. WILSON: I am.

2 THE COURT: Or you can be made a part of the record.

3 MR. WILSON: Yes, sir.

4 THE COURT: The ones that were forwarded to me by email
5 and I printed out, I've written all over them. So you all
6 have an extra copy?

7 MR. WILSON: Yes, sir.

8 THE COURT: Any objection to them being made a part of
9 the record?

10 MR. CLEMENTS: No, Your Honor. We feel like it should be
11 part of the record.

12 THE COURT: All right. And I'll look at them and you
13 don't need a ruling on this closing issue right now.

14 MR. WILSON: Your Honor, would you give me one second,
15 please?

16 THE COURT: Yes, sir.

17 MR. WILSON: You know, I have another matter that I need
18 to take up with you outside of the solicitor's presence.

19 THE COURT: Okay. All right. Anything else from the
20 State at this time?

21 MR. CLEMENTS: No, Your Honor.

22 THE COURT: All right. That will conclude the hearings
23 on these motions and I've ruled on every one of them I think
24 except the issue concerning closing arguments.

25 MR. WILSON: Yes, sir.

1 THE COURT: And I'll address that prior to you starting
2 the trial of this case.

3 MR. WILSON: Thank you.

4 THE COURT: So you all have an idea of what to do.

5 MR. CLEMENTS: And also, Your Honor, I would draw the
6 Court's attention I will be responding to two closing
7 arguments, not just one.

8 THE COURT: Mr. Wilson, could you come up here for just a
9 minute?

10 MR. WILSON: Yes, sir.

11 (Whereupon, a bench conference is held off the record.)

12 THE COURT: All right. I've dealt with that -- on the
13 other matter that Mr. Wilson needed to address here at sidebar
14 and that will conclude the matters contained in the case of
15 the State versus Sanders.

16 (Whereupon, the proceedings end at 11:56 a.m.)

17

18 --- END REQUESTED TRANSCRIPT ---

19

20

21

22

23

24

25

1 STATE OF SOUTH CAROLINA)

2) CERTIFICATE

3 COUNTY OF FLORENCE)

4

5 I, the undersigned, Krystal J. Smith, Notary Public and
6 Official Court Reporter for the Twelfth Judicial Circuit of
7 the State of South Carolina, do hereby certify that the
8 foregoing pages, numbered 1 through 34 constitute a true,
9 accurate, and complete Transcript of Record of all the
10 proceedings had and evidence introduced in the hearing of the
11 above captioned case, relative to appeal, in the Court of
12 General Sessions for Marion County, South Carolina, on the 8th
13 day of May, 2014.

14 I do further certify that I am neither of kin, counsel,
15 nor interest to any party hereto.

16

17 s/ Krystal J. Smith

18 Court Reporter

19

20 Florence, South Carolina

21 August 9, 2014

22

23

24

25

827
WITNESSES
JAMES LEE Marion County Sheriff

E. L. Clements, III

ARREST WARRANT NUMBER

2012A3310100042.	2012A3310100045.
2012A3310100047.	2012A3310100041.
2012A3310100050.	2012A3310100052.
2012A3310100046.	2012A3310100049.
2012A3310100051.	2012A3310100048.
2013GS3300256A.	2013GS3300256B.

ACTION OF GRAND JURY

Pauline R. Sweet
Foreperson of Grand Jury
Date: 5-9-13

VERDICT

Foreperson of Petit Jury:

Date:

DOCKET NO. 2013-GS-33-00256

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

TERM

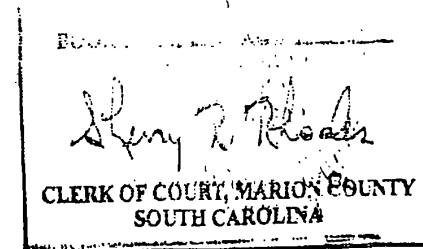
THE STATE

vs.

MARCO SIARA SANDERS

TYRELL WOODS

Indictment for
MURDER, ARMED ROBBERY, BURGLARY
1ST, ATTEMPTED MURDER, POSSESSION
OF A FIREARM IN COMMISSION OF
VIOLENT CRIME AND CONSPIRACY



FILED
PAGE
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MARION COUNTY SC
HENRY R. RHODES
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF MARION)

INDICTMENT FOR
MURDER, ARMED ROBBERY, BURGLARY 1ST,
ATTEMPTED MURDER, POSSESSION OF A
FIREARM IN COMMISSION OF VIOLENT CRIME
AND CONSPIRACY

At a Court of General Sessions, convened on MAY 9, 2013 the Grand Jurors of
MARION County present upon their oath:

COUNT ONE- MURDER

That MARCO SANDERS AND TYRELL WOODS did in Marion County, on or about July 4, 2012, willfully, feloniously, and intentionally kill the victim, Samuel Rowell, with malice aforethought, either express or implied, by means of shooting victim in the head, and the victim did die as a proximate result thereof on or about July 4, 2012 in Marion County, in violation of Section 16-03-0010, 20 S. C. Code of Laws, 1976, as amended.

COUNT TWO- ARMED ROBBERY

That MARCO SANDERS AND TYRELL WOODS did in Marion County on or about July 4, 2012, while armed with a deadly weapon, to wit: a pistol, did take and carry away personal property of Samuel Rowell to wit: Wallet, credit cards and monies, from or in the immediate presence of Samuel Rowell with intent to deprive Samuel Rowell of possession by use of force, threats or intimidation, in violation of Section 16-11-0330(A), S. C. Code of Laws, 1976, as amended.

COUNT THREE- BURGLARY 1ST DEGREE

That MARCO SANDERS and TYRELL WOODS did in Marion County on or about July 4, 2012, willfully and unlawfully entered the dwelling of Samuel Rowell located at Phil Court, Marion, while armed with a deadly weapon and/or caused physical injury to Samuel Rowell who was not a participant in the crime and/or entered in the nighttime, without consent and with the intent to commit a crime therein, and the defendants entered in the night time, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

ATTACHED TO AND BECOMING A PART OF THE ORIGINAL INDICTMENT FOR MURDER, ARMED ROBBERY, BURGLARY 1ST, ATTEMPTED MURDER, POSSESSION OF A FIREARM IN COMMISSION OF VIOLENT CRIME AND CONSPIRACY WITH THE AFORESAID NAMES(S) OF MARCO SANDERS AND TYRELL WOODS SHOWN THEREON:

COUNT FOUR-ATTEMPTED MURDER

That MARCO SANDERS AND TYRELL WOODS did in Marion County, on or about July 4, 2012, with malice aforethought attempt to murder one, Eddie Godbold, Jr by shooting at him with a firearm, in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT FIVE-POSSESSION OF A FIREARM IN COMMISSION OF VIOLENT CRIME

That MARCO SANDERS AND TYRELL WOODS did in Marion County, on or about July 4, 2012, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, to with the murder of Samuel Rowell and /or Burglary 1st, and/or Armed Robbery in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended

COUNT SIX-CONSPIRACY

That MARCO SANDERS AND TYRELL WOODS did in Marion County on or about July 4, 2012 did unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, conspire, confederate, agree between and among themselves and have tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Burglary and/or , Armed Robbery and/or Murder; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

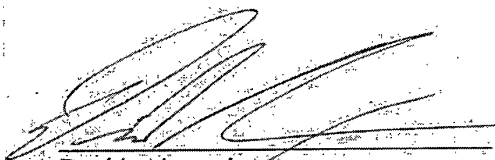


E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 6th, 2015



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

RECEIVED

MAR 06 2015

SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

MAR 06 2015

March 6th, 2105



David Alexander
Appellate Defender

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

ATTORNEY FOR APPELLANT

SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

 ORIGINAL

Appeal from Marion County
D. Craig Brown, Circuit Court Judge

RECEIVED

MAR 06 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRELL WOODS,

APPELLANT

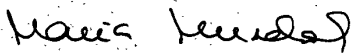
CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Donald J. Zelenka, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, and Mr. Tyrell Woods #344913, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of March, 2105.



Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 6th day of March, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

MAR 06 2015

SC Court of Appeals

Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT;

V.

TYRELL WOODS,

APPELLANT

APPELLATE CASE NO. 2014-001130

ANDERS BRIEF OF APPELLANT

DAVID ALEXANDER
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the trial court erred in refusing to dismiss appellant's conspiracy charge because he was never served with a warrant or the indictment for this charge?

STATEMENT OF THE CASE

On May 9, 2013, a Marion County grand jury indicted appellant for murder, armed robbery, first degree burglary, attempted murder, a weapons charge, and conspiracy. R. 827. On May 19, 2014, appellant was tried before the Honorable D. Craig Brown and a jury. R. 1. Ed Clements and Dudley Saleeby represented the State. R. 1. Ralph Wilson, Sr., represented appellant's co-defendant, Marco Sanders. R. 1. Scott P. Floyd and William Vick Meetze represented appellant. R. 1. The jury convicted appellant. R. 748, l. 1 – 749, l. 4. Judge Brown sentenced appellant to life imprisonment for murder, life imprisonment for burglary, thirty years' imprisonment for armed robbery, thirty years' imprisonment for attempted murder, five years' imprisonment on the weapons charge, and five years' imprisonment for conspiracy. R. 767, l. 15 – 768, l. 9. The judge set these sentences to run consecutively. R. 768, ll. 11 – 15. This appeal follows.

ARGUMENT

The trial court erred in refusing to dismiss appellant's conspiracy charge because he was never served with a warrant or the indictment for this charge.

Relevant Facts

The Evidence at Trial

Eddie Godbold, Jr. ("Godbold") was a neighbor of the decedent, Sam Rowell ("Rowell"). R. 194, ll. 2 – 5. On July 4, 2012, at approximately 7:00 PM, Godbold passed Rowell on the road. R. 194, ll. 2 – 16. Godbold tried to flag Rowell down because he wanted to borrow a deep fryer. R. 194, ll. 10 – 16. He could not get Rowell's attention. R. 194, ll. 6 – 16. Godbold drove to Marion, ran some errands, and drove back to Rowell's house at approximately 9:00 PM. R. 194, l. 17 – 195, l. 6.

Godbold went to the front door, knocked, but there was no answer. R. 195, ll. 9 – 14. He walked around to the back door and called Rowell's name. R. 195, ll. 9 – 20. He heard Rowell call: "Eddie. They're trying to rob me. Open the door." R. 195, ll. 15 – 20. When Godbold reached for the door, he heard three gunshots. R. 195, ll. 15 – 20. R. 201, ll. 16 – 20.

Godbold ran to the front of the house and hid behind the steps. R. 195, ll. 23 – 25. After waiting for a short period, Godbold got into his car and drove to a neighbor's house and called the police. R. 196, ll. 6 – 198, l. 5. Godbold drove back to the direction of the house, parked, and waited for the police. R. 198, ll. 4 – 17. Godbold never saw who was in Rowell's house or who fired the shots. R. 283, ll. 7 – 10. Even though Godbold did not see who was in the house, he told the police there were two people in the house. R. 231, l. 17 – 232, l. 19. He did not see any vehicles in Rowell's yard other than Rowell's

pickup truck. R. 208, l. 22 – 209, l. 3. On his way to call the police, he saw what he described as a white Cadillac Escalade parked near the house of another neighbor, Lafayette Reed (“Reed”). R. 198, ll. 18 – 23. R. 208, ll. 5 – 18.

Reed lived next door to Rowell. R. 406, ll. 3 – 9. He was standing in his yard when he heard three gunshots. R. 406, ll. 18 – 24. Reed got his gun, got in his car, and drove in the direction of Rowell’s house. R. 406, l. 25 – 407, l. 10. As he approached Rowell’s house, he noticed Godbold’s car parked in the yard. R. 407, ll. 11 – 19. He saw Godbold “kind of squatting down.” R. 407, ll. 11 – 19. A light-colored SUV without its lights on approached Reed’s car. R. 424, ll. 7 – 16. R. 409, ll. 7 – 11. The driver of the car turned on his lights and passed Reed. R. 424, l. 7 – 16. The car ran Reed off the road. R. 408, ll. 8 – 13. On the night of the shooting, Reed told the police he thought the car was either a Cadillac or a Navigator. R. 429, ll. 20 – 22. During his direct-examination testimony, Reed told the jury that he had told the detectives the car “looked like it was an Expedition or a Ford Explorer.” R. 409, ll. 3 – 11. Reed could not tell “what or who was in the car.” R. 409, ll. 12 – 17. R. 411, ll. 6 – 13. Reed tried to follow the vehicle but was unable to keep up with it. R. 413, l. 9 – 416, l. 16.

Reed drove back to another neighbor’s house. R. 416, ll. 20 – 21. Reed, Godbold, and the neighbor drove to Rowell’s house. R. 416, l. 21 – 417, l. 3. Approximately ten people were at Rowell’s house. R. 417, ll. 4 – 10. Reed looked inside the house through the side door, saw Rowell’s feet, and called his name without any response. R. 418, ll. 9 – 20. Reed claimed he did not enter the house. R. 418, ll. 21 – 24. R. 417, ll. 21 – 22.

Godbold testified that Rowell's house was used for parties. R. 204, l. 18 – 206, l. 9. The second officer on the scene agreed with defense counsel that the house was "some kind of a business, a juke joint or a club." R. 251, l. 23 – 252, l. 5. He agreed that inside were tables, chairs, liquor, beer, and cigarettes. R. 252, ll. 3 – 5. There were pool tables, rest rooms, and a bar area. R. 298, ll. 10 – 18. Cases of Crown Royal were found. R. 306, ll. 3 – 6. People would pay a fee to come and participate at parties. R. 205, ll. 4 – 12. Godbold did not remember the club having a function on the day of the shooting. R. 206, ll. 14 – 21. According to Rowell's brother, Rowell also took food and alcohol to sell at Atlantic Beach during Bike Week. R. 376, ll. 10 – 15. R. 382, ll. 4 – 16. Rowell had parties at his house frequently after baseball games. R. 382, l. 20 – 383, l. 9. Rowell rented houses to tenants. R. 383, ll. 15 – 17. Rowell also owned another club that he rented called Sweet Daddy's Sugar Shack. R. 383, l. 20 – 384, l. 6. Sweet Daddy's Sugar Shack was about a quarter of a mile from Rowell's house. R. 384, ll. 11 – 14.

Officer Gregory Pike ("Pike") was the first law enforcement officer to arrive at the scene. R. 218, ll. 5 – 23. He got the call at approximately 9:40 PM. R. 218, ll. 13 – 16. When he arrived, Pike was immediately approached by Godbold. R. 218, ll. 19 – 23. Two other people were with Godbold and they were never identified by Pike. R. 218, l. 24 – 219, l. 5. R. 233, ll. 6 – 10. Officer Pike approached the house with his flashlight. R. 220, l. 11 – 221, l. 11. He found three shell casings. R. 220, ll. 11 – 17. When he entered the house, he found Rowell. R. 221, ll. 12 – 19. He secured the scene and waited for investigators. R. 223, ll. 5 – 17.

Rowell's house was approximately five miles from the intersection of Wahee and Foxworth. R. 243, ll. 5 – 13. Andre Paige ("Paige") knew Rowell and Rowell's brother

("Harold"). R. 358, l. 24 – 359, l. 6. Approximately a month and a half after the shooting, Paige found a Walmart card with Rowell's name on it near the intersection of Foxworth and Wahee. R. 360, ll. 2 – 19. R. 364, ll. 7 – 25. A couple of days later, Paige gave the card to Harold. R. 360, ll. 2 – 8. R. 365, ll. 5 – 16. Page took Harold to the location where he found the card. R. 360, ll. 2 – 8. They found other cards and identification neatly stacked under a stop sign. R. 361, l. 17 – 22. R. 366, l. 24 – 367, l. 9. The grass had been freshly cut. R. 368, ll. 3 – 9. They did not find a wallet. R. 363, ll. 16 – 21. Harold testified that his brother carried a wallet. R. 373, ll. 21 – 22.

Levern Nichols ("Nichols"), who used to work for the police, testified that he saw the defendants in a white Ford Expedition the day before the shooting. R. 443, ll. 6 – 11. Nichols had heard that the police were looking for a white SUV. R. 442, ll. 14 – 25. On direct-examination, Nichols testified that he told the police about seeing the defendants one or two days before he gave a written statement. R. 444, ll. 2 – 4. The date on his written statement was August 23. R. 454, ll. 6 – 11. The defendants had already been arrested by the time gave Nichols gave his written statement. R. 460, l. 19 – 461, l. 2. Their pictures had been in the newspaper and on television. R. 495, ll. 14 – 20. On cross-examination, Nichols equivocated and said he "wasn't asked to write a statement until a week or two later maybe," after he initially told the police about seeing the defendants in the white SUV. R. 461, ll. 3 – 19. On re-direct, Nichols changed his story again that he told the police on the Monday or Tuesday immediately following the day of the shooting. R. 465, ll. 2 – 19. The police officer who testified immediately after Nichols claimed Nichols told him about seeing the defendants in the white SUV a couple of days after the shooting. R. 476, l. 19 – 477, l. 12.

The police learned from appellant's mother that appellant had a girlfriend. R. 478, ll. 10 – 16. The police checked her records and found that she owned a white Ford Expedition. R. 478, ll. 10 – 16. The police obtained a search warrant and searched her car. R. 480, ll. 5 – 17. The police did not find anything of value to the investigation in the car. R. 499, ll. 4 – 6.

Rowell died from a gunshot to the head. R. 276, ll. 1 – 5. R. 270, l. 14 – 271, l. 25. The pathologist described the body as it presented at the autopsy. R. 264, l. 20 – 265, l. 4. Rowell's hands were bound behind his back, tied with brown fiber rope and duct tape. R. 267, ll. 15 – 25. His legs were bound with duct tape. R. 268, ll. 3 – 7. Underwear was duct taped across his mouth as a gag. R. 268, ll. 8 – 24. Rowell had a scrape on his head. R. 269, ll. 1 – 13. A projectile was recovered from Rowell's head. R. 273, ll. 24 – 25. The pathologist described it as a small caliber bullet. R. 281, ll. 14 – 24.

Three 9 mm shell casings were found on the grass outside of the home. R. 299, ll. 14 – 24. R. 300, ll. 5 – 7. Three of Rowell's pants pockets were pulled out. R. 334, ll. 16 – 335, l. 7. Cash was found in one of the pockets. R. 339, l. 23 – 340, l. 1. A cell phone was found in another pocket. R. 340, ll. 5 – 7. No cartridge case was found close to Rowell's body. R. 302, ll. 13 – 15.

Two surveillance cameras were at Rowell's house. R. 302, l. 22 – 303, l. 10. A monitor for the cameras was found near the foot of Rowell's bed. R. 305, ll. 10 – 17. The cords had been cut. R. 305, ll. 21 – 23. A digital video recorder was found on a sofa with its cords cut. R. 325, ll. 2 – 9.

The DVR was initially given to SLED for analysis. R. 41, l. 17 – 482, l. 10. SLED could not view it, but told the Marion County investigator that a local hardware store had the same brand of equipment. R. 481, l. 17 – 482, l. 10. The investigator purchased another video player from the hardware store. R. 482, ll. 1 – 10. Using that new video player, the police were able to review the video. R. 482, ll. 5 – 10. The investigator testified that he recognized the defendants on the video. R. 504, l. 23 – 505, l. 6.

Over sixty items were submitted to SLED for analysis. R. 349, ll. 8 – 14. The crime scene investigator lifted one fingerprint from the front door. R. 303, l. 11 – 304, l. 1. Footwear impressions in the club room area were photographed but not analyzed. R. 307, ll. 13 – 20. R. 350, ll. 21 – 24. Rowell's pillows on his bed had no pillowcases. R. 324, ll. 11 – 13. Crown Royal boxes and cigar boxes were found in pillowcases in another room. R. 324, ll. 14 – 25. A coffee cup was sent for DNA analysis. R. 345, l. 9 – 346, l. 2. The State's fingerprint analysis expert testified that fingerprints found on these items at the scene matched the defendants' fingerprints. R. 626, l. 5 – 632, l. 5. No DNA evidence linked the defendants to the crime.

The State's Failure to Serve the Indictment

Prior to the jury being sworn, the defendants objected to the conspiracy charge because they had not been served with the indictment. R. 165, ll. 8 – 23. The defendants were never served with an arrest warrant for conspiracy. R. 165, ll. 8 – 20. The indictment on conspiracy was a direct indictment. R. 165, ll. 8 – 23. The defendants argued that since they had not been served with the conspiracy indictment, the State should not be allowed to try them on that charge. R. 165, ll. 8 – 25.

The State did not dispute that the defendants had not been served with the indictment. R. 166, l. 21 – 167, l. 6. The defendants received the indictment from the clerk's office. R. 166, ll. 11 – 19. The solicitor only argued that since the attorneys had a copy of the indictment, the defendants were not prejudiced. R. 166, ll. 21 – 167, l. 6. The trial judge noted the objection and deferred ruling. R. 167, ll. 7 – 13. The defendants again raised the issue during the trial to obtain a ruling. R. 662, l. 16 – 663, l. 7. The trial judge denied the motion. R. 664; ll. 8 – 13.

Discussion

The State could not try appellant for conspiracy without serving him with either a warrant or the indictment. “No person may be held to answer for any crime . . . unless on a presentment or indictment of a grand jury of the county where the crime has been committed. . . .” S.C. Const. art. I, § 11. “The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.” S.C. Const. art. I, § 3. See also U. S. Const. amends. V, XIV. A criminal defendant has the right “to be informed of the nature and cause of the accusations . . . against him.” U.S. Const. amend. VI. See also S.C. Const. art. I, § 14.

Appellant raised the issue before the jury was sworn. State v. Gentry, 363 S.C. 93, 101, 610 S.E.2d 494, 499 (2005). “An indictment is a critical document in criminal defense preparation that is grounded in constitutional and statutory principles.” State v. Baker, Op. No. 27497, ___ S.C. ___, ___ S.E.2d ___, 2015 WL 543493 (Feb. 11, 2015). The indictment gives the defendant notice of what he is called upon to answer. Id.

The South Carolina Supreme Court confronted this exact issue in State v. Green, 269 S.C. 657, 239 S.E.2d 485 (1977). But see Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004). In Green, the accused “was not served with an arrest warrant or indictment, was not arraigned on the charge for which he was convicted, nor was he ever advised by any official or lawful authority of the charges against him.” Green at 661, 239 S.E.2d at 487. Just as in this case, the State argued that notice to Green through his attorney was sufficient. Id. The Court rejected that argument, stating, “The only notice he could have possible received was through his attorney, which was clearly inadequate.” Id.

The solicitor never argued that appellant had been served on the conspiracy charge. The State’s only argument was that appellant had notice of the charge through his attorney and that he suffered no prejudice. Under Green, the trial judge erred in accepting this argument. Therefore, appellant’s conviction for conspiracy should be reversed.

CONCLUSION

For the foregoing reasons, appellant's conviction and sentence for conspiracy should be reversed with prejudice.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'David Alexander', is written over a horizontal line.

David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
D. Craig Brown, Circuit Court Judge

RECEIVED

MAR 06 2015

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRELL WOODS,

APPELLANT

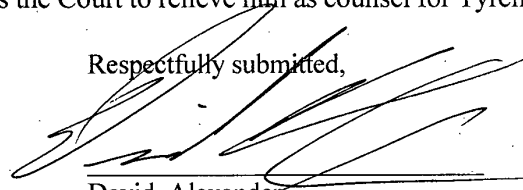
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Tyrell Woods states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge D. Craig Brown, which was held on May 19-22, 2014, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Tyrell Woods.

Respectfully submitted,



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

This 6th day of March, 2015.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Marion County
D. Craig Brown, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

TYRELL WOODS,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Trial transcript (May 19-22, 2014);
- (3) Hearing transcript (November 16, 2012);
- (4) Hearing transcript (May 13, 2013);
- (5) Hearing transcript (May 8, 2014).

I certify that this designation contains no matter which is irrelevant to this appeal.

March 6th, 2015



David Alexander
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

Attorney for Appellant

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Anders Brief of Appellant complies with Rule 211(b), SCACR, and the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

March 6th, 2015



David Alexander
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

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STATE OF SOUTH CAROLINA
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Appeal from Marion County

D. Craig Brown, Circuit Court Judge

THE STATE,

RESPONDENT,

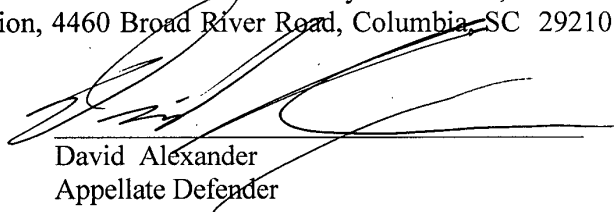
V.

TYRELL WOODS,

APPELLANT

CERTIFICATE OF SERVICE

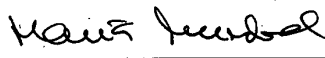
The undersigned attorney hereby certifies that a true copy of the Anders Brief of Appellant and Designation of Matter in the above referenced case has been served upon Donald J. Zelenka, Esquire, at the Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Anders Brief of Appellant and Designation of Matter and Record on Appeal have been served on Tyrell Woods, #344913 at Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210, this 6th day of March, 2015.



David Alexander
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 6th day of March, 2015.

 (L.S.)

Notary Public for South Carolina
My Commission Expires: July 3, 2023.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Appeal from Marion County

MAY 26 2015

D. Craig Brown, Circuit Court Judge

SC Court of Appeals

The State,

Respondent,

V.

Tyrell Woods,

Appellant,

Appellate Case No. 2014-001130

PRO-SE APPEAL BRIEF

By: Tyrell Woods, pro-se
Broadriver Corr. Inst.
4460 Broadriver Rd.
Columbia, S.C. 29210

STATEMENTS OF ISSUES ON APPEAL.

1. Whether appellate counsel provided ineffective assistance, by compiling a Anders brief, in light of the "preserved" issues involving appellant's statutory and constitutional rights under Due Process, to an official authenticated true billed indictment, and statutory "service" thereof?
2. Whether appellate counsel provided ineffective assistance on appeal by filing an Anders brief, as opposed to a merits brief, positing a logical claim or claims of double jeopardy violations. In regards to the "consecutive cumulative penalties" imposed, under the theory of a "common scheme or plan"?
3. Whether the substantive offenses would sustain in the event the court finds cause to reverse the conviction for conspiracy, and its accompanying sentence?

FACTS OF THE CASE.

On or about May 9, 2013, a Marion County Grand Jury indicted appellant for murder, armed robbery, first degree burglary, attempted murder, possession of a firearm during the commission of a violent crime, and "alleged to have also indicted the appellant for conspiracy".

On or about May 19, 2014, based on appellant's not guilty plea,

the case was called to trial before the Honorable D. Craig Brown, and a jury. Ed Clements and Dudley Saleeby represented the state. Ralph Wilson, Sr. represented appellant's codefendant, Marco Sanders. And Scott P. Floyd and William Vick Meetz, represented appellant.

The trial began on May 19, 2014 and ended on May 22, 2014, wherein the jury found appellant guilty of all charges named above. Judge Brown sentenced appellant to life imprisonment for the murder, life imprisonment for first degree burglary, thirty years for armed robbery, thirty years imprisonment for attempted murder, five years imprisonment on the weapon charge, and five years imprisonment for conspiracy. R. 767 line 1-15; 768 line 1-9. The court set all sentences to run consecutively. This appeal in pro-se capacity follows. In a "brief notation" to this Court of Appeals, appellant quotes the words of his codefendant immediately after Judge Brown imposed sentences.

"We got to die two times and then
come back and do 70 years?" R 768
lines 14-15.

SUMMARY OF ARGUMENTS ON APPEAL

Appellant begins by assuming appellate counsel reviewed the record in this case. However, "never once consulted with appellant concerning the issues or non-issues which would be raised on appeal". Seemingly, with such a serious sentence imposed by the court, the least counsel could have done was "follow the letter of law". In accordance with Anders v. California, 386 U.S. 738 (1967), ~~in standing~~ as leading authority here. Counsel reviewing the record prior to

submitting a appeal on behalf of the appellant, is but a single mandate from the Court. Instead, the Court held; "after a study of the record and "consultation" with appellant, if appellant counsel concludes that there was no merit to the appeal subsequent to a conscientious examination, he should so advise the court and request permission to withdraw. That request however, must be accompanied by a brief referring to anything in the record that might arguably support the appeal".

And again, the initial error is where appellate counsel "failed to follow the above controlling authority, by first consulting with the appellant prior to submitting the brief". Next, to summarize what could have resulted from consultation with appellant, prior to filing the Anders brief, is the potential for the grounds asserted herein by appellant, for review by this Honorable Court of Appeals.

Beginning with Griffin v. Illinois, 351 U.S. 12 (1956), the Court held that "equal protection was not afforded an indigent appellant where the nature of the review depends on the amount of money he has" at 19, and continuing through Douglas v. California, 372 U.S. 353 (1963); where this Court has consistently held invalid the procedures "where the rich man, who appeals as of right, enjoys the benefit of counsel's examination into the record, research of the law, and marshalling of arguments on his behalf, while the indigent already burdened by a preliminary determination that his case is without merit, is forced to shift for himself".

Consequently appellant argues; "counsel's role as advocate requires that he support his client's appeal to the best of his ability". But in the circumstances explained above, appellant is forced

to shift for himself, while bringing the following issues to the attention of the Honorable Court of Appeals.

1).. Appellant argues first that trial counsel in fact "did preserve by a contemporaneous objection, that appellant could be tried, convicted and sentenced for conspiracy. Whereas, Due Process (Substantive and Procedural) were violated in the course of mandatory indictment procedures".

It is irrefutable by the State's own admission, "that proper service of the indictment in this case for specifically conspiracy, never occurred". See Tr.tr. R. 154 lines 14-25; and pg. 155 lines 1-4. Whereas the objection was made and noted by the lower court.

What subsequently occurred between pages 155 and 165, lines 1-25. Is where the court resolved "only the issue of the indictment being true billed or not". Yet omitting "the service requirement objection" on a direct indictment, for which did not occur. Thus, both defense attorneys preserved the issue "of whther the state could lawfully proceed on the conspiracy charge". Tr.tr. R. 166 lines 21-25; R. 167 lines 1-13. Coupled with the state's position "their case depended on the conspiracy charge". (R. 166, lines 1-4).

LEGAL ANALYSIS AND ARGUMENT.

Amendment Five, of the United States Constitution states in relevant part that; "No person shall be held for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury". Article 1, Section §11 of S.C. Const. confers the identical language.

The purpose of presentment clause of the Fifth Amendment is twofold; it entitles the defendant to be in jeopardy only for offenses charged by a group of his fellow citizens acting independent of either prosecutor or judge; and it entitles defendant to be appraised of charges against him so that he knows what he must be prepared to meet at trial. See United States v. Fogel, 901 F.2d 23 (4th Cir. 1990) and United States v. Field, 875 F2d 130 (7th Cir. 1989).

This State's recognition of State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005), also noted by our Supreme Court in Evans v. State, 363 S.C. 495, 611 S.E.2d 510 (S.C. 2005), held "that challenges to the legality and sufficiency of "the process" of a Grand Jury, also must be made before the jury renders a verdict in order to preserve the error for appellate review". See S.C. Code §14-7-1140 (Supp. 2003).

Consequently, without a proper and timely service of a true billed indictment. Remains to be the functional equivalent "to no indictment at all". Whereas the defendant is unprepared to meet the charges initiated by the State, based on such negligence. Appellant recites the following exchange from the record. Tr.tr. p. 165, lines 7-25;

The Court: All right, anything further at this time, Mr. Wilson?

Mr. Wilson: Yes Sir, Your Honor, we still haven't addresses the issue regarding the conspiracy charge which is in the indictment and and it would by my understanding since the defendants were not indicted--I'm sorry. I apologize. Since the defendants were not arrested by arrest warrant, that would mean that the initial charge would have been--it was a direct indictment.

If there's a direct indicment, the process is the same as is for

a warrant, which means that it has to be served, bond has to be posted, and we have to go through the procedures that are required, and that's done to give the defendant's notice, as well as follow the statute which requires that it be done that was".

So appellant's position is one of "due process concerns". And holding the above concerns in mind. The incident resulting in the convictions occurred on July 4, 2012. As of the date of trial (i.e. May 19, 2014), the attorneys were arguing "the State failed to properly serve the indictment upon defendants". That "the conspiracy was a new charge", in which the defendants "were never arrested on". See Tr.tr.p. 166, lines 3-10. This statement went unchallenged by the State. Thus, there can be no question at this time "that the defendants were 'prejudice', by such failure to serve the indictment.

In Elliott v. Martinez, 675 F3d 1241 (10 Cir. 2012), this court held that the core of due process is the "right to notice" and a opportunity to be heard. Thus, the State's obligatory duty was to have defendants arraigned "by arrest", and timely notifying them of the State's intent by proper service of a true billed indictment. Alleging it was relying on a "conspiracy theory" to prove its case. As opposed to the "excuse it posited for its failure"; arguing "because conspiracy is the least of the charges, it did not prejudice the defendants, when in fact all sentences were ran consecutively". See Tr.tr.p. 166, lines 21-25. Nothing could be farther from the truth. And for these reasons, the Anders brief is inappropriate in this case.

2. Next, appellant argues whether counsel on appeal should have filed an Anders brief in light of logical concerns involving double jeopardy under the Blockburger test. If, as the State claimed, "the

case against defendants depended on "conspiracy" as a stand-alone substantive count, while alleging all other substantive counts within the conspiracy count as overt acts.

Count Six-conspiracy reads as follows;

That Marco Sanders and Tyrell Woods, did in Marion County on or about July 4, 2012, did unlawfully, willfully, knowingly, wickedly and feloniously unite, cobine, conspire, agree between and among themselves and have a tacit understanding with each other and with divers other persons whose names are unknown to the Grand Jurors for the purpose of committing the crime of Burglary and/or Armed Robbery and/or Murder, in violation of section 16-17-410, S.C. Code of Laws, 1976, as amended.

Appellant contends that "multiplicious indictments" are generally improper because they may prejudice the defendant or result in multiple sentences for a single offense in violation of the Double Jeopardy Clause. Multiplicity does not exist if each count of the indictment calls for factual proof not required by the other counts. See e.g. U.S. v. Lilly, 983 F.2d 300, 306 (2nd Cir. 1992)

However, in the instant case at bar, each count 1-5 charges that Marco Sanders and Tyrell Woods "did do", the criminal acts so charged. The conspiracy count number 'six', also charges essentially the same thing, i.e., "that Marco Sanders and Tyrell Woods together, "did do" the criminal acts charged". Moreover, the State at Tr.tr. p. 166-67, elaborates on this position insufficiently.

In otherwords, had the conspiracy charge omitted the substantive counts already accounted for, or counts in which one or the other defendants were not mentioned within a substantive count. It would not have raised a double jeopardy inquiry. However, count 'six' simply put, just renames the "murder and burglary charges" already accounted for in the substantive counts, as well as Armed Robbery.

And appellant argues that is a prong of malicious prosecution, as well as violations of double jeopardy. In United States v. Kerley, 544 F.3d 172, 178-79 (2d Cir. 2008)(multiplicious indictment violated Double Jeopardy Clause by punishing single offense multiple times); United States v. Tann, 577 F.3d 533, 543 (3d Cir. 2009) (multiplicious indictment "seriously affected the fairness and integrity of trial"); United States v. Miller, 576 F3d 528 (5th Cir. 2009)(per curiam)(multiplicious indictment prejudiced the defendant by significantly adding to sentence).

In fact, the only time multipliciousness does not violate double jeopardy, is when the sentences imposed are ran "concurrent as opposed to consecutively". See United States v. Colton, 231 F3d. 890, 910 (4th Cir. 2000)(multiplicious indictment did not prejudice defendant because defendant received concurrent, not multiple sentences for one offense).

In addition, when outlining double jeopardy prohibitions. First Degree Burglary carries a life term imprisonment (in which was imposed in this case) if serious injury including death occurs

during the course of the illegal act. Thus, Burglary significantly took into account the potential for violence, the resulting injury and death, if such occurred. Thereby "taking into account murder". Wherefore, appellant cannot be sentenced to "two" life sentences for the same decedent, in the course of a single "scheme and plan". For these reasons, appellate counsel should have briefed this argument on appeal as opposed to filing an Anders Brief.

In addition, "charging possession of a weapon", when First Degree Burglary accounts for "possession of a deadly weapon", where the defendant stands to receive multiple sentences for the same act, is also a violation of double jeopardy, for which should have been raised on appeal.

3). Finally, appellant argues "whether the substantive offenses would be able to survive in the event the court finds cause to reverse the conviction for conspiracy", as well as the accompanying sentences.

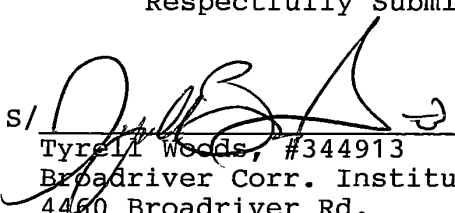
In otherwords, the State contended on record that "it's case depended on the agreement between the two defendants, in accordance with the statute's description of conspiracy. See §16-17-410. However, as previously pointed out within this brief, the State violated appellant's right to due process within the process of indicting the conspiracy charge. For which should have been restricted by the court, as its challenge was "preserved" by the defendants for appellate review. That issue was nevertheless omitted by appellate counsel, and is further cause to grant the required re-

lief here.

Under Anders, the appellant is cloaked with the duty to present any additional grounds for appeal that he feels counsel should have briefed. The issues herein were not hidden issues to which the appeal attorney should not have identified. Based on the position herein, appellant is at least entitled to a new sentencing hearing and at most, a new trial, based on the jury having decided the case on the State's impermissible "conspiracy theory". When such charge "did not find its way through proper procedure, in accordance with due process of law".

For these reasons, appellant respectfully request this court to vacate, reverse and remand this case to the lower court for a new trial and resentencing, in the event a new trial results in a conviction. And any further relief this Honorable Court deems just and proper.

Respectfully Submitted,

S/ 

Tyrell Woods, #344913
Broadriver Corr. Institution
4460 Broadriver Rd.
Columbia, S.C. 29210

cc: 5/22/2015

(10 of 10)

Woods (8) Type

~~In addition, the court lessened~~

Tyrell Woods #344913
Broadriver Corr. Institution
10 Broadriver Road
Columbia, S.C. 29210



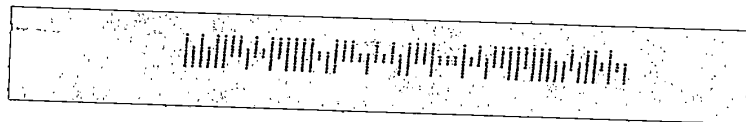
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S.C. Court of Appeals
PO Box 11629
Columbia SC 29202



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MAY 26 2015

SC Court of Appeals

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Tyrell Woods, Appellant.

Appellate Case No. 2014-001130

Appeal From Marion County
D. Craig Brown, Circuit Court Judge

Unpublished Opinion No. 2016-UP-030
Submitted December 1, 2015 – Filed January 20, 2016

APPEAL DISMISSED

Appellate Defender David Alexander, of Columbia; and
Tyrell Woods, pro se, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Donald J. Zelenka,
both of Columbia, for Respondent.

PER CURIAM: Dismissed after consideration of Appellant's pro se brief and review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.¹

APPEAL DISMISSED.

SHORT, GEATHERS, and MCDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

2017-33-204

FORM 5

STATE OF SOUTH CAROLINA)

COUNTY OF Marion)Tyrell Woods #344913)

Full name and prison number (if any) of Applicant.)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS)

APPLICATION FOR)

POST-CONVICTION RELIEF)

FILED
2017 MAR - 8 AM 10:24
CLERK OF COURT
MARION COUNTY
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention Broad River Correctional Institution, 4460 Broad River Road, Columbia, S.C. 29210
2. Name and location of Court which imposed sentence General Sessions Court, Marion County.
3. Name(s) of co-defendant(s) (if any) Marco Sanders
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Murder (2013-GS-33-256) Attempt murder; First-Degree Burglary
 - (b) Armed Robbery; possession of a weapon during a violent crime; and
 - (c) Criminal Conspiracy.
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) Murder (Life); 1st Degree Burg. (Life); Armed Robbery (30 years);
 - (b) Attempted Murder (30 years); Poss. Weapon (5 years); Consp. (5 yrs).

Revised 3/2003

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty Trial by Jury.
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal dismissed.
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 20, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Dismissed pursuant to Anders v. California
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) N/A
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Sixth Amendment violation based on Ineffective Assistance of Counsel.
- (b) Lack of Subject-Matter-Jurisdiction, "to include conspiracy at trial".
- (c) Fifth and Fourteenth Amendment Double Jeopardy violations in sentencing.
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Attached Sheets
- (b) See Attached Sheets
- (c) See Attached Sheets
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Only the appeal.
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No.
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No.
- (d) any other petitions, motions or applications in this or any other Court? No.
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application: N/A
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (c) the disposition thereof:
- i. N/A
- ii. N/A
- iii. N/A

- iv. N/A
- (d) the date of each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- No.
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. N/A
- ii. N/A
- iii. N/A
- (b) the proceedings in which each ground was raised:
- i. N/A
- ii. N/A
- iii. N/A
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Assistance not cognizable on direct appeal.
- (b) Jurisdictional inquiry may be question anytime during the pendency of the proceeding.
- (c) See Attached Sheets for Additional Grounds.
17. Were you represented by an attorney at any time during the course of:

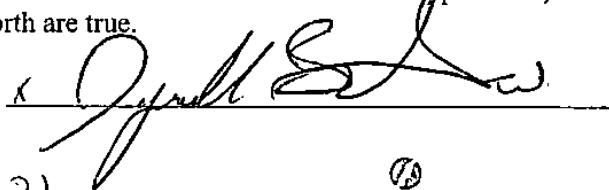
- (a) your arraignment and plea? _____
- (b) your trial, if any? William Vick Meetz
- (c) your sentencing? Same.
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Indigent Defense, David Alexander.
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. William Vick Meetz (Trial and Sentencing)
- ii. David Alexander (Direct Appeal)
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Meetz (trial and sentencin)
- ii. Alexander (Direct Appeal)
- iii. _____
19. State clearly the relief you seek in filing this application:
- Reverse and Remand for a New trial.
20. Are you now under sentence from any other court that you have not challenged?
- No.

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, T.W. being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.



SWORN to and subscribed before me this 20
day of FEBRUARY, 2017.

 (L.S.)
Notary Public

My Commission Expires: 9/16/2020

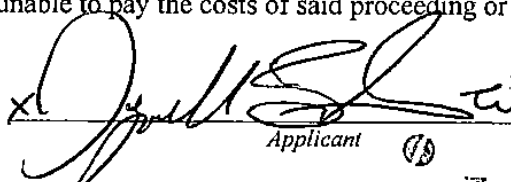
FILED
2017 MAR -8 AM 10:24
MARION COUNTY SC
CHARLES H. GRAY
CLERK OF COURT



**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.



Applicant

SWORN or affirmed to and subscribed before me this

22 day of February, 2017.

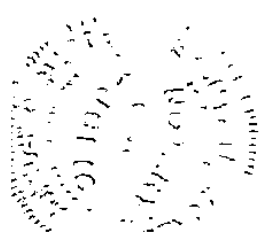


Notary Public

My Commission Expires: 9/26/2026

2017 MAR -8 AM 10:24
MARION COUNTY SC
CHRISTY L GRAY
CLERK OF COURT

FILED



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

COURT OF COMMON PLEAS

2017 MAR -8 AM 10:24
FILED
CLERK OF COURT
RICHLAND COUNTY SC

Tyrell Woods, #344913,
Petitioner,

Vs.

Case No.: 2017-CP-33-204

State of South Carolina,
Respondent. /

Attached Sheets Supporting PCR Application

This matter is being brought before the attention of this Honorable Court, by way of a pro-se Applicant for relief under the Uniform Post Conviction Act of South Carolina. See §17-27-10 to §17-27-160 (2003).

The purpose of post-conviction relief in South Carolina is to provide convicted persons with a comprehensive mechanism to raise any unresolved and previously unmentioned questions of fact or law relevant to their convictions or sentences. See S.C. Code §17-27-20(a). According to the South Carolina Supreme Court, the PCR Act was "designed to incorporate all rights available under federal habeas corpus". Finklea v. State, 255 S.E.2d 447-48 (S.C. 1979).

10688-92-5106

FILED

2017 MAR -8 AM 10:24

MARKET COUNTY
CRISTY L. GIBSON
CLERK OF COURT

COGNIZABLE CLAIMS

Claims raised in post-conviction must not only be framed in appropriate terms, depending on the procedural posture as explained, but they must also provide cognizable claims under the PCR Act.

A PCR applicant can raise almost any allegation relevant to any phase of the previous court proceedings. Specifically, an applicant can raise virtually every alleged denial of a federal right, with the exception of sufficiency of the evidence. See S.C. Code § 17-27-20(a)(6), but see Janckson v. Virginia, 443 U.S. 307, 313-16 (1979) (holding that insufficient evidence is a federal constitutional claim).

The PCR Act also recognizes almost any abridgment of a state created right. §17-27-20(a)(1). Specifically, the statute permits the following six categories of claims: (1) the conviction was in violation of the Constitution of the United States, the South Carolina Constitution, or South Carolina state law; (2) the court was without jurisdiction to impose the sentence; (3) the sentence exceeds the maximum authorized by law; (4) there is evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice; (5) the sentence has expired; probation, parole or conditional release has been unlawfully revoked; or that the applicant is otherwise unlawfully held in custody or other restraint; and (6) the conviction or sentence is otherwise subject to collateral attack

upon any ground of alleged error previously available under any common law, statute or other writ, motion, petition, proceeding or remedy. See §17-27-20(a)(1)+(6).

In Wilson v. State, 559 S.E.2d 581 (S.C. 2002). The Supreme Court determined "A defendant has the procedural right to 'one fair bite at the apple'". That is, "every defendant has a right to file a direct appeal and one PCR application". In Wilson's case, the Court ruled Wilson had not had "one bite at the apple" since he has not received either a direct appeal from his conviction or a PCR hearing.

The "One bite at the apple" policy would be frustrated if the one year statute of limitations (In Wilson's case) for PCR claims applied where the applicant was denied his direct appeal due to "ineffective assistance of counsel" and then was denied his right to a PCR application because of the one year statute of limitation.

Here, Applicant had one year from the time of his "re-hearing" denial of march 2016. Thus, there would be no statute of limitation issue in this case, as it is forwarded February 2017.

PETITIONER'S MEMORANDUM SUPPORTING PCR

1. Petitioner's initial claim stems from ineffective assistance of counsel. Which is a Federal Constitutional Sixth and Fourteenth Amendment right. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984). Where "both" trial and appeal attorneys provided deficient representation at critical stages of the proceeding.

(a). In this aspect, during trial Petitioner's counsel moved to dismiss the 'conspiracy charge' as well as the accompanying indictment because (1) it had not been true billed and (2) the Petitioner was never 'served by arrest warrant nor indictment' with the conspiracy charge. For which the State's case depended. See (Tr. tr. p. 154 to 161)(App. Rec).

For clarification purposes. Petitioner was arrested and charged with murder, armed robbery, burglary 1st degree, attempted murder and possession of a firearm during the commission of a violent crime. At all times during the investigation of this case, only Petitioner's co-defendant "Marco Sanders" was identified as a possible suspect in this case.

Even though the State failed to officially charge Petitioner with conspiracy. The court permitted the case to proceed as such, based on counsel's deficient performance by failing to make the proper objections. Such as "a motion to dismiss prior to trial", or in writing, and a "contemporaneous objection", once the State countered (Tr. tr. p. 154, lines 23-24) "it owed no duty to serve the defendant with a true billed indictment".

In law, See U.S. v. Fogel, 901 F2d 23 (4th Cir. 1990) and U. S. v. Field, 875 F.2d 130 (7th Cir. 1989). The purpose of 'presentation of the Fifth Amendment is twofold; it entitles defendant to be in jeopardy only for offenses charged by a group of his fellow citizens, acting independent of either the 'prosecutor of the judge'; and it entitles defendant to 'be appraised' of the the char-

ges against him so that he knows what he must meet at trial.

(b). Secondly, on this same premise. (Tr. tr. p. 157-58), the Court's analysis once the issue of the indictment came forth went and sought caselaw; citing Anderson v. State, which accorded State v. Bultron, 318 S.C. 323. And in that case a hearing was held to determine what occurred during the grand jury proceeding. Whereas, "testimony was produced from the grand jury" and not as here in the instant case, "by the Clerk of Court". Which counsel "failed to notice and firmly object".

In otherwords, once there was no indication or testimony by the grand jury on how the instant case came about. That was "independent of the prosecutor or the judge". This case was not one by which the grand jury attested to the indictment. But rather, by which the Clerk of Court attested. Which in and of itself, is constitutionally deficient. And stands at odds with the above cited case.

At (Tr. tr. p. 159, lines 21-25 Clerk of Court Ms. Sherry Rhodes was sworn). Under direct exam, Ms. Rhodes testified to the procedure conducted in Marion County. That (1) the indictment was signed on May 9, 2013. On Cross-Exam (Tr. tr. p. 160-163), it should have also been noted; (2) that the finding of the grand jury was allegedly done on May 9, 2013. Where the Clerk attested to such fact on Tr. tr. p. 160, and such indictment was returned to the Clerk's Office 162, lines 10-18. Yet the "Clerk's stamp"

exposes a date of May 2, 2013, which is prior to the action of the grand jury. Which renders the procedure suspect of being a rubber stamp process for the State.

2. Next, Petitioner avers the court as well as the state, for the above reasons "lacked subject-matter-jurisdiction" to proceed with a trial in the above case based on the "failure of the grand jury to have found a true bill on the indictment itself". Rather than what the grand jurors intention was, in regards to this case.

(a) For instance, the South Carolina Supreme Court determined in State v. Covert, (Opin. No. 26632 2009), in the context of arrest warrants, that a unsigned warrant is not lawful where the issuing judicial officer failed to sign the warrant on the space provided on the warrant form. See Davis v. Sanders, 40 S.C. 507, 19 S.E. 138 (1894).

[W]hen it is remembered that a sheriff or other officer, who undertakes to arrest a citizen under a warrant, is bound to show his warrant, if demanded, to the person proposed to be arrested, and if he refuses to do so the arrest may be lawfully resisted, we think it would be very dangerous to the peace of society for the court to hold that a paper, which shows on its face that it is an unfinished paper would be justification for an arrest.

The Davis requirement that a warrant must be signed by the issuing judicial officer in order to complete is a common law decision predicated on public policy concerns. The signature is the assurance that a judicial officer has found that law enforcement had made the requisite probable cause showing, and serves as no-

tice to the citizen upon whom the warrant is served that it is a validly issued warrant. Without the signature, it is merely an "unfinished paper". See Davis, supra; see also DuBose v. DuBose, 90 S.C. 87, 72 S.E. 645 (1911)

As in Covert, the lower courts passed the lack of the signature a simple scrivener's error. Petitioner's trial court found the same. See Tr. tr. p. 165, lines 166. When in actuality; the indictment in this case presented the identical product of an "unfinished paper". Something that could not be cured except by resubmission to the grand jury. Such is why the grand jury must act independent of the solicitor or the judge. And the Clerk of Court cannot testify for the grand jury, as was done in the instant case, without objection by counsel, which renders defense counsel ineffective.

3. Third, Petitioner avers trial counsel was ineffective for failing to move for trial severance. Where there existed a high risk of defending one client may prejudice the defense of the other. Especially where the evidence was weak that could place Petitioner on the scene as the co-defendant.

To have preserved for appeal a claim of misjoinder under Rule 4 of S.C.R. Crim. P., counsel would have had to make a written motion prior to trial, stating its reason for the request. And trial severance should be granted when "there is a substantial risk or serious one", that a joint trial would compromise a specific right

of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence. See Zafiro v. U.S., 506 U.S. 534, 539 (1993).

Here, the State unfairly accused 'conspiracy' through a invalid process. Which meant that "two people agreed to commit the crimes". Without sufficient evidence Petitioner was one of the participants. However, with Petitioner seated right beside the defendant police immediately identified. It left Petitioner without any defense to claiming innocence. Where the jury could logically deduce, "Petitioner was the other co-defendant", without actually considering the evidence introduced at trial.

Moreover, it would render the attorneys representation under the circumstances of this case per-se ineffective. By having to agree "certain defenses could not be forwarded". Based on the risk it would implicate the other defendant with the crimes charged.

In addition, such could also be a reason the defendants did not offer testimony or put forth any defense at the close of the State case. Based on the above, counsel was ineffective for not moving to sever the trial of defendants.

4. Fourth, Petitioner contends that appeal counsel in his case rendered ineffective assistance of counsel for (1) failing to file a merits brief as opposed to Anders, based on the preserved issues objected to in open court.

Here, Petitioner reiterates his claim that his appeal counsel provided ineffective assistance by failing to converse with his client on factual matters prior to submitting the Anders brief. Where Petitioner could have provided counsel with factual circumstances to broaden counsel's take on the case, and cause a more effective review of the appeal issues.

In otherwords, "a challenge to the court's subject-matter-jurisdiction" may be raised at any time". See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (S.C. 2005). Whereas, appeal counsel "if he reviewed the record entirely", would have noted as argued herein, there were important concerns for direct review dealing with "the process in which the indictment was obtained". And whether such process would have been upheld by the South Carolina appeals Court. Making the outcome of the proceeding different.

5. Fifth, is the way in which Petitioner was convicted and sentenced that exposes a violation of "double jeopardy". Where if the "same evidence test is applied". Petitioner would actually have been convicted of the identical crime twice. For instance, "armed robbery" is both (a) a violent crime under South Carolina laws to which; (b) requires the active employment of a firearm during the commission of the robbery. Thus, the firearm charge is fully accounted for when the state elected to charge 'armed robbery'. Again, the indictment here charges (1) murder, (2) armed robbery, (3) burglary 1st, (4) attempted murder, and (5) posse-

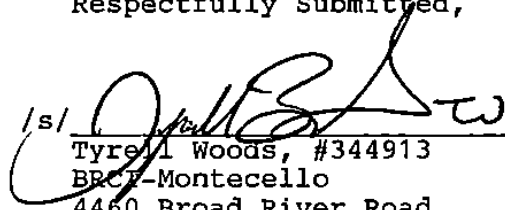
ssion of a weapon during the commission of a violent crime. The similarities between (a) 'armed robbery' and (b) possession of a weapon during the commission of a violent crime. Bear to much likeness for counsel "not to have noticed and on that basis, moved to dismiss one of the two counts as explained here.

In addition, "so does the charges Burglary 1st and armed robbery": Where under South Carolina laws, "both require the use of force (by weapon or otherwise)". And the unlawful taking with the intent to deprive the owner of his property. Although 1st degree burglary can be committed during the night time and without a weapon's element. It is the weapon which gives rise to the charge in the instant case at bar.

Under the legal analysis for support of the above concerns, in which trial counsel should have noticed. U.S. v. Grimes, stated; "If the defendant is charged with a single crime in multiple counts, those counts are duplicitous, and sentencing the defendant to multiple punishments violates the Double Jeopardy Clause. See also Austin v. Cain, 660 F.3d 880 (5th Circuit 2011); Grimes, 702 F3d 460 (8th Cir. 2012).

Wherefore, based on the facts and arguments contained herein, which is not limited. Petitioner request that relief be granted on Federal Constitutional grounds after a evidentiary hearing is convened and the court undertakes Petitioner's claims based on ineffective assistance of counsel.

Respectfully Submitted,

/s/ 
Tyrell Woods, #344913
BRCP-Montecello
4460 Broad River Road
Columbia, S.C. 29210

cc: filed
1/15/2017

(11 of 11)



ALAN WILSON
ATTORNEY GENERAL

July 25, 2017

The Honorable Christy M. Gray
Clerk of Court, Marion County
PO Box 295
Marion, SC 29571-0295

Re: Tyrell Woods, #344913 v. State of South Carolina
2017-CP-33-0204

FILED
2017 JUL 26 AM 9:58
MARION COUNTY SC
CHRISTY M GRAY
CLERK OF COURT

Dear Ms. Gray:

Enclosed please find the original **Return and Partial Motion to Dismiss** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Lindsey A. McCallister
Assistant Attorney General

LAM/dgr
Enclosure

cc: Jonathan D. Waller, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)
))
Tyrell Woods, #344913,)
Applicant,)
))
v.)
))
State of South Carolina,)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS
IN THE TWELFTH JUDICIAL CIRCUIT

Case No.: 2017-CP-33-204

**RETURN AND PARTIAL
MOTION TO DISMISS**

FILED
2017 JUL 26 AM 9:58
MARION COUNTY SC
CHRISTY McGRAY
CLERK OF COURT

Respondent, making its Return to the Application for Post-Conviction Relief filed on March 8, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the May 2013 term of the Marion County Grand Jury for one count each of murder, armed robbery, burglary -first degree, attempted murder, possession of a firearm during commission of a violent crime, and conspiracy (2013-GS-33-0256). Scott P. Floyd, Esquire, and William Vick Meetze, Esquire, represented Applicant. Solicitor Ed Clements, Esquire, and Assistant Solicitor Dudley Saleeby, Esquire, prosecuted the case. On May 19-22, 2014, Applicant proceeded to trial before the Honorable D. Craig Brown. The jury found Applicant guilty as indicted. Judge Brown sentenced Applicant to consecutive terms of imprisonment of five years each for conspiracy and possession of a weapon during commission of a violent crime, thirty years each for armed robbery and attempted murder, and life without parole for both counts of burglary – first degree and murder.

Applicant filed a timely notice of appeal. David Alexander, Esquire, of the Office of Appellate Defense perfected an appeal pursuant to Anders v. California, 386 U.S. 738 (1967). The

South Carolina Court of Appeals affirmed Applicant's conviction on January 20, 2016. State v. Woods, Op. No. 2016-UP-030 (S.C. Ct. App. filed January 20, 2016). The remittitur was returned to the circuit court on March 10, 2016.

Attached to this Return and incorporated herein by reference are the records of the Marion County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the application.

II.

In his application for post-conviction relief, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
 - a. Counsel failed to properly object to conspiracy charge due to that charge not being presented to the grand jury;
 - b. Counsel failed to "move for trial severance" where there existed "a high risk [that] defending one client may prejudice the defense of the other."
2. Ineffective Assistance of Appellate Counsel
 - a. Counsel "failed to file a merits brief as opposed to Anders, based on the preserved issues objected to in open court."
 - b. Counsel "failed to converse with [Applicant] on factual matters prior to submitting the Anders brief."
3. Lack of Subject-Matter Jurisdiction
 - a. The Court "lacked subject matter jurisdiction to proceed with a trial. . . based on the failure of the grand jury to have found a true bill on the indictment itself."
4. "Double Jeopardy" violation
 - a. The Court violated double jeopardy by sentencing Applicant on armed robbery and possession of a firearm during the commission of a violent crime due to the similarities between the two.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All

claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only person authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

III.

Respondent submits Applicant's allegations of ineffective assistance of trial and appellate counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. at 689. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386

S.E.2d at 625. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. Respondent submits Applicant cannot satisfy either requirement of the Strickland test.

Additionally, a defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985). Additionally, when counsel decides not to present all points requested by the defendant as a matter of professional judgment, an indignant defendant does not have a constitutional right to compel them to do so. Jones, 463 U.S. at 751.

In South Carolina, when appellate counsel petitions to be relieved after submitting an Anders brief, "the role of the appellate court is to review the brief submitted by counsel, any *pro se* response submitted by the Applicant, and the record on appeal to determine whether the appeal contains any issues of arguable merit. State v. Lyles, 381 S.C. 442, 444, 673 S.E.2d 811, 813 (2009) (citing State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991)). If the court finds that there is an issue with arguable merit, the court will direct parties to file merit briefs. Id. Otherwise, the appeal is dismissed and counsel is relieved. Id. In this way, the court is not deciding on the merits of the case, but "simply reflects that the appellate court was unable to ascertain a non-frivolous issue which would require counsel to file a merits brief." Lyles, 381 S.C. at 444-45, 673 S.E.2d at 813.

Furthermore, Applicant must show that appellate counsel's performance was deficient, and he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id. In this case, Applicant's appellate counsel filed an Anders brief, Applicant filed a response to the Anders brief, and the Court dismissed the appeal. Therefore, Respondent contends Applicant's appellate attorney rendered effective assistance of counsel.

However, the allegations of ineffective assistance of trial and appellate counsel probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits Applicant's claim the circuit court lacked subject-matter jurisdiction because the indictment was not stamped or marked as "true billed" is meritless. A circuit court has subject-matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. State v. Wilkes, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)). Defects in the indictment do not affect subject-matter jurisdiction. See State v. Gentry, 363 S.C. 93, 610 S.E.2d 494 (2005) (citing U.S. v. Cotton, 535 U.S. 625 (2002)). "[S]ubject-matter jurisdiction of the circuit

court and the sufficiency of an indictment are two distinct concepts.” Id. at 101, 610 S.E.2d at 499. The indictment is a notice document, and any challenges to its sufficiency “shall be taken by demurrer or on motion to quash... before the jury shall be sworn and not afterwards.” S.C. Code § 17-19-20 (2003).

In this case, Applicant was indicted by the Marion County grand jury. That indictment was signed by the foreman of the grand jury. A hearing was held on the issue of its validity, and the issue was ruled upon. Therefore, even if the facts alleged by Applicant are true, these facts do not support a cognizable claim for post-conviction relief under any of the statutory grounds. PCR relief is only proper when the application collaterally attacks the validity of the conviction or sentence. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000). This issue is improper for post-conviction relief because it could have been raised on direct appeal and, therefore, is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief allegation cannot assert an issue that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief.

For these reasons and pursuant to Rule 12(b)(6), SCRCP, the Court should dismiss this allegation for failing to state a cognizable claim for which relief can be granted under the Post-Conviction Relief Act.

V.

Applicant’s allegation that his convictions for armed robbery and possession of a weapon during commission of a violent crime constitutes a “double jeopardy violation” should be dismissed as a matter of law because the South Carolina Supreme Court has ruled on this exact issue and found

no constitutional violation. State v. Bolden, 303 S.C. 41, 44, 398 S.E.2d 494, 495(1990) (holding convictions for armed robbery and possession of a weapon do not constitute double jeopardy). “The Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction and protects against multiple punishments for the same offense.” State v. Jolly, 405 S.C. 622, 626, 749 S.E.2d 114, 116 (Ct. App. 2013) (quoting Stevenson v. State, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999)). “The double jeopardy clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended.” Bolden, 303 S.C. at 44, 398 S.E.2d at 495 (citing Missouri v. Hunter, 459 U.S. 359 (1983); Matthews v. State, 300 S.C. 238, 387 S.E.2d 258 (1990)). “Armed robbery is a violent crime under S.C.Code Ann. § 16–1–60. S.C.Code Ann. § 16–23–490 expressly provides additional punishment for possession of a weapon during commission of a violent crime as defined in § 16–1–60. It is clear from the face of the statute the legislature intended to allow cumulative punishment in this instance.” Id.

Because this exact issue has been raised to the South Carolina Supreme Court, which found no constitutional violation, this allegation should be summarily dismissed as a matter of law because there is no genuine issue of material fact which would necessitate an evidentiary hearing.

VI.

Respondent therefore requests that this Court convene an evidentiary hearing solely on the allegations of ineffective assistance of trial and appellate counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing, and those allegations should be dismissed as a matter of law.

VII.

Each and every allegation contained within the application not expressly admitted, qualified, or explained in this Return is hereby denied.

VIII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsel, and Applicant's remaining claims be dismissed as a matter of law.

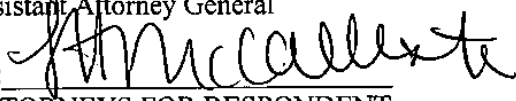
Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

1/25, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF MARION)

TYRELL WOODS, #344913)
Applicant,)
vs)
STATE OF SOUTH CAROLINA,)
Respondent,)

IN THE COURT OF COMMON PLEAS

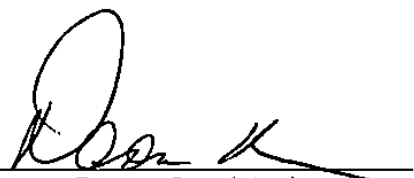
2017-CP-33-0204

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the **Return and Partial Motion to Dismiss** the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jonathan D. Waller, Esquire
Giese Law Firm
1315 Blanding Street
Columbia, SC 29201

DATED this the 24th day of July, 2017.


Deonna Rogers, Legal Assistant
For Respondent

FILED
2017 JUL 25 AM 9:58
MARION COUNTY CLERK
CHRISTINE M. GRAY
CLERK OF COURT

STATE OF SOUTH CAROLINA :
COUNTY OF FLORENCE :
Tyrell Woods, :
Applicant/Petitioner, :
Vs. :
State of South Carolina, :
Respondent :

IN THE COURT OF COMMON PLEAS
TWELTH JUDICIAL CIRCUIT

CASE NO.: 2017-CP-33-0204

PETITIONER'S SUPPLEMENT AND
AMENDMENT TO APPLICATION
FOR POST-CONVICTIO RELIEF

FILED
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The Petitioner hereby supplement his application for PCR to include the following grounds for relief:

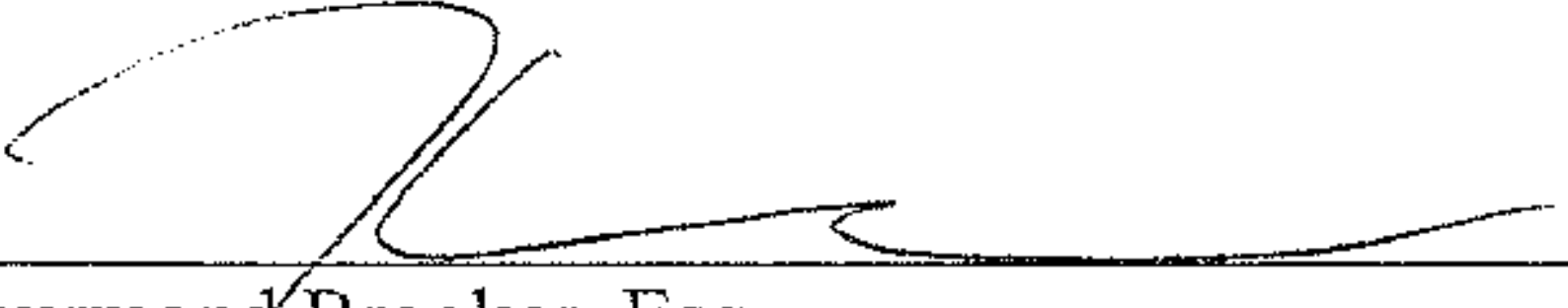
1. The trial court abused its discretion in failing to suppress the in-court lay opinion identification testimony by Detective James Lee identifying Tyrell Woods from video surveillance footage, pursuant to Rule 701 SCRE.
2. Appellate counsel's assistance was ineffective where he failed to appeal the trial court's denial of Tyrell Wood's motion in limine to exclude the in-court lay opinion identification testimony by Detective James Lee identifying Tyrell Woods from video surveillance footage, pursuant to Rule 701 SCRE.
3. Trial counsel was ineffective for failing to argue that the in-court lay opinion identification testimony by Detective James Lee identifying Tyrell Woods form video surveillance footage should be suppress or excluded pursuant to Rule 701 SCRE.
4. Trial counsel was ineffective for failing to move to suppress the fingerprint analytical reports by SLED on the ground that the schmerber order requiring the production of Tyrell Wood's fingerprints for analytical comparison to prints found at the crime scene and on the victim did not comply with SC Code Ann. 17-13-140.
5. The trial court abused its discretion in failing to dismiss the conspiracy charge pursuant to Tyrell Wood's pre-trial motion.
6. The trial counsel was ineffective in failing to move to exclude and or suppress or object to testimony by Detective James Lee and Neil Rouse that Shawn Bart Davis identified Tyrell Woods in a pretrial photograph lineup where Shaw Bart Davis was not present at trial in violation of the Confrontation Clause to the United States Constitutions

7. Counsel was ineffective for failing to object to the jury charge where the jury was instructed that malice element of murder could be inferred from conduct that showed a total disregard for human life.”

Respectfully submitted

Florence, SC

June 25, 20109


Thurmond Brooker, Esq.
Brooker Law Firm
P. O. Box 1450
Florence, SC 29503-1450

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true of this Supplement and Amendment to Application for Post-Conviction Relief was served by personal service on Lindsey A. McAllister on June 25, 2019 by mailing a copy via United State Postal Service, with sufficient postage attached thereto addressed as follows:

Lindsey A. McAllister, Assistant Attorney General
SC Attorney General Office
P. O. Box 11549
Columbia, SC 29211


Thurmond Brooker

Florence, SC

June 25, 2019

STATE OF SOUTH CAROLINA	:	IN THE COURT OF COMMON PLEAS
	:	TWELTH JUDICIAL CIRCUIT
COUNTY OF MARION	:	
	:	CASE NO.: 2017-CP-33-0204
Tyrell Woods,	:	
	:	
Applicant/Petitioner,	:	<u>APPLICANT'S 2ND SUPPLEMENT</u>
	:	<u>TO PCR APPLICATION</u>
	:	
State of South Carolina,	:	
	:	
Respondent	:	

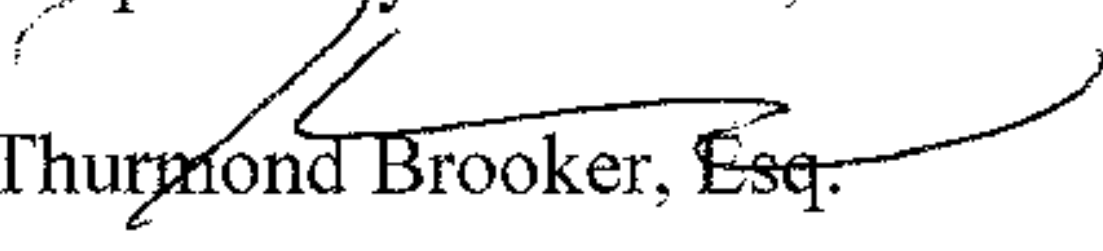
Applicant, by and through counsel, supplements his application for PCR to include the following issue for relief:

1. Counsel was ineffective for failing to move to squash the indictment on the ground that the indictment was fatally defective because it did not sufficiently allege the place of the crime. See, SC Code Ann. § 17-19-20; SC Code Ann. § 17-19-20; *State v. Blakeney*, 33 S.C. 111 (1890).

Florence, SC

March 2, 2020

Respectfully submitted,


Thurmond Brooker, Esq.

CERTIFICATE OF SERVICE

The undersigned thereby certified that a true copy of Applicant's 2nd Supplement to PCR Application was served by email sent to lmcallister@scag.gov and by First Class US Mail, postage prepaid, on this 2nd day of March 2020 addressed as follows:

Lindsey McAllister, Assistant Attorney General
SC Attorney General's Office
P. O. Box 11549
Columbia, SC 29211

Florence, SC


Thurmond Brooker, Esq.

State of South Carolina)
) Court of General Sessions
County of Florence) 2017-CP-33-00204

Tyrell Woods)
)
 vs.) Transcript of Record
)
State of South Carolina)

April 21, 2022
Florence, South Carolina

B E F O R E:

The Honorable George M. McFaddin, Jr., Judge.

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

Thurmond Brooker, Esq.
Attorney for the Petitioner

Mark R. Farthing, Esq.
Attorney for the Respondent

Annaliese Grassi
Transcriber



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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
P-1	Forensic report	24	
P-2	Transcript	28	
P-3	Supplemental forensic report	34	
R-1	Surveillance video	85	86

1 THE COURT: All right. Y'all want to call the case?

2 MR. FARTHING: Thank you, Your Honor. May it please the
3 Court, Mark Farthing appearing on behalf of the State of South
4 Carolina. This is conviction relief matter of Tyrell Woods v.
5 State of South Carolina. The docket number is 2017-CP-33-204.

6 This case stems from a home invasion and fatal shooting
7 that occurred in Marion County on the 4th of July in 2012, so
8 this one has a little bit of age on it. Based on the
9 incident, the applicant was indicted on in May of 2013 through
10 a six-count indictment by the Marion County grand jury for
11 murder, armed robbery, first degree burglary, attempted
12 murder, possession of a weapon during the commission of a
13 violent crime, and conspiracy. Through the same indictment
14 the applicant's uncle, Marco Sanders, was charged with the
15 same six offenses.

16 The applicant was represented on the charges by appointed
17 counsel Scott Floyd from the 12th Circuit Public Defender's
18 Office, and Mr. Floyd was assisted in his representation by
19 Vick Meetze. The applicant's case was called to trial in
20 Marion County on May 19th, 2014, and Mr. Woods was tried along
21 with his uncle, Mr. Sanders, who was represented by Ralph
22 Wilson, Sr.

23 I just want to give you a real quick summary of the case,
24 and this is based on the facts that were adduced during trial.
25 But the incident took place at the home of the 70-year-old

1 victim, Samuel Rowell. Mr. Rowell had a surveillance system
2 set up at his house with a couple of different cameras. And
3 those cameras on the evening of July 4th pick up a white SUV
4 that comes by a couple of times, and then an individual goes
5 to the door. That individual is later identified as the
6 applicant. He leaves after going to the door once, and then
7 shortly after that the camera picks up another individual
8 walking to the door with a gun clearly displayed and a roll of
9 duct tape in his hands. I know it was a revolver with a
10 homemade silencer affixed to it. Mr. Woods comes back in the
11 camera. He also has a gun. The two men go up to the door,
12 ready their guns, and go inside.

13 What happens inside we get through the forensics and
14 through the testimony of an individual named Eddie Godbold,
15 who is a neighbor of Mr. Rowell. Mr. Godbold came over trying
16 to find -- or came over to borrow a deep fryer. He saw Mr.
17 Rowell's truck parked outside so he knew he was home. He
18 knocked on the front door and nobody answered. He knocked on
19 the back door and nobody answered. When he came by the side
20 door, Mr. Rowell called out to him and said, Eddie, they're
21 robbing me; open the door. He went to open the door, and
22 three gunshots rang out. He ran and hid. Another neighbor
23 heard the gunshots, came over. Shortly after that he was run
24 off the road by a white SUV. Later Mr. Sanders, the uncle,
25 and the applicant were linked to that white SUV.

1 Through our forensics we got the surveillance footage.
2 Two officers that were familiar with Mr. Sanders identified
3 him from the video. One officer that was familiar with Mr.
4 Sanders and Mr. Woods identified both of them through the
5 surveillance video as the gunmen. And then in addition to
6 that very powerful surveillance footage, we also had some very
7 significant fingerprint evidence in this case where I believe
8 16 of Mr. Woods' fingerprints were recovered from spots inside
9 the victim's home, and it wasn't just any spots. It was, I
10 think, several of the fingerprints were from the adhesive side
11 of the duct tape that was used to bind and gag the victim
12 before he was shot to death, and the rest of the fingerprints
13 were recovered from items that had been put into pillowcases
14 being used as loot bags in the case.

15 And all of that evidence was presented to the jury. The
16 jury ultimately, after a short period of deliberations,
17 convicted both men as indicted. And the presiding judge,
18 Judge Brown, sentenced each of the men to two life sentences
19 along with an aggregate consecutive term of imprisonment of 70
20 years.

21 After the trial a notice of appeal was filed on the
22 applicant's behalf. David Alexander from the appellate
23 division of the South Carolina Commission on Indigent Defense
24 was appointed to represent the applicant. Ultimately, after
25 reviewing everything he submitted a brief pursuant to Anders

1 v. California along with a motion to be relieved, and the
2 applicant submitted a pro se brief on his own behalf. After
3 review, the Court of Appeals granted the motion to be relieved
4 and dismissed the appeal pursuant to the two Anders. The
5 appellate process was brought to an end with the issuance of
6 remittitur on March 10th, 2016.

7 Following that, that's how we get here. The applicant
8 initiated his PCR through an application filed on March 8th,
9 2017. That application was timely. In it he personally
10 raised a number of pro se claims including a claim the trial
11 court lacked subject matter jurisdiction due to the indictment
12 allegedly not being true billed. A claim trial counsel was
13 ineffective for failing to move for a severance and failing to
14 move to dismiss the conspiracy charge. A claim appellate
15 counsel was ineffective for failing to file a merits brief
16 raising the indictment issue and for failing to converse with
17 him on factual matters before filing the brief. And finally a
18 claim of a double jeopardy violation related to the fact he
19 was convicted and sentenced for both armed robbery and
20 possession of a weapon during the commission of a violent
21 crime.

22 Shortly after the application was filed, Jonathan Waller,
23 Esq., was appointed to represent the applicant. At some point
24 after that, though, Mr. Brooker has assumed the applicant's
25 representation, and today he's filed two separate amendments

1 to the application. Through those amendments we have eight
2 new claims that have been raised, and those are:

3 The trial judge erred by not suppressing the Det. Lee's
4 identification evidence, and he is the officer that made the
5 identification of Mr. Woods from the surveillance footage.

6 Number 2, trial counsel was ineffective for failing to
7 argue for suppression of the same testimony.

8 Number 3, appellate counsel was ineffective for failing
9 to appeal the denial of the motion to exclude that same
10 testimony, and so that's three related to Det. Lee's
11 testimony.

12 Number 4, trial counsel was ineffective for failing to
13 object to the fingerprint analysis results because the
14 Schmerber order for the applicant's prints reportedly didn't
15 comply with our state's warrant statute, Section 17-13-140.

16 Number 5, the trial judge erred by failing to dismiss the
17 conspiracy indictment.

18 Number 6, trial counsel was ineffective for failing to
19 move to exclude testimony from both Det. Lee and another
20 detective, Det. Rouse regarding an identification made by an
21 individual named Shawn Davis (phonetic).

22 Number 7, trial counsel was ineffective for failing to
23 object to a jury charge that instructed the malice element of
24 murder could be inferred from conduct that showed a total
25 disregard for human life.

1 And number 8, trial counsel was ineffective for failing
2 to move to quash the indictment on the ground it was fateably
3 (sic) defective for purportedly failing to sufficiently allege
4 the place of the crime.

5 At this time, we're here today for the evidentiary
6 hearing, and the State is ready to go forward. Before we go
7 any further, though, and with the Court's permission, I want
8 to ask counsel for the applicant to specifically confirm and
9 identify what claims we want to go forward on are the ones
10 I've listed, if all of them, and if there's any new claims.

11 And also before we go any further, I'd like to move for
12 summary dismissal on several of the claims that have been
13 raised and I would like to ask Your Honor to take judicial
14 notice of all the physical exhibits that are in the record in
15 Marion County.

16 THE COURT: Mr. Brooker?

17 MR. BROOKER: If you can indulge me for just a second,
18 Your Honor.

19 THE COURT: Yes.

20 (Pause.)

21 MR. BROOKER: I apologize, Your Honor.

22 THE COURT: It's all right.

23 MR. BROOKER: Thank you, Your Honor. Your Honor, I was
24 just confirming with my client in reference to which of the
25 issues that he seeks to go forth with. I think the issues

1 that were initially alleged in his application, I think
2 specifically it was an attachment to his application. He has
3 advised me that he would withdraw those objections that were
4 attached to the application, I think, in pleadings that's
5 identified as attached sheets supporting PCR application, and
6 we will be going forth with the issues that are raised in the
7 supplemental amendment that we filed; I think there were seven
8 issues. And of course, is that we also submitted a second
9 supplement to the application, which would be a total of eight
10 issues.

11 There is one issue, Your Honor, that we would like for
12 the Court to consider to include as a ninth issue, and of
13 course, as it is related to, I think, number 4. I think it's
14 related to number 4.

15 Where's the paper that you just showed me that had that
16 issue?

17 And that issue would be that trial counsel was
18 ineffective when he failed to object or move to suppress the
19 initial fingerprint analysis report by SLED on the grounds
20 that the quality of the fingerprints according to the SLED
21 laboratory reports were deemed insufficient or non-suitable
22 for comparison.

23 THE COURT: All right. From the State?

24 MR. FARTHING: Your Honor, I have no objection to that
25 amendment. I'm prepared to respond to that today. Based on

1 him withdrawing the pro se claims, several of my motions for
2 summary dismissal have been resolved, but if I can be briefly
3 heard on two of the claims that were made.

4 THE COURT: Okay.

5 MR. FARTHING: Two of the claims that have been raised
6 out of the now nine allege error on the part of the trial
7 judge. One is just a straight argument that the trial judge
8 erred by failing to suppress Det. Lee's identification
9 testimony, and one alleging the trial judge erred by failing
10 to dismiss the conspiracy charge. Both of those should be
11 summarily dismissed.

12 I think supporting that, our Supreme Court explained in
13 the Al-Shabazz case, when asserting the erroneous admission of
14 evidence, a violation constitutional right, or other errors in
15 the proceeding, the applicant generally must frame the issue
16 as one of ineffective assistance of counsel, and both of those
17 claims actually are framed in other allegations as ineffective
18 assistance of counsel so they're going to be addressed. But
19 post-conviction relief is not a substitute for direct appeal,
20 so we're not reviewing direct attacks on the trial judge's
21 rulings.

22 And so to the extent that those two claims have been
23 raised as separate allegations of the trial judge error, those
24 aren't recognizable in post-conviction relief and should be
25 summarily dismissed, and we'd ask Your Honor to do that now.

1 THE COURT: Mr. Brooker?

2 MR. BROOKER: Thank you, Your Honor. Your Honor, I
3 think, if my memory serves me correctly, I think that the two
4 that he identified was number 1, and that is to trial counsel
5 abuse of discretion in failing to suppress the in court lay
6 opinion. With respect to that, Your Honor, I think that
7 particular issue is incorporated in number 2 and 3, and so for
8 purposes of alleging that the trial counsel abuse of its
9 discretion, I don't have a problem with instead of, you know,
10 dismissing it, I would suggest that it be amended if he's
11 alleging that defect is in form only.

12 With respect to number 5, Your Honor, I don't know
13 whether or not number 5 is properly addressed by one of the
14 other issues, and I don't know whether or not number 5 is
15 addressed by one of the other issues. I would suggest that
16 number 5 be amended to suggest, or amend it to read that the
17 appellate counsel was ineffective, was ineffective in failing
18 to appeal the trial court's denial or dismissal -- the trial
19 court's denial of trial counsel's motion to dismiss the
20 conspiracy charge as opposed to dismissing it outright. And I
21 think the allegation is, and I think what he's alleging is, is
22 that they have been provided the proper notice of these
23 particular issues. I think the argument is, is with the form
24 and that they're not in proper form.

25 MR. FARTHING: Yes, Your Honor. And it sounds like one

1 is gone because it's already raised as 3, so we're perfectly
2 fine with that. And I have no problem with number 5 being
3 amended to be an ineffective assistance of appellate counsel
4 claim because I think that was in the pro se application. I
5 would note, though, that that is the exact issue that
6 appellate counsel filed in the Ander's brief, so as I
7 understand it, we're saying it is ineffective assistance of
8 appellate counsel for failing to raise that issue in a merits
9 brief.

10 THE COURT: Okay. All right. Let me jump to tomorrow
11 morning real quick because I think there's going to a relevant
12 concern here shortly.

13 (Court handles unrelated matter)

14 THE COURT: All right. I'm ready.

15 Mr. Brooker?

16 MR. BROOKER: Thank you, Your Honor. We would call Scott
17 Floyd.

18 THE COURT: All right, sir.

19 SCOTT FLOYD, after being duly sworn, testified as
20 follows:

21 DIRECT EXAMINATION

22 BY MR. BROOKER:

23 Q Mr. Floyd, you represented Tyrell Woods in connection
24 with the criminal charge that is the subject of this PCR
25 action; is that correct?

1 A Yes.

2 Q And were you his first counsel?

3 A Yes.

4 Q Okay. And do you know at what stage you were appointed
5 to represent him?

6 A Shortly after his arrest.

7 Q Okay.

8 A I think.

9 Q And about how long between the time of your
10 representation until the time that this case went to trial?

11 A You know, I know that -- it seems like I remember 2013,
12 maybe, was when we got involved and began talking to him and
13 received discovery and that sort of thing. And I'm not sure
14 when it went to trial, however many years after that it
15 would've been. I'm not sure.

16 Q Okay.

17 A I can't recall. I don't have the files sitting here in
18 front of me. But --

19 Q Okay. Do you remember prior, at least, do you remember
20 the allegations in connection with this case and the issues at
21 trial?

22 A Yes. I mean, I -- yes.

23 Q Okay. What were the general allegations against Mr.
24 Woods?

25 A Well, that he participated in a murder that occurred in

1 Marion County, along with Marco Sanders, I think, was his
2 codefendant's name. And also alleged conspiracy, robbery, a
3 number of other counts.

4 Q Okay. And if my memory is correct, and you correct me if
5 I'm wrong, was the factual allegation that he, along with his
6 codefendant, traveled to the home of the victim and that they
7 went in through the front door of the victim's residence?

8 A I believe. Well, I do recall there was an allegation
9 they went through the door and all that. Whether it was the
10 front door or the back door, I don't remember. I don't recall
11 specifically, but it may very well have been the front door.

12 Q And entrance in which they went through there was a video
13 camera that actually depicted these two particular subjects
14 going into the residence?

15 A That's correct. Yes.

16 Q Okay. And it's my understanding is, is that the two
17 individuals that entered the residence, that they ended up
18 using duct tape to tie up the victim in that case?

19 A That was an allegation. Correct.

20 Q Okay. And of course, the decedent was eventually killed
21 and of course, the two suspects flee the home; is that
22 correct?

23 A Correct. Yes.

24 Q And my understanding, you correct me if I'm wrong, that
25 the main evidence in connection with this case that implicated

1 Tyrell Woods was that video in which I think it was a -- was
2 that video and of course, the duct tape. I think there was
3 fingerprints that was taken off the duct tape and also
4 fingerprints that was taken on the interior of the home that
5 was alleged to have matched with Mr. Woods; is that correct?

6 A Yes. That's correct.

7 Q Okay. Can you think of, and I know that those were
8 the -- my understanding is, is that those were the most
9 significant pieces of evidence that pretty much the
10 Prosecution was using to tie him in connection with this
11 crime. Is there anything else though that was significant
12 that you can think of that I don't know of that they used to
13 try to suggest that he was one of the persons that actually
14 was seen on that video entering the home?

15 A He did -- if I recall, he did not give a statement
16 implicating himself. I don't believe his codefendant did
17 either. So I would -- I would think that's correct.

18 Q Okay.

19 A That those were the main items, yeah.

20 Q Okay. And I think, if my memory serves me correctly, let
21 me grab something I'll ask you to take a look at. And
22 actually, the fingerprints that was taken out of the home, at
23 some point in time that SLED used fingerprints of his to try
24 and determine whether or not his fingerprints matched the
25 fingerprints that was found in the home and also fingerprints

1 that was found, I think, on duct tape that was used to bind
2 the victim?

3 A Are you asking me if SLED tested those fingerprints
4 that --

5 Q Yeah.

6 A -- that were found inside the home?

7 Q Yeah. Did they use -- I think, and my understanding is
8 that initially that SLED found fingerprints on the inside of
9 the home?

10 A Right.

11 Q And of course, is, is that Mr. Woods was the suspect?

12 A Right.

13 Q And so they wanted to compare Mr. Woods's fingerprints to
14 the fingerprints that they found in the home?

15 A Correct. Yes.

16 Q And did they do that?

17 A Yes. It's my understanding they did.

18 Q Okay. I'm going to approach and I'm going to hand you up
19 this document. If you could take a look at it and see whether
20 or not you recognize it or remember it.

21 (Pause.)

22 A Okay.

23 Q Okay. And of course, is, and I think in that report --
24 you could take a look at this report with me. On page number
25 1 --

1 MR. BROOKER: Your Honor, I have one for you, Your Honor,
2 if you'd like to follow with us.

3 THE COURT: Yes. Thank you.

4 Q I think on page 1 of this latent prints report that's
5 dated November 5 of 2012, and I'm specifically looking at item
6 1. -- excuse me, 3.1.

7 A Okay.

8 Q And of course, it says latent prints developed on item 3,
9 cigarette box, and of course, it says results. And I think on
10 the last line, it says, no conclusion will be rendered due to
11 the quality of item 67/Tyrell Woods. Am I correct?

12 A 64.

13 Q I'm sorry. 64.

14 A Is what I'm looking at, yeah.

15 Q Okay. Now, item 64, was that a set of latent prints that
16 was stored in SLED's AFIS system, latent prints for Tyrell
17 Woods?

18 A That -- yes. That's what the report indicates. Correct.
19 Item 64.

20 Q Okay.

21 A It says major case prints then the name Woods Tyrell,
22 received from SLED AFIS. Yes.

23 Q And of course, on the next page at the very top, on page
24 number 2, I think this is going to be the second paragraph.
25 It says the latent submitted were not suitable for the South

1 Carolina automatic fingerprint identification system. Please
2 submit complete ink fingerprints and palm prints for further
3 examination and comparison.

4 A Um-hum.

5 Q Is it my understanding that what SLED is saying here is
6 that those initial fingerprints that were submitted for Mr.
7 Woods, that came out of the SLED's AFIS system, was
8 insufficient for purposes of comparison?

9 A That the latent prints collected from item 3.1 were
10 insufficient; is that --

11 Q Yeah. Item --

12 A -- what you're asking? Right.

13 Q Item 3.1, specifically item 64.

14 A Right.

15 Q And that's referencing 3.1. It says that item 64, which
16 is those latent prints from SLED, that those latent prints
17 were of poor quality and insufficient for comparison,
18 comparison to the fingerprints that was found at the scene of
19 the crime. Is that what your understanding of this report
20 was, that's what SLED was saying?

21 A My understanding is that they're referring to latent
22 prints taken from item 3.1; they're saying those weren't
23 suitable for comparison to the prints that they had in the
24 fingerprint identification system.

25 Q Okay. Go back to page 1 at the bottom.

1 A I see what it says.

2 Q And it says --

3 A No conclusion will be rendered to do the quality of item

4 64.

5 Q Okay. But it says due to the quality of item 64?

6 A Right.

7 Q And item 64 were those latent prints for the -- those

8 latent prints from SLED; is that correct?

9 A Well, they refer to latent prints twice. Item 64 says

10 major case prints. It doesn't call them latent prints.

11 Q Yeah. Yeah. Item 64?

12 A Right.

13 Q Those were the prints that actually came out of SLED's --

14 A System. Correct.

15 Q -- AFIS system; is that correct?

16 A That's what this says, yes.

17 Q Yeah. And it does say that they were -- that comparison

18 could not be made due to the quality of those prints; is that

19 correct?

20 A On the top of page 2, is that what you're talking about?

21 Q Yeah. Bottom of page 1, which says no conclusion --

22 A Right.

23 Q -- will be rendered due to the quality of item 64.

24 A Right.

25 Q And then the top of page 2 where it says the latents

1 submitted were not suitable for the South Carolina automatic
2 fingerprint identification system. Please submit complete
3 inked fingerprints and palm prints for further examination and
4 comparison.

5 A Okay. I see what you're saying.

6 Q So they were insufficient for comparison; is that your
7 understanding?

8 A That -- that's what that indicates as far as those items
9 taken off of the cig -- cigar box, yeah.

10 Q Okay. Yeah. And of course, when they were insufficient
11 for comparison, because these SLED says that item 64 was
12 insufficient for comparison, the latent fingerprints to
13 compare with the other fingerprints found at the scene, did
14 you file a motion or make a motion to suppress this report on
15 the grounds that the analyst indicates in the report that the
16 fingerprints from the SLED database were insufficient for
17 purposes of comparison?

18 A No. I do not recall filing such a motion.

19 Q And do you read this the same way that I do, is that SLED
20 is that saying that they're insufficient for comparison, what
21 they're saying is, is that they're unreliable; they can't make
22 a match because the latent prints are just a poor quality?

23 A I'm reading it to say that the prints taken off of item 3
24 couldn't be compared to what they had on file.

25 Q Yeah. Couldn't be --

1 A Right. Correct.

2 Q -- compared to 64.

3 A Correct.

4 Q Because 64 --

5 A Yes.

6 Q -- was of poor quality?

7 A Correct.

8 Q And 64 were the prints that they had in the SLED database

9 that they believe belonged to Mr. Woods; is that correct?

10 A That's my understanding. Item 64, yes.

11 Q Yeah. And those are the prints that they would use to

12 compare with all of those fingerprints that they found at the

13 scene; is that correct?

14 A That was my understanding, yes.

15 Q Because --

16 A And they -- they refer back to item 64 on every print

17 that they identified as his. Correct.

18 Q Now, and I'm a little bit confused, and of course,

19 there's -- I don't know whether or not you see this the same

20 way. It's at the top of the page. If on the first page if

21 SLED says that the fingerprints or SLED analyst says that

22 fingerprints -- that no conclusion can be drawn due to the

23 quality of the fingerprints, and then, of course, there's that

24 it requested, and it says, at least at the top of page 2, that

25 suggests that complete another set of fingerprints should be

1 submitted for further examination and comparison. That would
2 pretty much be relevant to every print later on in this report
3 in which they use number 64 to do a comparison with, with item
4 64 to do a comparison with. Would that same rationale apply?

5 A Well, the -- they do have items, as you're aware, that
6 they compare to the same standard in item 64, correct?

7 Q Um-hum.

8 A Such as the grayish -- the fingerprint they remove from
9 the adhesive side of the duct tape, item 48.3. They compared
10 that with item 64 and they're saying they were able to
11 identify it, okay --

12 Q Okay.

13 A -- with that item 64. So I took that to mean when I read
14 it, what you're pointing out as far as item 3.1, is that the
15 latents submitted were not suitable; they were referring to
16 the latents that were taken off the box.

17 Q Okay. Now, in fact, because the latent prints that's
18 referenced -- well, let me first of all --

19 MR. BROOKER: Judge, can we go ahead and have this marked
20 as Petitioner's 1, I guess?

21 THE COURT: State?

22 MR. FARTHING: Is this the report that was admitted
23 during trial with the exhibit on it, then?

24 MR. BROOKER: Yeah.

25 MR. FARTHING: Yeah. We have no objection to that.

1 THE COURT: Okay. Without objection.

2 (WHEREUPON, Petitioner's Exhibit No. 1 was marked for
3 identification only.)

4 Q Now, in fact, as a result of SLED's conclusion of that
5 fingerprint that was on SLED's database was of such poor
6 quality, isn't it true that the State actually moved -- I
7 think the State actually moved for the Court to issue a
8 Schmerber order requiring Mr. Woods to give a new set of
9 prints for comparison?

10 A The justification that I recall that the State gave for
11 wanting a new set of prints was so they would not have to
12 refer back to the original reason for them taking the prints,
13 which was a conviction that lead to him being incarcerated
14 in -- for a -- on a YOA sentence.

15 Q Okay. And did y'all have a Schmerber hearing?

16 A I believe we did. I believe, if I recall, it was in
17 front of Judge Seals.

18 (Pause.)

19 Q If you want to take a second, I know you probably don't
20 remember this and familiarize --

21 A It's -- it's fine. I can just --

22 Q Okay.

23 A I can -- I can find my place if you wanted to just go
24 ahead and ask me the question, I'll -- it's not very long.
25 I'll just find it if I need to.

1 Q Now, during the Schmerber hearing, I think the State was
2 asking the judge to require or issue an order requiring Mr.
3 Woods to render prints; is that correct?

4 A Yes. That -- yes. That's correct.

5 Q And my understanding is, is that they had originally
6 asked, I think, you, asked you whether Mr. Wood (sic) would
7 consent, and of course, Mr. Woods indicated that he did not
8 consent to rendering voluntarily on submitting prints; is that
9 correct?

10 A Yes, that's correct. I think at some point he said he
11 wouldn't mind if they were done electronically but if this is
12 the same hearing, I'm not -- but I think that came up at some
13 point. But --

14 Q And of course, the judge granted the Schmerber request by
15 the State; is that correct?

16 A Yes, he did.

17 Q Now, when the Schmerber hearing was conducted, from that
18 transcript, can you determine whether or not the State
19 presented any testimony to the judge to satisfy probable cause
20 as to why that Schmerber order should've been granted and
21 those prints submitted? Was there any probable cause analysis
22 whatsoever?

23 A Oh, I don't -- I don't recall the judge making any
24 finding on that, no.

25 Q There was no witnesses called, no testimony put up, were

1 there not?

2 A I do not believe so.

3 Q I think it just was the attorneys. I think Mr. Clemmons
4 advised the judge that he needed to have a Schmerber order
5 issued and explained to the judge why. The judge asked you
6 for your opinion, and then, of course, after you weighed in on
7 behalf of Mr. Woods, the judge simply granted the request for
8 a Schmerber order, and of course, Mr. Woods was required to
9 give his prints that day; is that correct?

10 A That's what I recall, yeah.

11 Q Okay. Is it your understanding, I think, pursuant to, I
12 think, South Carolina statute, and let me make sure I get the
13 statute right, that Schmerber orders, when a judge grants or
14 issues a Schmerber order, that that Schmerber order has to
15 comply with South Carolina statute and specifically has to
16 comply with 17-13-140. And 17-13-140 requires that that
17 Schmerber order only be given after a finding of probable
18 cause?

19 A Okay. I mean, if that's what you -- I mean, I don't have
20 the statute here in front of me, but --

21 Q Okay.

22 A -- I mean, I'm not -- I'm not denying that it says that,
23 if that's what you say.

24 Q Okay. Okay. I don't have a copy of the statute. I can
25 show you my computer if you want to take a look at it.

1 A That's fine.

2 Q Do you disagree that the --

3 A I -- I don't -- I don't disagree that it says that if
4 that's what you cite.

5 Q Okay. And so 17-13-140 required that the order only be
6 issued after establishing probable cause.

7 A Okay.

8 Q And you agree with me that there was no probable cause
9 determination made at that hearing; is that correct?

10 A I didn't see the judge address that at all.

11 Q Okay. Now, those prints were obtained?

12 A Um-hum.

13 Q And then, of course, those prints were submitted to SLED;
14 is that correct?

15 A That was my understanding, yes.

16 MR. BROOKER: And if, Your Honor, for the purpose of this
17 hearing, if we could mark this transcript as Petitioner's 2.

18 THE COURT: Any objection?

19 MR. FARTHING: This is also one of the reports admitted
20 during the trial?

21 MR. BROOKER: Yes.

22 MR. FARTHING: Oh, yeah. We're good with it. Thank you.
23 Oh, I'm sorry. Are we talking about the transcript?

24 MR. BROOKER: That's right.

25 MR. FARTHING: Yeah. The transcript's already a part of

1 the record, Your Honor. It's part of the judge's packet and
2 it's included in both as a separate transcript and as part of
3 the record on appeal.

4 THE COURT: All right.

5 MR. FARTHING: So it's already part of the record.

6 THE COURT: All right. Thank you.

7 (WHEREUPON, Petitioner's Exhibit No. 2 was marked for
8 identification only.)

9 Q Now, just a quick question. So do you agree with me that
10 you should have objected when the judge granted the State's
11 petition for a Schmerber order without first having a probable
12 cause determination, or going through a probable cause
13 analysis?

14 A I don't think that he even needed a Schmerb -- Schmerb --
15 a Schmerber order to take fingerprints.

16 Q Okay. And that's fine.

17 A Yeah.

18 Q But my question is --

19 A Right.

20 Q My question is --

21 A Um-hum.

22 Q -- is, is that should you have objected to the Schmerber
23 order being issued under those circumstances where no probable
24 cause determination had been made?

25 A Well, I didn't object, so --

1 Q Okay.

2 A I mean, it's in the record, so at that point.

3 Q Sure. Now, and I think I've already handed you a copy
4 of -- I think I already did. So this supplemental latent print
5 report.

6 A Okay. Thank you.

7 Q Sure. And once the supplemental -- once those latent
8 print reports was obtained, and I think those latent prints
9 that was obtained as a result of the Schmerber hearing, they
10 were substantly (sic) identified as item 106, evidentiary item
11 106; is that correct?

12 A Yes. That -- that would appear so, yes.

13 Q Let me hand you a copy of this just for the record so
14 that you can take a look it and recall it.

15 A Thank you.

16 Q Just so the record's made clear, do you recognize this?
17 Did you ever receive this as a part of your discovery in
18 connection with Mr. Woods' case?

19 A To be honest with you, I don't -- I don't recall if I did
20 or not.

21 Q Okay. Do you know what this is?

22 A Excuse me?

23 Q Do you know what it is? Well, let me ask it a different
24 way. Is this a list identifying most if not all of the
25 evidence that was connected in connection with this

1 investigation?

2 A It -- yes. It does appear to be an evidence log, if you
3 want to call it that.

4 Q Yeah.

5 A Correct.

6 Q Okay. And of course, I think on page number 6, if you
7 turn to page number 6, and if you look at number 64, or item
8 64.

9 A Um-hum.

10 Q And I think in that second miscellaneous column it says,
11 known fingerprints and/or palm prints card, and in the third
12 item it says, major case prints bearing the name Woods Tyrell,
13 received from SLED AFIS database, or AFIS.

14 A Right.

15 Q Is that correct?

16 A Um-hum.

17 Q So those first set of prints they would've used would've
18 come from that SLED database, according to this?

19 A That -- that's my understanding, yes, according to that.

20 Q Okay. And of course, I think on the last page, which
21 would be number 9, you see item 106?

22 A Yes.

23 Q And item 106 was the, it says here, the known
24 fingerprints and/or palm print, and it says, bearing the name
25 Woods Tyrell, received from SA Scott Hardy (phonetic). Those

1 would've been the fingerprints that would've been received as
2 a result of the Schmerber order; is that correct?

3 A I would think so, yes. That appears to be correct.

4 MR. BROOKER: We would move to enter this into the
5 records as --

6 MR. FARTHING: Before we move it in, Your Honor, my copy
7 that I received says page 2 of 9 and is pages 2 through 9. As
8 a rule of completeness, where is page number 1?

9 MR. BROOKER: Your Honor, the only reason why it starts
10 on page number 2 because it is an itemized list of the
11 evidentiary items. Of course, is -- that it is a complete
12 list, it starts off with item number 1, if you look on the
13 first page, which says miscellaneous. So that's the only
14 purpose of it. And so there is no evidentiary items that were
15 (indiscernible), I think, on the first page.

16 THE COURT: Okay.

17 MR. FARTHING: Your Honor, I'd object to it unless we
18 have the complete document.

19 THE COURT: Where is the first page, Mr. Booker,
20 regardless of what it says?

21 MR. BROOKER: I don't know, Your Honor. This is what we
22 have. This is what was given to us when we got the discovery.
23 If it's not necessary, Your Honor, we can move on.

24 THE COURT: So was this used at trial, or it's just a
25 list?

1 MR. BROOKER: I think that's the evidentiary list, I
2 think, that the attorneys were given, I think, from SLED that
3 itemizes all of the evidence that was collected. It's an
4 itemized identification of all of the evidence, I think, that
5 was collected.

6 I think he's testified to it, Your Honor. I don't want
7 to get hang up on it is, and I'll withdraw to enter it into
8 evidence. I wanted to do that so that we can have kind of a
9 clean record.

10 THE COURT: Anything further from the State, sir?

11 MR. FARTHING: No, Your Honor.

12 THE COURT: Okay. Let's just move on then.

13 MR. BROOKER: Okay.

14 BY MR. BROOKER:

15 Q Now, I think you testified, and I think I asked you
16 about -- I think I handed up a latent print report that's
17 dated November 19 of 2012?

18 A Yes. That's correct.

19 Q Okay.

20 MR. BROOKER: If you could indulge me for just a second,
21 Your Honor.

22 THE COURT: Yes, sir.

23 Q And it's my understanding is, is that these latent prints
24 were used to go back and make the comparison with item 3; is
25 that correct?

1 A Yes. That's what that report indicates, yes. That's
2 correct.

3 Q And that would've been fingerprints that they found on
4 the cigar box; is that right?

5 A That's what it says, yes. That's correct.

6 Q And of course, the purpose of them doing that would be,
7 again, because they -- well, let me ask you this. Let me go
8 back to Petitioner's 1.

9 MR. BROOKER: If you'd indulge me for just a second, Your
10 Honor. If you could indulge me for just a second, Your Honor.

11 THE COURT: Yes, sir.

12 Q Now, when the SLED expert, or at least the SLED analysis
13 testified at trial, did he testify to the supplemental report
14 as he did the original latent print report?

15 A I don't -- I don't recall. I mean, if it's in the
16 transcript, I guess he did. But I -- I -- I don't know. I
17 don't recall, Mr. Brooker. I'm sorry.

18 Q That's all right. That's all right. I'm just asking you
19 what you remember.

20 A Yeah.

21 Q That's all right. Now, with respect to these prints,
22 would you agree with me that these latent prints, or at least
23 this print analytical report, should have been inadmissible on
24 the grounds that the SLED reports -- that the Schmerber order
25 was defective, or the Schmerber proceeding was defective?

1 A I mean, no, I don't agree and I -- but that's not my call
2 to make.

3 Q Did you make an objection to these reports being used at
4 trial and entered into evidence?

5 A If it's not in the transcript, then I did not. If it is,
6 then I did. I -- I really don't recall doing that.

7 MR. BROOKER: Could we move to enter this in? I guess
8 this would be Petitioner's 3, I believe.

9 MR. FARTHING: I'm sorry, Your Honor. I didn't hear what
10 he's seeking to admit.

11 MR. BROOKER: This is the supplemental --

12 MR. FARTHING: The second page -- yeah.

13 MR. BROOKER: -- supplemental --

14 MR. FARTHING: Sure. Absolutely.

15 THE COURT: Yes, sir. Yeah.

16 (WHEREUPON, Petitioner's Exhibit No. 3 was marked for
17 identification only.)

18 Q Now, I'm going to move you to now Petitioner's Number 6.

19 A Yeah.

20 Q And of course, Petitioner's Number 6 reads that trial
21 counsel was ineffective in failing to move to exclude and/or
22 suppress, or object to testimony by Det. Lee and Neil Rouse,
23 that Shawn Davis identified Tyrell Woods in a pre-trial lineup
24 in where Shaw (sic) Davis was not present at trial in
25 violation of the confrontation clause. Do you remember Shawn

1 Davis, Shaw (sic) Davis?

2 A I -- I believe his name is Shawn, but yeah.

3 Q Is it Shawn instead of Shaw?

4 A I think so, yeah.

5 Q Okay.

6 A I think it's Shawn.

7 Q Okay.

8 A If I recall, that was -- that was his name. That might

9 be a little cut off or something. But yeah, I do re -- recall

10 Mr. Davis, or I recall the statement that he had written out

11 and was provided in discovery.

12 Q Okay. What did Shawn Davis say that was of relevance and

13 in connection with the prosecution of that trial?

14 A Well, if I recall, he stated that he saw Mr. Woods and

15 Mr. Sanders just prior to the -- the incident in this case at

16 the location, and they were armed, appeared to be armed. I

17 mean, in a nutshell, I think that's what he said.

18 Q Okay. He said that he saw two individuals? And of

19 course --

20 A Right.

21 Q -- was he shown a photo lineup?

22 A I believe he was.

23 Q Okay.

24 A As I recall, yeah.

25 Q And did he identify Mr. Woods from that photo lineup?

1 A It was my recollection that he did. I think that's
2 correct, yes.

3 Q Now, that photo lineup was mentioned at trial; was it
4 not?

5 A It was mentioned.

6 Q That, I think, Dets. Lee and Rouse testified regarding
7 about Mr. Shawn Davis identifying Mr. Woods through that photo
8 lineup; is that correct?

9 A Yes. That is correct.

10 Q Okay. Was any objection made to that testimony?

11 A No, sir.

12 Q Is there a reason why no objection was made to Det. Lee
13 and Det. Rouse testifying regarding that out-of-court
14 identification?

15 A Yes, sir.

16 Q What was the reason?

17 A Mr. Clemmons, who is the solicitor, stated to me, and
18 I -- I believe Mr. Wilson was there, he may have had separate
19 conversations with him, but I believe he -- he was there.
20 That he had Shawn Davis under subpoena, that he was there
21 available to testify, but for some reason, and I -- I don't
22 know if he was intimidated or what, he was not crazy about
23 testifying. But -- but that he would call him to testify if
24 he needed to, but if he did put him on the stand, he was going
25 to go beyond the simple identification of the photographs. In

1 other words, he was going to ask him about seeing them at the
2 location where the murder took place, ask him about if he saw
3 them armed, and that sort of thing. And so you know, as just
4 a matter of -- of strategy, we thought it might be best to
5 leave him out of it.

6 Q Okay.

7 A Right.

8 Q If he was left out of it then why was there testimony
9 regarding -- why was there testimony regarding him identifying
10 Mr. Woods in the photo lineup?

11 A Well, I think that they -- they didn't refer to him
12 implicating them in any particular -- seeing them do anything
13 wrong. I'll put it that way. I think what he was leading to
14 was after he got the identification, he -- I believe he
15 basically stated he went and got a warrant. I'm talking about
16 the investigator. In other words, I think he was -- the --
17 the testimony was entered, I guess, just to -- to show that
18 he received an identification, and -- and that he got a
19 warrant. However, he didn't go into those other things as far
20 as Mr. Davis telling him that he had seen Mr. Woods and Mr.
21 Sanders armed, and at the location, and all that sort of
22 thing.

23 Q Did you talk with Mr. Davis?

24 A I did not talk to him, no. Not that I recall.

25 Q Did --

1 A Um --

2 Q I'm sorry. Go ahead.

3 A I could've talked to him early on, but -- but right

4 before the trial I did not. I know I didn't.

5 Q Okay. And --

6 A I mean, I -- I don't -- I don't recall it.

7 Q Okay. And the reason why I'm asking you that question

8 is, is that you said that your strategy of allowing testimony

9 to be entered into the evidence --

10 A Um-hum.

11 Q -- that Mr. Davis had identified --

12 A Um-hum.

13 Q I want to make sure I understand this. That Mr. Davis

14 had identified Mr. Woods through a photo lineup.

15 A Um-hum.

16 Q The strategy in not objecting to that testimony was is

17 that if you allowed that testimony to be entered then, of

18 course, the solicitor's office would forego calling him as a

19 witness; is that the strategy?

20 A Pretty much.

21 Q Okay. Okay. But you didn't talk to Mr. Davis?

22 A I did not right -- not prior to the trial I did not. And

23 like I said, early on, and -- and I -- when I say early on, I

24 mean before the case ever came to trial, it's possible that I

25 did, but I -- I don't recall doing it. So I'm not -- I'm not

1 saying I did.

2 Q Did Mr. Davis write a statement?

3 A He -- yeah. There was a written statement in the --

4 Q Okay.

5 A -- in the discovery I believe.

6 Q Okay. And in that written --

7 A There was at least one I think.

8 Q Okay. And in that written statement, did Mr. Davis say

9 some of the things that you feared he may testify to at trial;

10 did he say those things in his written statement?

11 A Well, I th -- my understanding was that, if -- if I

12 recall, I think he wrote something in there about the -- the

13 subjects being armed at the location.

14 Q Um-hum.

15 A Yeah.

16 Q Okay.

17 A I -- I don't -- I'm not looking at it, but I -- I don't

18 remember it, like, being a real lengthy detailed statement.

19 I --

20 Q Uh-huh.

21 A -- think it was shorter. But that's what I recall of it,

22 yeah.

23 Q Okay. Now, when he wrote his statement, he was not able

24 to identify the subjects by name; is that correct, in his

25 statement?

1 A I don't think he did, no.

2 Q Okay. And that would've been the basis for the photo
3 lineup to see whether or not he can identify them through
4 photographs?

5 A I think that's right, yeah.

6 Q So but that was the basis for your not objecting to that
7 testimony coming in?

8 A Yeah. I mean, like I said, Mr. Clemmons basically told
9 us if he testified he was going to elicit from him testimony
10 which -- where he said that he saw the individuals that he
11 identified in that lineup at that location prior to the
12 murder, armed, right outside of the -- of the -- of the house,
13 or house/club, whatever it was.

14 Q Yeah. And I don't mean to impugn Mr. -- and I'm not
15 trying to impugn Mr. Clemmons reputation.

16 A Sure.

17 Q But you didn't independently verify that?

18 A I did not. I did not talk to Mr. Davis after Mr.
19 Clemmons spoke to me and Mr. Wilson. I did not.

20 Q Okay.

21 A Correct.

22 Q Now, I'm assuming is, is that the testimony that was
23 given, that testimony that Mr. Woods was identified in the
24 photo lineup, would you agree with me that that would be
25 testimonial evidence as opposed to nontestimonial evidence?

1 A I -- I mean, I would. Certainly. You could make the
2 argument, yeah, that was testimonial evidence. Sure. Um-huh.

3 Q Yeah. Because it was --

4 A Um-hum.

5 Q -- it was collected in connection with the
6 investigation --

7 A Sure.

8 Q -- of this crime?

9 A Absolutely.

10 Q And then, of course, is, is that it went to an important
11 issue of identification?

12 A Correct. Yeah.

13 Q Okay.

14 A That's -- that's correct.

15 Q And as a result of that, then, of course, Crawford would
16 apply; is that correct?

17 A Correct, yes.

18 Q Okay. So Mr. Woods would have a right of confrontation?

19 A Yes.

20 Q Okay. Did you talk with Mr. Woods to see whether or not
21 Mr. Wood (sic) agreed with that strategy of waiving his right
22 to confrontation? Did you consult with him in reference to
23 that before you did it?

24 A I can't recall if we talked about that issue or not. We
25 may have but I can't -- I don't specifically remember

1 conversation.

2 Q Okay. Okay. I want to ask you about Number 7. And of
3 course, there's -- and I may have to look it up. I believe
4 that somewhere during the jury instructions that the judge
5 instructed the jury with the issue of malice, that the malice
6 element of murder could be inferred from conduct that showed a
7 total disregard for human life?

8 A Correct.

9 Q Okay. Now, did you object to that definition of malice?

10 A I don't recall objecting to that. I don't think I did,
11 no.

12 Q Okay. Now, murder is an intent crime; is that correct?

13 A Correct.

14 Q Okay. And you may disagree with me but I want to ask you
15 about your opinion of this. Where the judge says that it can
16 be inferred from conduct that shows a total disregard for
17 life, would you agree with me that that may be interpreted as
18 a reckless, or either a negligent standard, total disregard
19 for human life?

20 A I mean, not the way I define negligence, but I mean --

21 Q Sure.

22 A -- it's been a long time since I've done civil law. So I
23 mean --

24 Q Yeah. Yeah. Now, a total disregard for human life,
25 showed a total disregard for human life. And I'll ask you is,

1 is that, how did you interpret that when the judge says it can
2 be inferred from conduct that suggests a total disregard for
3 human life?

4 A Well, I interpreted it as, I mean, if you have a total
5 disregard for human life, I interpreted it as intentionally
6 doing things to bring about, or possibly bring about a loss of
7 life.

8 Q Um-hum.

9 A I mean, that's the way I interpreted, but people may
10 disagree.

11 Q Okay. Now, did you make -- I think you said that you did
12 not make an objection to that?

13 A No. I don't think I did. Huh-uh.

14 Q Is it reasonable -- and I'll ask you this. Could a
15 reasonable person -- and I'm not asking you, you know, about
16 every person. But could you see why a reasonable person may
17 interpret that as being a reckless disregard for human life,
18 or a negligent disregard for human life? See how that can
19 be -- is it reasonable that that could be interpret that way?

20 A Well, I mean, I suppose anyone could interpret it however
21 they want. I mean, the judge gives jurors instructions, and
22 they interpret them. I mean --

23 Q Yeah.

24 A I mean, you know, I have no control over how anyone
25 interprets anything.

1 Q If it was interpreted that way, is it possible that that
2 may lessen the burden of proof that the State would have to
3 prove if a jury interpreted that as a reckless or negligent
4 standard?

5 A Well, I think if you take it with, I mean, you know, if
6 you iso -- just isolate -- if that's the only instruction he's
7 given, but obviously, he's given instructions on --

8 Q Yes.

9 A -- reasonable doubt. And then, if you take it in context
10 and with everything else be charged, then no.

11 Q Um-hum. So --

12 A And at the time I -- I, you know, I -- I -- and I
13 don't -- I don't claim to be the greatest legal scholar in the
14 world. Trust me.

15 Q None of us are.

16 A And -- but you know, I wasn't aware of any cases that
17 prohibited that specific language being charged, you know.

18 Q Okay.

19 A But --

20 Q Now, I want to ask you about, I think that there was a
21 pre-trial motion that was filed to suppress, I think it was
22 Det. Lee. Det. Lee, I think, reviewed the video footage from
23 the murder scene.

24 A Um-hum.

25 Q I think it was video footage of the, you know --

1 A Yeah.

2 Q -- of these assailants --

3 A Yeah.

4 Q -- going into the home.

5 A Right.

6 Q Is that correct?

7 A I -- I believe that's right and it was either him or I

8 can't recall the other detective's name, or maybe both of

9 them. I -- I can't recall. But yes. I -- I mean, I'm not

10 (indiscernible).

11 Q Okay. And I think it was Det. Lee. And do you remember,

12 and I think there was a standard that, I think, that a lay

13 person, I think it's 701. I think Rule 701 of the South

14 Carolina Rules of Evidence deals with under the circumstances

15 in which a lay witness can testify regarding opinion or

16 impression, give opinion or impression testimony; is that

17 correct?

18 A Correct.

19 Q And I think, specifically, and you correct me if I'm

20 wrong, is that 701 basically says that a lay person can give

21 a -- is it your understanding that 701 says that a lay person

22 can give opinion or inference testimony if there's a rational

23 basis for the perception in which that witness is testifying

24 to?

25 A I mean, I think that's basically correct. I'm not -- I'm

1 not looking at it. But yeah. I think that's essentially
2 correct.

3 Q And number two, that that testimony would be helpful to
4 clearly understand the witness's testimony or determine an
5 issue, I think, in dispute?

6 A Corre -- correct.

7 Q And of course, it would be the type of testimony that
8 would not require knowledge, skill, or experience?

9 A Correct.

10 Q Okay.

11 A I think that might be, yes.

12 Q And I think in this particular situation, correct me if
13 I'm wrong is, is that Det. Lee indicated that he was able to
14 identify Mr. Woods from the surveillance video; is that
15 correct?

16 A I believe that's correct, yes.

17 Q And I think y'all had a pre-trial motion -- a pre-trial
18 motion was filed to determine whether or not Det. Lee's, I
19 guess, out-of-court identification should be suppressed and
20 not admitted in court or at the trial?

21 A Okay. I -- I vaguely recall that, yes. But I -- I don't
22 recall the specifics of it, but yes, I -- I -- I believe we
23 did that.

24 Q Okay. And in order for a person to have a -- and I'm
25 asking you from your perspective. In order for a person to

1 have a rational basis in which to draw an inference or a
2 conclusion, specifically -- and I'm talking about right now in
3 context of an out-of-court identification from video -- that
4 that person has to have, I guess, prior knowledge or
5 information which they can base their identification on from
6 the video?

7 A Yeah. I would think so. I mean, I would think you would
8 at least need to know the person and -- and know what he
9 looked like, or -- or think you know what he looks like
10 anyway, or have some type of prior knowledge of that, yes.

11 Q Okay.

12 A Um-hum.

13 Q And did Det. Rouse testify to having prior knowledge of
14 Mr. Woods?

15 A Det. Rouse?

16 Q I'm sorry. I think it was Lee, I believe, who made
17 the -- Det. Lee, I think, is the one who indicated that he
18 identified -- or could identify Mr. Woods from the video.

19 A I -- you know, I don't recall if he testified to that or
20 not. It's either in the transcript or it's not. I -- I don't
21 know. I -- I can't remember if he testified to that.

22 Q Do you have a copy of the transcript with you?

23 A I do. And I'm sorry, I didn't bring it up here. When I
24 walked up, I -- I left it but I'll get here.

25 THE WITNESS: If you'll allow me to stand down and get

1 it, Your Honor.

2 THE COURT: It's right here.

3 Q Okay. That's all right.

4 A I think it's about 500.

5 Q Okay.

6 A Okay. Is it on 501, Mr. Brooker, or 5 -- what page am I
7 looking at?

8 Q Okay. If you can indulge me for just a second. Let me
9 locate the page number. I'm looking at -- I guess I'll start
10 off on number 74.

11 A It's what now? I'm sorry.

12 Q On page 74.

13 A Page 74?

14 Q Yeah. I think it's -- and let me make sure that we have
15 the same corresponding page. I think it's 74.

16 MR. FARTHING: Your Honor.

17 THE COURT: Yes, sir.

18 MR. FARTHING: Just for clarification. Page 74 is Det.
19 Rouse, who did not identify Mr. Woods from the surveillance
20 footage during the trial testimony. Det. Lee is the detective
21 that identified. So Det. --

22 MR. BROOKER: That's correct.

23 MR. FARTHING: -- Det. Lee's testimony at pre-trial where
24 he discusses his knowledge of --

25 MR. BROOKER: Would be on 90.

1 MR. FARTHING: -- the victims begins on page 91.

2 MR. BROOKER: That's correct. It's on 91.

3 THE COURT: Thank you, sir.

4 Q Okay. You're on page 91?

5 A I am.

6 Q And of course, there's, I think, on 91, specifically line

7 2, I think Solicitor Clemmons asked Inv. Lee, can you tell the

8 Court how do you know Tyrell Woods; is that correct?

9 A Right. Um-hum.

10 Q And of course, line 6 he indicated that he didn't know

11 Tyrell Woods very long; is that correct? On line 6 of page

12 91.

13 A It says, "Okay, did you know Tyrell Woods very long?"

14 Okay. On line 8 he answers, "No. Matter of fact, he was a

15 juvenile." All right. Okay.

16 Q Um-hum. And of course, he indicated for the first

17 time -- is it correct that he indicated the first time he met

18 Mr. Woods was roughly in 2007?

19 A Correct.

20 Q Now, if you turn to page number 2, I think Mr. Clemmons

21 asked --

22 A Page number 2?

23 Q I'm sorry. 92. I apologize.

24 A Okay.

25 Q 92. Did Mr. Clemmons ask Mr. Rouse how many times had he

1 met Tyrell Woods?

2 A Let's see.

3 Q I think it's -- if you look on 92, and I think if you
4 look at line -- I think you start from line 2.

5 A Okay. Yeah. Well, I think what he's asking is, he -- at
6 the end of 91 he's -- he -- he asked him if he had face-to-
7 face contact with both Mr. Woods and Mr. Sanders at the same
8 time. That's what I understood. But --

9 Q And how many times had he indicated that he had face-to-
10 face contact with him?

11 A My understanding was one time. Um-hum.

12 Q And I think on page 95 through 96, I think, do you recall
13 whether or not that one time that he's alleged that he had
14 contact with Mr. Woods, or was during a time in which in Mr.
15 Woods was brought down to the police station? I think it
16 starts on page -- this would be page 94.

17 A Okay. Hang on one second.

18 Q Excuse me. 95. I apologize.

19 A That's okay.

20 Q It's 95 going to 96.

21 A Let me find that. Let's see. I'm sorry. I -- I'm going
22 to have to clean these glasses for a second.

23 THE WITNESS: I'm sorry, Your Honor.

24 THE COURT: That's all right.

25 THE WITNESS: I'm cloudy.

1 THE COURT: It's okay.

2 THE WITNESS: Okay. I'm sorry.

3 Q Do you see where he says that he was brought in one time,
4 I think, with another gentleman who had been --

5 A Correct. Yeah.

6 Q -- referenced as something about a stolen lawnmower or
7 something like that?

8 A Yeah. From another county, yes.

9 Q Another county?

10 A Yes.

11 Q And my understanding is that's the only contact that he
12 would've had with him, and you said that contact was back in
13 2007; is that correct?

14 A Well, yes. Originally, I think that's what he said,
15 around '07. Um-hum.

16 Q Yeah. Around '07.

17 A Yeah.

18 Q Okay.

19 A Um-hum.

20 Q And of course, again, I think, in looking on page 108
21 when he was asked again, on page -- excuse me, 101 -- when he
22 was asked that question again, and I'm at the very top of 101.

23 A 101?

24 Q Yes. And it says that at that time he was involved in an
25 incident where lawnmowers were being stolen, or had been

1 stolen?

2 A Right.

3 Q But he was in the office at that time, if I remember,
4 interviewed by Det. Rouse?

5 A Correct.

6 Q So he's indicating that that one time he was in the
7 office is, is that he wasn't the one that was interviewing Mr.
8 Woods; is that correct? Or talking to Mr. Woods; is that
9 correct?

10 A Yeah. He says that Det. Rouse did the interview. That's
11 right.

12 Q And of course, on that same page on line 12 --

13 MR. FARTHING: Your Honor, I'm going to object to the
14 leading. We're just going line through line through the
15 transcript. These are all leading questions. We would
16 object.

17 THE COURT: Mr. Brooker?

18 MR. BROOKER: I think, Your Honor, he is, I think,
19 underneath the Rules of Evidence, Your Honor, is, is that as
20 he is not my witness I could treat him as hostile, and I --

21 MR. FARTHING: Your Honor, Mr. Brooker called Mr. Floyd
22 to the witness stand, he is his witness. This is direct
23 examination.

24 THE COURT: Your witness, Mr. --

25 MR. FARTHING: Leading questions are prohibited.

1 THE COURT: Your witness, Mr. Brooker.

2 MR. BROOKER: I can pull out the rules, Your Honor. The
3 rules specifically says is, is that just because if you call
4 a --

5 THE COURT: Let's do this. What do you want him to read
6 from the transcript?

7 MR. BROOKER: Basically, is --

8 THE COURT: Pick out the lines you want to him to start
9 at and where you want end. What's that going to be?

10 MR. BROOKER: Okay.

11 THE COURT: Let's just do it that way.

12 MR. BROOKER: We'll do it that way, Your Honor.

13 THE COURT: Mostly tell him what line to start at and
14 when to finish.

15 BY MR. BROOKER:

16 Q Did Mr. Rouse personally interview Mr. Woods?

17 A He indicated he did not. Well, Mr. Rouse did but Mr. Lee
18 indicated he did not personally interview him.

19 Q And of course, is, is that he actually had no involvement
20 in that case, he was just there; is that correct?

21 A That's what he says. He says he was there at the
22 sheriff's office when Mr. Woods was being interviewed. That's
23 correct.

24 Q Um-hum. Okay. Did you ask Mr. Rouse at that time, or at
25 any point in time, I think, when you talked with, or cross-

1 examined Mr. Rouse, did you ask -- excuse me, Mr. Lee -- did
2 you ask Mr. Lee what Mr. Woods's physical description was at
3 that time, and was his physical appearance different then what
4 it was on that video? Do you recall ever asking him that
5 question, whether or not the physical appearance of Mr. Woods
6 as he --

7 A No. I don't --

8 Q -- appeared on --

9 A -- I don't -- I don't see that question in there.

10 Q I would say the physical appearance of that person on
11 the --

12 A No.

13 Q -- that he believed to be Mr. Rouse --

14 A No.

15 Q -- on the video whether or not it was different?

16 A He believed to be Mr. Woods?

17 Q Yeah. That he believed to be Mr. Woods.

18 A Right.

19 Q Was it different?

20 A No. I didn't ask him that. Not that I see. Not on
21 those pages that you're pointing me to.

22 Q And when was this video taken? I think it was taken, if
23 I'm not mistaken, would that have been a five-year difference
24 between 2007, and of course, the date in which Mr. Rouse
25 testified to this? I think you said first saw him in his

1 office in 2007; is that correct?

2 A He -- well, that was his estimate of the date, yes.

3 Q His estimate of the date.

4 A So yeah. That would've been about a five-year spread.

5 Um-hum.

6 Q Okay.

7 A That's correct.

8 Q And I think this testimony was given -- maybe I'm a

9 little bit wrong; my math might be off. It's more like a

10 seven-year spread? I think this testimony was given in 2000,

11 what is it, was it 2014?

12 A Well, the trial was in 2014.

13 Q 2012 was the murder; is that correct?

14 A Right.

15 Q 2000 (sic) murder. So from 2012 -- excuse me. From 2007

16 to 2012 would be roughly around five years?

17 A Right. Yeah. If his -- yeah. That's correct. If his

18 recollection of the date he was in that office is correct,

19 yeah, that would be correct.

20 Q Okay. And I don't know if whether or not you remember

21 this, but do you know how old Mr. Woods would have been at

22 that time?

23 A He -- and I know he would've been below 18.

24 Q Okay.

25 A Yeah. He would've been -- he would've been --

1 Q A juvenile?

2 A -- a juvenile. Um-hum.

3 Q Okay. Was there any other testimony solicited -- well,
4 let me ask it this way. Do you remember whether or not Mr.
5 Rouse testified -- excuse me -- Mr. Lee testified to any other
6 occasions in which he had the opportunity to observe Mr.
7 Woods?

8 A I do not recall him saying that he saw him on any other
9 occasion, that he saw Mr. Woods on any other occasion.

10 Q So to your understanding it would have been that one
11 occurrence?

12 A According to his testimony, yes.

13 Q Did you ask him how long he had the opportunity to --
14 during that one occurrence in the office, did you ask him how
15 long he had the opportunity to observe Mr. Woods? Would have
16 been a glancing look, would it have been five minutes, would
17 it have been five seconds, would it have been five hours; did
18 you ask that question?

19 A I -- I don't think I asked about the particular time he
20 was in there with him, no. Huh-uh.

21 Q In order to determine whether or not Mr. Woods -- excuse
22 me -- Mr. Lee would've had a rational basis, a rational prior
23 basis in which to have perceived Mr. Woods and give an
24 identification from that surveillance video, do you think it
25 would be important to know, you know, how long he had -- that

1 one opportunity that he observed Mr. Woods, how long it was
2 that he observed him?

3 A I mean, how lon -- I mean, I don't know that it matters.
4 I mean, if he remembered -- if you remember what somebody
5 looks like, you remember what they look like. I mean -- I
6 mean, that was his testimony. Now, you know, that may go to
7 the weight of it.

8 Q So --

9 A But you know, if --

10 Q And --

11 A -- but if you want to say I saw this guy one day for ten
12 minutes and I remember what he looks like five years later,
13 then, you know.

14 Q Yeah. And that's what I'm trying to ask is --

15 A Yeah.

16 Q -- is that --

17 A Right.

18 Q -- would it make a difference if he only saw him --

19 A Well --

20 Q -- for two minutes?

21 A Well, certainly, yeah. I think it could go to the weight
22 of, yeah, his testimony. Certainly.

23 Q Okay. But did you solicit that information from him?

24 A I -- I don't recall doing that, no.

25 Q Do you think you should have solicited that information

1 so that the judge could make a reasonable determination as to
2 whether or not Mr. Lee's observance, or at least alleged
3 ability to be able to identify Mr. Woods would be rational
4 based upon that one visit? Do you think it was important to
5 know how long that one observation was?

6 A Well, the ju -- judge heard his testimony that he was
7 there one time, and he made his decision. So I'm -- I'm not
8 sure it would've been that important if he was there for 30
9 minutes or an hour. That's why I didn't ask.

10 Q Okay. Okay. It would make no difference?

11 A Well, apparently it didn't make any difference to the
12 judge. I mean, he allowed the testimony. I mean, he heard
13 what he -- that -- that he met him one time.

14 Q But you would agree with me your job would be to try to
15 elicit information so that the judge can determine whether or
16 not Mr. Lee had a rational basis to make that identification,
17 especially since it was a one-time identification, or it was a
18 one-time observation five years ago?

19 A Right. And I think I brought that out that he had a one-
20 time observation of him about five years ago. I think I asked
21 him that several times. But --

22 Q Okay.

23 A -- I -- I did not ask him the particular length of the
24 meeting though. No I did not.

25 Q Um-hum. And we're almost finished here. I want to ask

1 you just a one more set of questions, and that was about the
2 conspiracy charge.

3 A Okay.

4 Q Did you make a motion to dismiss the conspiracy charge,
5 or join in on a motion to dismiss the conspiracy charge?

6 A You know, I honestly can't remember if I did that or not.
7 I -- I don't know. I mean, if it's not in the transcript then
8 I didn't.

9 Q Was Mr. Lee originally -- when he was first charged with
10 warrants --

11 A You mean Mr. Woods?

12 Q I mean Mr. Woods. I apologize. When Mr. Woods was first
13 charged, was he served warrants for conspiracy?

14 A I think that might've been a direct presentment, I
15 believe, maybe.

16 Q His direct indictment?

17 A Or yeah. Um-hum. I think -- I think that might be
18 correct.

19 Q Was Mr. Woods ever served with that indictment?

20 A You mean arraigned? I -- I can't remember if he was
21 arraigned or not. I -- I -- I can't remember. I would have
22 to read back through, but I -- I can't remember that. I just
23 don't have any recollection of it.

24 Q Okay. All right. But if the transcript -- you wouldn't
25 doubt the transcript. So if the transcript suggested he was

1 never arraigned on that, you would not doubt that, would you?

2 A No, sir.

3 Q Okay.

4 A I -- I would not.

5 Q If he was not arraigned on that indictment, do you think

6 it would proper to make a motion to dismiss it?

7 A You know, I think probably so, yes. If I -- I may have

8 missed that, yes. Um-hum.

9 Q And why would you think it would proper to make a motion

10 to dismiss; what's the basis of that?

11 A Well, you know, I mean, technically if you're -- if

12 you're presenting directly to a grand jury on a charge, I

13 mean, you should be arraigned for it in court.

14 Q Okay.

15 A Um-hum.

16 Q You would agree with me that he has a right to be served

17 and provide notice of some charges, whether or not it's

18 through the original arrest warrant, and of course, if not

19 through an original arrest warrant then served the direct

20 indictment?

21 A Yeah. I mean, yeah. I mean, no. That's -- yeah. I

22 mean, I believe I provided him with all the indictments

23 myself, but I -- I don't know that it was done in court, yes.

24 Q And that's the next thing I was going to ask you.

25 A Right.

1 Q Is that do you remember when you received a copy of the
2 indictment for conspiracy?

3 A I don't remember but I did -- we did have one in my -- in
4 my file, I'm sure. But I -- and I don't remember when I
5 received it.

6 Q Okay. And do you remember specifically whether or not
7 you presented it to him?

8 A Yeah. We went over all the charges before the trial and
9 all the indictments.

10 Q I want to ask you one more question --

11 A Sure.

12 Q -- about the indictment. And I think it's mentioned as a
13 result of, I think, the second supplemental that we made. I
14 want to see whether or not -- now, this is just a technical
15 issue, but I want to ask you about this. The second one -- I
16 think in the supplemental of the second supplemental to the
17 PCR application, we raised an issue that says that counsel was
18 ineffective for failing to move to squash the indictment on
19 the ground that the indictment was fatally defective because
20 it did not sufficiently allege the place of the crime.

21 A Okay.

22 Q Is it your understanding that an indictment has to
23 specifically identify, and when I mean specifically, it has to
24 specifically identify the location of the crime, and that
25 means the county and the state?

1 A It's my understanding, yes, the county needs to be
2 included, yes.

3 Q Okay. Does it need to identify which state, or does it
4 need to confirm that the county that's identified is within
5 the State of South Carolina?

6 A Well, I think that there would've -- if there -- if -- if
7 it's captioned for Marion County, I mean, I would, I mean, I
8 need to see what you're talking about. I don't -- can I see
9 the indictment?

10 Q I'll see if I can locate it for you once I asked this
11 question. But what's your understanding of the law regarding
12 that? I'm not asking you to commit to anything. I'm
13 asking --

14 A My understanding is that the county needs to be stated.
15 The correct county where the crime was committed needs to be
16 alleged on the indictment.

17 Q Does the State need to alleged in the indictment as well,
18 do you know? What's your understanding of the law?

19 A I mean, my understanding is that the indictment issues
20 from the State of South Carolina and the -- the allegation
21 that it happened in Marion County means that it's in South
22 Carolina, you know.

23 Q So your understanding that as long as it identifies the
24 county it would be --

25 A The county --

1 Q -- sufficient?

2 A -- correct. Right.

3 Q And I'm assuming as a result of that, did you make any
4 objections regarding the sufficiency of the indictment?

5 A Hmm.

6 Q Did you see anything defective about the indictment?

7 A You mean for murder or --

8 Q Yeah. For any of the indictments.

9 A Okay. Not that I recall, no.

10 MR. BROOKER: If you can indulge me just a second, Your
11 Honor. Let me make sure I cover all of the issues as
12 contained within my supplemental.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. BROOKER: If you can indulge me for just a second,
16 Your Honor. Let me confer --

17 THE COURT: Yes, sir.

18 MR. BROOKER: -- with Mr. Woods before I sit down.

19 MR. FARTHING: Your Honor, while Mr. Brooker's conferring
20 with his client, can I ask for just a five-minute recess? Can
21 we break, and that'll give him plenty of time, and then come
22 back and rock and roll on cross?

23 THE COURT: Yeah. We're going to take a break just as
24 soon as I find out what he wants to do.

25 MR. FARTHING: Okay. Thank you, Your Honor.

1 THE COURT: I had already planned to do that, sir.

2 (Pause.)

3 MR. BROOKER: I don't have any further questions, Your
4 Honor.

5 THE COURT: All right. We'll take about 15 minutes, 10
6 minutes to 4 be back in here.

7 Now, as you well know you can't discuss --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- with anybody else. But for the sake of
10 the record, I need to say that.

11 THE WITNESS: Sure.

12 THE COURT: All right. Thank you, all.

13 THE WITNESS: Yes, sir.

14 (Recess.)

15 THE COURT: Cross, sir?

16 MR. FARTHING: Thank you, Your Honor.

17 CROSS-EXAMINATION

18 BY MR. FARTHING:

19 Q Good afternoon, Mr. Floyd.

20 A Good afternoon.

21 Q I have a couple of questions for you, but before I get
22 into any of the allegations, I just want to run over a couple
23 of background things with you. Can you state for the record
24 where you're currently employed?

25 A Yes. With the -- I'm the chief public defender for the

1 12th Circuit.

2 Q And this going to be a dumb question. But what
3 percentage of your practice is criminal law?

4 A Sir?

5 Q What percentage of your practice is criminal law?

6 A Now, all of it. Yes. Correct.

7 Q And --

8 A 100 percent.

9 Q How long have you been practicing by this point in time?

10 A 32 years, I think, thir -- 32 or 33, I can't remember.

11 Q How many of those years have been devoted to criminal
12 defense work?

13 A Hmm. I mean, to some extent probably all of them. I
14 mean, I -- I was in private practice for many years before and
15 I did, you know, civil and some criminal. But I've been with,
16 actually, in the public defender system since 2006, I believe.
17 So --

18 Q So it's safe to say then before Mr. Woods's case, before
19 you got appointed to it, you had some past trial experience?

20 A Correct.

21 Q What about with major felony cases?

22 A Yes. I -- I have.

23 Q What about with murder cases?

24 A Yes.

25 Q And those are cases that have gone to trial and verdict?

1 A Yes.

2 Q Have you had any special training or experience in your
3 background, anything like the National Forensic college?

4 A No. Never been to there. Huh-uh.

5 Q Okay. When did you first meet Mr. Woods? And I think
6 there was some confusion on it before, but it was a July 2012
7 arrest and a May 2014 trial.

8 A Um-hum. I don't remember the exact date, but I -- but we
9 went -- the first time I met him he was still at Turbeville
10 Correctional Institution, I believe, on YOA sentence. And I
11 think that was the first place that I met him, but I can't
12 remember the exact date.

13 Q How many times did you meet with him during the course of
14 the representation leading up to the trial, any idea?

15 A Gosh, I -- I can't remember, but I mean --

16 Q More than once?

17 A Oh, yes.

18 Q Yeah. And how long do meetings usually last?

19 A You know, I know the -- the first meeting we had lasted a
20 while because we actually had the video at that point when we
21 went to Turbeville Correctional, and we watched the video and
22 went through all that. And at, you know, various points went
23 through discovery and that -- that sort of thing. So you
24 know, probably I would say 45 minutes, an hour, you know.

25 Q Was Mr. Woods cooperative with you during your meetings?

1 A Yes. I --

2 Q How did he compare to your typical client?

3 A I thought Mr. Woods was a very pleasant person to deal
4 with, and he -- he and I didn't have any, you know, personal
5 conflicts or anything of that nature, and I got along with
6 him.

7 Q And so he helped you with the preparation of your defense
8 and you guys were on the same page?

9 A Um-hum. Yes, sir.

10 Q All right. Let me ask you a couple of things about the
11 trial prep. Did you file any Brady motions or Rule 5 motions?

12 A Yes.

13 Q Were you provided access to the evidence in the State's
14 possession?

15 A Yes, sir.

16 Q Did you review that evidence?

17 A Yes, sir. We would have reviewed it before the trial.

18 Q Did you review it and discuss it with Mr. Woods?

19 A Yes.

20 Q Did you discuss strengths and weaknesses?

21 A Yes. I mean, we talked about, you know, the evidence
22 that they had and -- and that sort of thing. Certainly.

23 Q Was there anything you didn't provide to Mr. Woods or
24 discuss with Mr. Woods?

25 A I mean, you know, if he asked me for something, I mean, I

1 think we reviewed all of discovery. I -- I don't remember
2 what particular things he asked me for copies of, but if he
3 asked me for copies of particular things, I would have
4 provided them to him.

5 Q Let me ask you about the evidence against him. Just a
6 real quick summary. What's the general evidence that you're
7 aware of that connected him to the crime?

8 A Well, there was the video of two folks entering the scene
9 of the -- of the crime. The video was, you know, a fair --
10 fairly good quality video. Fingerprints inside the location,
11 and you know, some -- excuse me. And as you heard there was
12 some identification testimony that -- and other than that,
13 that's it. I mean --

14 Q And well, he also got linked to the white SUV, right?
15 There was testimony --

16 A Yes. That's --

17 Q Yeah. So he got linked to the car, we had fingerprint
18 evidence, and we had some --

19 A Right.

20 Q -- pretty significant surveillance footage evidence?

21 A Right.

22 Q And the fingerprint evidence wasn't just fingerprint
23 evidence, right, it was fingerprint evidence on duct tape and
24 the adhesive side of the duct tape, right?

25 A Correct.

1 Q And so that's something -- did you see a real compelling
2 way to explain that away?

3 A No.

4 Q And while we're on the fingerprints, we have the new
5 allegation raised regarding the challenge to the fingerprint
6 evidence. When you were looking at that report --

7 A Um-hum.

8 Q -- you know, it says with one of the fingerprint there
9 wasn't sufficient comparison with the standard from Mr. Woods
10 for, I think that was, 3.1?

11 A Correct.

12 Q When they take fingerprints from somebody, they take one
13 fingerprint or do they take more than one fingerprint?

14 A My understanding is they take more than one.

15 Q Right. And so just hypothetically, we don't know the
16 answer to this because, you know, Mr. Darnell wasn't asked
17 about it. But if there was one fingerprint that we have a
18 latent of that say is a right thumb, and we took ten prints
19 from Mr. Woods and there was a smear on the right thumb, and
20 the latent print we were trying to compare it to was latent a
21 right thumb, we wouldn't be able to make a comparison. But
22 what about the other, I think it's, 14 in that report, or
23 maybe 15, but were there any other fingerprints in that report
24 that the report indicated they were able to make a match with
25 the standard that they had?

1 A Yeah.

2 Q Right. And the latent print expert, did you have any
3 reason to question the expertise of Mr. Darnell? I know he
4 testified during the trial he's been a latent print examiner
5 for about two decades at that point in time.

6 A Correct.

7 Q So this is a situation where we have a very qualified
8 expert and he didn't say all of the prints that they had on
9 Woods for that one standard were incapable of comparison,
10 right?

11 A Correct.

12 Q And during the trial didn't Mr. Darnell actually put up
13 pictures of some of the Defendant's known standard and
14 compared them to some of the ones that were collected at the
15 crime scene and showed the jury that the points of comparison
16 for those actual fingerprints?

17 A If I recall, he did use a -- a photograph or -- or
18 some -- or a video -- or some -- something. I know there were
19 images of it, yes.

20 Q Right. And what was his opinion that he rendered during
21 the trial regarding the comparison of Mr. Woods' fingerprints
22 to the fingerprints that were collected at the crime scene?

23 A That they matched.

24 Q Right. And --

25 A Right.

1 Q -- he testified, I believe, that his work was reviewed by
2 another examiner, correct?

3 A I believe that's correct.

4 Q Okay.

5 A Yes.

6 Q Let's see. And I want to talk to you just a little bit
7 about the indictment. When did you receive Mr. Woods'
8 indictment, or do you remember, just a general idea?

9 A Normally, I mean, I -- I don't recall the exact date I
10 received it. I mean, but normally Mr. Clemmons' office
11 provides us with the indictments after the grand jury --

12 Q Right.

13 A -- convenes.

14 Q And this grand jury met in May of 2013, right? And --

15 A Right.

16 Q -- so about a year before trial?

17 A Correct.

18 Q Did you review the indictment with Mr. Woods?

19 A Yes. I mean, we would have reviewed the indictments
20 before, yes --

21 Q And --

22 A -- the trial.

23 Q -- this was a single indictment, right, with six counts?
24 So it wasn't six separate indictments; it was a single
25 indictment with six separate charges?

1 A That -- that may be, yes. That's correct.

2 Q And did he have any trouble understanding any of those

3 six charges when you went over them with him?

4 A I mean, I never got the impression that --

5 Q And did you any grounds upon which to move to challenge

6 this indictment based on sufficiency grounds?

7 A No.

8 Q Any concerns over the notice it provided? You knew what

9 you were prepared to defend, and he knew what he was prepared

10 to defend?

11 A Correct.

12 Q Do you have any concerns at all over where the offense

13 was alleged to have occurred?

14 A No.

15 Q Do you know of any authority that would support

16 invalidating the conspiracy charge in this case because it was

17 a direct presentment instead of an arrest warrant?

18 A I mean, I can't cite you a -- a legal case, no.

19 Q All right. And so especially in the post-Gentry world,

20 we know indictments are a notice document. So in this case,

21 you didn't have concerns about notice?

22 A Oh, no. No.

23 Q Right. And was there any concern -- and I ask this to --

24 with a view of reviewing the discovery. After you reviewed

25 the discovery and reviewed the indictment, and the indictment,

1 I believe the burg charge even specifically lists the actual
2 street address of the victim's residence. Did you have any
3 concerns about what county the Defendant's charges were
4 alleged to have occurred in and what state?

5 A No, sir.

6 Q Right. And let me talk to you about the trial a little
7 bit. In general, what was the defense strategy in this case?

8 A Well, just to try and cast doubt on the -- the
9 investigating officer as to whether or not his, you know,
10 identification was, I guess, valid, and also the video itself,
11 the quality of video, that sort of thing.

12 Q Did you attempt to challenge the testimony from Det. Lee
13 identifying him from that surveillance footage?

14 A I mean, I cross-examined him, yes, sir.

15 Q Well, did you object to its admission both pre-trial and
16 during trial?

17 A I think -- yes, I think I did. I believe I did.

18 Q Yes, Your Honor. And -- or excuse me. Yes, Mr. Floyd.
19 And the trial judges overruled your objection?

20 A Correct.

21 Q Right. And his basis for doing so he analyzed State v.
22 Fripp and State v. Mitchell, two cases directly on point for
23 this exact scenario that look at Rule 701, and he considered
24 the testimony and just made an adverse ruling to you?

25 A Right.

1 Q So you did everything in your power to keep that evidence
2 out, and the trial judge just overruled you while relying on
3 cases that supported his decision?

4 A Correct.

5 Q Right. I know there were some questions asked of you on
6 direct about how long Det. Lee viewed Mr. Woods during their
7 2007 meeting and you didn't ask those questions. Did you know
8 the answer to those questions before you asked him?

9 A Not that I recall. I did not.

10 Q So I'm just asking this as with your level of experience.
11 Is it a wise decision for a defense attorney to ask questions
12 of witnesses they don't know or at least have some reason to
13 know the answer of?

14 A Well, certainly, that can get you in trouble sometimes.
15 You have to (indiscernible) --

16 Q Right. So if we had asked -- if you had asked a question
17 of Det. Lee about how long that one-on-one meeting he
18 described occurred, it's possible he could've given very
19 damaging testimony in response, right?

20 A Well, certainly, he could have said, I sat there for two
21 hours --

22 Q Right. And --

23 A -- in the same room with him. He could've said that, but
24 I -- yeah.

25 Q And the basis of his knowledge, I know this is more for

1 the judge then you. But the basis of his knowledge wasn't
2 just that one-on-one meeting, wasn't it? He testified after
3 that that he had seen the defendant's photographs multiple
4 times after that point in investigations. So he had a one-on-
5 one meeting with him, and then for years that followed, he saw
6 his photograph over and over again in connection to their
7 cases?

8 A Yeah. I think he did testify to that.

9 Q And let me switch gears to the fingerprint evidence. You
10 were asked about the pre-trial hearing where the solicitor
11 asked for a new copy of the Defendant's fingerprint. At that
12 point in time was the Defendant under arrest?

13 A The -- the pre-trial hearing?

14 Q Yeah. The pre-trial hearing in November of 2012. Had
15 Mr. Woods been arrested by that point in time?

16 A Oh, yes.

17 Q Yeah. And under South Carolina law, a defendant has to
18 provide fingerprints upon arrest, right?

19 A Right.

20 Q Right. So he didn't really have a basis to object, and
21 we didn't really necessarily need a Schmerber order to obtain
22 the Defendant's fingerprint, did we?

23 A I -- I didn't think so, but --

24 Q But let's assume we did. The solicitor called the
25 judge's attention during that hearing to the arrest warrants,

1 right? He specifically told him, here's, you know, we got
2 arrest warrants for this defendant, called his attention to
3 it. So the judge at this point in time knew there was a
4 probable cause basis, and this defendant had already been
5 arrested?

6 A That was my understanding, yes, sir.

7 Q All right. Now, let's ignore that for a second. Were we
8 already in possession of Mr. Woods fingerprints at this point
9 in time based on his past arrests?

10 A My understanding was they already had a -- a -- a
11 fingerprint.

12 Q Did you --

13 A Yes.

14 Q Did you think there was any basis to challenge whether
15 there was probable cause for his fingerprints?

16 A I mean, personally, I didn't, you know, just my opinion,
17 I didn't -- I didn't understand -- even understand why they --
18 they -- they had a Schmerber hearing to begin with.

19 Q Right. And then you --

20 A And that's why --

21 Q -- you called that to the judge's attention. You said
22 the solicitor already has them, so I don't know --

23 A Right.

24 Q -- why he needs them.

25 A Right.

1 Q And the solicitor explained he needed them because --
2 A Correct.
3 Q -- he didn't want to use the ones that had a prior
4 arrest --
5 A Right.
6 Q -- connected to them, right?
7 A Correct.
8 Q And then, so after the judge said, I'm going to order him
9 to it, do you remember what the Defendant did in response to
10 that? Let me ask you. Would it surprise you if I told you
11 the transcript has the Defendant's next words, I'm willing to
12 provide fingerprints, or he said something to that effect?
13 A I -- I mean, I wouldn't be surprised. I -- I -- I do
14 remember there was -- that that may have been in different
15 place where he -- he did say he was willing to give them
16 electronically. But --
17 Q Right. And then --
18 A -- that -- that just --
19 Q -- the solicitor said --
20 A That sticks out in my head, but -- but if there's another
21 place, I mean, it wouldn't surprise me. Whatever's in the --
22 Q I --
23 A -- transcript is --
24 Q I think we're talking about the same thing.
25 A Right.

1 Q And so after that the solicitor said, well, I can't do
2 them electronically. And the judge said, well, what about
3 this; what if your attorney's around? And the Defendant said,
4 I guess that's okay.

5 A Okay.

6 Q Right.

7 A Right.

8 Q So in this particular case, it's a situation where we had
9 probable cause to get his warrant, he was required to give us
10 the fingerprints anyway by virtue of his arrest, and he told
11 the judge he was okay giving the fingerprints, right?

12 A Correct.

13 Q So there really wasn't much of a basis then to complain
14 about those fingerprints in this case, right?

15 A Right.

16 Q Let me flip to the jury instruction. Did you raise any
17 objections to the jury instructions?

18 A I don't recall specifically. I know the one that Mr.
19 Brooker particularly asked me about near the end concerning
20 the -- the inference. I know I -- I don't think I did to that
21 and I'm -- I -- I can't recall objecting to the -- to any
22 other. But --

23 Q Do you see any reason to object to that malice jury
24 instruction?

25 A No. Not -- no, sir.

1 Q Do you know of anything, you know, case law or anything
2 like that that would make it improper for a judge to instruct
3 a jury on inferring malice from conduct that showed a total
4 disregard for human life?

5 A I -- I wasn't aware of any case law that indicated that
6 was an improper charge. I mean, I -- I certainly am aware of
7 the malice being inferred from the use of a --

8 Q Right.

9 A -- deadly weapon. Right. But that's not the same thing,
10 right?

11 Q It is not. Was malice though -- let's not worry about
12 the jury instruction. Was malice even really an issue in Mr.
13 Woods' case? And I say that from this. Identity was at
14 issue, but if Mr. Woods was the person that did it, is
15 shooting a elder bound-and-gagged victim with a pistol in the
16 head from close range, is that an act that can conceivably be
17 not malicious?

18 A I mean, I don't -- I don't think I argued that. No.

19 Q Right.

20 A Right. I mean, that -- that wasn't my argument.

21 Q So pretty much, though, whoever did this to Mr. Rowell
22 did it with malice.

23 A Right.

24 Q And the thing you guys were fighting on was whether Mr.
25 Woods was the one that did not whether Mr. Woods did it but

1 didn't do it with malice?

2 A That -- that would be -- yes. That would be correct.

3 Q All right. This is just a broad question. But based on
4 the evidence and based on your experience, was the jury's
5 verdict in this case something unexpected for you?

6 A I mean, I was not shocked or surprised by it, no.

7 Q Do you think Mr. Woods was shocked by it based on your
8 conversations leading up to the trial?

9 A I mean, he -- he didn't indicate to me that he was, but
10 certainly, I don't want to, you know, speak for him in that
11 regard. But --

12 Q All right. I think the only other thing I haven't asked
13 you about is Mr. Davis. So just so I'm clear on this, Mr.
14 Davis was a witness that had provided a statement to officers
15 that potentially provided an extra link to the Defendant and
16 the victim's murder?

17 A That's right, yes.

18 Q And if he testified there's a risk from him testifying
19 based that out-of-court statement that he's going to provide
20 more evidence, not less, against the State?

21 A That -- that's correct.

22 Q And so from a strategic standpoint based on discussions
23 with the solicitor, you decided to allow the solicitor to
24 elicit evidence that was just elicited for the limited extent
25 of an identification had been made and that lead us to get

1 arrest warrants. But no evidence was presented about what the
2 basis that witness had to make identification or how the
3 identification was, what was being made, whether it was him
4 just identifying Woods and Sanders or him identifying them
5 linking them to the crime. It was very general testimony.

6 And from a strategic standpoint, you decided not to
7 object to that testimony because if you did, the solicitor had
8 made it clear, Shawn Davis was going to be testifying, which
9 would eliminate any confrontation problem and then more
10 damaging testimony could potentially come out for your client?

11 A That's -- yes. In a nutshell that's it, yes.

12 Q All right. So that was a strategic choice made in this
13 particular case?

14 A Correct.

15 Q All right.

16 MR. FARTHING: Bear with me one moment, Your Honor.

17 THE COURT: Sure.

18 Q I'm going to ask you just one more subject and then I
19 want to play a video for you to see if it is consistent with
20 your recollection of the surveillance footage. The thing I'm
21 going to ask you about is severance, and I think this
22 allegation may be withdrawn now, but I just want to cover it
23 just for safety's sake. In this particular case, did you move
24 for a severance pre-trial?

25 A I don't recall doing that, no. I don't believe I did.

1 Q I don't believe you did either.

2 A No.

3 Q I think Mr. Wilson did, and this was one of the few

4 objections you chose not to join into.

5 A Right.

6 Q And is there a reason you chose to not join into that

7 objection? Did you see a legitimate basis in this particular

8 case to seek a severance?

9 A No, I did not.

10 Q Were there any separate facts for these two defendants

11 that made their cases unique from one another?

12 A Not that I was aware of. I mean --

13 Q And these two defendants are, actually, the cases are so

14 similar to them that both defendants were indicted through one

15 six-count indictment that functionally had twelve counts for

16 two defendants in it?

17 A Correct.

18 Q Right. So there was just no reason to seek a severance.

19 And based on the trial judge's denial of the severance, do you

20 think your severance motion would have been successful if you

21 had raised it?

22 A No.

23 Q All right. All right. And now, is your monitor working

24 up there?

25 A It -- it has a date displayed.

1 Q All right.

2 A And a --

3 MR. FARTHING: At this point, Your Honor --

4 A -- channel 1 and channel 2.

5 MR. FARTHING: -- this is the exhibit we talked about
6 before. I'm going to play it for Mr. Floyd to identify and
7 then I'll seek to admit it if he identifies it.

8 THE COURT: Yes, sir.

9 MR. FARTHING: And it's about five minutes long.

10 THE COURT: Okay.

11 MR. FARTHING: This is the surveillance footage that was
12 introduced during trial as States Exhibit 18.

13 (Thereupon, the visual recording was played but not
14 transcribed herein.)

15 MR. FARTHING: And Your Honor, just for clarification
16 while it's playing, the recording jumps around a couple times
17 but it has a just -- it's been edited down as it was at trial
18 to just hit the highlights.

19 THE COURT: Yes, sir.

20 (Thereupon, the visual recording was played but not
21 transcribed herein.)

22 Q Do you see a white SUV driving by, Mr. Floyd?

23 A Yes, sir.

24 (Thereupon, the visual recording was played but not
25 transcribed herein.)

1 Q Do you see a white SUV driving by again, Mr. Floyd?

2 A Yes, sir.

3 (Thereupon, the visual recording was played but not

4 transcribed herein.)

5 Q Do you see a white SUV driving yet again, Mr. Floyd?

6 A Yes, sir.

7 Q What vehicle was Mr. Woods linked to at this time?

8 A There was some evidence that it -- that it was a -- a

9 white SUV.

10 (Thereupon, the visual recording was played but not

11 transcribed herein.)

12 Q Is that the individual that Det. Woods (sic) identified

13 as your client?

14 A Yes, sir.

15 Q Is the quality of this recording so poor that no one

16 would ever be able to make an identification from it with

17 knowledge?

18 A I mean, not in my opinion. I mean, you can -- it's --

19 it's a pr -- pretty good video.

20 (Thereupon, the visual recording was played but not

21 transcribed herein.)

22 Q Does that man appear to be holding a pistol with a

23 silencer on it and a roll of duct tape?

24 A Yes. It -- it does appear that way.

25 Q What does it look like is in Mr. Woods' hands?

1 A Well, the person who's alleged to be Mr. Woods, it looks
2 like there's a -- a gun, an automatic-type pistol in his hand.

3 (Thereupon, the visual recording was played but not
4 transcribed herein.)

5 Q Now, just to be clear, this is a clear video and we have
6 testimony from an individual that he had knowledge that
7 enabled him to make an identification, and you did though take
8 steps to attempt to exclude this video?

9 A Yes, sir.

10 Q And the trial judge just overruled those saying that the
11 issues you pointed out were matters of weight for the jury
12 versus admissibility?

13 A I believe that's correct if I recall. Yes, sir.

14 (Thereupon, the visual recording was played but not
15 transcribed herein.)

16 MR. FARTHING: I don't know that there's anything else
17 but I'm going to keep letting it play. But at this time I'd
18 like to move to admit the video as State's Exhibit 1 for
19 purposes of this hearing. It is State's Exhibit 18 during the
20 trial.

21 (WHEREUPON, Respondent's Exhibit No. 1 was marked for
22 identification only.)

23 THE COURT: Mr. Brooker?

24 MR. BROOKER: No objection, Your Honor.

25 THE COURT: Thank you.

1 (WHEREUPON, Respondent's Exhibit No. 1 was received into
2 evidence.)

3 (Thereupon, the visual recording was played but not
4 transcribed herein.)

5 Q I think that may be it, except for let me ask you one
6 more thing. I want to backtrack to the stuff about Shawn
7 Davis. Did the solicitor, do you remember the solicitor
8 mentioning Shawn Davis again at any point in time, using it in
9 closing or anything, trying to argue that identification was
10 evidence of their guilt?

11 A I mean, I don't have any recollection of him doing it,
12 but --

13 Q Do you remember who did use it during closing? Was it
14 you and Mr. Wilson, and you pointed out that the State had
15 presented testimony related to this Shawn Davis fellow who was
16 identified as a criminal but didn't tell you any reason why
17 he'd be able to make any kind of identification?

18 A That's -- that's possible we did that. I -- you know, I
19 had -- I didn't read my closing argument. I'm sorry. But --

20 Q Right. No.

21 A But --

22 Q That's okay.

23 A But so --

24 Q And so if you did do that though --

25 A Right.

1 Q -- it would've meant that the ones that used the Shawn
2 Davis testimony to their advantage was the defense, right?

3 A Right. Correct.

4 Q Right. So there was a strategic reason for not objecting
5 to it, and then that strategic reason also gave you another
6 avenue to attack the State's case in closing argument when you
7 didn't have a lot of great avenues to do that based on the
8 evidence of guilt?

9 A Correct.

10 Q All right. Thank you very much.

11 MR. FARTHING: No further questions.

12 A Thank you.

13 THE COURT: Mr. Brooker?

14 MR. BROOKER: I'll be very brief.

15 REDIRECT EXAMINATION

16 BY MR. BROOKER:

17 Q I think you just said that this video that was just
18 entered into evidence, I think you said the video was pretty
19 clear; is that correct?

20 A I think I said it was pretty good quality, yeah. I
21 mean --

22 Q That it's pretty good quality, that video?

23 A Um-hum.

24 Q Okay. When you look at that video --

25 A Um-hum.

1 Q -- that video, could you tell us what was the difference
2 between Mr. Woods as he was depicted in that video and the way
3 he was at trial? Was there a difference?

4 A The way he was at trial?

5 Q And let me explain. I'm talking about physical, what was
6 there in his physical appearance?

7 A I mean, I don't recall specifically. I -- I may have
8 argued in my closing that the person that they alleged to be
9 him didn't exactly, you know, match the person who was sitting
10 in the courtroom. I think I might've done that.

11 Q Okay. And I think, with respect to the Schmerber order,
12 I know that you testified is, is that you didn't need to --
13 that it was necessary to make a probable cause assessment
14 doing the Schmerber order because probable cause had already
15 been made when he was arrested. Isn't it true that the law
16 is, is that the fact that someone has been arrested still does
17 and sort of relieves the state of the obligation to provide
18 probable cause in the Schmerber hearing?

19 A Right.

20 Q Okay. And so even if he's been arrested and probable
21 cause has been established for his arrest, you still have to
22 provide probable cause through a Schmerber hearing, don't you?

23 A Well, you know, that's up to the judge, I suppose.

24 Q I'm asking, is that the law?

25 A Well, I'm -- I'm not going to say what the law is because

1 I'm not a judge. I mean, Supreme Court can say what the law
2 is, but I mean, but yes. It's my understanding that they are
3 supposed to go through some type of analysis, yes, before they
4 issue such an order.

5 Q Yeah.

6 A Um-hum.

7 Q And having a warrant or a person being under arrest for a
8 warrant doesn't relieve them of that obligation to do that.

9 A Well --

10 Q Is that your understanding?

11 A That's my understanding, yes.

12 Q And I think you also -- it was mentioned in a transcript,
13 I think, that Mr. Woods had said that it's okay if it's
14 electronic, but didn't he say that after the judge had already
15 given the order that he would give the fingerprints?

16 A He may have, yeah. I'm not -- I'm not speaking that. If
17 it's written in that transcript, then yes, that's when he did
18 it.

19 Q But you're not alleging that he, you know, that he
20 voluntarily consented to giving his fingerprints?

21 A I'm -- I'm not alleging anything.

22 Q Okay. Didn't during the Schmerber hearing it was asked
23 as to whether or not he would do it voluntarily, and you told
24 the judge that he would not?

25 A If that's what it says in the transcript, then that's

1 what I said, yes.

2 Q The SUV. Was there testimony that connected Mr. Woods to
3 the SUV during the trial?

4 A You know, I can -- Mr. Brooker, I can remember reading in
5 the discovery there's been some connection with an SUV. I
6 can't remember specifically at trial whether or not that
7 testimony was entered. I -- I can't remember.

8 Q Yeah. And that's my question is, is that did the owner
9 of that SUV or anybody who was familiar with the SUV come to
10 trial, to your knowledge, come to trial and testify that that
11 SUV that's contained in the video, that SUV is connected to
12 Mr. Woods?

13 A I don't recall that, no.

14 Q Did you check the registration? Did the law enforcement
15 check the registration to see who that SUV was registered to?

16 A It seemed -- it seems like in the discovery, at least,
17 there was, I believe, it was disclosed who it was registered
18 to.

19 Q Was it registered to Mr. Woods to your knowledge?

20 A I don't -- I don't think so. I -- I don't recall it
21 being registered to him.

22 Q On the video was any identifying information like a tag
23 or VIN number was taken off the SUV to specifically identify
24 that specific SUV excluding all other white SUVs to Mr. Woods?

25 A I don't recall, no, there being any identifying marks

1 such as tags or serial numbers on the video.

2 Q I think you were also asked a question, I think, in
3 reference to maliciousness. And I think you were asked
4 whether or not this case was about malice, whether or not this
5 case was about malice. But wouldn't you say is, is that
6 obligation of a defense attorney is, is to make sure that the
7 State provides proof beyond a reasonable doubt on every
8 element of the offense?

9 A That is correct. No char -- and they were charged that
10 by the judge, I believe.

11 Q Okay.

12 A I mean, I didn't specifically -- I don't recall
13 specifically arguing malice, that there was no malice in this
14 crime, if that's what you're asking. In my closing, I don't
15 remember arguing that, but I didn't read it before I came in
16 here, so I -- you know.

17 Q Yeah. And I just wanted to address that because I think
18 it was suggested that this was not a malice case, it was
19 simply an identity case, and I just wanted to make sure did
20 you agree with that statement that I made that the defense
21 attorney's job is, is --

22 A Well -- well -- well, oh, I agree with that. And what I
23 said was I did not argue about malice being present. I argued
24 whether or not it was actually Mr. Woods in the video or -- or
25 whether he was there. If I recall.

1 Q Yes, sir. If you can indulge me for just a second. I'm
2 going to make sure that I don't have any other questions I
3 need to ask. Just one more thing that you were asked on
4 direct, excuse me, on redirect (sic). And that was in
5 reference to how many times that you met with Mr. Woods, and I
6 think you said you couldn't remember but it was more than one?

7 A Yes, sir.

8 Q Do you know whether or not it was more than twice?

9 A I'm -- I'm pretty sure it was, but I can't recall exactly
10 how many times.

11 Q So you can't confirm or deny whether or not it was more
12 than -- it was --

13 A I -- no. I'm not going to tell you it was more than
14 twice because I don't have, you know, a list sitting here in
15 front of me, and I can't -- I can't remember, and I'm not
16 going to speculate.

17 Q Um-hum. I got you.

18 A But --

19 MR. BROOKER: No other questions, Your Honor.

20 MR. FARTHING: May I briefly, Your Honor?

21 THE COURT: Yes, sir.

22 RECROSS-EXAMINATION

23 BY MR. FARTHING:

24 Q You were asked about the white SUV and how we couldn't
25 specifically say that it was that exact white SUV on the video

1 that the Defendant was linked too.

2 A Right.

3 Q Are you familiar with your three decades-plus of
4 experience about circumstantial evidence?

5 A Correct.

6 Q Right. And so sometimes circumstantial evidence doesn't
7 have value until it's added to others, but when you have more
8 than ten fingerprints in a house linked to Mr. Woods, and you
9 have Mr. Woods being identified from surveillance footage
10 that's pretty clear, and then you add testimony that links Mr.
11 Woods to a white SUV that looks an awful lot like the white
12 SUV on that video, that has meaning and value, does it not?

13 A Correct.

14 Q Right. And very quickly to the malice point. Is there a
15 reason why you focused on identity and not this wasn't a
16 malice killing?

17 A Well, I mean, the -- the nature of the killing itself
18 was, you know, an elder gentleman who was bound and then --

19 Q Right.

20 A -- shot execution style, basically. So --

21 Q Yeah. A close-range bullet to the brain --

22 A Right.

23 Q -- of a 70-year-old man that is then bound and gagged
24 while his home is being ransacked, that's not typically
25 something that a jury's going to buy. A reasonable fact

1 finder would have doubt as to malice?

2 A Right.

3 Q Right.

4 MR. FARTHING: I have no further questions.

5 THE COURT: Mr. Booker?

6 MR. BROOKER: I just want to ask one follow-up question.

7 FURTHER REDIRECT EXAMINATION

8 BY MR. BROOKER:

9 Q I think regardless of that, malice still had to be proven
10 beyond a reasonable doubt; is that correct?

11 A That is correct. Absolutely. And the judge charged
12 that.

13 Q And regardless of how violent or heinous the crime is,
14 murder is still an intent crime; is that correct?

15 A That's correct.

16 Q Okay. And of course, anything that would suggest that
17 it's something below that would not be correct; is that --

18 A I --

19 Q -- is that right?

20 A I would believe so.

21 Q Thank you.

22 A Yes, sir.

23 MR. FARTHING: I hate to do one more.

24 THE COURT: Yes, sir.

25 FURTHER RECROSS EXAMINATION

1 BY MR. FARTHING:

2 Q What is the lesser-included offense that you thought you
3 could request here as a lesser for murder?

4 A I didn't request a lesser; I included offense that I
5 recall.

6 Q Are you aware of any cases in South Carolina history
7 where voluntary manslaughter has been the conviction for a
8 person bound and gagged, and shot in the head while they're
9 tied up?

10 A I mean, I'm not aware of any. But --

11 Q Okay. Just checking.

12 A No, sir.

13 Q Thank you.

14 THE COURT: May he come down, Mr. Brooker?

15 MR. BROOKER: Yes, sir. Thank you, Your Honor.

16 THE COURT: All right, gentleman. Y'all said y'all
17 wanted to try to work in one more before 5 o'clock. At 5
18 o'clock we stop.

19 MR. FARTHING: Yes, Your Honor. The State would like to
20 call Solicitor Clemmons out of order.

21 THE COURT: All right. I'm not trying to be churlish
22 now, but at 5 o'clock, even if he's on the stand, we stop.

23 MR. FARTHING: Yes, sir.

24 THE COURT: Okay.

25 MR. FARTHING: I got two questions.

1 THE COURT: And I say that because we have people here
2 today who have responsibility beyond the courthouse, right,
3 ma'am?

4 Go ahead, ma'am.

5 MR. BROOKER: Judge, before we start, is it okay Mr.
6 Floyd be excused?

7 THE COURT: Oh, yes, sir.

8 MR. BROOKER: If there's no objections --

9 THE COURT: Yes, sir.

10 MR. BROOKER: -- by counsel.

11 MR. FLOYD: Thank you, Your Honor.

12 THE COURT: Sure.

13 MR. FLOYD: Thank you.

14 E.L. CLEMMONS, after being duly sworn, testified as
15 follows:

16 DIRECT EXAMINATION

17 BY MR. FARTHING:

18 Q Good afternoon, Solicitor Clemmons.

19 A Good afternoon.

20 Q Did you try this case?

21 A I did.

22 Q I'm going to keep this really focused on the issues. Can
23 you tell us a little bit about Shawn Davis and what his role
24 in this case was?

25 A He, you know, identified the defendants, gave a

1 statement, what he saw. And what we did was, we realized we'd
2 have a problem because he was scared to death. And so the way
3 we worked our way around that was we asked James Lee if he'd
4 talk to Shawn Davis, if he showed him a photo lineup, and then
5 what did you do after that. We didn't ask him for anything
6 beyond that that, and he told us he went and got warrants, if
7 I remember.

8 Q Right. So you weren't offering the identification for
9 the truth of the matter asserted; you were offering it to
10 explain what he did next, which was the arrest?

11 A That's right.

12 Q Right. Was Shawn Davis available to testify; was he
13 under subpoena and present for the trial?

14 A He was, and I don't know if he was present or if we had
15 him on a short leash in the community where we could get to
16 him quickly. But I think he was in another building with our
17 other witnesses.

18 Q Right. So if an objection had been raised to the
19 testimony on confrontation grounds, what would you have done
20 with Shawn Davis?

21 A We'd put Shawn Davis up, and the whole shooting match
22 would come in.

23 Q Got you.

24 A And it'd be detrimental to the defense.

25 Q Yes, sir. The next question relates to the fingerprint

1 evidence just as a hypothetical. Hypothetically, if the trial
2 judge had suppressed the fingerprint evidence, if a defense
3 counsel objection had been lodged and he had suppressed the
4 fingerprint evidence that we had, the sample that we had
5 taken, the known standard we had taken, what would you have
6 done at that point in time in the trial?

7 A Well, I had an expert there, so I would've had him. I
8 would ask for recess, have him take the fingerprints, and we'd
9 have a new set right there we could work with.

10 Q Right. So the fingerprints were coming in one way or the
11 other?

12 A Yeah. That's true.

13 Q And there is a no question you had probable cause to get
14 Mr. Woods fingerprints?

15 A I absolutely had probable cause.

16 Q All right. Thank you very much, Solicitor.

17 THE COURT: Mr. Brooker?

18 MR. BROOKER: Okay. Yes. Very briefly.

19 CROSS-EXAMINATION

20 BY MR. BROOKER:

21 Q Was Shawn Davis incarcerated at that time?

22 A I can't remember. That's been a long time ago. There's
23 certain things I remember very clearly about this trial and
24 the other things I'm fuzzy on. Well, I remem -- well, what I
25 always remember is them going into the trailer on that video

1 with the soda bottle taped onto the gun as a homemade
2 silencer.

3 Q Okay. Did you send a subpoena out for him; did you
4 subpoena Shawn Davis?

5 A We subpoenaed everyone. I can't say for certain, but he
6 wouldn't have been there without a subpoena because he was
7 scared to death, and that's normally our practice to subpoena
8 all our witnesses --

9 Q Okay.

10 A -- in case they need cover for work or anything else.

11 Q Do you have any specific recollection as to whether or
12 not you subpoenaed him?

13 A I don't have a specific recollection on that, no. But I
14 can tell you, that's our practice.

15 Q If you could correct me if I'm wrong is, it's my
16 understanding is, is that Shawn Davis would have been the
17 first person who identified, I think, Mr. Woods, and of
18 course, was the arrest warrants that were secured were secured
19 based upon that identification, and that was even before Ross
20 (phonetic) and Neil had viewed the surveillance footage?

21 A I can't recall the sequence of those events, but all
22 those things were done. I'm not sure if what you say is first
23 or second or third. It's been many years.

24 Q I got you. Now, Shawn Davis was not called at trial; is
25 that correct?

1 A That's correct.

2 Q And Shawn Davis did testify even though you say in a
3 limited fashion about the -- or at least I think it was Neil
4 Ross (sic), and of course, is, is that Det. Lee testified even
5 in a limited capacity about that photo lineup; is that
6 correct?

7 A What I recall specifically, and I know I'm accurate on
8 this because we've done this many times. Is you ask law
9 enforcement officer, he can't give you hearsay of what
10 somebody else said, you ask them what he did in his
11 investigation, which we did. We asked James Lee, you talked
12 to somebody, did you show them a photo laydown, and after
13 that, what did you do? Went and got warrants.

14 Q But there was testimony at trial that there was an
15 identification made; is that correct?

16 A I hadn't seen this transcript. Like Mr. Floyd, didn't
17 anticipate being here to testify. But I'm just strictly from
18 memory without refreshing it with a -- with the transcript.
19 But there was an identification made. I don't know how much
20 testimony there was about it. You know, we didn't put the
21 photo lineup in without Shawn Davis being there to verify
22 what -- to say what he did, and we didn't put him up to
23 testify because of his fear, which was legitimate.

24 Q Okay. Now, very quickly. I'm almost finished, Mr.
25 Clemmons. My understanding is, is that y'all made a decision

1 not to call Mr. Davis. And I think, if my memory serves
2 correctly, and if my memory doesn't serve me correct, you
3 correct me. That was there an agreement or task of agreement
4 between you and the defendant and the defense office that if
5 they objected to that limited hearsay evidence, then you would
6 call Shawn Davis and put him on the stand?

7 A We didn't put any hearsay evidence in; we just put James
8 Lee saying what he did. And there was no task of agreement; I
9 just said this is what I'm going to do. If such and such
10 happens, then this is what I'm going to do. If such and such
11 doesn't happens, then this is the route I'm going to take. So
12 I didn't make any agreement; I just told them what I was going
13 to do.

14 Q And that's what I'm --

15 A They could go along with it or not.

16 Q And that's what I'm trying to figure out is, is that
17 whether or not there was some sort of an agreement or whether
18 or not there was not agreement?

19 A We didn't agree, we -- we just stated what it was, and
20 very smartly strategically, I believe, Mr. Wilson and Mr.
21 Floyd didn't pursue that and make me have to put it all in. I
22 think that was a pretty good strategy on their part.

23 MR. BROOKER: If you can indulge me for just a second,
24 Your Honor.

25 THE COURT: Yes, sir.

1 MR. BROOKER: Let me make sure I don't have any further
2 questions --

3 THE COURT: Yes, sir.

4 MR. BROOKER: -- for Mr. Clemmons.

5 Q I think, just very briefly, Mr. Clemmons, in reference
6 to -- and it will be very brief. This is in reference to the
7 Schmerber hearing that y'all conducted. Is it your
8 understanding that even if a person in custody and has been
9 charged with a crime, that the law still requires that
10 probable cause be satisfied with a Schmerber hearing; is that
11 your understanding of what the law is?

12 A I don't think that's -- that's completely accurate. As a
13 matter of fact, there's a sta -- a statute you quoted earlier;
14 I can't remember what the number was. But it seems to me like
15 there's something in there that says if you can -- if you can
16 present to the person that there's a reasonable grounds, other
17 reasonable grounds, or have a probable cause hearing. So if
18 you check that statute and see if I'm correct or not, I don't
19 know.

20 Q Okay. So you don't know whether or not you have to
21 provide probable cause at a Schmerber hearing if the person
22 has already been arrested and is in custody?

23 A I don't think it was necessary. It wasn't really
24 necessary for us to get a Schmerber; we was just trying to
25 cover all our bases. But as far as the law and statute, and I

1 might be -- my memory might be wrong on that -- the statute
2 you quoted earlier about requiring probable cause, I think
3 there's a phrase before that that says you can show sufficient
4 grounds otherwise.

5 Q And --

6 A I think we had pretty sufficient grounds for the arrest
7 warrants, and the cops were moving in at that point in time,
8 and the knowledge that the judge had of the case, it would've
9 been done.

10 Q And just one more question, and of course, this in
11 reference to the malice element. I think that the judge
12 instructed the jury that the malice element could be inferred
13 from the conduct that showed a total disregard for human life.
14 I am not aware of any statute that says that malice can be
15 inferred from the conduct that reflects a total disregard for
16 human life. At that time were you aware of any such case law
17 that says that malice could inferred?

18 A I'm not aware of any case law, but I think at that time
19 it was clear there was malice.

20 Q But that's a jury issue, right?

21 A That's a jury issue, and the judge charged them, I
22 believe, correctly on the law, and they made a decision based
23 on the facts that were evidence, and they applied the law to
24 those facts as they found them. And they definitely reached a
25 conclusion there was malice.

1 MR. BROOKER: If you could indulge me for just a second,
2 Your Honor. Let me --

3 THE COURT: Yes, sir.

4 MR. BROOKER: -- make sure I don't have any further
5 follow-up questions for Mr. Clemmons.

6 (Pause.)

7 MR. BROOKER: No follow-up questions for Mr. Clemmons,
8 Your Honor.

9 THE COURT: Mr. Farthing?

10 MR. FARTHING: Thank you very much for your testimony,
11 Solicitor. I'd ask that you be excused from the stand.

12 THE WITNESS: Thank you, Your Honor.

13 THE COURT: Gentleman, I think we better stop there for
14 today.

15 (Court handles unrelated matter)

16 THE COURT: Okay. So if we start at 9:30 with withdrawal
17 hearings, allowing change-out time 10 o'clock, so hopefully be
18 back on this one at 11 o'clock tomorrow.

19 MR. FARTHING: Yes, sir.

20 THE COURT: Okay. All right, folks. Thank you for your
21 patience.

22 (End of Transcript of Record)

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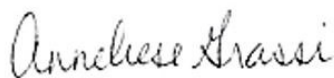
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State of South Carolina)
)
County of Florence)

I, ANNELIESE GRASSI, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 21st day of April, 2022.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 9, 2022



Anneliese Grassi, CDLT-264
Transcriber