

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County
Daniel F. Pieper, Circuit Court Judge

Opinion No. 4633 (S.C. Ct. App. filed 11/19/2009)
90-GS-32-83-84.

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S.C. SUPREME COURT

THE STATE,

RESPONDENT,

V.

GENE TONY COOPER, JR.,

PETITIONER

APPENDIX

Volume 3

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17295

VOLUME THREE OF FOUR

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Daniel F. Pieper, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GENE TONY COOPER, JR.,

APPELLANT

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1 Answer: This guy got out on parole after being
2 locked up 17 years who happened to be my cell mate
3 and robbed and killed this girl and told me about
4 it. Well, SLED, which happens to stand for South
5 Carolina Law Enforcement Division, charged me with
6 the same crime they charged him for because I knew
7 about it and I didn't tell on him.

8 Question: Did he tell you in a phone
9 conversation or what?

10 Answer: Yes, sir. Just so happened his niece,
11 which was my age and he's a little older than me,
12 was coming to visit me. And I called and talked to
13 her one evening and he got on the phone and told me
14 about it. Well, she overheard it. And excuse my
15 French, but when the shit hit the fan, I was
16 standing in front of it.

17 Question: So they prosecuted him and you, too?

18 Answer: Yes, sir. They locked me up for
19 conspiracy to commit murder, conspiracy to commit
20 kidnapping, conspiracy to commit armed robbery.
21 They said, well, you testify for us and we'll just
22 give you a conspiracy charge and it won't even hurt
23 you at all, because I still had a couple years left
24 in prison before I could get out. Well, seeing how
25 extensive my record is already, I felt it was in my

1 best interest to tell them what I knew, so I did.
2 Well, that man got a life sentence and eventually
3 got a death sentence question.

4 Question: And what did you get?

5 Answer: I got five years running concurrent
6 with what I already had, which was basically
7 nothing. They just gave -- they just give me a
8 sentence to satisfy me is basically what happened.

9 Question: And when did you get out?

10 Answer: I got out June the 9th of '93.

11 Question: And you've been out -- and you've
12 been out until you got in trouble with this charge
13 that's on file here?

14 Yes, sir.

15 Question: Now, at the time that you were
16 jailed, they -- did they take all of your property
17 from you?

18 Answer: Yes, sir. I got out, and my daddy's a
19 heavy lift crane operator and he teaches portable
20 hoisting and lifting, so I've done it all of my
21 life. I have what people call very sensitive hands
22 when it comes to pressure and maneuverability of
23 heavy objects. I'm real good at what I do. I've
24 been called from one coast to the other to come make
25 one lift.

1 **MR. LUPTON:** Objection to the sarcasm, Your
2 Honor.

3 **THE COURT:** Just read straight from the record,
4 counsel.

5 **MR. BRUCK:** What do you lift up with a crane?
6 I don't understand.

7 I can lift anything from people -- I can lift
8 anything from people to anything that weighs a
9 million pounds or less. I'm certified from coast to
10 coast.

11 Question: And you put it some place specified;
12 is that correct?

13 Answer: The work I like doing best is working
14 with millwrights, which are some of the most
15 finicky, pickiest people in the world. If you work
16 with iron workers, you can get this close
17 (indicating). If you work with a millwright, they
18 want it this close (indicating). And I can do that
19 without hurting anybody ever, without ever pinching
20 a finger, bloodying a nose. They raise hell from
21 time to time if they don't do it the way I like it.
22 My name has got to go on that lift card. I'm the
23 one that has to be responsible for all the rigging
24 and the qualified certification of everybody who has
25 to help me.

1 Now, later on, still being questioned by his
2 own lawyer: Now, Phillip, whenever the police asked
3 you about what you've been doing, have you made
4 complete disclosure about what you've done?

5 Answer: Probably overkill.

6 Question: What do you mean overkill?

7 Answer: Well, I knew I was in pretty bad
8 trouble. And, basically, I wanted them to believe
9 that I knew a whole lot more than I did so that they
10 could arrange for my bond to be lowered and I could
11 get out on bond and maybe try to help myself out.

12 Question: You don't really know the person who
13 would be able to finance a ten pound cook?

14 Answer: I ain't never met anybody like that.

15 Question: Was there a ten pound cook?

16 Answer: No.

17 Now, Mr. Peele was sitting there saying he
18 would let you work with him?

19 Answer: That's what he told me, told me if I'd
20 write this statement, that he would have something
21 to show to the D.A. that, well you're trying to help
22 us, maybe she'll help you.

23 And along the same subject later in the
24 hearing, the District Attorney questioned him as
25 follows:

1 Question: Okay. Let's talk a little bit about
2 the new offense. From what I gathered from hearing
3 your testimony at this point in time, you're
4 saying -- what you're saying is that everything you
5 said when you wrote down your statement to Officer
6 Peele was not true; is that what you're saying now?

7 Answer: No, sir.

8 Question: Okay. You're telling us now that
9 you don't have any idea how to cook methamphetamine?

10 Answer: I've known enough people that -- no, I
11 do not know how to cook it. I've been associated
12 with enough people that I know when it's being done,
13 and I know what is needed to do it, but actually to
14 know how to do it, no, I don't know how.

15 Question: You know the general process,
16 though?

17 Answer: For instance, I don't know how to
18 extract the Lithium strips from a battery.

19 Question: But you know how to do the other
20 stages of it?

21 Answer: I know what you need to do it.

22 Question: All of this stuff from what you told
23 him about the precook, the big cook and everything
24 else, you're telling us that's a lie?

25 Answer: Pretty much, yes, sir.

1 Question: Didn't really cause you a problem
2 lying to him that day, did it?

3 Answer: No. Actually, I kind of -- I was kind
4 of hoping it was going to help me because I -- he
5 kind of laid the information out as what he thought
6 was transpiring and I kind of used it and revved it
7 up a little bit to make it look like I knew
8 something that would help him so he would help me.

9 Question: So, basically, you were in a tight
10 spot?

11 Answer: Yes, sir.

12 Question: And you didn't want to be in a tight
13 spot, so you told him some lies or fabrications to
14 try to get out of a tight spot?

15 Answer: I told him exactly what I thought he
16 wanted to hear so he would help me, yes, sir.

17 Now, beginning with the cross-examination by
18 the District Attorney is as follows:

19 Question: Mr. Farmer, I'd like to start by
20 kind of going back over some of the things you
21 talked about with your lawyer. Let's talk about the
22 first time when you got convicted in South Carolina.
23 The first time was for larceny?

24 Answer: Yes, I believe so.

25 Question: And that was in '82?

1 I believe it was in '83.

2 '83, okay. That's when you actually got
3 convicted and that's when you got put on probation?

4 Right.

5 Okay. So you got, what, three years probation?

6 Answer: Been a long time ago. That was 20
7 years ago, I don't remember. That sounds right.

8 Question: And you -- and did you make your
9 probation or did you get thrown in jail for
10 violating your probation?

11 Answer: I don't believe I actually violated
12 it. I believe this other charge just -- I got this
13 other charge and I got this youthful offender
14 sentence when I went to the boys home. I don't know
15 if they violated it or not.

16 Question: Okay. So in '83, you got this
17 probation. While you're on probation, you picked up
18 a new case or cases in Georgia and South Carolina
19 down there at the border for what you described as
20 stealing a check or cashing a check?

21 Answer: Yes, sir.

22 And that was in what year?

23 '84.

24 And you got convicted on that and sent through
25 a six month juvenile or what -- youthful offender

1 program?

2 Answer: Youthful offender program. It's for
3 young adults.

4 Question: And both of those theft cases, those
5 were both felonies in the State of South Carolina
6 and Georgia, were they not?

7 Answer: Yes, sir. They was handled as such, I
8 think.

9 I'm sorry?

10 They was handled as such, I believe.

11 Okay. And then -- so you go through the six
12 month program there starting in '84 and you get out
13 presumably some time in early '85?

14 November.

15 November of '85 or November of '84?

16 '84.

17 Okay. And then by June of '85, if I'm
18 understanding your testimony correctly, you've
19 committed and already been to court and been
20 sentenced on two cases of what they call over there
21 housebreaking and larceny, kind of like what we call
22 burglary of a habitation over here?

23 Yes, sir.

24 All right. So, basically, you broke into two
25 different people's houses and stole stuff?

1 Yes, sir.

2 What time of day was it when you broke into
3 their houses?

4 I'd say afternoon.

5 While they're away at work?

6 Yes, sir.

7 Did you know if anybody was home when you did
8 that?

9 Sure hope they wasn't.

10 But did you -- but you didn't know?

11 I believe I knocked on the door and they didn't
12 come to the door. We broke in.

13 Okay. So that was in June of '85. So you'd
14 been out probably just a few months when you
15 committed that offense?

16 Yes, sir.

17 Okay. June of '85, you got sent down, one was
18 a six year sentence, one was a five year sentence.

19 Did those run concurrently or were they stacked on
20 top of each other?

21 Consecutively.

22 Consecutively. And then what year was that
23 that you escaped or went to the store, as you
24 described it?

25 I would say '88, something like that.

1 '88, all right. And I understand it's been a
2 while, you may be approximate on these dates, that's
3 okay.

4 Answer: I'm really not sure at all. I'm just
5 guessing.

6 Okay. And so for the escape case, they gave
7 you six months. Was it stacked on top of what you
8 had from before?

9 Yes, sir. They just extended my sentence six
10 months.

11 All right.

12 They would never -- it never did go to any kind
13 of courtroom or anything like that, they just give
14 me six.

15 It was an administrative deal or something?

16 Yes, sir.

17 All right. And once you got in that, they sent
18 you to a maximum security prison?

19 Yes, sir.

20 What did you think of that?

21 I didn't think it was too cool at all.

22 Okay. And you said you were there for the
23 maximum security prison for five years?

24 I was in a maximum security institution until
25 '93 until I got out. I just happened to be at that

1 particular one for about five years.

2 Okay. So you were in the maximum security from
3 '88 when they give you the six extra months until
4 '93 when you got out, correct?

5 Yes, sir. I was at that particular one for
6 about five years. I've been to several
7 institutions. You get transferred around, but they
8 were all maximum security institutions.

9 Okay. They sent you to several different
10 facilities?

11 Right.

12 All right. And that was it. What year was
13 that when the whole murder robbery thing came
14 around, approximately?

15 Answer: '90.

16 Question: 1990?

17 Answer: '90, something like that, '91 maybe.

18 So '90 to '91?

19 Might have been '89, I don't know.

20 Do you know approximately when that one
21 actually went through court?

22 I'd say early 90's. Could have been a criminal
23 conspiracy. I got five years running concurrent.

24 Mr. Farmer, let me show you a few documents
25 here. Just on this particular one, is that your

1 signature right here?

2 Yes, sir.

3 And does that have the date March 21st of 1991?

4 Yes, sir.

5 And is that a date -- could you take a look at
6 it real quick? That appears to -- that appears that
7 you entered a plea and were sentenced to five years
8 for that conspiracy to commit kidnapping, robbery
9 with a deadly weapon, murder charge.

10 Answer: All that was dropped down to a
11 criminal conspiracy charge.

12 Okay. Criminal conspiracy, sure, involving
13 those offenses?

14 Right.

15 So does March 21st of '91 sound right?

16 Answer: That sounds right.

17 Okay. And it appears here, it says,
18 consecutive sentence now served. Was that your
19 understanding it was concurrent?

20 That's what I thought.

21 Apparently, it was consecutive?

22 Undoubtedly.

23 Question: Meaning stacked?

24 Answer: Yes, sir.

25 Question: All right. So that would have been

1 March 21st of '91 when you actually went to court
2 and, obviously, it happened some date before then?

3 Answer: Couple of years.

4 Question: Essentially, it sounds like from
5 1983 until 1991, you've been in and out of jail and
6 prison presumably off and on pretty much the whole
7 time?

8 Answer: I was in there just about the whole
9 time.

10 Okay. Did you learn anything from that?

11 Answer: I sure did.

12 Question: What did you learn?

13 Answer: I learned you don't need to be
14 stealing other people's stuff. You need to go out
15 and work and you need -- and, you know, earn your
16 own way.

17 Question: Did you learn you don't want to go
18 back to prison again?

19 Definitely.

20 That concludes the testimony, Your Honor. We
21 have two other witnesses regarding statements by Mr.
22 Farmer, but they were not able to be here by today.
23 So we'll call them during the defense case.

24 **THE COURT:** All right. Next witness.

25 **MR. BELL:** The State would call Blake Taylor.

1 BLAKE E. TAYLOR, JR.,
2 having been duly sworn, testified as follows:

3 THE CLERK: If you'll have a seat and state
4 your name for the record, please.

5 THE WITNESS: Blake E. Taylor, Junior.

6 DIRECT EXAMINATION

7 BY MR. BELL:

8 Q Mr. Taylor, where are you employed?

9 A South Carolina Department of Corrections.

10 Q How long have you been employed with the South
11 Carolina Department of Corrections?

12 A Thirty-eight years.

13 Q And were you familiar with the Central
14 Correctional Institution?

15 A Yes, sir.

16 Q Where was that?

17 A It was in downtown Columbia right off Huger
18 Street near the river.

19 Q And when did it stop functioning as a
20 correctional institution?

21 A 1992 or something like that.

22 Q And what is your job now with the department of
23 corrections?

24 A Director of Compliance, Standards and
25 Inspections.

1 **Q** And back in 1989, how were you employed with
2 the department of corrections?

3 **A** I was a director of Internal Affairs, Audits
4 and Inspections.

5 **Q** Now, back then, did you have an occasion to
6 know some telephone numbers around Central
7 Correctional Institution?

8 **A** Yes, sir.

9 **Q** And can you tell us some numbers on cell block
10 three? They had phones in the cell blocks, didn't
11 they?

12 **A** They did.

13 **Q** What kind of phones did they have?

14 **A** Those were pay phones.

15 **Q** And how were they used -- were they used by the
16 inmates?

17 **A** They were available to the inmates. They could
18 make collect calls to outside parties on those
19 phones. The phones were supplied by a private
20 vendor. They didn't belong to the department of
21 corrections. They were just like pay phones on the
22 streets.

23 **Q** And how many pay phones were on cell block
24 three; do you recall?

25 **A** I don't recall a total, but there were probably

1 at least a half a dozen.

2 Q And let me ask you about some phone numbers.

3 748-9801 was that a phone number that was on cell

4 block three, one of the pay phones?

5 A Yes.

6 Q And 748-9802 is that --

7 A Yes.

8 Q And, I believe, 748-9841?

9 A Yes, that's correct.

10 Q Okay. Now, there was some testimony about the
11 educational building at CCI; is that correct?

12 A Are you talking about from the previous trial?

13 Q I'm just talking about --

14 A You said testimony, I didn't know --

15 Q I mean, in this trial there was some testimony
16 about the educational --

17 A Well, I haven't heard the testimony, but there
18 was an education department at Central Correctional
19 Institution.

20 Q And what was that?

21 A Where was it or what was it?

22 Q What was it?

23 A It was a part of the institution where inmates
24 were allowed to be tutored, to be taught. There
25 were literacy programs to help inmates who didn't

1 know how to read and write learn to do so. And
2 there were even some areas where people who were
3 qualified could earn their GED, high school
4 equivalency diploma.

5 Q And was there a slang name for it?

6 A For the -- schoolhouse, different -- I'm sure
7 there were many others.

8 Q The school was schoolhouse one?

9 A Yes.

10 Q And there were state telephones over there?

11 A There were office phones for staff, yes.

12 Q Now, did you also have an occasion back at that
13 time to come into the -- come into your possession
14 the visitation records of a Phillip Farmer?

15 A Yes, sir.

16 Q And did you have access to them?

17 A I did.

18 MR. BELL: Your Honor, may I approach the
19 witness?

20 THE COURT: Yes, sir.

21 BY MR. BELL:

22 Q Mr. Taylor, I ask -- show you what's been
23 marked as State's 41 and ask you if you recognize
24 that?

25 A That is a photostatic copy of -- well, there

1 are two documents. The first page is a visiting
2 list for Inmate Phillip Farmer. It has the names
3 and addresses of the people who were on his visiting
4 list. And the second page is an inmate visitor log
5 that records who visits and when for this particular
6 inmate.

7 **Q** And how do you keep up with who visits him on
8 the visitation log?

9 **A** The system at that time that this reflects had
10 each visitor assigned a number. The first person on
11 the list was number one, the second person number
12 two and so forth. So by each name of a visitor,
13 there is an assigned number. And then when the
14 visitors came to see the inmate, the column on the
15 left is the date of the visit. And then where it
16 says name of visitor, actually the entry is the
17 number that corresponds to the person from the
18 visiting list.

19 **MR. BELL:** Your Honor, we'd offer this as
20 State's 41.

21 **THE COURT:** Any objection?

22 **MR. ANDREWS:** No objection.

23 **THE COURT:** State's 41 in evidence without
24 objection.

25 (State's Exhibit Number 41, visitor log,

1 admitted into evidence.)

2 BY MR. BELL:

3 Q I'm going to hand you back State's 41 and ask
4 you, on the front page, the names and addresses of
5 visitors?

6 A Yes, sir.

7 Q Do you see the name Brenda McLauren on there?

8 A Yes. She is listed as -- number 20 is the
9 number assigned to her on this list.

10 Q Okay. And I want to ask you on the second page
11 of the visitors log and ask you is there a date of
12 October 4th, 1989 on there?

13 A Yes.

14 Q And what was the visitor number for that date?

15 A Number 20, which is Brenda McLauren's number.

16 MR. BELL: Thank you, Mr. Taylor. Please
17 answer any questions the defense may have.

18 CROSS-EXAMINATION

19 BY MR. BRUCK:

20 Q Good afternoon, Mr. Taylor.

21 A Yes, sir.

22 Q You still have the exhibit with the visiting
23 list?

24 A No, sir, I do not.

25 Q That record reflects a great number of visits

1 from Brenda McLauren to Red Farmer, does it not?

2 **A** The page that I have includes a period -- well,
3 haven't totaled up the days, but there are probably
4 ten or 12 different days on this.

5 **Q** Did she visit him on July 28th, 1989?

6 **A** I'm sorry. That doesn't mean that she visited
7 on all of those dates. I didn't know if you -- but
8 this-is a just-an ongoing, sequential list here of
9 visiting days.

10 **Q** Maybe I should take a look at it for a moment.

11 **MR. BRUCK:** If I may approach.

12 **THE COURT:** Yes, sir.

13 BY MR. BRUCK:

14 **Q** Okay. So this shows just that Brenda McLauren
15 was on his visiting list, correct?

16 **A** The first page shows the names of people on his
17 list, which includes Ms. McLauren. The second page
18 are the dates that Inmate Farmer had visits by
19 anyone.

20 **Q** And does it show who the visits were with?

21 **A** Yes.

22 **Q** By number?

23 **A** Yes.

24 **Q** And what was Ms. McLauren's number?

25 **A** Twenty.

1 Q So looking at the second page, can you see if
2 inmate -- visitor number 20 visited Mr. Farmer on
3 the 21st of July of 1989?

4 A I don't have the information for the 21st of
5 July here.

6 Q What's the first date you have?

7 A September 27th.

8 Q Okay. So --

9 A Of '89.

10 Q I'm sorry. You have no way of knowing from
11 these records whether she visited him several times
12 a week during August and September, do you?

13 A At the lower part of the page, there's actually
14 information that's earlier than what's at the top,
15 so if you want me to --

16 Q Well, maybe to speed things up, you testified
17 previously in this matter, did you not?

18 A I did.

19 Q Would it refresh -- and you were testifying
20 from the records at that time?

21 A Yes.

22 Q Why don't I just get you to list the dates that
23 you said Ms. McLauren visited Red Farmer starting
24 with July 28th. Just read them all out to the jury.

25 A According to this, this is my responding yes to

1 the questions, July 28th, 1989; August 4th, 1989;
2 August 5th, 1989; August 7th, 1989; August 9th,
3 1989; August 14th, 1989, these are all 1989 dates,
4 August 19th, 31st; September 14th, 16, 17, 20, 27,
5 29; October 2nd; October 4th; October 7th and 8th.

6 Q Thank you. So it's fair to say she was a very
7 frequent visitor to Mr. Farmer?

8 A During that period, apparently, yes.

9 Q Now, the telephone at the schoolhouse, that was
10 a regular phone that was available to a great many
11 inmates, correct?

12 A No, it was really a staff phone, but there were
13 some inmate workers who were performing functions
14 that staff might normally have performed, you know,
15 if there had been more salaried employees available,
16 but there were some handpicked inmates who had
17 either been selected because of their skills or some
18 other reason to work in jobs and some of them did
19 have access in the course of their duties supposedly
20 to use the telephone.

21 Q And if an inmate were involved in a drug
22 trafficking conspiracy and wanted access to a
23 telephone that was not a state phone -- that was not
24 a pay phone, getting a job in that schoolhouse would
25 be a good way to do it, wouldn't it?

1 **A** Well, I -- if someone had a job that allowed
2 use of the telephone, I suppose it could have been
3 used for sinister purposes.

4 **Q** Has security been somewhat tightened up now as
5 opposed to 1989, if you know?

6 **A** Oh, everything is very different now. The
7 entire telephone system, everything has progressed
8 and technology is very different.

9 **MR. BRUCK:** Now, bear with me just a moment.

10 (Pause.)

11 **MR. BRUCK:** That's all, Mr. Taylor. Thanks so
12 much.

13 **MR. BELL:** A couple more questions, Your Honor.

14 REDIRECT EXAMINATION

15 BY MR. BELL:

16 **Q** Mr. Taylor, the phones that are in the
17 education building that's for staff, are those
18 collect phones?

19 **A** No, sir. Those are regular business phones,
20 you know, like anyone would have even in an office
21 outside the department of corrections that you might
22 have had in a law office or anything else at that
23 time.

24 **Q** So for local calls, there would be no records;
25 is that correct?

1 **A** That's correct.

2 **MR. BELL:** Thank you.

3 **MR. BRUCK:** Nothing further.

4 **THE COURT:** You may step down sir. Thank you.

5 **MR. LUPTON:** Your Honor, ask that this witness
6 be excused.

7 **THE COURT:** Any objection to the witness being
8 excused?

9 **MR. BRUCK:** No, sir.

10 **THE COURT:** You may be excused.

11 **MR. BELL:** Your Honor, at this time, we'd offer
12 State's 42 as an exhibit as what the phone records
13 would actually reflect without the record keepers
14 coming.

15 **THE COURT:** State's 42 in evidence without
16 objection; is that correct?

17 **MR. BRUCK:** Yes, sir.

18 (State's Exhibit Number 42, phone records,
19 admitted into evidence.)

20 **MR. BELL:** May I publish this to the jury?

21 **THE COURT:** Yes, sir.

22 **MR. BELL:** I'm going to give them time to look
23 at the exhibit.

24 **THE COURT:** That's fine.

25 (Pause.)

1 **MR. BELL:** Your Honor, with that, the State
2 would rest.

3 **THE COURT:** All right. Ladies and gentlemen,
4 I'm going to send you back to the jury room. Do not
5 discuss this case in any way. Thank you-very-much. _____

6 (The jury retires to the jury room.)

7 **THE COURT:** Do y'all need a break before we
8 take up any motions?

9 **MR. BRUCK:** It would be just as well to break
10 now and then take motions, yes, sir.

11 **THE COURT:** All right.

12 (Brief Recess.)

13 **MR. BRUCK:** At this time, Your Honor, the
14 defendant moves for a directed verdict of acquittal
15 on all charges on the grounds that the evidence
16 presented by the State is insufficient as a matter
17 of law to convince a reasonable trier of fact beyond
18 a reasonable doubt of his identity as a member of
19 the conspiracy or as one of the individuals directly
20 responsible for the robbery, kidnapping and murder
21 of Kimberly Quinn.

22 We rely on the case of Jackson versus Virginia
23 for the general proposition that due process would
24 be denied by conviction resting on this evidence.
25 And although we recognize that the weight of witness

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1 verdict, that's basis of your motion?

2 MR. BRUCK: Yes, sir.

3 THE COURT: All right. I deny that motion.

4 Anything further?

5 MR. BRUCK: No, sir.

6 THE COURT: All right. Mr. Cooper, please

7 stand.

8 We've reached that stage of the trial where you
9 may present your defense. Now, you have a right --
10 I'm sure your attorneys have advised you about this,
11 Mr. Cooper, but you have the right to testify on
12 your own behalf; however, no one can make you
13 testify.

14 If you elect to testify and you have some prior
15 record that falls within the coverage of our rules
16 of evidence or procedure, which I understand you do
17 have that type of record, or there's some basis for
18 admission of that record, then the Solicitor will be
19 able to present that record to the jury for its
20 consideration for impeachment and possibly other
21 purposes.

22 If you elect not to testify, not to take the
23 stand, then I will charge the jury they are not to
24 give the fact that you did not testify any
25 consideration whatsoever and that there's to be no

1 prejudice to you because you did not testify.

2 It will be left entirely up to you as to
3 whether or not you wish to testify.

4 Mr. Bruck, have you been over the advantages
5 and disadvantages of his testifying or not
6 testifying with him?

7 **MR. BRUCK:** Yes, sir.

8 **THE COURT:** Mr. Cooper, have you been over that
9 with your counsel?

10 **DEFENDANT COOPER:** Yes, sir.

11 **THE COURT:** Do you understand your
12 conversations with your attorney about this?

13 **DEFENDANT COOPER:** Yes, sir.

14 **THE COURT:** And do you understand everything
15 that I've said about this?

16 **DEFENDANT COOPER:** Yes, sir.

17 **THE COURT:** Have you made a decision -- has
18 your client made a decision yet, Mr. Bruck, as to
19 whether he wishes to testify or do you wish to defer
20 that at this time?

21 **MR. BRUCK:** We wish to defer that at this time.

22 **THE COURT:** All right. Thank you.

23 Is there some issue about his prior record that
24 we need to resolve at this point? I thought there
25 were some that y'all agreed to.

1 **MR. BRUCK:** I don't know that we have agreed.
2 Our position is that his prior record is remote.

3 **THE COURT:** What were the prior records you
4 intended to introduce?

5 **MR. BELL:** The armed robbery conviction in
6 February of 1997, armed robbery in --

7 **MR. BRUCK:** '97?

8 **THE COURT:** 1977?

9 **MR. BELL:** 1977, excuse me, armed robbery in
10 March of 1977 and the housebreaking and larceny in _____
11 September of 1977.

12 **THE COURT:** So an armed robbery in 1977 and a
13 housebreaking and larceny in 1977?

14 **MR. BELL:** Yes, Your Honor, all in 1977.

15 **THE COURT:** All right. What's your position on
16 those?

17 **MR. BRUCK:** Well, obviously, they're outside of
18 ten years of the time of his current testimony. And
19 we think under all the circumstances, that
20 there's --

21 **THE COURT:** I'm sorry?

22 **MR. BRUCK:** I should have the rule in front of
23 me, too, but under Rule 609, we think the
24 convictions are too remote.

25 **THE COURT:** Do you wish to tell me why you

1 think they should come in based on their age? When
2 was he released from custody on these convictions?

3 MR. BELL: I believe 1988.

4 MR. BRUCK: 1988.

5 THE COURT: 1988?

6 MR. BRUCK: Yes, sir.

7 MR. BELL: Your Honor, first of all, I would
8 just like to, for the record, and you can check the
9 clerk's file as I did file a motion and give notice
10 pursuant to Rule 609 that I intended to use those,
11 number one. Number two --

12 THE COURT: Well, both of you agree that the
13 period of ten years has lapsed from the --

14 MR. BELL: From this date, yes, Your Honor.

15 THE COURT: -- date of conviction or release
16 from confinement.

17 MR. BELL: Yes, from the date --

18 THE COURT: So we're under part B of the rule?

19 MR. BELL: Yes, sir, Your Honor.

20 THE COURT: All right. Let me hear you out on
21 why they should come in.

22 MR. BELL: Number one, my first argument was
23 that since this crime did happen in 1989, albeit
24 it's been these years, whoever's fault that was,
25 they're close in time to the actual date of the --

1 of this crime happening.

2 My second one is, especially to the armed
3 robberies and the larceny, is our Supreme Court has
4 ruled that they are crimes of dishonesty and they
5 would go to the credibility of the witness, which I
6 think is important in this case and I think that
7 that has -- overbearing, that that's certainly
8 probative and not punitive.

9 I mean, there's been testimony about his prison
10 life in one way or the other and I think they even
11 spoke about crimes in their opening statement, so I
12 don't know how the prejudicial effect would outweigh
13 the probative value in this thing. That's the
14 general -- I mean, pursuant to the rule. But I
15 think that because these are crimes of dishonesty,
16 they go to the credibility and are extremely
17 probative in this case.

18 **THE COURT:** You have to show that they
19 substantially outweigh any prejudicial effect.

20 **MR. BELL:** Yes, Your Honor. I mean, I think
21 they've mentioned them and all that. I think
22 they've kind of somewhat waived them. He mentioned
23 them in his opening about the defendant and the
24 witness being involved in a crime spree in 1977,
25 that the witness was the leader between the two and

1 I think they've already -- the prejudicial effect
2 has gone down because of that.

3 **THE COURT:** All right. Do you wish to respond
4 to that?

5 **MR. BRUCK:** Well --

6 **THE COURT:** You mentioned the crime spree in
7 your opening comments?

8 **MR. BRUCK:** Yes. I did not go into -- it was
9 obvious that the fact that Tony Cooper was a prison
10 inmate was inherent in the evidence in this case.

11 **THE COURT:** You didn't say what the crimes
12 were, but you said that he had a prior record of a
13 string of crimes from when he was like 17.

14 **MR. BRUCK:** That's right. And the real point
15 was the disparity in ages between Cooper and
16 Sutherland. It certainly hasn't been waived as to
17 the identities of the crimes, their dates or
18 anything else.

19 And I would add that the -- I don't see any
20 basis for arguing that subsection two of the general
21 rule section A is an exception to the remoteness
22 rule, section B, that whether it's a crime of
23 dishonesty or a crime punishable by more than one
24 year, it's still has to not be remote.

25 **THE COURT:** Well, I don't think he was arguing

1 that the first part of the rule made an exception to
2 part B, I don't think that's the case. If he were
3 not beyond the ten year period, then a crime of
4 dishonesty would come in automatically without a
5 waiving process. It's only by virtue of the
6 remoteness of the convictions that the waive process
7 kicks in for the kind of crimes that would normally
8 fall under (a)(2) of the rule, but what he was
9 saying is that's what the probative value is that
10 they are the kinds of crimes that go to credibility
11 and this case is all about credibility.

12 **MR. BRUCK:** I would add that it's also -- the
13 similarity of the crime of armed robbery to the
14 armed robbery here also increases its prejudicial --

15 **THE COURT:** That somewhat troubles me about the
16 armed robbery, but what about the housebreaking and
17 larceny?

18 **MR. BRUCK:** I'll admit that that particular
19 argument does not apply to the housebreaking and
20 larceny.

21 **THE COURT:** I have some concern that you are
22 also trying him for armed robbery and seeking to
23 admit that. I'll allow the housebreaking and
24 larceny in, but not the armed robbery.

25 **MR. BRUCK:** Very well.

1 **THE COURT:** All right. You had some other
2 matters you wanted to discuss with me?

3 **MR. BRUCK:** It was really about scheduling, but
4 maybe it makes more sense for us to put up the
5 witnesses we have here.

6 **MR. BELL:** Your Honor, I do have -- they kind
7 of shared a couple of their witnesses. I mean, I
8 don't know exactly what they're doing, but I think
9 there's -- what I'm concerned about is during
10 Mr. Sutherland's testimony, he was asked about did
11 he say something to a couple of women. And I think
12 they intended for them to testify.

13 And my concern is, while we're having the jury
14 break, is that he's already admitted what he said to
15 them and I don't know that they can go back and try
16 to prove anything by extrinsic evidence on that. I
17 mean, he admitted to it that he did it and there's
18 no reason for that testimony. If they put him up
19 for something else, I don't have a problem with
20 that, but if they're going to get up for them to
21 say, you know, he's told us that he did it, well he
22 admitted to that.

23 **THE COURT:** Well, you, yourself, say this case
24 is all about credibility.

25 **MR. BELL:** Right, Your Honor, but he admitted

1 to it, though, that's my point. I mean, he admitted
2 to it. He didn't deny it.

3 **THE COURT:** Yes, sir.

4 **MR. ANDREWS:** Your Honor, these --

5 **THE COURT:** I really don't know what they're
6 going to testify to, so.

7 **MR. ANDREWS:** Your Honor, they're going to
8 testify that Mr. Sutherland admitted to them that he
9 performed the crimes alone without any involvement
10 by Mr. Cooper.

11 **THE COURT:** Well, that's a little bit different
12 than just saying he was involved in a crime. If
13 they say that he claimed that they performed the
14 crimes alone, that's a different category, you would
15 agree, right?

16 **MR. BELL:** Yes, Your Honor, but that's what he
17 admitted to. That's what he admitted to telling
18 these women.

19 **THE COURT:** Well, he admitted that, but at the
20 same time, he denies that. That's kind of peculiar
21 in this case. It's just a little bit different. I
22 mean, he admits that, but he says he only said that
23 for a certain reason.

24 Now, whether he did that with these women or
25 had the same motivation to tell those women in the

1 manner he might have done that with someone else is
2 a different story. I don't know. I don't know the
3 background or relationship with these women or not.

4 I'm not prepared to stop that at this point.
5 If you hear something that suggests otherwise,
6 you're free to revisit the issue.

7 **MR. BELL:** Okay.

8 **THE COURT:** Anything else?

9 **MR. ANDREWS:** Not from the defendant.

10 **THE COURT:** State?

11 **MR. BELL:** Nothing, Your Honor.

12 **THE COURT:** Bring the jury in, please.

13 (The jury returns to the courtroom.)

14 **THE COURT:** Go ahead.

15 **MR. BRUCK:** Thank you, Your Honor. I call
16 Norman Starnes.

17 NORMAN EDWIN STARNES,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** State your full name for the
20 record.

21 **THE WITNESS:** My name is Norman Edwin Starnes.

22 DIRECT EXAMINATION

23 BY MR. BRUCK:

24 **Q** Good afternoon, Mr. Starnes. It's fairly
25 obvious, but would you tell the jury where you

1 currently reside?

2 **A** Right now, I currently reside at the Lexington
3 County Detention Center at 521 Gibson Road here in
4 Lexington.

5 **Q** And is that because you are awaiting trial on
6 charges here in Lexington County?

7 **A** Yes, sir, that is correct.

8 **Q** And how long have you been at the Lexington
9 County Detention Center awaiting trial?

10 **A** Since June the 23rd of 2000.

11 **Q** Of 2000?

12 **A** Yes, sir, that's correct.

13 **Q** How old are you, Mr. Starnes?

14 **A** I'm 40.

15 **Q** And where did you grow up?

16 **A** I grew up in Cayce, South Carolina.

17 **Q** And when were you first arrested on the charges
18 that you now are facing?

19 **A** May the 27th of 1996.

20 **Q** Did there come a time that because of
21 proceedings involving this trial, that you were sent
22 to the Special Management Housing unit at Lieber
23 Correctional Institution?

24 **A** Yes, sir, that is correct.

25 **Q** And can you tell us what day you arrived there?

1 **A** I arrived April the 25th of 1997.

2 **Q** And how long did you stay in that unit?

3 **A** Thirty-eight months.

4 **Q** And during the time that you were there, were
5 both Tony Cooper and Bo Sutherland inmates in that
6 same unit?

7 **A** Yes, sir, that is correct.

8 **Q** Did you get to know them?

9 **A** Pretty much so, yes, sir.

10 **Q** Can you describe the circumstances by which you
11 got to know each of them?

12 **A** I got to know Tony, he was --

13 **Q** You need to try to keep your voice up a little
14 bit.

15 **A** I'm sorry. Tony was the first inmate that I
16 met while I was down there. He was serving meals
17 and doing other things in the unit. At a later
18 point, I'd become a trustee down there and I worked
19 with Mr. Sutherland. He was a trustee at one time.
20 And we kind of -- we worked together serving meals,
21 cleaning the unit and doing other duties that the
22 officers asked us to do.

23 **Q** And being a trustee, I mean, that didn't mean
24 that you left prison, that meant that you got to do
25 jobs inside the prison unit?

1 **A** That's correct. We never left the institution.
2 We stayed confined in that unit.

3 **Q** Okay. Now, you said that Mr. Cooper was
4 serving meals, that meant that there was a time when
5 he was working out of his -- not confined in his
6 cell all the time?

7 **A** That is correct. When I originally arrived
8 down there, Mr. Cooper was a trustee and he was
9 actually the first inmate that I met because he
10 brought me my breakfast.

11 **Q** Now, did you have an opportunity to observe any
12 interaction between Mr. Cooper and Mr. Sutherland?

13 **A** Yes, sir.

14 **Q** Now, let me ask you this. Weren't they
15 separated so that they had no contact with each
16 other at all?

17 **A** They were separated as Mr. Sutherland was on
18 what's known as the A wing unit and Mr. Cooper was
19 actually in the unit that I was in, the B wing unit,
20 but it's actually the same structure.

21 **Q** Mr. Starnes, actually without my asking you to
22 after I spoke to you about this matter, did you take
23 it upon yourself to draw a little diagram of the --
24 of this unit where both you and Mr. Sutherland and
25 Mr. Cooper were confined?

1 **A** Yes, sir, that's correct.

2 **Q** And are we looking at it projected on the
3 screen right now?

4 **A** Yes, sir, that is correct.

5 **Q** I'm not sure if you'd have an easy time coming
6 down and pointing the items here. -Would it help you
7 in your testimony to show the jury the areas you're
8 talking about?

9 **A** Sure, with the Court's permission.

10 **THE COURT:** You may step down.

11 (Witness leaves the witness stand.)

12 BY MR. BRUCK:

13 **Q** I'm sorry. You said that -- you were talking
14 about A wing and B wing. Do you remember where --
15 which wing Mr. Cooper was assigned to and which wing
16 Mr. Sutherland was assigned to?

17 **A** Okay. Mr. Cooper was assigned to the B wing
18 unit.

19 **Q** Keep your voice up, please.

20 **A** Actually, I was here in 125 and Mr. Cooper was
21 in cell 106. And this is the B wing unit here
22 (indicating). There is a gate that separates what's
23 known as the sally port area here in front of the
24 control room. There are two electronic doors that
25 allow us access to the A wing unit.

1 **Q** And Mr. Sutherland was in the A wing?

2 **A** That is correct. I believe he was upstairs
3 somewhere on the right side. I cannot remember the
4 cell number because I wasn't housed over there.

5 **Q** Now, can you explain how they would have had
6 any contact at all with each other if they were in
7 different wings?

8 **A** When we have church service, we normally set up
9 the church service -- when I was down there it was
10 rotated. Occasionally, we would set it up on the B
11 wing side over here. And then every other week, we
12 would rotate it, it would be set up on A wing. And
13 they would interact when we had church service.

14 The library is over here in, actually, cell
15 102. It's not a cell anymore. The beds and the
16 toilets and things were taken out of that room and
17 that's a library. When Mr. Sutherland would come
18 over and get books, him and Tony would interact,
19 also.

20 **Q** All right. You're not going to need this
21 anymore, I believe, are you?

22 **A** I don't believe.

23 **Q** Okay. Why don't you take your seat again.

24 **A** (Witness resumes the witness stand.)

25 **Q** So under those circumstances, did you have any

1 opportunity to observe how they got along?

2 A Yes, sir, I did.

3 Q Did there appear to you to be any serious
4 tension in the sense of -- well, serious tension
5 between them that you observed?

6 A No, none, never.

7 Q Did you ever witness Mr. Sutherland being
8 threatened by Mr. Cooper?

9 A No.

10 Q Now, at this time, Cecil Lucas was no longer
11 living?

12 A No, sir.

13 Q You've never met him because he was not --

14 A Never met Mr. Lucas.

15 Q Okay. And during the time that you were there,
16 was Sammy Roberts there at some point and then was
17 executed?

18 A That's correct, but I never did know him.

19 Q Okay. And Robert South?

20 A I never knew Robert South. I'm sorry, I did
21 know Sammy Roberts. He was there a brief period.
22 Mr. South I did not know. He was executed before I
23 arrived.

24 Q So after Mr. Roberts was executed, did you --
25 well, let me ask you, first of all, did you ever see

1 Mr. Roberts or hear Mr. Roberts threatening
2 Mr. Sutherland on Mr. Cooper's behalf or for any
3 other reason?

4 **MR. BELL:** Objection, Your Honor, calls for
5 hearsay.

6 **THE COURT:** Yes, sir.

7 **MR. BRUCK:** I think a threat is not offered for
8 the truth of the matter asserted and the -- I'm
9 attempting to elicit a negative answer in any event.

10 **THE COURT:** I sustain that objection. Go
11 ahead.

12 BY MR. BRUCK:

13 **Q** Did you ever see any trouble between Sammy
14 Roberts and Bo Sutherland?

15 **A** I've never observed any. The 38 months that I
16 was down there, there was never a fight in that
17 unit, period.

18 **Q** And that's to say in either A or B?

19 **A** Neither A or B, the 38 months that I was down
20 there, there was never a fight.

21 **Q** So I take it there was also never a stabbing?

22 **A** No. There was an incident when two inmates
23 tried to escape, but that was between an inmate and
24 an officer. There was never a stabbing between two
25 inmates or a fight or anything like that the entire

1 time that I was down there.

2 Q And that escape was not successful; is that
3 correct?

4 A It was unsuccessful, that's correct.

5 Q So are you telling this jury that in the 38
6 months -- 38?

7 A Yes, sir, that's correct.

8 Q That you were in this unit with Bo Sutherland
9 and Tony Cooper, that you observed no violence by
10 any inmate against any other inmate for any reason?

11 A That's correct.

12 Q Did you ever observe any inmate threatening any
13 other inmate in connection with testimony in court
14 or the cases that they were involved in?

15 A No, I never saw that.

16 Q Did Mr. Sutherland ever discuss with you what
17 he did in connection with his own case?

18 A At one point, he did.

19 Q What did he tell you?

20 A It was around May of 2000, Mr. Sutherland had
21 told me that he had made a confession in court that
22 he took responsibility for what happened and that he
23 was present and responsible for the charges that he
24 was in there for and that Tony didn't have anything
25 to do with it and Tony was not present when it

1 happened.

2 **Q** Did you -- was that in just the course of a
3 normal conversation or did he march right up to you
4 and give you -- and announce that to you?

5 **A** Actually, it was when my appeal was -- it was
6 May 8th of 2000 that is when my case was overturned
7 and that's the day that he told me because I
8 explained to him that my case was overturned on
9 appeal and that I was going to be retried and that's
10 when he told me this.

11 **Q** Okay. You were having a conversation with him?

12 **A** That's correct.

13 **Q** And the subject got around to his own case,
14 what he had done?

15 **A** That's correct.

16 **Q** You said that you observed no tension between
17 Bo Sutherland or problems and certainly no fights
18 between Bo and Tony. Can you generally characterize
19 when you did observe the way they interacted when
20 they were together?

21 **A** They interacted just like most of us did. We
22 tried to get along, you know, because you couldn't
23 really fight or argue with other inmates because
24 they would lock the whole institution down, the unit
25 that we were in. I did observe a couple occasions

1 where Bo Sutherland didn't get any canteen, he was
2 indigent. And, occasionally, the little bit of
3 money that Tony did receive, every now and then he
4 would buy him canteen items, such as, cigarettes
5 because Bo smoked.

6 **Q** Was Bo Sutherland the only person that Tony
7 would buy things for?

8 **A** No.

9 **Q** So that was just something Tony occasionally
10 did for other people?

11 **A** Yes, sir, that's correct.

12 **Q** That didn't have anything themselves?

13 **A** That's correct.

14 **Q** Including Bo?

15 **A** That's correct.

16 **Q** Just in general, if you were told that the
17 statement Bo Sutherland made to you was something
18 that had been coerced by a conspiracy of other
19 inmates, have you ever observed anything that would
20 corroborate that?

21 **A** That it was coerced?

22 **Q** Yes.

23 **A** No, sir.

24 **Q** Did he act like he was saying something that
25 was coerced?

1 **A** No, sir.

2 **Q** Just a normal conversation?

3 **A** Just a normal conversation.

4 **MR. BRUCK:** Please answer any questions the
5 Solicitor may have for you.

6 **THE WITNESS:** Yes, sir.

7 CROSS-EXAMINATION

8 BY MR. BELL:

9 **Q** Mr. Starnes, if Bo had told you that Tony did
10 do something, it would have gotten back to Tony,
11 wouldn't it?

12 **A** Such as?

13 **Q** You might have just seen Tony and talked to him
14 and mentioned in passing that Bo says you did it,
15 that could have happened, couldn't it?

16 **A** That he did it?

17 **Q** I'm just saying if Bo told you -- instead of
18 Tony, I was the only one, Tony had nothing to do
19 with it, that's your testimony, correct?

20 **A** That's correct.

21 **Q** If Bo told you that Tony did have something to
22 do with it, I'm just asking you, if he told you
23 that, it could have gotten back to Tony; isn't that
24 correct?

25 **A** If he's telling me directly to myself, I would

1 have to be the one that told him, but if he told
2 other inmates, sure it could get back to him.

3 Q But, I mean, you may, if somewhere down the
4 line just innocently in passing, say, well, you
5 know, Tony, Bo says that you were involved in it,
6 you could have said that, couldn't you? I mean, you
7 may have said that somewhere down the line if that
8 happened; isn't that true?

9 A No, sir.

10 Q My question to you is what Bo told you could
11 have gotten back to Tony at some point, whatever he
12 told you?

13 A Well, it was my understanding that there were
14 other inmates that knew Bo had said that. I wasn't
15 the only one that knew that. It was nothing that
16 was -- no secret.

17 Q I understand that. But what I'm saying is
18 whatever Bo told you or somebody else being on this
19 floor that you drew out, it could have gotten back
20 -- what Bo said could have gotten back to Tony;
21 isn't that true?

22 A Yes, sir.

23 Q If Bo said Tony was involved, somewhere,
24 somebody could have told Tony, well, Bo said you
25 were involved; isn't that correct?

1 **A** Sure that could have happened.

2 **Q** Okay. Now, you made this diagram?

3 **A** Yes, sir, that's correct.

4 **Q** You knew you were coming to testify for Tony?

5 **A** No, sir, I didn't know that. I had spoke to
6 Mr. Bruck -- actually a paralegal or a law student
7 had come over and spoke to me. And I drew that
8 diagram, because I don't think either one of them
9 had ever been in that unit, just so they would have
10 a general idea of what it's like.

11 **Q** And you were down in that unit, let me get my
12 dates right, from April 25th, '97?

13 **A** That's correct.

14 **Q** For 38 months, which would have been, what,
15 about July of 2000, June or July of 2000?

16 **A** I came back on June the 23rd. My case was
17 reversed on May the 8th and they brought me directly
18 back to Lexington on June the 23rd of 2000.

19 **MR. BELL:** Thank you very much.

20 **MR. BRUCK:** Just one last thing.

21 REDIRECT EXAMINATION

22 BY MR. BRUCK:

23 **Q** Mr. Starnes, have you been offered anything in
24 exchange for your testimony here today?

25 **A** No, sir.

1 **Q** Is there anything that I or Tony Cooper's
2 defense or Tony Cooper can offer you?

3 **A** No, sir.

4 **Q** Help you with your case, reduce the charges?

5 **A** No, sir.

6 **MR. BRUCK:** Thank you. That's all.

7 **THE COURT:** You may step down, sir -- is there
8 something else?

9 **MR. BELL:** Nothing, Your Honor.

10 **THE COURT:** You may step down, sir. Thank you.

11 **MR. ANDREWS:** Your Honor, the defendant's next
12 witness is Betts Davis.

13 BESSIE W. DAVIS,

14 having been duly sworn, testified as follows:

15 **THE CLERK:** If you'll have a seat and state
16 your full name for the record, please.

17 **THE WITNESS:** My name is Bessie W. Davis.
18 Everybody calls me Betts, B-E-T-T-S.

19 DIRECT EXAMINATION

20 BY MR. ANDREWS:

21 **Q** Good afternoon, Ms. Davis. Where are you
22 currently residing, Ms. Davis?

23 **A** I live at -- you want me to give my full
24 address?

25 **Q** Sure.

1 **A** 209 Shadow Lane, Cayce.

2 **Q** And how long have you lived in Lexington
3 County?

4 **A** Well, I moved up here in 1954, but my husband
5 and I moved over into Richland County for 15 years
6 and then we came back. So I've been basically in
7 Lexington and Richland since '54.

8 **Q** You're a long time resident of the midlands
9 area. And are you retired?

10 **A** Yes.

11 **Q** And what did you do before you retired?

12 **A** I taught school for 30 years. And then I was
13 retired for a while and my husband and I got bored.
14 And so I went to work for rental car agencies and I
15 did that for 17 years.

16 **Q** And let me move you, Ms. Davis, to the subject
17 for which we asked you to come to testify today. Do
18 you know Bo Sutherland?

19 **A** Yes.

20 **Q** And how do you know Mr. Sutherland?

21 **A** I met him at prison.

22 **Q** And how was it that you happened to be at a
23 prison?

24 **A** I'm a volunteer, as he called it, from my
25 church. I'm a volunteer.

1 Q And how long have you been involved in prison
2 ministries?

3 A About 25 years.

4 Q When did you begin?

5 A Somewhere in the early 80's.

6 Q And when did you meet Mr. Sutherland?

7 A It was while he was at the Broad River
8 facility.

9 Q And have you been visiting prisons, including
10 the Broad River facility, consistently since the
11 early 80's?

12 A Yes.

13 Q How often do you go to the prisons to visit
14 inmates?

15 A At one time, we went twice a month, but as we
16 got older, we realized it was wise to just go once a
17 month. And we take food in four times a year.

18 Q And when you're not taking food in, you're
19 going in on a monthly basis, what do you do during
20 these visits?

21 A We visit. We go from cell to cell to cell.
22 They just turn us loose. We've earned that right, I
23 hope, and so we just visit each person.

24 Q And when you go on the day a month, since
25 you've been going once a month, how long are you

1 there during the visits?

2 **A** We go in generally about noon, 12:30 maybe and
3 we stay until 8:30 and 9:00. And at times, we've
4 been invited to come back. If there is a problem
5 that they think we can help with, we go back.

6 **Q** How many inmates do you typically see on a
7 given day when you're visiting?

8 **A** We try to see each one. And in the unit we're
9 working in now, there are about 65 to 70 men. And
10 we try to see each person, that's the reason we stay
11 so long.

12 **Q** And how long -- what's the range of time you
13 tend to visit with inmates when you're visiting
14 them?

15 **A** If I think one man needs me to stand there
16 while he talks, then I might visit as long as 30
17 minutes, but then, of course, I have to shorten the
18 time with the others, I might not stay more than two
19 or three. And some time some of them are asleep.

20 **Q** Now, when you visit the inmates, there are
21 others who are also involved in the prison
22 ministries that accompany you; isn't that right?

23 **A** Yes.

24 **Q** Now, when you visit with the inmates, do you do
25 that alone or are there more than one of you that do

1 that?

2 **A** My friend, who is sitting out here, she led me
3 into ministry visiting, so I go with her each time.

4 **Q** And when you visit specifically with the
5 inmates, are you by yourself or are you accompanied
6 by your friend?

7 **A** Usually we separate so we can make sure that
8 each person is having a visit, but if I need her to
9 hear what someone is saying, then I call to her or
10 go find her. I'd say, Where is she? And the guys
11 will say, There she is. They look after us, the
12 guys do.

13 **Q** And you're referring to who, the inmates or the
14 security officers?

15 **A** Well, the security officers, of course, keep
16 their eyes on us, I'm sure, but I'm not as aware of
17 them, so I might have to ask one of the men -- one
18 of the inmates, you know, to help me find Naida.
19 I'll say, Where is she, and they'll say, Oh, there
20 she is.

21 **Q** And you're referring to Naida Knotts, who's
22 here with you today?

23 **A** Yes.

24 **Q** Now, when you first met Bo Sutherland, was it
25 around 1992?

1 A I don't remember the year. I can just tell you
2 it was while he was at Broad River.

3 Q Were you visiting Broad River before Bo
4 Sutherland was placed there in custody?

5 A We started -- yes, probably, because see we
6 started at CCI in maximum security, that was our
7 department to work with.

8 Q Okay. And do you recall meeting
9 Mr. Sutherland?

10 A Oh, yes.

11 Q And over the years, have you met with
12 Mr. Sutherland with any regularity?

13 A Yes.

14 Q And how often have you met with him?

15 A Well, each time I would go, if he were awake.
16 Now, sometimes he'd be out serving food if it were
17 his time to do that, but any time that I would go
18 down the row visiting each cell and if he were in
19 there, yes, I would visit.

20 Q And when you visited with Mr. Sutherland, what
21 sort of things did you and he talk about?

22 A A lot of times about family because he was from
23 Cayce and I knew some of his family members, but not
24 by name just knew who they were. I knew that his
25 father had worked in Cayce. And I remember when he

1 was riding a bicycle around in Cayce, he was that
2 young. He and I came to remember that.

3 Q Are you saying that you actually recall seeing
4 him --

5 A Seeing him as a child.

6 Q Now, was there ever a point in time where Bo
7 Sutherland talked with you about the crime for which
8 he was charged and convicted?

9 A Yes.

10 Q And --

11 MR. LUPTON: Your Honor, I object as to the
12 fact that this is improper impeachment.
13 Mr. Sutherland admitted his statements. They cannot
14 prove it through extrinsic evidence.

15 MR. ANDREWS: Your Honor, may we approach?

16 THE COURT: Approach.

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

20 THE COURT: Overruled.

21 BY MR. ANDREWS:

22 Q All right. Ms. Davis, the question was, would
23 you please explain to the jury what Bo Sutherland
24 told you about the event for which he was charged
25 and convicted?

1 **A** I never asked, but he shared with me that he
2 did the crime alone, that Tony did not have anything
3 to do with it.

4 **Q** Now, when you said you never asked, did you
5 initiate this conversation?

6 **A** No. I never ask any of them what they did. If
7 they want to tell me, I allow it, but sometimes I
8 have to say, That's enough, I don't want to hear
9 anymore, I can't take anymore. I've had to do that
10 only once or twice.

11 **Q** When you're referring to they, you're talking
12 about other inmates?

13 **A** Other inmates.

14 **Q** Who from time to time talk with you about the
15 crimes --

16 **A** They do.

17 **Q** And this is what Mr. Sutherland did as well?

18 **A** Yes.

19 **Q** Now, did you ask specifically about
20 Mr. Cooper's involvement with the crime?

21 **A** No.

22 **Q** And what did Bo actually tell you about that?

23 **A** What I just told you, that he said Tony Cooper
24 didn't have a thing to do with this. He said, I did
25 it by myself. And I was impressed. I can tell you

1 one other thing I asked him, I did ask him a
2 question. I said, Did you tell the authorities
3 this? And he said, Yes. And I said, And they
4 haven't done anything about it? Because I knew Tony
5 was there. And he said, No, they haven't.

6 **Q** Do you recall anything else about this
7 conversation?

8 **A** No.

9 **Q** Did Bo Sutherland ever discuss this with you
10 again after that one occasion?

11 **A** No.

12 **Q** Was this -- did this discussion occur shortly
13 after you met Bo in the early 90's or has it
14 happened more recently?

15 **A** Oh, it was early on.

16 **Q** Now, when Bo was giving you this information
17 and explaining what you just testified to, did he
18 appear to be sincere?

19 **A** Oh, yes, I believed him.

20 **Q** Did he appear to be joking?

21 **A** No. He was, I thought, very sincere.

22 **Q** You've talked with Bo on many, many occasions?

23 **A** Yes.

24 **Q** Did he appear to be acting any differently in
25 having this conversation with you concerning his

1 sole participation in the crime than on other
2 occasions when he's talked to you about other
3 things?

4 **A** Everything just seemed normal to me.

5 **Q** Did he appear to be pressured or coerced in any
6 way?

7 **A** No.

8 **MR. ANDREWS:** I don't have any further
9 questions. Please answer any that the State may
10 have for you.

11 CROSS-EXAMINATION

12 BY MR. LUPTON:

13 **Q** Good afternoon, ma'am. You visit prisons as a
14 church ministry; is that right?

15 **A** Yes.

16 **Q** So you go as a representative of the church to
17 see people in prison; is that correct?

18 **A** You could say that, yes.

19 **Q** And that would be much like the mission of the
20 church to reach out to people who are in need of the
21 church?

22 **A** Right.

23 **Q** And that's your reason for going, reaching out
24 to these people in need; is that fair to say?

25 **A** That's fair.

1 Q And, certainly, that's a very noble thing. In
2 that regard, you've been doing this for 25 years,
3 correct?

4 A Around that time. It was either in '80 or '81.
5 We really can't remember.

6 Q About 25 years, you've been reaching out as a
7 representative of the church to people who need the
8 church?

9 A For people who need the Lord.

10 Q People who need the Lord. And you want to help
11 these people; is that fair to say?

12 A I would think so, yes.

13 Q And you talk to these people as long as they
14 need -- you said as long as they need the talk to
15 you?

16 A Right.

17 Q And in doing that, I imagine that over the
18 course of that amount of time, there's been a lot of
19 people who have told you that they didn't do what
20 they were accused of doing; is that fair to say?

21 A No.

22 Q Each person --

23 A To be honest with you, most of them let me know
24 they're there because they were guilty.

25 Q So nobody in 25 years has ever told you they

1 were --

2 **A** One person. One person told me he was not
3 guilty.

4 **Q** In 25 years, you've only had one person tell
5 you that he wasn't guilty?

6 **A** That's right.

7 **Q** And that's Tony?

8 **A** No.

9 **Q** So Tony's never denied being guilty?

10 **A** Tony --

11 **Q** I'm not trying to --

12 **A** Listen, I know -- would you like me to tell you
13 about the one who told me he was not guilty?

14 **Q** No, ma'am. What I'm asking right now is
15 Tony has never told --

16 **A** Tony and I didn't talk about that kind of
17 thing. He always made sure that I was comfortable
18 standing there talking with him.

19 **Q** But Tony's never denied being guilty to you?

20 **A** And I didn't ask him. That's not what we're in
21 there for.

22 **Q** I understand, but he's never denied it; is that
23 correct?

24 **A** (No response.)

25 **Q** Is that correct?

1 **A** Listen, I told him what Bo said and he smiled,
2 I remember that.

3 **Q** He was happy to hear what Bo said?

4 **A** He smiled and sometimes we'd hold hands and he
5 patted my hand. He didn't force me into anything.

6 **Q** I understand.

7 **A** Okay.

8 **Q** So you did share with Mr. Cooper what Bo had
9 told you?

10 **A** Yes, I did.

11 **Q** And if -- all right. So what Bo told you did
12 get back to Tony Cooper?

13 **A** Yes. I told you I told him.

14 **MR. LUPTON:** Nothing further.

15 **THE WITNESS:** Thank you.

16 **THE COURT:** Anything else?

17 **MR. ANDREWS:** Nothing further. Thank you, Ms.
18 Davis.

19 **THE COURT:** You may step down. Thank you,
20 ma'am.

21 **MR. ANDREWS:** Your Honor, the defendant's next
22 witness is Ms. Naida Knotts.

23 NAIDA KNOTTS,

24 having been duly sworn, testified as follows:

25 **THE CLERK:** Have a seat up there please, ma'am.

1 And then once you have a seat, state your name for
2 the record loud and clear, please.

3 **THE WITNESS:** Naida Knotts, N-A-I-D-A
4 K-N-O-T-T-S.

5 DIRECT EXAMINATION

6 BY MR. ANDREWS:

7 **Q** Good afternoon, Ms. Knotts. Can you hear me?

8 **A** Yes, I can.

9 **Q** You've recently had a change in hearing; is
10 that correct?

11 **A** Yes.

12 **Q** You tell me if I don't speak up loud enough and
13 you can't hear me, would you please just raise your
14 hand and I'll try to talk more loudly. Are we okay
15 right now?

16 **A** I can hear you.

17 **Q** Ms. Knotts, tell the jury where you're from, if
18 you would, please?

19 **A** Tell them what?

20 **Q** Tell the jury where you're from?

21 **A** I live in Calhoun County now. I was from
22 Cayce. And when we started the prison ministry, it
23 was out of Cayce.

24 **Q** And how long have you been a resident of
25 Lexington County before you moved to Calhoun County?

1 **A** About 40 years.

2 **Q** And are you retired?

3 **A** Yes, I am.

4 **Q** And how long have you been involved in the
5 prison ministries?

6 **A** About 25 years.

7 **Q** And did you begin the prison ministries?

8 **A** Well, my husband actually got us into it.
9 Several of the two inmates had escaped, we had a
10 small motel and they were captured there. And we
11 just -- our hearts just got -- were melted for them,
12 the inmates. And we -- it just evolved into the
13 prison ministry.

14 **Q** And you've been involved in those prison
15 ministries ever since. Now, how frequently have you
16 been visiting the inmates over the last 25 years?

17 **A** First, it was twice a month and then we had to
18 cut it down to once a month.

19 **Q** And have you and Ms. Davis continually gone to
20 the ministries and participate in those visits
21 together?

22 **A** I couldn't hear you.

23 **Q** Have you and Ms. Davis participated in the
24 prison ministries together?

25 **A** Yes, always together. We're the gold dust

1 twins.

2 Q Now -- but when you arrive at the prison in the
3 various units, you split up and talk to the inmates
4 separately; is that correct?

5 A Most of the time we do.

6 Q Now, do you know Bo Sutherland?

7 A Yes, I do.

8 Q Have you met with Mr. Sutherland on your own
9 over the years?

10 A Yes, on my own.

11 Q And how often would you say you've met with
12 Mr. Sutherland?

13 A Well, most of the time he wouldn't talk with
14 us, but when we did get to talk with him -- not in
15 the last three years.

16 Q Now, there was -- did you begin seeing
17 Mr. Sutherland in the 90's and visit him for a while
18 before he stopped seeing you?

19 A Did we visit him for a while?

20 Q Did you visit him for a while?

21 A Yes.

22 Q And how long would you say you visited him
23 before he stopped seeing you?

24 A Well, it was just off and on, some days he
25 didn't want to...

1 Q Speak up so we can make sure the jury can hear
2 you.

3 A Okay.

4 Q Now, has Bo ever mentioned to you the -- his
5 participation in the crime that -- for which he was
6 in prison and convicted?

7 A About probably three years ago or so, I can't
8 remember the times, but he was -- he told me -- we
9 got to talking, we were both from Lexington County,
10 and we were talking about different things here and
11 he started telling about the crime.

12 Q Now, let me ask you before you go into it. Was
13 anyone with you on that occasion?

14 A No, not then. I was by myself.

15 Q And did you ask him any questions about his
16 crime or is this something he volunteered?

17 A No. He was telling me about different things.
18 Can I get some water?

19 Q Sure, get some water. Take your time. What
20 did he tell you?

21 A He was telling me about how -- what -- how he
22 -- he told me that he had committed the crime. And
23 he said that -- I said, Well what about Tony? What
24 did he do? And he said, Well, Tony wasn't even
25 there. He didn't have anything to do with it.

1 Q Now, when you said that Bo said he committed
2 the crime, is that what he said or do you remember
3 how he described --

4 A I don't remember just how he said it, but he
5 was talking about what he was charged for.

6 Q Was he referring to or do you know whether he
7 was referring to the murder of Kimberly Quinn in
8 Lexington County?

9 A Yes.

10 Q That was your understanding in --

11 A Yes, that was my understanding.

12 Q And why did you ask about Tony Cooper?

13 A Why did I ask him about Tony?

14 Q Yes.

15 A Because I know he was supposed to be involved
16 with the crime.

17 Q By that, you mean that he was charged with it?

18 A Right, charged with the crime, uh-huh.

19 Q And so you wanted to know about Tony's
20 participation since he was telling you about the
21 crime; is that correct?

22 A Right.

23 Q And what did he say about Tony Cooper's
24 participation?

25 A About Tony's?

1 Q Yes. What did Bo say about Tony's
2 participation?

3 A He said, No, Tony wasn't even there. He had
4 nothing to do with it.

5 Q Now, is this the first time Bo had ever talked
6 with you about the murder of Kimberly Quinn?

7 A That's the only time I remember him talking
8 about it.

9 Q And this was about three years ago?

10 A Something like that. Just the years kind of
11 run together. But then he got upset with us and he
12 wouldn't see us anymore.

13 Q How long was it after that he told you about
14 his participation in the murder of Kimberly Quinn
15 that he stopped seeing you; do you remember?

16 A It seemed to be shortly after.

17 Q And that was about three years ago?

18 A Something like that.

19 Q And you've not met with him since?

20 A No, he wouldn't talk to us.

21 Q Now, when Bo was talking with you about the
22 crime, did he seem serious or was he in a joking --

23 A No, he was not joking. He was very serious.
24 And I wondered why he was telling me -- why he was
25 telling me that.

1 Q Did he appear to be nervous?

2 A No.

3 Q Did he seem like he was coerced or pressured in
4 any way?

5 A No.

6 Q Was he talking loud -- more loudly than usual
7 so people in the other cells could hear him?

8 A I don't remember it being louder than -- no.

9 Q Was his way of communicating with you that time
10 in the cell any different than the other times when
11 he talked with you?

12 A Just that he was more talkative.

13 Q So meaning he was talking more about his family
14 beforehand?

15 A Yeah.

16 MR. ANDREWS: All right. Thank you, Ms.
17 Knotts. Please answer any questions -- before you
18 get up, you need to answer any questions the State
19 may have for you. Thank you.

20 CROSS-EXAMINATION

21 BY MR. LUPTON:

22 Q Good afternoon, ma'am.

23 A Hello.

24 Q You have also been involved in the --

25 A I can't hear you, I'm sorry.

1 Q I apologize. You have also been in the church
2 ministry for about 25 years, ma'am?

3 A Yes, Betts and I together.

4 Q And you also -- you -- acting as a
5 representative of the church, reaching out to people
6 who need the Lord; is that correct?

7 A Right.

8 Q You're trying to bring the Lord to these people
9 who need to be helped?

10 A I'm sorry, I can't hear you. This is very
11 aggravating to you I know.

12 Q No, ma'am, not at all. You were trying to
13 bring the Lord to people who needed the Lord; is
14 that fair to say?

15 A That's the object of it, yes.

16 Q People who needed friends?

17 A Right.

18 Q And in the course of that, you talked to
19 everybody in the cell block?

20 A That they would, that they would come to the
21 door or if they were awake and wanted to talk.

22 Q And in the process, you say that on one
23 occasion, you talked to Bo Sutherland?

24 A He was very -- yes.

25 Q And you were asked about he wasn't acting any

1 different, but you did say that he was more
2 talkative than usual?

3 **A** Yes, I did.

4 **Q** So that is he was acting somewhat different
5 that day?

6 **A** I guess you can say that, yes.

7 **Q** And you wondered why he was telling you that
8 information, you said that, right?

9 **A** Uh-huh.

10 **Q** Is it possible that he was telling you that
11 information for you to tell it to Tony Cooper when
12 you went to visit him later; is that possible?

13 **A** I don't know. I don't remember if we'd already
14 visited him or what. I don't remember what.

15 **Q** But it's possible that in Bo's mind, he was
16 giving you that --

17 **A** It's possible.

18 **MR. ANDREWS:** Objection, Your Honor, calling
19 for speculation about the thoughts of other persons.

20 **THE COURT:** I sustain that.

21 BY MR. LUPTON:

22 **Q** But it is possible that after talking with Bo
23 Sutherland, you were going to talk to Tony Cooper?

24 **A** I may have already talked with the other one,
25 you know, I don't know. That's been a long time.

1 And I'm 78 years old.

2 Q No, ma'am, I understand. Now, let me ask you,
3 in the course of 25 years of visiting inmates, have
4 you ever had somebody tell you that they were not
5 guilty of what they were charged with?

6 A Asking what now?

7 Q In all your time visiting inmates, has anybody
8 ever told you they weren't guilty?

9 A That they weren't guilty?

10 Q Yes, ma'am.

11 A Yeah, very few.

12 Q Very few?

13 A Uh-huh.

14 Q And when they would do that, would they seem
15 sincere?

16 A I would say so, yeah.

17 Q And did you believe them?

18 A Well, we're not in there really to --

19 Q You're not there to pass judgment, I
20 understand. But they did seem sincere?

21 A Right.

22 Q So if they were lying, they were lying to you
23 sincerely; is that fair?

24 A Well...

25 Q So it is possible for somebody, including Bo

1 Sutherland, to lie and seem sincere when doing it?

2 **A** Anything's possible.

3 **Q** And going back, you got into the prison
4 ministry because your -- because of the escaped
5 inmates that were recaptured and you said your heart
6 melted for them?

7 **A** That's right.

8 **Q** You're very compassionate for these people is
9 that fair to say? And that's certainly not -- I'm
10 not implying that that's a bad thing, but you are
11 compassionate towards these people? _____

12 **A** Right.

13 **MR. LUPTON:** Nothing further, Your Honor.

14 **MR. ANDREWS:** Nothing further.

15 **THE COURT:** You may step down, ma'am. Thank
16 you.

17 **MR. LUPTON:** And, obviously, Your Honor, no
18 objection to these witnesses being excused if they
19 wish to go.

20 **THE COURT:** They may be excused.

21 Approach, counsel.

22 (Whereupon, a bench conference was held off
23 the record, in the presence of the jury, but out of
24 the hearing of the jury.)

25 **THE COURT:** Does anybody on the jury need a

1 break?

2 (There was no response.)

3 **THE COURT:** All right. Go ahead.

4 **MR. DUNCAN:** Your Honor, we'd call Lori R. Van
5 Wallendael.

6 LORI R. VAN WALLENDael,
7 having been duly sworn, testified as follows:

8 **THE CLERK:** Have a seat up there please, ma'am.
9 Once you have a seat, state your full name on the
10 record, please.

11 **THE WITNESS:** My name is Lori R. Van
12 Wallendael.

13 DIRECT EXAMINATION

14 BY MR. DUNCAN:

15 **Q** Ms. Van Wallendael, I guess I should refer to
16 you as Doctor Van Wallendael in some respect?

17 **A** Yes.

18 **Q** What is your address?

19 **A** I reside at 5325 Saint Stephens Church Road in
20 Gold Hill, North Carolina.

21 **Q** And what do you do?

22 **A** I am an associate professor of psychology at
23 the University of North Carolina at Charlotte.

24 **Q** And to get to your position as a professor of
25 psychology, how did you happen to get to where you

1 are?

2 A Typically, a professor at a university will
3 require having a Ph.D. degree, so I got a bachelors
4 degree at a little college called McMurray College
5 in Illinois and then got my masters and Ph.D. in
6 experimental psychology from Northwestern
7 University.

8 Q And that's a degree in -- a Ph.D., so you're a
9 doctor in psychology in any particular area of
10 psychology?

11 A Yes. I chose to specialize in experimental
12 psychology and particularly in the field that we
13 call cognition, which has to do with memory and
14 attention, perception, decision processes.

15 Q And, Doctor Van Wallendaël, you've been
16 teaching for how long?

17 A Twenty years now.

18 Q All right. So you've been involved in research
19 in this area of cognitive psychology, that is, human
20 memory, perception and judgment for about 20 years?

21 A Yes, a little over 20 years.

22 Q Have you presented or published any papers in
23 your area of expertise?

24 A Yes, I have.

25 Q And would you tell us what areas have you done

1 these papers?

2 **A** Like a lot of people, I guess, early in my
3 career, I was interested in some fairly theoretical
4 areas of memory and decision making. And then in
5 the last probably ten years or so, I've been moving
6 more towards applied memory issues of how people
7 recall things in the real world, particularly in the
8 areas of eyewitness testimony and voice recognition.

9 **Q** Do you belong to any academic societies or --
10 do you belong to any organizations in your field of
11 expertise?

12 **A** Yes. I belong to what's called the Society for
13 Applied Research in Memory and Cognition and also
14 the American Psychology of Law Society.

15 **Q** And, Doctor Van Wallendaël, have you testified
16 and been qualified as an expert in this area of
17 cognitive psychology?

18 **A** Yes, I have.

19 **MR. DUNCAN:** Judge, I'm going to lead just a
20 little bit with the permission of counsel.

21 **MR. BELL:** No objection.

22 BY MR. DUNCAN:

23 **Q** You've testified as an expert in the superior
24 court for the District of Columbia, Washington D.C.?

25 **A** Yes.

1 Q You've also testified as an expert in
2 Mecklenburg County, North Carolina, which is
3 Charlotte Superior Court?

4 A Yes.

5 Q And you've also testified in Dade County,
6 Georgia Superior Court as an expert?

7 A Yes.

8 Q And also in Fulton County, the Atlanta area,
9 Superior Court?

10 A That is correct.

11 Q And this would be -- this is your first time
12 testifying in South Carolina; is that correct?

13 A Yes, it is.

14 Q Okay. Now, these papers you've presented and
15 published, have these been what are called peer
16 review papers?

17 A Yes, they have been.

18 Q Would you explain briefly what peer review
19 means?

20 A Sure. When a paper gets published in
21 psychology or any of the sciences really, it is
22 typically submitted to a journal editor who then
23 goes out and finds other experts in the field to
24 critique your paper and to make sure that the
25 methodology that you used was accurate and that you

1 have basically done your homework as far as the
2 library research of knowing the appropriate theory
3 and what other people have done. And so for a paper
4 to get published, it has to have basically been
5 passed by typically two or three other experts in
6 the field, in addition to the journal editor who's
7 probably one of the major experts in the field.

8 And the majority of papers tend to get
9 rejected. There's a minority that actually wind up
10 getting published of the various things that gets
11 submitted each year.

12 **Q** And you've had several papers that have been
13 accepted in this area?

14 **A** Correct.

15 **Q** And as I understand it, there's an Attorney
16 General's Commission on criminal justice reforms in
17 the State of North Carolina?

18 **A** Yes.

19 **Q** And that involves judges, attorneys and police?

20 **A** That's correct.

21 **Q** All right. And you testified in what areas for
22 that commission?

23 **A** My colleague, Doctor Brian Cutler, and I were
24 asked to basically talk to that commission about the
25 general findings in research on eyewitness

1 testimony. The commission was basically trying to
2 make recommendations for improving how lineups are
3 conducted in North Carolina and trying to avoid
4 misidentifications.

5 **MR. DUNCAN:** I would submit, Your Honor, this
6 -- or I would propose her as an expert in this area
7 of cognitive psychology at this time.

8 **MR. BELL:** No objection, Your Honor.

9 **THE COURT:** The Court finds you to be qualified
10 in that area without objection.

11 BY MR. DUNCAN:

12 **Q** Doctor Van Wallendael, are you familiar with
13 the area of children's memories?

14 **A** Yes. I actually have a thesis student who's
15 working on this area right now.

16 **Q** What can you -- as far as children that are
17 under age seven, would you share with the jury what
18 research in that area shows as far as their memories
19 and how suggestible things are to them, that's sort
20 of their -- their memories and how they're formed,
21 that sort of thing?

22 **A** Sure. The first thing to realize is that
23 whether you're talking about an adult or a child,
24 forming a memory is a fairly complicated process and
25 it's not like switching on a video camera in your

1 head. It would be nice if it was, but it typically
2 doesn't work that way.

3 So when we recall something, first of all, we
4 have to pay attention to what is going on around us,
5 certain things typically get into our memory and
6 certain things don't and then as we later try to
7 recall what's happened to us, our brain tries to
8 fill in the gaps of things that we might have missed
9 so that -- I tend to liken the process as putting a
10 jigsaw puzzle together and some of the pieces out of
11 the box are actual memories that we have perceived
12 with our senses, but some of the pieces are filled
13 in through inference, through our knowledge of the
14 way the world works, through things that other
15 people have told us.

16 And with children, what we tend to see is that
17 kids under the age of seven or so are even more
18 suggestible than adults in terms of pulling outside
19 material into their memories and making it a vivid
20 part of that memory. So, for instance, if someone
21 asks a question of a child under the age of seven,
22 did you hear a loud noise, did you hear angry
23 voices, that question actually becomes a part of the
24 experience of the child's memory so that later on as
25 they attempt to recall it, they may pull that

1 information in and, you know, it becomes a part of
2 what they think happened to them.

3 Q And what does the passage of time -- or what
4 effect, if any, does the passage of time have on
5 memories that children have?

6 A Typically, the passage of time tends to make
7 things worse because the more time that passes the
8 more information we get from outside sources, the
9 more other people tell us about things that
10 happened, the more we hear about perhaps similar
11 situations that have happened to other people. And
12 all of those things have a possibility of impinging
13 on our memories and becoming part of our memories
14 without our really knowing what it is that was
15 originally a part of our perceptions and what it is
16 that has been added at a later date.

17 Q Now, Doctor, this is in no way, though, as I
18 understand it, a comment on an adult testifying as
19 to a childhood memory as to their sincerity in
20 believing that memory, is it?

21 A No, absolutely not. We're talking about how we
22 genuinely experience our own memories.

23 My own daughter has a good example of this.
24 She claims to have a very vivid memory of a trip
25 that we took with her to England when she was about

1 18 months old. And she will tell you that she
2 remembers a day when we went to Dulver Castle and
3 there were gale force winds blowing and she was in
4 the baby backpack on her daddy's back and she
5 remembers clutching her stuffed animal and being
6 afraid that she was going to lose it.

7 And I keep telling her, 18 months, can't
8 happen, brain's not developed enough to have
9 permanent memories then. But she's convinced. And
10 I know she's heard her dad and I talk about that day
11 a lot. She's seen pictures of herself in the
12 backpack. She's seen pictures of that trip, but she
13 genuinely experiences it as something that she
14 remembers having happened to her and I guess a lot
15 of us probably have experiences like that in our
16 childhoods.

17 Q So there's no question about the sincerity in
18 their belief and there's no question that she really
19 believes that?

20 A No, absolutely not. And these kinds of
21 additions and changes to our memory happen very
22 unconsciously on our part to the point where we
23 can't consciously pick apart what happened and what
24 we've just heard about from somebody else.

25 Q Have you done -- I think you mentioned that you

1 had done some work in the area of police lineups?

2 **A** Yes.

3 **Q** Would you share with the jury some of your
4 studies on that and what -- how you construct a
5 police lineup, what's the optimum way, that sort of
6 thing?

7 **A** Sure. Research in this area, I guess, back in
8 the 1970's or so, psychologists started getting very
9 interested in eyewitness testimony. And for many
10 years, we were just kind of looking at all of the
11 things that can go wrong, all of the things that
12 make being an eyewitness so difficult.

13 And then probably in the last ten, 15 years,
14 psychologists have realized that we've been kind of
15 studying things that are outside the control of the
16 witness and the police, you know, they're useful
17 things maybe to talk to a jury about, but they're
18 not very practically helpful.

19 So the movement has kind of shifted to trying
20 to study things that the police can control, such
21 as, how a lineup is put together, how witnesses are
22 instructed, things that hopefully we can do to try
23 to make a test of memory be a more fair and accurate
24 test. And one of the things that we focused on is
25 how do you put a good lineup together, how many

1 people should be in it, who should those people be
2 besides the suspect.

3 The National Institute of Justice has
4 recommended that lineups that involve photographic
5 arrays should have at least eight photographs in
6 them. And I don't think I've ever seen a lineup,
7 but six seems to have become sort of the tradition
8 of the number of photos in many, many areas, but the
9 notion, basically, is more is better.

10 You know, if you're going to really test
11 somebody's memory with a good multiple choice test,
12 you want to make it so that, statistically, a person
13 isn't just accidentally going to stumble on the
14 suspect. And part of what that means is that when
15 you put the known incident people, what we call
16 foils or fillers, into the lineup, you need to take
17 some care in selecting who they are. There's two
18 ways to do that.

19 One is you can look at the suspect and you can
20 try to find pictures of people who look like the
21 suspect, which sounds like a pretty logical way to
22 do it and, in fact, it's probably the most common
23 way to do it or has been over the years.

24 The other way, though, is to look at what did
25 the eyewitness originally say about the perpetrator

1 and what description did they give and to try to
2 match the photographs to the description that the
3 eyewitness originally gave. And the idea there is
4 that you're going to have a set of photos that all
5 match what we know of the eyewitness' memory and
6 hopefully you will have a better chance of getting a
7 situation where the suspect doesn't stand out by
8 virtue of being the only one who really does meet
9 the description. And research tends to show that if
10 you match the photographs to the description rather
11 than just to people who look like the suspect, that
12 you have a better chance of getting an accurate
13 recognition out of people.

14 Q So it's more accurate to pick photos of people
15 that look like the description given by the witness
16 rather than the suspect?

17 A Right.

18 Q So if a witness were to give a description of
19 dark, shoulder length hair and bangs over the front
20 of their face, then the lineup should have persons
21 who look like that rather than a suspect?

22 A Correct.

23 Q I'm going to show you State's Exhibit 8 -- I'm
24 sorry -- 18.

25 MR. DUNCAN: Can I approach the witness, Your

1 Honor?

2 THE COURT: Yes, sir.

3 BY MR. DUNCAN:

4 Q Have you seen that previously?

5 A I have seen a copy of this, yes.

6 Q Okay. Is that what's called a panel lineup?

7 A Yes, a panel or what's also called a
8 simultaneous lineup.

9 Q And is there another type of lineup that is
10 preferable as far as being more accurate?

11 A Yes. What has been recommended by a number of
12 states and by the National Institute of Justice in
13 recent years has been a new procedure that we call a
14 sequential lineup. And the difference is that with
15 a standard panel or photo array, you have six or
16 eight pictures that you are looking at
17 simultaneously and you can compare them, you can
18 contrast them, you have them all in front of you at
19 once. And what the sequential lineup does is it
20 forces you to look at the photos one at a time and
21 make a decision about each one, is this the person
22 you saw, is this the person you saw. And if you say
23 no, you go on to the next photo. If you say yes,
24 the procedure ideally stops.

25 The reason that that is supposed to be better

1 is that when you look at all, let's say, six photos
2 together simultaneously, you have a tendency as a
3 witness to try to pick out the person who looks most
4 like what you remember. We call it a relative
5 judgment strategy. So you take what you recall of
6 the situation and you try to find the person who
7 looks most familiar or most like your memory. And
8 where you look at the photos one at a time, you're
9 prevented somewhat from doing that. So you really
10 have to take each person and compare them very
11 explicitly with what you remember and make a
12 decision about, you know, is this the person, not
13 just the most familiar person, but actually the
14 person.

15 And what we found in studying witnesses is that
16 when you give a person a lineup, they have a
17 tendency to expect the culprit to be in there, you
18 know, the police wouldn't be bothering to show you
19 this if they didn't have a suspect and some reason
20 to believe that suspect was guilty. So it's kind of
21 like taking a multiple choice test where you know
22 that there's a right answer in there, you think that
23 there is one right answer in there and so you try
24 and eliminate the people that you know are not the
25 right person and try to find that one person who

1 looks most like what you remember.

2 Q So the police should give the instruction that
3 the person may not be in this set of photos?

4 A Yes. One of the findings that has been very
5 consistent in research, and it's a little surprising
6 I think, is that it makes a big difference if the
7 police simply say to you explicitly, I want you to
8 look at some photos here, tell me if you see the
9 person who did this, the person might not be in the
10 lineup, as opposed to not giving that explicit
11 instruction.

12 Now, you might think, you know, why do you need
13 to say that explicitly? Of course, it's assumed,
14 but, again, what the witness assumes is probably the
15 exact opposite. The witness assumes that the person
16 is in there and just the simple thing of telling
17 them, it's okay to say none of the above, you know,
18 that's a legitimate answer, actually tends to
19 decrease the number of false identifications that we
20 see in research studies.

21 Q Are there any statistics on the false
22 identification factor as far as these panel lineups
23 that the police administer?

24 A There have been studies -- there have been two
25 fairly large scale studies, one in California and

1 one in England of real police lineups and how often
2 people pick out known innocent suspects. And it
3 typically happens in those studies known in a sense
4 20 to 25 percent of the time and as far as, you
5 know, actually choosing the police as suspect. Of
6 course, we don't know how many times that's a true
7 identification and how many times that might be an
8 error.

9 Q But it is far preferable to say, The person
10 might not be here?

11 A Yes, absolutely.

12 Q And it's also preferable to do a lineup with
13 photos of persons who fit the description given
14 rather than who the police want it to be?

15 A Correct.

16 Q Now, have you done any work or are you familiar
17 with the area of eyewitness testimony?

18 A Yes.

19 Q All right. And what are the factors that go
20 into human memory and perception by eyewitnesses?

21 A There are a number of factors that are
22 important in trying to judge whether a person has
23 had an adequate opportunity to view someone. And
24 the thing to keep in mind is that when you pay
25 attention to a situation that is happening around

1 you, attention is not unlimited.

2 Attention is what we call a limited mental
3 resource. There's only so much that you can stretch
4 around. And to pay attention to a variety of things
5 like someone's facial features or height, weight,
6 build and so forth takes some time. You have to
7 basically, you know, take the time to notice a
8 variety of things.

9 So one of the things that we always look for is
10 how long did the witness have the opportunity to
11 view the person that they later identified. And not
12 too surprisingly more is better. The more time you
13 have, the more likely you are to be able to make an
14 accurate identification later.

15 **Q** If a witness were to testify that they had
16 three seconds of a full facial view of a person, how
17 would that fit into your studies and your equation?

18 **A** Well, it's hard to put actual numbers on things
19 like this, but if I can kind of give you sort of a
20 comparison figure. Frequently in research, we will
21 do what are called field studies where we send an
22 experimenter in to interact with a store clerk or a
23 bank teller or just a person on the street and ask
24 them directions, things like that. And we usually
25 wind up setting up a situation where the person

1 interacts actively with what I'll call the suspect,
2 I guess, for anywhere from 30 seconds to several
3 minutes.

4 And in those kinds of studies when we come back
5 later and surprise the witness and say, you know, do
6 you remember that person that you talked to a few
7 minutes ago or a few hours ago or a few days ago, do
8 you think you could recognize them in a lineup
9 later, even when people have interacted for several
10 minutes, we tend to see less than half the time
11 people being able to accurately identify the person
12 that they have talked to or interacted with. And
13 very often what you see are correct identifications
14 in the ball park of 30, 40 percent or so and false
15 identifications in the ball park of about 30 percent
16 as well.

17 So even with a good couple of minutes to
18 interact with someone, it's a difficult task for
19 people to come back later and pick out the person
20 that they've seen previously.

21 Q Now, is it a fair statement then that
22 confidence, absolutely sincerity on the part of a
23 witness and a strong belief don't translate into
24 accuracy?

25 A That's a very good statement. One of the areas

1 that I've worked on in my own lab and that many
2 researchers have worked on is the relationship
3 between confidence and accuracy because it would be
4 nice if we had a clue on the part of telling an
5 accurate witness from an inaccurate witness. And
6 confidence would seem to be something that ought to
7 be useful, but, in fact, when we ask people about
8 their confidence and when we look at their accuracy
9 later, the relationship tends to be very small.

10 There are people who make very insecure,
11 unconfident witnesses who are dead on right and
12 there are people who say with a hundred percent
13 certainty, I'm absolutely sure this is the one, and
14 they turn out to be wrong. And, in general, I think
15 most of us are over confident in our memory
16 abilities unfortunately.

17 MR. DUNCAN: Thank you, Doctor. Answer any
18 questions the prosecution might have.

19 CROSS-EXAMINATION

20 BY MR. BELL:

21 Q It's Doctor Van Wallendael?

22 A Yes.

23 Q Okay. Doctor Van Wallendael, let me -- in your
24 studies, you talk about sending people into a store
25 or something and just interacting, talking just in

1 general, then leaving kind of thing; is that
2 correct?

3 **A** Yes.

4 **Q** Does traumatic events, does that increase
5 attention?

6 **A** Typically not. Obviously, a lot of the
7 research that's been done, ethical constraints
8 prevent us from creating a trauma for someone.—So
9 we have to kind of create a situation in the field
10 where we draw people's attention, but in a
11 nontraumatic kind of way. One of the classics is
12 sending somebody into a convenient store to buy a
13 carton of cigarettes and having them to pay in
14 pennies. You know, that will get your attention,
15 but it's obviously not traumatic.

16 There are a few studies that have looked at
17 more traumatic circumstances. One of those is
18 currently being done and -- well, was recently
19 published by Charles Morgan up at Yale. He had the
20 chance to study voice recognition and face
21 recognition among a set of armed forces personnel
22 who were undergoing a very strenuous simulation of
23 being captured and being interrogated by the enemy.

24 And he was able to look at people's ability to
25 recognize the faces of the people who captured and

1 interrogated them and found that, in general, the
2 more stressful the situation that they had been
3 under, the less likely they were to remember the
4 face of their persecutor.

5 Q Well, let me ask you this. For instance, you
6 haven't heard any of this particular case, have you?

7 A No, I haven't.

8 Q You were just shown a copy of this lineup; is
9 that correct?

10 A Right.

11 Q Now, I believe, your testimony was in
12 recognition in picking out eyewitnesses, more is
13 better, correct?

14 A Yes.

15 Q That means the more time you see somebody, the
16 better, correct?

17 A Yes.

18 Q All right. And what if, for some reason, you
19 focused on the individual or individuals, something
20 makes you focus on them, is that even better?

21 A Ideally that should be better, yes.

22 Q So, for instance, I'll say in this case, what
23 if a person, if something caught their attention and
24 they thought there was something suspicious and they
25 started looking at the people to try to make sure

1 they can identify them, would that heighten their
2 ability to pick pictures out?

3 **A** All other things being equal, I would say that
4 that kind of person should be a better witness than
5 someone whose attention hadn't been drawn to the
6 situation in that way.

7 **Q** Okay. And even if they saw them for three to
8 five or six seconds a full facial view, if they were
9 focusing in on it because something caught their
10 attention to focus in on it, that would still help
11 them identify a person, wouldn't it?

12 **A** It should.

13 **Q** And if they happen to see a person four times,
14 let's say, for ten to 15 minutes each time four
15 different times during the course of the day, that
16 would heighten their ability to identify somebody?

17 **A** Yes. Research tends to show that more
18 exposures to someone will help.

19 **Q** And besides seeing them full-on, you've seen
20 them from the side or the back or whatever, would
21 help even more to create a fuller description and a
22 fuller memory; is that correct?

23 **A** I hadn't thought about that. To -- I guess, to
24 the extent that -- if you saw someone from the back,
25 I'm not sure that you would get as much in the way

1 of identifying features in terms of, you know,
2 things that could really help you later. In the
3 case of a lineup type situation, we usually only get
4 to see a person's full frontal view in a photo, so,
5 in that case, I would say probably the full frontal
6 view would be the most critical one for someone to
7 have had.

8 Q What if somebody did that and they were shown
9 this photo array and it was open and they just
10 immediately went to a picture, would that be all
11 right? I mean, they had a chance to see them for a
12 while and they just immediately recognized them.

13 A Immediacy seems to have some relationship to,
14 certainly to confidence and if there is -- there's a
15 little bit of a storm brewing currently in research
16 as to how much we can gain out of the quickness of a
17 person's response, but, in general, it's been seen
18 as probably a positive factor.

19 Q Now, talking about childhood memories not
20 necessarily being able to hit specific events, but
21 would something traumatic key certain memories for a
22 child?

23 A You mean just like a general memory of an
24 event?

25 Q Yes.

1 **A** Yeah, I would say probably. Research tends to
2 show that, you know, children that we know have been
3 through traumas have remembered the event. You
4 know, they don't tend to repress it or forget it.
5 They know that it happened to them, although, they
6 may not know the details very well.

7 **Q** I mean, could they repress it because in the
8 event they became scared for some reason that, you
9 know, scared to tell anybody or something?

10 **A** I'm hesitating because of the use of the word
11 repressed there. A lot of people choose to not tell
12 other people about events, whether, in fact, they
13 choose not to tell themselves, which would be the
14 Freudian repression concept. There's a lot of
15 controversy in psychology over that right now.

16 **Q** But a child -- I mean, if a traumatic event,
17 I'm not talking about being able to identify the
18 specific person, but, in general, they could say one
19 or two or three people were involved?

20 **A** The research hasn't really looked specifically
21 at that kind of a question. What typically happens
22 when children's recalling this kind of situation is
23 studied is that there's a general memory of an event
24 happening to them. There is the ability to lose
25 details of how that event unfolded, but I don't know

1 anything in the literature that specifically speaks
2 to, you know, things like the number of people
3 involved.

4 **MR. BELL:** Thank you, Doctor. I have nothing
5 further.

6 **MR. DUNCAN:** Just a couple of questions.

7 REDIRECT EXAMINATION

8 BY MR. DUNCAN:

9 **Q** Doctor Van Wallendael, what spurred this
10 research into perception, was it not DNA
11 exonerations of defendants?

12 **A** That's been the primary spurring, not so much
13 of the research. The research has kind of been
14 going on, at least to a certain extent, for a
15 hundred years, but I think what spurred the real
16 resurgence in the last few years has been the
17 studies of DNA exonerations and the role that
18 eyewitnesses typically play in those.

19 **Q** And so this has all happened since 1989, has it
20 not?

21 **A** Oh, yes.

22 **Q** And, in fact, law enforcement agencies have
23 learned and now no longer make these mistakes that
24 they made in 1989?

25 **MR. BELL:** Objection, Your Honor. There's been

1 no testimony about mistakes.

2 **THE COURT:** Yes, sir. Do you wish to rephrase
3 that question?

4 **MR. DUNCAN:** Yes, I will.

5 BY MR. DUNCAN:

6 **Q** In State's Exhibit 18 that I showed you, does
7 the research show that that would be a proper way to
8 conduct a lineup at this time?

9 **A** At this time, it would not be in line with the
10 guidelines of how a lineup should be conducted.

11 **Q** And, for instance, picture of the person number
12 two has a long face which none of the others do; is
13 that correct?

14 **MR. BELL:** Objection, Your Honor. May I
15 approach?

16 **THE COURT:** Yes, sir.

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

20 **THE COURT:** I'll give you some leeway. Go
21 ahead.

22 BY MR. DUNCAN:

23 **Q** The -- in those six photos right there.

24 **A** Yes.

25 **Q** One person has a long face, correct?

1 **A** Yes, I would say so.

2 **Q** Okay. If no witness said anywhere that a
3 person had a long face, do you think that photo
4 should have been included in the lineup?

5 **A** When a witness gives a description, and
6 frequently they won't say anything about the shape
7 of the face, in which case, it's permissible to put
8 in people with long faces, round faces and so forth,
9 what you want to focus on are the details that the
10 witness did give. So if let's say, you know, the
11 witness is describing a white male, then you
12 wouldn't want to have an African-American or
13 Hispanic males, for instance.

14 **Q** Or a Latino male of some sort?

15 **A** Right.

16 **Q** Okay. And you would include someone if the
17 witness said shoulder length hair, you would include
18 people with shoulder length hair?

19 **A** As much as possible. The other thing that's
20 currently done is to give the witness instructions
21 that hair, hair length, hair style, facial hair is
22 prone to change and so, you know, you would give
23 them specific instructions about, you know, don't
24 focus on the hair length or the hair style or color,
25 but focus on the unchangeable features of the face.

1 **Q** And these studies that you talked about where
2 people had full facial views for several minutes,
3 there was still an error -- a wrong person being
4 identified in 30 something -- I'm sorry, what did
5 you say?

6 **A** Typically, yeah. The circumstances vary, but
7 on the average, 30 to 35 percent false
8 identifications are what we tend to get in a variety
9 of different kinds of studies of either real life
10 encounters or watching video taped crimes and so
11 forth.

12 **Q** And that would be several minutes of full
13 facial as opposed to, for instance, three seconds?

14 **A** Typically, yeah.

15 **MR. DUNCAN:** All right. Thank you.

16 **MR. BELL:** Nothing further.

17 **THE COURT:** All right. You may step down.

18 **MR. DUNCAN:** May this witness be excused?

19 **THE COURT:** Any objection?

20 **MR. BELL:** No objection, Your Honor.

21 **THE COURT:** You may be excused, ma'am.

22 All right. Ladies and gentlemen, I'll go ahead
23 and send you home for the day. Do not discuss this
24 case in any way overnight. Also, do not expose
25 yourself to any type of coverage, again, I don't

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1 26, 2006.)

2 THE COURT: Are y'all ready to proceed?

3 MR. BRUCK: Yes, sir.

4 MR. LUPTON: Your Honor, if I may, I think just
5 to speed things along once the jury is out, there is
6 one matter we probably should take out regarding the
7 testimony, I think, probably of the first witness.

8 MR. BRUCK: Maybe I should summarize what we
9 propose to do. I thought I would voluntarily
10 disclose to the State what our first witness is
11 going to testify to and I did. And I'll explain it
12 to you.

13 Kim Turner is a psychology Ph.D. student who
14 accompanied a lawyer who interviewed Mr. Farmer just
15 a few weeks ago in Texas on our behalf. And she is
16 here to testify about some of the statements Mr.
17 Farmer made that impeach his trial testimony.

18 Generally the point of -- the State's
19 objection, as I understand it, is that one of the
20 things that Mr. Farmer said that is in stark
21 contrast to his trial testimony is that the motive
22 for Ms. Quinn's murder, as he understood it, was
23 that inmates in the department of corrections
24 believed or all believed that she had intentionally
25 set fire to her own house for insurance proceeds and

1 that her son had been killed and her daughter
2 injured in that fire and that she did it for the
3 insurance money. This is something, as Your Honor
4 will recall, is already before the jury because it's
5 repeated several times in Sutherland's statement
6 that is in evidence, the statement he made to me in
7 1992.

8 Mr. Farmer's statement to Ms. Turner is in
9 conformity with that. The State objects to that on
10 the grounds that it's prejudicial. We, of course,
11 are not maintaining for a moment that it's true.
12 The point is simply that inmates believed it to be
13 true and that she was a person held in extremely low
14 regard among the inmates and that that, according to
15 Mr. Farmer, is the reason for her murder.

16 We think -- we are not maintaining that she
17 actually burned her children up for insurance
18 proceeds and we are also not maintaining that that
19 was the real motive for the murder, neither one.
20 We're simply saying that that's what Mr. Farmer says
21 now and we think that there's no way to...

22 **THE COURT:** Go ahead.

23 **MR. BRUCK:** We simply think there's no way to
24 sanitize that without taking most of the impeachment
25 value out of this extremely markedly, inconsistent

1 statement by Mr. Farmer, so we think it should come
2 in.

3 **THE COURT:** You're trying to link the fact that
4 she was held in low regard by other inmates to the
5 reason for her murder?

6 **MR. BRUCK:** We're not, Mr. Farmer did. He said
7 that that's why she was killed, that people wanted
8 her dead because she had -- in the penitentiary
9 wanted her dead because they don't like child
10 killers and she was one.

11 **THE COURT:** And you're saying that's
12 inconsistent with what Mr. Farmer testified to?

13 **MR. BRUCK:** Yes. He testified she was killed
14 as part of a -- cover up a robbery by Mr. Cooper.

15 **THE COURT:** So you have someone that Mr. Farmer
16 told this to?

17 **MR. BRUCK:** Yes, that's exactly what we have.
18 We also have other inconsistent statements by Mr.
19 Farmer. He basically leaves himself out of the
20 planning for this robbery. He doesn't tell the same
21 story now as he did at trial and she's going to
22 testify to that. The State has no objection to
23 that, but they do object to the business about the
24 fire with the child.

25 **MR. LUPTON:** Your Honor, obviously, under

1 normal circumstances, I don't think any of what she
2 would say would be proper impeachment. The witness
3 has already had the statement read into the record;
4 therefore, I think that would qualify as an
5 admission that he has said that he was not the
6 person who initiated the phone call. I think
7 under --

8 **THE COURT:** Well, if he made the statement that
9 this is why it happened, but he told someone else
10 this is why it happened --

11 **MR. LUPTON:** Well, Your Honor, I was dealing
12 with the other one first.

13 **THE COURT:** Well, all of the others he said you
14 agreed to, so I don't need to hear about those.

15 **MR. LUPTON:** We're willing to allow it just to
16 -- out of an abundance of fairness, but the
17 statements -- the slanderous statements that this
18 was done in retaliation for her intentionally
19 killing her child for insurance is just -- it's just
20 despicable.

21 **THE COURT:** Well, he's not offering it for the
22 truth of that statement. He's offering it to say
23 Mr. Farmer was telling another story before he told
24 this story, regardless of whether it's true or not.

25 **MR. LUPTON:** Your Honor, I believe it would be

1 inadmissible because it's attempting to prove the
2 character of the victim. They can't say that that
3 was the motive for the killing and that it's not
4 true and that goes to motive of -- character of the
5 victim, completely inadmissible. The information
6 should be excluded under 403 because of the
7 incredibly prejudicial nature of it.

8 **THE COURT:** Why is it different than any other
9 scenario where someone says one thing, but they were
10 really telling someone else something else?

11 **MR. LUPTON:** Your Honor, it's also incompetent
12 evidence because he has no personal knowledge of
13 this. They are admitting that he just says this is
14 something that he heard. He doesn't know the motive
15 for the killing, according to their statements.

16 **THE COURT:** Is your witness someone that heard
17 it directly from Farmer or from someone else?

18 **MR. BRUCK:** No. She was at the interview.

19 **THE COURT:** That's different.

20 **MR. LUPTON:** But, Your Honor, they concede that
21 Farmer isn't saying, I know the motive for the
22 killing. He's saying, I heard -- allegedly saying,
23 I heard on the cell block, I guess, that this is why
24 it happened.

25 We don't know -- it's hearsay as to how he got

1 that information. He has no personal knowledge
2 under 601. It would be hearsay, under 801. It
3 would be character evidence, improper character
4 evidence. It's just -- would be 403 inadmissible.
5 It's just completely inadmissible, Your Honor.

6 **THE COURT:** I think those are all red flags.
7 The question is, did he actually say this was the
8 version that he understood it and then he testified
9 to another version? That's all we're talking about.

10 If you directly say one thing to another person
11 and then come into court and testify to another
12 thing, then generally that kind of information can
13 come out. That's all it's being offered for, not to
14 truth, not to slander, not as character. Any kind
15 of limiting instruction will be given if necessary.

16 The question is, did he specifically say this
17 and specifically say something different? If that's
18 the case, then I think it's admissible. If he
19 didn't, if he hasn't changed his version just -- did
20 he say this is it and then he testified differently,
21 Mr. Bruck, or did he say other people were saying
22 such and such? If it's other people were saying
23 such and such, that's --

24 **MR. BRUCK:** His exact words were, A bunch of us
25 were mad at her because we all thought she killed

1 her child, and so on. She didn't owe me any money.

2 **THE COURT:** So he was mad at her because he
3 thought she killed --

4 **MR. BRUCK:** Yes. Now, he's denying having
5 ordered the killing as well, which is another part
6 of the impeachment, but he is speculating that she
7 was killed for this reason as an explanation for her
8 death not for the reason that the State has put into
9 evidence, which was the robbery.

10 **THE COURT:** If he were mad at her, why wouldn't ~~it~~
11 that also go to bias? If he was mad at her, if
12 that's what the testimony will be?

13 **MR. LUPTON:** Your Honor, I'm not quite certain
14 how that would be admissible as to bias against
15 Mr. Cooper. The fact that he had a bias against the
16 victim, I don't see how that's relevant to his
17 credibility as to statements he's made against this
18 defendant.

19 **THE COURT:** Would he have a reason to testify
20 one way or the other because of that feeling for
21 her?

22 **MR. LUPTON:** Your Honor, if -- I don't think
23 so. I can't see how --

24 **THE COURT:** It's not bias towards the
25 defendant, it's biased to testify one way or

1 another. It's just bias in general. It's any kind
2 of thing that would impact your testimony one way or
3 the other, that's the kind of bias the rule's
4 addressed to.

5 **MR. LUPTON:** I would not have any objection to
6 testimony that he had a dislike of this victim.

7 **THE COURT:** All right. What is it that he --
8 what did he say about the murder? So far you've
9 just told me that the witness is going to say that
10 he had some dislike of the victim and they don't
11 oppose that. How does that lead to the murder?

12 **MR. BRUCK:** He said that -- let me go through
13 my notes -- when asked about the motive for the
14 murder, Mr. Farmer stated that everyone was angry
15 with Ms. Quinn because they all knew she had burned
16 her house down and killed her son and injured her
17 daughter in the process just to collect the
18 insurance. He stated exactly, A bunch of us were
19 mad at her because we all thought she killed her
20 child.

21 **THE COURT:** You have to slow down, Mr. Bruck.

22 **MR. BRUCK:** Excuse me, I'm sorry. When asked
23 about the motive for the murder, Mr. Farmer stated
24 that everyone was angry with Ms. Quinn because they
25 all knew she had burned her house down and killed

1 her son and injured her daughter in the process just
2 to collect the insurance money.

3 **THE COURT:** When asked by whom?

4 **MR. BRUCK:** By the interviewer.

5 **THE COURT:** Your interviewer?

6 **MR. BRUCK:** Yes. What was the motive for the
7 murder was the question. And, of course, he's
8 testified very differently.

9 **THE COURT:** And his testimony about the motive
10 of the murder was that --

11 **MR. BRUCK:** He denied knowing, exactly the
12 testimony, this was his answer to the question. The
13 other part of this, of course, is that he no
14 longer --

15 **THE COURT:** Hold on one second.

16 (Pause.)

17 **THE COURT:** Go ahead.

18 **MR. BRUCK:** As I say, that was his response to
19 the question about the motive. He also leaves out
20 or omits from any of this the prior phone call which
21 was from him to Cooper, which, according to his
22 trial testimony, set up the whole chain of events in
23 progress.

24 **THE COURT:** Well, before the alleged murder,
25 Mr. Farmer never claimed to have any knowledge of

1 the murder.

2 **MR. BRUCK:** Of the murder, right, but -- in his
3 trial testimony, had he been asked what was the
4 motive for the murder, he would have -- he did say
5 it was because they robbed her and they killed her
6 and burned the body. And the reason they robbed her
7 is my phone call to Tony Cooper that started the
8 whole thing going and I was going to get \$500. He
9 no longer -- that's not his story anymore.

10 **THE COURT:** Did he ever say that was the motive
11 for the murder, the robbery? I thought there was
12 some suggestion by him after the fact that Mr.
13 Cooper had indicated something that led him to
14 believe that she had been murdered. Did he ever
15 take a position on the reason for that murder other
16 than his statement that they were going to rob her?

17 **MR. BRUCK:** The inference is she was killed to
18 eliminate her as a witness to the robbery.

19 **THE COURT:** Where does that inference come
20 from?

21 **MR. BRUCK:** It comes from all of the facts and
22 circumstances that he set up the robbery and then
23 next he hears she didn't have the money and she was
24 murdered. And the jury is going to conclude from
25 that that the reason for the robbery was to kill her

1 because she was a robbery victim.

2 Now, he tells a completely different version
3 that leaves out all of the advanced planning and
4 instead when asked the open-ended question about
5 motive, offers this thing about --

6 **THE COURT:** What was the time frame of this
7 conversation with your witness?

8 **MR. BRUCK:** It was three weeks ago.

9 **THE COURT:** No. What was the time frame of Mr.
10 Farmer's conversation with your witness?

11 **MR. BRUCK:** Oh, he still says that he got --
12 I'm sorry -- Mr. Farmer talked to our witness on May
13 the 5th of this year.

14 **THE COURT:** May the 5th of this year?

15 **MR. BRUCK:** Yes. This is fresh.

16 **THE COURT:** So after all of the smoke has
17 cleared, on May 5th of this year, Mr. Farmer is
18 still taking the position that's why she was killed?
19 Is that what you're telling me the witness is going
20 to say?

21 **MR. BRUCK:** Yes. He has a new position about
22 why she was killed that is rather like...

23 **THE COURT:** Go ahead.

24 **MR. BRUCK:** Yes. Now, Mr. Farmer, I mean
25 there's good and bad in this, Mr. Farmer still says

1 that he found out about it from the phone call from
2 Tony Cooper. We don't adopt that, but that's what
3 he still says and we're going to put her up and
4 she's going to say that. And he claims to have been
5 completely shocked because this is the first
6 communication he had had with Cooper now --
7 according to his version now. He leaves out the
8— ...October 4th phone call. So it's pretty important
9 stuff.

10 **THE COURT:** I think we -- maybe it wouldn't be
11 a bad idea to hear in camera the witness. Either
12 way, I'd probably let you proffer it anyhow, so
13 let's just hear it.

14 **MR. BRUCK:** Okay. Ms. Turner.

15 **THE COURT:** I'm not so sure you can make the
16 total link yet, so.

17 (The following proceedings were reported in
18 camera.)

19 KIMBERLY ERIN TURNER,
20 having been duly sworn, testified as follows:

21 **THE CLERK:** Have a seat in the witness stand
22 state your full name on the record, please.

23 **THE WITNESS:** Kimberly Erin Turner.

24 *****

25 *****

1 DIRECT EXAMINATION

2 BY MR. BRUCK:

3 Q Good morning, Ms. Turner.

4 A Good morning.

5 Q I'll cut to the chase for this hearing. Were
6 you present and participated in an interview with
7 Phillip Gary at the Michael Unit in Palestine, Texas
8 on May the 5th of 2006?

9 A Yes, sir.

10 Q And the other person present was John Wright?

11 A Yes, sir.

12 Q Who was an attorney in Texas. Okay, in the
13 course of that interview and prior to this
14 interview, you had read Mr. Farmer -- you and
15 Mr. Wright had both read Mr. Farmer's trial
16 testimony from 1991?

17 A Yes, sir.

18 Q Please speak up so that everybody can hear you.
19 In the course of this interview, did Mr. Farmer
20 relate to you the sequence of events immediately
21 before and after the murder of Kimberly Quinn?

22 A He did.

23 Q Can you tell us what he said?

24 A He said that he was, I believe, a teacher in
25 the prisons. And he said that he received a phone

1 call the morning after the alleged murder. And he
2 was -- I remember him saying that he was completely
3 surprised by the phone call.

4 Q Completely surprised by the phone call?

5 A I remember him saying that. That Mr. Cooper
6 was speaking in some sort of code and had said
7 something,--I-believe, about a construction job being
8 finished.

9 Q Right.

10 A But he took that to mean that Ms. Quinn had
11 been murdered.

12 Q Did he tell you anything about having called
13 Mr. Cooper prior to Ms. Quinn's murder?

14 A No, sir, he didn't.

15 Q Did you ask him or did Mr. Wright ask him in
16 your presence what the motive for the murder was as
17 he understood it?

18 A Yes, sir.

19 Q And what did he tell you?

20 A Mr. Farmer said that a lot of the inmates in
21 the prison disliked Ms. Quinn because of the
22 insurance scandal of her murdering her children.

23 Q Of her setting a fire?

24 A Setting the fire and one of her children died.

25 Q Did he say that -- did he use the term a bunch

1 of us were mad at her because of that?

2 A He did say that.

3 Q All right. Did you ask him specifically
4 whether or not he was -- that he had talked to
5 Mr. Cooper beforehand about trying to get any money?

6 A I don't recall if either me or Mr. Wright
7 actually specifically asked him that.

8 Q But did he deny that?

9 A He denied that Ms. Quinn owed him money.

10 Q Okay. And he -- he ~~told~~ you nothing about any --
11 conversation between him and Mr. Cooper prior to Ms.
12 Quinn's murder?

13 A No, sir.

14 Q And this is in response to -- this was all he
15 told you in response to the question about the
16 motive for her death?

17 A Yes, sir.

18 Q And he claimed to be completely surprised by
19 the phone call from Mr. Cooper in every respect?

20 A Yes.

21 Q All right. And did he -- did he tell you that
22 -- that his testimony during the first trial was not
23 fair to Mr. Cooper because he had been encouraged to
24 put a spin on it against him?

25 A Yes, sir.

1 Q And that he wasn't going to put the same spin
2 on it this time?

3 A He did say that.

4 Q All right. And, again, when asked about the
5 motive for this crime, all he told you, his entire
6 response had to do with the attitude of him and
7 other inmates about what they believed to be her
8 having set a fire?

9 A Yes, sir.

10 Q All right. Would it refresh your memory if I
11 told you that the -- you told me that he denied that
12 he had talked to Mr. Cooper about murdering Ms.
13 Quinn or trying to get the money or anything
14 beforehand; does that refresh your memory?

15 A A little. I can't say that I remember,
16 specifically, from a month ago.

17 Q But according to his testimony, the first you
18 heard his only contact with Mr. Cooper about this
19 was the phone call afterwards?

20 A Yes, sir.

21 MR. BRUCK: Thank you.

22 MR. LUPTON: Your Honor, I didn't object
23 because this is a proffer, but I would like to note
24 for the record that if Mr. Bruck asks in front of
25 the jury, would it refresh your memory if I remind

1 you you told me, then I will object. And I will
2 move to recuse counsel because he's made himself a
3 witness at that point.

4 **MR. BRUCK:** I wouldn't do that.

5 **MR. LUPTON:** But, again, for the purposes of
6 the proffer, I didn't object.

7 CROSS-EXAMINATION

8 BY MR. LUPTON:

9 **Q** You testified he said that he was encouraged to
10 put a spin on his story?

11 **A** Yes, sir.

12 **Q** Was that in response to a question asked by
13 somebody or did he volunteer that?

14 **A** I can't be positive, but I believe he
15 volunteered it. I remember him using the word spin.

16 **Q** But you're not sure what it was in response to?

17 **A** No, sir.

18 **Q** Did he say who encouraged him to put a spin on
19 it?

20 **A** No, sir, he would not say that.

21 **Q** And did he say what the spin was?

22 **MR. BRUCK:** Your Honor please, I don't think
23 this -- I understand they'd like to have some
24 discovery, but I don't think this goes to the
25 State's objection. This is another part of the

1 witness' proffer.

2 MR. LUPTON: That's fine. I'll move on.

3 BY MR. LUPTON:

4 Q Going specifically to the statements at issue,
5 in response to a direct question from Mr. Wright --
6 well, first of all, what was the question, as
7 closely as you can remember to its exact wording?

8 A As closely as I can remember, I believe it was
9 why did this murder occur or what was the motive. I
10 can't be sure.

11 Q And so Mr. Wright asks him what was the motive
12 and did he say what the motive was?

13 A No, sir.

14 Q Did he speculate as to what he thought the
15 motive might be?

16 A He didn't answer it like that. He sort of
17 colloquially said, A bunch of us disliked Ms. Quinn
18 because we thought -- I don't even think he said we
19 thought -- that she had burned her house and one of
20 her children died.

21 Q So that was -- so his response to what was the
22 motive, he said, Well, a bunch of us didn't like her
23 because we thought this?

24 A Yes, sir.

25 Q Or believed or in his mind it may have been

1 true?

2 A Yes, sir.

3 Q But that was his statement, A bunch of us
4 thought that?

5 A I believe so.

6 Q So he didn't say that was the motive, he was
7 just saying that a bunch of us didn't like her?

8 A Exactly.

9 Q And did he say that Tony Cooper was one of
10 those that didn't like her?

11 A I don't remember him saying that specifically.

12 Q If you can remember, did he say who us was?
13 Did he define us in any way?

14 A He had told me about several guys that they
15 sort of hung around with in prison and I don't
16 remember names.

17 Q So --

18 A But when he said a bunch of us, he just left it
19 at a bunch of us.

20 Q So the names weren't necessarily given in
21 context of who us was?

22 A No, sir.

23 Q It was during the course of the overall
24 conversation, he talked about the people in prison?

25 A Right.

1 **Q** But the us was sort of left open?

2 **A** Yes, sir.

3 **MR. LUPTON:** Nothing further, Your Honor.

4 **THE COURT:** Anything else?

5 **MR. BRUCK:** Nothing further.

6 **THE COURT:** You may step down, ma'am. Thank
7 you.

8 Any further argument?

9 **MR. LUPTON:** Your Honor, I certainly am not
10 going to suggest that that statement wasn't made,
11 but the speculative nature of it, he doesn't say
12 that that's the motive. He's just saying, Well, a
13 bunch of us didn't like her. There's no indication
14 as to who us is, whether that was a murder --
15 motive, whether that was the sole motive. It's just
16 so speculative and it's -- as to anybody other than
17 him, it would be hearsay.

18 And if he's denying any prior knowledge of the
19 murder, then I don't see how they can say that he
20 claims to have knowledge of the motive just by
21 saying he says, Well, a bunch of us didn't like her.
22 I think it's so speculative, so prejudicial and so
23 lacking in foundation is to make it far more
24 prejudicial than probative.

25 **THE COURT:** Any further response?

1 **MR. LUPTON:** I'm willing to agree to allow her
2 to testify that --

3 **THE COURT:** He disliked her.

4 **MR. LUPTON:** That he disliked her.

5 **THE COURT:** I understand.

6 Yes, sir.

7 **MR. BRUCK:** Only if you need to hear further
8 response.

9 **THE COURT:** I mean, I kind of agree with the
10 State. I don't really have a problem with her
11 testifying that he disliked her. I'm just trying to
12 make this leap that that's what he was really
13 talking about. I don't know that the witness really
14 thought that that's for sure what he was talking
15 about.

16 **MR. BRUCK:** Your Honor, the witness will go on
17 to say that Mr. Farmer was being deliberately
18 obscure about a few things, but he's asked a direct
19 question about the motive for this crime. And in
20 1991, his testimony obviously would have been, well
21 the motive was that I told Tony to rob her, and then
22 they went and robbed her and killed her. Now, he
23 says something completely different. That is very
24 powerful impeachment.

25 We didn't choose this witness. The way he

1 talks and everything else is his business, but it is
2 very markedly different than his trial testimony.

3 As far as -- the only objection that I
4 understand is Rule 403 that it's more prejudicial
5 than probative. The time to have raised that issue
6 was when Mr. Sutherland's statement was offered.
7 This is before the jury several times over in Mr.
8 Sutherland's written statement, which is in as
9 substantive evidence.

10 **THE COURT:** I agree when we started the
11 conversation, if he said one thing to one person and
12 another thing to another person, then perhaps it
13 should come in, but it's not clear that that's what
14 he's really saying.

15 **MR. LUPTON:** Your Honor, if I may, I'm willing
16 to agree, out of trying to protect the record as
17 much as possible, to allow them to ask if he was
18 asked what the motive was and his response was, That
19 a bunch of us didn't like them -- didn't like the
20 victim or had some sort of animus against her. I
21 would maintain my objection to the fact that any
22 statement or speculation about the burning of her
23 child, I think that that is just too far over the
24 edge.

25 **THE COURT:** What about that, Mr. Bruck?

1 **MR. BRUCK:** Well, in view of the fact it's
2 already before the jury and it doesn't -- I don't
3 think it has the ring of truth when he says, well,
4 we didn't like her and they don't give a reason. So
5 we don't think it fully gives us the impeachment to
6 which we're constitutionally entitled. I should say
7 we would have no objection to a --

8 **THE COURT:** I mean, what's before the jury is
9 what the daughter says, there was a fire and she was
10 hurt, right? Is there anything more than that.

11 **MR. BRUCK:** No. Sutherland says that she
12 burned up her young'uns and did it for the insurance
13 money and that she should burn in hell and on and
14 on. It's much more powerful than anything they're
15 objecting to now.

16 **THE COURT:** If that's already in -- what's
17 the --

18 **MR. LUPTON:** Your Honor, if they're willing to
19 -- I think he was getting ready to say that they're
20 willing to agree that to -- instruction to the jury
21 that they're not contending that that fact is true.
22 And if they're willing to do that, then I'll
23 withdraw my objection.

24 **MR. BRUCK:** Not that we're --

25 **THE COURT:** Why indicate -- I would tell the

1 jury it's not being offered as to any character
2 trait of the victim. Is that what you're asking
3 for?

4 **MR. LUPTON:** Your Honor, that they're not
5 contending that she really did that, that they're
6 just presenting that as motive, an alternate motive,
7 the belief of that.

8 **MR. BRUCK:** I think the correct instruction is
9 that it's not being offered to show that the
10 statement was true.

11 **MR. LUPTON:** If the Court's willing to give
12 that instruction at that point and the defense is
13 willing to agree to that, then I'll withdraw that
14 objection.

15 **THE COURT:** All right. This evidence is not
16 being offered as to the truth of the statement, is
17 that what you're asking?

18 **MR. LUPTON:** Yes, Your Honor. And I believe
19 the defense is willing to agree with that.

20 **MR. BRUCK:** Yes.

21 **MR. ANDREWS:** Your Honor, one other thing
22 before the jury comes in. I just wanted to inform
23 you that following the testimony of the next
24 witness, that we intend, with the State's consent,
25 to put in the testimony from the defendant's mother

1 who has subsequently died after the first trial.
2 And we would call my paralegal to respond as she
3 would be the witness.

4 **THE COURT:** All right.

5 **MR. LUPTON:** No objection.

6 **THE COURT:** Bring the jury in, please.

7 (The jury enters the courtroom at 10:35
8 a.m.)

9 **THE COURT:** Good morning, ladies and gentlemen.
10 Just my normal question, has anyone been exposed to
11 any information or contact about this case; if so,
12 please raise your hand?

13 All right. Let the record reflect that no one
14 raised their hand.

15 We're ready to proceed at this time.

16 **MR. BRUCK:** We call Kim Turner.

17 KIMBERLY ERIN TURNER,
18 having been duly sworn, testified as follows:

19 **THE CLERK:** Have a seat please, ma'am. State
20 your full name, please.

21 **THE WITNESS:** Kimberly Erin Turner.

22 DIRECT EXAMINATION

23 BY MR. BRUCK:

24 **Q** Ms. Turner, where do you currently reside?

25 **A** I live in Willis, Texas.

1 Q Willis?

2 A Yes, sir.

3 Q I'm going to need to -- ask you to speak up.

4 Don't get right on the mike, but just close.

5 A Okay.

6 Q And where are you from originally?

7 A I'm from Statesboro, Georgia.

8 Q Which is about how far from here?

9 A A hundred and fifty miles.

10 Q And you just drove over from Statesboro, from
11 your mother's house, today to be here?

12 A Yes, sir.

13 Q Before about half an hour, an hour ago, have
14 you and I ever met?

15 A No, sir.

16 Q And how are you employed or occupied at this
17 time?

18 A I'll a full-time student at Sam Houston State
19 University.

20 Q At Sam Houston -- I need you to slow down a
21 little bit. I have the same problem the Court
22 Reporter tells me. At Sam Houston...

23 A State University.

24 Q In?

25 A Huntsville, Texas.

1 Q Okay. And what course of study are you
2 pursuing at the university?

3 A I'm a third slash fourth year Ph.D. student in
4 clinical psychology.

5 Q In clinical psychology. And do you have an
6 interest in any particular specialty or subarea of
7 clinical psychology?

8 A Yes, sir. The program is in clinical
9 psychology with a forensic concentration.

10 Q And a forensic concentration means that you are
11 interested in the area of psychology that has to do
12 with the law and the use of psychology in legal
13 settings?

14 A Yes, sir.

15 Q For example, forensic psychologists interview
16 children in custody disputes or get involved in
17 court proceedings where psychology is important to
18 assist the court?

19 A Yes, sir.

20 Q And in that connection, are you -- have you
21 been a volunteer intern working with a lawyer in
22 Texas?

23 A Yes, sir. I work with John Wright.

24 Q Where does Mr. Wright have his office?

25 A Mr. Wright's office is in Huntsville, Texas.

1 Q The same town where you're going to school?

2 A Yes, sir.

3 Q And you're about, what, two years away from
4 being Doctor Turner?

5 A Yes, sir.

6 Q If you know, at my request, did Mr. Wright on
7 May the 5th of this year, travel to a prison in
8 Texas to interview Phillip Gary Farmer?

9 A Yes, sir.

10 Q And did he ask you to accompany him?

11 A Yes.

12 Q And did you do that?

13 A Yes.

14 Q The two of you interviewed him together?

15 A Yes, sir.

16 Q And was Mr. Farmer willing to talk with you?

17 A He was very willing.

18 Q About how long did y'all talk?

19 A Approximately, between two and three hours.

20 Q Now, I would like to focus in on the relevant
21 part of your conversation if I could. Did you --
22 before you went to see Mr. Farmer, had you reviewed
23 the testimony that he gave previously in this case?

24 A Yes, sir.

25 Q So you knew what he had said in the past. Did

1 you ask -- did you or Mr. Wright ask Mr. Farmer what
2 the motive was for the crimes against Kimberly
3 Quinn?

4 **A** Yes, ~~from~~ sir. I can't remember if it was me or Mr.
5 Wright, but one of us asked.

6 **Q** All right. And maybe you should just back up.
7 Tell us what Mr. Farmer told you about his knowledge
8 of this case.

9 **A** Well, he told me that he had met Ms. Quinn in
10 the prison in South Carolina. She was visiting
11 another inmate there. And he knew Mr. Cooper also
12 through that prison. He --

13 **Q** Where was Mr. Farmer working within the prison?

14 **A** He worked at the school. I think he was a
15 teacher or...

16 **Q** And did he tell you what the first time he
17 heard about the robbery or the murder of Ms. Quinn
18 was?

19 **A** Yes, sir. It was the morning after it had
20 happened. He stated that he got a phone call at the
21 prison from Mr. Cooper.

22 **Q** And was that the only phone conversation that
23 he related to you that he had had with Mr. Cooper in
24 this entire matter?

25 **A** Yes, sir.

1 Q All right. Did he tell you that he had
2 previously phoned Mr. Cooper himself?

3 A He did not.

4 Q And did he tell you what -- and we don't need
5 his word for word, but in substance, did he tell you
6 what Mr. Cooper had to say when he made this phone
7 call after Ms. Quinn's murder?

8 A He said that Mr. Cooper was speaking in some
9 type of code language, that he had said something
10 about the construction job was done. And Mr. Farmer
11 had taken that to mean that Ms. Quinn had been
12 killed.

13 Q And he told you -- he did not tell you that he
14 had spoken to Mr. Cooper prior to that?

15 A No, sir.

16 Q Now, did you or Mr. Wright ask him directly
17 what the motive for this crime was?

18 A Yes, sir.

19 Q And what did he tell you in response to that
20 question?

21 A When he was asked what the motive was, he said
22 that a lot of the inmates in the prison disliked Ms.
23 Quinn because they thought she had intentionally
24 burned her house and her son had been killed in that
25 fire and her daughter injured. And they thought

1 that was intentional to -- for her to get the
2 insurance money.

3 **Q** Now, when you say a lot of the inmates, did he
4 include himself in that?

5 **MR. LUPTON:** Your Honor, at this time, if we
6 could...

7 **THE COURT:** Ladies and gentlemen, as to that
8 statement, that statement is not being offered as to
9 the truth of that statement.

10 Go ahead.

11 **MR. BRUCK:** Thank you.

12 BY MR. BRUCK:

13 **Q** Did he say whether he, himself, was one of the
14 people who thought this?

15 **A** He did, I believe. He said a bunch of us.

16 **Q** Now, what was his reaction to getting this
17 phone call that he said was from Mr. Cooper after
18 Ms. Quinn's death?

19 **A** I remember him saying he was completely
20 surprised. He said he had to hide his surprise from
21 Ms. Quinn's fiancé who was standing there next to
22 him.

23 **Q** When he said he was completely surprised, did
24 you understand him to be saying that he had no
25 inkling about any of this until he got this phone

1 call?

2 **A** That's what I understood.

3 **Q** And he told you nothing about a check and
4 nothing about a prior phone call?

5 **A** No, sir.

6 **Q** And in response to a question about the motive,
7 he offered ~~nothing else as a possible motive~~ to this
8 ~~crime?~~

9 **A** No, sir.

10 **Q** Just the fact that a bunch of us were mad at
11 her for the reason you stated?

12 **A** Yes, sir.

13 **Q** Did he say anything about his testimony that he
14 had previously given in this case?

15 **A** I remember he used the word spin. He said that
16 someone had helped him put a spin on it and that
17 that testimony had made Mr. Cooper look bad.

18 **Q** Did he tell -- did he indicate whether he meant
19 by that that the testimony was more unfavorable to
20 Mr. Cooper, than --

21 **MR. LUPTON:** Objection, Your Honor, as to
22 leading.

23 **THE COURT:** Rephrase your question.

24 **BY MR. BRUCK:**

25 **Q** When -- first of all, when he indicated that he

1 had been encouraged to put a spin on his testimony,
2 did he indicate to you who encouraged him to do
3 that?

4 **A** No, sir, he would not do that.

5 **Q** Did he indicate whether it was the defense or
6 the prosecution or the police?

7 **A** Well, he did state that his testimony made
8 Mr. Cooper look worse than he was. I took that to
9 mean it was the prosecution.

10 **Q** I see. The -- and did he ever refer to his
11 testimony -- did he use the term about their -- that
12 his testimony represented their version of the
13 truth?

14 **A** I believe he did say that.

15 **Q** All right. Now, did you or Mr. Wright press
16 him to be more specific about what he was talking
17 about?

18 **A** We did.

19 **Q** And would he be more specific?

20 **A** He would not.

21 **Q** All right. Did you ask him to be more specific
22 about the way that he was encouraged to put a spin
23 on his testimony?

24 **A** Yes, sir.

25 **Q** And would he explain what he meant by that?

1 **A** He would not.

2 **Q** Did he indicate whether or not he was willing
3 to do the same thing against Mr. Cooper again?

4 **A** I believe, I'm not a hundred percent, but I
5 believe he said that he would want to tell the truth
6 this time.

7 **Q** This time. And did you understand that --

8 **A** Meaning if he came back to testify is what I
9 took it to mean.

10 **Q** Did you understand that to mean that he had not
11 told the truth the last time?

12 **A** That's what I understood.

13 **Q** And you've said that you pressed him to try to
14 explain what he meant and he wouldn't do it?

15 **A** No, sir.

16 **MR. BRUCK:** That's all. Thank you.

17 CROSS-EXAMINATION

18 BY MR. LUPTON:

19 **Q** So he said he's telling the truth now?

20 **A** I'm not sure.

21 **Q** Well, you said that he claimed that he had spun
22 his story last time?

23 **A** He did use that word spin.

24 **Q** But he wasn't going to do it again?

25 **A** That's what he said.

1 Q So his story now that he got a phone call from
2 the defendant, Gene Tony Cooper, wherein Mr. Cooper
3 confessed to the robbery and murder of the victim,
4 Kimberly Quinn, he said that was the truth; is that
5 true?

6 A He didn't say that that was the truth, that's
7 just what he told us.

8 Q But that's still his story now when he is
9 telling the truth?

10 A Yes, sir, that was his story as of three weeks
11 ago.

12 Q All right. Now, he talked about putting a spin
13 on it, on his story previously?

14 A Yes, sir.

15 Q You don't know who it was that encouraged him,
16 according to him, to put any spin on it?

17 A No, sir.

18 Q You don't know what it was that he claims was a
19 spin?

20 A No, sir.

21 Q But you know that he claimed before that he was
22 called -- that he called rather, the defendant to
23 set up a robbery and now he says that he had no
24 knowledge prior?

25 A Yes.

1 Q So that would be a difference in testimony?

2 A Yes.

3 Q He also claimed to have been surprised when he
4 got this call, this cold call confession, of the
5 murder?

6 A Yes.

7 Q But he said that there was -- that the call
8 came in code?

9 A Exactly.

10 Q A construction project?

11 A I believe that's what he said.

12 Q But despite the fact that this was in code, he
13 said he knew that it was referring to the murder of
14 Kim Quinn?

15 A That's what he said.

16 Q Would that not indicate prior knowledge?

17 A I can't answer that.

18 Q The testimony about us being mad at the victim,
19 would -- did he give any specifics about who us was?

20 A No, sir. I think he just said a bunch of us.

21 Q So that could have included the defendant,
22 Mr. Cooper?

23 A Sure.

24 Q Could have included him?

25 A Yes, sir.

1 **Q** In fact, would it not, if there was testimony
2 that the defendant said, I don't respect that bitch,
3 so I have no problem killing her or robbing her,
4 that would be consistent with --

5 **MR. BRUCK:** I object. This is far beyond any
6 possible knowledge of this witness. It's
7 argumentative.

8 **THE COURT:** You're asking her if it would be
9 consistent testimony?

10 **MR. LUPTON:** If the -- if Mr. Farmer, since
11 we're talking about his consistencies, if Mr. Farmer
12 had previously said that Mr. Cooper said I have no
13 problem robbing that -- robbing her because I don't
14 respect that bitch.

15 **THE COURT:** Rephrase your question. I don't
16 know if you should use that consistency type of
17 language. You ask her what she knows from that
18 conversation.

19 BY MR. LUPTON:

20 **Q** You said you reviewed Mr. Farmer's testimony;
21 is that correct?

22 **A** Very briefly.

23 **Q** And in his prior testimony, he said that he had
24 called up Mr. Cooper about robbing the victim. And
25 he testified in that that Mr. Cooper said, I don't

1 have a problem with that, I don't respect that
2 bitch, or words to that effect; is that correct?

3 **A** I don't recall that specific sentence, but it
4 must be.

5 **Q** So would that be indicative in your mind --

6 **MR. BRUCK:** Objection, what's indicative in her
7 mind. This is simply argument.

8 **MR. LUPTON:** I'll withdraw it, Your Honor.

9 **THE COURT:** All right. The question is
10 withdrawn.

11 **BY MR. LUPTON:**

12 **Q** And he had no problem -- Mr. Farmer had no
13 problem talking to you?

14 **A** No, sir.

15 **Q** And he did not indicate in any way that he was
16 going to lie to you?

17 **A** No, sir.

18 **Q** He minimized his own role in this crime?

19 **A** Yes, sir.

20 **Q** But he freely, unequivocally, said that the
21 defendant confessed to this murder?

22 **A** In code.

23 **Q** But Mr. Farmer was not equivocal in saying that
24 that coded confession was given?

25 **A** Yes, sir.

1 Q And that it was given by the defendant, Gene
2 Tony Cooper?

3 A That's correct.

4 Q And that was in May of 2006?

5 A Yes, sir.

6 Q While he was serving a life sentence in the
7 State of Texas?

8 A Two life sentences I believe.

9 Q Two life sentences. And well beyond any help
10 or punishment of the State of South Carolina?

11 MR. BRUCK: Objection. This witness has no way
12 of knowing and it may not be so.

13 MR. LUPTON: I'll withdraw that. I apologize.

14 THE COURT: The question's withdrawn.

15 MR. LUPTON: Nothing further, Your Honor.

16 THE COURT: Any follow-up?

17 MR. BRUCK: No, sir.

18 THE COURT: You may step down, ma'am. Thank
19 you.

20 MR. BRUCK: We'd ask that Ms. Turner be
21 excused.

22 MR. LUPTON: Absolutely.

23 THE COURT: You may be excused, ma'am. Thank
24 you.

25 Do you have something you want to read to the

1 jury?

2 **MR. ANDREWS:** Yes, sir, Your Honor. Your
3 Honor, at this time, we'd like to publish the prior
4 testimony in this case of Ms. Bessie Mae Cooper.
5 And we'd like to ask our paralegal, Tammy Pope, to
6 provide the testimony of Ms. Cooper.

7 **THE COURT:** All right. Again, ladies and
8 gentlemen, some testimony from different individuals
9 has been presented to you because that individual is
10 either deceased or not available. So you would
11 consider that testimony as you would any other
12 testimony in your consideration of the issues in
13 this case. The testimony was given under oath and
14 subject to cross-examination.

15 Go ahead.

16 **MR. ANDREWS:** Thank you, Your Honor.

17 (Whereupon, the following testimony of
18 Bessie Mae Cooper was read for the jury.)

19 BY MR. ANDREWS:

20 **Q** Ms. Cooper, would you please tell us what
21 relation you are to Tony?

22 **A** I'm his mother.

23 **Q** And where do you live?

24 **A** 4270 Greenwood Drive, West Columbia.

25 **Q** Now, I also want to ask you this. Does Tony

1 look any different now than he did in October of
2 1989?

3 A No, sir. He looks just like, you know.

4 Q How long has he had the goatee?

5 A Just about all of his life.

6 Q Has he ever had shoulder length hair?

7 A No, sir, since he was a kid.

8 Q Has he ever worn glasses?

9 A When he was six.

10 Q Has he worn glasses since then?

11 A No, sir.

12 Q Do you remember October 5th, 1989?

13 A Yes, I do.

14 Q Could you tell us did you have an occasion to
15 see Tony on the morning of October 5th, 1989?

16 A Yes, sir.

17 Q What time did you see him?

18 A It was approximately ten o'clock.

19 Q And where did you see him?

20 A At my house.

21 Q How do you know that it was about ten o'clock?

22 A I had the T.V. on and the Donahue Show was just
23 about to go off.

24 Q Did he come to your house on that occasion?

25 A Sir?

1 Q How long did he stay at your house?

2 A He stayed until about 11:30.

3 Q Until 11:30?

4 A Yes, sir.

5 Q In the morning? Was that 11:30 in the morning?

6 Line ten. _____

7 A Uh-huh.

8 MR. ANDREWS: I'm sorry, Ms. Pope. We've
9 actually skipped a line. I'm referring you to line
10 ten of the transcript. _____

11 A In the morning.

12 Q Ms. Cooper, we're talking about in the morning
13 of October 5th; is that correct?

14 A Uh-huh.

15 Q What time, once again, did Tony come to your
16 house that morning?

17 A It was around ten o'clock. I don't know the
18 exact minute, but I know it was around ten o'clock.

19 Q And how long did he stay?

20 A He stayed until approximately 11:30.

21 Q How do you know it was approximately 11:30?

22 A Well, I was right there in the kitchen and I
23 was fixing -- I had started to cook dinner and I
24 just hadn't started yet.

25 Q Did y'all talk about dinner?

1 **A** Yes.

2 **Q** What did you say about dinner?

3 **A** I told him when he come back, we would have
4 lunch.

5 **Q** Now, Ms. Cooper, before I go any further, I
6 want to ask you how do you remember these times?
7 Why do you remember them?

8 **A** Well, after all this thing come up, I wrote it
9 down where I wouldn't forgot it.

10 **Q** Now, after Tony left at 11:30, did he come back
11 to your house?

12 **A** Yes, sir.

13 **Q** What time did he come back; do you know?

14 **A** Well, it was approximately, maybe 12:30 because
15 the 700 Club was on and we sat and watched it
16 together. —

17 **Q** Is this correct, Ms. Cooper?

18 **A** Yes, sir.

19 **Q** It is?

20 **A** Yes, sir.

21 **Q** I believe you said then that he came back to
22 your house at 12:30; is that correct?

23 **A** Yes, sir.

24 **Q** Did he leave later -- did later he leave your
25 house?

1 **A** No, sir. He didn't leave until late that
2 afternoon.

3 **Q** What time that afternoon did he leave?

4 **A** Approximately between 5:00 and 5:30.

5 **Q** What did he do at your house during the
6 daytime; do you recall?

7 **A** Well, a lot of times we'd just sit and talk,
8 but that day he went out. His daddy had give him a
9 motor home. He went out and worked on his motor
10 home just about all afternoon.

11 **Q** Is there any question that he was at your house
12 that day?

13 **A** No, sir. I know he was there.

14 **Q** Now, at some point during that day, did
15 Mr. Cooper come home?

16 **A** He come in about four o'clock or maybe five
17 after.

18 **Q** Was Tony at home when Mr. Cooper got home?

19 **A** He was down in the field at the camper.

20 **Q** Did Mr. Cooper see Tony?

21 **A** He should have because our driveway has got a
22 circle on it and when -- it went right by that motor
23 home.

24 **Q** What was Tony riding in?

25 **A** His truck.

1 Q When you first saw Tony on the morning of
2 October 5th, what time was it?

3 A It was approximately ten o'clock.

4 Q How long did he stay? Until about when?

5 A 11:30.

6 Q And then he left?

7 A Yes, sir.

8 Q What time did he come back?

9 A It was around 12:30.

10 Q And how long did he stay?

11 A He stayed until 5:00, around 5:00 or 5:30.

12 Q And then he left?

13 A Yes, sir.

14 Q Did you see him anymore that day?

15 A No, sir.

16 MR. ANDREWS: Nothing further.

17 MR. LUPTON: Your Honor, I'll just be reading
18 the State's cross.

19 BY MR. LUPTON:

20 Q Ms. Cooper, you saw the commotion on Sunday
21 October 8th when the officers were going down to the
22 pond?

23 A We had went to church.

24 MR. LUPTON: I appreciate -- I'll just go ahead
25 and read it myself. Thank you.

1 MS. POPE: Oh, I'm sorry.

2 MR. LUPTON: We had went to church, I wasn't
3 home.

4 In that afternoon you didn't see them either?
5 I didn't pay it no attention.

6 Then on Monday, October 9th, some officers came
7 by your house and talked with you?

8 No, sir, it was Monday evening.

9 ~~On Monday, October 9th, though?~~

10 Yes, sir, I believe it was. It was in the
11 afternoon.

12 And that was -- do you recall that being
13 Mr. McDermott and Mr. Tyndal that came by that
14 Monday evening?

15 I remember Mr. McDermott, but I don't remember
16 the other guy.

17 They asked you certain questions then; is that
18 correct?

19 Well, they were looking for somebody with long
20 hair.

21 Yes, ma'am. They asked you about the '77
22 Mercury Cougar, white with green top; isn't that
23 correct?

24 They was wanting to know what kind of car Tony
25 had.

1 And did they ask you about the Mercury Cougar?

2 I told them what kind of car he had.

3 They asked you about the Mercury Cougar; is
4 that right, Ms. Cooper?

5 Yes.

6 Which one of these officers? Point out to the
7 jury which officer you -- which officer asked you
8 about a subject with long hair.

~~9~~ I believe it was this one-sitting-over there
10 with the blue shirt.

11 Which one with the blue shirt? Are you talking
12 about Mr. Tyndal?

13 Witness nods head.

14 Lieutenant Tyndal asked you about a subject
15 with long hair; is that correct?

16 Yes, sir.

17 That's what your testimony is that Monday on
18 October 9th, Mr. Tyndal was asking you about a
19 subject with long hair?

20 Yes, sir.

21 You also talked with officers on Friday,
22 October 13th. I believe it was Detective Hite and
23 Detective Gallardi (ph)?

24 Yes, sir, I remember.

25 Do you recall Detective Hite -- recall telling

1 Detective Hite and Detective Gallardi that you and
2 your husband were home Thursday evening, October
3 5th?

4 Yes, sir, we were home.

5 And that is correct, y'all were home Thursday
6 evening, October 5th; is that right?

7 Yes, sir.

8 Do you recall telling Mr. Hite and Mr. Gallardi
9 that you and your husband went to bed at
10 approximately 7:30 Thursday evening, October 5th?

11 Yes, sir.

12 Do you further recall telling Detective Hite
13 and Detective Gallardi that you did not see Tony
14 Cooper any on Thursday, October 5th?

15 Well, I didn't see him.

16 You didn't see Tony Cooper at all on Thursday,
17 October 5th of '89?

18 No, I didn't.

19 And that's what you told Detective Hite and
20 Detective Gallardi on Friday, October 13th of '89?

21 Yes, sir.

22 One other thing, Ms. Cooper, on October 4th of
23 '89, Wednesday, Brenda McLauren visited Red Farmer;
24 isn't that correct?

25 As far as I know it is.

1 And you had that down on that paper that
2 Mr. McWhirter showed you -- excuse me -- that
3 somebody showed you?

4 Yes.

5 Thank you, ma'am. I don't have any further
6 questions.

7 BY MR. ANDREWS:

8 Q Ms. Cooper, I want to talk with you about
9 October 5th. Do you know we are talking about
10 October 5th here of '89?

11 A I know what we are talking about.

12 Q Did you see Tony on October the 5th?

13 A Yes, sir.

14 Q What time did you see him?

15 A I first seen him around ten o'clock.

16 Q Did you see him these times that we talked
17 about up here on the board?

18 A Yes, sir.

19 Q Do you remember telling the Solicitor that you
20 didn't see him just a few minutes ago?

21 A I didn't see him that night after he left to go
22 home.

23 Q Oh.

24 A That's what I was talking about.

25 Q What time did he leave your house the last

1 time?

2 **A** Around 5:00 or 5:30.

3 **Q** After that, did you see him anymore that day?

4 **A** No. I went to bed and I was asleep. I was on
5 doctor's medication.

6 **Q** And we're talking about Thursday night now?

7 **A** Yes.

8 **MR. ANDREWS:** I don't have any other questions.

9 Thank you.

10 **MR. LUPTON:** On recross.

11 Ms. Cooper, do you remember this officer,
12 Detective Hite? He talked with you on October 13th
13 of '89 that Friday?

14 I don't know what date it was, but I do
15 remember talking with him and Mr. Gallardi.

16 That's right, him and Mr. Gallardi.

17 That is correct.

18 Back then didn't you tell them that you didn't
19 see Tony at all on Thursday, October 5th?

20 No, sir, I didn't tell them that.

21 That is not what you told them?

22 No, sir.

23 October 13th, you did not tell Detective Hite
24 that you did not see Tony Cooper at all on the 5th
25 of October of '89?

1 I didn't tell him that.

2 You told Mr. Hite that you and your husband
3 were home that Thursday evening, October 5th?

4 Yes, sir, we were.

5 And that's what you told Mr. Hite?

6 I don't even know if he asked me that or not.

7 Did you tell Mr. Hite that you and your husband
8 went to bed at approximately 7:30?

9 Yes, sir.

10 And you told Mr. Hite that?

11 Yes, I did.

12 You did not tell Mr. Hite that you did not see_
13 Tony Cooper on Thursday, October 5th; you deny
14 telling him that?

15 I didn't tell him that.

16 You deny that you told Mr. Hite that?

17 I didn't tell him that.

18 Nothing further.

19 **MR. ANDREWS:** That concludes any examination of
20 this witness, Your Honor.

21 **THE COURT:** All right. Ladies and gentlemen,
22 I'm going to send you to the jury room for a few
23 minutes. Please do not discuss this case in any
24 way. Thank you very much.

25 (The jury retires to the jury room.)

1 (Brief Recess.)

2 (The jury returns to the courtroom.)

3 **THE COURT:** All right. Ladies and gentlemen,
4 we've decided to go ahead and stop for the day. I
5 know this is a holiday weekend and some of you may
6 be going out of town for the weekend. We will pick
7 up with everything on Tuesday. If you'll report in
8 Tuesday at 11:00 a.m., we will proceed with the
9 trial, finish up any remaining testimony and then
10 argue and charge probably at that point.

11 So, again, you must not discuss this case in
12 any way whatsoever, must not expose yourself to any
13 type of media coverage or otherwise about the case
14 and also must not conduct any type of independent
15 research or investigation on your own.

16 I need you to give those pads to the bailiffs
17 on your way out so they can secure them in a safe
18 place over the break. Have a good holiday weekend.
19 We will see you on Tuesday. Thank you very much.

20 (The jury was excused for the day.)

21 **THE COURT:** All right. Then I'll see y'all at
22 about 10:30 that day. We'll finalize any matters
23 about the jury charge at that time. All right, have
24 a good weekend.

25 (Whereupon, the proceedings were concluded)

1 for May 26, 2006.)

2 (The following proceedings were held on May
3 30, 2006.)

4 (Defendant's Exhibit Numbers 8 through 11
5 were marked for identification purposes.)

6 **THE COURT:** Do y'all have anything special with
7 charges? I know we're not done with the trial, I'm
8 just asking.

9 **MR. BRUCK:** We have an alibi charge.

10 **THE COURT:** Other than what you told me about
11 the other day. Did you think about the reference --

12 **MR. BRUCK:** I'm writing right now the request.

13 **THE COURT:** Because there was a reference.

14 **MR. BRUCK:** Yes.

15 **THE COURT:** Did y'all have anything?

16 **MR. BELL:** Nothing from the State, Your Honor,
17 other than what we discussed from Friday.

18 **THE COURT:** And just for the record, the
19 conspiracy charge, the indictment has several, but
20 you're proceeding under conspiracy to commit armed
21 robbery; is that correct?

22 **MR. BELL:** That's correct. I think that's the
23 only one that survived the prior trial by reading
24 the transcript.

25 **MR. LUPTON:** Your Honor, if I could suggest, I

1 think that probably the best course of action under
2 the circumstances might be just prepare verdict
3 forms rather than sending the indictments
4 themselves.

5 ~~THE COURT:~~ I agree with that. ~~Because of the~~
6 different language in the indictments, I agree with
7 that and they're all straight up or straight down,
8 so it will just say each -- each indictment either
9 not guilty or guilty.

10 (Pause.)

11 MR. BRUCK: Your Honor please, I have written
12 out two proposed instructions and perhaps I should
13 just read them into the record and then I'll pass
14 this up.

15 The first one is the one that I wrote at the
16 invitation of the Court which reads as follows:
17 There have been references during this trial to
18 prior proceedings in Mr. Cooper's case. Please
19 understand that these prior proceedings have nothing
20 to do with Mr. Cooper's guilt or innocence. He is
21 presumed to be innocent of all charges against him
22 and starts the trial on a clean slate. You may not
23 speculate on any prior hearings or proceedings, but
24 must base your verdicts entirely on the evidence or
25 the lack of evidence presented to you since this

1 trial began last Monday.

2 **THE COURT:** That sounds good to me except for
3 clean slate, I will say cloak of innocence.

4 **MR. BRUCK:** Okay. The ~~second~~ one just occurred
5 to me as I was doing the first one. It reads as
6 follows: There have also been references by one or
7 two witnesses -- I should say by one or two State's
8 witnesses about having appealed their own
9 convictions and having received new trials or
10 resentencings. Please do not assume or expect that
11 anything of this sort will occur in this case. Once
12 the question of Mr. Cooper's guilt or innocence is
13 properly submitted to you and you render your
14 verdict, that verdict is final and no other court
15 may second guess or change it.

16 I'm just concerned that Sutherland said he
17 appealed and it was set aside --

18 **THE COURT:** Yeah, well that's not necessarily
19 true, though, that instruction.

20 **MR. BRUCK:** It is true once the case is
21 properly submitted. Those words encompass a trial
22 free of error and it is precisely true. It's not
23 true that once it's submitted, but it is true once
24 it's properly submitted. And, of course, that's the
25 frame of mind that the jury should embark on rather

1 than thinking, well, it will be appealed endlessly.
2 So I think it is exactly correct with the word
3 properly submitted.

4 **THE COURT:** I'll think about that.

5 **MR. BRUCK:** Thank you, Your Honor.

6 **MR. LUPTON:** Your Honor, if the defense is
7 stipulating that this is properly submitted, we'll
8 accept that stipulation. Otherwise, I think that
9 asking the jury to -- inviting the jury to speculate
10 on --

11 **THE COURT:** Why don't y'all go ahead and draft
12 one up, too, because there were references by your
13 witnesses to those facts. So if you want to draft,
14 something and submit it, I'll consider it. Hand
15 yours up.

16 **MR. LUPTON:** Your Honor, I think that from the
17 State we would ask that there be no mention of it.
18 I think that any mention of possibility of appeal
19 one way or the other is not proper for the jury to
20 consider.

21 **THE COURT:** All right.

22 **MR. LUPTON:** In any trial much like parole
23 eligibility back before the life without parole
24 statutes.

25 **THE COURT:** If I consider this instruction,

1 Mr. Bruck, why wouldn't I just say there has also
2 been references by one or two witnesses about having
3 appealed their own convictions and having received
4 new trials or resentencing, this is not a matter for
5 your consideration at all of the issues in this
6 case? I mean, the problem is, I guess, in part it
7 is a matter for their consideration because you set
8 up potential bias as to some of the --

9 **MR. BRUCK:** Right exactly. So what we're
10 ~~telling them is just don't assume that this is a~~
11 revolving door where every conviction gets set aside
12 and sent back again so this is just a trial run.
13 That's what I'm concerned about. And they've only
14 seen two criminals on the witness stand and both of
15 them had good news to report on their success on
16 appeal and it just creates a very misleading
17 impression of how the system works.

18 **THE COURT:** I'll think about it. I'm not sure
19 about the second one. I don't have a problem with
20 the first one.

21 **MR. BRUCK:** There are two other evidentiary
22 matters. By agreement, we are resubmitting three
23 photographs that were introduced the last time.
24 They have been marked as Defendant's 8, 9 and 10.
25 And they are photographs of the door and the

1 peephole from which Mr. Harley observed the
2 defendant or the person he identified as the
3 defendant.

4 **THE COURT:** Any objection to those?

5 **MR. BELL:** No objection, Your Honor.

6 **THE COURT:** All right. We'll go ahead and put
7 Defendant's 8, 9 and 10 into evidence.

8 (Defendant's Exhibit Numbers 8 through 10,
9 photographs, were admitted into evidence.)

10 **MR. BRUCK:** Finally, there is a matter which
11 needs to be resolved. We are offering Defendant's
12 11, which is the toxicology report on Ms. Quinn. As
13 I understand it, the State has no objection
14 receiving the report, that is to its authenticity.

15 But the relevance of this, Your Honor, is that
16 Mr. Sutherland testified that he and Ms. Quinn
17 smoked marijuana together. And as you'll note, the
18 report does not reflect marijuana or cannabis. In
19 addition, Mr. Sutherland referred to her having said
20 that she had been using Morphine and there's no
21 Morphine in the bloodstream.

22 As I understand the State's position, they
23 recognize the relevance of those facts, but object
24 to the report coming in because of possible
25 prejudicial effect of the prescription drugs that.

1 Ms. Quinn did have in her bloodstream. We think the
2 report is the best evidence and we offer it.

3 **THE COURT:** I'm not sure I understand what
4 you're trying to say as far as that evidence is in
5 through Mr. Sutherland.

6 **MR. BRUCK:** Right.

7 **THE COURT:** And you want the report in just to
8 show that this is what was found in the urine?

9 **MR. BRUCK:** Yes. In other words, that the
10 toxicology does not match his testimony about what
11 this woman was either ingesting or telling him she
12 had ingested.

13 **THE COURT:** And you don't have any objection --
14 to me, that's relevant.

15 **MR. LUPTON:** Your Honor, I think that the
16 lack --

17 **THE COURT:** Which one is going to argue all of
18 these? Are you going to argue this?

19 **MR. LUPTON:** I was under the impression that --

20 **THE COURT:** All right. Go ahead.

21 **MR. LUPTON:** Your Honor, with regards to the
22 marijuana, the lack of marijuana and the lack of an
23 opiate in the toxicology screen, I think that is
24 relevant and we're prepared to stipulate to the lack
25 of those drugs.

1 I think that just putting in the toxicology
2 report as a piece of paper is prejudicial because it
3 reveals other drugs that she was taking. We don't
4 know whether or not she was taking those
5 legitimately or illicitly. There's no evidence of
6 that. There's no evidence that those drugs are in
7 any way relevant to this case. And I think that
8 there is too great a danger of the jury looking at
9 that and having a prejudicial effect.

10 There's also no explanation of what the blood
11 alcohol level means as far as the fact that point
12 014 blood alcohol level was extraordinarily low.

13 **THE COURT:** Well, do you want this person here,
14 Mr. Bruck?

15 **MR. BRUCK:** We don't feel that we need to have
16 him here. It only became relevant recently, big
17 thanks to Sutherland, so that we hadn't addressed
18 this until the weekend, but certainly there's going
19 to be no claim that she was drunk, that is a very
20 low blood alcohol level. I think it's a matter of
21 common knowledge that the level for intoxication is
22 four -- five times that and we're not claiming that.
23 We just think we're entitled to real evidence as
24 opposed to just trying the whole case by
25 stipulation.

1 **THE COURT:** I mean, if you have no objection to
2 the authenticity of this record, I'm not sure I
3 understand why it shouldn't come in. If you want to
4 call the person in to explain that on rebuttal, you
5 can do that.

6 **MR. LUPTON:** Your Honor, if you're inclined to
7 let it in, then I would ask that we agree by
8 stipulation that point 08 would be -- on that blood
9 alcohol level would be the inference level for
10 intoxication so that there's some context to that
11 and that --

12 **THE COURT:** Point 10 you mean back then?

13 **MR. LUPTON:** Point 10 back then.

14 **MR. BRUCK:** Either way we're happy to
15 stipulate.

16 **THE COURT:** Well, write out your agreed upon
17 stipulation and you can publish it. Defendant's 11
18 is in evidence.

19 Y'all both get together and write out a
20 stipulation while we're waiting for the jury and you
21 can publish it at that time when you reference this
22 report.

23 **MR. BRUCK:** That's all we have, Your Honor. If
24 there are no further matters, I would like to take a
25 moment to --

1 **THE COURT:** Go ahead. We're waiting on the
2 jury.

3 (Defendant's Exhibit Number 11, toxicology
4 report, admitted into evidence.)

5 (Pause.)

6 **MR. LUPTON:** Your Honor, I was discussing with
7 Mr. Bruck the best way to get the stipulation on the
8 record. He has agreed to read the stipulation when
9 he puts the document in. I think that will flow at
10 best.

11 (Pause.)

12 **THE COURT:** While we're waiting, have y'all
13 made any decision about if your client is going to
14 testify?

15 **MR. ANDREWS:** Yes, sir.

16 **DEFENDANT COOPER:** Yes, sir.

17 **MR. BRUCK:** He is going to testify.

18 **THE COURT:** Mr. Cooper, please stand. Mr.
19 Cooper, you understood all of my discussions about
20 your right to either testify or not to testify?

21 **DEFENDANT COOPER:** Yes, sir.

22 **THE COURT:** Do you remember everything that I
23 said in that regard?

24 **DEFENDANT COOPER:** Yes, sir.

25 **THE COURT:** That if you choose to testify, then

1 any prior record that we discussed may be offered
2 against you for impeachment purposes. Also, if you
3 choose not to testify, I'll tell the jury they're
4 not to give that fact any consideration whatsoever.
5 There should be no prejudice to you if you did not
6 testify. Do you understand all of that?

7 **DEFENDANT COOPER:** Yes, sir.

8 **THE COURT:** And you've had sufficient time to
9 discuss that with your attorney?

10 **DEFENDANT COOPER:** Yes, sir.

11 **THE COURT:** Mr. Bruck, you have discussed all
12 of the advantages and disadvantages of the either
13 testifying or not testifying with him?

14 **MR. BRUCK:** That's correct.

15 **THE COURT:** And he has had sufficient time to
16 make that decision?

17 **MR. BRUCK:** Yes, he has.

18 **THE COURT:** All right. And you agree with that
19 decision?

20 **MR. BRUCK:** Yes, I do.

21 **THE COURT:** All right. Thank you.

22 (Pause.)

23 (Defendant's Exhibit Number 12, map, was
24 marked for identification purposes.)

25 **THE COURT:** All of the jurors are here. Are

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1 **MR. BRUCK:** Please the Court.

2 Good morning, Mr. Foreman and ladies and
3 gentlemen. In your absence, the parties have
4 introduced into evidence three photographs that I'd
5 —like to publish at this time. They reflect the—
6 doorway from which Mr. Harley observed the Cougar
7 and includes a photograph of the peephole about
8 which he testified.

9 These are Defendant's Exhibits 8, 9 and 10.
10 Defendant's 8 is a long view. Defendant's 9 is a
11 slightly closer view of the same door. Defendant's
12 10 shows the peephole. Thank you.

13 Mr. Foreman, ladies and gentlemen, the
14 defendant also offers at this time Defendant's
15 Exhibit 11, which is a report, a toxicology report,
16 from the State Law Enforcement Division Forensic
17 Services Laboratory reflecting the results of a
18 screen of Ms. Kimberly Quinn's blood and urine.
19 I'll put this up and you can see the results.

20 As you will note, ladies and gentlemen, the
21 analysis was completed on July the 6th, 1990. And
22 it reflects that in the blood was found 0 point 014
23 percent blood alcohol and in the urine was found
24 nordazepam, oxazepam and temazepam.

25 The State and the defense also agreed on the

1 following stipulation: There is evidence of a blood
2 alcohol level in this case. The parties agree that
3 at the time of this offense, a blood alcohol level
4 of 0 point 100 percent or greater created an
5 inference of impairment and a blood alcohol level of
6 0 point 050 percent or less, conclusively proved the
7 person was not impaired due to alcohol. Thank you.

8 That concludes our documentary exhibits, Your
9 Honor.

10 **MR. ANDREWS:** Your Honor, at this time, the
11 defense would like to call Mr. Gene Cooper, Senior.

12 GENE COOPER, SR.,

13 having been duly sworn, testified as follows:

14 **THE CLERK:** Have a seat up there please, sir.
15 Speak up loud and clear. And once you have a seat,
16 state your name on the record.

17 DIRECT EXAMINATION

18 BY MR. ANDREWS:

19 **Q** Mr. Cooper, please state your full name for the
20 record.

21 **A** Reverend Gene -- Gene Cooper, Senior.

22 **Q** Mr. Cooper, if you'll back up just a few inches
23 from the mike, it will pick up your voice
24 adequately. Mr. Cooper, what is your relationship
25 to the defendant, Tony Cooper?

1 A He's my son.

2 Q Do you have any other children?

3 A I've got three more.

4 Q Where is Tony in the order of those children?

5 A He's the youngest one.

6 Q All right. Are you married?_____

7 A Yes.

8 Q Are you in your first or your second marriage?

9 A Second marriage. My first wife passed away
10 with cancer -- no, it was heart attack. She did
11 have cancer.

12 Q And when did she die?

13 A 1992.

14 Q How long had you two been married?

15 A Forty-three years.

16 Q Where do you live now, Mr. Cooper?

17 A 146 Fremont Lane, Gaston, South Carolina.

18 Q How long have you lived in Lexington County?

19 A Since January 1950.

20 Q What did you do before you moved to Lexington
21 County?

22 A I was in the United States Army.

23 Q All right, sir. Are you retired now?

24 A Yes.

25 Q What did you do before you were retired?

1 **A** I was a brick mason for 45 years. I'm an
2 ordained minister since 1962.

3 **Q** What did your ministry consist of?

4 **A** Well, mostly evangelist side. I pastored three
5 or four churches.

6 **Q** In the midlands area? Where were they?

7 **A** In what?

8 **Q** Where were those churches?

9 **A** Well, I pastored...-----

10 **Q** Sorry, talk a little more slowly. The Full
11 Salvation Baptist Church is that what you said?

12 **A** Yes. And I pastored the Bible Church of God on
13 Bluff Road and House of Prayer on Second Street in
14 Cayce.

15 **Q** And how long were you a minister?

16 **A** Since 1962.

17 **Q** And how about a brick mason? For whom were you
18 last employed as a brick mason?

19 **A** Nassau Recycling Plant in Gaston, South
20 Carolina.

21 **Q** How long did you work for the Nassau Plant?

22 **A** Twelve and a half years.

23 **Q** All right. Mr. Cooper, let me draw your
24 attention to the day of October 5th, 1989. Do you
25 remember that day?

1 A Yes.

2 Q Where were you working then in 1989?

3 A I was working for the Nassau Recycling Plant in
4 Gaston.

5 Q And the days you were working for Nassau, when
6 did you usually get home from your work?

7 A We usually got home around four o'clock.

8 Q Now, on the day of October 5th, 1989, did you
9 go to work that day?

10 A Yes.

11 Q What time did you get home that day?

12 A It was around four o'clock.

13 Q When you got home, do you remember who was
14 there at your home?

15 A Tony was there and my wife.

16 Q What do you remember-Tony-doing when you
17 arrived home around four o'clock?

18 A He was out back around the camper, working
19 around the camper as far as I know. I just passed
20 by him and I went on in the house.

21 Q Okay. How did you -- when you got home, how
22 did you get home? Were you driving?

23 A I was driving my car.

24 Q And where was Tony relative to where you parked
25 your car after you got home?

1 **A** Well, it was big ol' cane.break (ph) and I
2 drove it all the way around that cane break usually.
3 And the camper is back there around the cane break
4 and I just drove around, pulled up the driveway
5 headed out really.

6 **Q** Okay. You said Tony was at the camper?

7 **A** He was back behind at the camper.

8 **Q** All right. Did you speak to him at that time
9 when you got home?

10 **A** I don't believe I did. I just seen him back
11 there.

12 **Q** And what did you do when you got home?

13 **A** I went in the house and took a shower and
14 usually eat supper and went to bed really.

15 **Q** All right. When you ate supper, did Tony eat
16 with you?

17 **A** No.

18 **Q** Do you know whether he was still there at that
19 point?

20 **A** Not really, no, I don't.

21 **Q** When was the next time you saw Tony?

22 **A** Well, it was about -- it was about quarter
23 after 11:00, 20 after 11:00 that night really.

24 **Q** I thought you just said you went to bed?

25 **A** Well, I went to bed after I got off of work. I

1 was tired down. And I usually -- I usually every
2 afternoon I come in, take a shower, eat supper and
3 go to bed. I work in 2200 degrees that where --
4 that furnace I was working around and I didn't
5 really talk to nobody hardly except my wife a few
6 minutes and I usually went to bed.

7 Q You were pretty tired is that what you're
8 saying?

9 A Yeah. You work around that heat you get plum
10 give out and you don't be talking to nobody really
11 hardly.

12 Q Okay. Now, what do you remember about waking
13 up or the circumstances under which you say you saw
14 Tony?

15 A Well, usually, I got up a few times at night, I
16 had a -- I really had a prostate operation, and at
17 night by about quarter till 11:00, and I usually
18 listen to a preacher. The only reason I know what
19 time it was, he come on at 11 o'clock every night.

20 Q What preacher was that? Do you remember his
21 name?

22 A His name is Peter Popoff. He's actually from
23 California. But I got to catch him on the radio
24 station at 11 o'clock every weekday night. And most
25 of the time, I had a habit of listening to him.

1 **Q** Okay. And how long was the Reverend Popoff
2 program on the radio?

3 **A** It stayed on 15 minutes. And I got up then and
4 went to the restroom. And the restroom was about
5 six feet wide and I was standing in the corner and
6 there was a window there. And Tony come in the
7 driveway there and I looked right down at the lights
8 and I seen him in the truck.

9 **Q** And you said Tony came in the driveway, was he
10 driving in his truck?

11 **A** Yeah, he was in there.

12 **Q** And what did you do when you saw his lights?

13 **A** Well, I went outside to see what was wrong and
14 his truck was running hot. And he wanted to go home
15 and didn't have nothing to fix the truck with. And
16 I told him, If you drive kind of slow, you might
17 make it. But, you know, you're -- he still had his
18 bed in the room in the house and he can go in there
19 and sleep. And he said, No, I want to go home. So
20 he wanted me to follow him down there. So I didn't
21 really want to, but I went ahead and done it because
22 if he got halfway and he called me, then I would
23 have to get up anyway. So I went ahead and rode
24 down there behind him slow and then come on back to
25 the house and went to bed.

1 Q All right, sir. Now, when Tony first arrived
2 and you went outside, did he do anything to try to
3 deal with his truck running hot that you noticed?

4 A Well, he just had the hood up and everything.

5 Q Did he put any water in the radiator?

6 A He put the water in the radio (sic) and I told
7 him if that thing blows, I said it's going to burn

8 ~~that good motor and --- but I said, If you drive real~~
9 slow, you'll probably make it home. So he insisted
10 on me following him home, you know. And so, you
11 know, keeping him from maybe getting halfway and
12 then calling me, I went ahead and followed him down
13 to where he lived at and go on back to the house.

14 Q Now, what time was it again that,
15 approximately, that you saw Tony drive in the
16 driveway and went out and talked to him?

17 A It was about around 20 after 11:00.

18 Q Now, how do you know that?

19 A Well, I wouldn't have known that, I remember
20 the preacher usually went off a quarter after and I
21 had went in the restroom.

22 Q Okay. Now, about how long did Tony stay at
23 your house before you and he went to his house?

24 A Well, 20 minutes, 30 minutes. Like I say, the
25 only reason I know -- the rest of me driving down

1 back just speculating because the only reason I
2 remember that was that preacher being on there, we
3 drove down there slow, maybe about 15 miles I guess.

4 Q Fifteen miles between your home and Tony's?

5 A Where he lived at, yes.

6 ~~Q~~ And once you got to Tony's, did you stop and go
7 inside?

8 A No. I just told him, I'll see you later, and
9 backed up and turned around and went home.

10 MR. ANDREWS: I don't have any further
11 questions, Mr. Cooper. Please answer any that the
12 State's counsel may have for you.

13 CROSS-EXAMINATION

14 BY MR. LUPTON:

15 Q You lived for a long time right by the pond
16 where the victim's body was found; is that correct?

17 A Now what?

18 Q For many years, you lived -- you say you moved
19 since this happened, right?

20 A Yes.

21 Q But for many years, you lived in a house that
22 was very near where the victim's body was found; is
23 that correct?

24 A It was about two miles.

25 Q And, in fact, you used to take Tony swimming at

1 that pond; is that correct?

2 **A** We swim there about five or six years.

3 **Q** Five or six years.

4 **A** Off and on.

5 **Q** So the defendant was very familiar with that
6 pond, wasn't he?

7 **A** Well, several people went and swam in there I

8 ~~guess.~~

9 **Q** But the defendant was one of those people. He
10 was very familiar with the pond, right?

11 **A** Who now?

12 **Q** The defendant in this case.

13 **A** Oh, yes, yeah.

14 **Q** And he is your son; is that right?

15 **A** Huh?

16 **Q** The defendant is your son; is that correct,
17 sir?

18 **A** I didn't catch it.

19 **Q** The defendant, he's your son?

20 **A** Yes.

21 **Q** And you love him?

22 **A** Oh, yes.

23 **Q** Now, when this offense first happened and the
24 defendant was arrested for murder, you didn't go to
25 the police and tell them he was with you that night,

1 did you?

2 A No, he wasn't arrested right that day or
3 nothing.

4 Q But when he was arrested, you didn't go
5 straight to the police and tell them, My son is
6 innocent, he was with me that night, did you?

7 A No. They come and talked with my wife and was
8 supposed to come back and talk with me, but I never
9 did see them anymore.

10 Q And you say that you knew he was innocent
11 because he was with you when the crime occurred, but
12 in the year 1989, you never told the police that
13 fact, did you?

14 A Well, nobody come and asked.

15 Q But you never went to anybody and told them --
16 told any police officer, anyone --

17 A They didn't come and ask me nothing.

18 Q They didn't come and ask you?

19 A They were supposed to come back.

20 Q So in 1990 --

21 A And then I never seen them no more. And there
22 wasn't no use to go to talk with the police until
23 the court time because they -- well, I did go down
24 to West Columbia Police and talked with that --

25 Q But you didn't tell them this story, did you,

1 sir?

2 A Well, nobody asked me.

3 Q All right. So you say you have --

4 A I went and told them he was innocent.

5 Q You say you have this information that he was
6 with you when the murder occurred and you love your
7 son, but in 1989, you never told the police, He was
8 with me the night this murder happened, did you,

9 --sir?

10 A There wasn't no use to tell anybody anything
11 because they had him arrested and you don't be
12 sitting around talking until court time, you're just
13 wasting your breath. They don't listen to me, they
14 going to let him out?

15 Q And in 1990, all of 1990, you never told the
16 police this story, did you, sir?

17 A What profit would it have been?

18 Q Would you say --

19 A My wife was sick with cancer and I had business
20 with her and if the court time wasn't there --

21 Q And, in fact, in 1991, during the first
22 proceeding, that is the first time you told this
23 story; isn't that true?

24 A Right.

25 Q So you waited until the court date when there

1 was no way anybody could check any of this to come
2 forward and tell this story; is that correct?

3 A Until the court time?

4 Q At the court time. You didn't want to tell
5 anybody before that, even though you say that this
6 son of yours that you love, you had evidence -- you
7 knew he was with you that night and you say you
8 didn't go and tell anybody about that with --
9 anybody with law enforcement anyway?

10 A I talked with the FBI man, but that was just a
11 waste of time.

12 Q Not about this story, did you, sir?

13 A Well, nobody asked me.

14 Q Nobody asked you. And you said that you were
15 waiting for the police to come back?

16 A Right.

17 Q And they did talk to your wife on October 13th;
18 is that right?

19 A Right, as far as I know.

20 Q And you talked with your wife about your
21 testimony after that between October 13th and this
22 trial, didn't you?

23 A Right.

24 Q So between October 13th and this trial, the
25 first time, is when y'all got your story's straight

1 about the alibi; isn't that true?

2 **A** Well, we sat down and began to process to see
3 where everybody was at. You think -- you don't
4 just -- you don't have a computer mind, you know. I
5 don't.

6 **MR. LUPTON:** Beg the Court's indulgence.

7 (Pause.)

8 **MR. LUPTON:** Thank you, Your Honor. Nothing
9 further.

10 REDIRECT EXAMINATION

11 BY MR. ANDREWS:

12 **Q** Mr. Cooper, do you ever remember telling your
13 son, Tony's, lawyers about the fact that he was at
14 your home on the night of October 5th?

15 **A** I talked with the lawyers now.

16 **Q** You told them long before the trial, didn't
17 you?

18 **A** Oh, yeah. I talked with them many times.

19 **Q** Now, in terms of the pond, was your family the
20 only family that used that pond that used to be over
21 near your house?

22 **A** No, there's different people be down there
23 fishing and, you know, different --

24 **Q** Was that pond commonly used by the people who
25 lived in that area within several miles of it?

1 **A** I never did see a crowd of people down there
2 really. There used to be -- before the house burned
3 down, there used to be an old fellow that stayed in
4 there. When the house burned down then, I didn't
5 really go down there, but a few times while he lived
6 there, but after the house was---after he got out, ---
7 there wasn't nobody down there, that's when we
8 started going swimming-down there.

9 **Q** And you saw other people there, too?

10 **A** Yes, sir.

11 **MR. ANDREWS:** Thank you. No further questions.

12 RECROSS-EXAMINATION

13 BY MR. LUPTON:

14 **Q** You and your wife talked about your story,
15 about your son being with you that night?

16 **A** Oh, yes.

17 **MR. ANDREWS:** Your Honor, objection. This
18 isn't a follow up on redirect.

19 **THE COURT:** I'll give him a little leeway. You
20 can follow up if necessary. Go ahead.

21 BY MR. LUPTON:

22 **Q** And y'all told that story to the lawyers; is
23 that true?

24 **A** (No response.)

25 **Q** That was your testimony?

1 A To the court. Are you talking about the court?

2 Q I'm talking about prior to the first
3 proceeding, you say that you and your wife, after
4 she talked with the police on October 13th, 1989,
5 that y'all got together about this alibi and y'all
6 told the lawyers; is that true?

7 A Well, really I talked with the police, but they
8 didn't ask me no kind of questions.

9 Q And you didn't --

~~10 A I just told them that -- told them he was~~
11 innocent, but like I say --

12 Q You never told them -- you never thought it
13 important to tell the police that he was with you
14 that night?

15 A I didn't try to tell them. They asked me and
16 it wasn't court time. And like I say, I had
17 business with -- my wife was sick and she had
18 cancer. And I got sense enough, I've sat in several
19 juries myself and I know there's no use in running
20 your mouth until court time. It's a general
21 process, you think about where you're at and what
22 happened and all that before you go anywhere.

23 Q You got to get your story straight; is that
24 right?

25 A You got to see where you're at. You've got to

1 remember where you were at. That's general process
2 to sit down and think about what you're going to do.

3 Q But you never told the police?

4 A They didn't come back. They weren't
5 interested. They had their man and -- whether he
6 was guilty or innocent.

7 Q You talked with two --

8 A It's a general process they do.

9 Q You talked to two different police officers,
10 but you--

11 A They didn't come back.

12 MR. LUPTON: Nothing further, Your Honor.

13 MR. ANDREWS: No further questions.

14 THE COURT: You may step down, sir.

15 MR. BRUCK: It will take about two minutes to
16 set up for the next witness. It will be our final
17 witness.

18 THE COURT: All right. I'll send the jury out.

19 Ladies and gentlemen, I'll send you to the jury
20 room. Do not discuss this case in any way. Thank
21 you very much.

22 (The jury retires to the jury room.)

23 (Brief Recess.)

24 (Court's Exhibit Number 11, stipulation,
25 marked for identification purposes.)

1 **THE COURT:** Are y'all ready?

2 **MR. BRUCK:** Yes, sir.

3 **MR. BELL:** The State's ready.

4 (The jury returns to the courtroom.)

5 **THE COURT:** All right. Ladies and gentlemen,

6 we're ready to proceed.

7 Go ahead.

8 **MR. BRUCK:** Call Tony Cooper.

9 GENE TONY COOPER, JR.,

10 having been duly sworn, testified as follows:

11 **THE CLERK:** Have a seat up there and state your

12 name loud and clear and speak up, please.

13 **THE WITNESS:** Gene Tony Cooper, Junior.

14 DIRECT EXAMINATION

15 BY MR. BRUCK:

16 **Q** Tony, did you conspire to kill Kimberly Quinn?

17 **A** No, sir.

18 **Q** Did you conspire to rob Kimberly Quinn?

19 **A** No, sir.

20 **Q** Did you rob Kim Quinn?

21 **A** No, sir.

22 **Q** Did you kidnap her?

23 **A** No, sir.

24 **Q** And did you kill her?

25 **A** No, sir.

1 Q All right. Let's back up. Where were you
2 born, Tony?

3 A Columbia, Baptist hospital.

4 Q And your dad who just testified is Gene Tony
5 Cooper, Senior?

6 A Yes, sir.

7 Q Who is your mother?

8 A Bessie Mae Cooper.

9 Q And she died in 1992?

10 A November the 1st, '92.

11 Q Where did you grow up?

12 A In Cayce.

13 Q And on September the 16th of 1977, did you
14 plead guilty to the offenses of housebreaking and
15 grand larceny in Lexington County and received a
16 sentence of 15 years?

17 A Yes, sir.

18 Q All right. And you went to the South Carolina
19 Department of Corrections?

20 A Yes, sir.

21 Q Tony, did there come a time when you were
22 released and returned to Lexington County?

23 A Yes, sir.

24 Q And where did you initially go to live when you
25 came -- when you came back to Lexington?

1 A My father and mother out in South Congaree.

2 Q Is that the same house that he just told us
3 about?

4 A Yes, sir.

5 Q We'll get to where that is in a minute. Did
6 you meet or become reacquainted with a young lady?

7 A Yes, sir, Marsha.

8 Q Marsha, who has testified in this trial
9 previously?

10 A Yes, sir.

11 Q And did you get married?

12 A Yes, sir.

13 Q Now, what was the date of your marriage?

14 A June the 30th, '89.

15 Q Of 1989?

16 A Yes, sir.

17 Q And Marsha already had four children?

18 A Yes, sir.

19 Q When you married her?

20 A Yes, sir.

21 Q Two little twins and two older children?

22 A Yes, sir.

23 Q From a prior marriage?

24 A Yes, sir.

25 Q Okay. Tony, I want to ask you at the time that

1 you were married to Marsha on June 30th, 1989, how
2 did you keep your hair?

3 **A** I kept it cut short.

4 **Q** Cut short?

5 **A** Around the ears.

6 **Q** I'm going to show you a wedding picture and ask
7 if that accurately reflects the way you kept your
8 hair on June the 30th, 1989?

9 **A** Yes. Most of the time, it was shorter than
10 that, but it was short.

11 **Q** After June 30th, did you let your hair grow
12 out?

13 **A** No, sir, I kept it short.

14 **Q** You kept it short?

15 **A** Yes, sir.

16 **Q** Was it ever longer than that or any time
17 between June of 1989 and October the 5th of 1989?

18 **A** No, sir, it was kept short.

19 **Q** It was kept short, all right. Does this -- is
20 this picture from around the same time?

21 **A** Yes, sir. That's about September -- August or
22 September. It was kept short.

23 **Q** And that reflects how you had your hair in
24 October as well?

25 **A** Yes, sir.

1 Q Beginning of October?

2 A Yes, sir, short just like that.

3 Q At any time during this period, did you ever
4 have shoulder length hair?

5 A No, sir.

6 Q Now, I notice that that picture and the one we
7 just saw, that's Defendant's 5th and now we're

8 looking at Defendant's 4th -- Defendant's 4, show

9 you with facial hair. And for the record, would you
10 tell us what facial hair you have, you're wearing at
11 that time?

12 A I had a mustache and a goatee.

13 Q And a goatee?

14 A Yes, sir, all that's right in there.

15 Q You don't have a goatee any longer, but you did
16 then?

17 A Yes, sir.

18 Q Now, you're saying this picture was taken in
19 September of 1989; is that right?

20 A Yes, sir, somewhere right in there.

21 Q With the twins?

22 A Yes, sir, Glen and Paul.

23 Q And between the time when this picture was
24 taken and October the 5th of 1989, did you shave
25 your goatee off?

1 **A** No, sir. It was always there.

2 **Q** Okay.

3 **A** All '89.

4 **Q** All right. Now, Tony, do you have a fairly
5 noticeable physical characteristic, something that
6 people notice about you when they watch you?

7 **A** My eyes blink a lot.

8 **Q** Your eyes blink a lot?

9 **A** Yes, sir.

10 **Q** And that's something that people have commented
11 on throughout your life?

12 **A** Yes.

13 **Q** Is that something which began recently? How
14 long have you had that?

15 **A** All my life ever since I can remember.

16 **Q** All your life. As a child?

17 **A** Yes, sir.

18 **Q** You used to have that tick where you'd blink
19 and blink?

20 **A** Always.

21 **Q** Has there ever been a time when you didn't have
22 that?

23 **A** Not that I can remember.

24 **Q** Has it always been noticeable with you?

25 **A** They always ask me what's wrong with my eyes.

1 Q And do you know?

2 A I don't know. I can see that's all I remember.

3 Q In September, in the beginning of October 1989,
4 were you working?

5 A Uh...

6 Q I'm sorry?

7 A Run that by me again now.

8 Q In late September -- well, during the month of
9 August, September and beginning of October 1989,
10 were you doing any work?

11 A Yes, sir.

12 Q What kind of work did you do?

13 A Repair homes, repair apartment complexes, stuff
14 like that.

15 Q And was Marsha working, your wife?

16 A Yes, sir, she worked.

17 Q And who did she work for?

18 A She worked for -- she worked for a couple of
19 people. She worked for Ryan Shealy.

20 Q Senator Shealy?

21 A Yes.

22 Q As what?

23 A As a housekeeper. She worked as a nurse at
24 night sometimes.

25 Q Okay. What kind of a nurse?

1 **A** She took care of elderly people or someone
2 who's sick or something like that.

3 **Q** Now, did you have an employer or were you
4 working for yourself during this time?

5 **A** I worked for myself.

6 **Q** Okay. And I believe there may have been some
7 testimony already that Hurricane Hugo had come
8 through just, what, the 21st of September that year?

9 **A** Yes, sir.

10 **Q** Did that mean there was a lot of work for
11 independent contractors, people working around
12 houses?

13 **A** There was a lot of small damage all around.

14 **Q** So you were keeping pretty busy?

15 **A** Yes, sir.

16 **Q** Now, in the Fall of 1989, where were you
17 living, you and Marsha?

18 **A** In Pelion, South Carolina.

19 **Q** And whose property -- what kind of home did you
20 live in?

21 **A** A trailer house.

22 **Q** And whose property was that trailer house on?

23 **A** Ms. Burroughs, Marsha's mother's.

24 **Q** And her full name was what?

25 **A** Elsie Burroughs.

1 Q Lessie Burroughs?

2 A Lessie Burroughs.

3 Q Were there other trailers besides yours on the
4 property?

5 A Yes, sir. There was Marsha's mother's. There
6 was another trailer right here, Stanley lived in
7 that, then our trailer.

8 Q So there were three trailers fairly close
9 together?

10 A Yes, sir.

11 Q One of them belonged to Lessie Burroughs,
12 Marsha's mother?

13 A She owned them all.

14 Q Excuse me. Thank you. She owned them all and
15 she lived in one of them?

16 A Yes, sir.

17 Q And you and your family lived in another one?

18 A Yes, sir.

19 Q And then there was a man named Stanley?

20 A Yes, sir.

21 Q Who rented the third one?

22 A Yes, sir.

23 Q And all of these trailers were how far from
24 each other?

25 A Our trailer was right here. Stanley's was

1 right here. And then Marsha's mother was right up
2 here (indicating). So Stanley's was in between.

3 Q So it sort of made an L shape?

4 A Yes, sir, that's what it was.

5 Q It doesn't have to be exact, but if you could
6 estimate, were these trailers within a mile of each
~~7~~ other? Were they 50 feet of each other? Were they
8 close or far apart?

9 A Stanley's was about half way of this courtroom
10 from my trailer, from here to about that set of
11 posts back there.

12 Q So are you saying, just to estimate, roughly
13 maybe 60 feet?

14 A That's where his front door was at, but his
15 actual, you know, like our trailer was right here,
16 but from the corner of this trailer to the corner of
17 his trailer was about 15, 20 feet.

18 Q Fifteen or 20 feet, close together?

19 A Yeah.

20 Q Okay. And Ms. Burroughs, Marsha's mom, was
21 just a little bit further along?

22 A Yes, sir.

23 Q Now, how big a -- how big a property overall
24 did Ms. Burroughs have? Was it just big enough to
25 hold those three trailers or what?

1 **A** No, sir, probably 50, 75 or 100 acres.

2 **Q** 50 or 100 acres?

3 **A** Yes, sir.

4 **Q** You don't know exactly?

5 **A** I never did ask what they owned.

6 **Q** So this was a large parcel of land?

7 **A** Yes, sir.

8 **Q** Now, could you see every part of that? Was it
9 all open fields?

~~10 **A** No, sir. A lot of it was woods, you know, they
11 had special fields, but most of it I saw was bushes
12 and woods.~~

13 **Q** So there's been testimony that somebody had
14 buried a shotgun on that property, would you have
15 seen that being done necessarily?

16 **A** There's too much -- no, sir, I wouldn't have
17 saw.

18 **Q** Did you ever see anybody bury a shotgun on that
19 property, Bo Sutherland or anyone else?

20 **A** No, sir.

21 **Q** It's a big area, a big wooded area, is that
22 what you're saying?

23 **A** I don't even know how much land she owns, but I
24 know there's a lot of woods out there.

25 **Q** All right. Now, did you have phone service at

1 your trailer, your's and Marsha's?

2 A Yes, sir.

3 Q How many phones were there at that trailer,
4 extensions, total?

5 A Three.

6 Q Three phones?

7 A Three.

8 Q All on one number?

9 A Yes, sir.

10 Q Okay. And where were those phones?

11 A --- One was in the kitchen, one was -- the kids had
12 one back there in their rooms and there was one
13 going in the backyard. We had one set out in the
14 backyard.

15 Q Now, the kids, there are two little twins, but
16 then there were two teenagers at this time?

17 A Yes.

18 Q And those were the ones that had a phone in
19 their room?

20 A Yes, sir.

21 Q And tell me about the third phone?

22 A The third phone it was out in the backyard, the
23 long extension running from the house going outside.

24 Q I'm sorry, did you say a long extension?

25 A You know, a long line, it set in the backyard.

1 Q So you had a long phone cord, an extension
2 cord?

3 A Yes, sir.

4 Q That run out the window into the backyard?

5 A It ran out the door.

6 Q Okay. Now, why did you have a phone in your
7 backyard?

8 A Because a lot of us stayed out in the backyard,
9 but you got a lot of other -- Stanley used the phone

10 sometimes. You had other people like use the phone,
11 too, that's in Pelion. It's a small community. You
12 know, if somebody was over at Stanley's, use it,
13 somebody was over at his house, they might use it.
14 If somebody come from the beer joint to Stanley's
15 house, they might use it. You just kept it in the
16 backyard, that way they'd be outside.

17 Q You referred to a beer joint, where was that?

18 A It was right across the street. It was down
19 the street, but it was across the street. If you
20 walked up at the top of the driveway, you could see
21 it from the top of the driveway of our house.

22 Q Can you give us just a rough estimate of how
23 far it was from the house? Walking distance?

24 A Oh, yeah.

25 Q Okay. So are you saying that the phone that

1 you kept in the yard was sort of available for
2 friends and people in this little rural neighborhood
3 to use when they needed it?

4 **A** Yes, sir.

5 **Q** Stanley, the man that rented the third trailer
6 from your mother-in-law, did he have a phone in his
7 trailer?

8 **A** No, sir.

9 **Q** Now, besides Stanley, can you list some of the
10 other people that used that phone from time to time?

11 **A** Well, Melvin, Bo.

12 **Q** Okay. Slow down. Who's Melvin? What's
13 Melvin's last name?

14 **A** Melvin Burroughs, that's Marsha's brother.

15 **Q** Marsha's brother?

16 **A** Yes, sir.

17 **Q** All right. Was he friends with Bo Sutherland?

18 **A** Yes, sir.

19 **Q** Did they do things together?

20 **A** Yes, sir.

21 **Q** What did they mostly do together?

22 **A** Well, worked together and they went out
23 drinking together. You know, they always went to
24 the beer joint together. They went out partying.

25 **Q** And while we're talking about Bo, during this

1 period of time, you've told the jury about the work
2 you did. Did Bo help you in your work to some
3 degree?

4 **A** Yes, sir. We all worked on apartment complexes
5 or houses and stuff like that together.

6 **Q** Okay. All right, so you said Melvin Burroughs
7 is one of the people that would use this phone when
8 he was over in the area and needed to make a call.
9 Who else?

10 **A** Henry Martin, a guy named Lee and, you know,
11 just people I don't even know.

12 **Q** All right. So y'all didn't mind people coming
13 and using that phone that was out in the yard?

14 **A** That was basically about the only phone around,
15 you know, that it was, you know, I don't know, it
16 was like that when I got there. I just never said
17 nothing about it.

18 **Q** This was a custom which Marsha had thought was
19 okay?

20 **A** Melvin, you know, Melvin and Morris they had
21 their own lifestyle before I got there.

22 **Q** So Melvin would allow his friends to use the
23 phone?

24 **A** Yes, sir.

25 **Q** Melvin, Marsha's brother?

1 **A** Yes, sir.

2 **Q** What about Bo Sutherland? Did he have the
3 ability to use that phone?

4 **A** Anytime he wanted to.

5 **Q** And did he?

6 **A** Yes, sir.

7 **Q** Would he ask your permission?

8 **A** No, sir. He would be with Melvin and whatever,
9 you know. It was there.

10 **Q** Now, to use that phone, did somebody have to
11 knock on your front door of the trailer and ask to
12 come in the house in order to get to that phone?

13 **A** No, sir.

14 **Q** How would you get to that phone if you were in
15 the area and wanted to make a call?

16 **A** Just walk in the backyard.

17 **Q** Walk in the backyard. Would you take the phone
18 in when it rained?

19 **A** Well, if we seen it was going to be bad
20 weather, you know, we would do that, but if it
21 wasn't bad weather, we let it sat out there.

22 **Q** All right. Now, we've talked about the phone.
23 What about the car? Was there a time in which --
24 well, let me show you this. Do you recognize that
25 car?

1 **A** Yes, sir, that's my Cougar.

2 **Q** Okay. And during the period of time that we're
3 talking about, how many cars did you own all total?

4 **A** I owned that Cougar. I owned, I think, about a
5 '73 pick-up truck, that green truck, and I owned a
6 Mach 1, about a '73 Mach 1.

7 **Q** Mach 1?

8 **A** Yeah, a Mustang.

9 **Q** You took good care of it -- did you take good
10 care of your vehicles?

11 **A** Oh, yes, sir.

12 **Q** Who was using that truck during September and
13 the beginning of October of 1989?

14 **A** Are you talking about that car?

15 **Q** Excuse me. Yes, I'm talking about the Cougar.

16 **A** Bo Sutherland.

17 **Q** All the time?

18 **A** Yeah. Him and Melvin, you know, cruised around
19 in it.

20 **Q** Why did you let Bo -- it belonged to you, why
21 did Bo have it?

22 **A** Well, Bo didn't have no car, Melvin didn't have
23 no license and, you know, when they'd come to work
24 or whatever, after they'd got off from work, they
25 would go out, go at the bar drinking, so I just let

1 Bo, you know, Bo was going to buy the car.

2 Q Bo was going to buy the car you said?

3 A Yes, sir.

4 Q Okay. So when he got enough money, he was
5 going to pay you for it?

6 A Yes, sir.

7 Q And in the meantime --

8 A I just -- I let him get it, but he was supposed
9 to buy the car.

10 Q Okay. Now, there's been some testimony, a
11 great deal of testimony, about an ax that belonged
12 to your mother-in-law, Lessie Burroughs. Do you
13 know what ax we're talking about?

14 A Yeah, the ax my mother-in-law owned, that was
15 her ax.

16 Q I'm showing you State's Exhibit 22. As far as
17 you know, is this the ax your mother-in-law owned?

18 A That's my mother-in-law's ax.

19 Q Okay. Where was this ax in the last few weeks
20 of September, in the first week of October, if you
21 know, 1989?

22 A I remember Bo come got the ax and took it up to
23 Donny Shumpert's.

24 Q Now, let me back up. Did you have that ax in
25 your truck at various times?

1 **A** That and about ten other tools.

2 **Q** Okay. Your truck was full of tools?

3 **A** Yes, sir.

4 **Q** And that ax was one of the tools you had?

5 **A** You know, Melvin controlled his mother's tools,
6 but like I said, they had all put them together, you
7 know, so it's been in my truck.

8 **Q** Okay. And did there come a time when you gave
9 that ax to anybody or when somebody took possession
10 of that ax?

11 **A** Bo had come down and --

12 **Q** Slow down now. What?

13 **A** Bo had borrowed the ax.

14 **Q** Bo borrowed the ax. Do you remember about
15 when?

16 **A** After Hurricane Hugo.

17 **Q** Which was around the 21st of September or
18 something like that?

19 **A** No. It was about -- it was the last weekend of
20 September, I think, you know, you know, somewhere
21 right in there. I really can't keep up with the
22 date, but I remember he borrowed the ax and they was
23 doing some work up at Donnie Shumpert's house.

24 **Q** And Bo borrowed the ax?

25 **A** Yes, sir.

1 Q And did you see that ax another time?

2 A I called him and told him to bring the ax back,
3 I had -- Marsha wanted a tree moved out of the yard.

4 Q Marsha wanted a tree moved out of the yard at
5 y'all's house?

6 A Yes, sir.

7 Q And why was the tree there? What had happened?

8 A Hurricane Hugo had damaged it.

9 Q Okay. And so what happened after you made that

10 phone call?

11 A Bo brought the ax back and I removed the tree.

12 And then after I got through removing the tree, he
13 took the ax back up to Donnie Shumpert's.

14 Q All the same day?

15 A Yes, sir.

16 Q And when was the next time you saw that ax
17 prior to -- well, in October?

18 A I never saw it again.

19 Q You never saw it again?

20 A No.

21 Q The last time you saw that ax, Bo was driving
22 away with it?

23 A He took it -- he said he took it back up to
24 Donnie Shumpert's. They was up there doing some
25 work there.

1 Q That was all right with you at the time?

2 A Melvin and them didn't say nothing. I wasn't
3 going to say nothing.

4 Q You say Melvin wasn't going to say nothing.
5 That was Melvin's mother's ax, right?

6 A Yeah.

7 Q So it wasn't your place to say, Don't take the
8 ax? _____

9 A ~~I didn't say nothing.~~

10 Q All right. Tony, have you ever met Kim Quinn?

11 A Yes, sir.

12 Q Tell us about it.

13 A Well, I saw her at -- I think I saw her come in
14 the prison before to see her boyfriend. And I saw
15 her at Q and Q's a couple of times up on Knox Abbott
16 Drive.

17 Q After you got out of prison, you saw her at the
18 -- where?

19 A Q and Q's up on Knox Abbott Drive.

20 Q And did you ever have occasion -- well, just
21 tell us about that. How many times did you see her?
22 Did you get to know her well or what was --

23 A I probably saw her about a half a dozen times.
24 We just spoke and talked. You know, she was --
25 that's about it.

1 Q And you recognized her from seeing her visiting
2 her boyfriend in prison?

3 A Yes, sir.

4 Q Okay. Did you ever have occasion to visit her
5 in her home, any home that she lived in?

6 A Yes, sir.

7 Q How many times?

8 A One time.

9 Q And tell us about that.

10 A When she lived on North Lane Drive.

11 Q On North Lane Drive?

12 A Yeah, off of Frank Street over in Cayce.

13 Q Off of Frank Street. Okay, so that's not the
14 house she was living in on the night of her death?

15 A No, sir.

16 Q Okay. Tell us what the circumstances were and
17 why you went over to the house and who did you go
18 with?

19 A I had -- I had saw and talked with her up at Q
20 and Q's and she had wanted to ask me about borrowing
21 \$30.

22 Q She wanted to borrow \$30?

23 A Yes, sir. I think I had talked to her on the
24 telephone, but, you know, I told her I'd stop by her
25 house, but I had my girlfriend to go with me.

1 Q And that was who?

2 A Marsha.

3 Q So Marsha and you stopped by the house?

4 A Over on North Lane Drive.

5 Q You lent her the \$30?

6 A Yes, sir.

7 Q Did she pay it back?

8 A Yes, sir.

9 Q And she paid it back where?

10 A At Q and Q's.

11 Q Okay. So you never went to her house again?

12 A No, sir.

13 Q Have you ever been to her house on Platt
14 Springs Road?

15 A No, sir.

16 Q Ever?

17 A No, sir.

18 Q Did you know where it was?

19 A No, sir.

20 Q All right. Tony, I'd like to have you tell the
21 jury about the events of the week of October 2nd,
22 October 3rd, 4th and 5th of 1989. October 2nd was a
23 Monday, if I'm not mistaken, what did you do that
24 day?

25 A I went over to 2828 James Street over to Ms.

1 McCoy's house and I was working on her bathroom.

2 Q Ms. McCoy?

3 A Yes, sir.

4 Q Her first name is?

5 A Barbara Ann McCoy.

6 Q And she was someone who needed some work done?

7 A Yes, sir.

8 Q And you did that for her?

9 A Yes, sir.

10 Q Working on her what?

11 A Her bathroom.

12 Q Did you go back there on October 3rd?

13 A I went back there that morning, but she wasn't
14 there, so I left a note on her door and my mother's
15 phone number and told her I'd be at my house because
16 Ms. McCoy worked at night. So when she got home,
17 she called me over -- I was over at my mama's house.

18 Q So you went over to your mother's house?

19 A Yes, sir.

20 Q Now, your mother's house, your father's house,

21 is between your house down in -- near Pelion and

22 Cayce, right?

23 A Yes.

24 Q So rather than go all the way home, you went to
25 your parents' house?

1 **A** Yes, sir. 2828 James Street is over there off
2 of Frank Street in Cayce.

3 **Q** All right. Then -- was Bo with you -- was Bo
4 working with you on October 2nd when you did work at
5 Ms. McCoy's?

6 **A** On --

7 **Q** Monday?

8 **A** Yes, sir, on that --

9 **Q** What about --

10 **A** -- on Monday, he was there.

11 **Q** He was working there?

12 **A** Yes, sir.

13 **Q** What about October 3rd?

14 **A** No, sir. He had to go to Georgia.

15 **Q** So you were by yourself?

16 **A** Yes, sir.

17 **Q** All right. Did there come a time when you
18 borrowed an air compressor from the Shumperts?

19 **A** Yes, sir.

20 **Q** And tell us about that?

21 **A** That was on Tuesday.

22 **Q** That was Tuesday, October 3rd?

23 **A** Yes, sir.

24 **Q** All right. And you said Bo had gone to
25 Georgia. Did you borrow the air compressor by

1 yourself?

2 **A** Yes, sir.

3 **Q** You picked it up in what vehicle?

4 **A** The truck.

5 **Q** Okay. And when did you bring that -- did you
6 bring the air compressor back?

7 **A** Yes. I brought it back that evening.

8 **Q** That same evening?

9 **A** Yes, sir.

10 **Q** Were you by yourself or were you with Bo?

11 **A** I was by myself.

12 **Q** All right. When you brought that back, did --
13 was anybody firing a shotgun?

14 **A** No, sir.

15 **Q** All right. Bo wasn't with you?

16 **A** He wasn't with me.

17 **Q** Did Bo ever fire a shotgun in your presence and
18 say to anyone, Look at my new toy?

19 **A** No, sir.

20 **Q** And if he did that, it wasn't with you?

21 **A** It wasn't me -- no, sir.

22 **Q** Are you sure?

23 **A** I'm absolutely sure.

24 **Q** Tony, did you ever talk to Red Farmer that week
25 on the telephone, Phillip Gary Farmer?

1 A Not that week I didn't.

2 Q Had you ever spoken to him on the telephone
3 before?

4 A Yes, sir, during that year, a couple of times.

5 Q And why had you done that?

6 A I talked to him about my niece, Brenda.

7 Q And what did you talk to him about Brenda?

8 A I wanted to make sure that he wasn't going to
9 — play none of his games on her that, you know, I know
10 that men play on women who they get to come see them
11 in prison. And I talked to him that he wasn't --
12 the game was off limit with Brenda.

13 Q Can you explain what kind of games you were
14 concerned about that he played with women who came
15 to visit?

16 A With Red, he wanted somebody to be his mule.

17 Q His mule?

18 A Yeah.

19 Q Can you tell the ladies and gentlemen of the
20 jury what a mule is?

21 A To bring drugs into him and stuff like that
22 there.

23 Q That was his business in the prison?

24 A That was his game.

25 Q That was his game. And your niece, Brenda,

1 started visiting him?

2 A Yes, sir.

3 Q And that's what you were concerned about?

4 A Yes, sir.

5 Q During the week we're talking about now, the
6 week of October 2nd, 3rd, 4th, 5th of 1989, did you
7 talk to Red Farmer on the telephone?

8 A (No response.)

9 Q Did you talk to Red Farmer that week?

10 A No, sir.

11 Q Specifically at -- let me ask you this. You
12 said that Bo Sutherland was around on -- was around
13 the trailer a lot, your trailer, yours and Marsha's?

14 A And Stanley's.

15 Q And Stanley's trailer is right next door to
16 you?

17 A Yes, sir.

18 Q Was Bo Sutherland around that week?

19 A Yes, sir.

20 Q You said he went to Georgia on the 3rd. Did he
21 come back from Georgia that day?

22 A I didn't see him. I saw -- I didn't see him on
23 the 3rd.

24 Q Okay. That was a Tuesday. Now, let's go to
25 Wednesday. Did you see him on Wednesday?

1 A Yes, I saw him on Wednesday.

2 Q Okay. Where did you see him?

3 A At Ms. McCoy's.

4 Q So y'all were back to working?

5 A Yes, sir.

6 Q And he worked with you that day?

7 A Yes, sir.

8 Q Then in the evening, did there come a time when
9 Bo came over to your house?

10 A Yes, sir. We finished that job at Ms. McCoy's
11 house on Wednesday. And after we worked, he came on
12 down, he was down in Pelion with Melvin and Henry
13 and all the guys.

14 Q Henry and Melvin and Robert Sutherland, Bo
15 Sutherland, were all hanging around together that
16 Wednesday night?

17 A They was all drinking.

18 Q They were drinking where?

19 A Down there in Pelion.

20 Q What do you mean in Pelion? Where in Pelion?

21 A At the beer joint that's right there at
22 Stanley's yard.

23 Q Right near y'all's house?

24 A Yes, sir.

25 Q And during the course of that evening, did Bo

1 Sutherland come by y'all's house?

2 A Yes, sir. He was on the property all evening
3 long. He wasn't in our yard, but he was there.

4 Q Okay. Do you know whether Red Farmer or anyone
5 else from CCI placed a phone call to your house that
6 night at 7:34 p.m.?

7 A I don't know if he did or not.

8 Q Did you answer such a call?

9 A No, sir.

10 Q From CCI?

11 A I didn't answer the phone.

12 Q You're saying that Bo had been on the premises
13 most of that evening?

14 A Yes, sir.

15 Q Could Bo have taken that call if there was one?

16 A Yes, sir, easy. I mean, the phone was right
17 there, anybody could -- ain't no telling who might.
18 -- anybody could pick up the phone and answer the
19 phone.

20 Q All right. And if somebody had picked up the
21 phone and other than Bo, a member of your family,
22 one of the kids, anybody, and the caller had asked
23 for Bo, what would have happened?

24 A They would just see if Bo was out in the yard.

25 Q Out in the yard?

1 **A** See who all was over at Stanley's.

2 **Q** Now, where were you that evening? Were you in
3 the house the whole evening or what were you doing?

4 **A** Me and Marsha had been building an addition
5 onto the trailer house, so I was on the other end of
6 the -- it was at the other end of the trailer house,
7 the backyard -- the backyard was back here. Like
8 this was the trailer house (indicating), the
9 backyard was back here, but the addition was over
10 here on this end and I parked my car and my trucks
11 over here. So they would be way over here and I
12 would be over here.

13 **Q** If a -- would you have heard any phone call
14 being made to your house necessarily?

15 **A** I might have heard the phone ring or something,
16 but other than that.

17 **Q** So if someone else had answered it and then
18 called the person that it was for, would you have
19 known or not?

20 **A** I would have known. I might have heard the
21 phone ring, but I...

22 **Q** Do you remember that happening at 7:34 that
23 night?

24 **A** You know, I can't sit here and say I remember
25 it or I heard it, I can't say that.

1 Q Just an ordinary night with a bunch of people
2 hanging around?

3 A Just a regular night.

4 Q Did you think you were ever going to have this
5 kind of reason to remember that night?

6 A No, sir.

7 Q And every time the phone rang and every little
8 detail about it?

9 A People had been talking on that phone all year
10 long, so it was just routine.

11 Q All right. Did you place a call that night at
12 about 9:30 to Kimberly Quinn's house from your own
13 phone?

14 A No, sir.

15 Q Are you sure?

16 A Absolutely.

17 Q Now, at about 9:30, was Bo Sutherland still
18 around in the area?

19 A They were out in the yard all, you know, all
20 evening long.

21 Q Was the phone still out in the yard?

22 A Yes, sir.

23 Q Now, did you know that a call to West Columbia,
24 Platt Springs Road, say, from your house, you knew
25 that was a long distance call, didn't you?

1 A Oh, yes, sir.

2 Q That would show up on a phone bill?

3 A Yes, sir.

4 Q And there would be a permanent record made of
5 it?

6 A Yes, sir.

7 Q Now, if you had had some reason not for there
8 -- to make a call that wasn't going to show up on
9 the phone bill and go into the phone company
10 records, would you have to drive very far in towards
11 town?

12 A Down at the phone -- there's some -- a phone
13 bank down there where 106 runs into 302, that's
14 where the long distance line ended at.

15 Q So you could make a local call from there?

16 A Yes, sir.

17 Q And if you had wanted to call Kim Quinn, you
18 could have driven over there that night and done
19 that, right?

20 A Yes, sir.

21 Q And there would have been no record?

22 A You're right. That's correct.

23 Q Okay. You didn't call her that night from any
24 phone; is that right?

25 A No, sir, I didn't call her at all.

1 Q Do you know who did?

2 A No, sir.

3 Q All right. What did you do -- where did you
4 spend the night? Where did you go to sleep that
5 night? _____

6 A When?

7 Q On Wednesday night, October --

8 A Right there at the house in Pelion with Marsha.

9 Q Okay. You went to bed in your own bed that
10 night with Marsha?

11 A Yes, sir.

12 Q She wasn't working that night?

13 A She wasn't working that night.

14 Q All right. And what happened the next morning,
15 the first thing you remember from the next day?
16 We're talking about Thursday morning, October the
17 5th?

18 A Well, she didn't have to get up and go to work
19 early that morning and I had finished a job on
20 Wednesday, so we were both there at the house. And
21 we just, you know, being around the house, you know,
22 that morning.

23 Q Did you pick Bo Sutherland up in your truck all
24 the way up the road at Bo's house at 8:30 that
25 morning?

1 **A** No, sir.

2 **Q** Are you sure?

3 **A** Absolutely.

4 **Q** All right. Do you know what you did a couple

5 minutes after 9:00 that day?

6 **A** I made a phone call from my house to the

7 schoolhouse down at the prison about -- it was after

8 nine o'clock.

9 **Q** You called a state number at the prison after

10 nine o'clock that day from your house?

11 **A** Yes, sir.

12 **Q** And why did you make that call and who were you

13 trying to talk to?

14 **A** I called -- I was trying to get in touch with

15 -- I've got a brother-in-law down there.

16 **Q** You have a brother-in-law in there?

17 **A** And I was trying to get in touch with a guy

18 named Daniel Tedder. His name is Tree.

19 **Q** Okay. Now, your brother-in-law is -- your

20 sister Della?

21 **A** Yeah.

22 **Q** Was married to a man who was in CCI, the state

23 penitentiary?

24 **A** He was at that time.

25 **Q** At that time. His name was Richard...

1 **A** Snipes.

2 **Q** Snipes. And then you also were calling to see
3 if you could talk to who?

4 **A** Tree, his name is Daniel Tedder.

5 **Q** A man named Daniel Tedder, T-E-D-D-E-R; is that
6 right?

7 **A** Something like that.

8 **Q** But everybody knew him as Tree, that was his
9 nickname?

10 **A** Yes, sir.

11 **Q** Why were you wanting to get in touch with Tree?
12 First of all, tell us who Tree was and what kind of
13 relationship you had with him?

14 **A** Tree was a young person who'd come into prison.
15 You know, he didn't have nobody. He was married to
16 an older woman.

17 **Q** He was younger than you?

18 **A** Oh, yes, sir. He was married to an older
19 woman. In fact, my daddy married them. But he was
20 a young person, you know. His birthday was on
21 September the 25th and I had been busy working and I
22 had been asked him, you know, what he wanted me to
23 do for him for his birthday and that's why I called
24 down there.

25 **Q** And why were you staying in touch with Tree

1 after you got out of prison?

2 A Well, I knowed (sic) his wife. In fact, his
3 wife's son at one time, you know, was trying to --
4 was really trying to date Brenda, but they
5 eventually got married, but now they're divorced.

6 Q So after you were released, you stayed in touch
7 with Tree?

8 A Yes, sir.

9 Q And that day you were calling to see if you
10 could talk with him?

11 A Yes, sir.

12 Q Was he there?

13 A No, sir.

14 Q Who did you talk to, if you remember?

15 A I talked to one of the staff employees,
16 somebody who worked at the prison.

17 Q Now, the prosecutor, I feel sure, is going to
18 come up after me and say, Wasn't that really --
19 weren't you really trying to call Red Farmer at the
20 schoolhouse?

21 A No, sir.

22 Q You were not?

23 A I wasn't trying to call Phillip Farmer. Daniel
24 Tedder worked down at the schoolhouse.

25 Q He did?

1 A Yeah.

2 Q So you thought he might be there?

3 A Yes, sir.

4 Q But he wasn't there?

5 A No, sir.

6 Q So you chatted for a few minutes with who; do
7 you recall?

8 A I don't -- I remember it was one of the
9 employees, but I --

10 Q One of the employees, you mean not one of the
11 inmates, but somebody who works -- a state employee?

12 A Yeah, a state employee.

13 Q Okay. And after that call, do you recall, I
14 mean the records will show it, but do you recall how
15 long that call was?

16 A I done forgot.

17 Q Does five minutes sound about right?

18 A Something like that.

19 Q Okay.

20 A It wasn't long because I didn't talk to nobody.

21 Q Right. And after that, what did you do that
22 day?

23 A Well, I don't know what time, but I eventually
24 left and went to my mother's house. It was on a
25 Thursday. I went to my mama's house to finish doing

1 the work that I had started doing on Tuesday.

2 Q And what work was that? What were you doing
3 for your mom?

4 A I was cleaning the yards up after Hurricane
5 Hugo and I had a load of trash I had to put in the
6 pick-up truck and take off.

7 Q And about what time did you arrive at your
8 mother's house?

9 A I would imagine somewhere around 10:00.

10 Q And tell us again what the mileage is roughly
11 from, we'll look at the map in a moment, but the
12 mileage from your house to your mother and father's
13 house?

14 A I don't know. It only takes about five or ten
15 minutes to ride down there, you know, something like
16 that.

17 Q Ten or 15?

18 A Yeah, something like that, ten or 15.

19 MR. BELL: Your Honor, I've been lenient, but
20 I'm going to object to leading.

21 THE COURT: All right. Adhere to that please,
22 counsel.

23 BY MR. BRUCK:

24 Q Well, we'll check the distance, but --

25 A It's been so long -- it's been so long since I

1 drove it till I done forgot it.

2 **Q** I understand. A pretty good ways?

3 **A** Yes, sir.

4 **Q** Now, how long did you work that morning before
5 you left your mother's house?

6 **A** I went down there and I loaded the truck up. I
7 had a bunch of old shingles that had gotten thrown
8 around the yard and stuff from that wind. I had

9 some tree limbs and just -- it's a bunch of trash
10 that I had to gather up from around the yard and I
11 had loaded the truck up.

12 **Q** And then where did you go with the truckload of
13 trash?

14 **A** I went down to -- all the way down to 106, they
15 had a bunch of big, heavy-duty trash cans down there
16 where the community takes all of their trash and
17 throws it down there, that's on down, not the first
18 extension not like you're going to Lexington, but
19 the second one like you're going to Gaston, Swansea.
20 I went down there and I unloaded the truck down
21 there.

22 **Q** And what did you do after you unloaded the
23 trash?

24 **A** I went back to my mother's house.

25 **Q** About what time do you think you got back to

1 your mother's house?

2 **A** A little after 12:00.

3 **Q** At any time during that morning, did you go and
4 sit outside Kim Quinn's house with Bo Sutherland in
5 the Cougar?

6 **A** No, sir.

7 **Q** Other than going to your mother's house from
8 —— your house and then unload the trash and back to
9 your mother's, did you go anywhere that -- during
10 that day?

11 **A** No, sir. That's -- that's one day right there
12 I specifically took care of my business around my
13 mother's house because I had been promising that I
14 was going to do it after Hurricane Hugo and that's
15 what I did that day.

16 **Q** Were you with anybody or were you by yourself?

17 **A** I was by myself at my mama's house.

18 **Q** So Bo Sutherland wasn't there?

19 **A** No, sir.

20 **Q** All right. After you returned to your mother's
21 house, how much longer did you work or what did you
22 do?

23 **A** I stayed there working on the camper, messing
24 around the camper that my dad had give me.

25 **Q** Camper?

1 **A** Yeah.

2 **Q** All right. Tell us a little bit about the
3 camper.

4 **A** It had a motor in it, you know. It was an RV.
5 It had a motor in it. You could drive it, you know.
6 It had an air condition in it. It was pretty nice.

7 **Q** And so you were working on that in the
8 afternoon?

9 **A** Yes. I was cleaning it out and everything.

10 **Q** Were you home when your dad came home from
11 work?

12 **A** Yes, sir.

13 **Q** I mean, were you at your mother's?

14 **A** I was down there at the camper.

15 **Q** So you saw him drive up?

16 **A** Yes, sir. I still see him going around that
17 curve.

18 **Q** And how long did you stay at your mother's
19 house that afternoon, October the 5th?

20 **A** I left, it was after five o'clock.

21 **Q** After five o'clock?

22 **A** Yes, sir.

23 **Q** And what did you do -- where did you go after
24 your left your mother's?

25 **A** I went back to Pelion because, you know, I knew

1 that Marsha had to work that night and I wanted to
2 get down there, you know, to see her before she
3 left.

4 Q This was -- Marsha had to work at her nursing
5 job?

6 A Yes, sir.

7 Q And where did Marsha work at this nursing job?

8 A At that time, she was working for -- she was
9 taking care of this elderly man over in -- past the
10 dam, on the other side of the dam, Lake Murray Dam.

11 Q In Irmo?

12 A Yes, sir.

13 Q Was that -- was she working at a hospital or a
14 nursing home or a private home?

15 A It was a private home.

16 Q So it was like home care?

17 A Yes, sir.

18 Q I see. And can you tell us what happened
19 between the time you got back and until Marsha left
20 for work?

21 A I got back, you know, I sat around -- I be
22 right there up under her watching her, just talking
23 to her because I know she's going to be gone, so,
24 you know, and then she left about 7:00, a little
25 after 7:00.

1 Q Did you remember seeing her leave?

2 A I was right there when she got in the car and
3 left.

4 Q And then what did you do that evening?

5 A After she left, I sit out there in the yard for
6 a little while, you know, with the truck and, you
7 know, like I say, we had -- the addition we was
8 building on to the trailer house, you know, I just
9 messed around out there and then, you know, I went
10 in the house, took a shower, cleaned up. There
11 wasn't nothing to do because she wasn't there.

12 Q Now, was it Marsha's habit to -- y'all had only
13 been married a few months?

14 A About a hundred days.

15 Q A hundred days. And was it her custom to take
16 the little boys over to her mother's house?

17 A Yeah. The little boys they -- and the teenage
18 girl, you know, they went up to their grandmother's
19 house. And the oldest, the teenage boy, he went
20 back and forth. He did what he wanted to do.

21 Q That was -- and so, of course, your
22 grandmother's house was a stone's throw?

23 A Yes.

24 Q And that's where they would spend the night?

25 A Yes, sir.

1 Q So you didn't have to baby-sit the little boys?

2 A Yes, sir. Well, I was -- I didn't know nothing
3 about taking care of kids. If they got sick or
4 something, I wasn't qualified to make no decision on
5 that.

6 Q So it was the custom that they would spend the
7 night with their grandmother?

8 A Yes, sir.

9 Q And you said the oldest boy's name was what?

10 A David.

11 Q David Burroughs?

12 A Yes, sir.

13 Q And he was back and forth?

14 A Yeah, he was back and forth.

15 Q What, if anything, occurred later on that
16 evening on October the 5th?

17 A I was going to call her about 11 o'clock and I
18 had decided to call her at quarter till. And when I
19 went to use the phone --

20 Q Call who?

21 A Marsha.

22 Q Why were you going to call Marsha?

23 A I don't know. I just always called her.

24 Q You always called her when she was working all
25 night?

1 **A** Yeah. I'd call her in the daytime. You know,
2 I just had that habit.

3 **Q** So you went to call her and what happened?

4 **A** The phone -- the phone from the -- I called it
5 and the phone wouldn't go through. The phone call
6 wouldn't go through to Irmo across the dam.

7 **Q** All right. Now, I am putting up here
8 defendant's, I'm not sure of the number, which is
9 just an ordinary county map. In a minute, I'll get
10 you to come down and we can take a close look at it.
11 First, I just want you to describe what happened.

12 You tried to call her and the phone call wouldn't go
13 through; is that right?

14 **A** It wouldn't go through. The phone call would
15 not go through.

16 **Q** And was this a problem that people had noticed
17 at different times after Hurricane Hugo, the phones
18 weren't always working quite right?

19 **A** Yes, sir. You know, we had a lot of problems
20 after Hurricane Hugo.

21 **Q** All right. Some places you could get through,
22 other places you couldn't?

23 **A** Sometimes you could, sometimes you couldn't.

24 **Q** So what did you do?

25 **A** Well, I just -- it was still early enough, I

1 got in my pick-up truck and I rode down to the forks
2 in the road where 106 runs into 302. They have
3 about four or five phones.

4 Q I'm going let the jury see this county map so
5 we can take a close look. Maybe the simplest thing
6 to do -- the yellow dot, and you can't read it very
7 well, but it says, Tony's house, is that something
8 that -- that mark that you told me where to put,

9 that's where you and Marsha lived?

10 A Yes, sir, that's where we lived at.

11 Q And that's on what highway?

12 A 78.

13 Q All right. And the town of Pelion is right in
14 here where I'm indicating?

15 A Yes, sir.

16 Q All right. So you got in the truck and you
17 started driving up Highway 378?

18 A Yes, sir.

19 Q And where did you go after you got in the town
20 of Pelion?

21 A I made a right and went down 302 toward
22 Columbia.

23 Q And where I'm pointing the marker, is that the
24 direction you drove?

25 A Yes, sir, that's it.

1 Q Columbia is over this way (indicating)?

2 A Yeah, Columbia is over there.

3 Q This is the town of South Congaree up here
4 where I'm indicating?

5 A Yes, sir.

6 Q Now, why were you driving down 378 and then up
7 on --

8 A That's 302. I was driving up -- down 302.

9 Q Right. Why were you driving up 30 -- down 302
10 towards Columbia?

11 A I was going to where 106 runs into 302, they've
12 got about four or five phones down there.

13 Q Okay. Now, has this been marked in blue?

14 A Yes, sir.

15 Q That's a set of phone banks?

16 A Yes, sir.

17 Q And why did you think that the phones would
18 work any better or did you think that the phones
19 would work any better at that phone bank than they
20 did at the house?

21 A Well, from that point right there, like when
22 you -- once you pass that area right there a little
23 ways past it, then it's going to be long distance,
24 but once you get to that point right there, that's
25 where the long distance thing ends. And I just -- I

1 just assumed that maybe that might be a different
2 line, so that's why I went down there.

3 Q So you made another call -- you tried again?

4 A Yes, sir.

5 Q You tried to call Marsha again at the house
6 where she was working?

7 A Yes, sir.

~~8 Q And what happened?~~

9 A It wouldn't go through.

10 Q It wouldn't go through that time either?

~~11 A No, sir, it wouldn't go through.~~

12 Q So what did you decide to do at that time?

13 A I went on up the road there and I was going to
14 take 106 to go toward Lexington, but by the time I
15 got down there to --

16 Q Are you talking about Highway Six?

17 A Yeah, I was going -- I went down 302 to the --
18 to Highway Six extension there.

19 Q Okay. So you went on up Six and 302 to the
20 fork in the road, it's hard to read, but you told me
21 to write fork on this arrow?

22 A Yeah, that's where the -- 302 goes one way and
23 Highway Six goes the other.

24 Q Okay. So there's Highway Six going on up to
25 the dam?

1 **A** Yes, sir.

2 **Q** To Lexington and then further up to the dam?

3 **A** Yes, sir. It's going towards Lexington, yeah.

4 **Q** And that's the way Marsha had gone to work?

5 **A** Yes, sir.

6 **Q** And then 302 goes on through South Congaree and
7 then eventually on up towards Columbia?

8 **A** Yes, sir.

9 **Q** The airport?

10 **A** Yes, sir.

11 **Q** So you got to here and what happened?

12 **A** My truck was running hot, so I decided -- I,
13 you know, my father's house is closer than my house,
14 so I went to my father's house.

15 **Q** You've marked, or had me write on the sticker,
16 but you put this sticker on to indicate the general
17 location of your father's house?

18 **A** Yes, sir.

19 **Q** Okay. So now you're at the intersection, the
20 fork, right?

21 **A** I'm at the fork, the truck's running hot and
22 the closest is my father's house.

23 **Q** So rather than drive all the way back and risk
24 what?

25 **A** You know, getting stuck on the side of the

1 highway because if you get stuck on the side of 302
2 when the sun goes down, you know, there ain't too
3 many people going to want to help you. They just
4 ride on by you.

5 Q So you could have been really stuck?

6 A Yes, sir.

7 Q And this is a rural area?

8 A Yes, sir, it's a rural area.

9 Q All right. So you were already almost to your
10 dad's, right?

11 A Yes, sir.

12 Q So you decided to do what?

13 A I went on down to my father's house because,
14 you know, my truck was running hot. I know he --
15 you know, I figured, you know, he gets up all times
16 at night, sometimes he would go to sleep and get up.

17 Q And what happened when you pulled into your
18 dad's house?

19 A Well, I pulled in the house, you know, I
20 started checking to see what was wrong with the
21 truck. I had a -- I had a hole in the top of the --
22 a rubber hose in the water thing, you know, and it
23 was -- I had a leak in it, you know.

24 Q So you found the leak in the hose that was
25 causing the truck to run hot; is that right?

1 **A** Yes, sir.

2 **Q** And what -- what did you do about it?

3 **A** First, I run -- got the hose pipe, put it in
4 that thing and --

5 **Q** Let me ask you before you checked your hose,
6 did you talk to your dad?

7 **A** No. By the time he got out there, I was under
8 the hood by the time he got out there.

9 **Q** Okay. But he got up and came, he saw your
10 truck and he came out to speak with you?

11 **A** Yeah, I turned around because when I pulled in
12 the driveway, I seen his night light on. I seen a
13 night light on in the house, so I figured he was up
14 anyway, but by the time he had got out there,
15 because the hose, if I remember correctly, it was
16 right there and I had the hose pipe and I had the
17 hood up, checking.

18 **Q** Now, let me ask you this. Your mother this
19 time was also living in the home, correct?

20 **A** Yes, sir, she was sick a lot.

21 **Q** That was my next question. Tell us about her
22 condition.

23 **A** Mama had -- she had had -- she had had cancer.
24 She had one breast removed. And then she had to go
25 back -- that was in the 60's. And then she had to

1 go back in the 80's and have the other breast
2 removed. And she had heart trouble. She had
3 diabetes. But as far as I'm aware of, she was
4 asleep. I don't know, I didn't go in the house, but
5 I know she didn't get up or nothing. I didn't see
6 her.

7 Q So, at this time, she was bedridden?

8 A Well, ~~she could get up, she could get up.~~ She
9 just couldn't do much.

10 Q And at night, she would be asleep?

11 A Yeah. You know, sometime I go down there --
12 that's why I went to see her a lot while she was
13 alive in this world because I know when she's gone,
14 it's over with, you know, so I stayed close to her
15 as much as I could.

16 Q And then she died about three years later?

17 A Yeah. She died November 1st of '92.

18 Q Now, what happened after -- you say you got
19 under the hood and you found the source of the leak
20 and how did you repair it?

21 A Well, I run water in it, but I had -- also, I
22 had some thick -- I had some thick tape, you know,
23 that's all I had, didn't have nothing else to do. I
24 had some gray tape. I put some gray tape around the
25 thing and that's about it. That's all I could do.

1 **Q** And then -- and you say you put water in the
2 radiator?

3 **A** It was an old clunker. I only had it for about
4 a month or two. You know, you always got to do work
5 on an old vehicle when you get it.

6 **Q** And what, if anything, did you talk to your dad
7 about at that point?

8 **A** I told him I had to go back down in Pelion and
9 he told me I could spend the night there. I said,
10 no. I said, because I got to go down there just in
11 case Marsha might call down there or something.
12 Plus, I got to be there in the morning to -- when
13 the teenagers go to school, I got to be there,
14 they've got to bring the two little boys down, I got
15 to be there to get them. So I had to go back down
16 there that night.

17 **Q** Let me ask you this. You started out this trip
18 to make a call to Marsha. Did you ever call Marsha?

19 **A** No.

20 **Q** You never got through?

21 **A** Well, by that time, it was too late. And, you
22 know, by that time, you just can't call nobody's
23 house at 12 o'clock at night.

24 **Q** All right. So you felt like 11 o'clock was the
25 latest?

1 **A** Well, when it got on -- yeah. When it got on,
2 you know, after the truck run hot, the phone call
3 kind of come secondary because I knowed I had to get
4 the truck cooled, I had to get back down there
5 because I knew I had to get the two little boys the
6 next morning, so I had to focus on that there, you
7 know. Sometimes you can make the phone call,
8 sometimes you can't and I couldn't make it. So I
9 had to focus on making sure I was down there when
10 the two teenagers went to school the next morning.

11 **Q** All right. So the next thing that happened was
12 you drove home?

13 **A** Yeah. My dad followed me down there.

14 **Q** And your dad followed you?

15 **A** Yes, sir.

16 **Q** Can you estimate or do you know what time you
17 got home that night?

18 **A** It was after 12 o'clock that's all I know.
19 That's all I can remember at this time.

20 **Q** All right. And what did your dad do after you
21 got home?

22 **A** He kept on going. He turned around and went
23 back home.

24 **Q** Did you go to the pond that night?

25 **A** No, sir.

1 Q Did you go to Kim Quinn's house that night?

2 A No, sir.

3 Q Were you with Bo Sutherland that night?

4 A No, sir.

5 Q Do you know who was with Bo Sutherland that
6 day, if anyone?

7 A No, sir.

8 Q Or that night?

9 A I do not know.

10 Q It wasn't you?

11 A No, sir, it wasn't me.

12 Q Now, you got home after midnight, right?

13 A Yes, sir.

14 Q And what did you do?

15 A I went in and took my shoes off and laid down
16 and went to bed because I know I had to get up in
17 the morning. I know that I had to get as much rest
18 I could get at that time.

19 Q All right. And the next day, you woke up in
20 the morning?

21 A Yes, sir. I woke up -- I got up about two
22 hours later and went to the bathroom, you know, then
23 I went back to bed and then I got up.

24 Q The next morning, did you place a call to Red
25 Farmer and speak to him in code about this murder?

1 **A** No, sir.

2 **Q** Did you do that at any time?

3 **A** No, sir.

4 **Q** Now, when was the next time you saw Bo
5 Sutherland?

6 **A** Sometimes -- on Friday morning, he come down, I
7 thought he'd come down from Melvin's somewhere, but
8 Friday morning he come down.

9 **Q** Can you remember what time?

10 **A** No, sir. He stopped by the house. I figured
11 he was up at Melvin's because he said he had to go
12 to Columbia to do something. So if he had to go to
13 Columbia, then, I don't know. I thought maybe he
14 had spent the night up at Melvin's house, but he
15 said -- he just stopped by, said he had to go to
16 Columbia. He asked me what I was going to do that
17 day, I told him I had to go to Lexington County to
18 see Ray Chase at the apartment complex.

19 **Q** This was about a job?

20 **A** Yes, sir.

21 **Q** You went to see Mr. Chase?

22 **A** Yes, sir.

23 **Q** Mr. Case, I believe it is?

24 **A** Ray Chase or Case, something like that,
25 apartment complex right up here on top of the hill

1 in Lexington.

2 Q And this was to talk about a new job?

3 A Yes. He had Hurricane Hugo damage to his
4 apartment complex.

5 Q You got that job?

6 A Yes, sir. After I went up there and talked to
7 him and see him, he said after -- all he was waiting
8 for was the insurance.

9 Q Now, did there come a time after that Friday
10 when the police searched your truck -- let me ask
11 you this first. When you bought that truck, and
12 we're talking about State's Exhibit 37, is this the
13 interior of that truck?

14 A Yes, sir.

15 Q Okay. And at times, had you carried the ax
16 that's in evidence now in that gun rack?

17 A That ax has been in the back of the truck, the
18 front of the truck. It's been -- them tools right
19 there, they all been together.

20 Q Okay. Now, when you bought that truck, there
21 was a Dixie flag covering the back window?

22 A Yes, sir. Right there where that black is,
23 there was a big Confederate flag going across the
24 top of that.

25 Q All right. And you and Marsha decided to get

1 rid of it?

2 A Yes, sir, you know, like I say, Ms. McCoy, she
3 was an African American lady and that was an African
4 American community I was working in and, you know, I
5 just -- they show me respect, I show it back to
6 them, I just took the flag off. I had been planning
7 on doing that, but, you know, I'm going to treat
8 people the way they treat me.

9 Q All right. So you did that on what day?

10 A I did that on Sunday. I took the flag off on
11 Sunday and painted it black. I was going to put
12 some -- they got some glittering stickers, I was
13 going to put some stickers back there because black
14 is a dark, strong color, and they had some
15 glittering stickers I was going to put back on that
16 there, but that's why I painted it dark like that.

17 Q When you pulled the Dixie flag off, why didn't
18 you just leave it like it was after you pulled it
19 off? Why did you want to paint it?

20 A Well, some of it stuck on the window and I
21 couldn't get it off.

22 Q So the adhesive stuff was still there?

23 A Yeah. It stuck on there. And, you know, I had
24 done painted a couple of other vehicles, the inside
25 of them, so that was a quick way of taking care of

1 business is just -- I had done painted an old
2 Mustang, the inside of it like that there, so I just
3 went in, did that -- it wasn't nothing but an old
4 truck.

5 Q Is spray painting some of your trucks or your
6 vehicles something you did fairly often?

7 A I paint it quick, think nothing about it. If
8 it's old -- if it's old, then, you know, it's the
9 cheapest way to handle business.

10 Q Uh-huh. And so you painted the back of that on
11 Sunday?

12 A Yes, sir, Sunday. It was Sunday I did that,
13 Sunday evening.

14 Q Did you paint any other part of the truck that
15 Sunday?

16 A No, sir, just the back window that day.

17 Q All right. Did there come a time when the
18 truck was searched by the police?

19 A Monday night the -- about seven o'clock, about
20 six, seven carloads of SLED agents, police officers
21 come out to my house and they searched everything
22 including that truck. They searched everything, did
23 chemical tests on it. They had search warrants that
24 showed that they -- they was doing everything they
25 could do legally. And I was sitting there, eating.

1 I told them to go ahead, do what you got to do.

2 Q Okay. And then did they confiscate the truck
3 after that or did they leave it with you?

4 A No, sir, they left the truck with me. You
5 know, after they got through searching and
6 everything was clean, then they left.

7 Q And was it your understanding they didn't need
8 to search the truck anymore?

9 A You know, they said that everything was clean,
10 so they left everything with me and left, so I
11 figured they was satisfied.

12 Q Did there come a time when you did some more
13 painting in the truck?

14 A Tuesday, Tuesday evening, I spray painted the
15 old carpet in the bottom of the floor board.

16 Q Now, why did you do that?

17 A Because I had been planning to do it anyway. I
18 thought -- I didn't, you know, I thought they was
19 through with the truck. They had done been up under
20 the seat and everywhere else. So I painted the
21 carpet Tuesday evening.

22 Q Tuesday evening?

23 A Yeah.

24 Q The day -- 24 hours after they had searched it?

25 A Yes, sir.

1 Q Did anybody tell you not to alter the truck
2 after the search was over?

3 A No, sir.

4 Q Anybody tell you they wanted to come back and
5 do some more checking?

6 A No, sir.

7 Q ~~Did you have any reason to think that they were~~
8 going to?

9 ~~A No, sir.~~

10 Q If you had known, if they had told you, would
11 you have painted it?

12 A If they would have told me not to do nothing to
13 it, I wouldn't have done nothing to it, but nobody
14 didn't tell me.

15 Q Have you ever painted the floorboards of the
16 carpeting on any of your other vehicles?

17 A Yes, sir. I had an old Mustang and I had
18 painted it. Not only did I paint the inside, I
19 painted the bucket seats.

20 Q You painted the bucket seats with spray paint?

21 A Yeah, sold it to a car dealer.

22 Q How did it look?

23 A It looked good. I painted it black. Black is
24 a strong color and it looked good.

25 Q So it worked before for you?

1 **A** It always worked. I mean, it's a strong color
2 and it will stay -- it stays.

3 **Q** Now, I'd like to fast forward now to 1992. And
4 I want to ask you, did there come a time when Bo
5 Sutherland was confined in the same prison unit as
6 you out on Broad River Road?

7 **A** Yes, sir.

8 **Q** And when that happened, did you ever threaten
9 him to give a version of these events that put you
10 out of it?

11 **A** No, sir. You know, when we first got confined
12 in the same unit, I didn't say nothing to him. I
13 didn't know what to say. I didn't say nothing to
14 him. You know, you know, I was too distraught to
15 say anything. I mean, I didn't know -- I tried to
16 stay away from him.

17 **Q** Did you ever tell Cecil Lucas or Sammy Roberts
18 or Robert South to go and try to muscle him into
19 giving a statement clearing you of involvement in
20 this crime?

21 **A** No, sir. That -- we never had no kind of
22 conversation about Robert Sutherland.

23 **Q** Did you tell anybody else to pressure Robert
24 Sutherland to give a statement to your lawyer --

25 **A** No, sir.

1 Q -- that would be in your favor?

2 A No, sir.

3 Q Have you ever heard of anything like that
4 happening involving Robert Sutherland?

5 A Never had a conversation with nobody about
6 Robert Sutherland, any kind of pressure. I just --
7 when we first got on the same unit, I just -- I just
8 wanted to stay away from him. You know, it took me,
9 you know, it just took me a long time to learn to
10 deal with this situation and just decide I got to
11 deal with it in court.

12 Q In court?

13 A In court.

14 Q Like you're doing right now?

15 A Like right now.

16 Q Now, shortly after his arrival, did you and he
17 both sign paperwork to be separated?

18 A Yes, sir. I think Mr. -- Lieutenant Callahan
19 came around and he felt that, you know, this was the
20 best decision to make that we sign papers that we
21 wanted to both stay away from each other because the
22 legal situation because I was distraught over the
23 situation, I ain't going to lie about it, I mean, I
24 was just hurt. And Mr. Callahan knowed that I was
25 distraught over it and he just decided that we sign

1 papers and we stay away from each other as long as
2 we was at Broad River Correctional Institution.

3 Q I think it's obvious, but why were you
4 distraught?

5 A Because I hadn't did anything. I wasn't guilty
6 of no crime. And I didn't know what happened and I
7 didn't know what to do. I didn't know what to say. —

8 Q So you agreed to be separated from Bo and he
9 agreed to be separated from you? —

10 A Absolutely. —

11 Q And whatever statements he made, did you have
12 anything to do with them at all?

13 A I had nothing to do with it.

14 Q Did you tell him what to say?

15 A No, sir, I didn't tell him what to say. I
16 didn't say nothing to him.

17 Q Now, that was in 1992 and y'all have been in
18 the same units just about ever since, right?

19 A Well, we were moved to another unit with
20 different people and --

21 Q That's Lieber Correctional Institution?

22 A Yes, sir, Lieber.

23 Q That's down near Charleston, right?

24 A Yeah. And the onlyest (sic) time, you know,
25 that I would basically be around, so this is eight,

1 nine, ten years later after we was moved down there,
2 and the onlyest time I ever be around him or see him
3 it would be at church. I would go to church. He
4 don't even believe in God and he would just come
5 there sometimes, that would be the onlyest time that
6 I would basically, you know, or, you know, I would
7 see him, you know, at various times, but like I say,
8 that, you know, I had to just deal with the
9 situation in the courthouse.

10 Q So for Sutherland, church was a chance to get
11 out of his cell?

12 A And see what, you know, see what he could bum
13 from other people.

14 Q And he didn't mind being in the same room with
15 you then?

16 A No, sir, no, sir. I was -- going to church
17 wasn't nothing but a game to him.

18 Q But he would go even though he knew you were
19 there?

20 A Yes, sir.

21 Q Wasn't afraid of you?

22 A No, sir.

23 Q Or all of these other people?

24 A No. He would come to get out of his cell.

25 MR. BRUCK: I think that's everything I have to

1 ask you. I want to check with Mr. Duncan and
2 Mr. Andrews. Bear with me a minute.

3 **DEFENDANT COOPER:** All right.

4 (Pause.)

5 **Q** Did you commit these crimes?

6 **A** No, sir.

7 **Q** Any of them?

8 **A** No, sir.

9 **Q** Were you there when they were committed?

10 **A** No, sir.

11 **MR. BRUCK:** Please answer any questions the
12 prosecution may have. Thank you.

13 **THE COURT:** We'll pick up with
14 cross-examination after lunch, counsel.

15 Sir, you may step down. During the break, you
16 may not discuss your testimony; do you understand?

17 **DEFENDANT COOPER:** Yes, sir.

18 **THE COURT:** Thank you. You may step down.

19 Ladies and gentlemen, it's almost about 12:45,
20 so if you'll come back at 2:15, we'll proceed with
21 the trial. Do not discuss this case in any way.
22 Thank you very much. Have a good lunch.

23 (The jury was excused for lunch.)

24 **THE COURT:** All right. See y'all back then.
25 Thank you.

1 (Whereupon, there was a luncheon recess.)

2 **THE COURT:** Are y'all ready to proceed?

3 **MR. BELL:** The State's ready, Your Honor.

4 **MR. BRUCK:** The defense is ready.

5 **THE COURT:** Mr. Cooper, you may return to the
6 stand.

7 Is the jury ready? Will you check with them to
8 see if they're ready?

9 (The jury returns to the courtroom.)

10 **THE COURT:** All right. Ladies and gentlemen,
11 we're ready to resume the examination of this
12 witness. Go ahead.

13 **MR. BELL:** Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. BELL:

16 **Q** Sir, you've had 16 years to look over the
17 evidence in your case, haven't you?

18 **A** It's took me 16 years, seven months and 20 days
19 to get here.

20 **Q** And you've had that long to look over all of
21 the evidence in your case, the stack that they've
22 shown in court the other day; isn't that right?

23 **A** Correct.

24 **Q** And you've had a chance to look at all of the
25 evidence and try to explain all of the evidence;

1 isn't that true?

2 **A** I've talked with my lawyers.

3 **Q** You've had a chance to get your story straight
4 with all of that evidence; isn't that true?

5 **A** I've talked with my lawyers.

6 **Q** You've talked with your lawyers, but you've
7 looked through all of that stuff yourself, too,
8 haven't you?

9 **A** Whatever they showed me, we discussed it.

10 **Q** You discussed it. You didn't have it with you
11 all the time, they had it?

12 **A** They keep it.

13 **Q** They keep it, okay. Now, you've known Bo
14 Sutherland a long time, haven't you?

15 **A** Yes, sir.

16 **Q** How long would you say you've known him?

17 **A** Since I was a child.

18 **Q** Since you were a child. Since you were six
19 years old?

20 **A** Yes, sir.

21 **Q** Is that right?

22 **A** Yes, sir.

23 **Q** Is that about right? I want to make sure. And
24 you knew Red Farmer, right?

25 **A** Yes, sir.

1 Q And Brenda McLauren is your niece, correct?

2 A Yes, sir.

3 Q Do you know Gerald LeGrand?

4 A No, sir.

5 Q You never met?

6 A I've seen him in prison to come see Farmer.

7 Q Okay. Never met him out on the street?

8 A No, sir.

9 Q You know Eugene Carter?

10 A Yes, sir.

11 Q You know all of these individuals; is that
12 true?

13 A Yes, sir.

14 Q Okay. Well, let's go back a little about what
15 you testified to. First of all, you testified that
16 September 30th Bo brought the ax back to you; is
17 that right?

18 A Somewhere around there, I don't remember
19 precisely the day.

20 Q Okay. Was your wife around?

21 A Yes, sir.

22 Q Okay. And your testimony is that you gave it
23 back to Bo; is that correct?

24 A My testimony is he got it -- he took it upon
25 his self to get it.

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1 Q He took it upon his self to get it?

2 A Yes, sir.

3 Q Now, on October 3rd, you stated that that
4 morning you went to the Shumperts, to Donnie
5 Shumpert's trailer, to get the compressor, right?

6 A Yes, sir.

7 Q Okay. And you said that Bo was gone all day
8 that day; is that correct?

9 A Yes, sir.

10 Q And you brought the compressor back that
11 evening; is that correct?

12 A Yes, sir.

13 Q And Donnie was there when you took it back?

14 A I don't know if he was there. All I know is I
15 backed the truck up and got the compressor out and
16 pushed it back in the garage and somebody was, I
17 done forgot who, it's been so long, I just don't
18 remember.

19 Q Could your wife have been there?

20 A I don't remember.

21 Q And you were by yourself?

22 A I was by myself.

23 Q Bo wasn't with you?

24 A Bo was not with me.

25 Q Bo didn't have a shotgun with you?

1 A Not with me, no, sir.

2 Q Didn't fire it off in the air?

3 A No, sir.

4 Q Didn't say, Look at my new toy?

5 A No, sir.

6 Q And didn't put it back in your truck?

7 A No, sir.

8 Q Okay. Now, let's go to October 4th. You say
9 that there's three phones at your house, right?

10 A Yes, sir.

11 Q One's inside, one's in the kitchen, one's in
12 the kid's room and one's outside?

13 A Yes, sir.

14 Q Are you sure one's outside?

15 A The line reaches to outside in the backyard.

16 Q Okay. Are you sure that there's not just one
17 in the master bedroom?

18 A The line can reach in the master bedroom or it
19 can go all the way outside.

20 Q So sometimes it's in the master bedroom,
21 sometimes it's not; is that correct?

22 A Yes, sir.

23 Q And who paid for the phone bills at that house?
24 Did you pay for them?

25 A Marsha and me, both of us.

1 Q Okay. And long distance calls cost money,
2 don't they?

3 A Yes, sir.

4 Q Collect calls cost even more money, don't they?

5 A It would be about \$20 dollars over.

6 Q And a 15 minute collect call costs a lot,
7 doesn't it?

8 A Four or five dollars.

9 Q So you didn't have any problem with people
10 getting collect calls or long distance at your
11 house?

12 A You know, 20, \$25, I make pretty good money so
13 I really don't worry about.

14 Q But it adds up, doesn't it, with all of these
15 people that are calling on your phone?

16 A If it gets over \$30, then I would probably say
17 something about it.

18 Q Okay. Now, would you agree that Bo was not at
19 hour house until about nine o'clock on the evening
20 of October 4th?

21 A He was at Stanley's house.

22 Q Stanley's house?

23 A Which is right behind out -- he was on the
24 property. For him to get the phone, would be no
25 problem, but he was on Ms. Burrow's property the

1 whole time.

2 Q Okay. But getting a collect call would be
3 rather difficult, wouldn't it?

4 A I don't know.

5 Q You don't know?

6 A I don't know -- I don't know if he talked on
7 the phone, I wasn't there. I didn't see him -- I
8 wasn't paying attention to what everybody was doing.

9 Q Okay. And Red Farmer didn't call you at 7:34
10 p.m. on the evening of October 4th?

11 A He didn't call me because I didn't talk to him.

12 Q He didn't call you collect?

13 A He might have called the house, but I did not
14 talk to him.

15 Q And he didn't call you to talk about Kim Quinn?

16 A No, sir.

17 Q He didn't call you to tell you that she had a
18 2800 dollar insurance check?

19 A No, sir.

20 Q And that she should be robbed?

21 A No, sir.

22 Q Now, you say on October 5th, you got up in the
23 morning and your wife was still home, correct?

24 A Yes, sir.

25 Q And that you called CCI that morning; is that

1 correct?

2 A Yes, sir.

3 Q And you talked to some fellow named Tree,
4 Daniel Tedder?

5 A I tried to talk to him. He wasn't there.

6 Q You tried to talk. And also you wanted to talk
7 to somebody -- who else did you want to talk to?
8 Oh, your brother-in-law; is that correct?

9 A Yes, sir.

10 Q Okay. Were you aware that Red Farmer worked at
11 the schoolhouse?

12 A Yes, sir.

13 Q And that day, the only person that can put you
14 anywhere is your mother; is that right?

15 A My mother and my father.

16 Q But, I mean, during the day. Your father was
17 at work until four o'clock, right?

18 A Uh-huh.

19 Q According to your testimony, and your --

20 A Well, my wife can say I was at home and the
21 telephone call confirms I was at home, too.

22 Q Okay. But the only person that can say that
23 you were home on October 5th, 1989 during the day is
24 your mother; is that right?

25 A Yes, sir.

1 Q Okay. And then at night, you stated that you
2 went back home after you left your parent's house
3 after your father came home, right?

4 A Yes, sir.

5 Q And before your wife went to work, correct?

6 A Say that again.

7 Q You got home before your wife went to work that
8 evening, right?

9 A Yes, sir.

10 Q What time did she go to work?

11 A She left about 7:00.

12 Q She left about 7:00. And then the next time
13 that anybody sees you that night is your father at
14 quarter till 11:00; is that right?

15 A David was in and out of the house.

16 Q David was in and out of the house. But other
17 than that, the only other person to see you that
18 night was your father?

19 A Well, besides -- he still had a couple of guys
20 drinking over in the backyard at Stanley's house,
21 but, you know, I didn't go over there and discuss
22 nothing with them.

23 Q Okay. You weren't out riding, drinking beer
24 that night, were you?

25 A I don't ride around drinking beer.

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1 Q You don't ride around drinking beer, okay. And
2 you didn't go by Donnie Shumpert's that night?

3 A No, sir.

4 Q You didn't go by Donnie Shumpert's that night?

5 A No, sir.

6 Q And you didn't stop at a place called Don's
7 Place at Highway 302 in Pelion that night, did you?

8 A No, sir.

9 Q Now, ~~Mr. Cooper, let me ask you this. I want~~
10 to take you ahead. Do you recall October 12, 1989?

11 A No, sir.

12 Q Where might you have been arrested that day or
13 close to it?

14 A I think I was arrested somewhere about around
15 11:30, quarter till 12:00 on October the 10th.

16 Q Okay. Did you request to talk to anybody that
17 day on October 12th?

18 A No, sir, not that I know of.

19 Q Did you talk to Investigator Eddie Hite on that
20 day?

21 A I never requested to talk to any of them.

22 Q I'm just asking you, did you talk to
23 Investigator Eddie Hite that day?

24 A I may have, but I never requested to see any of
25 them.

1 Q You didn't request to see to Sheriff Metts?

2 A Sheriff Metts, yes, sir.

3 Q And you sat down and talked with Eddie Hite and
4 Sheriff Metts, didn't you?

5 A I talked with Sheriff Metts.

6 Q Right. And you told them that you were riding
7 around drinking beer that night, didn't you?

8 A No, sir, not that I remember.

9 Q And you never told them that you went to Donnie
10 Shumpert's that night, did you?

11 A They was wanting me to sign a sworn statement
12 and I told them that I could not sign a sworn
13 statement. Like I say, they was wanting me to sign
14 -- they wanted to write something out, wanted me to
15 sign it, I refused to sign anything.

16 Q But you talked with them some, didn't you?

17 A I told them I wasn't guilty of no crimes.

18 Q You told them you denied it, right?

19 A I told them I didn't know nothing about it, no,
20 sir.

21 Q But you told them that you were out riding
22 around that night, didn't you?

23 A Not that I recall.

24 Q Not that you recall. And you didn't tell them
25 that you were out at Don's Place on that night?

1 **A** I know I wasn't there.

2 **Q** Okay. And you didn't tell them you went to see
3 your -- your parents' house to check on your RV?

4 **A** I can't help what they wrote down and gave you.
5 I can only tell you that the conversation I had with
6 them was I was not guilty of any crimes.

7 **Q** Okay. So what they wrote down was incorrect?

8 **MR. BRUCK:** Objection. He doesn't...

9 **THE COURT:** I didn't hear your objection, sir.

10 **MR. BRUCK:** The witness has no way of knowing
11 what they wrote down. There's been no foundation
12 laid.

13 **THE COURT:** I sustain that objection.

14 BY MR. BELL:

15 **Q** If they wrote what I just asked you about that
16 you'd gone to Donnie Shumpert's that night, that's
17 wrong? They wrote that down wrong?

18 **MR. BRUCK:** Object to this. The Solicitor, in
19 effect, is testifying about what's on a sheet of
20 paper and then pitting a nonexistent witness against
21 -- he can ask him whether he made the statement, but
22 not whether the investigator wrote something down
23 and whether it would be wrong or right if they wrote
24 it down.

25 **THE COURT:** Well, are you asking him if that

1 statement was recorded somewhere, that it would not
2 be correct based on what he's saying, is that what
3 you're trying to ask?

4 **MR. BELL:** Your Honor, what I'm asking is,
5 apparently, the investigators heard him wrong or
6 something, I don't know.

7 **THE COURT:** I sustain the objection right now.

8 **BY MR. BELL:**

9 **Q** Now, so you never went to the pond on the early
10 morning of October 6th, 1989; is that correct?

11 **A** No, sir.

12 **Q** Where was Bo living at this time?

13 **A** Well, some time he lives at Donnie Shumpert's,
14 sometimes he lives at his trailer at Neece's,
15 sometimes he lives down there in Pelion with Melvin.

16 **Q** But most of the time he was living up around
17 where your parents lived, didn't he?

18 **A** Bo never stayed -- you never know where he was
19 going to be at. He never stayed at one place long.

20 **Q** But Donnie Shumpert's trailer was around the
21 drive from your parents, right?

22 **A** Yes, sir.

23 **Q** It was on Greenwood Drive?

24 **A** Yes, sir.

25 **Q** And his trailer was down Beckman Road, wasn't

1 it?

2 **A** Whose?

3 **Q** Bo's?

4 **A** Bo had a trailer down there close to Gator
5 Road, but it was -- it was Neece's trailer or
6 something, but it was somewhere on down the road
7 from Greenwood Drive down 302, down there on the
8 right.

9 **Q** But he, basically, lived near where your
10 ——— parents lived; is that right?

11 **A** Yes, sir.

12 **Q** So when he would come down there, he would come
13 from up at his trailer up around Greenwood Drive
14 area, wouldn't he?

15 — **A** I don't know where he would come from.

16 **Q** I mean you know him, right?

17 **A** I don't know where all he goes and what he
18 does.

19 **Q** You worked with him all the time, didn't you?

20 **A** That don't mean I know what he be doing.

21 **Q** I mean, he's at your house all the time, isn't
22 he?

23 **A** He spent a lot of time up there with Shumpert
24 around a bunch of motorcycle guys.

25 **Q** Okay. And you never went up there?

1 **A** Where at?

2 **Q** Shumpert's.

3 **A** I been up there a couple times. He had my --
4 he was supposed to be paying -- I paid him to paint
5 my Mach 1. And after you locked me up, he had my
6 Mach 1 pulled off and kept my money. And him and
7 his wife forgot to tell you about that.

8 **Q** Okay. They forgot to tell us about that?

9 **A** Yeah.

10 **Q** Okay. But you go up there and pick Bo up from
11 time to time, wouldn't you?

12 **A** I would go up there and check on my Mach 1 and
13 see if -- when he was going to paint it because I
14 had already paid him for it. I paid his light bill.
15 I bought all the materials. And he ripped me off
16 from my money, Donnie Shumpert did that.

17 **Q** And that's the Mach 1 that you painted, too,
18 isn't it?

19 **A** No, I had another -- this is a different
20 Mustang. I had a white Mustang that I had painted
21 the inside and sold, then I got this Mach 1. I went
22 through a lot of vehicles.

23 **Q** Okay. So on the afternoon of October 5th,
24 you're not at Platt Springs Road; is that right?

25 **A** Do what now?

1 Q On October 5th, the afternoon of October 5th,
2 you're not on Platt Springs Road with Bo Sutherland?

3 A No, sir.

4 Q Now, let's go a little ahead of time here.
5 Let's go to Sunday, that's the day you said you
6 painted the back window of your truck; is that
7 correct?

8 A Yes, sir.

9 Q All right. And you did some other things that
10 day, too, didn't you?

11 A I went and got the RV from my father's house.

12 Q Right. And that was with you and your wife,
13 right?

14 A Yes, sir.

15 Q And Bo was riding behind y'all, wasn't he? _

16 A No, he come driving up after I pulled out the
17 driveway.

18 Q Oh, he came pulling up after you pulled out the
19 driveway and that's when the police cars and all
20 came out there, wasn't it?

21 A He come waving -- I saw the police cars going
22 down Beckman Drive.

23 Q And he came pulling up, waving his arms or
24 whatever; is that right?

25 A After we had pulled off, yes, sir.

1 Q And y'all had a conversation?

2 A Yes, sir.

3 Q And then later that day y'all went to your
4 sister's house, didn't you?

5 A I don't remember -- I don't remember if I went
6 down there or not. I just don't remember it. I
7 knowed that I painted the window that day, but I
8 can't remember if I went to my sister's. I might
9 have, but I just can't remember.

10 Q And you don't remember going with your wife and
11 the little twins and all?

12 A Hey, I can't remember everything. If I went
13 down there, I wouldn't have no problem acknowledging
14 it, but I just don't remember.

15 Q Okay. And you don't know if Brenda was down
16 there and if Bo went down there either, do you?

17 A I don't know if we went down there that day. I
18 recall going down there one day with all of us going
19 down there, but I don't remember what day it was.

20 Q Okay. And then, let's see, you painted the
21 back window of your truck on that day, right?

22 A On Sunday.

23 Q On Sunday?

24 A I took the Confederate flag off and painted
25 what I couldn't get off.

1 Q And you were concerned about that Confederate
2 flag; is that correct?

3 A Yes, sir.

4 Q Because of your business?

5 A Yes, sir.

6 Q You didn't want a Confederate flag anywhere on
7 your truck?

8 A Well, I didn't want to be a part of what it
9 represented to tell you the truth about it.

10 Q Okay. And then the police came -- when did
11 they come to look at your truck?

12 A Monday night about seven o'clock, about seven
13 carloads.

14 Q Seven car loads. And you said they searched
15 your truck?

16 A Searched through the house, searched the truck,
17 took my wedding band off, did all kind of chemical
18 tests on it. They tested everything at my house.
19 My truck, everything that was in that yard they
20 tested.

21 Q Okay. And they said that truck was clean, you
22 can do whatever you want to with it?

23 A They left me at the house and left the truck
24 there. I was a free man, so I figured I was -- what
25 else is there to say, actions speak louder than

1 words.

2 Q But then they took your truck the next night,
3 didn't they?

4 A They took it from a guy named Lee. He had come
5 by from next door. He went to go get some beer and
6 he drove out the driveway and they caught -- they
7 had, basically, hijacked the truck somewhere down
8 the highway. I don't know where they took it at,
9 but they took him and the truck.

10 Q They took the truck on that night; is that
11 right?

12 A Late Tuesday night about -- about -- some time
13 after he drove out the yard to go get some beer. I
14 let him use my truck to go at the store to get some
15 beer and that's the last time I seen it. I don't
16 know what happened to it that -- the next thing I
17 know y'all had it, him and the truck.

18 Q And you painted the floorboards just because it
19 looked nice once you painted it; is that right?

20 A I painted it Tuesday night, Tuesday evening.

21 Q Right after the police had been up there?

22 A They come Monday and I painted it Tuesday.

23 Q Right, okay. Now, let's fast forward a little
24 bit. Bo's in prison and you start working on him to
25 get him to take the rap; isn't that true?

1 **A** No, sir.

2 **Q** I mean, your attorney, who's Mr. Bruck,
3 correct?

4 **A** Yes, sir.

5 **Q** He went and talked to Bo, didn't he?

6 **A** I don't have nothing to do with that.

7 **Q** You didn't have anything to do with it. Your
8 attorney went and talked to Bo and got some
9 statement; is that right?

10 **A** You have to talk to David Bruck about that.

11 **Q** ~~Okay.~~ And Bo made a couple more statements, is
12 that correct, during the course of this?

13 **A** He done said so many things, you know, I, you
14 know, he's your witness, you need to go talk to him.

15 **Q** All right. He talked to the jury. And he took
16 the police down back behind your house looking for a
17 shotgun, didn't he?

18 **A** I wasn't there. I think David Bruck went down
19 there with him and law enforcement.

20 **Q** Okay. But he went down back behind where you
21 lived; isn't that right?

22 **A** I don't know where he took them at. I was not
23 there.

24 **Q** I mean, if he test -- I mean, if that's where
25 he went, that would be the truth, wouldn't it?

1 **A** I wasn't there. I don't know where he took
2 them.

3 **Q** Okay. And he told a couple of people in
4 prison, I think, Ms. Davis; is that right? You
5 talked to her in prison, didn't you?

6 **A** You've got to talk to them. I wasn't involved
7 in the conversation.

~~8~~ **Q**- Well, I mean, they would come and see you, too,
9 wouldn't they?

10 **A** They'd come see about 60, 70 people in the
11 unit.

12 **Q** Well, in fact -- but Ms. Davis said she came
13 and told you what Bo said, didn't she?

14 **A** Yes, sir.

15 **Q** And you smiled?

16 **A** No, sir, I didn't -- I don't have -- I have
17 took the position that I'm going to deal with it in
18 court, I'm going to settle the situation in court,
19 that's the only avenue to my freedom. That's what I
20 decided.

21 **Q** And you're not going to threaten Bo, right?

22 **A** No, sir.

23 **Q** And, of course, the only three witnesses on
24 whether this happened or not are now dead, correct?

25 **A** You need to talk to Bo about them not me.

1 Q I'm talking about Mr. South, Mr. Roberts and
2 Mr. -- I've forgotten the other guy's name -- but
3 they've all been executed; is that right?

4 A They've all been executed.

5 Q So we can't ask them whether or not it
6 happened, right?

7 A You got -- I don't have nothing to do with that
8 once again. You asked me something that is beyond
9 my control.

10 Q Okay. Beyond your control. -- I mean, you get to
11 talk to people while you're in prison, don't you?

12 A The less said in prison, the better off you
13 are.

14 Q Bad things happen in prison, don't they?

15 A Yes, sir.

16 Q People get knifed?

17 A Yes, sir.

18 Q People get hurt in prison?

19 A Yes, sir.

20 Q For running their mouths, don't they?

21 A Yes, sir.

22 Q For not towing the line; is that right?

23 A Yes, sir.

24 Q And that could have happened to Bo?

25 A It could happen to anybody.

1 **Q** It could happen to anybody. So your testimony,
2 Mr. Cooper, is that you had nothing to do with this?

3 **A** I had absolutely nothing to do with it.

4 **MR. BELL:** Okay. One moment.

5 (Pause.)

6 **Q** One other thing let me ask you about, you know,
7 when you asked to talk to Sheriff Metts. Didn't
8 they ask you if you ever saw Bo Sutherland with a
9 shotgun?

10 **A** I don't remember.

11 **Q** You don't remember. And you didn't answer
12 that -- you wouldn't answer, correct, because you
13 said it would bury you if they found out; isn't that
14 true?

15 **A** I don't remember.

16 **Q** You don't remember.

17 **MR. BELL:** Nothing further, Your Honor.

18 **MR. BRUCK:** That's all we have.

19 **THE COURT:** You may step down, sir.

20 **MR. BRUCK:** The defense rests.

21 **MR. BELL:** I think we do have one reply.

22 **THE COURT:** All right. Approach the bench.

23 (Whereupon, a bench conference was held off
24 the record, in the presence of the jury, but out of
25 the hearing of the jury.)

1 **THE COURT:** Call your witness.

2 **MR. LUPTON:** The State would call Investigator
3 Hite, former Investigator Hite.

4 EDWARD VERNON HITE,
5 having been duly sworn, testified as follows:

6 **THE CLERK:** Have a seat and state your full
7 name on the record.

8 **THE WITNESS:** Edward Vernon Hite.

9 DIRECT EXAMINATION

10 BY MR. LUPTON:

11 **Q** — Mr. Hite, where are you currently employed?

12 **A** Lexington Medical Center.

13 **Q** And in what capacity?

14 **A** I'm a pathologist's assistant in the surgical
15 pathology department.

16 **Q** And, briefly, what does that consist of?

17 **A** We do something called grossing. We examine
18 organs from surgery, gall bladders, whatever comes
19 in. And I'm also in charge of the morgue where I
20 perform the autopsies.

21 **Q** Along with a pathologist doctor?

22 **A** Along with a pathologist there, yes.

23 **Q** And, essentially, you help the pathologist by
24 prepping for the autopsy?

25 **A** That's right. I work up the case. I get

1 everything set up and actually remove the organs for
2 the pathologist.

3 Q And how were you employed back in October of
4 1989?

5 A I was an investigator at the Lexington County
6 Sheriff's Department.

7 Q And in that capacity, did you have a chance to
8 speak with the defendant, Tony Cooper?

9 A Yes, sir, I did.

10 Q And --

11 MR. BRUCK: We have a matter we need to take
12 up, Your Honor, if we may.

13 THE COURT: All right. Ladies and gentlemen,
14 I'll send you to the jury room. Do not discuss this
15 case in any way. Thank you very much.

16 (The jury retires to the jury room.)

17 MR. BRUCK: We learned for the first time just
18 now that the State intends to go into a statement
19 taken from the defendant. We would like to have a
20 hearing on it as to its voluntariness and
21 admissibility.

22 We had previously been informed and, in fact,
23 we had anticipated that Mr. Hite's prior testimony,
24 which did not go into the statement, was going to be
25 offered by stipulation. And this is the first we've

1 known that it's going to be done this way and we
2 think we have the right to have it taken up outside
3 the presence of the jury.

4 **MR. LUPTON:** Your Honor, that's fine. I would
5 note for the record that the material that this is
6 based on was provided to the defendant. It's not
7 that they're surprised, it's just that previously
8 there was no indication that we would need him
9 because we only anticipated him replying to Bessie
10 Cooper and that accounts for why this is now sudden
11 development that we have him testify as to other
12 things. Since the defendant didn't testify in the
13 first trial, there was no impeachment or no reply
14 regarding that.

15 **MR. BRUCK:** I would like to apologize, too. We
16 had misplaced -- I agree that in discovery we did
17 receive the document summarizing this, but we cannot
18 put our hands on it. I'm wondering if the State
19 could furnish us with a second copy.

20 **THE COURT:** Well, why didn't y'all at the
21 pretrial indicate that you had a need for a Denno
22 hearing?

23 **MR. BRUCK:** Because we never thought they were
24 going into it. They've never gone into it before.

25 **MR. LUPTON:** We would have had it not been for

1 the fact that this is reply to material that was
2 gone into on the defense's case. Had we known that
3 they were going to put up the defendant and that he
4 was going to deny statements that he made
5 previously, then we would have anticipated this, but
6 we obviously cannot anticipate something that
7 doesn't become relevant until after the defendant
8 testifies.

9 **THE COURT:** I mean, just for the record, in the
10 future, any time you know that you're going to use
11 the defendant's statement and there's not been a
12 hearing on it, you're just asking for problems.

13 **MR. LUPTON:** Your Honor, I believe the
14 defendant was aware of these statements and stated
15 at the start of the trial that they did not request
16 a Denno hearing. I can't answer for why they did
17 that.

18 But as far as giving them a copy, we can send
19 somebody over to run a copy. And in the meantime,
20 with the defense's permission, if they're ready for
21 this part of the trial, we can proceed while we're
22 waiting on that.

23 **THE COURT:** Go ahead.

24 (Whereupon, the following proceedings were
25 reported in camera.)

1 DIRECT EXAMINATION

2 BY MR. LUPTON:

3 Q You took a statement or interviewed the
4 defendant on the 12th of October 1989,
5 approximately, 5:52 p.m.?

6 A Yes, sir.

7 Q And show you a copy of waiver of rights form.
8 Is that a copy of the form that the defendant
-9 signed?

10 A Yes, sir, it is.

11 MR. LUPTON: Your Honor, we'd ask that this be
12 marked as a State's Exhibit.

13 THE COURT: All right.

14 (State's Exhibit Number 43, waiver of rights
15 form, was marked for identification purposes.)

16 MR. LUPTON: And, at this time, we've given a
17 second copy to the defense.

18 BY MR. LUPTON:

19 Q If you could look at that, please?

20 A Yes, sir.

21 Q And is that the copy of the form that you went
22 over with the defendant and had him sign?

23 A Yes, sir, it is.

24 MR. LUPTON: And, Your Honor, for the sake of
25 brevity, since this will be in evidence --

1 BY MR. LUPTON:

2 Q You went over the form as it is presented here;
3 is that correct?

4 A Yes, sir, I did.

5 Q And you advised him of his rights as indicated
6 on the form?

7 A Yes, sir.

8 Q He initialed each right?

9 A Yes, sir, he did.

10 Q Did he appear to -- did you ask him if he
11 understood those rights?

12 A Yes, sir, I did.

13 Q Did he appear to understand his rights?

14 A Yes, sir.

15 Q Did he indicate to you that he was willing to
16 waive those rights and speak to you?

17 A Yes, he did.

18 Q In fact, does the form indicate that he is the
19 one who requested to speak with Sheriff Metts
20 present?

21 A That's correct.

22 Q And he signed this form indicating that he was
23 willing to waive his rights, willing to speak to
24 you?

25 A He did.

1 **Q** Now, was there any written statement signed by
2 the defendant produced during this interview?

3 **A** No, sir, it was not.

4 **Q** However, did you make notes of this interview?

5 **A** Yes, sir, I did.

6 **Q** Is that a copy of your notes?

7 **A** Yes, it is.

8 **Q** And that's a copy of the notes that you took on
9 that date from that interview?

10 **A** Yes, sir.

11 **Q** And during the course of the interview, did the
12 defendant state that he had been out driving around
13 in his pick-up truck, drinking beer on the night of
14 October 5th of 1989?

15 **A** He said in the interview that on 10/5/89, that
16 he was out driving around in his pick-up truck,
17 drinking beer and got home at, approximately, 2300
18 hours.

19 **Q** Which is 11:00 p.m.?

20 **A** 11:00 p.m., yes, sir.

21 **Q** Did he also tell you that he had stopped by
22 Donnie Shumpert's shop that night?

23 **A** He did.

24 **Q** Did he also tell you that he stopped by Don's
25 Place on Highway 302 in Pelion?

1 **A** That's correct.

2 **Q** And during the course -- during the course of
3 the interview, did he tell you that he -- or during
4 the course of the interview, was he ever asked if he
5 had ever seen Bo Sutherland with a shotgun?

6 **A** I did ask him that, yes.

7 **Q** And what was his response to that?

8 **A** He stated he could not answer this due to it
9 would bury him.

10 **Q** Were his -- was the interview free and
11 voluntary?

12 **A** Yes, sir. He's the one that requested it.

13 **Q** And he was advised of his rights?

14 **A** Yes, sir, he was.

15 **Q** And he waived those rights?

16 **A** Yes, sir, he did.

17 **Q** Based on your observations --

18 **THE COURT:** Can you establish when he was
19 advised of his rights, please?

20 **MR. LUPTON:** I'm sorry?

21 **THE COURT:** When was he advised of his rights?

22 **BY MR. LUPTON:**

23 **Q** What time was he advised of his rights?

24 **A** On 10/12/89 at 5:52 p.m.

25 **Q** And the interview, did it occur before or after

1 that?

2 A It was after that, yes, sir.

3 Q So at the time he gave you the interview, was
4 he, based on your observations, freely and
5 voluntarily giving up his rights and speaking to
6 you?

7 A Yes, sir.

8 ~~MR. LUPTON: Your Honor, I don't have any~~
9 further questions for purposes of the Denno hearing.

10 THE COURT: Any cross?

11 MR. BRUCK: Yes, sir.

12 CROSS-EXAMINATION

13 BY MR. BRUCK:

14 Q Mr. Cooper was under arrest at this time?

15 A Yes, sir, I believe he was.

16 Q This was a custodial interrogation?

17 A Yes, sir. I believe it occurred in the jail at
18 that time.

19 Q And, initially, were you alone when you took
20 the advice of rights from him?

21 A Yes, sir, I believe I was because there's no
22 witness signature there.

23 Q And then he asked that Sheriff Metts come?

24 A Yes, sir. He requested to talk with Sheriff
25 Metts.

1 Q And Sheriff Metts came and sat in on the
2 interview?

3 A Yes, sir.

4 Q And then you took notes, or you reduced the
5 conversation to writing at a later time to your own
6 memo?

7 A Yes, sir.

8 Q Okay. Did you take notes at the time?

9 A I probably did.

10 Q Where are they?

11 A Sir, I don't know. This was 1989. I wouldn't
12 have a clue.

13 Q And how long after this interview did you write
14 the memo that you're reading from now?

15 A Usually we try to do that right after we
16 completed whatever assignment we were given so, you
17 know, it would still be fresh. Now, if I did it
18 right then that night, I may have or I may have done
19 it the next day.

20 Q You don't know in other words?

21 A No, sir.

22 Q And there's no date on that memo, is there?

23 A No, sir.

24 Q Is it usual for you to do a memo and not date
25 it?

1 **A** Well, you keep calling this a memo. On a lead
2 sheet --

3 **Q** Or a lead sheet, excuse me?

4 **A** Usually we date it and, you know, when it's
5 done. But it says on here on 10/12/89 when this
6 occurred.

7 **Q** Now, you didn't attempt to take a written
8 statement from Mr. Cooper?

9 **A** No.

10 **Q** Can you tell us why?

11 **A** Well, the last sentence in this is that he
12 refused. I had asked him about giving handwriting
13 samples and he refused. So, you know, I can only
14 give you an assumption of why I didn't then, because
15 he probably refused that, too.

16 **Q** But you don't recall?

17 **A** No.

18 **Q** And it's not in your memo?

19 **A** No, sir.

20 **Q** And you said that -- you asked him a direct
21 question about asking Bo Sutherland -- about seeing
22 Bo Sutherland with a shotgun and he stated he could
23 not answer this due that it would bury him?

24 **A** That's what he said, yes, sir.

25 **Q** Do you know whether him meant Sutherland or

1 him? How did you take it?

2 A I took it as he was talking about himself.

3 Q Himself?

4 A Yes, sir.

5 MR. BRUCK: Bear with me just a moment.

6 (Pause.)

7 MR. BRUCK: That's all we have.

8 THE COURT: Any arguments?

9 MR. BRUCK: Yes, sir.

10 THE COURT: Did you have any other questions?

11 MR. LUPTON: No, Your Honor.

12 THE COURT: Any arguments?

13 MR. BRUCK: Well, the argument is that the last
14 question, it is inartful and it's not stated like a
15 lawyer would state it, but this was nothing but an
16 assertion of his Fifth Amendment right not to answer
17 the question and it absolutely cannot be used.

18 THE COURT: The fact that he requested to talk
19 with the sheriff?

20 MR. BRUCK: No. Cooper was asked if he ever
21 saw Bo Sutherland with a shotgun and he stated he
22 could not answer this due to it would bury him.
23 That's flat out a refusal to answer the question on
24 the grounds that the answer might tend to
25 incriminate him. It couldn't be any clearer.

1 **THE COURT:** What does that -- even if that part
2 were left out of the testimony about his statements
3 about where he had been and all?

4 **MR. BRUCK:** Yes.

5 **THE COURT:** That's what they're trying to get
6 in.

7 **MR. BRUCK:** They're trying to get in both of
8 them.

9 **MR. LUPTON:** Your Honor, we would be trying to
10 get in both. I think the fact that he voluntarily
11 spoke and then during the course of that, didn't say
12 I want to assert my Fifth Amendment rights, didn't
13 say I want the interview to terminate, didn't assert
14 his rights at all, he just said, I'm not answering
15 that because it will bury me.

16 **THE COURT:** Well, he said he wasn't answering
17 it.

18 **MR. LUPTON:** He said he could not answer this
19 due to it would bury him. Your Honor, I think that
20 that's an admission not an assertion of rights.

21 **THE COURT:** Do you wish to respond? He didn't
22 sign this form, right?

23 **MR. LUPTON:** No, Your Honor. These are
24 notes -- the officer's notes of the interview.

25 **THE COURT:** Yes, sir.

1 **MR. BRUCK:** I don't think there's anything more
2 to say about it. This couldn't be very much clearer
3 for a person with less than a high school education
4 in how he's exercising his Miranda rights that he's
5 just signed and given by this officer.

6 **THE COURT:** I'll let the statements about where
7 he had been come in, but not that one that he said
8 he was refusing to answer. The report can't come
9 in, the memo, just his testimony.

10 **MR. BRUCK:** Just his testimony not the memo,
11 right.

12 **THE COURT:** You can mark it for I.D., Madame
13 Court Reporter.

14 **MR. LUPTON:** Your Honor, we would ask that the
15 Miranda sheet come in.

16 **THE COURT:** Was that previously marked in by
17 agreement?

18 **MR. LUPTON:** No, Your Honor, it was marked at
19 this point for identification for this witness. I
20 think the Miranda sheet would be admissible.

21 **MR. BRUCK:** In context, the Miranda sheet
22 includes the notation, I have requested to talk with
23 Sheriff James R. Metts. Now, there's nothing wrong
24 with saying that he asked to talk to Sheriff Metts,
25 but to include it in the Miranda sheet is a partial

1 refusal of a waiver. It's a conditional waiver and
2 I think it burdens this man's right to freely --

3 **THE COURT:** What's the conditional waiver?

4 **MR. BRUCK:** The implication is that if they
5 don't bring Sheriff Metts, he's not talking, because
6 he -- that's -- what makes it a conditional waiver
7 is that it's written onto the Miranda sheet before
8 he signs it and so it appears -- the jury would draw
9 the inference that he was willing under certain
10 circumstances, but not under others. It's fine for
11 him to say he wanted to talk with Sheriff Metts, but
12 to say, in effect, as this sheet does, I ain't
13 talking unless you bring in the sheriff.

14 **THE COURT:** I don't know if that says that.

15 ~~**MR. BRUCK:** I think that is the inference and~~
16 an unfair inference that the jury would draw from
17 this document so we don't think this sheet itself
18 should come in. I think it's fine for him to go
19 through what it says.

20 **THE COURT:** Why do you need that? I mean, the
21 testimony is that he was given his Miranda warnings.

22 **MR. LUPTON:** Your Honor, essentially, the same
23 reason why the defense wanted to have the autopsy
24 tox screen on the victim's blood. I think that it's
25 competent evidence and I think it proves what we're

1 saying and I don't see any reason to exclude it, but
2 we do leave it to the Court's discretion.

3 **THE COURT:** You're asking that it be redacted
4 that line or what? Do you need to recall your
5 witness to explain that? I don't know if that
6 inference is proper or not, maybe I should wait
7 until after that.

8 **MR. BRUCK:** I just don't think -- there's not
9 going to be a dispute about voluntariness. This is
10 not something that they need to prove a point that's
11 in contention.

12 **THE COURT:** That's often the case with over --
13 go ahead.

14 **MR. BRUCK:** Well, I know. And because of the
15 fact that I don't think we ought to be whitening
16 things out and changing the evidence, if they don't
17 need it and it carries a potentially prejudicial
18 implication having to do with a man's partial
19 assertion of his Fifth Amendment rights, I just
20 think it shouldn't come in.

21 **THE COURT:** How do I know it's a partial
22 assertion of his rights, though?

23 **MR. BRUCK:** The implication from this could
24 well be, a jury could reasonably say that he was not
25 freely waiving his rights but was only waiving his

1 rights on condition that Sheriff Metts himself come.

2 **THE COURT:** Well, do you want to put him on the
3 stand to let me hear whether that's true or not?

4 **MR. BRUCK:** I'm sorry?

5 **THE COURT:** Do you want to recall your witness
6 to ask about that? You don't have to.

7 **MR. BRUCK:** No, I don't think we do. I think

8 ~~it's the State's burden to put on evidence that~~

9 ~~doesn't prejudice the defendant. This is rebuttal~~
10 and the fact that he was insisting on Sheriff Metts
11 doesn't rebut anything that's germane. And it tends
12 to burden his exercise -- his conditional exercise
13 of his Miranda rights, which he had a right -- he
14 had a right to attach any condition he wanted to
15 having an interview and that was a condition he
16 attached. And for that to be dramatized with the
17 form just isn't fair and I don't think we should do
18 it.

19 **THE COURT:** If he attached a condition to it,
20 he made the statement, though. He made the
21 statement and then signed the form saying, I've
22 requested to talk to the sheriff, so it seems to be
23 a little bit out of sequence if that theory is
24 correct. I mean, if it's a conditional waiver of
25 his rights, then, you know, that's assuming that

1 they told him they would do that before he made any
2 statement. Do you want to establish that through
3 this witness?

4 **MR. BRUCK:** The implication is that if Mr. Hite
5 had said, Well, you can't talk to the sheriff,
6 Mr. Cooper said --

7 **THE COURT:** Why don't you ask this witness what
8 happened in that regard, did he request to talk with
9 the sheriff before he made any statements, et
10 cetera?

11 **MR. BRUCK:** Maybe we should explore it a little
12 further.

13 BY MR. BRUCK:

14 **Q** Mr. Hite, can you explain what the context was
15 about Mr. Cooper asking to see the sheriff?

16 **A** He was advised of his rights and he requested
17 to speak with the sheriff and we made arrangements
18 for the sheriff to come there.

19 **Q** And was that before he signed his waiver,
20 because it's written up there that way? Was that
21 before he signed the waiver form?

22 **A** What was before?

23 **Q** His requesting to see the sheriff?

24 **A** At the time I wrote it in that he had requested
25 to see the sheriff and then he signed it.

1 Q Okay. So he asked to see the sheriff and you
2 said, We'll get the sheriff?

3 A Pretty much, yes, sir.

4 Q And then he signed the form?

5 A Well, I assume so, yes, sir.

6 Q That's the way it looks to you?

7 A I would think so, yeah.

8 Q So, in effect, he was attaching a condition to
9 his waiver, which is, you bring the sheriff, I'll
10 talk to you?

11 A I don't know if it was a condition or what.
12 He's just saying, I am requesting to talk with the
13 sheriff. Now, I never -- I don't recall him ever
14 saying, Look, if I don't talk to the sheriff, I'm
15 not talking to anybody, if that's what you're asking
16 me.

17 Q All right. But isn't that what you're -- isn't
18 that the most likely reconstruction that you can put
19 together now as best you can remember 16 and a half
20 years later?

21 A That he requested the sheriff, I wrote it on
22 here, I have requested to talk with Sheriff James R.
23 Metts and he signed it.

24 Q Okay. And after he asked to talk to the
25 sheriff, did you say, Okay, we'll get the sheriff

1 here?

2 A I'm sure I did. If I hadn't of said that, I
3 don't know if he would have signed it.

4 Q That was exactly my point.

5 A I don't know.

6 Q That's all I'm getting at. Okay, thank you.

7 THE COURT: I'm not going to allow it in. I
8 think it's causing more confusion than its potential
9 relevance is even more -- you can keep that out.

10 MR. LUPTON: Your Honor, with regards to that,
11 is the State being prohibited from going into the
12 fact that he did ask to speak with the sheriff
13 period.

14 THE COURT: Well, why do you want to go into
15 that if you don't even know what it means and he
16 doesn't even know what it means?

17 MR. LUPTON: Your Honor, I think it would go
18 to --

19 MR. BRUCK: We have no problem with the fact
20 that he asked to speak with the sheriff.

21 THE COURT: There you go.

22 MR. LUPTON: I just wanted to make sure.

23 THE COURT: Is that all you're going to do is
24 ask that one question?

25 MR. LUPTON: Well, with regards to that

1 particular part, yes, Your Honor. I mean, we're
2 going to ask him a number of questions, but we're
3 not going to belabor the point that he asked to
4 speak to the sheriff.

5 **THE COURT:** What are you trying to convey with
6 that?

7 **MR. LUPTON:** Your Honor, there was a question
8 about whether or not he was -- had asked to talk or
9 initiated contact. And there was discussion during
10 cross about whether or not he had asked to speak
11 with the sheriff and I think that this clears that
12 up.

13 **THE COURT:** So, on cross, you brought out that
14 he asked to speak to the sheriff?

15 **MR. LUPTON:** Your Honor, it was brought out and
16 he -- and the defendant did say on -- there was some
17 confusion during the cross-examination about whether
18 or not he had -- the defendant had asked to speak
19 with law enforcement or who he asked to speak with,
20 this just clears it up.

21 **THE COURT:** And you don't have any problems
22 with that? Is that what you said?

23 **MR. BRUCK:** Yes, that he asked to speak to the
24 sheriff, that's fine.

25 **THE COURT:** Well, I mean, I don't want y'all

1 both to be a little vague with me in that regard
2 because I don't want any traps later. You're saying
3 that's it, nothing more? And that's what you're
4 saying, too?

5 **MR. LUPTON:** That's all we want to ask as far
6 as that particular statement, yes, Your Honor.

7 **THE COURT:** And you're saying you don't object
8 to that?

9 **MR. BRUCK:** No.

10 **THE COURT:** You're also saying you don't
11 dispute the voluntariness of the statement for
12 purposes of this Denno hearing?

13 **MR. BRUCK:** Correct.

14 **THE COURT:** All right. For purposes of this
15 proceeding in limine, I've considered the totality
16 of the circumstances and find that the statement was
17 made freely, voluntarily and without promise,
18 duress, coercion or undue influence. I also find
19 that he understood his rights. He was given his
20 Miranda warnings. And he freely, voluntarily and
21 intelligently waived his rights in the Fifth and
22 Sixth Amendments of the Constitution.

23 Ready to proceed?

24 **MR. BRUCK:** We have one other matter, Your
25 Honor. We understand, and I don't know the details

1 and I'm sorry to have to go into this and I expected
2 to do this by stipulation, but we understand that
3 Detective Hite was either fired or required to
4 resign from the sheriff's department because of
5 misconduct. We think this is, maybe, information
6 going to his credibility as a witness and we wish
7 the State to disclose the circumstances surrounding
8 that incident at this time.

9 **MR. LUPTON:** Your Honor, I don't think that
10 there was ever any issue that he committed
11 misconduct. He was the lead investigator on the
12 Quattlebaum case. He discovered that there was
13 video taping taken place. And he, in accordance
14 with his duties, informed his superior and informed
15 Deputy Solicitor Fran Humphries of the Lexington
16 County Solicitor's office of the video tape and
17 requested that they address the matter
18 appropriately.

19 **THE COURT:** Was he fired?

20 **MR. LUPTON:** Your Honor, I don't believe he
21 was, but, Your Honor, the --

22 **THE COURT:** Were you fired or required to
23 resign, sir?

24 **THE WITNESS:** No, sir, I was not.

25 **THE COURT:** You were not fired and you were not

1 required to resign?

2 **THE WITNESS:** No, sir. I resigned the moment I
3 took the position as Chief Deputy Coroner of
4 Lexington County.

5 **MR. LUPTON:** And, Your Honor, he was never
6 accused of wrongdoing. There was only one person --

7 **THE COURT:** Do you have something to suggest
8 otherwise, Mr. Bruck?

9 **MR. BRUCK:** May I examine the witness briefly
10 on this?

11 **THE COURT:** Yes, sir.

12 BY MR. BRUCK:

13 **Q** Mr. Hite, during the course of the Quattlebaum
14 matter, did you have occasion to testify under oath
15 that there was no video taping of Mr. Quattlebaum
16 conferring with Mr. Duncan?

17 **A** No, sir. I didn't testify that there was no
18 video taping, no, sir.

19 **Q** Now, when did you resign from the sheriff's
20 department?

21 **A** 1997. I think it was, maybe, March, something
22 like that in '97.

23 **Q** All right. 1997 was the year in which this
24 Quattlebaum matter was disclosed, correct?

25 **A** I don't think it was. I thought it was

1 earlier. I don't remember the dates on it, no, sir.

2 Q Did you resign before or after the video taping
3 incident in State versus Quattlebaum became --

4 A Afterwards.

5 Q You resigned after --

6 A I think Quattlebaum was in '96. I may be wrong
7 now.

8 Q My question was after the video taping became
9 public and you resigned afterwards?

10 A Yes, sir.

11 Q Were you ever --

12 A No, sir. I resigned -- I resigned before it
13 became public.

14 Q Before it became public, but after it occurred?

15 A Yes, sir.

16 Q And you were one of the officers who witnessed
17 the video taping?

18 A Yes, sir.

19 Q When it happened?

20 A Yes, sir.

21 Q You were in the room?

22 A No, sir, someone came and got me.

23 Q And brought you into the room where the
24 interview was being monitored?

25 A Yes, sir. And then I went and got my

1 lieutenant and Fran Humphries.

2 Q So you brought Mr. Humphries into the --

3 A I went and told them and they came in there,
4 yes, sir. As I testified before, I'm not sure how
5 everybody got into that room because it was -- it
6 happened so quick.

7 Q Were you not asked -- in the Quattlebaum
8 matter, did you not ask -- were you not asked at
9 preliminary hearing when you were under oath whether
10 there was any taping of Mr. Quattlebaum period?

11 A Yes, sir. And I explained that during the
12 investigation and then asked during trial, my
13 questions that were asked me prior to that was
14 concerning my interview with Quattlebaum, my
15 lieutenant and Jack Duncan were in the room and
16 that's what I was referring to was that interview
17 there. There was no video taping, there was no tape
18 recording done during that interview.

19 Q So you were asked a direct question whether
20 Mr. Quattlebaum was ever taped and you said, no?

21 A Yes, sir, I did. As I said now, I was
22 referring to when I interviewed Mr. Quattlebaum with
23 Mr. Duncan present.

24 Q All right. So you answered a question that was
25 different than the question asked. The question

1 asked was, Mr. Quattlebaum ever taped.

2 **A** I answered the question as I thought it was
3 being asked to me.

4 **Q** Okay. You were never indicted?

5 **A** No, sir, I never was, never got a target letter
6 from the Federal Bureau of Investigation, never was,
7 cooperated fully during their investigation.

8 **Q** Did you testify before the Federal Grand Jury?

9 **A** Yes, sir, I did.

10 **Q** Did you retain counsel in the matter?

11 **A** Yes, sir, I did.

12 **MR. BRUCK:** Bear with me just a moment.

13 (Pause.)

14 **MR. BRUCK:** Nothing further. Appreciate the
15 disclosure. That takes care of that matter.

16 **THE COURT:** So that takes care of it?

17 **MR. BRUCK:** Yes, sir.

18 **MR. LUPTON:** Your Honor, I think that none of
19 this is relevant to this case.

20 **THE COURT:** I think he's saying he's not going
21 into it.

22 **MR. BRUCK:** We are relying on the information
23 that's been made known to us. In reliance upon
24 that, we do not intend to go -- if the facts turn
25 out to be different, of course, we'll have a

1 problem, but we have to take what we're told.

2 **THE COURT:** As it would be in any case where a
3 witness does not tell the truth.

4 All right. Are we ready?

5 **MR. LUPTON:** Your Honor, if I can one minute
6 and step out?

7 **THE COURT:** Yes, that's fine.

8 (Pause.)

9 **MR. LUPTON:** Thank you, Your Honor. The
10 State's ready.

11 **THE COURT:** Bring the jury in, please.

12 (The jury returns to the courtroom.)

13 **THE COURT:** All right. Ladies and gentlemen,
14 we're ready to proceed.

15 BY MR. LUPTON:

16 **Q** I believe we were talking about an interview
17 that you had with the defendant in this case?

18 **A** Yes, sir.

19 **Q** Now, do you recall when that interview
20 occurred?

21 **A** Yes, sir. It occurred on October 12th, 1989.

22 **Q** And about what time did this occur?

23 **A** It was around, approximately, 6:00 p.m., 5:52
24 p.m.

25 **Q** And do you recall who initiated the interview?

1 **A** Mr. Cooper requested to talk to us, yes, sir.

2 **Q** And did he also request anybody specific to be
3 there?

4 **A** He also requested to talk with Sheriff James
5 Metts, yes, sir.

6 **Q** And so y'all meet with him and did you go over
7 his rights at that time? _____

8 **A** I did. _____

9 **Q** And you have a copy of that in front of you; is
10 that correct?

11 **A** Yes, sir.

12 **Q** Now, can you explain to the jury how you
13 advised him of his rights?

14 **A** Pretty much in normal fashion, I told him, I
15 said, There are some rights I have to advise you,
16 and I read each one off on the sheet of paper and
17 had him initial beside each number.

18 **Q** And did you first establish whether or not he
19 was able to read and write?

20 **A** Yes, sir. He stated he had a 7th grade
21 education and he could read and write, or he could
22 read.

23 **Q** And, at that time, he had been arrested; is
24 that correct?

25 **A** Yes, sir.

1 Q So he was in custody?

2 A Correct.

3 Q And he understood what he was charged with, is
4 that fair to say?

5 A That is correct because also on the statement
6 it states that, I understand, who I understand is a
7 law enforcement officer, that he would like to
8 question me concerning the crime of murder,
9 kidnapping and robbery.

10 Q And below that is the advice of rights form?

11 A That's correct.

12 Q And could you tell the jury what rights you
13 advised him of?

14 A I stated to him that I have the right to remain
15 silent, that means I do not have to say anything or
16 answer any questions.

17 Q And did Mr. Cooper place his initials next to
18 that?

19 A He did. He placed the initials G.T.C.

20 Q Gene Tony Cooper?

21 A Correct.

22 Q And what did that indicate?

23 A That indicated that he did not have to talk at
24 all. He didn't have to say anything.

25 Q I'm referring to the initials being placed.

1 **A** The initials indicate he understood what was
2 just said to him and what he just read, yes, sir.

3 **Q** Now, what did you next advise him of?

4 **A** I advised him, Anything I say can be used
5 against me in a court of law.

6 **Q** And did he initial that indicating he
7 understood?

8 **A** Same initials, G.T.C., yes, sir.

9 **Q** What next?

10 **A** I have the right to talk to a lawyer and have a
11 lawyer here with me now to advise and help me before
12 and during questioning.

13 **Q** Did he initial that to indicate understanding?

14 **A** Yes, same initials.

15 **Q** What next?

16 **A** If I want to have a lawyer with me before and
17 during questioning but cannot afford to pay a
18 lawyer, one will be provided to me at no cost before
19 and while I am questioned.

20 **Q** And did he initial that one?

21 **A** Yes, sir.

22 **Q** What was the fifth?

23 **A** If I decide to answer questions now without a
24 lawyer here, I still have the right to stop
25 answering questions whenever I want to.

1 Q And did he initial that?

2 A He did, yes, sir.

3 Q And what was the 6th?

4 A I also have the right to stop answering
5 questions until I have talked to a lawyer.

6 Q And did he initial that to indicate I
7 understand?

8 A He did.

9 Q And does the form have a spot for him to
10 acknowledge whether or not he wishes to waive those
11 rights?

12 A Yes, it does.

13 Q And could you read that paragraph right above
14 his signature?

15 A It says, My decision to answer questions now
16 without a lawyer is made freely and is my own
17 choice, no one has threatened or coerced me in any
18 way or promised me special treatment. To show my
19 decision, I am signing my name in the space below.

20 Q And did he sign his name in the space below?

21 A Yes, he did.

22 Q Was it dated?

23 A Yes, 10/12/89.

24 Q And what time was indicated?

25 A 5:52 p.m.

1 Q And after you took this advice of rights --
2 first of all, when you gave him this advice of
3 rights, did you have a chance to observe him?

4 A Yes.

5 Q Did he appear to understand the rights?

6 A Yes, he seemed to, yes, very much so.

7 Q And when he waived those rights, did he appear
8 to be doing so voluntarily?

9 A Yes, sir.

10 Q Now, what did you do after he signed this
11 advice of rights and waived his rights and agreed to
12 speak?

13 A After that --

14 Q First of all, did you interview him before
15 that?

16 A No, did not. No, did not. After that, we
17 interviewed him.

18 Q And during the course of that interview, did he
19 state to you where he had been on the night of
20 October 5th, 1989?

21 A Yes, he did.

22 Q Where did he say he had been that night?

23 A He said he was out driving around in his
24 pick-up truck drinking beer, said he got home at,
25 approximately, 2300 hours or 11:00 p.m. He

1 further --

2 Q Did he say anything about whether or not he had
3 ever been to Donnie Shumpert's shop?

4 A Yes. He said he stopped by there that night.
5 And he also said he stopped at Don's Place on
6 Highway 302 near Pelion.

7 Q And did he say anything about having spent the
8 day at his parents' house?

9 A Yes. He said that he had stopped by his
10 parents late Thursday night to check on his motor
11 home.

12 Q Did he say anything at that time about having
13 spent the entire day or most of the day at his
14 parents' house?

15 A No, he did not.

16 Q Now, did you also have an occasion to interview
17 the defendant's mother on October 13, 1989?

18 A I could have, but I don't -- I really don't
19 recall.

20 Q You don't recall?

21 A No, sir.

22 Q If I showed you a copy of your prior testimony,
23 would that refresh your recollection?

24 A Yes, sir, it could.

25 Q And you gave this testimony at a time when the

1 events were fresher in your mind?

2 A Yes, sir.

3 Q And after looking at your prior testimony, do
4 you now recall whether or not you interviewed the
5 defendant's mother?

6 A Yes, sir, at her residence, you know, according
7 to this, yes, sir.

8 Q And at the time you interviewed her, did you
9 ask her whether or not she had seen her son, the
10 defendant, on the date of this murder?

11 A Yes, sir.

12 Q October 5th, 1989?

13 A She was asked if she had seen her son that
14 Thursday, yes, sir.

15 Q And what was her response?

16 A She stated that she and her husband were home
17 Thursday evening and she stated that she went to
18 bed, approximately, 7:30 that evening. She also
19 stated that she did not see Tony Cooper at all.

20 Q Now, did you ask her specifically whether she
21 had seen him at all any that day?

22 A She was asked if she saw him at anytime on
23 Thursday and she said that she had not see him at
24 all.

25 Q At any time?

1 **A** At all was her words, yes, sir.

2 **MR. LUPTON:** Nothing further, Your Honor.

3 CROSS-EXAMINATION

4 **BY MR. BRUCK:**

5 **Q** Good afternoon, Mr. Hite.

6 **A** Yes, sir.

7 **Q** First, I would like to talk to you about Ms.
8 Cooper.

9 **A** Uh-huh.

10 **Q** Now, when you testified previously -- you have
11 ---- no memory at all of what she said; is that correct?

12 **A** Vaguely, I -- seem like I remember something
13 about it, but the details, no, sir, I do not, no.

14 **Q** And so what you have just done is you have
15 looked back on how you testified in 1991?

16 **A** Yes, sir.

17 **Q** And you, basically, have just been telling the
18 jury what you said then?

19 **A** Yes, sir.

20 **Q** All right. And, at that time, you were
21 testifying from some notes that you had made even
22 earlier?

23 **A** Yes, sir.

24 **Q** Do you have those notes with you?

25 **A** No, sir.

1 Q Where are they?

2 A Sir, I don't know. That's been 14, 15 years
3 ago. I would have thought they would have been with
4 the case file. I have no idea.

5 Q The Solicitor didn't provide you with your
6 original case notes before you testified here today?

7 A No, sir.

8 Q So what we've got now is you testifying today
9 about what you testified to in 1991 about what you
10 wrote down at some point between talking to
11 Ms. Cooper in 1991, correct?

12 A I wrote them down at the time that we talked to
13 her. And, yes, I'm testifying to what I said then,
14 yes, sir.

15 Q Okay. About what she --

16 A She had told me, yes, sir.

17 Q About what was in your notes?

18 A Yeah, and what she had told me.

19 Q So that in 1991, you wouldn't have been using
20 your notes if you had remembered exactly what she
21 said from memory, would you?

22 A No, sir, because this was written down, this --
23 the follow-up sheet supposedly was done the next
24 day, according to my testimony, so that would have
25 been fresh. I probably did it that evening or some

1 time that night.

2 Q Uh-huh. So the notes that you're talking about
3 were not -- now, were not taken down while she
4 talked to you, they were a follow-up sheet that you
5 wrote down the next day?

6 A No, sir, that's not what I'm saying. I'm
7 saying that usually there is a follow-up sheet done
8 where an interview is summarized and I would have
9 done that probably the next day. The notes would
10 have been taken while I was talking to her. That's
11 pretty much, you know, the way it's done.

12 Q Well, then I guess I should have asked you two
13 things. Do you have the follow-up sheet?

14 A No, sir, I do not.

15 Q That you wrote down maybe the day after you
16 talked to her?

17 A No. According to this, I did it the day after
18 I talked to her. No, sir, I do not.

19 Q Okay. Well, then how about letting me have the
20 original notes?

21 A Sir, I don't have the notes. I've told you
22 that, I think, about three times now.

23 Q Oh, I apologize. I misunderstood. All right,
24 so the follow-up sheet is based on the notes?

25 A Uh-huh. That's correct.

1 Q And your testimony in 1991 is based on the
2 follow-up sheet?

3 A According to this, my testimony was based on --
4 from the notes.

5 Q Okay. Can you tell me for sure whether that
6 was the follow-up sheet or the notes you took at the
7 time?

8 A The notes.

9 Q Okay. And Ms. Cooper was in very bad health at
10 that time, was she not?

11 A I don't recall.

12 Q You didn't notice?

13 A I don't recall, no, sir. I mean, she could
14 have been ill, I'm not sure.

15 Q You were unaware that she had had two
16 mastectomies and suffered from cancer?

17 A She could have, yes, sir. But like I said, I
18 don't recall what her health condition was at the
19 time. She was there and she was conscious and able
20 to talk to me.

21 Q Able to talk to you. But it's been an awfully
22 long time?

23 A Yes, sir, it has.

24 Q And if she was confused about whether you were
25 asking her about Thursday night or about the entire

1 day, you don't recall that either?

2 A No, sir, but I believe I would have put
3 something in the notes, you know, concerning that.
4 According to my testimony in 1991, she was, you
5 know, it seemed like she was pretty clear on it.

6 Q And you think you were pretty clear?

7 A No, sir. I'm saying it seemed like to me she
8 was pretty clear. If she wasn't too clear on it, I
9 would have said so.

10 Q Okay. Your testimony exactly was, Ms. Cooper
11 stated that she and her husband were home Thursday
12 evening and she further stated that she went to bed

13 at, approximately, 7:30 that evening?

14 A That's correct.

15 Q Now, both of those are apparently questions
16 having to do with the evening, correct? ---

17 A Yes, sir.

18 Q And the next statement is that she also stated
19 that on October 5th, 1989, that she had not seen
20 Tony Cooper at all?

21 A That's correct.

22 Q And was she asked to make a written statement?

23 A I don't think so, no, sir. There's no
24 indication she was, no, sir.

25 Q So all we have is your notes and your incident

1 report, neither of which exist any longer or at
2 least you don't have it?

3 A I don't know if they exist or not. I just --
4 I'm saying I don't know where they are, okay.

5 Q All right. And if she understood your
6 questions to mean did you -- to relate to the
7 evening in whether she saw Tony Cooper in the
8 evening, you wouldn't know? You don't think that's
9 what she understood?

10 A Do what now? Repeat that, please.

11 Q You don't think she understood your questions
12 to be referring to the evening?

13 A I'm sure she -- we were clear that she hadn't
14 seen him at all Thursday whether it be daytime or
15 evening.

16 Q All right. Now, I'd like to ask you about your
17 statement, the interview you had with Mr. Cooper on
18 the 12th of October?

19 A Uh-huh.

20 Q You began by telling the jury the exact time to
21 the minute that this interview had occurred,
22 correct?

23 A Uh-huh.

24 Q And that time was 5:52 p.m.?

25 A Yes, sir.

1 Q But the reason you know that is that on the
2 waiver of rights form, there is a space for the
3 time?

4 A That's correct.

5 Q And you filled out 5:52?

6 A That's correct.

7 Q So you don't remember that it was 5:52?

8 A No, sir. If I put 5:52 on there, then that's
9 what time it occurred. If it occurred at 8:52, I
10 would have put 8:52 on there.

11 Q Right. So that's why you know the exact time?

12 A That's correct, yes, sir.

13 Q And then thereafter, during the testimony that
14 you just gave that the jury just heard about what
15 Mr. Cooper said, you were -- you don't actually
16 remember what he said directly, do you?

17 A I remember talking to him, but word for word
18 what he said, no, sir.

19 Q Right. So what you're relying on is another
20 one of these follow-up reports?

21 A Yes, sir.

22 Q That you wrote at some point after you and
23 Sheriff Metts interviewed him?

24 A That's correct.

25 Q And that's a one page report, correct?

1 A Yes, sir.

2 Q And it has no date on it?

3 A No, sir, it does not.

4 Q And you don't remember exactly when that was
5 written, correct?

6 A No, sir, but it probably -- and I can only
7 speculate that it was written a short time
8 afterwards so the information would still be fresh.

9 Q Do you remember sitting down and writing it?

10 A Exactly -- if I could remember that, I probably
11 could remember when I wrote it.

12 Q So you don't?

13 A No.

14 Q And in this report, you wrote down -- now, let
15 me ask you this. When you were talking -- when you
16 and Sheriff Metts were interviewing Tony Cooper,
17 were you taking notes or were you just listening to
18 what he had to say?

19 A I'm sure I was taking notes at that time, also.

20 Q I'm sure you know what my next question is,
21 don't you?

22 A Yes, sir.

23 Q What is it?

24 A Where is the notes.

25 Q And where are they?

1 **A** I don't know, sir.

2 **Q** All right. So all we have is the statement --
3 is the follow-up report that you wrote to yourself
4 to the file at some point, you think, shortly after
5 the next day or two maybe?

6 **A** I would probably say either that night or the
7 next morning at the latest. Usually we try to do it,
8 at that time, like I said, so while it's still fresh
9 in your mind.

10 **Q** All right. But you don't know?

11 **A** If you want me to stand here under oath and say
12 exactly date and time, no, sir, I can't do it.

13 **Q** And in this summary that you have written down
14 for the file, you said that Cooper continued to deny
15 any knowledge of this incident, correct?

16 **A** That's correct.

17 **Q** And then you originally wrote, Cooper did state
18 he was out driving around in his pick-up truck,
19 drinking beer and got home at, approximately, 2300
20 hours, correct?

21 **A** That's correct.

22 **Q** And then you went back and inserted, after
23 Cooper did state, you inserted the words on 10/05/89
24 and put a little arrow?

25 **A** Uh-huh.

1 Q And you had left that out originally?

2 A I'm sure, yeah.

3 Q And then you said, Cooper further stated that
4 he did stop at Donnie Shumpert's shop and did stop
5 at Don's Place on Highway 302, Pelion, SC, Cooper
6 could not provide times?

7 A That's correct.

8 Q And there's no other mention of the date that
9 he's talking about in that paragraph, is there?

10 A No, sir.

11 Q And the sentence about he stopped at his
12 parents' house late Thursday night -- okay, that was
13 the rest of it -- Thursday night to check on his
14 mother, correct?

15 A Uh-huh.

16 Q And he didn't give a time either that you had
17 written down?

18 A No, sir.

19 Q If there's anymore information or any different
20 information, it might be in your notes that you --
21 that we don't have?

22 A I wouldn't think it would be much more than
23 this right here, if there's anything in there at
24 all.

25 Q All right. And sometimes when you're writing

1 down a statement from your notes, do you ever think
2 of things that you remember or think you recall that
3 aren't in your notes or do you include that?

4 **A** I probably -- I'm sure it's happened, but most
5 of the time it's basically just from the notes.

6 **Q** All right. But, I mean, if you thought you
7 remembered something else that was said and it
8 wasn't in your notes, you would have not put it in a
9 statement, would you?

10 **A** I would want to be sure in my mind that that's
11 what was said so it would be truthful.

12 **Q** Right. If you felt you were sure, you would
13 have put it down?

14 **A** I'm sure I would, yes, sir.

15 **Q** And so since you don't have the notes, we don't
16 know whether there are things in this statement that
17 aren't in there?

18 **A** That could be true, yes, sir.

19 **Q** Do you ever make mistakes?

20 **A** Absolutely, I'm human.

21 **MR. BRUCK:** That's all I have. Thank you.

22 Excuse me. I may not be.

23 **Q** Did you ever talk to Tony Cooper's father, Gene
24 Tony Cooper, Senior?

25 **A** I don't recall if I did. I'm not saying I

1 didn't, sir. I don't recall if I did. He may have
2 been there, you know, when we talked to his wife,
3 but it seems like if he had of, you know, there
4 would have been something said about that.

5 Q As a matter of fact, didn't you tell Mr. Cooper
6 you'd be back to talk to him later and then never
7 did?

8 A I may have, very well could have.

9 MR. BRUCK: That's all I have. Thank you.

10 REDIRECT EXAMINATION

11 BY MR. LUPTON:

12 Q But Tony Cooper, Senior never came to you and
13 said, hey, my son didn't do this, I know that for a
14 fact because he was with me when the crime occurred,
15 did he?

16 A Not that I'm aware of, no, sir. I don't recall
17 that, no, sir.

18 Q Now, the -- all this stuff took place about
19 close to 17 years ago, correct?

20 A Yes, sir.

21 Q And you've testified that your memory -- that
22 you don't really recall all of the details now?

23 A Not a lot of it, no, sir.

24 Q But when you made these notes that you
25 testified from both back in the -- back in '91 and

1 today --

2 A Uh-huh.

3 Q -- you remembered at that point what had
4 happened, didn't you?

5 A Yes, sir.

6 Q Were the statements you put into the -- was
7 what you put in those notes the truth?

8 A Absolutely.

9 ~~Q~~ What you testified before the truth?

10 ~~A~~ Absolutely.

11 ~~Q~~ Now, there was talk about possibility of
12 misunderstanding. Would you look at page 1772,
13 bottom of the page lines 20 through 25 during
14 cross-examination.

15 A Yes.

16 Q Were you asked -- there's been some question as
17 to whether or not there was a possibility that Ms.
18 Cooper may have misunderstood you that y'all had
19 been talking about the evening hours. Did you ask
20 her about whether or not she had seen her son, the
21 defendant, that evening?

22 A Yes, I did.

23 Q And had she?

24 A She said she had not.

25 Q Did you also ask very specifically or did you

1 indicate that you had asked very specifically about
2 it at all on October 5th?

3 A I did.

4 Q Separate from the question about the evening
5 hours?

6 A That's correct.

7 Q And had she -- did she tell you she had seen
8 him at all that day?

9 A She stated she had not seen him at all that
10 day.

11 Q Now, with regards to questions about whether or
12 not you -- when you made these notes, whether or not
13 something might be in the notes different from
14 what's in the -- from what's in the trial transcript
15 or what's in your follow-up report, back when you
16 wrote the notes, back when you wrote your follow-up
17 report, back when you wrote those documents, did you
18 know then what the defendant's alibi was going to be
19 today?

20 A No, not what it is today, no.

21 Q Did you have any reason, at that point, to
22 write something to rebut an alibi that you didn't
23 know about yet?

24 A No, because I can't predict the future. You
25 know, I don't know what his alibi was going to be

1 today, no.

2 Q Is it possible that his alibi has changed?

3 A Sure.

4 Q And that that's why you were told something
5 different back then?

6 A Absolutely, yes.

7 MR. LUPTON: Nothing further.

8 RECROSS-EXAMINATION

9 BY MR. BRUCK:

10 Q Just one last thing, Mr. Hite. The notes, both
11 ~~the interview with Tony Cooper's mother and the~~
12 interview with Tony Cooper, your original notes,
13 where do they go?

14 A Usually they're put with the case file at that
15 time, you know, that way it can all be kept concise
16 and together.

17 Q And that's because some of these things may
18 turn out to be very important, right?

19 A Sure.

20 Q And you don't want to lose things?

21 A That's correct.

22 Q Especially notes of an investigation when
23 everything's fresh?

24 A That's correct.

25 Q You try to -- it's good law enforcement?

1 **A** I think so, yes.

2 **Q** To keep track of things and not lose them?

3 **A** I think so.

4 **Q** Or destroy information that could turn out to
5 be important?

6 **A** I think so, yeah.

7 **Q** And where is the case file kept?

8 **A** I don't know. It wasn't my case, sir. It was
9 the City of West Columbia's case. We were assisting
10 the West Columbia-Police-Department so I don't have
11 a clue.

12 **MR. BRUCK:** Very well. Thank you. Nothing
13 further.

14 **MR. LUPTON:** Your Honor, the State rests.

15 **THE COURT:** All right. Ladies and gentlemen,
16 I'm going to send you to the jury room. Do not
17 discuss this case in any way. Thank you very much.

18 Hold on, ladies and gentlemen, before y'all go,
19 I didn't ask you this morning. My question is, has
20 anyone been exposed to any type of media coverage or
21 interaction or contact in any way about this case;
22 if so, raise your hand?

23 Let the record reflect no one raised their
24 hand. Thank you very much.

25 (The jury retires to the jury room.)

1 **MR. LUPTON:** Your Honor, can we excuse this
2 witness?

3 **THE COURT:** Any objection?

4 **MR. BRUCK:** No objection, sir.

5 **THE COURT:** You may be excused.

6 For the record, the Court indicated at the
7 bench conference the defendant could reserve any
8 motions, to go ahead and allow for the rebuttal
9 witness to testify so I did not have to send the
10 jury out twice. Do you have any motions?

11 **MR. BRUCK:** Yes, sir. At this time, I would
12 renew the motions made at the close of the State's
13 case for a directed verdict on all charges on the
14 same grounds stated therein.

15 **THE COURT:** All right.

16 **MR. BRUCK:** And on the same legal bases
17 including the federal constitutional grounds stated.

18 **THE COURT:** Any response?

19 **MR. BELL:** Your Honor, we would respond the
20 same way that the Court's concern is existence of
21 evidence not its weight and that there's been plenty
22 of evidence to take this to the jury.

23 **THE COURT:** And, as I understand, the only
24 ground raised for a directed verdict was that you
25 felt, as a matter of law, I should resolve that

1 credibility issue; is that correct?

2 **MR. BRUCK:** We felt that there was no
3 credibility issue worthy of the name on this case,
4 that's correct.

5 **THE COURT:** All right. That being the only
6 ground, I deny that motion for the same reasons I
7 indicated before. Anything further?

8 **MR. BRUCK:** Yes. I also, at this time, renew
9 the motion made pretrial to dismiss this case on the
10 grounds of a lack of a speedy trial. ~~I'd like to~~
11 restate and incorporate by reference every ground
12 and argument made previously and to add that now
13 that the evidence has come out, the Court has been
14 able to see that there has been a substantial
15 attrition through the passage of time of a great
16 deal of the State's case, this last witness was a
17 good example, which remembered almost nothing, and
18 it was very difficult to reconstruct crucial
19 information about what the defendant's statement was
20 to Sheriff Metts and to him, what the defendant's
21 mother's statement was, the notes that would have
22 been the basis for cross-examination have
23 disappeared during the passage of time.

24 I would also incorporate and refer the Court to
25 the testimony of Nancy Skraba, SLED agent, who said

1 that the DNA profiles that are obtainable from
2 evidence, such as, including the evidence in this
3 case, degrades over time. And that when she was
4 finally -- finally did the analysis at the request
5 of the defense this spring, she was only able to
6 obtain a few results and the results that could only
7 have been used to eliminate not to identify
8 contributors, evidence such as the beer cans at the
9 house and at the scene.

10 **THE COURT:** What would that have to do with the
11 trial date?

12 **MR. BRUCK:** The trial date?

13 **THE COURT:** Yeah, the DNA testing.

14 **MR. BRUCK:** What she said was that the more
15 time goes by, the less of an analysis you can get.

16 **THE COURT:** Well, I mean, that misses the
17 point. The testing doesn't take place at trial.
18 There's plenty of time in between the trial date and
19 whenever to get tests done; is that not correct?

20 **MR. BRUCK:** Well, I'm aware of that.

21 **THE COURT:** My question is what does the trial
22 date have to do with the actual testing?

23 **MR. BRUCK:** It's true that the State could have
24 tested these materials earlier. And perhaps had the
25 trial date been set earlier, the State would have

1 arranged for the testing sooner, but it did not and
2 they did not. And the evidence was too degraded to
3 get as much of a result as might have been,
4 according to the expert's testimony, obtained had
5 the testing been done earlier. These are examples
6 of trial related prejudice that we think is
7 attributable to the ~~inordinate delay in calling this~~
8 case for a retrial.

9 **THE COURT:** What -- does the State have a duty
10 to conduct DNA testing?

11 **MR. BRUCK:** They have a duty to call this case
12 for trial in a timely fashion.

13 **THE COURT:** Well, I mean, but the thing you're
14 talking about right now is DNA testing.

15 **MR. BRUCK:** Right.

16 **THE COURT:** We're not hashing out every aspect
17 of the speedy trial issue, but DNA testing, I mean,
18 it wasn't done during the first trial, correct?

19 **MR. BRUCK:** That's correct.

20 **THE COURT:** And no attempt was made to test it
21 within the period of time that you think it should
22 have been tested.

23 **MR. BRUCK:** Correct.

24 **THE COURT:** Does the State have a duty to do
25 that?

1 **MR. BRUCK:** I don't think that -- no. I mean,
2 the State does not have a duty to conduct every
3 conceivable forensic test.

4 **THE COURT:** I mean, the defendant has no duty,
5 but the defendant also can conduct a test.

6 **MR. BRUCK:** Well, that's right. And when we
7 had a trial date and the capacity to subpoena Ms.
8 Skraba, we also requested, realizing that the State
9 in all this time had not done any of this testing,
10 we asked that it be done and it was.

11 **THE COURT:** Well, I mean --

12 **MR. BRUCK:** It's true that we could have asked
13 for it sooner, that's true.

14 **THE COURT:** I don't mean to be so poignant, but
15 I don't -- I'm not making the leap from the setting
16 of the trial date to any desire to test. There
17 could have been numerous opportunities to do that
18 testing or compel that testing if it were deemed to
19 be appropriate, correct?

20 **MR. BRUCK:** Well, yes, I think that is probably
21 something that can be said about any speedy trial
22 prejudice. Yes, we could have taken depositions de
23 bene esse on this or that witness before their
24 memory faded. There are a lot of things that could
25 have been done, but there is no obligation on the

1 defendant's part.

2 **THE COURT:** I understand the defendant doesn't
3 have any duty to produce any type of testimony or
4 evidence, but, at the same time, really the question
5 really begs itself, I mean, we all know the answer,
6 there's no duty to perform these DNA tests because
7 if there were such a duty, a lot of cases would be
8 set aside for not having done so.

9 All right. What else?

10 **MR. BRUCK:** Those are our motions.

11 **THE COURT:** Any response from the State?

12 **MR. BELL:** Your Honor, we've already hashed out
13 the original issues on the speedy trial, but the DNA
14 testing, yes, we could have done it, but Ms. Skraba
15 testified, though, that there wasn't any credible
16 evidence either way that existed and the State was
17 aware of that. And, also, that one part of the
18 evidence, for instance, the blood of the victim was
19 so degraded back in 1989 when it was originally
20 tested, so that wouldn't affect either here nor
21 there on that, Your Honor. We think that the
22 Court's ruling is the correct ruling and we stand by
23 that ruling.

24 **THE COURT:** All right. I deny the motion.
25 Anything further?

1 **MR. BRUCK:** No, sir.

2 **THE COURT:** What are we talking as far as the
3 length of your closings? I can do closings today
4 and then charge first thing in the morning and let
5 them deliberate. I don't know how long your closing
6 is going to take so tell me. Who's doing the
7 closing?

8 **MR. BELL:** Mr. Lupton's going to open and then
9 I'll do the main closing.

10 **THE COURT:** How long is the opening going to
11 take?

12 **MR. LUPTON:** I would expect ten, 15 minutes at
13 most.

14 **THE COURT:** All right. And how much are you
15 going to need?

16 **MR. BELL:** Mind could go, you know, from half
17 an hour to an hour.

18 **THE COURT:** To an hour? There's a big
19 difference, that's twice as long.

20 **MR. BELL:** The most I've ever done is an hour
21 and that was a couple months ago and I didn't know I
22 was going that long. So, I mean, that's about when
23 I'm looking for.

24 **THE COURT:** So there's a possibility it could
25 take an hour and 15 minutes for the State?

1 **MR. BELL:** It could, Your Honor.

2 **THE COURT:** And the defense?

3 **MR. BRUCK:** I would estimate an hour and it
4 could even be a little more. There's a lot of facts
5 in this case.

6 **THE COURT:** That's okay. I understand. I'm
7 just trying to gauge the time.

8 **MR. BRUCK:** Our suggestion would be, I hate to
9 quit at a quarter till 4:00, but I think the jury is
10 probably a little tired and I think they would be
11 exhausted and bleary by the time they've listened to
12 two hours of closing arguments this afternoon.

13 **THE COURT:** Is that what y'all would prefer to
14 do?

15 **MR. BELL:** Yes, Your Honor, I think we would.

16 **THE COURT:** All right. Bring the jury in.

17 (The jury returns to the courtroom.)

18 **THE COURT:** All right. Ladies and gentlemen,
19 that completes the presentation of the case to you.
20 At that point, we had a couple options, we could
21 start the closings and then bring you back in the
22 morning to hear my charge and deliberate or we could
23 do it all together in the morning, hear the closing
24 arguments and then my jury instructions and then
25 allow you to deliberate. That seems to be the

1 preferred approach.

2 So what I'm going to do is ask you to report
3 back at 9:30 tomorrow morning and, at that time,
4 you'll hear the attorney's closing statements.
5 After those closing statements, I'll instruct you
6 about the law and, at that point, I'll ask you to
7 begin your deliberations in order to reach a verdict
8 in this case.

9 Please remember you must not discuss this case
10 in any way with anyone or expose yourself to any
11 type of coverage, media, newspaper or otherwise.
12 Again, I don't know if there has been any, but
13 that's my instruction to you. And, also, you have a
14 duty to report that to me if any of that interaction
15 or contact takes place.

16 I hope you have a good night. We'll see you
17 tomorrow morning.

18 (The jury was excused for the day.)

19 **THE COURT:** Y'all want to look at the verdict
20 form.

21 **MR. BELL:** We looked at it earlier.

22 **MR. BRUCK:** It's fine with us, Your Honor.

23 **THE COURT:** There are no objections to the
24 verdict form?

25 **MR. BELL:** None from the State.

1 **MR. BRUCK:** None from the defense.

2 **THE COURT:** See you tomorrow. Thank you.

3 Let's go ahead and use some of this down time
4 right now to get all of the exhibits together, make
5 sure something was not supposed to be marked as I.D.
6 or otherwise just to double check that, get them all
7 in one stack so y'all will have them there to use
8 for your closings, please. And then if there's any
9 issue about it, I can take it up right now.

10 _____ (Pause.) _____

11 **MR. BRUCK:** If it please the Court, we have one
12 matter. The court reporter informs me that
13 Defendant's 12, which is simply a county map that
14 was used during the testimony of the defendant has
15 not yet been formerly entered into evidence and we
16 so move.

17 **THE COURT:** Any objection from the State?

18 **MR. BELL:** None, Your Honor.

19 **THE COURT:** All right. Defendant's 12, county
20 map, is in evidence without objection.

21 (Defendant's Exhibit Number 12, county map,
22 admitted into evidence.)

23 **THE COURT:** We'll straighten out State's
24 Exhibit 10 in the morning, if that's the picture
25 related to the rings, then I understand the State

1 wants to withdraw that; is that correct?

2 MR. BELL: Yes, Your Honor.

3 THE COURT: Make sure you bring that up first
4 thing in the morning so we can put that on the
5 record.

6 MR. BELL: Yes, Your Honor. We're supposed to
7 have it here first thing.

8 THE COURT: All right. See y'all in the
9 morning.

10 ~~(Whereupon, the proceedings were concluded~~
11 for May 30, 2006.)

12 (The following proceedings were held on May
13 31, 2006.)

14 MR. BELL: Your Honor, we found the photograph.
15 And the court reporter has put 10 on it, which I
16 believe to be the photograph that we attempted to
17 enter, but I think we withdrew it as far as the
18 stipulation as to the rings. So this is the only
19 photograph that I know that existed in our case and
20 we just marked it State's 10 for I.D.

21 THE COURT: So 10 is being withdrawn as an
22 exhibit because it was admitted?

23 MR. BELL: We had a stipulation about the rings
24 being on the left hand.

25 THE COURT: Is that correct?

1 **MR. BRUCK:** Yes, sir.

2 **THE COURT:** All right. 10 is withdrawn from
3 evidence. State's 10 is being withdrawn.

4 The State in its cross of the defendant I don't
5 believe even brought up his prior convictions, but
6 you brought them up. So do you still -- probably
7 better to charge that you can't use that to show
8 that he committed any crime.

9 **MR. BRUCK:** Yes.

10 **THE COURT:** Okay.

11 (Pause.)

12 **THE COURT:** While we're waiting for the juror,
13 do you have any request for a charge about his
14 statement as to the voluntariness and -- did you
15 have any question about the voluntariness of the
16 statement and let the jury determine that beyond a
17 reasonable doubt?

18 **MR. BRUCK:** We don't request a charge on
19 voluntariness. We don't think it's an issue.

20 **THE COURT:** All right. We're still waiting on
21 a juror.

22 (Pause.)

23 **THE COURT:** Do y'all want to take a look at
24 this alibi charge?

25 (Pause.)

1 **MR. BRUCK:** This is fine except for the
2 language in order to establish an alibi. I'm sure
3 that's for the decision, but the language would
4 suggest burden -- what you're really doing is saying
5 what an alibi is. An alibi is simply evidence that
6 the defendant was...

7 **THE COURT:** For an alibi to exist, it must be
8 shown.

9 **MR. BRUCK:** Not even it must be shown, just an
10 alibi means the defendant contends where he was.
11 That language is really concerned with entitlement
12 to a charge and that's why it would have been
13 phrased that way, but just an alibi is -- an alibi
14 is simply an intention by the defendant that he was
15 elsewhere.

16 **THE COURT:** The defendant has raised the
17 defense of alibi. For alibi to exist, the defendant
18 must have been at another specified place at the
19 time the crime was committed and was, therefore,
20 impossible for the defendant to have been at the
21 scene of the crime.

22 **MR. BRUCK:** Well, I would prefer language an
23 alibi is simply an intention that the defendant was
24 dah, dah, dah, dah, dah.

25 **THE COURT:** What I don't understand for an

1 alibi to exist -- took out the shown part. The
2 State has to disprove it.

3 **MR. BRUCK:** It corrected states the burden. I
4 just wanted it to be...

5 **THE COURT:** I agree with the part about the
6 shown part. Any objection from the State?

7 **MR. BELL:** No, Your Honor.

8 **THE COURT:** All right.

9 ~~... (Pause.) ...~~

10 **BAILIFF:** The juror is here.

11 **THE COURT:** All right. Are y'all ready to
12 proceed?

13 **MR. BELL:** The State is ready, Your Honor.

14 **MR. BRUCK:** The defense is ready.

15 **THE COURT:** All right. Go ahead and bring the
16 jury in.

17 I decided not to charge the second part of your
18 request yesterday about appeals and the possibility
19 of setting aside this decision, et cetera. You
20 stated it on the record and your objection is noted
21 for the record.

22 **MR. BRUCK:** Thank you. I take it I don't have
23 to renew that after the instruction either.

24 **THE COURT:** I'm going to go ahead and say on
25 the record that that objection is noted for the

1 record.

2 MR. BRUCK: Thank you.

3 (The jury enters the courtroom at 9:50 a.m.)

4 THE COURT: Good morning, ladies and gentlemen.

5 We're ready to proceed at this time. At this point

6 in the case, it's your opportunity to hear the

7 closing statements or closing arguments of counsel.

8 This is an opportunity for counsel to summarize the

9 evidence from their respective points of view, to

10 put the pieces of the puzzle together so to speak.

11 Please remember these closing arguments are not to

12 be considered as evidence.

13 Upon completion of those closing statements, I

14 will then instruct you on the law as it pertains to

15 the issues in this case. And after I've instructed

16 you on the law, I will then allow you to begin your

17 deliberations in order to reach your verdict.

18 Now, depending on the timing, the closing

19 arguments may take us up to about lunch time, so

20 we'll probably just break for lunch. And right

21 after lunch, I'll charge you on the law and release

22 you to begin your deliberations.

23 What will happen is the State will go first.

24 They'll kind of open up on the law. Then the

25 defense counsel will have an opportunity to address

1 you. And because the State has the burden of proof
2 in this case, the State will have a final
3 opportunity to address you.

4 Go ahead, please.

5 **MR. LUPTON:** Thank you, Your Honor. May it
6 please the Court.

7 Ladies and gentlemen, during the course of this
8 trial, the State has proven beyond any reasonable
9 doubt that the defendant, Gene Tony-Cooper, is
10 guilty, guilty of murder, guilty of kidnapping,
11 guilty of armed robbery and guilty of conspiracy to
12 commit armed robbery.

13 Now, in a little while, Mr. Harrison Bell is
14 going to get up and he's going to go over the facts
15 in this case in detail with you. After that, the
16 Judge will give you a definition of the law or
17 what's called the charge the law. My job right now
18 is to sort of combine both, to talk to you to
19 explain some of the legal concepts that apply in
20 this case as they apply to the facts of this case.

21 Now, I want to start out by talking a little
22 bit about the elements of these four crimes. The
23 Judge will give you the legal definitions during his
24 charge on the law. And there really isn't a whole
25 lot of dispute that these crimes occurred. No one

1 contends that Kimberly Quinn was not murdered, for
2 example.

3 Murder is defined as the taking of another
4 person's life unlawfully with malice aforethought.
5 No question that she was murdered. So if at the end
6 of this trial when you go back to your jury room, if
7 you believe Tony Cooper had something to do with
8 that killing, then he is guilty of murder.

9 Kidnapping isn't exactly what you might think.
10 It isn't -- it does not require that there is an
11 abduction and holding a person for ransom.
12 Kidnapping simply put is the confining or taking
13 away of a person's freedom without the authority of
14 law. That taking away of freedom of a person does
15 not have to be for any considerable length of time.
16 It can be for a short period of time.

17 The taking away of a person's freedom can be by
18 force. For example, if you believe the victim was
19 handcuffed or if you believe she was held at gun
20 point or taken by force from her home, that would be
21 kidnapping.

22 But it can also be committed by trickery, what
23 the law calls inveigling. If you believe the victim
24 was tricked into going to the murder site, for
25 example if she was being told she was going to be

1 taken somewhere else and was taken to the murder
2 site, that also is kidnapping. If you believe that
3 the defendant participated in getting her to that
4 pond site, then the defendant is guilty of
5 kidnapping.

6 Armed robbery simply put is taking away of
7 something of value, for example, a check, cash or
8 rings, from a person or the presence of a person
9 while armed with a deadly weapon, in this case, a
10 shotgun, an ax.

11 Now, in armed robbery, it's important to note
12 that if there is a robbery and during the course of
13 that robbery the victim is killed, then it makes no
14 legal difference whether the taking occurred before
15 or after death. If the victim is killed in the
16 course of the robbery, then it is still armed
17 robbery regardless of when the valuables were taken.
18 So, in this case, even if the rings were taken from
19 the defendant's (sic) hand, from her severed hand
20 after she was killed, it is still an armed robbery.

21 Criminal conspiracy or, in this case,
22 conspiracy to commit armed robbery is simply two or
23 more people getting together to do an illegal act,
24 in this case, the armed robbery. Now, it doesn't
25 matter which two people. In this case, if you

1 believe that it was the defendant and Red Farmer who
2 called him to set up the robbery, that's criminal
3 conspiracy, conspiracy to commit armed robbery. If
4 you believe that Tony Cooper and Bo Sutherland did
5 this together, that is a criminal conspiracy.

6 Now, there's one important point of law that I
7 want to explain that goes hand in glove with these
8 elements and that's the legal concept of accomplice
9 liability.

10 Now, under the law, when two or more people get
11 together and commit a crime, whether it's the
12 criminal conspiracy count or any other crime, any
13 crime committed in this case or any crime at all,
14 two or more people get together and commit a crime,
15 then each person is responsible for the acts of
16 every other person in that crime. The law explains
17 it as the hand of one is the hand of all or the act
18 of one is the act of all. So any time you have two
19 people who get together and commit the crime, each
20 is responsible.

21 So, in this case, regardless of who you think
22 committed the murder, who pulled the trigger, if the
23 defendant was involved in the commission of these
24 crimes, then it doesn't matter if you are unsure
25 about who pulled the trigger, if Tony Cooper was

1 involved in this robbery, then under hand of one
2 hand of all, he is responsible for the acts of the
3 other conspirators. So if he was out there
4 committing this crime even if you're not sure who
5 pulled the trigger, he is still guilty.

6 Now, I've said that the State has proven this
7 case beyond a reasonable doubt. What does beyond a
8 reasonable doubt mean? That's a legal term. It's
9 kind of hard to explain, hard to understand some
10 time. If you have trouble with it, don't feel
11 alone. The Supreme Court has struggled with this
12 definition as well. Over time, different
13 definitions have been used by the Supreme Court to
14 explain this concept.

15 The most recent one that has been used by the
16 Supreme Court to explain it is proof that leaves you
17 firmly convinced of the defendant's guilt.

18 **MR. BRUCK:** Your Honor please, I object to a
19 definition different than the one the Court is --

20 **THE COURT:** The Court indicates it's going to
21 use the hesitate to charge definition, counsel.

22 **MR. LUPTON:** In any event, this is a concept
23 that has had a number of explanations, but the
24 bottom line is that at the end of this trial when
25 you go back to the jury room, you have to decide

1 what really happened. And if you believe that what
2 really happened is that Tony Cooper was involved in
3 this crime, then the defendant, Tony Cooper, is
4 guilty.

5 Now, the next thing I want to talk about is
6 direct evidence versus circumstantial evidence.
7 Direct evidence is something that a witness has
8 perceived through their own five senses, something
9 they saw, something they heard, something they
10 touched or tasted or smelled. An example in this
11 case is when Bo Sutherland testified about being
12 involved in this crime with Tony Cooper and that he
13 saw Tony Cooper shoot the victim, that is direct
14 evidence.

15 Circumstantial evidence is when one or more
16 pieces of evidence, a chain of evidence is shown,
17 and that chain of evidence leads to the proof of
18 some other fact that's at issue. In this case, an
19 example of that would be Farmer's testimony that was
20 read in that he called Tony Cooper to set up these
21 crimes. The -- that's the first element of the
22 chain, first link. Dana Harley who said he saw Tony
23 Cooper and Bo Sutherland casing the victim's house
24 as part of this crime, setting up for it. Tony
25 Cooper confessed to the crime afterwards.

1 All of these things lead to a chain of proof
2 that establishes the fact not proven that Tony
3 Cooper committed the crime. So that circumstantial
4 chain shows proof of some other fact.

5 Now, of course, in this example, there are a
6 lot of other facts in that chain of evidence that
7 show Tony Cooper did this crime, that's just a brief
8 example.

9 Now, the Judge is going to explain to you that
10 under the law, there is no difference between direct
11 evidence and circumstantial evidence. All that is
12 required is that all of the evidence in this case
13 taken together leaves you convinced that the
14 defendant did this crime.

15 Now, the last thing I want to talk about is
16 credibility. That's a big issue in this case. I'm
17 going to break that down into a few things that I
18 want to talk about.

19 First of all, the law allows you to use all of
20 the same tools in judging credibility in the jury
21 room that you use out in your daily lives out on the
22 street outside of this courthouse. You have all of
23 those tools available to you. The biggest one, of
24 course, is motive to lie.

25 Now, you saw a lot of examples of that in this

1 case, but in looking at motive to lie, I want you to
2 think about two things, what and when, what does a
3 person have a motive to lie about and when did they
4 have that motive to lie?

5 As to what, an example of that, of course, that
6 you saw in this case, self-preservation, parent's
7 love of a child. Self-preservation, one of the
8 things that they're going to talk about is Farmer,
9 I'm sure, Farmer's motive to minimize his own role
10 in this. But that doesn't give him a motive to make
11 up a story about Tony Cooper. He had a motive to
12 minimize his own role.

13 And you can look at that and conclude that
14 perhaps he really did as he said, just called to set
15 up a robbery, but you might also conclude that
16 that's minimizing his role, in that he really set up
17 the robbery and the murder, but that doesn't give
18 him a reason to say Tony Cooper confessed to him.
19 It never gave him a motive to say, I committed this
20 crime with Tony Cooper. It never gave him a motive
21 to plead guilty to conspiring with Tony Cooper.

22 Now, similarly, the defendant himself has a
23 motive to lie for self-protection. He doesn't want
24 to be convicted of this crime so he has that same
25 motive. Parent's love for a child, obviously

1 similar.

2 What about the when? Going back to the Farmer
3 example, you can see that if he ever did have a
4 motive to lie in this case about Tony Cooper, that
5 motive is gone. After he testified in the first
6 proceeding, he got his deal. He pled to his five
7 years consecutive. He did his time. He got out.
8 He ended up in Texas where he's currently serving
9 two life sentences.

10 That when gave him no motive when he was in
11 front of a judge in Texas in 2001 to lie and say,
12 Tony Cooper called me and confessed to this murder.
13 That judge had no interest in this case. That
14 motive did not exist at that point. He had pled
15 guilty, double jeopardy protected him, the fact that
16 he's doing two life sentences in Texas protects him
17 now.

18 But still until 2006, May 5th of 2006, to their
19 own -- to an attorney that was asked to go and talk
20 to him on behalf of the defendant, he is still
21 maintaining that. That motive to lie long since
22 expires, if it ever existed.

23 Now, on the flip side, motive to lie can be
24 seen the other way. A motive to lie might not arise
25 immediately. In this case, you saw an example of

1 that.

2 In the beginning of this case, Tony Cooper was
3 standing on the alibi defense that he was out riding
4 around, that was a story that he was sticking to at
5 the first -- at first. When his mother was
6 interviewed on October 13th, 1989, that was his
7 alibi, so she had no reason to lie for him and say
8 that he was at home that day, the day the murder was
9 committed. So she told the truth, I hadn't seen him
10 all day. It was only after that alibi fell apart
11 and that he had to switch alibis that her motive
12 arose. And it was only after that that her story
13 changed to, He was at home with me all day.

14 Now, another way to judge credibility is
15 corroboration or the lack of corroboration. Proof
16 of things that are consistent with some point of
17 testimony is corroboration. For example, in this
18 case, there's testimony from Bo Sutherland that Tony
19 Cooper committed these crimes with him.

20 Now, there's a lot of corroboration for that,
21 but just hitting a few examples: Red Farmer called
22 Tony Cooper to set this up. You heard that. And
23 you heard Tony Cooper's testimony, repeated
24 statements, that there was a confession that the
25 defendant confessed to this murder to him. The fact

1 that Dana Harley saw Tony Cooper with Bo Sutherland
2 casing the house, corroboration. Amanda saw two men
3 that night, corroboration. And the fact that laid
4 over the body was this log that, I believe, the
5 testimony was, was big as round as a person and
6 eight feet long and testimony was it was too heavy
7 for one person to lift alone, that's corroboration
8 that two people committed this crime.

9 **MR. BRUCK:** Your Honor please, I hesitate to
10 object, but there was no testimony that that log was
11 too heavy for two people. This is an inference of
12 counsel and we object to the misstatement of the
13 evidence.

14 **THE COURT:** I think he can talk about what he
15 thinks the inferences are. Go ahead.

16 **MR. LUPTON:** And you can recall that testimony
17 came through Investigator Rick McDermott, the SLED
18 agent, when he was on the stand.

19 Now, there are obviously other factors of
20 corroboration in this case that corroborate that,
21 but that will be for Mr. Bell to talk about later.
22 But one thing before I move on is sometimes lack of
23 a piece of evidence can show corroboration to some
24 point of testimony.

25 An example of that is the lack of any phone

1 records showing a call to that schoolhouse phone on
2 Friday, October 6th, 1989, that shows corroboration,
3 because had there been a call from Tony Cooper's
4 house to that schoolhouse phone, that long distance
5 call, it would have shown Tony Cooper was not in
6 West Columbia cashing the check from Bo Sutherland
7 like Bo Sutherland said he was and that they didn't
8 ride around in West Columbia during that time period
9 like Bo said. The fact that there was no call
10 reported shows it was a local call, shows that that
11 call came from the West Columbia area where the
12 evidence showed Tony Cooper was, corroboration.

13 Now, evidence that's inconsistent with some
14 point of testimony shows a lack of corroboration.
15 The example of that is Tony Cooper's mother giving
16 him an alibi, but it's contradicted by the fact that
17 only eight days after the offense occurred only
18 eight days after the murder, she said he was not at
19 home all day.

20 Cooper himself contradicted that piece of
21 evidence as well in his interview with Investigator
22 Hite when he said he was out riding around, lack of
23 corroboration.

24 Now, finally, let me explain one last thing.
25 The question is often wondered is there some

1 different standard for judging the credibility of
2 evidence presented by one party versus the other?

3 Now, let me preface this by saying that in a
4 criminal case, no defendant has any obligation to
5 present any evidence at all, but once a defendant

6 voluntarily takes upon himself the burden of proving
7 something, presenting some piece of evidence, then
8 you must judge that evidence, the credibility of
9 that evidence, the same as any other evidence.

10 So, for example, when they try and present
11 evidence that some mythical Chico person, who just
12 happens to look like Tony Cooper except for another
13 inch of hair, was with Bo Sutherland when he was
14 casing this robbery and murder, you have to look at
15 that the same way and judge the credibility of that
16 piece of information, that piece of evidence the
17 same way as you would any other evidence. Is it
18 credible? Is it believable? Is it corroborated?
19 With all the people you heard from, with all the
20 evidence you heard, was there anything about Chico
21 to corroborate his existence? Or, in fact, did you
22 hear that he did not exist?

23 That was Gerald LeGrand's testimony, there was
24 no Chico. You had the chance to look at Gerald
25 LeGrand and judge his credibility and decide if you

1 think he's the criminal master mind that he has been
2 portrayed. That lack of any corroboration, lack of
3 anything to show credibility in that statement shows
4 that there was no Chico. Chico doesn't exist. It
5 was Tony Cooper.

6 Now, as I said, after I'm done, the defense
7 will give a closing statement, then Mr. Bell will
8 discuss the facts in more detail, then the Judge
9 will give you a charge on the law and after that,
10 you're going to retire to your jury room. All that
11 anybody can ask is that when you do that, you go
12 back and render a just verdict and, in this case,
13 that verdict is guilty on all counts. Thank you.

14 **MR. BRUCK:** Your Honor please.

15 Mr. Foreman, ladies and gentlemen, I wish I
16 could just have a conversation with you and see what
17 was on your mind and what your questions were and
18 respond to like you would normally do in everyday
19 life when you have a difficult problem and you need
20 to work out together, but one of the main rules in
21 court is that I can't do that very ordinary human
22 thing and talk with you.

23 Instead, the rules require me to just talk at
24 you and argue. So that's what I'm going to do. And
25 it may take me an hour or more to cover all of the

1 facts of this rather twisted case and rather twisted
2 evidence that you've heard from the State since we
3 began.

4 Everybody comfortable for now? If you need a
5 break while I'm talking to you, please just raise
6 your hand, I'll make sure we attract the Judge's
7 attention and that will be fine because we'll be
8 here for a little while and I appreciate you bearing
9 with me.

10 Now, as Mr. Lupton just said, I won't get
11 another chance to speak to you. Mr. Bell will make
12 his argument to you when I'm done and I'm not going
13 to be able to answer anything he says. And you may
14 see me over there sort of thriving, I cannot jump up
15 and say, wait a minute, that isn't right or you're
16 forgetting about this, but the rules don't allow
17 that. The State gets the last word.

18 **THE COURT:** Hold on just a second. Can
19 everybody stand up on the jury?

20 (Jurors comply.)

21 **THE COURT:** Ladies and gentlemen, it's
22 important that you all pay close attention to the
23 arguments, please. Thank you.

24 **MR. BRUCK:** Also, if anybody just needs to
25 stretch, I find sometimes it helps me when I have to

1 sit for a long time, so feel free and I won't be in
2 the least bit insulted.

3 But as I say, I'm going to have to go through
4 not only the things I've got to say to you, but try
5 to deal with the things that Mr. Bell is probably
6 going to say when I sit down and I'm-not able to
7 answer.

8 Now, when it all comes down, the State's case
9 really consists of three witnesses and a few
10 circumstantial details. So I would like to first
11 talk about the witnesses and go one by one through
12 the details.

13 Now, Dana Harley, of the three, he's the honest
14 one. He's the honest witness. And Dana Harley is a
15 good guy who just tried to do his duty, paid careful
16 attention to something very suspicious going on,
17 came in, did his level best to tell you what he saw.
18 And nothing I'm going to say implies the slightest
19 criticism of Dana Harley as a person. I wish
20 everybody was like Dana Harley.

21 But we all make mistakes and he made one. And
22 the reason you know is the person he saw had
23 shoulder length hair. Now, Mr. Lupton tried to
24 change that into an inch. The difference between
25 Tony Cooper's hair...

1 **THE COURT:** You can't hear, ma'am?

2 **JUROR:** I'm having a lot of difficulty hearing
3 him. About every other word is what I'm hearing.

4 **THE COURT:** Can you speak up, please?

5 **MR. BRUCK:** I certainly will and I apologize.

6 All of the evidence is that at all relevant
7 times, Tony Cooper's ~~hair looked like that~~
8 (indicating). Shoulder length, an inch from being
9 shoulder length, huh-huh.

10 When you want to know what way the wind is
11 blowing, you don't look at the trunk of the tree,
12 you look at the leaves, you look at the little
13 things. It's the little things that tell you where
14 the truth is and that is a little thing that tells
15 you Mr. Harley made an error. I'm going to get to
16 making errors and identifications in a moment.

17 Another picture, shoulder length (shook head).
18 And where is the witness to say that Tony Cooper's
19 hair ever looked any different than this and that it
20 looked any different than that if not shorter on
21 October the 5th of 1989?

22 And that's not all, no witness mentioned hair
23 on his chin. The person with Bo Sutherland didn't
24 have a goatee, Tony Cooper did.

25 Glasses. Ms. Freeman, the other witness who's

1 died and whose testimony had to be read in, said
2 they were glasses and not dark glasses. Tony Cooper
3 doesn't wear glasses, never did, wasn't wearing them
4 that day or any other time.

5 And the other thing that you surely noticed
6 even before I mentioned it when Tony Cooper
7 testified yesterday, Tony Cooper has a very
8 noticeable tick (indicating), all his life. He
9 blinks both eyes a lot. What witness saw somebody
10 blinking in that car? No one, because it wasn't
11 Tony. Can I prove that? Of course not. It is the
12 State that has to prove that it was Tony Cooper and
13 there are four reasonable doubts right there.

14 Something even bigger than any of that, the
15 State relies on Dana Harley, but there were three
16 eyewitnesses that day and every single one of them
17 picked out him. They all had a close enough look to
18 identify Mr. Sutherland.

19 And what about the other two? One of them has
20 died and her testimony was read to you and one of
21 whom the State didn't see any reason to call. But
22 the officer testified that all three picked out Bo
23 Sutherland, but the other two did not pick out the
24 picture of Tony Cooper.

25 Remember Doctor Van Wallendael testifying about

1 research of the accuracy of eyewitness
2 identification from people who have had much more
3 opportunity to view a subject than Dana Harley had
4 to view Tony Cooper that day. About 30 percent get
5 it wrong. One out of three, 33 percent, that's
6 exactly what we have here. Three honest witnesses,
7 and not surprisingly, the State brings you the
8 witness that helps their case and leaves the other
9 two on the cutting room floor.

10 No mention about Ms. Freeman. She testified --
11 remember the State left something out when reading
12 her testimony and I had to come back and say, Let's
13 read this other paragraph, and it was the part where
14 she talked about what a good look she got of the two
15 men in the car. That's what the State didn't think
16 was necessary for you to hear. She got a good look
17 at the person that was with Bo Sutherland and it
18 wasn't Tony Cooper or at least she didn't pick him
19 out.

20 And then the last witness, the third witness,
21 who's never set foot here, don't know why, the State
22 has the burden of proof, but they didn't bring her,
23 one of many, many examples. And the State thought
24 it would be better for you not to know, not to hear
25 the witnesses, not to have everything before you

1 return your verdict. And I'll get to several more
2 of those before I'm done.

3 Now -- and what was the picture of Tony Cooper
4 that was used in the lineup? There he is number
5 four, very young man. How many years before 1989
6 was that picture taken? Another piece of evidence
7 we don't have, we don't know, don't know where this
8 picture came from.

9 But you can look at it and you can compare that
10 photo to the way Tony Cooper looked in 1989 about a
11 month or two before this crime. Do you think they
12 look alike? There could be ten years between those
13 two photos. A doubt for which you can give a
14 reason, a doubt based on reason.

15 When you start to think about it, Mr. Harley
16 was an honest man and he's a good guy and he was
17 doing his best, but it looks like he's one of the 30
18 percent of honest witnesses who make a mistake.

19 It's hard to pick a person out. It's hard.

20 And how much opportunity did he have? The
21 State, and I'm sure from Mr. Bell you're going to
22 hear in a little while, oh, 45 minutes in total, the
23 car came back so many times and he saw that car for
24 so much, but he testified that his identification
25 was based on, he remembered it as six seconds where

1 he got a full view of the man's face, not 45
2 minutes.

3 There were -- there was a distance -- remember
4 he observed them a lot of this time through a
5 peephole. The State doesn't want you, or didn't
6 present to you evidence of what that peephole looked
7 like. That's the peephole. That's how he was, you
8 know, fish eye, remember he said, And it distorted
9 the view. How much is that worth?

10 He told you that it was ~~six seconds where he~~
11 got a view. And then Mr. Duncan asked him a few
12 more questions. And it turned out that when he had
13 testified before, he said it was really three
14 seconds and now he remembers it, an honest change, a
15 mistake in his testimony, he remembers that it was
16 more like six, but when it was fresher in his
17 memory, it was three, that's what this is based on.

18 The experiments, the research that Doctor Van
19 Wallendael talked about where people that had much
20 longer opportunity to observe than three seconds or
21 even six seconds and they got it wrong a third of
22 the time. A doubt based on reason.

23 Now, this thing about -- you'll have the
24 photographs to look at, see if one or two of those
25 subjects of the person that where Tony Cooper is in

1 the lineup don't look to you like they're Hispanic.
2 Of course, you can't tell if someone's Hispanic by
3 looking at the picture, but look at it and see and
4 wonder if the description from some of the
5 witnesses, maybe one of the witnesses we didn't hear
6 from of the three eyewitnesses, said it was a
7 Hispanic looking man, that's evidence for it. Why
8 would they have picked people out who looked like
9 that if that's not the description they were working
10 from?

11 Now, you may have thought, I often do, when you
12 call a university professor in a case like this,
13 you're going to think, Oh, boy, now we're going to
14 get a bunch of theoretical, highfaluting stuff
15 that's got nothing to do with real life people in
16 real life situations, and maybe you were braced for
17 that when Doctor Van Wallendael took the stand. But
18 didn't she just tell us things that, really, when
19 you think about them, are absolutely common sense.

20 She described a series of reforms that have
21 taken place among police agencies in the last 15
22 years and she explained why. Law enforcement got a
23 terrible shock from DNA. What happened was
24 convictions based on eyewitness testimony before DNA
25 was available, some of them where there was DNA to

1 test and the first time we had this amazing new
2 technology that would tell you beyond a shadow of a
3 doubt whether identification was correct or an
4 error, and in case after case, it turned out that
5 people, at least as certain as Mr. Harley, their
6 identification turned out to be wrong because the
7 DNA doesn't lie and it doesn't make mistakes.

8 So what law enforcement throughout the country
9 and the department of justice did, they went back to
10 some of these cases and they thought, how could we
11 have avoided this? And they called on people like
12 Doctor Van Wallendael to start doing experiments and
13 research to see whether we can improve the way that
14 lineups are conducted so that we won't make terrible
15 mistakes like that in the future, because most of
16 the time, tragically, there is no DNA to test and we
17 still have to investigate these cases the old
18 fashioned way using police lineups and photo spreads
19 and all that.

20 So some of the things that they learned and
21 Doctor Van Wallendael came here to tell you about
22 are just common sense. If you show six pictures to
23 someone the way this was done all at once, the
24 natural human reaction is not to look at each
25 picture and compare it to the picture in memory, but

1 to look at all six together and pick the one that
2 looks closest to the person you saw and that's a way
3 that error comes in.

4 And then another thing that is so simple to do
5 and now the rules are, at least the best practice is
6 the way law enforcement is supposed to do it, is to
7 caution any witness before they look at a lineup to
8 remember that the person you saw may not be here.
9 Now, that's an easy thing to do and it's something
10 that police agencies know to do now, but they didn't
11 know to do it in 1989. They thought it was enough
12 not to say, look closely at number four. I mean, no
13 one was going to do anything, you know, that
14 obviously designed to produce a false
15 identification. But if you warn the person that the
16 person might not be here, that counteracts the
17 natural tendency that any good citizen has to want
18 to help the police.

19 If you had seen something like this and they
20 were showing you a spread and there's been a
21 terrible crime committed, wouldn't you feel like you
22 were letting the officer down if you said, well, I'm
23 really not sure? Sure you would.

24 They're working hard. They're working around
25 the clock. They've got lead sheets and passports

1 and all that kind of stuff and here it comes down
2 and it depends on you and they show you these things
3 and they must have had a reason for putting one of
4 those people in that spread and you're going to feel
5 they don't want to hear, gee whiz, I don't know, I
6 wish I could help you, I'm sorry. That's a natural
7 human feeling.

8 So what do you do? You look at the six and you
9 pick out the one that looks closest. And then
10 memory begins to work, begins to change.

11 Doctor Van Wallendael told you another thing
12 that's just common sense. Memory is not like a
13 photograph. It's not like a video tape. It's more
14 like a stew. You put things in. You can take
15 things out. You can add things later that weren't

16 there before. And it's all in this stew in the end,
17 it's all part of your memory.

18 So once he picked out that picture and then he
19 testified he saw Tony Cooper and everything else,
20 this is Mr. Harley, it became part of his memory,
21 his memory began to change. And the person in that
22 car began to look more and more like picture number
23 four.

24 And the same thing, with all respect, happened
25 to Amanda Vaughn. Now, Amanda, it 's understating

1 the matter to say that Kim Quinn's daughter is an
2 honest witness. She did not come to court to say
3 anything different than what she now remembers she
4 heard, but she was a little girl of six. And the
5 next morning she didn't say anything about hearing
6 two people. All she told the neighbor was, My mom's
7 gone.

8 Now, surely, she was crying, she was upset.
9 Surely, she would have said there were bad men here
10 that was yelling, that there were two people, that
11 somebody -- and then two years later, or nearly two
12 years later, a year and a half, she testified and
13 she didn't say anything about hearing men or being
14 told or having them talk to her.

15 Now, she's eight years old. And a year later
16 she testified against -- in Bo Sutherland's trial,
17 not against him, but at his trial. And she didn't
18 say anything more than just she woke up and her mom
19 wasn't there, nothing about hearing two people,
20 nothing about somebody threatening her.

21 And how much sense does it make, I mean, if you
22 have children, you know you don't order your child
23 to go to sleep or you're going to hurt them, that
24 doesn't make them go to sleep. And she wouldn't
25 have gone to sleep if some stranger after all this

1 yelling and said, go to sleep or I'm going to do
2 something to you, she would have started to cry.

3 But I'm not at all saying that she wasn't
4 telling you what she remembers now because her
5 memory has been changed as she's grown up and she's
6 found out what the State believes happened and what
7 the official version is of what happened to her mom,
8 she begins to picture it. And then the picture
9 begins to merge with the memory when she has no
10 memory because she was asleep almost the whole time.
11 So there's not even anything for the picture to
12 replace. It replaces nothing. What can be more
13 natural and human than to try to make sense of this
14 thing?

15 And so now she's a grown young lady and she has
16 a memory, but it's not a memory of anything that
17 really happened, but it feels like a memory. And so
18 why didn't she say before, well, it must have been
19 because she was scared? She didn't say anything
20 before because there was no memory, it didn't
21 happen.

22 This is something -- this is the exact
23 phenomenon that Doctor Van Wallendael testified to
24 about the memories of children. It happens to
25 adults, too, but it certainly happens to little kids

1 like Amanda was on October the 5th, 1989.

2 I don't mean, in talking about the photos --
3 photo procedure, to sound like I'm criticizing the
4 West Columbia Police Department or Lexington County
5 Sheriff's Department the way this was done. They
6 ~~did things the way things were done in 1989, but you~~

7 have the great advantage now of knowing that those
8 were -- those were the pre-DNA identification
9 techniques. We have learned to do better. And
10 while we can't go back and redo that identification
11 technique, you can make sure that a mistake that was
12 made then, a misidentification that was made then,
13 does not affect a man's life in 2006.

14 The last thing to say about Mr. Harley is the
15 courtroom identification of Tony Cooper. There
16 wasn't one. The State didn't even ask him, do you
17 see the man that you say you saw in the car that day
18 in the courtroom. Weren't you waiting for that?

19 Now, of course, we've all changed since 1989.
20 We all look different. But there was no question
21 about that, no discussion. Wouldn't you have at
22 least expected to see, well, he looks different now,
23 his hair is very short and he doesn't have the
24 goatee that I didn't mention at the time, but I
25 recognize something about the face, there's some

1 similarities? Nothing.

2 I think you can conclude from that, Judge
3 Pieper, I anticipate, will tell you that a
4 reasonable doubt can arise in a case from the
5 evidence or from the lack of evidence in a case.
6 That is lack of evidence.

7 We had the courtroom confrontation between the
8 only eyewitness out of the three who picked Tony
9 Cooper's picture out and a man that unquestionably
10 is Tony Cooper. And the State didn't even ask, is
11 that him, does it look like him, is there anything
12 about him that looks like the man you saw for those
13 six seconds or for however long it was that you saw
14 in the car that day. The lack of evidence.

15 Well, that's the honest witness, folks, and it
16 doesn't get better after that, because the rest of
17 their case is based, as you well know, on Bo
18 Sutherland, Robert H. Sutherland, and on Red Farmer.
19 Take a little time to talk about Mr. Harley, but
20 it's going to take me even more time for reasons
21 that you already know to review Mr. Sutherland and
22 Mr. Farmer with you.

23 Now, the good thing about Mr. Sutherland is
24 that you at least got to see him, laid eyes on him,
25 see what kind of person he appeared to be. That is

1 part of judging credibility, you look him over.

2 That's how we all -- I couldn't agree more with
3 Mr. Lupton that you don't -- you bring the scales
4 from everyday life that allow you to get to managing
5 the world to be successful into the courtroom with
6 you. And part of that is the ability to size people
7 up, to look them in the eye, to see how they conduct
8 themselves, how they hold themselves, how they
9 answer questions or don't answer questions when
10 they're being examined and cross-examined.

11 And unlike Mr. Farmer, who you have yet to lay
12 eyes on, Mr. Sutherland at least shuffled in here
13 with that expression that none of you will probably
14 ever forget and you got to see how he dodged and
15 weaved and played games with me. He was willing to
16 answer the State's questions, but when it came for
17 cross-examination, forget it.

18 But he's told three different versions as you
19 know. He first told a version that, yeah, it was
20 him and Tony Cooper in the car at the apartments,
21 but then he went home. And the next thing he knew
22 Tony was -- they were riding in the car and Tony
23 said, Here's the creek where I threw the hands and
24 feet and the ax. And he only knew about it because
25 Tony Cooper told him about that. That was version

1 one, put himself out.

2 Everybody agrees he was lying then and that's
3 the version he told under oath, sworn statement to
4 law enforcement shortly after Kim Quinn's body was
5 found. There's one.

6 Version two, he gave a statement to me in 1992.
7 Now -- and you'll have that to review in the jury
8 room.

9 Now, what can I offer Bo Sutherland? Can I
10 offer him a lesser sentence, a deal like the State
11 did in exchange for his testimony to version number
12 three? Of course not. I'm just a lawyer, court
13 appointed lawyer for Tony Cooper. But he wanted to
14 get something, as he told Mr. Bell, he wanted to get
15 something off his chest.

16 And he went through this and signed a statement
17 and swore that it was true and then stuck to it year
18 after year after year. And told everybody that he
19 came into contact with when the subject of this
20 crime came up, in one way or another, he said he
21 committed this murder by himself and Tony wasn't
22 involved.

23 Fast forward to April 21st, 19 -- 2006, and
24 I'll go into a little more detail in a minute, but
25 now Mr. Sutherland's interest has changed and he no

1 longer wants to take responsibility for what he did.
2 So he now says -- and the reason he doesn't want to
3 is that he has a crack at freedom, a chance of
4 getting out after 30 years for everything that he
5 admits to doing in this crime.

6 But he's got the slight problem of this
7 extremely detailed statement that he gave and then
8 repeated in summary before Judge -- that's Judge
9 Westbrook, the man for whom this courthouse is
10 named. He was in a hearing before Judge Westbrook,
11 and I read you the testimony, and Sutherland stands
12 up against his lawyers, I wasn't there, Tony Cooper
13 wasn't there, no one was twisting his arm that day,
14 he stands up and with his own lawyers objecting, he
15 says, I just want to put something on the record, I
16 want to make a statement.

17 And the statement was that he did this by
18 himself. And then he adds that Tony Cooper wasn't
19 involved in it. I don't know if he mentioned Tony
20 Cooper's name. He just said, I did this and I did
21 it by myself. He was tired of the charade.

22 He was sworn, Judge Westbrook said put that man
23 under oath, before he made any statement, hand on
24 the Bible, swear to tell the truth and then that's
25 what he said. This is 1996.

1 1997, you'll have it in evidence, he's writing
2 letters to Judge Keesley, another circuit judge in
3 this county, objecting to the fact that his own
4 lawyers were preventing me from talking to him again
5 about the details of this case, part of the
6 investigation. So this is year after year.

7 And what's his explanation now? How did he
8 explain all of that away? The committee. He calls
9 it the committee. He says that in April of 1992
10 when he gets out of the cell block after he's been
11 convicted, he started being -- he was threatened.
12 He was threatened by Tony Cooper's friends that if
13 he didn't make a statement or if he didn't take the
14 blame and he didn't do this or he didn't do that,
15 they were going to get him.

16 Now, first off, you saw Robert Sutherland, how
17 easily -- there is an ex -- a tough ex-con, he's not
18 an ex-con, a tough convict. How easily intimidated
19 is that guy? Really, seriously. And how easily
20 intimidated do you think he was 14 years ago that
21 the moment somebody says, we're going to get you if
22 you don't do such and such, he goes, Oh, okay,
23 whatever you say. And then launches this year after
24 year crusade of this information just to satisfy
25 these inmates that he's gotten with the program and

1 he's going to make the statement that he now says is
2 completely false. You know, I don't believe that,
3 but does it appeal to your common sense?

4 And who are the members of the committee? This
5 was the part where this story went from being
6 fanciful to being a down right insult to your
7 intelligence. Who are the members of the committee
8 that -- the other inmates who threatened him and
9 forced him to do this? He rattled off the names,
10 Cecil Lucas, Sammy Roberts and Robert South.

11 -- And where-are-they-now? They've all been
12 executed. So we can't ask them about this.

13 Is there one living person on the face of this
14 earth, other than, of course, he says Tony, who knew
15 about this? Nope. Nope. They're all safely dead.
16 So that not a one of these people can be
17 interviewed, can be questioned by law enforcement or
18 by me or by us, can be brought into court. How
19 convenient.

20 Now, ladies and gentlemen, if the story seemed
21 ridiculous to begin with, at that point, it seems to
22 pass the laugh test. This was an absurd and
23 ridiculous tale to tell. There was no committee.
24 There were no threats. Bo Sutherland was not
25 frightened of anybody.

1 Why does Bo Sutherland make the decisions he
2 makes? Why does he decide to lie and then tell a
3 partial truth? And that's all I'm sure that
4 statement is. We don't endorse every word or every
5 paragraph in that statement. He was there, I
6 wasn't, I don't know what's true. But why does he
7 make these decisions? I don't know. He doesn't
8 think like normal people. That's something that
9 only -- a question that only he can answer and he --
10 it's no longer in his interest to tell you the
11 truth, so he did it.

12 Now, that's version number two. He stuck with
13 that year after year after year until April 21st,
14 2006, just a little over a month ago, close to 17
15 years after this crime, almost exactly 14 years
16 after he signed this statement. And why does he --
17 he said it was to get it off his chest. Apparently,
18 after all these years, he's acquired some kind of a
19 late blooming conscience.

20 Let's be real. What happened with Bo
21 Sutherland is that the death penalty was lifted off
22 him by a court decision and he was facing
23 resentencing. And the -- and resentencing in a
24 capital case is by a jury, come right back in here,
25 pick a jury just like y'all and the State will put

1 up evidence why he deserved the death penalty for
2 what he did. And he can try to search his prior
3 life or something good he had done as a reason why
4 he shouldn't get the death penalty. And the jury
5 would weigh the evidence and decide whether he
6 should get death or -- and the least he could get
7 when the State seeks the death penalty is life
8 without parole, that would be a win. That's the
9 least he could get.

10 But if the State were to decide not to even ask
11 for the death penalty, obviously that takes death
12 off the table. Remember I told you in my opening
13 statement what if a witness came before you with a
14 gun to his head, well that's who I was talking
15 about. The State offered him his life in exchange
16 for his testimony, but they offered him the chance
17 for more than that. They offered him a chance for
18 freedom.

19 Let me read to you the stipulation, Mr. Bell's
20 usual strong and clear delivery failed him a little
21 bit when he read it, it sounded like that to me when
22 he read this stipulation, so I want to make sure
23 nobody missed every word of it. This is what
24 Mr. Bell told you during the course of this trial
25 the deal with Mr. Sutherland was.

1 And remember, remember that when I asked
2 Mr. Sutherland whether he had a deal for life, what
3 did he say? He didn't know, not that anybody had
4 told him. Now, he could get 30 years as a result of
5 his testimony, right? He didn't know. He didn't
6 know.

7 Ladies and gentlemen, he was lying to you. He
8 was lying to you right then. And we know it because
9 of what Mr. Bell was required, under his duty as an
10 officer of this court, to read to you right after
11 his testimony. It might have been the next morning.

12 This is what it says: The State and Robert
13 Sutherland reached an agreement prior to his
14 testimony in this trial.

15 Remember that, not the State and
16 Mr. Sutherland's lawyers, the State and Robert
17 Sutherland reached an agreement prior to his
18 testimony in this trial. Mr. Sutherland agreed to
19 testify for the State. For its part, the State
20 agreed not to seek the death penalty when
21 Mr. Sutherland is resentenced for the murder of
22 Kimberly Quinn.

23 It continues: The effect of this agreement is
24 that Mr. Sutherland will not be sentenced to death
25 and could receive a sentence of not less than 30

1 years in the discretion of the sentencing judge.

2 And the last paragraph that Mr. Bell read to
3 you is as follows: If the State had not agreed to
4 withdraw its request for the death penalty,
5 Mr. Sutherland could not have received any sentence
6 other than death or life imprisonment without
7 parole.

8 Now that, ladies and gentlemen, from the State,
9 is the truth. And what Mr. Sutherland told you was
10 a bald-faced lie that he didn't know. He didn't
11 know. He knew it would look bad if he had to admit
12 that he was testifying both with a gun to his head
13 and the hopes of freedom and he wasn't going to say
14 anything to help me or to help Tony Cooper.

15 Why was he so anxious? He's not the smartest
16 guy in the world, but he had it in his mind that the
17 better a show he put on, the better a performance,
18 the more loyal he was to his new side, the State,
19 the more chance that that 30 year sentence, that
20 crack in the door, that glimmer of life, freedom,
21 being again back on the street, back in the bars,
22 back at those -- that beer, hanging around, that's
23 what he wants, that's what he's hoping for, that's
24 the purpose of his existence on this earth. And he
25 figured that the more he -- the better he did and

1 the harder he performed and the more totally one
2 sided his testimony was and the more convincing it
3 was all the way down through a few sniffles and
4 tears, the more chance either that the State would
5 ask the judge to give him less than life or even if
6 the State didn't do that, I'm not saying the State
7 has promised to do that, that's what made -- that's
8 what put him under so much pressure, the State had
9 already promised to ask for 30 years.

10 If he knew he was going to get 30 years, if it
11 was signed and sealed, he probably wouldn't have put
12 on such a show. And he's a man dangling by a
13 string, he wants that 30 year sentence worse than
14 anything and he was going to put on the best show he
15 could. Well, fortunately, for the truth, the show
16 he put on was not very good, but that accounts for
17 it.

18 I asked him to name one other person who had
19 ever seen him cry about the death of Kimberly Quinn
20 and he said, Well, I cried when my mom had died.
21 Not exactly the question that was asked, was it?

22 All right. That was the deal. Those were Bo's
23 stories. And, of course, you've heard the last
24 story, which is what? That he -- his role in this
25 crime was the baby-sitter. Bo is now the

1 baby-sitter. Does that appeal to your common sense?
2 He was the guy who took care of little Amanda while
3 Tony went out to do the dastardly deed. And then
4 poor Bo was shocked to discover that Tony had
5 kidnapped Kim and then Tony killed her with three or
6 four blasts with a shotgun. He had nothing to do
7 with that.

8 Notice Mr. Lupton very understandably was
9 trying to hedge his bets on that. He talked to you
10 about the hand of one, the hand of all, that
11 everybody's guilty, it doesn't matter who fires the
12 shots.

13 Well, wait a minute, folks, their case is that
14 Tony Cooper fired all four shots. And if you don't
15 believe that, you don't believe their star witness.
16 The State knows that you're not likely to believe
17 that because their star witness is not believable.
18 So here's our case, folks, but if you don't believe
19 that, we've got another theory which, under the hand
20 of one hand of all, even if Bo Sutherland fired all
21 four shots, Tony was there, he's still guilty.
22 Hedging their bets.

23 That tells you something, doesn't it? Even the
24 State cannot deny, does not deny, has to deal with
25 the fact that this evidence is not believable.

1 **THE COURT:** Counsel approach, please.

2 (Whereupon, a bench conference was held off
3 the record, in the presence of the jury, but out of
4 the hearing of the jury.)

5 **MR. BRUCK:** I'm going to -- the State talked to
6 you about corroboration. They claimed their case
7 was corroborated, talked to you about Bo
8 Sutherland's credibility. And now the issue is, I
9 agree with the State, you do look for corroboration.
10 And what I'd like to do now is to talk about the
11 ways that Bo Sutherland's story was and wasn't
12 corroborated. It's going to take me a little while.

13 Your Honor, this might be a good place to take
14 a short break.

15 **THE COURT:** All right. Ladies and gentlemen,
16 I'll send you to the jury room for a break. Please
17 do not discuss this case in any way whatsoever.
18 Thank you very much.

19 (The jury retires to the jury room.)

20 **THE COURT:** I'll just state for the record that
21 I think that that juror in the striped shirt
22 continues to doze off, even though I interrupted and
23 had them all stand up. I'm happy to take whatever
24 action you suggest in regard to that juror.

25 **MR. BRUCK:** We would like to discuss that over

1 the break.

2 THE COURT: I'll be happy to allow you to do
3 that. It seems to me he is not going to pay
4 attention, but that's your call strategy-wise both
5 of you.

6 MR. BRUCK: Thank you.

7 THE COURT: I don't approve of that. And one
8 way or another I need to address it with that juror.

9 MR. BRUCK: I should say I would have noticed
10 it except that my view of that juror was blocked by
11 the juror on the front of him.

12 THE COURT: That's why I had them stand
13 originally just to give them a quick little stretch
14 break, but he continues to doze off or it appears he
15 continues to doze off.

16 (Brief Recess.)

17 THE COURT: I'm starting to wonder if I should
18 bring the juror in and ask since I've made that
19 inquiry at this point.

20 MR. BRUCK: Bring the jury in --

21 THE COURT: That juror in and ask have you
22 heard everything.

23 MR. BRUCK: We've thought about whether we
24 wanted to ask for him to be excused and we feel that
25 he doesn't -- we don't want him to be and part of

1 the reason is that we think the alternate is also
2 having a little trouble staying awake, so that --

3 **THE COURT:** I haven't noticed the alternate
4 like this juror.

5 **MR. BRUCK:** We have. So we don't know that it
6 would necessarily improve matters, it would just
7 leave us with no alternate. I would be more
8 inclined, I think, to have the Court ask the juror,
9 just indicate to the juror that he appeared to have
10 been asleep and is he capable of paying attention
11 and is there anything that he can think of to try to
12 do better.

13 **THE COURT:** Sometimes people close their eyes,
14 but they're still listening. That's why I said I
15 have a duty to ask. But I think, for the record, I
16 should at least ask the juror on the record since
17 I've now brought this up.

18 **MR. BRUCK:** All right. The other thing that
19 occurred to us is to place the juror on the front
20 row where he wouldn't be able to lean back against
21 the wall.

22 **THE COURT:** Well, I don't -- I mean, that might
23 single him out too much. I don't know if I want to
24 do that.

25 Bring that juror with the striped shirt on that

1 was sitting in the back row.

2 (The juror enters the courtroom.)

3 **THE COURT:** Sir, come around, please. That's
4 fine. Can you state your name for the record and
5 your juror number?

6 **JUROR:** I think I'm juror number 70.

7 **THE COURT:** What's your name, please?

8 **JUROR:** Brandon Hill.

9 **THE COURT:** Juror number 70.

10 Mr. Hill, I've noticed that you had your eyes
11 closed a lot during these closings. As you've
12 heard, it's very important that everyone pay close
13 attention. It's an important day for everyone.
14 Have you been hearing everything that's been said?

15 **JUROR:** Not everything. I've been trying. I
16 got off work at seven o'clock this morning.

17 **THE COURT:** If I had known that you had a
18 problem with work, I would have told you that night
19 shifts don't cut it during a jury process. They
20 would have had to protect you. Have you not heard
21 the testimony in this case?

22 **JUROR:** What you mean?

23 **THE COURT:** You said you're trying to hear
24 things. Have you gone through this trial and have
25 not heard a lot of things?

1 JUROR: No. I started night shift Monday.

2 THE COURT: So this just started this week?

3 JUROR: Yeah.

4 THE COURT: And have you heard the closing
5 statements today?

6 JUROR: Some of it. .

7 THE COURT: Some of it, but not all of it?

8 JUROR: I can't say I heard it all.

9 THE COURT: But you've heard all of the
10 evidence in this case?

11 JUROR: Yes, sir.

12 THE COURT: Are you capable of listening to
13 everything from this point on?

14 JUROR: I'll try.

15 THE COURT: All right. I need to know one way
16 or another.

17 JUROR: Yes, sir.

18 THE COURT: All right. I'll send you back to
19 the jury room. We'll let you know. Thank you, sir.

20 (Juror leaves the courtroom.)

21 THE COURT: All right. I'll be happy to hear
22 you both out. I'm not very comfortable with the
23 fact that he said I've heard some of it.

24 MR. BRUCK: We do not -- we do not wish to
25 request that he be excused at this time.

1 arguments are long; however, this is everyone's day
2 in court today. It is very important that you pay
3 close attention to the matters being presented to
4 you. If you need a break at any time, we're happy
5 to accommodate you. If you do not hear something,
6 we're happy to accommodate you. I'll be watching
7 closely to make sure that everyone's paying close
8 attention.

9 Go ahead.

10 **MR. BRUCK:** If you don't feel that you can take
11 Sutherland's testimony on trust, I suspect that you
12 don't, then you want to look for the ways in which
13 it's corroborated. Was anything he said
14 corroborated?

15 Now, of course, he had plenty of time to show
16 you the stack of evidence he had to study over the
17 years, so he knew what the evidence in the case was.
18 He had plenty of time to fashion this detail or that
19 detail around what he knew the State had and could
20 prove.

21 But one interesting thing, he gave a statement,
22 the initial statement on April 21st to the State.
23 You know, in this trial, there's been a lot of
24 examination of witnesses about, well you say this
25 now, but on such and such a date, didn't you say

1 this. And the lawyers on both sides have had
2 statements, written statements to go by. The
3 statement on April 21st doesn't exist.

4 Remember Sutherland said he met with the
5 prosecution team and with their investigator and his
6 own lawyers on April 21st and no one took any notes.
7 No one took notes. Doesn't that seem a little odd?
8 This is -- Bo speaks after all of these years, he's
9 finally going to tell what he says is the truth
10 against Tony Cooper and no one writes the first word
11 down.

12 Well, one effect of that -- I mean, of course,
13 they wanted to see whether he was, you know, they
14 wanted to see what his story was. They weren't
15 going to give him a deal until they found -- until
16 they could see whether it was something they could
17 use in court, that's fine, but why wasn't anyone
18 writing anything down?

19 The result of that, if he had written something
20 down and it varied from anything he said on the
21 witness stand, under the law, the State would have
22 been required to give it to us and we would have
23 read it back to him and you would have had the
24 benefit of knowing that as recently as last month,
25 he varied, this or that was different. So how do

1 you solve that problem? You just don't write
2 anything down and then this pesky problem of not
3 getting his story straight goes out the window, not
4 going to happen.

5 So he has this meeting, doesn't write anything
6 down, the State doesn't write anything down.

7 There's no record of the version that he gave then
8 as opposed to the version that you've heard. And
9 when you consider all of the other versions he's
10 told, that's no minor matter. Lord knows what the
11 details were then.

12 But there were a few things that he wasn't
13 ready for and he didn't include. According to Bo
14 Sutherland, there's never been a word about
15 handcuffs in this entire case until Bo Sutherland
16 said that Tony put Kim Quinn in handcuffs and that's
17 -- now, he had to have something like that because
18 he had to explain how it could be that anyone could
19 kidnap her or lure her out to this lake and then
20 leave her there still alive and come back to get the
21 baby-sitter, Bo Sutherland, the innocent
22 baby-sitter, and bring him out to the scene where he
23 could be a witness to this scene of horrifying
24 carnage who's so disturbed to see. That was his
25 story. And the handcuffs were necessary to the

1 story because otherwise Kim Quinn would have run
2 away.

3 But what Bo wasn't ready for was a fact, and
4 the reason he wasn't ready you found out. Doctor
5 Sexton took a very careful look at every bit of Kim
6 Quinn's body that was brought to him, including her
7 wrist, her severed wrist. And there was no evidence
8 of handcuff marks on the wrist.

9 Now, think about that. According to Bo's story
10 number three, she was left for a long time, 20
11 minutes, half an hour, maybe an hour, we don't know,
12 but a long time with her hands handcuffed behind her
13 back to some part of this building. You don't think
14 she would have struggled to get free against those
15 handcuffs. You don't think there would have been
16 cuts and bruises. Those wrists would have been
17 bloody. Of course, it would have been if it were
18 true. And Doctor Sexton would have found it.

19 But you see, Bo was at a disadvantage. He had
20 tons of evidence that he could pour over and fashion
21 a story that didn't conflict with the physical
22 evidence that the State had, but he didn't know
23 about the wrists because, as Doctor Sexton said, the
24 first person that ever asked him about handcuff
25 marks was me and it was on the day that he testified

1 before you.

2 So there's no report, there's no prior
3 testimony, Bo had no way of knowing that Doctor
4 Sexton didn't find handcuff marks. So close as he
5 tried to match the evidence, he had to get something
6 wrong and now you know why he got that wrong. There
7 were no handcuffs, ladies and gentlemen. That was
8 something he lied about.

9 And something else, I mean, corroboration,
10 where are the handcuffs? Bo knew where the severed
11 feet were. He knew where the severed hand was. He
12 knew where the ax was. He not only didn't know
13 where the handcuffs were, he didn't lead anybody to
14 them. He never mentioned what happened to the
15 handcuffs. His imagination failed at that point.
16 He forgot that the handcuffs had to be disposed of,
17 too. There were no handcuffs. The little things
18 will tell you where the truth lies. That's how you
19 know. That's how you know.

20 Now, more corroboration. He testified that
21 Tony pulled down Kim Quinn's pants to show where he
22 had beaten her on her bottom, on her behind. Well,
23 what do you know, part of her body that was not
24 burned were the buttocks. Where were the bruises
25 that supposedly Tony Cooper showed Bo Sutherland?

1 Never mentioned it. They weren't there. Do you
2 think Doctor Sexton would have missed that? I don't
3 think so.

4 Now, if she had been burned over that area of
5 her body after she was killed, sure, that would
6 explain, but she wasn't. We've got the diagram to
7 show you. No bruises because there was no beating.

8 This was just something -- this -- who knows,
9 this might be the kind of detail that appeals to a
10 man like Bo Sutherland when he's trying to come up
11 with a story, maybe ~~this is the sort of thing that~~
12 Bo had done to somebody else, I don't know. I
13 wouldn't put it past him, but it isn't part of the
14 evidence in this case.

15 Corroboration, corroboration, what you've got
16 is a lack of corroboration where there should have
17 been corroboration if he was telling the truth.

18 Now, you know, when you hear a story like the
19 one Bo told you, it has a ring of the truth because
20 there are so many details in it. And you think, you
21 know, it sounds like a man -- when someone tells you
22 a long story and it's full of, we turned here and we
23 did this and Tony said this and we wondered about
24 that and I told him not to come back because there
25 were -- not to drive back and forth because somebody

1 was going to see him and afterwards we went and he
2 had two chilli dogs. Remember? All of that is the
3 sort of stuff that makes you think, well this sounds
4 like a true story because surely no one can make up
5 all of those details.

6 I'm not at all suggesting that he made up all
7 of those details. Most of those details are
8 probably true, except for one thing, who did them?

9 But as far as -- I bet you Bo Sutherland did
10 have two chilli dogs after he murdered Kim Quinn.
11 It has the ring of truth because it is true. The
12 only difference is who ate the chilli dogs? Who was
13 there?

14 So it's easy, it's easy to tell a false story
15 providing you put a lot of things in there that are
16 true to give it the stuff of a realistic sounding
17 tale. That's how you do it. It's no great trick.
18 Anybody can do it if you just put your mind to it
19 and that's what Bo did.

20 So there was no evidence that Kim was beaten
21 the way he said. There was also -- we don't know
22 that there would have been a struggle with Tony
23 Cooper if Bo's story were true, but, at some point,
24 this went, according to Bo's story number three, it
25 went from being a decoy operation where he lures her

1 out of the house and she's going voluntarily, but
2 surely by the time they were 12 miles away or
3 whatever it was way out in the woods at the pond,
4 she knew something was up, there had to have been a
5 struggle before he gets her in those ghostly,
6 nonexistent handcuffs. Any evidence of a struggle
7 on Tony Cooper's body, any scuffs, any marks, any
8 scratches? No. Corroboration that isn't there.

9 The State wants you to believe that because
10 there was a log on her body, ~~that means that two~~
11 people must have been there. And I'm not saying
12 that two people weren't there, but we can't prove it
13 by Bo Sutherland what happened. He may have had
14 somebody with him or he may have done it alone as he
15 maintained for so many years.

16 There was certainly somebody with him in the
17 parking lot that morning and afternoon outside Kim
18 Quinn's house, somebody with shoulder length hair
19 and glasses and probably no goatee, but we don't
20 know whether he later did this by himself. He looks
21 like a man entirely capable of handling a 122 pound
22 woman, I think that's what her weight is on her
23 license that you'll have in evidence. So he didn't
24 need anybody, he didn't need anybody to do this to
25 help him, but there may have been someone there.

1 But what's the State's proof that there was
2 someone there? That she has this log placed on her
3 body. And they asked one of the officers, well it
4 looked like a pretty heavy log. Oh, yeah, a heavy
5 log. How much? How much did it weigh? We don't
6 know.

7 And then something interesting, you probably
8 wouldn't have noticed this because you had no reason
9 to be listening for it, but when they read the
10 — testimony of Lieutenant Jim Springs into evidence
11 about the crime scene, went on and on and on about
12 all of the things they did, he said there was a
13 rotten log on her. We all know a rotten log can be
14 eight feet long, but it hardly weighs anything
15 because it's mostly air inside. It's been eaten out
16 by termites or whatever. That was the famous log
17 that would have required two people. It sounds very
18 much like everything on this scene is consistent
19 with one person.

20 And then you would expect the ordinary sorts of
21 crime scene evidence to be brought in. Where are
22 the tire tracks? The question is, was it Bo in the
23 Cougar out there or was it Tony in the truck? Well,
24 tire tracks would be one way to find out. Where is
25 the tire track evidence? Isn't it?

1 Any testimony that anything like that was done
2 or that it distinguishes between the Cougar? What
3 about tire tracks at Kim Quinn's house? Nothing.
4 Corroboration isn't there, isn't there.

5 Bo Sutherland said that when he was
6 baby-sitting or before he started doing his
7 baby-sitting, he sat around with Kim Quinn at the
8 apartment -- at Kim's house rather and they smoked
9 pot. And he also said that she said that she had
10 been doing Morphine, a narcotic drug. What did SLED
11 find? ~~No Morphine, no pot.~~ Corroboration,
12 corroboration.

13 Three different kinds of prescription drugs.
14 Remember the testimony about the smuggling of
15 prescription drugs into CCI, don't know what it
16 means. But no pot, no Morphine, folks.
17 Corroboration.

18 How do you know Bo Sutherland is telling the
19 truth? Well, you look for something that shows that
20 he's telling the truth and I'm going through the
21 list and it's not there. On the contrary, there are
22 things that show that he didn't tell the truth and
23 this is some of it.

24 Bo mentioned -- he went through this so fast,
25 it seemed like he was almost ashamed, I don't know

1 if Bo had much shame, but almost ashamed of giving
2 this detail, but he blurred right through where this
3 shotgun came from, that it was from a break-in at a
4 trailer, I think he said Calhoun County or
5 something. We got it. And I think he listed Tony
6 as one of the people and Melvin Burroughs....

7 Remember Melvin? Tony talked about Melvin,
8 Marsha's brother, Bo's buddy, the one that they
9 drink beer and hang out with, run around with,
10 Melvin. Do you remember Melvin's testimony? No.
11 Didn't read it to you, didn't call him, no Melvin.
12 Corroboration.

13 Burden of proof, ladies and gentlemen, is on
14 the State. They put Bo Sutherland there. In
15 exchange, they paid dearly for his testimony,
16 created a risk that he's going to get out and it was
17 their duty to show that he was telling the truth
18 with version number three. No Melvin, chose not to
19 call him.

20 What's the real story of the shotgun, the real
21 story? Where does it really come from? It's for
22 you to wonder.

23 And then there are some things within the
24 State's own case. Bo's testimony was that, as I
25 recall it, and if I get anything wrong, it is not

1 intentional, you go by, obviously, what you heard,
2 there are 12 of you and only one of me, but my
3 recollection is that when Bo was going through his
4 story number three, he said that Tony picked him up
5 at 8:30 on Thursday, October the 5th, the morning of
6 this day when they were going to case the apartment
7 and they went over to see Brenda and John at 8:30.

8 Now, remember, you saw the map, Bo's apartment
9 is sort of halfway into town from Pelion where Tony

10 lives, so he's already I don't know how many miles.

11 And Mr. Lupton and I looked for a scale on the map,
12 it's not there, but y'all are residents of this

13 county and you know how far apart things are and
14 you'll have the county map in to look at. It's a
15 pretty good ways up the road from Pelion to Bo's
16 apartment at 8:30, according to Bo to -- up they go
17 on to see Brenda.

18 Well, guess what? There was a long distance
19 phone call to the schoolhouse from CCI, the prison,
20 from Tony's house at 9:07, lasts for five minutes.
21 The State was acting like that's part of their case,
22 but it really shows that Tony wasn't riding up the
23 road to Brenda's place of work with Bo Sutherland
24 after 8:30, Tony was at home making that call. And
25 he told you what that call was about and who it was.

1 to and why he made it.

2 Corroboration. Bo was lying when he said they
3 were already on the road at 8:30, much less 9:07
4 because Tony couldn't have been back at his house at
5 that time to make that phone call.

6 The State will make a big deal, they may get up
7 here and say, Oh, that was Tony trying to call Red
8 Farmer at the schoolhouse, there's no proof of that
9 and it doesn't fit their own star witness' story.

10 Bo says he left the Shumperts at eight o'clock
11 that night. Teresa Shumpert says Bo left just
12 before 10:30. Who are you going to believe?
13 Corroboration.

14 And then, finally, I could think of more. And
15 you have probably thought of examples that I've
16 missed where if Bo's story was true, there should be
17 some fact. The curtain rod she supposedly, I didn't
18 quite catch what he said, I'm sure you did, they
19 supposedly put something in behind her hands after
20 she was taken away from the building still
21 handcuffed, some kind of a rod. Where is it?
22 Anybody bring that into you? Is that in evidence?

23 And we could go on and on and on and be here
24 all day, but you see what I'm talking about. If Bo
25 was telling the truth, there should be proof. There

1 should be proof that doesn't lie, that doesn't need
2 deals to testify, real proof, physical evidence and
3 it's not there.

4 And then, finally, before I leave Bo, and I'm
5 just about done with him, there's something about
6 his story that doesn't make any sense at all. He
7 said that the motive for this crime was robbery, a
8 check, an insurance check, according to Tony, and
9 they were going to go rob Kim. And then, according
10 to him, Tony goes and talks to his niece, Brenda,
11 and finds out she doesn't have the check so he gets
12 mad.

13 Well, as far as it goes, I guess that makes
14 sense, but what's the next thing? He decides to rob
15 her of the check anyway and it's not there. Now,
16 how much sense does that make? The motive has
17 completely fallen apart.

18 Now, the Judge may tell you the law is that the
19 State does not have to prove motive in order to
20 convict somebody of a crime. There is such a thing
21 as crimes that don't have a motive that makes any
22 sense. But when the State's whole theory is based
23 on a motive and it turns up a motive doesn't make a
24 bit of sense, then using your common sense, doesn't
25 that tell you that maybe the motive for this crime

1 was something completely different and that the
2 people that had that motive don't want you to know
3 about it. Bo told you what the motive was in 1992.

4 I told Red, the third paragraph, I called Red
5 on the phone from the Fast Fare at Leaphart Road
6 where Brenda works. I guess it was the schoolhouse
7 number. It was the number that Brenda gave me. I
8 told Red I could get the reefer. I told him the
9 price was 800 bucks. Then he said that she's been
10 F'ing up a lot of people's dope, a lot of people
11 don't feel too good about her. She's been stepping
12 in people's cocaine, according to Red. That means
13 she'd been cutting the cocaine. Red said you could
14 kill her. I could just take the money and
15 everything.

16 And then he went on that apparently there was
17 this myth in the penitentiary, and I assume it was a
18 myth, but people seemed to believe it, that she had
19 gotten an insurance settlement for a fire in which
20 her older child was killed and that she had set the
21 fire deliberately in order to get money for drugs.
22 And, of course, that puts her at the very bottom of
23 the totem pole as far as convicts are concerned,
24 don't like crimes against children. You always hear
25 about that and it seems apparently to be true.

1 So there's all of that. And Red Farmer is
2 still talking about that to this day now in Texas
3 that that's why she was killed.

4 Now, am I going to tell you that Bo Sutherland
5 is giving the exact truth about all of this in this
6 statement? No. I don't know. I don't know when
7 Bo's telling the truth. He doesn't tug on his ear
8 when he's lying and scratch his head when he's
9 telling the truth. There's no way to tell. But
10 that is a motive, folks, that made some sense
11 whether it's that exact motive or something like it.
12 Kim Quinn was in deep in the drug smuggling business
13 into CCI.

14 You heard from Gerald LeGrand. They called
15 Gerald LeGrand to testify only that he had set Bo
16 Sutherland, as it's stated in this statement that Bo
17 gave, in touch with a certain Chico. That was all
18 the State thought you needed to hear from Gerald
19 LeGrand.

20 And then when he was cross-examined, Mr. Duncan
21 asked him a few more questions. It turned out that
22 Gerald LeGrand knew a lot about this story that the
23 State didn't think it was important for you to know.
24 Gerald LeGrand was, maybe not the center, but he was
25 certainly a peripheral character in this web of drug

1 smuggling into CCI.

2 And I would submit to you, ladies and
3 gentlemen, that it is the drug trafficking business
4 in 1989, the dirty business of smuggling drugs into
5 CCI that lies at the bottom of why Kim Quinn was
6 killed. And it should come as no surprise, people
7 that smuggle drugs act like everything is just
8 ordinary. They act -- they are deceitful people.

9 That's what smuggling is, it is deceit.

10 And it is not surprising that they have not
11 come forward to tell you what really happened to Kim

12 ~~Quinn, but it is incumbent upon you, I would~~
13 suggest, to use your common sense and see that there
14 is a story here that makes more sense than the
15 nonexistent check that Kim Quinn didn't have when,
16 according to Bo, Tony Cooper and him went right
17 ahead with the plan knowing there was nothing there
18 to rob.

19 Now, the last thing, before I leave Bo, is
20 that, according to him, he was out at the scene and
21 Tony shot all four shots and then Tony cut off the
22 hands and then told Bo to cut off the feet.

23 Now, as the expression goes, what dog did he
24 have in that fight? Why was Bo then going to say,
25 okay, yes, sir, I'll be glad to cut off the feet and

1 started slinging that ax and cutting the -- it makes
2 absolutely no sense whatsoever. He had no reason to
3 be helping with this thing. As far as he was
4 concerned, it was all a terrible shock. Like he was
5 doing it just to be doing something, he had nothing
6 better to do. I mean, how much sense does that make
7 to you?

8 ~~When you first hear it the first time, you~~
9 think, okay, that is a story, but when you look at
10 it closely, it begins to fall apart. And I would
11 suggest to you that the testimony of the State's
12 star witness has fallen apart, which brings us to
13 witness number three, Red Farmer, basically, the
14 rest of the State's case.

15 Now, at least you got to look at Bo Sutherland.
16 You've never laid eyes on Red Farmer. But even long
17 distance -- let me say something about that first.
18 You would not have been aware of this, you had no
19 reason to know this, but the very first thing that
20 happened in this trial --

21 **MR. BELL:** I object, Your Honor.

22 **THE COURT:** Yes, sir, approach.

23 (Whereupon, a bench conference was held off
24 the record, in the presence of the jury, but out of
25 the hearing of the jury.)

1 **THE COURT:** Sustained based on how it's
2 postured. Go ahead.

3 **MR. BRUCK:** The very first thing that happened
4 before you were selected was after you were all
5 qualified, the whole panel was qualified out there
6 on Monday last week, the Judge said, Solicitor, call
7 your next case. Mr. Bell stood up and said, The
8 State calls the case of the State versus Gene Tony
9 Cooper, Junior.

10 Now, that actually -- something happened at
11 that moment. People may not realize it. You may
12 think -- in civil court, the court decides what
13 cases get called to trial when there's a schedule
14 and the court's in charge of it, but in criminal
15 cases, the State calls the cases. They decide what
16 case is going to be called on what week.

17 Now, they get set ahead of time so that
18 everyone knows to have their witnesses here and, of
19 course, it wouldn't then come as a surprise that
20 they were going to call Tony Cooper's case when they
21 did, but you should know that the State has great
22 power about deciding when to call cases and when not
23 to.

24 They called this case apparently when Red
25 Farmer was not available or at least he wasn't here.

1 If the State had wanted you to hear Red Farmer in
2 person, why not ask the Judge to put this case off,
3 they're the ones that call the cases, until Red
4 Farmer's presence can be secured? But they didn't.
5 They have the burden of proof. He's their witness.
6 Where is he?

7 You're entitled to conclude that the State
8 feels that their case would be stronger if you never
9 laid eyes on the guy. We would just go from paper.
10 They would do better and Tony would do worse. And
11 you would be more inclined to believe his story if
12 you never heard him utter the first word.

13 Now, that is something that you may, and I
14 suggest, should consider in deciding whether to
15 convict a man's testimony -- whether to convict a
16 man of murder on the testimony of an absent witness.

17 Now -- all right, you never got to hear him
18 testify. You don't know how he answered questions.
19 You don't know how he behaves on cross, but you know
20 a lot about him. You didn't find out very much on
21 what the State presented to you, but you found out a
22 lot about Red Farmer from what the defense presented
23 afterwards. And let's go through some of that and
24 let's remember who Red Farmer is, their second star
25 witness.

1 Red Farmer testified that he was a young guy
2 who went to prison and then, remember the testimony
3 from Texas, he just happened to go to a store when
4 he wasn't supposed to and they called that an escape
5 and they put him in, so he had to go to CCI, the big
6 house, the big penitentiary. They throw, this is
7 him talking now, they throw a 19-year-old young'un
8 in with murderers and there he was at CCI.

9 But, fortunately, he was a smart guy and so he
10 set up this literacy program. And he very
11 grandiosely told you in his testimony, indirectly,
12 about all the good work he did at CCI. He started
13 out, he said, they asked him, the authorities at CCI
14 asked him to set up a literacy program to help the
15 inmates who couldn't read and write. And he said
16 okay.

17 And he started with a little program that had
18 just four teachers and before long, he built up that
19 program until there were 40 teaches, 120 students.
20 That's what he wanted the jury, when he did testify,
21 to know about who he was and that's why he was over
22 at the schoolhouse because that's where the literacy
23 program was and that explains the phone calls and
24 everything else.

25 Well, come to find out, and we had to tell you

1 this, the State didn't, that that whole literacy
2 program was just a scam because what he was actually
3 doing was running a drug trafficking operation out
4 of that school house using that unsecured phone and
5 ~~he did it almost the whole time that he was at CCI.~~

6 This is Red Farmer talking. Remember the testimony
7 that I read to you.

8 ~~Now, think about that a little bit.~~ This is a
9 guy who lives a completely false life. He pretends
10 to be one thing while he's doing another. He is a
11 psychopathic individual or a sociopathic individual,
12 somebody who is just as phony as a three dollar
13 bill. He's slick and he knows how to talk and he
14 knows how to sound like a good guy, but he's a bad
15 guy. And while he behaves one way where people can
16 see him, he does something else in reality. That is
17 Red Farmer.

18 And if there was any doubt, you knew that about
19 him in 1991 when he admitted that he was running
20 this drug trafficking operation and he acted like it
21 was no big deal. He said, I had to make a living.
22 Like they don't feed you at CCI unless you
23 supplement your income smuggling drugs to inmates.
24 No wonder Tony was concerned that his niece, Brenda,
25 was visiting this character, a reason to be

1 concerned.

2 Well -- all right. So that's what we knew
3 about Red to begin with. And we know that Kim Quinn
4 was part of this network that Red was running, bring
5 -- smuggling prescription drugs and who knows what
6 else, cocaine, according to Bo, into CCI. And he
7 knew that -- he was hooked up with Gerald LeGrand.

8 He was playing Gerald LeGrand and turning him into a
9 drug smuggler or Kim was, or Kim was -- Gerald
10 LeGrand picked up stuff from Kim and brought it in,
11 tried to bring it into Red.

12 And then something happens to Kim Quinn. Did
13 it involve a nonexistent check or did it involve the
14 dirty business that Red Farmer was in the thick of?
15 There's no testimony that Tony Cooper was involved
16 in this business. There's been plenty of testimony,
17 we know for a fact that Red Farmer was and Bo says
18 he was.

19 Okay. So Kim Quinn gets murdered by somebody
20 for some reason. And then it comes time for Red
21 Farmer to start explaining this away.

22 Now, it takes him a long time. Let's not
23 pretend that Red Farmer came forward and said, Oh,
24 my goodness, I was so shocked. I just told Tony
25 Cooper about a check, but I never imagined that

1 anything like this would happen and I'm really
2 disturbed about it.

3 The testimony was that it took him from when
4 this happened in October, they started questioning
5 him around October 9th and he didn't come up with
6 this story accusing Tony Cooper until November 15th
7 and November 16th.

8 These dates probably just flew by you at the
9 time because it was just reading a transcript, it
10 was hard -- it had to have been hard for you to
11 follow, but this is crucial because it tells you
12 that Red spent close to six weeks deciding how he
13 was going to -- how he was going to tell his story.

14 Maybe he knew that he had placed a call to
15 Tony's house that had gone out to that extension
16 phone and talked to Bo, maybe that call was never
17 made, we don't know. Somebody called, maybe it was
18 Red. People who know aren't going to say. If it
19 was Red or if he heard about someone else placing
20 that call, then he could use that to build his story
21 around, but it took him an awful long time, an awful
22 long time to come up with that story. He did not
23 come forward with it right away.

24 But he played the State like a fiddle, ladies
25 and gentlemen, because by his own statement, by his

1 own version, he is the reason that Kim Quinn is
2 dead. He put this whole thing into motion. He was
3 the critical player that started it all and caused
4 there to be an attempted robbery.

5 And what did he get out of it? In his own
6 words, that they just gave me enough of a sentence
7 to make me happy. Served a few extra months, a
8 couple of years for a crime that you can get life
9 imprisonment for, armed robbery, 25 years,
10 conspiracy to commit kidnapping, at that time, life.
11 And he gets a deal and he left with almost no time.
12 And he describes it in his testimony in Texas like
13 it was less than a slap on the wrist, made me happy.
14 Pretty good work. Pretty good work for a guy
15 involved, for a guy that started the chain of events
16 that led to this (indicating).

17 So then where does Red go? If we had not
18 brought you more evidence about Red, you would have
19 thought that at that point, well, bless his heart, a
20 literacy teacher, he got involved with a bad crowd,
21 but he made his amends, told his story, maybe he's a
22 school teacher somewhere, good guy, hope he does
23 well.

24 That would have been nice, folks, but that, as
25 you know, because of what we brought to court, is

1 not the story of the State's absent star witness,
2 Red Farmer. Quite the contrary, he goes to Aiken
3 and almost immediately he's getting busted three
4 times for selling drugs, big surprise.

5 _____ He's allowed to stay out on the street for a
6 long time. You can draw whatever inferences you
7 want from that. Do you think Red got busted and
8 immediately started telling the police, I can turn
9 in other people if you'll let me off, why don't you
10 let me work for you? The guy's good at playing law
11 enforcement, taking advantage, getting people to
12 trust him and betraying their trust.

13 Three years after he was first busted, what
14 _____ does he do? This case is ready to come up in court,
15 he's out of there, jumps bond, a bench warrant is
16 issued for him. He's a wanted fugitive.

17 According to his testimony, he goes to Texas
18 and then eventually -- he goes to Tennessee and then
19 eventually to Texas where he is found running a
20 Methamphetamine factory. And then he's arrested.
21 He tells various stories that he then recants later
22 on, gets out on bond.

23 Remember the testimony that I read to you from
24 his sentencing in Texas? He's a witness on the
25 witness stand and he has to admit when the

1 prosecutor is questioning him, he gets out on bond
2 goes right back to it again, gets busted dealing
3 more Methamphetamine and it's really worth
4 remembering exactly what he said.

5 First of all, he's got to go through his prior
6 record and his prior record includes an arrest for
7 conspiracy. I'm sorry, this takes a long time, but
8 it is important, this is the State's witness. Let's
9 remember, this is Red Farmer describing his role,
10 describing what happened, what he knows about the
11 death of Kim Quinn. He is in court. He is under
12 oath.

13 Okay. After the part where he talks about the
14 19-year-old young'un thrown in with the murderers
15 and -- Question: What happened?

16 This guy got out on parole after being locked
17 up 17 years, who happened to be my cellmate, and
18 robbed and killed this girl and told me about it.
19 Well, SLED, which happens to stand for South
20 Carolina Law Enforcement Division, charged me with
21 the same crime they charged him for because I knew
22 about it and I didn't tell on him.

23 Question: Did he tell you in a phone
24 conversation or what?

25 Yes, sir, it just so happened his niece, which

1 was my age, and he's a little older than me, was
2 coming to visit me. And I called and talked to her
3 one evening and got on the phone and told me about
4 it. Well, she overheard it, and excuse my French,
5 but the shit hit the fan. I was standing in front
6 of it.

7 So they prosecuted him and you, too?

8 Answer: Yes, sir. They locked me up for
- 9 conspiracy to commit murder, conspiracy to commit
10 kidnapping, conspiracy to commit armed robbery.

11 They said, Well, you testify for us and we'll just
12 give you a conspiracy charge and it won't even hurt
13 you at all and so on. So seeing how extensive my
14 record is already, I felt it was in my best interest
15 to tell them what I knew, so I did.

16 And then the lawyer asked him: And what did
17 you get?

18 Answer: I got five years running concurrent
19 with what I already had, which was basically
20 nothing. They give me a sentence to satisfy me is
21 basically what happened.

22 Now, that is Red Farmer's most recent testimony
23 about this case. How much resemblance does that
24 bare to what was read to you in his absence? Where
25 is the phone call at 7:34 from Red Farmer to Tony

1 Cooper setting up this robbery? It ain't there,
2 folks. It has gone away. It is the linchpin, it is
3 the critical fact of the State's case and it's gone.

4 Well, the State says, Oh, well, you know, he
5 was just trying to minimize things for himself.

6 Well, that's exactly right, he'll say anything if
7 it's in his interest, if he wants just a sentence to
8 satisfy me and get free, he'll say one thing. And
9 then under oath, if it's in his interest to say
10 something else, he'll say something completely
11 different.

12 Now, the State, I suggest, is going to be so
13 desperate when Mr. Bell gets up and talks to you
14 that they're -- in fact, Mr. Lupton has already done
15 this. They'll make a big deal out of the fact that
16 after all these years, Red Farmer is still claiming
17 that Tony Cooper made a phone call to him the day
18 after the murder and said this thing about burning
19 the body in code.

20 Well, how surprising is that whether it's true
21 or whether it's false? A total stranger shows up, a
22 lawyer and a young lady, to talk to him. He doesn't
23 know them from Adam's house cat. What's he supposed
24 to tell them? Well, you know, I perjured myself and
25 convicted an innocent man in South Carolina.

1 He's -- some fragment of this story that he
2 told is still going to be lingering around. He
3 knows it. He memorized it. It was his ticket to
4 freedom. It treated him pretty well.

5 Mr. Lupton says he has nothing to gain.
6 Nonsense. He's more desperate now than he ever was.
7 He's under two life sentences in Texas. And what do
8 you think he's thinking about? Well, my life is
9 over, I guess I should get right with God now. You
10 think that's the way Red Farmer thinks? He's
11 thinking about parole. He's thinking about how can

12 I get out of here. He's thinking about, boy, I wish
13 they'd send for me from South Carolina and maybe
14 South Carolina can help me with these people in
15 Texas. These folks are crazy here. I'm here for
16 life. I need help.

17 That was his last words, remember, at the
18 sentencing hearing, what do you think -- the
19 prosecutor said, What do you think you deserve? He
20 says, I need help, I need help. Well, that's Red
21 Farmer. He's always looking for help. He still has
22 a motive to lie. He still has a motive whether he
23 doesn't remember his story anymore or what the story
24 on it is.

25 But he did say -- the guy's got any sort of

1 conscience and I think it peeped out when he was
2 talking to Kim Turner, the young lady you heard, who
3 also has no dog in this fight, she's just an intern
4 helping a lawyer there. She's coming to visit her
5 mom over the Memorial Day from Aiken. We asked her
6 to drive down from Statesville (sic), Georgia to
7 tell you what Red Farmer had to say.

8 And what was the last thing he said? He said,
9 This time, ~~if I testify against Tony -- if they call~~
10 me to testify at Tony's trial, I'm going to tell the
11 truth. This time, I'm going to tell the truth.
12 There was a lot of spin on it last time. This time,
13 I'm going to tell the truth. Is there any surprise
14 that he's not here?

15 The State would like for you to assume without
16 evidence that this time isn't what you needed to
17 hear. You needed to hear what he said last time and
18 that should be enough, that should satisfy you.
19 Well, ladies and gentlemen, the State's burden is
20 beyond a reasonable doubt and that is not anywhere
21 close to a case that proves their case beyond a
22 reasonable doubt. He should have been here. It was
23 the State's job to have him here. They've been
24 putting off this trial and breaking in the middle,
25 whatever it took, but he's not here and that has to

1 be held against the State.

2 Now, I told you at the beginning in my opening
3 statement to you, I said, Try to picture what the
4 presumption of innocence feels like. And I said,
5 One way of expressing it is if your best friend's
6 son was charged with a crime, you wouldn't fold your
7 arms and say, I'll never believe it, but you would
8 be doubtful. You'd be skeptical. You would not
9 want to believe it. You would presume him innocent.

10 And if someone tried to say, well, you don't
11 need to hear the actual testimony, he's in Texas and
12 making all of these inconsistent statements, but
13 trust us, he gave a statement a long time ago, read
14 this and you'll see that your best friend's son did
15 it. You'll say, I don't think so. I need more than
16 that.

17 Well, that's your job, ladies and gentlemen.
18 That's what is enforcing the presumption of
19 innocence means in this case, you have no friends in
20 this case. You are neutral. But Tony Cooper is
21 presumed innocent by you and that is the state of
22 mind that you should take to the evidence I've just
23 been talking about.

24 I also wanted to give you a little flavor of
25 who Red Farmer is. Remember his description, it

1 wasn't relevant to anything except who he is. In
2 the middle of his testimony in the Texas trial, he
3 begins describing what a world class crane operator
4 he was, his amazing hands and how in demand he was.
5 People were bidding for him and he had very high
6 standards about when he would sign the certificate
7 and when he wouldn't, some people could get him like
8 this and people can get him like this.

9 ~~That's the kind of guy, he's not only a liar,~~
10 he's not only as phony as a three dollar bill, he's
11 a narcissist. It's all about Red. It's all about

12 Red. And when he gave his original version of this,
13 it was all about Red.

14 Now, all of which comes to the question, I've
15 talked to you about the motive, well why finger
16 somebody else? Why put the blame on someone that
17 wasn't really involved? Why would Red do that? Why
18 would Bo do that? Well, there are a number of
19 reasons why.

20 And most of all, you've seen how valuable it
21 can be to have someone else fingered. Tony was a
22 suspect in the beginning. Why? Because of the
23 Cougar, because of the license plate. We now know,
24 as the police didn't, that Bo had complete use of
25 that Cougar during all the weeks before this. It

1 meant nothing about Tony that the Cougar was there
2 casing the joint, it only meant something about Bo.

3 It was natural that from that moment on as soon
4 as that license plate was called in, the registered
5 owner is Tony Cooper. Well, he becomes a suspect
6 and then that's who the police are interested in,
7 Tony Cooper, Tony Cooper. It starts from there and
8 then the identification that we talked about by
9 Mr. Harley. And by then, they've got enough of a
10 case to take to court, it's not very strong, but
11 they've got it.

12 These criminals who deal with information, who
13 deal in lies, who deal in testimony against other
14 people in order to cover their own tracks, they know
15 who's buying that and what sort of price is to be
16 paid. It wouldn't have taken very long for someone
17 like Red Farmer, for someone like Bo Sutherland to
18 know the sale this week is on Tony Cooper, that's
19 who the police are interested in, that's who they
20 want, therefore, give them what they want and there
21 will be something in it for me and for Red, boy, was
22 there ever.

23 But there's another reason why they would have
24 put this on Tony Cooper. And, in fact, Bo suggested
25 one, which was they were mad at Tony because he made

1 a break from these folks in the penitentiary when he
2 left and he wouldn't lend them money and he wouldn't
3 do things they wanted and so that would be another
4 reason.

5 But I think probably the most really serious
6 reason and the one that really mustn't be forgotten
7 about is that whoever the guy was in the car with Bo
8 Sutherland, the guy with the glasses and the
9 shoulder length hair and no goatee, he knows what
10 really happened. He knows what really, really
11 happened. He knows what Red Farmer really
12 instructed people to do to Kim Quinn. He knows the
13 real reason and he probably knows what happened at
14 the pond and who did what to whom.

15 Now, if you're Bo and you're Red, you've got a
16 choice. You can either give them the guy the police
17 are already after and be a hero or you can give them
18 the guy that really knows. And then what, buddy?
19 That guy is going to roll right back on you and it's
20 not going to be Red Farmer makes this call who's
21 almost innocent about the check and then was so
22 shocked about what happened to Kim, it's going to be
23 Red Farmer called in a hit on Kim Quinn. Red Farmer
24 ordered her murdered and that's the guy they're
25 going to cut the deal with not Red Farmer. They're

1 going to cut the deal with him.

2 That's the world these people live in. It's
3 very different than the world that you and I live in
4 and it's hard to put yourself in that frame of mind,
5 but you've got to do it because this case has
6 brought you into this world and left the decision up
7 to you about what really happened.

8 _____ Can Tony Cooper prove that? He can't prove
9 anything. He doesn't have to. He can't. He
10 doesn't know why Kim Quinn was killed. He doesn't
11 know how. He doesn't know whether she pled for her
12 life or what the circumstances were out of the
13 crime. He doesn't know what the orders were that
14 went out from CCI, whether it was visitors or
15 whether it was over the telephone or what telephone
16 or when. We can't prove any of that. But I suggest
17 to you, ladies and gentlemen, all of that fits with
18 this evidence much better than the one theory that
19 the State has pulled out of this jumble of
20 inconclusive, uncorroborated accusations.

21 **THE COURT:** Let's go ahead to stand for a
22 second, ladies and gentlemen. You can go ahead and
23 stretch.

24 (Pause.)

25 **MR. BRUCK:** I am getting toward the end, you'll

1 be glad to know. I appreciate you being with me. I
2 think you'll agree with me this case is important.
3 We've been thinking about this for a while and I
4 hope that I've been able to point out things in the
5 evidence ~~that~~ some of you may not have seen and a
6 quick once over that is a necessary part about being
7 on a jury. I am about done.

8 I want to now discuss with you what else
9 they've got. I've been through the three-witnesses,
10 the missing witness, Farmer, Bo Sutherland and
11 Mr. Harley. Now, let's see what else they've got
12 that they claim amounts to proof beyond a reasonable
13 doubt.

14 Painting the truck. I think you've seen
15 through that as proof already. Tony painted all his
16 vehicles. He was a vehicle painter.

17 Marsha, she's Marsha Crane. She is not married
18 to Tony anymore. She has no reason to lie for him.
19 She just came in and described to you what she
20 remembered about this man, that he was a guy that
21 was very fussy about his cars and was always finding
22 cheap ways of making them look better. He did it to
23 a Mustang and he did it to the truck not before the
24 police searched it, but after.

25 Now, come on, wouldn't he have -- if he had

1 wanted to paint that truck to destroy evidence,
2 wouldn't he have done it the next morning or that
3 weekend? Would he have waited?

4 The first thing he paints on Sunday is not the
5 floor boards or anywhere where Kim Quinn might have
6 been secreted, but the back window. Now, what
7 evidence do you think would have been on the inside
8 back window of that truck? _____

9 And you found out why he painted the window and
10 it made perfectly good sense. He bought that truck,
11 there was a Dixie flag on it, he didn't need any of
12 that on his truck and he wanted to get rid of it and _____
13 he did. And then the sticky stuff was left, the
14 adhesive, so he just, you know, it's hard to get
15 that stuff off, so he just painted over it. And
16 then after the police searched the truck, he painted
17 the floorboards like he did these other vehicles.

18 Circumstantial evidence is good evidence if it
19 proves something, but if it doesn't prove something,
20 it can just lead you astray. First, you hear he's
21 painted his truck, you go, uh-oh, it sounds fishy.
22 And then you find out all the facts and it turns out
23 it's really not fishy at all.

24 The ax and the Cougar. Well, the Cougar has
25 been explained. Bo Sutherland had the Cougar and,

1 ladies and gentlemen, he had the ax, too.

2 Marsha has got no reason to lie. They're
3 talking about motives and lie and all that. You can
4 say, well, Tony Cooper would have said that Bo had
5 the ax whether he did or not, but Marsha's got no
6 reason to say that. She didn't -- if she had wanted
7 to lie about it, she would have said, I saw with my
8 very eyes how he put it back in the trunk of the
9 Cougar and drove off. All he said was, Bo brought
10 it back, we used it and then I never saw it again.
11 The inference being that Bo took it back with him,
12 that's what Tony told you happened. Bo had that ax
13 that night.

14 All that testimony about the paint matching and
15 everything, that's the one bit of good forensic,
16 scientific work, and I'll talk to you about that
17 before I'm done too, in this entire case. What they
18 proved was that Marsha Burroughs' mother's ax that
19 Tony used was at vary -- at some point in the past
20 in his truck, but they never proved that it was in
21 his truck on October 5th and that's because it
22 wasn't.

23 The call to Kim Quinn, I'm sure you will hear
24 and hear and hear about that when I sit down, the
25 call to Kim Quinn about 9:30 on Tony's phone, well,

1 let's think about that. If Tony was involved in a
2 plot to rob Kim Quinn of the check that turned out
3 not to exist, do you think he would have made a
4 phone call to her house, long distance, where he
5 knew perfectly well it would have been on his phone
6 bill at 9:30 the night before the crime? How much
7 sense does that make to you? All he had to do was
8 get in the car and drive up the highway that he
9 pointed to you until he got close enough to West
10 Columbia where it would be a local call.

11 Someone made that call. The phone was out in
12 the yard, no one's testified that that isn't true,
13 that that wasn't kind of like a community phone out
14 there in the country, people would gather, including
15 Bo Sutherland. The call was made, but we don't know
16 by who.

17 And, you know, something interesting, Tony
18 admitted that he had met Kim Quinn, even been to her
19 prior house at one time. He didn't have to do that.
20 He could have said, I've never laid eyes on her, if
21 he had wanted to lie about it. Why did he tell you
22 that he knew her slightly, he had seen her at this
23 bar and he remembers her visiting at CCI?

24 Ladies and gentlemen, the reason he told you
25 that is that it's true, that's the end of the

1 explanation. It might help him. It probably hurts
2 him, but it's true, so he said it. And I think you
3 can draw something from that. If he had wanted to
4 lie, he had a good opportunity to do it.

5 All right. The ax and the Cougar and the call
6 to Kim and then there's the alibi. The State will
7 make a big deal out of the fact that Tony's
8 statement about -- alibi is a -- it's a word you
9 remember in sort of gangster movies, but it's
10 actually a legal term. It just means that you were
11 somewhere else when the crime was committed, so you
12 couldn't have committed it. If an alibi is true,
13 then it means the defendant can't be guilty.

14 The Judge will tell you that it is not Tony
15 Cooper's job to prove his alibi. It is not Tony's
16 job to prove that he was at home and then driving up
17 the highway trying to make the call and then going
18 to his dad's and coming back that night or that he
19 was at his mother's during the day when Bo and the
20 guy with the long hair was casing Kim's apartment.
21 It is not our burden to prove that it's true. It is
22 the State's burden to prove beyond a reasonable
23 doubt that it is not.

24 And even if the State proves beyond a
25 reasonable doubt that the alibi is not true, that

1 doesn't prove the guilt. They still have to prove
2 that it was Tony that committed this crime, that he
3 was there and did it.

4 Now, that's an important distinction because
5 there are cases in which an innocent man gives a
6 false alibi. I don't think this is one of them, but
7 it could happen. A person can be perfectly
8 innocent, but his alibi is he was home alone and a
9 person might think that's not going to be good
10 enough, I better come up with something better. And
11 they do come up with something better and the alibi
12 falls apart and everybody says, false alibi, he must
13 be guilty.

14 No, false alibi means he was scared and he
15 thought he needed some witnesses to vouch for him
16 and that no one would believe he didn't do it if his
17 testimony was just that he was home alone.

18 So the fact that they impeach an alibi in a
19 case, doesn't tell you the defendant is guilty, it
20 just tells ~~you~~ that's one piece of evidence that
21 you'll have to weigh like everything else. And if
22 it's not true, then you look back at the case and
23 say, well, forgetting about that, did they prove
24 guilt or innocence?

25 But let's look at what Tony's testimony was and

1 how it was supposedly undercut by the testimony of
2 the last witness.

3 According to Mr. Hite, who used to work at the
4 Lexington County Sheriff's Department, Tony asked,
5 ~~right~~ after he was arrested, he asked to be
6 interrogated. And he not only asked to be
7 interrogated, but he asked to be interrogated by
8 Sheriff Metts himself, Sheriff James Metts, your
9 sheriff.

10 Does that sound like a guilty man? Usually,
11 ~~it's the other way around. The police come and want~~
12 to question the suspect and he's going, I don't know
13 about this, you know. And they read him his rights
14 and all that stuff. This was the other way around.
15 He was hammering on their door.

16 And an important little detail that he
17 mentioned was -- that Mr. Hite mentioned was, It
18 wasn't our case. So they had a situation, it was
19 West Columbia's case, Tony was just in the Lexington
20 County Jail, as I understand it, and he was
21 demanding to see Lexington County to talk to them
22 about a case that they weren't the lead
23 investigators on. So the officers didn't want to
24 talk to him. They hadn't asked to see him and it
25 wasn't their case. So what do you expect is going

1 to happen?

2 He says he takes notes, but the notes are gone
3 and you don't know what they say. At some point
4 afterwards, he says it would have been the next day
5 or maybe even that night, pretty quick, but he
6 doesn't have any memory of when it was, he writes an
7 undated little lead sheet in which he puts down his
8 recollection of what Tony Cooper said. And some of
9 it is consistent with Tony's testimony that he went
10 over to his dad's house that night, for example.

11 And you're supposed to take -- I mean, Mr. Hite
12 had no memory whatsoever of what Tony said from his
13 own memory when he testified before you. He was
14 going from his testimony in 1991. And his testimony
15 in 1991 was based on his memo that he had written to
16 himself at some unknown time after he had taken down
17 some notes and it was probably based on the notes,
18 but there might have been things in the notes -- in
19 the statement that weren't in the notes and the
20 notes are gone.

21 A clerk could have provided the testimony. You
22 didn't even need Mr. Hite to come in and testify
23 because he had nothing to add.

24 Remember the presumption of innocence. You're
25 being asked to convict your best friend's son. I

1 mean, that's the way of thinking. If that is the
2 evidence that you are asked to accept that someone
3 who you presumed innocent was really guilty, what
4 would you say about that? You'd say that's not
5 fair. That's like third, fourth hand, who knows how
6 garbled that version got by the time that you heard
7 it. That's just not fair.

8 ~~This is too important to rely on that kind of a~~
9 version of a version of a version taken down by an
10 officer that didn't want to be there that hadn't
11 asked to talk to Tony Cooper and it wasn't his case
12 anyway. No disrespect to Mr. Hite, but all
13 bureaucracies know, they're interested in what
14 they're interested in and they make mistakes and
15 they cut corners when they're not. They've got to
16 have other things they need to be doing. And this
17 is just not reliable testimony.

18 We do not know -- it has not been proven beyond
19 a reasonable doubt whether or to what extent what
20 Tony told -- insisted on telling law enforcement
21 that day was any different than what you have heard.
22 And you cannot convict based on that.

23 The same thing about the mom, Tony's mom who
24 was suffering with cancer, dying of cancer as it
25 turned out, and that she's asked these questions

1 about, did you see him that night. And she says,
2 No, which is true from what Tony said. And then, at
3 some point, that becomes, Did you see him at all
4 that day. And the notes that maybe can clear up
5 whether she was really asked about the day or
6 whether she was only asked about the night, they're
7 lost or they're gone or they never existed.

8 So what are you supposed to do? You're being
9 asked, in effect, to take it on faith, take it on
10 faith.

11 Well, ladies and gentlemen, we take a lot of
12 things in our lives on faith, but not in a court of
13 law, not when the burden of proof, of proof, is on
14 the State to prove guilt beyond a reasonable doubt.
15 And that is how the State supposedly undermined
16 Tony's account of where he was that night and that
17 day.

18 For the most part, Tony really was home alone
19 or he was with his mom. That's where most people
20 are. He was working for himself. He was helping
21 out his mother that day. He was with people who
22 love him. And then whenever they say where he was,
23 they can always say, oh, well, you just love him.
24 That's the way it was.

25 You know, another thing that's a ring of truth

1 about Tony's testimony about where he went that
2 night is that, according to his own testimony when
3 he drove down to the phone bank to try to get
4 through to make a call to Marsha, and isn't it
5 believable that when Marsha went to work -- I mean,
6 here's a guy who gets out of prison and before you
7 know it, he is married to this lovely woman, this
8 beautiful family, he must have felt like he had won
9 the jackpot, isn't it believable that when she goes
10 to work all night long, he just -- he wants to call
11 her and just talk to her?

12 And it's right after Hurricane Hugo and the
13 phones are sometimes working, sometimes not and he
14 wants to get a little bit closer. And finally
15 unable to phone her, it gets to be too late, his car
16 is running hot, not a bit of testimony that that
17 isn't true. So he goes by his dad so he doesn't get
18 stranded late night.

19 But one thing, and I'm sure you're going to
20 hear all about this from Mr. Bell because it is so,
21 that by driving to his dad's house, Tony brought
22 himself close to the pond, much closer, many miles
23 closer than he was at his own house. Now, if he
24 wanted to tell a story that wasn't true, that's not
25 the route he would have chosen to bring himself

1 closer to the pond.

2 It's just like the phone call to Kim Quinn, he
3 told you that story because it is true. He can't
4 change it, that's what it was whether it helps him
5 or hurts him, and that part of it is certainly going
6 to hurt him, I guarantee you. Mr. Bell will do
7 everything he can to make it hurt him.

8 He didn't have to -- if he wanted to make
9 something up, he didn't have to say that. He could
10 have driven in the other direction. But he was
11 stuck with what he did, so he told you and now he
12 has to take whatever consequences from that.

13 I think you can see that you don't convict a
14 man simply because he tells what happened whether it
15 helps or hurts. And on the contrary, that is some
16 evidence that he is probably telling the truth.

17 You may have been wondering for the -- waiting
18 for the DNA in this case. Isn't it amazing that
19 when there was finally DNA testing done by SLED in
20 2006, who demanded, who asked for it? Why did they
21 do it? Because Mr. Duncan, Mr. Andrews and I asked
22 for it on behalf of Tony Cooper. Well, there's so
23 little curiosity to know who's DNA were on those
24 beer cans.

25 Now, come to find out, it's too late. They

1 might have eliminated people. Even after they got a
2 partial profile, you heard Nancy Skraba, a very
3 professional and capable serologist who does the DNA
4 testing for SLED, even after they got a partial
5 profile, she said, Well, there isn't enough to match
6 anybody, the passage of time, the evidence gets, you
7 know, it wears away, it gets less and less useable,
8 but it could have excluded someone. And the State
9 still doesn't, still doesn't run that evidence
10 against Tony Cooper's DNA profile and against Bo
11 Sutherland's DNA profile.

12 What if those beer cans had revealed two male
13 DNA on those Budweiser beer cans that supposedly
14 weren't there when Kim's friend was last over there
15 the night before? Seemed to have something to do
16 with her visitors that night or visitor. What if
17 there were two male profiles and one was Bo's and
18 the other wasn't Tony's? It wouldn't help the
19 State's case, would it?

20 So let's just not ask. Let's just not do the
21 DNA analysis and let's hope the jury doesn't notice.
22 Well, ladies and gentlemen, I am confident that you
23 have noticed.

24 I have probably talked too long. I think I've
25 worn out my welcome. If y'all weren't tired, you

1 wouldn't be human at this point and I'm just about
2 done. Please feel free to stand up one at a time if
3 you need to stretch.

4 I told you in my opening statement when this
5 trial began that you are about to see how an
6 innocent man can be convicted of murder. We all
7 know it happens. We all know it happens. It
8 happens in a case like this where the people who
9 know what happened ain't saying. They've got every
~~10 reason not to say because the truth would hurt them~~
11 and testifying against the man on trial would and
12 has helped them. That's the kind of case it happens
13 in. And it happens in the kind of case where the
14 State doesn't follow up the evidence that they've
15 got.

16 The gas in the gas can, before I say this, I
17 think Mr. Bell is probably planning on making a big
18 deal out of the fact that there was a gas can in
19 Tony Cooper's pick-up truck just like there is in
20 probably any number -- thousands of other cars and
21 pick-up trucks all through this county, including, I
22 would not be surprised, in many of y'all's cars.

23 You can test gas. Gas isn't gas. We all go to
24 the pump, we get high test, we get led from, you
25 know, regular. What kind of gas was in that can?

1 You heard the testimony, the stipulated
2 testimony from the SLED agent who tested the gas out
3 at the crime scene to show that it was gas, could
4 she have run a chemical test to find out what was in
5 that gas, what chemicals, what additives, what grade
6 of gasoline? Of course, she could have. If he --
7 she was finding gas that hadn't burned. If it had
8 burned, she wouldn't have found it. Did it match
9 the gas in Tony Cooper's -- Tony Cooper's truck?
10 Apparently, no one thought it was important enough
11 to find out, but they still tell you they've proven
12 his guilt beyond a reasonable doubt.

13 Who knows what's in that gas can. To this day,
14 17 years almost after this picture was taken, they
15 think it's such a big deal that he painted the
16 carpet. What's in that gas can?

17 Those are the warning signs. When a mistake is
18 in danger of being made in a courtroom, those are
19 the things.

20 During those DNA exonerations in those cases I
21 told you about where it turned out they convicted
22 the wrong people even though all the ducks seemed to
23 be in a row in the courtroom before they had DNA,
24 they couldn't run the tests, they go back and they
25 look and they say, How were these mistakes made?

1 And there were all these warnings signs, they were
2 always there all along if you had only looked for
3 them. That is the jury's job because they're there
4 in this case and if you'll look for them, you'll see
5 them.

6 Now, this was a gory crime, especially what was
7 done to the body after Kim Quinn was killed. And
8 everybody's going to feel some pressure about, Ooh,
9 what if he did it, can we acquit a man who might
10 have done this? That's suspicion, folks. If he
11 wasn't a suspect, if there wasn't some reason to
12 think he probably did it, a lot of people said -- or
13 a few people said he did it, he wouldn't be here.
14 That's what gets a case into court is probably
15 guilty, is maybe guilty, is suspicion. That's -- a
16 jury never even has to consider a case unless a
17 person probably or maybe or might well have done it.
18 So there's always that pressure.

19 But I dare say that the pressure is a little
20 lighter on you because innocent or guilty, Tony
21 Cooper has already served 17 years for this crime
22 whether he did it or not. There is no question, no
23 matter what the truth is, of an innocent man getting
24 away with murder. We're 17 years past that point,
25 aren't we?

1 The Judge will tell you that a reasonable doubt
2 is a doubt that causes a person to hesitate in the
3 more important decisions of life. It's not a doubt
4 that makes you think the person is innocent. It's
5 not a doubt that makes you think they said this, but
6 I believe this. It's simply a doubt that makes you
7 hesitate, hesitate to act.

8 When you come into the jury room and you
9 finally are through with listening and get to talk
10 and get to share your ideas and begin to make your
11 decision, you may find yourself hesitate. That,
12 ladies and gentlemen, is a reasonable doubt. If you
13 are hesitant after you have heard everything, after
14 you have given fair consideration to everything
15 Mr. Bell is about to tell you, then you have a
16 reasonable doubt.

17 Now, you should deliberate, you must
18 deliberate. You should listen to the views of other
19 jurors, you should respect each other's views,
20 nobody should ever pressure anybody else, but you
21 should hear each other out. But please remember
22 that if you have a reasonable doubt when you go into
23 the jury room that is based on the evidence or the
24 lack of evidence in this case, that evidence is not
25 going to change.

1 What is going to change is that y'all are going
2 to get tired, you may weaken, the evidence will not
3 get stronger, so that if you have a reasonable doubt
4 early in your deliberations, stick to your guns,
5 stick to your guns.

6 It would not be fair to say, and this is in the
7 ambient the State wants you to do and this is what
8 their case really comes down to, they'll try to say
9 a word or two in defense of the witnesses that they
10 called or didn't call, but what they really are
11 hoping against hope that you will do is to say, when
12 there's smoke, there's fire; birds of a feather
13 flock together; Tony and Bo were peas in a pod, if
14 Bo did it, Tony must have done it; there was too
15 much going, the phone calls and Bo and the Cougar
16 and everything, they probably did it together and we
17 don't know that he didn't; and it's all too
18 confusing and we'll just be realistic about this and
19 figure that Tony must have done it, too.

20 That's why Mr. Lupton went in such detail about
21 the principle of accomplice liability that the hand
22 of one is the hand of all. Now, that's a perfectly
23 true statement of the law and you'll hear it from
24 the Judge, but their case doesn't have anything to
25 do with hand of one, hand of all. Their case is

1 that Tony fired four shots from the shotgun and
2 killed this woman all by himself. So what
3 Mr. Lupton was really telling you is, well, if you
4 don't believe that, maybe you'll just average it out
5 and say he's guilty anyway if you don't believe
6 there's evidence, but you still think where there's
7 smoke, there's fire. -----

8 I'd like to ask you not to do that. That would
9 ----- not be consistent with your oath. ----- That is not your -----
10 job. Your job is to test the State's case. And if
11 it is not proven, to find Tony Cooper not guilty.

12 Not guilty does not mean we are sure you are
13 innocent, it doesn't mean we think you are innocent
14 because that -- it's way too late for that. Tony
15 Cooper will live under the suspicion of this, for
16 which he has already served nearly 17 years in
17 prison, for the rest of his life no matter what your
18 verdict is. You cannot change that and no one is
19 asking you to. Not guilty simply means that the
20 State has not proven his guilt beyond a reasonable
21 doubt, that's all it means.

22 Ladies and gentlemen, I am just about done. I
23 want to suggest to you one thing. You go to a used
24 car lot to buy a car for your son or daughter who's
25 about to go off to their first job or to college.

1 And the man on the car lot says, I've got just the
2 car for you, driven by an old man many years, kept
3 it in the garage, it's a 17-year-old car, but he
4 just drove it to the grocery store and to church,
5 low mileage, look at it, beautiful paint job. And
6 it looks pretty nice first glance, but you weren't
7 born yesterday and there you are with a used car
8 salesman, so you say, If you don't mind, I would
9 like to take a close look.

10 And you tap on the fender, it feels a little
11 funny. And because you were ready for this, you
12 brought a little refrigerator magnet from home and
13 you put that refrigerator magnet on the fender and
14 it falls right off. You get on your back and you
15 get under the car and you look at it and there's
16 nothing but Bondo, nothing but Bondo on the inside.
17 And you stand up again and you say, Sir, this car
18 has been wrecked and it's been painted and that's
19 why -- it has a new paint job and that's why it
20 looks nice and you didn't tell me about that.

21 Then the used car salesman is a little
22 flustered and recovers and he says, Well, actually,
23 that's true, it has been wrecked. I'll tell you
24 what I'll do, I'll take a thousand dollars off the
25 asking price, now it's really a steal, but let me

1 tell you the engine is in great shape. And I have
2 here paperwork from the prior owner about how
3 wonderful the engine was. Please don't look under
4 the hood, don't insist on seeing it yourself. I'll
5 just show you the paperwork and that should satisfy,
6 there's no reason to doubt anything else about this
7 car, take my word for it,--just go on the transcript, ----
8 go on the paper. ----

9 Well, ladies and gentlemen, it is a free
10 country and if you want to, you can buy that car,
11 but you cannot convict a man of murder on the
12 evidence that you have heard in this courtroom.
13 Thank you very much.

14 **THE COURT:** Counsel approach.

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

18 **THE COURT:** Ladies and gentlemen, this is about
19 the time we'd normally break for lunch or we can go
20 into the State's argument. The State's argument
21 will probably be long, too. I'm just going to ask
22 you would you like to break for lunch at this time;
23 if so, please raise your hand?

24 I mean, I can send you back to the jury room if
25 you'd rather talk about it in the jury room or we

1 could go through with the State's argument and then
2 break for lunch at that time. Do you want a minute
3 to go to the jury room and think about it or -- let
4 me ask you again, show me your hands if you want to
5 break for lunch at this time. It doesn't matter
6 either way.

7 **JUROR:** A short break would do me fine.

8 **THE COURT:** We'll just go ahead and take a
9 short break then because it seems like most of you
10 have not requested a break. If you change your mind
11 during the break, you can let me know when you come
12 back in.

13 (The jury retires to the jury room.)

14 **THE COURT:** Y'all can go ahead and take a five
15 minute break. We'll see what they say when they
16 come back.

17 (Pause.)

18 **THE COURT:** As they walked out, they said
19 they'd rather go to lunch instead. So what I think
20 I'll do is bring them back in and break until 2:00.
21 Is that okay with y'all?

22 **MR. BELL:** That's fine.

23 **THE COURT:** Defense?

24 **MR. BRUCK:** Yes, sir.

25 **THE COURT:** Now, I don't know how long it's

1 going to take, at some point, we'll have to decide
2 whether we want them to start deliberating if it
3 gets to be close to 4:00 or 5:00. I intend to
4 follow the policy, you keep them together until they
5 reach a decision. So I'll let y'all think about
6 that during lunch.

7 **MR. BRUCK:** Your Honor, I'm pretty sure we
8 would like them to start deliberating unless they
9 don't want to.

10 **THE COURT:** I'll probably ask them, but I'll
11 explain to them that they have to stay together. It
12 just depends on the time like I said. I don't know
13 how long you're going to take. Bring the jury back
14 in, please.

15 (The jury returns to the courtroom.)

16 **THE COURT:** I understand, ladies and gentlemen,
17 that you'd rather go ahead to lunch, so we'll just
18 break for lunch. If you could please be back a few
19 minutes before two o'clock, that's about an hour and
20 15 minutes, we'll proceed with the trial. Again,
21 you must not discuss this case in any way
22 whatsoever.

23 I did not ask this morning, was anyone exposed
24 to any communication, media, newspaper, radio or
25 anything about this case; if so, please raise your

1 hand?

2 Let the record reflect no one raised their
3 hand. We'll see you back then. Thank you very
4 much. Give your pads to the bailiff on your way out
5 and we'll put them back in the jury room.

6 (The jury was excused for lunch.)

7 **THE COURT:** All right. See y'all.

8 (Whereupon, there was a luncheon recess.)

9 **THE COURT:** Are y'all ready to proceed?

10 **MR. BELL:** The State's ready.

11 **MR. BRUCK:** The defense is ready.

12 **THE COURT:** All right. Bring the jury in if
13 they're ready.

14 (The jury returns to the courtroom.)

15 **THE COURT:** All right. Ladies and gentlemen,
16 we're ready to proceed at this time.

17 **MR. BELL:** Please the Court. Counsel, defense.

18 Mr. Foreman, ladies and gentlemen of the jury.
19 Before I start remarks, I would like to thank y'all
20 for being here, for being part of this jury. I know
21 it's been a long trial. It's been several days.
22 And what I've noticed, y'all have been paying great
23 attention, which is all we can ask that you pay
24 attention.

25 And we also, on behalf of the State and the

1 family of Kimberly Quinn, we thank you for your
2 service here. I hope you understand that you're the
3 basis of our criminal justice system and without
4 your service, we would have no criminal justice
5 system. And I hope you have learned something
6 during the course of your stay. You've learned how
7 our court operates. And I hope you can take
8 something back. And, again, we would just like to_____
9 thank you for your service on this jury and
10 understand how much we appreciate it.

11 Now, ladies and gentlemen, this case, as you've
12 learned, was motivated by pure greed, the quest for
13 \$2800, an insurance settlement check that Kim Quinn
14 was getting the week of October 5th. From her
15 attorney's testimony, from the stipulation from her
16 attorney, she was getting that \$2800. And that
17 information found its way to CCI. But they didn't
18 get it because she didn't have the check. She was
19 getting it, but she didn't have the check.

20 The only things they got in this case was a 149
21 dollar welfare check, some cash, some rings and an
22 I.D. card. And for that, Kimberly Quinn lost her
23 life. She was murdered.

24 As I said in my opening, this case started with
25 a little six-year-old girl wanting to know where her

1 mommy was. And it turned into a case where Kimberly
2 Quinn was murdered, robbed, kidnapped, turned into
3 that and the conspiracy.

4 Ladies and gentlemen, it also turned into a
5 case of people trying to cover their tracks as well
6 and I'll go into that a bit later and let you know
7 about that.

8 A wise person once said that crimes conceived
9 in hell do not have angels for witnesses. And the
10 State has to take the witnesses and the evidence
11 that it finds. We don't get to make things up,
12 ladies and gentlemen. We take what we can find and
13 we present it to you in proving a criminal case.

14 This was hatched in CCI, this plan was hatched
15 in CCI and it came out on the streets of Lexington
16 County.

17 Something else I would like you to keep in
18 mind, too, that you've heard a lot about. It's
19 about how people, when they're involved in bad
20 things, they sometimes, often, tend to minimize
21 their involvement. I mean, think about it, that's
22 basic human nature.

23 For those of you that have children or if you
24 remember back to your childhood and something
25 happened around the house, a lamp was broken or

1 something like that and your mother or father go,
2 Who did that, what's usually the first answer? I
3 don't know. It wasn't me. It was so and so. And
4 then you start grilling them and asking them and get
5 them to the truth, they start coming around.

6 With basic human nature, self-preservation, you
7 want to minimize your guilt. It permeates
8 throughout all of life from children to adulthood.
9 It's not something learned, it's basic human
10 behavior.

11 Now, ladies and gentlemen, what I want to try
12 to do is kind of summarize the evidence the
13 State has presented, plus the arguments of the
14 defense and incorporate all of that. And I'm kind
15 of doing it chronologically because it's the only
16 order that kind of made sense to me to do this.

17 I'm going to start out, September 30th is a
18 kind of a good place to start about the ax. Who saw
19 the ax las -- ax last? That's hard to say. Who saw
20 the ax last, that's the big question.

21 The defendant says, Well, Bo had it, brought it
22 to me, we cut some trees down, I gave it back to Bo.
23 It's not what his wife says, his wife who didn't
24 want to be here. His wife says, Bo brought the ax,
25 Bo had the ax, he brought it to cut those trees down

1 and that's the last time I saw that ax. And we know
2 that ax was in the back of his pick-up truck.
3 That's the start of it, September 30th.

4 Let's go to October 3rd. October 3rd, Bo and
5 Tony borrow a compressor. It's the State's case,
6 it's the State's evidence. They bring it back to
7 the Shumperts, Donnie and Teresa Shumpert's house
8 later that night, later that evening. And what
9 happens? When they bring it back, both Teresa
10 ~~Shumpert who testified, Donnie was there, and they~~
11 said, Bo got out with a shotgun, look at my new toy,
12 fired it up in the air, they took exception, they
13 didn't like that. He put it back in, where, Tony's
14 truck.

15 Now, that was Teresa Shumpert. I'm going to
16 ask you what -- as was said, what dog does she have
17 in this fight? She's a witness. She was honest.

18 Well, what does the defendant do? He didn't
19 even -- he says, I went there by myself, Bo was
20 never there. Well, of course not, ladies and
21 gentlemen, because it puts him with Bo Sutherland
22 and the shotgun in his truck, that's the problem for
23 the defendant. But Teresa Shumpert, she has nothing
24 to gain, nothing to lose, nothing to hide, she's not
25 here for Bo, not here for Tony, not here for

1 anybody, don't know anybody, other than what she
2 testified to. They had the shotgun and it was back
3 in Tony's truck.

4 Next day, October 4th, 1989, what do we know?
5 We know, number one, Brenda McLauren went to visit
6 Red Farmer. We know that. We've got the records.
7 The records are in evidence. Who's Brenda McLauren?
8 The defendant's niece.

9 Now, it's true, she visited him many times
10 before, but this is important because this is where
11 everything begins, this is where this plan starts to
12 cook because what does Red tell her? Tell Tony to
13 get in contact with me.

14 Well, of course, he doesn't wait. That
15 evening, 7:34 p.m., a collect call is placed from a
16 cell block three number, 748-9802, that Blake Taylor
17 testified about, to Tony Cooper's residence, the
18 defendant's residence. Who do they call? Well, Red
19 Farmer says, I called Tony. I called him on a
20 collect call.

21 There's nobody else there, according to the
22 defendant's wife. She said that it was me, Tony and
23 the kids. And she never testified, she was asked
24 about three phones, if you remember, I think the
25 defense asked her about the three phones, she never

1 said anything about the phone being out in the
2 middle of the yard for everybody in the world. She
3 said that Bo usually came by to use the phone and
4 would never let him in. She didn't like that. Why
5 would he have to come inside rather than if there's
6 a phone out in the middle?

7 But remember, ladies and gentlemen, nothing has
8 happened in this plan so far, so what difference
9 does it make if it shows up on the records? That
10 was Red calling the defendant to set this plan up,
11 she's getting a check, it's an easy hit, go get it.
12 And I think it was like a 17 minute call, too. It
13 was a long collect call. You can check the evidence
14 that we put in.

15 Also, on October 4th, there's a phone call, I
16 think it's like at 9:30 that evening, to Kimberly
17 Quinn's house. It's short, like a minute long. And
18 they're like, well, you know, explain this.

19 Well, ladies and gentlemen, the State -- the
20 State can't explain the criminal mind. I don't have
21 to explain the criminal mind, nor do I try to
22 explain the criminal mind. I don't know why people
23 do anything.

24 Everybody wants to put a rational explanation
25 to this irrational act of murder and armed robbery

1 and kidnapping and criminal conspiracy, but there's
2 no rational thought going in here. There's only
3 thought that's motivated by greed, the potential pay
4 off for \$2800. Don't you remember Red Farmer's
5 testimony was \$500, he's going to get \$500 out of
6 this? Pretty good score.

7 But the defendant had to say, Oh, I know Kim
8 Quinn, just to kind of cover the basis here, you
9 know, maybe I did call her. Well, what purpose
10 could that call serve? To see if she's home that
11 night, maybe they were going to try to do it that
12 night, maybe to ask her if she was going to be home
13 the next day. I don't know. I can't prove that,
14 nor do I have to prove that.

15 Let's go to the next day, ladies and gentlemen,
16 the big day. First of all, Bo testified, Bo
17 Sutherland testified here, you got to see him, that
18 the defendant -- that the defendant had talked to
19 Red Farmer the day before on October 4th about
20 robbing the victim, Kimberly Quinn. And, ladies and
21 gentlemen, remember the State's perspective on this
22 is we find out information, then we look for
23 evidence to back that up. So Red Farmer calls the
24 defendant, there's a phone call, collect call from
25 CCI, to the defendant's house the day before, that's

1 called corroboration.

2 That morning Bo says they went to see -- first
3 of all, got together and they went to see Brenda
4 McLauren, the defendant's niece. They want to make
5 a thing about 8:30.

6 Well, was Bo wearing a watch? Did he testify
7 he was wearing a watch? Did he testify he was
8 watching some T.V. program at 8:30? He was just
9 trying to remember as best he could. And we know,
10 we know there was a phone call from the
11 defendant's --

12 **JUROR:** Are we on the 5th or the 6th?

13 **MR. BELL:** I'm sorry.

14 **THE COURT:** Ladies and gentlemen, if you ever
15 have a question, I'm going to have you write it down
16 and hand it to me if that becomes the case.

17 **JUROR:** Sorry.

18 **THE COURT:** That's all right.

19 **MR. BELL:** We're still on the 5th. We're still
20 on the 5th. Nervous finger.

21 But we know the call came from the defendant's
22 house to the schoolhouse at 9:07 for five minutes.
23 So it could have been 9:30 that Bo was thinking
24 about. It's like six miles to where Bo lived. It's
25 another ten miles into West Columbia or so. You've

1 got the map, you can look at it. It all still
2 meshes with the time because Dana Harley talks about
3 somewhere 9:30, ten o'clock, he wasn't looking at a
4 watch either, it all fits in that time line, ladies
5 and gentlemen.

6 And if Bo -- another thing, an interesting
7 point with this is, if Bo had had all of this case --
8 and knew all of these times, wouldn't his story
9 exactly match-up to these things if he'd been able
10 to study this for 16 years? You know, he would have
11 caught that if he'd been able to study this as they
12 want to claim that he matched his story to the
13 evidence or whatever. I mean, it's an inconsistent.
14 If he says it's 8:30, wouldn't he have better
15 matched his story up if he was trying to create this
16 story? That doesn't make sense, ladies and
17 gentlemen.

18 Still on October 5th, the defendant and Bo go
19 by Kim Quinn's house. They go to the Lyngate
20 Apartments. As you can see, they look out to Kim
21 Quinn's house. That's from the apartment where Dana
22 Harley is.

23 And let's talk about Dana Harley. Dana Harley
24 got to see these two individuals four times that
25 day, around 9:30, ten o'clock that morning, what did

1 he say, 11:00 or 11:30, around one o'clock, 1:15 and
2 3:00, 3:15. You remember Dana. He didn't have his
3 times exactly right, too. Is he lying as well?
4 But, again, he doesn't have anything to do with this
5 case. He just kind of got caught in the middle of
6 something that he just didn't know what he was
7 getting caught in the middle of until it was over
8 with.

9 He saw these people. He got good looks at
10 them, ladies and gentlemen, four good looks. One
11 time he saw the defendant coming at him. He got
12 very good looks at these people more than the usual
13 person does in a crime. Usually, it's a fleeting
14 glance. They come in, they do something, they're
15 gone and they say, Oh, that's the person. But he
16 got to look.

17 And, furthermore, ladies and gentlemen, he just
18 wasn't, you know, glancing while he was going about
19 his business, this car caught his attention because
20 he was concerned that they might be doing something
21 at the apartment, they might be injuring his uncle's
22 property or the tenant's property or might be
23 breaking into them. He was staring these people
24 down. He was staring this car down.

25 He called it a white Mercury Cougar or a Ford

1 Cougar with a green top. He got -- at 11 o'clock,
2 he wrote the tag down, 11:00, 11:30, he wrote the
3 tag number down. The Clemson sticker on the back,
4 he remembered that. And look at the picture of the
5 Cougar, it had a Clemson sticker on the back
6 windshield. That's what he was looking at.

7 And then what was the testimony? The 17th,
8 when this investigation rolled on, they showed him
9 two lineups and what did he do? The first one,
10 there's the defendant. I mean, immediately. What
11 did Larry Hall say? He picked him out like that.
12 He didn't scan over and look at it and compare.
13 They opened it and he said that's the man. Same
14 thing with Bo Sutherland, that's the man. That's
15 how good his identification is, ladies and
16 gentlemen.

17 And remember what he was saying, these people
18 were looking down Platt Springs Road at the house.
19 They weren't trying to canvas the neighborhood, they
20 were looking out towards the house. They were
21 casing the house for what they were going to do
22 later.

23 And this is the big problem with the defense is
24 they can't get past Dana Harley, because if that's
25 the defendant in the car, he's involved in this

1 crime. And that was the defendant in this car,
2 ladies and gentlemen. They had to discredit, the
3 defense has to discredit his identification. They
4 have to or else their case -- the State's case falls
5 flat.

6 So what do they do? They call, the defense,
7 Doctor Van Wallendael. Heard the defense talk about
8 it and you heard her testimony up here, but what did
9 she really tell you, ladies and gentlemen? Oh, she
10 spouted, well, you know, we've done these studies
11 and 30 percent of them have failed, you know, 30
12 percent of them are misidentified. And she was
13 telling, Well, what we do is we just send people
14 kind of in a store and out and then go back and ask
15 if people can identify them.

16 But that's different in this case, ladies and
17 gentlemen. This man was paying attention. He saw
18 them, I don't know, by my calculations, it's 40
19 minutes. He saw the defendant for a good 40 or 45
20 minutes, got a full face-on look at him and was able
21 to see him because he was paying attention to him.

22 And what did Doctor Van Wallendael say? She
23 said, Yes, that would lead to a better, a more
24 confident identification. The more time you get to
25 look at them, the more time you get to look at them,

1 the more true the identification is. And that's
2 what happened in this case, ladies and gentlemen.

3 She also said on cross-examination if somebody
4 focuses more, truly focuses on that person, that
5 that would lead to a better and truer
6 identification. And then she was asked, Well, what
7 about when somebody's shown something and they can
8 pick it like that? She says -- she said that that
9 shows great confidence, that shows confidence in
10 their identification. So what did -- their expert
11 said was that -- was that Dana Harley's
12 identification of the defendant and Bo Sutherland
13 were correct.

14 Now, there's this thing about facial hair and
15 the length of hair, but you remember what she said
16 about that? The State asked her on
17 cross-examination, Well, what about -- what about
18 features like long hair or facial hair or whatever?
19 She said, We encourage people not to focus on that.
20 We want to focus on the features and all. And
21 that's what Dana Harley did, ladies and gentlemen,
22 he focused on the features. He focused on the
23 features.

24 Now, one last word about Dana Harley I want to
25 say is this, if Dana Harley's identification of the

1 defendant is not good, then his identification of Bo
2 Sutherland is not good. The defense didn't fight Bo
3 Sutherland's identification. They didn't say one
4 word about his identification because they want Bo
5 to be involved because that tries to help their
6 client, but Dana Harley had more opportunity to see
7 the defendant than Bo Sutherland.

8 Bo Sutherland never got out of the car. Bo
9 Sutherland didn't walk towards Dana Harley. Bo
10 Sutherland didn't sit on the stoop for ten minutes.
11 The defendant, Tony Cooper, did. And that's their
12 problem is that he saw him and they can't fight
13 that.

14 We also have Sharon Freeman who unfortunately
15 has passed away. She focused on the passenger at
16 that time at three o'clock who was Bo Sutherland,
17 had no problem identifying him, said the other
18 person had dark hair and said the other person was
19 wearing glasses. She was asked sunglasses. She
20 said, no, they weren't dark. But, you know, not all
21 sunglasses are dark, ladies and gentlemen. He could
22 have been wearing glasses at that time for whatever
23 reason.

24 Again, the State can't explain the behavior of
25 how criminals think and act. We just put the

1 evidence up that shows that somebody's guilty.

2 But let's think about this, let's look at it
3 from the other side. If it's not Tony Cooper, who
4 is it? Well, you've heard the guy named Chico that
5 Bo gave this statement saying he was involved, but
6 we know there's no Chico. Gerald LeGrand testified
7 there's no Chico. He doesn't know a Chico.

8 The only other name mentioned was, they tried
9 to slip Melvin Burroughs' name into it, but, you
10 know, if he looked like Tony Cooper, they would have
11 brought you a picture so fast and made your head
12 spin. Of course, the defense doesn't have to prove
13 anything, but you can guarantee like they brought
14 the expert, they would have brought a picture in if
15 it was somebody else. The only person that was, was
16 Tony Cooper, the defendant.

17 Also, on October 5th, guess who appears at the
18 victim's house that afternoon? The defendant's
19 niece, Brenda McLauren. Two people say that,
20 Elizabeth Griffin, you remember, she identified the
21 picture, and that corroborates what Bo said.

22 Bo said she came by and we didn't know we were
23 looking at the wrong house until she pulled in the
24 driveway and then we knew which house it was. And
25 what was she up to? She's recognizance. She's

1 trying to see if she got the check.

2 Guess what? She didn't get the check. Goes
3 back, they meet up later that afternoon and they
4 said that she didn't have the check. And what was
5 the response that Bo said Tony said, Damn the money,
6 the bitch deserves to die, and that's malice, ladies
7 and gentlemen.

8 Now, later October 5th, Bo Sutherland's at the
9 Shumperts. Again, they want to play time, eight
10 o'clock, 10:30. They can remember that people were
11 looking at a watch, there's no testimony they were.
12 Teresa Shumpert sees Bo leave and he's gone, but
13 guess what? The white Mercury is there. Teresa
14 Shumpert said that and Lee Chavis said that. He
15 said, I went to bed at 7:00, the car was there. I
16 woke up the next morning, it was in the exact same
17 place under the tree. That car hadn't moved.

18 So where did he go? Well, he went with Tony
19 because Tony always picks him up from there. And
20 guess what? The defendant even says he was there,
21 or that's the first version he gave, that he stopped
22 by Donnie Shumpert's that night. So, again, all of
23 these, Bo and Tony together, they're old friends,
24 they've known each other for a long time, in each of
25 these steps, Bo and Tony are together.

1 They ride around, drink a couple beers, stop at
2 some place in West Columbia, check out the victim's
3 house, there's a truck there, go back to the place,
4 have a beer or two, go back, nobody's there, they
5 enter the house. They go to the house.

6 And what does Amanda tell you, the daughter?
7 Now, she tells you there were two men that came in
8 the house. She was six years old back then, ladies
9 and gentlemen, that was a frightful night. Where
10 did my mommy go? She remembers that her mommy left
11 that night. That's something traumatic.

12 And I guarantee you she doesn't forget that.
13 But she also was scared because she was threatened
14 that night as well. What's happening to your mom is
15 going to happen to you if you don't turn over and go
16 to sleep. And that's what she did. She was scared
17 and she's been scared for all these years, but now
18 she's not. And she came and testified, there were
19 two men, two men that took her mom.

20 And then what did Bo say about that? We went
21 there, had a couple beers. He said they smoked a
22 joint.

23 Bo said that Kim told him that she was doing
24 Morphine or something like that, that's what the
25 victim, he says, told her. I don't know whether

1 that's true or not -- well, obviously not from the
2 drug report. Could the marijuana have gotten
3 through her system within 30 minutes before she was
4 killed? I don't know. We don't have that.

5 And then she was taken out to the pond by the
6 defendant. I came back, got Bo, took her out, she
7 was bound with handcuffs.

8 They put -- they shot her three to four times,
9 according to Bo. Doctor Sexton, of course, says at
10 least three times. And then they cut her hands and
11 feet off.

12 Bo says it was just to get the handcuffs off.
13 And you remember what Doctor Sexton said when he was
14 asked? He just said that it probably wouldn't have
15 left marks, it was a smooth surface. So there's no
16 way of knowing. There's no evidence. There's no
17 way of knowing that. I mean, it could or could not
18 have left marks with the handcuffs. And then they
19 cut her feet off.

20 All of this is encouraged to cover up their
21 tracks. They didn't want to find out who this woman
22 was. Then they put a log, a big log and a chair and
23 all and gasoline and lit it on fire and burned her.

24 And the question was asked, where are the
25 handcuffs? Well, ladies and gentlemen, I'll tell

1 you, the handcuffs are at the same place as the
2 shotgun because we haven't found the shotgun.
3 Again, trying to cover up their tracks.

4 They then, as stated, Bo says he got the ax
5 after Tony cut her hands off and tried to cut her
6 feet off, but the jeans got in the way, so they had
7 to pull her jeans off and throw them in the pond.
8 And where were the jeans found? In the pond. Look
9 at the bottom of that left leg, it's as if somebody
10 were trying to cut through it. That's
11 corroboration, ladies and gentlemen.

12 They then went on after they finished, they
13 threw the evidence in the creek, whatever, the ax
14 that was found there, the ax from Tony's truck, and
15 the hands and the feet. Then they went and washed
16 the clothes, covered up the crime. Bo slept on
17 Tony's sofa. They're together again. Partners in
18 crime.

19 Now, we'll go to October 6th. We know that
20 Kimberly Quinn's welfare check was cashed at 9:17
21 that morning in Cayce. We know that from the teller
22 tape from SCN where that check was cashed.

23 We also know that Red Farmer was called that
24 morning and they talked in code. Tony Cooper, the
25 defendant, called him, told him what happened,

1 talked in code.

2 There are no records of that, why? They were
3 in Cayce. They were washing the truck, they were
4 cashing the check, all they had to do was go to a
5 pay phone and it's a local call to CCI, to the
6 schoolhouse number. The job's done, construction
7 job's done, didn't get as much as we wanted, had to
8 burn the materials, talking in code.

9 Also, on October 6th, there's a fire around the
10 pond. Why is that important? Because we know
11 Kimberly Quinn's dead by then because of the fire.
12 They didn't find anything at that time, they just
13 dug a fire break around it.

14 They also -- the police also, finally, that's
15 when they get the license plate where Dana Harley
16 comes and tells them the license plate number and
17 guess who it comes back to? Gene Tony Cooper,
18 Greenwood Drive.

19 They check the I.D. number that was on the back
20 of the check. Comes back to the victim. We know
21 that she didn't cash the check because it wasn't her
22 signature on the back of the check.

23 October 7th, Andrew Baldwin goes up fishing,
24 finds her brain, runs back and tells his parents.

25 I'm going to October 8th. October 8th is when

1 they find the body. Remember Rob Turner and Andrew
2 Baldwin go back over there and then run home and
3 tell dad and they call the Lexington County
4 Sheriff's Department. So everybody's coming out
5 there.

6 What else is happening? Well, the defendant,
7 his wife and children are going up and getting the
8 RV at the dad's house up there right across from _____
9 Beckman Road. They're leaving out, all of these
10 police officers are coming in, who rides up? Bo.
11 Bo says that, his wife, Marsha, says that. Waives
12 them down, they go talk. And why are they worried
13 about that? If the defendant had no involvement in
14 that, why would Bo come to him if he had no
15 involvement?

16 Later that day, October 8th, they all go down
17 to the defendant's sister's house. Bo, Marsha, two
18 kids, the defendant, go to see the defendant's
19 sister and Brenda McLauren, his niece. And those
20 four, the defendant, Bo, his sister and his niece,
21 go off and talk amongst themselves. And why are
22 they talking amongst themselves? What's that about?
23 Because they're still trying to work on the cover
24 up, ladies and gentlemen. And that was testimony
25 from his ex-wife, Marsha.

1 October 9th, they dive in the pond, they find
2 the pants.

3 October 10th, about that time is when the
4 police get up with Bo and he tells them the first
5 story that Tony got up with me, he told me what he
6 did, that he shot the girl and then threw the stuff.
7 The fishes are eating good as they crossed the pond,
8 minimizing his conduct, ladies and gentlemen.

9 But the crucial things are that Tony was
~~10 involved was the first thing out of his mouth, the~~
11 defendant, and where the location of this evidence
12 was. And that caused the police to go dive there
13 the next day.

14 The 11th, that's when they go diving. What do
15 they find? They find evidence. They find the ax.
16 They find a foot.

17 Also, on that day, they take the truck into
18 custody. Now, there was some testimony that they
19 searched the truck beforehand. I believe that was
20 the defendant's testimony. And he says, Oh, they
21 came in there and they conducted all tests and then
22 they said it was clean.

23 All right, ladies and gentlemen, if that's the
24 case, then why did they come back and seize the
25 truck and take it to the SLED lab and that's where

1 Nancy Skraba and Jeff Hollifield conducted their
2 scientific test? Because, ladies and gentlemen,
3 they just looked in the truck back then. They
4 didn't do any big search or they didn't do any
5 scientific tests of that truck early on.

6 But that's when the stuff was closing in. Had
7 to cover evidence and so he painted -- he painted
8 the back window and he painted the floorboard of
9 that truck.

10 Oh, well, he likes to paint his vehicle.
11 That's the explanation. Fine. It's just right
12 after a murder that he's a suspect in, he's starting
13 to paint things. Why is he painting the back
14 window? There might have been evidence there. I
15 mean, don't you recall they found these paint flakes
16 near the back window, or at least one of them. Lord
17 knows what was covered up.

18 But here's the explanation of why the back
19 window was covered, the defendant's explanation.
20 Well, there was a Confederate flag back there and,
21 well, it was bad for business and so I wanted to
22 take it out. And then when I pulled it off, it was
23 sticky, didn't look good, so I decided to paint it
24 over.

25 Okay. Well, that's interesting, ladies and

1 gentlemen.

2 And he went on -- remember, he went on about,
3 you know, how he wanted to treat people equally and
4 he didn't need those kind of symbols and all that on
5 his truck and what have you.

6 Well, ladies and gentlemen, I want you to look
7 carefully at the picture of the truck that you saw
8 earlier where the gas can was in the back. And look
9 up in the top corner on the back of -- the back of
10 the windshield, that's an-American-flag and a
11 Confederate flag cross. Why didn't he paint over
12 that if he was so dadgum worried about a Confederate
13 flag? Because he wasn't painting it to cover up a
14 Confederate flag, ladies and gentlemen. He was
15 painting it to cover up a crime. That's why. Look
16 at that carefully that covered up -- cover up.

17 October 12th, they find -- let me go back to,
18 they took the paint samples on October 11th, took
19 the paint samples and they matched it to this ax,
20 the ax that cut her extremities off, ladies and
21 gentlemen, the ax that was in Tony Cooper's truck,
22 that was seen with Tony Cooper on September 30th.

23 And I don't know, there was two different --
24 don't you remember, Jeff Hollifield testified there
25 was two paints, one on the head, one on the handle,

1 there were two different paints and they each
2 matched inside the pick-up truck to the levels and
3 all. So we know that this ax was in that pick-up
4 truck.

5 And we find on October 12th, Kimberly Quinn's
6 left hand in the creek, no rings on the left hand.
7 Those rings are missing.

8 Ladies and gentlemen, that's kind of the
9 summary of the evidence day by day. I want to talk
10 to you now a little bit about a couple of -- the
11 important testimony. We talked about Dana Harley.
12 First, let's talk about Phillip Red Farmer, the man
13 the defense loves to hate. The man who started this
14 crime.

15 But I want you to remember, ladies and
16 gentlemen, and he verified this in his sentencing
17 phase in 2001 in Texas where he's doing life in
18 prison, he stated that he was -- he pled guilty to
19 criminal conspiracy. And criminal conspiracy that
20 he pled guilty to, that he admitted to in court
21 means that -- one, that two or more people get
22 together to commit an unlawful act and that means
23 they have to have knowledge beforehand.

24 He's minimizing to help himself. I'll probably
25 agree with that, most people do. As I said, that's

1 basic human nature, self-preservation, but he's
2 admitted to that.

3 And he didn't get concurrent time. What his
4 testimony was, don't you remember, the Prosecutor
5 said, Well, you got consecutive time, five years
6 consecutive. So that really didn't help him a whole
7 lot.

8 And, again, he stated, what? That they hatched
9 this plan, he and the defendant. He was to get \$500
10 and that they called on Friday morning to tell him
11 that the job had been done. The defendant called
12 him that morning.

13 And all this time, they brought testimony from
14 the sentencing in 2001 in Texas and then a
15 conversation that was held in May of this year, and
16 he never wavered on who committed the crime, the
17 defendant. Don't you remember the sentencing, he
18 talked a -- a fellow killed a girl and I called his
19 niece. Well, the only fellow and niece involved in
20 this are the defendant and Brenda McLauren, his
21 niece.

22 And then May 6th, Oh, yes, he did it. And his
23 take was a little, I never called anybody, but, you
24 know, I got a surprise phone call on Friday morning
25 and it -- it was in code. And it said that the job

1 had been done or whatever.

2 But, again, ladies and gentlemen, doesn't that
3 code, I mean, you've got to know what the code means
4 in order to understand the message. And,
5 apparently, he understands the message because he
6 said, I knew it meant that she'd been killed. So
7 there has to have been prior knowledge. Even by his
8 talk, even by what he said, he's still telling you

9 there's prior knowledge that he was involved. And
10 he testified earlier that he was involved. He got a
11 deal.

12 Like I said, you know, we don't have angels for
13 witnesses. We've got to take the witnesses as we
14 get them.

15 Remember, he told them what he knew, that's
16 what he told, I believe, the person in this year,
17 2006. He told the State, told the authorities what
18 he knew, that was his quote. And you know what he
19 knew.

20 And then you heard the testimony of Bo
21 Sutherland, the codefendant. He has been convicted
22 of murder, kidnapping of Kimberly Quinn. He's a
23 convicted murderer, ladies and gentlemen. The only
24 promise the State gave him was not to seek the death
25 penalty for his testimony.

1 And you heard why he wanted to come in here.
2 He said he wanted to clear his conscience. You saw
3 a hardened criminal, a man who's been convicted of
4 murder. You saw him cry up there. Whether genuine
5 or not, he's the only one that showed emotion around
6 here. And what has he gained?

7 The defense wants to say, well, the State's
8 holding a gun to his head because we took the death
9 sentence off the table. Well, what did he testify,
10 though, ladies and gentlemen? Unfortunately, his
11 body is holding a gun to his head. He found out
12 earlier this year, late last year, that he's got a
13 serious illness. He probably has a death sentence
14 as he sits. So it doesn't matter how long. It
15 doesn't matter what the State does, he's still a
16 convicted murdered. He's still going to be
17 sentenced for that.

18 And it's true that he's given versions. Of
19 course, the first was implicating the defendant back
20 in 1989. As I told you, that was the first version.
21 That's how they found the items from Kimberly Quinn.

22 And then he says once he entered prison, he got
23 threats. He named three people who are no longer
24 with us who have been executed. And that cuts both
25 ways, ladies and gentlemen, you can't prove what Bo

1 says, but you also can't use them to prove what he
2 says. It cuts both ways.

3 He gave a statement in April of 1992, I
4 believe. You've got the evidence. There's
5 Defendant's 1 and 2 or 2 and 3. And it's
6 interesting, there's two versions or there's two
7 different ones. I don't know why they had to go
8 back and get it straight. Apparently, Bo -- Bo told
9 you why, because it didn't help their client.

10 And remember their -- the defendant's attorney
11 who went to talk to him without his attorneys and
12 they had to come back and one's dated April 6th and
13 there's only one page on that and the other one's
14 dated April 12th. Why are there two dates? They
15 had to get the thing straight so it sounded good? I
16 don't understand that, ladies and gentlemen, but
17 that's for you to decide.

18 But Bo was -- Bo had done everything that Tony
19 had told him. You remember Lee Chavis, Bo was a
20 follower, the defendant was a leader and that
21 continued in prison. When he can send a message to
22 him, Bo take the fall, what did Bo do? He tried to
23 do that several times.

24 But then, ladies and gentlemen, as he testified
25 to, he came here last week to clear his conscience.

1 He's not going anywhere, ladies and gentlemen. He's
2 going to prison. And he implicated himself. He
3 said what he had -- he said that he was involved.
4 He may have minimized his role, again, human nature,
5 but we had that evidence to bring you.

6 Ladies and gentlemen, throughout this, the
7 police and all did a lot of work on this case. What
8 they did was pretty impressive concerning or
9 considering, as I said earlier, that the defendants
10 in this case were covering their tracks.

11 And, you know, and my take on this case has
12 been but for two things, they would have gotten away
13 with it. Number one, but for Dana Harley, nobody
14 would have known who was around there, and but for
15 Rob Turner and Andrew Baldwin finding the body so
16 soon, I mean, that could have been -- they could
17 have found that weeks later and never known where to
18 go from there.

19 They found the ax. They tied the ax to the
20 defendant. They found witnesses. They found phone
21 records that corroborated stories in this case,
22 ladies and gentlemen.

23 We've got gasoline. They've talked about
24 gasoline, but as stated, Carlotta Stackhouse from
25 SLED said it was gasoline, didn't say what brand of

1 gasoline it was or what kind of gasoline it was,
2 just gasoline. So how do you compare it to this as
3 found back in the back of the truck?

4 Let me talk about the back of the truck, too.
5 That's kind of a convenient place because he always
6 keeps gas back there, so, you know, gasoline to be
7 in the back of the truck wouldn't be suspicious.

8 And to find gas in the back or on the floor bed or
9 whatever is explained easily away, well, I keep a

10 ~~gas can back there. So that's why that's a -- the~~

11 gas can was conveniently located in the back of that
12 pick-up truck, you pull it out, burn a body, put it
13 back there and nobody would be the wiser.

14 They also want to talk about DNA, why didn't
15 the State have DNA testing? Quite frankly, the
16 State knew there was nothing there.

17 What did Nancy Skraba tell you? The defense
18 asked her to do it, so she did it. And what did she
19 find? She stated, Well, there were a couple beer
20 cans at the house.

21 And, remember, there's a house around the pond
22 because, and I asked her about this, there was -- at
23 the house and then they had something else at the
24 victim's house. And the only thing that they got
25 was one from the house, not the victim's house, and

1 one along the road leading to the pond. Those were
2 the beer cans.

3 Ladies and gentlemen, what evidentiary
4 significance do they have? One, I think at the
5 house was a female part or something like that,
6 which she explained. Well, I mean, we know Kim
7 Quinn's there. And the other beer can along the
8 road at the pond, Lord knows who that could be. And

9 even if it came back to the defendant, he's been
10 down there. His wife testified to that. His father
11 testified to that.

12 The other thing were the pants, the jeans, that
13 had blood on them, but you remember Nancy Skraba
14 said it was a different blood type when she tested
15 it back in '89 than the victim, so that has no
16 significance.

17 And some hairs found at a trailer in Neece's,
18 what significance do they have? This case didn't
19 happen at a trailer. It happened at a house on
20 Platt Springs Road and it happened at a pond.

21 So the evidence that she found something has
22 absolutely no significance in this case. If it
23 shows something, it's neither here nor there in this
24 case. It's not indicative of a crime or indicative
25 of somebody not being guilty of a crime. It has

1 absolutely no significance.

2 No blood was found on the ax because it was in
3 the water for a couple of days. Very little blood
4 was found on the pants because it was in the water
5 for days. Again, covering up the crime.

6 Now, what did the defense say? Well, based on
7 the defense, all of the State's witnesses have
8 either lied or are mistaken. Their idea is to
9 divide and conquer because this case is like a
10 jigsaw puzzle and you've got to put it all together.

11 You can't look at one piece here and one piece
~~12~~ there, you've got to put them together and the
13 picture becomes quite clear in this case, ladies and
14 gentlemen.

15 You know, the defendant's story yesterday is he
16 tried to hit everything and tried to explain
17 everything as best he could, but he forgot a couple.
18 You know, he tried to explain away the phone, Oh,
19 it's out in the middle of the yard for everybody to
20 use. His wife didn't say anything about that.

21 Oh, the phone call, anybody could have gotten
22 the phone call. I don't know where that phone call
23 came from. Well, they were the only ones around to
24 get that collect call on October 4th.

25 But I did get a call the morning of -- I mean,

1 I did call CCI because I wanted to check on somebody
2 else. Well, that's convenient.

3 Oh, I knew the victim. That's convenient. Why
4 else would there be a telephone call from his house
5 to her house?

6 The only people that see him on October 5th,
7 according to him, are his mother and father. The
8 mother has testified, Well, yeah, he came there.
9 But then she gave a statement to the police back on
10 October 13th that said she didn't see him that night
11 or at any time that day. And the father just didn't
12 give a statement.

13 They've come up with that since then because
14 there's nobody else that can put him anywhere other
15 than Bo and the evidence, casing Kimberly Quinn's
16 house and then at the pond, that's why.

17 And then even a story he gave back on October
18 12th, Detective Hite had his notes up there, what
19 was he doing? Riding around that night, he went to
20 the Shumpert's house, he went to a place called
21 Don's and he stopped by to check on his camper at
22 his father's house, not because he was having truck
23 troubles, not because he'd overheated, didn't say
24 anything about his father following him back down to
25 Pelion. It doesn't wash, ladies and gentlemen.

1 That's two alibis and they can't get it right.

2 And they want to say, well, if it's a false
3 alibi, then, well, you can still consider that being
4 not guilty. Well, the State's disproved his alibis,
5 ladies and gentlemen, because he was there at the
6 pond. He was at Kimberly Quinn's house. He was at
7 the apartments on Platt Springs Road in the
8 afternoon and he was at the pond that night. We
9 just can't -- nobody can account for his whereabouts
10 that night.

11 Painting the truck, wanting to get the
12 Confederate flag. Well, we know that ain't right
13 either. He was just trying to -- he was just trying
14 to think you would like a good guy. But, no, he
15 wasn't painting that truck, he was painting it to
16 cover up the evidence.

17 Don't you remember Nancy Skraba said, Well, I
18 couldn't get anything off of that. I couldn't get
19 anything out of the floorboard. I couldn't get
20 anything off of the window. There was nothing to
21 get. There might have been blood, there might have
22 been hairs or whatever we could have gotten, but,
23 no, not with that paint over there, nothing, nothing
24 at all, cover up, cover up.

25 Ladies and gentlemen, in order to believe that

1 the defendant's not guilty and to believe the
2 defendant's story, you would have to disbelieve
3 Marsha Crane, Teresa Shumpert, Lee Chavis, Dana
4 Harley, Elizabeth Griffin, Ed Hite, Bo Sutherland,
5 Red Farmer and Gerald LeGrand. Nine people you have
6 to disbelieve and believe him. And these nine
7 people didn't form a conspiracy to convict him. He
8 formed this chain of evidence to convict him through
9 his actions.

10 ~~-----Ladies and gentlemen, all the evidence in this~~
11 case points back to the defendant. The ax, Tony
12 Cooper. The shotgun put in the truck, Bo, oh, and
13 Teresa Shumpert. The car, who does the car come
14 back to? Tony Cooper. Who's using it? Bo, his
15 good buddy, who's together all the time. His niece,
16 that's Tony Cooper's niece, Brenda McLauren, she's
17 involved in this. It's his niece. He knows Red
18 Farmer. Dana Harley identifies him. He knows the
19 area of the pond. He grew up around there, been
20 there many times according to his ex-wife. He and
21 Bo hang out together. I don't think his wife liked
22 it, but they do.

23 Painting the truck, covering up. Meeting with
24 Bo on Sunday on the road, had to get together while
25 all the police cars were going down there. Going to

1 his sister's house, had to get with the other people
2 to get their story straight.

3 And I also left one off. Where did Bo take the
4 police back in 1992, I think the defense asked about
5 that, to look for the shotgun? To Tony's house in
6 Pelion and they couldn't find it there. That's
7 where he said it was buried. Interesting.

8 Oh, and he knows Gerald LeGrand. Don't you
9 remember, Gerald said, I met up with Tony. There
10 was some fellow with him that might have been Bo,
11 but I went there to meet with Tony. I bought him a
12 hamburger at Dutch Square Mall at the Hardees or
13 something. Bo doesn't know him. His attorney
14 approached Bo Sutherland. Everything points to the
15 defendant. What points to Bo Sutherland? The
16 defendant.

17 Ladies and gentlemen, you know the elements of
18 the crime, murder, armed robbery, kidnapping and
19 criminal conspiracy. The State claims Tony Cooper
20 was involved. He killed Kimberly Quinn.

21 The law says the hand of one, the hand of all,
22 that's part of the law, that's just not a cop out by
23 the State, that's the law. You may find that Bo
24 wasn't totally truthful, you can believe part of his
25 testimony, but Tony was down there, we know that.

1 The defendant was down there.

2 Again, the State -- and we agree we must prove
3 the case beyond all reasonable doubt. You've heard
4 of reasonable doubt. It's a doubt that would cause
5 a reasonable person to hesitate to act in their most
6 important affairs.

7 ~~Let me give~~ you a little scenario to kind of
8 help you out, it's not the end all be all, but it's
9 kind of like if you found a house. It's your dream
10 house. It's got everything you want in it, got a
11 great kitchen, great bedroom, pool, whatever you
12 like, whatever your dream house is and you were
13 ready to buy, but there's one problem.

14 Let's say it was painted chartreuse or
15 something, something you don't like, would that be a
16 reason for you not to buy it? I mean, you can
17 always have your house painted. You can get the
18 seller to paint your house or something else. Just
19 a paint job, probably wouldn't cause you to
20 hesitate.

21 But if, for instance, if the electrical system
22 was shot, now that might cause you to hesitate.
23 That's something major you don't want to get
24 involved with and that's kind of where you would
25 hesitate to act.

1 It's not being asked to convict your best
2 friend's son, that's nothing. That's a ploy to get
3 sympathy from you, ladies and gentlemen, that's not
4 what reasonable doubt is. Reasonable doubt is a
5 serious doubt.

6 And I want to remind you, you can have
7 reasonable doubt about a piece of evidence or a
8 piece of testimony, but still, still not have
9 reasonable doubt as to the defendant's guilt,
10 because you can eliminate that piece of evidence and
11 if there's other evidence that still convicts him
12 beyond a reasonable doubt, you can do that.

13 Kimberly Quinn may not have been the best
14 person in the world, ladies and gentlemen. I can't
15 vouch for her conduct or anything like that, but
16 just because she may have done some things that you
17 don't like, she didn't deserve to die this way. She
18 didn't deserve to have her head literally blown off
19 and her body mutilated. Nobody deserves that,
20 nobody, nobody in this world.

21 The State has proven the defendant guilty
22 beyond all reasonable doubt, ladies and gentlemen,
23 of murder, armed robbery, kidnapping and conspiracy.
24 Everything points to him, the evidence points to
25 him.

1 You have heard more than enough evidence. The
2 State asks you to bring back verdicts that do
3 justice in this case, that do justice to Kimberly
4 Quinn and her family. And there's only four
5 verdicts that do that, that's guilty of murder,
6 guilty of armed robbery, guilty of kidnapping and
7 guilty of conspiracy. Find the defendant, Gene Tony
8 Cooper, guilty of all four charges. Thank you.

9 **THE COURT:** All right. Ladies and gentlemen,
10 as you have heard, the State of South Carolina has
11 charged the defendant with the offenses of murder,
12 kidnapping, armed robbery and conspiracy to commit
13 armed robbery.

14 Now, you should distinctly understand that an
15 indictment just contains allegations on the part of
16 the State and is in no way to be considered as
17 evidence. The only evidence in the case is the
18 testimony from the witness stand and any exhibits or
19 stipulations which have been introduced in evidence
20 or any testimony that's been read to you.

21 Please pay close attention because I'm often
22 asked if I provide to you a written copy of any
23 legal instructions, which I do not provide.

24 Now, to the indictments, the defendant has pled
25 not guilty, which places upon the State the burden

1 of proving a defendant guilty. A person charged
2 with committing a criminal offense in South Carolina
3 is never required to prove innocence. A defendant
4 does not have to produce any evidence or witnesses.
5 The burden is always upon the State to prove a
6 defendant's guilt beyond a reasonable doubt.

7 Can everyone hear me okay?

8 **JUROR:** A little bit louder.

9 **THE COURT:** Now, I charge you that it is a
10 vital, important rule of law that a defendant in a
11 criminal trial must always be presumed innocent
12 until a defendant's guilt has been proven beyond a
13 reasonable doubt. This presumption of innocence
14 remains with the defendant at all times throughout
15 the trial and is only removed when and if the State
16 has proven guilt beyond a reasonable doubt.

17 For it is your solemn duty, ladies and
18 gentlemen, if not convinced of guilt beyond a
19 reasonable doubt, to find the defendant not guilty.

20 What is a reasonable doubt in the law? A
21 reasonable doubt is a doubt that would cause a
22 reasonable person to hesitate to act. All
23 reasonable doubts must be resolved in favor of the
24 defendant. Suspicion, however strong, does not
25 suffice to sustain a conviction. As indicated, the

1 burden of proof is always upon the State.

2 Now, ladies and gentlemen, under the laws of
3 this state, you are the finders of the facts in this
4 case. I do not have the right to pass upon the
5 facts or express any opinion that I might have as to
6 the facts to you, nor may I indicate in any way what
7 I think about the guilt or innocence of a defendant.

8 You should form no opinion in that regard from
9 anything I may have said or done or if you've
10 construed any acts or statements or if you think
11 I've made some kind of gesture or I've reacted to
12 something throughout the trial, that's not the case,
13 ladies and gentlemen. And, certainly, if you have
14 done that, you should disregard that in any way and
15 you must not consider that in any way as any opinion
16 that I might have about this case and you must not
17 consider that during your deliberations.

18 Now, you've heard some references to
19 stipulations that have been made between each side
20 in this case. Generally, it's the -- a stipulation
21 to some underlying fact about some issue or
22 situation and that's an agreement between the
23 parties as to certain facts. And you should accept
24 those as being true, but you may consider those
25 stipulated facts in any way whatsoever during your

1 consideration of the issues in this case.

2 Also, there have been some references during
3 the trial to prior proceedings in Mr. Cooper's case.

4 Please understand that these prior proceedings have
5 nothing to do with Mr. Cooper's guilt or innocence.

6 He is presumed to be innocent, as I've told you, of

~~7 all charges against him. And a cloak of innocence.~~

8 remains with him throughout these proceedings unless
9 the State establishes guilt beyond a reasonable
10 doubt. You may not speculate on any prior hearing
11 or proceedings, but must base your verdicts entirely
12 on the evidence or the lack of evidence in this case
13 since this trial has begun.

14 Now, you are also the judges and the sole
15 judges of the credibility or the believability of
16 the witnesses who have testified in this case. In
17 passing upon their credibility, you may take into
18 consideration many things, such as, the demeanor or
19 manner of testifying; was the witness forthright or
20 hesitant; whether the witness had reason to be
21 biased or prejudiced; whether a witness' testimony
22 was contradicted on the one hand or whether it was
23 supported, corroborated or consistent on the other
24 hand; whether a witness made any previous statements
25 which are inconsistent with the witness' present

1 testimony; you may consider such statements in your
2 determination of the truth of any statements or
3 testimony, as well as your consideration as to the
4 credibility of that witness; and what was the
5 witness' opportunity for observation and knowledge
6 of the matters about which the witness has
7 testified.

8 You may believe a small portion of a witness'

9 testimony and disregard the larger or vice versa.

10 You may believe one witness against many or many
11 against one. You may believe all, some or none of a
12 witness' testimony, it's entirely up to you.

13 Now, you may have heard a reference to evidence
14 of some other crime or misconduct by a witness.
15 Evidence of some other crime that was committed by a
16 witness may be considered by you on the limited
17 issue of credibility or impeachment of that witness
18 and certainly must not, in any way, be considered as
19 evidence of -- that a person committed a crime on
20 the particular occasion in question.

21 It's not provided to you for any other purposes
22 and you should not consider it for any other
23 purposes. You may give it such weight as you may
24 believe it to be entitled on the sole issue of the
25 credibility or believability of that witness.

1 Now, rules of evidence ordinarily do not permit
2 witnesses to testify as to opinions or conclusions.
3 An exception to this rule exists as to those whom we
4 call expert witnesses. Witnesses who by education
5 and experience have become an expert in some art,
6 science, profession or calling may state their
7 opinions as to relevant, material matter in which
8 they profess to be an expert and may also state the
9 reasons for their opinions.

10 You must consider expert testimony as you would
11 any other testimony and give it such weight as you
12 may believe it to be entitled when considered with
13 all of the other evidence in this case. Such
14 testimony is given for the purpose of enlightening
15 you and not for the purpose of controlling your
16 judgment.

17 Now, there are two types of evidence which are
18 generally presented during the trial, direct
19 evidence and circumstantial evidence. Direct
20 evidence is the testimony of a person who asserts or
21 claims to have actual knowledge of a fact, such as
22 an eyewitness. Circumstantial evidence is the proof
23 of a chain of facts and circumstances indicating the
24 existence or nonexistence of a fact.

25 The law makes absolutely no distinction between

1 the weight or value to be given to either direct or
2 circumstantial evidence, nor is a greater degree of
3 certainty required of circumstantial evidence than
4 of direct evidence.

5 You should weigh all of the evidence in the
6 case. After weighing all of the evidence, if you're
7 not convinced of the guilt of the defendant beyond a
8 reasonable doubt, you must find the defendant not
9 guilty.

10 Now, by the same Constitution that makes you
11 the finders of the facts, I am made the sole and
12 only instructor in the law. You must accept as
13 correct the law which I charge, apply to the law the
14 facts as you find them to be and reach your verdict.
15 Put aside any conceptions you may have had as to the
16 law before coming today and accept the law as I
17 instruct it to be. For purposes of your duty as
18 jurors here today, you should not be concerned about
19 what the law ought to be, but rather what I charge
20 you the law is at the present time in this state.

21 Now, I've read to you the charges that are
22 alleged in the indictments. I'm going to go over
23 each of those offenses at this time.

24 In one of the indictments, the defendant is
25 charged with the offense of murder. Murder is the

1 unlawful killing of any person with malice
2 aforethought either expressed or inferred. Hence,
3 in order to convict of murder, the State must not
4 only prove the killing of the victim was caused by
5 the defendant, but it was done with the reckless
6 intent that is with malice aforethought.

7 Now, criminal intent is a necessary element of
8 this offense. It must be proved by the State beyond
9 a reasonable doubt. It's a state of mind which
10 operates jointly with an act in the commission of a
11 crime. Criminal intent is a mental state, a
12 conscious wrongdoing. It's up to you, the jury, to
13 determine what the defendant intended to do based on
14 the circumstances shown to have existed.

15 There's no way medical science can dissect a
16 person's brain and determine what that person had in
17 mind, so the law states that criminal intent may be
18 inferred from the circumstances shown to have
19 existed. Of course, you have the right to reject
20 any such inferences.

21 I would also instruct you that motive is that
22 which leads or attempts the mind to indulge in a
23 criminal act. It's the cause or reason that induces
24 a person to act. Motive is not an essential element
25 of the crime of murder and need not be shown by the

1 State. However, the presence or absence of motive
2 may be considered in determining criminal intent,
3 which I have instructed you is an essential element
4 of this offense.

5 I'll use this time to discuss with you a little
6 bit about the concept of malice aforethought. I
7 tell you that while the law does not require that
8 malice shall exist for any particular length of time
9 before the commission of the act in question, it
10 must be aforethought, which means that malice must
11 have been conceived in the mind of the defendant and
12 must have accompanied the act of killing.

13 Malice is defined in the law of homicide as a
14 term of art. That is a technical term importing
15 wickedness and excluding just cause or legal excuse.
16 It is the wrongful intent to injure another and
17 indicates a wicked or depraved spirit intent on
18 doing wrong.

19 The words expressed or inferred do not mean
20 different kinds of malice, but merely the manner or
21 the way in which the only kind of malice known to
22 the law may be shown to exist, that is, either by
23 direct evidence or inference.

24 Now, malice may be expressed as where there may
25 be previous threats of vengeance or lying in wait or

1 other acts of preparation that show that the deed
2 was within a defendant's mind. Malice may also be
3 inferred as where, though not directly expressed, it
4 is indirectly but necessarily inferred from facts
5 and circumstances which are proved.

6 Malice may be implied or inferred from the
7 willful, deliberate and intentional doing of an
8 unlawful act without just cause or legal excuse. If

9 a person using a deadly weapon deliberately and
10 intentionally and without just cause or legal excuse
11 takes the life of another, malice may be inferred if
12 facts are proven beyond a reasonable doubt
13 sufficient to raise an inference of malice to your
14 satisfaction. This inference would be simply an
15 evidentiary fact to be taken into consideration by
16 you, the jury, along with all the other evidence in
17 the case and you may give it such weight as you
18 determine it should have.

19 In any event, an inference in no way lessens
20 the burden on the State to prove malice beyond a
21 reasonable doubt. In other words, evidence of
22 malice from the use of a deadly weapon is simply an
23 evidentiary fact to be considered by you along with
24 all the other evidence in the case and given such
25 weight as you determine it should have, including

1 your right to reject any such inference.

2 Now, one cannot be convicted of a crime which
3 is defined in terms of a result as a murder unless
4 one's act is the proximate cause of the result,
5 which in murder is the death of the victim.

6 Now, ladies and gentlemen, in another
7 indictment -- and if I didn't say as it would apply
8 to all of the offenses that I go over with you, the
9 State must prove all of the elements of an offense
10 beyond a reasonable doubt. If the State has failed
11 to prove any one or more of the elements of an
12 offense beyond a reasonable doubt, you must find the
13 defendant not guilty of that offense.

14 In another indictment, the defendant is charged
15 with the offense of kidnapping. The State must
16 prove beyond a reasonable doubt that the defendant
17 knowingly and unlawfully seized, confined,
18 inveigled, decoyed, kidnapped, abducted or carried
19 away another person without authority of law.

20 To do something unlawfully is to do something
21 contrary to a law. Something done without the
22 authority of law means to do something the law does
23 not sanction or condone or provide justification
24 for. And knowingly means with knowledge,
25 consciously, not accidentally.

1 Seize means to take hold of suddenly or
2 forcibly. Confine means to limit, restrict or
3 enclose within bounds, imprison, shut or keep in.
4 Inveigle means to allure, entice or lead astray by
5 false representations or promises or other deceitful
6 means. Decoy means to lure successfully. Kidnap is
7 to remove a person against his or her will by
8 unlawful force or by fraud. Abduct means to carry
9 off secretly or by force or for an illegal purpose.
10 Carry away means to remove. Those are the terms in
11 the statute that I've just tried to define for you.

12 Now, the State does not have to prove that the
13 defendant did all of these things, instead if you
14 find beyond a reasonable doubt that the defendant
15 did any of these things, you may find the defendant
16 guilty of kidnapping if the defendant also acted
17 with the reckless intent that I discussed with you.

18 Now, a kidnapping does not have to be for any
19 personal or monetary gain or for any illegal
20 purpose. It may be for any reason whatsoever.

21 In another indictment, the defendant is charged
22 with the offense of armed robbery. Under South
23 Carolina law, armed robbery includes all of the
24 elements of strong armed robbery or common law
25 robbery, plus an additional element. So I'm just

1 going to go over the basic concepts of robbery first
2 and then tell you what the additional element is.

3 Robbery is the felonious taking away of the
4 goods of another against the owner's will and
5 without his consent by force, intimidation or
6 violence. This is essentially larceny by force.

7 In order to convict a defendant of robbery, the
8 State must prove beyond a reasonable doubt the
9 following: First, the State must show that the
10 property belonged to another person and that either
11 the property was not owned in some way by the
12 defendant or the defendant did not otherwise have a
13 right to possession.

14 Second, the State must show that the defendant
15 took the property and carried it away.

16 Third, the State must show that the time the
17 defendant took and carried away the property, he did
18 so with an intent to steal that property by
19 permanently depriving the owner of the use of the
20 property.

21 Fourth, the State must show that the property
22 was taken by the defendant from the person or
23 immediate presence of the owner. Property is on
24 another's person if it is in their hand, in their
25 pocket or otherwise attached to their clothing.

1 It's within the presence of another if it's close
2 enough and sufficiently within the person's control
3 that had the person not been overcome with violence
4 or prevented by fear, the person could have stopped
5 the taking.

6 And, fifth, the State must show that the taking
7 of the property was accomplished through actual,
8 physical violence or threats of such violence.

9 Now, the offense which the defendant is charged
10 with is armed robbery. And armed robbery is defined
11 by statute and includes all of the elements that I
12 just went over with you, plus an additional element
13 describing the statute which may be met by one of
14 two possible means.

15 Pursuant to South Carolina code section
16 16-11-330 part A, a person is guilty of armed
17 robbery if that person commits robbery, as I've
18 defined that offense to you, one, while armed with a
19 pistol, dirk, slingshot, metal knuckles, razor or
20 other deadly weapon. Deadly weapon is generally
21 defined as any article, instrument or substance
22 which is likely to produce death or great bodily
23 injury. And the jury must determine whether a
24 deadly weapon was used based upon all the facts and
25 circumstances presented. Or, second under the

1 statute, while alleging, either by action or words,
2 he was armed while using a representation of a
3 deadly weapon or any object which a person presents
4 during the commission of the robbery reasonably
5 believed to be a deadly weapon.

6 Now, it is not necessary for the State to prove
7 that the perpetrator be armed throughout the
8 commission of the crime, rather armed robbery may be
9 established by the State by proving beyond a

10 reasonable doubt that the perpetrator arms himself
11 or becomes armed with a deadly weapon at any time
12 during the progress of the taking or while the
13 robbery is being perpetrated.

14 Now, finally, ladies and gentlemen, the
15 indictment for conspiracy to commit armed robbery.
16 Now, the State -- for this indictment, the State
17 must prove beyond a reasonable doubt that the
18 defendant combined with one or more persons for the
19 purpose of committing an unlawful act or committing
20 a lawful act by unlawful means. There must be a
21 mutual understanding, agreement or common intention
22 in plan. Mere passive knowledge of or consent to
23 the criminal conduct of another is not enough to
24 make a person a conspirator. There must be guilty
25 knowledge and participation.