

VOLUME II of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY

Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No. 2015-CP-40-00331

RECEIVED

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S.C. SUPREME COURT

Steven Bosnell Gillian, #282336,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2022-000769

APPENDIX

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JESSIE BOOT -CROSS- BY MS. MIMS

1 was handed to him.

2 Q But it's not in the report that you gave to the
3 police?

4 A (Witness nods.) (Indicating affirmative
5 response.)

6 Q You are saying that today, right? That is your
7 testimony today?

8 A Yes, ma'am.

9 Q And this is over a year later, right?

10 A Yes, ma'am.

11 Q You never called the police in the interim to
12 ~~tell them you forgot a fact or forgot to mention~~
13 that fact?

14 A No, ma'am.

15 Q And you didn't mention to the police that you
16 went to the Cipkala house either, did you?

17 A Yes, ma'am.

18 Q You did the tell the police that?

19 A Yes, ma'am.

20 Q They didn't put that in your report or your
21 statement, did they?

22 A I don't know. I never got to read it.

23 Q Do you want to read your statement? I will let
24 you look over this. Do you remember talking to
25 Investigator Ewing?

JESSIE BOOT -CROSS- BY MS. MIMS

1 A Is that Lexington or Richland County?

2 Q Richland County.

3 A Yes, ma'am.

4 Q And do you remember signing a statement, reading
5 over a statement and signing it?

6 A Yes, ma'am. He wrote it for me.

7 Q And is that your signature right there
8 (indicating)?

9 A Yes, ma'am.

10 Q See if you can find anywhere in there where you
11 mentioned going to the Cipkala house.

12 A (Pause.) It's not in here. Do you have my
13 statement from Lexington? It's in that
14 statement.

15 Q It's in the statement from Lexington?

16 A Yes, ma'am.

17 Q You did give two statements?

18 A Yes, ma'am.

19 Q You gave one to Lexington and one to Richland?

20 A Yes, ma'am.

21 Q And you have been charged with burglary in the
22 first degree?

23 A Yes, ma'am.

24 Q And we know, because your lawyer is here, that
25 that charge is still pending?

JESSIE BOOT -REDIRECT- BY MR. MCMAHON

1 A Yes, ma'am.

2 Q You have not gone to court on that charge yet?

3 A No, ma'am.

4 Q You have already been up here earlier this week
5 discussing your testimony with the Solicitor's
6 Office?

7 A Yes, ma'am.

8 MS. MIMS: Beg the Court's indulgence, Your
9 Honor.

10 (Pause.)

11 MS. MIMS: I have no further questions,
12 Your Honor.

13 THE COURT: Any redirect?

14 REDIRECT EXAMINATION

15 BY MR. MCMAHON:

16 Q In discussing your testimony with the
17 Solicitor's Office, nobody told you what to say?

18 A No, sir.

19 Q What is the only thing I told you to say?

20 A The truth.

21 Q Thank you.

22 MR. MCMAHON: I don't have any further
23 questions.

24 THE COURT: Any recross?

25 MS. MIMS: No, sir, Your Honor.

1 THE COURT: You can step down, Mr. Boot.
2 You are free to stay or you can go if you like.

3 Let me ask you to approach.

4 (Whereupon there was a bench conference off
5 the record in the presence of the jury but out of the
6 hearing of the jury.)

7 THE COURT: Ladies and gentlemen, we will
8 go ahead and stop for the day. We made a lot of good
9 progress today, moved along very well. It looks good
10 in terms of getting this thing, this case, moved
11 soon.

12 Of course, as you know, we certainly want
13 to do it as expediently as possible but certainly
14 also being sure that everybody has a chance to have
15 their full time in court.

16 But we are still doing pretty good. We
17 will take a recess for the day. I will ask you to be
18 back in the morning at 9:30 in the jury room. Again,
19 remember, don't talk about the case with anybody; and
20 don't let anybody talk about the case with you. See
21 you then.

22 (The jury is excused for the day at
23 5:25 p.m.)

24 THE COURT: The jury is secured. Let me
25 note a couple of things for the record if I might.

1 One is that prior to Mr. Boot's testimony, I had a
2 conference with all counsel, including Mr. Holler who
3 represents Mr. Boot.

4 I was advised at that time that Mr. Boot
5 was thoroughly advised of his Fifth Amendment rights
6 and that he understood them and understood that once
7 he gave them up, he couldn't be limited in that, that
8 he gave all of his Fifth Amendment rights up.

9 There apparently were no problems with that
10 in his testimony. I wanted to be sure that was on
11 the record. Mr. Holler concurred in that also. Is
12 that the understanding of the State as to that part?

13 MR. MCMAHON: Yes, sir.

14 THE COURT: Defense?

15 MS. MIMS: Yes, sir.

16 THE COURT: Also we had a motion just now
17 as to the issue of hearsay under 801 (B)(2)(E), I
18 think. I tried to get all these down. As I recall,
19 that was related to statements of a conspirator,
20 co-conspirator, during the furtherance of the
21 conspiracy. I ruled that it was admissible at that
22 point. Anything else from the State on that?

23 MR. MCMAHON: Nothing, Your Honor.

24 THE COURT: Anything else from the defense
25 on that?

1 MS. MIMS: No, Your Honor.

2 THE COURT: Mr. McMahon, in terms of the
3 defense being prepared for whatever they are going to
4 do, any idea when you anticipate your case being
5 completed?

6 MR. MCMAHON: Judge, I think we will take a
7 whole day tomorrow. I think we will either rest late
8 tomorrow or Thursday morning. So I think we will
9 either rest late tomorrow or have a few witnesses for
10 Thursday morning if we move along tomorrow like we
11 did today.

12 I've got the rest of the burglary
13 witnesses. Obviously, I have got my forensics to get
14 back into. It shouldn't take terribly long. I think
15 we can put it up by then.

16 THE COURT: It looks like we should get or
17 probably should get to the jury sometime late
18 Thursday or Friday at some point. Does that sound
19 about right?

20 MR. MCMAHON: Yes, sir, I would think so.
21 I would think maybe -- my preference would be Friday
22 morning rather than late Thursday, but it just
23 depends on when we finish Thursday.

24 THE COURT: We've got the whole week.
25 Friday beats Saturday. We are doing well with that.

1 I will see you in the morning at 9:30.

2 MR. MCMAHON: Thank you, Judge.

3 THE COURT: Have a good evening.

4 (Whereupon the proceedings were concluded
5 for February 26, 2002.)

6 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF RICHLAND

STATE OF SOUTH CAROLINA)

-VS-)

Transcript of Record

STEVEN GILLIAN,)

01-GS-40-1201

Defendant.)

February 25-28 & March 1, 2002
Columbia, South Carolina

V O L U M E I I O F I I

B E F O R E:

HONORABLE MARC H. WESTBROOK, Judge; and a jury.

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K. LUCK CAMPBELL, Assist. Solicitor
Attorneys for the State

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Circuit Court Reporter

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13 STEVEN MICHAEL LIVINGSTON

14 DIRECT By Mr. McMahon 837

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16 JOHN EVERETT EWING, JR.

17 DIRECT By Mr. McMahon 846

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22 JAMES STANDIN SMITH

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1 (The following proceedings were reported on
2 February 27, 2002.)

3 THE COURT: Counsel, as I understand, you
4 needed some time to review some tapes. Have you been
5 able to do that?

6 MS. MIMS: Yes, sir, Your Honor. Thank
7 you.

8 THE COURT: Are we ready to begin? Is the
9 State ready?

10 MS. CAMPBELL: The State is ready, Your
11 Honor.

12 THE COURT: Is the defense ready?

13 MS. MIMS: The defense is ready, Your
14 Honor.

15 THE COURT: Bring the jury, please.

16 (The jury returns to the courtroom at
17 10:00 a.m.)

18 THE COURT: All parties and attorneys are
19 in the courtroom and all jurors have returned.
20 Solicitor, call your next witness, please.

21 MS. CAMPBELL: May it please the Court.
22 The State calls Brandon Cannon.

23 BRANDON CANNON, being first
24 duly sworn, testified as follows:

25 CLERK: Have a seat in the witness box and

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 state your full name for the record.

2 THE COURT: Counsel, let me ask you to
3 approach one second if I might.

4 (Whereupon there was a bench conference off
5 the record in the presence of the jury but out of the
6 hearing of the jury.)

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Brandon, how old are you?

10 A I'm 17.

11 Q Where do you live?

12 A West Columbia.

13 Q Who do you live in West Columbia with?

14 A My father.

15 Q Are you currently in school?

16 A No, ma'am, not right now.

17 Q What are you doing?

18 A At the moment I help my father work on the
19 weekend.

20 Q You are going to have to speak up for me, okay?

21 A I help my father work on the weekends when I can
22 when they need me.

23 Q When they need you?

24 A Yes, ma'am.

25 THE COURT: You will need to put that

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 microphone awful close. He is almost whispering.

2 MS. CAMPBELL: Yes, sir.

3 Q What kind of work does your father do?

4 A He is a land surveyor for U.S. Group.

5 Q So you help with his landscaping?

6 A Yes, ma'am.

7 Q Do you know Steve Gillian?

8 A No, ma'am, I do not.

9 Q Have you met Steve Gillian before?

10 A Yes, ma'am.

11 Q And how did you meet Steve Gillian?

12 A Through Jeremiah.

13 Q When you are saying through Jeremiah, what is
14 Jeremiah's last name, do you know that?

15 A Page.

16 Q Jeremiah Page?

17 A Yes, ma'am.

18 Q And were Jeremiah Page and Steve Gillian
19 friends?

20 A As far as I know, they were.

21 Q When you first met Steve Gillian, was it in
22 January of last year?

23 A I believe so.

24 Q And how did you come to meet Steve Gillian
25 through Jeremiah Page?

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 A On the day that we had met at Gilligan's was the
2 first day I met him.

3 Q At Gilligan's?

4 A Yes, ma'am.

5 Q And do you remember -- that was in January of
6 last year?

7 A Yes, ma'am.

8 Q What day of the week was that that y'all were
9 meeting?

10 A On a Friday.

11 Q What was the purpose of your meeting that day?

12 A To go to the house and rob it, I guess.

13 Q To commit a burglary?

14 A Yes, ma'am.

15 Q You are going to have to talk louder. Are you a
16 little nervous here today?

17 A Yes, ma'am.

18 Q So you had had conversations -- and don't tell
19 us what they were -- but you had conversations
20 with Jeremiah?

21 A Yes, ma'am.

22 Q And then you agreed to meet at Gilligan's that
23 day?

24 A Yes, ma'am.

25 Q And this was on a Friday; is that correct?

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Approximately what time did y'all meet at
3 Gilligan's that day?
- 4 A Anywhere from 12 to 1:00 o'clock.
- 5 Q How did you get to Gilligan's?
- 6 A With David Grice.
- 7 Q With David Grice?
- 8 A Yes, ma'am.
- 9 Q Whose car were you in when you went with David
10 Grice to Gilligan's that day?
- 11 A In David's car.
- 12 Q And, again, the purpose of you meeting at
13 Gilligan's was to later go rob a house?
- 14 A Yes, ma'am.
- 15 Q When you got to Gilligan's, who all was there?
- 16 A When we first got there, it was just me and
17 David.
- 18 Q It was just you and David?
- 19 A Yes, ma'am.
- 20 Q What kind of car were y'all in?
- 21 A A silver Century, four-door.
- 22 Q As you waited did other people show up?
- 23 A Yes, ma'am, but not right as we got there. It
24 took everybody else a little while to get there.
- 25 Q It took everybody else a little while to get

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 there?

2 A Yes, ma'am.

3 Q Do you know the names of some of the other
4 people that showed up that day?

5 A I didn't at that point, but I do know now what
6 some of their names are.

7 Q You knew Jeremiah Page?

8 A Yes, ma'am.

9 Q And did Jeremiah Page show up that day at
10 Gilligan's?

11 A Yes, ma'am.

12 Q Who was he with?

13 A He was with Steve.

14 Q With Steve Gillian?

15 A Yes, ma'am.

16 Q What kind of car were they in?

17 A They were in a four-door Chrysler. I believe
18 so.

19 Q Who was driving that car, do you remember?

20 A Steve was.

21 Q Steve Gillian?

22 A Yes, ma'am.

23 Q Did any other cars show up that day?

24 A Yes, ma'am.

25 Q How many more cars, do you remember?

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 A Two more.

2 Q Were there two more people that showed up?

3 A Three.

4 Q Did you know all their names?

5 A No, ma'am.

6 Q Once y'all all met at Gilligan's, did y'all have
7 any conversations about what you were going to
8 do next?

9 A Yes, ma'am.

10 Q What was the plan that day?

11 A That we were to go ahead and go to the house and
12 everything, and Steve was supposed to go sit at
13 the gas station and call the house and
14 everything to see if anybody was there. If
15 anybody was there, he was supposed to call
16 Dustin's cell phone and let him know if there
17 was anybody at the house.

18 Q So Dustin was one of the people with you, too?

19 A Yes, ma'am.

20 Q Did you know him before that?

21 A No, ma'am.

22 Q In fact, in this whole group, the only people
23 you really knew were Jeremiah and David Grice;
24 is that correct?

25 A Yes, ma'am.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

- 1 Q When y'all left Gilligan's, did y'all proceed
2 towards the gas station? This is a Shell
3 Station?
- 4 A Yes, ma'am.
- 5 Q What happened on the way to the gas station?
- 6 A Dustin's car ran out of gas.
- 7 Q So when Dustin's car ran out of gas, what did
8 y'all do?
- 9 A Dustin proceeded to go to the neighbor's house
10 or the person's house that the car ran out of
11 gas at and asked him for a gas can.
- 12 Q Did someone then go get him gas?
- 13 A Yes. Me, David, and Jeremiah went and got gas.
- 14 Q What did y'all do with the gas can?
- 15 A As far as I know, he returned it.
- 16 Q So after you got Dustin's car problem taken care
17 of, did y'all then proceed along with your plan
18 to do this burglary?
- 19 A Yes, ma'am.
- 20 Q Where did y'all go?
- 21 A We went ahead and went to the store and
22 everything, and Steve sat there. We drove by
23 the house, went through twice; and then we went
24 to the house.
- 25 Q Who all actually went to the house that day?

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 A It was me, Jeremiah, David, Jessie, Dustin, and
2 one other person that I have no idea who it was.

3 Q Did Steve go to the house with y'all that day?

4 A No, ma'am.

5 Q Where was Steve while y'all were going to do
6 this burglary?

7 A He was sitting at the Shell Station.

8 Q And who was making the phone call to make sure
9 no one was home?

10 A Steve was.

11 Q How many cars did y'all take to the house?

12 A Two.

13 Q Once you got to the house, tell this jury what
14 happened.

15 A When we got to the house, Jeremiah had the keys
16 to the house and everything. We went ahead and
17 Jeremiah opened the door, and we went in. Some
18 of them ran to the safe. Me and David, we sat
19 there. As soon as the door opened, we took
20 maybe two or three steps in the house and stood
21 there.

22 Q And then some of the others ran to the safe?

23 A Yes, ma'am.

24 Q Do you remember who all ran to the safe?

25 A If I'm not mistaken --

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

- 1 Q Don't tell me unless you are sure.
- 2 A I'm not sure.
- 3 Q But it wasn't you and David, you know that?
- 4 A Yes, ma'am.
- 5 Q And y'all were inside the house, but you didn't
- 6 go to the safe; right?
- 7 A Yes, ma'am.
- 8 Q In total time how long were y'all in the house?
- 9 Were you there for a long time or a short time?
- 10 A A short time.
- 11 Q When everyone came back from where the safe was,
- 12 did y'all all run back outside?
- 13 A Yes, ma'am.
- 14 Q Do you remember what types of items that they
- 15 had with them?
- 16 A As far as I know, Jeremiah had a gun with him.
- 17 There was a box of silverware stolen that I
- 18 remember seeing that came out of the house.
- 19 There was a box and the gun.
- 20 Q Did you actually take anything out of the house?
- 21 A No, ma'am.
- 22 Q But other people had stuff with them?
- 23 A Yes, ma'am.
- 24 Q And specifically Jeremiah had a gun?
- 25 A Yes, ma'am.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 Q And You saw him with that gun when he exited the
2 house?

3 A Yes, ma'am.

4 Q Once y'all exited the house, did you get back in
5 your cars?

6 A Yes, ma'am.

7 Q Where did y'all go?

8 A We went back to the Shell Station to meet Steve.

9 Q Did y'all meet up with Steve that day?

10 A Yes, after we left the house.

11 Q When you met up with Steve, tell this jury what
12 happened.

13 A Well, we got there and we told him that we
14 hadn't gotten anything out of the house. He got
15 real mad, and he started going through David's
16 car.

17 Q I couldn't quite understand what you were
18 saying. You said when you got there, what?

19 A When we got there after we had gotten back from
20 the house, Steve was at the gas station and
21 everything. He asked if we had got anything out
22 of the house, and we told him no. He got mad.
23 He started going and running through David's
24 car, you know, looking under the seats, in the
25 trunk, in the floor boards and stuff.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 Q Did you know what everyone did with the items
2 they actually had taken, the silverware and some
3 of those other items?

4 A The silverware, we threw it out when --

5 Q That was later. But at that point did you know
6 where it was?

7 A Yes, ma'am.

8 Q Where was it?

9 A The silverware and stuff?

10 Q Yes.

11 A The box of silverware was in David's car. It
12 ended up in David's car.

13 Q And you said that Steve got mad?

14 A Yes, ma'am.

15 Q Why was Steve mad that day?

16 A I believe because we came out of the house with
17 nothing.

18 Q Nothing he wanted?

19 A Yes, ma'am.

20 Q But did he take possession of something he
21 decided he did want that day?

22 A Yes, ma'am.

23 Q Tell this jury what happened with he and
24 Jeremiah.

25 A With him and Jeremiah, we were about getting

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 ready to leave. Jeremiah had handed Steve what
2 looked like to me was a .38 special.

3 Q A .38 special?

4 A Yes, ma'am. He had handed it to Steve, and
5 Steve had taken it and put it in a brown paper
6 bag with another gun and put it in the trunk.

7 Q In the trunk of his car?

8 A Yes, ma'am.

9 Q So the last time you saw that gun, it was in
10 whose possession?

11 A It went from Jeremiah's possession to Steve's.

12 Q And what did Steve do with that gun?

13 A He took it and put it in a brown paper bag and
14 put it in the trunk of his car.

15 Q And is that the last time you saw that gun that
16 day?

17 A Yes, ma'am.

18 Q At that point you said Steve was mad, and he was
19 going through people's cars?

20 A Yes. He didn't go through everybody's car. He
21 just went through David's car at that point.

22 Q Were there additional plans made about going
23 back to the house at that point when he was mad?

24 A Yes, ma'am, after that, yeah. Then he decided
25 that they were going to go back to the house.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

- 1 Q What was the purpose of them going back to the
2 house?
- 3 A To make sure there was no fingerprints left.
4 They were going to try to wipe fingerprints and
5 see if they could find another safe.
- 6 Q So they were looking for more stuff?
- 7 A Yeah.
- 8 Q And whose idea was it to go back to the house,
9 do you remember?
- 10 A Steve's.
- 11 Q This time who all went back to the house, do you
12 know?
- 13 A It was Steve, Jeremiah, Dustin, Jessie, and the
14 other guy I don't know.
- 15 Q When they went back to the house, did you go
16 with them?
- 17 A No, ma'am.
- 18 Q Did David Grice go with them?
- 19 A No, ma'am.
- 20 Q Where did y'all go?
- 21 A We sat behind B.B.'s.
- 22 Q And what was the purpose of y'all sitting behind
23 B.B.'s?
- 24 A Because we did not want to go in the house
25 again. Once they were going back in, we did not

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

- 1 want to go.
- 2 Q So you weren't actually there when they went
- 3 back in the house?
- 4 A Yes, ma'am.
- 5 Q You weren't there?
- 6 A No, I was not.
- 7 Q Did you and David wait to hear from them again?
- 8 A Yes, ma'am.
- 9 Q And this was when you were waiting at B.B.'s?
- 10 A Yes, ma'am.
- 11 Q Do you know approximately how long it took?
- 12 A No, ma'am.
- 13 Q After a while did they get in contact with you?
- 14 A Yeah, they came back to B.B.'s after a while.
- 15 Q What happened then?
- 16 A After that as far as I know, Dustin then went to
- 17 go pick up his car and stuff, and Steve -- we
- 18 followed him to Mrs. C.'s house. That's where
- 19 they were going.
- 20 Q You are going to have to repeat that. I
- 21 couldn't understand you.
- 22 A They said they wanted us to follow them to
- 23 Mrs. C.'s house.
- 24 Q To Mrs. C.'s house?
- 25 A Yes, ma'am.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 Q And is Mrs. C. like an initial C.?

2 A As far as I know.

3 Q It's a name you can't pronounce.

4 A It's just Mrs. C. That's how I knew her.

5 Q Did you follow them up to Mrs. C.'s house?

6 A Yes, ma'am.

7 Q And was Steve Gillian the one you were
8 following?

9 A Yes, ma'am.

10 Q Who was with Steve in his car?

11 A Jeremiah was.

12 Q And who was in your car?

13 A David.

14 Q So y'all all went up to Mrs. C.'s house?

15 A Yeah.

16 Q What happened when you got to Mrs. C.'s house?

17 A When we got to Mrs. C.'s house, we all got out
18 and everything. There was nobody there. Steve
19 had walked down back behind the house. From
20 what it looked like to me, he was throwing stuff
21 in the water trying to get rid of some stuff.

22 Q He was throwing stuff in the water. Is her
23 house actually on the lake there?

24 A Yes, ma'am.

25 Q So if you walk into her back yard, the lake is

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 right there?

2 A Yes, ma'am.

3 Q You saw Steve walk down there, and it appeared
4 he was throwing things into the water?

5 A Yes, ma'am.

6 Q Do you know what he was throwing?

7 A No, I do not.

8 Q What else happened while you are at Mrs. C.'s
9 house?

10 A Nothing really. After that we didn't stay there
11 too terribly long because there was nobody
12 there. Me and David went ahead and left because
13 I needed to go pick up my check from work.

14 Q You needed to go pick up your paycheck?

15 A Yes, ma'am.

16 Q What all did you get from this burglary?

17 A There was a baseball that ended up in the car,
18 and there was a box of silverware that ended up
19 in the car.

20 Q In your car?

21 A In David's car.

22 Q In David's car?

23 A Yes, ma'am.

24 Q The car y'all were in?

25 A Yes, ma'am.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 Q So the box of silverware and the baseball?

2 A Yes, ma'am.

3 Q Did you get any baseball cards?

4 A I believe there was some baseball cards and some
5 coins in the box.

6 Q What did y'all do with these items?

7 A The silverware, we threw it out coming back from
8 Mrs. C.'s house. We threw it out and
9 everything. We threw the silverware out and
10 stuff.

11 Q Why did y'all throw the silverware out?

12 A Because there was no point. We didn't need it.

13 Q What?

14 A We didn't need it.

15 Q You didn't need it?

16 A At that point.

17 Q What did y'all do with the baseball and the
18 baseball cards?

19 A David -- we tried to go to a baseball shop to
20 get rid of it, and they didn't buy it. But
21 there was a guy there that asked David to look
22 at the baseball. He looked at the baseball and
23 everything and offered David \$100 for the
24 baseball. So David said yeah and the guy gave
25 him \$100 for the baseball.

BRANDON CANNON -DIRECT- BY MS. CAMPBELL

1 Q You've got to talk louder. I know you are
2 nervous.

3 A David give him the baseball for \$100. The guy
4 gave him the \$100. The baseball cards, as far
5 as I know, they were thrown away, I think.

6 Q After that day, that Friday, that would be the
7 26th, did you have any more contact with Steve
8 Gillian?

9 A No, ma'am, that was the last day.

10 Q That was the first and the last?

11 A Yes, ma'am.

12 Q Later the police approached you and talked to
13 you; is that correct?

14 A Yes, ma'am.

15 Q And that was a couple of weeks after?

16 A Not a couple of weeks after. If I'm not
17 mistaken, it was a while after it happened.

18 Q I will show you this statement just so you can
19 refresh your memory as far as the date, which is
20 up here (indicating).

21 A All right.

22 Q What was the date?

23 A February the 4th.

24 Q When the police approached you about that
25 burglary, you told them pretty much everything

BRANDON CANNON -CROSS- BY MS. MIMS

1 you knew?

2 A Yes, ma'am.

3 Q Just like you are doing here today?

4 A Yes, ma'am.

5 Q The man that you met that day, Steve Gillian, do
6 you see him here in the courtroom?

7 A Yes, ma'am.

8 Q Can you point him out for the jury.

9 A (Indicating.)

10 Q Is it this man sitting here (indicating)?

11 A Yes, ma'am.

12 Q With the red and blue tie?

13 A (Witness nods.) (Indicating affirmative
14 response.)

15 MS. CAMPBELL: Your Honor, I have nothing
16 further of this witness.

17 THE COURT: Cross.

18 MS. MIMS: Thank, Your Honor. May it
19 please the Court.

20 THE COURT: Yes, ma'am.

21 **CROSS EXAMINATION**

22 BY MS. MIMS:

23 Q Mr. Cannon, you did talk to the police. But
24 there was a couple of things you left out when
25 you talked to them; isn't that right?

BRANDON CANNON -CROSS- BY MS. MIMS

1 A I believe so, yes, ma'am.

2 Q Like seeing Steven put a gun in the trunk?

3 A Yes, ma'am.

4 Q That's not in your statement, is it?

5 A No, ma'am.

6 Q You are testifying to it here today a year
7 later, right?

8 A Yes, ma'am.

9 Q And since this time, you have had conversations
10 with David Grice; isn't that right?

11 A I talked to him once or twice, but that's just
12 virtually like -- not saying anything about the
13 case. He said, "Hey, how are you doing?"

14 Q But you had a conversation with David Grice?

15 A Yes, ma'am.

16 Q Have you talked to Jeremiah Page?

17 A Yes, we did. That was about it. He said hello.
18 That was about it.

19 Q This is something pretty important?

20 A Yes, ma'am.

21 Q Saying that Steven had a gun in the trunk of his
22 car, that's pretty important?

23 A Yes, ma'am.

24 Q And it's not in your statement; is that right?

25 A Yes, ma'am.

BRANDON CANNON -CROSS- BY MS. MIMS

1 Q Now, you know the names now of the people that
2 are accused of going into this house for the
3 burglary; right?

4 A Yes, ma'am.

5 Q I don't know if you have seen this. You have
6 got Jeremiah Page, Steve Gillian, David Grice,
7 Brandon Cannon, Dustin Johnson, and Jessie Boot.

8 A Yes, ma'am.

9 Q And everybody went into the house the first time
10 except Steve Gillian?

11 A Yes, ma'am.

12 Q Including Dustin Johnson; is that right?

13 A Yes, ma'am.

14 Q You also mentioned you see Steven throwing some
15 things into the water?

16 A Yes, ma'am.

17 Q Once you got to Mrs. C.'s house?

18 A Yes, ma'am.

19 Q Are you sure that wasn't Jeremiah?

20 A No, ma'am.

21 Q You saw Steven?

22 A Yes, ma'am.

23 Q I think we have gone over this. You do have a
24 burglary in the first degree pending?

25 A Yes, ma'am.

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 Q That's a very serious offense?

2 A Yes, ma'am.

3 Q And you have not been to court on that charge
4 yet?

5 A Yes, ma'am.

6 Q And you are being prosecuted by the State?

7 A I believe so.

8 MS. MIMS: I have nothing further, Your
9 Honor.

10 THE COURT: Any redirect?

11 MS. CAMPBELL: No, Your Honor, I have
12 nothing.

13 THE COURT: You can step down. You are
14 free to go if you like or you can stay if you like.

15 THE WITNESS: Thank you, Your Honor.

16 MR. MCMAHON: The State calls David Grice.

17 DAVID CHRISTOPHER GRICE,
18 being first duly sworn, testified as follows:

19 CLERK: Have a seat in the witness box and
20 state your full name for the record.

21 THE WITNESS: David Christopher Grice.

22 DIRECT EXAMINATION

23 BY MR. MCMAHON:

24 Q David, I want you to speak up so that everybody
25 on the jury can hear you; okay?

DAVID GRICE -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q How old are you?
- 3 A Eighteen.
- 4 Q Speak up now.
- 5 A Eighteen.
- 6 Q If I can't hear you, I know they can't hear you;
7 okay? Where do you live?
- 8 A [REDACTED].
- 9 Q And where is that located?
- 10 A In Lexington.
- 11 Q Who do you live there with?
- 12 A My sister.
- 13 Q Now, what is your occupation, David?
- 14 A I work at Bellacino's.
- 15 Q Bellacino's, that's a restaurant?
- 16 A Yes, sir.
- 17 Q Located in Lexington?
- 18 A Yes, sir.
- 19 Q Where did you go to high school?
- 20 A Lexington High School. Then they built White
21 Knoll and I went there.
- 22 Q Your father is in court with you today, correct?
- 23 A Yes, sir.
- 24 Q David, I want to ask you if you know a few
25 people involved in this case. Do you know

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 Brandon Cannon?

2 A Yes, sir.

3 Q That just testified?

4 A Yes, sir.

5 Q How do you know -- tell the jury how you know
6 Brandon Cannon.

7 A Me and Brandon Cannon has been friends for a
8 while. I went to school with him and stuff.

9 Q So y'all were school friends?

10 A Yes, sir.

11 Q And friends outside of school; is that correct?

12 A Yes, sir.

13 Q And y'all were friends back in January of last
14 year?

15 A Yes, sir.

16 Q Do you know Jeremiah Page?

17 A Yes, sir.

18 Q How do you know Jeremiah Page?

19 A I also went to school with Jeremiah, too.

20 Q What school was that that you went to with
21 Jeremiah Page?

22 A Lexington High School.

23 Q Now, before this incident that we are going to
24 talk about, this burglary that happened, did you
25 know the Defendant in this case, Steve Gillian?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A No, sir.

2 Q Did you know a boy named Dustin Johnson?

3 A No, sir.

4 Q Did you know a boy named Jessie Boot?

5 A No, sir.

6 Q So if you look at this list up here, these six
7 names, do you see right here, David?

8 A Yes, sir.

9 Q You are telling the jury you knew Brandon as a
10 school friend?

11 A Yes, sir.

12 Q And you knew Jeremiah Page?

13 A Yes, sir.

14 Q Of the two of them, who did you know best,
15 Brandon or Jeremiah?

16 A Jeremiah.

17 Q Now, I want to direct your attention back to the
18 week that includes January 26th, that Friday,
19 that day of the burglary.

20 A Yes, sir.

21 Q Before that day of the burglary, did you receive
22 some phone calls concerning doing the burglary?

23 A Yes, sir.

24 Q And initially who did you receive a phone call
25 from?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A Jeremiah Page.

2 Q And you had -- don't tell me what that
3 conversation was -- but you had a conversation
4 with Jeremiah Page?

5 A Yes, sir.

6 Q As a result of that, did you receive a second
7 phone call?

8 A Yes, sir.

9 Q And who was that second phone call from?

10 A Steven Gillian.

11 Q And was anybody else on the line?

12 A Yes, sir.

13 Q Who was that?

14 A Jeremiah Page.

15 Q So you're talking on the phone to Jeremiah Page
16 and Steve Gillian?

17 A Yes, sir.

18 Q About the burglary?

19 A Yes, sir.

20 Q And was Steve Gillian talking?

21 A Yes, sir.

22 Q And what was that conversation you had?

23 A He told me that I better not F.g B.S. him and
24 that I better be for real about this, and that
25 was pretty much it.

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 Q For real about what? What was the plan you and
2 him talked about?

3 A To break into the house.

4 Q And how was that plan going to be conducted?

5 A What do you mean?

6 Q How was the plan? What was the plan? What were
7 y'all going to do?

8 A Like where to meet and stuff?

9 Q Yes.

10 A He told us to meet him at 11:30 at Gilligan's in
11 Lexington.

12 Q Now, who did you discuss this burglary with
13 before you went to Gilligan's?

14 A Brandon Cannon.

15 Q As a result of you discussing it with Brandon,
16 did he go with you?

17 A Yes, sir.

18 Q So you and Brandon go to meet, as far as you
19 know, Steve Gillian and Jeremiah Page at
20 Gilligan's?

21 A Yes, sir.

22 Q And that would have been that Friday?

23 A Yes, sir.

24 Q Where is Gilligan's restaurant located at?

25 A In front of Past Time Pavilion in Lexington.

DAVID GRICE -DIRECT- BY MR. MCMAHON

- 1 Q What vehicle were you in?
- 2 A My 1996 Nissan Sentra.
- 3 Q And who all was with you?
- 4 A Just Brandon Cannon.
- 5 Q About what time did y'all get there, David?
- 6 A Probably right about 11:30.
- 7 Q If I show you State's 29, what is that a
- 8 photograph of?
- 9 A Gilligan's restaurant.
- 10 Q Is that where you were supposed to meet Steve
- 11 Gillian and Jeremiah Page?
- 12 A Yes, sir.
- 13 Q Now, who showed up next?
- 14 A Jessie Boot.
- 15 Q Before then did you know Jessie's name?
- 16 A No, sir.
- 17 Q And what type of vehicle was Jessie in, do you
- 18 remember?
- 19 A An older model Sentra with rims on it.
- 20 Q Speak up.
- 21 A An older model Sentra with rims on it.
- 22 Q Do you remember the color?
- 23 A It was a dark color, could have been black or
- 24 dark blue.
- 25 Q And who showed up next?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A Steven Gillian and Jeremiah.

2 Q What vehicle were they in?

3 A Like an old white -- like a Cutlass sort of.

4 Q Were y'all there for a good period of time
5 before Steve Gillian and Jeremiah Page showed
6 up?

7 A Yes, sir, about an hour and a half.

8 Q And was there a fourth vehicle that showed up?

9 A Yes, sir.

10 Q What vehicle was that?

11 A Dusty Johnson.

12 Q And what type of vehicle was that, David?

13 A It was like a 2000 like Buick.

14 Q Now, while at Gilligan's was there any planning
15 about how the burglary was going to be
16 conducted, how it was going to be committed?

17 A At Gilligan's -- are you talking about when they
18 got there?

19 Q Yes, when everybody got there.

20 A They all got out the car, and we were sitting
21 there. Steve pulled out keys, and I asked
22 Jeremiah how he got the keys to the house. He
23 said he got them from a boy named --

24 MS. MIMS: Objection.

25 Q Don't get into what Jeremiah said. Who had the

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 keys to the house at Gilligan's?

2 A Steven Gillian.

3 Q What did he do with those keys?

4 A Gave them to Jeremiah.

5 Q And where did he give those keys to Jeremiah at?

6 A Gilligan's.

7 Q What else did he give Jeremiah at Gilligan's?

8 A I believe it was a map.

9 Q And what was that map to?

10 A The house.

11 Q Now, from Gilligan's where were y'all going to
12 go to?

13 A The Shell Station.

14 Q Why were y'all going to the Shell Station?

15 A Because Steve wanted to call the house and make
16 sure nobody was there.

17 Q What happened? Tell the jury what happened
18 between Gilligan's and the Shell Station.

19 A Dustin's car ran out of gas.

20 Q When it ran out of gas, what, if anything, did
21 you do or the others do as far as getting that
22 car back running?

23 A They told me and Brandon and Jeremiah to go to
24 the store to get gas.

25 Q And did you do that?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Where did y'all get the gas can from?

3 A One of the neighbors.

4 Q What gas station did y'all go to?

5 A It's either an Amoco or a Pantry. It's right
6 behind Wal-Mart right there when you come off
7 the dam.

8 Q Now, did y'all get Dustin's car back running?

9 A Yes, sir.

10 Q And from there where did y'all go?

11 A To the Shell Station.

12 Q What did Steven do at the Shell Station?

13 A He got out and called on the pay phone.

14 Q What was the plan as far as who was going to go
15 in the house?

16 A As far as I knew at the time, I thought we all
17 were going.

18 Q What happened from the Shell Station?

19 A We left to go to the house.

20 Q Did everybody leave to go to the house?

21 A No, sir.

22 Q Who didn't?

23 A Steve.

24 Q And what did he do?

25 A He sat there in the Shell Station parking lot.

DAVID GRICE -DIRECT- BY MR. MCMAHON

- 1 Q So all the rest of y'all go to the house?
- 2 A Yes, sir.
- 3 Q How many times did you go in the house?
- 4 A Once.
- 5 Q The time you went in the house, just tell the
- 6 jury what happened.
- 7 A When I came out or when I was in there?
- 8 Q When you went into the house.
- 9 A When we went into the house, Jessie Boot and
- 10 Jeremiah went inside the house.
- 11 Q How did y'all get in? How did you get in?
- 12 A The keys.
- 13 Q Who had the keys?
- 14 A Jeremiah.
- 15 Q What door did y'all go in?
- 16 A The front door.
- 17 Q Go ahead.
- 18 A Then they went -- we went in the house. Then me
- 19 and Brandon stood in the doorway, and they went
- 20 to the safe and opened the safe or whatever and
- 21 took the stuff. They took a videotape of some
- 22 sort or something like that, and then they all
- 23 started running out the house and we followed.
- 24 Q And what, if anything, were you given in the
- 25 house?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A A box of silverware.

2 Q And who gave you that box?

3 A Jeremiah Page.

4 Q What did you do with that box?

5 A Threw it out the window.

6 Q From the house initially, what did you do with
7 the box, David?

8 A Oh, went and took it to my car.

9 Q So you took it out of the house to your car; is
10 that correct?

11 A Yes, sir.

12 Q Now, about how long were y'all in the house that
13 first time?

14 A Thirty seconds.

15 Q When I say that first time, you never went back
16 in the house the second time; did you?

17 A No, sir.

18 Q And did you have your car down at the house?

19 A It was at the very top of the driveway.

20 Q Was there any of these other cars down at the
21 house?

22 A Dusty's dad's car.

23 Q That was the car that had run out of gas?

24 A Yes, sir.

25 Q Now, when you ran out of the house with that

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 box, did you know what was in that box when you
2 ran with it?

3 A No, sir.

4 Q You found that out later?

5 A Yes, sir.

6 Q Who all got in your car and where did y'all go?

7 A Jeremiah Page got in the front seat and Brandon
8 Cannon got in the back seat, and we went back to
9 the Shell Station.

10 Q Now en route from the house back to the Shell
11 Station, who were y'all going back to meet?

12 A Steven Gillian.

13 Q What, if anything, did you see that Jeremiah
14 Page had?

15 A He pulled out a pistol.

16 Q And describe that pistol for the jury.

17 A It was a brown-handled .38, black metal. It
18 said Taurus on the side of it.

19 Q And Jeremiah Page was in your front seat of your
20 Sentra?

21 A Yes, sir.

22 Q Going from the house back to meet Steve Gillian;
23 is that correct?

24 A Yes, sir.

25 Q Now, did y'all go back and meet him?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q And what happened when y'all met Steve?

3 A We got there. As soon as we pulled up, Dusty
4 pulled up. Then we all got out of the car.

5 Then Steve was like, "What did y'all get?" I
6 can't remember which one said it, but we said
7 there was no money in the house.

8 Q And what was Steve's demeanor when y'all said
9 y'all didn't get money?

10 A He became in a rage, starting saying, "Y'all
11 better not be B.S.ing me," started going through
12 my car, looking under my seats, pulling all my
13 clothes out of the back seat of my car. Then he
14 went to Dustin's and did the same thing.

15 Q Now, while there, what, if anything, did you see
16 done with the gun?

17 A At first Jeremiah was trying to hide it until
18 Jessie or one of them said, "What about that gun
19 you got, Jeremiah?"

20 MS. MIMS: Objection, hearsay, Your Honor.

21 MR. MCMAHON: Your Honor, I think it's
22 under 801 --

23 THE COURT: I'm going to allow it.

24 Obviously, it's not for the truth of the matter
25 asserted but for other reasons. I will allow it. Go

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 ahead.

2 MR. MCMAHON: Thank you, Your Honor.

3 Q Go ahead, David.

4 A He said, "What about the gun that you got,
5 Jeremiah?" And Jeremiah said -- at first he
6 didn't want to give it to him. Then he pulled
7 it up and said, "Here, man." Steve had the
8 expression like, "Oh, hell yeah."

9 Q Did you see the gun a second time?

10 A Yes, sir.

11 Q You saw it then?

12 A I saw it, yes, sir.

13 Q And what, if anything, did Jeremiah Page then do
14 with that gun?

15 A He gave it to Steve.

16 Q And what, if anything, did you see Steve do with
17 the gun?

18 A He tucked it away.

19 Q When you say tucked it away, where did he put
20 it?

21 A In his -- like inside.

22 Q In his waistband?

23 A Yes, sir.

24 Q Now, was there any decision made to go back in
25 the house a second time?

DAVID GRICE -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Why was that? Who wanted to go back in the
3 house?
- 4 A I believe Jessie said that he got his
5 fingerprints on the safe.
- 6 Q So who all went back to the house that second
7 time, David?
- 8 A Everybody except me and Brandon.
- 9 Q Where did y'all go?
- 10 A We went to B.B.'s.
- 11 Q And B.B.'s is what?
- 12 A It's like a restaurant.
- 13 Q Where was it located in relationship to the
14 Shell Station and the house?
- 15 A Exactly half way between them.
- 16 Q Now, y'all waited there?
- 17 A Yes, sir.
- 18 Q And y'all waited while all the others went or
19 had said they were going down to go in the
20 house?
- 21 A Yes, sir.
- 22 Q And you don't know anything about going in the
23 house the second time?
- 24 A No, sir.
- 25 Q Did they return?

DAVID GRICE -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Did Steven leave to go down to the house that
3 second time?
- 4 A Yes, sir.
- 5 Q And did he return from the direction of the
6 house that second time?
- 7 A Yes, sir.
- 8 Q When they returned, what, if anything, did they
9 have?
- 10 A The discussion, they were talking about they had
11 jewelry. They got some more coins or something
12 like that.
- 13 Q From there where did y'all go?
- 14 A From there me and Brandon -- Brandon had to go
15 to work, but Jeremiah told us to follow him.
- 16 Q Whose car was Jeremiah in then?
- 17 A Steve's.
- 18 Q Steve's?
- 19 A Yes, sir.
- 20 Q What did y'all do?
- 21 A We followed him to a lady named Mrs. C.'s house.
- 22 Q Was that house up on the lake?
- 23 A Yes, sir.
- 24 Q And what, if anything, happened at Mrs. C.'s
25 house?

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 A When we got to Mrs. C.'s house, Steve got out of
2 the car; and Jeremiah got out the car. Jeremiah
3 threw some boxes away and stuffed something
4 inside of like a leaf bag on the ground, like
5 there was leaves in like a trash bag.

6 Then Jeremiah walked up to my car and
7 started talking to me. Then I seen Steve get --
8 once he was there, he walked up to the car, too;
9 and he had the gun in his hand.

10 He popped his trunk to his car and got out
11 a brown bag. He wiped his fingerprints off of
12 it and told Jeremiah -- walked up to him and
13 told him to wipe his fingers off of it and drop
14 it in the bag.

15 Q So who last had possession of the gun?

16 A Steve.

17 Q Where did you -- what did you last see Steve do
18 with the gun?

19 A Put the gun in his trunk.

20 Q David?

21 A Yes, sir.

22 Q What did you get from this burglary?

23 A Nothing at all.

24 Q What, if anything, ended up in your car?

25 A As we were riding down the road, we heard

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 something like moving around in my floorboard.

2 So I asked Brandon to look and see what it was.

3 He said it was a baseball.

4 Q Were there any other items of silverware in your
5 car?

6 A Yes, sir.

7 Q What did you and Brandon do with that
8 silverware?

9 A We threw it out the window.

10 Q Did you throw it on the roadway leading from
11 Mrs. C.'s house back out to the highway?

12 A Yes, sir.

13 Q That was later recovered by the police, the
14 silverware?

15 A (Witness nods.) (Indicating affirmative
16 response.)

17 Q What about the baseball, what did you do with
18 the baseball?

19 A We sold it.

20 Q And where did you sell it and when?

21 A We sold it in a parking lot in front of Pager
22 Warehouse for \$100.

23 Q When y'all left Mrs. C.'s house, was that the
24 last time that you saw Steve Gillian?

25 A No, sir.

DAVID GRICE -DIRECT- BY MR. MCMAHON

1 Q When did you next see him?

2 A When I went to the Pager Warehouse, they were
3 coming out of the baseball shop.

4 Q And that would have been that same day?

5 A Yes, sir.

6 Q Was that the 26th, was that the last day you saw
7 Steve Gillian?

8 A Yes, sir.

9 Q Now, David, you gave a statement to the police;
10 is that correct?

11 A Yes, sir.

12 Q And if I show you this document, is this a copy
13 of the four-page statement that you gave to the
14 police?

15 A Yes, sir.

16 Q And what date did you give that statement?

17 A February 4, 2001.

18 Q So that was about ten days, about ten days or so
19 after the burglary occurred; correct?

20 A Yes, sir.

21 Q You are also charged with burglary first degree
22 from this crime in Lexington County?

23 A Yes, sir.

24 Q I don't have anything to do with prosecuting
25 that case?

DAVID GRICE -CROSS- BY MS. MIMS

1 A No, sir.

2 Q Thank you.

3 MR. MCMAHON: I don't have any further
4 questions.

5 THE COURT: Cross.

6 MS. MIMS: Thank you, Your Honor. May it
7 please the Court.

8 CROSS EXAMINATION

9 BY MS. MIMS:

10 Q Very quickly, Mr. Grice. When you are talking
11 about everybody going back to the house after
12 they had already been the first time?

13 A Yes, ma'am.

14 Q This was Jessie's idea?

15 A Yes, ma'am.

16 Q Because Jessie wanted to wipe his fingerprints
17 off the safe?

18 A I believe so.

19 Q So Jessie wanted to go back to the house?

20 A (Witness nods.) (Indicating affirmative
21 response.)

22 Q In your report to the police, Mr. McMahon just
23 asked about you, the report you gave to the
24 police, do you remember doing that?

25 A Yes, ma'am.

DAVID GRICE -REDIRECT- BY MR. MCMAHON

1 Q In that report you don't mention it being a .38
2 Taurus; do you?

3 A No, ma'am.

4 MS. MIMS: I don't have any further
5 questions for this witness.

6 THE COURT: Any redirect?

7 REDIRECT EXAMINATION

8 BY MR. MCMAHON:

9 Q You don't mention the type of gun, but you
10 mention the gun several sometimes in your
11 statement?

12 A Yes, sir.

13 Q Thank you.

14 MR. MCMAHON: I don't have anything
15 further.

16 THE COURT: Anything else?

17 MS. MIMS: No, sir.

18 THE COURT: You can step down. You are
19 free to go or you can stay if you like.

20 MR. MCMAHON: Judge, I need to get some
21 electrical equipment in, a T.V.

22 THE COURT: Do you want to take a short
23 break?

24 MR. MCMAHON: Yes, sir.

25 THE COURT: Ladies and gentlemen, while we

1 are getting some of this together -- we will let you
2 watch movies -- we will take a short break. We will
3 ask you to step in the jury room. While you are
4 there, remember not to talk about the case. As soon
5 as we are ready, we will bring you back in.

6 (The jury retires to the jury room.)

7 THE COURT: We will stand in recess while
8 we are getting this taken care of.

9 MR. MCMAHON: It shouldn't take but a
10 minute, a couple of minutes.

11 THE COURT: Take your time.

12 (Whereupon there was a recess.)

13 THE COURT: Counsel, anything before we
14 begin?

15 MR. MCMAHON: Judge, my next witness is
16 Jeremiah Page. Among various things he is going to
17 testify to, one, concerning the burglary prior to the
18 meeting at Gilligan's on that same Friday the 26th.

19 His testimony will be that -- he may have
20 to step out while I say this. Step out, Jeremiah. I
21 forgot I would be going into his testimony since he
22 is sequestered.

23 THE COURT: That's all right.

24 (Pause.)

25 MR. MCMAHON: I think his testimony will be

1 on that Friday the 26th, he and the Defendant Gillian
2 went to the Harbison Wal-Mart and had keys made up
3 that were keys to the Muller residence that were used
4 to enter the house later that day.

5 The keys, of course, were given to him, the
6 testimony has been, by Steve Gillian. We have a
7 videotape from the Wal-Mart on that January 26th
8 showing Jeremiah Page.

9 He will identify himself. It also is
10 showing another male individual who we identify as
11 Steve Gillian at around 12:39, 12:40 in the afternoon
12 on the 26th.

13 They are in the tire and key department.
14 They are having keys made. You can see a person that
15 appears to be Mr. Gillian putting keys in his pocket.
16 You can see his face.

17 We also have a receipt from that same day
18 at the same approximate time, although the time on
19 the receipt, they are usually a couple of minutes
20 difference because the cash register is not
21 necessarily coordinated with the videotape as far
22 as the clock time; but it was generally that same
23 time.

24 You will see where the individuals had five
25 keys made. I will not put the receipt up through

1 Mr. Page. Of course, Your Honor, as the testimony
2 goes on, we have the sleeves for the keys that were
3 found in the trash at the Cipkala residence on the
4 lake after the burglary.

5 So what I purport to do is put the tape in
6 now of the key transaction and have it authenticated
7 by Mr. Page, saying that's him, went there on that
8 date, "There is who I was with." I think they want
9 to take up that matter now.

10 THE COURT: Counsel.

11 MR. BUTLER: Yes, sir. I don't have any
12 objection to the testimony of Jeremiah Page as
13 Mr. McMahon just laid out, except the objection I
14 have is to him testifying using the videotape when
15 the videotape has not been properly placed into
16 evidence after being authenticated by somebody from
17 Wal-Mart.

18 I guess the objection I have is that
19 Jeremiah Page can't authenticate the videotape. He
20 can testify as to what happened. I think he can say,
21 "That's me on the videotape, and that's Steve on the
22 videotape," if that's what his testimony is going to
23 be, but only after the videotape has come into
24 evidence through another witness.

25 I don't think he can authenticate the

1 videotape. So my objection would be publishing the
2 videotape to the jury when it's not properly into
3 evidence and/or admitting the videotape into evidence
4 through this witness.

5 I think that they have to have the person
6 from Wal-Mart here first before they can enter it
7 into evidence and have it entered into evidence
8 before they can publish it to the jury. That would
9 be my objection.

10 THE COURT: Mr. McMahon, what about that?

11 MR. MCMAHON: Judge, I think under the
12 appropriate rule, 109, he can authenticate it. He is
13 saying, "On the 26th I went there to the Wal-Mart and
14 had keys made, and that's me." So I think that
15 properly authenticates the tape itself.

16 That's like saying you've got to have
17 somebody from the tape recorder company to
18 authenticate a 911 tape. If you have got a caller on
19 the 911 tape or receiver, if you've got a person one
20 way or the other to say, "That's me. That's my
21 voice," and such, then I think it's properly
22 authenticated.

23 I will point out that I am going to have
24 the gentleman from Wal-Mart testify. This same issue
25 will come up with Dustin Johnson, another witness in

1 the case. We have another tape where there is the
2 purchase of the bullets on the 27th from that same
3 Wal-Mart.

4 Of course, I think it can be authenticated
5 by an individual that says, "That's me. That
6 accurately reflects that day and that time. That's
7 what we did before the burglary."

8 THE COURT: Anything else?

9 MR. BUTLER: I don't think that they can
10 lay the foundation to get the tape in without the
11 person from Wal-Mart.

12 Although you might not have to have in the
13 911 tape, you may not have to have the person who
14 manufactured the recording device, I think you have
15 to have the 911 operator or the person from dispatch
16 before you can admit the physical tape into evidence.
17 I think you would have to have that person here.

18 With respect to -- I mean, since it has
19 been brought up about the other video, it's my
20 understanding that video has been enhanced in some
21 way.

22 MR. MCMAHON: No, sir. No video has been
23 enhanced. No video I am going to show has been
24 enhanced.

25 MR. BUTLER: Beg the Court's indulgence for

1 one moment.

2 (Attorneys confer.)

3 MR. MCMAHON: I guess we have a difference
4 in semantics. The way the Wal-Mart video works -- I
5 am very familiar with Wal-Mart, as His Honor knows.
6 You walk in and they have bubbles. In those bubbles
7 are those cameras.

8 Those cameras may be taking pictures in
9 sporting goods, automotive, all the departments in
10 Wal-Mart. They could be photographing or filming 16
11 different areas.

12 When you get the original tape for that
13 day, all those are on their machine. You get all
14 these 16 views. You may see His Honor's bench and
15 the defense table here (indicating) and here
16 (indicating).

17 So Wal-Mart has to put it in their machine
18 to filter out the particular section that you want to
19 focus on, whether it's sporting goods, ammunition or
20 whether it's tire and keys.

21 It's not an enhancement. It's not changing
22 the nature of the filming in any manner. It's just
23 that's the way their equipment works, and the way the
24 electronic is set up when you view that area of
25 Wal-Mart.

1 So it's not changing the image. It's just
2 using the electronic equipment to where you go from
3 all 16 jumping around to where you can say, "I want
4 camera eight or I want camera ten solely."

5 We have had that done. I guess me and
6 Mr. Butler -- I don't think he was trying to imply we
7 had enhanced or changed the image, but we have gone
8 back to the images in the sporting goods only and to
9 images in the key section only.

10 MR. BUTLER: That's all I meant.

11 THE COURT: I understand. Counsel, I think
12 it's admissible on either of those counts. It's
13 admissible if the witness can testify that it
14 accurately depicts or reflects what he is testifying
15 to.

16 Also it will be appropriate to have someone
17 from Wal-Mart come at a later time to authenticate it
18 and put it in. So I will let it in either way.

19 MR. BUTLER: That's all I have on that
20 matter. I would like to raise one more matter if I
21 could.

22 THE COURT: Sure.

23 MR. BUTLER: At this time I request, if the
24 State knows under Brady and Giglio, Wheatley and all
25 those case, if any of the testifying co-defendants to

1 the burglary have been engaged in any kind of plea
2 negotiations with the Lexington County Solicitor's
3 Office.

4 I understand that the Fifth Circuit
5 Solicitor's Office has nothing to with the
6 prosecution of that case; however, these
7 co-defendants, by virtue of their testimony, their
8 testimony will be able to be used against them in a
9 subsequent trial if they went to trial.

10 If law enforcement or the Solicitor's
11 Office in Lexington County has been engaged in any
12 kind of negotiations with these co-defendants, that
13 would be imputed to the State.

14 So I would ask not only if the State is
15 aware of any, but I would also ask them to find out,
16 which normally I know that I cannot ask them to do
17 that. But I think that any knowledge of any State
18 agent would be imputed to the Solicitor's Office in
19 this case. I would ask that now.

20 THE COURT: What about that, Mr. McMahon?
21 Do you know of any negotiations?

22 MR. MCMAHON: Judge, I know of none. I
23 will be glad to subpoena Mr. Riddle or Solicitor
24 Myers. I think I can find Mr. Riddle. I am not sure
25 I can find Solicitor Myers. I don't know of any. I

1 don't know. I can try to get him over here, and he
2 can put it on the record. I think Mr. Riddle is
3 actually assigned to it.

4 MR. BUTLER: I don't require them to come.
5 Out of an abundance of caution, we renew our motion
6 under Brady.

7 MR. MCMAHON: I will try to call him at the
8 break. My understanding there is none. I certainly
9 had no conversations with him whatsoever about
10 whatever happens in this case.

11 I've told all these defendants, A., to tell
12 the truth; and, B., I would stand up in any court any
13 time and tell them, the sentencing judge if they were
14 to plea, that they assisted the State and told the
15 truth on behalf of the State in a homicide
16 prosecution in Richland County. That's all I have
17 told them.

18 THE COURT: What you might do is if you
19 get a chance is have someone contact the Eleventh
20 Circuit Solicitor's Office and determine if they
21 have had any negotiations with the Defendants along
22 those lines.

23 MR. MCMAHON: Judge, Ms. Campbell reminded
24 me. I've also had conversations with each and every
25 one of their attorneys. I told each and every one of

1 their attorneys that there was no deals in return for
2 their testimony over here.

3 Outside of me saying that they have
4 testified truthfully on behalf of the State, I have
5 told each attorney that without exception. I
6 understand it is Mr. Holler and Mr. Pogue, Ms. Henry,
7 Mr. Soltis, and Mr. Moore.

8 THE COURT: Let me note, as to the
9 witnesses who testified earlier this morning, my
10 understanding is that they also were thoroughly
11 notified of their rights under the Fifth Amendment
12 and have chosen to waive their rights before they
13 testified. Who is Mr. Page's attorney, do you know?

14 MR. MCMAHON: Sir?

15 THE COURT: Who is Mr. Page's attorney? He
16 is testifying next.

17 MR. BUTLER: Soltis, I believe.

18 THE COURT: Steve Soltis?

19 MR. MCMAHON: That's right.

20 THE COURT: Has Mr. Page been made aware of
21 his Fifth Amendment rights?

22 MR. MCMAHON: I haven't made him aware of
23 them.

24 THE COURT: Let's do this. Before the jury
25 comes in, let's put him on the stand and let me ask

1 him a couple of questions just to have it on the
2 record.

3 MR. MCMAHON: All right, sir.

4 THE COURT: Bring Mr. Page in.

5 MR. BUTLER: Your Honor, as long as you do
6 that, I would ask if you would inquire of him if he
7 has been offered any incentive from Lexington County.

8 THE COURT: Sure. That's not a problem.

9 MR. BUTLER: Thank you, Your Honor.

10 JEREMIAH PAGE, being first
11 duly sworn, testified as follows:

12 CLERK: Have a seat in the witness box and
13 state your full name for the record.

14 THE WITNESS: Jeremiah Page.

15 THE COURT: Mr. Page, do you understand you
16 have been called as a witness to testify in this
17 case; is that correct?

18 THE WITNESS: Yes, sir.

19 THE COURT: As I understand, you are
20 currently charged with burglary in Lexington County
21 and have an attorney, Mr. Soltis; is that right?

22 THE WITNESS: Yes, sir.

23 THE COURT: Have you had a chance to talk
24 with your lawyer about testifying here today?

25 THE WITNESS: No, sir.

1 THE COURT: Do you want some time to talk
2 with him before you testify here?

3 THE WITNESS: Um...

4 THE COURT: You don't have to. I am just
5 asking if you want to.

6 THE WITNESS: He just told me to cooperate.
7 I think it will be fine.

8 THE COURT: Okay. Do you understand that
9 under the law that you will be -- as I understand
10 under the facts of this case, you will be asked some
11 questions which in essence will involve you admitting
12 to criminal acts on your part. Do you understand
13 that?

14 THE WITNESS: Yes, sir.

15 THE COURT: Do you understand that under
16 the Fifth Amendment to the Constitution, you don't
17 have to do that? You can't be forced to admit to a
18 criminal act. Do you understand that?

19 THE WITNESS: Yes, sir.

20 THE COURT: And if you are asked questions,
21 you have the right to refuse to answer on the grounds
22 of the Fifth Amendment. Do you understand?

23 THE WITNESS: Yes, sir.

24 THE COURT: Do you understand that if you
25 give up your Fifth Amendment rights and testify, that

1 once you have done that, you give up all of your
2 rights? If you don't like a question somewhere down
3 the line, you can't go back and claim it. Do you
4 understand?

5 THE WITNESS: Yes, sir.

6 THE COURT: Understanding that do you still
7 wish to testify today?

8 THE WITNESS: Yes, sir.

9 THE COURT: As I understand, the charges
10 against you are in Lexington County; is that right?

11 THE WITNESS: Yes, sir.

12 THE COURT: Do you have any kind of deal
13 with them or have you had any kind of negotiations by
14 which they would do you any favors or recommend a
15 particular sentence for you in exchange for
16 testifying here?

17 THE WITNESS: I haven't talked to them, so
18 I don't really know.

19 THE COURT: You don't know of any; is that
20 right?

21 THE WITNESS: Right.

22 THE COURT: Do you have any kind of deals
23 with the Solicitor's Office here?

24 THE WITNESS: No, sir.

25 THE COURT: Counsel, anything you want to

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 ask Mr. Page along these lines?

2 MR. MCMAHON: No, Your Honor.

3 MR. BUTLER: No, sir.

4 THE COURT: You can step back down,
5 Mr. Page. I find that Mr. Page has been thoroughly
6 notified of his Fifth Amendment rights. And while
7 his attorney is not here, he indicates he has talked
8 to him. He has freely and voluntarily chosen to give
9 up his Fifth Amendment rights. Let's bring the jury
10 in.

11 (The jury returns to the courtroom.)

12 THE COURT: All parties and attorneys are
13 in the courtroom and all jurors have returned.
14 Mr. McMahon.

15 MR. MCMAHON: The State calls Jeremiah
16 Page.

17 JEREMIAH PAGE, being first
18 duly sworn, testified as follows:

19 CLERK: Have a seat in the witness box and
20 state your full name for the record.

21 THE WITNESS: Jeremiah Page.

22 DIRECT EXAMINATION

23 BY MR. MCMAHON:

24 Q Mr. Page, I want you to speak up so that
25 everybody on the jury can hear you; okay?

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

- 1 A Okay.
- 2 Q How old are you?
- 3 A Eighteen.
- 4 Q What is your date of birth?
- 5 A [REDACTED].
- 6 Q Where do you live?
- 7 A [REDACTED] [REDACTED] [REDACTED].
- 8 Q And where is that located at?
- 9 A Irmo, South Carolina.
- 10 Q Who do you live with?
- 11 A My mother.
- 12 Q Now, Jeremiah, you have some pending criminal
- 13 charges?
- 14 A Yes, sir.
- 15 Q In what county?
- 16 A Lexington.
- 17 Q And what charges?
- 18 A Burglary first degree.
- 19 Q Do you have a lawyer that represents you on
- 20 those charges?
- 21 A Yes, sir.
- 22 Q Who is that?
- 23 A Mr. Stephen Soltis.
- 24 Q Jeremiah, before you came in and were sworn in
- 25 front of the jury, did you previously testify in

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 front of His Honor, in front of the judge?

2 A Yes, sir.

3 Q And the judge asked you certain questions?

4 A Right.

5 Q He asked you certain questions about your right
6 to testify or not testify in this case?

7 A Yes, sir.

8 Q Do you understand that whatever you say in this
9 case can be used against you to prosecute you in
10 the case in Lexington County?

11 A Yes, sir.

12 Q Knowing that that can be used against you, you
13 are still willing to testify and waive those
14 rights?

15 A Yes, sir.

16 Q And testify in this trial?

17 A Yes, sir.

18 Q Have you been made any offers or promises by
19 Lexington County to help you out for testifying
20 in this case?

21 A None that I know of.

22 Q Have I offered you anything?

23 A No, sir.

24 Q What have I told you I would do? I told you I
25 would say that you told --

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 A That I told the truth.

2 Q In front of whatever judge you pled guilty in
3 front of; is that correct?

4 A Yes, sir.

5 Q And that's all I have told you I would do,
6 correct?

7 A Yes, sir.

8 Q Knowing that this can be used to prosecute you,
9 you are still willing to testify?

10 A Yes, sir.

11 Q Now, Jeremiah, I want to ask you if you know a
12 few people.

13 A All right.

14 Q Do you know Steve Gillian?

15 A Yes, sir.

16 Q How do you know him?

17 A I met him through his cousin Tyler Gillian.

18 Q About how long -- Did you know him in January of
19 last year?

20 A Yes, sir.

21 Q And about how long had you known Steve by that
22 time?

23 A Just a matter of a few weeks.

24 Q And you say you met him through his cousin
25 Tyler?

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Do you know where Tyler lived?

3 A Right next door. I don't know the address.

4 Q When you say right next door, right next door to
5 who?

6 A To Steve.

7 Q So they lived in close proximity to each other;
8 is that right?

9 A Yes, sir.

10 Q As far as you know, Tyler lived in his
11 grandparents or great grandparents' home?

12 A Yes, sir.

13 Q And Steve's parents' home was right there also;
14 is that right?

15 A Yes, sir.

16 Q Did you know David Grice?

17 A Yes, sir.

18 Q And tell the jury how you knew David Grice and
19 how long you had known him.

20 A I have known David for quite a few years, ever
21 since middle school.

22 Q So y'all went to school together?

23 A Yes, sir.

24 Q Would y'all have been friends?

25 A Yes, sir.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 Q Now, where was that y'all went to school
2 together, Jeremiah?

3 A We went to school together in Lexington High
4 School, but I knew him prior to that.

5 Q Brandon Cannon, did you know Brandon?

6 A Yes, sir.

7 Q And how did you know Brandon?

8 A Met him through friends.

9 Q About how long -- tell the jury about how long
10 you had known Brandon.

11 A I have known him for approximately three years
12 also.

13 Q Dustin Johnson?

14 A Met him in Irmo through other friends after
15 moving there.

16 Q And Jessie Boot?

17 A I just met him on the day of the burglary.

18 Q The day of the burglary, I want to talk about
19 that day a little bit. Did you have any
20 conversations with Steve about the burglary
21 before the day y'all committed the burglary on
22 January 26th?

23 A Yes, sir.

24 Q What were those conversations that you had with
25 the Defendant about the burglary?

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 A Just basically that there was a house that we
2 were going to go into, and there was a large
3 amount of money in the safe. That's basically
4 it. That's basically what I was told.

5 Q And who told you that?

6 A Steve.

7 Q How did he say he knew about the house?

8 A He didn't tell me right then, but later on he
9 told me Wes Muller, the guy's house that we
10 actually robbed, had given him a map and all and
11 had basically set it up with Steve.

12 Q Gillian told you that he knew Wes Muller?

13 A Yes, sir.

14 Q And Wes Muller had given him?

15 A A map.

16 Q A map and?

17 A Keys.

18 Q You don't know if Wes Muller did that or not,
19 but that's what Gillian told you?

20 A Yes, sir.

21 Q So how were y'all going to go into the house?

22 A With these keys that he was given.

23 Q Now, did you -- let's see. Did you talk to any
24 of these friends of yours and basically recruit
25 them to assist y'all in this burglary?

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Tell the jury who you talked to.

3 A David Grice and Brandon Cannon.

4 Q And you recruited David and Brandon to commit
5 this burglary with you and Steve?

6 A Yes, sir.

7 Q And they agreed to do that?

8 A Yes, sir.

9 Q Now, on that Friday where was this group of
10 burglars, gang of burglars, going to meet?

11 A Gilligan's restaurant in Lexington.

12 Q And how did you get to Gilligan's restaurant in
13 Lexington?

14 A Steve took me there.

15 Q And you rode in his car?

16 A On the way to Gilligan's or the way from
17 Gilligan's?

18 Q To Gilligan's.

19 A Yes.

20 Q You went to Gilligan's in Steve's car with Steve
21 driving?

22 A Yes, sir.

23 Q Now, before y'all went to Gilligan's on that
24 Friday the 26th, had y'all gone to any other
25 locations in preparation for this burglary?

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 A Yes, sir, we went to the Wal-Mart on Harbison
2 Boulevard to make copies of the keys to the
3 house.

4 Q And who all went to that Wal-Mart on Harbison
5 Boulevard?

6 A Just Steve and myself.

7 Q And what section of Wal-Mart did y'all go to?

8 A I believe it was in the sporting goods area.

9 Q What did y'all do while you were in there?

10 A Had the keys made.

11 Q And were you in there --

12 A Yes, sir.

13 Q -- when the keys were made?

14 A Yes, sir.

15 Q Was Steve in there when the keys were made?

16 A Yes, sir.

17 Q And tell the jury what date that was.

18 A January 26th, 2001.

19 Q And that would have been that Friday?

20 A Yes, sir.

21 Q Was that immediately preceding y'all meeting the
22 other burglars at Gilligan's?

23 A Yes, sir.

24 Q Since that time, Jeremiah, have you reviewed a
25 videotape?

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1 A No, sir.

2 Q Have you looked at the videotape in this case?

3 A No, sir.

4 MR. MCMAHON: May I approach the bench?

5 THE COURT: Yes, sir.

6 (Whereupon there was a bench conference off
7 the record in the presence of the jury but out of the
8 hearing of the jury.)

9 THE COURT: Ladies and gentlemen, let me
10 ask you to step to the jury room just for a moment.
11 While you are there, be sure to remember not to talk
12 about the case.

13 (The jury retires to the jury room.)

14 THE COURT: Mr. McMahon, do you want to do
15 it with him or go to another place?

16 MR. MCMAHON: Is yours still set up?

17 (Attorneys confer.)

18 MR. MCMAHON: I would like to show it to
19 him in the hallway. I apologize for this, Your
20 Honor.

21 THE COURT: That's all right.

22 MR. MCMAHON: I thought it had been shown
23 to him.

24 THE COURT: Mr. Page, you will go with
25 Mr. McMahon. He is going to let you look at the

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1 tape. You understand that you don't talk about your
2 testimony at all. Look at the videotape. We will
3 stand in recess.

4 (Whereupon there was a recess.)

5 THE COURT: Let's bring the jury in.

6 (The jury returns to the courtroom.)

7 THE COURT: All parties and attorneys are
8 in the courtroom and all jurors have returned.
9 Mr. McMahon.

10 MR. MCMAHON: Thank you, Your Honor. May
11 it please the Court. I apologize for the delay.

12 THE COURT: No problem.

13 BY MR. MCMAHON:

14 Q Jeremiah, I want to go back to that Friday the
15 26th prior to going to Gilligan's. Just to back
16 up a little bit, where did you go? Who did you
17 go with in regards to this burglary?

18 A We went -- it was me and Steve. We went to the
19 Wal-Mart on Harbison Boulevard to have copies of
20 the keys to the house made.

21 Q Since this break that we have had, you had an
22 opportunity to view a video of that key
23 transaction?

24 A Yes, sir.

25 Q When you viewed that video, did you identify

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1 certain individuals in the video?

2 A Yes, sir, I did.

3 Q Who were those individuals that you identified?

4 A Steve Gillian and myself.

5 Q You could clearly see them on the video?

6 A Yes, sir.

7 Q Where were y'all at?

8 A At the counter getting the keys made.

9 Q In what location?

10 A The sporting goods area, I believe.

11 Q And what store?

12 A Wal-Mart on Harbison Boulevard.

13 MR. MCMAHON: Your Honor, may the witness
14 step down?

15 THE COURT: Yes, sir, certainly.

16 (Witness leaves the witness stand.)

17 BY MR. MCMAHON:

18 Q Step on this side over here (indicating),
19 Jeremiah.

20 MR. MCMAHON: Mr. Wedekin, if you would
21 start the tape.

22 (During the playing of the videotape, the
23 following was reported.)

24 BY MR. MCMAHON:

25 Q This is a part of the area of the store of

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 Wal-Mart on Harbison?

2 A Yes.

3 Q And this (indicating) is the counter, the keys?

4 A Yes, sir.

5 Q Speak up so the jury can hear you.

6 A Yes, sir.

7 Q Who is this individual here (indicating)?

8 A That's myself.

9 Q And the date appears up here, 1/26/01?

10 A Yes, sir.

11 Q And time 12:39?

12 A Yes, sir.

13 Q And some seconds. What are y'all doing there?

14 A Getting the keys made.

15 Q Is there anybody to your left?

16 A Yes.

17 Q And who is that?

18 A Steve.

19 Q And point out where he is at?

20 A Right here (indicating).

21 Q Right here (indicating)?

22 A Yes, sir.

23 Q This (indicating) is you?

24 A Yes, sir, it is.

25 MR. MCMAHON: Stop it for me right there,

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1 Mr. Wedekin.

2 Q Who is this right here (indicating)?

3 A Steve Gillian.

4 Q And he is there during this entire transaction?

5 A Yes, sir.

6 Q What are y'all doing?

7 A Getting copies of the keys made.

8 MR. MCMAHON: Go ahead, Mr. Wedekin.

9 (The videotape was continued, and the
10 following was reported.)

11 MR. MCMAHON: You can stop it, Mr. Wedekin.

12 Q He appears to be putting something in his
13 pocket?

14 A Yes, sir.

15 Q What is that?

16 A That would be the keys.

17 Q That would be the keys y'all had made?

18 A Yes, sir.

19 (The videotape was continued and nothing
20 further was reported.)

21 MR. MCMAHON: Thank you, Mr. Wedekin. Your
22 Honor, I would offer the tape into evidence at this
23 time.

24 MR. BUTLER: Subject to the previous
25 objection.

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1 THE COURT: All right, sir. So noted.

2 Counsel, we will allow it to be admitted.

3 (State's Exhibit Number 39, videotape, is
4 received into evidence.)

5 BY MR. MCMAHON:

6 Q Now, from the Wal-Mart on Harbison, where did
7 y'all go, Jeremiah?

8 A To Gilligan's restaurant in Lexington.

9 Q And when you got there, who all do y'all meet
10 with?

11 A Dustin Johnson, David Grice, Brandon Cannon,
12 Jessie Boot.

13 Q Was there any plans about the burglary made
14 while y'all were at Gilligan's?

15 A Not really. I think everybody kind of knew what
16 was going on.

17 Q Was there any talking at Gilligan's?

18 A Yeah, a little. I don't remember what was said
19 though.

20 Q What, if anything, was done with the keys or the
21 map while at Gilligan's?

22 A Steve gave me the keys then, and I had already
23 seen the map, so I knew what it looked like.

24 Q So the keys to the Muller residence were given
25 to you by who?

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- 1 A Steve.
- 2 Q At what location?
- 3 A At Gilligan's.
- 4 Q From Gilligan's where was the plan for y'all to
5 go to?
- 6 A A Shell Station.
- 7 Q Why were y'all going to the Shell Station?
- 8 A To call the house to make sure that no one was
9 home.
- 10 Q And whose idea was that?
- 11 A Steve's.
- 12 Q And what happened between Gilligan's and the
13 Shell Station?
- 14 A Dustin ran out of gas.
- 15 Q And just very briefly, how did his car get back
16 running?
- 17 A Me, David, and Brandon borrowed a gas thing or
18 whatever to go refill at the gas station and
19 bring back to him.
- 20 Q And his car got back to running?
- 21 A Yes, sir.
- 22 Q And y'all went to the Shell Station?
- 23 A Yes, sir.
- 24 Q Was the phone call made from the Shell Station?
- 25 A Yes, sir.

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- 1 Q From the pay phone?
- 2 A Yes, sir.
- 3 Q And who made that call?
- 4 A Steve.
- 5 Q And what was the purpose of that call?
- 6 A To make sure no one was home.
- 7 Q Did y'all make sure no one was home?
- 8 A Yes, sir.
- 9 Q And after that what did y'all do?
- 10 A We headed towards the residence.
- 11 Q What was the plan as far as who all was going to
- 12 go into the house?
- 13 A Everybody except Steve was going in the house.
- 14 Q And before I go any further, how many times that
- 15 day of the 26th did you go in the house?
- 16 A Twice.
- 17 Q The first time tell the jury who all went in the
- 18 house.
- 19 A Dustin Johnson --
- 20 Q It maybe easier this way. Who didn't go?
- 21 A Steve.
- 22 Q So you went in the house, David, Brandon,
- 23 Dustin, and Jessie went in the house the first
- 24 time?
- 25 A Yes, sir.

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1 Q And real quickly now, the second time who didn't
2 go in the house?

3 A David and Brandon and Dustin.

4 Q David, Brandon, and Dustin didn't go in the
5 second time?

6 A Right.

7 Q What was Steve -- what was the plan as far as
8 what Steve was going to be doing when y'all went
9 in the house the first time?

10 A He was going to wait on us.

11 Q Tell the jury what happened, who went where,
12 when y'all went in the house the first time,
13 Jeremiah.

14 A We all went to the bedroom and --

15 Q Back up a minute. How did you get in the house?

16 A With the keys.

17 Q Who had the keys?

18 A I did.

19 Q Who unlocked the door?

20 A I did.

21 Q When you got the door unlocked, who went where?

22 A I went and grabbed the videotape out of the
23 surveillance equipment.

24 Q And how did you know about the house having a
25 surveillance system?

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- 1 A It was drawn on the map.
- 2 Q So you go and get that tape?
- 3 A Yes, sir.
- 4 Q And then what do you do?
- 5 A Go into the closet where the safe is located.
- 6 Q Where is that closet where the safe is located
- 7 in the house?
- 8 A In the bedroom, like his parent's bedroom, like
- 9 a master bedroom.
- 10 Q And that was a walk-in closet?
- 11 A Yes, sir.
- 12 Q Who went back there with you?
- 13 A Everybody.
- 14 Q What, if anything, did you find back in that
- 15 walk-in closet?
- 16 A We found that safe.
- 17 Q Who opened the safe?
- 18 A Jessie.
- 19 Q What, if anything, was inside the safe? What
- 20 did y'all get?
- 21 A Like pictures, some baseball cards, a baseball,
- 22 silverware, a magazine to a Glock .40,
- 23 .40-caliber bullets and a .38 special revolver.
- 24 Q Who got that .38 special revolver?
- 25 A I did.

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1 Q So who had that pistol when y'all left that
2 house?

3 A I had it.

4 Q And how long were y'all in that house the first
5 time, Jeremiah?

6 A Just like a matter of minutes.

7 Q How did you get from the house?

8 A In David Grice's car.

9 Q Who all was in David Grice's car?

10 A David Grice, Brandon Cannon, and myself.

11 Q Where were you at in the car, do you remember?

12 A I believe I was up front.

13 Q Was David driving?

14 A Yes, sir.

15 Q You were up front?

16 A Yes, sir.

17 Q Did you have that pistol in your possession?

18 A Yes, sir.

19 Q Did you have it in your hands?

20 A No, sir.

21 Q Did you look at the pistol?

22 A Yes, sir.

23 Q Describe that pistol for the jury, Jeremiah.

24 A It was dark metal. The handle was wooded, had a
25 brass color rivet that has a bull on it. It

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1 says Taurus, and on the metal it's engraved .38
2 special made in Brazil.

3 Q You examined it that closely to know all that
4 detail?

5 A Yes, sir.

6 Q Tell the jury whether that gun was loaded or
7 unloaded when you got it.

8 A It was not loaded.

9 Q How did you know that?

10 A Because I opened it up to make sure there was no
11 bullets in it just to be safe.

12 Q When did you do that?

13 A As soon as I got in the car with it.

14 Q So you did that in the car?

15 A Yes, sir.

16 Q Were you able to tell how many rounds that .38
17 had?

18 A Yes, sir, it only had five.

19 Q How many?

20 A Five.

21 Q And there weren't any in it?

22 A No, sir.

23 Q Now, when y'all left the house that first time,
24 who did y'all meet with?

25 A Steve.

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1 Q And what happened when y'all met with Steve?

2 A He didn't believe that we didn't have the money.

3 So he ransacked the cars. Then Jessie brought

4 up that I found a pistol. Steve asked for the

5 pistol, and so I handed it to him.

6 Q When you say he ransacked the cars, that's

7 because y'all didn't get any money?

8 A Right.

9 Q Tell the jury how much money y'all thought was

10 going to be in that house, Jeremiah.

11 A 1.8 million.

12 Q \$1.8 million. Who told you that?

13 A Steve.

14 Q Now, y'all didn't get any money?

15 A No, sir.

16 Q And when you say he ransacked the cars,

17 specifically what cars? What did Steve do?

18 A In David's car he started ripping -- looking

19 under seats, trying to pull seats out, trying to

20 pull his trunk open and just looking anywhere

21 that you could hide anything in a car. He also

22 did the same thing to Dustin Johnson's.

23 Q What, if anything, was said about the gun?

24 A What do you mean?

25 Q Did you still have the gun?

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1 A Yes, sir.

2 Q I believe you mentioned earlier somebody said
3 something?

4 A Yeah. Jessie said, "Didn't you get a pistol?"
5 And then I said yeah, and I handed it over to
6 Steve.

7 Q So that was the .38 --

8 A That was the .38 special.

9 Q -- special Taurus made in Brazil you handed it
10 over to?

11 A Steve.

12 Q Steve Gillian?

13 A Yes, sir.

14 Q The Defendant in this case?

15 A Yes, sir.

16 Q What was his reaction when you gave him the
17 pistol?

18 A He calmed down a little bit. He was kind of
19 happy about the gun.

20 Q What did he say he was going to do with it?

21 A Do some dirt.

22 Q Do some dirt. What did you see him do with the
23 pistol then?

24 A He put it in his pants in his waist.

25 Q Now, Jeremiah, was there any plan made at this

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1 point to go back to the house?

2 A Yes, sir.

3 Q And what was that plan? Who wanted to go back
4 to the house and why?

5 A Jessie wanted to go back to wipe off his prints,
6 and Steve wanted to go back to make sure for
7 himself that there was no money.

8 Q So who all was going in that house the second
9 time?

10 A Steve, Jessie, Dustin waited out in the car, and
11 myself.

12 Q What about David and Brandon?

13 A They waited at B.B.'s.

14 Q And they were in David's car?

15 A Yes, sir.

16 Q Tell the jury what happened when y'all went back
17 to the house that second time.

18 A Well, the three of us -- me, Steve, and
19 Jessie -- went to the house. They immediately
20 just started tearing things up, ripping out
21 drawers, looking for jewelry. Jessie started
22 like kicking the surveillance equipment. He
23 karate kicked a door down.

24 Steve told me to go look around for other
25 things. I didn't find anything and came back

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1 upstairs, and they had a pillowcase with like
2 jewelry and other little things in it.

3 Q Was the house pretty well trashed that second
4 time?

5 A Yeah, I would say so, at least the bedroom was.

6 Q And the three people in there the second time
7 was you, Jessie, and Steve?

8 A Yes, sir.

9 Q And what item was taken out of the house that
10 second time?

11 A Just a bunch of jewelry really. That's all I
12 know of.

13 Q When y'all left the second time, Jeremiah, where
14 did y'all go?

15 A We went to B.B.'s -- actually we went to a
16 little side road. There is a little dirt road
17 right beside the house where Steve's car was
18 parked. Me and Steve got into his car.

19 Then we rode over to B.B.'s to get David
20 and Brandon. Then we all rode to Gilligan's
21 where Jessie got his car. Then things were
22 looked at a little bit, but then after --

23 Q Things were what?

24 A Things were like looked at a little bit to see
25 what we had. Then after that we went to

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1 Mrs. Cipkala's house where -- that's where
2 everything was gone through, in her driveway.

3 Q Who is Mrs. Cipkala?

4 A A lady. We kind of partied at her house and
5 whatnot.

6 Q And who was she a friend of?

7 A She was pretty good friends with Steve, I would
8 say.

9 Q Where was her house located at?

10 A Rocky Cove Road, I believe. I don't know if
11 that is the exact name. I know it's right there
12 by Rocky Cove though.

13 Q Is that on the lake?

14 A Yes, sir.

15 Q What was done -- that was this same afternoon?

16 A Yes, sir.

17 Q And what was done there at Mrs. Cipkala's house?

18 A The keys to the house were thrown into the lake.
19 The .40-caliber bullets were thrown into the
20 lake. The box of .40-caliber bullets, the
21 Styrofoam insert and something else -- I'm not
22 sure what it was. I don't remember -- and the
23 sleeves that the keys that we bought at Wal-Mart
24 were also put in a trash bag.

25 Q So if I pick up State's Exhibit Number 35 and if

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1 I show you this item here (indicating), what is
2 that item?

3 A That's the box to the .40-caliber bullets and
4 the insert.

5 Q What was done with these items?

6 A That were all chunked into the lake.

7 Q The bullets were?

8 A Yes, sir.

9 Q What about the box and this (indicating)?

10 A That was put into the trash can.

11 Q Who put it in the trash?

12 A I did.

13 Q And you mentioned the sleeves?

14 A Yes, sir.

15 Q These items (indicating)?

16 A Yes, sir, that's them.

17 Q What was done with these items?

18 A I put them into the bag of leaves.

19 Q And that's the sleeves from the keys that y'all
20 had gotten from?

21 A From the Wal-Mart.

22 Q What does that say on there?

23 A Wal-Mart.

24 Q Was there any silverware?

25 A Yeah, there was like a shoe box with all kinds

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1 of silver in it.

2 Q Whose car was that in?

3 A I believe David had it.

4 Q Do you know what he did with that?

5 A From what he told me, chunked it out the window.

6 Q In that area from Mrs. C.'s house back toward
7 378?

8 A Yes, sir.

9 Q Now, did you see the gun again at Mrs. C.'s?

10 A Yes, sir.

11 Q How did you come to see the gun at Mrs. C.'s?
12 Explain that to the jury, Jeremiah.

13 A He pulled out the gun.

14 Q He who?

15 A Steve pulled out the gun and placed it in a
16 brown paper bag and then put it in his car under
17 the hood as a matter of fact.

18 Q Where are you referring to?

19 A When you lift up the hood between the engine,
20 it's like a fire wall, I would say. He placed
21 it on top of the fire wall, and it just fits
22 there just perfectly.

23 Q And that's where you last saw the gun?

24 A Yes, sir.

25 Q In whose possession? Who had the possession of

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1 it then?

2 A Steve.

3 Q Now, y'all where did y'all go from Mrs. C.s, you
4 and Steve?

5 A I don't really remember.

6 Q Do you recall seeing David and Brandon anymore
7 that afternoon?

8 A Oh, yes. We went to a place to sell cards off
9 of -- I believe off of U.S. 1 in West Columbia.
10 That's where we ran into David and Brandon.

11 Q You say sell cards. What kind of cards are you
12 talking about, Jeremiah?

13 A Baseball cards that had come from the house.

14 Q And y'all were trying to sell them, you and
15 Steve?

16 A Yes, sir.

17 Q Now, did you remain with Steve throughout that
18 Friday evening?

19 A Yes, sir.

20 Q And, in fact, where did you stay Friday night?

21 A I stayed at his house.

22 Q Did he have that handgun, that pistol?

23 A Yes, sir.

24 Q What, if anything, or who, if anyone, was he
25 trying to get in touch with in regards to that

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1 pistol Friday night?

2 A Dustin Johnson, to buy the bullets.

3 Q Why was he trying to get in touch with Dustin
4 Johnson?

5 A Because Dustin had a fake I.D. that said he was
6 21.

7 Q And what did Steve want Dustin to do?

8 A Buy him bullets.

9 Q Do you know whether or not he got in touch
10 with -- Steve -- got in touch with Dustin
11 Johnson that night?

12 A No, I do not.

13 Q I didn't ask you this, but did Steve have a cell
14 phone?

15 A Yes, he did.

16 Q Now, you spent Friday night with whom and where?

17 A With Steve at his house.

18 Q The house on Weed Drive?

19 A Yes, sir.

20 Q His mother and father's house?

21 A Yes, sir.

22 Q If I go into that Saturday the 27th, what time
23 did y'all get up and get out on Saturday the
24 27th?

25 A I would say around three or 4:00 o'clock in the

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

- 1 afternoon.
- 2 Q Where did y'all go? Where did y'all first go
- 3 that afternoon?
- 4 A We went to go -- there was a place on Saint
- 5 Andrews. It was like a silver shop, and we went
- 6 to try to sell coins.
- 7 Q Where did those coins come from?
- 8 A Also from the house.
- 9 Q When you say we went, who is we?
- 10 A Me and Steve.
- 11 Q Were y'all able to sell any coins at this coin
- 12 shop?
- 13 A No, sir, because you had to have an appointment.
- 14 Q Now, to your knowledge did Steve still have the
- 15 possession of that pistol?
- 16 A Yes, sir.
- 17 Q And what, if anything, was he attempting to do
- 18 on that Saturday afternoon, early evening, in
- 19 regards to that pistol?
- 20 A Find bullets.
- 21 Q Did he have his cell phone?
- 22 A Yes, sir.
- 23 Q Did he call anyone in regards to finding
- 24 bullets?
- 25 A Dustin Johnson and a guy name Dre.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 Q A guy named Dre, D-R-E?

2 A Yes, sir.

3 Q Were you with Steve when he called this guy
4 named Dre?

5 A Yes, sir.

6 Q And later on after he made this phone call to
7 Dre, did you and Steve go anywhere?

8 A Yes, sir, we went to the studio where I knew Dre
9 from.

10 Q And where was that studio?

11 A Off of Monticello Road.

12 Q Now, let me ask you something. Did Steve work?

13 A No, sir.

14 Q Did he have a goal? Was he trying to do
15 something?

16 A Well, he was trying to like make music and get
17 into the music entry and whatnot.

18 Q This studio, what type of studio was it?

19 A They made rap music and whatnot.

20 Q And was Steve aspiring to be a rapper?

21 A Yes, sir.

22 Q So y'all went to this studio where?

23 A Located off Monticello Road.

24 Q And who did y'all meet with over there?

25 A Dre and a few other boys.

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1 Q Did Steve have a conversation with Dre in your
2 presence?
3 A Yes, sir.
4 Q What, if anything, did Steve ask Dre?
5 A He asked him to buy him bullets.
6 Q And did he buy him bullets?
7 A No, sir, he told him he wasn't going to.
8 Q You were there and present during that
9 conversation?
10 A Yes, sir.
11 Q Have you seen Dre outside today?
12 A Yes, sir.
13 Q Now, after that where did y'all go?
14 A Top China Buffet.
15 Q And you remember this, both as it happened like
16 this and you have given statements to this
17 effect; is that correct?
18 A Yes, sir.
19 Q And I am not familiar with Top China buffet.
20 Where is that at, Jeremiah?
21 A Like Saint Andrews and Broad River.
22 Q Did y'all eat?
23 A Yes, sir.
24 Q You and Steve?
25 A Yes, sir.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

- 1 Q And from there where did you go?
- 2 A He took me to my friend Thomas' house.
- 3 Q That's Thomas Motts?
- 4 A Yes, sir.
- 5 Q Thomas Motts. Was there a period of time late
- 6 that Saturday afternoon, early Saturday evening,
- 7 that you were not in Steven's presence?
- 8 A Yes, sir.
- 9 Q And you were with who?
- 10 A Thomas.
- 11 Q And did you have an occasion to get back into
- 12 Steven's presence?
- 13 A Yes, sir.
- 14 Q And how did you come to be back in his presence
- 15 and about what time?
- 16 A About 8:15 he came over to Thomas' house.
- 17 Q And he picked you up?
- 18 A Yes, he picked --
- 19 Q And where did y'all go?
- 20 A -- me and Thomas up.
- 21 Q I didn't mean to interrupt.
- 22 A That's it. He picked us up.
- 23 Q And where did y'all go?
- 24 A To a party out in Chapin.
- 25 Q And do you know whose party that was?

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- 1 A No, sir, I don't.
- 2 Q How long did y'all stay there?
- 3 A I would say for a few hours.
- 4 Q And you had gone to that party with who?
- 5 A Steve and Thomas.
- 6 Q When y'all left the party in Chapin, where did
7 you go?
- 8 A To some guy name Duane's house in the River Walk
9 area. Nobody was home there, so everybody kind
10 of was just sitting there drinking. The cops
11 pulled up, and Steve ran off into the woods.
12 Everybody else left after the cops left, and
13 then Steve came back. Then we went to Rush's.
- 14 Q Rush's where?
- 15 A Harbison.
- 16 Q Harbison Boulevard?
- 17 A Yes, sir.
- 18 Q Right near that Wal-Mart?
- 19 A Yes, sir.
- 20 Q Where y'all had bought the keys?
- 21 A Yes, sir.
- 22 Q Did Steve have his cell phone?
- 23 A Yes, sir.
- 24 Q Did he call anybody?
- 25 A He called Richie and asked him basically where

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 they were like partying and whatnot.

2 Q Did you know Richie?

3 A Kind of, sort of.

4 Q Knew who he was?

5 A Yeah.

6 Q And did he talk with Richie?

7 A I believe so.

8 Q And he made other cell phone calls?

9 A Yeah.

10 Q Did you know whether or not he called Austin?

11 A I'm not sure.

12 Q And Where did y'all end up?

13 A At Mikey Glenn's house.

14 Q Did you know Mr. Glenn before this night?

15 A Yes, sir, I met him here and there.

16 Q And had you gone to Mikey Glenn's house and with
17 whom?

18 A Steve, in his car.

19 Q And about what time had y'all gotten there?

20 A I would say around midnight.

21 Q Now, prior to midnight on that Saturday, had you
22 seen Jason Ward?

23 A No, sir.

24 Q Did you know Jason Ward?

25 A No, sir.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

- 1 Q How tall are you?
- 2 A I would say about five-six.
- 3 Q How much do you weigh?
- 4 A About 120 pounds maybe.
- 5 Q All right. Now, you are at Mikey Glenn's with
- 6 Steve; correct?
- 7 A Yes, sir.
- 8 Q At the party at the Glenn residence?
- 9 A Yes, sir.
- 10 Q Does Steve stay there with you the entire time,
- 11 Jeremiah?
- 12 A No, sir.
- 13 Q Tell the jury when he leaves the first time.
- 14 And does he return?
- 15 A Yes, sir, he returned with Jason.
- 16 Q When he returned with Jason, are you introduced
- 17 to Jason?
- 18 A Yes, sir.
- 19 Q Who does Jason arrive there with?
- 20 A Steve.
- 21 Q Steve had gone and got him and brought him back?
- 22 A Yes, sir.
- 23 Q And I take it you had been drinking that
- 24 evening?
- 25 A Yes, sir, I had.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 Q That night and on up into the early morning
2 hours, correct?

3 A Yes, sir.

4 Q Now, does Steve and Jason stay there for a
5 period of time?

6 A For a little while they were there.

7 Q Then what happens?

8 A They left to go somewhere. I'm not sure of
9 where though.

10 Q Did you have a car?

11 A No, sir.

12 Q Your transportation was with Steve?

13 A Yes, sir.

14 Q So Steve and Jason have left the Glenn party?

15 A Yes, sir.

16 Q Leaving you there?

17 A Yes, sir.

18 Q While you were there by yourself, did you have
19 an altercation with Kiah Stone and Austin Lee?

20 A Yes, I did.

21 Q Were you pretty much, I will say, under the
22 influence? Were you pretty much drunk?

23 A Yes, sir.

24 Q By that time. Tell the jury what happened.

25 A I would say we were wrestling around at first,

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 and then I got a little out of control. He got
2 a little mad and a bed got broke. I swung it at
3 him. Then I started to walk down the stairs
4 cussing and yelling at him and knocked a few
5 empty beer cases off the counter.

6 They ran up and were like, "Don't knock
7 things around in my friend's house and whatnot,"
8 kind of slammed me under this door and told me
9 to leave because I was acting like an idiot.

10 Q Even in your drunken state, you can recall
11 acting like an idiot, Jeremiah?

12 A Yes, sir.

13 Q Who was this that you had gotten in that
14 altercation with?

15 A Kiah Stone and Austin Lee.

16 Q That's who you were swinging the bedpost at?

17 A Yes, sir.

18 Q Did they beat you up?

19 A Not really. They busted my lip open, but that's
20 it.

21 Q And they pushed you out what door?

22 A The back door.

23 Q I guess that Saturday, January 28th, wasn't
24 particularly warm out there; was it?

25 A No, it wasn't.

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1 Q And it was that door (indicating)?

2 A Yes, sir, that's the door.

3 Q Referring to State's 21. Now, did you stay
4 outside for a while?

5 A I walked around the house, and I called up to
6 them. They were at an upstairs window. I told
7 them that I was just drunk, running my mouth,
8 acting like fool and could I get back in and use
9 the phone and get a ride out of there. They
10 told me to come on in and use the phone. This
11 is when I called Steve and told him about the
12 altercation.

13 Q That's who you would need for a ride?

14 A Yes, sir.

15 Q So the guys that threw you out of the party?

16 A Yes, sir.

17 Q Let you back in?

18 A Yes, sir.

19 Q To use the phone?

20 A Yes, sir.

21 Q When you go back in to use the phone, who do you
22 call?

23 A Steve Gillian.

24 Q And you called his cell phone?

25 A Yes, sir.

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

- 1 Q Do you talk with him?
- 2 A Yes, sir.
- 3 Q When he had left the party, who had he left
- 4 with?
- 5 A Jason Ward.
- 6 Q And what is the conversation that you have with
- 7 Steve on the phone now? What do you tell him?
- 8 A I told him that I had an altercation with Kiah
- 9 and Austin, and he needed to -- could he come
- 10 pick me up from the party. He said he would be
- 11 there in a minute.
- 12 Q How long did it take him to get there?
- 13 A Not very long at all.
- 14 Q What's not very long?
- 15 A I would say maybe ten minutes, give or take.
- 16 Q Who was with him?
- 17 A Jason.
- 18 Q Where were you at when Steve arrived?
- 19 A In the kitchen.
- 20 Q And tell the jury what happens when Steve gets
- 21 there.
- 22 A As soon as Steve walks in, he --
- 23 Q What door did he come in?
- 24 A He walked in the back door into the kitchen.
- 25 Q Who is with him?

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1 A Jason. He walks in, immediately walks up to
2 Richie, head butts him in the nose. He is
3 running around ranting and raving about, "Where
4 are they at? Where are they at," punching kids,
5 choking kids, slamming kids.

6 Then Kiah and Austin came from upstairs to
7 downstairs, wherever they were at. He punched
8 Kiah in the face, and then he started choking
9 Kiah up against the door.

10 Q Does he punch Kiah or punch Austin?

11 A He punches Austin.

12 Q And chokes Kiah?

13 A Yes, sir.

14 Q Then what happens?

15 A Then they were saying that they had not done
16 nothing, they didn't do nothing. So he turned
17 to me and said that I was lying to him. So
18 that's when he assaulted me.

19 Q Tell the jury when you say assaulted you, what
20 did he do to you?

21 A He basically took me in a whole circle around
22 the kitchen, beating me up the whole way around,
23 punching me when I was up, kicking me when I was
24 down, slamming me in between.

25 Q In relation to the photograph, State's 22?

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- 1 A That's the kitchen.
- 2 Q Point to the area.
- 3 A Right here (indicating), all around that whole
- 4 little island.
- 5 Q All around the island?
- 6 A Yes, sir.
- 7 Q When he would punch you or hit you or kick you,
- 8 when he punched you, would you fall down,
- 9 Jeremiah?
- 10 A The way he punched me and slammed me up against
- 11 something, then I would fall.
- 12 Q Would you get up on your own?
- 13 A Yes, sir.
- 14 Q And when you were down, what would he do?
- 15 A He would kick me.
- 16 Q Beat you up?
- 17 A Uh-huh. (Indicating affirmative response.)
- 18 Yes, sir.
- 19 Q Then what did he say? What did he tell you to
- 20 do?
- 21 A He told me to get out of there before he made me
- 22 disappear.
- 23 Q Did anybody come to your assistance or to these
- 24 other kid's assistance?
- 25 A As I was walking out the door, I heard Jason say

JEREMIAH PAGE -DIRECT- BY MR. MCMAHON

1 that he was going to quit beating up and hitting
2 on these kids.

3 Q What door did you go out of?

4 A The same door in the kitchen.

5 Q And why? Why Did you go out?

6 A Because Steve told me he was going to make me
7 disappear.

8 Q And where did you go?

9 A I went and hid behind a neighbor's house at
10 first. Then I heard Steve come out and say, "I
11 will kill you, M.F." I thought he was talking
12 to me. So I headed towards the woods, which
13 actually was a golf course; but it was dark and
14 I couldn't tell.

15 Q What did you do out there?

16 A Hid behind a tree.

17 Q From where you were hiding, could you see the
18 patio area of the Glenn residence?

19 A Yes, I could see all that fine. It was pretty
20 well lit.

21 Q Could you see who was up on that patio area?

22 A Steve. Then I saw Steve and Jason both out
23 there.

24 Q So first you saw Steve?

25 A Yes, sir.

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1 Q And then you saw Steve and Jason?

2 A Yes, sir.

3 Q What did you hear? What did you then see,
4 Jeremiah?

5 A I saw them. Jason was sitting there. After I
6 heard -- I had heard an altercation between what
7 I believed them two because I heard --

8 Q You heard it coming from the direction that you
9 later saw them?

10 A Yes, sir. I heard yelling and cussing and then
11 I heard punches. I waited a minute, and then I
12 stood up and started to walk towards the house.
13 I saw the two of them standing on the patio
14 area. I thought they might be waiting on me. I
15 wasn't exactly sure. So I headed back to my
16 tree.

17 Q Now, did you see them anymore that night?

18 A No, sir.

19 Q Right after you saw Steve and Jason on the
20 patio, what did you hear?

21 A I heard two distinctive car doors open up and
22 shut, and then the crank car up.

23 Q Two distinctive car what?

24 A Doors, open and shut.

25 Q And then what happened?

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- 1 A A car cranked up, and I knew it was Steve's car
2 because it made a funny sound when he cranked it
3 up.
- 4 Q What kind of car was it?
- 5 A It was a Chrysler K. car.
- 6 Q Made by Chrysler, a K. car sound, a Chrysler
7 sound?
- 8 A Yes, sir.
- 9 Q And you heard that?
- 10 A Yes, sir.
- 11 Q Then what did you do?
- 12 A I waited a few minutes to be sure he was gone.
13 I walked down towards the house, looked in front
14 of the house, and looked in the driveway. His
15 car was gone and others had left. So I knew it
16 was him that was gone, and then I went into the
17 house.
- 18 Q Now, when you knew his car had left and the
19 others were there, did you see Jason?
- 20 A No, sir.
- 21 Q Did you see him anymore?
- 22 A No, sir.
- 23 Q When you went in the house, tell the jury where
24 you slept.
- 25 A I went and hid in a closet in Mike's house just

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1 in case Steve came back. I didn't want him to
2 find me.

3 Q And then what did you do? Did you stay in the
4 closet all night?

5 A I stayed in there until I heard people moving
6 around and some girls talking, and then that's
7 when I came out.

8 Q Where did you go when you came out?

9 A Kiah took me to my house.

10 Q Kiah took you home?

11 A Yes, sir.

12 Q Because you didn't have any transportation?

13 A No, sir.

14 Q Describe to the jury, please, what Steve was
15 wearing that night.

16 A He was wearing a Portland Trailblazer's hat, a
17 red Ecko brand sweatshirt, Ecko brand jeans and
18 white Nike Air Force Ones.

19 Q As far as the sweatshirt, how did it compare to
20 this (indicating)?

21 A That's an exact replica.

22 Q And you say he had a White Trailblazer's hat?

23 A Yes, sir.

24 Q What type of jeans and what type shoes?

25 A The jeans were also Ecko, and the shoes were

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1 white Nike Air Force Ones.

2 Q Now, let me go back to that gun a minute,
3 Jeremiah. You talked about it holding how many
4 bullets?

5 A Five.

6 Q Did you ever have a conversation with Captain
7 Smith about that, and about what Steve said?

8 A Yes, sir. He said if he ever -- if he ever
9 killed somebody, he was going to unload the
10 whole thing.

11 Q And you told Captain Smith that?

12 A Yes, sir.

13 Q Also did you ever have any conversations --

14 MR. MCMAHON: May I approach the bench?

15 THE COURT: Yes, sir.

16 (Whereupon there was a bench conference off
17 the record in the presence of the jury but out of the
18 hearing of the jury.)

19 MR. MCMAHON: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. MCMAHON:

22 Q Jeremiah, also, specifically did you have some
23 conversations with Steve where he told you he
24 robbed a jewelry store?

25 A Yes, sir.

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1 Q Did he tell you in the robbery of that jewelry
2 store that he stole some Tag Heuer watches?

3 A Yes, sir. As a matter of fact, he had one on
4 his wrist.

5 Q But he didn't tell you what jewelry store?

6 A No, sir.

7 Q But he had told you that, correct?

8 A Yes, sir.

9 Q Also you cooperated with the police, both
10 Richland County and Lexington County; is that
11 right?

12 A Yes, sir, I did.

13 Q In fact, you showed the Lexington County
14 authorities areas where various of these items
15 were recovered?

16 A Yes, sir.

17 Q Systems Lane?

18 A Yes, sir.

19 Q Irmo Drive?

20 A Yes, sir.

21 Q Up at Mrs. Cipkala's house?

22 A Yes, sir.

23 Q Is that right?

24 A Yes, sir.

25 Q And you also had some conversations with members

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1 of Steve's family after this incident happened,
2 correct?

3 A Yes, sir.

4 Q Did you know Tyler?

5 A Yes, sir.

6 Q And what is the relationship, kinship, between
7 Tyler and Mr. Gillian?

8 A They are cousins.

9 Q Cousins?

10 A Yes, sir.

11 Q Did you have a conversation -- don't tell me
12 what it was -- but did you have a conversation
13 with Tyler?

14 A Yes, sir.

15 Q About the homicide?

16 A Yes, sir.

17 Q As a result of that, did you report that
18 information to Captain Smith?

19 A Yes, sir, I did.

20 Q You had described a hat. How does this
21 (indicating) compare?

22 A Yes, that is it.

23 MR. MCMAHON: Your Honor, I would offer
24 this in evidence.

25 THE COURT: Any objection?

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1 (Attorneys confer.)

2 MR. BUTLER: No objection.

3 MR. MCMAHON: I understand, without
4 objection, Your Honor.

5 THE COURT: Yes, sir.

6 (State's Exhibit Number 40, hat, is
7 received into evidence.)

8 BY MR. MCMAHON:

9 Q So State's Exhibit Number 40 is a hat that you
10 described he had on that night and a sweatshirt
11 like this, State's Exhibit Number 19?

12 A Yes, sir.

13 Q Jeremiah, when you learned about the -- Jason
14 never hit you?

15 A No, sir.

16 Q You didn't hardly know him?

17 A No, sir. As a matter of fact, there was a boy
18 that hit me in the eye with a pool stick by
19 accident; and he kind of stood up for me as a
20 matter of fact.

21 Q And Steve hit you?

22 A Yes, sir.

23 Q And beat you up?

24 A Yes, sir.

25 MR. BUTLER: I object to the leading at

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 this point.

2 THE COURT: Sustained. Rephrase your
3 questions.

4 MR. MCMAHON: I will move right along, Your
5 Honor.

6 Q But you didn't have any altercation with Jason
7 Ward?

8 A No, sir, I did not.

9 Q None whatsoever. When you learned about the
10 murder, who did you call?

11 A Richland County.

12 Q You called them?

13 A Yes, sir.

14 Q They didn't call you?

15 A No, sir.

16 Q Thank you.

17 MR. MCMAHON: Your Honor, I don't have any
18 further questions.

19 THE COURT: Cross.

20 MR. BUTLER: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. BUTLER:

24 Q Jeremiah, you don't want to go to prison; do
25 you?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 A No, sir, I don't.
- 2 Q You have been incarcerated before, right?
- 3 A Only to do with this burglary.
- 4 Q Right. Briefly at the detention center in
- 5 Lexington County?
- 6 A Yes, sir.
- 7 Q You don't like being incarcerated, do you?
- 8 A No, sir, I do not.
- 9 Q You have to eat the food they gave you?
- 10 A Yeah.
- 11 Q And it's not any good, is it?
- 12 A No, sir.
- 13 Q You have to wear the stupid orange jumpsuits
- 14 they give you?
- 15 A Yes, sir.
- 16 Q You don't get to see the people you want to see?
- 17 A No, sir.
- 18 Q The people in there aren't very nice?
- 19 A No, sir.
- 20 Q And most importantly you can't leave?
- 21 A Right.
- 22 Q And you know what that's like, right?
- 23 A Yes, sir.
- 24 Q You don't like it, do you?
- 25 A No, sir, I don't.

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1 Q And you know what you are charged with now,
2 burglary in the first degree -- that is what you
3 are charged with, right?

4 A Yes, sir.

5 Q And that carries a sentence of 15 to life?

6 MR. MCMAHON: No, sir, I object to that. I
7 object to this.

8 THE COURT: Sustained.

9 MR. MCMAHON: He can't go into that.

10 MR. BUTLER: May we approach?

11 MR. MCMAHON: I object.

12 THE COURT: You can come up just a second.

13 (Whereupon there was a bench conference off
14 the record in the presence of the jury but out of the
15 hearing of the jury.)

16 BY MR. BUTLER:

17 Q Jeremiah, you know you are facing a lot of time?

18 A Yes, sir.

19 Q Serious time?

20 A Yes, sir.

21 Q Prison time?

22 A Yes, sir.

23 Q Time incarcerated in prison?

24 A Yes, sir.

25 Q And Mr. McMahan asked you about cooperating with

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 the police. Remember those lines of questions?
- 2 A Yes, sir.
- 3 Q But you didn't cooperate fully and completely
- 4 initially, did you?
- 5 A No, sir.
- 6 Q At first you told them, "Yeah, this is what
- 7 happened; but I don't really know everybody's
- 8 name"?
- 9 A Yes, sir.
- 10 Q And they put you in jail?
- 11 A I actually told them all the names before then.
- 12 Q The first time you talked to them, you gave them
- 13 all the names?
- 14 A Well, I gave them more names during the duration
- 15 of the questioning, except for two. You are
- 16 right about two of them.
- 17 Q So you didn't give them two names, names that
- 18 you knew?
- 19 A Yes, sir.
- 20 Q So you lied to the police the first time?
- 21 A Somewhat, yes, sir.
- 22 Q Well, did you lie or not?
- 23 A Yes, sir.
- 24 Q I don't want to put words in your mouth. You
- 25 lied, right?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q You told them you didn't know two of the people?

3 A Yes, sir.

4 Q And then from the jail you had your mother call
5 and say, "Oh --

6 MR. MCMAHON: I object to hearsay. I
7 object to hearsay. Anything his mother said, that's
8 clearly hearsay. He knows that.

9 THE COURT: I am going to allow it to the
10 extent -- as I understand, you are asking the
11 question if he called to get his mother to say
12 something?

13 MR. BUTLER: Right.

14 THE COURT: I will allow that.

15 BY MR. BUTLER:

16 Q You made that call, right?

17 A Yes, sir, I did.

18 Q And as a result of that, investigators from
19 Lexington County talked to you again?

20 A Yes, sir.

21 Q And then you came forward with the names?

22 A Yes, sir.

23 Q Once you were in jail and you had no bond and
24 you couldn't get out?

25 A Yes, sir.

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 Q Then you wanted to cooperate even more fully,
2 right?
- 3 A Yes, sir.
- 4 Q And when you were down there initially, you had
5 no bond; right?
- 6 A Yes, sir.
- 7 Q And bond is what you pay to get out of jail?
- 8 A Yes, sir.
- 9 Q And then lo and behold, you got a P.R. bond;
10 isn't that right?
- 11 A Yes, sir.
- 12 Q So first no bond, right?
- 13 A Right.
- 14 Q A call to the police, right?
- 15 A Yes, sir.
- 16 Q And then a P.R. bond, right?
- 17 A Yes, sir, but telling those names is not what
18 got me my P.R. bond.
- 19 Q Cooperating with the police is why you got your
20 P.R. bond, right?
- 21 A Yes, sir. This came like five days later when I
22 did something else for them.
- 23 Q For them?
- 24 A Yes, sir.
- 25 Q So you sat in jail for five days. Then they got

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 you out, and you showed them some things?

2 A Yes, sir.

3 Q And then you got your P.R. bond?

4 A Yes, sir.

5 Q And how much money did you pay to get out on the
6 P.R. bond?

7 A Zero.

8 Q Zero, right?

9 A Yes, sir.

10 Q Get out of jail free?

11 A Yes, sir.

12 Q So you are in jail, you can't get out, you tell
13 them what they want to hear, and then they get
14 you out of jail?

15 MR. MCMAHON: Your Honor, I object to the
16 phrasing of the question, the form of the question.

17 MR. BUTLER: I will rephrase it.

18 MR. MCMAHON: He can't say what the police
19 wanted to hear.

20 MR. BUTLER: I will rephrase.

21 THE COURT: I understand. Just rephrase
22 it.

23 BY MR. BUTLER:

24 Q You tell them what you told them, and then you
25 get out of jail free; right?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q And Mr. McMahon has told you to tell the truth,
3 right?

4 A Yes, sir.

5 Q And you understand that he has nothing to do
6 with the charges in Lexington County, right?

7 A Yes, sir.

8 Q But you understand the Lexington County
9 Solicitor's Office has a great deal to say about
10 what happens to your charges, right?

11 A Yes, sir.

12 Q They could dismiss the charge if they wanted to,
13 right?

14 A Yes, sir.

15 Q They could reduce it to a lesser charge,
16 couldn't they?

17 A Yes, sir.

18 Q They could recommend probation, couldn't they?

19 A Yes, sir.

20 Q And then you are not going to prison, right?

21 A Right.

22 Q Mr. McMahon has told you, "I will stand there
23 and I will tell the judge that you cooperated"?

24 A Yes, sir.

25 Q And you know that when you are sitting here

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 testifying?

2 A Yes, sir.

3 Q And you want him to do that for you, don't you?

4 A Yes, sir.

5 Q You want to be able to stand there in front of
6 the judge and have Mr. McMahon who is
7 prosecuting this case say, "He helped us get a
8 conviction"?

9 A Yes, sir.

10 Q You are hoping that that will affect what the
11 judge does to you, aren't you?

12 A Yes, sir.

13 Q With respect to the gun that you say you guys
14 took in the burglary, you turned it over to
15 Steve; right?

16 A Yes, sir.

17 Q And he put it in a brown paper bag?

18 A Yes, sir.

19 Q And he put it behind the fire wall of his car?

20 A Something like that.

21 Q And that's in the hood, right?

22 A Yes, sir.

23 Q Under the hood?

24 A Yes, sir.

25 Q Which is in the front of the car?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 A Yes, sir.
- 2 Q As opposed to the trunk?
- 3 A Yes, sir.
- 4 Q Which is in the back of the car?
- 5 A Yes, sir.
- 6 Q And you clearly know the difference between the
- 7 hood and the trunk, right?
- 8 A Yes, sir.
- 9 Q No doubt in your mind it was in the hood, not
- 10 the trunk?
- 11 A Yes, sir.
- 12 Q Okay. On the night of the party, you were
- 13 pretty drunk?
- 14 A Yes, sir.
- 15 Q Y'all had been drinking early evening, right?
- 16 A Yes, sir.
- 17 Q Late evening?
- 18 A Yes, sir.
- 19 Q Early morning?
- 20 A Yes, sir.
- 21 Q And you are not a real big guy?
- 22 A No, sir, I'm not.
- 23 Q And you admit that the reason you acted the way
- 24 you were acting is because you were drunk?
- 25 A Yes, sir.

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 Q When you drink alcohol, it affects your
2 judgment; right?

3 A Yes, sir.

4 Q You do stupid stuff when you are drunk?

5 A Yes, sir.

6 Q And you regret it later?

7 A Yes, sir.

8 Q Alcohol affects your judgment, right?

9 A Yes, sir.

10 Q And your senses, your ability to perceive
11 things; right?

12 A Yes, sir.

13 Q And you were intoxicated and you were affected
14 by the alcohol, it's safe to say; right?

15 A Yes, sir.

16 Q And you say that you called Steve because you
17 wanted him to come pick you up?

18 A Yes, sir.

19 Q You didn't call Steve saying, "Hey, I need you
20 to come take up for me because I am getting
21 picked on and getting beaten up"?

22 A That may have been what happened.

23 Q You wouldn't have said that?

24 A I may have. I don't know.

25 Q But they didn't beat you up?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 A No, they didn't really beat me up.
- 2 Q So if you would have said, "Steve, come pick me
3 up. I'm getting beat up," that would have been
4 a lie?
- 5 A Yes, sir.
- 6 Q And you wouldn't lie to get somebody to help
7 you, would you?
- 8 A No, sir.
- 9 Q That's what you are saying Steve got mad about
10 when he came back to the party, right?
- 11 A Yes, sir. He came there and kind of -- not kind
12 of -- he came there in my defense.
- 13 Q And then he got mad at you because you had told
14 him that they beat you up real bad?
- 15 A I don't think I told him they beat me up real
16 bad.
- 17 Q Why did he get mad at you?
- 18 A Because he said I was lying about the whole
19 thing.
- 20 Q And you wouldn't lie to get somebody to help you
21 out, would you?
- 22 A No, sir.
- 23 Q Did you lie to Steve or not?
- 24 A No, sir.
- 25 Q So you didn't tell him, "Come help me out. Come

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 get my back. They beat me up real bad"?

2 A I really don't remember if I said that or not.

3 Q That's fine. Because you were drunk anyway,
4 right?

5 A Right. But I mean, if I may add, I believe
6 Steve was also intoxicated.

7 Q You didn't tell Mr. McMahon that you made any
8 threats to anybody that night? So I'm asking
9 you, did you?

10 A I don't remember.

11 Q To the guys that threw you out, Austin Lee and
12 who was the another guy?

13 A Kiah.

14 Q Did you make any threats to them?

15 A Possibly. I don't remember.

16 Q Did you say anything like, "That's a good way to
17 get a bullet in your ass"?

18 A I honestly don't remember.

19 Q Because you were drunk?

20 A Right.

21 Q You don't remember everything when you are
22 drunk, right?

23 A No, I don't.

24 Q That's all right. And then you say Steve beat
25 you up?

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 A Yes, sir.
- 2 Q So you had been drinking early evening, right?
- 3 A (Witness nods.) (Indicating affirmative
4 response.)
- 5 Q Late evening?
- 6 A (Witness nods.) (Indicating affirmative
7 response.)
- 8 Q Is that right?
- 9 A Yes, sir.
- 10 Q Early morning, right?
- 11 A Yes, sir.
- 12 Q You had gotten thrown out of the house?
- 13 A Yes, sir.
- 14 Q Because you were acting stupid?
- 15 A Yes, sir.
- 16 Q Steve beats you up?
- 17 A Yes, sir.
- 18 Q And you want to get away?
- 19 A Yes, sir.
- 20 Q So you ran out the back door, and you went and
21 you hid on the golf course?
- 22 A Yes, sir.
- 23 Q Because you didn't want Steve to beat you up
24 anymore?
- 25 A I didn't want him to kill me.

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 Q So you wanted to get far away from him, right?

2 A Enough to where he couldn't find me.

3 Q So you went to the golf course behind Mikey
4 Glenn's house?

5 A Yes, sir.

6 Q And that golf course is about 30 yards away from
7 that back patio?

8 A Well, I didn't get all the way to the golf
9 course. Like I could see where you would drive
10 the golf cart, I could see that area. I was
11 still in his back yard though.

12 Q Close to the golf -- the cart path?

13 A Yes, sir.

14 Q How close to the cart path?

15 A I'm not exactly sure. I am just saying I could
16 see it.

17 Q That's fine. Because you were drunk, right?

18 A Not anymore actually. After the way Steve beat
19 me, that was kind of a buzz killer.

20 Q So Steve beating you up sobered you up?

21 A I would say so.

22 Q Then your judgment was fine after that?

23 A Yes, sir. I mean, I may have had a little one,
24 but I was nowhere what I was earlier.

25 Q I've got you. Because all the excitement just

JEREMIAH PAGE -CROSS- BY MR. BUTLER

- 1 made the alcohol dissipate from your body?
- 2 A You understand what a buzz kill is, sir; don't
- 3 you?
- 4 Q No, I really don't. That what's I'm asking.
- 5 A Well, getting thrown around and slammed around
- 6 kind of definitely makes you not intoxicated
- 7 anymore.
- 8 Q Okay.
- 9 A At least that's how I felt.
- 10 Q And when you were hiding in the tree near the
- 11 golf course, let me make sure we know what we
- 12 are talking about. I will show you State's 24.
- 13 Have you ever seen this before?
- 14 A Yes, sir, I have.
- 15 Q It's a diagram of Mikey Glenn's house?
- 16 A Yes, sir.
- 17 Q I don't think I need to get you down. The patio
- 18 is right here (indicating)?
- 19 A Yes, sir.
- 20 Q You're back here somewhere (indicating)?
- 21 A Yes, sir.
- 22 Q And the driveway is over here (indicating)?
- 23 A Yes, sir.
- 24 Q And the driveway goes downhill, right?
- 25 A Yes, sir.

JEREMIAH PAGE -CROSS- BY MR. BUTLER

1 Q It's kind of a steep hill in front of Mikey
2 Glenn's house?

3 A Yes, sir.

4 Q And the driveway takes you down the hill about
5 how long would you say, 20-yards, 30-yards?

6 A Roughly.

7 Q And Steve's car was parked on the street?

8 A No, it wasn't.

9 Q Where was it in the driveway?

10 A It was right beside those steps right there
11 (indicating).

12 Q Right here (indicating) is where Steve's car
13 was?

14 A Literally right beside the steps.

15 Q Right here (indicating)?

16 A About like that. (indicating). It was at the
17 very top of the driveway though. He was parked
18 on the street when he first got there. After he
19 came back, he was parked at the top.

20 Q You saw that when?

21 A When I walked out of the house after he told me
22 to leave. I saw his car sitting right there.

23 MR. BUTLER: Beg the Court's indulgence one
24 moment.

25 THE COURT: Yes, sir.

JEREMIAH PAGE -REDIRECT- BY MR. MCMAHON

1 (Pause.)

2 BY MR. BUTLER:

3 Q Jeremiah, what time did Steve drop you off after
4 you ate at the Top China Buffet?

5 A I'm not exactly sure, somewhere around dusk.

6 Q Dusk meaning what?

7 A Meaning the sun was going down.

8 Q Steve's kind of got a big mouth, doesn't he?

9 A I would say so.

10 Q He talks a lot of junk?

11 A Yes, sir.

12 Q Sometimes it's true and sometimes it's not?

13 A Yes, sir.

14 MR. BUTLER: Beg the Court's indulgence one
15 moment.

16 THE COURT: Yes, sir.

17 (Pause.)

18 MR. BUTLER: That's all I have. Thank you.

19 THE COURT: Any redirect?

20 MR. MCMAHON: Just a couple of questions,
21 Judge, famous last words.

22 REDIRECT EXAMINATION

23 BY MR. MCMAHON:

24 Q Jeremiah, just a couple of questions now. Let
25 me clear this up. Do you talk to the police

JEREMIAH PAGE -REDIRECT- BY MR. MCMAHON

1 before you go to jail?

2 A Yes, sir.

3 Q As a matter of fact, you called them on Sunday
4 the 28th?

5 A Yes, sir.

6 Q And that's when you talked to Captain Smith?

7 A Yes, sir.

8 Q And the next day -- Mr. Butler asked you about
9 giving statements to the police. What day did
10 you give this first statement?

11 A The 29th of January.

12 Q That's a one, two, three, four, five, six,
13 seven, eight, nine, ten-page statement?

14 A Yes, sir.

15 Q In that statement he asked you about what you
16 told Steve when you called him on the cell
17 phone. Do you remember Mr. Butler asking you
18 that?

19 A Yes, sir.

20 Q After the incident with Kiah and Austin?

21 A Yes, sir.

22 Q What did you say in your statement?

23 A I told Steve that Kiah and Austin were --

24 COURT REPORTER: I'm sorry. I can't
25 understand, Judge.

JEREMIAH PAGE -REDIRECT- BY MR. MCMAHON

1 BY MR. MCMAHON:

2 Q I'm sorry. I am standing close to you. That's
3 keeping your voice down.

4 THE COURT: Just talk a little bit slower.

5 A It says that I told Steve that Kiah and Austin
6 were up in my face and threw me out of the
7 party.

8 Q And you didn't tell them about all the burglars?

9 A Right.

10 Q Who didn't you tell them about?

11 A David and Brandon.

12 Q But did you tell them about -- let's look at
13 page 8. Did you tell them about Dustin?

14 A Yes, sir.

15 Q Did you tell them about Steve?

16 A Yes, sir.

17 Q Did you tell them about a boy named Jessie?

18 A Yes, sir.

19 Q Didn't know his last name?

20 A Yes, sir.

21 Q Said he dated Dustin's sister?

22 A That's right.

23 Q Did you tell them about going to Wal-Mart?

24 A Yes, sir.

25 Q On the 26th. And you told them about the

JEREMIAH PAGE -REDIRECT- BY MR. MCMAHON

1 pistol?

2 A Yes, sir, I did.

3 Q And this is as a result of you calling the
4 police?

5 A Yes, sir, it is.

6 Q What did you tell them about the pistol?

7 A Dark metal, wooden handle, goldish color on the
8 handle, said, "Taurus, made in Brazil."

9 Q This is a ten-page statement that you gave to
10 Detective Ewing?

11 A Yes, sir.

12 Q That same day you gave a one, two, three, four,
13 five-page statement to Detective Collins from
14 Lexington County who was here yesterday?

15 A Yes, sir.

16 Q And that was basically about the burglary?

17 A Yes, sir.

18 Q On the 30th you gave another statement?

19 A Yes, sir.

20 Q And that's where you showed them where these
21 various items were at, correct?

22 A Yes, sir.

23 Q Assisted in drawing a map?

24 A Yes, sir.

25 Q Gave another statement about Dre?

JEREMIAH PAGE -REDIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q And Tyler?

3 A Yes, sir.

4 MR. BUTLER: I object. This is going
5 beyond the scope of cross.

6 THE COURT: Overruled. I will let him go
7 into what statements he gave at that point.

8 BY MR. MCMAHON:

9 Q You talking got you in jail, didn't it?

10 A Yes, sir, it did.

11 Q You calling the police is what put you in jail?

12 A Yes, sir.

13 Q And how much bond -- was Captain Smith the judge
14 when you got the P.R. bond?

15 A 250,000.

16 Q Was Captain Smith the judge?

17 A Oh, no, sir.

18 Q A judge did that?

19 A Yes, sir.

20 Q Not a police officer?

21 A No, sir.

22 Q A solicitor didn't do it?

23 A No, sir.

24 Q A judge did that?

25 A Yes, sir.

JEREMIAH PAGE -RECROSS- BY MR. BUTLER

1 Q So it's actually rather than, "No bond, called
2 police, P.R.," it's actually called police;
3 right?

4 A Right.

5 Q Jeremiah Page runs his mouth?

6 A Right.

7 Q And Jeremiah Page gets locked up?

8 A Right.

9 Q And then a judge is the one that lets you out?

10 A Yes, sir.

11 Q And you haven't been promised anything?

12 A No, sir.

13 Q That's going to be up to a judge, too?

14 A Yes, sir.

15 MR. MCMAHON: I don't have any further
16 questions.

17 THE COURT: Any recross?

18 MR. BUTLER: Briefly.

19 THE COURT: Yes, sir.

20 **RECROSS EXAMINATION**

21 BY MR. BUTLER:

22 Q The solicitor in your case consented to a P.R.
23 bond; isn't that right?

24 A Yes, sir.

25 Q So the solicitor did have a say so, didn't they?

JEREMIAH PAGE -RECROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q A solicitor can say, "I object to any bond"?

3 MR. MCMAHON: I object to that now. I
4 object to that. It's hearsay.

5 THE COURT: I sustain that objection
6 because he can't testify as to what role the
7 solicitor can play. He can testify as to what
8 happened but not the solicitor's role.

9 BY MR. BUTLER:

10 Q The solicitor consented to a P.R. bond in your
11 case; isn't that right?

12 A I believe so. I wasn't in general sessions that
13 day when my lawyer got me the P.R. bond. So I
14 honestly don't know.

15 Q And your lawyer is Steve Soltis?

16 A Yes, sir.

17 Q Your solicitor is Tracey Carroll?

18 A I don't know. At roll call I go see Dayton
19 Riddle, so I don't know.

20 Q And with respect to your initial statement to
21 the Lexington County Sheriff's Department to
22 Investigator Collins, you didn't just tell
23 him -- let me back up. You told him you didn't
24 know the two names, the names of the two other
25 guys; right?

JEREMIAH PAGE -RECROSS- BY MR. BUTLER

- 1 A Right.
- 2 Q "Jessie with two of his friends. I do not know
3 their names"?
- 4 A Right.
- 5 Q That was a lie, right?
- 6 A Yes, sir.
- 7 Q You did know their names?
- 8 A Yes, sir.
- 9 Q And you signed it, right?
- 10 A Yes, sir.
- 11 Q He gave you an opportunity to read your one,
12 two, three, four, five-page statement; right?
13 He give you an opportunity to read it, right?
- 14 A Yes, sir.
- 15 Q And you signed every page of it, right?
- 16 A Yes, sir.
- 17 Q And he told you to make any additions, deletions
18 or corrections you need to make; right?
- 19 A Yes, sir.
- 20 Q And you made some, didn't you?
- 21 A Yes, sir.
- 22 Q Like right there (indicating), you scratched
23 that out and you initialed it?
- 24 A Yes, sir.
- 25 Q Right there (indicating), right?

JEREMIAH PAGE -RECROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q And you would have had to read this part that
3 says, "Two of his friends, I don't know their
4 names"?

5 A Yes, sir.

6 Q You read that again, didn't you?

7 A Yes, sir.

8 Q And then you signed every page saying, "The
9 facts contained herein are true and correct,"
10 didn't you?

11 A Yes, sir.

12 Q And that was a lie also, wasn't it?

13 A Yes, sir.

14 MR. BUTLER: That's all I have.

15 MR. MCMAHON: Your Honor, I would move
16 under 106 that the entire statement come in and be
17 published at this time.

18 MR. BUTLER: It's still hearsay. The
19 statement doesn't come in because I asked him about
20 it.

21 MR. MCMAHON: It's not a hearsay statement.
22 That's your declarant right there. Under State
23 versus Jackson and 106, the entire statement is
24 admissible. I will offer it into evidence. They can
25 read it later, but I move that the statement come in

1 evidence at this time.

2 THE COURT: It can be allowed in if it's
3 appropriate under the circumstances. Before I make a
4 ruling, let me have a chance to look the statement
5 over first.

6 MR. MCMAHON: Thank you, Your Honor. I
7 will mark it for identification purposes.

8 THE COURT: Do you have any other questions
9 of this witness, Mr. McMahon?

10 MR. MCMAHON: No, sir. I want to make sure
11 that is the statement that he gave to Detective
12 Collins on 1/29/01.

13 THE COURT: Yes, sir.

14 MR. MCMAHON: I will mark it.

15 (State's Exhibit Number 41, statement of
16 Page, is marked for identification.)

17 THE COURT: Mr. Page, you can step down.
18 You are free to stay if you wish or you can go if you
19 wish. Do you have another short witness?

20 MR. MCMAHON: Yes, sir, I think I do. I
21 sent for him right now.

22 STEVEN DOUGLAS COOK, being
23 first duly sworn, testified as follows:

24 CLERK: Have a seat in the witness box and
25 state your full name for the record.

KEVIN COOK -DIRECT- BY MR. MCMAHON

1 THE WITNESS: My full name is Kevin Douglas
2 Cook.

3 DIRECT EXAMINATION

4 BY MR. MCMAHON:

5 Q Good afternoon, Mr. Cook.

6 A Sir.

7 Q I appreciate you coming --

8 THE COURT: Let me ask you to please spell
9 your last name.

10 THE WITNESS: C-O-O-K, sir.

11 BY MR. MCMAHON:

12 Q I appreciate you coming today. I understand you
13 are a little under the weather.

14 A Yes, sir.

15 Q I apologize for that. Mr. Cook, where do you
16 live? What area do you live in?

17 A Now I live in Newberry.

18 Q What is your occupation?

19 A I am the Chief of Public Affairs and
20 Correctional Liaison for the United States Army
21 at Fort Jackson.

22 Q And how long have you been -- if I say public
23 information officer, is that the correct
24 terminology?

25 A No, sir. It's P.A.O.

KEVIN COOK -DIRECT- BY MR. MCMAHON

1 Q Close.

2 A I have been there since 1982.

3 Q What was your occupation prior to that,
4 Mr. Cook?

5 A I was in a similar position in another police
6 station.

7 Q How many years do you have military service and
8 civilian service?

9 A Thirty-seven years with the Department of
10 Defense and Department of the Army.

11 Q Mr. Cook, I will ask you if you know a lady
12 named Nancy Bailey Cook Muller?

13 A I know Nancy Bailey Muller. She never took
14 Cook.

15 Q All right, sir. What was your relationship to
16 Nancy Bailey Muller?

17 A We were married.

18 Q And could you tell me, y'all are divorced at
19 this time?

20 A That's correct, sir.

21 Q When were y'all divorced, Mr. Cook?

22 A About 1991.

23 Q Prior to that time, did you have an occasion to
24 purchase a weapon for your wife Nancy?

25 A Yes, sir.

KEVIN COOK -DIRECT- BY MR. MCMAHON

1 Q And would you describe that weapon for us,
2 please. You are familiar with weapons?

3 A Yes, sir.

4 Q You have some personal weapons of your own?

5 A Yes, sir.

6 Q And as a matter of fact, I think with your
7 military career, you are very familiar with
8 weapons also; is that right?

9 A That's correct, sir.

10 Q Could you describe when and where you purchased
11 that weapon and give us the general description
12 of it.

13 A I can't tell you exactly when I purchased it.
14 It was in late either '89 or '90, was just as
15 Desert storm precipitated -- Desert Shield
16 rather. I purchased it on Broad River Road, and
17 I believe the business that I purchased it from
18 is no longer there. I do recall it had a firing
19 range in the rear of the store. It was near
20 S.L.E.D.

21 Q Could you describe the weapon for us.

22 A Yes, it was a five-shot, wheel gun revolver,
23 Taurus .38, four-inch barrel with a dark hand
24 grip, a composite wood hand grip; and I believe
25 it was glued.

KEVIN COOK -DIRECT- BY MR. MCMAHON

1 Q And when you and your wife at the time divorced,
2 who kept possession of that weapon?

3 A She did.

4 Q And she has had it -- as far as you know, she
5 had it from the time y'all divorced?

6 A Yes. We discussed it and felt it would be
7 important for her to carry that with her or have
8 that with her because of her employment.

9 Q You say it held how many shots, Mr. Cook?

10 A Five.

11 Q And what brand was it?

12 A Taurus.

13 Q And you described it as a wheel gun revolver.
14 Explain to the jury what you mean by that.

15 A There's two types of weapon. One is a wheel gun
16 or revolver where you take the cylinder out and
17 insert the rounds, in this case five. You snap
18 it back. That's the normal thing.

19 The other type is a magazine-fed weapon
20 where you actually take a magazine and slip it
21 into the thing, pull the chamber back and let it
22 go.

23 This one is a dual action where you can
24 either -- in the case of Taurus, with a dual
25 action, you can cock it back once, pull the

STEVEN COOK -CROSS- BY MS. MIMS

1 trigger or you can just pull the trigger and it
2 will fire.

3 Q And if you have it fully loaded, it would fire
4 five times?

5 A Correct, sir.

6 Q And, Mr. Cook, you described it as a dark
7 finish?

8 A Yes, sir.

9 Q With wooden grip, brown wooden grip handles?

10 A Yes, sir.

11 Q Thank your.

12 MR. MCMAHON: I don't have any further
13 questions.

14 THE COURT: Cross?

15 MS. MIMS: Very quickly, Your Honor.

16 CROSS EXAMINATION

17 BY MS. MIMS:

18 Q Mr. Cook, is your wife familiar with firearms?

19 A I showed her how to fire the weapon, ma'am; and
20 she fired it with me one time when we purchased
21 the weapon. From that point on, I don't know if
22 she has fired it since then.

23 Q You don't know if she has any other familiarity
24 with the weapon?

25 A No, ma'am.

1 MS. MIMS: Your Honor, I have no other
2 questions. Thank you.

3 MR. MCMAHON: Nothing further. May
4 Mr. Cook be excused?

5 THE COURT: Yes, sir, certainly. You can
6 step down and you are free to go.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: Have you got a short one you
9 can use?

10 MR. MCMAHON: Judge, I have another one. I
11 don't know...

12 THE COURT: You think it would be better to
13 go ahead and take a lunch break at this time?

14 MR. MCMAHON: Yes, sir, perhaps.

15 THE COURT: Let's do that. Ladies and
16 gentlemen, we will take a short break for lunch. I
17 will ask you to be back at 2:15. We will get started
18 then.

19 Again, it's very important, don't talk
20 about the case with anyone. Don't let anyone talk
21 with you about it. We will see you back at 2:15.
22 Everyone remain seated while the jury leaves, please.

23 (The jury is excused for lunch at
24 12:50 p.m.)

25 THE COURT: Anything before we break for

1 lunch?

2 MR. MCMAHON: I would just turn this
3 statement over to the Court. That's all I have.

4 THE COURT: I will tell you something after
5 lunch.

6 MR. MCMAHON: Thank you.

7 THE COURT: Anything from the defense
8 before we break?

9 MS. MIMS: No, sir, Your Honor.

10 THE COURT: I will see you back at 2:15.
11 Thank you.

12 (Whereupon there was a luncheon recess.)

13 THE COURT: Coconut, here are these two
14 notes to mark as Court's exhibits.

15 (Court's Exhibit Number 9 and 10, notes
16 from juror, is marked for purposes of the record.)

17 THE COURT: All parties and attorneys are
18 in the courtroom. Counsel, anything before we start
19 back?

20 MS. CAMPBELL: Not from the State.

21 THE COURT: Defense?

22 MR. BUTLER: Yes, sir.

23 THE COURT: Okay.

24 MR. BUTLER: First, just by way of
25 background for the record, during Jeremiah Page's

1 testimony, I attempted to cross examine him about
2 his pending charge in Lexington County, burglary
3 first.

4 I attempted to ask him about the potential
5 sentence, which is 15 to life. I also would have
6 asked him: Did you understand that is a mandatory
7 minimum 15 and a nonparolable offense? The solicitor
8 objected and that objection was sustained.

9 At the bench we had a conference, and I
10 noted my exception to Your Honor's ruling. At this
11 time I would like to make a record and note my
12 exception to Your Honor's ruling with respect to my
13 ability to cross examine the witnesses against the
14 Defendant in this case and exercise his right to
15 confront under the confrontation clause of the State
16 and Federal Constitution.

17 As we discussed, I am familiar with case
18 law. There is only one, and I have handed it to Your
19 Honor and the State as well. It's State versus
20 Mizzle, a Court of Appeals case, 535 S.E.2d 134, a
21 2000 case, where the defense lawyer was unable to get
22 into the sentence that a co-defendant was facing.

23 The trial judge ruled that it was just a
24 way to back door the sentence that the Defendant was
25 facing, and the jury is not supposed to know the

1 sentence.

2 The Court found there, because they were
3 able to get out, the defense lawyer was able to get
4 out that he was facing a substantial amount of time,
5 there was no violation of his right to confront, that
6 it was not a constitutional violation.

7 I think that's the only situation where it
8 would be appropriate to limit cross examination with
9 respect to bias under Rule 608, which I also appealed
10 to you at side bar.

11 It is in that limited circumstance where
12 the Defendant would be exposed to the same sentence,
13 and the jury would then know the sentence. That's
14 why we usually don't let people talk about
15 sentences.

16 But it's different if it's going to go to
17 bias. The jury is entitled to know exactly how bias
18 a person may be. There is a big difference between a
19 30-day offense and one that carries life without
20 parole.

21 State versus Mandell Sims, a Supreme Court
22 case from this year, for which there is no cite, it's
23 Opinion Number 25398 in the advance sheet where the
24 Defendant wanted to cross examine a testifying
25 witness as to pending charges and was not even

1 allowed to get into the charge itself.

2 I know we are not completely on all fours
3 with this case; but the Court noted, "If convicted of
4 first degree burglary, Peterson was facing --
5 Peterson is the witness -- was facing a possible life
6 sentence in prison.

7 The Court goes on to explain, "The number
8 of charges pending against Peterson and the severity
9 of the potential sentences, we find the evidence was
10 probative on the issue of bias and should have been
11 admitted."

12 So in that case they ultimately found it
13 was erroneous to limit cross, but they found that it
14 was harmless. In light of those cases, I would renew
15 my position at side bar.

16 I would ask that the jury be informed that
17 the sentence for burglary first is a mandatory 15 to
18 life, and it's a no-parole offense. That is my
19 position on that.

20 THE COURT: I understand. If I might, let
21 me note on that one that. The problem is any time,
22 whether it's a defendant or anyone else, the problem
23 with getting into specific sentences is it can
24 actually be misleading to the jury.

25 They may have the impression that he is

1 facing 15 years to life. As you know, he is also
2 facing the possibility of probation. It just depends
3 on the circumstances.

4 So that is why I have always stayed away
5 from sentences, specific sentences, on anything. I
6 think it always appropriate to say, "You are facing
7 a lot of time," or a long sentence or something like
8 that. But it's always better to stay away from
9 that.

10 Let me also note, Mr. McMahon, as to the
11 motion to include the rest of the statement, I don't
12 think it's necessary to include the rest of the
13 statement of Mr. Page, to put it in the record.

14 As you know, the rule does provide certain
15 occasions where you do, usually for purposes such as
16 clarification or expansion of what is already in the
17 record. But it really wouldn't in this circumstance
18 help to include the entire statement.

19 MR. MCMAHON: Thank you, Your Honor. The
20 State is ready, with one exception. I provided
21 Ms. Mims a copy of the chart I intend to introduce,
22 not by the next witness but the second witness in the
23 afternoon.

24 He was flown in from Philadelphia. He is
25 the custodian of the records of the cell phones. In

1 this particular chart, there are several categories
2 listed. One of those categories listed under
3 "Persons," some of that information under "Persons"
4 has already been testified to. Some of it has not.

5 The cell phone custodian is not the
6 custodian for the information on the person. That
7 would come in through other witnesses. For example,
8 you will see Dustin Johnson up at the top. Dustin
9 Johnson will be a witness and will testify to his
10 cell phone number.

11 THE COURT: Okay.

12 MR. MCMAHON: You will see a location where
13 it says studio and in parenthesis Dre. Dre will
14 testify to the phone number at the studio. I have a
15 custodian available on those other names, with the
16 exception of the fact that Captain Smith called some
17 of those numbers.

18 For example, I think it's [REDACTED], which
19 is the number at Mr. Gillian's great grandparents'
20 residence; and Captain Smith would testify to that.
21 I guess what I'm saying is I will offer those
22 charts.

23 I have informed them I am not going to
24 refer to that information under "Persons" at this
25 time. That will come in through other witnesses if

1 that's appropriate. I don't know if they object or
2 not. I did want to bring that to the Court's
3 attention before I called that witness.

4 THE COURT: Counsel, did you want to
5 address that at all?

6 MR. BUTLER: Do I understand the State
7 plans to move the chart into evidence or use it for
8 demonstrative purposes?

9 MR. MCMAHON: Move it into evidence.

10 MR. BUTLER: We would have an objection to
11 that. That objection would be hearsay. I know, if I
12 understand correctly, the State is saying that
13 different witnesses would testify to different
14 portions of the information contained on the chart.

15 So to the extent that what they say when
16 they testify is not hearsay, I agree; but the chart
17 itself is hearsay. Once the chart is moved into
18 evidence, it's hearsay.

19 You couldn't -- for example, I can't
20 summarize different portions of a witness's testimony
21 on a chart that I like and then move that into
22 evidence.

23 I mean, I can write up on the board for
24 demonstrative purposes, but I can't then ask that
25 selective portions of it be moved into evidence. So

1 we would object to it being moved into evidence as
2 hearsay.

3 MR. MCMAHON: Your Honor, I don't mean to
4 interrupt. Under 803 (6), records of regularly
5 conducted activities are an exception to the hearsay
6 rule.

7 MR. BUTLER: But, Judge, if I understand
8 correctly, there are no records that indicate the
9 name of the person who goes with the phone number.
10 That is coming from live testimony.

11 MR. MCMAHON: I will get the custodian here
12 on that also. Some of that is coming in. I will
13 black that part out, and then I will call another
14 custodian for that. If that's what they want, that's
15 fine. I don't have any problem with that.

16 MR. BUTLER: I think that is sufficient.

17 THE COURT: That will take care of it. Are
18 we ready to bring the jury in? Is the State ready?

19 MS. CAMPBELL: The State is ready, Your
20 Honor.

21 THE COURT: Is the defense ready?

22 MS. MIMS: The defense is ready, Your
23 Honor.

24 THE COURT: Let's bring them in, please.

25 (The jury returns to the courtroom at

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 2:30 p.m.)

2 THE COURT: All parties and attorneys are
3 in the courtroom and all jurors have returned. Call
4 your next witness please.

5 MS. CAMPBELL: The State calls Dr. Jeffrey
6 Welsh.

7 JEFFREY ALLEN WELSH, being
8 first duly sworn, testified as follows:

9 CLERK: Have a seat in the witness box and
10 state your full name for the record.

11 THE WITNESS: Dr. Jeffrey Allen Welsh.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q Dr. Welsh, where are you employed?

15 A Palmetto Richland Memorial Hospital.

16 Q What do you do there?

17 A I'm a pathologist.

18 Q Can you tell this jury as a pathologist what
19 your duties include.

20 A Duties include all diagnostic and laboratory
21 testing involved in the hospital and outlying
22 labs, as well as performing autopsy pathology.

23 Q So you actually perform autopsies in certain
24 cases?

25 A Yes, sir.

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 Q Can you tell this jury a little bit about your
2 educational training.

3 A Yes. I have a degree in chemistry from the
4 College of Charleston. My medical degree is
5 from the Medical University of South Carolina in
6 Charleston. I did five years of training in
7 anatomic and clinical pathology also at the
8 Medical University.

9 I am board certified in anatomic and
10 clinical pathology and was a deputy medical
11 examiner for three years in Charleston and
12 lectured in forensic pathology at the medical
13 school.

14 Q You have been qualified before here in the State
15 of South Carolina as an expert in forensic
16 pathology?

17 A Yes.

18 Q And do you know how many times you have been
19 qualified?

20 A No, many.

21 Q As recently as two weeks ago?

22 A Yes.

23 MS. CAMPBELL: Your Honor, at this time we
24 would offer him as an expert in forensic pathology.

25 THE COURT: Any objection?

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 MR. BUTLER: No, sir.

2 THE COURT: Without objection. Ladies and
3 gentlemen, as I told you earlier regarding an expert
4 witness, this witness will be qualified as an expert.
5 Remember, he is allowed to testify as an expert
6 because of his background, training, qualification,
7 education or experience in a particular area.

8 This area is in the area of forensic
9 pathology. He is allowed to give an opinion. Of
10 course, you are not bound by the opinion of the
11 expert. You decide how much weight and credibility
12 to give to it. Any exception to the charge from the
13 State?

14 MS. CAMPBELL: None, Your Honor.

15 THE COURT: From the defense?

16 MR. BUTLER: No, sir.

17 THE COURT: Go ahead.

18 BY MS. CAMPBELL:

19 Q Doctor, turning your attention back to last
20 January, specifically January 28th, I believe
21 that was a Sunday afternoon, did you perform an
22 autopsy that day?

23 A Yes, I did.

24 Q And who was that on?

25 A Jason Ward.

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 Q And approximately what time did that autopsy
2 commence?

3 A May I refer to my notes?

4 Q Yes, sir.

5 A That was beginning at approximately 1:00 p.m. on
6 the 28th of January.

7 Q As in every case when you first come in contact
8 or first start doing an autopsy, what do you do
9 initially?

10 A In a case like this, we are notified by the
11 Coroner of Richland County. He explains to us
12 the circumstances and orders an autopsy, and
13 then we perform the autopsy.

14 The body is brought to Richland Hospital,
15 usually in a case like this with a police or
16 sheriff's escort. We examine the body in the
17 autopsy room which is in the hospital.

18 We do an internal examination. Photographs
19 are taken. We document all injuries, document
20 everything we feel is appropriate. Evidence is
21 gathered by the police, mainly to do things such
22 as fingerprints if those are needed.

23 We then do, as well as an external
24 examination, an internal examination which
25 involves making an incision into the chest,

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 abdomen and the head and removing vital organs
2 and examining those organs for injury. Our
3 ultimate charge really is to find a cause of
4 death.

5 Q So in a case like this, you would actually
6 remove the internal organs, the brain?

7 A That is correct.

8 Q The internal organs?

9 A Yes.

10 Q And examine them in order to determine cause of
11 death?

12 A Yes. We examine them. The term we use is
13 grossly, which means we look at them in the
14 autopsy room and then examine them
15 microscopically also under the microscope with
16 tissue sections.

17 Q In this case I believe you said first you do an
18 external examination?

19 A That's correct.

20 Q What you are looking for there is any obvious
21 signs of trauma?

22 A Obvious trauma, yes.

23 Q In this case when you did an external
24 examination from the neck down, what, if any,
25 signs of trauma did you find on Jason Ward?

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1 A From the neck down, no trauma.

2 Q But was it obvious to you or to anyone that
3 there was significant trauma to his head area?

4 A Yes. Obviously the decedent had suffered
5 multiple gunshot wounds to the head.

6 Q Specifically on your external examination, what
7 areas of the head did he suffer or did he have
8 wounds that were obvious?

9 A He had a single wound to the back of the head in
10 the right neck area.

11 Q And what part of the neck was that?

12 A I can point on myself, right here in the back
13 (indicating).

14 Q Right back here (indicating)?

15 A Yes, sir, exactly.

16 Q So he had one obvious wound right here
17 (indicating) on his neck)?

18 A That's correct.

19 Q Did you find any other wounds to his head area?

20 A Yes, in the left cheek area.

21 Q So you've got the one wound over here
22 (indicating) and then in the left cheek area?

23 A Yes.

24 Q And what part of his cheek were there wounds?

25 A Again, right where your fingers are.

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 Q Right here (indicating)?

2 A There were several gunshot wounds.

3 Q So it was multiple gunshot wounds to the cheek,
4 and then you've got one gunshot to the back side
5 of the neck?

6 A That's correct. And we had, in addition to the
7 entrance wounds, we had an exit wound also to
8 the right side of the head.

9 Q To the right side of the head?

10 A Yes.

11 Q And what part of the head was that in?

12 A Up in this side (indicating), corresponding with
13 the wounds to the cheek.

14 Q So you had entrance wounds where the bullet
15 entered into the cheek area, and you had at
16 least one exit wound?

17 A That's correct.

18 Q On the corresponding -- the other side of the
19 head?

20 A Yes.

21 Q But there were no exit wounds that corresponded
22 with the neck wound?

23 A No. The neck wound was traced and the bullet
24 recovered.

25 Q Once you had made your observations externally,

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 did you notice other wounds to the head area?

2 A Some bruising and what we call curvilinear or
3 small little abrasions to the top of the head.
4 We mentioned that, as it looked like possibly he
5 had been beaten or somehow had trauma to the top
6 of the head.

7 And with the little patterns, the little
8 curved lines, we mentioned as a possibility that
9 he had been beaten with some sort of weapon,
10 object or possibly a gun of some sort.

11 Q When you say certain little curved lines?

12 A Yes.

13 Q And this was to the top of his head?

14 A Yes.

15 Q There would be lines coming in that way
16 (indicating)?

17 A Exactly, yes, curved lines.

18 Q Again, those would be consistent with someone
19 having beaten him on the top of the head?

20 A That's true.

21 Q And would it also be consistent with someone
22 having beaten him with the butt of a gun?

23 A That's possible, yes. It was consistent with
24 that.

25 Q Do you know specifically exactly how many of

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 those indentations there were?

2 A Not documented per se. We just saw them and
3 photographed them, but I don't know exactly how
4 many.

5 Q So we have got the wound to the cheek, we've got
6 the wound to the back of the neck, we've got the
7 exit wound to the side of the head, and you've
8 got some bruising?

9 A Yes.

10 Q And linear indentations in the top of the head?

11 A Yes.

12 Q Once you noted and documented the outer, were
13 you able to do an internal examination to
14 further clarify your findings?

15 A Yes, we did. We routinely do a Y-shape incision
16 of the chest and the abdomen and remove and
17 examine those organs. In this case particularly
18 we also have to remove the brain and do an
19 incision in the back of the skull. We take the
20 brain out, and we examine it for signs of
21 trauma.

22 We do that for several reasons, to document
23 injuries and also to recover the bullets. As I
24 mentioned, in this case we recovered all but one
25 that corresponded with an exit wound. We

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1 documented the extensive cerebral damage.

2 Q Were you able to determine from your examination
3 how many bullet wounds were actually to the
4 cheek area?

5 A Yes, we did. To the cheek area, it looks like
6 wounds number two, three, and four.

7 Q So you have got four entrance wounds?

8 A Yes, a total of four -- two, three, four, and
9 five -- entrance wounds in the cheek.

10 Q And then you also noted that there was an
11 entrance wound to the back of the neck. How
12 many bullets entered that wound?

13 A One.

14 Q Entrance?

15 A Yes.

16 Q And then on the top of the head you had the
17 bruising?

18 A The bruising.

19 Q And the linear indentations?

20 A Yes.

21 Q And you were able to recover how many bullets?

22 A Four bullets.

23 Q Again, you had one exit wound?

24 A We had one exit wound, yes.

25 Q So, in other words, Doctor, one of the bullets

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1 that entered into the cheek area actually exited
2 out of the skull?

3 A That's correct.

4 Q But the other four, including the one from the
5 neck, were actually trapped within the limits of
6 the skull?

7 A That's correct. We recovered the gunshot wound
8 to the back of the neck. That bullet was in a
9 different place. It was in the left temple
10 area. So that one actually traveled --

11 Q So that bullet was actually recovered from this
12 area (indicating)?

13 A Yes, that's correct.

14 Q And that would have been the one that entered
15 over here (indicating)?

16 A Exactly.

17 Q Okay.

18 A The other bullets traveled in the opposite
19 direction from the left cheek to the right side.
20 They traveled upward and backward and to the
21 right.

22 We recovered them inside the skull in this
23 area (indicating) of the head, with the
24 exception of one area where there was an obvious
25 exit wound. Of course, that bullet we did not

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 recover.

2 Q In observing the four entrance wounds to the
3 cheek, was there any significance in the pattern
4 of those bullets paths?

5 A The significance being that they were so close
6 together, almost overlapping in some cases.

7 Q Would that be consistent with someone who might
8 not have been moving at the time?

9 A Would not have been moving very much.

10 Q Would not have been moving?

11 A No.

12 Q Doctor, did you make any other observations
13 about the area of the skin around the entrance
14 wounds you observed in both areas?

15 A Yes. Besides the actual wounds, we had areas of
16 stippling -- we call that powder stippling --
17 which is from gun powder coming out of the gun.
18 As the bullet leaves a gun, it goes out with
19 explosive gases and with powder out of the
20 barrel where the bullet goes out of it.

21 If the gunshot wounds are close enough to
22 the victim, that powder will burn the skin,
23 almost in a nice peppering. They call it
24 powder peppering or powder stippling around
25 the wound. So we can get an idea -- we know

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1 from that that it was a close gunshot wound.

2 Q You say close gunshot wound. I have heard the
3 word contact wound before. Would these have
4 been considered contact wounds?

5 A No. A contact wound is when the gun is up
6 against the skin.

7 Q Actually touching the skin?

8 A Touching the skin. Those gases and powders go
9 into the skin. It causes a different type of
10 wound. It's causes a stellate or star-shaped
11 wound because those gasses explode the tissue.

12 When the gun is back farther but close
13 enough that that powder comes out, it just
14 burns the skin in a round pattern around the
15 wounds.

16 Q And that's what you observed both on the neck
17 area in this case?

18 A That's correct.

19 Q As well as the wounds on the cheek?

20 A That's correct. We measured that and get an
21 idea. That was about a four centimeter in
22 diameter area on the neck and a little bit
23 bigger on the cheek, about six inches on the
24 cheek.

25 Q Six inches on the cheek?

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1 A Yes.

2 Q And four inches on the part?

3 A Yes.

4 Q And, Doctor, approximately how far away would
5 the gun have been held when it was fired to
6 cause that kind of stippling? I know you have
7 to be approximate.

8 A It will be approximate. To be absolutely sure,
9 it's a ballistic measurement. You need to look
10 at the gun individually. They can be
11 individual. You are talking about a foot to two
12 feet, somewhere in there.

13 Q A foot to two feet?

14 A Yes, it's close.

15 Q It's close?

16 A Yes, it's close or the powder wouldn't reach the
17 skin basically.

18 Q So both of these shots, the one to the neck, as
19 well as the ones to the face, were about
20 12 inches to two feet?

21 A Yes.

22 Q And would be considered close?

23 A Yes.

24 Q Doctor, once someone is shot, even at close
25 range like that with a gun, are they

DR. JEFFREY WELSH -DIRECT- BY MS. CAMPBELL

1 necessarily, say, standing above someone
2 shooting down at them, are they necessarily
3 going to get blood on themselves when they are
4 shooting?

5 A They don't have to, no.

6 Q And in this case there were also some toxicology
7 tests done?

8 A Yes, they are routinely done on blood and urine
9 on a victim.

10 Q And in this case it was done for alcohol, as
11 well as the presence of drugs?

12 A Yes.

13 Q And it came back on the alcohol positive?

14 A Alcohol was positive in the blood and the urine,
15 I believe.

16 Q But the drug tests were negative?

17 A Yes, drugs were negative.

18 Q You say it was positive. What percentage was it
19 on the blood?

20 A As I recall, I believe it was below what we
21 consider the limit of intoxication for like a
22 D.U.I. It was .09, not quite .1.

23 Q Finally, you mentioned that you had the bullets
24 that were recovered corresponding with the face
25 wounds that were coming from this area

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1 (indicating), those three bullets, as well as
2 the one in the left temple area. You recovered
3 those and turned those over?

4 A Yes.

5 Q I show you what has been marked as State's
6 Exhibit's 12 through 15. Would these have been
7 the projectiles you turned over to the
8 authorities?

9 A Yes, I turned those over. They are labeled by
10 our markings here.

11 Q Those are your markings actually on them?

12 A Yes.

13 MS. CAMPBELL: Beg the Court's indulgence.

14 (Pause.)

15 BY MS. CAMPBELL:

16 Q Doctor, finally, when you fire a gun -- I should
17 have done this both ways. When you are firing
18 at someone, you may or may not get blood on you.
19 It just depends on the individual case?

20 A Sure, it's a variable situation.

21 MS. CAMPBELL: That's all I have.

22 THE COURT: Cross.

23 CROSS EXAMINATION

24 BY MR. BUTLER:

25 Q Good afternoon, Doctor.

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1 A Good afternoon.

2 Q How are you today?

3 A Good.

4 Q Thank you. Let me ask you just a few questions
5 about the stippling that you talked about.

6 A Yes.

7 Q If I understand it, stippling occurs because the
8 gasses and the powder, when the gun discharges,
9 they come out of the barrel of the gun, and they
10 are still hot?

11 A Yes, that's correct.

12 Q They're on fire?

13 A Yes.

14 Q And at some point they cool off when they get
15 into the air?

16 A Yes.

17 Q But they will travel a foot to two feet, and
18 they'll still be on fire more or less?

19 A Yeah, exactly. They travel variable distances,
20 just as a specific thing for the gun.

21 Q So you could have a gunshot wound with no
22 stippling, and one explanation could be it's
23 because the bullet had to travel such a distance
24 that at that time the powder and other gasses
25 were no longer hot such that they would burn and

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1 tattoo the skin?

2 A I'm sure that's possible. It's very likely,
3 too, that the powder doesn't come out a great
4 distance. That's another issue.

5 Q So you could tell by the presence of stippling
6 that more or less the gun was a foot to two feet
7 away in this case?

8 A Yes, that's approximate.

9 Q And with the five wounds, any one of them would
10 have been sufficient to put a person -- to
11 incapacitate a person?

12 A That's correct.

13 Q Put the person on the ground?

14 A Yes.

15 Q Would you go so far as to say that any one of
16 them would have been fatal in and of itself?

17 A I think you could say that, yes.

18 Q So it's safe to say that after the first shot,
19 this person was on the ground?

20 A Yes.

21 Q And these are traumatic injuries?

22 A Yes.

23 Q And by trauma we mean they cause a lot of
24 physical damage to the tissue and bone and other
25 parts of the body?

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- 1 A Yes.
- 2 Q Ms. Campbell asked you about blood spatter.
- 3 With injuries like this, it's not just that an
- 4 injury is created and blood just leaks out. The
- 5 blood is going to spatter?
- 6 A Yes. It can come out of the wound, certainly.
- 7 Q And blood can spatter with traumatic injuries
- 8 like this distances of several inches, if not
- 9 feet?
- 10 A Yes.
- 11 Q Would you say that with injuries like this,
- 12 blood could travel a matter of feet?
- 13 A I think that it's very possible. I think it
- 14 usually is a little more limited, and again it's
- 15 real variable.
- 16 Q What would you think the range would be with
- 17 injuries as traumatic as these?
- 18 A Well, it truly would just be a guess, but I
- 19 think it could easily go inches. I would just
- 20 assume it would go -- it could splatter several
- 21 inches, could be a foot.
- 22 Q Inches to a foot?
- 23 A I think that's reasonable.
- 24 Q And, of course, the subsequent gunshots would
- 25 have been once the person was on the ground; and

DR. JEFFREY WELSH -CROSS- BY MR. BUTLER

1 if they are close range, the person is close;
2 and the person firing the gun is also at close
3 range?

4 A I think that is likely, yes.

5 Q I want to ask you about some of your findings in
6 your autopsy report. Do you have that with you?

7 A Yes.

8 Q Page 1, the section dealing with external
9 examination, the last couple of sentences. I
10 want to talk to you if I could about lividity
11 and rigor mortis?

12 A Okay.

13 Q You noted that you had detected blanchable
14 lividity?

15 A Yes.

16 Q Explain to the jury if you could, please, what
17 that is.

18 A Well, after death the blood tends to pool and
19 eventually come out of the vessels. Lividity is
20 the term for that or rigor mortis as it is
21 sometimes called. It is a staying of the skin
22 by the blood.

23 The significance of blanchable lividity
24 means that at the time of autopsy, we saw this
25 red discoloration. It's usually in the

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1 dependent areas.

2 If a body, for example, is lying on its
3 back, it would be all along the back. When I
4 say blanchable, I mean that I could go and put
5 my finger there and I can pull it back.

6 It's white because that hasn't fixed yet.
7 It hasn't fixed. There is a time frame at
8 which point you wouldn't be able to move that
9 anymore.

10 Q At what point does lividity become fixed?

11 A Well, about twelve hours it is marked. Then
12 anywhere after that it becomes fixed, but
13 usually that's a pretty good cutoff. That,
14 again, is very dependent on a lot of things.

15 Q Sure, sure.

16 A Temperature being one and several other things.

17 Q At what point does lividity become apparent
18 after death?

19 A It can be apparent relatively quickly, but
20 certainly by two hours it's pretty easily seen.

21 Q So, if it's not yet fixed but it's apparent,
22 then you could estimate the time of death in
23 between two and twelve hours, more or less --

24 A More or less.

25 Q -- depending on some other variables?

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1 A Yes.

2 Q And you also noted earlier rigidity. What is
3 rigidity?

4 A Likewise, after death people tend to stiffen up.
5 It's basically -- a good way to explain it, just
6 like massive exercise where you have tissue
7 damage and you feel stiff, you have a stiffening
8 based on the breakdown of tissues.

9 The rigidity is simply just a reflection of
10 that. The fact is actually the body becomes
11 stiff to a certain point about 24 hours or so,
12 and then that's lost; but it's a reflection of,
13 very loosely, times of death.

14 Q And at what point does rigidity start to set in?
15 At what point do you notice rigidity?

16 A That also would be in, say, four or five hours
17 to set in.

18 Q And what do you mean by early rigidity?

19 A Well, early means -- basically that is a
20 subjective term in a way. We come up with that
21 based on the different parts of the body. It
22 comes at different points in different muscles
23 based on the size of those muscles.

24 Early rigidity means that we can still
25 basically move the appendages around and the

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1 fingers and move things around. It's not fixed
2 completely and strong where we can't move an
3 arm, which might be more like 12, 18, 20 hours
4 or so.

5 Q So you would start to detect early rigidity
6 after how long?

7 A Again, just a couple of hours; two, three, four
8 hours.

9 Q In that same paragraph in the sentence before
10 starting, "Ecchymosis."

11 A Yes.

12 Q "Ecchymosis suggestive of needle marks present
13 in the -- some things I can't pronounce.

14 A Yes. That's antecubital fossa. That, again, is
15 just an area of where people normally would take
16 a shot. We saw those. We don't know at the
17 time if those are resuscitative or other use.

18 But I had commented on those, ecchymosis
19 suggestive of needle marks in the right
20 antecubital fossa, which is right in here
21 (indicating); and then on the dorsal medial
22 aspect of both hands, dorsal being this part
23 (indicating) of the hand and medial in this area
24 (indicating).

25 Q And you go on to say, "No offensive or defensive

DR. JEFFREY WELSH -CROSS- BY MR. BUTLER

1 wounds to the hands." What are offensive
2 wounds?

3 A Offensive wound, we use that term when we look
4 at the hands routinely to see if we had evidence
5 of offense, being where someone hit something or
6 somebody and had bruising around the knuckles.

7 Defensive wounds might be blocking a punch
8 or blocking a knife or a bullet or anything
9 where you might see wounds that are pretty
10 remarkable in the soft tissues and hands. An
11 offensive wound might be bruising from like a
12 punch.

13 Q Striking somebody?

14 A Yes, exactly.

15 Q And you saw no evidence of that?

16 A No.

17 MR. BUTLER: Beg the Court's indulgence one
18 moment.

19 (Pause.)

20 MR. BUTLER: That's all I have, Doctor.

21 THE COURT: Any redirect?

22 MS. CAMPBELL: No, sir. May he be excused?

23 THE COURT: You can step down, and you are
24 free to go, Doctor.

25 THE WITNESS: Thank you, Your Honor.

DAVID IDE -DIRECT- BY MR. MCMAHON

1 MR. MCMAHON: Your Honor, the State calls
2 David Ide.

3 DAVID IDE, SR., being first
4 duly sworn, testified as follows:

5 CLERK: Have a seat in the witness box and
6 state your full name for the record.

7 THE WITNESS: My name is David Ide, Sr.

8 THE COURT: What is the last name?

9 THE WITNESS: I-D-E.

10 DIRECT EXAMINATION

11 BY MR. MCMAHON:

12 Q Sir, I will ask you to speak up so that all the
13 members of the jury can hear you; okay?

14 A Yes.

15 Q Mr. Ide, where are you from?

16 A Irwin, Pennsylvania.

17 Q And where do you live now?

18 A I live right now in Philadelphia, Pennsylvania.

19 Q When did you arrive in Columbia?

20 A I arrived about 9:00 a.m. this morning.

21 Q And you are here under subpoena; is that
22 correct?

23 A Yes, that's correct.

24 Q What is your occupation?

25 A I'm a business security analyst for Tryton

DAVID IDE -DIRECT- BY MR. MCMAHON

1 P.C.S. We do business as SunCom.

2 Q Now, are you the custodian of certain records of
3 SunCom?

4 A Yes, that's correct.

5 Q You are designated as such?

6 A Yes.

7 Q And are you called and subpoenaed to testify at
8 various locations to records normally held in
9 y'all's business activity with SunCom?

10 A Yes, that's correct.

11 Q What type of business is SunCom?

12 A It's a cellular phone company.

13 Q As a result of your occupation and y'all's
14 position in SunCom, did y'all receive from the
15 Richland County Sheriff's Department a search
16 warrant back at the end of January of 2001 for
17 certain documents concerning a particular cell
18 number with SunCom?

19 A Yes, that's correct.

20 Q And let me ask you, cell number [REDACTED],
21 was that a cell number of SunCom?

22 A Yes, that is.

23 Q As part of your records, could you tell us who
24 is the subscriber? Whose phone was that?

25 A It's Steve Gillian.

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 Q Do you have records that reflect that?
- 2 A Yes, I do.
- 3 Q Could you show those to me, please.
- 4 A (Witness complies.)
- 5 Q And where would I see on here, Mr. Ide, the
- 6 information of the phone number?
- 7 A The second page here, right there (indicating).
- 8 Q That's the number I asked you about there,
- 9 [REDACTED] ?
- 10 A That's correct.
- 11 Q And where does it show on here the name of the
- 12 subscriber?
- 13 A Right here (indicating).
- 14 Q And what name is that?
- 15 A Steve Gillian.
- 16 Q Does it show an address, a street number, and
- 17 town?
- 18 A Yes, it does.
- 19 Q What is that?
- 20 A [REDACTED] [REDACTED] [REDACTED], Columbia, South Carolina.
- 21 MR. MCMAHON: Your Honor, I would offer
- 22 these two documents into evidence.
- 23 MR. BUTLER: Without objection.
- 24 (State's Exhibit Number 42, subscriber
- 25 records, is received into evidence.)

DAVID IDE -DIRECT- BY MR. MCMAHON

1 BY MR. MCMAHON:

2 Q Looking at State's 42, would you highlight on
3 page 2 that cell number.

4 A (Witness complies.)

5 Q And could you highlight the subscriber's name.

6 A (Witness complies.)

7 MR. MCMAHON: Your Honor, may I publish
8 this to the jury?

9 THE COURT: Yes, sir.

10 BY MR. MCMAHON:

11 Q Now, in addition to the cell phone number and
12 the subscriber information, do y'all maintain
13 other records in the normal course of your
14 business as to phone calls made from or phone
15 calls made to that number?

16 A Yeah, exactly, yes.

17 Q And was that part of the information requested
18 by the search warrant that was faxed to y'all by
19 the Richland County Sheriff's Department?

20 A Yes, that's correct.

21 Q And in compliance with that search warrant, did
22 you pull up and maintain outgoing and ingoing
23 records for a period including the 27th and the
24 28th of January of 2001?

25 A Yes, that's correct.

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 Q And you have those records with you today?
- 2 A Yes.
- 3 Q Are these part of those records?
- 4 A Yes, that's correct.
- 5 Q Additionally, there is another form that you
- 6 were attempting to hand me; correct?
- 7 A Yes.
- 8 Q Now, you reviewed those records before you came
- 9 into court today; is that correct?
- 10 A That's correct.
- 11 Q And did you also review these charts that I am
- 12 showing you now? And do they accurately reflect
- 13 all the incoming and outgoing phone calls that
- 14 were recorded on the cell number of Steve
- 15 Gillian on the 27th of January of 2001?
- 16 A Yes, that's correct.
- 17 Q You have checked those, and there were 19 total;
- 18 correct?
- 19 A Yes, on the 27th.
- 20 Q Did you also check and see that it reflects
- 21 phone numbers outbound and incoming between
- 22 midnight on the 27th and 28th up through
- 23 9:30 a.m. on the 28th; is that correct?
- 24 A Yes, that's correct.
- 25 Q All of these are records normally held in your

DAVID IDE -DIRECT- BY MR. MCMAHON

1 business?

2 A That's correct.

3 Q Additionally, when a person uses a SunCom cell
4 phone, is there just one tower?

5 A No, there's multiple towers.

6 Q And what tower does the phone pick up?

7 A Depending on where they are located, it will
8 depend on what the tower is they are going to
9 pick up.

10 Q Is it fair to say it picks up the closest tower?

11 A Yes, that's correct.

12 Q Does your information include the switch and the
13 cell, the tower number, and the location that
14 the call is made from?

15 A Yes, that's correct.

16 Q That's an outbound call?

17 A Yes.

18 Q What about an inbound call?

19 A Inbound calls would just state incoming call.
20 It will not give you the number from where the
21 call is coming from; but it does tell you the
22 location also, the same as the outbound call.

23 Q Does it tell you the location the call is coming
24 from or does it tell you the location the cell
25 phone is picking up at?

DAVID IDE -DIRECT- BY MR. MCMAHON

1 A Where you are receiving the call at, yes.

2 Q So depending on where the cell phone is at at
3 the time, correct?

4 A Exactly, correct.

5 Q And tell me -- perhaps it is still going around.
6 That phone number was [REDACTED], I believe you
7 said?

8 A Yes.

9 Q Area code 803?

10 A That's correct.

11 Q I want to show you one more chart and ask you if
12 this reflects the cell cite numbers and the
13 addresses and locations of those cell sites.

14 A That's correct, yes.

15 Q Are the cell sites on the phone calls made on
16 the 27th and 28th reflected on these charts?

17 A Yes, that's correct.

18 Q All the phone numbers made on the 28th are not
19 reflected on this chart, correct?

20 A Not all of them, no.

21 Q But all of them are made between midnight and
22 9:30 in the morning are reflected on this chart?

23 A That's correct.

24 MR. MCMAHON: Your Honor, I offer these
25 four charts into evidence at this time.

DAVID IDE -DIRECT- BY MR. MCMAHON

1 THE COURT: Any objection?

2 MR. BUTLER: Beg the Court's indulgence one
3 moment.

4 (Attorneys confer.)

5 MR. BUTLER: Without objection.

6 THE COURT: Thank you, sir.

7 (State's Exhibit Number 43, chart of cell
8 phone records of 1/27/01; Number 44, page 2 of phone
9 records; Number 45, telephone chart; and Number 46,
10 chart of cell cite locations, are received into
11 evidence.)

12 THE COURT: If anyone has a cell phone or
13 pager or beeper in the courtroom, dispose of it,
14 please. The Supreme Court has ruled that there are
15 to be no cell phones, pagers or beepers in the
16 courtroom. We are ordered by the Chief Justice to
17 take them away if they go off. So if you have one,
18 shut it down.

19 BY MR. MCMAHON:

20 Q Do you have a copy of this chart up there with
21 you?

22 A Yes, I do.

23 Q So perhaps me and the jury could follow along, I
24 am picking up the first page of January the
25 27th. I am picking up the first page of

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 January 27th. It's now marked State's Exhibit
2 Number 43. As I say, all of these records are
3 records normally held in your business; correct?
- 4 A That's correct.
- 5 Q And the 27th, this will reflect all the cell
6 phone record calls that were made from that cell
7 phone number on January the 27th?
- 8 A That's correct.
- 9 Q So let's start at the time 0:29. That's a.m.,
10 shortly after midnight. There is an incoming
11 call?
- 12 A That's correct.
- 13 Q And there is a number in parentheses one. What
14 does that mean?
- 15 A That means the incoming call is for one minute.
- 16 Q And how does that work? Like if I talk for 59
17 seconds, it is a minute?
- 18 A If it's under a minute, it will round up to the
19 minute.
- 20 Q And if it's over a minute, it will round up to
21 two minutes?
- 22 A Right.
- 23 Q That's how we pay for our minutes, correct? It
24 always rounds up, not round down?
- 25 A Correct.

DAVID IDE -DIRECT- BY MR. MCMAHON

1 Q So y'all's record will not have the number that
2 came from? You did not have those?

3 A No, we do not.

4 Q Now, C.290, what does C.290 represent?

5 A C.290 is the cell site, meaning that is the cell
6 site on which the incoming call was picked up
7 on.

8 Q And we went and organized State's Number 46, the
9 various cell sites; correct?

10 A That's correct.

11 Q I now have them incorporated on each of one of
12 these. But if I look here (indicating), C.290,
13 what location is that cell at, that tower?

14 A 1633 Lake Murray Boulevard, Columbia, South
15 Carolina. That's in Richland County.

16 Q And you have incorporated -- that information is
17 incorporated on each one of the State's
18 Exhibits, this one being State's 43; is that
19 correct?

20 A That's correct.

21 Q Next at 01:03 a.m., is that an incoming or
22 outgoing call?

23 A That is an outbound phone call.

24 Q What phone number?

25 A [REDACTED].

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 Q Tell me the number again.
- 2 A Area code [REDACTED].
- 3 Q That would mean that [REDACTED], that cell phone,
- 4 called [REDACTED]?
- 5 A That's correct.
- 6 Q At what time?
- 7 A 1:03 a.m.
- 8 Q Again, does that give you the cell or tower
- 9 location?
- 10 A Yes, it does.
- 11 Q Where was that?
- 12 A The call was placed from -- it hit the cell site
- 13 on 296 Harbison Boulevard in Columbia, South
- 14 Carolina, Richland County.
- 15 Q Have you ever been to Columbia before?
- 16 A No, this is the first time.
- 17 Q So you don't know where either Lake Murray
- 18 Boulevard nor Harbison Boulevard are at; is that
- 19 correct?
- 20 A No, I do not.
- 21 Q When the cell is used, will it search for the
- 22 closest and hit the closest tower?
- 23 A Yes, it will.
- 24 Q So at 0:29 the phone would have been closest to
- 25 the Lake Murray Boulevard tower?

DAVID IDE -DIRECT- BY MR. MCMAHON

1 A That's correct.

2 Q And at 1:03 the phone would have been closest to
3 the Harbison Boulevard tower?

4 A That's correct.

5 Q It would not have been at the same location both
6 times?

7 A No.

8 Q Of course again, that has got one minute?

9 A That's correct.

10 Q That is going to be consistent on throughout in
11 parentheses, the timing of the calls; is that
12 right?

13 A That's correct.

14 Q Now, that looks like all the a.m. hours of
15 Saturday, January 27th. Then we go to p.m.
16 Again, is there an outbound call, 15:54?

17 A Yes.

18 Q To what number?

19 A [REDACTED].

20 Q For what length of time?

21 A For one minute.

22 Q And what tower?

23 A It was picked up at 147 Drafts Woods Road,
24 Lexington, South Carolina in Lexington County.

25 Q About two hours later, 17:54, is there a call?

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 A Yes, there is.
- 2 Q Outbound?
- 3 A Outbound.
- 4 Q To what number?
- 5 A [REDACTED].
- 6 Q So this same number up here (indicating), that
- 7 is the second call to this [REDACTED]; correct?
- 8 A That's correct.
- 9 Q And your company doesn't keep subscriber
- 10 information for other people's numbers?
- 11 A No, it does not.
- 12 Q I would have to ask somebody else that?
- 13 A Only if it was SunCom number would we have that
- 14 information.
- 15 Q How long is this call, Mr. Ide?
- 16 A It's two minutes.
- 17 Q And does it indicate the cell tower?
- 18 A Yes. It's [REDACTED] [REDACTED] [REDACTED] [REDACTED], Irmo,
- 19 South Carolina in Richland County.
- 20 Q And it appears that 6,7, 8 minutes later, there
- 21 is an outbound call to [REDACTED]?
- 22 A That's correct.
- 23 Q Three minutes?
- 24 A Correct.
- 25 Q It looks like my chart is misspelled. Instead

DAVID IDE -DIRECT- BY MR. MCMAHON

1 of Marina Road, I have inverted the A. and the
2 N. to Marion Road; but that appears to be the
3 same cell tower number?
4 A Yes, it's Marina road.
5 Q 18:38, is there an outbound call?
6 A Yes, there is.
7 Q What number?
8 A [REDACTED].
9 Q [REDACTED]. And what is the length of that call?
10 A One minute.
11 Q I want to back up to [REDACTED]. What is that number
12 that was called, [REDACTED]
13 A [REDACTED]
14 Q Now, 19:27, ingoing or outbound?
15 A Incoming phone call.
16 Q And you would have no information; however, you
17 do have the cell number?
18 A Yes, I do.
19 Q What is the cell number and location?
20 A The cell site number is C.211 located at 2108
21 North Lake Drive, Columbia, South Carolina,
22 Lexington County.
23 Q And, again, that means that would be the area
24 where --
25 A The incoming call.

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 Q -- where the [REDACTED] cell phone was at?
- 2 A Exactly, correct.
- 3 Q At 19:50 p.m., is there an outbound call?
- 4 A Yes.
- 5 Q This is all military time. This is what 7:50 at
- 6 night?
- 7 A Yes.
- 8 Q Ten minutes to eight?
- 9 A Yes.
- 10 Q What number is that to?
- 11 A [REDACTED].
- 12 Q And there appears to be a succession of calls to
- 13 that number?
- 14 A That's correct.
- 15 Q 19:50, 19:56 and 20:00 hours, 8:00 p.m.?
- 16 A Yes, that's correct.
- 17 Q Five minutes, zero minutes, one minute?
- 18 A Yes.
- 19 Q All appear to be on the same cell tower?
- 20 A That's correct.
- 21 Q Now, 20:19, is there an outbound call at that
- 22 time?
- 23 A Yes, there is.
- 24 Q To what number?
- 25 A [REDACTED].

DAVID IDE -DIRECT- BY MR. MCMAHON

1 Q [REDACTED]?

2 A [REDACTED].

3 Q Is that the same as that number there
4 (indicating) if you can read my writing?

5 A Yes, it is.

6 Q [REDACTED]?

7 A Yes.

8 Q And if you can read my writing, that looks like
9 Austin's cell phone?

10 A Yes, that's what it says.

11 Q That would be at what time and what night?

12 A That would be on the 27th at 8:19 p.m.

13 Q Now, ten minutes later what is that call?

14 A It's an incoming call.

15 Q And it is -- it looks like the cell tower has
16 changed.

17 A Yes, that's correct.

18 Q It changes from the three calls to the [REDACTED] to
19 three calls to [REDACTED], Austin's cell phone. Then
20 you've got an incoming Harbison Boulevard cell,
21 [REDACTED]?

22 A That's correct.

23 Q Now, there are other calls on the 27th; correct?

24 A Yes, that's correct.

25 Q And this being the continuation of the calls on

DAVID IDE -DIRECT- BY MR. MCMAHON

1 the 27th?

2 A That's correct.

3 Q At 20:57 is there a call?

4 A Yes, there is.

5 Q To what number?

6 A [REDACTED].

7 Q [REDACTED]?

8 A [REDACTED].

9 Q And for what duration?

10 A Four minutes.

11 Q What cell tower?

12 A C.293, which is located at 296 Harbison

13 Boulevard, Columbia, South Carolina, Richland

14 County.

15 Q Let me just check back and see. That's the same

16 cell tower the incoming call --

17 A Yes.

18 Q -- the last one came from, correct?

19 A Yes, that's correct.

20 Q 20:16, is there an outbound call?

21 A 21:16, yes, there was one.

22 Q And where is that to?

23 A [REDACTED].

24 Q What period of time?

25 A Three minutes long.

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 Q What cell?
- 2 A C.293, 296 Harbison Boulevard, Columbia, South
- 3 Carolina, Richland County.
- 4 Q And then there is one at 21:19?
- 5 A That's correct.
- 6 Q Again, to the [REDACTED] number?
- 7 A That's correct.
- 8 Q One minute?
- 9 A Correct.
- 10 Q Same cell, [REDACTED]?
- 11 A Yes, that's correct.
- 12 Q So there were four calls to [REDACTED]?
- 13 A Yes, that's correct.
- 14 Q Now, 21:26, is there an outbound phone call?
- 15 A Yes, there is.
- 16 Q And to what number?
- 17 A [REDACTED].
- 18 Q [REDACTED]?
- 19 A [REDACTED].
- 20 Q [REDACTED]. For what length of time was that call?
- 21 A Four minutes.
- 22 Q Four minutes. Is that the same number,
- 23 [REDACTED]?
- 24 A That's correct.
- 25 Q Can you read my writing under that?

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 A Yes, I can.
- 2 Q What does it say?
- 3 A Richie's cell phone.
- 4 Q Richie's cell phone. That would be here
5 (indicating) at 9:37, 21:37 incoming?
- 6 A Yes, that's correct.
- 7 Q What period of time?
- 8 A Three minutes long.
- 9 Q And the cells change; is that correct?
- 10 A That's correct.
- 11 Q In fact, in the last three numbers, the cell
12 phone location has changed?
- 13 A Yes, that's correct.
- 14 Q It's gone from Harbison Boulevard, Western Lane,
15 Lake Murray Boulevard; correct?
- 16 A That's correct.
- 17 Q Now, 21:51, is there an outbound call?
- 18 A Yes.
- 19 Q What number?
- 20 A [REDACTED].
- 21 Q That's the second call?
- 22 A Yes.
- 23 Q To that number, Richie's cell phone?
- 24 A Yes.
- 25 Q What is the cell number at then?

DAVID IDE -DIRECT- BY MR. MCMAHON

1 A It's at 1256 Crooked Creek Road in Chapin
2 (phonetic), South Carolina in Lexington County.

3 Q If I told you that was Chapin, you wouldn't
4 argue with me being from Philadelphia; would
5 you?

6 A No.

7 Q That would be the cell tower that was hitting
8 then up there around Chapin?

9 A That's correct.

10 Q Is there another call up in that area at 23:03?

11 A Yes, incoming.

12 Q An incoming call?

13 A Yes, that's correct.

14 Q Two minutes?

15 A Yes.

16 Q What cell tower is it hitting?

17 A 1256 Crooked Creek Road, Chapin, South Carolina
18 in Lexington County.

19 Q How close, about what radius tell us, do you
20 have to be to the cell tower?

21 A Probably two miles, a couple of miles.

22 Q That obviously doesn't mean you are at the
23 tower?

24 A Yes.

25 Q But you are in the area of that particular

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 tower?
- 2 A Yes.
- 3 Q Let's go to Sunday the 28th. I am now referring
4 to State's Exhibit Number 45. Do you have that
5 chart?
- 6 A Yes.
- 7 Q If I go to the last cell tower this phone hit on
8 11:03 p.m., 23:03 p.m. on that Saturday night,
9 it hit the tower in Chapin; correct?
- 10 A Yes.
- 11 Q According to your record, what is the next tower
12 that that cell phone hits?
- 13 A 296 Harbison Boulevard, Columbia, South Carolina
14 in Richland County.
- 15 Q And what phone number?
- 16 A [REDACTED].
- 17 Q That would be the third one to [REDACTED],
18 correct?
- 19 A Yes, that's correct.
- 20 Q And, again, for one minute?
- 21 A Yes.
- 22 Q Now, this is after midnight Saturday night,
23 Sunday morning?
- 24 A That's correct.
- 25 Q Is there a cell phone call at 20 minutes after

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 midnight on the 28th?
- 2 A There is an incoming phone call.
- 3 Q You don't know where that came from?
- 4 A No, I do not.
- 5 Q What cell?
- 6 A Cell C.211 at 2108 North Lake Drive, Columbia,
7 South Carolina, Lexington County.
- 8 Q And it looks like -- correct me if I'm wrong --
9 from the 0:20 a.m. call, Mr. Ide, until
10 the 6:01 a.m. call that cell phone is always
11 hitting that same tower, C.211, C.211; is that
12 correct?
- 13 A Yes, that's correct.
- 14 Q That's one, two, three, four, five, six, seven,
15 eight times it hits that C.211?
- 16 A That's correct.
- 17 Q What is the earliest time it hits that C.211?
- 18 A 12:20 a.m.
- 19 Q What is the time of the latest time it hits that
20 C.211?
- 21 A 6:01 a.m.
- 22 Q Incoming call at 1:26 a.m.?
- 23 A Yes, that's correct.
- 24 Q Incoming call at 1:28 a.m.?
- 25 A Yes.

DAVID IDE -DIRECT- BY MR. MCMAHON

1 Q Then there is a call at 1:33 a.m. That's
2 outbound?
3 A Yes, that's correct.
4 Q What number?
5 A ([REDACTED]).
6 Q How long is that call?
7 A One minute.
8 Q And what number is that?
9 A [REDACTED].
10 Q Can you read my writing under there?
11 A Clint slash Wendy.
12 Q That's that same phone number?
13 A Yes, that's correct.
14 Q And what time is that call?
15 A 1:33 a.m.
16 Q And two minutes later there appears to be an
17 incoming call for two minutes?
18 A That's correct.
19 Q Same cell tower?
20 A Correct.
21 Q Then at 2:07 a.m. an outbound call?
22 A Yes.
23 Q To what number?
24 A [REDACTED].
25 Q At 4:54 a.m. is there an incoming call?

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 A Correct.
- 2 Q An incoming call. Is that incoming call on the
3 same cell tower as the outgoing call was to
4 Clint and Wendy's?
- 5 A Yes, correct.
- 6 Q Then there is a call at 6:01 a.m. outgoing?
- 7 A Correct.
- 8 Q To what number?
- 9 A [REDACTED].
- 10 Q Is there a call between six and seven a.m.?
- 11 A No, there is not.
- 12 Q Is there a call around 6:30 a.m.?
- 13 A No, there is not.
- 14 Q Is there a call between seven and eight a.m.?
- 15 A No, there is not.
- 16 Q The call after the 6:01 a.m. call, what is the
17 next call?
- 18 A It's at 8:42 a.m. to [REDACTED].
- 19 Q And has the cell location changed?
- 20 A Yes, it has.
- 21 Q What is the cell location for the 8:42 a.m.
22 call?
- 23 A [REDACTED], Lexington, South
24 Carolina, Lexington County.
- 25 Q And then is there a call outbound at 9:29 a.m.?

DAVID IDE -DIRECT- BY MR. MCMAHON

- 1 A Yes, there is.
- 2 Q And to what number?
- 3 A [REDACTED].
- 4 Q I have thrown my papers pretty much everywhere.
- 5 If you will give me a second. It's [REDACTED] what?
- 6 A [REDACTED].
- 7 Q This number here (indicating)?
- 8 A Yes, that's correct.
- 9 Q That would be the second call because if I go
- 10 back to Saturday afternoon, the 27th, there was
- 11 a call to that number at 15:54 p.m.; correct?
- 12 A That's correct.
- 13 Q Now, that cell tower has changed?
- 14 A Yes, it has.
- 15 Q That phone has changed cell towers the last
- 16 three calls?
- 17 A Yes, that's correct.
- 18 Q What is the cell tower it is now hitting?
- 19 A [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED], Irmo, South
- 20 Carolina, Richland County.
- 21 Q That's the same cell tower it was hitting the
- 22 afternoon before?
- 23 A Yes, that's correct.
- 24 Q [REDACTED]?
- 25 A Correct.

DAVID IDE -DIRECT- BY MR. MCMAHON

1 Q [REDACTED] ?
2 A Yes, that's correct.
3 Q Then at 9:30 a.m. is there an outgoing call?
4 A Yes.
5 Q To what number?
6 A [REDACTED].
7 Q Is that the same cell location?
8 A Same as the last call, yes, that's correct.
9 Q Obviously, you don't know who was using the
10 phone?
11 A No.
12 Q These are not all -- there are all the phone
13 calls for the 27th?
14 A For the 27th, yes.
15 Q Outgoing or incoming?
16 A Yes, that's correct.
17 Q These are all the phone calls for the 28th
18 between midnight and 9:30 a.m.?
19 A That is correct.
20 Q There are other phone calls on the 28th?
21 A Yes.
22 Q After 9:30?
23 A Yes.
24 Q But there is none missing within this time
25 frame?

DAVID IDE -CROSS- BY MR. BUTLER

1 A No, there is not.

2 Q Thank you.

3 MR. MCMAHON: I don't have any further
4 questions.

5 THE COURT: Cross?

6 MR. BUTLER: One thing.

7 CROSS EXAMINATION

8 BY MR. BUTLER:

9 Q The records that you are referencing, they show
10 calls that were placed and received or only
11 those that were placed?

12 A Only the outbound calls, and they just tell you
13 if there was an incoming call received.

14 Q If there is an outgoing call that is not
15 answered, would that reflect in your records?

16 A If it was outbound, no, it will not reflect.

17 Q So if somebody makes a call from the cell phone
18 that your record shows are Steve Gillian's, if a
19 call was made from that phone and not answered,
20 it wouldn't be in your records?

21 A No, it's not in our records, no.

22 Q That's all I have. Thank you.

23 THE COURT: Anything else?

24 MR. MCMAHON: No, sir.

25 THE COURT: You can step down, and you are

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 free to go if you like.

2 THE WITNESS: Thank you.

3 MR. MCMAHON: May he be excused? He's got
4 a flight in about an hour and a half.

5 THE COURT: I understand, yes, sir.

6 KENNETH WHITLER, being first
7 duly sworn, testified as follows:

8 CLERK: Have a seat in the witness box and
9 state your full name for the record.

10 THE WITNESS: My name is Kenneth H.
11 Whitler. It's spelled W-H-I-T-L-E-R.

12 DIRECT EXAMINATION

13 BY MR. MCMAHON:

14 Q Sir, by whom are you employed?

15 A The South Carolina Law Enforcement Division.

16 Q And how long have you been employed with
17 S.L.E.D.?

18 A Since November of 1997.

19 Q What is your current position with S.L.E.D.,
20 Agent Whitler?

21 A I am a criminalist in the laboratory division of
22 S.L.E.D. I am in the firearms department.

23 Q Would you relate for the jury, please, your
24 educational background, your training, your
25 experience in your particular field of

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 expertise.

2 A I have undergraduate and graduate degrees from
3 the University of South Carolina. I have been
4 trained in firearms identification when I was
5 employed by the Federal Bureau of Investigation
6 in their laboratory.

7 I was qualified as a firearms tool mark
8 examiner with them. I retired in 1997 and then
9 came to work for S.L.E.D. where I am doing
10 basically the same job.

11 The training program to learn how to become
12 a firearms examiner took approximately a year
13 and a half where you examine numerous cases,
14 bullets, cartridge cases, firearms, do a number
15 of test cases.

16 Then they have a test where you have to
17 successfully complete the test before they will
18 certify you. I was certified by the F.B.I. as a
19 firearms tool mark examiner as I said.

20 I have testified in approximately 75 trials
21 for them in various state, federal, and
22 territorial courts and also had some testimony
23 accepted in two other countries.

24 I came to S.L.E.D. in 1997 and since then I
25 have testified probably in another 40 trials in

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 various state courts in the State.

2 Q As an expert in?

3 A Firearms identification.

4 Q Have you ever been offered as an expert in that
5 field and not accepted as an expert in that
6 field?

7 A No, sir.

8 MR. MCMAHON: Your Honor, I would offer
9 Agent Whitler as an expert in the field of firearms
10 identification.

11 THE COURT: Any objection?

12 MR. BUTLER: No objection.

13 THE COURT: Without objection. Again,
14 ladies and gentlemen, this witness is qualified as an
15 expert in the area of firearms identification.
16 Remember what I told you about an expert. They are
17 allowed to give an opinion. You are not bound by the
18 opinion. You decide how much weight and credibility
19 to give to it.

20 Is there any exception to the charge from
21 the State?

22 MR. MCMAHON: No, Your Honor.

23 MS. MIMS: No, Your Honor.

24 THE COURT: Go ahead.

25 BY MR. MCMAHON:

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 Q Agent Whitler, would you explain to the jury
2 just very generally and briefly how S.L.E.D. and
3 how you, as a criminalist, gets involved in a
4 local investigation such as this.

5 A Generally there is evidence that would be
6 submitted by the crime scene team at the request
7 of the local authorities or if the local police
8 department or Sheriff's Office conducts their
9 own crime scene and they submit the evidence to
10 S.L.E.D. directly.

11 Q So generally what would happen is items that
12 would be gathered by the local agencies would be
13 submitted to S.L.E.D. for forensic evaluation,
14 whether it be firearms or any other division
15 within your agency; is that correct?

16 A That's correct.

17 Q And do y'all provide this type of support for
18 all the law enforcement agencies throughout
19 South Carolina?

20 A That's correct.

21 Q Now, I know you were -- there were several
22 different items of evidence that were submitted
23 for your examination at different times in this
24 case; is that correct?

25 A There were two submissions, yes.

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 Q And I want to talk about the first submission.
2 What was the first items that were submitted to
3 you, Agent Whitler?

4 A The first items that were submitted were four
5 fired bullets.

6 Q I want to show you what has been previously
7 marked as State's 12, 13, 14, and 15 and ask if
8 you can look at these items and if you recognize
9 them and if you can identify them for us,
10 please.

11 A (Pause.) Yes, I can.

12 Q What are those items, Agent Whitler?

13 A These are four fired bullets.

14 Q Can you tell us when those items were submitted
15 for your identification?

16 A I received them on January 31st.

17 Q And as a result of your receiving those items,
18 what examinations did you conduct on those
19 items? What can you tell us about what they
20 are?

21 A I did a visual and microscopic examination of
22 the bullets. Basically visual means I looked at
23 them under a stereo microscope and determined
24 that they are .38-caliber copper-jacketed
25 bullets.

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 Then I compared them with each other to
2 determine if they were fired by the same
3 firearm. From that comparison I was able to
4 determine that all four bullets were fired by
5 the same firearm.

6 Q Now, if I go back and kind of break down your
7 testimony a little bit, the characteristics,
8 what type of bullets are these? Could you tell
9 us that again.

10 A They are .38-caliber copper-jacketed bullets.

11 Q Now, did you tell that by visual examination or
12 did you tell this by additional examinations
13 initially?

14 A It's visual and use the micrometer to measure
15 the diameter of the bullet.

16 Q Each and every one of those bullets -- 12, 13,
17 14, and 15 -- is a .38 caliber copper-jacketed
18 bullet?

19 A Yes.

20 Q Now, you can go a step beyond that and tell, for
21 example, if 12 -- if I can just pick it up. I
22 wouldn't be lucky enough to pick up 12. I
23 picked up 15. But you could compare 15 to 14 to
24 13 to 12 and tell if each and every one of those
25 were fired by the same weapon?

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 A That's correct.

2 Q How are you able to do that? What tests do you
3 perform to determine that?

4 A You put it on a comparison microscope and
5 compare the marks on one bullet to the marks on
6 another.

7 Q Does a weapon uniquely mark each bullet that is
8 fired through it?

9 A It has the potential to mark each bullet. You
10 have the potential to identify each bullet from
11 a particular firearm. In reality though in some
12 cases, guns don't mark very well or bullets are
13 damaged; and in some cases you aren't able to
14 identify them all.

15 Q But you were able to identify each and every one
16 in this case?

17 A In this case the marks were sufficient that I
18 was able to identify them as being fired by the
19 firearm.

20 Q If I say 12, 13, 14, and 15 each were fired by
21 the same firearm; is that correct?

22 A That's correct.

23 Q Can you tell any particular characteristics
24 about a firearm by just looking at the bullets?

25 A We have a data base that we can use to determine

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 just the general riffling characteristics.
2 Every barrel that is rifled is rifled with a
3 certain number of lands and grooves.

4 The grooves are the spiral cuts into the
5 barrel to make the bullet spin. Some
6 manufacturers use five grooves. Some use six.
7 It's up to them what they do.

8 In this data base, we are able to determine
9 the number of lands and grooves on a bullet and
10 the width of those grooves and come up with a
11 possible list of firearms that we know have that
12 particular land and groove configuration.

13 In that way we are able to help
14 investigators to a certain extent to say, "You
15 could be looking for these models and
16 manufacturers of firearms."

17 Q And those terms you used are lands and grooves;
18 is that correct?

19 A That's correct.

20 Q Correct me if I'm spelling it wrong if you can
21 read it. What are the land and groove
22 characteristics on these bullets?

23 A They were fired from a barrel with five grooves,
24 right twist.

25 Q Five groove, right twist?

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 A Uh-huh. (Indicating affirmative response.)

2 Q Each and every one of those?

3 A That's correct.

4 Q Now, I take it some weapons have more grooves?

5 A Yes.

6 Q And I take it if you have got a right twist,
7 some weapons can have a left twist?

8 A Left twist.

9 Q So if the five groove, right twist gives you the
10 characteristics of a particular weapon, that's
11 the data base you go to?

12 A That's correct.

13 Q Now, you can then, as I understand it, Agent
14 Whitler, focus or hone down an investigation,
15 not to a specific weapon, but perhaps a specific
16 brand or brands of weapons for the
17 investigators?

18 A Usually, yes.

19 Q Were you able to do that in this case?

20 A I provided a list of eight possibilities.

21 Q And those eight possibilities, that would be
22 weapons that would be .38-caliber weapons?

23 A Weapons that were capable of firing .38-caliber
24 bullets.

25 Q And they would be .38-caliber, right twist, five

KENNETH WHITLER -CROSS- BY MR. MCMAHON

- 1 grove; correct?
- 2 A Uh-huh. (Indicating affirmative response.)
- 3 Q And you provided a list of eight?
- 4 A That's correct.
- 5 Q Of course, is that list all inclusive?
- 6 A No, it's not because we never can tell for sure,
- 7 you know, if someone decides to change their
- 8 rifling. Some manufacturers are very
- 9 consistent. They always use the same rifling.
- 10 Some change periodically. They will go from one
- 11 number to another or change directions or
- 12 whatever.
- 13 Q And this is a list of eight manufacturers?
- 14 A Manufacturers, yes.
- 15 Q Give me an idea if you can how many
- 16 manufacturers are there?
- 17 A There are hundreds.
- 18 Q Hundreds. Among those was Taurus one you
- 19 provided?
- 20 A Yes.
- 21 Q Is Taurus a .38-caliber? Does it make a
- 22 .38-caliber weapon with right twist, five
- 23 groove?
- 24 A Yes, that's why it was on the list.
- 25 Q That would have been capable of firing each and

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 every one of these bullets -- 12, 13, 14, and
2 15?

3 A Yes.

4 Q Like you say, that's why it was on the list?

5 A Yes.

6 Q And there are others on the list?

7 A That's correct.

8 Q Smith and Wesson, Ruger, such like that, but
9 Taurus is among those; correct?

10 A That's correct.

11 Q If you had a specific weapon, would you be able
12 to compare those bullets to the specific barrel?

13 A Yes. If I had the firearm, I could fire test
14 the bullets. Then I would take the test bullets
15 and microscopically compare those to the
16 submitted bullets.

17 Q And no weapon was ever submitted for your
18 examination?

19 A No, sir.

20 Q Now, at a later time were you provided other
21 items of evidence to examine?

22 A I was provided with a box of .38 special
23 cartridges.

24 Q I want to show you an item and ask you if you
25 can identify that item for us, please.

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 A Yes.

2 Q Is that the other item you were provided to
3 examine?

4 A That's right.

5 MR. MCMAHON: Your Honor, I offer this into
6 evidence.

7 THE COURT: Any objection?

8 MS. MIMS: No objection.

9 (State's Exhibit Number 47, box of bullets,
10 is received into evidence.)

11 BY MR. MCMAHON:

12 Q Could you tell us what State's 47 is?

13 A Exhibit 47 is a box that contains 50 unfired .38
14 special cartridges.

15 Q And what examination did you conduct on that box
16 of cartridges and how did it compare to the
17 bullets that were previously submitted?

18 A I visually examined those cartridges and looked
19 at the bullet portion of the cartridge. They
20 have some of the same general characteristics,
21 same shape, they are the same weight, same
22 approximate weight.

23 Q When you say the same weight, you are actually
24 talking about the?

25 A The weight of the actual bullet itself.

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 Q Grains?

2 A That's correct.

3 Q Weight in grains, not like weight in pounds?

4 A Weight in grains.

5 Q A small amount of weight is what I'm saying.

6 Those are .38?

7 A Those are .38.

8 Q And those are -- how did you characterize the
9 other, as copper-jacketed bullets?

10 A That's correct.

11 Q Are there any characteristics or properties of
12 these bullets that are inconsistent with 12, 13,
13 14, and 15?

14 A No.

15 Q This is a common brand of bullet?

16 A It is for that manufacturer. They make probably
17 millions of them each year. The fact that the
18 bullets that were submitted have the same
19 characteristics, that bullet could be loaded or
20 a similar bullet could be loaded by other
21 manufacturers that we are not aware of. So it's
22 just that these bullets are consistent with
23 these. I can't say they have to be that
24 particular manufacturer.

25 Q They are consistent with Remington 130

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 copper-jacketed bullets; is that correct?

2 A Yes.

3 Q And as you said, if you had a particular weapon,
4 you could test fire bullets such as this?

5 A That's correct.

6 Q From that weapon and compare them to this?

7 A Yes.

8 Q I want to ask you just a couple more questions.
9 We have heard some talk about -- these are very
10 general questions -- about revolvers and about
11 semiautomatic weapons. Could you describe for
12 us how a revolver functions, how you would load
13 it, how would you fire it? Say, for example, a
14 .38-caliber Taurus, you are familiar with that
15 weapon or a weapon such as that?

16 A Yes, sir.

17 Q How it would function and how you would fire it,
18 how you would load it and unload it.

19 A A revolver has what is called a cylinder. It's
20 a circular piece of metal that has holes drilled
21 in it for the cartridge to fit into. When you
22 load these cylinders up -- some hold four, some
23 hold five. Excuse me. Some hold six and some
24 hold five.

25 In some cases they have even started making

KENNETH WHITLER -CROSS- BY MR. MCMAHON

1 seven, eight and nine-shot revolvers. But
2 basically you load the cylinder; and then when
3 you fire, there is always a cartridge in line
4 with the barrel.

5 When you pull the trigger, the cylinder is
6 rotated a partial turn. It puts a fresh
7 cartridge in line with the barrel. When the
8 hammer falls, it ignites the cartridge. The
9 bullet goes out the barrel, and you have a fired
10 cartridge case left in the chamber.

11 If you pull the trigger again, the cylinder
12 rotates a short distance. Another cartridge
13 comes in line with the barrel, and it is in turn
14 fired.

15 You can do that until you have expended all
16 the cartridges in the cylinder. At that point
17 then you have to reload it, which means opening
18 up the cylinder.

19 Various revolvers have different systems.
20 Some have a latch on the side where you flip it
21 open, and it exposes the back of the cartridge
22 case so you can pull them out.

23 Some the entire cylinder will come out the
24 side of the revolver. You hit what is called an
25 ejector rod that pushes all the cartridge cases

KENNETH WHITLER -CROSS- BY MS. MIMS

1 out at one time. Then you just reload and close
2 the cylinder up and start over.

3 Q When you fire a revolver -- does Taurus make a
4 five-shot revolver?

5 A Yes, they do.

6 Q And if you fire five times, unload it, you pull
7 the trigger one for each time for it to fire; is
8 that correct?

9 A That's correct.

10 Q But if you fire a revolver, it does not eject
11 the shell?

12 A No.

13 Q A semiautomatic would; is that correct?

14 A Yes.

15 Q Thank you, Agent Whitler.

16 MR. MCMAHON: I have no further questions.

17 THE COURT: Cross.

18 MS. MIMS: Thank you, Your Honor. May it
19 please the Court.

20 CROSS EXAMINATION

21 BY MS. MIMS:

22 Q Good afternoon, Agent Whitler. You will have to
23 bear with me because I don't have a strong
24 knowledge of firearms. Let me ask you this to
25 begin with. You can't say that these bullets

KENNETH WHITLER -CROSS- BY MS. MIMS

1 were fired from a five-shot Taurus?

2 A No. I can just say that they were fired from a
3 firearm barrel that had five lands and groves,
4 right twist; and they are most consistent with
5 coming from a .38 special or .357-type revolver.

6 Q Some of the other firearms as you mentioned that
7 this could have come from, I think you indicated
8 in your report that you have got a .357 magnum;
9 is that right?

10 A Yes.

11 Q A .38 S. and W., a .38 long colt, a
12 nine-millimeter luger and a .38 special?

13 A Yes.

14 Q So that's five different firearms that could
15 produce this same type of bullet that you see?

16 A That's correct.

17 Q Or what you have here in evidence. You also
18 mentioned that the rifling impressions -- you
19 talked a little bit about rifling impressions --
20 that they were consistent with a Taurus; is that
21 right?

22 A That's correct.

23 Q But there are also eight other firearm brands
24 that you have named in your report that it is
25 also consistent with?

KENNETH WHITLER -CROSS- BY MS. MIMS

1 A Seven others.

2 Q Just to be clear for the jury, consistent with
3 means it could be; is that right?

4 A Yes.

5 Q And it could not be? I mean, there is a
6 possibility it's not; isn't that true, too? It
7 might not be?

8 A No, they are consistent. Any of the eight
9 manufacturers produce barrels that have the same
10 rifling characteristics and widths present on
11 the bullets that were submitted. So they all
12 have the possibility that that particular
13 firearm could have fired those bullets.

14 Q I understand. So we have got at least eight
15 different firearms, eight different type
16 manufacturers. Some pretty well known
17 manufacturers, Smith and Wesson?

18 A Yes.

19 Q Sports Arms, Alpha, I.N.A. Koonan Arms, Ruger
20 and Llama. Is this an all-inclusive list?

21 A No.

22 Q So the list could go on and on? As you
23 mentioned, there are other manufacturers out
24 there that change their rifflings all the time?

25 A There are changes and new manufacturers come

KENNETH WHITLER -CROSS- BY MS. MIMS

1 along, and people go out of business.

2 Q So that changes. It's hard to keep up with who
3 has the exact same amount of rifflings and that
4 type of thing, I'm sure?

5 A Yes.

6 MS. MIMS: Beg the Court's indulgence.

7 (Pause.)

8 MS. MIMS: No further questions.

9 MR. MCMAHON: None on redirect.

10 THE COURT: Agent, you can step down and
11 you are free to go if you would like to. Counsel, it
12 might be a good time to take a short break.

13 Ladies and gentlemen, we will take a short
14 break. Let me ask you to step to the jury room. Be
15 sure not to talk about the case. See you back in a
16 few minutes.

17 (The jury retires to the jury room.)

18 THE COURT: We will stand in recess for a
19 few minutes.

20 (Whereupon there was a recess.)

21 THE COURT: Is the State ready?

22 MS. CAMPBELL: The State is ready.

23 THE COURT: Defense ready?

24 MS. MIMS: The defense is ready, Your

25 Honor.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 THE COURT: Let's bring the jury in.

2 (The jury returns to the courtroom.)

3 THE COURT: All parties and attorneys are
4 in the courtroom and all jurors have returned. Call
5 your next witness.

6 MS. CAMPBELL: May it please the Court.
7 Thank you, Your Honor. The State calls Dustin
8 Johnson.

9 DUSTIN JOHNSON, being first
10 duly sworn, testified as follows:

11 CLERK: Have a seat in the witness box and
12 state your full name for the record.

13 THE WITNESS: Dustin Johnson.

14 DIRECT EXAMINATION

15 BY MS. CAMPBELL:

16 Q Dustin, you will have to talk up for me. Talk
17 real loud and speak into the microphone, okay?

18 A Dustin Johnson.

19 Q Dustin, how old are you?

20 A Seventeen.

21 Q You will have to talk louder and slower.

22 A Seventeen.

23 Q Are you a little nervous here today?

24 A A little bit.

25 Q Where do you live, Dustin?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 A In Irmo.

2 Q In Irmo. Who do you live in Irmo with?

3 A My dad.

4 Q Does anybody else live there with you and your
5 dad?

6 A No, ma'am.

7 Q Do you go to school, Dustin?

8 A Yes, ma'am.

9 Q Where do you go to school?

10 A Dutch Fork High School.

11 Q And what year are you at Dutch Fork High School?

12 A A senior.

13 Q When is your graduation date?

14 A June.

15 Q Of this year?

16 A Yes, ma'am.

17 Q I will ask you about a few people and about who
18 you know, okay, Dustin? Do you know Steve
19 Gillian?

20 A Yes, ma'am.

21 Q And tell this jury how you know Steve Gillian.

22 A Through his brother Clint Gillian.

23 Q Excuse me?

24 A Through his brother Clint.

25 Q His brother Clint?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Is that his older brother or his younger
3 brother?
- 4 A Younger brother.
- 5 Q And how many years have you been knowing Steve
6 Gillian?
- 7 A Probably two years.
- 8 Q Two years. You said you knew him through his
9 brother Clint. So you were actually closer
10 friends with his brother Clint?
- 11 A Yes, ma'am.
- 12 Q Do you know Jeremiah Page?
- 13 A Yes, ma'am.
- 14 Q And tell the jury how you know Jeremiah Page.
- 15 A From school.
- 16 Q When you say from school, is that from Dutch
17 Fork?
- 18 A Dutch Fork.
- 19 Q Jeremiah Page used to go to Dutch Fork High
20 School?
- 21 A Yes, ma'am.
- 22 Q How many years have you been knowing Jeremiah?
- 23 A A few years.
- 24 Q Do you know a boy named Brandon Cannon?
- 25 A Yes, ma'am.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q How do you know him?

2 A From the day that we went to the robbery.

3 Q Prior to the day of the robbery, you had never
4 met him before?

5 A No, ma'am.

6 Q What about David Grice? Had you ever met him
7 prior to that robbery day?

8 A No, ma'am.

9 Q Finally, Jessie Boot. Do you know Jessie?

10 A Yes, ma'am.

11 Q How do you know Jessie Boot?

12 A He dated my sister.

13 Q He dated your sister?

14 A Yes, ma'am.

15 Q I want to turn your attention back to that
16 Friday, January 26th of last year; okay?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q Had you been in contact with Steve Gillian that
20 week?

21 A Yes, ma'am.

22 Q And he wanted you to participate in some
23 activity with him on that Friday?

24 A Yes, ma'am.

25 Q What had he told you he wanted you to do?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A Go to the house that we were going to break
2 into.
- 3 Q You've got to talk louder.
- 4 A We were going to go to the house, and we were
5 going to break into it.
- 6 Q Break into a house?
- 7 A Yes, ma'am.
- 8 Q Did you know which house ahead of time you were
9 going to break into?
- 10 A Yes, ma'am.
- 11 Q Who told you which house you were going to break
12 into?
- 13 A Steve.
- 14 Q Were you aware that other people were involved
15 or were going to be involved in the break-in
16 that day?
- 17 A Yes, ma'am.
- 18 Q Did Steve Gillian give you a plan on how y'all
19 were to meet up to go do the break-in?
- 20 A Yes, ma'am.
- 21 Q And what kind of things did Steve Gillian tell
22 you y'all were going to break in and get?
- 23 A A safe.
- 24 Q A safe. He told you that ahead of time; is that
25 correct?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Where were y'all supposed to meet on that
- 3 Friday?
- 4 A Gilligan's.
- 5 Q Gilligan's. Is that in Lexington County?
- 6 A Yes, ma'am.
- 7 Q Is that near where you live?
- 8 A No, ma'am.
- 9 Q Was that near the place you were going to break
- 10 in?
- 11 A Yes, ma'am.
- 12 Q And who all was supposed to meet at Gilligan's
- 13 that day that you knew of?
- 14 A Me, Steve, Jessie, and Jeremiah.
- 15 Q When you got there, there were a couple more
- 16 people there than you actually anticipated; is
- 17 that right?
- 18 A Yes, ma'am.
- 19 Q And what time were y'all supposed to meet up
- 20 that day?
- 21 A Around 12:00 o'clock, 1:00 o'clock.
- 22 Q Twelve or 1:00 o'clock?
- 23 A Yes, ma'am.
- 24 Q You don't know exactly what time it was?
- 25 A No, ma'am.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q When you got -- did you drive to Gilligan's?
- 2 A Yes, ma'am.
- 3 Q Was anybody riding with you when you went there?
- 4 A No, ma'am.
- 5 Q When you got there, who all was there?
- 6 A Jessie, Steve, Jeremiah, Brandon, and David.
- 7 Q What was the plan once y'all met at Gilligan's?
- 8 What were y'all going to do from there?
- 9 A We were going to go to the Shell gas station,
- 10 and they were going to call the house.
- 11 Q Which gas station?
- 12 A The Shell gas station.
- 13 Q Who was going to call the house?
- 14 A Steve was going to call the house.
- 15 Q Was this the house you were going to break in?
- 16 A Yes, ma'am.
- 17 Q Why was Steve going to call the house from the
- 18 Shell Station?
- 19 A To see if anyone was home.
- 20 Q On the way -- did you drive to the Shell
- 21 Station?
- 22 A Yes, ma'am.
- 23 Q Who was riding with you?
- 24 A Jessie.
- 25 Q How many other cars were going in this little

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 caravan?
- 2 A Three.
- 3 Q And was Steve driving a car?
- 4 A Yes, ma'am.
- 5 Q Who was driving the other car, those two boys
- 6 you didn't know?
- 7 A Right.
- 8 Q On the way to the Shell gas station, did you
- 9 have car trouble?
- 10 A Yes, ma'am.
- 11 Q What happened to your car?
- 12 A It ran out of gas.
- 13 Q You ran out of gas?
- 14 A Yes, ma'am.
- 15 Q What kind of car were you driving?
- 16 A A Riviera.
- 17 Q When you ran out of gas, what did you do?
- 18 A Pulled off to the side of the road.
- 19 Q And how did you get gas?
- 20 A Steve went and got gas.
- 21 Q They went and got gas?
- 22 A Yes, ma'am.
- 23 Q In a gas can?
- 24 A Yes, ma'am.
- 25 Q So once you got gassed back up, did y'all

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 proceed with your plan?
- 2 A Yes, ma'am.
- 3 Q Where did you go?
- 4 A They all stopped at the Shell Station. Me and
- 5 Jessie kept going, and we stopped at B.B.'s and
- 6 waited on them.
- 7 Q And eventually did they come and everyone
- 8 proceeded to the house?
- 9 A Yes, ma'am.
- 10 Q Were you driving?
- 11 A Yes, ma'am.
- 12 Q And how many other cars actually went to the
- 13 house?
- 14 A Two other cars besides mine.
- 15 Q When you got to the house, everybody who you
- 16 mentioned was there?
- 17 A Everyone except for Steve.
- 18 Q Except for Steve. Where was Steve while y'all
- 19 were committing the burglary?
- 20 A Around on the dirt road that runs on the side of
- 21 the house.
- 22 Q Once you got to the house, what happened?
- 23 A Everyone got out and walked into the house,
- 24 except I was behind them a little bit. They all
- 25 went inside, and I walked up on the steps. They

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 were inside for a minute, and I went back to my
2 car. Then they came running out the house.

3 Q How long total was everybody in the house, do
4 you even know?

5 A A minute or two.

6 Q It was pretty fast?

7 A Yes, ma'am.

8 Q And everybody went up to the house, right,
9 together?

10 A Right.

11 Q You didn't actually go back to where the safe
12 was; is that correct?

13 A Right.

14 Q Once everybody came out of the house, did you
15 see that they had certain items with them?

16 A Yes, ma'am.

17 Q How were they holding those items?

18 A Under their shirt.

19 Q Could you tell then what they had?

20 A No.

21 Q Did somebody get back in the car with you?

22 A Jessie did.

23 Q Did he have any items with him at that point, do
24 you remember?

25 A I don't remember.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q Where did y'all go once everybody got back --
2 where did you park your cars?
- 3 A In the driveway.
- 4 Q In the driveway. This is, of course, in the
5 middle of the day; right?
- 6 A Yes, ma'am.
- 7 Q So once y'all had gone in -- do you know how
8 many got in the door?
- 9 A No, ma'am.
- 10 Q Once y'all got back in your cars, where did you
11 go?
- 12 A We went to B.B.'s, which is right up the street.
- 13 Q And is that where Steve was waiting?
- 14 A Yes, ma'am.
- 15 Q Once you met back up with Steve, tell this jury
16 what happened.
- 17 A They were all talking, and then Jessie said that
18 he left his prints on the safe. So he wanted to
19 go back. Then they were talking. Steve,
20 Jeremiah, and Jessie got back in my car; and we
21 went back.
- 22 Q Let me slow you down for a minute. While you
23 were there, what was Steve's demeanor like, do
24 you remember?
- 25 A No, ma'am.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q Did you at that point see anybody with a gun?

2 A No, ma'am.

3 Q So y'all all got back into the car?

4 A Right.

5 Q And then you proceeded back to the house?

6 A Yes, ma'am.

7 Q And on the second trip, who all went in?

8 A Steve, Jeremiah, and Jessie.

9 Q Steve, Jeremiah, and Jessie?

10 A Yes, ma'am.

11 Q And you drove them to that place, didn't you?

12 A Yes, ma'am.

13 Q Did you go in that time?

14 A No, ma'am.

15 Q How long were they in the house this time? Was
16 it a longer period or a shorter period?

17 A Longer.

18 Q When they came out, did they have some more
19 items with them?

20 A Yes, ma'am.

21 Q Where did y'all go after they came out of the
22 house?

23 A We went back to B.B.'s.

24 Q And then when you got back to B.B.'s, did
25 everybody start showing everybody what they had?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A No, ma'am, not really.
- 2 Q When you got back to B.B.'s, did you ever see
- 3 what all had been taken?
- 4 A No, ma'am.
- 5 Q Dustin, what did you get that had been taken
- 6 that day?
- 7 A There was some coins that Jessie had.
- 8 Q Some coins Jessie had?
- 9 A Yes, ma'am.
- 10 Q And Jessie was with you?
- 11 A Right.
- 12 Q What else?
- 13 A I'm not real sure.
- 14 Q You don't remember?
- 15 A No, ma'am.
- 16 Q Once y'all got back to B.B.'s, where did you go
- 17 when you left B.B.'s? Who was with you?
- 18 A I took Jessie back to his car at Gilligan's.
- 19 Q Where was his car?
- 20 A Gilligan's.
- 21 Q Then after that where did you go?
- 22 A I went to the golf course to play golf.
- 23 Q Because you are actually on the golf team?
- 24 A Yes, ma'am.
- 25 Q That day during the robbery, did Steve ever

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 mention anything to you about having a gun?

2 A Yes, ma'am.

3 Q When did he tell you about a gun he had?

4 A While we are at B.B.'s.

5 Q There were other people out there that day who
6 were also talking about the gun; is that
7 correct?

8 A Yes, ma'am.

9 Q And this was on that Friday afternoon, correct?

10 A Yes, ma'am.

11 Q And later that evening, into the early morning
12 hours of that Saturday morning, do you remember
13 Steve making some phone calls to you?

14 A Yes, ma'am.

15 Q And you don't remember specifically what y'all
16 were talking about at that point?

17 A No.

18 Q But then the next morning, that Saturday
19 morning, you didn't talk to Steve any during
20 that Saturday during the daytime?

21 A No, ma'am.

22 Q And just so I can clear this up, do you have a
23 cell phone?

24 A Yes, ma'am.

25 Q What is your cell phone number?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A [REDACTED].
- 2 Q (Writing on board.)
- 3 A No, it's [REDACTED]?
- 4 Q Other than me messing it up; is that right?
- 5 A Yes, ma'am.
- 6 Q And do you usually keep that cell phone with
- 7 you?
- 8 A Yes, most of the time.
- 9 Q Turning your attention to that Saturday, kind of
- 10 late afternoon.
- 11 A Yes, ma'am.
- 12 Q Did you receive a phone call from Steve Gillian?
- 13 A Yes, ma'am.
- 14 Q And where were you when you received the phone
- 15 call?
- 16 A The Shell Station in Ballentine..
- 17 Q The Shell Station in Ballentine?
- 18 A Yes, ma'am.
- 19 Q So you were in Ballentine. That was late
- 20 afternoon on Saturday?
- 21 A Yes, ma'am.
- 22 Q That was the 27th, around dusk, dark, sometime?
- 23 A 5:30, 5:45.
- 24 Q Somewhere around there?
- 25 A Yes, ma'am.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q You got a phone call from Steve, and you were in
2 Ballentine?

3 A Yes, ma'am.

4 Q What did Steve want when he called you on that
5 evening, that Saturday evening?

6 A He wanted me to wait there, and he was coming to
7 meet me.

8 Q He wanted you to stay there at a gas station in
9 Ballentine?

10 A Yes, ma'am.

11 Q He wanted to come meet you. Did he tell you why
12 he was going to meet you at that point?

13 A No, ma'am.

14 Q And did you wait for him?

15 A Yes, ma'am.

16 Q And how long did it take him to get there to
17 meet you?

18 A Three minutes, four minutes.

19 Q So he was pretty close by or he was at least
20 within three or four minutes of driving time
21 when he came?

22 A Yes, ma'am.

23 Q When he got to the Shell Station, what did he
24 want you to do?

25 A He wanted me to take him to Wal-Mart to buy some

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 bullets.

2 Q To take him to Wal-Mart to buy some bullets.

3 Why did he want you to buy the bullets for him?

4 A Because I had a fake I.D.

5 Q You said you had a fake I.D. How old do you
6 have to be to buy bullets?

7 A Twenty-one.

8 Q He wasn't 21 and you weren't 21?

9 A No.

10 Q I show you this item. Do you recognize that?

11 A Yes, ma'am.

12 Q What is that?

13 A My fake I.D.

14 Q That's your fake I.D.?

15 A Yes, ma'am.

16 Q That was in your possession?

17 A Right.

18 MS. CAMPBELL: Your Honor, at this time we
19 offer it into evidence.

20 THE COURT: Any objection?

21 MS. MIMS: No objection, Your Honor.

22 (State's Exhibit Number 48, identification
23 card, is received into evidence.)

24 BY MS. CAMPBELL:

25 Q Did you have this fake I.D. with you?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q And did you agree to go with Steve Gillian to
3 buy bullets?

4 A Yes, ma'am.

5 Q And who was going to pay for bullets?

6 A He was.

7 Q What kind of bullets did he want you to buy that
8 evening?

9 A .38 specials.

10 Q Was he specific about the caliber of the bullets
11 he needed?

12 A Yes, ma'am.

13 Q And did you know at that point what caliber the
14 gun was that he had gotten the day before?

15 A No, ma'am.

16 Q Did y'all proceed together to Wal-Mart?

17 A Yes, ma'am.

18 Q And whose car did y'all take to Wal-Mart?

19 A My car.

20 Q And where did you leave Steve's car?

21 A At the Citgo.

22 Q Which is near where?

23 A Near the Shell Station.

24 Q And how far are the Shell Station and the Citgo
25 from the Wal-Mart?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A Probably ten minutes.
- 2 Q So y'all proceeded onto the Wal-Mart, right?
- 3 A Yes, ma'am.
- 4 Q Once you got to Wal-Mart, did you make a phone
- 5 call?
- 6 A Yes, ma'am.
- 7 Q Who were you calling?
- 8 A Jason Canady.
- 9 Q Why were you making a phone call to Jason
- 10 Canady?
- 11 A To see if he had any bullets because I didn't
- 12 want to go buy them.
- 13 Q You weren't real happy about buying the bullets?
- 14 A Right.
- 15 Q Joseph Canady, whose phone did you use to call
- 16 him?
- 17 A Steve's.
- 18 Q What is Joseph Canaday's phone number?
- 19 A [REDACTED].
- 20 Q Is his name Jason?
- 21 A Yes, ma'am.
- 22 Q When you called Jason, did he have any bullets?
- 23 A No, ma'am.
- 24 Q That was actually you making the phone call on
- 25 Steve Gillian's cell phone?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q And that was pretty close in time to when you
3 actually bought the bullets, right?

4 A Yes, ma'am.

5 Q Once you got to Wal-Mart, did y'all go in
6 together?

7 A No, ma'am.

8 Q Who went in first?

9 A I did.

10 Q What was the plan?

11 A That I was going to go get them and come back
12 out to my car.

13 Q Where do you buy bullets in Wal-Mart?

14 A In, I guess, the sports section.

15 Q In the sporting section?

16 A Yes, ma'am.

17 Q And did Steve accompany you in at that point?

18 A No, ma'am.

19 Q And while you were in Wal-Mart, did you take
20 your cell phone in?

21 A No, ma'am.

22 Q Did you leave it in the car?

23 A Yes, ma'am.

24 Q And your cell phone has like caller I.D. -- no,
25 what is that stuff called, voice mail?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Voice mail on it. So if someone were to call
- 3 you while you were in Wal-Mart and your phone
- 4 was in the car, they would just get your voice
- 5 mail?
- 6 A Right.
- 7 Q You walked into the Wal-Mart. Were you able
- 8 to -- where did you get the money to pay for the
- 9 bullets?
- 10 A Steve gave it to me.
- 11 Q And how much money did he give you?
- 12 A Twenty dollars.
- 13 Q A \$20-bill?
- 14 A Yes, ma'am.
- 15 Q And were you able to go up to the counter and
- 16 buy the bullets?
- 17 A Yes, ma'am.
- 18 Q During the period of time when you were buying
- 19 the bullets, did Steve suddenly appear?
- 20 A Yes, ma'am.
- 21 Q And did he come up and stand at the counter with
- 22 you?
- 23 A No, ma'am.
- 24 Q Was he just watching what you were doing?
- 25 A Yes, ma'am.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q Dustin, back went all this -- shortly after all
2 this happened, did you have an opportunity to
3 review a videotape from the Wal-Mart? Did you
4 have an opportunity to watch this videotape from
5 the Wal-Mart?

6 A Yes.

7 Q You saw it?

8 A Yes.

9 Q Does it accurately depict what happened that day
10 when you were buying the bullets?

11 A Yes, ma'am.

12 MS. CAMPBELL: Your Honor, at this time we
13 offer it into evidence.

14 THE COURT: Any objection?

15 MS. MIMS: I would object, Your Honor,
16 based on lack of foundation. He can't authenticate
17 the videotape from Wal-Mart.

18 THE COURT: I will allow it in. If he can
19 identify it and identify that the tape depicts what
20 he is testifying to, I will allow it in.

21 MS. CAMPBELL: Thank you, Your Honor. Your
22 Honor, may the witness step down?

23 THE COURT: Yes, ma'am. Mr. Johnson, be
24 sure to keep your voice up so the court reporter can
25 hear what you are saying.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 THE WITNESS: Yes, sir. (Witness leaves
2 the witness stand.)

3 BY MS. CAMPBELL:

4 Q Stand on this side (indicating), and you have to
5 talk really loud.

6 (During the playing of the videotape, the
7 following was reported.)

8 BY MS. CAMPBELL:

9 Q Do you recognize this?

10 A Yes, ma'am.

11 Q You've got to talk real loud.

12 A Yes.

13 Q What does that area represent?

14 A Where I bought the bullets.

15 Q Where you bought the bullets?

16 A (Witness nods.). (Indicating affirmative
17 response.)

18 Q So that is the area where you bought the
19 bullets, right?

20 A Yes, ma'am.

21 Q I have to advance it slowly because it's done on
22 time. Who is that (indicating)?

23 A That's me right there.

24 Q This is you standing right here (indicating)?

25 A Yes.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q And at this point you had just approached the
2 counter?

3 A Yes.

4 Q Is Steve anywhere to be seen at this point?

5 A No.

6 Q And your purpose, you are waiting -- going to
7 wait on him?

8 A Right.

9 Q So you can purchase the bullets that he wanted?

10 A Yes, ma'am.

11 Q Again, that is you sitting there leaning on the
12 counter?

13 A Right.

14 Q At this point you have wandered off to another
15 part. What are you doing?

16 A Getting a glow stick.

17 Q A glow stick?

18 A Yes, ma'am.

19 Q What is a glow stick?

20 A It's just a light stick.

21 Q It's a light stick?

22 A Yes, ma'am.

23 THE COURT: You need to speak up, please,
24 sir.

25 BY MS. CAMPBELL:

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q What do you do with a glow stick?
- 2 A Whatever you want to.
- 3 Q They glow in the dark?
- 4 A Yes, ma'am.
- 5 THE COURT: Bailiffs, let me ask a bailiff
- 6 or deputy to sit right over here in this middle
- 7 section, please. Go ahead.
- 8 BY MS. CAMPBELL:
- 9 Q And this, again, you have returned back over
- 10 here (indicating) to the counter.
- 11 A Yes.
- 12 Q And he is getting your bullets?
- 13 A Yes.
- 14 Q At some point during this video, did you have an
- 15 opportunity to see Steve?
- 16 A Yes.
- 17 Q Let's back it up. See this figure right here
- 18 (indicating)?
- 19 A Yes.
- 20 Q Did I stop it at the right point? You viewed
- 21 this earlier. Do you recognize that?
- 22 A Yes.
- 23 Q Who is that?
- 24 A Steve.
- 25 Q What is Steve dressed in that day?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 A The red rhino shirt.

2 Q A red rhino shirt?

3 A Yes, ma'am.

4 Q If I can make this act better. Here in this
5 video, as you are over here purchasing, who is
6 this right here (indicating)?

7 A Steve.

8 Q Steve Gillian?

9 A Yes, ma'am.

10 Q In that video you can see that he has some kind
11 of emblem on the front of his shirt?

12 A Yes, ma'am.

13 Q I will show you this item which has been marked
14 as State's Exhibit 19 for I.D. Does this look
15 like the shirt he had on that day?

16 A Yes, ma'am.

17 Q I notice also, because you can see him pretty
18 well right here, does he also have something on
19 his head?

20 A Yes.

21 Q What he had on his head, State's Exhibit 40, is
22 that the type of hat he had on that day?

23 A Yes.

24 Q At this point while he is circling around you,
25 did you have any conversations with him while

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 you were in the store?

2 A No.

3 Q Then he continues to walk out; is that correct?

4 A Right.

5 Q And then you leave?

6 A Right.

7 (The videotape was concluded and nothing
8 further was reported.)

9 BY MS. CAMPBELL:

10 Q You can sit back down.

11 A (Witness resumes the witness stand.)

12 Q The box of bullets you bought, how many were in
13 it?

14 A Fifty.

15 Q Fifty. I will show you State's Exhibit 47.
16 What caliber was it?

17 A .38 special.

18 Q .38 special. I am showing you State's Exhibit
19 47. Is that consistent with the type of
20 ammunition you bought that day?

21 A Yes, ma'am.

22 Q When you bought that ammunition, did you get a
23 receipt, Dustin?

24 A Yes, ma'am.

25 Q I will show you this blow-up. Would this be a

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 blow-up of the receipt or a copy actually of the
2 receipt you got?

3 A Yes, ma'am.

4 MS. CAMPBELL: Your Honor, at this time we
5 offer it into evidence.

6 THE COURT: Any objection?

7 MS. MIMS: Same objection, lack of
8 foundation. He can't authenticate a Wal-Mart
9 receipt.

10 MS. CAMPBELL: He can authenticate the
11 receipt he got. He said --

12 THE COURT: I understood he said that was
13 the receipt he got.

14 MS. CAMPBELL: It's a copy of the receipt
15 that he got.

16 MS. MIMS: If this is his actual receipt,
17 that's one thing; but I don't -- did they get the
18 copy from Dustin Johnson or did they get it from
19 Wal-Mart?

20 MS. CAMPBELL: He can recognize it if it
21 matches the receipt he got, which is what he said.

22 THE COURT: Certainly, if that's what he
23 can testify to, but you need to lay a little bit more
24 foundation.

25 BY MS. CAMPBELL:

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Q Dustin, that day you made two purchases; is that
2 correct?

3 A Yes, ma'am.

4 Q And you got a receipt for those purchases,
5 right?

6 A Yes, ma'am.

7 Q One was the .38 special ammunition for 9.43?

8 A Right.

9 Q And you also bought the light stick we talked
10 about?

11 A Yes, ma'am.

12 Q Which was 3.42?

13 A Right.

14 Q And your total was 13.48?

15 A Yes, ma'am.

16 Q You gave him a \$20-bill. Does this accurately
17 reflect what was on the receipt you got that
18 day?

19 A Yes, ma'am.

20 THE COURT: Any other objection from the
21 defense?

22 MS. MIMS: It would be the same objection,
23 Your Honor.

24 THE COURT: I note that. I will allow it
25 in.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 (State's Exhibit Number 49, enlargement of
2 receipt, is received into evidence.)

3 BY MS. CAMPBELL:

4 Q Jason (sic), on this receipt -- you don't have
5 to step down again -- again, I went through it
6 quickly. I want to go through it a little more.
7 Here is the .38 special S.P.E.C.; is that
8 correct?

9 A Yes.

10 Q Then it's got a serial number right here
11 (indicating), right?

12 A Yes, ma'am.

13 Q I would just ask on this box, there is also a
14 serial number; correct?

15 A Yes, ma'am.

16 Q And then you also bought that light stick thing
17 you told me about, right?

18 A Yes, ma'am.

19 Q It was \$3.42. Again, the total was \$13.49?

20 A Yes, ma'am.

21 Q And you paid for it with a \$20-bill in cash,
22 right?

23 A Right.

24 Q That Steve Gillian had given you?

25 A Yes.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q And then you got the change and you left?
- 2 A Yes.
- 3 Q Was the ammunition and the glow stick, were
- 4 those in the bag when you left that day?
- 5 A Yes.
- 6 Q So this ammunition was actually in a bag. When
- 7 did you get back with Steven Gillian?
- 8 A I don't understand.
- 9 Q When did you get back together with Steven
- 10 Gillian?
- 11 A When we got back to my car.
- 12 Q When you got back to your car?
- 13 A Right.
- 14 Q Again, you were the one driving?
- 15 A Right.
- 16 Q Was he already there when you got back to the
- 17 car?
- 18 A No, ma'am.
- 19 Q Did he come back to the car shortly after you
- 20 got there?
- 21 A Yes, ma'am.
- 22 Q Once he got back in the car, did y'all exchange
- 23 what you were supposed to?
- 24 A Yes, ma'am.
- 25 Q And what did you give him?

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 A The bullets.

2 Q Did he get the glow stick?

3 A No, ma'am.

4 Q You kept that?

5 A Yes.

6 Q And, again, let me make sure, in order to
7 purchase those bullets, you presented State's
8 Exhibit 48 saying you are over 21?

9 A Yes, ma'am.

10 Q Jason (sic), I want to ask you about some of the
11 months before the burglary. Well, let me finish
12 up this. Once you had gotten back in the car
13 and you had given him -- did you give them these
14 (indicating) in the bag?

15 A Yes, ma'am.

16 Q Did you take your glow stick out?

17 A Yes, ma'am.

18 Q Did he pay for your glow stick?

19 A Yes, ma'am.

20 Q So you got a \$3.42 glow stick for making the
21 purchase?

22 A Yes, ma'am.

23 Q Once you all got back in the car, what did you
24 do? Did you go off with Steve? What happened?

25 A No, ma'am, I took him to his car.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q And where was his car again?
- 2 A The Citgo.
- 3 Q And how far away was that from the Wal-Mart?
- 4 A About ten minutes.
- 5 Q Once you dropped him off at the Citgo, does he
- 6 get back in his car?
- 7 A Yes, ma'am.
- 8 Q Did you have anymore contact with him that
- 9 night?
- 10 A No, ma'am.
- 11 Q In fact, have you had anymore contact with him
- 12 since then?
- 13 A No, ma'am.
- 14 Q In the months preceding this, did Steve also ask
- 15 you to do him other favors as far as concerning
- 16 some watches?
- 17 A Yes, ma'am.
- 18 Q And tell this jury what Steve wanted you to do
- 19 with some watches he had.
- 20 A Go to the pawn shop.
- 21 Q And why were you going to the pawn shop with
- 22 some watches?
- 23 A To sell them.
- 24 Q Do you remember how many watches it was?
- 25 A Twelve.

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 Q What kind of watches were they?
- 2 A Tag.
- 3 Q They were Tag watches, and there were 12 of
- 4 them. Did you ever ask him or think to ask him
- 5 where he got those watches?
- 6 A No, ma'am.
- 7 Q So you didn't know where they came from?
- 8 A No, ma'am.
- 9 Q You just know he had them, and he wanted you to
- 10 sell them for him?
- 11 A Yes, ma'am.
- 12 Q Because he didn't want to go to the pawn shop?
- 13 A Right.
- 14 Q And did you do that?
- 15 A Yes, ma'am.
- 16 Q Why?
- 17 A I don't know.
- 18 Q And you did that several months before --
- 19 A Yes, ma'am.
- 20 Q -- this burglary?
- 21 A Yes, ma'am.
- 22 Q You also did it, sold one, for him in January;
- 23 is that right?
- 24 A Yes, ma'am.
- 25 Q Dustin, the police first contacted you on

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

- 1 January 30th?
- 2 A Yes, ma'am.
- 3 Q And at that point they advised you of your
4 rights, and you gave a full statement?
- 5 A Yes, ma'am.
- 6 Q And you implicated yourself in the burglary?
- 7 A Yes, ma'am.
- 8 Q At that point they were asking you specifically
9 about that burglary on that Friday; is that
10 correct?
- 11 A Yes, ma'am.
- 12 Q Did they ask you anything about buying the
13 bullets at that point?
- 14 A No, ma'am.
- 15 Q But later on the 7th, about a week later, did
16 they come back and ask you some more questions?
- 17 A Yes, ma'am.
- 18 Q And you gave them a statement and cooperated
19 fully with them, didn't you?
- 20 A Right.
- 21 Q And you implicated yourself in the burglary?
- 22 A Yes.
- 23 Q And you got charged for the burglary, right?
- 24 A Right.
- 25 Q And you have those pending charges now over in

DUSTIN JOHNSON -DIRECT- BY MS. CAMPBELL

1 Lexington?

2 A Right.

3 Q A week later did they come back to you, and did
4 you cooperate again?

5 A Yes, ma'am.

6 Q At this point did they ask you some questions
7 about the bullets?

8 A Yes, ma'am.

9 Q When they first asked you about the burglary,
10 had you linked up the bullet buying to Jason
11 Ward's death?

12 A No, ma'am.

13 Q Did you know Jason Ward?

14 A No, ma'am.

15 Q Then they also came back a week later and asked
16 you some more questions about the watches; is
17 that correct?

18 A Yes, ma'am.

19 Q Again, you cooperated fully and told them all
20 you had done, as well as what Steve had done?

21 A Yes, ma'am.

22 Q Then finally they came back to you several
23 months later and just clarified a couple of more
24 questions, and you still cooperated with them;
25 right?

DUSTIN JOHNSON -CROSS- BY MS. MIMS

1 A Yes, ma'am.

2 Q Finally, Dustin, the guy Steven Gillian, the guy
3 that got you to buy the bullets, do you see him
4 here in the courtroom?

5 A Yes, ma'am.

6 Q Can you point him out for the jury.

7 A Right there (indicating).

8 Q Sitting in the middle of that table over there?

9 A Yes, ma'am.

10 MS. CAMPBELL: Your Honor, that's all I
11 have.

12 MS. MIMS: May it please the Court, Your
13 Honor.

14 THE COURT: Yes, ma'am.

15 CROSS EXAMINATION

16 BY MS. MIMS:

17 Q Dustin, you had a lot of information that the
18 police wanted?

19 A Right.

20 Q And they came back to you at least four
21 different times to talk to you?

22 A Right.

23 Q Because you gave four different statements?

24 A Right.

25 Q And you weren't always completely honest with

DUSTIN JOHNSON -CROSS- BY MS. MIMS

1 them in your statements, were you?

2 A What are you asking me?

3 Q Well, we will go through it. We are talking
4 about the burglary. We will start with the
5 burglary. I think you first gave a statement on
6 January 30th concerning the burglary of the
7 Muller house?

8 A Right.

9 Q And in your statement to the police, you
10 mentioned going to the house with five other
11 people or meeting at Gilligan's with five other
12 people?

13 A Yes.

14 Q I think we have gone through all the names.
15 After that five of you went to the house, and
16 Steven stayed behind?

17 A Right.

18 Q And you told the police that you did not go into
19 the house that day?

20 A Right.

21 Q But actually you did?

22 A No.

23 Q Do you know why the other four co-defendants
24 would say you did go in the house?

25 A No. They might have assumed because I was

DUSTIN JOHNSON -CROSS- BY MS. MIMS

- 1 behind them, but I didn't go.
- 2 Q Even if they said they actually saw you in the
- 3 house and it was their testimony here today,
- 4 that wouldn't be true?
- 5 A No, ma'am, I never set foot in there.
- 6 Q And there was a gun taken from that house?
- 7 A Yes, ma'am.
- 8 Q But you never saw the gun with Steven; is that
- 9 right?
- 10 A Right.
- 11 Q Let me grab a map real quick. You are familiar
- 12 with the Braywick subdivision?
- 13 A Yes, ma'am.
- 14 Q And how are you familiar with that subdivision?
- 15 A My mom lives there.
- 16 Q Let me show you State's Exhibit 1. This is an
- 17 area, this right here (indicating), is an area
- 18 around the Braywick subdivision. Do you
- 19 recognize Weed Drive?
- 20 A Yes, ma'am.
- 21 Q Is that the area around -- is Braywick
- 22 subdivision around this area?
- 23 A Yes, ma'am.
- 24 Q And your mother actually lives in this area?
- 25 A Yes, ma'am.

DUSTIN JOHNSON -CROSS- BY MS. MIMS

1 Q So you visit your mom?

2 A Yes, ma'am.

3 Q At one point didn't you live with your mom?

4 A Yes, ma'am.

5 Q In the Braywick subdivision?

6 A Yes, ma'am.

7 Q You spoke a little bit about watches with the
8 solicitor just a moment ago. You told the
9 police, I think when they talked to you on the
10 16th of February, that you had pawned three
11 watches for Steven. Do you remember that?

12 A Yes, ma'am.

13 Q But that was a lie; isn't that true? That
14 wasn't the truth?

15 A Right.

16 Q Because actually you pawned 12 watches for
17 Steven?

18 A Yes, ma'am.

19 Q And there is a big difference in three and
20 twelve?

21 A Yes, ma'am.

22 Q And you also told the police that you got \$100
23 for a watch. Do you remember that?

24 A Yes, ma'am.

25 Q But in actuality you got \$2,400 for 12 watches;

DUSTIN JOHNSON -CROSS- BY MS. MIMS

- 1 isn't that true?
- 2 A Yes, ma'am.
- 3 Q Okay.
- 4 A But I did get 100 one time. I went more than
- 5 one time.
- 6 Q So on one occasion you got \$100 for one?
- 7 A Right.
- 8 Q But on other occasions you got close to 2,400?
- 9 A Right.
- 10 Q But you didn't tell the police that in your
- 11 February 16th statement. You told them you only
- 12 pawned three watches; isn't that true?
- 13 A Yes, ma'am.
- 14 Q Do you remember that?
- 15 A Yes, ma'am.
- 16 Q And actually you pawned 12, right?
- 17 A Yes, ma'am.
- 18 Q So that wasn't true?
- 19 A Right.
- 20 Q And you never told the police about the five
- 21 gold coins that you had from the Muller
- 22 residence, did you?
- 23 A No, ma'am.
- 24 Q And in almost every statement that they take
- 25 from you, Dustin, don't they ask you, "Do you

DUSTIN JOHNSON -CROSS- BY MS. MIMS

1 have anything you wish to add?"

2 A Right.

3 Q And you always said no?

4 A Right.

5 Q And this would be something that you probably
6 should tell the police?

7 A Right.

8 Q You knew they were investigating a burglary?

9 A Right.

10 Q But you never told them about the coins?

11 A No.

12 Q So really, Dustin, when the police came to you
13 on each of these four different occasions, they
14 had more information; isn't that true?

15 A Yes, ma'am.

16 Q And only when you were confronted with the
17 information, did you give them the statement
18 concerning what they needed; isn't that true?

19 A (No response.)

20 Q Let me kind of condense that for you. You only
21 told them about you actually pawning 12 watches
22 when they came to you and said, "We now have
23 more information about how many watches you
24 pawed"?

25 A Right.

DUSTIN JOHNSON -CROSS- BY MS. MIMS

- 1 Q And you only told them about the watches,
2 period, when they came to you asking about you
3 pawning watches?
- 4 A Yes.
- 5 Q You never volunteered that information?
- 6 A Right.
- 7 Q Around this time, Dustin, you actually were the
8 owner of three fake I.D.s; isn't that true?
- 9 A No, ma'am.
- 10 Q Does the name Benjamin LaPrad (phonetic) mean
11 anything?
- 12 A Yes, ma'am.
- 13 Q Was that an I.D. that you owned?
- 14 A Yes, ma'am.
- 15 Q Was that a fake I.D.?
- 16 A Yes, ma'am.
- 17 Q And when you were arrested, you were arrested by
18 Investigator Collins and I think Investigator
19 Ewing. Do you remember that?
- 20 A Yes, ma'am.
- 21 Q And you had another fake I.D. on you at that
22 time; is that correct?
- 23 A Yes, ma'am.
- 24 Q With the name Joseph Anderson?
- 25 A Yes, ma'am.

DUSTIN JOHNSON -CROSS- BY MS. MIMS

1 Q So you actually owned three fake I.D.s?

2 A Yes, ma'am.

3 Q You had fake I.D.s so that you could lie about
4 your age; isn't that true?

5 A Yes, ma'am.

6 Q And because you were involved with this burglary
7 at the Muller residence, you have also been
8 charged with burglary in the first degree?

9 A Yes, ma'am.

10 Q You haven't taken care of your charge? Have you
11 been to court yet for that charge?

12 A No, ma'am.

13 Q That charge is still pending?

14 A Right.

15 Q This is a very serious offense that you are
16 facing?

17 A Yes, ma'am.

18 MS. MIMS: Beg the Court's indulgence, Your
19 Honor.

20 (Pause.)

21 MS. MIMS: I have no further questions.

22 THE COURT: Redirect?

23 MS. CAMPBELL: We have no more questions,
24 Your Honor.

25 THE COURT: You can step down. You are

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 free to go if you would like. You are free to stay
2 if you wish.

3 MR. MCMAHON: Your Honor, the State calls
4 David Jordan.

5 DAVID JORDAN, being first
6 duly sworn, testified as follows:

7 CLERK: Have a seat in the witness box and
8 state your full name for the record.

9 THE WITNESS: My name is David Jordan.

10 DIRECT EXAMINATION

11 BY MR. MCMAHON:

12 Q Mr. Jordan, by whom are you employed?

13 A Wal-Mart loss prevention.

14 Q And how long have you been with Wal-Mart loss
15 prevention?

16 A Going on about 14 months now.

17 Q Could you speak up so all the members of the
18 jury can hear you. Do you have any experience
19 in law enforcement prior to Wal-Mart?

20 A Yes, sir.

21 Q Would you relate that for the jury, please.

22 A I used to work for the Richland County Sheriff's
23 Department.

24 Q And how long were you with the Richland County
25 Sheriff's Department?

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 A About three years.

2 Q Now, Mr. Jordan, as part of your duties and
3 responsibilities as loss prevention, do you work
4 at the Wal-Mart on Harbison Boulevard?

5 A Yes, sir, I do.

6 Q Are you the custodian of certain videotapes,
7 security tapes, from the Wal-Mart on Harbison
8 Boulevard?

9 A Yes, sir, I am.

10 Q And as part of your duties and responsibilities,
11 have you provided and reviewed certain security
12 tapes from the Wal-Mart on Harbison Boulevard?

13 A Yes, sir, I have.

14 Q And are those tapes from the date of January the
15 26th of 2001 and January the 27th of 2001?

16 A Yes, sir, they are.

17 Q Could you just very generally and briefly
18 explain for the jury how the security video
19 system works in the Harbison Wal-Mart.

20 A In Wal-Mart we have approximately 125 cameras in
21 every Wal-Mart. They are recorded on a 24-hour
22 V.C.R. system. There's 12 V.C.R.s recording in
23 a 24-hour period.

24 The tapes cycle through a full 24 hours
25 where they are changed either by myself and/or

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 management. They cycle through. They are
2 normally held for a 30-day period before they
3 are recycled and recorded over.

4 Q So, for example, law enforcement would have to
5 or whoever would have to request a copy of the
6 tape or you would keep a copy of the tape
7 yourself for whatever reason within that 30-day
8 period of time, and they are recycled into the
9 system; is that correct?

10 A That's correct.

11 Q I believe the tapes for the 26th and 27th of
12 January of 2001 were requested by the Richland
13 County Sheriff's Department; is that correct?

14 A Yes, sir, that's correct.

15 Q When you get that original tape and you pop it
16 in the machine, you have these -- what did you
17 say 12 different?

18 A Sixteen channel multiplex.

19 Q What do you see?

20 A It's a digital processor. It's made to take 16
21 cameras and record it all onto one tape.
22 Without that processor when you play a tape
23 back, you can't see the picture. You have to
24 play it back through that actual system where
25 you can break the pictures down.

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 Q Does that processor change the images in any
2 manner?

3 A No, sir.

4 Q So y'all are filming sporting goods, car, tires,
5 the various jewelry, the various departments,
6 all at one time?

7 A That's correct.

8 Q And if you want to go and look at the jewelry
9 department or the sporting goods department, you
10 filter that out through your processor?

11 A Yes, sir. The 16 channel processor has 16
12 individual buttons. Camera number 1, if you
13 press number one, it pulls up just that camera.

14 Q And did you do that in reviewing these tapes for
15 both the key and tire section on January the
16 26th of 2001 and the ammunition sporting goods
17 section for January 27th, 2001?

18 A Yes, I did.

19 Q I am not going to show these tapes again, but
20 you had the opportunity to review those tapes
21 and prepare those tapes; correct?

22 A Yes, sir, I did.

23 Q As a matter of fact, specifically the one tire
24 and key, you actually ran that through the
25 system and went back to tire and keys; is that

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 right?

2 A Yes. What I had to do is take the 16 general
3 processor, put it into that individual picture
4 and then record from the original tape to a
5 separate tape so you can play it in a regular
6 V.C.R. to watch it back.

7 Q But you didn't change or alter any of the images
8 in any manner?

9 A No, sir.

10 Q I was looking for the other tape. But be that
11 as it may, it's both the ammo tape and tire and
12 key tape. It's still in the machine.

13 MR. MCMAHON: Your Honor, I offer this
14 other one into evidence. It was just shown, the ammo
15 tape.

16 THE COURT: Any further objection to that?

17 MS. MIMS: Just my previous objection.

18 THE COURT: So noted.

19 (State's Exhibit Number 50, videotape, is
20 received into evidence.)

21 BY MR. MCMAHON:

22 Q The tape has a date. The film on the tape has a
23 date and time; is that correct?

24 A That is correct.

25 Q Are your cash registers -- is everything

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 absolutely synchronized to your cash registers?

2 A To the tape?

3 Q Yes, sir.

4 A No, sir. The tapes are actually programmed by
5 myself.

6 Q Is the date correct?

7 A The date is correct.

8 Q And the times can be off a minute or two?

9 A That is correct.

10 Q Is that a fair statement?

11 A With all 12 V.C.R.s, maybe two of them actually
12 match.

13 Q They wouldn't be off no more than a minute or
14 two?

15 A A few minutes at the most.

16 Q Now, can you go and look at a tape and then go
17 back and identify the receipt? In other words,
18 you know what cash register you are looking at?

19 A Yes, I do.

20 Q Can you go and look at a receipt for that same
21 area?

22 A That's correct. It shows the register number on
23 the receipt.

24 Q So I want to show you what has been introduced
25 as State's Exhibit Number 49, this item here.

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 It's an enlargement. Is this an enlargement of
2 a Wal-Mart receipt?

3 A Yes, sir, it is.

4 Q There is certain information -- I believe you
5 can keep your seat. If I look at this receipt,
6 Mr. Jordan, it's got -- do you know what these
7 numbers (indicating) mean?

8 A I believe I know what the majority of them are.

9 Q The S.T. number, what would that be?

10 A That's our store location. Number 1164 is the
11 Harbison Wal-Mart.

12 Q That's the Harbison Wal-Mart. Then it's an O.F.
13 number?

14 A That's the operator's number of the actual
15 operator that is operating the register at that
16 time.

17 Q So if I worked for Wal-Mart, I would have my own
18 number?

19 A Every individual person that works at a register
20 has their own number.

21 Q Do you know who that is on?

22 A Yes, sir.

23 Q You talked with him?

24 A Yes, sir, I have.

25 Q You have reviewed the tape with him?

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 A Yes, sir, I have.

2 Q Tell the jury the name of the man that sold the
3 bullets in this particular case. Do you know
4 his name? Do you recall his name?

5 A I didn't work with him on a regular basis as
6 loss prevention. I do know him. I have spoke
7 to him in the office.

8 Q And reviewed the tape with him?

9 A Yes, sir.

10 Q Now, this tape has got a date and time -- or
11 this receipt of 1/27/01, 18:36:39?

12 A Yes, sir.

13 Q That would be the date and time that the cash
14 register is recording the sale of these items,
15 correct?

16 A That's correct..

17 Q And does it also indicate -- this number, the
18 T.F. number, what is that?

19 A That is the register that he was located at,
20 register 77, which is I believe is sporting
21 goods.

22 Q That is T.E. number?

23 A That is correct.

24 Q Then it's got the T.F. number. What is that,
25 8794?

DAVID JORDAN -DIRECT- BY MR. MCMAHON

- 1 A That would be the number of transactions that
2 went through that register. That's probably a
3 monthly number, the 8,974, that went through
4 that particular register.
- 5 Q Then it's got the items, .38 special and the
6 inventory number?
- 7 A Right, it's a U.P.C. code.
- 8 Q The amount of the light stick, the number;
9 correct?
- 10 A That's correct.
- 11 Q And then it just goes through what was tendered
12 and what was paid back?
- 13 A Yes, sir, that's correct.
- 14 Q And you could look at that tape, State's 50 I
15 believe it was, the ammo tape and could identify
16 that area as the area of the ammo?
- 17 A Yes, sir, it's sporting goods.
- 18 Q Then you could go back and identify this
19 transaction consistent with the date and time on
20 that video; is that correct?
- 21 A Yes, sir, that is correct.
- 22 Q Did you do the same thing for the key and tire
23 area?
- 24 A Yes, sir, I did.
- 25 Q On the 26th?

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q You went and ran the tape for the 26th through
3 the processor, correct?

4 A That's correct.

5 Q And then identified a transaction with two white
6 males buying keys at that location; is that
7 correct?

8 A That's correct.

9 Q And were you able to identify a receipt for that
10 transaction?

11 A Yes, sir, we pulled up through the electronic
12 journal a key sale for six keys.

13 Q Let me show you this item. Does this reflect
14 the same store?

15 A Yes, sir, it does.

16 Q Does it reflect the date and time, the 26th at
17 12:41?

18 A Yes, sir.

19 Q As does it reflect the keys?

20 A Yes, sir, it does.

21 Q This would be an enlargement of the receipt for
22 that transaction that you viewed on the tire and
23 key video?

24 A Yes, sir.

25 MR. MCMAHON: Your Honor, I would offer

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 this into evidence.

2 MS. MIMS: We object, Your Honor, for the
3 lack of foundation.

4 THE COURT: The same reason. That is noted
5 and overruled. We will allow it.

6 (State's Exhibit Number 51, enlargement of
7 receipt, is received into evidence.)

8 BY MR. MCMAHON:

9 Q And, again, going through, 1164 is the store
10 number, which is the same here (indicating),
11 1164; correct?

12 A That's correct.

13 Q And then you have got the operator number?

14 A Yes, sir.

15 Q The register number?

16 A Register 95.

17 Q And 95 was the register in the key and tire
18 area?

19 A Yes, sir.

20 Q How can you tell?

21 A Tire lube express, T.L.E. is what they call it.

22 Q And then the transaction number, correct?

23 A That's correct.

24 Q And these (indicating) are the inventory codes,
25 correct?

DAVID JORDAN -DIRECT- BY MR. MCMAHON

1 A That's correct.

2 Q And obviously, the cash tendered, change due.
3 What is this code T.C. down here (indicating)?
4 Do you know, Mr. Jordan?

5 A It's one of the transaction codes now. I'm not
6 real familiar with that.

7 Q The date 1/26/01, 12:41:02; is that correct?

8 A That's correct.

9 Q And both of these receipts correlated with the
10 dates on the tapes?

11 A Yes, sir, they do.

12 Q And the times. You did not change or alter
13 those videos in any manner?

14 A No, sir. There is actually no way to do it once
15 they are recorded.

16 Q Thank you.

17 MR. MCMAHON: I don't have any further
18 questions.

19 THE COURT: Cross.

20 MS. MIMS: I have no questions for this
21 witness.

22 THE COURT: You can step down. Thank you,
23 sir. You are free to go if you like. You can stay
24 if you wish.

25 MR. MCMAHON: The State calls Andre

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 Robinson.

2 ANDRE ROBINSON, being first
3 duly sworn, testified as follows:

4 CLERK: Have a seat in the witness box and
5 state your full name for the record.

6 THE WITNESS: My name is Andre Robinson.

7 DIRECT EXAMINATION

8 BY MR. MCMAHON:

9 Q Andre -- you don't mind if I call you Andre?

10 A No, sir.

11 Q Where are you from?

12 A Columbia, South Carolina.

13 Q And speak up so that everybody on the jury can
14 hear you.

15 A Columbia, South Carolina.

16 Q And how old are you, Andre?

17 A Twenty-three.

18 Q You were raised in Columbia?

19 A Yes.

20 Q What area of Columbia do you live in?

21 A You could say the country.

22 Q You could say the county in Columbia?

23 A Yeah.

24 Q Andre, what is your occupation? What do you do?

25 A I'm a musical writer and singer.

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 Q And how long have you been a musical writer and
2 singer?

3 A Twelve years.

4 Q And I believe you were telling me that you
5 think you are fixing to get a contract; is that
6 right?

7 A Yes.

8 Q With who, Andre?

9 A Sony.

10 Q Now, sometimes are you known as Dre or people
11 called you Dre?

12 A Yeah.

13 Q What name -- do you have a different name that
14 you sing or perform under?

15 A Yeah, Kenyon, K-E-N-Y-O-N.

16 Q Kenyon. Andre, do you go to a particular
17 recording studio?

18 A Yes. For doing the entertainment?

19 Q Yes.

20 A It was 1013 Widtean Drive. It's now on
21 Parklane.

22 Q And you say 1013 Widtean Drive. I bet the court
23 reporter would like for you like to spell that
24 for her. Do you know how to spell that?

25 A Yes, W-I-D-T-E-A-N.

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

- 1 Q And what area of town was that studio in?
- 2 A I guess Columbia. I mean...
- 3 Q Do you know what road it was off of? Are you
- 4 familiar with Monticello Road?
- 5 A It was off Monticello and Blue Ridge.
- 6 Q Off Monticello and Blue Ridge?
- 7 A Yeah.
- 8 Q What type of music do you perform, Andre?
- 9 A I do R. and B. music.
- 10 Q R. and B.?
- 11 A Yeah.
- 12 Q Are there artists of other types that come to
- 13 that studio?
- 14 A We have rappers, alternative rock, you know,
- 15 different styles.
- 16 Q Back in January of last year, were you recording
- 17 and would you be around that studio?
- 18 A Uh-huh. (Indicating affirmative response.)
- 19 Q Did you happen to meet a fellow or know a fellow
- 20 named Steve, the Defendant in this case?
- 21 A Yes.
- 22 Q Do you see him --
- 23 A Uh-huh. (Indicating affirmative response).
- 24 Right there (indicating).
- 25 Q Do you recognize him?

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 A (Witness nods.) (Indicating affirmative
2 response.)

3 Q Is that correct?

4 A Yes.

5 Q And you knew him back then?

6 A Uh-huh. (Indicating affirmative response.)

7 Q Did you know his first name Steve?

8 A Yes, I knew him by 2 Cocke first.

9 Q You knew by him what?

10 A 2 Cocke because he was cocky.

11 Q So one name you knew him by was the number 2 and
12 C-O-C-K-E?

13 A Uh-huh. (Indicating affirmative response.)

14 Q And did he have another name?

15 A Solomon.

16 Q Solomon. And then you also knew his first name?

17 A Steve.

18 Q He would come out to the studio from time to
19 time?

20 A Uh-huh. (Indicating affirmative response.)

21 Q And that's how you knew him?

22 A (Witness nods.) (Indicating affirmative
23 response.)

24 Q I want to ask you, was there a phone out at the
25 studio?

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

- 1 A Yeah.
- 2 Q Do you remember the number?
- 3 A [REDACTED].
- 4 Q [REDACTED]?
- 5 A [REDACTED].
- 6 Q [REDACTED]?
- 7 A Yep.
- 8 Q And the police talked to you about this case; is
- 9 that right?
- 10 A Sure did.
- 11 Q About Solomon, 2 Cocke, Steve?
- 12 A (Witness nods.) (Indicating affirmative
- 13 response.)
- 14 Q I believe you gave them a statement. The date
- 15 was February the 12th, is that right, when you
- 16 gave that statement?
- 17 A Yes.
- 18 Q And did they ask you about seeing Steve on a
- 19 particular date or time?
- 20 A Yes.
- 21 Q Out at the studio?
- 22 A Uh-huh. (Indicating affirmative response.)
- 23 Q The day you were talking about, had he called
- 24 you that day?
- 25 A Yes.

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 Q Did he call you before he came out to the studio
2 that day?

3 A Yes.

4 Q So if I look at this, State's Exhibit Number 43,
5 do you see your phone number up there, the phone
6 number for the studio?

7 A Yes.

8 Q Here (indicating)?

9 A Yep.

10 Q [REDACTED]. And it looks like a call came from
11 some phone number at 15:54, 3:54 in the
12 afternoon; is that correct?

13 A Yeah.

14 Q Now, Steve called you?

15 A Uh-huh. (Indicating affirmative response.)

16 Q At the studio?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q And did he ask you anything over the telephone?

20 A He said he wanted to talk to me.

21 Q Did he tell you why he wanted to talk to you,
22 Dre?

23 A No, he didn't say why.

24 Q He didn't say. But you didn't mind talking to
25 him?

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

- 1 A Yeah.
- 2 Q Did he later on come out and talk with you?
- 3 A Yeah.
- 4 Q And who was with him?
- 5 A Jeremiah.
- 6 Q Now, did you know Jeremiah?
- 7 A Yes. I mean, the little time I met him through
- 8 him.
- 9 Q How did you describe Jeremiah?
- 10 A Short, you know, short hair.
- 11 Q (Indicating.)
- 12 A That's him.
- 13 Q That's State's Number 20. That's a picture of
- 14 Jeremiah, and he was with him that day?
- 15 A (Witness nods.) (Indicating affirmative
- 16 response.)
- 17 Q Is that right?
- 18 A That's correct.
- 19 Q Dre, when Steve and Jeremiah came out to the
- 20 studio that day, did Steve have a conversation
- 21 with you? Did he ask you something?
- 22 A Yes.
- 23 Q Tell the jury what he asked you if you had.
- 24 A He asked me -- well, when he said he wanted to
- 25 talk to me, I said, "Come over here." He came

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 over. Then he asked me would I get him some
2 bullets.

3 You know, excuse my language. I told him,
4 "Hell no, I can't get you no bullets because
5 you'll get caught up with it. If you are going
6 to do something, you got to get your head in
7 this music because you got to get real serious
8 and try to make it happen. You need to be
9 focused."

10 Q Who wanted you to buy bullets?

11 A He did, Solomon.

12 Q Solomon?

13 A (Witness nods.) (Indicating affirmative
14 response.)

15 Q Steve; is that right?

16 A Yeah, 1 Cocke.

17 Q 2 Cocke. All three and the same?

18 A Yeah.

19 Q Did he ask whether or not you had an I.D.?

20 A He asked me about an I.D.

21 Q And you told him you did?

22 A Yeah.

23 Q And then he asked you to buy him some bullets?

24 A Uh-huh. (Indicating affirmative response.)

25 Q And you said?

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

- 1 A "Hell no."
- 2 Q What did you tell him about buying bullets?
- 3 A I say, "If you buy some bullets, whatever you
4 are going to do, the police are going to catch
5 you because people been dead ten years and got
6 caught." You know, I mean.
- 7 Q And that was after a phone call?
- 8 A Uh-huh. (Indicating affirmative response.)
- 9 Q That he came out there?
- 10 A Uh-huh. (Indicating affirmative response.)
- 11 Q Now, do you remember, Dre, a particular type of
12 sweatshirt Steve would wear?
- 13 A He had a little red sweatshirt with a little
14 rhino thing on it, Ecko.
- 15 Q A little red sweatshirt with a little round
16 thing on it?
- 17 A A rhino.
- 18 Q A Rhino?
- 19 A Yes, called Ecko.
- 20 Q And if I showed you this item (indicating), does
21 it look like this item?
- 22 A Ecko, yeah.
- 23 Q Have you seen Steve since that day?
- 24 A No, not since the studio.
- 25 Q I noticed another call to [REDACTED] the next day,

ANDRE ROBINSON -DIRECT- BY MR. MCMAHON

1 Sunday the 28th?

2 A Okay.

3 Q Do you recall talking to him the next day?

4 A Nah.

5 Q Thank you, Dre.

6 MR. MCMAHON: I don't have any further
7 questions.

8 THE COURT: Cross.

9 MS. MIMS: I don't have any questions, Your
10 Honor.

11 THE COURT: You can step down. You are
12 free to go or you can stay if you wish. It might be
13 a good time to stop.

14 MR. MCMAHON: Yes, sir.

15 THE COURT: Ladies and gentlemen, we will
16 go ahead and take a recess for the day. I will ask
17 you to be back in the morning at 9:30. We will get
18 started back up then. Again, it's very important,
19 don't talk about the case. See you in the morning.

20 (The jury is excused for the day at
21 5:23 p.m.)

22 THE COURT: Counsel, I have given both
23 tables a copy of a proposed charge. Obviously, there
24 are, I'm sure, some changes to be made to it. That's
25 just something to get you started. In the morning or

1 we will probably sometime tomorrow need to talk about
2 it, I'm sure. Anything else before we go from the
3 State?

4 MR. MCMAHON: No, sir, Your Honor. Just so
5 the defense will know, I think we will probably rest
6 sometime late tomorrow morning or early tomorrow
7 afternoon. That's what I'm thinking.

8 THE COURT: Anything else from the defense?
9 Will you be prepared to make whatever decision you
10 have to at that point?

11 MS. MIMS: Yes, sir, we will.

12 THE COURT: See you tomorrow then at 9:30.

13 (Whereupon the proceedings were concluded
14 for February 27, 2001.)

15 (The following proceedings were reported on
16 February 28, 2001.)

17 THE COURT: Counsel, I understand we are
18 still short a couple of jurors. Rather than go back
19 downstairs, I will wait here until we get them.

20 BAILIFF: We have them.

21 THE COURT: We do have them. Before we
22 bring them in, let me ask, any of you have any other
23 charge requests that you have been able to put
24 together?

25 MS. CAMPBELL: None from the State at this

1 time, Your Honor.

2 THE COURT: If you notice on what I gave
3 you, there are some with question marks because
4 obviously I don't know until everything unfolds
5 what's going to happen.

6 MS. MIMS: Your Honor, at the next break,
7 the defense will have one or two charges. I am sorry
8 I didn't bring them.

9 THE COURT: No problem. The only concern
10 is just that you have enough time for you to be able
11 to look it over.

12 MS. MIMS: Yes, sir. Thank you.

13 MS. CAMPBELL: Judge, one other thing. On
14 the next witness, I showed Ms. Mims his prior record.
15 He does have three counts of auto breaking from the
16 year 2000. That would be the extent of his record as
17 impeachable. I think we agreed to that. I just
18 wanted to put that on the record.

19 THE COURT: Ms. Mims, is that your
20 understanding?

21 MS. MIMS: Yes, sir, that's my
22 understanding.

23 THE COURT: I understand we have all the
24 jurors. Do you want to start without Mr. McMahon?

25 MS. CAMPBELL: We can start without

1 Mr. McMahon.

2 THE COURT: Let's bring the jury in.

3 BAILIFF: We need one more.

4 THE COURT: I thought you said we had them
5 all.

6 BAILIFF: We thought we did.

7 (Pause.)

8 THE COURT: I understand we have all the
9 jurors? Is the State ready?

10 MR. MCMAHON: Yes, sir.

11 THE COURT: Is the defense ready?

12 MS. MIMS: Yes, sir, Your Honor.

13 THE COURT: Now let's bring them in.

14 (The jury returns to the courtroom at
15 9:39 a.m.)

16 THE COURT: All parties and attorneys are
17 in the courtroom and all jurors are now with us. The
18 State, call your next witness, please.

19 MS. CAMPBELL: The State would call Tyler
20 Gillian.

21 RICHARD TYLER GILLIAN, being
22 first duly sworn, testified as follows:

23 CLERK: Have a seat in the witness box and
24 state your full name for the record.

25 THE WITNESS: My name is Richard Tyler

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Gillian.

2 DIRECT EXAMINATION

3 BY MS. CAMPBELL:

4 Q Tyler, how old are you?

5 A Eighteen.

6 Q Where do you live?

7 A With my great grandparents on Innsbruck Drive.

8 Q With your great grandparents on Innsbruck Drive?

9 A Yes, ma'am.

10 Q Is that in Richland County or in Lexington
11 County?

12 A Lexington County.

13 Q Who all lives at that house?

14 A Me, my great grandfather and my great
15 grandmother.

16 Q So it's you, your great grandfather and your
17 great grandmother?

18 A Yes, ma'am.

19 Q How long have you been living at that address on
20 Innsbruck Drive?

21 A I've lived on and off there my whole life; but
22 for just the past three and a half years, I've
23 stayed there.

24 Q Are you currently employed?

25 A No, ma'am.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 Q Where did you go to high school?
- 2 A Dutch Fork and Chapin alternative.
- 3 Q How do you know Steve Gillian?
- 4 A That's my cousin.
- 5 Q He's your cousin?
- 6 A Yes, ma'am.
- 7 Q Is he your first cousin?
- 8 A Yes, ma'am.
- 9 Q And Steve Gillian used to live next door to you;
- 10 is that correct?
- 11 A Yes, ma'am.
- 12 Q And when you are talking about the house on
- 13 Innsbruck Drive, I will show you State's Exhibit
- 14 38. Do you recognize that?
- 15 A Yes, ma'am, that's the front of my house.
- 16 Q That's the house where you live with your great
- 17 grandparents?
- 18 A Yes, ma'am.
- 19 Q I will show you State's Exhibit 37. Do you
- 20 recognize that?
- 21 A That's the house they used to live in, Steve and
- 22 my uncle and my cousin Clint.
- 23 Q This is the house where Steve used to live?
- 24 A Yes, ma'am.
- 25 Q And who did he live there with?

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A His parents and his brother.
- 2 Q His parents. And is this his father right here
- 3 (indicating)?
- 4 A Yes, ma'am.
- 5 Q Mr. Gillian, right here (indicating) in the
- 6 yellow shirt?
- 7 A Yes, ma'am.
- 8 Q And that's your uncle?
- 9 A Yes, ma'am.
- 10 Q That would be Steve's father?
- 11 A Yes, ma'am.
- 12 Q And that would be Clint's father?
- 13 A Yes, ma'am.
- 14 Q Tell this jury how these two houses -- are they
- 15 close to each other? How are they situated?
- 16 A There is a garden in between them. You can
- 17 easily walk from one to the other.
- 18 Q In fact, if you look in the back of this
- 19 picture, can you see the house where you live on
- 20 Innsbruck?
- 21 A Yes, ma'am, right there (indicating).
- 22 Q Put my finger where it's supposed to be?
- 23 A Right there (indicating).
- 24 Q The white house in the background?
- 25 A Yes, ma'am.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 Q So the house where you live is actually right
2 behind the house where the Gillians live; is
3 that correct?
- 4 A Yes, ma'am.
- 5 Q Tyler, you were pretty much raised by your great
6 grandparents?
- 7 A Yes, ma'am.
- 8 Q What is that phone number or what was it last
9 January, that phone number?
- 10 A 781 --
- 11 Q Wait a minute. Wait a minute. Okay.
- 12 A 781-2232.
- 13 Q That's the house on Innsbruck?
- 14 A Yes, ma'am.
- 15 Q Was it unusual for Steve to come over and stay
16 in this house on Innsbruck?
- 17 A He would come from time to time. He would
18 usually leave. He would just sit in my room and
19 watch T.V., just hang out. He was real close to
20 my great grandmother.
- 21 Q Before I get any further, back in the year 2000,
22 Tyler, you were convicted, I think, of three
23 counts of auto breaking?
- 24 A Yes, ma'am.
- 25 Q And you are currently on probation for those?

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q I want to turn your attention back to January
3 the 28th of last year, that Super Bowl weekend.

4 A Yes, ma'am.

5 THE COURT: Counsel, let me do one thing if
6 I might. Ladies and gentlemen, let me be sure and
7 tell you what that means. Any time evidence of prior
8 criminal convictions is admitted regarding any
9 witness, I want to be sure you understand that that
10 is admitted only as it pertains to the credibility of
11 that witness.

12 It's to let you use it, if you wish, in
13 judging the credibility of the witness. Now, you may
14 find that it makes the witness less credible. You
15 may find it makes the witness more credible. You may
16 find it does not affect the witness's credibility at
17 all.

18 It certainly is not designed to reflect on
19 the character of the witness in any fashion but
20 simply to allow you to use it if you find it
21 appropriate to determine whether to affect the
22 credibility of the witness and for nothing else.

23 Is there any exception from the State to
24 that charge?

25 MS. CAMPBELL: No, sir.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 THE COURT: Any exception from the defense?

2 MS. MIMS: No, Your Honor.

3 THE COURT: All right. Go ahead.

4 BY MS. CAMPBELL:

5 Q Tyler, turning your attention back to that Super
6 Bowl Sunday, where were you staying that
7 weekend?

8 A I was staying at my grandparents and at my
9 friend Tony Rodriques' house.

10 Q Specifically that Saturday night, where did you
11 sleep?

12 A I slept at my grandparents' house. I stayed
13 over at Tony's --

14 COURT REPORTER: Judge, I didn't get that.

15 BY MS. CAMPBELL:

16 Q Say that again..

17 A I stayed at my grandparents house that night,
18 but before that I was at my friend Tony's house
19 until 1:00 a.m.

20 Q So you got home about 1:00 a.m.?

21 A Yes, ma'am.

22 Q That would be kind of the early morning hours or
23 right after midnight on that Saturday night?

24 A Yes, ma'am.

25 Q When you got home at 1:00 a.m., was Steve

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Gillian at that house on Innsbruck?

2 A No, ma'am.

3 Q What did you do once you got in around
4 1:00 a.m.?

5 A I went in, turned on my T.V., got something to
6 drink, and fell asleep.

7 Q And where did you fall asleep?

8 A In my bed.

9 Q In your bed?

10 A Yes, ma'am.

11 Q Because you have your own room in that house
12 because you live there?

13 A Yes, ma'am.

14 Q In the early morning hours around 5:30 or
15 6:00 a.m., do you remember hearing voices while
16 you were sleeping?

17 A I thought I heard Steve's voice. It could have
18 been -- I don't know exactly what time. It
19 could have been as late as six, earlier than
20 that. I don't really know. I know the
21 approximate time.

22 Q When you heard voices, where were they coming
23 from?

24 A Outside the house. I have two windows. It
25 could have been outside. I never saw him in my

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 presence.

2 Q You never saw him at that point?

3 A (Witness shakes head.) (Indicating negative

4 response.)

5 Q But you could hear his voice outside?

6 A Yes, ma'am.

7 Q Do you remember what you heard him saying at

8 that point?

9 A No, ma'am, I couldn't understand anything.

10 Q Did you hear any other voices?

11 A No, ma'am.

12 Q But you did hear, Steve?

13 A Yes, ma'am.

14 Q And in your bedroom, would you be able to tell

15 if anyone came in the house?

16 A If they came in the front door, I could tell if

17 anyone came in the house. If they came in our

18 back door, I probably wouldn't.

19 Q But that morning in the early morning hours, you

20 said sometime around 5:30, six --

21 A Uh-huh. (Indicating affirmative response.)

22 Q -- it could have been earlier or later?

23 A Uh-huh. (Indicating affirmative response.)

24 Q And you heard his voice?

25 A Yes, ma'am.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q And again it was coming from outside?

2 A Yes, ma'am.

3 Q What part of the outside of this house was it
4 coming from, what area? Could you tell?

5 A My room is right here (indicating), and
6 apparently right next to there.

7 Q So if he had pulled up next to the house, this
8 (indicating) is your bedroom?

9 A Uh-huh. (Indicating affirmative response.)

10 Q Right here (indicating) in the front on the
11 corner?

12 A Yes, ma'am.

13 Q And you heard it coming from the side over here
14 (indicating) next to it, right?

15 A Yes, ma'am.

16 Q Did you ever see him at that point?

17 A No, ma'am.

18 Q Did you ever hear him come in the house?

19 A No, ma'am.

20 Q Later that morning did you hear Steve out in the
21 yard again?

22 A It was -- I didn't hear Steve again until about
23 nine, 9:15, 9:30, right before my grandparents
24 went to church. Then I saw him.

25 Q Let me back up, and you are going to have to

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 speak up a little; okay? You didn't see him any
2 or hear him any until later that morning between
3 nine and 9:30?

4 A Yes, ma'am, that was the next time I saw him or
5 heard him.

6 Q And how did you hear him coming in or coming
7 back to the house at that point?

8 A He came in my room somewhere between that time,
9 and he just started talking to me and going on
10 about what had happened.

11 Q Did you hear his car pull in that morning?

12 A Yes, ma'am.

13 Q And when his car pulled in the second time that
14 morning, did it pull in the same place you heard
15 earlier?

16 A No, ma'am, he pulled right by the house. My
17 grandpa asked him to move it so he could go to
18 church.

19 Q Is there some gravel or something out there?

20 A Yes, ma'am, there's rocks and gravel right next
21 to the house.

22 Q So the second time he pulled in, what area was
23 he in of the house? Is it shown on here?

24 A You can't see it directly. See, there is grass
25 all the way from where that sewer tank is over

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 there. It has gravel and concrete pieces.

2 Q So he pulled into a different part of the yard?

3 A Yes, ma'am.

4 Q And you could tell that because could you hear
5 the tires on the gravel?

6 A The sounds. You can just hear it.

7 Q You said he came in your room that morning?

8 A Yes, ma'am.

9 Q Again, the time period is somewhere before your
10 grandparents went to church?

11 A Yes, ma'am.

12 Q That would have been somewhere around the time
13 of nine to 9:30?

14 A Yes, ma'am.

15 Q When he came in your room that morning, did he
16 have a conversation with you?

17 A Yes, ma'am.

18 Q What did he first talk about?

19 A About how he went to a party last night, and he
20 beat up a few people.

21 Q Did he specifically say what people he beat up?

22 A He told me he had beat up Jeremiah and Richie.
23 That's about the extent. He went into that.

24 Q And at that point did your grandfather enter the
25 room?

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am. He asked him to move his car so he
2 could go to church.
- 3 Q And did Steve leave to go move his car at that
4 point?
- 5 A Yes, ma'am.
- 6 Q Did he come back into your room and have another
7 conversation with you?
- 8 A Yes, ma'am.
- 9 Q And what was that conversation?
- 10 A He had told me that he had killed somebody.
- 11 Q And how did he phrase that, do you remember?
- 12 A Not exactly. I just remember he told me, and I
13 didn't really believe it because he would always
14 ramble on about stuff.
- 15 Q Did he elaborate any on how he had killed that
16 person?
- 17 A He said he took him behind this jewelry store he
18 had once robbed and was going to show him the
19 shop. He said he didn't tell him who it was or
20 exactly how it happened. That's what he said
21 happened.
- 22 Q He said he took him where?
- 23 A To a jewelry store he had robbed.
- 24 Q To a jewelry store he had robbed?
- 25 A Yes, ma'am.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q And that he had shot him is how he indicated he
2 had killed him?

3 A Yes, ma'am.

4 Q Did he say anything else?

5 A I think that was about it, all I can remember.

6 Q Did he say anything about newspapers, reading
7 about it?

8 A I remember hearing something like, "You might
9 see it in the newspaper," but I wasn't paying
10 much attention. I just remember the direct
11 comment he said to me. I paid attention to
12 that. I didn't want to believe it, didn't
13 believe it. He looked at me kind of funny, and
14 I just went on my way, and he went to sleep.

15 Q You told him you didn't believe him?

16 A I never told him that. I just looked at him
17 like in a state of disbelief. I never actually
18 said, "I don't believe you."

19 Q When you looked at him, what happened?

20 A He just kind of grinned at me.

21 Q What was his demeanor like that morning?

22 A He was drunk.

23 Q After that did he go take a shower?

24 A I think he had taken a shower before. He looked
25 clean.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q Did you go take a shower?

2 A Yeah, I took a shower after I talked to him. I

3 stayed and watched the T.V. in the other room.

4 Q So after that he went to sleep in your bed?

5 A Yes, ma'am.

6 Q Do you remember what he was wearing that

7 morning?

8 A If I remember correctly, he was wearing a

9 T-shirt, some blue jeans. I think he had a

10 leather jacket with him. He was wearing some

11 white shoes.

12 Q Let me get this straight. He was wearing blue

13 jeans?

14 A Yes, ma'am.

15 Q Some white -- what kind of shoes?

16 A Nike's.

17 Q Tennis shoes?

18 A Yeah. Yes, ma'am, tennis shoes.

19 Q And what else?

20 A And a T-shirt. I think he had his leather

21 jacket with him.

22 Q You are familiar with his clothes and stuff.

23 Does he have several pairs of tennis shoes?

24 A He had a good bit of tennis shoes, three or four

25 pairs.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q He had white tennis shoes, right?

2 A Yes, ma'am.

3 Q Do you know whether or not Steve ever had a red
4 sweatshirt?

5 A Yes, ma'am.

6 Q Describe the sweatshirt for the jury.

7 A It was a red Ecko. It had a rhinoceros on it.
8 It was a hooded sweatshirt.

9 Q Did you know where he got that sweatshirt?

10 A Fine's.

11 Q That's a store here in town?

12 A It was at Columbiana Centre. They closed.

13 Q I am showing you this sweatshirt. Do you
14 recognize this?

15 A Yes, ma'am, that's the one he had.

16 Q That's like the one he had?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q It had the same emblem on the front?

20 A Yes, ma'am.

21 Q But he was not wearing that when you saw him
22 that morning?

23 A No, ma'am.

24 Q During that evening did you ever hear the phone
25 ring after you got in at 1:00 a.m.?

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A No, ma'am, I don't remember. If I talked to
2 him, I usually called him; but I didn't call
3 nobody.
- 4 Q Was there a phone in your room though?
- 5 A No, ma'am, there's not. A lot of times I take
6 the phone to sleep with me, but sometimes I
7 don't.
- 8 Q That night you didn't?
- 9 A No, ma'am.
- 10 Q Were you aware of the burglary that had happened
11 that Friday before at that point?
- 12 A I heard something about it prior to it and
13 after.
- 14 Q You heard about it but it wasn't from Steve,
15 right?
- 16 A Huh-uh. (Indicating negative response.)
- 17 Q Had Steve ever told you anything about a jewelry
18 store robbery prior to that?
- 19 A He had mentioned it that time, and that morning
20 was the first time I heard anything about it.
21 Before that like he had said something about it,
22 but I didn't believe it. I thought he was just
23 talking.
- 24 Q So before that he had talked about robbing a
25 jewelry store?

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q What specifically had he talked about he had
3 gotten from the jewelry store?

4 A Some ladies' jewelry.

5 Q Specifically watches?

6 A Yes, ma'am.

7 Q Tyler, you first talked to the police on that
8 Sunday, January 28th, right, Super Bowl Sunday?

9 A Yes, ma'am.

10 Q And when you first talked to them, did you tell
11 them about what Steve had told you that morning?

12 A No, ma'am.

13 Q Why not?

14 A Because I didn't believe it and the fact he is
15 my cousin. I was just reluctant to tell.

16 Q This is hard for you here today, isn't it?

17 A Yes, ma'am.

18 Q They talked to you again a few days later?

19 A Yes, ma'am.

20 Q And you told them about the burglary and stuff?

21 A Yes, ma'am.

22 Q But you still didn't tell them what he said?

23 A Yes, ma'am, that's correct.

24 Q That afternoon -- and you can't talk about what
25 he said -- but that afternoon after Steve said .

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 that to you that morning, that Sunday afternoon?

2 A Yes, ma'am.

3 Q Did you and Clint have a conversation?

4 A Around lunch time Clint just pulled me aside and
5 asked me --

6 Q You can't say what he said. I'm sorry. It's
7 the rules. But y'all had a conversation?

8 A The two stories coerced. That's all. We heard
9 the same story.

10 Q When did you find out Jason Ward had been
11 killed?

12 A I was at my friend's house. It was probably in
13 the afternoon right before the Super Bowl, I
14 think. It was on the news.

15 Q Did you know Jason Ward?

16 A No, ma'am. I mean, I knew him when I seen him,
17 but never...

18 Q And then on February 15th, the police got in
19 contact with you again?

20 A Yes, ma'am.

21 Q And you told them what Steve had told you?

22 A Yes, ma'am.

23 Q And why did you feel like you needed to tell
24 them at that point?

25 A Because Clint had already came ahead with his.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 I figured, you know, they had me anyway. So
2 there was no point in -- I don't know how to put
3 it. They already knew. They had pulled me
4 aside, and I had to tell them the truth.

5 Q You had to tell them the truth?

6 A Yes, ma'am.

7 Q Tyler, you gave a statement to the police;
8 right?

9 A Yes, ma'am.

10 Q You can use this statement. You were talking
11 about specifically what Steve said to you that
12 morning?

13 A Yes, ma'am.

14 Q You can look at this statement and let it help
15 you refresh your memory, okay?

16 A Yes, ma'am.

17 Q You remember when I asked you about what Steve
18 said when he first came in the room about what
19 he had done at the party?

20 A Uh-huh. (Indicating affirmative response.)

21 Q Does that help refresh your memory?

22 A He had said, "I kicked five or six kids' ass at
23 the party."

24 Q Did he say specifically whom?

25 A Yeah, Richie, Austin, Jeremiah.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q Then he went to move the car; is that correct?

2 A Yes, ma'am.

3 Q When he came back in, does that statement help
4 refresh your memory about what he said
5 specifically about killing somebody?

6 A He said, "I killed somebody, Yo."

7 Q "I killed somebody," what?

8 A "Yo." It's just a term. He said, "I took him
9 behind Dems jewelry store that I had robbed in
10 Boozer Shopping Center and was going to show him
11 how I did it."

12 Q You've got to slow down a little. He took him
13 behind Dems jewelry store?

14 A "That I robbed and told him I was going to show
15 him how I did it. Then I shot him a couple of
16 times and left him there because" --

17 COURT REPORTER: Judge, I couldn't
18 understand.

19 THE COURT: You need to speak a little bit
20 more clearly.

21 BY MS. CAMPBELL:

22 Q And you need to slow down a little bit, okay?

23 THE COURT: But also, just pronounce your
24 words a little bit more.

25 A He took him behind Dems, "The jewelry store that

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 I had robbed," is what he said. He said, "I was
2 going to kind of show him how I robbed the
3 place. Instead I just shot him a couple of
4 times and left him there because I figured no
5 one would find out because they did not find out
6 that I robbed the place."

7 Q And then did he tell you why he shot -- he
8 didn't tell who the person was, right?

9 A No, ma'am.

10 Q Did he tell you why he shot the person?

11 A "Because kids and people think they are hard
12 these days."

13 Q They are hard these days?

14 A Uh-huh. (Indicating affirmative response.)

15 Q What did that mean?

16 A Think they can fight, think they're bad.

17 Q Think they can fight, think they are bad?

18 A (Witness nods.) (Indicating affirmative
19 response.)

20 Q I want to ask you specifically, and you can look
21 at this to refresh your memory, about what he
22 had gotten when he had robbed the jewelry store.
23 He had told you about that before any of this
24 happened, right?

25 A Yes, ma'am.

TYLER GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q And in there does it indicate he said he got
2 watches?

3 A Yes, ma'am.

4 Q Does it indicate what kind of watches?

5 A Tag Heuer.

6 Q Tag Heuer watches?

7 A They were ladies'.

8 Q Tag ladies' watches?

9 A Uh-huh. (Indicating affirmative response.)

10 Q Do you remember finally, Tyler, when the police
11 asked you about the red sweatshirt, about where
12 it would be?

13 A Uh-huh. (Indicating affirmative response.)

14 Q Do you remember what you told them?

15 A I figured it would be in the lake because that's
16 where he always would put stuff. That's where
17 he would put something. If he put something --

18 COURT REPORTER: Judge?

19 THE COURT: Again, Mr. Gillian, you have
20 just got to pronounce your words a little more
21 clearly.

22 BY MS. CAMPBELL:

23 Q And talk slowly, okay?

24 A I would figure it was in the lake because he
25 said if he put anything anywhere, it would be in

TYLER GILLIAN -CROSS- BY MS. MIMS

1 the lake.

2 Q Did you also tell the police about him, how he
3 talked about killing someone before that?

4 A He said if he had killed someone, it would make
5 him real.

6 Q It would make him real?

7 A Uh-huh. (Indicating affirmative response.)

8 Q What else did he say?

9 A He thought if he killed someone, he could appeal
10 to the rap-type music crowd.

11 Q It would appeal to the rap-type music crowd?

12 A Yes, ma'am.

13 Q Thank you, Tyler. Answer any questions they may
14 have, okay?

15 A Yes, ma'am.

16 THE COURT: Cross.

17 MS. MIMS: Thank you, Your Honor. May it
18 please the Court.

19 CROSS EXAMINATION

20 BY MS. MIMS:

21 Q Good morning, Tyler.

22 A Good morning.

23 Q I want to go back to the early morning of
24 January 28th.

25 A Yes, ma'am.

TYLER GILLIAN -CROSS- BY MS. MIMS

- 1 Q You were sleeping at your great grandparents'
2 house?
- 3 A Yes, ma'am.
- 4 Q And Steve has come to your bedroom window
5 before?
- 6 A Yes, ma'am.
- 7 Q In the past?
- 8 A Uh-huh. (Indicating affirmative response.)
- 9 Q Usually when he did that, it was to stay, "Let
10 me in the house"?
- 11 A Yes, ma'am.
- 12 Q And on the morning of January 28th, you heard
13 his voice again?
- 14 A Yes, ma'am.
- 15 Q And it was between 5:30 and six; is that right?
- 16 A Roughly around that time. I don't know the
17 exact time.
- 18 Q But somewhere between that time?
- 19 A Uh-huh. (Indicating affirmative response.)
- 20 Q And you heard his voice again at the window?
- 21 A Uh-huh. (Indicating affirmative response.)
- 22 Q You couldn't tell what he said?
- 23 A I couldn't tell what he said. I don't know if
24 he was directly at the window. I just heard his
25 voice somewhere around that part of the house.

TYLER GILLIAN -CROSS- BY MS. MIMS

1 Q And you didn't hear anybody else's voice at that
2 time?

3 A No, ma'am.

4 Q Just Steven?

5 A Uh-huh. (Indicating affirmative response.)

6 Q And you are sure about that?

7 A That's correct.

8 Q Now, Tyler, when the police came and questioned
9 you, they questioned you the first time on
10 January 28th?

11 A Yes, ma'am.

12 Q And you gave a statement at that time?

13 A Yes, ma'am.

14 Q A sworn statement?

15 A Yes, ma'am.

16 Q And they weren't happy with what you said?

17 A No, ma'am.

18 Q And they came back and saw you again?

19 A Yes, ma'am.

20 Q They saw you, I think on February 2nd?

21 A Like three or four days later, yes, ma'am.

22 Q And they again weren't satisfied with what you
23 said?

24 MS. CAMPBELL: Objection, Your Honor. I
25 don't think she can ask that. He can't speculate

TYLER GILLIAN -CROSS- BY MS. MIMS

1 about what the police were thinking at the time.

2 THE COURT: I will sustain the objection to
3 the extent that he can't speculate. But if there is
4 something they said or something that gave an
5 indication, you can just lay a little foundation.
6 You can do that.

7 MS. MIMS: Thank you, Your Honor.

8 THE COURT: Go ahead.

9 BY MS. MIMS:

10 Q Did they seem happy with your answers?

11 A Somewhat but not thoroughly.

12 Q They wanted more information from you?

13 A They figured I knew more, which I did. They
14 could probably tell by the way my answers were.

15 Q They came back again on February 15th the third
16 time?

17 A Yes, ma'am.

18 Q And just to go back a little bit, you mentioned
19 to Ms. Campbell that you did have some auto
20 breaking charges?

21 A Yes, ma'am.

22 Q On January 28th of 2001, you were on probation?

23 A Yes, ma'am.

24 Q And just so the jury understands, probation is a
25 program where when you are charged with a crime

TYLER GILLIAN -CROSS- BY MS. MIMS

1 and you plead guilty, you can get probation?

2 A Yes, ma'am.

3 Q And through probation you are able to get out of
4 jail; is that right?

5 A Yes, ma'am.

6 Q And you are supposed to do things, like report
7 to a probation officer?

8 A That's correct.

9 Q Follow all the rules, like maybe keep a job?

10 A Yes, ma'am.

11 Q Maybe get a G.E.D.?

12 A Stay in school, stuff like that.

13 Q And if you don't do that, there is a sentence
14 hanging over your head?

15 A Yes, ma'am.

16 Q That's a jail sentence, right?

17 A Yes, ma'am.

18 Q And if you don't do well on probation, you go to
19 jail?

20 A That's correct.

21 Q Did the investigators know you were on
22 probation?

23 A Not at that point in time. They didn't know
24 until this morning.

25 Q You don't think the investigators knew until

TYLER GILLIAN -CROSS- BY MS. MIMS

- 1 this morning that you were on probation?
- 2 A They pulled up my rap sheet when I was in there
- 3 this morning.
- 4 Q Did they show you a warrant at all when they
- 5 came out to talk to you the third time?
- 6 A No, ma'am. They showed me a warrant with
- 7 Steve's name on it one time when I was with my
- 8 grandmother, I think.
- 9 Q Did they explain to you accessory after the
- 10 fact?
- 11 A They explained to us what that was.
- 12 Q They explained to you what that was?
- 13 A (Witness nods.) (Indicating affirmative
- 14 response.)
- 15 Q And did they mention they could charge you with
- 16 accessory after the fact?
- 17 A Never directly said they could charge me with
- 18 it.
- 19 Q But they mentioned it to you, didn't they?
- 20 A Yeah, they mentioned it to me.
- 21 Q And you know Steve well?
- 22 A Pretty well, yes, ma'am.
- 23 Q He is your first cousin?
- 24 A Yes, ma'am.
- 25 Q And he pretty much stayed at your grandparents a

TYLER GILLIAN -CROSS- BY MS. MIMS

1 lot, too?

2 A Yes, ma'am.

3 Q Or your great grandparents a lot, too. And
4 Steve talks a lot?

5 A Yes, he does.

6 Q He runs his mouth?

7 A Yes, ma'am.

8 Q And you have seen him intoxicated before?

9 A Yes, ma'am.

10 Q And he runs his mouth a lot when he is
11 intoxicated?

12 A A lot more than normal.

13 Q A lot more than normal?

14 A Yes, ma'am.

15 MS. MIMS: Beg the Court's indulgence.

16 (Pause.)

17 MS. MIMS: I have no further questions,
18 Your Honor.

19 THE COURT: Any redirect?

20 MS. CAMPBELL: Nothing, Your Honor.

21 THE COURT: You can step down, Mr. Gillian.
22 You can stay if you wish or you are free to go if you
23 wish.

24 THE WITNESS: Thank you.

25 STEVEN MICHAEL LIVINGSTON,

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 being first duly sworn, testified as follows:

2 CLERK: Have a seat in the witness box and
3 state your full name for the record.

4 THE WITNESS: Steven Michael Livingston.

5 DIRECT EXAMINATION

6 BY MR. MCMAHON:

7 Q Mr. Livingston, what is your occupation?

8 A I'm owner and manager of Dems Jewelers.

9 Q And how long have you been associated with Dems
10 Jewelers?

11 A Since 1969.

12 Q Now, I want to direct your attention back to
13 July 4th -- well, before I get there, where is
14 Dems located and what type of business is it?

15 A Well, it is a jewelry, retail jewelry, store in
16 Boozer Shopping Center.

17 Q How long have y'all been in the Boozer Shopping
18 Center location?

19 A Since before '69.

20 Q And that had to be somewhere around the time
21 Boozer Shopping Center was developed?

22 A I can't answer that question.

23 Q It's been a good while?

24 A Yes, sir.

25 Q Y'all's business at the Boozer Shopping Center,

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 I refer you now to State's Exhibit Number 4,
2 this being a diagram of Boozer Shopping Center.

3 A Yes, sir.

4 Q This (indicating) representing Dems. There are
5 other businesses, if you face Dems, to the
6 right?

7 A That's correct.

8 Q And other businesses to the left?

9 A That's correct.

10 Q And behind Dems there is an alleyway?

11 A A driveway, yes, sir.

12 Q Driveway. That driveway, you can go around and
13 come out towards the Bush River Road side of
14 Boozer Shopping Center; is that correct?

15 A That's correct.

16 Q Now, the entrance to Dems for retail customers
17 would be this front entrance (indicating)?

18 A Yes, sir.

19 Q On this side (indicating). Did y'all have any
20 type of security alarm system in Dems back in
21 July of 2000?

22 A Yes, sir.

23 Q And was that alarm system activated during that
24 night?

25 A Yes, sir.

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 Q That y'all had a break-in?

2 A Yes, sir.

3 Q Would you tell the jury basically about the
4 break-in and what item or items that were
5 stolen.

6 A Yes, sir. I received a phone call from the
7 Sheriff's Department approximately -- well,
8 actually from the alarm company around 1:40 in
9 the morning of July 4th, 2000.

10 At 1:59 the Sheriff's Department called my
11 house and told me that we had had an entry into
12 our business. They requested me to come down.
13 I responded. I was there approximately 30
14 minutes.

15 The front glass window had been entered.
16 Someone had climbed through the glass, entered
17 the store, broken the show case that was about
18 20 feet from the front door that contained 34
19 Tag Heuer watches. They were all missing.
20 Coincidentally, we had done an inventory on
21 June 30th, so it was quite accurate.

22 Q So there is just one front door to Dems?

23 A Yes, sir.

24 Q And what was the condition of that door when you
25 arrived, Mr. Livingston?

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 A Well, to our amazement, it's a laminated glass
2 door, meaning that it's so-called riot proof.
3 It has a plastic liner to the inside of the
4 glass.

5 Someone had shattered the glass and bent
6 the plexiglass over the railing where you can
7 push open the door and had thrown a mat over
8 that, which I assume so they wouldn't be
9 injured, you know, entering the building and
10 climbing over and going over the glass.

11 Q And when you say that door was riot proof, you
12 meant it was purported to where it would sustain
13 a great amount of force without breaking?

14 A We have had this incident probably ten or more
15 times over the years, and this is the first time
16 anyone has gotten through it.

17 Q Is that right?

18 A Yes, sir.

19 Q Now, when you go in the building and when you
20 enter the building to that front door, how far
21 again is it from the counters where the watches
22 were at?

23 A It's approximately 20 feet. That case stands
24 perpendicular to the front door.

25 Q So if I go in, is that the first counter I come

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

- 1 to?
- 2 A Yes, sir.
- 3 Q And when you say 20 feet, can you give the jury
- 4 an idea about how far it is from your front door
- 5 to that first counter.
- 6 A Approximately to that table (indicating).
- 7 Q And all this (indicating) would be just walking
- 8 area inside the Dems until you get to that
- 9 counter?
- 10 A Yes, sir, it's an entrance way.
- 11 Q How was that counter secured or the watches?
- 12 Were they on the counter, in cases or what?
- 13 A They are within the case, and obviously the case
- 14 door was locked.
- 15 Q And that's a glass case?
- 16 A Yes, sir.
- 17 Q And what was the condition of that glass case?
- 18 A The top glass had been broken out of the case.
- 19 Q And how many -- I believe you said you had just
- 20 done an inventory June the 30th?
- 21 A Yes, sir.
- 22 Q This was four days later. Were you able to
- 23 determine precisely and fairly accurately how
- 24 many watches were missing?
- 25 A It was exactly 34.

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 Q Thirty-four watches?

2 A Yes, sir.

3 Q And were all of these watches the same brand
4 watches?

5 A Same brand.

6 Q And what is the brand name of those watches?

7 A Tag Heuer.

8 Q That's two different words?

9 A Yes, T-A-G, H-E-U-E-R.

10 Q That's the brand of watches that they were, Tag
11 Heuer?

12 A Yes, sir.

13 Q What is the range of value of those watches?

14 A At retail price, they probably started around
15 695 -- 695 to maybe 3,000.

16 Q Times 34?

17 A Yes, sir.

18 Q Now, this is July. Of course, the Sheriff's
19 Department began an investigation?

20 A Yes, sir.

21 Q They were on the scene, I believe you said, at
22 least uniform officers responding to the call,
23 before you arrived that morning?

24 A That is correct.

25 Q And an investigator began following up on this

STEVEN LIVINGSTON -DIRECT- BY MR. MCMAHON

1 burglary; is that correct?

2 A Yes, sir.

3 Q Is it fair to say it went through a number of
4 months before there was any information
5 developed back on the recovery of any of the
6 watches?

7 A Well, I don't know what information they had;
8 but I was notified in approximately February of
9 2001.

10 Q And in February of 2001, I believe Detective
11 Ewing might have been assigned and following up
12 on the case; is that correct?

13 A Yes, sir.

14 Q You had provided him -- I am not going to go
15 through all the numbers -- but you had provided
16 Detective Ewing with an inventory by serial
17 number, model number, of all the various watches
18 that were stolen?

19 A With the exception of about maybe two watches
20 that we did not have the serial number.

21 Q Were certain of those items returned to you in
22 February of 2001?

23 A I don't recall the date, but we did get 16
24 pieces back.

25 Q Thank you, Mr. Livingston. Answer any questions

STEVEN LIVINGSTON -CROSS- BY MR. BUTLER

1 the defense lawyer may have.

2 THE COURT: Any questions?

3 MR. BUTLER: Yes, sir.

4 CROSS EXAMINATION

5 BY MR. BUTLER:

6 Q Good morning, Mr. Livingston. How are you?

7 A Fine. How are you?

8 Q I'm fine. Thank you. I just have a couple of
9 quick questions for you.

10 A Sure.

11 Q Referring back to State's 4, Boozer Shopping
12 Center is kind of like an L.; right?

13 A Yes, sir.

14 Q And Dems is in sort of the middle of this branch
15 (indicating) of it, the top branch?

16 A That's correct.

17 Q And you are familiar with Manifest Discs and
18 Tapes?

19 A I am familiar with the location.

20 Q You know where it is. It's over on the other
21 side, right?

22 A That's correct.

23 Q And the point of entry in the burglary was the
24 front of your store, right?

25 A Yes, sir.

STEVEN LIVINGSTON -CROSS- BY MR. BUTLER

1 Q And there was no vandalism or damage or
2 attempted break-in at the back of your store,
3 was there?

4 A Not that we are aware of.

5 Q I guess it seems like a stupid question, but you
6 can't get to the front of your store through the
7 back of the store; can you?

8 A Well, yes, sir.

9 Q I mean, you can't get through -- if you want to
10 go through, if you were going to break through
11 the front door, you wouldn't have any reason to
12 be going through the back?

13 A Well, there is a vault back there. I guess it
14 depends why you would want to go back there.

15 Q But there was no evidence anybody had been
16 tampering with anything in the back?

17 A There was no evidence anyone went beyond that
18 front show case.

19 Q That's all. Thank you.

20 A Yes, sir.

21 MR. MCMAHON: Nothing on redirect, Your
22 Honor. May Mr. Livingston be excused?

23 THE COURT: Yes, sir. Mr. Livingston, you
24 are free to go or you can stay if you want to also.

25 THE WITNESS: Thank you, sir.

JOHN EWING -DIRECT- BY MR. MCMAHON

1 MR. MCMAHON: The State calls John Ewing.

2 JOHN EVERETT EWING, JR.,

3 being first duly sworn, testified as follows:

4 CLERK: Have a seat in the witness box and
5 state your full name for the record.

6 THE WITNESS: John Everett Ewing, Jr.

7 DIRECT EXAMINATION

8 BY MR. MCMAHON:

9 Q Mr. Ewing, by whom are you employed?

10 A Richland County Sheriff's Office.

11 Q And how long have you been employed by the
12 Richland County Sheriff's Department?

13 A March will be eight years.

14 Q What is your current position at the Sheriff's
15 Department?

16 A I'm an investigator.

17 Q Would you relate for the jury, please, the
18 various positions you have held during your
19 eight years with the Sheriff's Office.

20 A Yes. I have worked in court security, the
21 warrant division. I've been a line deputy. I
22 have worked as a school resource officer at one
23 of the high schools and a detective,
24 investigator.

25 Q How long have you been an investigator?

JOHN EWING -DIRECT- BY MR. MCMAHON

1 A Approximately two years now.

2 Q Now, Investigator Ewing, I am going to briefly
3 go back to the date of January the 28th. Were
4 you assigned to and, in fact, did you respond to
5 the crime scene behind Boozer Shopping Center on
6 Sunday morning, the 28th of January, 2001?

7 A Yes, I did.

8 Q And did you remain involved in the investigation
9 from that Sunday morning, the 28th, on through
10 January, February, and further dates?

11 A Yes, sir, I did.

12 Q Now, from the scene did you have an occasion to
13 go with the coroner to the address on an I.D.
14 card that had been secured from the body of the
15 victim, State's Exhibit Number 16?

16 A Yes, sir, I did.

17 Q And as a result of going there, you talked with
18 Mrs. Barbara Snipes, the mother of the victim,
19 and with Mr. Snipes, the stepfather of the
20 victim?

21 A Yes, sir.

22 Q Were you able to determine where the victim was
23 living at the time?

24 A [REDACTED], Suburban Lodge.

25 Q And did you pass that information on to other

JOHN EWING -DIRECT- BY MR. MCMAHON

1 officers involved in the investigation?

2 A Yes, sir, I contacted Lieutenant Smith.

3 Q That was my next question. Was among those
4 Lieutenant Smith and other officers so that they
5 could follow up on the Suburban Lodge area?

6 A Yes, sir.

7 Q You had an opportunity thereafter to go back to
8 the Suburban Lodge?

9 A Yes, sir.

10 Q Now, you remained involved in the investigation
11 throughout the day of that Sunday. Were you
12 able to determine where the victim was employed
13 and whether or not he had worked on that
14 Saturday night?

15 A Yes, sir.

16 Q Did you contact any co-workers of his?

17 A Yes, sir.

18 Q Who was that?

19 A Lee Houlis, I believe, is how his name is
20 pronounced.

21 Q From that were you able to determine other
22 individuals that had worked on Jason's shift?

23 A Yes, sir.

24 Q And who were they?

25 A Clint Brown and Wendy Johnson.

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- 1 Q Did you have an opportunity to talk with Clint
2 and Wendy by telephone?
- 3 A Yes, sir.
- 4 Q Later on that day, as a matter of fact, did you
5 go talk with them in person?
- 6 A Yes, sir.
- 7 Q Y'all knew by this time or did you the victim's
8 roommate's name?
- 9 A Was Zach, yes, sir.
- 10 Q And Clint and Wendy were his co-worker's names?
- 11 A Yes, sir.
- 12 Q And did you identify other friends of the
13 victim?
- 14 A I did.
- 15 Q That day?
- 16 A Yes, sir.
- 17 Q That would be Todd Davis?
- 18 A Todd Davis.
- 19 Q And Ted Swaggert?
- 20 A Yes, sir.
- 21 Q As a result of talking with these individuals,
22 were you given the name or were you interested
23 in contacting a Steve, a Steve Gillian?
- 24 A Yes, sir.
- 25 Q Were you and the lieutenant able to identify his

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1 residence?

2 A Yes, sir.

3 Q The location of where he lived?

4 A Yes, sir.

5 Q And where was that?

6 A It was Weed Drive. May I refer to my notes?

7 Q Sure, certainly.

8 A [REDACTED].

9 Q Did you have an opportunity to go to that
10 residence on actually that January the 28th?

11 A Yes, sir.

12 Q Approximately what time?

13 A Approximately 3:50.

14 Q In the afternoon?

15 A Yes, sir.

16 Q Do you remember what time you had gotten to the
17 crime scene that morning? Do you have it listed
18 in your notes?

19 A It's in my notes. It was around 8:52 in the
20 morning when I arrived on the scene.

21 Q So if I refer to State's Exhibit Number 27,
22 which is only a calendar for January of 2001, on
23 the 28th you were at the crime scene at
24 8:52 a.m.?

25 A Approximately that time, yes, sir.

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- 1 Q And by 3:50 that same afternoon, you were at the
2 Weed Drive residence?
- 3 A Yes, sir.
- 4 Q Was the Defendant at the Weed Drive residence?
- 5 A He was not at the Weed Drive residence.
- 6 Q Where was he at? Did you see him that day?
- 7 A Yes, sir, he was at his grandparents on
8 Innsbruck, which basically backs up to Weed
9 Drive.
- 10 Q Showing you State's Exhibit Number 37 and 38,
11 would that be his great grandparents' house in
12 the background?
- 13 A Yes, it would.
- 14 Q And 38, that would be a closer-up shot of part
15 of the great grandparents' house?
- 16 A Yes, sir.
- 17 Q Now, did you see his automobile at that
18 location?
- 19 A At the Innsbruck location, yes, sir.
- 20 Q And what, if anything, did you or Lieutenant
21 Smith do in regards to his automobile?
- 22 A A consent to search form was filled out, and
23 Lieutenant Smith searched the vehicle.
- 24 Q Who gave y'all consent to search the vehicle?
- 25 A Steve Gillian.

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1 Q I want to show you this document and ask if you
2 can identify it for us, please.

3 A That's a consent to search form which I filled
4 out for Steve, and Steve signed it for a search
5 of his vehicle.

6 MR. MCMAHON: Your Honor, I would offer
7 this in evidence.

8 THE COURT: Any objection?

9 MS. MIMS: No objection.

10 THE COURT: Without objection.

11 (State's Exhibit Number 52, consent to
12 search, is received into evidence.)

13 MR. MCMAHON: May I publish it?

14 THE COURT: Yes, sir.

15 BY MR. MCMAHON:

16 Q This is a document y'all normally use in
17 situations such as this?

18 A Yes, sir.

19 Q And you request someone to let you search their
20 car, have them sign it, and they consent?

21 A Yes, sir.

22 Q And you say the vehicle was searched at that
23 time?

24 A Yes, sir.

25 Q I want to show you some photographs. I know

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- 1 they were taken at a later date, but State's 10
2 and 11, is that the photographs of the vehicle
3 that was searched?
- 4 A That is the vehicle, yes.
- 5 Q That was searched on the afternoon of
6 January 28th?
- 7 A Yes, sir.
- 8 Q After that content to search form was signed?
- 9 A Yes, sir.
- 10 Q I believe the time on that is 16:02, 4:02 in the
11 afternoon?
- 12 A I would have to look at the paperwork. If it's
13 on there, that's what time it was.
- 14 Q And did y'all find a weapon in that vehicle at
15 the time?
- 16 A No, sir.
- 17 Q Any bullets?
- 18 A No, sir.
- 19 Q Or a red Ecko sweatshirt?
- 20 A No, sir.
- 21 Q Similar to this (indicating)?
- 22 A No, sir.
- 23 Q Or a Portland Trailblazer's hat (indicating)?
- 24 A No, sir.
- 25 Q You were there while the search was conducted?

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1 A Yes, sir.

2 Q Did you or Lieutenant Smith look up under the
3 hood of the vehicle?

4 A No, sir.

5 Q So it wasn't searched at that time?

6 A No, it wasn't.

7 Q Now, the Defendant, was he arrested then?

8 A No, sir.

9 Q Later on that evening of the 28th, are you still
10 working?

11 A Yes, sir.

12 Q Did you have an occasion to be at y'all's
13 headquarters at the Richland County Sheriff's
14 Department that night?

15 A Yes, sir.

16 Q And where is that located at?

17 A 5623 Two Notch Road in Richland County.

18 Q And did you have an opportunity to be in the
19 presence of the Defendant that night at the
20 Richland County Sheriff's Department?

21 A Yes, sir.

22 Q He had come down there voluntarily?

23 A Yes, sir.

24 Q And what, if anything, additionally did you
25 request from him that night?

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1 A I did a consent to search form for his clothes
2 that he was wearing.

3 Q I want to show you another document and ask if
4 you can identify that document for us, please.

5 A That's the consent to search form for the
6 clothes in which Steve signed.

7 Q Again, that's on the 28th?

8 A It is.

9 Q And what time does that show, Detective Ewing?

10 A 21:51 hours, which is 9:51 at night.

11 MR. MCMAHON: Your Honor, I would offer
12 this.

13 MS. MIMS: I have no objection.

14 THE COURT: Without objection.

15 (State's Exhibit Number 53, consent to
16 search, is received into evidence.)

17 BY MR. MCMAHON:

18 Q Now, State's 53, again is a form similar to
19 State's 52 on the consent to search. You took
20 certain items of clothes that he had on; is that
21 right?

22 A Yes, sir.

23 Q I want to show you some items and ask if you can
24 identify them for me, please. Do you recall
25 what he was wearing?

JOHN EWING -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q What was he wearing?

3 A He was wearing a gray Bugs Bunny shirt, a black
4 leather jacket, some blue jeans, and some tennis
5 shoes.

6 Q I want to show you these items and ask if you
7 can identify them for us, please.

8 A That's the shirt he was wearing.

9 Q That's the shirt he had on that Sunday night at
10 the Richland County Sheriff's Department?

11 A Yes, sir.

12 Q Blue jeans (indicating)?

13 A Yes, sir.

14 Q What brand of blue jeans?

15 A Pure Plaz blue jeans.

16 Q Not Ecko?

17 A No, sir.

18 Q And tennis shoes?

19 A Yes, sir.

20 Q These shoes here (indicating)?

21 A Those are the shoes, yes, sir.

22 Q What type of shoes are these?

23 A I don't recall.

24 Q (Hands to witness.)

25 A Max Air shoes, appear to be Nike Max Airs.

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1 Q And a jacket you say?

2 A A black leather jacket.

3 Q This jacket (indicating)?

4 A Yes, sir.

5 Q Also, there is a belt in here?

6 A Yes, sir.

7 MR. MCMAHON: Your Honor, I would offer
8 these items in evidence, I understand without
9 objection.

10 MS. MIMS: Without objection.

11 THE COURT: Without objection.

12 (State's Exhibit Number 54, box containing
13 clothing, shoes, and belt, is received into
14 evidence.)

15 BY MR. MCMAHON:

16 Q Going through State's 54 again just very
17 quickly, Detective Ewing, this (indicating) pair
18 of tennis shoes?

19 A Yes, sir.

20 Q This (indicating) pair of Pure Plaz jeans?

21 A Yes, sir.

22 Q A belt (indicating)?

23 A Yes, sir.

24 Q This (indicating) Ice History Iceberg Bugs Bunny
25 T-shirt?

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1 A Yes, sir.

2 Q And this (indicating) leather jacket?

3 A Yes, sir.

4 Q And the reverse of that, he did not have on
5 State's Exhibit Number 40 (indicating)?

6 A No, sir.

7 Q The Portland Trailblazer's ball hat. And he did
8 not have on a red Ecko hooded sweatshirt
9 (indicating)?

10 A No, sir, he did not.

11 Q Now, this is that Sunday night. Did y'all
12 arrest Steve Gillian?

13 A No, sir.

14 Q And did you remain involved in the
15 investigation?

16 A I did.

17 Q Now, after getting these clothes that Sunday
18 night, did you go to your home?

19 A I went -- later that night I went to my home,
20 yes, sir.

21 Q Were you notified by Lieutenant Smith of an
22 assignment for the next morning?

23 A Yes.

24 Q And what was that assignment?

25 A Lieutenant Smith asked me to pick up a person by

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- 1 the name of Jeremiah Page.
- 2 Q Throughout that entire Sunday, had y'all talked
3 with Jeremiah Page?
- 4 A No, sir.
- 5 Q Had y'all tried to contact Jeremiah Page?
- 6 A No, sir.
- 7 Q That night after 9:51, after that event, you
8 were notified by Lieutenant Smith to pick up
9 Jeremiah Page?
- 10 A Yes, sir.
- 11 Q And did you do that?
- 12 A Yes, I did.
- 13 Q When did you do that?
- 14 A I did that on the 29th.
- 15 Q So that would have been the next morning, that
16 Monday morning; correct?
- 17 A Yes, sir.
- 18 Q And when you picked Mr. Page up, where did you
19 take him to?
- 20 A To my headquarters, which is 5623 Two Notch
21 Road.
- 22 Q What, if anything, was the purpose of you
23 picking up Mr. Page?
- 24 A I wanted to question him. He contacted
25 Lieutenant Smith, and I wanted to question him

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1 about why he contacted Lieutenant Smith.

2 Q He contacted y'all?

3 A Yes, sir.

4 Q Is that right?

5 A Yes, sir.

6 Q And did you take a statement from him?

7 A Yes, sir, I did.

8 Q As you initially began taking the statement,
9 what, if anything, did you advise Jeremiah Page
10 of?

11 A I advised him of his Miranda warnings, rights.

12 Q What do you mean by that?

13 A Any time you question someone, you advise them
14 of their rights if they may be involved or have
15 been involved in a crime. It's their
16 constitutional rights.

17 Q And you advised Mr. Page of that?

18 A I did.

19 Q Did you tell him that whatever he told you could
20 be used against him?

21 A I did.

22 Q Even telling him that, did he give you a
23 statement?

24 A Yes, sir, he did.

25 Q Of course, you can't go into the substance of

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1 the statement. But as a result of that
2 statement, did you or Lieutenant Smith contact
3 any other officer with any other agency?

4 A Yes, sir.

5 Q And who was that?

6 A Investigator Collins with Lexington County.

7 Q And that was in regards to following up on what
8 incident?

9 A A burglary which took place in Lexington County.

10 Q Was that the first time you had heard about the
11 burglary in Lexington County?

12 A It was, yes, sir.

13 Q And the first person you heard about it from
14 was?

15 A Jeremiah Page.

16 Q Were y'all able to, through the assistance of
17 the Lexington County officers, identify a
18 burglary which had occurred over there on the
19 26th?

20 A Yes, sir.

21 Q And were y'all also able to determine a certain
22 item or items that had been stolen from that
23 burglary?

24 A Yes, sir.

25 Q And among those was there a pistol?

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1 A Yes, sir.

2 Q Were y'all able to determine what type of
3 pistol?

4 A It was a Taurus .38.

5 Q By then -- I know you weren't there -- but by
6 then had an autopsy already been performed on
7 the body of the victim?

8 A Yes, sir.

9 Q And you would not attend an autopsy?

10 A No, I would not.

11 Q You would be out there on the street working?

12 A Yes, sir.

13 Q And the crime scene officers would be attending
14 the autopsy; is that correct?

15 A Yes, sir.

16 Q Now, did y'all attempt in your investigation on
17 the 29th to follow up on the description or the
18 identification of the pistol that was stolen?

19 A Yes, sir.

20 Q Who did you do that with?

21 A I contacted the owner of the house that got
22 broken into, Nancy Muller.

23 Q And in addition to that, did you contact any
24 other person?

25 A I contacted her ex-husband Kevin Douglas Cook.

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1 Q Were you able to get a description from
2 Mr. Cook?

3 MS. MIMS: Objection, Your Honor, hearsay.

4 A Yes.

5 Q Did you have a conversation --

6 THE COURT: Wait. I will overrule the
7 objection on that, on that particular question. I
8 assume he is not going any further with it.

9 MR. MCMAHON: No, sir.

10 THE COURT: Go ahead.

11 BY MR. MCMAHON:

12 Q But you were able to contact and did contact
13 Mr. Cook?

14 A I did, yes.

15 Q Was there another individual, as a result of the
16 statement that was given to you by Jeremiah
17 Page, that you were attempting to contact?

18 A Yes, sir.

19 Q And who was that?

20 A Dustin Johnson.

21 Q Dustin Johnson?

22 A Yes, sir.

23 Q I want to go to the next day, the 10th, and ask
24 you if you had an opportunity to do several
25 things involved in this investigation. Number

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1 one, were you able to contact or locate Dustin
2 Johnson?

3 A Yes, sir.

4 Q As a result of that, did the officers take a
5 statement from Dustin Johnson on the 30th?

6 A Yes, sir.

7 Q As a result of Dustin Johnson's statement, did
8 you get another name that y'all were interested
9 in contacting?

10 A Yes, sir.

11 Q Who was that?

12 A Jessie Boot.

13 Q Did you assist or were you part of the execution
14 of a search warrant at both the Weed and
15 Innsbruck residence on January 30th?

16 A Yes, sir.

17 Q And at that time an item was recovered and taken
18 into custody; is that correct?

19 A Yes, sir.

20 Q Among those items, State's Exhibit Number 36?

21 A Yes, sir.

22 Q And what residence was that taken out of?

23 A I believe the Innsbruck, but I'm not sure.

24 Q That's on the 30th?

25 A Yes, sir.

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1 Q Detective Ewing, on the 31st did you interview
2 Jessie Boot?

3 A I did.

4 Q And additionally did you interview Tyler, Tyler
5 Gillian?

6 A May I look at my notes?

7 Q Yes, sir, certainly.

8 A I did, yes, sir, on the 31st.

9 Q When you interviewed Tyler, what, if anything,
10 did he give you?

11 A I'm sorry, I did not hear the question.

12 Q When you interviewed Tyler, what, if anything,
13 did he give you?

14 A He had some jewelry that he had found.

15 Q And where did he find that jewelry?

16 A At the Innsbruck location.

17 Q And he turned it over to you?

18 A Yes, sir.

19 Q Now, as we go on through, on into February the
20 1st --

21 (Attorneys confer.)

22 MR. MCMAHON: Your Honor, I offer the
23 calendar of February of 2001 without objection.

24 THE COURT: Any objection?

25 MS. MIMS: No objection, Your Honor.

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1 (State's Exhibit Number 55, calendar of
2 February of 2001, is received into evidence.)

3 BY MR. MCMAHON:

4 Q Of course, Detective Ewing, y'all have known
5 about the party at the Glenn residence?

6 A Yes, sir.

7 Q Throughout these dates y'all were contacting or
8 attempting to contact various individuals that
9 had been to that party; is that correct?

10 A That's correct.

11 Q I am going to go on to State's Exhibit Number
12 55, which is a calendar of February of 2001. I
13 ask you if you had an opportunity to interview a
14 Richie Cunliffe and an Austin Lee on February
15 the 1st?

16 A Yes, sir, I did.

17 Q And in addition to them being interviewed, did
18 the next day you make arrangements to have
19 pictures taken of Mr. Cunliffe and Mr. Lee?

20 A Yes, sir.

21 Q I want to show you State's Exhibit Number 26.
22 That's a photograph of Mr. Lee?

23 A Yes, sir, it is.

24 Q And you made arrangements to have that
25 photograph taken?

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- 1 A I did.
- 2 Q And State's Exhibit number 18, that's a
3 photograph of Mr. Cunliffe?
- 4 A Yes, sir.
- 5 Q And you made arrangements to have that
6 photograph taken?
- 7 A Yes, sir.
- 8 Q Did you have an opportunity to interview Thomas
9 Moss?
- 10 A Yes, sir.
- 11 Q Now, Thomas Moss was a friend of who?
- 12 A Jeremiah Page.
- 13 Q And his name had come up in Jeremiah's
14 statement?
- 15 A Yes, sir.
- 16 Q You interviewed him on the 2nd, I believe; is
17 that correct?
- 18 A Yes, sir, it is correct.
- 19 Q Now, that jewelry that Tyler had given you,
20 where was it returned to?
- 21 A P.C. Faigle of Lexington County.
- 22 Q He was one of the officers working the Muller
23 burglary?
- 24 A Yes, sir.
- 25 Q And it has been returned to your knowledge?

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1 A Yes, sir, it has.

2 Q Now, on the 5th -- and I take it as you and
3 Lieutenant Smith are working the homicide,
4 Lexington County is working the burglary?

5 A Yes, sir.

6 Q They are kind of tandem and parallel, so to
7 speak, I guess you could say?

8 A Yes, sir.

9 Q Did you know what arrangements, if any, had been
10 made on the Wal-Mart tapes, videotapes, from
11 Harbison by Lexington County?

12 A A Lexington County investigator picked them up
13 from Wal-Mart.

14 Q And that was Investigator Collins?

15 A It was, yes, sir.

16 Q And on the 5th did you take custody of those
17 tapes?

18 A Yes, sir, I did.

19 Q And that was the tapes both concerning the ammo?

20 A Yes, sir.

21 Q And the keys?

22 A Yes, sir.

23 Q On the 5th also, did you confirm and follow up
24 on the information with the party in Chapin at
25 Parker Valek's?

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- 1 A I did, yes, sir.
- 2 Q Now, again on the 5th, were y'all contacted by
- 3 Jeremiah Page?
- 4 A Yes, sir, I spoke to Jeremiah.
- 5 Q And as a result of that contact with Jeremiah
- 6 Page on the 5th, were y'all wanting to talk back
- 7 to Tyler Gillian?
- 8 A Yes, sir.
- 9 Q And y'all did so, correct?
- 10 A Yes, sir.
- 11 Q Y'all talked back with Tyler?
- 12 A Yes, sir.
- 13 Q And also ultimately you wanted to talk to Clint
- 14 Gillian also; is that correct?
- 15 A Yes, sir.
- 16 Q Where was Clint working?
- 17 A All My Children day care.
- 18 Q And All My Children, who owned that?
- 19 A Mrs. Cipkala. It's not a day care. I said day
- 20 care. I believe it's like a clothing shop,
- 21 something like that.
- 22 Q It sounds like a day care, All My Children; but
- 23 it's a clothing shop?
- 24 A Yes, sir.
- 25 Q That's Mrs. Cipkala's?

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1 A Yes, sir.

2 Q And you say Clint worked there?

3 A Yes, sir.

4 Q How about the Defendant?

5 A I believe he did at one time, yes, sir.

6 Q Now, as y'all reviewed this tape from the
7 Wal-Mart and the ammo section, had y'all
8 identified a particular time perhaps when a
9 transaction had occurred for the particular type
10 of bullets?

11 A Yes, sir.

12 Q What type of bullet were y'all looking for?

13 A .38.

14 Q Did y'all know that by then?

15 A Yes, sir.

16 Q And you reviewed that tape. Did you identify a
17 particular person making a transaction of the
18 bullets?

19 A It shows a person making a transaction, yes,
20 sir.

21 Q Who did that person appear to be to you?

22 A Dustin Johnson.

23 Q Y'all had talked to Dustin previously?

24 A Yes, sir.

25 Q As a result of viewing that tape and it

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1 appearing to be Dustin Johnson, did y'all make
2 any still photographs off that tape?

3 A Yes, sir.

4 Q So you didn't also have a videotape, you had a
5 still showing the transaction?

6 A Yes, sir.

7 Q What did you do? Who did you take it to?

8 A I took them to Dustin Johnson.

9 Q As a result of that, did you take a second
10 statement from Mr. Johnson?

11 A I did.

12 Q Did you see anyone additionally in that tape
13 during the time when Mr. Johnson was purchasing
14 the bullets?

15 A Yes, sir.

16 Q Who did that person then appear to be?

17 A It was a white male wearing a red Ecco shirt and
18 a white hat.

19 Q I show you two items. What do these appear to
20 be?

21 A It's Dustin Johnson at the counter purchasing
22 something, and another white male with a white
23 hat with a reddish-color shirt with a design on
24 it at the back counter.

25 Q And who does that appear to be?

JOHN EWING -DIRECT- BY MR. MCMAHON

1 A Steve Gillian.

2 Q And what is the other photograph?

3 A It basically just appears that it might be like
4 a second later, the same type.

5 MR. MCMAHON: Your Honor, I would offer
6 these into evidence.

7 THE COURT: Any objection?

8 (Attorneys confer.)

9 MR. MCMAHON: I will just offer one of
10 them. Is that without objection?

11 MS. MIMS: No objection.

12 THE COURT: Without objection.

13 (State's Exhibit Number 56, still
14 photograph from video, is received into evidence.)

15 BY MR. MCMAHON:

16 Q Point out on State's 56 where you identify an
17 individual you believe to be Dustin Johnson.

18 A This is Dustin Johnson right here (indicating).

19 Q And Steve Gillian?

20 A In the back right here (indicating).

21 Q So my left index finger is Steve Gillian?

22 A Yes, sir.

23 Q And my right is Dustin Johnson?

24 A That's correct.

25 Q And Dustin Johnson identified himself, correct?

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- 1 A Yes, he did.
- 2 Q Now, when you see that individual in the
3 background with the hat and the sweatshirt, what
4 steps do y'all take to locate the hat or the
5 sweatshirt?
- 6 A Another search warrant was secured for the
7 residence.
- 8 Q Which residence?
- 9 A Both locations, the Innsbruck and Weed Drive.
- 10 Q And y'all searched those residences on
11 February 8th?
- 12 A Yes, sir.
- 13 Q Do you find the red Ecko T-shirt?
- 14 A No, sir.
- 15 Q This is not -- this is like it -- but this is
16 not the red Ecko T-shirt y'all found?
- 17 A Did not find it.
- 18 Q At Steve Gillian's residence or his great
19 grandparents' residence?
- 20 A No, sir.
- 21 Q Y'all never recovered it?
- 22 A No, we did not.
- 23 Q A red Ecko sweatshirt?
- 24 A No, sir.
- 25 Q Did y'all recover a hat?

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- 1 A Yes, sir.
- 2 Q I am showing you State's Exhibit 40. What is
3 this item?
- 4 A That's a Portland Trailblazer's hat.
- 5 Q When and where was it recovered?
- 6 A It was located in Steve Gillian's bedroom on [REDACTED]
7 [REDACTED] by myself in his closet.
- 8 Q There is some other writing on it besides the
9 logo, some blue-type writing?
- 10 A Yes, sir.
- 11 Q That was placed there by?
- 12 A I believe S.L.E.D.
- 13 Q By forensic agents?
- 14 A Yes, sir.
- 15 Q And they didn't find any blood on this hat?
- 16 A Not to my knowledge.
- 17 Q Now, as a result of talking with Dustin Johnson
18 and doing the search on it -- what did you say
19 the 8th?
- 20 A Yes, sir.
- 21 Q Were y'all interested in getting the
22 documentation of how he was able to, at 17 years
23 old, purchase the bullets?
- 24 A Yes, sir.
- 25 Q If I show you State's Exhibit Number 48, what is

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- 1 this item?
- 2 A A South Carolina identification card.
- 3 Q In the name of?
- 4 A Michael Duke.
- 5 Q Is that the fake I.D. Mr. Johnson used?
- 6 A Yes, sir.
- 7 Q To purchase the bullets?
- 8 A Yes, sir.
- 9 Q Now, as you continued on in the investigation,
- 10 did you continue talking to various of these
- 11 individuals that had been to the party?
- 12 A Yes, sir.
- 13 Q I am not going over all of them, Matt Dickerson
- 14 and such as that; is that correct?
- 15 A That's correct.
- 16 Q And did you have an opportunity on the 15th to
- 17 talk with Jeremiah Page?
- 18 A Yes, sir.
- 19 Q As a result of the conversation on the 15th, did
- 20 you then attempt to locate any type of incident
- 21 involving a burglary?
- 22 A Yes, sir, I did.
- 23 Q What incident? What did you determine?
- 24 A Determined that there was a burglary committed
- 25 on July the 4th at Dams Diamonds in Boozer

JOHN EWING -DIRECT- BY MR. MCMAHON

1 Shopping Center in Richland County.

2 Q So July the 4th of 2000?

3 A Yes, sir.

4 Q And how had it -- just very briefly -- how had
5 that burglary been conducted?

6 A Someone entered through the front door, broke in
7 through the front door area and went in and
8 stole some watches.

9 Q What type of watches?

10 A Tag Heuer watches.

11 Q T-A-G, H-E-U-E-R watches?

12 A Yes, sir.

13 Q And approximately how many?

14 A Approximately 34.

15 Q Did you get an inventory by serial number of
16 those watches?

17 A Yes, sir.

18 Q And as a result of talking with Jeremiah, did
19 you interview anyone else about that burglary at
20 Dems?

21 A Yes, sir.

22 Q And who was that?

23 A Dustin Johnson.

24 Q Dustin Johnson?

25 A Yes, sir.

JOHN EWING -DIRECT- BY MR. MCMAHON

- 1 Q As a result of interviewing Dustin Johnson, did
2 you get a search warrant to go to a particular
3 location?
- 4 A I did.
- 5 Q And what location?
- 6 A The exact location -- let me refer back to my
7 notes.
- 8 Q What is the name of the location?
- 9 A Irmo Jewelry and Loan. It's on Saint Andrews.
- 10 Q What type of business was that?
- 11 A It's a pawn shop.
- 12 Q And what was -- what did you get the search
13 warrant for and what were you looking for?
- 14 A I got the search warrant for the location of
15 Irmo Jewelry And Loan, and I was looking for Tag
16 Heuer watches.
- 17 Q And the information comes from Jeremiah on the
18 15th?
- 19 A Yes, sir.
- 20 Q As a result of conversations he has with Tyler?
- 21 A Correct.
- 22 Q That just testified two witnesses before you?
- 23 A Yes, sir.
- 24 Q Then you talked with Dustin Johnson?
- 25 A Yes, sir.

JOHN EWING -DIRECT- BY MR. MCMAHON

1 Q And then on the 20th, you get a search warrant
2 for Irmo?

3 A Jewelry and Loan or Pawn. I'm not exactly sure
4 the name of it. It's loan, Irmo Jewelry and
5 Loan.

6 Q Who runs that business?

7 A Malcolm Jackson.

8 Q As a result of getting that search warrant,
9 what, if anything, did you recover?

10 A At that time I recovered 13 Tag Heuer watches.

11 Q And were you able to by serial number identify
12 these watches back to a particular location and
13 a particular break-in?

14 A Yes, sir.

15 Q And what location and what break-in?

16 A The Dems Diamonds' burglary which happened on
17 July 4, 2000.

18 Q And Mr. Livingston identified those watches when
19 they were returned to him?

20 A He did, yes, sir.

21 Q And you located several others in addition to
22 that 13; is that correct?

23 A I did, yes, sir.

24 Q How did they come in possession of the Irmo
25 Pawn?

JOHN EWING -CROSS- BY MS. MIMS

1 A Dustin Johnson pawned them, sold them to
2 Mr. Jackson.

3 Q Thank you, Detective Ewing. Answer any
4 questions the defense may have.

5 THE COURT: Cross.

6 MS. MIMS: Thank you, Your Honor. May it
7 please the Court.

8 CROSS EXAMINATION

9 BY MS. MIMS:

10 Q Good morning, Investigator.

11 A Good morning.

12 Q Does this (indicating) look familiar?

13 A Yes, it does.

14 Q This is the Boozer Shopping Center area?

15 A Yes, ma'am.

16 Q And you are one of the officers who were first
17 to arrive on the scene that day once a call came
18 in that a victim had been shot behind Boozer
19 Shopping Center?

20 A I arrived on the scene. I was not the first,
21 but I arrived, yes, ma'am.

22 Q You were there very early in the morning?

23 A Yes, ma'am.

24 Q And you know the layout of Boozer Shopping
25 Center, I assume?

JOHN EWING -CROSS- BY MS. MIMS

1 A I do somewhat, yes, ma'am.

2 Q We are referring here to State's Exhibit Number
3 4. The victim's body was found behind Manifest
4 music store; is that right?

5 A Not behind it. It was behind Boozer Shopping
6 Center but not directly behind Manifest.

7 Q Where is Manifest music? If you can show the
8 jury on this exhibit.

9 A Down here (indicating).

10 Q Manifest is more down here (indicating)?

11 A Yes, ma'am.

12 Q You've got a Heroes and Dragons comics or
13 something?

14 A That I believe is this (indicating).

15 Q Between this (indicating) and Fields is where
16 the victim's body was?

17 A That's correct.

18 Q While you are standing up there, can you point
19 out where Dams House of Diamonds is located.

20 A Right here (indicating).

21 Q So at the opposite end of Boozer Shopping
22 Center?

23 A Correct.

24 Q Shortly after arriving on the scene and
25 identifying and finding out who the victim was

JOHN EWING -CROSS- BY MS. MIMS

- 1 in this case, you went to talk to the victim's
2 mother?
- 3 A Yes, ma'am.
- 4 Q And you found out that the victim lived at
5 Suburban Lodge?
- 6 A Yes, ma'am.
- 7 Q I shouldn't have taken this down. But the
8 Suburban Lodge is located actually right behind
9 Boozer Shopping Center; isn't that right?
- 10 A Yes, ma'am.
- 11 Q There is just a fence separating Boozer Shopping
12 Center and Suburban Lodge?
- 13 A I'm not sure if there is a fence there.
- 14 Q But it is directly behind Boozer Shopping
15 Center?
- 16 A Yes, ma'am.
- 17 Q You talked about through your investigation, you
18 made contact with Steven Gillian?
- 19 A Yes, ma'am.
- 20 Q And that's on the same day that the victim's
21 body was found?
- 22 A Yes, ma'am.
- 23 Q When you went to see him, one of the first
24 things you were interested in was searching his
25 vehicle?

JOHN EWING -CROSS- BY MS. MIMS

1 A Yes, sir.

2 Q And Steven gave you a consent to search?

3 A Yes, ma'am.

4 Q Exactly what that means is he is telling you,
5 "Look, I am not arguing with you about searching
6 my vehicle;" isn't that right?

7 A Yes, ma'am.

8 Q So referring to State's Exhibit 53, his
9 signature here on the bottom is, "I am letting
10 you do this voluntarily"?

11 A Yes, ma'am.

12 Q Isn't that correct? He put up no resistance to
13 you searching his car?

14 A Correct.

15 Q And you searched the car on the afternoon of
16 January 28th, 2001?

17 A Correct.

18 Q And that is the same day that the victim was
19 killed?

20 A Yes.

21 Q Or that the victim's body was found?

22 A Right.

23 Q And I think the same day, later on that night,
24 Steven came to the Richland County Sheriff's
25 Department to meet with you?

JOHN EWING -CROSS- BY MS. MIMS

- 1 A Correct.
- 2 Q He drove himself to the Richland County
3 Sheriff's Department?
- 4 A No, ma'am.
- 5 Q How did he get there?
- 6 A With me.
- 7 Q He came with you voluntarily?
- 8 A Yes, ma'am.
- 9 Q Did he tell you he was not going to come?
- 10 A No, he didn't.
- 11 Q And at that point he could have told you, "I'm
12 not coming;" isn't that right?
- 13 A Yes, ma'am.
- 14 Q Because he wasn't under arrest?
- 15 A Correct.
- 16 Q And when you got to the Sheriff's Department,
17 you wanted to see his clothes?
- 18 A Yes.
- 19 Q And you wanted to take them so that you could
20 take samples of his clothes?
- 21 A Correct.
- 22 Q And you do this so that you can obtain hairs or
23 fibers or blood or D.N.A. or anything that
24 could connect him with the crime scene; is that
25 right?

JOHN EWING -CROSS- BY MS. MIMS

1 A Yes, ma'am.

2 Q And you did that in this case?

3 A Took the clothes, yes, ma'am.

4 Q And he voluntarily let you take his clothes?

5 A Yes, ma'am.

6 Q You also obtained another consent to search
7 form with Steven's signature on there with him,
8 I guess, voluntarily saying, "Here are my
9 clothes"?

10 A Yes, ma'am.

11 Q He didn't argue with you about that?

12 A No, ma'am.

13 Q And what did you do with the clothes that you
14 took from Steven?

15 A They were turned over to one of the lab units
16 there at the Sheriff's Office.

17 Q Okay. You mentioned that you contacted
18 Jeremiah -- I can't remember his last name.

19 A Jeremiah Page.

20 Q Jeremiah Page.

21 A Jeremiah Page contacted us.

22 Q Jeremiah Page contacted you?

23 A Yes.

24 Q And this is, I think, on January 29th that he
25 contacted you?

JOHN EWING -CROSS- BY MS. MIMS

- 1 A He actually contacted Lieutenant Smith on the
2 night of the 28th, and Lieutenant Smith asked me
3 to pick him up on the morning of the 29th.
- 4 Q When he contacted you -- but you are the one who
5 went and got a statement from Jeremiah Page?
- 6 A He came back to the Sheriff's office with me.
- 7 Q With you?
- 8 A Yes.
- 9 Q And you took the statement from Jeremiah?
- 10 A Yes.
- 11 Q And he gave you some information about a
12 burglary?
- 13 A Yes.
- 14 Q On Old Chapin Road?
- 15 A That's the address. He did not know the address
16 at the time, yes.
- 17 Q But that is the burglary that he was talking
18 about?
- 19 A Yes.
- 20 Q And during that time he gave you some
21 information, but he didn't give you everything
22 he could tell you at that time; isn't that
23 right? There was more information that came up
24 later?
- 25 A Yes.

JOHN EWING -CROSS- BY MS. MIMS

1 Q Jeremiah, when was he taken to jail, do you
2 recall?

3 A I'm not sure.

4 Q Sometime before the 5th of February?

5 A I would think so, yes, ma'am.

6 Q So when he contacted you again on the 5th of
7 February, he was incarcerated?

8 A I don't know.

9 Q You don't know. Do you remember him contacting
10 you from prison?

11 A No, I don't.

12 Q And you spoke to Tyler Gillian in this case as
13 well?

14 A Correct.

15 Q Tyler Gillian resides at [REDACTED] [REDACTED]?

16 A That's correct.

17 Q He lives there with he and Steven Gillian's
18 great grandparents?

19 A Yes.

20 Q And he told you that he found some jewelry in
21 his bedroom?

22 A Yes.

23 Q Was this all women's jewelry?

24 A I don't recall.

25 Q You don't recall. I'm moving around on you a

JOHN EWING -CROSS- BY MS. MIMS

- 1 little bit?
- 2 A That's okay.
- 3 Q You also investigated the sale of some bullets
- 4 at a Wal-Mart?
- 5 A Yes.
- 6 Q On Harbison. I think that is still Richland
- 7 County, maybe Lexington County?
- 8 A I'm not sure.
- 9 Q It's along the line?
- 10 A Yes.
- 11 Q And through your investigation you reviewed a
- 12 videotape at the Wal-Mart?
- 13 A (Witness nods.) (Indicating affirmative
- 14 response.)
- 15 Q In that videotape you saw kind of clearly Dustin
- 16 Johnson?
- 17 A Correct.
- 18 Q And you say you see another white male in the
- 19 video with a white hat on; is that right?
- 20 A Correct.
- 21 Q What day is this again, January 27th?
- 22 A I would have to review my notes; but I believe
- 23 you are correct, January 27th.
- 24 Q And the man in this picture is wearing a white
- 25 hat?

JOHN EWING -CROSS- BY MS. MIMS

1 A Correct.

2 Q And a shirt with something on it?

3 A Correct.

4 Q You can't tell the color of this shirt, can you?

5 A It's a dark color.

6 Q But this is a black and white photo?

7 A Yes, it is.

8 Q I am referring to State's 56. You cannot see
9 the color of the shirt in this picture?

10 A No, ma'am.

11 Q Can you make out the face in this picture,
12 anybody's face in this picture, besides Dustin
13 Johnson?

14 A No, ma'am.

15 Q That's not a clear picture of anybody's face?

16 A Not a clear picture.

17 Q And later on you yourself found a white Portland
18 Trailblazer's hat in Steven Gillian's closet?

19 A I did.

20 Q And you took that hat?

21 A Yes, ma'am.

22 Q You took that hat. And I think we saw there was
23 some markings on that hat, a blue mark across
24 the bill -- I don't know where the hat is -- is
25 that right?

JOHN EWING -CROSS- BY MS. MIMS

- 1 A There was blue markings on it.
- 2 Q There are blue markings on the bill of the hat?
- 3 A Yes, ma'am.
- 4 Q That was so it could be sent to S.L.E.D.?
- 5 A I don't know.
- 6 Q Why would they put a blue mark on the hat?
- 7 A I'm not in forensics. I did not do that.
- 8 Q But it was sent to forensics?
- 9 A Yes.
- 10 Q And forensics usually test for hair, fibers,
- 11 blood, evidence linking it to the crime scene?
- 12 A Yes.
- 13 Q And they found no blood on that white hat is
- 14 what you testified to earlier?
- 15 A To my knowledge.
- 16 Q And you also testified earlier that you took the
- 17 clothes of Steven Gillian that he was wearing on
- 18 the 28th when he came to your office?
- 19 A Correct.
- 20 Q And they didn't have any blood on it either?
- 21 A I don't know.
- 22 Q The investigation of Dems Diamonds started back
- 23 on July 4th after it was initially broken into
- 24 or right after it was broken into?
- 25 A Yes, ma'am.

JOHN EWING -CROSS- BY MS. MIMS

1 Q You took over that investigation in a way or
2 kind of restarted that investigation based on
3 new information?

4 A Correct.

5 Q And throughout your investigation you found that
6 watches, Tag Heuer watches, had been pawned at a
7 place called Irmo Loan and Pawn or something to
8 that effect?

9 A They were sold at Irmo.

10 Q I'm sorry. They were sold there. And they were
11 sold there by Dustin Johnson?

12 A Correct.

13 Q And he was using the fake identification of
14 Michael Duke?

15 A No, ma'am.

16 Q He was using the fake identification of?

17 A Nobody.

18 Q He sold them to Michael Jackson without any
19 identification?

20 A Correct.

21 Q Did Dustin Johnson have fake identification?

22 A Yes.

23 Q Do you know how many pieces of fake
24 identification he had?

25 A No, I don't.

JOHN EWING -CROSS- BY MS. MIMS

- 1 Q And how many watches did Dustin Johnson pawn?
- 2 A May I look at my notes?
- 3 Q Yes. Well, Malcolm Jackson, I think you
- 4 testified, said that he had sold 13 Tag watches;
- 5 is that right?
- 6 A That's how many I recovered. There were more
- 7 than 13. Do you know what date that was?
- 8 Q I'm sorry. It's a long report. Let me ask you
- 9 this. Maybe this will help. You just testified
- 10 that Malcolm Jackson had bought 13 Tag Heuer
- 11 watches?
- 12 A I recovered 13.
- 13 Q You recovered them from Malcolm Jackson?
- 14 A Correct.
- 15 Q And Malcolm Jackson got them from Dustin
- 16 Johnson?
- 17 A Correct. In total from Malcolm Jackson, I got a
- 18 total 16; but 13 the first day.
- 19 Q Thirteen the first day?
- 20 A Yes.
- 21 Q And those had been sold to him by Dustin
- 22 Johnson?
- 23 A Correct.
- 24 Q And the watches that you recovered, were they
- 25 all ladies' watches?

JOHN EWING -CROSS- BY MS. MIMS

1 A No.

2 Q They were ladies' and men's watches?

3 A Correct.

4 MS. MIMS: Beg the Court's indulgence.

5 (Pause.)

6 MS. MIMS: I have no further questions.

7 Thank you.

8 THE COURT: Any redirect?

9 MR. MCMAHON: Nothing on redirect.

10 THE COURT: Officer, you can step down.

11 You are free to go if you wish or stay if you wish.

12 We will take a break at this point.

13 Ladies and gentlemen, we will take a short
14 break. I will let you step to the jury room. While
15 you are there, be sure not to talk about the case.
16 See you back in a few minutes.

17 (The jury retires to the jury room.)

18 THE COURT: Anything from the State before
19 we break?

20 MR. MCMAHON: No, Your Honor.

21 THE COURT: Anything from the defense?

22 MS. MIMS: No, sir, Your Honor.

23 THE COURT: See you back in a few minutes.

24 (Whereupon there was a recess.)

25 THE COURT: Counsel, let me just put on the

1 record a matter involving one juror. I think you
2 know yesterday we had a juror who has to be in
3 traffic court in Columbia today and advises she is
4 having trouble getting that arranged.

5 So I am going to send a letter over to them
6 telling them to let her out. They don't seem to
7 understand that they have to let her out for this.
8 We will do that. She sent a note. The note is
9 available if you need to review it.

10 (Court's Exhibit Number 11, note from juror
11 is marked for purposes of the record.)

12 THE COURT: Anything else?

13 MS. MIMS: Your Honor, in terms of the jury
14 charge -- and I am sure we are going to bring that up
15 later or argue it later anyway. I wanted to let you
16 know that the defense will be requesting a voluntary
17 manslaughter charge in this case. I'm sure we will
18 argue that later. I just wanted to let you know
19 about that.

20 THE COURT: Do you know what the State's
21 position will be on that yet?

22 MR. MCMAHON: I apologize, Judge.

23 THE COURT: Do you know what your position
24 is at this point on the lesser included of voluntary?

25 MR. MCMAHON: Judge, I don't think there is

1 any lesser included offense. I don't have any cases
2 here before me right now. Perhaps after we rest, if
3 I can have an opportunity to look at some cases.

4 I don't think it meets several elements;
5 therefore, I don't know if you would be required to
6 charge it under the factors of this particular case.
7 But I don't have a particular case in front of me
8 right now to cite.

9 THE COURT: You don't have to do that now.
10 You have got time.

11 MR. MCMAHON: Thank you.

12 THE COURT: Is the State is ready to start
13 back?

14 MR. MCMAHON: Yes, sir.

15 THE COURT: Is the defense ready?

16 MS. MIMS: Yes, sir, Your Honor.

17 THE COURT: Bring the jury.

18 (The jury returns to the courtroom.)

19 THE COURT: All parties and attorneys are
20 in the courtroom and all jurors have returned.
21 Madame Solicitor.

22 MS. CAMPBELL: The State calls Clint
23 Gillian.

24 CLINT TYLER GILLIAN, being
25 first duly sworn, testified as follows:

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 CLERK: Have a seat in the witness box and
2 state your full name for the record.

3 THE WITNESS: I'm Clint Tyler Gillian.

4 DIRECT EXAMINATION

5 BY MS. CAMPBELL:

6 Q Clint, how old are you?

7 A I'm 18.

8 Q Where do you work?

9 A I work at Atlanta Bread Company.

10 Q What high school did you go to?

11 A Dutch Fork.

12 Q Have you gotten your G.E.D.?

13 A Yes, ma'am.

14 Q How long have you been working at Atlanta Bread
15 Company?

16 A Approximately four months.

17 Q What do you do there?

18 A I work on the line, make sandwiches.

19 Q Where do you live?

20 A At [REDACTED] [REDACTED] [REDACTED] [REDACTED] --

21 Q You are going to have to talk a little more
22 clearly.

23 A It's down Salem Church Road.

24 Q Down Salem Church Road?

25 A Yes, ma'am.

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q And in January of last year, where did you live?

2 A [REDACTED] [REDACTED] [REDACTED].

3 Q [REDACTED] [REDACTED] [REDACTED]?

4 A Yes, ma'am.

5 Q And is that here in Richland County or is that
6 in Lexington County?

7 A I believe that's Lexington County.

8 Q I will show this picture which has been marked
9 as State's Exhibit 37. Do you recognize that?

10 A That's my old house.

11 Q That's your old house?

12 A Yes, ma'am.

13 Q In the background of this house, you can see a
14 white house. Whose house is that?

15 A That's Sadie Gillian's house, my grandma.

16 Q Your grandmother?

17 A Yes, ma'am.

18 Q So these houses are very close together?

19 A Correct.

20 Q In fact, the white house, your grandmother's
21 house, is right behind the Weed Street house;
22 right?

23 A Yes, ma'am.

24 Q Who did you live with when you lived on Weed
25 Drive?

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A My parents, Terry and Adrian Gillian.
- 2 Q Sitting right here (indicating) in the yellow
- 3 shirt, who is this?
- 4 A That's my father.
- 5 Q That's your father right here?
- 6 A (Witness nods.) (Indicating affirmative
- 7 response.)
- 8 Q How are you related to Steve Gillian?
- 9 A He's my brother.
- 10 Q He's your brother?
- 11 A Yes, ma'am.
- 12 Q And did you know Jason Ward?
- 13 A Yes, I had seen him on occasion.
- 14 Q How did you know Jason Ward, through whom?
- 15 A Through my brother.
- 16 Q And that would be your brother Steve?
- 17 A Yes, ma'am.
- 18 Q I want to turn your attention back to January
- 19 the 28th, that Super Bowl Sunday of last year.
- 20 A Yes.
- 21 Q Where did you spend the night that Saturday
- 22 night, Sunday morning?
- 23 A I was staying at my house that night.
- 24 Q That's the house on Weed Drive?
- 25 A Yes, ma'am.

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q Did you have an occasion that morning around
2 8:30 to come in contact with your brother Steve?

3 A Yes, ma'am, he came into my room that morning.

4 Q Had you seen him at any time during the night,
5 other than that?

6 A No, ma'am.

7 Q And he came in your room about 8:30, I believe
8 you said?

9 A Yes, ma'am.

10 Q And this is your room at Weed Drive?

11 A Correct.

12 Q What was his demeanor like when he entered your
13 room?

14 A He looked pretty nervous. He was pacing around.

15 Q He was pacing around?

16 A Yes, ma'am.

17 Q Did you have a conversation with him that
18 morning?

19 A Yes, ma'am, I did.

20 Q What did Steve Gillian, your brother, tell you
21 that morning around 8:30 as he was pacing in
22 your room?

23 A He said that last night someone had got offed,
24 which pretty much means someone was killed.

25 Q He said, "Last night somebody got offed"?

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Did you ask him what it was about?
- 3 A Yes, I asked him what it was about. He said
- 4 \$500.
- 5 Q He said it was over \$500?
- 6 A Correct.
- 7 Q What else did he say about who it was?
- 8 A He said that he might as well tell me who it is,
- 9 and he said Jason Ward.
- 10 Q He told you that that morning?
- 11 A Correct.
- 12 Q Did he tell you anything else about he and Jason
- 13 earlier that night?
- 14 A He said that they had been at a party, and they
- 15 got into a little scuffle over something.
- 16 Q They had gotten into a scuffle over something?
- 17 A Like a fight.
- 18 Q A fight?
- 19 A Yes, ma'am.
- 20 Q Did he also tell you how he had killed Jason?
- 21 A He said that he had shot him several times.
- 22 Q Did he say he shot him several sometimes all at
- 23 once?
- 24 A No, he shot him one time; and he said Jason was
- 25 looking at him, and he shot him a couple more

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 times.

2 Q He said that he shot him one time, Jason was
3 looking at him, so he shot him a couple more
4 times?

5 A Right.

6 Q What, if anything, did your brother say about
7 how he felt about it?

8 A It didn't really seem like it mattered. It
9 wasn't bothering him so much at the time, I
10 don't think.

11 Q Did he tell you that?

12 A Yes, ma'am.

13 Q Did he say what he had done after he had shot
14 Jason?

15 A He said he just left the scene.

16 Q And when he said, "the scene," did he use those
17 words or did he say where he left him?

18 A No. He just said that after it happened, he
19 left. He didn't say where he was going.

20 Q Did he tell you anymore about how he felt about
21 what he had done?

22 A He said he wasn't feeling that much remorse.

23 Q Did he say anything about, "It's not that bad"?

24 A Well, he said that his life was -- it's not that
25 bad because he doesn't know how life is anyway

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 because he had been in a good bit of trouble.

2 Q Did he tell you where he was going to be going?

3 A No, ma'am. Well, he said he was going to be

4 going to jail.

5 Q Did you have anymore conversations about what he

6 had done the night before?

7 A Repeat the question.

8 Q Did he say anything to you about how you would

9 see this?

10 MS. MIMS: Objection to the leading, Your

11 Honor.

12 BY MS. CAMPBELL:

13 Q What else did he say?

14 A He said that this would be on the news and to

15 watch the news.

16 Q After that conversation where did he go?

17 A He went to me-maw's house after he took a

18 shower.

19 Q So he took a shower at your house?

20 A Yes, ma'am.

21 Q When you say he went to me-maw's house, whose

22 house is that?

23 A That's my great grandma, the white house.

24 Q The white house right behind your house?

25 A Correct.

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

1 Q And you didn't have anymore conversations with
2 him about this, did you?

3 A No, ma'am. I saw him later that Sunday night,
4 but he didn't talk about it at all.

5 Q Later that day did you have a conversation --
6 you can't say what the conversation was -- but
7 did you have a conversation with Tyler?

8 A Yes, I spoke with Tyler at the lake house, which
9 is in Lexington.

10 Q And did you even tell your mother anything about
11 it at that point?

12 A No, ma'am. I told her I had spoke with him that
13 morning, and he was nervous. I didn't tell her
14 any details.

15 Q When he came to your room that morning around
16 8:30, do you remember what he was wearing?

17 A I had seen him wearing a red sweatshirt. It was
18 an Ecko brand one, like three days before. I'm
19 not sure if he had that on that morning, but I
20 know that he had one.

21 Q He did have an Ecko sweatshirt that he had been
22 wearing for the three days before that?

23 A Yes, ma'am.

24 Q But you don't remember if he had it on that
25 morning?

CLINT GILLIAN -DIRECT- BY MS. CAMPBELL

- 1 A No, ma'am.
- 2 Q I am showing you this exhibit, State's Exhibit
- 3 19, do you recognize this?
- 4 A Yes, ma'am.
- 5 Q And does this look like the sweatshirt you are
- 6 talking about he had?
- 7 A Yes, ma'am.
- 8 Q Did he change clothes before he left the house
- 9 after the shower?
- 10 A I'm pretty sure he did. I stayed in bed until
- 11 after he left though.
- 12 Q You didn't really come in contact with the
- 13 police until about two weeks after this
- 14 happened?
- 15 A That's right.
- 16 Q And at that point they contacted you about
- 17 getting a statement?
- 18 A Yes, ma'am.
- 19 Q And did you tell them back on February 15th what
- 20 Steve had told you that morning?
- 21 A Yes, ma'am.
- 22 Q Why didn't you tell them before that?
- 23 A I didn't know what could happen to me if all
- 24 this just passed over and I had given a
- 25 statement.

CLINT GILLIAN -CROSS- BY MS. MIMS

1 Q When you say what could happen to you --

2 A I was scared.

3 Q Scared of whom?

4 A Of my brother.

5 Q But on the 15th when they contacted you, you
6 told them what happened?

7 A Yes, ma'am.

8 MS. CAMPBELL: That's all I have, Your
9 Honor.

10 THE COURT: Cross.

11 MS. MIMS: Thank you, Your Honor, very
12 quickly.

13 CROSS EXAMINATION

14 BY MS. MIMS:

15 Q Clint, you know your brother very well?

16 A Yes, I do.

17 Q You know Steven can sometimes shoot off his
18 mouth?

19 A This is correct.

20 Q He does that quite often?

21 A Yes, ma'am.

22 Q Brags about stuff sometimes that didn't happen?

23 A Usually if he is bragging, he did it.

24 Q He brags a lot?

25 A Yes.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q He shoots off his mouth a lot?

2 A Yes, ma'am.

3 Q Did he ever tell you he robbed a jewelry store?

4 A No, ma'am.

5 MS. MIMS: I have no further questions.

6 THE COURT: Any redirect?

7 MS. CAMPBELL: Nothing, Your Honor. May he
8 leave?

9 THE COURT: Yes, sir. You can step down.
10 You are free to stay if you wish or you can leave if
11 you wish.

12 THE WITNESS: Thank you.

13 MR. MCMAHON: The State calls Lieutenant
14 Smith.

15 JAMES STANDIN SMITH, being
16 first duly sworn, testified as follows:

17 CLERK: Have a seat in the witness box and
18 state your full name.

19 THE WITNESS: James Standin Smith,
20 S-T-A-N-D-I-N.

21 DIRECT EXAMINATION

22 BY MR. MCMAHON:

23 Q Sir, you work with the Richland County Sheriff's
24 Department?

25 A I do.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q How many years law enforcement experience do you
2 have?

3 A I started with the Sheriff's Department in 1984.

4 Q What various positions have you held during that
5 period of time, Lieutenant Smith?

6 A I started out as a road officer. I was there
7 for three years. I was promoted to investigator
8 in 1987. I was a burglary investigator for
9 several years, and then I was promoted to
10 corporal and then sergeant over the property
11 crimes unit, the burglary unit, forgery unit.

12 I remained in that capacity until 1996. I
13 left for a period of three years and went into
14 the private sector, and I ran a security guard
15 company. Then I came back in 1999. Since 1999
16 I have been promoted to the rank of sergeant and
17 then lieutenant over major crime.

18 Q And how long have you been a lieutenant over
19 major crimes?

20 A I've been a lieutenant over major crimes since
21 September.

22 Q And what are your duties and responsibilities
23 generally as a lieutenant over major crimes?

24 A I am responsible for basically supervising every
25 major crime that happens in Richland County,

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 with a special emphasis on robberies and
2 homicides.

3 Q How is it set up? How many officers do you have
4 that work in that particular division?

5 A Well, I have approximately 20 officers under me;
6 and that also includes the sex crimes unit.
7 There are five or six officers in that unit. We
8 have a robbery unit with four officers. Then we
9 have other major crime detectives, approximately
10 probably 20.

11 Q I believe you said you were promoted to
12 lieutenant in September of 2001?

13 A Yes, sir.

14 Q So back when this happened, you were a
15 supervisor in major crimes, a sergeant?

16 A That's correct. I was over robbery at the time,
17 but I was in the call rotation for homicides.

18 Q Lieutenant, I am not going to go back through
19 all the events and the investigation; but there
20 are a few questions I would like to ask you.
21 You became involved in this investigation on the
22 28th of January?

23 A That's correct.

24 Q And remained involved in the investigation?

25 A I did.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q Throughout the course of it?

2 A Yes, sir.

3 Q Did you have the opportunity go to the crime
4 scene on the morning of the 28th?

5 A I did.

6 Q Now, Boozer Shopping Center, you are familiar
7 with that area?

8 A Yes, sir, I am.

9 Q Is there anyway you can walk from the alleyway
10 on the back side of Boozer that is between
11 Boozer and Dutch Square -- let me refer to the
12 diagram, State's 4. Is there an area on State's
13 4 where you can walk back through here
14 (indicating) without going all the way around
15 the building?

16 A Yes, sir. I believe there is an alleyway right
17 at the L.

18 Q Right here (indicating)?

19 A At the corner, yes, sir.

20 Q So you can come down in this direction
21 (indicating) behind Manifest and Heroes and
22 Dragons or Fields and such and turn right,
23 walking in this direction (indicating) and cut
24 over towards the front?

25 A That's correct.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q This (indicating) is the front of the buildings?

2 A That is correct.

3 Q Dems, Educational Warehouse, Shannon's?

4 A Yes, sir.

5 Q All this area (indicating) is obviously in the
6 back?

7 A That's correct.

8 Q Now, Lieutenant, as you remained involved in the
9 investigation -- and I take it you were working
10 very closely with Detective Ewing that just
11 previously testified; correct?

12 A That's correct.

13 Q Y'all received certain information that day. In
14 fact, I believe you contacted the victim's
15 roommate, Mr. Bogue?

16 A I did.

17 Q And later on that day, y'all had an occasion to
18 go to the [REDACTED] residence of the
19 Gillians; is that correct?

20 A Yes, sir.

21 Q About what time was that?

22 A That was in the middle of the afternoon. I can
23 refer to my notes for the exact time.

24 Q Certainly.

25 A It was in the middle of the afternoon, a little

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 bit after 4:00 o'clock.

2 Q As a result of being over there, did y'all
3 request consent to search the vehicle belonging
4 to Steve Gillian?

5 A Yes, sir, we did.

6 Q I am showing you State's Exhibit 52. What is
7 that item?

8 A It's a consent to search form that we use at the
9 Sheriff's Department.

10 Q And Mr. Gillian, the Defendant, consented for
11 y'all to search the vehicle at that time?

12 A He did.

13 Q And you did?

14 A Yes, sir.

15 Q You didn't find the gun?

16 A No, sir.

17 Q Didn't find any bullets?

18 A No, sir.

19 Q Didn't find a red Ecko sweatshirt?

20 A No, sir.

21 Q A white hat?

22 A No, sir.

23 Q Now, did you have the opportunity or at that
24 time did you take the opportunity to look under
25 the hood of the vehicle?

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 A No, sir, we did not.
- 2 Q Did you have any reason to at that time?
- 3 A No, sir. I had never actually searched in an
4 engine area for a firearm.
- 5 Q And you had been doing it, what, 16, 17 years
6 then, with that exception of the security
7 guard --
- 8 A Yes, sir.
- 9 Q -- employment, correct?
- 10 A Yes, sir.
- 11 Q Now, Lieutenant, as you remained involved in the
12 investigation, did the Defendant come to the
13 Sheriff's Department the night of the 28th?
- 14 A Yes, sir.
- 15 Q Did y'all again get a consent to search,
16 probably State's Exhibit 53, probably 53. Yes,
17 sir, it is. Did y'all take his clothes?
- 18 A We did.
- 19 Q Were you looking for particular clothes?
- 20 A We were looking for the clothing that he was
21 wearing the early morning hours of that day and
22 the night before.
- 23 Q The early morning hours of the 28th?
- 24 A Yes, sir.
- 25 Q And as part of your investigation, specifically

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 were there certain types of clothes you were
2 looking for?

3 A Yes, sir. We had learned that the Defendant
4 wore a red Ecko sweatshirt and white tennis
5 shoes specifically.

6 Q And was that the clothes he had on at the
7 Sheriff's Office on the night of the 28th?

8 A No, sir.

9 Q And those would be State's Exhibit Number 54
10 that has previously been shown, the gray tennis
11 shoes?

12 A Yes, sir.

13 Q And the Pure Plaz jeans?

14 A Yes, sir.

15 Q Not Ecko jeans. The Bugs Bunny T-shirt and this
16 black letter jacket?

17 A That's correct.

18 Q You have been looking for that red sweatshirt
19 from January 28th of 2000 until today and never
20 found it?

21 A Still looking for it, yes, sir.

22 Q Now, that night of the 28th, the Defendant was
23 allowed to leave?

24 A Yes, sir.

25 Q And did you receive contact by any other

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 individual the night of the 28th?

2 A I did.

3 Q Who was that?

4 A I was contacted by another member of my office

5 that there was an individual attempting to reach

6 the detectives involved in this case.

7 Q And who was that individual?

8 A It was Jeremiah Page.

9 Q And that was actually the night of the 28th?

10 A Yes, sir, sometime after 10:00 p.m.

11 Q Throughout the morning of the 28th, the

12 afternoon and evening of the 28th, had you been

13 attempting to contact Mr. Page?

14 A No, sir.

15 Q He contacted you or y'all?

16 A Yes, sir.

17 Q And you contacted him back?

18 A I did.

19 Q That night?

20 A That night.

21 Q As a result of that, did you have a phone

22 conversation with him?

23 A I did. I had a cell phone at the time, and I

24 had a phone conversation with him from my cellar

25 phone.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q Were you able to, in talking with him that
2 morning -- without going into the substance of
3 that conversation -- could you describe for the
4 jury, please, your evaluation of what his mental
5 state was.

6 A The young man was scared to death.

7 Q As a result of that, what steps did you take as
8 far as Mr. Page was concerned?

9 A I had a detective go by there that night to make
10 contact with him, and I also informed him that
11 we he would be picking him up in the morning to
12 get greater detail about his information.

13 Q And did you pick him up or did you have him
14 picked up that next morning?

15 A Yes, sir, I directed Gary Ewing to go by first
16 thing and pick him up.

17 Q That would have been?

18 A The 29th.

19 Q The 29th?

20 A Yes, sir.

21 Q Now, Mr. Page gave y'all a statement on the
22 29th?

23 A He did.

24 Q He also gave Lexington County, I think, a
25 statement on the 29th?

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir, I believe that's correct.
- 2 Q As a result of his statement, were you
- 3 interested in researching the Defendant's
- 4 vehicle?
- 5 A Yes, sir, we were.
- 6 Q And why was that?
- 7 A Because we had gained information about a
- 8 compartment in the engine area of the
- 9 automobile.
- 10 Q So what steps did you take as far as the
- 11 Defendant's vehicle was concerned after the
- 12 interview with Jeremiah Page?
- 13 A Myself, and I believe it was Captain Stewart at
- 14 the time, proceeded back to the Defendant's
- 15 residence or actually I believe it was the great
- 16 grandparent's residence that day and conducted
- 17 another consent to search.
- 18 Q On the same vehicle?
- 19 A Yes, sir.
- 20 Q And that second consent to search, of course,
- 21 y'all had not -- when y'all searched the vehicle
- 22 on the afternoon of the 28th, y'all didn't take
- 23 the vehicle into y'all's custody?
- 24 A No, sir.
- 25 Q It remind whatever it remained --

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 A That's correct.

2 Q -- when y'all were searching. You don't know
3 what its status was the night of 28th, the early
4 morning hours of the 29th?

5 A No, sir.

6 Q Did y'all search under the hood area of that
7 vehicle on the 29th?

8 A We did.

9 Q You and the captain, I believe you said?

10 A Yes, sir, it was the captain.

11 Q What were the results of that search?

12 A The results were negative also.

13 Q Could you describe for the jury, please, any
14 areas up under the hood of that vehicle that you
15 observed capable of secreting a weapon.

16 A There was sort of a unique area. Between the
17 engine block and the windshield, there was sort
18 of a recessed well area. I quiet frankly hadn't
19 ever noticed it in an automobile and was
20 unknowing that you could hide a pistol there or
21 that a pistol would stay there.

22 Q Lieutenant, was that area such a size -- are you
23 familiar with the size of a .38 special Taurus?

24 A Yes, sir.

25 Q Four inch?

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Was it such an area under there that you could
- 3 place a weapon of that size in that area?
- 4 A It would have been possible.
- 5 Q But you didn't find the weapon?
- 6 A No, sir.
- 7 Q Just like the sweatshirt, you are still looking
- 8 for it?
- 9 A That's correct.
- 10 Q Now, Lieutenant, as y'all continued into the
- 11 investigation, did it reveal where some bullets
- 12 may have been purchased or how did y'all develop
- 13 that information?
- 14 A We learned through forensic information the type
- 15 of bullets that were used to kill the victim.
- 16 Q The .38-caliber?
- 17 A Yes, sir.
- 18 Q Copper-jacketed bullet?
- 19 A 130-grain, .38-caliber copper-jacketed bullets.
- 20 Q Now, armed with that knowledge, what did y'all
- 21 do?
- 22 A We began researching areas or retail locations
- 23 that would sell that particular type of
- 24 ammunition. One of the first places we went to
- 25 was the Harbison Boulevard Wal-Mart.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 First of all, it was 24 hours, I think, at
2 the time. It may still be. But it was in close
3 proximity to these other events that we had been
4 investigating. So it was a good shot to go
5 there to see if there had been a sale.

6 Q And what did y'all determine when y'all
7 investigated the sporting goods ammo section at
8 Harbison Wal-Mart?

9 A We indeed did confirm that there had been a
10 purchase or sale that Saturday night, the 27th.

11 Q Here (indicating).

12 A Yes, sir.

13 Q The victim is found here (indicating).

14 A Yes, sir.

15 Q And, of course, by that time y'all knew about
16 the burglary on Old Chapin Road?

17 A We did.

18 Q Now, were y'all able to identify, not only the
19 date but the time and the type of ammunition
20 that had been purchased?

21 A We were.

22 Q And got a receipt?

23 A Yes, sir.

24 Q And that would be State's Exhibit Number 49,
25 which would be an enlargement of that receipt?

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 A Yes, sir, it looks to be.

2 Q This would have been consistent with the
3 ammunition that y'all understood that was used
4 in the homicide?

5 A Yes, sir, that was consistent.

6 Q With that knowledge what did you do as far as
7 State's Exhibit Number 47 is concerned?

8 A We actually purchased a box of the ammunition
9 for comparison purposes, and we wanted to submit
10 that to S.L.E.D. to see if we could get a
11 consistent match.

12 Q The .38 special copper-jacketed bullet here
13 (indicating)?

14 A Yes, sir.

15 Q Where was that purchased and when?

16 A It was purchased from, I believe, the same
17 Wal-Mart on Harbison Boulevard sometime after
18 that. I don't know the exact date. I can refer
19 to it. Then it was submitted to S.L.E.D.

20 Q And why this particular type of ammo did y'all
21 purchase?

22 A That was the lot number and the bar code of the
23 ammunition that was purchased. I believe it was
24 the only .38 special 130-grain bullet that
25 Wal-Mart sold.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q And actually -- I knew it would be the last
2 place I looked -- it appears to be a bar code
3 here (indicating)?

4 A Yes, sir.

5 Q If you take that bar code and you compare it, it
6 looks like this last number is off?

7 A I believe that is an S., but the other numbers
8 are consistent.

9 Q And all this other is consistent where it might
10 just be a different box of the same type ammo,
11 correct?

12 A That's correct.

13 Q Now, you had this ammo submitted to S.L.E.D.?

14 A Yes, sir.

15 Q To compare to see whether or not it's consistent
16 with the autopsy?

17 A That's correct.

18 Q And was it?

19 A It was consistent.

20 Q Searching his car, you didn't find any ammo?

21 A No, sir.

22 Q Just like you didn't find the sweatshirt or the
23 gun, but you are still looking?

24 A That is correct.

25 Q Now, y'all get the receipt. What about State's

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Exhibit Number 56 and 50? What steps did y'all
2 take to review the security cameras at the
3 Wal-Mart?

4 A Investigator Collins from Lexington County had
5 already taken possession, I think, of the
6 videotapes from the 26th and the 27th.

7 Q Why did he take the 26th?

8 A He was investigating the burglary aspect of it
9 and had received some information about some
10 keys.

11 Q Go ahead, sir.

12 A We were able to obtain that videotape from him
13 or retrieve that videotape from Investigator
14 Collins' possession. Then we took it a step
15 further and attempted to have it reviewed
16 further, specifically with regard to the
17 sporting goods department and the time that we
18 knew about the purchase of the shells, which I
19 believe was 6:36 p.m. So we had that done; and
20 as a result of that, we were able to identify
21 two individuals in the purchase.

22 Q We've got the video you reviewed?

23 A Yes sir.

24 Q And then this still comes off the video; is that
25 correct?

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 A That's correct.

2 Q When you look at this still, did you identify
3 the individual I am pointing to now?

4 A Yes, sir, he was identified as Dustin Johnson.

5 Q And he admitted it?

6 A He did.

7 Q We have seen him on tape, and we have seen him
8 here. Then additionally there appears to be an
9 individual over here (indicating)?

10 A Yes, sir.

11 Q Now, y'all don't review this until on up in
12 February?

13 A It was several days afterward.

14 Q The point I am making is even before y'all
15 reviewed this, y'all were looking for the red
16 Ecko sweatshirt; correct?

17 A That's correct.

18 Q Now, did you see this individual over here
19 (indicating)?

20 A When we initially reviewed it?

21 Q Yes.

22 A Not when we initially reviewed it.

23 Q Then how did you determine who this individual
24 was?

25 A Well, actually, ironically Dustin Johnson

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 actually pointed him out to us. We realized
2 that it was consistent with the clothing and the
3 individual.

4 MR. MCMAHON: May he step down, Your Honor?

5 THE COURT: Yes, sir.

6 BY MR. MCMAHON:

7 Q Step down here for a moment, Lieutenant.

8 A (Witness leaves the witness stand.)

9 Q I was about to call you Captain and promote you
10 again.

11 A That's all right.

12 Q Point out that individual and what appears he is
13 wearing. This is a black and white photograph?

14 A It's a black and white photograph.

15 Q And the videotape is black and white?

16 A That's correct.

17 Q It's not because we want black and white, but
18 it's just that's all we have. They don't have
19 color security?

20 A That's correct.

21 Q Point out what you are referring to here.

22 A Referring to the sweatshirt, you can see the
23 emblem and see something in the emblem; and even
24 I can tell that is consistent with the
25 sweatshirt.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q And what about the hat, State's Exhibit
2 Number 40? If I can find it.

3 A We received information -- I believe it was from
4 Dustin Johnson -- concerning the fact that the
5 Defendant wore a Portland Trailblazer's hat.

6 Q How did that (indicating) appear to compare?

7 A It looks very consistent with the Portland
8 Trailblazer's hat that we ultimately recovered.

9 Q Now, as a result of this, y'all get the search
10 warrant?

11 A That's correct.

12 Q To research the house, to search the house
13 again, for these items?

14 A Specifically the hat.

15 Q And did you find it?

16 A We find the hat, yes, sir.

17 Q You can go back and have a seat.

18 A (Witness resumes the witness stand.)

19 Q And, Lieutenant, State's Exhibit Number 19,
20 y'all's investigation determined the color and
21 the brand, even the type of insignia, if you
22 will, that was on the sweatshirt; correct?

23 A Yes, sir. I was unfamiliar with that name brand
24 or that product and that did turn up a red Ecko
25 sweatshirt with logo of a rhinoceros on the

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 front of it.

2 Q Did it also reveal where Mr. Gillian's red Ecko
3 rhinoceros hooded sweatshirt was purchased?

4 A Yes, sir. We had received information -- I
5 believe it was from one of the family members --
6 that it had been purchased from Fines men's
7 clothing store that was in Columbiana Centre.

8 When we received that information, that
9 place had closed. So we wanted to again get a
10 duplicate like we had with the shells. I
11 dispatched an investigator to purchase a
12 sweatshirt of that same style from the Fine's, I
13 believe it was in Columbia Mall.

14 Q That's where this (indicating) was purchased,
15 right?

16 A Yes, sir.

17 Q And this was shown to various witnesses after
18 they described it?

19 A That's correct.

20 Q As being exactly like that sweatshirt?

21 A Yes, sir.

22 Q And I think, lastly, Lieutenant, early on in the
23 investigation -- and I think that you have seen
24 law enforcement develop since the '80s, '84 --
25 how has the use of cell phones changed law

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 enforcement?

2 A Well, I have worked a number of cases, here
3 lately even more, where individuals involved in
4 crimes or witnesses or maybe individuals who are
5 involved in crimes utilize cell phones.

6 It's sort a blessing for us because it
7 helps us track the whereabouts and track who
8 they are calling and that kind of thing. It
9 makes a documented record of where they were,
10 what time they were there, who they were
11 calling, that kind of thing.

12 Q Did you learn early on in the investigation that
13 Mr. Gillian had a cell phone, a working cell
14 phone?

15 A Yes, sir.

16 Q And did you get a search warrant to get those
17 records?

18 A We did.

19 Q And referring now to State's Exhibit Number 42,
20 this being the record of the number and the
21 subscriber information on Mr. Gillian's cell
22 phone?

23 A Yes, sir.

24 Q And additionally did you get a call detail for
25 both the 27th and the 28th of January?

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir, those were the two dates we were
2 interested in.
- 3 Q And, Lieutenant, are you familiar with these
4 numbers?
- 5 A I am.
- 6 Q [REDACTED]?
- 7 A Yes, sir.
- 8 Q Whose number is that?
- 9 A Bear with me.
- 10 Q Yes, sir.
- 11 A That's Dustin Johnson's cell phone number.
- 12 Q And [REDACTED]?
- 13 A That's the number that we learned was at the
14 studio.
- 15 Q That would have been the young man, Andre
16 Robinson?
- 17 A That's correct.
- 18 Q This is the same, [REDACTED]?
- 19 A Dustin Johnson.
- 20 Q [REDACTED]?
- 21 A That was an individual identified as Jason
22 Canady.
- 23 Q Again, [REDACTED], Dustin Johnson?
- 24 A Dustin Johnson.
- 25 Q And the [REDACTED]?

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 A That was an individual we identified as Maria
2 Alfred.
- 3 Q And did you talk with Ms. Alford?
- 4 A I did.
- 5 Q [REDACTED]?
- 6 A That is Austin Lee.
- 7 Q Austin Lee. I think we've got a picture of
8 Mr. Lee, and he testified. This gentleman right
9 here, State's 26?
- 10 A Yes, sir.
- 11 Q Going on through the 27th, [REDACTED]?
- 12 A I believe -- I don't have that actual one
13 documented.
- 14 Q [REDACTED]?
- 15 A That was the number associated at that time with
16 Mrs. Cipkala.
- 17 Q Mrs. Cipkala. [REDACTED]?
- 18 A That's again Maria Alford.
- 19 Q [REDACTED]?
- 20 A That was the number we later learned was Richie
21 Cunliffe's.
- 22 Q We have a picture of Mr. Cunliffe.
- 23 A Yes, sir.
- 24 Q He testified?
- 25 A Yes, sir.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q (Indicating.)

2 A That's him.

3 Q State's 18. That's his number twice. Then if
4 we go to Sunday, again [REDACTED] is Richie?

5 A That's correct.

6 Q [REDACTED] ?

7 A That was the number we learned to be Clint Brown
8 and Wendy Johnson's apartment.

9 Q That's at Palmetto Pointe?

10 A Yes.

11 Q [REDACTED] ?

12 A That was a residence we learned to be with the
13 last name, Benz, B-E-N-Z.

14 MR. BUTLER: Your Honor, I will object to
15 hearsay at this point to any information that didn't
16 come from somebody who has testified. I haven't
17 objected to most of what has come out in testimony;
18 but any that does not, I object on the basis of
19 hearsay.

20 THE COURT: I understand. I will sustain
21 the objection. Obviously, we need to determine which
22 ones have testified and which have not.

23 BY MR. MCMAHON:

24 Q [REDACTED] ?

25 A That was the Defendant's great grandparent's

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 home on Innsbruck.

2 Q I believe Tyler testified to that?

3 A I believe so, yes, sir.

4 Q Right there (indicating). It is up there. And
5 [REDACTED]?

6 A Again, that's the studio.

7 Q Now, I want to show you State's Exhibit Number
8 46. Are you familiar with these locations of
9 where these cell sites are located at?

10 A Yes, sir.

11 Q You can point out on the map where they are; is
12 that correct?

13 A Yes, sir.

14 Q Step down here for me, please.

15 MR. MCMAHON: That is with the Court's
16 permission, Your Honor.

17 THE COURT: Yes, sir.

18 (Witness leaves the witness stand.)

19 BY MR. MCMAHON:

20 Q Step on this side (indicating) for me. I think
21 I want to do it two ways, Lieutenant. I guess I
22 want to do it chronologically by cell number,
23 and then I think I want to do it chronologically
24 by phone calls.

25 A All right, sir.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q C.201 is located at [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED],
2 Irmo, Richland. Is that area depicted on this
3 map?

4 A It is.

5 Q And where would that be?

6 A This (indicating) is 76 going up into
7 Ballentine. It would actually run in this area
8 (indicating).

9 Q So number 6 and 76 is the intersection with
10 Ballentine?

11 A Yes, sir.

12 Q And then Marina Road, would that run off to the
13 left or the right?

14 A It would run to the left towards the lake.

15 Q So back in this direction (indicating) towards
16 the lake?

17 A I believe it dead ends on the lake.

18 MR. MCMAHON: Your Honor, I propose to put
19 a number up there, one, where he has identified that
20 area at.

21 THE COURT: Yes, sir. That's on which
22 Exhibit?

23 MR. MCMAHON: State's Number 1.

24 THE COURT: What colors are you going to do
25 it in so we can distinguish it?

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 MR. BUTLER: May we approach?

2 THE COURT: Sure.

3 (Whereupon there was a bench conference off
4 the record in the presence of the jury but out of the
5 hearing of the jury.)

6 MR. BUTLER: Note my objection.

7 THE COURT: So noted.

8 MR. MCMAHON: Judge, I will do it in red.

9 THE COURT: Thank you.

10 BY MR. MCMAHON:

11 Q So if this (indicating) is the intersection of
12 number 6 and 76, would you place on there the
13 number. I think the number is one.

14 A Number one?

15 Q Yes, sir.

16 A It would be in this area right here
17 (indicating).

18 Q And that is close to the area of Ballentine?

19 A Yes, sir.

20 Q Now, [REDACTED], Lexington, C.203,
21 where would that be located?

22 A This is I-20 (indicating). Actually Florence
23 would be that way (indicating) and Augusta this
24 way (indicating). It would be near the
25 intersection of Highway 378 and I-20 off to the

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 right.
- 2 Q Would you place that as two?
- 3 A Yes, sir. (Witness complies.)
- 4 Q So this (indicating) would be 20 where you are
5 going towards Augusta where you cross the Saluda
6 River?
- 7 A A good reference point would be the hospital.
8 Lexington Hospital would be here (indicating).
- 9 Q And this (indicating) is I-20 and 378?
- 10 A Right.
- 11 Q And number three would be the cell tower located
12 at 1300 and a half Fontaine Road, Columbia?
- 13 A Yes, sir.
- 14 Q Would that be on this map?
- 15 A No, sir.
- 16 Q What area would that be in relation to the map?
- 17 A It's actually over here (indicating).
- 18 Q So it would be back over here (indicating)?
- 19 A Yes, sir.
- 20 Q Then number four, C.211, 2108 North Lake Drive,
21 Columbia.
- 22 A North Lake Drive, that's the dam road. It runs
23 right across the dam. So this (indicating) is
24 the Lexington side of the dam. Then this
25 (indicating) would be the dam.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 That particular address or that location is
2 on the Irmo side of North Lake Drive. It's near
3 where the road runs off to Yacht Cove
4 condominiums from here. That would be right in
5 this area (indicating). That was four?

6 Q Yes, sir. Then number five is 1256 Crooked
7 Creek Road, Chapin?

8 A That also isn't on the map. Obviously Chapin is
9 north or northwest of Ballentine. So it would
10 be in this area (indicating).

11 Q So you would go on up 76 Highway to get to
12 Chapin?

13 A That's correct.

14 Q And the lake runs all up in that area?

15 A Yes, sir, this side (indicating).

16 Q And, number six, 6515 North Trenholm Road,
17 Forest Acres?

18 A Yes.

19 Q Where would that be located?

20 A That would be closer to that Fontaine Road,
21 which was number three, and again would be over
22 here (indicating) towards Columbia and Forest
23 Acres.

24 Q Number seven, 409 and a half Western Lane?

25 A Western Lane is sort of a frontage Road that

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 runs near the intersection of Broad River
2 outbound and I-26.

3 Q Is that depicted on the map?

4 A This (indicating) is Broad River Road as it's
5 coming from Boozer Shopping Center, Dutch Square
6 up. This (indicating) is the intersection of
7 I-26 and Broad River. It would be in this
8 vicinity (indicating). That was number six?

9 Q Seven. 1633 Lake Murray Boulevard?

10 A Lake Murray Boulevard is the road that runs
11 right through the heart of Irmo. It's also
12 known as Highway 60, and 1633 is just past the
13 intersection of where Lake Murray Boulevard and
14 Woodrow actually intersect.

15 Q That would be here (indicating)?

16 A It would be in this area right in here
17 (indicating).

18 Q [REDACTED] [REDACTED] [REDACTED] [REDACTED]?

19 A Saint Andrews Road is right here (indicating),
20 running from Broad River Road all the way up
21 into Irmo. [REDACTED] is at the intersection of where
22 Old Bush River runs towards the dam. There's a
23 number of restaurants. There is a shopping
24 center right at that intersection.

25 Q This (indicating) is Bush River here?

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 A This (indicating) is Old Bush River.

2 Q Running off here (indicating) towards the dam?

3 A It runs off here (indicating), yes, sir. That
4 would be nine.

5 Q And then [REDACTED] [REDACTED] [REDACTED]?

6 A Here (indicating) is Harbison. There
7 (indicating) is the Wal-Mart. 296 is down
8 closer to where the Olive Garden is, if you are
9 familiar with that. That would be ten
10 (indicating).

11 Q Let me ask you this. This is a chart here,
12 State's 46. It doesn't have numbers on it, but
13 it's just numbered one through ten?

14 A In the order that we just went down.

15 Q This order (indicating)?

16 A Yes, sir.

17 Q Now, if you go back, for example -- and I am not
18 going to go through all of them -- but if you go
19 back and just starting with this 1:03 call
20 hitting C.293, [REDACTED] [REDACTED] [REDACTED].

21 A That would be number ten.

22 Q That would be number ten. Point out where
23 number ten is at?

24 A Right here (indicating), right off Harbison
25 Boulevard.

JAMES SMITH -DIRECT- BY MR. MCMAHON

- 1 Q Let me ask you about the call, say, this call at
2 17:54 to [REDACTED], Dustin Johnson's cell phone.
3 What repeater is that in?
- 4 A Number one, Marina Road.
- 5 Q And that's at Ballentine?
- 6 A Yes, sir.
- 7 Q And there is a Citgo station in Ballentine?
- 8 A Yes, sir.
- 9 Q Then [REDACTED] made eight minutes after, what
10 repeater is that in?
- 11 A Same repeater, number one in Ballentine.
- 12 Q From that location to 18:38, [REDACTED] where
13 would that be?
- 14 A That's number ten, Harbison.
- 15 Q That's the one near Wal-Mart?
- 16 A Yes, sir.
- 17 Q Go to, for example, after midnight into that
18 Sunday, not quite after midnight yet, there was
19 some testimony about a party in Chapin?
- 20 A Yes, sir.
- 21 Q Do you see these calls here, 9:51 and 23:03,
22 hitting C.223, [REDACTED] [REDACTED] [REDACTED] [REDACTED], Chapin?
- 23 A That's the one that is not on this map. It was
24 I believe number five.
- 25 Q Just put number five and an arrow in which

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 direction that would be.

2 A (Witness complies.)

3 Q If we go to that Sunday -- by the way, where
4 that Olive Garden is, you seem to be familiar
5 with some restaurants. Is Rush's out there,
6 too? Is there a Rush's out there?

7 A I believe so, yes, sir.

8 Q Thank you. Now, C.211, where is C.211?

9 A C.211 is number four. That's North Lake.
10 That's again the one near the entrance to Yacht
11 Cove.

12 Q Point that out for the jurors. These are coming
13 0:20 plum through 6:01 a.m. Sunday morning?

14 A Yes, sir.

15 Q They would all be hitting this tower
16 (indicating). Point out, if that is the tower,
17 where is the Glenn residence?

18 A The Glenn residence would be in this area here
19 (indicating).

20 Q Lime Bay?

21 A Right here (indicating), in between here.

22 Q And then this (indicating) is Palmetto Pointe?

23 A Yes, sir.

24 Q And that would be Clint and Wendy's residence?

25 A Yes, sir.

JAMES SMITH -DIRECT- BY MR. MCMAHON

1 Q And that's the tower being hit at 6:01 a.m. to
2 [REDACTED] ?

3 A His great grandparent's number, yes, sir.

4 Q Then you've got a call at eight, and you don't
5 have a call for two hours and 41 minutes?

6 A That's right.

7 Q Then you've got another call to the great
8 grandparent's number from a different tower?

9 A Yes, sir. That's the tower on Saint Andrews
10 Road, which would be number nine, at the
11 intersection of Old Bush River and Saint
12 Andrews.

13 Q About 45 minutes later, you are hitting another
14 tower?

15 A Back up here (indicating) in Ballentine, number
16 one.

17 Q And this road has access down to the lake?

18 A Yes, sir, dead ends.

19 Q I believe you can retake the stand, Lieutenant.

20 A (Witness resumes the witness stand.)

21 MR. MCMAHON: Your Honor, I will offer
22 State's 19 for identification into evidence at this
23 time also. I don't know if I offered it when he
24 testified.

25 THE COURT: Any objection?

JAMES SMITH -CROSS- BY MR. BUTLER

1 MR. BUTLER: No, sir.

2 THE COURT: Without objection?

3 (State's Exhibit Number 19, bag containing
4 red sweatshirt, is received into evidence.)

5 MR. MCMAHON: That's all I have. Answer
6 any questions the defense has.

7 THE COURT: Cross.

8 MR. BUTLER: May it please the Court.

9 THE COURT: Yes, sir.

10 DIRECT EXAMINATION

11 BY MR. BUTLER:

12 Q Good afternoon, Investigator.

13 A Good afternoon, Mr. Butler.

14 Q I guess I should call you Lieutenant, I'm sorry.
15 Lieutenant, you were the lead investigator on
16 this case?

17 A Yes, sir.

18 Q And your duty as lead investigator is to be sure
19 to oversee the entire investigation?

20 A Yes, sir.

21 Q So you are responsible for several other
22 investigators and officers who report to you?

23 A I attempt to supervise their findings and their
24 investigations, yes, sir.

25 Q And their findings, they would document a

JAMES SMITH -CROSS- BY MR. BUTLER

1 report; and you would get a copy of that
2 report?

3 A Yes, sir, ultimately I would.

4 Q And you would have a file on this case that
5 would have all the reports from all
6 investigators, all officers and all S.L.E.D.
7 investigators, anything to do with it you have;
8 and you keep that?

9 A At this time we are doing that. Previously we
10 were -- some of the forensic information, for
11 instance, from S.L.E.D. was going through our
12 forensic section; and they were actually
13 retaining those files.

14 Q But as of this point you have all that?

15 A I don't have all the S.L.E.D. reports, no. I am
16 familiar with them, but I don't have them all.

17 Q You are familiar?

18 A To some degree, yes, sir, probably the gist of
19 them.

20 Q You know what is going on in the investigation
21 because you are in charge?

22 A I try to be, yes, sir.

23 Q And if there is something that you think needs
24 to be done, then you would direct that that be
25 done?

JAMES SMITH -CROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q For example, we talked about the clothing being
3 sent to S.L.E.D.; right?

4 A Yes, sir.

5 Q And despite the fact that you were looking for a
6 red sweatshirt and white shoes, you sent the
7 clothes that you had to S.L.E.D.?

8 A We sent what we could.

9 Q Right.

10 A If I had the red sweatshirt, I can assure you it
11 would be at S.L.E.D.

12 Q Sure. And you sent the jeans you had?

13 A Yes, sir.

14 Q And the hat that you did have?

15 A Yes, sir.

16 Q And you send it even if it's not necessarily
17 what you are looking for because sometimes
18 people -- the accounts that you get, they may be
19 off?

20 A Yes, sir. Sometimes people take showers and
21 change their clothes, too.

22 Q Right. For example, if the jeans that you did
23 send, although there were Pure Plaz and not
24 Ecko, they were sill baggie blue jeans; right?

25 A That's correct.

JAMES SMITH -CROSS- BY MR. BUTLER

1 Q If S.L.E.D. had determined that there was Jason
2 Ward's blood on those, that would be really
3 significant?

4 A Yes, sir.

5 Q Despite the fact that someone else, one person,
6 said they were Ecko jeans?

7 A It would be significant, yes, sir.

8 Q That's why you send it anyway just to be sure.

9 A That's right.

10 Q The shoes that you had, although I guess they
11 are kind of grayish, they are Nike?

12 A Yes, sir.

13 Q And they are Nike Air?

14 A I would have to look at them again. They are
15 not the shoes that we subsequently learned that
16 he would commonly wear. They were being
17 described as a Nike Air that were white in
18 color, and we never located those shoes either.

19 Q But these are Nikes. Would you disagree with me
20 if I said that they are Nike Air something?

21 A Well, if you can let me look at them, I can tell
22 you what they are.

23 (Pause.)

24 A They weren't white. That's the point of it.

25 Q Nike Air Max?

JAMES SMITH -CROSS- BY MR. BUTLER

1 A Max Air, yes, sir.

2 Q And Jeremiah testified that the shoes were Nike
3 Air?

4 A I believe Jeremiah did, as well as possibly
5 someone else from some of the statements.

6 Q And you were present at the time that the body
7 was discovered?

8 A Subsequent to that.

9 Q You were at the scene before it was removed?

10 A That's correct.

11 Q And there were hairs taken off the body?

12 A I don't know that that was done in my presence,
13 but that was done.

14 Q It was done. Hairs were taken off the body.
15 And there were hairs taken from the Defendant's
16 vehicle?

17 A I believe so, yes, sir.

18 Q The passenger side of his vehicle?

19 A Yes, sir.

20 Q The reason that the Sheriff's Department would
21 collect things like that is that they can be
22 submitted for comparison, right?

23 A That's correct. At the time we are not sure who
24 we are dealing with as far as a suspect.

25 Q Sure, sure. Ultimately that's what you want to

JAMES SMITH -CROSS- BY MR. BUTLER

1 do is identify a suspect?

2 A Yes, sir.

3 Q And things like hair and fiber and blood can, if
4 successful, ultimately identify a suspect?

5 A Yes, sir. In this case we did identify the
6 suspect. We learned, of course, that he had
7 been in an altercation. The hair and fiber
8 evidence, the ones that were crucial at that
9 time as it would pertain to him, they were in
10 a physical altercation at a party just less than
11 probably 30 minutes before this homicide.

12 Q So that just wasn't important?

13 A After we identified him as a suspect, it did not
14 become important.

15 Q Let me ask you this. If you had -- if S.L.E.D.
16 had compared those hairs that were taken off of
17 Jason Ward and found them to be Steven
18 Gillian's, that would be really important;
19 wouldn't it?

20 A It could be in conjunction with the other
21 information that they had had an altercation at
22 a party. I assume if you have an altercation,
23 there is going to be some sort of transfer of
24 trace evidence that you are talking about.

25 Q And Steven's vehicle was inspected twice, right?

JAMES SMITH -CROSS- BY MR. BUTLER

1 A Yes, sir.

2 Q And if there had been blood in Steven's vehicle,
3 that would be really important; right?

4 A Yes, sir.

5 Q And that would be important, even though -- at
6 that time when you are looking at Steven's
7 vehicle, you are looking for blood; right?

8 A Yes, sir.

9 Q And at that time you knew that there was no
10 blood in Steven's car?

11 A Yes, sir, that's correct.

12 Q You knew where the homicide had taken place?

13 A That's right.

14 Q You looked in his car anyway because just like
15 you said, hair and fibers can transfer and blood
16 can transfer, too?

17 A It can.

18 Q So somebody can participate in a homicide, get
19 blood on them; and then if they get in the car,
20 it wouldn't be at all surprising that you might
21 expect to find blood in the car?

22 A Well, the better place I would expect to find
23 blood is that red sweatshirt that I've never
24 found --

25 Q I understand.

JAMES SMITH -CROSS- BY MR. BUTLER

- 1 A -- and the white tennis shoes.
- 2 Q In any case you looked in the car?
- 3 A We did.
- 4 Q Because you are being thorough?
- 5 A Yes, sir.
- 6 Q And there was no blood in the car?
- 7 A No, sir.
- 8 Q And you looked in the car on the 28th, the day
- 9 of the homicide?
- 10 A We did.
- 11 Q And then was it somebody from your department or
- 12 from S.L.E.D. that took a second closer look at
- 13 the car?
- 14 A It was our department, I believe, yes, sir, when
- 15 we towed it a couple of days later.
- 16 Q Because forensic science has developed to a
- 17 point that you can detect things with
- 18 instruments that you can't with the naked eye?
- 19 A I believe you are correct in saying that.
- 20 Q So even though you and the others responding
- 21 officers had looked at the vehicle on the 28th,
- 22 people who are trained in that went back and
- 23 took a crosser look at the vehicle?
- 24 A Yes, sir.
- 25 Q Okay. As lead investigator what physical

JAMES SMITH -CROSS- BY MR. BUTLER

1 forensic evidence are you aware of linking
2 Steven Gillian to this incident location and to
3 Jason Ward in the way we talked about?

4 A The key forensic evidence is still missing.
5 That would be the evidence of the gun and the
6 red sweatshirt and possibly the tennis shoes. I
7 suspect that's the reason it is missing.

8 Q I will ask you the question again. What
9 physical forensic evidence are you aware of
10 linking Steven Gillian to this crime?

11 A I am not aware of any.

12 Q So the answer to that would be none?

13 A That's correct.

14 Q You are familiar with State's 6?

15 A Yes, sir.

16 Q Before that, let me ask you something else. I'm
17 sorry.

18 A That's okay.

19 Q I am jumping ahead of myself. There was a
20 missing necklace that you were looking for?

21 A There was.

22 Q Jason Ward was known to wear a thick gold chain?

23 A That's correct.

24 Q And that was not on him at the time that the
25 body was discovered?

JAMES SMITH -CROSS- BY MR. BUTLER

- 1 A It was not.
- 2 Q And that was important to you?
- 3 A It was important to locate it, yes, sir. Some
4 of the witnesses' accounts we had said he wore
5 that; and, again, we never located that either.
- 6 Q State's 6, it's an aerial photograph of Boozer
7 Shopping Center?
- 8 A Yes, sir.
- 9 Q You directed that that photograph be taken?
- 10 A I'm not sure that I actually did, but there were
11 some other supervisors involved that may have
12 directed that. I don't recall that myself.
- 13 Q Why would that have been done?
- 14 A It's done in a lot of cases of this nature. It
15 comes in pretty handy in a situation like this,
16 this setting. You can refer to it and that kind
17 of thing.
- 18 Q Right. So you can have an aerial view that you
19 can't get from the ground?
- 20 A That's correct.
- 21 Q You also had Steve's car towed to that location,
22 didn't you?
- 23 A Yes, sir.
- 24 Q And his car appears in the photograph, doesn't
25 it?

JAMES SMITH -CROSS- BY MR. BUTLER

1 A That could be his car. It's the same color.

2 Q You had the car towed to the incident location,
3 placed there so that there could be a photograph
4 taken of the incident location with Steve's car
5 there?

6 A I didn't direct that; but that was done, yes,
7 sir.

8 Q Why would that have been done?

9 A Why would that have been done?

10 Q Yes.

11 A It was actually done in an attempt to -- during
12 some interviews.

13 Q Tell me what you mean.

14 MR. MCMAHON: No, sir. No, sir. I object
15 to going into any interviews with the Defendant.
16 That is self-serving hearsay.

17 MR. BUTLER: That's not what was said.

18 MR. MCMAHON: Objection.

19 THE COURT: Yes, sir, sustained.

20 MR. BUTLER: May we approach?

21 THE COURT: Yes, sir.

22 (Whereupon there was a bench conference off
23 the record in the presence of the jury but out of the
24 hearing of the jury.)

25 MR. BUTLER: Beg the Court's indulgence.

JAMES SMITH -REDIRECT- BY MR. MCMAHON

1 THE COURT: Sure.

2 (Pause.)

3 MR. BUTLER: That's all I have. Note my
4 exceptions.

5 THE COURT: So noted. Any redirect?

6 MR. MCMAHON: Just a couple.

7 REDIRECT EXAMINATION

8 BY MR. MCMAHON:

9 Q He asked you about if something was really
10 important, something was really important, you
11 recall that line of questioning, asking you
12 about various items of evidence?

13 A Yes, sir, he did.

14 Q Cell phone records, is that really important?

15 A Yes, sir.

16 Q The video of the bullets, is that really
17 important?

18 A It's pretty important, yes, sir.

19 Q Video of buying the keys, that's really
20 important?

21 A It's crucial.

22 Q He asked you about some forensic evidence,
23 forensic evidence on the bullets, that's really
24 important?

25 A Yes, sir, that is considered forensic evidence.

JAMES SMITH -REDIRECT- BY MR. MCMAHON

1 Q Given the fact that the theft of the weapon was
2 from the Old Chapin Road residence?

3 A Yes, sir.

4 Q Confessions to his family really important?

5 A Very important.

6 MR. MCMAHON: No further questions.

7 THE COURT: Any recross?

8 MR. BUTLER: No, sir.

9 THE COURT: You can step down.

10 MR. MCMAHON: Can I check with the court
11 reporter just very quickly?

12 THE COURT: Certainly.

13 (Pause.)

14 MS. CAMPBELL: Your Honor, the State would
15 rest at this time.

16 THE COURT: Ladies and gentlemen, as you
17 have heard, the State has now rested. Let me ask you
18 if will step to the jury room for just a few minutes.
19 There are some matters that I have to take up with
20 the lawyers. While you are there, be sure not to
21 talk about the case.

22 (The jury retires to the jury room.)

23 THE COURT: Let me ask if I might first.
24 Obviously, the first thing I normally would do is to
25 take up any motions at this point. But in order to

1 help with the scheduling, I need to determine what to
2 do with the jury.

3 Counsel, do you know at this point in terms
4 of your defense whether we are going -- are you going
5 to put up a defense?

6 MS. MIMS: No, sir, Your Honor.

7 THE COURT: You are not going to put one
8 up?

9 MS. MIMS: No, sir.

10 THE COURT: Let me tell you about my
11 dilemma at this point if I might. I am committed to
12 handle the drug court in Lexington later this
13 afternoon.

14 If we were to go to the jury this
15 afternoon, that could present me with a bit of a
16 problem. Would anybody have a particular problem
17 with just going to the jury in the morning on this?

18 MR. MCMAHON: The State doesn't, Your
19 Honor, whatever your pleasure.

20 MS. MIMS: No, sir.

21 THE COURT: The reason I want to ask that
22 now is so that we can go ahead and let the jury go
23 for the afternoon and tell them to come back in the
24 morning. We can do our motions and things while they
25 are away.

1 MR. MCMAHON: The defense is going to rest
2 today in front of the jury? In other words,
3 everything is going to be done today in front of the
4 jury.

5 THE COURT: I assume so, right.

6 MS. MIMS: Yes, sir, Your Honor.

7 THE COURT: But I want to get the motions
8 on the record and everything. We can talk about
9 charges once I send the jury. Let me ask first, are
10 there any motions?

11 MR. BUTLER: Yes, sir. At some point I
12 would like to -- and I don't know what would be a
13 convenient time -- I would like to proffer the
14 testimony of Lieutenant Smith that I was going to get
15 into before Your Honor sustained the State's
16 objection.

17 THE COURT: Right.

18 MR. BUTLER: I don't know if you would like
19 to that while it's still fresh or not; but at some
20 point I would like to do that.

21 THE COURT: If we can, let's do the motions
22 and everything and get the jury gone and let you do
23 it. Is that okay?

24 MR. BUTLER: Yes, sir.

25 THE COURT: I note for the record that

1 Mr. Butler did timely move to proffer while we were
2 at the bench here a few minutes ago. It was not on
3 the record but he did do so. Again, any motions from
4 the defense?

5 MR. BUTLER: Your Honor, at this time the
6 defense would move for a directed verdict based on
7 the fact that all evidence, direct and
8 circumstantial, would not allow for a reasonable jury
9 to find the Defendant guilty.

10 We would also move for a mistrial based on
11 all objections and all pretrial motions. I won't go
12 through all of them, but most importantly our motion
13 with respect to the prior bad act evidence under
14 State versus Lyle and 404(B) and Rule 403.

15 I think the evidence has borne out what I
16 anticipated, which is that the most reliable evidence
17 and detailed evidence of the characteristics of the
18 firearm came from Jeremiah Page.

19 I know that we at least attempted, I
20 attempted to impeach him thoroughly, but not with
21 respect to that information. I think it seems -- at
22 least to us it seems clear -- that the underlying
23 burglary was not necessary to get that information.
24 For that reason we would move for a mistrial, as well
25 as a directed verdict.

1 THE COURT: I note both motions and would
2 deny both motions, counsel. Any other motions at
3 this point?

4 MR. BUTLER: No, sir.

5 THE COURT: Any motions from the State?

6 MS. CAMPBELL: No, Your Honor.

7 THE COURT: Let me examine Mr. Gillian if I
8 might. Mr. Gillian, would you stand, please, sir,
9 and just stay right where you are.

10 Madame Clerk, would you put him under oath
11 for me, please.

12 STEVEN GILLIAN, being first
13 duly sworn, testified as follows:

14 THE COURT: Mr. Gillian, do you understand
15 in this case that the State has charged you with the
16 offense of murder? Since they have brought the
17 charges, they are required to prove you guilty beyond
18 a reasonable doubt. Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you understand that what
21 that means simply is it is their burden. They have
22 to do the proving. In fact, you don't have to prove
23 anything. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: What that means, of course, is

1 they have to put up witnesses, which they have done
2 up to this point. You don't have to put up
3 witnesses. You don't have to testify if you don't
4 want to. However, if you want to put up witnesses
5 you can; and if you want to testify, you can. Do you
6 understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Have you had a chance to talk
9 with your lawyers about all this?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What that does then is brings
12 us to the point of asking you about a couple of
13 decisions that we need to find out whether you have
14 made. Once I have gone over it with you, I will give
15 you a chance to talk further with your lawyers if you
16 need to.

17 First, I need to determine, do you
18 understand again you don't have to call a case, don't
19 have to call any witnesses if you don't want to? Do
20 you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And, again, you can if you want
23 to. Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you understand that if you

1 did call witnesses, those witnesses would have to
2 testify under oath, just like the State's witnesses;
3 and they would be questioned by the prosecutors, as
4 well as your lawyers? Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, if you don't call
7 witnesses, don't call any case at all, then you also
8 have the option -- and it's entirely an option on the
9 part of your lawyers -- of having the final closing
10 statement. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Of course, to some people that
13 is significant. To some it is not. It varies by
14 individuals. Either way your lawyers have that
15 option. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Of course, as I have told you,
18 the other side of it is that if you want to call
19 witnesses, you can. Do you understand that?

20 THE DEFENDANT: (Nods head.) (Indicating
21 affirmative response.)

22 THE COURT: Do you understand also that you
23 have to make the decision as to whether you will
24 testify yourself? As I told you a moment ago, you
25 don't have to testify if you don't want to; but you

1 can if you want to. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you understand that if you
4 did testify, that you would do so under oath on the
5 stand, just like all the other witnesses have. You,
6 in essence, would then give up your Fifth Amendment
7 rights, which means you would have to answer any and
8 all relevant questions asked of you. Do you
9 understand that?

10 THE DEFENDANT: Yes.

11 THE COURT: In other words, you couldn't
12 get on the stand and then at some point decide that
13 you didn't like the questions and didn't want to
14 answer them. You would have to answer them at that
15 point on. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you understand that if you
18 choose not to testify, I will give the jury an
19 instruction if you want which basically says they
20 can't consider it in any way, can't even talk about
21 it in the jury room? Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, as far as both of these
24 decisions, do you understand that these are your
25 decisions to make? Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I want you to have a chance
3 to talk with your lawyers. You can certainly do
4 that. But at the same time, I am going to be asking
5 you what your decision is on it. Do you understand
6 that?

7 THE DEFENDANT: No.

8 THE COURT: You don't understand that?

9 THE DEFENDANT: I don't want to testify.

10 THE COURT: You don't want to testify. I
11 will get back to that in just a second. Let me ask
12 you this, and this sounds like a stupid question; but
13 I always have to ask this on the record. Today have
14 you had any kind of medication, drugs, alcohol,
15 anything at all that would keep you from knowing what
16 you are doing?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is there anything that would
19 keep you from knowing what you are doing and what's
20 going on?

21 THE DEFENDANT: I take headache medicine at
22 night. That's it.

23 THE COURT: Does that influence your
24 judgment at all?

25 THE DEFENDANT: No, sir.

1 THE COURT: It doesn't keep you from
2 knowing what is going on right now?

3 THE DEFENDANT: (Shakes head.) (Indicating
4 negative response.)

5 THE COURT: Do you feel like you are
6 mentally and emotionally capable, in other words,
7 able to make these decisions?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Do you want to talk with your
10 lawyers about it some more? Have you had a chance to
11 talk with them enough?

12 (Pause.)

13 THE DEFENDANT: I talked to them.

14 THE COURT: Sir?

15 THE DEFENDANT: I talked to them.

16 THE COURT: You say you have talked to
17 them?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: You don't feel like you need to
20 talk to them anymore?

21 THE DEFENDANT: No, sir.

22 THE COURT: Have you been satisfied with
23 your lawyers?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you feel like they have done

1 everything you have wanted them to?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Have you had their advice about
4 all this?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: I understand at this time you
7 are choosing not to testify; is that correct?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Is that your decision?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is there anybody else you need
12 to talk to, any family or friends or anyone else you
13 need to talk to you?

14 THE DEFENDANT: No.

15 THE COURT: Are you also choosing not to
16 call witnesses?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that's your decision also;
19 is that right?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Counsel, have both of you had
22 a chance to give your advice, the best advice you
23 could give Mr. Gillian on this, and in essence feel
24 like you have had ample opportunity to talk with him
25 about it?

1 MS. MIMS: Yes, Your Honor.

2 THE COURT: Mr. Butler?

3 MR. BUTLER: I have not discussed it with
4 him because Ms. Mims is lead counsel.

5 THE COURT: Right.

6 MR. BUTLER: But I feel certain that they
7 have discussed it adequately.

8 THE COURT: She has indicated that.
9 Mr. Butler, do you feel like you need further
10 opportunity to talk to him at all?

11 MR. BUTLER: No, sir.

12 THE COURT: Anything either of you counsel
13 want to say as to his decision? I always give
14 counsel an opportunity to say, if they want to say,
15 whether they agree or disagree otherwise or if they
16 just don't want to make a comment.

17 MS. MIMS: No, sir, Your Honor.

18 MR. BUTLER: No, sir.

19 THE COURT: I find then for the record that
20 the Defendant has decided not to call a case in this
21 matter, has decided not to testify, that he has done
22 so of his own free will, voluntarily, intelligently,
23 without being under any condition that would prevent
24 him from knowing what he was doing and also with the
25 advice of very competent counsel.

1 At this point then obviously we would have
2 to be prepared to go to the jury, and we will do that
3 in the morning then. Anything else before we let the
4 jury go for the day?

5 What I'm going to do next is take up the
6 proffer Mr. Butler wants to put on the record and
7 also any changes to the proposed charge that either
8 of you have. Is there anything before we send the
9 jury then?

10 MR. MCMAHON: Are you going to bring them
11 in?

12 THE COURT: I'm going to bring them in and
13 send them home.

14 MR. MCMAHON: They are going to rest?

15 THE COURT: Yes, sir, on the record.

16 MR. MCMAHON: And then send them home.

17 THE COURT: That's right.

18 MR. MCMAHON: Yes, sir.

19 THE COURT: That's the way we usually do
20 it, haven't changed that. Anything from the defense
21 before we bring them in?

22 MS. MIMS: No, Your Honor.

23 THE COURT: Bring the jury in, please.

24 (The jury returns to the courtroom.)

25 THE COURT: Mr. Foreman, and ladies and

1 gentlemen, at this time we are prepared to move
2 forward. Let me ask the defense, are you ready at
3 this time?

4 MS. MIMS: The defense rests, Your Honor.

5 THE COURT: The defense has now rested
6 their case. At this time, ladies and gentlemen, we
7 have finished with all the evidence in the case. The
8 next step now is to have the final closing statements
9 by the lawyers. Then I will have a final instruction
10 on the law for you. All of that is going to take a
11 little time to do.

12 Then we, of course, would have you
13 deliberate. What we are going to do is this. We are
14 going to come back in the morning to have the final
15 closings and the final instruction of law. Sometime
16 tomorrow morning we are going to turn the case over
17 to you.

18 There are some matters I need to take up
19 with the lawyers this afternoon. As I advised them,
20 I also have court in another county that I have got
21 to do something in later this afternoon.

22 In fact, it's scheduled and there are going
23 to be a lot of people there for it. It's something
24 that I have to do, which could involve letting you
25 start deliberating and then going home and coming

1 back.

2 I don't want to do that. I would rather --
3 once you start deliberating, we have got to keep you
4 in the jury room until you reach a verdict. So
5 that's why we will come back in the morning.

6 I will ask you to be back in tomorrow
7 morning at 9:30. At that time we will have the final
8 closing statements, I will give you the final
9 instruction on the law, and we will be turning the
10 case over to you.

11 Again, it's very important at this point
12 that you not talk about the case with anyone.
13 Certainly don't let anyone talk about the case with
14 you. With that in mind, we will see you in the
15 morning at 9:30. Be prepared to get started back
16 then. Thank you.

17 (The jury is excused for the day at
18 12:50 p.m.)

19 THE COURT: The jury has retired.
20 Mr. Butler, do you want to do that proffer now?

21 MR. BUTLER: Could we please?

22 THE COURT: Lieutenant Smith, would you
23 come back to the witness stand, please, sir. You are
24 still under oath.

25 JAMES STANDIN SMITH, having

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

1 been previously duly sworn, resumed the witness stand
2 and testified as follows:

3 THE COURT: At this time we will enter into
4 a proffer regarding the issues Mr. Butler wanted to
5 question Lieutenant Smith about earlier. Go ahead.

6 MR. BUTLER: Thank you, Your Honor.

7 (The following testimony was reported in
8 camera.)

9 DIRECT EXAMINATION

10 BY MR. BUTLER:

11 Q Lieutenant Smith, we were talking about State's
12 6, the aerial photograph of the Boozer Shopping
13 Center?

14 A Yes, sir.

15 Q Let me ask you first, in the interim did you
16 discuss this issue at all with Mr. McMahon or
17 Ms. Campbell before retaking the stand?

18 A As far as what?

19 Q This issue, this photograph?

20 A Just briefly.

21 Q What did you talk about?

22 A I just wanted to understand the nature of the
23 proffer regarding this issue.

24 Q What did they tell you?

25 A That it had to do something with the

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

1 admissibility of your motion or something that
2 is probably over my head.

3 Q Okay. That's fine. They didn't tell you what
4 to say or anything?

5 A No.

6 Q Just checking. You know I have to ask those
7 questions, right?

8 A Yeah.

9 Q Before we stopped you said that the photograph
10 was taken to conduct some interviews. Could you
11 explain what you mean by that, please?

12 A Yes, sir, I can. At the direction of and sort
13 of the suggestion of one of my superior
14 officers, in the course of one of the interviews
15 with the Defendant, he had suggested that we
16 attempt a ruse involving some aerial
17 photographs.

18 They were then -- the photographs were then
19 doctored to some degree by one of my forensic
20 officers in an attempt to make it appear to be a
21 satellite photograph showing the Defendant's
22 vehicle at the rear of Boozer Shopping Center at
23 the time frame of the incident. This was used
24 in one of the interviews in an attempt to get a
25 confession from the Defendant.

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

1 Q That photograph, State's 6, hadn't been -- you
2 said doctored up?

3 A When you first asked me that question, I was not
4 sure if this was a photograph that was taken for
5 that purpose or one that was taken by one of the
6 other forensic investigators during the course
7 of the investigation.

8 Q And did you tell -- did you tell the Defendant
9 N.A.S.A. had taken it from a satellite or
10 something like that, and it showed his car
11 there? "So we know that you did it," or
12 something like that?

13 A It was something along those lines? I don't
14 recall if it was actually N.A.S.A. I know
15 "satellite" was used and that kind of thing.

16 Q As lead investigator you documented your
17 investigation, actually I can say the whole
18 investigation as best you could in your
19 investigative summary?

20 A Yes.

21 Q And you were thorough in that?

22 A Relatively thorough.

23 Q A 15-page summary?

24 A Yes, sir. Everything that I did may not be in
25 there.

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

1 Q I understand that. But a 15-page summary is
2 pretty long, wouldn't you say?

3 A It's relatively long.

4 Q I mean, you summarize witness statements in
5 here?

6 A It's a month-long investigation. I think we put
7 up nearly 40 witnesses.

8 Q Yes, sir.

9 A And it's relatively long.

10 Q That portion of your investigation, the ruse, I
11 believe is the word that you used?

12 A That's probably a fair way to describe it,
13 ruse.

14 Q Yes, sir. It's a lie to the Defendant. I
15 understand you are saying that you have to do
16 that, but, I mean, that's a fair
17 characterization; right?

18 A That's accurate, yes, sir.

19 Q And there was no satellite. That's not his car.
20 I mean, his car was there, but it didn't happen?

21 A That's right.

22 Q His car wasn't photographed there at the time?

23 A That's correct.

24 Q In the documentation of your investigation in
25 your report, do you detail that aspect of your

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

- 1 investigation at all?
- 2 A I don't believe I did.
- 3 Q You left that out?
- 4 A It didn't produce any results.
- 5 Q Well, I mean, there are going to be other things
6 that are going to be documented that don't
7 produce any results. For example, in your
8 report you say you sent off the clothing to
9 S.L.E.D. for analysis, but there was no blood
10 detected.
- 11 A But generally, especially with the length of
12 time we interrogated Mr. Gillian, the number of
13 times, every attempt we made and every detail we
14 presented to him probably isn't documented if he
15 didn't confess.
- 16 Q Yes, sir. For example, on the top of page 3,
17 "Search of his auto turned up no results as far
18 as blood or firearms." I mean, there is a
19 negative result.
- 20 A Right. If he had confessed, it would have been
21 documented.
- 22 Q I got you. But you didn't document in your
23 report that you tried to play a trick on him and
24 it didn't work?
- 25 A No, I didn't.

JAMES SMITH -IN CAMERA DIRECT- BY MR. BUTLER

1 Q Does this appear to be a copy of your 15-page
2 summary?

3 A It does.

4 Q Are all 15 pages there?

5 A They appear to be, yes, sir.

6 (Pause.)

7 A Yes, sir.

8 MR. BUTLER: At this time, Your Honor, I
9 would like to make this a Court's exhibit and part of
10 the record.

11 THE WITNESS: I believe if I could point
12 this out for the record --

13 THE COURT: One second. Let her mark that.

14 (Court's Exhibit Number 12, investigative
15 report, is marked for purposes of the record.)

16 BY MR. BUTLER:

17 Q You were offering to explain something?

18 A Yes, sir.

19 Q Go ahead.

20 A In thinking about your question, I don't know
21 and I don't think it was in my file; but I
22 believe Investigator Ewing's file does refer to
23 a detailed involvement with the Defendant's car
24 in his follow-up.

25 Q It varies actually but it's in there.

JAMES SMITH -IN CAMERA CROSS- BY MR. MCMAHON

1 A It does suggest that there was a detail which
2 would open up questioning regarding that detail.

3 Q I understand.

4 MR. BUTLER: That's all I have. Thank you.

5 THE COURT: Mr. McMahon, any questions on
6 this?

7 CROSS EXAMINATION

8 BY MR. MCMAHON:

9 Q It must not have been hidden too well.
10 Mr. Butler knows about it, right?

11 A That's right.

12 Q That's why he was asking you about it, right?

13 A Yes, sir.

14 Q If I look at Mr. Ewing's report on 2/1/01 at
15 9:00 a.m., he's got that he was requested by
16 Sergeant Smith to respond to Boozer Shopping
17 Center?

18 A Yes, sir.

19 Q "To supervise Investigator Frank Berry and
20 Investigator Friar on special detail they were
21 doing"?

22 A Yes, sir.

23 Q "Berry was in charge of having Steve's vehicle
24 transported to Boozer Shopping Center, and then
25 the lab was going to fly over to take pictures

JAMES SMITH -IN CAMERA REDIRECT- BY MR. BUTLER

1 from it in an airplane"?

2 A That could go to the heart of it, possibly.

3 It's been a year but it's not in my file.

4 Generally things that are in my file are usually
5 things I did myself. I wasn't directly involved
6 in the towing of the vehicle to Boozer.

7 Q Somebody directed you to have someone else do
8 it?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 THE COURT: Are you through?

13 MR. MCMAHON: Yes, sir.

14 THE COURT: Go ahead, Mr. Butler.

15 MR. BUTLER: What portion was that of
16 Investigator Ewing's report?

17 MR. MCMAHON: I was on page 20, I think. I
18 will tell you this, Mr. Butler. I had them make me a
19 bigger font so I could read it. I don't know if my
20 page 20 is your page 20. I don't know.

21 (Attorneys confer.)

22 MR. BUTLER: Just briefly on redirect.

23 REDIRECT EXAMINATION

24 BY MR. BUTLER:

25 Q This paragraph of Investigator Ewing's report?

JAMES SMITH -IN CAMERA REDIRECT- BY MR. BUTLER

1 A Yes.

2 Q Would you read that paragraph for the Court,
3 please.

4 A This is Ewing's notes: "Investigating officer
5 was requested by Sergeant Smith to respond to
6 Boozer Shopping Center to supervise Investigator
7 Frank Berry and Investigator Friar on a special
8 detail that they were doing.

9 "Berry was in charge of having Steve's
10 vehicle transported to Boozer Shopping Center,
11 and then the lab was going to fly over to take
12 pictures from an airplane.

13 "Investigating officer advised Smith after
14 this, 'I was going to Dutch Fork High and
15 question some other students.' Smith stated that
16 he would have Investigator Dave McRobert
17 (phonetic) respond to assist investigating
18 officer at Dutch Fork High School."

19 Q The word ruse doesn't appear in that paragraph,
20 does it?

21 A No, sir.

22 Q There is no nothing in that paragraph to
23 indicate the reason the photographs would be
24 taken or to try to trick the Defendant into
25 confessing, does it?

JAMES SMITH -IN CAMERA REDIRECT- BY MR. BUTLER

1 A No, sir.

2 Q It didn't say what the pictures are for, does
3 it?

4 A No, sir, but I assume you have had access to
5 that file for some time.

6 Q I have. The point I am making is that aspect is
7 not documented in your investigation. The
8 photographs -- in fact, the photographs are
9 going to be taken, but what they are going to be
10 used for is not?

11 A Probably not.

12 Q And the fact that they would be used to lie to
13 the Defendant to get him to confess is not, is
14 it?

15 MR. MCMAHON: I object to that
16 characterization.

17 MR. BUTLER: He agreed it was a lie.

18 MR. MCMAHON: I object to the
19 characterization.

20 THE COURT: I am going to overrule the
21 objection. He can use the word if he wants to.

22 BY MR. BUTLER:

23 Q Go ahead.

24 A In defense of the word lie, I am familiar with
25 the Supreme Court ruling that allows, during

JAMES SMITH -IN CAMERA REDIRECT- BY MR. BUTLER

- 1 interrogation tactics, ruses of this nature to
2 be used in an attempt to elicit a confession.
- 3 Q That's right.
- 4 A Such as the fingerprint on the window sill on
5 the burglary, that kind of thing.
- 6 Q That's right. I asked you previously --
- 7 A I don't know if the Supreme Court referred to it
8 as a lie.
- 9 Q And I asked you previously --
- 10 A Yes, sir.
- 11 Q Sometimes you do --
- 12 A It is a mistruth. It's a ruse.
- 13 Q Sometimes you use that as part of your
14 investigation?
- 15 A Yes, sir.
- 16 Q That's understandable.
- 17 A Yes, sir.
- 18 Q But falsehood, untruth, the purpose of the
19 photograph was not documented in your report or
20 Ewing's?
- 21 A That's correct.
- 22 Q The fact that photographs were doctored to make
23 it look like something else is not referenced in
24 your reports or Ewing's?
- 25 A No, sir.

1 MR. BUTLER: That's all I have.

2 THE COURT: Any other questions
3 Mr. McMahon?

4 MR. MCMAHON: No, sir.

5 THE COURT: You can step down. Let me be
6 sure for the record, as I understand it, obviously
7 there was no confession used in the State's case. I
8 assume there was not a confession; is that correct?

9 MR. MCMAHON: That's correct, yes, sir.

10 THE COURT: Mr. Butler, what was the intent
11 of wanting to use that testimony then?

12 MR. BUTLER: To go to the integrity of the
13 investigation, the credibility of the witness, the
14 bias of the witness and the Sheriff's Department. I
15 think his explanation is an adequate one, but I think
16 it's one for the jury to hear.

17 I think it's okay to say, "Sometimes we
18 have to tell falsehoods to defendants." The fact
19 that that was done is in and of itself relevant, but
20 it's doubly relevant because it's done and not
21 documented as if this were something that was
22 hidden.

23 The investigator has a 15-page summary,
24 which in my experience I know is not the same as the
25 investigators or the State's. I've never seen one

1 that long.

2 Investigator Ewing's is 23 pages. There is
3 no reference to that, and it's because it's an
4 untruth, a falsehood, that was designed for a
5 particular purpose that didn't work.

6 Now, do I think it blows this case wide
7 open? No, but I think I am entitled to cross
8 examine. I have a duty to cross examine the
9 witnesses against him. This is the lead investigator
10 who documented thoroughly his investigation and left
11 that part out. I think I am entitled to ask him
12 about it.

13 THE COURT: Yes, sir. Is there anything
14 else in the case -- and I guess this is what I am
15 trying to get to -- is there anything else in the
16 case that you can point to that in essence would have
17 been manufactured by the law enforcement folks that
18 this would be relevant on?

19 MR. BUTLER: No, sir. But the only reason
20 I know about this one is because of my conversations
21 with the Defendant. If I just read the reports and
22 the discovery, I wouldn't know. I wouldn't know what
23 the photograph was used for. The only reason I know
24 is from discussing it with him. So I wouldn't know
25 what else was out there.

1 THE COURT: I think the testimony would be
2 relevant if there were some problem, if there was
3 something else in the State's case that you felt had
4 been manufactured or had been done improperly or in
5 essence was subject to attack.

6 Obviously, this was done, as I understand
7 it, for the limited purpose of getting a confession
8 from the Defendant, which didn't work. They didn't
9 get the confession. Apparently -- you can tell me if
10 I'm wrong -- there were apparently no fruits from
11 this, in essence, no fruits from this at all; is that
12 correct?

13 MR. BUTLER: Not that I'm aware of, no,
14 sir.

15 THE COURT: Right, right.

16 MR. BUTLER: And if I could just make
17 clear.

18 THE COURT: Certainly.

19 MR. BUTLER: It's not just that that was
20 done. I want to make sure it's clear to all parties
21 I understand this has to be done. I am not saying
22 that there is anything wrong with it, but I think
23 that I am entitled to bring that up and let the jury
24 decide.

25 I understand it happens all the time. If I

1 were an investigator, I would do the same thing. I
2 understand that. But I think I am entitled to ask
3 those questions. It's not just that it was done.

4 To me what is more important is that it was
5 done and that it wasn't documented. My position
6 would be the right to confront, the right to cross
7 examine under the State and Federal Constitutions.

8 THE COURT: I certainly understand. What I
9 will do is if there were something else in this case
10 on which it might impact, I would let it in in order
11 to get into that.

12 But the problem is there is nothing else
13 in the case. And simply to be able, I think, just
14 throw it out that it was done and just leave the
15 jury to decide what they want to do with it, I think
16 would go a little bit too far though. I do
17 understand your point though. Anything else from
18 the State on this?

19 MR. MCMAHON: No, Your Honor.

20 THE COURT: Proposed charge requests, what
21 about the first one? The order I usually take them
22 is from the State and then the defense. Do you have
23 any proposed change to the charge from the State?

24 MR. MCMAHON: No, sir.

25 THE COURT: None. Defense, I understand

1 first you want the lesser included of voluntary
2 manslaughter; is that right?

3 MS. MIMS: We would like a voluntary
4 manslaughter charge, Your Honor. There was testimony
5 during the trial about a fight that took place
6 between the victim and the Defendant.

7 There was also testimony, I think, from
8 Dr. Welsh who mentioned the condition of the body. I
9 don't think he give a specific time. He said the
10 murder could have happened shortly after the party or
11 after they left the party.

12 He didn't specifically say that, but I
13 don't think the rigor had set in very strongly. I
14 forget the terms. But I think there could be the
15 connection that the murder could have taken place
16 shortly after the party, shortly after the fight.
17 And because of that, we think we are entitled to a
18 voluntary manslaughter charge in that respect.

19 THE COURT: What is the State's position on
20 that?

21 MR. MCMAHON: Judge, I don't think
22 voluntary applies in this case. There is no showing
23 that there was any sufficient legal provocation. As
24 a matter of fact, the victim in this case was acting
25 in defense of third parties based on the conduct of

1 the Defendant.

2 Then the testimony from Miss Armstrong is
3 that the Defendant made the statements about luring
4 him away. There is some passage of time from the
5 time of the incident at the party between the victim
6 and the Defendant until they leave the party.

7 Then there is some period of time before
8 the gunshots were heard somewhere between 6:30 and
9 6:45. I think there would be sufficient cooling
10 time even if there were sufficient legal
11 provocation.

12 So the use of a deadly weapon and the
13 manner in which it was used, I don't think you can
14 call this a killing without malice. I just don't
15 see where voluntary manslaughter is a lesser
16 included offense and would apply in this particular
17 case.

18 I did tell His Honor I would look at some
19 of the law. I didn't do it at the break. I can
20 actually do it over lunch. I was thinking we may be
21 coming back this afternoon. I don't have particular
22 cases in my mind right now.

23 THE COURT: Do you want more time to look
24 at some cases?

25 MR. MCMAHON: It depends on what your

1 ruling is. I hate to say it like that.

2 THE COURT: I would tell you at this time
3 my inclination is that it appears to me -- and, of
4 course, as you know this is primarily a
5 circumstantial case -- that the same circumstances
6 which would point to a murder seem to me also to
7 point to voluntary manslaughter if that gives you any
8 idea. Do you want some more time to look at it?

9 MR. MCMAHON: I wouldn't mind a little more
10 time.

11 THE COURT: Do you want to take a lunch
12 break? We will get the rest of the charges when we
13 come back after lunch and go over it.

14 MR. MCMAHON: Yes, sir, I would like the
15 opportunity to see if there are any cases out there.

16 THE COURT: All right. I will let you and
17 the defense both; and both of you, if you will, swap
18 cases with each other before you come back in.

19 MS. MIMS: Yes, sir.

20 THE COURT: We will get back to that one
21 then. Any other requests to charge?

22 MR. MCMAHON: Judge, on your charge -- for
23 example, you are not going to charge alibi?

24 THE COURT: No, obviously not. As you
25 notice, that had a big question mark next to it on

1 the sheet.

2 MR. MCMAHON: Right, and I take it you are
3 not going to charge identification?

4 THE COURT: That had a big question mark,
5 too, and nothing came up about it.

6 MR. MCMAHON: I thought that's what those
7 meant. Thank you, Your Honor.

8 THE COURT: Anything else from the State?

9 MR. MCMAHON: No, sir, I don't think so.

10 THE COURT: You are not foreclosed from
11 bringing up any other requests when we come back from
12 lunch. So if you need time to look it over, you can
13 do that.

14 MR. MCMAHON: Yes, sir. Thank you.

15 THE COURT: Anything else from the defense?

16 MS. MIMS: No, Your Honor.

17 THE COURT: Let's take a break and come
18 back at 2:30 and give y'all time to spend the lunch
19 break looking at the law.

20 (Whereupon there was a luncheon recess.)

21 THE COURT: All parties and attorneys are
22 in the courtroom, including the Defendant. Counsel,
23 I believe we were going to talk first about the
24 potential lesser included charge of manslaughter.

25 Mr. McMahon, do you have anything else you want to

1 say about it?

2 MR. MCMAHON: Yes, sir. Your Honor, just
3 very briefly, the cases I looked at: State versus
4 Locklair, Tucker, Norris, I also looked at State
5 versus Johnson, which was also a case that Ms. Mims
6 gave me. She also gave me a copy of State versus
7 Davis.

8 Judge, I guess part of my theory is that
9 lawful conduct can never provide sufficient legal
10 provocation to reduce a killing from murder to
11 manslaughter. In other words, if a victim is acting
12 lawfully in self-defense or in defense of others,
13 that act cannot provide sufficient legal provocation.

14 I think or I believe it was Norris that
15 stands for that proposition that it would have to be
16 some type of illegal conduct. An exercise of a legal
17 right, no matter how offensive to another, is never
18 provocation sufficient to justify or mitigate an act
19 of violence.

20 Of course, that falls on through the Tucker
21 case, which is a death penalty case. I understand
22 that. He tried to say, "Well, sufficient legal
23 provocation was provided because of my financial
24 situation because the victim of the armed robbery
25 opposed me or something like that." I think that

1 falls through. I think it's still the law.

2 Judge, these other cases, when I looked at
3 Johnson, where there are cases where there is an
4 argument prior to the murder, sometimes I think
5 voluntary manslaughter would fit. I just don't think
6 it does in this set of facts.

7 Most of those cases when there is a heated
8 argument and the decedent -- I am reading from the
9 Johnson case -- the decedent was about to initiate a
10 physical encounter when the shooting occurred. Here
11 Johnson and the victim had words and were engaged in
12 a fight at the time the shooting occurred.

13 So I think that's a very large distinction
14 here, particularly given the testimony of the
15 pathologist that says -- it was brought out through,
16 I don't know if it was direct and cross -- but I know
17 on cross about the lack of offensive or defensive
18 injuries to the victim.

19 So I think with the passage of time -- I
20 think it's two separate instances. I don't think you
21 can take what occurred at the party when the victim
22 is acting lawfully and use that at a later point in
23 time at a remote location to provide sufficient legal
24 provocation.

25 Even if His Honor were to find that, I

1 think there would be sufficient cooling time,
2 particularly given the fact that you have the use of
3 a deadly weapon, one in the back of the neck and four
4 others in the face.

5 So I don't think you would be required,
6 under the facts of this case, to charge the lesser
7 include offense of voluntary manslaughter. Thank
8 you, Your Honor.

9 THE COURT: Mr. Mims, anything else?

10 MS. MIMS: Yes, sir, Your Honor. I would
11 just argue that I think there is -- the sufficient
12 legal provocation prong, I don't think this was just
13 a legal act or the victim was acting legally. I
14 think there was testimony on direct that he had
15 punched Steven in the face four times after he got
16 him on the ground. So I would take exception to
17 that.

18 Also in State versus Davis -- or I'm
19 sorry -- State versus Johnson that Mr. McMahon was
20 just referring to, the Court, the Supreme Court, does
21 not mention what type of fight there was when they
22 said very clearly that there should be no evidence
23 whatsoever -- well, they said that the Court
24 eliminated the offense of manslaughter, which it
25 should only do that if there is no evidence

1 whatsoever tending to reduce the crime at all.

2 In fact, we have, I think, sufficient
3 evidence here showing that this could have happened
4 in the heat of passion. They had that argument
5 earlier. There was a fight. There was testimony
6 that the victim punched Steven in the face three to
7 four times. According to Dr. Welsh, it could have
8 been very shortly thereafter that the killing took
9 place.

10 Also under Tucker, the State referred to
11 Tucker, I think that this case is distinguished from
12 Tucker considering that in that case there was a
13 kidnapping.

14 The victim of the kidnapping, the victim in
15 the case, the victim of the kidnapping -- and this
16 happened before the provocation actually took place.
17 It was a criminal act that took place before the
18 provocation.

19 I don't think it fits within the facts that
20 we have here before us. So I think that is a
21 completely separate exception or separate set of
22 facts.

23 Your Honor, I also have handed up a case of
24 State versus Davis. In that case there is also -- I
25 think the Court found voluntary manslaughter was a

1 proper charge to the jury where the witness testified
2 the appellant and the victim had been fighting.

3 That's what we have in this case. So I
4 would ask that you do consider charging voluntary
5 manslaughter.

6 THE COURT: Anything else, Mr. McMahon?

7 MR. MCMAHON: No, sir, I won't belabor the
8 point.

9 THE COURT: Counsel, I am still convinced
10 that my point is appropriate that I made before; that
11 is, the same circumstances -- as you know, this is a
12 circumstantial case.

13 The same circumstances which would point to
14 a murder charge could also point to a manslaughter
15 charge, depending on the jury's view of the facts.
16 So I am going to grant Ms. Mims' motion to charge the
17 lesser included offense of voluntary manslaughter.
18 Were there any other motions for changes in the
19 charge from the State?

20 MR. MCMAHON: One moment.

21 (Pause.)

22 MR. MCMAHON: Judge, so I understand, the
23 King charge is no longer the law, so it's neither
24 charged nor argued?

25 THE COURT: That's my understanding.

1 MR. MCMAHON: That's my understanding, too.

2 THE COURT: Right.

3 MR. MCMAHON: Thank you.

4 THE COURT: I have got, as you know,
5 standard language about lesser included offenses; and
6 I think what I have got is fine. Anything else?

7 MS. MIMS: We are fine with the charges,
8 Your Honor.

9 THE COURT: Anything else?

10 MR. MCMAHON: Can we have a copy of your
11 voluntary charge?

12 THE COURT: That's what I'm getting ready
13 to do. I've got the printer right here on the bench
14 with me, and I'm getting ready to print it out.

15 MR. MCMAHON: That's all I need, Judge.

16 THE COURT: And we are off the record.

17 (Whereupon the proceedings were concluded
18 for February 28, 2002.)

19 (The following proceedings were reported on
20 March 1, 2002.)

21 THE COURT: Counsel, I understand we still
22 are missing one juror yet.

23 BAILIFF: We have her, Judge.

24 THE COURT: The jury is here. Are you sure
25 now?

1 BAILIFF: Yes, sir.

2 THE COURT: Yesterday they told me the jury
3 was here, and they weren't. Any changes to the
4 charges, counsel, before we begin?

5 MS. CAMPBELL: Judge, the only thing we
6 would address, and I would hand up a copy of State
7 versus Brightman, which is the case that overruled
8 King.

9 (Hands to Court.)

10 MS. CAMPBELL: In your lesser included
11 part, I think you have got the King language that if
12 you have a reasonable doubt as to whether the
13 Defendant is guilty of murder or manslaughter, you
14 must resolve that in favor of the Defendant.

15 THE COURT: That's actually the Gorham
16 charge.

17 MS. CAMPBELL: I handed up Brightman. That
18 was the language addressed, and we would ask that
19 that be taken out of your charge.

20 THE COURT: I think actually didn't the
21 Supreme Court say that it wasn't error not to give
22 the King charge as I understood?

23 MS. CAMPBELL: I think it said it expressly
24 overruled it because of the definition of reasonable
25 doubt. "We now think that the time has come to

1 overrule King. The King charge is unnecessary in
2 light of the modern general reasonable doubt charge
3 which instructs the jury to resolve doubt in favor of
4 the Defendant."

5 It gives the litany of the definition of
6 reasonable doubt and how the definition of reasonable
7 doubt itself has changed, and that's the reason that
8 they overruled it.

9 THE COURT: What is the defense position on
10 that?

11 MR. BUTLER: I agree with Your Honor's
12 position. To overrule King would be to say it's not
13 error not to charge it; but Your Honor of course
14 could still charge it. We would request it.

15 It is just an extension of the reasonable
16 doubt charge, but I think it clarifies some aspects
17 of the charge, especially in light of including the
18 lesser included. So we would request the King charge
19 be included.

20 THE COURT: Anything else?

21 MS. CAMPBELL: No, Your Honor. I just
22 would note that in even in this opinion, that is the
23 exact language they do address as far as the duty to
24 resolve it.

25 THE COURT: I understand it. No question

1 about that. Counsel, I am still going -- I feel a
2 little better leaving the charge as it is. I am
3 going to leave it as it is. Any other changes from
4 the State?

5 MS. CAMPBELL: No, sir.

6 THE COURT: From the defense?

7 MS. MIMS: No, sir, Your Honor.

8 THE COURT: The State, are you ready? It
9 looks like you are ready to go.

10 MR. MCMAHON: Yes, sir.

11 THE COURT: Defense, are you ready to do
12 your closing?

13 MS. MIMS: Yes, sir.

14 THE COURT: Let's bring the jury in.

15 (The jury returns to the courtroom at
16 9:35 a.m.)

17 THE COURT: All parties and attorneys are
18 in the courtroom and all jurors have returned.

19 Ladies and gentlemen, at this time we will
20 have closing statements by the attorneys. Then I am
21 going to charge you on the law, and at some time this
22 morning it's going to be your case.

23 The State will have the first closing, and
24 the defense will have the final closing. I will ask
25 you at this time to give the attorneys your undivided

1 attention. Mr. McMahon.

2 MR. MCMAHON: Thank you, Your Honor. May
3 it please the Court.

4 THE COURT: Yes, sir.

5 MR. MCMAHON: Mr. Foreman, and ladies and
6 gentlemen of the jury, imagine, imagine holding a
7 fully loaded five-shot .38 special Taurus revolver
8 within about that far (indicating) of another human
9 being's head, the back of another human being's head.
10 Imagine that.

11 Go a little further than that and imagine
12 pulling that trigger that first time, that first
13 time. And the doctor says any of them would be
14 incapacitating. So if that is that first time, not
15 in the back, but in the back of the head, then the
16 victim falls.

17 Then imagine pulling that trigger with the
18 victim down two, three, four, five, four more times,
19 four more times with the victim on the ground to such
20 an extent that it enters into the victim's face,
21 skull, brain, to such an extent that round two,
22 three, four, and five overlapped, overlapped.

23 That's what he calls gun control, a tight
24 shot group, firing till you unload. You will -- kids
25 are hard. Man that is real. 2 Cocke for me. You

1 will look for -- you will look for, I know y'all
2 will -- y'all will search for some nonmalicious act
3 upon his part.

4 For several reasons y'all will do that.
5 Because you are fair and impartial jurors,
6 number one. You will honor your oath as fair and
7 impartial jurors.

8 Number two, but beyond that, because of the
9 bond of kindness in the human heart, because you
10 don't want to believe that a human being, another
11 human being, can be that malicious, that malicious.

12 You search all you want, ladies and
13 gentlemen. Take as long as you want and as much time
14 as you want. Examine each and every piece of
15 evidence. I submit to you that you will not find one
16 nonmalicious act by this Defendant, by this
17 Defendant.

18 Ladies and gentlemen, I am going to speak
19 with y'all about several things. There is a lot of
20 evidence. "Oh," they will say, "There is not a lot
21 of evidence." But there is a lot of evidence.

22 I have the opportunity to address y'all and
23 speak both as to the law and to the facts of the case
24 and how the facts of the case intertwine with the
25 law. After I am through, the defense can make a

1 statement to you. His Honor will charge you, will
2 tell you the law.

3 Then it will become your duty to examine
4 the facts to determine what the facts are, to apply
5 those facts to the standard of the law that we all
6 must abide by and to reach a verdict that speaks the
7 truth, that does justice, that does justice.

8 You will have all of the evidence, all of
9 the evidence: The testimony presented from the
10 witnesses under oath, all these physical items of
11 evidence. I know y'all sent out notes from time to
12 time, couldn't see the evidence.

13 Some of it was not handed over to you. You
14 will have all the photographs, all the diagrams, all
15 the pictures, the charts, the physical items in the
16 jury room with you for your examination.

17 But before I get to the particulars of the
18 facts of the case, there's two things I would like to
19 mention. Number one, there's two types of evidence
20 recognized under our law: Direct and circumstantial
21 evidence.

22 One is as good as the other. This case, as
23 in most cases, has direct and has circumstantial
24 evidence. Direct evidence is that evidence which we
25 as human beings perceive through our senses. It's

1 what a witness sees, what a witness hears, what a
2 witness smells.

3 "I heard him say, 'You better join the
4 witness protection program.' I heard him say that he
5 was going to trick Jason into leaving." Direct
6 testimony.

7 There is also circumstantial evidence. We
8 use that, direct and circumstantial evidence, in
9 making all of life's important decisions. We use
10 them both. One is as good as the other. The law
11 recognizes that one is as good as the other.

12 His Honor will tell you the two types of
13 evidence, what direct evidence is. And he will say
14 circumstantial evidence, I submit to you, is a proof
15 of a chain of facts and circumstances indicating the
16 existence of a fact, indicating the existence of a
17 fact.

18 This is real simple. I used to use the
19 example when my chaps were young. My young son, I
20 could walk into my kitchen and I knew when he fixed
21 his own cereal. I knew when he got into -- I think
22 his favorite was Frosted Mini-Wheats.

23 I didn't see him get the box. I didn't
24 hear him crunch on the cereal. But right the time my
25 foot hit that kitchen floor, I knew Matthew had been

1 in the cereal because I could feel the grain of the
2 sugar, and I could look, could look over at the
3 table. If it was cleaned up, he didn't eat it. If
4 he was cleaned up, he didn't eat.

5 Matt hadn't been around that table. I
6 didn't see him fix that cereal, eat it or anything.
7 But I knew, as good as I had been there, Matthew had
8 been back into the Frosted Mini-Wheats. At 25 he
9 probably still is. But that's what circumstantial
10 evidence is.

11 It's going to bed at night and it's dry
12 outside. It's getting up the next morning and going
13 to get your newspaper, and there's puddled water out
14 there. You know when it has rained. You didn't see
15 it, you didn't hear it; but you know it has rained.
16 That's what that is.

17 Y'all know in your lives, I can tell by the
18 looks on your faces, you know exactly what
19 circumstantial evidence is. You know precisely how
20 credible circumstantial evidence is.

21 It's as good as if you saw it. Sometime
22 it's better because those circumstances intertwine
23 and bind in with each other. There is not a greater
24 distinction or greater weight or value to be given to
25 either direct or circumstantial evidence.

1 Both have equal value under our law. One
2 is as good as the other. Weigh all the evidence in
3 this case. In weighing the evidence, if you are not
4 convinced of the Defendant's guilt, find him not
5 guilty.

6 If after weighing all the evidence, the
7 direct and the circumstantial, the confluence, the
8 intertwining of the direct and circumstantial, if you
9 are convinced that he is guilty beyond a reasonable
10 doubt, if we have proven it, you find him guilty
11 under your oath. You find him guilty.

12 You decide as the judges of facts the
13 credibility of the witnesses, the believability of
14 the witnesses. We do that in our everyday life. We
15 look at different factors to decide the believability
16 people's believability.

17 We do it by their demeanor. I can go right
18 back to Matthew. I can tell when my chap wasn't
19 being truthful with me by his demeanor, by whether
20 or not he was forthright or hesitant. We all know
21 that.

22 You go back and you picture in your mind
23 those witnesses on the stand. Did they sit up? Did
24 they look up? Did they speak up? Did they hem and
25 haw around? Was the testimony consistent within

1 itself? Did it make sense? Was it reasonable,
2 common sensical? Was the testimony of the witness
3 corroborated?

4 Me and Solicitor Campbell brought you
5 witness after witness after witness after witness
6 that corroborated one and the other. Not only was
7 the testimony corroborated by other witnesses, when I
8 talk about the facts, it's corroborated by videos.
9 It's corroborated by photographs. It's corroborated
10 by physical items of evidence. It's corroborated by
11 cell phone records.

12 Did the witness have any reason to be
13 biased or prejudiced? You may look at some of them
14 and say, "Oh, they are charged with burglary. They
15 got a get out of jail free card." Everything they
16 said in here can be used -- those burglars -- against
17 them in court to convict them in court, to convict
18 them in court.

19 But the easy point of that is when you try
20 the devil, the angels ain't going to be here to
21 testify against him. Then you look at the status of
22 some of the victims, the family victims, the family
23 witnesses, they are victims too -- not the family of
24 Jason Ward only, but Clint and Tyler Gillian.

25 Blood is thicker than water, but they had