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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of General Sessions

The Honorable Letitia Verdin, Circuit Court Judge

Appellate Case No. 2022-000311
2005-GS-42-000888

State of South Carolina.....Respondent,

v.

Joshua Jeter Appellant.

**RECORD ON APPEAL
VOLUME I OF II**

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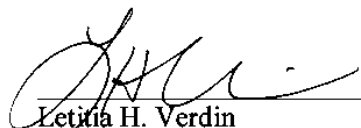
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(State’s Exhibit No. 10 – tape 60 - and Defense’s Exhibit 1 – phone calls from Spartanburg County Detention Center – are all on file with this Court.)	

(1) the chronological age of the offender and the hallmark features of youth, including “immaturity, impetuosity, and failure to appreciate the risks and consequence”; (2) the “family and home environment” that surrounded the offender; (3) the circumstances of the homicide offense, including the extent of the offender's participation in the conduct and how familial and peer pressures may have affected him; (4) the “incompetencies associated with youth—for example, [the offender's] inability to deal with police officers or prosecutors (including on a plea agreement) or [the offender's] incapacity to assist his own attorneys”; and (5) the “possibility of rehabilitation.” *Aiken*, at 544, S.E.2d at 577 (citing *Miller*, at 477).

This Court held a hearing on December 8, 2021, during which it heard testimony relating to these factors. The Court has carefully considered this testimony in coming to its decision. The family and home environment of the Petitioner was not structured, as his father was not present in the home and his mother was often at work leaving Petitioner mostly unsupervised. The Court heard testimony that, in structured environments, Petitioner has, for the most part, done well. The Court also considered arguments from the State that Petitioner has continually failed to take responsibility for the shooting death which occurred in 2004. Petitioner testified at the hearing that he never intended to rob the victim, that he hadn't brought the gun, and that he was “merely present” at the crime scene. This testimony is not consistent with the evidence presented at Petitioner's original trial. Therefore, it appears to the Court that Petitioner has not fully taken responsibility for his role in the murder.

After careful consideration of the testimony presented at the hearing, the Petitioner's age at the time of the offense, and the *Aiken* factors, the Court resentsences Petitioner to 50 years on Indictment 2005-GS-42-0888 for murder, to run concurrent to his other sentences. Petitioner will receive credit for any time he has already served.

IT IS SO ORDERED.



Letitia H. Verdin
Thirteenth Circuit Court Judge

December 30 2021

Greenville, South Carolina

FILED
2022 JAN 16 PM 1:20
CLERK OF COURT
ANDREW J. BROWN
ANDREW.BROWN@SCJUDS.COM



State of South Carolina
The Circuit Court of the Thirteenth Judicial Circuit

Letitia H. Verdin
Judge

Greenville County Courthouse
305 East North Street, Suite 318
Greenville, SC 29601-2120
Phone: (864) 467-8448
Fax: (864) 467-8504

January 11, 2022

Spartanburg County Clerk's Office
Civil Records
180 Magnolia St
2nd floor suite 500
Spartanburg, SC 29306

RE: *State of South Carolina v. Joshua Jeter*; case no.: 2005-GS-42-0888

To Whom It May Concern:

Enclosed herewith please find an order for the above referenced case, signed by Judge Letitia Verdin. Please kindly file this order and if you need anything with regards to this matter please do not hesitate to contact us.

With kindest regards,

A handwritten signature in cursive script that reads "Brittany Long".

Brittany Long
Administrative Assistant to
The Honorable Letitia H. Verdin

bpl
Enclosures

Comes Now the Defendant Joshua Jeter and moves this Honorable Court for an Order resentencing him with regarding the above-referenced indictments. In support thereof, the Defendant would show that on March 17, 2006, the Defendant was found guilty after a jury trial on one count of murder. At the time of the commission of the charge in question, the Defendant was under the age of eighteen. As a result of the aforementioned conviction, the Defendant was sentenced by the Honorable Derham Cole to life in prison without the possibility of parole. As a result of the foregoing facts, the Defendant would move this Court for resentencing pursuant to the South Carolina Supreme Court's decision in Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (2014) cert. denied, 135 S. Ct. 2379 (2015). Additionally, the Defendant would request the appointment of an attorney to represent him with regard to this matter.

Wherefore, the Defendant would respectfully pray this Court for an Order (1) appointing an attorney and (2) for resentencing pursuant to Aiken v. Byars, 410 S.C. 534 765 S.E.2d 572 (2014) cert. denied, 135 S. Ct. 2379 (2015)

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2259

M. Hope Blackley
Clerk of Court

Gail Moffitt
Assistant Clerk of Court

Date: 07-27-15

Name: Joshua Jeter

We have received your letter on _____. The applicable response is checked below.

- ☐ I suggest you contact the Probation Office @ 180 Library Street, Spartanburg, SC 29306.
- ☐ I suggest you contact the Solicitor's Office @ 180 Magnolia Street, Spartanburg, SC 29306.
- ☐ I suggest you contact the Public Defender's Office @ 366 N. Church St., Spartanburg, SC 29306.
- ☐ I suggest you contact the Spartanburg County Jail @ 950 California Ave, Spartanburg, SC 29303.
- ☐ A copy of your letter has been forwarded to the Public Defender's Office.
- ☐ A copy of your letter has been forwarded to the Solicitor's Office.
- ☐ I suggest you contact your attorney.
- ☐ Please provide us with the original document.
- ☐ The reference case is not a General Sessions case.
- ☐ Grand Jury proceedings are held in private.
- ☐ Please provide us with a warrant or indictment number.
- ☐ Due to the large volume of requests, this office no longer conducts criminal records research.
- ☐ Case History print-out enclosed.
- ☐ A court date has not been scheduled for your case(s).
- ☐ A Plea/Trial date has been scheduled for _____. (This date is subject to change)
- ☐ All copies are \$1.00 per page that must be paid in advance. Please submit a cashier's check or money order in the amount of \$_____.

☒ Other: Enclosed checked copies

If we can be of further assistance to you please let us know.

G. Smith
General Sessions Clerk

MR. JOSHUA JETER # 314407
MC CORMICK C.I. (F-2-A-181)
386 REDEMPTED WAY
MC CORMICK S.C. 29899

M. HOPE BLACKLEY
SPTBG CO. CLERK OF COURT
P.O. BOX 3483
SPTBG, S.C. 29304

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The Supreme Court of South Carolina

Joshua Jeter,

Petitioner,

v. .

State of South Carolina,

Respondent.

Spartanburg County

Docket No.: 2005-GS-42-00888

ORDER

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG -3 AM 11:03
M. HOPE BLACKLEY

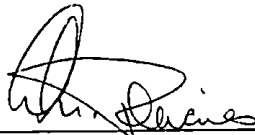
Petitioner filed a motion on July 27, 2015 for resentencing pursuant to Aiken v. Byars, 410 S.C. 534, 765 S.E.2d 572 (SC 2014). Now, therefore, pursuant to SC CONST. Art. V, § 4,

IT IS HEREBY ORDERED that the Honorable Letitia H. Verdin be vested with exclusive jurisdiction over the Petitioner's Motion for Resentencing in the above-captioned matter.

Judge Verdin shall at all times be vested with concurrent jurisdiction in all circuits of the state to dispose of matters relating to this case, and shall decide all matters pertaining to the Petitioner's Motion, and shall retain jurisdiction over this matter regardless of where she may be assigned to hold court, and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.

If necessary, to resolve issues related to the appointment of counsel, a hearing shall be conducted within thirty (30) days of this order.

Within sixty (60) days of the date of this order, Judge Verdin shall issue a scheduling order setting forth the schedule that shall be followed in this matter, including the date of the hearing on the merits. The scheduling order may be amended as necessary.



Costa M. Pleicones
Chief Justice

August 2, 2016
Columbia, South Carolina

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2016 AUG -3 AM 11:03
M. HOPE BLACKLEY

1 STATE OF SOUTH CAROLINA
2 COUNTY OF SPARTANBURG

IN GENERAL SESSIONS COURT
7th JUDICIAL CIRCUIT

3 STATE OF SOUTH CAROLINA,
4
5 Plaintiff,

COPY

6 vs.

CASE NO. 2005-GS-42-00888

7 JOSHUA JETER,
8 Defendant.

9
10 HEARING BEFORE: HONORABLE LETITIA H. VERDIN
11
12 DATE: December 8, 2021
13
14 TIME: 10:11 AM
15
16 LOCATION: Spartanburg County Judicial Center
17 180 Magnolia Street
18 Spartanburg, SC 29306

19 REPORTED BY: LORA L. McDANIEL,
20 Registered Professional Reporter

21 APPEARANCES:

22 ATTORNEYS FOR THE PLAINTIFF
23 BARRY J. BARNETTE, ESQ.

24 ATTORNEYS FOR THE DEFENDANT
25 MICHAEL MORIN, ESQ.

STATE OF SOUTH CAROLINA vs. JOSHUA JETER

1	I N D E X				
2	DIRECT CROSS REDIRECT RECROSS				
3	WITNESS/EXAMINATION				
4	WILLIAM FARR				
5	BY MR. BARNETTE	11	--	16	--
6	BY MR. MORIN	--	14	--	--
7	BARBARA HOWZE				
8	BY MR. BARNETTE	17	--	--	--
9	BY MR. MORIN	--	--	--	--
10	LATANYA WALKER				
11	BY MR. BARNETTE	22	--	--	--
12	BY MR. MORIN	--	--	--	--
13	J. PATRICIA ANDERSON				
14	BY MR. MORIN	26	--	42	--
15	BY MR. BARNETTE	--	29	--	--
16	RICHARD VIETH				
17	BY MR. MORIN	44	--	--	--
18	BY MR. BARNETTE	--	46	--	--
19	JANET VOGELSANG				
20	BY MR. MORIN	49	--	73	--
21	BY MR. BARNETTE	--	70	--	75
22	SHERRY JOHNSON				
23	BY MR. MORIN	76,83	--	--	--
24	BY MR. BARNETTE	--	--	--	--
25					

STATE OF SOUTH CAROLINA vs. JOSHUA JETER

1	LINDA ASKARI				
2	BY MR. MORIN	83	--	--	--
3	BY MR. BARNETTE	--	--	--	--
4	BISHOP CATHAYE JONES				
5	BY MR. MORIN	86	--	--	--
6	BY MR. BARNETTE	--	--	--	--
7	RASHAD MOORE				
8	BY MR. MORIN	90	--	--	--
9	BY MR. BARNETTE	--	93	--	--
10	JOSHUA JETER				
11	BY MR. MORIN	95	--	--	--
12	BY MR. BARNETTE	--	99	--	--

13
14 CERTIFICATE OF REPORTER Page 109
15

16 E X H I B I T S

17		FOR ID.	IN EVD
18	PLF. EXH. 1, 2006 transcript of trial	5	8
19	PLF. EXH. 2, Compact disc	5	8
20	PLF. EXH. 3, Indictment and sentencing sheet	5	8
21	PLF. EXH. 4, Court of Appeals denial	5	8
22	PLF. EXH. 5, 2009 PCR Order	5	8
23	PLF. EXH. 6, 2013 Order of Dismissal	5	9
24	PLF. EXH. 7, Spartanburg County Index excerpt	5	9
25	PLF. EXH. 8, SC Department of Corrections		

STATE OF SOUTH CAROLINA vs. JOSHUA JETER

1	excerpt	5	9
2	PLF. EXH. 9, Obituary	5	9
3	PLF. EXH. 10, 2006 trial exhibits	9	9
4			
5			
6			
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1 (PLF. EXH. 1, 2006 transcript of trial, was marked
2 for identification.)

3 (PLF. EXH. 2, Compact disc, was marked for
4 identification.)

5 (PLF. EXH. 3, Indictment and sentencing sheet, was
6 marked for identification.)

7 (PLF. EXH. 4, Court of Appeals denial, was marked
8 for identification.)

9 (PLF. EXH. 5, 2009 PCR Order, was marked for
10 identification.)

11 (PLF. EXH. 6, 2013 Order of Dismissal, was marked
12 for identification.)

13 (PLF. EXH. 7, Spartanburg County Index excerpt, was
14 marked for identification.)

15 (PLF. EXH. 8, SC Department of Corrections excerpt,
16 was marked for identification.)

17 (PLF. EXH. 9, Obituary, was marked for
18 identification.)

19 MR. BARNETTE: May it please The Court, Your Honor.
20 This is the matter of Aiken versus Byers. I believe you were
21 assigned this case, the Joshua Jeter case. Indictment
22 2005-GS-42-888, Your Honor. We're here -- Mr. Morin from the
23 Public Defender's Office is here to represent him, Your Honor,
24 in this matter.

25 I have nine exhibits I'd like to mark. They have

1 been pre-marked, Your Honor. I believe he agrees with all but
2 one. He has an objection to one. We'll deal with that.

3 State's Exhibit 1, Your Honor, I'd like to enter is
4 the transcript of the actual trial in this matter. The trial
5 was done from March 13th to March 17th, 2006 in front of the
6 Honorable J. Derham Cole in that case, Your Honor. He was also
7 tried with his coDefendant, Lance Lyles, in that trial, Your
8 Honor.

9 State's Exhibit 2, Your Honor, is merely a digital
10 copy on a disc. I didn't know which way The Court would rather
11 examine. I have it both ways, the paper as well as digital. I
12 don't think there is an objection to either one of those.

13 MR. MORIN: No, Your Honor, there's no objection.

14 MR. BARNETTE: I would like to move those forward
15 for consideration.

16 THE COURT: All right.

17 MR. BARNETTE: State's Exhibit 3, certified copy of
18 the indictment as well as the sentencing sheets where he was
19 convicted by a jury. There was actually four counts that he
20 was convicted of. We're just dealing with the murder. The
21 other counts, I think, he served his time on, Your Honor.
22 That's the only thing we're dealing with at this point. I
23 marked as State's Exhibit 3. I think those are entered without
24 objection, too.

25 State's Exhibit 4, Your Honor, he had a direct

1 appeal to the Court of Appeals. That was 2008-UP-587, and it
2 was denied by the Court of Appeals, his direct appeal, Your
3 Honor. For the record, I think there's no objection to that
4 also.

5 State's Exhibit 5, Your Honor, is actually his PCR.
6 It was CP number 2009-CP-42-1221, Your Honor. The Honorable
7 Mark Hayes heard that case. And he denied his PCR in that
8 case, Your Honor. This is actually the certified copy of that
9 Order or a copy of that Order. We move that into evidence
10 also, Your Honor.

11 THE COURT: All right.

12 MR. BARNETTE: State's Exhibit 6 is the final Order
13 of Dismissal. That was a second PCR that he filed. That was
14 under 2013-CP-42-2353. Honorable Roger Couch denied that, make
15 that a part of the record.

16 State's Exhibit 7, Your Honor, is actually the
17 public index from Spartanburg County Clerk of Court Office
18 showing the PCR history in this matter.

19 State's Exhibit 8 is the one, I believe, Mr. Morin
20 has an objection to. This is actually going to be off the
21 South Carolina Department of Corrections Website concerning the
22 defense's disciplinary and all his actions at the Department of
23 Corrections since he has been there. And we do have -- he's
24 not agreeing to that. I do have a witness here to testify
25 about that --

1 THE COURT: Understood.

2 MR. BARNETTE: -- shortly.

3 THE COURT: All right.

4 MR. BARNETTE: State's Exhibit 9 is an obituary and
5 a celebration of life of the victim in this case. I may not be
6 pronouncing this right, I just asked his mother about that;
7 Tavaris Howze is his name. He was 21 at the time of death,
8 Your Honor, in this case.

9 Your Honor, I'd also like to move all the exhibits
10 that was entered in the trial and make it part of the record
11 also. I don't think there's any objection.

12 THE COURT: Any objection?

13 MR. MORIN: No, Your Honor.

14 THE COURT: Those are also admitted. We'll hear
15 from the witness about that one.

16 (PLF. EXH. 1, 2006 transcript of trial, was entered
17 into evidence.)

18 (PLF. EXH. 2, Compact disc, was entered into
19 evidence.)

20 (PLF. EXH. 3, Indictment and sentencing sheet, was
21 entered into evidence.)

22 (PLF. EXH. 4, Court of Appeals denial, was entered
23 into evidence.)

24 (PLF. EXH. 5, 2009 PCR Order, was entered into
25 evidence.)

1 (PLF. EXH. 6, 2013 Order of Dismissal, was entered
2 into evidence.)

3 (PLF. EXH. 7, Spartanburg County Index excerpt, was
4 entered into evidence.)

5 (PLF. EXH. 8, SC Department of Corrections excerpt,
6 was entered into evidence.)

7 (PLF. EXH. 9, Obituary, was entered into evidence.)

8 MR. BARNETTE: One exhibit I'll be pointing to,
9 that will be State's Exhibit 60 that was introduced at the
10 trial. You'll understand the relevance of that when we get
11 into the testimony, Your Honor. We do have the exhibits here,
12 Your Honor. I'll mark these as State's Exhibit 10. This would
13 be all the trial exhibits.

14 (PLF. EXH. 10, 2006 trial exhibits, was marked for
15 identification and entered into evidence.)

16 MR. BARNETTE: Your Honor, to make sure the record
17 is clear, I think 1 through 7 was entered without objection.
18 And 9, 10 has been entered without objection. The only
19 objection he has is State's Exhibit 8.

20 THE COURT: Those are also admitted.

21 MR. BARNETTE: I'll let him state anything he wants
22 to put on the record about these exhibits.

23 MR. MORIN: Your Honor, the one I objected to, SCDC
24 disciplinary record, I would argue that's not relevant in this
25 case. I know the State would like to say that rehabilitation

1 of the client is one of the factors, and I don't believe that
2 them entering what happened in the Department of Corrections is
3 appropriate in that they're arguing that he's going to act in
4 conformity with these other issues.

5 In addition to that, we're talking about
6 rehabilitation at some point when he gets out, not what a
7 teenager serving a life sentence in Lee County Correctional and
8 McCormick Correctional and Perry and certainly at Broad River.
9 Incidents occurred during that time to him that I don't think
10 are in dispute. I believe to introduce a teenager's reaction
11 to being incarcerated for the rest of his life is not something
12 that's appropriate in this hearing.

13 THE COURT: Thank you so much for your argument.
14 Here's what I'm going to do. I'm going to allow the evidence
15 to be presented at this time. I'll make a final decision on
16 that when I issue my order. Since we've already discussed it
17 today, we don't have a jury here today, I'm going to go ahead
18 and hear the evidence and make a determination about that
19 later.

20 MR. BARNETTE: Your Honor, I would argue counter to
21 that, obviously. Rehabilitation is what they have to prove. I
22 think it shows what his actions have been since he's
23 incarcerated for the last 17 years.

24 THE COURT: I'm inclined to admit the evidence
25 outright, but I want to take a look. I want to take a look at

WILLIAM FARR DIR BY MR. BARNETTE

1 the law a little bit more before I make a final decision on
2 that. I don't think there's any harm in allowing it to be
3 admitted at this time.

4 MR. BARNETTE: I've heard the counter argument from
5 the other side, in the Aiken versus Byers case. We had no
6 discipline -- they wanted to enter it in. Obviously, they
7 entered it in, showing the rehabilitation she had. That's the
8 reason why I don't think they can advocate any exhibit. In
9 this situation, the disciplinary record is what it is, just for
10 the record, Your Honor.

11 MR. MORIN: Your Honor, one of the things that I've
12 been arguing is I don't appreciate trying to be held to the
13 standard of whatever some other attorney did in some other case
14 that I wasn't part of. Thank you.

15 THE COURT: Yes, sir.

16 MR. BARNETTE: Your Honor, I will call William Farr
17 as the first witness, Your Honor.

18 WILLIAM THOMAS FARR
19 being first duly sworn, testified as follows:

20 MR. BARNETTE: Your Honor, may he remove his mask?

21 THE COURT: Please. Anybody who's speaking,
22 certainly, remove your mask as well.

23 MR. BARNETTE: Thank you.

24 DIRECT EXAMINATION

25 BY MR. BARNETTE:

1 Q. What's your name, sir?

2 A. My name is William Thomas Farr.

3 Q. Where do you work at, sir?

4 A. I work for the South Carolina Department of
5 Corrections, Office of Investigations.

6 Q. What's your position there, sir?

7 A. Assistant chief for the upstate region.

8 Q. How long have you been working with them?

9 A. I've been -- this is my 29th year in Department of
10 Corrections.

11 Q. Part of that, in your investigations and things
12 like that, do y'all deal with disciplinaries?

13 A. Yes, sir.

14 Q. With those disciplinaries, are they reported -- or
15 a lot of times they're handled administratively; is that right?

16 A. That's correct.

17 Q. In this case, did you get a chance to review Joshua
18 Jeter's, inmate, his disciplinary records as well as his inmate
19 records?

20 A. Yes, sir, I reviewed it.

21 Q. I know you have a copy yourself. Let me show you
22 what's been marked as State's Exhibit 8. Is that the same copy
23 you reviewed earlier, sir?

24 Give you a chance to look through just to make
25 sure.

1 A. Yes, sir. This is the same copy I have here.

2 Q. Those records are maintained by the Department of
3 Corrections; is that right?

4 A. Yes, sir.

5 Q. Are they actually posted on the Website publicly?

6 A. These right here are on the Website (indicating).

7 Q. Actually, you've looked at some of these
8 disciplinaries yourself?

9 A. Yes, sir.

10 Q. Does this record fairly represent the
11 disciplinaries he's had in the Department of Corrections?

12 A. Best of my knowledge, yes.

13 Q. He's been incarcerated since 2006; is that right?

14 A. It should be on the last page.

15 Q. I believe he went in March 20, 2006; on the first
16 page?

17 A. Yes, sir.

18 Q. Is that correct?

19 A. Yes, 2006, yes.

20 Q. That would be a record that y'all maintain, the
21 public uses as well as y'all use; is that right?

22 A. Yes, sir.

23 Q. That's a fair representation of his record --

24 A. Yes, sir.

25 Q. -- in the Department of Corrections?

1 A. Yes, sir.

2 MR. BARNETTE: I don't have any questions. Please
3 answer questions of Mr. Morin or The Court.

4 THE COURT: Yes, sir.

5 MR. MORIN: I know we don't have a jury. Did you
6 move that in? Am I going to preserve the record by objecting
7 contemporaneously?

8 MR. BARNETTE: I will move State's Exhibit 8 into
9 the record.

10 MR. MORIN: I renew my objection.

11 THE COURT: As I said, I'll let it in for purposes
12 of this hearing, subject to my final order.

13 CROSS-EXAMINATION

14 BY MR. MORIN:

15 Q. If I can make sure I'm looking at the same thing.

16 In addition to what's been introduced, not only
17 includes his discipline, it also includes his work record;
18 isn't that correct?

19 A. His work records?

20 Q. He has earned work credit.

21 A. Yes, sir. I don't know if it's on this one. I was
22 just looking at the disciplinary history as part of it. We can
23 get his work history as well.

24 Q. Doesn't page six of the document before you show
25 earned work credits?

1 A. On this page here?

2 Q. I'm sorry. I mean five of six.

3 A. There we go. Earned work credits, yes, sir.

4 Q. He worked as a general worker as well as a ward
5 keeper assistant on several occasions; isn't that correct?

6 A. Yes, sir. All inmates have to work. Go to school
7 or they have to work.

8 Q. He's also earned some educational credits as well?

9 A. Yes, sir. If they are certain age, they are
10 mandated to go to school.

11 Q. I notice several times when he was doing one job,
12 it appears that he was institutionally transferred from one
13 place to another. Is that correct?

14 A. Talking about on the same place, same institution;
15 different work area?

16 Q. Yes. On this it also says his start date, his end
17 date, his termination and reason. I see several institutional
18 transfers is what it says.

19 A. Right. There's several institutional transfers on
20 here.

21 Q. Sometimes there's some other reasons that he either
22 from discipline or something, he was working fairly regularly
23 from 2009 through now. As you said, he's required to work?

24 A. Yes, sir. He's required to work or get a skill.
25 At a certain age, it's mandated you have to go to school.

1 Q. Do you know what that age is?

2 A. I'm not sure what age it is.

3 Q. You don't know?

4 A. I don't know.

5 Q. Okay.

6 A. We do criminal investigations. That part I don't
7 remember.

8 MR. MORIN: That's all I have, Your Honor.

9 THE COURT: Anything else for this witness?

10 MR. BARNETTE: Just one question, Your Honor. Just
11 follow-up.

12 REDIRECT EXAMINATION

13 BY MR. BARNETTE:

14 Q. On the earned work credits, you said he had to work
15 all the time. They're required to?

16 A. Yes, sir. That's required to work. To the best of
17 my knowledge, they still have to work or they go to school.

18 Q. I notice the general worker, he started -- found in
19 the middle of the earned work credit -- from September 15, 2016
20 through June 27, 2017, it says initiate transfer. He didn't
21 start working until March 25, 2019, according to this record.
22 There was a period of time that he did not work. You don't
23 know what that's for?

24 A. No, sir.

25 Q. And you've reviewed his disciplinary record?

BARBARA HOWZE DIR BY MR. BARNETTE

1 A. Yes, sir.

2 Q. Obviously the dates and what they were is listed on
3 each one?

4 A. Right. I looked at it on this (indicating).

5 MR. BARNETTE: Thank you, sir.

6 MR. MORIN: I have no further questions, Your
7 Honor.

8 THE COURT: Sir, you may step down.

9 MR. BARNETTE: Can this witness be excused?

10 THE COURT: Any objection?

11 MR. MORIN: No, Your Honor.

12 (The witness exited the stand.)

13 MR. BARNETTE: Your Honor, I call Ms. Howze to the
14 stand, please.

15 BARBARA HOWZE
16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. BARNETTE:

19 Q. If you would please state your full name for the
20 record.

21 A. Barbara Kemperer Howze.

22 Q. Ms. Howze, where do you live at, ma'am?

23 A. I live at 1446 Old Richburg Road in Chester.

24 Q. Where do you work at, ma'am?

25 A. I work at Lewisville High School.

1 Q. What do you do there, ma'am?

2 A. I drive a school bus.

3 Q. Did you have two children?

4 A. I have two children.

5 Q. Who were they, ma'am? Who are they?

6 A. Tavaris was my oldest, and I have one that's
7 Joshua. He's 33.

8 Q. Tavaris was killed; is that right?

9 A. Yes.

10 Q. Does this date mean something to you?

11 A. Yes, he was killed on this day.

12 Q. Is that December 8, 2004?

13 A. December 8, 2004.

14 Q. Seventeen years ago?

15 A. Seventeen years ago.

16 Q. Can you just tell The Court a little bit about how
17 you were notified and what happened once you were notified.

18 A. About who called me?

19 Q. Yes.

20 A. A friend of mine that went to school with Tavaris,
21 his mom called me and told me he had got shot. I didn't know
22 anything until I heard from the police officers about 4:00 that
23 morning.

24 Q. Your husband was alive at that time?

25 A. My husband was alive at that time, yes.

1 Q. And where was he going to school at the time?

2 A. He was going to Spartanburg Methodist. He actually
3 came in one day and he said: Ma, I want to go to school to be
4 a history teacher, which he had went to South Carolina State.
5 He didn't like it down there. He came in, and he said: I want
6 to go to school to be a history teacher.

7 He did all the leg work, finding out where he
8 wanted to go, how to get there, you know, the classes and
9 everything that he needed. And he ended up over here in
10 Spartanburg Methodist.

11 Q. Prior to going to South Carolina State, which high
12 school did he go to?

13 A. He went to Lewisville.

14 Q. In Lewisville, did he participate in any sports or
15 anything?

16 A. Football. They won state championship in football.

17 Q. Did he play for Coach McMurray?

18 A. He played for Coach McMurray.

19 Q. When he went to SMC, did y'all help him?

20 A. Yes. All the campus -- all the apartments on
21 campus was full. So we got him an apartment in the complex
22 where he got killed at. And my husband and I had paid up the
23 rent and got him a car and everything where he can go back and
24 forth to school.

25 Q. Was he doing well in school?

1 A. Yes.

2 Q. Did you talk to him often?

3 A. Every day.

4 Q. You felt like that he was going to be a history
5 teacher one day?

6 A. Yes, I did.

7 Q. He lived in Rose Hill Apartments there?

8 A. Yes.

9 Q. Matter of fact, I know you found out where he was
10 killed at. He lived in the apartment below that?

11 A. Below.

12 Q. If you would, just tell the judge about him in
13 general.

14 A. He was just a big gentle giant, I called him. He
15 was Momma's Boy. Like I said, he came over here to go to
16 school. And the day that he got killed -- I always talked to
17 him every day about 7:30 or 8:00, whenever he called me 'cause
18 I always worked at night. And he called. And I called him
19 that particular day. And he didn't answer.

20 And I went home and told my husband, I said:
21 Tavaris is not answering the phone, something is wrong. I
22 didn't know what was wrong until I got a phone call about 11:30
23 that night saying that he had gotten killed. Actually, the
24 lady said he had got shot in the head. I didn't know. That's
25 what she had told me, he had got shot in the head.

1 He came to the school over here -- it was something
2 about history that he wanted to know. He could tell you
3 anything about history. And he said: Mom, I'll go to school.
4 I want to be a history teacher because Coach McMurray was a
5 history teacher. He was trying to follow in his footsteps or
6 whatever. That's why he came over here to go to school.

7 Q. Sounds like a wonderful young man.

8 A. He was. He really was. Didn't bother anybody.
9 And he was upstairs. They were up there watching a movie. Not
10 knowing -- he was in his pajamas. The police officer -- nobody
11 knew who he was because he was in his lounge clothes. He was
12 just up there watching TV, chilling. I guess young folks,
13 teenagers or whatever doing. He was just up there chilling.

14 Q. How has this affected you?

15 A. Oh, gosh. I seen my husband just went away year
16 after year after year. He gave up. He stopped. He just
17 stopped living.

18 He stopped living because that took a lot out of
19 him and out of both of us. It took a lot. Every day. I
20 didn't get a chance to see if he was going to make it as a
21 history teacher. I never got a chance to see if he was going
22 to have kids. I never got a chance to just hear now, you know.
23 I never got a chance to talk to him. Never. Even the night he
24 got killed, I never got a chance to speak to him anymore.

25 MR. BARNETTE: Thank you, ma'am. Please answer any

LATANYA WALKER DIR BY MR. BARNETTE

1 questions Mr. Morin or the Judge has.

2 THE COURT: Mr. Morin.

3 MR. MORIN: I have no questions of Ms. Howze.

4 THE COURT: Ma'am, you may step down.

5 (The witness exited the stand.)

6 MR. BARNETTE: I call LaTanya Walker to the stand.

7 LaTANYA WALKER

8 being first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. BARNETTE:

11 Q. Ma'am, please give us your full name.

12 A. LaTanya Walker.

13 Q. Where do you live at, ma'am?

14 A. I live in Columbia, South Carolina.

15 Q. What do you do?

16 A. I'm a correctional counselor.

17 Q. Do you counsel inmates?

18 A. I do.

19 Q. So you're familiar with what happens in the prison?

20 What is done with inmates and so forth?

21 A. Yes. Yes, sir, I am.

22 Q. What relation was Tavaris to you?

23 A. Tavaris was my cousin. He was actually raised as
24 my little brother. My mother passed away, which is Barbara's
25 older sister. I was raised by my Aunt Barbara, my Aunt Tricia,

1 and my Uncle Ernest that passed away. I was raised by them.
2 Tavaris was my little brother.

3 Q. How did you learn about the news?

4 A. At that time, I was given a call by my sister
5 'cause the same person who called my Aunt Barbara, my sister
6 graduated with her son. My sister called me probably around
7 11:00 that night and told me about it.

8 Q. How did it affect you?

9 A. It affect me in a major way 'cause I had just saw
10 him. Sunday is pretty much our family day. I had just saw him
11 that Sunday. He told my Aunt Barbara he was coming back that
12 Wednesday to finish up our Christmas lights.

13 It affected me in a mighty way. I mean, he was
14 just a big giant. Like my Aunt Barbara said, he did anything
15 for anybody whenever he could, whenever you asked him to.
16 There was never any no or anything. He was just always there.
17 He was always there.

18 Q. Let me show you what's been marked as State's
19 Exhibit Number 9. It's been entered into evidence already.
20 Can you tell The Court what that is, ma'am.

21 A. That's Tavaris' obituary, December 8, 2004. His
22 original obituary.

23 Q. There are several pictures and everything in there;
24 is that correct?

25 A. Yes, sir.

1 Q. Football was a big part of his life; is that right?

2 A. Yes, sir. Football was a major part of his life.

3 Q. Coach McMurray, he was the man he looked up to?

4 A. Yes. We all did actually. He was a community
5 coach. I graduated from Lewisville High School as well. He
6 was actually a community coach. We all grew up around Coach
7 McMurray.

8 Q. He wanted to be just like him; is that right?

9 A. Yes. Yes. He actually had an opportunity to speak
10 to Chester County that day. He actually did the opening for
11 the minister. Coach Mack actually spoke to the congregation at
12 Tavaris' funeral.

13 Q. Is there anything you would like to tell This
14 Court?

15 A. I understand that today is definitely, ma'am,
16 about, I want to say accountability on what we do and how we
17 live. I've never been a perfect person, any of us. I'm asking
18 The Court to allow my Aunt Barbara to feel the way she feels on
19 this day. It's been a long 17 years for you. It's been a long
20 17 years for us in a mighty way. We're not here to judge
21 anyone of anything.

22 Sometimes more than life, some things in life are
23 higher than courts. More standards. We have to live by God.
24 I believe that. So it's time for accountability, and the
25 things that we do in life. Being a teenager, that time of

1 night, accountability. Our folks always have accountability
2 for us growing up. No way at 16 or 17 years old I would've
3 been out of my Aunt Barbara's house or my Aunt Tricia's house.
4 We can't blame parents. Sometimes parents are still learning
5 too. They are still learning. We got to give accountability
6 for what we do and how we live. That's self-inventory. That's
7 self-responsibility. That's self-accountability.

8 Q. If you would, could you address The Court.

9 A. I'm sorry, ma'am. That's self-accountability. We
10 have to start doing that. Today, this particular day is higher
11 than the courts. So please, whatever you do, give your entire
12 self to God. Your entire self. It's time. It's definitely
13 time. Please allow my Aunt Barbara to feel the way she feels
14 today, you know, to your family that's here for you. It's just
15 been a long 17 years for us all. So we'll just pray, you know,
16 about the entire situation. Thank you, ma'am, for allowing me
17 to speak.

18 Q. If I can just ask you one question. Do you see DOC
19 records as a counselor?

20 A. I'm a federal counselor. I work for the federal
21 Bureau of Prisons.

22 MR. BARNETTE: I'm sorry. I just wanted to clarify
23 that. Please answer any questions Mr. Morin has for you or The
24 Judge may have for you.

25 MR. MORIN: I don't have any questions of this

PATRICIA ANDERSON DIR BY MR. MORIN

1 witness.

2 THE COURT: Thank you so much.

3 THE WITNESS: Thank you, ma'am.

4 (The witness exited the stand.)

5 MR. BARNETTE: Your Honor, that would be our
6 presentation concerning the hearing. I would like to pass
7 these exhibits up to you, Your Honor. And I'll leave the box
8 here for you. You'll have the exhibits here.

9 THE COURT: Thank you so much.

10 MR. BARNETTE: No problem. Thank you.

11 MR. MORIN: If I may have a moment, Your Honor.

12 (A pause transpired.)

13 MR. BARNETTE: To clarify the record, Your Honor,
14 item 60 may have been a different exhibit in the exhibit list.
15 I talked to Mr. Morin about it briefly. It's a jail phone call
16 between his client and his mother and brother. That will
17 become more relevant as the testimony develops.

18 THE COURT: Very well.

19 MR. MORIN: Your Honor, I'm going to call Pat
20 Anderson as the first witness.

21 MR. BARNETTE: Your Honor, I would like to make an
22 objection on the record once she gets sworn in.

23 JULIA PATRICIA ANDERSON
24 being first duly sworn, testified as follows:

25 DIRECT EXAMINATION

1 BY MR. MORIN:

2 Q. Ms. Anderson, will you state your name for the
3 record.

4 A. Julia Patricia Anderson.

5 Q. Ms. Anderson, how do you know Mr. Jeter?

6 A. He was my client.

7 MR. BARNETTE: Your Honor, I would like to propose
8 an objection right now. We had been in a pretrial conference
9 with you before we came out here for the hearing. He's going
10 to ask questions about plea negotiations, involvement in this
11 case. I would like to state on the record I don't think it's
12 proper to ask about plea negotiations. Obviously, the
13 sentencing is never allowed by the State or the defense in that
14 situation.

15 I know Mr. Morin, he'll put on the record what his
16 position is. I'd like to state this for an objection, make a
17 motion in limine to keep all plea negotiations out in this
18 case. Make sure that the record is protected on that.

19 THE COURT: For purposes of this hearing, I'm going
20 to allow those plea negotiations just for the limited purpose
21 of our hearing here today.

22 MR. BARNETTE: My motion in limine or my objection
23 at this point, I don't want to object every time she testifies.
24 That will be continuously throughout her testimony.

25 THE COURT: Absolutely.

1 MR. BARNETTE: Thank you, Your Honor.

2 THE COURT: Thank you. Yes, sir.

3 BY MR. MORIN:

4 Q. Ms. Anderson, you were representing Mr. Jeter?

5 A. I was.

6 Q. Was that throughout his trial?

7 A. Yes, sir.

8 Q. And in preparation for it?

9 A. Yes, sir.

10 Q. During that time, was an offer made in this case?

11 A. No.

12 Q. An offer made to him to plea guilty?

13 A. Before the trial?

14 Q. Yes. Before the trial.

15 A. No.

16 Q. Was one made during the trial?

17 A. Yes.

18 Q. Did you relay that offer to Mr. Jeter?

19 A. I did.

20 Q. What was Mr. Jeter's response to that offer?

21 A. He wanted to accept it.

22 Q. If he wanted to accept it, why didn't he plead
23 guilty?

24 A. Because him pleading guilty on the lesser charge
25 had to be, according to Solicitor Balsa, Lance, Mr. Vieth's

1 client and my client had to plead. One couldn't do it.

2 Q. Let me just back up a little bit. Not so much --
3 it was an offer for a lesser charge that was made?

4 A. Yes.

5 Q. And your client wanted to accept it?

6 A. Yes.

7 Q. Lance Lyles, who was a coDefendant in this case,
8 was represented by Rick Vieth; is that correct?

9 A. Yes, sir.

10 Q. And the offer was contingent on both Defendants
11 accepting?

12 A. Yes, sir.

13 Q. So the reason why the offer didn't go forward
14 beyond your client saying he wanted it was because the other
15 Defendant, represented by another attorney, rejected the offer?

16 A. Yes, sir, that's correct.

17 Q. And you testified that this offer was some lesser
18 included?

19 A. Yes, I believe it was manslaughter.

20 MR. MORIN: That's all the questions I have.

21 THE COURT: Mr. Barnette.

22 CROSS-EXAMINATION

23 BY MR. BARNETTE:

24 Q. Ms. Anderson, I have a few questions. You said
25 there was no offer prior to the trial?

1 A. Barry, I couldn't find my file. So I did not -- my
2 recollection was there was no offer other than life.

3 Q. Now, if I understand you right, you said during the
4 trial Mr. Bulsa offered manslaughter?

5 A. Yes, sir.

6 Q. It was supposed to be both clients during the
7 trial?

8 A. Yes.

9 Q. Is there any record of that in the transcript or
10 anything else?

11 A. Well, Mr. Vieth has some evidence about that.

12 Q. You don't have any independent evidence of this on
13 the transcript or anything else of this yourself?

14 A. Only what Mr. Bulsa told me.

15 Q. Let me ask you a couple questions about the trial
16 itself. Y'all was going to trial before -- the crime occurred
17 December 8, 2004; is that correct?

18 A. I think so.

19 Q. Y'all were going to trial on Mr. Jeter September
20 2015 (sic)?

21 A. Right.

22 Q. A jury had actually been picked?

23 A. I'll have to say yes.

24 Q. According to the transcript?

25 A. Yeah.

1 Q. Your client produced a gun?

2 A. Right.

3 Q. And the gun that was produced was brought -- I
4 guess was brought by the mother to the Solicitor's Office?

5 A. Yes, sir.

6 Q. And the trial was stopped at that point?

7 A. Yes.

8 Q. He alleged that was the gun he had with him the
9 night this happened?

10 A. Yes, he did.

11 Q. Matter of fact, he had given three different
12 statements before this trial. In the first two statements he
13 denied being at Rose Hill; is that right?

14 A. I believe so.

15 Q. And then the third one, the third statement he
16 gave, he said it was a half truth. He admitted going over
17 there. He admitted he didn't have any involvement with the
18 situation or anything like that?

19 A. Yes, sir.

20 Q. He gives a statement right after the gun is
21 produced. The trial stops because, obviously, the gun needed
22 to be tested even though it wasn't the caliber. It was a .25
23 caliber weapon, wasn't it?

24 A. Yes, sir.

25 Q. It was a Phoenix; right? If I remember right?

1 A. What?

2 Q. What kind of gun was it, do you remember?

3 A. I have no clue. Rutger?

4 Q. 125. The weapon used in the the murder was a .22;
5 is that right?

6 A. I believe so.

7 Q. Your client gave a fourth statement with you
8 present after the trial was stopped; is that right?

9 A. He did what?

10 Q. He gave a fourth statement, didn't he? With you
11 present?

12 A. He gave another statement?

13 Q. Yes, ma'am, a fourth statement.

14 A. Yes, sir.

15 Q. And you were present when he gave that statement?

16 A. Yes.

17 Q. That fourth statement was given on September 14,
18 2005. I can get the transcript. You want to look at the
19 transcript? On page 385.

20 A. Yes, I do.

21 Q. I believe -- I'll let you look at it real quick.
22 Look at page 385, starting on line 19.

23 (A pause transpired.)

24 THE WITNESS: Okay. Repeat the question now.

25 BY MR. BARNETTE:

1 Q. He gave a fourth statement around September 14,
2 2005?

3 A. Yes.

4 Q. In that statement he admits to being there with the
5 gun and the mask on?

6 A. Yes.

7 Q. Just some -- I know The Court may not know the
8 facts. Basically, your Defendant as well as Mr. Vieth's
9 Defendant in this case, Lance Lyles, was convicted of going
10 over -- Lance Lyles knocked on the door, opened the door. The
11 person in the room at that time, Clarence Spicer, opens the
12 door. He knew Lance Lyles. He didn't recognize him until a
13 later date from there.

14 He saw a second individual behind that had a mask
15 and gun on behind him at the time. When he tried to shut the
16 door, somebody put an arm through and fired the gun, and the
17 gun is what killed Tavaris in this case. Is that basically the
18 facts?

19 A. And that was Mr. Vieth's client who had the gun
20 that got the door shut on it. And it was his client that was
21 the shooter.

22 Q. Your client admitted in the statement, he admitted
23 having a mask and gun; is that right?

24 A. He did.

25 Q. Clarence Spicer, the one at the door, he only saw

1 one gun, didn't he?

2 A. Yes -- no. He saw the one.

3 Q. We can go through the transcript, Ms. Anderson, if
4 you want me to.

5 A. If I had one, I would've gone through it. Excuse
6 me.

7 Q. I can go through it with you.

8 A. What are you asking now?

9 Q. I'm asking, basically: Mr. Spicer, in his
10 testimony, Mr. Lyles he does identify, he has gold teeth in his
11 mouth and everything. The only thing he saw was the man with
12 the mask behind him with the gun. That was his testimony. You
13 tried to get him to change his testimony, but he was adamant
14 about that.

15 A. But I believe it was established at court that it
16 was Lance's hand and gun that was shut in the door.

17 Q. Show me where that's in the transcript.

18 A. Well, let me start looking. I don't know where it
19 is. I'll be glad to take this and study it and come back and
20 testify.

21 Q. You're alleging that it was established that Lance
22 Lyles had the gun?

23 A. I believe so.

24 Q. What evidence showed that?

25 A. I don't know where you're talking about. Tell me.

1 Q. Go to page 141, line 9.

2 A. Thank you.

3 Q. This is Clarence Spicer's testimony.

4 A. One what?

5 Q. 141. I can turn it to you, if that would help.

6 A. I got it. Line 9?

7 Q. Line 9. That's your cross.

8 A. I see.

9 (A pause transpired).

10 THE WITNESS: What was your question?

11 BY MR. BARNETTE:

12 Q. My question is, like I said, The Court is going to
13 have this. I'm not going to beat a dead horse. I know The
14 Court will have this.

15 Can you show me where the evidence establishes that
16 Lance Lyles had the gun. I mean, you did a very thorough cross
17 of him. My position, when I reviewed it, I do not see any
18 evidence of that.

19 A. On 21 he said: I saw the mask and the gun almost
20 as soon as he tried to walk into my house. But I wasn't going
21 to let him in.

22 Q. Lyles didn't have a mask; he just had the hoodie on
23 and the gold teeth. Isn't that correct?

24 A. I believe so.

25 Q. Like I said, The Court is going to have that to

1 examine. The Court can weigh it herself.

2 A. It was my understanding that it was established in
3 court that Lance Lyles was the first one at the door because he
4 had gotten a bad -- he didn't get all the marijuana he needed
5 from Mr. Spicer and that was why he was there. And that was
6 Lance Lyles.

7 My client was just going along for the ride. He
8 was very immature for 16 at that time. And it was established
9 that the victim was sitting on the couch. And I believe it was
10 well established that, when Lance was trying to push on the
11 door, he pushed -- his arm went in and I think involuntarily
12 made the gun fire.

13 Q. That's your opinion?

14 A. That's what I remember, too, from the court.

15 Q. We'll move on from that. The transcript, I know
16 The Court will have to review.

17 When it got to the trial, the gun that you
18 produced -- this is the trial in March 2006 we're talking
19 about.

20 A. Uh-huh.

21 Q. It was brought up about the .25 caliber gun and
22 where it came from and everything; is that right?

23 A. Right.

24 Q. There was a jail phone call, which is actually
25 Lyles Exhibit Number 1 is what I found out. It says 60. 60

1 was ours. Lyles number one.

2 A. I remember this very well.

3 Q. I understand. Going through that, basically, they
4 testified that this is the gun that he had that night. Is that
5 what he testified to, Mr. Jeter?

6 A. I want to say that the fact that their phone
7 calls were --

8 Q. I'm asking a question before we get to that. He
9 testified that .25 is the one he had with him that night?

10 A. I don't know. I don't remember.

11 Q. Like I said, I know they're going to have all this
12 here from there. I think it's page 425, one through ten, he
13 talks about the Phoenix .25 caliber gun. That was the gun he
14 had that night?

15 A. Who?

16 Q. Josh Jeter, your client.

17 A. Four what?

18 Q. 425. Lines one through ten.

19 A. 425?

20 Q. Yes, ma'am.

21 A. Okay.

22 (A pause transpired).

23 THE WITNESS: Okay.

24 BY MR. BARNETTE:

25 Q. He testified that was the .25 he had that night;

1 isn't that correct?

2 A. Yes, he did.

3 Q. Later on it was shown that was a made-up story;
4 wasn't it?

5 A. About the gun?

6 Q. Yes.

7 A. What was shown was that he and his family over the
8 phone decided it would be great to produce a gun since that was
9 such a big deal and they didn't find the gun. And everybody
10 got in trouble for that, I believe; the family, everyone.

11 Q. I can go through it. Like I said, the Judge will
12 have the transcript. Obviously, that's what happened. They
13 felt like they needed to produce a gun. His mother even
14 testified. I remember Mr. Vieth's cross was very effective
15 also on pointing that out where he had discovered prior to
16 that -- you provided discovery to him. He knew there wasn't a
17 gun involved; is that right?

18 A. Yes.

19 Q. He knew what caliber was used in the case; is that
20 right?

21 A. At first?

22 Q. Through discovery he would've found out by
23 September 2005?

24 A. Yeah.

25 Q. That it was a .22, not a .25.

1 In that phone call, him and his mother and brother
2 talked and, basically, they come up saying we need to get you a
3 gun. It actually winds up, the gun that was produced, he
4 claims he got it from, I believe, somebody at the basketball
5 courts.

6 A. That's what he said. That's what they did. They
7 played basketball and sell guns there.

8 Q. That's the story they told. Basically it was his
9 aunt's gun; right?

10 A. I don't remember.

11 Q. Like I said, the transcript will speak to that.
12 Basically, they produced this gun because there wasn't a gun?

13 A. Right. Can I offer something else about that?

14 Q. Not right now. Not right now, ma'am. Sorry.

15 Like I said, pages 459, 460, Mr. Vieth asked
16 various questions. Basically it talks about the discovery.
17 Talks about the gun. I mean, the gun being produced and things
18 like that.

19 Like you said, this was his family that did that
20 with him. Like I said, they talked about this on the phone
21 call.

22 A. Yes.

23 Q. That's Lyles Number 1; actually introduced by
24 Mr. Vieth; is that right?

25 A. What?

1 Q. Mr. Vieth actually introduced the phone call; is
2 that right?

3 A. Who did?

4 Q. Mr. Lyles' attorney, Mr. Vieth, introduced the
5 phone call, his exhibit 1.

6 A. Well, yes. He hired -- he had a professional to
7 transcribe it, I believe. And my client didn't have the
8 money -- no. It was Mr. Vieth bought it from y'all. And it
9 was over a thousand dollars, I believe. It was way up there.
10 And my client didn't have the money. And so they made up this
11 story.

12 The trouble was we didn't have the money to get a
13 transcript from you. So I got it from the jail. And what was
14 interesting -- and I think this may be in the transcript. When
15 I went through it with Josh, we couldn't find anything about
16 the gun. And it turns out that -- it wasn't in my packet. It
17 was not in my packet.

18 Q. You didn't receive the packet from the Solicitor's
19 Office.

20 A. From the jail. And because my client couldn't
21 afford anything else.

22 Now, I did -- I brought up the fact that I got it
23 from the jail and just amazingly the one page I needed wasn't
24 in there. And anyway, Mr. Vieth had everything. But when I
25 brought that up before Jude Cole, I believe, he told me I

1 should've spent the money and gotten a professional one.

2 Q. The bottom line is this wasn't provided by us; it
3 was provided by the jail obviously?

4 A. The jail.

5 Q. Obviously, that was discussed during the trial?

6 A. Uh-huh.

7 Q. There's no question after the cross and everything,
8 like you said, they developed this -- they produced the gun and
9 they --

10 A. Yes.

11 Q. -- discussed that on the jail telephone call?

12 A. Uh-huh.

13 MR. BARNETTE: One moment, Your Honor, please.

14 THE COURT: Certainly.

15 BY MR. BARNETTE:

16 Q. I believe you did talk at sentencing at one point;
17 is that right?

18 A. I believe so.

19 Q. I'll let you look at page -- I think it's page 729.

20 A. About the end of it.

21 Q. It's the sentencing.

22 A. Seven?

23 Q. 29.

24 A. 29. Okay.

25 (A pause transpired.)

1 THE WITNESS: All right. What's the question?

2 BY MR. BARNETTE:

3 Q. You stated on the record in the sentencing; is that
4 right?

5 A. I said what?

6 Q. About the plea offers and everything like that?

7 A. Yes, I did.

8 Q. During the PCR that Judge Hayes heard, that was
9 discussed also; right?

10 A. (Witness moves head from side to side.)

11 Q. That's a State's exhibit. Obviously, The Court can
12 look at that. Thanks for answering my questions, ma'am.

13 A. Excuse me. Right here it says that -- about Lance
14 Lyles not wanting to plea to it. And Mr. Bulsa making us have
15 both of them plea. It was manslaughter that was offered.

16 Q. That's your testimony during the trial, not before
17 the trial?

18 A. I didn't know a lot of it before the trial.

19 MR. BARNETTE: Please answer any questions
20 Mr. Morin may have.

21 MR. MORIN: Very quickly.

22 REDIRECT EXAMINATION

23 BY MR. MORIN:

24 Q. In this case Sean Spicer or Clarence Spicer is the
25 witness to what happened; is that correct?

1 A. Right.

2 MR. MORIN: Your Honor, I'm not going to ask any
3 further questions. I only point that out for The Court so they
4 know the transcript that's been entered, Mr. Spicer's testimony
5 starts at page 105.

6 THE COURT: Thank you so much.

7 BY MR. MORIN:

8 Q. Mr. Barnette asked you -- there's four statements
9 that Josh gave prior to the trial?

10 A. Right.

11 Q. And some of those he was by himself. Some of those
12 he was with his mother; correct?

13 A. I believe so.

14 Q. Some of those the police came and got him and some
15 of those his mother carried him up to the police station?

16 A. Correct.

17 Q. All of those were known to the State prior to
18 trial?

19 A. I would assume so.

20 Q. During the trial, your testimony is -- during the
21 trial, I think the transcript also refers, an offer was made?

22 A. Yes.

23 MR. MORIN: That's all the questions I have.

24 MR. BARNETTE: No further questions, Your Honor.

25 THE COURT: All right. Thank you so much.

RICK VIETH DIR BY MR. MORIN

1 THE WITNESS: Thank you. It's fun to get to do
2 something different.

3 (The witness exited the stand.)

4 THE COURT: Mr. Morin.

5 MR. MORIN: I'm going to call Rick Vieth.

6 RICHARD W. VIETH

7 being first duly sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY MR. MORIN:

10 Q. Mr. Vieth, state your name for The Court, please.

11 A. Richard W. Vieth. I go by Rick.

12 Q. Mr. Vieth, you represented Lance Lyles in this
13 murder case?

14 A. I did.

15 Q. He's a co-Defendant of Mr. Jeter?

16 A. That's correct.

17 Q. During your representation of him, did the State
18 make an offer in this case?

19 A. The State --

20 Q. I'm not interested -- let me back up for a second.

21 MR. BARNETTE: Your Honor, note my objection;
22 motion in limine prior to this kind of testimony.

23 THE COURT: It's so noted.

24 BY MR. MORIN:

25 Q. I'm not asking you to reveal any client confidences

1 or any information you received in representing Mr. Lyles.

2 A. Sure.

3 Q. I'm simply asking about the procedures and
4 processes that got us to trial and what happened in the trial
5 in general. I don't want to be crossing over any lines there.

6 During your representation of your client in this
7 case, did the State make an offer?

8 MR. BARNETTE: Your Honor, I'm not going to keep
9 objecting. The motion in limine and everything has been
10 protected on the record.

11 THE COURT: It has been.

12 THE WITNESS: The State said that they would
13 consider alternatives to what murder carried if Mr. -- if Lance
14 wanted to cooperate.

15 BY MR. MORIN:

16 Q. And your client chose to go to trial?

17 A. My client chose to go to trial. His position was
18 he was not guilty.

19 Q. And were you aware that his position was affecting
20 Mr. Jeter's ability to plea guilty?

21 A. I honestly don't recall whether it affected
22 anybody. I just knew that the Solicitor was asking if we
23 wanted to cooperate. From our version, the other -- the
24 coDefendant had the mask and could they properly identify who
25 had a mask on. My guy didn't have a mask on. So would he

1 cooperate. He was obviously in the mix.

2 Q. Basically, what this trial started to come down to
3 was they were pointing at each other?

4 A. Apparently so.

5 MR. MORIN: That's all the questions I have.

6 THE COURT: Mr. Barnette.

7 MR. BARNETTE: Real brief.

8 CROSS-EXAMINATION

9 BY MR. BARNETTE:

10 Q. Mr. Vieth, you heard -- let me rephrase that. Your
11 position was your man didn't have a gun?

12 A. My position, no mask, no gun. Our position was he
13 knocked on the door to get some marijuana.

14 Q. And your position was Mr. Jeter had the mask and
15 the gun?

16 A. Correct.

17 Q. Actually, he actually gave a statement to that, the
18 fourth statement?

19 A. Correct.

20 Q. Your position is, for the plea agreement --

21 MR. BARNETTE: Your Honor, note my objection;
22 motion in limine. Just for the record on that, I am asking a
23 question since it's allowed.

24 THE COURT: Certainly.

25 BY MR. BARNETTE:

1 Q. The plea offer was, basically, if your man
2 cooperated, he was the one to cut a possible deal with on that
3 case?

4 A. Correct. That's what my notes say.

5 Q. Obviously, your client didn't do that?

6 A. It was frustrating because he was 16. I got his
7 parents involved, too. I didn't want a 16-year-old to make the
8 total decision. I knew what the evidence was; the deck of
9 cards did not look good. I've got notes where I said the hand
10 of one is the hand of all is a tough charge; could impact you
11 even though you say you're innocent. And do you really want to
12 roll the dice for the trial with a potential offer.

13 It couldn't be guaranteed what a judge will do. It
14 was -- we would work with you towards an alternative, towards
15 murder. He just felt like he was not guilty 'cause he didn't
16 have a mask. Didn't know the guy was going to pull the mask
17 and gun. And he just wanted to go to trial, and I couldn't
18 convince him otherwise.

19 Q. That offer wasn't contingent on Mr. Jeter's offer
20 as far as you know?

21 A. No. Not as far as I know.

22 Q. Also, I noticed in your closing, I went through the
23 whole transcript, you offered the fact that your man didn't
24 wear a mask?

25 A. Right.

1 Q. And Mr. Spicer knew him or knew of him?

2 A. Correct.

3 Q. And why would somebody go there to do something
4 like that and not have his face covered?

5 A. That was the concern. I think my client was taking
6 that position. The only reason he would go would be so someone
7 would open the door. If they look through a hole: Oh, we know
8 who he is, open the door. He just -- he took the position he
9 was innocent. He didn't know this was going to happen.

10 Q. Just to follow up on it, you're the one that
11 actually entered the jail phone calls; is that right?

12 A. Probably so. When I heard that cross-examination
13 or examination of Ms. Anderson, I didn't remember it.

14 Q. I know the judge will have the transcript or
15 whatever. You went through the cross. I know Mr. Bulsa also
16 crossed him, too. I know it's an unusual situation with two
17 Defendants like that.

18 You basically talked to him about him having
19 discovery prior to the gun being produced; is that right, sir?

20 A. I trust you.

21 Q. I'll be glad -- the other thing, too, you asked
22 him -- actually, you cross-examined the mother and him and both
23 come to admit that the story was not true. Is that the best of
24 your memory? That the gun that they produced was a gun -- they
25 produced a gun when they had to?

JANET VOGELSANG DIR BY MR. MORIN

1 A. Right.

2 Q. I can go through that transcript. I'll leave it up
3 to the judge.

4 A. The transcript speaks for itself, yes, sir.

5 MR. BARNETTE: One moment, Your Honor.

6 (Pause).

7 MR. BARNETTE: Thank you, sir. Please answer any
8 questions Mr. Morin has.

9 MR. MORIN: That's all the questions I have.

10 THE COURT: You may step down. Thank you for being
11 here.

12 (The witness exited the stand).

13 MR. MORIN: Your Honor, at this time I want to call
14 Jan Vogelsang.

15 JANET VOGELSANG
16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MORIN:

19 Q. Ms. Vogelsang, would you state your name for the
20 record.

21 A. Janet Vogelsang. V as in Victor, O-G-E-L-S-A-N-G.

22 Q. Ms. Vogelsang, where are you employed?

23 A. I have a private practice in Greenville, South
24 Carolina where I diagnose and treat mental, emotional and
25 behavioral disorders. And I conduct bio-pyscho-social

1 assessments for the courts in different types of cases.

2 Q. What degrees do you presently hold?

3 A. I have a master's degree in social work from the
4 University of South Carolina. And an undergraduate degree in
5 psychology from Pepperdine University in California.

6 Q. And are you licensed?

7 A. I'm licensed by the State of California -- I'm
8 sorry. I'm licensed by the State of South Carolina. And I'm
9 board certified by the American Board of Examiners in
10 Clinical-Social Work.

11 Q. How long have you been doing this type of work?

12 A. I have been practicing clinical-social work since
13 1980.

14 Q. Are you trained to do clinical-social work and
15 conduct bio-social assessments?

16 A. Bio-psycho-social assessments, yes.

17 Q. What's the purpose of those types of assessments?

18 A. Well, the assessment is a clinical-social work
19 method of gathering extensive information on a person's life
20 through clinical interviews, through the gathering of
21 contemporaneous documents, through looking and reading and
22 talking to other professionals or experts who have been
23 involved in a case; through a review of the research and
24 literature germane to the case and, if called upon, to testify.

25 It is not the purpose of the assessment to excuse

1 human behavior but to try to shed some light on the
2 circumstances and to have some understanding of how a person
3 has arrived at those circumstances.

4 And finally, the assessment -- the bio part does
5 not mean the clinical-social workers are medical personnel,
6 that we're neurologists or that we're geneticists. We're
7 trained to work in a multi-disciplinarian approach and to
8 confer with those other professionals; in fact, their findings
9 into our own. Same with the psych part has to do with the fact
10 that psychologists do a lot of testing. So we refer clients to
11 be tested. We share information, again, on a
12 multi-disciplinarian approach.

13 And finally, the social part has to do with the
14 environment; age, gender, education, socio-economic level, all
15 the dynamics that go into a person's life.

16 Q. Approximately since 1980, how many times have you
17 testified as a social worker with bio-psycho-social?

18 A. I would conservatively say hundreds of times. It's
19 been in different kinds of cases.

20 Q. Different kinds of cases in the sense of?

21 A. In family court. Custody. Divorce. Termination
22 of parental rights. Child abuse and neglect. Domestic
23 violence. Adoptions. I have non-capital cases. And then I've
24 testified in about 100 capital cases.

25 MR. MORIN: Your Honor, I would like to offer

JANET VOGELSAND DIR BY MR. MORIN

1 Ms. Vogelsang as an expert social worker with bio-psycho-social
2 certifications.

3 MR. BARNETTE: I have no questions, Your Honor.

4 THE COURT: All right. I'll recognize her as an
5 expert in that area to give her opinion.

6 BY MR. MORIN:

7 Q. Ms. Vogelsang, were you hired in this case to do a
8 social-psycho-bio-social -- I'm trying to get that word down.
9 I've been practicing -- with Mr. Jeter.

10 A. I was, yes.

11 Q. Who did you interview in preparation for your
12 presentation and testimony today?

13 A. I'm sorry?

14 Q. Who did you interview? Did you interview some
15 people?

16 A. So I interviewed Mr. Jeter on September 24, 2019.
17 And, of course, my work on this case mainly occurred before,
18 right before COVID, in the period before COVID.

19 I interviewed his brother Travis Jeter on
20 9/25/2019.

21 I interviewed his mother, Sherry Johnson, on that
22 same date.

23 And his Aunt Linda Askari, I interviewed on
24 9/25/19.

25 I also interviewed Pastor Cathaye Jones on that

1 date. And I interviewed him one other time briefly. I don't
2 have that date noted.

3 I also interviewed his wife, Terrell Jones, on
4 January 20, 2020.

5 I interviewed Brooks Miller by telephone. She is
6 the mother of Josh's child Logan.

7 I interviewed Jack Logan on January 23, 2020. He's
8 a community organizer.

9 Rashad Moore, who is with the Department of Social
10 Services, January 22, 2020.

11 Ms. Askari, who is also a community organizer, on
12 January 22, 2020,

13 Q. Did you review any records in working on the case?

14 A. I reviewed Josh's school records.

15 And I also saw his mother's school records just in
16 gathering some history about her.

17 I saw the Department of Juvenile Justice records on
18 Josh, the Department of Social Services records on Josh.

19 I saw his parents' divorce records.

20 He and his mother's medical records.

21 And I reviewed some of the South Carolina
22 Department of Corrections records.

23 And just briefly went over some of Josh's testimony
24 at trial.

25 Q. Did you visit any communities in preparing to

1 testify?

2 A. I visited the Bishop Street community in
3 Spartanburg. And one of the neighborhoods that is close by to
4 the Bishop Street community where his Aunt Linda lived. And I
5 drove through the Monks Grove community where Josh's father
6 lived and where Josh visited often when he would see his
7 father.

8 Q. Could you give us sort of a roadmap about Josh's
9 family history that you feel is integral to Josh's development.

10 A. On the maternal side of Josh's family, we have a
11 very, very large, loving, warm, extended family who are very
12 active in the Spartanburg community that have put an emphasis,
13 historically, on education, on participating in their churches
14 and, in fact, have built a church. They have been very active
15 in participating in anything that had to do with the community.
16 And they're a very close-knit family.

17 I'm not sure when they came here. They were back
18 and forth with family in New York. A lot of the family from
19 the Bronx in New York settled in the Spartanburg and the
20 Cowpens area. And went to school and had their families and
21 are raising their children here.

22 I don't know much at all about Josh's father. He
23 is deceased. His mother is deceased. And I was not able to
24 get very much extended information about him at all.

25 Q. Other than -- did you learn anything about his

1 parents given his father's limited history?

2 A. Mostly about his mother. That she did go to school
3 in New York. She started grammar school in New York. She came
4 down here and went to Spartanburg schools. She went back up to
5 New York a couple of times to go to school in Washington, D.C.
6 as well.

7 Q. Let me stop you there. I'm interested in if you
8 learned anything about the relationship in the family unit,
9 Josh's family unit, which is comprised of his mother. Her name
10 is?

11 A. Her name is Sherry Johnson.

12 Q. Ms. Johnson and Tommy Jeter, his father.

13 A. Yes. I don't know anything about his father's
14 school history or that sort of thing.

15 Q. And, of course, there's also Josh has a brother?

16 A. Yes.

17 Q. Travis?

18 A. Yes.

19 Q. Is that the family unit that he was born into?

20 A. Yes.

21 Q. Can you tell me if you learned anything about the
22 circumstances of the family at the time of his birth? His
23 birth.

24 A. So when his parents met and they married, they gave
25 birth to Josh's older brother Travis. And that was about three

1 years before Josh was born. They had a very happy marriage.
2 They were very much in love with each other. And they wanted
3 to build their family in the same -- with the same model that
4 Sherry's extended family had built their families. So they had
5 a lot of hopes, a lot of dreams for their marriage and for
6 raising their children. And that continued until when Sherry
7 became pregnant with Josh.

8 His father, who had a very good job, had provided a
9 nice home, started using crack in the middle to late '80's is
10 the time when crack really started taking over neighborhoods
11 and communities. And he developed a crack habit that he just
12 could not overcome.

13 And so when Josh was born, this young couple were
14 having great difficulty staying together even though they
15 tried.

16 Q. Josh, following his birth, had a series of issues;
17 is that fair to say?

18 A. Yes.

19 Q. Can you tell me about that.

20 A. Josh was born in December of 1987. His mother was
21 diagnosed with toxemia at the time of his birth. So he was
22 born three weeks premature. He had weak reflexes. He was a
23 poor feeder. They had to put him into the neonatal ICU unit.
24 He had to be kept in a radiant warmer. And he was diagnosed
25 with a mild respiratory syndrome. But then he was released

1 from the hospital a few days later.

2 Q. The family at that time, Mrs. Johnson and
3 Mr. Jeter, they were having a fairly violent relationship; is
4 that fair to say?

5 A. Yes.

6 Q. In fact, was Josh injured in some way during that
7 time?

8 A. So when he was two-and-a-half months old, he had a
9 fever of 103, and he was taken to the hospital. And
10 Ms. Johnson explained to the doctors that he had been sick for
11 two weeks with -- so they diagnosed him with pneumonia. His
12 upper right lobe had collapsed. He had stopped breathing. His
13 lips had turned blue, and they had to stimulate him to restart
14 his breathing and, again, he was in the ICU.

15 Immediately -- not immediately following but very
16 soon following that --

17 MR. BARNETTE: I'm going to state an objection. I
18 don't know if it's a response. I'm trying to let her talk and
19 everything. I don't know if it's responsive to his question.

20 THE COURT: Sustained.

21 BY MR. MORIN:

22 Q. When he went there, did they discover a physical
23 injury on him?

24 A. Yes.

25 Q. That's what I wanted to ask you about.

1 A. At five months old, she took him to the hospital,
2 again, with these breathing difficulties but she told the
3 doctors that three days earlier he had fallen from a car seat
4 and fallen from the car and his head had hit the pavement. He
5 had a skull fracture on the parietal bone and a questionable
6 skull fracture on the occipital bone.

7 He was x-rayed and released from the hospital.
8 Again, he had been diagnosed with pneumonia. His father was
9 not present during that incident.

10 And then there was one following injury where
11 Mrs. Jeter and Mr. Jeter were fighting, again, over crack and
12 over finances. And she had an iron in her hand. And when she
13 went to hit Mr. Jeter, she had accidentally hit Josh, causing a
14 laceration in his forehead. And this case was referred to
15 Social Services, who investigated.

16 In their investigation, they found that his father
17 was drug addicted and had been in Patrick Harris psychiatric
18 hospital.

19 Q. The family eventually broke apart; is that fair to
20 say?

21 A. Yes.

22 Q. And can you tell me about what followed that
23 breaking apart of the family.

24 A. It's a very difficult time. Sherry then became
25 something that she had never wanted to be or have happen. She

1 became a single mother. She had to provide for her boys.
2 Mr. Jeter was not good about paying child support. They still
3 loved each other very much. They would try and reconcile, and
4 it simply just did not work.

5 The conflict in the home for the first three years
6 of his life was quite extreme because of his crack use. So
7 Joshua, during those most critical years, was being exposed to
8 a lot of stress in the home.

9 Q. As your training as a social worker, do you have
10 training in the child development area?

11 A. Yes.

12 Q. Can you briefly tell me what that means as far as
13 your training and what you know about child development.

14 A. Child development refers to the stages that
15 children go through from birth until -- now we're looking to
16 the age of 25 because neuroscience tells us the brain is still
17 developing until 25. These are ages in which the brain is more
18 receptible to learning certain skills.

19 So we have certain skills that we expect children
20 to be able to master during those stages. If they miss one of
21 those stages, it's very hard for them to go back and pick up
22 those skills.

23 Parents don't have to be a Ph.D. in education to do
24 a good job. Most parents really do a very decent job getting
25 their children through these stages with classes and articles

1 and videos and talking to their doctors. The presence of a
2 parent, the attention by a parent, the guidance of the parent
3 has everything to do with how children master these stages and
4 especially how they come to make good choices and to be
5 responsible and, as someone said earlier, to be accountable.
6 All of that starts from birth and is a part of that process of
7 development.

8 Q. I believe there's been testimony about parents who
9 don't allow children to do certain things and others that allow
10 things to just go on.

11 With regard to Josh, can you tell us something
12 about his early education and where that was going.

13 A. So I think one of the most interesting dynamics in
14 his history is the history of his education because it has --
15 it leaves a lot of questions unanswered. He started out very
16 well at Henry Solomon Elementary. He was learning normally.
17 He had done well in kindergarten. His grades were good. His
18 behavior was good.

19 Then he went that first grade to Hendrix. He went
20 to a different school second grade, I think Star Text. He went
21 to a third school that I don't recall the name of. By the
22 fourth grade, he was at Cleveland Elementary. And so you see
23 that there was some degree of moving around during those first
24 three years; also, that he's adapting well in terms of making
25 the grades, learning what he needed to be learning.

1 The conduct, however, that started out so good
2 starts to deteriorate, especially by the time he gets to the
3 fourth grade. His parents divorced when he was in the third
4 grade. And the fourth grade we start to see that he's -- he is
5 still making good grades. In fact, he's making A's and B's and
6 C's. Nothing to complain about.

7 But under the section of his records with conduct,
8 he is getting unsatisfactories and needs improvement. So over
9 time you start to see that increase. While at the same time,
10 he is able to do his academic work history was in math. His
11 weakness was in reading which improved over time.

12 In the fifth grade his mother was arrested for
13 simple assault. And according to the records, was ordered to
14 spend 30 days in jail. But even through that difficult year,
15 he was able to maintain A's and B's. But poor conduct. And
16 that was the year he quit playing football.

17 We have a history as to what's going on in school
18 with his conduct that he is learning academically. But under
19 courtesy, self-control, dependability, all of those things,
20 there's not a single teacher's note that -- there's one
21 teacher's notes that says needs to improve behavior. One
22 teacher's notes that says behavior greatly improved.

23 The kind of notes you're used to seeing with this
24 level of conduct where a teacher says you got to go to the
25 principal or we have to have you tested, there's something

1 going on here. That never happens. Never happens.

2 Q. It's just sort of ignored almost?

3 A. That goes on through middle school, right on up
4 until the 7th and 8th grade. You see these same very low
5 conduct ratings but with no description of what he's actually
6 doing. So it remains a mystery as to why this is going on.
7 There's no letters in the records to his mother. No police
8 come in to talk.

9 Again, no testing. No questioning.

10 Q. Also during this time he was spending some time
11 with his father; is that correct?

12 A. Yes. His father lived in a neighborhood that I
13 went to but it was described to me by a social services person
14 as a neighborhood that was kind of split. And one part of the
15 neighborhood was a little safer, a little nicer, a little more
16 intact.

17 The side that Josh's father lived on was a much
18 rougher section. There was a bar there. There was more
19 violence in the street. There was more guns. There were
20 stabbings that would take place. Josh would go and be with his
21 father in the afternoon. Of course, his father worked. His
22 father had this drug addiction.

23 So his grandmother, his paternal grandmother, was
24 there but she also worked and was in poor health. It was
25 during this period where, you know, Josh's really more out in

1 the streets.

2 This is also the time during these middle school
3 years where he and his mother are living on Bishop Street and,
4 again, Bishop Street is a relatively rough area at that time.
5 So they were having break-ins. Josh had all his Christmas
6 presents stolen. He was very scared and uncomfortable living
7 there. And, of course, his mother had to work to support him
8 and his brother.

9 So he would go stay at his aunt's house. It was
10 just within walking distance but in a much nicer area. She was
11 a strict disciplinarian. And when he was at her home, he felt
12 safer because he was there with her children. And she would
13 feed them, and so that was really the only place he was getting
14 structure after school was when he would visit that aunt.

15 Q. When he went to high school, did this unstable,
16 violent type activity seem to stay with his --

17 A. During middle -- there's a gap in the school
18 records around the seventh or eighth grade. Every effort to
19 find those records did not succeed. So there's some things
20 there going on that we don't know about.

21 We know in the seventh grade he was placed in
22 alternative school. He was placed in a TIP program. And he
23 went from Whitlock to Carver. He's still making B's and C's.
24 I think the lowest grades I saw for Josh was maybe a year of
25 C's, which a lot of parents might be very happy with.

1 And so his brother during that time graduated from
2 Spartanburg High. As I said, this was a family who put a lot
3 of emphasis on education. And so by the time he gets to high
4 school, the 9th grade, he is placed in University School which
5 is also alternative. And it was a bad beginning to that year.

6 We have a medical record that says he was punched
7 in the nose.

8 His little niece, who was an infant that he was
9 very close to, rolled off the bed and died during that year.

10 And this is the year that he was accused of
11 assaulting a coach at the University School by bumping into him
12 with his chest and pushing him with his hand because he wasn't
13 where he was supposed to be in the gym.

14 Q. Was there a hearing about that?

15 A. There was a hearing about that. And an incident
16 report was produced. And he was arrested and he was booked and
17 held at South Carolina Department of Juvenile Justice.

18 Q. What can you tell us about kids who end up at DJJ
19 and how that relates to Josh?

20 A. I think some of the best research we have on
21 juveniles has to do with whether or not there are any behaviors
22 in the home that are reliable predictors of children. You have
23 children in Juvenile Justice ending up in adult incarceration.

24 And studies have been repeated hundreds and
25 hundreds of times. U.S. Department of Justice have done the

1 studies, the Department of Juvenile Justice. And they are
2 consistent in showing that the two greatest contributors are
3 either family violence or neglect. And interestingly, some of
4 those studies show that neglect actually carries more weight
5 than the family violence in terms of a predictor of who's going
6 to end up in Juvenile Justice.

7 Q. When you say neglect, you're not just talking about
8 conscious, I'm not paying attention to this child, are you?

9 A. Right.

10 Q. There's more to neglect than that; is that correct?

11 A. Yes. And in terms of Josh's family, this was not
12 neglect in terms of food or shelter or love or caring. It's a
13 situation that many families find themselves in. I call it
14 benign neglect. I don't think his mother had any intention of
15 not caring for him or wanting the best for him. I think she
16 was doing the very best she knew how to do.

17 She was not getting any child support from his
18 father. Or if she got any, it was because she had to go to
19 court and go through the whole process.

20 And so what happened is that there ended up being a
21 lack of structure in the home and this was verified by the
22 Department of Juvenile Justice in South Carolina, who in their
23 assessment said there is no structure in this home.

24 And it appeared to me in my interviews and talking
25 to family members and talking to friends and others who knew

1 Josh that he and his brother both were left to make a lot of
2 decisions on their own and that there was not the oversight or
3 supervision that there needed to be. Again, I think his mother
4 was trying her best.

5 Q. From Josh's evaluation, what did you learn?

6 A. Are you talking about the evaluation at DJJ?

7 Q. Yes.

8 A. They did an IG screening test on Josh, and he
9 scored in the sort of the low average range. And he had two
10 other scores that put him into the low average range. And, of
11 course, this is real inconsistent with the grades that he was
12 making. There was no further effort to do any kind of
13 intellectual testing on him to try and explain how is he able
14 to make these grades yet, you know, his IQ is falling in this
15 sort of average to low average range.

16 They state his strengths were that he was polite.
17 He was cooperative. That he had a limited criminal history.
18 In fact, the only document I saw prior to this was the incident
19 with Coach Abraham. He was diagnosed with oppositional defiant
20 disorder and cannabis abuse.

21 As I said, under axis four of the DSM, they put no
22 structure in the home; that he had a daily use of marijuana and
23 that he was selling marijuana and crack which he reported to
24 them. And he told them that he had been expelled three years
25 in a row. That does not show up in the school records.

1 Q. Let me ask you about that. Is that Josh reporting
2 that he wasn't going to school?

3 A. He just -- he told them that he was expelled three
4 years in a row. The school records indicate that he had
5 excellent attendance.

6 Finally, the evaluation. While he was 21 days at
7 DJJ, he had appropriate behavior. He had appropriate social
8 skills. He did his work. They found that he was very
9 respectful to authority and to rights of others. That he
10 practiced self-control. That he was responsible and age
11 appropriate.

12 This is not at all unusual for us to see people,
13 especially I think, kids who like school and they feel like
14 that's the one place that they can show what they're capable of
15 in terms of grades; that when they are in a structured setting
16 like this was at DJJ for three weeks, he was able to show how
17 he could perform under those circumstances.

18 Q. Were there any recommendations made by DJJ?

19 A. They recommended family counseling. They
20 recommended anger management. They recommended counseling for
21 impulse control. And that's typically where you will get some
22 testing to see what's going on; have there been head injuries,
23 are there neurological problems.

24 They recommended counseling for decision-making
25 skills. All of these things having to do with how the frontal

1 part of the brain is working; helping him develop appropriate
2 responses; helping him with substance abuse counseling.

3 Q. Let me interrupt you there. Can you see anywhere
4 where any of that was done?

5 A. No. There's no records or evidence that any of
6 that happened.

7 Q. In interviewing Pastor Jones and his wife, what did
8 you learn about Josh from there?

9 MR. BARNETTE: Your Honor, I'm probably going to
10 object. I know they're going to be testifying. I assume it's
11 going to be cumulative to what they testify to.

12 MR. MORIN: I'll withdraw that question.

13 THE COURT: Very well.

14 BY MR. MORIN:

15 Q. Over the year leading up to the incident that
16 happened, can you tell us about Josh's history there.

17 A. Pretty much as far as I could determine, the same
18 kind of things were going on. I think he and his mother had
19 moved to a nicer area. Sherry was doing well in terms of
20 working and was holding responsible jobs. And, again, it just
21 seems that Josh, after school, was pretty much in an
22 unstructured setting where he could kind of do as he wanted.
23 And that during that time he -- the same for his brother.
24 During that time, his mother was having him talk to Pastor
25 Jones.

1 Q. Now, you're familiar with some of his issues at the
2 Department of Corrections; is that correct?

3 A. Yes.

4 Q. Can you give us your opinion regarding what you see
5 there.

6 A. Well, this is certainly not an area of expertise
7 for me.

8 MR. BARNETTE: Your Honor, I'm going to object to
9 it then if it's not in her expertise.

10 THE COURT: Sustained.

11 BY MR. MORIN:

12 Q. Let me finish with this. With regard to Josh's age
13 at the time this occurred, can you give us your opinion as a
14 social worker that you've been as to that. That's what it
15 really comes down to.

16 A. So with child development we know how risky the
17 teenage years are, adolescents. As I said, we now know that
18 development continues until the age of 25.

19 And so Josh was 16, just two days short of 17, and
20 this is a time when kids are, especially boys, are engaging in
21 far riskier behavior than they did before. They are more
22 exposed to adverse situations.

23 In Josh's case, being alone, being unsupervised,
24 having the freedom to kind of come and go as he pleased. They
25 are more exposed to adverse influences in the community, in

1 school, with their friends.

2 And so what we know is that they just lack this
3 mature sense of responsibility. They could be responsible
4 about taking out the garbage or doing their class work or their
5 homework or showing up for football. But outside the home they
6 still lack that mature sense of responsibility. That was
7 certainly the case in Josh's life. They need a lot more
8 supervision during those years than a lot of parents realize.

9 MR. MORIN: Please answer any questions
10 Mr. Barnette has.

11 THE COURT: Mr. Barnette.

12 MR. BARNETTE: Just a few, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. BARNETTE:

15 Q. Ma'am, if I heard your testimony correctly, correct
16 me if I'm wrong, he had good grades first and third grades?

17 A. I'm so sorry. I can't hear you.

18 Q. I'll speak up a little bit louder. First and third
19 grades he had good grades, good behavior, and everything?

20 A. Yes.

21 Q. Obviously what happened in his childhood prior to
22 that, the injuries and everything, really didn't have an effect
23 on him, did it?

24 A. Well, it does not appear during those first three
25 years that whatever was going on in the home and it was

1 continuing because of his mother's emotional state over the
2 divorce. There are children for reasons we don't always
3 understand who really take to school and take to it even more
4 so if things are not going on well at home. So they feel more
5 comfortable there. They feel safer there. It gets their mind
6 off what's going on.

7 Q. I guess my question is he's smart. I mean, he's
8 making good grades. He's making B's and C's in the seventh
9 grade; is that right?

10 A. That's exactly right.

11 Q. He knows what's going on. What I mean, he's smart
12 enough to learn and change his behavior appropriately; is that
13 right?

14 A. I'm sorry.

15 Q. I'll rephrase that. Through your testimony he
16 could adjust his behavior in the environment that he was in.
17 He also made good grades, like I said, at least through seventh
18 grade it appears?

19 A. That's correct. That is why we are so used to
20 seeing the school ask that same question. This makes no sense.
21 What is going on with this child that their conduct doesn't
22 comport with their grades. That's when we start to see
23 referrals for testing even as early as the first grade and that
24 just didn't happen in this case.

25 Q. There was really no need for the first and third

1 grade; he had no discipline or anything?

2 A. By the second grade and the third grade, you start
3 to see that behavior deteriorate. That is when schools
4 typically start asking questions, doing home visits, referring
5 to the school counselor. I mean, to your point if you look at
6 the conduct, it's a mystery as to why he would not have been
7 referred for some intervention.

8 Q. Like I said, it looks like you had no disciplinary
9 until the fourth grade. They were testing him; is that
10 correct?

11 A. I think the conduct already had some
12 unsatisfactory, needs improvement, but the fourth is when you
13 see a big dip.

14 Q. Obviously, his brother graduated from Spartanburg
15 High. Education was important thing for their family?

16 A. Very.

17 Q. He admitted to selling marijuana and crack. Was
18 that in the schools or in the community?

19 A. I think that was in the DJJ record that he admitted
20 to doing that. And that he was using marijuana and alcohol.

21 Q. DJJ said that his behavior was appropriate and he
22 had self-control the 21 days he was with them?

23 A. Under that kind of structure and supervision, yes.

24 Q. He could structure his -- and have appropriate
25 behavior in that structure?

1 A. In that environment, yes.

2 MR. BARNETTE: One moment, Your Honor, please.

3 BY MR. BARNETTE:

4 Q. Just one other question. Did he ever talk about
5 this event to you?

6 A. We did not talk about it during our interview. I
7 was aware of the fact that this young man, Mr. Howze, had been
8 killed by a gun. I'm usually given an overview of the crime.
9 So I don't know the details.

10 Q. You didn't talk to him about the crime itself?

11 A. No.

12 MR. BARNETTE: Thank you, ma'am.

13 MR. MORIN: Just briefly.

14 THE COURT: Certainly.

15 REDIRECT EXAMINATION

16 BY MR. MORIN:

17 Q. Mr. Barnette asked you about his ability to adjust
18 his behavior. Do you remember when he asked you that?

19 A. Yes.

20 Q. Adjusting behavior to the environment in which the
21 young person is in is critical; isn't that correct?

22 A. Yes.

23 Q. So if you're in school, and there's a structure
24 like there was at DJJ, you get one type of adaptation; correct?

25 A. Yes.

1 Q. The other hand, if you take a teenager and you let
2 them loose in the neighborhood at all hours, they're going to
3 have a different adaptation without any supervision; is that
4 correct?

5 A. Yes. And to that point I think and, of course,
6 coming from a mental health perspective, academic intelligence
7 has nothing to do with emotional intelligence or behavioral --
8 behaviors, or that sort of thing. I think we so frequently do
9 see those going hand in hand in some cases that we tend to
10 think, you know, if you're not doing good in school, bad
11 behaviors. That all makes sense.

12 The truth is that very smart people can engage in
13 very bad behavior. And in this case, we don't really know for
14 sure. 81, that's not consistent with the grades he was
15 getting. This is why it would've been so critical early on to
16 have had that testing, stuff that we knew it was just a result
17 of early head injuries, what could this be. We still don't
18 know.

19 Q. Isn't it fair to say that the safety factor at
20 school can affect a child's ability to advance academically or
21 what have you versus if that safety net is not there?

22 A. It's sort of an exception. The fact is that a lot
23 of children who have been traumatized, who are in high stress
24 homes, the best part of their day is in the classroom. And
25 when they act out in the way apparently Josh was acting out,

1 they're really telling us their story about what's going on
2 outside the classroom. They're bringing it in. So he could
3 make the grades but he's also -- he doesn't have the language
4 to say what's going on at home. Kids don't. So he's acting
5 out.

6 And again, we don't know the specifics or the
7 details of what it was he was doing and why he wasn't referred.

8 MR. MORIN: Thank you.

9 MR. BARNETTE: Just one question.

10 THE COURT: Please.

11 RECROSS-EXAMINATION

12 BY MR. BARNETTE:

13 Q. So all the 16-year-olds out there that are on the
14 streets not being supervised, always going to commit crimes of
15 murder like this? Is that your testimony?

16 A. The last part of that sentence again. All
17 16-year-olds.

18 Q. You're saying all 16-year-olds in South Carolina,
19 in this country, wherever, they don't commit crimes like this.
20 There is different levels. This is a murder, ma'am. This is
21 not stealing candy out of the store or whatever. They don't do
22 these crimes, do they? This is not normal?

23 A. Most people do not commit murder.

24 MR. BARNETTE: Thank you, ma'am.

25 THE COURT: Any other questions?

SHERRY JOHNSON DIR BY MR. MORIN

1 MR. MORIN: No.

2 THE COURT: Ma'am, you can step down. Thank you so
3 much.

4 (The witness exited the stand.)

5 MR. MORIN: Your Honor, may Ms. Anderson and
6 Mr. Vieth be released?

7 THE COURT: Any objection?

8 MR. BARNETTE: No objection, Your Honor.

9 THE COURT: Sorry, Mr. Vieth. I didn't mean to
10 hold y'all here.

11 MR. MORIN: Your Honor, can Ms. Vogelsang also be
12 excused?

13 MR. BARNETTE: No objection.

14 THE COURT: Yes.

15 MR. MORIN: Your Honor, at this time I would like
16 to call Sherry Johnson.

17 SHERRY JOHNSON
18 being first duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. MORIN:

21 Q. Ms. Johnson, will you state your name for the
22 record, please.

23 A. Sherry Johnson.

24 Q. Ms. Johnson, how are you related to Joshua Jeter?

25 A. He's my son.

1 Q. Ms. Johnson, you had two boys; is that correct?

2 A. Correct. .

3 Q. And you pretty much had to raise them on your own;
4 isn't that correct?

5 A. Yes.

6 Q. Is it fair to say there was a good bit of time
7 where your boys were not being supervised by a parent?

8 A. Correct.

9 Q. You have an older son who did graduate from
10 Spartanburg High School?

11 A. Right.

12 Q. And he maintained various extracurricular
13 activities; track or football. He stayed busy after school; is
14 that correct?

15 A. Correct.

16 Q. As far as you know?

17 A. Right.

18 Q. Josh did not do that. So after school when your
19 son, Travis, was doing after-school things, Josh was left to
20 himself?

21 A. Right.

22 Q. You had to work?

23 A. Correct.

24 Q. Sometimes you had to work late or second shift; is
25 that correct?

1 A. That's correct.

2 Q. Sometimes the boys were, at a fairly young age,
3 young teenagers, they had to take care of what they had to take
4 care of at home; is that fair to say?

5 A. Right.

6 Q. Of course, he also spent some time with his father?

7 A. Correct.

8 Q. He occasionally spent time over there where he
9 lived with his father?

10 A. Yes.

11 Q. His father wasn't that good an influence, though,
12 was he?

13 A. He wasn't.

14 Q. You allowed it to occur anyway?

15 A. Correct.

16 Q. Were you aware that the Department of Juvenile
17 Justice had made recommendations regarding counseling and so
18 forth?

19 A. I was aware that they wanted him to take, like,
20 some of the -- because of the marijuana. Also, they say he had
21 anger management. I recall some of those classes.

22 Q. Do you know if he attended those?

23 A. He attended a few of them. We attended a few of
24 them.

25 Q. Do you know if he or the family completed?

1 A. No.

2 Q. There's been testimony about Josh having problems
3 at school.

4 A. Correct.

5 Q. Did the school ever contact you about that?

6 A. No.

7 Q. Did you ever go to the school and say: What is
8 this about?

9 A. I did. When they let me know he was having
10 problems in school, they just, like, talk to me about him,
11 sending him to the alternative school.

12 Q. The only conversations you had with them was when
13 he was much older and they sent him to alternative school?

14 A. Correct.

15 MR. MORIN: If I may have just a moment.

16 THE COURT: Sure.

17 (A pause transpired).

18 BY MR. MORIN:

19 Q. There were other people in the community who Josh
20 sought out to assist him occasionally; is that fair to say,
21 when you weren't --

22 A. Correct.

23 Q. In fact, at some point Josh asked to live somewhere
24 else, did he not?

25 A. Right.

1 Q. If that had been -- if that request had been
2 accepted, you would've allowed him to go and live somewhere
3 else; is that correct?

4 A. Well, correct.

5 Q. Would that have been so that he could be in a more
6 structured environment?

7 A. Being his mom, being his mom, even though he was
8 going through some things that was not structural for the
9 family, for him, still I wanted to do the best I can for him
10 'cause I was his mom. Even though being a child he asked that
11 question, being a mom, I was going to just still do the best I
12 can for him and let him see maybe we didn't know how long that
13 was going to last, you know, in the condition that we was at,
14 at that time.

15 Q. Because during the time that he was growing up, it
16 wasn't unusual for Tommy to come over there and take things?

17 A. Right.

18 Q. Take things from the house; isn't that correct?

19 A. Correct.

20 Q. Not just when he was young. This went on four or
21 five -- until y'all got divorced?

22 A. Correct.

23 Q. He was coming over there taking things and getting
24 in arguments with you; is that correct?

25 A. That's correct.

1 Q. He was present during that; is that correct?

2 A. Yes.

3 Q. Now, Josh had several interactions with the police
4 after this incident occurred; is that correct?

5 A. Correct.

6 Q. Some of them you weren't even aware of until after
7 he came home?

8 A. Right.

9 Q. Some of them the police came to your home and took
10 him and then you went and got him?

11 A. Uh-huh. Yes.

12 Q. You allowed him to go on his own?

13 A. Right.

14 Q. And then you never questioned where they were
15 taking him or why. You just let the police come and get him
16 and carry him to wherever they took him?

17 A. Correct.

18 Q. And you also, on one occasion without being
19 requested by any law enforcement, took him down there again; is
20 that correct?

21 A. Right.

22 Q. When you took him yourself, without any request
23 from law enforcement, did you -- were you present when he was
24 being questioned by the police in the room?

25 A. No. I was on the outside of the room. I just

1 turned him in. I didn't know anything that was going on
2 inside. I was on the outside of the room.

3 Q. Right. It was your idea to take him down there?

4 A. Right.

5 Q. To talk to the police again?

6 A. Correct.

7 Q. You didn't stay with him. He was in there by
8 himself?

9 A. Correct.

10 Q. I think that was either the third or the fourth
11 time he had conversations with police. Do you recall?

12 A. That was, I think, the third time.

13 MR. MORIN: That's all the questions I have.

14 THE COURT: Any questions for this witness?

15 MR. BARNETTE: No questions.

16 THE WITNESS: Excuse me. Before I get down, can I
17 say something?

18 THE COURT: Mr. Morin.

19 MR. BARNETTE: I'm going to object. They got asked
20 all the questions they could.

21 THE COURT: Mr. Morin, I'll allow you to ask her a
22 question if you know what she's aiming at.

23 MR. MORIN: I appreciate it. I understand the
24 objection.

25 DIRECT EXAMINATION CONTINUED

LINDA ASKARI DIR BY MR. MORIN

1 BY MR. MORIN:

2 Q. Ms. Johnson, is there anything else you want The
3 Court to know regarding your son?

4 A. What I just want to say to the family, that I
5 grieve with you-all. I didn't lose a son. But I grieved
6 because Joshua, he's still here. I'm grieving because he is in
7 prison with a life sentence. I do grieve for you-all. I think
8 about you and your family all the time. I just want to say
9 that I'm sorry --

10 MR. MORIN: Thank you.

11 MS. JOHNSON: -- for the incident.

12 THE COURT: Thank you.

13 (The witness exited the stand).

14 MR. MORIN: Linda Askari.

15 LINDA ASKARI

16 being first duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. MORIN:

19 Q. Ma'am, will you state your name for the record.

20 A. Linda Askari.

21 Q. Mrs. Askari, how do you know Joshua Jeter?

22 A. By marriage. He's my nephew.

23 Q. Did he grow up in the neighborhood near where you
24 lived or in your neighborhood?

25 A. Yes. Yes, he did.

1 Q. Were you familiar with the relationship that was
2 going on between, from your own observation, between Tommy and
3 Sherry?

4 A. Yes.

5 Q. How would you characterize that relationship?

6 A. Violent.

7 Q. Was that during Josh's younger years?

8 A. Yes.

9 Q. Did you ever have the occasion that Josh came to
10 your house?

11 A. Yes. Josh spent many a nights.

12 Q. When Josh spent the night with you, when would he
13 usually arrive?

14 A. We be already be in bed. It would be late.

15 Q. Late?

16 A. Yeah, it would be late.

17 Q. Did you know that he was coming when he spent the
18 night with you?

19 A. No, I did not.

20 Q. Tell us about how that actually occurred. I mean,
21 you're in bed. And then what happened?

22 A. I heard a knock on my door. And I don't answer the
23 door. I ask who was it. It was Josh. I opened the door up.
24 I asked him why was he there. And so he stated, you know, no
25 one was home. And he needed a place to sleep.

1 I told him get on the couch and fixed him something
2 to eat.

3 Q. That would be late at night?

4 A. Yes.

5 Q. I don't want to pry too much. You said you had
6 gone to bed. I know at 10:00 I can't stay awake anymore. Was
7 it later than that?

8 A. About 10:00.

9 Q. About 10:00?

10 A. Yeah.

11 Q. About how old was Josh when these things were
12 occurring?

13 A. I can't remember those ages. He was young. He
14 should've been at home.

15 Q. He was young enough he should not be out?

16 A. He should've not been out.

17 Q. That would happen over several years? Over several
18 months?

19 A. Yeah.

20 Q. Which one?

21 A. Couple years.

22 Q. Couple years that was going on?

23 A. Uh-huh.

24 Q. Did you ever talk or ask or mention this to his
25 mother?

1 A. No. I talked to his grandmother.

2 Q. Basically Josh -- but not Travis; just Josh?

3 A. Just Josh.

4 Q. And Josh would, at this young age -- obviously, you
5 described it as younger than he should've been even to show up
6 randomly at your house needing a place to stay?

7 A. That's correct.

8 Q. Again, I don't mean to insult you. Was the
9 neighborhood you were living in one where it would be a good
10 idea for someone his age to just be walking in the dark at
11 those hours?

12 A. No. No, it wasn't. It was considered as bad.

13 Q. It wasn't safe, was it?

14 A. No, it was not safe. No.

15 MR. MORIN: That's all the questions I have of this
16 witness, Your Honor.

17 MR. BARNETTE: No questions, Your Honor.

18 THE COURT: Ma'am, you can step down. Thank you.

19 (The witness exited the stand.)

20 MR. MORIN: Bishop Cathaye.

21 This is Bishop Cathaye. I called him.

22 BISHOP CATHAYE JONES

23 being first duly sworn, testified as follows:

24 DIRECT EXAMINATION

25 BY MR. MORIN:

1 Q. Sir, would you state your name for The Court.

2 A. Certainly. Bishop Cathaye Jones.

3 Q. Cathaye Jones?

4 A. Uh-huh.

5 Q. You're ordained; is that correct?

6 A. Yes, I'm consecrated. International Bishop.

7 Q. Are you familiar with Josh Jeter?

8 A. Yes, I am.

9 Q. Can you tell us how you know Josh.

10 A. Knowing Josh but married into his family 35 years.

11 So that's how I knew him.

12 Q. Did you have any interaction with him when he was a
13 young man or pre-teen? I'll say nine, ten, 11, 12. That age.

14 A. Absolutely. In the City of Spartanburg, within the
15 County of Spartanburg, the county here know it as well, had
16 many programs throughout the city, county even with Solicitor
17 Barry, in the community that I serve, which is the young
18 community.

19 With that said, Josh participated in the
20 after-school program. Also participated in little league
21 football. So a couple of years from when he was little league,
22 nine, ten, 11 and 12. Those are the years that we sponsor by
23 one of the former kids that came from the community, Brian
24 Sims, who played NFL. And he wanted to play on that team.
25 Also, from the alternative school, picking him up from school,

1 making sure that he gets home.

2 Q. Is it fair to say your work in the community has
3 involved many young men?

4 A. Thousands.

5 Q. Many of them without active father or male role
6 models; is that correct?

7 A. Hundreds.

8 Q. When you were most active with Josh was the time
9 that he was playing in that football and that kind of thing
10 when he was nine, ten, 11 and 12; is that fair to say?

11 A. That's correct.

12 Q. And, of course, you were at that time were
13 attending to many young men through your ministry, through your
14 coaching?

15 A. Hundreds. Hundreds.

16 Q. There was a time there where eventually Josh sort
17 of wasn't around that group as much; is that fair to say?

18 A. He struggled, yes.

19 Q. Struggled?

20 A. Yeah.

21 Q. And he kind of fell off from regular contact with
22 you?

23 A. Yeah. When that happen, I go searching. I ask
24 some of the kids have they seen him. And, of course, I hear
25 he's on the north side of town. So I go over that way

1 searching, looking for him. And they kind of won't tell
2 you-all the time. Every now and then I will find him and
3 sometimes I don't. Then we get in the car. Let's go. Pretty
4 much that's it.

5 Q. So you were basically trying to help him?

6 A. Uh-huh.

7 Q. But finding him was quite a task there after he
8 turned 13, 14 years old?

9 A. Absolutely. Absolutely.

10 Q. He was just -- is it fair to characterize that he
11 was basically moving from pillar to post as they say?

12 A. He would drift.

13 Q. He's adrift?

14 A. Uh-huh.

15 Q. When you had him on a regular basis, whether it was
16 through your programs or through football or what have you, did
17 you have any problems with him?

18 A. Oh, no. No. No.

19 Q. I'm going to ask. The young men that you're
20 dealing with know that you're the voice of authority?

21 A. Authoritarian, absolutely. Yes.

22 Q. When they're with you, they follow the rules?

23 A. Absolutely.

24 Q. They adapt. They might come from somewhere else.
25 What you're saying, they adapt to what you're saying?

RASHAD MOORE DIR BY MR. MORIN

1 A. Absolutely.

2 MR. MORIN: I think that's all the questions I
3 have, Your Honor.

4 MR. BARNETTE: No questions, Your Honor.

5 THE COURT: Thank you, sir. You may step down.
6 (The witness exited the stand).

7 MR. MORIN: Rashad Moore.

8 RASHAD MOORE
9 being first duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. MORIN:

12 Q. Would you state your name for The Court, please.

13 A. Rashad Moore.

14 Q. Mr. Moore, do you know Joshua Jeter?

15 A. Yes.

16 Q. Are you related to him?

17 A. Yes, he's my cousin.

18 Q. Mr. Moore, you and Joshua are about the same age?

19 A. Yes.

20 Q. And you grew up sort of near each other; is that
21 correct?

22 A. Yeah, we grew up in the same neighborhood.

23 Q. But you didn't go to school together, did you?

24 A. We went to elementary school together and then Josh
25 started going to other schools.

1 Q. Huh?

2 A. We went to elementary school together and then Josh
3 started going to other schools.

4 Q. What school did you go to?

5 A. I went to Hendrix. And then I remained in the
6 Boiling Springs district.

7 Q. You graduated from Boiling Springs?

8 A. I did.

9 Q. And you went on to college?

10 A. I did.

11 Q. And you presently work for the Department of Social
12 Services?

13 A. Yes.

14 Q. You're here because of what you know of Josh. You
15 don't have any relationship professionally to his family?

16 A. No.

17 Q. Do you recall when this occurred, this incident
18 occurred?

19 A. Yeah. We was 16. This incident occurred and two
20 weeks later we lost another cousin. Within two weeks I lost
21 three cousins.

22 Q. With regard to what happened in Josh's case, can
23 you tell me what you -- how that affected you.

24 A. I mean, I guess at 16, you know, we was kids. So
25 there was a lot of stuff going on around us that we didn't

1 take heed to. I think more or less, had that mind-set that we
2 was young, that, you know, nothing was going to happen to us
3 so, you know. I guess when these incidents occurred, it opened
4 my eyes up to see the effect that it had on family, other
5 families as well. So it gave me more of a -- it was eye
6 opener.

7 You know, even though we're kids, it still have
8 life changing event on ourselves and others as well.

9 Q. That was something you don't recall considering
10 prior to that?

11 A. Prior to that, no. It was more or less, you know,
12 I'm going to do what I want to do regardless of the fact.

13 Q. Even though you were going to a different school,
14 you had stayed up there in school district two in Boiling
15 Springs, you still had a certain feeling what you wanted to do;
16 is that fair to say?

17 A. Yes, sir. I mean, I guess from being a
18 professional that I am now, a lot of people that don't come
19 from that environments that we come from, they don't
20 understand. So, you know, we more or less had to be on guard.
21 And it's like people was already against us because of the
22 environment that we was coming from and not knowing stuff that
23 we had to deal with on a day-to-day basis.

24 So when you're not able to seek out to nobody to
25 talk to or express yourself to, you know, you got to deal with

1 it the best way you know how, so.

2 Q. Is it fair to say that it would've been possible
3 for you to get into a lot of serious trouble as well but for
4 what happened?

5 A. I mean, easily. And I know that, you know, as far
6 as I've been active in the community and, like, this is one of
7 my motivations throughout life. Since 2008 I've been working
8 in the community so that no other family has to experience it.
9 This is like one of my motivation. This is, like, I try to
10 tell kids about the incident that occurred. Simple fact,
11 you're 16 and that, you know, they was kids, you know. And
12 they got life sentences. Yeah. It's life changing so, you
13 know. This is one of those things that, you know, you want
14 others to know about.

15 MR. MORIN: Thank you, sir. Answer any questions
16 of Mr. Barnette.

17 MR. BARNETTE: Just briefly, Your Honor.

18 THE COURT: Certainly.

19 CROSS-EXAMINATION

20 BY MR. BARNETTE:

21 Q. You graduated from Boiling Springs High School;
22 right?

23 A. Yes, sir.

24 Q. You went to college?

25 A. I did.

1 Q. You came through the same type environment, didn't
2 you?

3 A. Yes, sir.

4 Q. So, I mean, you followed the path that people want
5 to follow, is that right, hopefully?

6 A. I was fortunate. I could've easily ended up in a
7 situation. I had my encounters with different law enforcement,
8 stuff along those lines. I was fortunate enough to where I
9 didn't end up in the situation.

10 Q. But you didn't?

11 A. I didn't.

12 MR. BARNETTE: Thank you.

13 THE COURT: Mr. Morin.

14 MR. MORIN: Your Honor, would it be okay to take a
15 ten-minute break?

16 THE COURT: Sure. We've been going at it pretty
17 full tilt. Do you have any other questions for this witness?

18 MR. MORIN: No, I do not have any more questions.

19 THE COURT: Thank you, sir, very much. We'll be in
20 recess for ten minutes.

21 (The witness exited the stand.)

22 THE COURT: Recess for ten minutes.

23 (A recess transpired from 12:27 p.m. until 12:41
24 p.m.)

25 MR. BARNETTE: May we approach one second.

JOSHUA JETER DIR BY MR. MORIN

1 THE COURT: Absolutely.

2 (Off-the-record discussion transpired).

3 THE COURT: Mr. Morin.

4 MR. MORIN: Your Honor, I'm going to call Joshua
5 Jeter.

6 JOSHUA JETER

7 being first duly sworn, testified as follows:

8 THE COURT: Feel free to remove your mask, if you
9 like.

10 DIRECT EXAMINATION

11 BY MR. MORIN:

12 Q. Mr. Jeter, would you state your name for the
13 record.

14 A. Joshua Jeter.

15 Q. Mr. Jeter, where are you presently being housed?

16 A. Broad River Correctional Institution.

17 Q. I'm going to ask -- first, I'm going to ask you
18 about before this happened; okay? When you were growing up
19 from 13, 14, 15, that age, who was in charge of you?

20 A. No one really.

21 Q. When you came home from the school, was there any
22 adults there?

23 A. No, my mom was always working.

24 Q. Was there a lot of times where you were not at home
25 yourself? Out and about?

1 A. Yes, sir.

2 Q. Do you remember spending time with your dad?

3 A. Yes, sir.

4 Q. During those times, how did you feel?

5 A. I feel -- when I spent time with my father?

6 Q. When you were with your father. When you were

7 alone. When you were out on the street. Those times.

8 A. I felt, honestly, I felt lost. Not in control. I

9 ain't know what was going on.

10 Q. Did you feel safe?

11 A. No.

12 Q. There's been testimony when you were in school one

13 time, you got your face punched pretty hard. Do you remember

14 that?

15 A. Not vividly.

16 Q. Now, since you've been in the Department of

17 Corrections, you moved around quite a bit; is that fair to say?

18 A. Yes, sir.

19 Q. They've had you at Lee Correctional?

20 A. Yes, sir.

21 Q. McCormick?

22 A. Yes, sir.

23 Q. Perry?

24 A. Yes, sir.

25 Q. Have you been injured any since you've been in the

1 Department of Corrections?

2 A. Yes, sir. I've been stabbed multiple times.

3 Q. You were stabbed in July of 2016; is that correct?

4 A. Yes, sir.

5 Q. Shortly after that, about a month, month-and-a-half
6 after that, they found a weapon in your cell. Do you remember
7 that?

8 A. Yes, sir.

9 Q. Why did you do that?

10 A. Being incarcerated around all the dopes, I had to
11 have something to protect myself 'cause I've been stabbed. I
12 seen a king of people get stabbed.

13 Q. Have you thought about what happened on the night
14 in question that we're talking about?

15 A. Yes, sir. Yes, sir. Every single day. 17 years
16 straight.

17 Q. More than half your life you've already been in the
18 Department of Corrections; correct?

19 A. Yes, sir.

20 Q. You've been thinking about it?

21 A. Yes, sir.

22 Q. What have you been thinking about?

23 A. Situation never occurred. I can't -- I can't -- I
24 can't pray enough or ask God for forgiveness enough for the
25 situation that happened. Like I say, my family, the victim's

1 family, Howze's family, I know everybody hurting. I just
2 can't -- can't understand why the situation happened or why I
3 had to be a part of it. God makes no mistakes, so I don't
4 know. I'm just living daily and striving better myself.

5 Q. How old are you now?

6 A. Thirty-three.

7 Q. Have you thought about the possibility -- I imagine
8 you have. Have you thought about the possibility of maybe some
9 day getting out?

10 A. Yes.

11 Q. When you think about getting out, what do you think
12 about doing?

13 A. I just want to help -- help people and try to
14 prevent gun violence like what happened to me. And I want to
15 raise my son and have more children and just be something
16 successful and a success story.

17 Q. How old is your son?

18 A. Sixteen.

19 Q. Do you know who he lives with?

20 A. He lives with his mother.

21 MR. MORIN: Answer any questions Mr. Barnette asks,
22 please.

23 THE COURT: Mr. Barnette.

24 MR. BARNETTE: May it please The Court, Your Honor.

25 THE COURT: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. BARNETTE:

3 Q. Mr. Jeter, that .25 was not the gun you had that
4 night, was it?

5 A. Yes, sir.

6 Q. That was not the gun; correct?

7 A. It was.

8 Q. Now, we went through the trial and your mother and
9 you both testified under cross that, that wasn't the gun. We
10 have the jail phone call.

11 A. Sir, I never said it wasn't. I never said it
12 wasn't. Jail phone calls, my family was striving to come up
13 with something where they got it from. I told them that we
14 don't have to come up with no story. Just tell the truth. And
15 that's what the tapes -- that's what you hear on the tapes.
16 They were just trying to come up with a situation saying where
17 the gun came from.

18 Q. I understand that. You testified before you was
19 confronted, the .25 was the gun you had that night. Matter of
20 fact, you were getting ready to get tried yourself back in
21 September 2005 when y'all produced the gun and gave it to the
22 Solicitor's Office; isn't that correct, sir?

23 A. Yes, sir.

24 Q. That wasn't the gun that you had that night;
25 correct?

1 A. No, sir.

2 Q. Which one is it?

3 A. It was the gun.

4 Q. Well, you testified in a courtroom before, back in
5 March 2006, that it wasn't. You just told me that it wasn't.

6 It was a gun that your mom -- which I understand
7 your mom trying to protect you. I understand that. I'm not
8 saying it's right. That wasn't the gun, was it?

9 A. Yes, sir, it was. I never said it wasn't.

10 MR. BARNETTE: The transcript will speak for
11 itself.

12 BY MR. BARNETTE:

13 Q. You're not taking responsibility for anything you
14 did in this case, are you?

15 A. Yes, sir, I take full responsibility everything I
16 did.

17 Q. What did you do?

18 A. I was there. I bought a gun. I had a gun that
19 night. And I was with someone who, who, we did something
20 wrong. I was always forthcoming with the fact that I was with
21 the gun. I never denied it.

22 Q. Was this a robbery over marijuana because he was
23 mad at him, or what was the deal?

24 A. It was never intended to rob or burglarize
25 Mr. Spicer's house.

1 Q. So your intent -- so you went over. You had a mask
2 on; right?

3 A. Yes, sir.

4 Q. You had a gun?

5 A. Yes, sir.

6 Q. Right?

7 THE COURT: I need you to say yes or no.

8 THE WITNESS: Yes, sir.

9 BY MR. BARNETTE:

10 Q. So you want This Court today, just like you wanted
11 to believe back in March 2006, that you had nothing to do with
12 any of this?

13 A. I don't understand your question.

14 Q. Your testimony is you had nothing to do with what
15 happened on December 8, 2004 to Tavaris Howze that night?

16 A. I was merely present.

17 Q. You didn't know what was going to happen. You just
18 had a gun with you just to have a gun and mask on?

19 A. I mean, yes, sir.

20 Q. If you're going to tell the truth, why make up a
21 story? That gun, you didn't get that .25 on the basketball
22 court. It was your aunt's gun; right? Aunt Lilly's?

23 A. No, sir.

24 Q. You realize the judge has the transcript. She's
25 going to have it and she's going to review your testimony --

1 MR. MORIN: I think he asked the question. I ask
2 that he move on to the next one.

3 THE COURT: I will allow him to finish his question
4 and the witness needs to answer.

5 BY MR. BARNETTE:

6 Q. I want to give you a chance like Mr. Vieth gave you
7 a chance in cross. Mr. Bulsa gave you a chance in cross to
8 correct your story. This is your chance to come clean.

9 What happened that night?

10 A. Sir, I was -- I was there. A reckless situation
11 occurred. It was no plan, nothing. I was there. Like I say,
12 just a reckless disregard for life or whatever happened. It
13 wasn't no plan.

14 Q. Mr. Lyles and you were friends; right?

15 A. Sir?

16 Q. You and Mr. Lyles was friends?

17 A. Yes, sir.

18 Q. You went over with him; is that right?

19 A. Correct.

20 Q. He's the one that knew the person that lived there;
21 right?

22 A. Correct.

23 Q. You didn't know him, did you?

24 A. No.

25 Q. He had his face exposed so he could talk to the

1 guy; is that right?

2 A. Yes.

3 Q. You was right there. You had to see what happened?

4 A. No, I was standing -- I was not standing right
5 there.

6 Q. Where were you then?

7 A. I was standing somewhere, in another area, waiting
8 on him to get what he came to get for, and we was going to
9 leave.

10 Q. How far was you away from him?

11 A. A good bit.

12 Q. Good bit. Tell me how far.

13 A. Maybe about 20, 24. Maybe 30 feet.

14 Q. You're claiming this far away about?

15 A. Something like that.

16 Q. There's not enough room in that area for that.

17 A. I mean, I was standing by the balcony, you know
18 what I'm saying, to the door, to the balcony. I guess I gave
19 an assumption of about 24 feet, sir.

20 Q. If you didn't have anything to do with this case,
21 why didn't you tell anybody else about it? If you was merely
22 present.

23 A. I don't understand.

24 Q. I'll ask the question again. Why didn't you tell
25 anybody else about this if you're just merely present? Why

1 didn't you tell somebody else that Mr. Lyles did this, he shot
2 this guy?

3 A. I told my mother and, she turned me in about it. I
4 did tell someone.

5 Q. That was the third statement you made when she took
6 you in. The first two you gave was at the school; right?

7 A. Right.

8 Q. And the guidance counselor was there; is that
9 right?

10 A. Right.

11 Q. Third one your mother was there?

12 A. Right.

13 Q. And the third one wasn't correct, was it?

14 A. I don't recall.

15 Q. I can bring out the transcripts and show you. You
16 testified to Mr. Vieth it was a half truth, didn't you?

17 A. I don't recall, sir.

18 Q. Even after y'all turned the gun over to stop your
19 first trial, you and your attorney -- once your family got the
20 gun for you and everything -- gave a fourth statement that was
21 different from the third statement; correct?

22 A. Yes.

23 Q. Why didn't you tell that story the first time
24 around?

25 A. Scared. Didn't want -- I didn't really want to

1 tell no one 'cause I was scared. I was scared out of my mind.

2 Q. The third statement your mom was there with you;
3 correct?

4 A. Correct.

5 Q. She wanted you to tell the truth then. You didn't
6 tell the whole truth, did you?

7 A. I was -- I was still kind of scared. And I mean...

8 MR. BARNETTE: One moment, Your Honor.

9 THE COURT: Certainly.

10 MR. BARNETTE: One more question.

11 THE COURT: Certainly.

12 BY MR. BARNETTE:

13 Q. You're not taking responsibility for what you did
14 that night, are you?

15 A. Yes, sir.

16 Q. You're not. I want to make sure that's clear for
17 the record.

18 A. I am taking responsibility.

19 Q. You're saying that you're just merely present.
20 You're not taking responsibility for this crime, are you?

21 MR. MORIN: Your Honor, that calls for a legal
22 conclusion.

23 THE COURT: I'm going to allow him to answer the
24 question.

25 THE WITNESS: If you're asking me did I murder

1 someone, no, I did not murder no one. So I can't take
2 responsibility for nothing I didn't do.

3 BY MR. BARNETTE:

4 Q. You were there with Mr. Lyles, weren't you?

5 A. Yes, I was.

6 Q. And you realize --

7 A. I already admitted that.

8 Q. And the only witness that saw you there that night,
9 saw you with the gun, not Mr. Lyles.

10 This is your chance to come clean. You've been
11 convicted of a crime. This is your sentencing, re-sentencing
12 under Aiken versus Byers. I mean, this is it. This is your
13 last chance. If you want to confess your sins, right now is
14 the time. Because all these people deserve that. Your family.
15 Their family.

16 Are you going to answer the question?

17 A. What was the question?

18 Q. Are you going to tell the truth?

19 A. I am telling the truth, sir.

20 MR. BARNETTE: Thank you, Your Honor. That's all
21 the questions I have.

22 THE COURT: Mr. Morin.

23 MR. MORIN: Your Honor, I would just say Mr. Jeter
24 gave sworn testimony in the transcript at 420. I would refer
25 to that. Thank you.

1 THE COURT: I'll take a look at the transcript.

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

3 MR. BARNETTE: I ask you to look at the cross by
4 Mr. Bulsa and Mr. Vieth. I'll give you the page numbers, I
5 think you can find them.

6 THE COURT: Mr. Jeter, you can step down.

7 MR. MORIN: That's all I have, Your Honor.

8 THE COURT: Thank you.

9 (The witness exited the stand).

10 THE COURT: Mr. Barnette.

11 MR. BARNETTE: Your Honor, I have no reply.

12 THE COURT: Very well. If anybody -- this has been
13 a very succinct case. A lot more succinct than I had
14 anticipated. I know you two have worked together long and hard
15 on just getting the exhibits and things pared down. I thought
16 you both did very thorough, excellent jobs.

17 If anybody wants to make any kind of closing
18 statement, perfectly fine with me. Otherwise, I've taken notes
19 throughout. My law clerk's taken notes throughout. I'm going
20 to read the entirety of everything you provided.

21 MR. BARNETTE: I think you understand our
22 arguments. I think through the testimony and the questions
23 I've asked and what was presented, I'm not going to do a
24 closing unless you ask us to do a closing.

25 THE COURT: I'm not asking anybody to do it. And

1 as I said, if this had been a three, four-day type of deal, I'd
2 ask you to sum things up.

3 As I've alluded to, I'm going to take this matter
4 under advisement. That means I'm going to take everything and
5 look at it.

6 MR. BARNETTE: I just want to make sure he didn't
7 want to.

8 MR. MORIN: I'm good.

9 THE COURT: I'm sorry. I should've said he shook
10 his head no for the record.

11 I'm going to take this matter under advisement and
12 I'm going to review everything that's been provided. I'm going
13 to look at my notes again. I certainly want to read the
14 guiding case law in this area.

15 I anticipate I would have a decision in this case
16 within two weeks. I anticipate having a decision and issuing
17 an order within two weeks. Thank you so much.

18 MR. BARNETTE: Thank you, Your Honor.

19 THE COURT: We will be in recess.

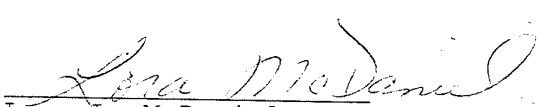
20 (The hearing was concluded at 1:00 p.m.)
21
22
23
24
25

CERTIFICATE OF REPORTER

I, Lora McDaniel, Registered Professional Reporter
and Notary Public for the State of South Carolina at Large, do
hereby certify that the foregoing transcript is a true,
accurate, and complete record.

I further certify that I am neither related to, nor
counsel for, any party to the cause pending or interested in
the events thereof.

Witness my hand, I have hereunto affixed my official
seal this 3rd day of May, 2022 at Spartanburg, Spartanburg
County, South Carolina.


Lora L. McDaniel,
Registered Professional Reporter
My Commission expires:
August 9, 2026

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
3
4 The State,)
-vs-) TRANSCRIPT OF RECORD
5) 2005-GS-42-880;888;3711;2628
6 Joshua Jeter and)
Lance Lyles,) 2005-GS-42-879;890;2627;3712
7 Defendants.) March 13 - 17, 2006
Spartanburg South Carolina

8
9
10 B E F O R E:
11 HONORABLE J. DERHAM COLE, JUDGE; and a jury

12
13 A P P E A R A N C E S:
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25 ORIGINAL

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1 (Proceedings March 13, 2006)

2 THE COURT: Do we have any matters to address in the

3 case before we pick a jury?

4 MS. ANDERSON: Yes, sir.

5 THE COURT: Where are y'all's clients?

6 MS. ANDERSON: Mine is in the jail room.

7 THE COURT: Let's bring the clients in too.

8 (Pause.)

9 THE COURT: First case to be called is the State vs.

10 Lance Lyles and the State vs. Joshua Jeter.

11 MR. BULSA: Correct, Your Honor.

12 THE COURT: Ms. Anderson, you represent which

13 defendant?

14 MS. ANDERSON: I represent Joshua Jeter.

15 THE COURT: And, Mr. Vieth, you represent Mr. Lyles?

16 MR. VIETH: Yes, sir.

17 THE COURT: All right. Any matters we need to address

18 prior to the jury panel being brought around?

19 MR. BULSA: Yes, sir, Your Honor. I think this is

20 going to tie in with their motion, Your Honor.

21 But Mr. Jeter has given statements to the police. We

22 have redacted those statements to remove any indication or

23 inference of Mr. Lyles, any direct inference to Mr. Lyles.

24 I believe there has been some motions going to be to

25 sever the two trials because of these statements. I would

1 like to get this marked so the judge can have them.

2 (Witness interview form marked State's Exhibit No. 1
3 for Identification; pre-interrogation waiver form and
4 statement dated December 11, 2004, marked State's Exhibit
5 No. 2 for Identification; pre-interrogation waiver form and
6 statement dated December 14, 2004, marked State's Exhibit
7 No. 3 for Identification; pre-interrogation waiver form and
8 statement dated September 14, 2005, marked State's Exhibit
9 No. 4 for Identification; witness interview form marked
10 State's Exhibit No. 5 for Identification.)

11 MR. BULSA: For the record, Your Honor, I have marked
12 each statement individually.

13 Statement two is the pre-interrogation waiver forms,
14 and I have copies notated by the date and time on each
15 statement given.

16 Mr. Lyles has given one statement, Your Honor. I have
17 also redacted from it any reference to Joshua Jeter. I
18 made an error on Lance Lyles.

19 (Whereupon, State's Exhibit No. 5 was renumbered.)

20 THE COURT: All right. What matters do we have to
21 address?

22 MR. VIETH: Your Honor, I will be glad to address on
23 behalf of Mr. Lyles.

24 We had obviously filed a motion to suppress based on
25 the statements given in this case.

1 This, Judge, is a case involving a murder, attempted
2 armed robbery, I think burglary first, and possession of a
3 weapon by a person under the age of 21. Four indictments.

4 The cases involve some statements that were given,
5 four statements I believe given, by Codefendant Jeter; one
6 statement given by Mr. Lyles.

7 Naturally the right-of-confrontation issue is a
8 concern to us looking at the four statements. In looking
9 at what Mr. Bulsa has attempted to do on the redaction,
10 quite frankly, it eliminates any inference to my client or
11 any connection to him under Brewton. I am not sure that I
12 would have a motion based on the documents that he's handed
13 up if that would go toward a severance.

14 If I am correct, and I assume he has handed up
15 statements that are dated 9/14/05 witnessed by
16 Ms. Brewster; then there was a-witnessed-by-Pat-Anderson;
17 and then I believe one witnessed by Stacy Watson dated the
18 1st and another one witnessed by Ms. Brewster. I assume
19 that's the -- any statements.

20 MR. BULSA: I misread one signature, so there is one
21 slight change.

22 THE COURT: What's going on? Why are we letting these
23 people go in and out? They just came in and now they are
24 going out. What's going on?

25 THE WITNESS: I believe they are in the wrong

1 courtroom, Your Honor.

2 THE COURT: I have got to have some help here,
3 fellows.

4 (Pause.)

5 THE COURT: All right. Mr. Vieth.

6 MR. VIETH: One second. Four statements, one
7 witnessed by Dale Willingham (sic) and David Hearst.

8 There's no inference that can be drawn to my client in
9 that statement, so I really don't have any objection to
10 that redaction.

11 THE COURT: Now, let me be sure I have these
12 redactions right. I don't have -- you said the 9/14.

13 MR. VIETH: Well, that's what I had.

14 MR. BULSA: That's the 2005, Your Honor. That should
15 be the last one.

16 THE COURT: All right. I have got a 9/14 statement
17 and then a 12/10 statement, a 12/11 statement and 12/14
18 statement.

19 MR. VIETH: Right.

20 THE COURT: Okay.

21 MR. VIETH: You know, doing it in the way they were
22 given, it looks like you've got a 12/10/2004, a 12/11/2004,
23 a September the 14th of 2005 and then a December 14, no
24 excuse me, there's a December of 2004.

25 All right. Three statements given in '04 then, all in

1 the month of December, 12/10/04, 12/11/04, 12/14/04; and
2 then one given 9/14/05 is what I have been handed.

3 THE COURT: Okay. Well, let's begin with the 12/10/04
4 statement that was given at 11:45.

5 MR. VIETH: Correct. That statement, I've reviewed it
6 with my client and his family, and there's no inference to
7 my client being mentioned in that. So I don't think I
8 would have any confrontation issue on that one.

9 THE COURT: Okay.

10 MR. VIETH: On 12/11/04, there will be no
11 confrontation issues there.

12 THE COURT: Okay.

13 MR. VIETH: 12/14/04, no redaction issues on that one.

14 THE COURT: All right.

15 MR. VIETH: 9/14/05, Your Honor, again, I think as far
16 as confrontation issues it has been sanitized fairly well
17 from my client's standpoint, so we would have no objections
18 on those.

19 THE COURT: All right.

20 MR. VIETH: Ms. Anderson I am certain would address
21 those issues.

22 THE COURT: Is that all you have?

23 MR. VIETH: As to -- yes, sir, basically. I didn't
24 know what we were going to be looking at, so I had moved to
25 sever, but I in the severance as to me not being able to

1 cross-examine the statements, these statements do not in
2 any way implicate there even being a codefendant, much less
3 my client. So I would withdraw or not have any --

4 THE COURT: So you don't have any motions to make.

5 MR. VIETH: On the severance.

6 THE COURT: Okay. Ms. Anderson.

7 MS. ANDERSON: Well, Your Honor, my only problem with
8 them is they are so sanitized it sounded like my guy was
9 there all by himself. And, you know, I would hate to see
10 these statements used.

11 THE COURT: Well, what difference does it make whether
12 he was there by himself or not?

13 MS. ANDERSON: Well, it makes a lot of difference in
14 the theory of my case.

15 THE COURT: Well, he can testify, I mean.

16 MS. ANDERSON: Yes, sir.

17 THE COURT: The fact that these statements have been
18 redacted doesn't preclude him from testifying about anybody
19 that might have been there.

20 MS. ANDERSON: I understand that, Your Honor. But I
21 agree he has taken out every inference concerning or any
22 mention of the codefendant.

23 THE COURT: Okay. And you would agree that's
24 appropriate.

25 MS. ANDERSON: Yes, sir.

1 THE COURT: Okay.

2 MS. ANDERSON: Now, I had a motion to remand, and I
3 believe it's --

4 THE COURT: Do I understand there is no motion to
5 sever by either defendant?

6 MR. VIETH: Yes, sir. That's correct.

7 THE COURT: Okay.

8 MS. ANDERSON: I don't know that I have any legal
9 ground to ask for a severance.

10 THE COURT: Okay.

11 MR. BULSA: While we're on the statements, there is a
12 statement that I've handed to the Court on Lance Lyles that
13 I would ask Ms. Anderson to address.

14 THE COURT: All right. Have you looked that at that
15 redaction, Ms. Anderson?

16 MS. ANDERSON: I believe this is -- Your Honor, I have
17 no problem with this, with his redacted statement.

18 THE COURT: All right. Neither defendant has a motion
19 for severance. Any other motions?

20 MS. ANDERSON: Yes, sir. I don't know if we can bring
21 this up now, but one thing I would ask, it's my
22 understanding that Mr. Bulsa has an arrest warrant for my
23 client's mother. And I would ask that if he could, could
24 she turn herself in at the end of the trial because I do, I
25 need her here during the trial.

1 THE COURT: Well, I don't have the slightest idea what
2 you're talking about. But what is it, Mr. Bulsa? Do you
3 know?

4 MS. ANDERSON: It pertains to this case. It's a --
5 has a warrant for obstruction of justice and --

6 THE COURT: Well, who has the warrant?

7 MS. ANDERSON: Mr. Bulsa said he had one.

8 MR. BULSA: The city police obtained one last Friday,
9 I believe.

10 THE COURT: They have the warrant?

11 MR. BULSA: Yes, sir. They tried to serve it over the
12 weekend, and unfortunately they weren't able to.

13 THE COURT: Well, I mean, if they have a warrant, they
14 have an obligation to serve it, except if she's under
15 subpoena they can't serve it here at the courthouse. But
16 if they have a warrant, I assume they understand what their
17 obligations are about service of warrants.

18 MS. ANDERSON: Well, all I am asking, would it be
19 possible if she agrees to turn herself in at the end of the
20 trial. I think it's important for my client's morale to
21 have his mother here during the trial.

22 THE COURT: Well, we can certainly make -- I can make
23 arrangements to have her here during the trial. But, now,
24 I can't direct a law enforcement agency when or when not to
25 execute the service of a warrant. I'm not getting into

1 that. You will have to address that with the city police,
2 and Mr. Bulsa if he wants to participate.

3 MS. ANDERSON: All right. I have a motion to remand
4 to family court. Is this the time to do it? I think Mr.
5 Vieth is joining me in on this.

6 THE COURT: Yes, ma'am.

7 MS. ANDERSON: Do you have a copy of it?

8 THE COURT: No, ma'am.

9 MS. ANDERSON: May I approach?

10 THE COURT: Yes, ma'am.

11 MS. ANDERSON: May I proceed?

12 THE COURT: Yes, ma'am.

13 MS. ANDERSON: Your Honor, I am making a motion to
14 remand this to family court based on the following grounds:
15 My client was 16 years of age on the date that this
16 occurred. I believe his birthday was the next day. He
17 turned 17. But he was 16 on that day. Well, two days
18 later he turned 17. And I believe that Mr. Vieth's client
19 was also 16 at the time.

20 My client had no criminal record whatsoever. He was
21 enrolled in the university school with District Seven, and
22 he had passing grades.

23 And I think what you have to do -- I mean, the current
24 case law allows the solicitor to bring him to circuit
25 court, but I think you have to look at Kent vs. United

1 States about whether jurisdiction should be waived by the
2 family court. And it would be the age factors with the
3 seriousness of the offense. I agree it was very serious.

4 My client has been incarcerated the entire time since
5 his arrest. Mr. Lyles has not.

6 Whether it was committed in an aggressive, violent and
7 premeditated and wilful manner, this was an accident. I
8 don't believe that this was premeditated or planned at all
9 in any way.

10 And, yes, entry occurred. Someone died. Since
11 both -- now, there wasn't indictments returned. I mean, I
12 still feel despite this -- he was 16. He was immature. He
13 has no record. I don't think -- I think that he could
14 be -- the public could be protected by him. I think he is
15 a good candidate for rehabilitation and he could receive
16 that through the Department of Juvenile Justice rather than
17 trying him as an adult.

18 I agree his charges, both charges, are very serious.
19 Someone died. But this is also a very young man who is not
20 fully mature. And I do believe that the family court could
21 address the seriousness of these matters. And I would ask
22 that it be remanded to the family court.

23 And I did attach cases to that, State vs. Graham, and
24 then about the children's code. All of that is attached.
25 And I have his school record as far as his grades if you

1 are interested in looking at them.

2 THE COURT: All right. Mr. Balsa.

3 MR. BULSA: Thank you, Your Honor.

4 Your Honor, this circumstance is handled specifically
5 by Statute 20-7-6605.

6 THE COURT: 66 or 76?

7 MR. BULSA: 6605, Subsection (1), where it states the
8 definition of a child. A child does not mean a person 16
9 years of age or older who is charged with a class A, B, C
10 or D felony as defined in Section 16-1-20 for a felony
11 which provides a maximum, determines imprisonment for 15
12 years or more.

13 Your Honor, clearly murder was the original warrant
14 that he was charged under, is a Class A felony.

15 This definition further goes on to read that -- skip
16 to it -- "May be remanded to the family court for
17 disposition of the charge at the discretion of the
18 solicitor."

19 Your Honor, we think it's clear that the only party
20 that can remand this would be the solicitor's office based
21 on their review of the case, and we have chosen not to do
22 that.

23 THE COURT: All right. Ms. Anderson, do you want to
24 respond?

25 MS. ANDERSON: I understand that they can. It wasn't

1 under -- that's under 20-7-6605. It is at the solicitor's
2 discretion. But if you look at 20-7-7605, Section (3), it
3 permits the circuit court to remand it for disposition.

4 I think that gives you the right if you feel that it's
5 necessary that he can be -- that the case can be remanded
6 to family court. I don't know if Mr. Vieth wanted to join
7 in.

8 MR. VIETH: I definitely join in on the motion, Your
9 Honor.

10 I don't think the Court can make any finding without
11 testimony to determine whether it should be remanded. I
12 don't think you can just make a decision from the bench
13 without testimony, analogist to a family court judge having
14 a hearing as to a waiver. But I do join in on the motion.

15 (Pause.)

16 THE COURT: All right. I will have to read some of
17 these statutes and address that issue shortly.

18 What other motions do we have, if any?

19 MR. BULSA: I have a motion that would not affect jury
20 selection.

21 THE COURT: Okay. Does the defense have any
22 additional motions?

23 MS. ANDERSON: Again, I have a suppression motion, but
24 I don't think that would affect picking the jury.

25 THE COURT: Okay. We are going to take ten minutes,

1 and then we will be back.

2 MR. BULSA: Thank you, Your Honor.

3 (Whereupon, a recess was taken.)

4 THE COURT: With regard to the motion to transfer the
5 case to family court or to have a hearing for me to
6 determine whether or not it ought to be in family court, it
7 appears from a plain reading of Section 20-7-7605 that it
8 relates to jurisdiction over a case, involving a child must
9 be transferred, and sets forth several provisions as to how
10 they are transferred. But they all relate to cases
11 involving a child.

12 By definition, 20-7-6605 defines a child, and it
13 excludes from the definition of a child any person 16 years
14 of age or older who is charged with a Class A, B, C or D
15 felony, which murder would be included.

16 So based upon the reading of those two statutes, I do
17 not see where this Court has discretion to remand the case
18 to the family court for disposition.

19 It appears that by statute the legislature has placed
20 that discretion into the province of the solicitor when we
21 are dealing with a child, excuse me, dealing with a person
22 16 years of age who has been charged with the crime of
23 murder.

24 The solicitor does have discretion to remand it, but
25 this Court does not appear to have the same discretion. As

1 I understand it, each of the defendants in this case have
2 been properly indicted by the Spartanburg County Grand
3 Jury, which confers jurisdiction on this Court.

4 So each of the defendants' motions to remand the case
5 to family court for disposition is denied.

6 Any other motions to address before the jury is
7 selected?

8 MR. BULSA: None by the state, Your Honor.

9 MS. ANDERSON: Nothing else, Your Honor.

10 THE COURT: Okay. All right. Now, these incidents
11 are alleged to have occurred where?

12 MR. BULSA: At the Rose Hill Apartments. That's 201
13 Powell Mill Road, Apartment K-306. Those apartments are
14 off W. O. Ezell just on Powell Mill.

15 THE COURT: Any requests for voir dire from the state?

16 MR. BULSA: No specific ones, Your Honor.

17 THE COURT: Defendant Jeter?

18 MS. ANDERSON: Yes, sir. May I approach?

19 THE COURT: Yes, ma'am.

20 MS. ANDERSON: Would you like my witness list?

21 THE COURT: Yes, ma'am.

22 All right. Defendant Lyles.

23 MR. VIETH: No, sir. I have seen Ms. Anderson's
24 proposed, and I agree with that.

25 THE COURT: Do you have a witness list?

1 MR. VIETH: No, sir, but that's my fault. I can get
2 you one real quick. The only witness, I can name on the
3 witness list if any we have --

4 THE COURT: Let me give you this and ask you to write
5 it down on it.

6 Ms. Anderson, this question regarding Spartanburg
7 Methodist College, what does that have to do with the case?

8 MS. ANDERSON: Your Honor, the victim was a student at
9 Spartanburg Methodist College.

10 THE COURT: Okay.

11 MR. BULSA: The state would object to number eight on
12 Ms. Anderson's list.

13 THE COURT: Okay. Am I correct in assuming that the
14 allegations in each of the indictments are the same as to
15 both defendants?

16 MR. BULSA: Yes, sir.

17 THE COURT: All right. Any other matters to address
18 before the panel is brought around?

19 MR. BULSA: No, sir.

20 MR. VIETH: No, sir.

21 MS. ANDERSON: No, sir.

22 THE COURT: Okay. Bring them around. We will have to
23 remove the spectators.

24 (The following takes place in the presence of the jury
25 venire.)

Jury qualification

1 THE COURT: Good morning again, or good afternoon,
2 ladies and gentlemen of the jury panel.

3 We are ready to begin with jury selection in the first
4 case that's going to require some of your participation.
5 The title of the cases are the State vs. Joshua Jeter and
6 the State vs. Lance Lyles.

7 Each of these persons have been accused by the state
8 of having committed the crimes of burglary in the first
9 degree, armed robbery, murder and possession of a firearm
10 by a person under the age of 21 years.

11 Now, when the state brings a charge against another
12 citizen the state brings those charges by way of documents
13 called indictments.

14 Indictments are like warrants. They set forth the
15 charge that has been brought against a person. They are
16 not evidence of anything and they are not proof of
17 anything. They simply contain allegations that the state
18 has brought and that the state has the burden of proving to
19 the satisfaction of a jury beyond a reasonable doubt.

20 Now, by way of these indictments, as I told you, the
21 state alleges that on or about December the 8th of 2004
22 that Joshua Jeter and Lance Lyles did here in Spartanburg
23 County enter the dwelling of Clearance Spicer located at
24 201 Powell Mill Road in the Rose Hill Apartments, Apartment
25 306-K, here in Spartanburg County; and that they entered

Jury qualification

1 that residence without consent and with the intent to
2 commit some crime therein; and that while they were
3 affecting entry or while they were in the residence they
4 were armed with or displayed a deadly weapon.

5 And also they allege that they did also cause physical
6 injury to one Tavaris Howze. And they also allege that
7 that incident, that is the burglary incident, did occur in
8 the nighttime.

9 The state also alleges that Joshua Jeter and Lance
10 Lyles did commit the crime of armed robbery in that they
11 did on December the 8th of 2004 attempt to rob one
12 Clearance Spicer while they were armed with a pistol or
13 other deadly weapon.

14 The state also alleges that the defendants, Joshua
15 Jeter and Lance Lyles, did here in Spartanburg County on or
16 about December the 8th of 2004 commit the crime of murder
17 in that they did wilfully and with malice aforethought kill
18 one Tavaris Howze by means of a gunshot wound and that he
19 died as a proximate result of that wound.

20 And they further allege that Joshua Jeter and Lance
21 Lyles did here in Spartanburg County on or about December
22 the 8th of 2004 unlawfully carrying -- did unlawfully carry
23 about his person a pistol in that each defendant was under
24 the age of 21 years at the time of the incident, and that
25 being in violation of a particular statutory provision.

Jury qualification

1 Now, as to all of those allegations and as to each of
2 the indictments that contain a criminal charge each of the
3 defendants has entered a plea of not guilty. That plea of
4 not guilty places upon the state the burden of proving all
5 of the allegations that they have set forth in each of
6 those indictments, the burden of proving each of the
7 essential elements of each crime that is alleged against
8 each defendant; and therefore the burden is upon the state
9 to establish each defendant's guilt to the satisfaction of
10 12 jurors beyond a reasonable doubt before a verdict of
11 guilty could be returned as to that particular defendant
12 and as to that particular charge.

13 And so we are going to be selecting 13 of you. There
14 will be 12 primary jurors and one alternate juror. And by
15 way of your participation you are going to be called upon
16 to listen to the testimony presented during the trial of
17 the case and to consider any other evidence that might be
18 introduced during the trial of the case.

19 After all of that evidence has been received I will
20 instruct the jury on the law that's applicable to each of
21 these charges, and then you will be called upon to decide
22 the facts from that evidence, apply the law that I will
23 have provided you; and you will determine whether or not a
24 defendant's guilt as to a particular charge has been proven
25 beyond a reasonable doubt.

Jury qualification

1 And if it has, then your verdict would be guilty as to
2 that particular defendant and as to that particular charge.
3 And if the state has failed to satisfy you of a defendant's
4 guilt beyond a reasonable doubt and as to a particular
5 charge, then of course you would return a verdict of not
6 guilty as to that particular defendant and as to that
7 particular charge.

8 Now, before we can begin with jury selection I have
9 got some questions that I am going to ask you. And the
10 purpose of these questions is to determine whether or not
11 there is some reason why any one of you jurors should not
12 be selected to participate in the trial of this particular
13 case.

14 So as those questions are asked of you should you need
15 to respond to them, I'm going to ask that you please stand.
16 And I will address those matters with you individually
17 should that need arise.

18 If at any time during this process you are asked a
19 question that you would prefer not to answer in front of
20 the audience, you just let me know of that fact, and you
21 can come forward. And I will discuss it with you here at
22 the bench, and you can provide me with that information.

23 But, again, it is important and it is required of you
24 that you respond to a question when it does apply to you
25 and you need to provide that information. But if you

Jury qualification

1 prefer to provide that information here at the bench, then
2 I will permit you that opportunity to do so.

3 Now, as I told you, in this case the two defendants,
4 that is the two persons who are accused of these crimes,
5 are Joshua Jeter and Lance Lyles.

6 Let me ask Mr. Jeter, first, if you will please stand
7 and face the jury panel.

8 (Whereupon, Defendant Jeter and Ms. Anderson stood.)

9 THE COURT: All right. Standing with Mr. Jeter is Pat
10 Anderson. She is his lawyer. She will be assisting him in
11 the trial of this case.

12 Thank you. Be seated.

13 The other defendant is Lance Lyles.

14 Mr. Lyles, if you will, please stand and face the jury
15 panel.

16 (Whereupon, Defendant Lyles and Mr. Vieth stood.)

17 THE COURT: Standing with Mr. Lyles is Rick Vieth, his
18 lawyer, who will be assisting him in the trial of this
19 case.

20 In this case one of the persons who is alleged to have
21 been a victim of one or two separate offenses is Clearance
22 Spicer. Where is Mr. Spicer?

23 Mr. Spicer, if you will, please stand and face the
24 jury panel.

25 (Whereupon, the victim stood.)

Jury qualification

1 THE COURT: An additional person who is alleged to be
2 a victim, and being a victim of the crime of murder, is one
3 Tavaris Howze. Who is present from Mr. Howze's family?

4 I will ask you if y'all will please stand so the jury
5 can see you. And by seeing them you may be able to
6 identify whether or not you knew Tavaris Howze. Is that
7 how that's pronounced?

8 MR. BULSA: Yes, sir.

9 (Whereupon, the victim's family stood.)

10 THE COURT: All right. Now, in addition to each of
11 the two defendants and in addition to those persons who are
12 alleged to be the victim, victims, and in addition to the
13 lawyers involved in the trial of this case, and Mr. Bulsa
14 and Mike Smith who are assistant circuit solicitors for the
15 7th Judicial Circuit will be presenting the case on behalf
16 of the state.

17 In addition to those persons who have already been
18 identified for your benefit, I'm going recite a list of
19 potential witnesses.

20 Now, all of these people may not be called as
21 witnesses, but they have some information or are somehow
22 related to the case, and therefore they may be witnesses.

23 That decision will be made perhaps at a later time.
24 But all of them are potential witnesses. So I am going to
25 recite a list of each of the persons who are potential

Jury qualification

1 witnesses.

2 And the reason I am identifying all of these people
3 for you, that includes the defendants, the alleged victims,
4 the lawyers and the families and that sort of thing, the
5 reason I am identifying all of these people for you is
6 because I need to know if any juror is connected by blood
7 or by marriage to any of these persons.

8 I also need to know whether or not you have any type
9 of social, business, professional or other relationship
10 with any of these persons who have been identified; and I
11 also simply need to know whether or not you know any of
12 these people through any contact, any type of relationship,
13 or you just met them somewhere or in some fashion know who
14 they are.

15 Now, in addition to those persons who have been
16 identified, the following are potential witnesses: Doris
17 Boozer, Toby Bradley and Paula Brewster, each employed with
18 the Spartanburg Public Safety Office.

19 We also have Mary Coleman. Where is Mrs. Coleman
20 employed or what's her connection?

21 MR. BULSA: Your Honor, she was a neighbor.

22 THE COURT: Mary Coleman lives in the neighborhood
23 where this incident is alleged to have occurred, which, as
24 I say, was off Powell Mill Road, which is off W. O. Ezell
25 Boulevard, located at the Rose Hill Apartment Complex.

Jury qualification

1 We also have Dan DeFreese with the South Carolina Law
2 Enforcement Division; Brian Durbin, Ed Guthro, Spartanburg
3 Public Safety Office; Marcus Hardy; Sherry Hardy; Richard
4 Hause, Spartanburg Public Safety Office; David Hearst,
5 Spartanburg Public Safety Office; Scott Hill; David Hogsed,
6 Spartanburg County Sheriff's Department; Ernest Howze, a
7 resident of Chester; Kerry Huff; Travis Jeter; Steve Lamb,
8 Spartanburg Public Safety Office; Leonard Lyles, Sr.;
9 Melissa Lyles; April Mayberry; C. D. Norkett with the
10 Spartanburg Public Safety Office; Russell Porter,
11 Spartanburg Public Safety Office; David Reeves, Spartanburg
12 Public Safety Office; Tony Rice; Johnny Robinson; Clearance
13 Spicer; J. Steadman, Spartanburg Public Safety Office;
14 William Swanlund, Spartanburg Public Safety Office; Robert
15 Talanges, Spartanburg County Sheriff's Department; Hugh
16 Tang, State Law Enforcement Division; Chris Taylor,
17 Spartanburg Public Safety Office; Freddie Thompson,
18 Spartanburg Communications Department; Beth Vaughn,
19 Spartanburg County Sheriff's Department; Dale Winningham,
20 Spartanburg Public Safety Office; David Wren, pathologist,
21 Spartanburg Regional Medical Center; Stacy Watson, employed
22 at the university school, Spartanburg County; Robert
23 Ledford. And those appear to be all of the potential
24 witnesses in the case.

25 Now, is there any member of the jury panel that has

Jury qualification

1 any connection -- blood, marriage, social or business,
2 professional relationship -- with any person who has been
3 identified for your benefit, as well as whether or not you
4 happen to know in some fashion any of these persons who
5 have been identified for your benefit? If you need to
6 respond to the question, I am going to ask that you please
7 stand.

8 Those who are standing -- is everyone standing that
9 needs to respond to the question?

10 All right. Those who are standing, I am going to ask.
11 I will start to my left and work across the room. If you
12 will, please give me your name and your juror number, and
13 then tell me how the question relates to you.

14 JUROR NUMBER 137: Crystal Taylor, No. 137. And David
15 Hogsed works with my husband. I've met him.

16 THE COURT: Okay. And your husband works?

17 JUROR NUMBER 137: Spartanburg County.

18 THE COURT: Spartanburg County Sheriff's Department?

19 JUROR NUMBER 137: Yes.

20 THE COURT: Okay. Would that fact in any way
21 interfere with your ability to be fair and impartial if you
22 were selected as a juror?

23 JUROR NUMBER 137: No.

24 THE COURT: You said you are 137?

25 JUROR NUMBER 137: 137.

Jury qualification

1 THE COURT: Okay. Thank you, ma'am. You may be
2 seated.

3 Yes, ma'am.

4 JUROR NUMBER 52: 52, Sandra Skinner. I also know
5 David Hogsed.

6 THE COURT: And how do you know Mr. Hogsed?

7 JUROR NUMBER 52: I have known him since he was a kid.

8 THE COURT: All right. Would that have any impact
9 upon your decision?

10 JUROR NUMBER 52: No.

11 THE COURT: Thank you. Be seated.

12 Yes, ma'am, in the green.

13 JUROR NUMBER NINE: Juror No. 9. Doris Boozer is a
14 friend of my family.

15 THE COURT: And would that have any impact upon your
16 decision in the case?

17 JUROR NUMBER NINE: No, sir.

18 THE COURT: Thank you. Be seated.

19 Yes, ma'am.

20 JUROR NUMBER 54: Linda Fortner, 54. I know the
21 lawyer, Pat Anderson.

22 THE COURT: And how do you know Ms. Anderson?

23 JUROR NUMBER 54: As an associate.

24 THE COURT: Ma'am?

25 JUROR NUMBER 54: As an associate. I met her several

Jury qualification

1 years ago.

2 THE COURT: And you were what number?

3 JUROR NUMBER 54: 54.

4 THE COURT: 54. Would that have any bearing upon your
5 decision?

6 JUROR NUMBER 54: No, sir.

7 THE COURT: All right. Thank you. Be seated.

8 Yes, ma'am.

9 JUROR NUMBER 15: Angela Brown, No. 15. I have
10 occasional business communication with the attorneys.

11 THE COURT: With which attorneys?

12 JUROR NUMBER 15: Both Ms. Anderson and Mr. Vieth.

13 THE COURT: Okay. And would that have any bearing
14 upon your decision in the case?

15 JUROR NUMBER 15: No, sir.

16 THE COURT: All right. Thank you. You may be seated.

17 Yes, sir.

18 JUROR NUMBER 73: Mark Holden, Number 73. I am
19 familiar with all of the police officers at the city of
20 Spartanburg. I work with them, and the people at this
21 solicitor's office and the defense attorneys.

22 THE COURT: Would any of those facts or any of those
23 relationships have any impact upon your decision in the
24 case?

25 In other words, could you still be fair and impartial

Jury qualification

1 to everybody, notwithstanding you might have some
2 professional connection with these persons?

3 JUROR NUMBER 73: Yes, sir, I could.

4 THE COURT: All right. So you could put aside any
5 connection and be fair and impartial to both?

6 JUROR NUMBER 73: Yes, sir, I could.

7 THE COURT: All right. Thank you. Be seated.

8 Yes, sir.

9 JUROR NUMBER SEVEN: Juror No. 7, Robert Andrews. I
10 attend church with the family of Steve Lamb.

11 THE COURT: All right. And would that fact in any way
12 affect your judgment in the case?

13 JUROR NUMBER SEVEN: No, sir.

14 THE COURT: Thank you. Be seated.

15 Yes, ma'am.

16 JUROR NUMBER 25: Juror No. 25, Bethany Cecil. I have
17 a relationship, social relationship, with Ms. Anderson.

18 THE COURT: Would that have any bearing upon your
19 decision in this case?

20 JUROR NUMBER 25: No, sir.

21 THE COURT: Thank you, ma'am. You may be seated.

22 Yes, sir.

23 JUROR NUMBER 134: Juror 134, Tad Smith. I know Steve
24 Lamb.

25 THE COURT: And how do you know Mr. Lamb?

Jury qualification

1 JUROR NUMBER 134: He was a DARE officer when I was in
2 sixth grade.

3 THE COURT: Would that have any bearing upon your
4 decision in the case?

5 JUROR NUMBER 134: No, sir.

6 THE COURT: All right. Thank you. Be seated.
7 Yes, ma'am.

8 JUROR NUMBER 167: 167, Jenny Toney. I attend church
9 with Mr. Bulsa. I don't know him personally.

10 THE COURT: Would that have any bearing upon your
11 decision in the case?

12 JUROR NUMBER 167: No, sir.

13 THE COURT: Said you are 167.

14 Okay. Yes, ma'am.

15 JUROR NUMBER 81: Kathleen James, No. 81. I know Mr.
16 Vieth. He represented Joe Gibson's Auto World for whom I
17 used to work on several cases that I was involved in.

18 THE COURT: Would that have any bearing upon your
19 decision in this case?

20 JUROR NUMBER 81: No, sir.

21 THE COURT: All right. Thank you. You may be seated.
22 Anyone else need to respond to that question?

23 (No response.)

24 THE COURT: All right. Now, I told you that this is a
25 case that the state alleges occurred back on December the

Jury qualification

1 8th of 2004.

2 They allege that it occurred at the Rose Hill
3 Apartment Complex, specifically Apartment 306-K, which are
4 located at 201 Powell Mill Road here in the city of
5 Spartanburg off of W. O. Ezell Boulevard.

6 They allege that each of the defendants committed the
7 crime of burglary by entering Mr. Spicer's home without his
8 consent and with the intent to commit a crime therein; and
9 that further they committed an attempted robbery as to
10 Mr. Spicer and committed the crime of murder as to Tavaris
11 Howze.

12 Has any member of the jury panel heard anything about
13 the facts or circumstances that might relate to this
14 particular case, or have you seen anything about the case
15 that might have appeared in any media outlet?

16 In other words, have you been exposed to any
17 information about this case from any source whatsoever,
18 whether it be television or radio or newspaper or just
19 personal contact with an individual? If you believe you
20 have heard or seen anything that relates to this particular
21 case, I would ask that you please stand.

22 Yes, ma'am.

23 JUROR NUMBER 48: Juror 48. I remember reading about
24 it in the newspaper.

25 THE COURT: All right. And about how long ago was it

Jury qualification

1 that you last recall having seen some article about it?

2 JUROR NUMBER 48: When it happened.

3 THE COURT: Back in December of 2004?

4 JUROR NUMBER 48: Yes, sir.

5 THE COURT: Do you specifically remember any facts
6 that were set forth in the article?

7 JUROR NUMBER 48: Nothing more than you have said this
8 morning.

9 THE COURT: Okay. Is there anything about what you
10 have previously been exposed to that would in any way
11 impair your ability to be fair and impartial to both sides
12 in this case?

13 JUROR NUMBER 48: No, sir.

14 THE COURT: Okay. Thank you. You may be seated.

15 Anyone else need to respond to that question?

16 (No response.)

17 THE COURT: Has any member of the jury panel or any
18 member of your immediate family -- and I'm going to define
19 an immediate family member as a spouse or a parent or a
20 child or a sibling -- a spouse, a parent, a child or a
21 sibling.

22 Have you or any members of your immediate family ever
23 been the victim of, or have you ever been charged with or
24 convicted of any type of violent crime? And I'm going to
25 loosely define a violent crime as those crimes that would

Jury qualification

1 include murder, manslaughter, armed robbery, burglary,
2 criminal sexual conduct, assault and battery with intent to
3 kill, criminal domestic violence of a high and aggravated
4 nature or any other similar type of an offense as to those.
5 I need to know if you or an immediate family member has
6 ever been the victim of such an offense, as well as I need
7 to know whether or not you or any immediate family member
8 has ever been charged with or convicted of a similar type
9 of an offense.

10 And, again, as I've stated, if you need to respond, I
11 will ask that you stand. If you prefer not to provide the
12 information in front of the audience, you can come forward.
13 I will discuss it with you up here at the bench.

14 All right. Is everyone standing that needs to respond
15 to the question?

16 All right. Looks like I've got nine individuals that
17 are responding to the question.

18 Now, those of you who prefer to provide me with the
19 information here at the bench, I will ask that you come
20 down, please.

21 THE BAILIFF: No. 99.

22 (Bench conference held off the record with juror.)

23 THE BAILIFF: No. 80.

24 (Bench conference held off the record with juror.)

25 THE BAILIFF: No. 50.

Jury qualification

1 (Bench conference held off the record with juror.)
2 THE COURT: Next.
3 THE BAILIFF: 157.
4 (Bench conference held off the record with juror.)
5 THE BAILIFF: No. 58.
6 (Bench conference held off the record with juror.)
7 THE BAILIFF: 163.
8 THE COURT: 163.
9 (Bench conference held off the record with juror.)
10 THE BAILIFF: No. 9.
11 (Bench conference held off the record with juror.)
12 THE BAILIFF: 169.
13 (Bench conference held off the record with juror.)
14 THE BAILIFF: No. 44.
15 (Bench conference held off the record with juror.)
16 THE BAILIFF: No. 15.
17 (Bench conference held off the record with juror.)
18 THE COURT: We have got one more?
19 JUROR NUMBER 75: Yes. No. 75.
20 THE COURT: Yes, sir.
21 JUROR NUMBER 75: I was burglarized twice in 2002, my
22 home was.
23 THE COURT: All right. Would either of those
24 incidents have any impact upon your decision in this case?
25 JUROR NUMBER 75: No, sir.

Jury qualification

1 THE COURT: Okay. Thank you. Be seated.

2 Is there any member of the jury panel who is related
3 by blood or marriage to any law enforcement officer? Are
4 you related by blood or marriage to any law enforcement
5 officer employed in any law enforcement agency anywhere?
6 If so, please stand.

7 All right. Mrs. --

8 JUROR NUMBER 81: Kathleen James, No. 81. My father
9 is a retired F. B. I. agent.

10 THE COURT: And would that have any bearing upon your
11 decision?

12 JUROR NUMBER 81: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, sir.

15 JUROR NUMBER 153: Phillip Sluder, 153. My brother is
16 with the highway patrol.

17 THE COURT: Would that have any bearing upon your
18 decision in the case?

19 JUROR NUMBER 153: No, sir.

20 THE COURT: Thank you. Be seated.

21 Yes, ma'am.

22 JUROR NUMBER 163: Cherrie Seman, 163. I was married
23 for 26 years to an F. B. I agent.

24 THE COURT: Would have any bearing upon your decision?

25 JUROR NUMBER 163: No, sir.

Jury qualification

1 THE COURT: Thank you. Be seated.

2 Yes, ma'am.

3 JUROR NUMBER TWO: No. 2, Jennifer Adkins. My husband
4 is a former detention officer for Spartanburg County.

5 THE COURT: What number was that?

6 JUROR NUMBER TWO: No. 2.

7 THE COURT: Two.

8 JUROR NUMBER TWO: And then my in-law's are secret
9 service and F. B. I.

10 THE COURT: Would that have any bearing upon your
11 decision?

12 JUROR NUMBER TWO: No, sir.

13 THE COURT: Thank you. Be seated.

14 Yes, ma'am.

15 JUROR NUMBER 137: No. 137, Crystal Taylor. My
16 husband is with Spartanburg County.

17 THE COURT: Would that have any bearing upon your
18 decision?

19 JUROR NUMBER 137: No.

20 THE COURT: Thank you. Be seated.

21 Is there any member of the jury panel who has any sort
22 of connection by family relationship with any person who
23 has previously or who is now attending the Spartanburg
24 Methodist College? If so, please stand.

25 All right. Your name, please, sir.

Jury qualification

1 JUROR NUMBER SEVEN: I'm No. 7, Robert Andrews. My
2 son and daughter both attended Spartanburg Methodist
3 College.

4 THE COURT: Presently attending?

5 JUROR NUMBER SEVEN: No, sir.

6 THE COURT: Previously?

7 JUROR NUMBER SEVEN: Yes.

8 THE COURT: Okay. Thank you. You may be seated.

9 Is any member of the jury panel originally from
10 Chester, South Carolina? If so, please stand. Chester.

11 (No response.)

12 THE COURT: All right. Now, I've told you what the
13 case is about, the basic facts. That's not intended to be
14 a complete recitation of what the evidence might show. I
15 am just trying to give you a basic understanding of what
16 the case is about, because I need to know whether or not
17 there is anything about the nature of the case itself, that
18 is what these persons are charged with having committed --
19 is there anything about the nature of the cases themselves
20 that would prevent any juror from being able to fair and
21 impartial if you were called upon to serve as a juror in
22 this case? If so, please stand.

23 (No response.)

24 THE COURT: Has any juror already made up your mind or
25 formed an opinion as to what you think the ultimate outcome

Jury qualification

1 ought to be based upon what you've heard up until this
2 point or based upon any other consideration?

3 I just need to know if you have already made up your
4 mind as to the ultimate verdict. If so, please stand.

5 (No response.)

6 THE COURT: Does any member of the jury panel know of
7 any reason whatsoever why you believe that you could not be
8 fair and impartial if you were selected to serve as a juror
9 in the case? If so, please stand.

10 (No response.)

11 THE COURT: Any other questions requested by the
12 state?

13 MR. BULSA: No, Your Honor.

14 THE COURT: By the defendant?

15 MS. ANDERSON: No, Your Honor.

16 MR. VIETH: No, Your Honor.

17 THE COURT: All right. Let's draw a jury.

18 Let me see the lawyers before we start that just a
19 minute.

20 (Bench conference held off the record.)

21 THE COURT: All right. Draw the jury, please, ma'am.

22 Let me say this. When you come forward, each side has
23 a chance to have you excused from service in the case.

24 If either side asks that you be excused, just go back
25 and have a seat where you are now. If both sides agree to

Jury selection

1 have you seated, you'll be having a seat in the jury box to
2 your right and to my left.

3 So if you will simply come forward when your name is
4 called with any belongings that you have, you will be
5 instructed whether you are to be seated or excused from
6 service in the case.

7 THE DEPUTY CLERK: Juror No. 54, Linda Fortner.

8 MS. ANDERSON: Could I just ask one question? How do
9 you want us to do this? Are we going to do the -- each of
10 us take a strike?

11 THE COURT: If that's what y'all want to do. You are
12 entitled to.

13 MS. ANDERSON: All right.

14 THE DEPUTY CLERK: What says the state?

15 MR. BULSA: Please excuse the juror in this case.

16 THE DEPUTY CLERK: Juror number 164, Norvell C. Stark,
17 Jr.

18 MR. BULSA: 164?

19 THE DEPUTY CLERK: 164. What says the state?

20 MR. BULSA: Please excuse the juror in this case.

21 THE DEPUTY CLERK: Juror No. 72, Billy Hipps, Jr.
22 What says the state?

23 MR. BULSA: Please present the juror in this case.

24 THE DEPUTY CLERK: What says the defense?

25 MS. ANDERSON: Seat the juror.

Jury selection

1 MR. VIETH: Seat the juror.

2 THE DEPUTY CLERK: Juror No. 2, Jennifer L. Adkins.

3 What says the state?

4 MR. BULSA: No. 2?

5 THE DEPUTY CLERK: Two.

6 MR. BULSA: Please present Ms. Adkins.

7 THE DEPUTY CLERK: What says the defense?

8 MS. ANDERSON: Excuse the juror.

9 THE DEPUTY CLERK: Juror No. 7, Robert J. Andrews.

10 What says the state?

11 MR. BULSA: Please present the juror.

12 THE DEPUTY CLERK: What says the defense?

13 MS. ANDERSON: Excuse the juror.

14 THE DEPUTY CLERK: Juror No. 86, Carolyn A. King.

15 What says the state?

16 MR. BULSA: Please present Ms. King.

17 THE DEPUTY CLERK: What says the defense?

18 MS. ANDERSON: Seat the juror.

19 MR. VIETH: Seat the juror.

20 THE DEPUTY CLERK: Juror No. 60, Donald C. Gibson.

21 What says the state?

22 MR. BULSA: Please present Mr. Gibson.

23 THE DEPUTY CLERK: What says the defense?

24 MS. ANDERSON: Excuse the juror.

25 THE DEPUTY CLERK: Juror No. 5, Christopher W. Alley.

Jury selection

1 THE COURT: What number was that?
2 THE DEPUTY CLERK: No. 5. What says the state?
3 MR. BULSA: Please present Mr. Alley.
4 THE DEPUTY CLERK: What says the defense?
5 MS. ANDERSON: Seat the juror.
6 MR. VIETH: Seat the juror.
7 THE DEPUTY CLERK: Juror No. 73, Mark Holden.
8 MS. ANDERSON: What number was that?
9 THE DEPUTY CLERK: 73. What says the state?
10 MR. BULSA: Please seat the juror.
11 THE DEPUTY CLERK: What says the defense?
12 MS. ANDERSON: Excuse the juror.
13 THE DEPUTY CLERK: Juror No. 155, John J. Dempsey.
14 What says the state?
15 MR. BULSA: Please present the juror.
16 THE DEPUTY CLERK: What says the defense?
17 MS. ANDERSON: Excuse the juror.
18 THE DEPUTY CLERK: Juror No. 169, Tamatha Jackson.
19 MS. ANDERSON: I'm sorry. I can't hear the clerk.
20 THE DEPUTY CLERK: 169. What says the state?
21 MR. BULSA: Please excuse the juror in this case.
22 THE DEPUTY CLERK: Juror No. 25, Bethany Cecil. What
23 says the state?
24 MR. BULSA: What's the number?
25 THE DEPUTY CLERK: 25.

Jury selection

1 MR. BULSA: Please excuse the juror in this case.

2 THE DEPUTY CLERK: Juror No. 163, Cherrie Seman. What
3 says the state?

4 MR. BULSA: Please present the juror.

5 THE DEPUTY CLERK: What says the defense?

6 MS. ANDERSON: Excuse the juror.

7 THE DEPUTY CLERK: Juror No. 15, Angela N. Brown.
8 What says the state?

9 MR. BULSA: Please excuse the juror in this case.

10 THE DEPUTY CLERK: Juror No. 137, Crystal Taylor.
11 What says the state?

12 MR. BULSA: Please present the juror.

13 THE DEPUTY CLERK: What says the defense?

14 MS. ANDERSON: Your Honor, I would request the juror
15 be excused for cause. Her husband works for Spartanburg
16 County, and Spartanburg County has been involved with the
17 investigation of this case.

18 THE COURT: I deny that request.

19 MS. ANDERSON: I would ask her to be excused then.

20 THE DEPUTY CLERK: Juror No. 160, Daniel Robinson.
21 What says the state?

22 MR. BULSA: Please present the juror.

23 THE DEPUTY CLERK: What says the defense?

24 MS. ANDERSON: Seat the juror.

25 MR. VIETH: Seat.

Jury selection

1 THE DEPUTY CLERK: Juror No. 48, Carol Epps. What
2 says the state?
3 MR. BULSA: Please present the juror.
4 THE DEPUTY CLERK: What says the defense?
5 MS. ANDERSON: Please seat the juror.
6 THE DEPUTY CLERK: Juror No. 115, Bobby Rainwater.
7 What says the state?
8 MR. BULSA: Please excuse the juror in this case.
9 THE DEPUTY CLERK: Juror No. 150, Shawn D. Wright.
10 What says the state?
11 MR. BULSA: Please excuse the juror in this case.
12 THE DEPUTY CLERK: Juror No. 149, Steven P. Wood.
13 What says the state?
14 MR. BULSA: Please present the juror.
15 THE DEPUTY CLERK: What says the defense?
16 MS. ANDERSON: Excuse the juror.
17 THE DEPUTY CLERK: Juror No. 69, Mark Henderson. What
18 says the state?
19 MR. BULSA: Please present the juror.
20 THE DEPUTY CLERK: What says the defense?
21 MS. ANDERSON: Excuse the juror.
22 THE DEPUTY CLERK: Juror No. 153, Phillip Sluder.
23 What says the state?
24 MR. BULSA: Please present the juror.
25 THE DEPUTY CLERK: What says the defense?

Jury selection

1 MR. VIETH: No. 53?

2 THE DEPUTY CLERK: 153.

3 MS. ANDERSON: Seat the juror.

4 THE DEPUTY CLERK: Juror No. 168, Leandra Y. Smith.

5 What says the state?

6 MR. BULSA: Please present the juror.

7 THE DEPUTY CLERK: What says the defense?

8 MS. ANDERSON: Seat the juror.

9 THE DEPUTY CLERK: Juror No. 151, Dorothy L. Hughes.

10 What says the state?

11 MR. BULSA: Please excuse the juror in this case.

12 THE DEPUTY CLERK: Juror No. 3, Loretta Alexander.

13 What says the state?

14 MR. BULSA: Please present the juror.

15 THE DEPUTY CLERK: What says the defense?

16 MS. ANDERSON: Seat the juror.

17 MR. VIETH: Seat the juror.

18 THE DEPUTY CLERK: Juror No. 99, Deborah Sherbert.

19 What says the state?

20 MR. BULSA: Please present the juror.

21 THE DEPUTY CLERK: What says the defense?

22 MS. ANDERSON: Excuse the juror.

23 THE DEPUTY CLERK: Juror No. 9, Bobby Arthur. What
24 says the state?

25 MR. BULSA: Please excuse the juror.

Jury selection

1 THE DEPUTY CLERK: Juror No. 106, Danyell Mullins.

2 What says the state?

3 MR. BULSA: Please present the juror.

4 THE DEPUTY CLERK: What says the defense?

5 MS. ANDERSON: Present the juror.

6 MR. VIETH: Seat the juror.

7 THE DEPUTY CLERK: Juror No. 80, Nancy Johnson. What
8 says the state?

9 MR. BULSA: Please present the juror.

10 THE DEPUTY CLERK: What says the defense?

11 MR. VIETH: Your Honor, based on her communication
12 with the Court at the bar, we would move to strike for
13 cause.

14 THE COURT: I am going to decline that request.

15 MR. VIETH: Strike, excuse.

16 THE COURT: You are excused.

17 THE DEPUTY CLERK: Juror No. 81, Kathleen James. What
18 says the state?

19 MR. BULSA: Please present Ms. James.

20 THE DEPUTY CLERK: What says defense?

21 MR. VIETH: Seat the juror.

22 MS. ANDERSON: Seat the juror.

23 THE DEPUTY CLERK: Juror No. 175, Jeffrey Murff. What
24 says the state?

25 MR. BULSA: Present the juror.

Jury selection

1 THE DEPUTY CLERK: What says the defense?
2 MR. VIETH: Excuse the juror from the trial.
3 THE DEPUTY CLERK: Juror No. 176, Brett Lancaster.
4 What says the state?
5 MR. BULSA: Excuse the juror.
6 THE DEPUTY CLERK: Juror No. 50, Mark Farris. What
7 says the state?
8 MR. BULSA: Please present the juror.
9 THE DEPUTY CLERK: What says the defense?
10 MS. ANDERSON: Seat the juror.
11 MR. VIETH: Seat the juror.
12 THE DEPUTY CLERK: Juror No. 44, Melissa Edwards.
13 What says the state?
14 MR. BULSA: Please present the juror.
15 MR. VIETH: Excuse the juror from this trial, please.
16 THE DEPUTY CLERK: No. 119, Brandon Riley. What says
17 the state?
18 MR. BULSA: Please present the juror.
19 THE DEPUTY CLERK: What says the defense?
20 MR. VIETH: Seat the juror.
21 THE COURT: This will be for the alternate juror.
22 THE DEPUTY CLERK: Juror No. 142, Aaron Wilkie. What
23 says the state?
24 MR. BULSA: Please present the juror.
25 THE DEPUTY CLERK: What says the defense?

Jury selection

1 MS. ANDERSON: Excuse the juror.

2 THE DEPUTY CLERK: Juror No. 94, Wendy Lynn. What
3 says the state?

4 MR. BULSA: Please present the juror.

5 THE DEPUTY CLERK: What says the defense?

6 MS. ANDERSON: Excuse the juror.

7 THE DEPUTY CLERK: Juror No. 83, Sandra Johnson. What
8 says the state?

9 MR. BULSA: Please present the juror.

10 THE DEPUTY CLERK: What says the defense?

11 MR. VIETH: Excuse the juror from this trial.

12 THE DEPUTY CLERK: Juror No. 167, Jenny Toney.

13 MR. BULSA: What's that number again, ma'am?

14 THE DEPUTY CLERK: 167. What says the state?

15 MR. BULSA: Please present the juror.

16 THE DEPUTY CLERK: What says the defense?

17 MR. VIETH: Excuse the juror from this trial, please.

18 THE DEPUTY CLERK: Juror No. 46, David Elm. What says
19 the state?

20 MR. BULSA: Please present the juror.

21 THE DEPUTY CLERK: What says the defense?

22 MS. ANDERSON: Seat the juror.

23 MR. VIETH: Seat the juror.

24 THE COURT: All right. Those jurors who have been
25 selected, I will ask you to please go with the bailiff to a

Jury selection

1 jury room. I will bring you back in just a few minutes to
2 excuse you for lunch.

3 (The following takes place outside the presence of the
4 jury.)

5 THE COURT: Any matters that need to be addressed
6 regarding jury selection by the state?

7 MR. BULSA: No, Your Honor.

8 THE COURT: By the defendant Jeter?

9 MS. ANDERSON: No, sir, Your Honor.

10 THE COURT: By defendant Lyles?

11 MR. VIETH: No, sir, Your Honor.

12 (Whereupon, the remaining members of the jury venire
13 were excused.)

14 THE COURT: All right. Bring the jury back, please,
15 sir.

16 (The following takes place in the presence of the
17 jury.)

18 THE COURT: All right. Ladies and gentlemen, as I
19 told you, we are going to let you go for lunch. We will
20 ask you to report back at 2:45; at 2:45 this afternoon.

21 Let me caution you that now that you have been
22 selected you are not permitted to discuss the case in any
23 fashion whatsoever with any person whatsoever.

24 You can't discuss the case among yourselves until you
25 have actually been excused and asked to begin deliberations

1 at the trial's conclusion.

2 So during the lunch recess and at all other times
3 during the course of this trial do not discuss the case
4 with any person, including your fellow jurors. Also, do
5 not permit any person to discuss the case with you.

6 Your decision has to be based upon what you see and
7 hear during the trial in the courtroom, and you are not
8 permitted to allow yourselves to be exposed to any outside
9 or extraneous information.

10 Also, you are not going to be able to conduct any
11 research. You don't do any investigation; you don't watch
12 anything that comes on television. Don't listen to
13 anything that comes on the radio; don't read anything that
14 appears in the newspaper as it relates to this case. That
15 way we will avoid any outside extraneous information
16 possibly influencing your decision.

17 So with that, you are excused for lunch. Please
18 report back at 2:45 to your jury room that you have just
19 been introduced to.

20 If you are not sure how to get back to that room, be
21 sure you talk to the bailiffs before you leave. They will
22 provide you with those directions.

23 Let me ask also that when you come back, please go
24 directly to the jury room. Don't stand in the hall or out
25 on the steps or on the sidewalk, because there might be

1 people around the courthouse that might be talking about a
2 case. You might think it's this one. It may be this one,
3 it may not. But there may be conversations from spectators
4 or witnesses or lawyers or court personnel. It might not
5 even have anything to do with this case, but you might
6 think that it does. It might be something that could
7 influence your decision.

8 So in order to avoid that possibility, when you come
9 back from lunch, please just simply go back directly to
10 your jury room, and then we will begin with the trial of
11 the case at 2:45. Have a good lunch. We will see you at
12 2:45.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: All right. Any matters that need to be
16 addressed before we recess for lunch?

17 MR. BULSA: No, sir.

18 MR. VIETH: Your Honor, one matter.

19 My client has been on house arrest with a bracelet
20 since, well, about a year, I guess, and been with his
21 parents who are here. I just bring up that I would like to
22 be allowed to remain on that ankle bracelet for the
23 pendency of this case instead of the bond being rescinded.

24 THE COURT: Well, who is on his bond?

25 MR. VIETH: Stand up.

1 THE COURT: And you are who?
2 LEONARD LYLES: I'm his father.
3 MR. VIETH: His father.
4 THE COURT: I know that. What's your name?
5 LEONARD LYLES: Leonard Lyles.
6 THE COURT: Leonard Lyles.
7 LEONARD LYLES: Yes, sir.
8 THE COURT: And you signed the bond that secured his
9 release?
10 LEONARD LYLES: Yes, sir.
11 THE COURT: And you're willing to continue to assume
12 that obligation?
13 LEONARD LYLES: Yes, sir.
14 THE COURT: Now, do you understand that if he doesn't
15 appear for some reason or doesn't show up or shows up late,
16 then that's a violation of the conditions of bond and
17 you'll have to pay the money that you've agreed to pay to
18 secure that release?
19 LEONARD LYLES: We understand.
20 THE COURT: Okay. All right. Mr. Lyles, Lance Lyles,
21 do you understand that you're obligated to appear when I
22 tell you to report back to the courthouse?
23 DEFENDANT LYLES: Yes, sir.
24 THE COURT: Okay.
25 MR. BULSA: Your Honor, R & R Bail Bonding is on the

1 bond.

2 THE COURT: Who?

3 MR. BULSA: R & R Bail Bonding.

4 THE COURT: Let me see the bond.

5 MR. VIETH: They got a portion of it.

6 THE COURT: He can't remain on bond unless the
7 bondsperson is here. See, the bond is up once the case is
8 called.

9 If R & R is willing to continue with the obligation,
10 I'll entertain that motion at the appropriate time. But is
11 anyone from R & R here?

12 MR. VIETH: No. Stand up, please, Mr. Lyles. You
13 said he was part of the bond and you are part of the bond.

14 LEONARD LYLES: Right.

15 MR. VIETH: How did that work?

16 LEONARD LYLES: We had the majority of the bond and
17 they had like --

18 THE COURT: I understand. Up are just a co -- you are
19 a cosigner or a cosurety, but, I mean, the bond is
20 obligated, not only Mr. Lyles but R & R bonding too. Ruby
21 Rice signed it, so.

22 MR. VIETH: We will try to get her at lunch.

23 THE COURT: He will be in custody during lunch. And
24 then if she is willing to continue the obligation, Mr.
25 Vieth, she will need to come to court and let me know that

1 she is willing to continue that obligation.

2 MR. VIETH: All right. Thank you.

3 THE COURT: All right. Court is in recess until 2:45.

4 (Whereupon, a recess was taken.)

5 THE COURT: Mr. Bulsa, have you got a motion?

6 MR. BULSA: Yes, sir, I do.

7 MR. VIETH: Your Honor, may I address the issue we
8 took up with you? Right after lunch -- I have the bondsman
9 here right now.

10 THE COURT: Okay.

11 MR. VIETH: Ruby, you're on the bond.

12 RUBY RICE: Yes, sir.

13 MR. VIETH: Lance is in the start of a trial for
14 murder, armed robbery or attempted armed robbery, and
15 burglary and possession of a pistol. You are on the bond.

16 I've made a request to the Court to allow him to
17 remain on bond with an ankle bracelet during the pendency
18 of this trial. And of course we have to have your thoughts
19 about whether you agree to stay on the bond or whether you
20 want off the bond. Would you address us your thoughts on
21 that?

22 RUBY RICE: I've decided to stay on it.

23 THE COURT: You are going to continue under the
24 obligation?

25 RUBY RICE: Yes, sir.

1 THE COURT: Okay.

2 RUBY RICE: Thank you, sir.

3 THE COURT: You will have to continue to have him
4 here.

5 RUBY RICE: Yes, sir.

6 THE COURT: Okay.

7 MR. VIETH: Thank you, Your Honor.

8 THE COURT: All right. Mr. Bulsa, your motion?

9 MR. BULSA: Your Honor, the state makes a motion in
10 limine.

11 We anticipate both defense attorneys to, perhaps even
12 in their opening statements, comment about drug use at this
13 apartment in question. We would ask the Court to exclude
14 any comment regarding drug use or the existence of drugs in
15 that apartment. Also, we would request that they be
16 precluded from asking any questions relating to that type
17 of substance.

18 Your Honor, this case, you have seen the indictments.
19 You haven't heard much of the facts. But it's about a man,
20 Tavaris House, friends with Clearance Spicer.

21 He was visiting Mr. Spicer that evening, and there was
22 a knock at his door. Mr. Spicer opened the door, and the
23 defendants were outside the door. And subsequent to a
24 conversation and some viewing by Mr. Spicer, a shot was
25 fired into that house or into the apartment and struck

1 Mr. Howze while he was at the love seat/couch type piece of
2 furniture watching T. V.

3 Your Honor, we don't feel that there's any relevance
4 between the existence of marijuana at the house then or
5 before, which we feel it would be offered primarily to
6 discredit the character of Mr. Howze and Mr. Spicer. We
7 would feel that's not relevant or probative to any issue in
8 question.

9 I have cited the case that does not -- that relates to
10 drinking, and it's an old case, but I didn't find any law
11 to dispute it. It says drinking by a person is not
12 necessary to allow into evidence, but surely in this case
13 we think drug use would be analogist to that case. We
14 would ask the Court to preclude that from either defense
15 attorney going into that with any questions or comments.

16 THE COURT: All right. Ms. Anderson, what's the
17 position of Mr. Jeter?

18 MS. ANDERSON: Well, our position is in my client's
19 statement he said that the reason they went over to
20 Mr. Spicer's home was to buy marijuana, and that is a big
21 part of our case.

22 And I also -- there was marijuana found in the
23 building, in the apartment. I asked them to test it, and I
24 have the rest results that it was positive for marijuana,
25 because there was a roach or a piece about that big near

1 Mr. Howze's head.

2 There are other people in the complex who said that,
3 yes, you could go to Mr. Spicer's house to get drugs, but
4 it is our case. And if he, if we can't mention this, this
5 is what, I mean, he has this, my client's statement that
6 says we were going there to buy marijuana.

7 I think that it would unduly prejudice our case if we
8 are not allowed to go into that. It's in my client's
9 statement. Marijuana was found.

10 The witnesses that they interviewed and the statements
11 we have said that people coming in and out of Mr. Spicer's
12 apartment had offered to sell them drugs.

13 So I do think that the fact that -- just whether or
14 not -- I am not trying to impugn Mr. Spicer's reputation
15 whatsoever, but the thing is they were going over there to
16 buy marijuana. And that is our -- that would cripple our
17 defense if we cannot go into that.

18 THE COURT: Well, how is that a defense?

19 MS. ANDERSON: This is the explanation of what
20 happened. It's why they went over there.

21 THE COURT: Well, that's why I am asking. I mean, if
22 you go over to somebody's house to buy drugs, you can't rob
23 them or murder them. So how is it a defense?

24 MS. ANDERSON: I understand that.

25 THE COURT: Well, how is it a defense in this case?

1 MS. ANDERSON: It explains why they were there.

2 THE COURT: Okay. Mr. Vieth, do you want to be heard?

3 MR. VIETH: Your Honor, I quite agree. My client, as
4 far as I know unless something happens in the course of
5 this trial, and I don't foresee in all likelihood will take
6 the stand. And when I ask him a question about why he had
7 a reason to be going over there, you know, it wasn't to buy
8 shirts or play games or something, I don't see why we would
9 be limited to make up some story as to why he went over
10 there if he gets on the stand.

11 THE COURT: Limited to making up a story?

12 MR. VIETH: Well, I mean, he would be literally having
13 to make up some different version as to reality.

14 THE COURT: Oh, well, I wouldn't suggest you make up
15 anything.

16 MR. VIETH: Okay. Well, then your comment just simply
17 says we can't mention it at this stage of the process in
18 opening statement.

19 THE COURT: Yeah. Well, what we will have to do is
20 I'll have to determine that that evidence, should there be
21 some, is relevant or probative on some point before it can
22 be allowed to be introduced.

23 So in the opening statements it's clearly not relevant
24 yet. There has got to be something brought out during the
25 trial of the case that might make it relevant.

1 MR. VIETH: All right. Well, let's continue a little
2 bit on this so we know some ground rules.

3 When Mr. Spicer testifies and purportedly identifies
4 one or more people, cross-examination will certainly be how
5 did you happen to know a person. And I don't know what he
6 is going to say, but.

7 THE COURT: Well, he will have to tell the truth.

8 MR. VIETH: I'll ask the question. I mean, I'm going
9 to ask the question, if he doesn't answer the question, is
10 it true that someone was over there.

11 Let me retract that. He's not going to know the
12 answer to that question. So I won't ask that question. I
13 realize he won't know the answer to that. But I will ask
14 how he came to be able to know somebody.

15 THE COURT: Y'all have an advantage over me. Y'all
16 know what the facts are in this case or what might be
17 introduced. I don't.

18 MR. VIETH: Well, I agree with Pat. We are not trying
19 to say that Mr. Spicer or anyone at that house has some
20 character flaw because they smoke marijuana or sell it.
21 But when you get into -- you know, when you go to the
22 grocery store to buy groceries and you go somewhere else to
23 do something else -- they went over there to buy some
24 marijuana. I mean, it's an explanation of why they went
25 there.

1 If I ask my client why did you go over there, that's
2 going to be his answer. So I don't, you know, except for
3 saying that we can't bring it up in opening statements,
4 that's fine. But as soon as Spicer gets on the stand,
5 cross-examination, what it is.

6 THE COURT: Well, I understand. But cross-examination
7 just doesn't open the door to anything that might come up.
8 It's still got to be relevant on probative on some issue.

9 MR. VIETH: Well, I guess we will just wait until his
10 answer. I think they are trying to just exclude that we
11 went over there maybe to watch T. V. or something.

12 THE COURT: Well, they can't. I mean, you can't just
13 make up a reason. I mean, it can't be fictitious. It's
14 got to be real.

15 Mr. Bulsa, what is it that you are trying to preclude?
16 I mean, clearly, if that's the circumstances of this event,
17 that's the circumstances of this event.

18 Now, I mean, just to interject in evidence that there
19 might have been drugs on the premises clearly is not
20 relevant to anything by itself. But it might be relevant
21 to the issue of how these people knew each other, why they
22 were there, what they were arguing about or whatever. I
23 don't know what the evidence or testimony might reveal in
24 this case.

25 MR. BULSA: Yes, sir. I anticipate a fishing

1 expedition by defense counsel in cross-examination just
2 trying to discredit Mr. Spicer.

3 Your Honor, the only evidence in the case file that
4 there was any drugs, there's a blunt, a smoke blunt, that
5 was found in one of the ashtrays. And then it wasn't until
6 Mr. Jeter's fourth statement that he mentioned going over
7 there for weed. There's no other evidence other than a
8 couple of witnesses.

9 THE COURT: Is that in a statement that you are
10 intending to introduce?

11 MR. BULSA: That portion is not coming in because it
12 says Lance said, "Let's go over there and get some weed."

13 THE COURT: Okay.

14 MR. BULSA: Yes, sir.

15 THE COURT: So that's not in the statement.

16 MR. BULSA: No, sir. It won't be in what's being
17 offered.

18 There are a couple of witnesses that did a canvass.
19 There was speculation by a couple of witnesses that they
20 thought it might have been over drugs. That's the basis of
21 any drug connection to this apartment.

22 There's no clear, direct evidence that any drugs had
23 ever been sold out there. There's only evidence of one
24 blunt being smoked there either that night or weeks before.
25 It just happened to be in the ashtray.

1 THE COURT: Well, of course I don't know what might be
2 revealed. So we will just have to address it as it arises,
3 but in opening statements it will not be permitted.

4 As far as testimony is concerned, we will have to see
5 if it otherwise becomes relevant. Clearly, the defense,
6 you know, when you put up witnesses to testify, your
7 version of the events might be different than what the
8 state's is. But I'm talking, you can't just cross-examine
9 a state's witness for the purpose of cross-examining a
10 state's witness to ask if they sell or use drugs when it's
11 not relevant to the case.

12 Now, it might be that something could make it
13 relevant, and those witnesses can be recalled if they have
14 to be or need to be.

15 I am just saying the defense can't speculate -- in
16 your cross-examination of the state's witnesses, you can't
17 just interject facts or evidence just for the purpose of
18 prejudicing the witness or the state's case when there's no
19 real foundation for its existence.

20 Now, if you can establish a foundation for its
21 existence through testimony or other evidence, then perhaps
22 it would be relevant at some point. I don't know.

23 MS. ANDERSON: Your Honor, the statements that Mr.
24 Bulsa plans to use, "When Lance's father left, Lance asked
25 me to walk to Rose Hill and get some weed."

1 THE COURT: That's going to be redacted. That's not
2 going to be introduced in this case. You have the redacted
3 version.

4 Y'all, we discussed that earlier, and that's the
5 reason y'all weren't making a motion to sever the trial,
6 because the portions where one codefendant talks about
7 another has been removed.

8 MS. ANDERSON: I realize that, but my client is going
9 to testify to that.

10 THE COURT: Well, we'll see about that.

11 MS. ANDERSON: I mean, that --

12 THE COURT: And he may testify to that. But right now
13 we're talking about the state's case, not the defense's
14 case.

15 MS. ANDERSON: But you are going to limit us in our
16 opening statements then.

17 THE COURT: Yes, ma'am, I am.

18 MS. ANDERSON: Well, I have a motion also.

19 THE COURT: Okay. Is this what might be referred to
20 as a request for a hearing pursuant to Jackson vs. Denno?

21 MS. ANDERSON: No, sir. I'm just basically asking to
22 suppress the statements of my client because he was 16 when
23 the first one was made. Well, he'd just turned 17.

24 THE COURT: Is that the sole ground?

25 MS. ANDERSON: He did not have a guardian with him at

1 the time.

2 THE COURT: Right.

3 MS. ANDERSON: And that basically he was interrogated
4 at the school without a parent or a guardian there, and he
5 was picked up from his home.

6 THE COURT: And he was how old?

7 MS. ANDERSON: Huh?

8 THE COURT: And he was 17 years old?

9 MS. ANDERSON: He had just turned 17. But what he was
10 being questioned about happened when he was 16.

11 THE COURT: Well, I understand that, but does that
12 mean that if you question somebody who is 25 about
13 something that happened when they were ten that you have to
14 have a guardian appointed?

15 MS. ANDERSON: Might be. No, sir.

16 THE COURT: Probably not.

17 MS. ANDERSON: But can Mr. Bulsa bring up my client's
18 statements in his opening argument?

19 THE COURT: Well, as I understand it -- well, not if
20 there's a likelihood that they can be suppressed and
21 there's a motion to that effect. If it's not evidence,
22 it's not in evidence.

23 So generally what you are talking about in opening
24 statements are things that -- just the basic foundation of
25 the case or/and certainly what you think is going to be

1 proven. But if it's contested, I mean reasonably contested
2 and it might not come in -- I mean, being contested and
3 being admissible are two different issues. But if it's
4 something that might not be admitted, then as the case with
5 the drug usage or evidence, then we don't discuss it in
6 opening statements.

7 MS. ANDERSON: So anything that could be redacted or
8 whatever can't be brought up? You know, from our client --
9 from Mr. Bulsa's opening statement.

10 THE COURT: Well, I am not sure I understand your
11 question.

12 MS. ANDERSON: He can't go into great detail in my
13 client's statement in his opening statement.

14 THE COURT: He can't go into your client's statement
15 at all if there's a motion to suppress it.

16 MS. ANDERSON: All right.

17 THE COURT: All right. Anything else? When do you
18 anticipate --

19 MS. ANDERSON: I would ask that the witnesses be
20 sequestered.

21 THE COURT: All right. Let me ask this first.
22 When do you anticipate getting to any statements?

23 MR. BULSA: Probably not until tomorrow.

24 THE COURT: Okay. Well, we will have the suppression
25 hearing at the end of the day.

1 In the meantime, there won't be any discussion about
2 Mr., at least Mr. Jeter's statement.

3 Mr. Vieth, do you have a motion to exclude Mr. Lyle's
4 statement?

5 MR. VIETH: Yes, sir. I will just join in. We didn't
6 have much a statement at all, but I would -- for purposes
7 of the opening statements, let's just leave it like it is,
8 not to be mentioned.

9 THE COURT: Okay. No mention of any evidence that is
10 not otherwise agreed to and for which there is a motion
11 outstanding to suppress it.

12 All right. Anything else?

13 MR. BULSA: Your Honor, we were in the process of
14 trying to view the evidence to see if we could premark it.
15 But if you want to go ahead and bring the jury in I guess
16 we can --

17 THE COURT: What's the state's position on
18 Ms. Anderson's motion to sequester the witnesses?

19 MR. BULSA: We have no objection, Your Honor. We just
20 would ask that Mr. Spicer, the Howze family and Sergeant
21 Taylor be allowed to remain.

22 THE COURT: Well, are they, other than Mr. Spicer, are
23 they fact witnesses?

24 MR. BULSA: Mr. Howze, the father, will not be as to
25 the events, but he will be to his son. But I don't see any

1 danger.

2 THE COURT: In other words, there is nothing he can
3 testify to about the event in question?

4 MR. BULSA: No, sir.

5 THE COURT: All right. Have y'all got any objection
6 to the family of Mr. Howze remaining?

7 MS. ANDERSON: No, sir.

8 THE COURT: All right. Mr. Spicer and the Howze
9 family and Mr. Taylor can remain.

10 MS. ANDERSON: No. I did have an objection to
11 Mr. Spicer, but I am assuming because he's an alleged
12 victim he's getting to stay. I would prefer that he be
13 sequestered.

14 THE COURT: Well, you might, but I think the present
15 state of the law is Mr. Spicer has a constitutional right
16 to stay.

17 MS. ANDERSON: Yes, sir.

18 THE COURT: Okay. All right. The other witnesses, I
19 will need y'all -- I don't know who they are or if they are
20 present. So I will need y'all to instruct them regarding
21 their sequestration and the fact that they are not
22 permitted to discuss their testimony with any other
23 witness.

24 MR. BULSA: Yes, sir.

25 (Whereupon, the sequestered witnesses left the

1 courtroom.)

2 THE COURT: All right. Are all of the state's
3 witnesses sequestered with those exceptions?

4 MR. BULSA: Yes, sir. I believe so.

5 THE COURT: Are all of the defense potential witnesses
6 sequestered?

7 MR. VIETH: Yes, sir.

8 MS. ANDERSON: Yes, sir.

9 THE COURT: All right. Bring the jury in and ask
10 Mrs. Alexander to take the foreperson's seat.

11 (C. D. R. marked State's Exhibit No. 6.)

12 (The following takes place in the presence of the
13 jury.)

14 THE COURT: Good afternoon, ladies and gentlemen of
15 the jury panel. We are ready to begin with the trial of
16 the case for which you were selected.

17 Mrs. Alexander, I'm going to ask you to serve as the
18 foreperson of this jury.

19 Now, as the foreperson you'll have three specific
20 duties than none of the other jurors will have.

21 Number one, you're going to be asked to serve as the
22 spokesperson for the jury. And so if during the trial
23 something arises that needs to be brought to my attention,
24 that is you or a fellow juror has any difficulty or problem
25 or question, if you will let the bailiff know of that fact,

1 he will let me know, and I will try to address any
2 difficulty or answer any question that you or a fellow
3 juror may have.

4 Secondly, you are going to be asked to preside over
5 the jury deliberations when the time comes, and that of
6 course won't be until the end of the trial after all of the
7 evidence has been received and I've instructed you on the
8 law that's applicable in the case. But when the time does
9 come for jury deliberations you're going to be asked to
10 preside over that process in the jury room simply to ensure
11 that it is carried out in some orderly fashion.

12 And, thirdly, you will be asked to actually write the
13 verdict or the decisions of the jury. And you will do that
14 on verdict forms that I'll provide you at the trial's
15 conclusion on which you will indicate the jury's unanimous
16 decision.

17 Now, the foreperson has those specific duties that I
18 have indicated, but that does not in any way mean that she
19 is any more important than any of you other jurors, because
20 the decision of a jury is the unanimous consensus opinion
21 of all 12 jurors, and so all of you are going to have an
22 equal say and an equal vote in what the ultimate decision
23 in this case will be.

24 Someone simply has to be delegated those
25 responsibilities that I have indicated, and I have

1 delegated those to Mrs. Alexander in appointing her as the
2 foreperson.

3 But all of you jurors are equally important so far as
4 the ultimate decisions in this case are concerned, because,
5 as I've stated, the verdicts of the jury must be unanimous.
6 All of you must be in agreement. So all will have an equal
7 vote and an equal say in the ultimate decisions.

8 Now, Mr. Ellis, you have been selected as an alternate
9 juror, and the purpose of an alternate juror is to take the
10 place of one of the original 12 jurors if during the trial
11 one of these original 12 cannot continue to serve for some
12 reason.

13 If an illness or an emergency or some other
14 circumstance prevents one of these original 12 from
15 continuing to serve as a juror, then you would be called
16 upon to take that person's place. And in that event you
17 would then become the 12th juror. And of course if that's
18 the case, then you would participate throughout the trial,
19 including in the jury deliberations.

20 If however when the time comes for jury deliberations
21 all of the original 12 are able to engage in that process,
22 then your service would end and you would not be permitted
23 to participate any further, because only 12 are permitted
24 to engage in deliberations. And it is however important
25 that you pay just as careful attention as we ask of all of

1 the jurors in the case, because it does occur from time to
2 time for one reason or another one of the original 12 may
3 be called away. In that event you come the 12th.

4 So we do appreciate your participation as an alternate
5 just as we appreciate the participation of all of you
6 jurors who have been selected for the purpose of deciding
7 the verdicts in this particular case.

8 You may swear the panel.

9 (Whereupon, the jury was duly sworn.)

10 THE COURT: All right. Ladies and gentlemen, as you
11 know, you have been selected to decide the verdicts in the
12 cases of the State vs. Joshua Jeter and the State vs. Lance
13 Lyles.

14 These cases are being tried together, but,
15 nevertheless, you are to consider them separately so far as
16 the evidence is concerned and the law that's applicable.

17 In other words, you'll have to determine separately
18 whether or not the evidence in the case does prove to your
19 satisfaction beyond a reasonable doubt that each of the
20 separate defendants have committed any crime that the state
21 claims they have committed.

22 Of course your verdicts in the case, they might be the
23 same or they might be different. That will depend upon
24 your consideration of the evidence, your determination of
25 fact and your application of the law in the case. But,

1 nevertheless, the important thing is that you are to treat
2 these defendants separately and consider the evidence and
3 the law applicable to each separately in arriving at your
4 decisions.

5 And of course you are also to treat the charges
6 separately. There are four charges that have been brought
7 against each defendant, and you will consider each of those
8 charges separately as to each of the defendants and
9 consider the evidence as it relates to that particular
10 charge and the law that I will provide you in your
11 determination as to whether or not the state has proven a
12 particular defendant guilty of a particular charge or not.

13 You will simply consider all of those things
14 separately in arriving at separate and distinct verdicts in
15 the cases.

16 Now, each of these defendants has been accused by the
17 state with the crimes of burglary in the first degree,
18 armed robbery, murder and possession of a firearm by a
19 person under the age of 21 years.

20 Now, I told you earlier that those charges had been
21 brought to this Court by way of indictments, indictments
22 being legal documents that set forth factual allegations.
23 But the indictments are not themselves proof of anything
24 and they are not evidence of anything.

25 The indictments simply serve to bring a person charged

1 with a crime into this court, and it puts that person on
2 notice as to what crime the state claims they have
3 committed. But other than serving as notice to each of the
4 defendants and other than serving as the verdict forms at
5 the trial's conclusion, the indictments serve no purpose so
6 far as you 12 jurors are concerned.

7 Now, as to all of the allegations contained in each
8 indictment and as to the charges that have been brought
9 against each of the defendants, each of these defendants
10 has entered a plea of not guilty.

11 And, as I told you, that plea of not guilty therefore
12 places upon the state because they brought the charges, to
13 establish each defendant's guilt as to each of the charges
14 to your satisfaction beyond a reasonable doubt before any
15 decision of guilty could be returned.

16 The burden is never upon a defendant who is accused of
17 a crime to prove that they are not guilty or to prove that
18 they are innocent, because in some cases that wouldn't even
19 be possible.

20 The burden is always upon the state in bringing a
21 charge against another to establish that person's guilt to
22 the satisfaction of 12 jurors beyond a reasonable doubt
23 before such a decision could be returned.

24 And, in fact, under the constitution and the laws of
25 this state and of all 50 states so far as I am aware every

1 person who is accused of a crime is presumed to be
2 innocent. And that presumption of innocence remains with
3 every defendant, as it does with these defendants, from the
4 time that they are placed under arrest and throughout the
5 course of the criminal process and even throughout the
6 course of the actual trial in the case.

7 And that presumption of innocence will be applicable
8 to each of these defendants even at the time that you go
9 back to begin with your deliberations in this case at the
10 trial's conclusion.

11 That presumption of innocence will be with each of the
12 defendants there, and it will remain with them forever,
13 unless you 12 jurors determine that they are no longer
14 entitled to that presumption of innocence as to some charge
15 or charges. But it's only if, unless and until the state
16 satisfies you of a defendant's guilt as to some charge
17 beyond a reasonable doubt, would the defendant no longer be
18 entitled to that presumption of innocence as it remains to
19 that particular charge.

20 Now, the way the trial will proceed is that in a
21 moment the lawyers will address you in opening statements.
22 There are two occasions in the trial of a case where
23 lawyers are permitted to address the jury. And that is at
24 the beginning of the trial before any evidence has been
25 introduced and then again at the conclusion of the trial

1 after all of the evidence has been received.

2 Please keep in mind however that the lawyers'
3 statements are not evidence in the case. You are not to
4 consider any statements that the lawyers make as being any
5 evidence upon which you will base your decision.

6 The lawyers aren't witnesses to anything. They are
7 not going to be telling you anything that they know about
8 this case of their only own personal knowledge. They are
9 not going to be testifying under oath.

10 They won't take the witness stand. They won't be
11 subjected to direct and cross-examination as witnesses will
12 be. And so what the lawyers tell you in their statements
13 is not evidence in the case, but you should nevertheless
14 listen to what they have to say because those statements do
15 serve a purpose.

16 The opening statements serve to provide you with a
17 basic understanding as to what this case is about so that
18 you will have some context in which to place the evidence
19 that we will be receiving shortly thereafter.

20 The closing statements afford the lawyers an
21 opportunity to discuss with you the evidence that you have
22 seen and heard during the trial. And through that
23 discussion each will have an opportunity to try to persuade
24 you or to convince you that that evidence does or does not
25 support a particular decision.

1 Now, it's in between those opening and the closing
2 statements of the lawyers that we actually receive the
3 evidence that you will consider in arriving at your
4 determination of fact and ultimately your verdicts in the
5 case.

6 Now, as I've told you, the state has the burden of
7 proof. The state has to prove a defendant guilty of a
8 crime beyond a reasonable doubt before such a verdict could
9 be returned. So the state will go forward first in its
10 presentation of evidence.

11 Once the state has concluded with its presentation of
12 evidence each of the defendants will have the same
13 opportunity to present evidence and to testify if they wish
14 to. But understand, as I told you, the burden is not upon
15 a defendant to prove that he is not guilty because in some
16 cases that wouldn't be possible.

17 The burden is on the state to prove that he is guilty.
18 And therefore in a criminal trial a defendant does not have
19 to take the witness stand and does not have to testify
20 during the trial of the case.

21 And should a defendant make that decision, a jury
22 can't hold that against the defendant in any way, because
23 the defendant doesn't have to testify, doesn't have to
24 prove anything. And should a defendant make that decision,
25 the jury can't consider it against the defendant or

1 consider it in any way whatsoever in your deliberations or
2 in your determination as to whether or not that defendant's
3 guilt has been proven beyond a reasonable doubt. But each
4 defendant is afforded an opportunity to testify or call
5 other witnesses or produce other evidence should that
6 defendant wish to do so.

7 In any event, after all of the evidence has been
8 received and after you've heard the final summations of the
9 lawyers, I will then instruct you on the law in detail as
10 it relates to these particular charges.

11 After you receive that instruction on the law, you
12 will be asked to go back and begin with your deliberations
13 in the case. And through that process you 12 jurors are
14 going to be called upon through the exercise of good
15 judgment and common sense conscientiously applied to the
16 testimony and the evidence in the case to decide what you
17 believe to be the true facts as they relate to these
18 allegations.

19 Once you decide those facts, you will apply the law,
20 and you will arrive at your decision, that is whether or
21 not the state has proven each defendant guilty beyond a
22 reasonable doubt.

23 Now, all that we ask for you to do is to pay careful
24 attention through the course of the trial, and by that I
25 mean you just simply must listen carefully to each witness

1 as each witness testifies, because there might be a
2 conflict in the testimony, and it might be that you will
3 need to resolve that conflict in order to arrive at your
4 decision.

5 You have every right to evaluate the credibility of a
6 witness' testimony. And you can accept it in total or
7 reject it in total, or you can accept some portion of it
8 and reject some other portion of it. That's your
9 prerogative to assess the credibility and the believability
10 of witnesses.

11 But it's important that you give each witness the same
12 degree of attention as they testify so that when you go
13 back to begin your deliberations in the case you will be in
14 a proper position to fairly assess each witness'
15 credibility not only in light of that particular witness'
16 testimony but in light of all of the other testimony and
17 the other evidence received during the trial.

18 It's also important that you keep an open mind
19 throughout the course of the trial, and by that I simply
20 mean that you are not to begin making up your minds or
21 formulating your opinions as to what you think the ultimate
22 decisions in this case ought to be until all of the
23 evidence has been received, until I have instructed you on
24 the law and until you have been asked to go back and begin
25 with your deliberations in this case. That is the process

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1 that is designed for you 12 jurors to arrive at a fair and
2 just decision.

3 So I do want to thank you in advance for your
4 participation, as well as your careful attention. I would
5 ask that you please give the lawyers your attention now as
6 they give you their opening statements.

7 Mr. Bulsa.

8 MR. BULSA: May it please the Court.

9 Good afternoon, ladies and gentlemen. Tavaris Howze
10 was 21 years old and left his home in Chester to come to
11 Spartanburg to attend Spartanburg Methodist College.

12 He moved into Rose Hill Apartments off Powell Mill
13 Road which is close to Spartanburg Methodist. He made
14 friends with a gentleman who lived above him, Clearance
15 Spicer.

16 Mr. Spicer worked and had been working on December the
17 8th of 2004. Mr. Howze was visiting Mr. Spicer, and there
18 had been another gentleman there by the name of Brian
19 Durbin. Mr. Durbin also went to Spartanburg Methodist
20 College. He was friends with Tavaris.

21 He left the apartment to go to Spartanburg Methodist
22 to get some food and then was going to come back.

23 Meanwhile, Tavaris and Clearance stayed in the apartment
24 watching television.

25 They heard a knock on the door around 9:00 o'clock.

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1 Clearance gets up thinking it's Brian coming back.

2 When he opens the door he sees a man with a hood type
3 piece of clothing over his head, and the guy says what's
4 up. There is a short conversation.

5 As Clearance is speaking to this man, this man tries
6 to step into the apartment, actually gets a foot in the
7 door, when Clearance sees a second man go behind the first
8 one. The second man was wearing a mask and he had a gun in
9 his hand.

10 So Clearance does what any normal person would do. He
11 tries to close the door because he senses something is
12 wrong.

13 As he's pushing the door the first man's there. He's
14 trying to push him out. Tavaris is still on the couch/love
15 seat type of piece of furniture. As he's pushing the door
16 closed, an arm comes through the door and a shot rings out.
17 And Tavaris is struck in the head and falls dead in the
18 floor of his friend.

19 I submit to you, ladies and gentlemen, the evidence
20 will show that these two men were acting in concert and
21 went over there and were attempting to invade, burglarize
22 Clearance's apartment intending to rob him while
23 brandishing weapons, and it didn't go as planned.
24 Clearance fought back, and unfortunately for Clearance his
25 friend died as a result.

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1 I thank you for your participation in this trial. The
2 judge has outlined the procedure to you.

3 You will hear from a number of witnesses by the state.
4 You will see some exhibits, some photographs, diagrams.
5 Please pay attention to everything you hear. It is your
6 job as the fact-finders to determine what happened and who
7 you believe.

8 The judge outlined the charges to you. Each man is
9 charged with four offenses. The main offense, of course,
10 is the death Tavaris Howze. That's murder. Murder is the
11 unlawful killing of another person with malice
12 aforethought. That malice is either expressed or implied.

13 Malice can be implied through the use of a deadly
14 weapon. Just the fact that you have a gun out in a
15 situation such as this and it's discharged, that can be
16 enough for malice. The fact that you fire indiscriminately
17 into an apartment in itself can be malice.

18 I submit to you there can be no other reason to have a
19 gun out but to commit an offense, an offense. And if you
20 use it during that offense, that that can be malice as
21 well.

22 Armed robbery. It's attempted armed robbery because
23 they were trying. They did not succeed. Nothing was
24 stolen. But we submit to you the evidence will show that
25 that was the reason they were going over there.

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1 Burglary is an unlawfully entry, not a breaking and
2 entering. It's just an unlawful entry into a dwelling, in
3 this case an apartment, the dwelling of another person
4 without consent.

5 They were not invited in. They were being forced out.
6 They broke the plane; a foot got in the door and an arm got
7 in the door. And their intention is to commit a crime
8 while they were there. They are armed with a deadly
9 weapon.

10 They caused injury, death, to Tavaris while they were
11 there, and it occurred at 9:00 o'clock in the evening,
12 which is December 8th, is the nighttime hours.

13 The last charge is unlawful possession of a pistol by
14 a person under the age of 21. The statute in South
15 Carolina says that if you are under the age of 21 you are
16 not even supposed to be handling a pistol.

17 There are other circumstances not related to this case
18 that set out where anybody can handle a weapon. But in
19 this case just the mere fact that you are under a certain
20 age, you can be convicted of that offense.

21 I submit to you, as I stated before, these men were
22 acting in concert. That is the theory in the law known as
23 the hand of one is the hand of all.

24 Just because one bullet struck Tavaris Howze, I submit
25 to you both of these men are guilty of murder. Both of

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1 them are guilty of attempted armed robbery; both of them
2 are guilty of burglary in the first degree; and both are
3 guilty of unlawful possession of a pistol because they are
4 acting together. What one does, the other one is just as
5 responsible.

6 The judge will further charge you on that concept.
7 That's one of the pieces of law he told you that you're
8 going to have to apply to the facts as you find them.

9 There is another point of law that's called the
10 natural and probable consequences of your act. Just
11 because you go somewhere and your main intention is to rob
12 somebody, you have a gun out to try to scare them, if that
13 gun is discharged during that criminal act, that's a
14 natural and probable consequence of your actions. If you
15 pull a gun out and use it in that fashion, I submit to you
16 that you are guilty of actually intending to pull that
17 trigger.

18 Please listen closely to the witnesses' testimony, the
19 physical exhibits.

20 Ladies and gentlemen, I want to state to you that
21 evidence in this case comes in various forms the judge
22 talked to you about. The witnesses' testimony is evidence;
23 an exhibit is evidence; a picture is evidence; a diagram is
24 evidence. Everything you are going to hear is evidence.
25 Please listen closely. Evaluate it with good common sense.

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1 Clearance Spicer thanks you; Tavaris Howze's parents
2 thank you. This is part of the criminal justice system.
3 We ask that you do the just thing as you listen, as you
4 will be deliberating.

5 The judge told you you can't discuss this among
6 yourselves or with your family members until all of the
7 evidence is in and the judge tells you.

8 So absorb it in your own minds, and then you will
9 collectively go back and discuss it at the close of the
10 case.

11 We have two defense attorneys. It'll go, I will ask
12 questions. Then each defense attorney will get their
13 chance to ask questions. That's the format you'll see.

14 So it might be a little longer than some of you want.
15 But there are two people on trial. They committed the
16 crime together. They are all responsible together. That's
17 why they are being tried together.

18 MR. VIETH: May it please the Court.

19 THE COURT: Yes, sir.

20 MR. VIETH: Madam forelady and ladies and gentlemen of
21 the jury, my name, as we talked about earlier, is Rick
22 Vieth. I practice law in Spartanburg with
23 three-or-four-man law firm. It's Henderson, Brandt, Vieth
24 on Kennedy Street.

25 I represent Lance Lyles who is one of the two

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1 codefendants that are before you today.

2 Probably one of the more difficult things to do is
3 give an opening statement in a case where you have murder
4 and armed robbery, attempted armed robbery rather, and
5 burglary and so forth. They don't get any more serious
6 than this.

7 You have been selected as 12 people, and an alternate,
8 that both sides feel will be compassionate to both sides
9 and listen to both sides, not make any deliberations in
10 advance of hearing the whole case, and then render a
11 verdict which you think speaks the truth.

12 And when you go home, probably my guess around
13 sometime Wednesday if we're lucky. Should be. Should be
14 close to Wednesday afternoon or maybe early Thursday
15 morning -- that you will feel comfortable that you've
16 reached the verdict that speaks the truth. And you will go
17 on about your lives.

18 At the end of that time some lives could be changed
19 forever, and some lives may not be changed. But it's going
20 to be based on the evidence and not -- I agree with what
21 the Court said. Certainly it's not what I say or what
22 Ms. Anderson says or what Mr. Bulsa says. It's going to be
23 evidence elicited from the witness stand, but it's also
24 going to be an interesting concept to you and even us as
25 lawyers that have been doing it for a while, is to have you

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1 apply the law with the facts. It's not always clear how
2 you apply the legal issue, the legal theories, with factual
3 evidence that comes in.

4 And to that extent I need to say this about our
5 position in the case. We picked the jury basically as a
6 defense table. We are over there and kind of compare notes
7 and make a decision and so forth.

8 But in reality at this point through this trial they
9 are separate entities entirely. Lance Lyles and Josh Jeter
10 are different human beings, both charged with identical
11 charges. But they are different. And you are going to
12 have to consider a couple of things.

13 One is under the law we have a theory that's called
14 mere presence, mere presence being that if someone happened
15 to be present with someone that committed an unlawful act,
16 that doesn't make the one that's merely present guilty of a
17 crime.

18 You also have the theory that's been explained to you
19 briefly by the solicitor that you have the hand of one is
20 the hand of all. And you say someone commits an offense
21 and you are so intertwined with them as to say that you
22 both knew what you were doing together, then mere presence
23 gets tossed aside and you say the hand of one is the hand
24 of all.

25 And this is going to be some decision-making that's

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1 going to go on through this trial, because Lance says he's
2 not guilty of anything, that he went over there and knocked
3 on the door.

4 And there is going to be a lot of evidence in this
5 case that you won't see me doing a lot of
6 cross-examination, a lot of evidence that I probably am not
7 going to try to contradict.

8 One is that someone has died; two is that Lance
9 knocked on the door. We are not hiding that fact. Three
10 is that Lance was totally exposed. He did not try to hide
11 his face. Four is someone obviously got shot.

12 And when you see the diagrams of it, at least my
13 understanding of it is there is a sofa to the right of the
14 entranceway. If someone is walking in, the sofa is over in
15 this angle.

16 When Mr. Spicer correctly sees someone with a gun and
17 a mask behind Mr. Lyles, goes to shut a door that closes in
18 this angle.

19 Now, when that door closed in this angle it hit a gun,
20 and that gun discharged. And Mr. Howze was sitting on that
21 sofa minding his own business and died of a gunshot wound
22 to the left side of the head.

23 Obviously, we could sit here and say had the door not
24 hit the arm it wouldn't have gone off or the decedent
25 hadn't been sitting there it wouldn't -- you know, we would

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1 have gotten lucky and no one would have been hurt, or we
2 could say if someone didn't have a mask and a gun this
3 wouldn't have started in the first place.

4 So these are issues that go to murder. You know, is
5 there malice aforethought? Was there an intentional
6 killing? Was there an attempt to rob somebody? Was there
7 a pistol held by someone under 21?

8 To these charges Lance says I am not guilty, I went
9 over there and knocked on the door. If I was going to
10 hide, I'd had a mask on or something, I did not do that.

11 Now, when this happened and a shot was fired, probably
12 what any adult would do, certainly two-16 years-olds would
13 do, they took off. They ran as almost in a Forest Gump
14 kind of way. They never quit running. They ran for that
15 night. Neither one of them called the parents; neither one
16 of them called the police and made any statements about the
17 other.

18 Two days later, I think it was two days later, they
19 caught up with Lance who was running. They had his mother
20 in a room where they talked to him. And they got Mr. Jeter
21 two days later, and maybe three, two or three days after
22 this.

23 And so one of the questions obviously is going to be,
24 well, why didn't someone just pick up the phone and say,
25 hey, guess what the other guy did, or, hey, someone did

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1 something wrong. And this is where you have got to try to,
2 I guess, put yourself into a 16-year-old. What would you
3 do? You're scared. And you make errors.

4 The question is going to be in some degree with Lance,
5 is, is this episode the hand of one, the hand of all, is
6 this episode mere presence. And I've got to be put in a
7 position to almost argue in the alternative. I've got to
8 almost say that Lance, certainly his position is I am not
9 guilty of anything.

10 But if a juror or a jury gets back there in two or
11 three days and conceptualises, well, I think it's the hand
12 of one is the hand of all, then I have got to shift gears
13 and say if you go in there you have got to look at the
14 definition of murder. And here is a door hitting it and a
15 gun discharging. Is it murder, is it accident or something
16 else?

17 These are the issues you are going to be faced with
18 over some period of time. My anticipation is that I will
19 only have a couple of witnesses at the end of the day.

20 And as the judge said, I don't have to call anyone.
21 Lance has a constitutional Fifth Amendment right, the right
22 to remain silent. The Court will tell you that I will not
23 hold that against him, and you cannot hold it against him.
24 That's a constitutional right that we have.

25 But I at this point in time anticipate calling Lance

Opening statements

1 to put him on the stand and subjecting him to
2 cross-examination and open him up to you. And I submit
3 that will probably be a day when you determine credibility
4 of witnesses, because right now, and probably for most of
5 the state's case, I don't anticipate a lot of contradiction
6 in the facts that are going to be presented to the court or
7 to you as to knocking on doors, someone dying, people
8 running and so forth.

9 It's just simply going to be a matter of did the state
10 meet the burden of proving guilt beyond a reasonable doubt
11 on all of the charges and the elements that they have to
12 prove.

13 And the burden is on them to prove it. And then if
14 that is proven to your satisfaction, is it the hand of one,
15 hand of all, or do you find that there's not sufficient
16 reasonable doubt to convict Mr. Lyles of the crime if you
17 should, in fact, for some reason find Mr. Jeter guilty of
18 any crime whatsoever.

19 So it's an interesting law-school kind of trial that
20 you are going to hear a lot of stuff, a lot of facts, but,
21 more importantly, how do you apply the law to the facts.
22 And that's what I anticipate will be the course of this
23 trial over the next two or three days. Thank you.

24 MS. ANDERSON: May it please the Court.

25 THE COURT: Ms. Anderson.

Opening statements

1 MS. ANDERSON: I am Pat Anderson, and I practice law
2 here in Spartanburg, and I represent Joshua Jeter.

3 And when Mr. Bulsa pointed to the table and called
4 those boys men, I wanted to cry, because they are not.
5 They were 16. Both of them were 16 years old when this
6 incident occurred.

7 And I do extend my sympathy to the Howze family. I am
8 so sorry this occurred.

9 As Mr. Vieth told you, we are sitting at the same
10 table, but we are not together, and you have to remember
11 that. Because you are going to hear a lot of witnesses
12 about who did what, why they were over there.

13 Both boys were in school together, and I think it was
14 established they were together that night. It's
15 established they went over to Mr. Spicer's apartment. What
16 happened then though, and this is where y'all are going to
17 have to listen carefully, because the question is going to
18 be were there two guns, whose arm was holding the gun when
19 the gun went off.

20 My take on this case is it was a terrible accident. I
21 don't know where Mr. Bulsa comes across that this was a
22 robbery or a burglary, that these boys went to steal
23 anything. I don't think there is going to be any evidence
24 that they went to steal anything. I think they went over
25 there and I think a terrible accident occurred.

Opening statements

1 The judge will read you the law about murder, possibly
2 manslaughter, involuntary or voluntary manslaughter, in
3 this case. And I'm going to leave it up to y'all because
4 you are going to have a lot of witnesses from the state, a
5 lot of police officers.

6 I think some of the people in the, the neighbors are
7 going to come around. And then I think probably we will
8 have a few. I don't know that I will have any witness. At
9 this point I believe my client will testify and tell you
10 what happened that night.

11 As I said, it's a terrible tragedy. I don't believe
12 after you hear the evidence that you are going to believe
13 that it was a murder.

14 As Mr. Vieth says though, we have got two defendants.
15 I want you to judge Mr. Jeter on his own, and it may be
16 that he was the mere presence. His defense might be the
17 mere presence of being there.

18 The judge will instruct you on all of that law. All I
19 ask is that you listen to every witness.

20 We will try not to put y'all to sleep, and I know
21 sometimes, particularly when you have three lawyers in
22 something, it can get -- well, four actually. It can get
23 long and drawn out.

24 The case is fairly simple in what they are charged
25 with. The difficulty comes in trying to decide, and that's

Opening statements

1 y'all's job, who did what, and if anything happened other
2 than Mr. Howze dying. And, as I said, my take on it, it
3 was a terrible accident.

4 I agree an arm came in the door. And when Mr. Spicer
5 hit it, because you'll see you couldn't, those two boys
6 could not have known that Mr. Howze was in that apartment
7 from the door. He was hidden from sight.

8 And so my take on it is that when the arm went in with
9 the gun and Mr. Spicer shut the door, that's reflex. The
10 gun was fired and the bullet hit Mr. Howze in the head
11 killing him. As I said, a very horrible, horrible tragedy
12 for this family and for these two families also.

13 You have got to remember these two boys, these were
14 boys. They were 16. They are just 17 now. Well, maybe
15 18. But they're young, and this is, this is their life
16 also that's in balance.

17 But I trust y'all to listen carefully and pay
18 attention to the evidence, and I know that you will do your
19 job. And, again, I thank you very much for being here.
20 Our court system wouldn't work without people like you, and
21 we surely do appreciate it. Thank you.

22 MR. BULSA: Your Honor, if I may, both defense
23 counsels have agreed to enter, the entrance of 9-1-1 call.
24 It is marked State's Exhibit No. 6. I would like to
25 publish that at this time.

Clarence Spicer
Direct examination by Mr. Bulsa

1 THE COURT: All right. Any objection?

2 MR. VIETH: No, sir.

3 MS. ANDERSON: No, sir.

4 THE COURT: It is admitted.

5 (Whereupon, the C. D. was played for the jury.)

6 MR. BULSA: The state now calls Clearance Spicer to
7 the stand.

8 CLARENCE SPICER, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Clearance, would you introduce yourself to us?

12 A I am Clarence Spicer.

13 Q And how old are you?

14 A Twenty-five.

15 Q Where do you live?

16 A Rose Hill Apartments.

17 Q And how long have you lived there?

18 A About four or five years.

19 Q Do you work?

20 A Yes, I do.

21 Q Where do you work?

22 A M. S. I. Inventory.

23 Q M. S. I. Inventory. What is that?

24 A We go around from place to place, different stores,
25 counting their merchandise.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q And how long have you been employed with them?

2 A About four or five years.

3 Q What education did you have?

4 A I graduated Charlotte -- well, I graduated
5 Independent, Charlotte.

6 Q Is that a school, high school?

7 A Yeah, high school.

8 Q Did you get any further education?

9 A No, I didn't.

10 Q How long after you graduated high school did you get
11 this job?

12 A Probably about two years.

13 Q Have you been working there ever since?

14 A Yes, I have.

15 Q You are stationed out of Spartanburg. Where do you
16 travel to?

17 A I been as far north as New Hampshire, been out to St.
18 Louis, been down to Florida, just different places.

19 Q Do you travel with a team of people?

20 A Yes.

21 Q And you are responsible for counting a company's
22 inventories.

23 A Yes.

24 Q Do you have a roommate?

25 A Yes, I do.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q What's his name?

2 A Kerry Huff.

3 Q How long has he been your roommate?

4 A The whole time I have been staying here.

5 Q Does he work with you?

6 A He used to be my boss, but he doesn't work there any
7 more. He has his own company.

8 Q Okay. Now, Tavaris Howze was a neighbor, right?

9 A Yes.

10 Q Where did he live?

11 A Below me.

12 Q Is that how you got to know him, through him living
13 there?

14 A Yes.

15 Q Do you recall when he moved in?

16 A It was right before school started, probably around in
17 August.

18 Q You made a comment right before school started.

19 A That's --

20 Q What does school have to do with Mr. Howze?

21 A He was up from Chester to go to S. M. C.

22 Q So he is a resident of Chester and he came to go to S.
23 M. C.

24 A Yes.

25 Q So do you remember when school had started

Clarence Spicer
Direct examination by Mr. Bulsa

1 approximately?

2 A It was sometime in August. I am not sure of the exact
3 date.

4 Q And whenabouts did you and he become friends?

5 A Right around the same time when he moved in.

6 Q And would he come and visit you often?

7 A Yeah.

8 Q Would you go to his place?

9 A Yes.

10 Q So it was common for either one of you to be at either
11 person's place.

12 A Uh-huh.

13 Q You need to answer out loud.

14 A Oh, yes. You're right.

15 Q Okay. Now, you lived at K-306.

16 A Yes.

17 Q 306 suggests that there are three floors to this
18 apartment.

19 A Yes.

20 Q All right. And when you enter into this apartment
21 complex from the parking lot, you actually enter into the
22 second level, right?

23 A Yes.

24 Q You can go down or you can go up.

25 A Yes.

Clarence Spicer
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibits Nos. 7 through 12
2 for Identification.)

3 Q Clearance, while I am getting that set up I am going
4 to ask you if you would look at these photographs. And
5 they are marked for identification State's Exhibits 7
6 through 11. Just don't testify about them. Just tell me
7 if you recognize them.

8 A Yes. I recognize all of them.

9 Q Okay. Are those different views of your apartment
10 building?

11 A Yes.

12 Q And as well as your apartment?

13 A Yes.

14 Q I show you State's Exhibit No. 12. I believe this is
15 entered without objection. Have you seen that photograph
16 before?

17 A Earlier, yeah, earlier today.

18 Q While we were preparing for trial?

19 A Yeah.

20 Q Do you recognize your apartment complex in that
21 photograph?

22 A I mean, just like an individual building, or what?

23 Q Just the complex itself. Do you recognize that? Can
24 you recognize your building?

25 A Uh-uh.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q Okay. I will start with this one, State's Exhibit No.

2 12. Does that show your apartment complex?

3 A Yes.

4 Q Okay. Do you know what this building right here is,
5 this big building?

6 THE COURT: Mr. Spicer, please be careful with that
7 microphone. When you turn your back, you hit it, and it
8 distorts the sound.

9 THE WITNESS: Okay.

10 A Is that the Home Depot building?

11 Q Is the Home Depot behind your apartment complex?

12 A Yes, it is.

13 Q Okay. And what are these buildings here?

14 A These are probably apartments, just different
15 buildings.

16 Q Okay. Is that Rose Hill?

17 A Yes, it is.

18 Q Okay. And you're in the K building?

19 A Yes.

20 Q And can you pick out your building for me?

21 A Should be this one right over here.

22 Q All right. Use this laser if you would. Do you
23 believe it is that one right there?

24 A Yes.

25 Q Okay.

Clarence Spicer
Direct examination by Mr. Bulsa

1 THE COURT: Be careful of the microphone, Mr. Spicer.

2 Q So directly behind your building is the property of
3 Home Depot and those others.

4 A Yes.

5 Q Is that Market Square, I believe?

6 A Yes.

7 Q At that time was there any boundary like a fence or
8 anything between those two properties?

9 A No, there wasn't.

10 Q Was there a path going from this complex into those
11 parking lot areas?

12 A Yes.

13 Q Okay.

14 MS. ANDERSON: Your Honor, I object to the pictures
15 that Mr. Bulsa wants to use.

16 THE COURT: Let me see them.

17 MR. BULSA: Mr. Vieth, do you object?

18 MR. VIETH: Yes, I object. I will let Ms. Anderson
19 take care of it.

20 (Bench conference held off the record in the presence
21 of the jury but out of the hearing of the jury.)

22 THE COURT: What numbers were those?

23 MR. BULSA: The objection, Your Honor, was 10 and 11.

24 THE COURT: I sustain the objection to Exhibits 10 and
25 11, State's.

Clarence Spicer
Direct examination by Mr. Bulsa

1 (Photographs marked State's Exhibits Nos. 7 through 9
2 and 12.)

3 Q Okay. Mr. Spicer, let's start with State's Exhibit
4 No. 7. Is this a view of your apartment complex?

5 A Yes, it is. That's the front view.

6 Q Front view. Okay. So you would enter up through here
7 and go to your apartment.

8 A Yes.

9 Q Is your apartment on the front or the back of the
10 building?

11 A The back side.

12 Q I am now going to show you State's Exhibit No. 8.
13 Does that show the back side?

14 A Yes, it does.

15 Q So this balcony here, would that be your balcony?

16 A No. I am above that.

17 Q Okay. You are above it. So we don't actually see
18 yours. This would be the balcony outside your door.

19 A Yes.

20 Q Okay. And your door is to this side of the building?

21 A Yes, it is.

22 Q Now State's Exhibit No. 9. What does that show us?

23 A That's the floor that my building is on, well, that my
24 apartment is on.

25 Q Okay. And which side of this picture would your door

Clarence Spicer
Direct examination by Mr. Bulsa

1 be on?

2 A The back side, the back left.

3 Q Back in here?

4 A Yes.

5 Q Okay. Now, let me keep that there a minute. As you
6 walk up is there space between that bannister and your
7 door?

8 A Yes. It is.

9 Q So if someone is standing in this area looking into
10 your apartment, could they see a couch along the wall?

11 A Yes.

12 Q And it would have been that couch along that wall that
13 Tavaris would have been sitting on?

14 A Yes, sir.

15 Q Okay. Now, I will keep this up here a minute. Tell
16 us what happened that night if you would.

17 A I had gotten off work. I had just been dropped off at
18 home.

19 On my way in I stopped downstairs at Tee's house,
20 Tavaris, and told him I was back, because him and Brian was
21 down there. They had had my play station for a couple of
22 days.

23 I hadn't been for a couple of weeks, but I stopped in
24 every now and then to get clothes or just to check on the
25 apartment.

Clarence Spicer
Direct examination by Mr. Bulsa

1 While I was down there they was finishing up a game.

2 And then him and Brian came upstairs. We sat around for a
3 little while just talking or whatnot, and then I put in a
4 movie. Brian said he was going to get something to eat.

5 Q Let me pause you right there. Who is Brian?

6 A One of the guys I went to school with.

7 Q Did you know Brian before you knew Tavaris?

8 A No. I met him through Tee.

9 Q And you are calling Tavaris Tee.

10 A Yes.

11 Q Is that a nickname of his?

12 A Yes.

13 Q Okay. All right.. Continue on. So Brian went out to
14 get something to eat.

15 A Yeah. Brian went out to get something to eat. While
16 he was gone two guys came up to my door, one of them with a
17 mask and a gun and the other one with a hood covering his
18 face.

19 I opened the door and saw that. One of the guys tried
20 to step in. I stopped him on his way in. The other guy
21 came from the side with a gun and a mask on, and I started
22 trying to close the door. And while I was closing the door
23 one of them shot inside of my house, and that's when Tee
24 was shot.

25 Q The first individual, you said he had a hood on.

Clarence Spicer
Direct examination by Mr. Bulsa

- 1 A Yes.
- 2 Q Who do you mean?
- 3 A Like a sweatshirt with a hoodie on it.
- 4 Q Did you see his face?
- 5 A Yes.
- 6 Q Did you recognize him?
- 7 A Yes.
- 8 Q At that point in time did you recognize him?
- 9 A At that point in time, no, I didn't.
- 10 Q Okay. But are you telling this jury that later you
- 11 realized who that was?
- 12 A Yes. I did.
- 13 Q Okay. But at the time of this incident you didn't
- 14 know, you didn't recall knowing who he was.
- 15 A No, no, I didn't.
- 16 Q Was there anything else about his appearance that you
- 17 remember standing out?
- 18 A Yeah. He had a gold grill. He had gold teeth.
- 19 Q Gold teeth?
- 20 A Yeah.
- 21 Q What?
- 22 A Gold teeth. I guess caps or something. I don't know.
- 23 Q And you could tell that when he spoke to you?
- 24 A Yeah.
- 25 Q What did he actually say?

Clarence Spicer
Direct examination by Mr. Bulsa

1 A He started to walk in and said what's up and said
2 something else. I wasn't sure what it was. When he was
3 walking in I put my arm up to stop him from coming in.

4 Q About how far did he get?

5 A He got about a foot in. I mean, he got -- he was
6 stepping into the doorway. He stepped far enough. I would
7 say a foot.

8 Q Do you recall how far you opened the door?

9 A Not really.

10 Q Okay. As you opened it he said something and started
11 walking in. And why didn't you just invite him in?

12 A Because I didn't know why he was there. I didn't know
13 him at the time. And then I saw the guy come from the side
14 of him with the gun and the mask.

15 Q Okay. And so when he was entering into your house,
16 that was without your consent.

17 A Yes.

18 Q And this other man that came behind this person, do
19 you recall which side of the door he came from?

20 A The right side.

21 Q Okay. If we are looking at this picture here, the man
22 being outside your apartment, would he have come as he was
23 walking towards us past your door?

24 A Yes. He would have been coming from the far side.

25 Q Okay. And your view of him was what? What did you

Clarence Spicer
Direct examination by Mr. Bulsa

1 see?

2 A A ski mask and a gun.

3 Q Do you recall which hand he had the gun in?

4 A The left hand, left hand.

5 Q You believe it was his left hand?

6 A Yes.

7 Q Do you recall the description of the gun?

8 A It was a silver revolver.

9 Q How far past the door did he get if you remember?

10 A Which one?

11 Q The second man.

12 A The second man never really made it into the house
13 because by the time I saw him I started pushing the door
14 closed.

15 Q How far past your doorway walking did he come?

16 A He was, he was far enough in front of it to be
17 considered in front of my door.

18 Q Okay. He was in full view of you?

19 A Yes.

20 Q So we've got the first man stepping into your
21 apartment. As you try to close the door was there
22 resistance?

23 A Yes. I am pushing one way and seems like they're
24 pushing the other way.

25 Q Okay. Something keeps popping.

Clarence Spicer
Direct examination by Mr. Bulsa

- 1 THE COURT: He is too close to the microphone.
- 2 Q So you're -- they're actively pushing against you as
- 3 you are trying to close the door.
- 4 A If I am not mistaken, yes.
- 5 Q Is that the way it felt to you?
- 6 A That's how it felt.
- 7 Q And you heard the 9-1-1 call.
- 8 A Yes, I did.
- 9 Q And you placed that call.
- 10 A Yes, I did.
- 11 Q And, as you stated in there, what were they trying to
- 12 do?
- 13 A I think they were trying to rob me.
- 14 Q Why did you have that feeling?
- 15 A Because two guys came into my house with guns and
- 16 masks -- well, a gun and mask. That's the only thing I
- 17 could get out of it.
- 18 Q Do you know if Tee did anything at all?
- 19 A Went to school.
- 20 Q I mean while this was going on.
- 21 A He stood up for a second.
- 22 Q Did he come to the door at all?
- 23 A No.
- 24 Q As you were pushing the door closed, what happened?
- 25 A The gun went off.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q Did you see the gun through your door?

2 A Yeah. I saw it facing, facing the back side, facing
3 the back side.

4 Q Okay.

5 THE COURT: Excuse me. If you are going to show some
6 more pictures, let me get the bailiff to move the rope so
7 the jury can move down and hopefully some can see better.

8 (Pause.)

9 MR. BULSA: If I could get these marked, I believe
10 without objection.

11 (Photographs marked State's Exhibits Nos. 13, 14, 15.)

12 Q Clearance, see if you can -- if you would, look at
13 these first to orient yourself to State's Exhibits 13 and
14 14. Do you recognize where they are taken from?

15 A Yes. My apartment.

16 Q State's Exhibit No. 13. What does this show us?

17 A My front door.

18 Q That's the front door. Is that from your hallway?

19 A Yes.

20 Q So this is where they were trying to come through.

21 A Yes.

22 Q State's Exhibit No. 14. What does that show us?

23 A The floor.

24 Q Okay. Off to the upper right-hand corner, is this the
25 door?

Clarence Spicer
Direct examination by Mr. Bulsa

- 1 A Yes, it is.
- 2 Q Is this where Tavaris would have been?
- 3 A Yes.
- 4 Q Okay. Let me show you State's Exhibit No. 15, the
5 diagram. Is that diagram of your apartment?
- 6 A Yes, it is.
- 7 Q All right. Is this the doorway?
- 8 A Yes.
- 9 Q Now, this shows the door being fully open. Was it
10 ever open that far when you were talking with these men?
- 11 A No.
- 12 Q Were you on the phone at that time?
- 13 A Yes, I was.
- 14 Q What happened to the phone during this?
- 15 A I dropped it and it busted open.
- 16 Q Okay.
- 17 A Well, it fell apart. It didn't break. I dropped it.
- 18 Q Okay. Now, this is a 3-seat couch right here.
- 19 A Yes.
- 20 Q And this is a 2-seat --
- 21 A Yes.
- 22 Q -- couch. What is this over here in this area?
- 23 A Television, entertainment system.
- 24 Q Okay. And you have another couch over in this area.
- 25 A Yes.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q Now, we have a diagram of a body. Is that where
2 Tavaris wound up?

3 A Yes.

4 Q Okay. Was Kerry home at this time?

5 A No. He was out of town.

6 Q Do you know how long he had been away?

7 A It was for a while. He hadn't been there since
8 Thanksgiving, I know for sure.

9 Q How about yourself? How long had you been there? I
10 mean, had you been away yourself?

11 A Yeah, I had been away for a couple of weeks, but I
12 think about two or three days before the incident I had
13 stopped in.

14 Q Okay. So you had not seen Tavaris in a few weeks.

15 A I hadn't seen him in a couple of days, about two or
16 three days.

17 Q Two or three days.

18 A Yeah.

19 Q Okay. Now, when he was alive did he visit you
20 frequently?

21 A Yeah.

22 Q So this was not an uncommon occurrence.

23 A No, it wasn't.

24 Q When you called 9-1-1, as we heard, you told them what
25 happened. And then what was the next thing that happened?

Clarence Spicer
Direct examination by Mr. Bulsa

1 A Brian came back.

2 Q Speak up a little bit.

3 A Brian had came back.

4 Q Brian came back.

5 A Yeah.

6 Q So Brian actually beat the police.

7 A Yes.

8 Q And what happened when Brian came back?

9 A He came inside. He saw Tee laying on the floor. I
10 told him what had happened. Then he went out and started
11 waiting. Both of us went back outside waiting for the
12 police to get there.

13 Q Did you or Brian ever attempt to move Tavaris?

14 A Yes. Right when I closed the door I tried to pick him
15 up to see if, how bad he was hurt or whatever.

16 Q What did you see?

17 A I saw a red spot on my floor, a little red dot up by
18 his head on my floor.

19 Q Could you tell if he was breathing?

20 A No, I couldn't.

21 Q What did you do when you saw that?

22 A Just, I guess that's when I called, had already called
23 9-1-1. I was just waiting on Brian and the police, and
24 then Brian went outside. I think he saw the cops first.
25 And he was flagging them upstairs. I went out, and I told

Clarence Spicer
Direct examination by Mr. Bulsa

1 them to come on up. By then they let us leave, well,
2 outside the apartment.

3 Q So you left your apartment --

4 A Yes.

5 Q -- while the police went up and took some pictures and
6 made this diagram. What did you do while you waited
7 outside?

8 A I smoked a cigarette and waited. We just waited for
9 the police to tell me what to do next, I guess. They took
10 me down.

11 Q Who took off?

12 A They took me down to city hall.

13 Q Okay. So you went to city hall, the police station,
14 with an officer.

15 A Yeah.

16 Q What happened at city hall?

17 A Gave my statement to Officer Brewster.

18 Q And did you describe for her the two men you saw?

19 A Yes.

20 Q Was it at that point you recalled realizing you had
21 seen one of those men before?

22 A No.

23 Q After you spoke with Detective Brewster, what
24 happened?

25 A Nothing really. We sat in there, and she took down my

Clarence Spicer
Direct examination by Mr. Bulsa

1 statement, and Taylor came in. Well, Officer Taylor came
2 in. And I started talking to him about everything that had
3 happened.

4 I think he went to see what had happened with Brian
5 because Brian wasn't there. They let Brian leave the
6 scene.

7 Q Okay. Do you recall how long you stayed at city hall?

8 A Probably until about midmorning. It was for a little
9 while.

10 Q And where did you go afterwards?

11 A To my girlfriend's house at the time.

12 Q Could you go back to your apartment?

13 A No.

14 Q Do you know why you couldn't go back?

15 A The police were still there, for one, and I didn't
16 have my key. I am pretty sure they were still doing
17 everything they had to do.

18 Q Did you get called back to the police station later?

19 A Yes. The next day.

20 Q You were called the next day. Do you mean the 9th?

21 A Well, yes.

22 Q This happened December 8th at about 9:00 o'clock?

23 A Yes.

24 Q On the 9th, we had the evening of the 8th and the
25 morning of the 9th. Sometime on the 9th you got called

Clarence Spicer
Direct examination by Mr. Bulsa

1 back.

2 A Yes.

3 Q Okay. And what took place when you were back there on
4 the 9th?

5 A We went over my statement again and started trying to
6 see if I could think of whoever it was and why it would
7 have happened, just different things.

8 Q Was it during that conversation you recalled that you
9 might have known that person?

10 A Yes. Later on.

11 Q And tell the jury about that.

12 A One, one day during, I guess, sometime that month or
13 maybe like November or something a guy came to my house
14 that usually came up and played ball with me on the play
15 station, and he met up with us.

16 Two people came over there and met him. And it was
17 Leonard and Lance that came and met him over there. And I
18 asked him -- I called from the police department. I called
19 and asked. I called and asked him who they were, and he
20 told me. He told me who Leonard was.

21 Q Okay. So you had seen who you just named Leonard and
22 Lance at your apartment before but you didn't know their
23 names.

24 A Yes.

25 Q They had met up with another guy you knew.

Clarence Spicer
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Do a lot of people come to your place to play the play
3 station?

4 A Yeah.

5 Q So that wasn't unusual.

6 A Not at all.

7 Q While you were talking to Sergeant Taylor, is that
8 when you recalled having seen that person before?

9 A Yes.

10 Q And then you tell us you made that phone call. And
11 you actually through the phone call, what did you learn?

12 A He told me the guys' names who had came up there to
13 meet him that day.

14 Q And that was Leonard?

15 A Yes.

16 Q Did he give you a last name?

17 A Yeah.

18 Q Leonard Lyles?

19 A Yeah. He said he called him Little Leonard at first,
20 and I asked him if he knew his last name, and he told me.

21 Q So Leonard Lyles --

22 A Uh-huh.

23 Q -- came over to your place. And who was with him on
24 that occasion?

25 A His brother.

Clarence Spicer
Direct examination by Mr. Bulsa

1 Q His brother. And of these people that you saw in your
2 doorway, who was it you saw?

3 A Lance.

4 Q Did you know his name?

5 A At the time?

6 Q Yes, sir.

7 A The time I was introduced to him?

8 Q Yes, sir.

9 A No, I didn't.

10 Q Okay. Did you know his name when you got off the
11 phone with that other friend of yours?

12 A Yes.

13 Q So with that information did you tell Sergeant Taylor?

14 A Yeah. I think I told him he had a nickname that they
15 were calling him. It was, it was Banks, I think.

16 Q Banks?

17 A Yeah.

18 Q Okay. So you provided that information to Sergeant
19 Taylor.

20 A Yes.

21 Q Were you later shown any photographs?

22 A Yes.

23 Q Was that in like a lineup?

24 A Yes.

25 Q Would you describe what you remember seeing?

Clarence Spicer
Direct examination by Mr. Bulsa

- 1 A Six pictures on a piece of paper.
- 2 Q Six pictures?
- 3 A Yes.
- 4 Q Okay. And what procedure was undertaken to show them?
- 5 A They just put six pictures on a piece of paper and
- 6 asked me if I knew or if I could point out who the person
- 7 was.
- 8 Q And could you?
- 9 A Yes.
- 10 Q And who was it?
- 11 A Lance Lyles.
- 12 Q Sir, I am going to ask you before this jury today, do
- 13 you recognize and see the person that you are calling Lance
- 14 Lyles?
- 15 A Yes, I do.
- 16 Q Point him out to the jury if you would.
- 17 A Far side of the table over there, white shirt and
- 18 glasses.
- 19 Q Okay.
- 20 MR. BULSA: Let the record reflect he pointed out
- 21 Lance Lyles.
- 22 Q And was Lance Lyles one of the individuals at your
- 23 apartment that night --
- 24 A Yes, he was.
- 25 Q -- the night that Tavaris Howze was killed?

Clarence Spicer
Direct examination by Mr. Bulsa

1 A Yes, he was.

2 Q Which of the two individuals was he?

3 A He was the guy that tried to come in first.

4 Q He was the first man.

5 A Yes.

6 Q Okay. Did you ever, were you ever able to identify
7 the second man?

8 A No.

9 Q Why not?

10 A He had on a mask.

11 Q Clearance, the defense attorneys will ask questions.
12 Please listen to their questions closely and answer them.

13 THE COURT: No. We are going to take a short break
14 before we go forward with the cross-examination.

15 I will ask the jury to please go to your jury room.
16 Do not talk about the case. I will bring you back in just
17 a few minutes.

18 (The following takes place outside the presence of the
19 jury.)

20 THE COURT: Mr. Spicer, you may step down. You may
21 not however discuss your testimony during the break.

22 Okay. Court's in recess for ten minutes.

23 (Whereupon, a recess was taken.)

24 THE COURT: Mr. Bulsa, can you push those lights down
25 until the jury gets seated? I think it is bothering some

Clarence Spicer
Direct examination by Mr. Bulsa

1 or all.

2 All right. Mr. Spicer, if you will, come back around
3 and take your seat on the stand.

4 Is there any testimony that either defendant wishes to
5 ask of this, elicit from this witness that relates to that
6 subject which I previously excluded based upon the lack of
7 relevance, at least in this phase?

8 MR. VIETH: I guess the better way to do it is, are we
9 allowed to do that, I mean?

10 THE COURT: Are you allowed to do what?

11 MR. VIETH: To go into that piece of evidence.

12 THE COURT: Whether it's a drug transaction or
13 something?

14 MR. VIETH: No. I am not going to go into that. No,
15 sir.

16 THE COURT: Well, what did you think? What testimony
17 is it that you would like to get from this witness that I
18 have previously indicated would be excluded if not shown to
19 be relevant?

20 MR. VIETH: Probably the only question I would ask
21 Mr. Spicer is -- probably phrase it in this way, and let it
22 go at whatever his answer is; is that the only occasion
23 that he had to have Lance or to have Lance Lyles in his
24 house, was to play games, was there any other reason he may
25 have been there in November.

Clarence Spicer
Direct examination by Mr. Bulsa

1 THE COURT: Okay.

2 MS. ANDERSON: Can I ask him about the marijuana
3 cigarette that was found in the apartment?

4 THE COURT: And what would the relevance of it be?

5 MS. ANDERSON: Again, it goes to why the boys were
6 there.

7 THE COURT: Well, if it is something that this witness
8 agrees to, you can.

9 MS. ANDERSON: But I can't ask him --

10 THE COURT: Well, if he denies it, it's not relevant,
11 is it, until it's been made relevant? That's my point.

12 MS. ANDERSON: Okay.

13 THE COURT: You can recall these witnesses if you need
14 to. I mean, you just can't ask these witnesses a bunch of
15 questions that you perceive to be relevant and they deny
16 and then you don't put any proof as to them is my point.

17 MS. ANDERSON: I will be able to at some point though.

18 THE COURT: Well, you might be able to, but I don't
19 know whether you will or not.

20 See, that's the problem. You know, many times lawyers
21 make decisions during the course of the trial. You may say
22 you plan to do something now and something develops and you
23 decide not to do it.

24 Well, then the damage has already been done so far as
25 the questions of these witnesses are concerned. That's why

Clarence Spicer
Direct examination by Mr. Bulsa

1 I say unless there is no objection or it's otherwise -- the
2 relevance is otherwise obvious, and it's not a fact that's
3 in dispute, then it can't be admitted where it's
4 prejudicial unless it's relevant and the probative value
5 outweighs that prejudicial effect.

6 MS. ANDERSON: All right.

7 THE COURT: Okay. Bring the jury in.

8 (The following takes place in the presence of the
9 jury.)

10 THE COURT: All right. Ladies and gentlemen, we are
11 going to continue with the cross-examination of the witness
12 by defense counsel.

13 MR. BULSA: Your Honor, if I may, looking through the
14 pictures, we found one other additional photograph I would
15 like to introduce without objection.

16 MS. ANDERSON: Actually I found it, but I am letting
17 Mr. Bulsa introduce it.

18 THE COURT: Well, that was kind of you to do that.

19 MR. BULSA: I think they want to use in it
20 cross-examination.

21 THE COURT: All right. It is admitted without
22 objection.

23 (Photograph marked State's Exhibit No. 16.)

24 THE COURT: All right. Who is going?

25 MS. ANDERSON: I'm sorry. I thought you were going to

Clarence Spicer
Cross-examination by Ms. Anderson

1 say something. Excuse me.

2 CROSS-EXAMINATION

3 BY MS. ANDERSON

4 Q Mr. Spicer, who did you say you work with?

5 A M. S. I. Inventory.

6 Q I couldn't hear you.

7 A M. S. I. Inventory.

8 Q Okay. What do you do for them?

9 A I am an auditor.

10 Q Okay. And you have had that job how long?

11 A About four or five years.

12 Q Okay. You don't go to college.

13 A No, I don't.

14 Q A lot of people that live in Rose Hill college
15 students?

16 A I don't know.

17 Q You don't know?

18 A I don't know.

19 Q Okay. Your roommate, did he go to college?

20 A He wasn't at the time. But, yes, he has.

21 Q Okay. But Mr. Howzer did.

22 A Yes.

23 Q He lived downstairs. Who was his roommate?

24 A He didn't have one.

25 Q Okay. Now, all right. Could you identify this

Clarence Spicer
Cross-examination by Ms. Anderson

1 picture?

2 A Yes.

3 Q What is it?

4 A It's my door.

5 Q Is this your front door?

6 A Yeah.

7 Q Okay. Now, Mr. Spicer, you say this is your front
8 door, correct?

9 A Yes.

10 Q Okay. And is there a step-up into your door?

11 A Yes, there is.

12 Q Okay. That's this down at the bottom, right?

13 A Yes.

14 Q Right along here is a step-up into your apartment.

15 A That brown thing.

16 Q Okay. Is your apartment on the level of that brown
17 thing?

18 A Yes, it is.

19 Q So when you step up, you don't go down again, right?

20 A No.

21 Q Okay. Now, tell me. You've identified Lance Lyles as
22 the person in the hoodie, correct?

23 A Yes.

24 Q And where was he standing in your door?

25 A Just right there at the doorway.

Clarence Spicer
Cross-examination by Ms. Anderson

1 Q Okay. Was it -- I'm going to take this down. Well,
2 maybe I shouldn't. Was it right here? I mean, can you?
3 Was he directly in front of your door?

4 A Yes.

5 Q Okay. And what did he say to you?

6 A I opened the door. He said what's up and something
7 else. I am not sure what else he said.

8 Q What do you mean, you are not sure what he said?

9 A Because by that time I am seeing somebody with a gun
10 and a mask.

11 Q Well, that's not what you said.

12 A What did I say?

13 Q I'm looking at your statement that you made that you
14 saw a black guy standing there and he was wearing a gray
15 hoodie pullover and he had gold teeth.

16 All right. Do you remember saying that and writing
17 that down?

18 A Yes, yes.

19 Q And you said he tried to walk in. You didn't say
20 anything about him talking to you, but he did say something
21 to you?

22 A Yes.

23 Q And you didn't recognize him?

24 A Not at the time, no.

25 Q Okay. Had you not had the occasion to see him the

Clarence Spicer
Cross-examination by Ms. Anderson

1 week before?

2 A No.

3 Q Okay.

4 A I wasn't there the week before.

5 Q Okay. When did you see him? When was it that he came
6 to your apartment?

7 A It could have been a couple of weeks before that.

8 Q Well, I believe you told Chris Taylor, let's see, he
9 came to your apartment with his brother. You don't
10 remember when that was?

11 A Not exactly, no.

12 Q Okay. But this same night that the incident occurred
13 is when you decided you knew him?

14 A No.

15 Q Okay. When was it?

16 A Around the next day sometime.

17 Q Okay. And you knew that his name was Banks?

18 A Somebody told me that his name was Banks.

19 Q I mean, somebody at the police station told you his
20 name was Banks, or who told you his name was Banks?

21 A A guy that had been at my house before that they came
22 to see the first time they ever been there.

23 Q Okay. Did you talk to those guys in between talking
24 to the police?

25 A I'm not sure what you are saying.

Clarence Spicer
Cross-examination by Ms. Anderson

1 Q Well, according to this report it looks like it was
2 the same night that you told him you thought you recognized
3 him, or the next morning. How long were you at the police
4 station?

5 A Until about the middle of the night, about 2:00 or
6 3:00 o'clock.

7 Q Okay. Because it says, "At about 1820 hours
8 Lieutenant Lamb and myself talked with Clearance Spicer."

9 A That's the next day.

10 Q Okay. So that's when you remembered you knew him?

11 A Yes.

12 Q Okay. Now, and you don't remember what he said.

13 A I don't remember his total statement, no.

14 Q But he said what's up?

15 A When he walked into the doorway he said what's up, and
16 said something else.

17 Q Okay. Did he -- I'm sorry. Excuse me.

18 A Never mind. I said when he walked into the doorway he
19 said what's up, and something else. I am not sure what it
20 was.

21 Q So he had to put his foot up in the door.

22 A Yes.

23 Q What else of his body came in?

24 A His body?

25 Q So did he step into the apartment?

Clarence Spicer
Cross-examination by Ms. Anderson

- 1 A Yes.
- 2 Q Okay. And what did you do?
- 3 A I put my arm up like I'm stopping him from coming in.
- 4 Q Now, the other person, the one that you said was in a
5 mask -- now, it was December, wasn't it?
- 6 A Yes.
- 7 Q It was cold.
- 8 A Yes.
- 9 Q Okay. So he had on a mask. What color was it?
- 10 A Dark black, blue.
- 11 Q Now, which way did he come around? I believe your
12 earlier testimony that was he was over here.
- 13 A He was.
- 14 Q And so he came over here this way.
- 15 A Yes.
- 16 Q Okay.
- 17 MS. ANDERSON: Now, we can cut the lights back on.
- 18 Q So if you're facing your door, okay, and this guy is
19 trying to come in and you are trying to shut it, there's no
20 way that the person with the mask on could have seen in the
21 apartment, was there?
- 22 A Yeah. He could have seen in the apartment if he had
23 looked in there.
- 24 Q How?
- 25 A Just looked. I mean, I opened my door, and you can

Clarence Spicer
Cross-examination by Ms. Anderson

1 see half of my whole apartment.

2 Q You opened your door and they're standing in front of
3 the door like this.

4 A Yes.

5 Q And you say that Lance Lyles is pushing his way in the
6 door. Okay.

7 A Yes.

8 Q All right. So but the other guy was behind him. You
9 never said he came in the door. So isn't it possible that
10 he could have -- I mean, could he not have seen Mr. Howzer?
11 I mean, you never said he came in the door.

12 A If he would have looked in there he would have saw
13 him.

14 Q But how could he have looked in there? How could he
15 have looked in there?

16 A Listen. I was pushing the door closed --

17 Q Okay.

18 A -- when they were trying to come in.

19 Q Okay.

20 A I didn't say he came inside. I said Lance came
21 inside.

22 Q Right. But I am asking you about my client,
23 Mr. Jeter. If he were the person, the other person there,
24 could he have seen in the apartment if you were pushing the
25 door and Lance had his body in the door? There's no way

Clarence Spicer
Cross-examination by Ms. Anderson

1 that the other person could have seen in the door, is
2 there?

3 A If he would have looked inside he could have saw in
4 there.

5 Q Well, how could he have looked inside?

6 MR. BULSA: Your Honor, I object. She's asked and
7 answered this question several times.

8 THE COURT: Overruled. Go ahead.

9 Q How could he have looked in the door if you had it
10 shut on Lance Lyles?

11 A If he is trying to push the door along with Lance
12 Lyles, he could have seen in there.

13 Q Well, you never said that. That's not in your
14 statement, what you testified.

15 A You are asking me a question right now?

16 Q Huh?

17 A Are you asking me a question right now? I am
18 answering your question.

19 Q I am just asking you. You testified that Lance Lyles
20 pushed inside your house.

21 A Yes.

22 Q And you said that the other guy -- that Lance Lyles
23 tried to come in and stepped up in the doorway and then you
24 saw the other guy with the gun and the mask, is that
25 correct?

Clarence Spicer
Cross-examination by Ms. Anderson

1 A Yes.

2 Q That was your testimony. And he came from over here.
3 We had that picture back up. He is from this side. Your
4 door opens like this, right? I mean, if we are facing,
5 here is your door, right?

6 A Yes.

7 Q Your door opens like that.

8 A Yes.

9 Q Okay. Here is Lance Lyles in the middle of your door,
10 and you said the other guy was over here, correct?

11 A Yes.

12 Q Okay. So you were shutting the door, correct?

13 A Yes.

14 Q Now, you stated that the person with the gun had the
15 gun in his left hand, correct?

16 A Yes.

17 Q All right. And where did the gun go?

18 A What do you mean, where did it go?

19 Q I mean, standing there, did you see one gun or two
20 guns?

21 A Standing there I saw one gun.

22 Q Okay. And did the gun come in the door?

23 A Yes.

24 Q How far?

25 A Far enough for somebody to get shot.

Clarence Spicer
Cross-examination by Ms. Anderson

1 Q That's what I am asking you. How far did it come in
2 the door? Where is the door? Show me the door, I mean, on
3 your arm. Okay. And where did the gun -- okay. All
4 right. So it's your testimony that the arm with the gun
5 came in that far. Did you shut the door on the arm?

6 A I shut the door while the arm was there. I was
7 pushing the door closed while they were pushing the other
8 way.

9 Q Okay. And then what happened?

10 A Somebody got shot.

11 Q Well, that's not what I am asking you. I am asking
12 you. Were shots fired? How many?

13 A At least one.

14 Q At least one. Okay. Do you remember what you said in
15 your statement right after it happened?

16 A No.

17 Q You said, "Then they shot once or twice, I don't
18 know."

19 A At least one.

20 Q But you also said they.

21 A It was more than one person.

22 Q Okay. But you said they shot. Was there more than
23 one gun?

24 A I saw one gun.

25 Q Okay. But you did state that they shot, didn't you?

Clarence Spicer
Cross-examination by Ms. Anderson

1 A Yes, I did.

2 Q Okay. Now, I know Mr. Bulsa asked you this, but why
3 didn't you invite them in? I mean, evidently didn't you
4 have people in and out of your apartment a lot?

5 A Yes, I did.

6 Q Okay. So why didn't you invite them in?

7 A It was a person at my door with a ski mask and a gun,
8 and there is a person at my door with a hoodie forcefully
9 coming in.

10 Q Well, but you didn't see the ski mask and the gun.
11 You were already shutting the door on Lance Lyles. Why?

12 A You didn't hear me correctly. I started closing the
13 door when I saw the ski mask and the gun.

14 Q That's not what you said earlier. Earlier you said
15 you tried to -- he tried to come in and you started pushing
16 them away even before you saw.

17 A Like that. I put up my arm. I also said that, didn't
18 I?

19 Q Uh-huh. And you were shutting the door. Why didn't
20 you want him in your house?

21 A I didn't know who it was.

22 Q But you amazingly remembered it later on, who it was.

23 A It wasn't amazing.

24 Q But you did remember who it was.

25 A Yes.

Clarence Spicer
Cross-examination by Ms. Anderson

1 Q Okay. You did say that the second man did not come
2 into the house.

3 A No. He never made it as far as the first man.

4 Q Okay. Now, why did you tell on the 9-1-1 call that
5 they were trying to rob you?

6 A Because that's what I felt.

7 Q Did they say, "Give me something, give me your money,
8 give me your whatever"?

9 A No, they didn't.

10 Q In fact, all they said was what's up.

11 A And some other statement.

12 Q But that you can't remember.

13 A Yeah. I wasn't sure.

14 Q Okay. So why did you think they were trying to rob
15 you?

16 A They painted a picture. I mean, if somebody comes to
17 your house with a mask and a gun and tried to force their
18 way in --

19 Q But you weren't going to let them in even before you
20 saw the mask and the gun, were you?

21 A I saw the mask and the gun almost as soon as he tried
22 to walk into my house. But, no, I wasn't going to let them
23 in.

24 Q Okay. But what did they do? I mean, what did he say,
25 Lance Lyles say, or do that made you think he was going to

Clarence Spicer
Cross-examination by Ms. Anderson

1 rob you?

2 A It was just a feeling that I got.

3 Q Okay. So was anything stolen?

4 A Not physically.

5 Q Okay. Nothing was taken from your house, correct?

6 A Yes.

7 Q Now, let me go back to your house. The couch -- you
8 had your front door. You've got your front door right
9 here. Opens up like this. Mr. Howzer was sitting over
10 here, correct?

11 A Yes.

12 Q All right. Now, in the diagram, in the diagram they
13 have Mr. Howzer lying here, in this diagram. This is where
14 he fell after he was shot, correct?

15 A Yes.

16 Q He was sitting?

17 A Yes.

18 Q So when they came to the door, he was sitting on this
19 couch.

20 A Yes.

21 Q Okay. Y'all were watching a movie.

22 A Yes.

23 Q All right. So isn't it possible that no one could
24 have seen Mr. Howzer? I mean, you got your door right
25 here. It's open like this. You are shutting it. They're

Clarence Spicer
Cross-examination by Ms. Anderson

- 1 out here and Mr. Howzer is back over here, correct?
- 2 A Yes.
- 3 Q When Lance Lyles came to your house once before, what
- 4 did he come to do?
- 5 A He was going to meet somebody else.
- 6 Q Who was he coming to meet?
- 7 A A guy named Pee.
- 8 Q Pee who?
- 9 A Pee.
- 10 Q Pee who?
- 11 A That's just it.
- 12 Q So people came to your house that you didn't know
- 13 their names?
- 14 A No. I mean, that's what I called him. I called
- 15 Tavaris Tee.
- 16 Q But you knew Tavaris' last name, didn't you?
- 17 A I didn't learn it until that night.
- 18 Q You did not know his last name was Howzer until that
- 19 night?
- 20 A His name is Howze.
- 21 Q Howze. Excuse me. You didn't know that until that
- 22 night?
- 23 A Yes.
- 24 Q Did he know your last name?
- 25 A I don't know.

Clarence Spicer
Cross-examination by Ms. Anderson

1 Q Did you know Brian's last name?

2 A I knew Brian, yes.

3 Q But you're in a habit of letting people that you don't
4 know their last names come to your house?

5 A Yes, I was.

6 Q When you talked on the 9-1-1 call you said you were
7 pushing the door closed and that's when the gun went off.
8 Isn't that what you said on the 9-1-1 tape?

9 A I don't recall.

10 Q But is that what happened?

11 A Yes.

12 Q As you were trying to close the door the gun went off.

13 A Yes.

14 Q And you don't know if it was one or two times.

15 A I am not sure.

16 Q What movie were y'all watching?

17 A "Man on Fire."

18 MS. ANDERSON: That's all the questions I have.

19 MR. VIETH: May it please the Court.

20 MR. BULSA: May we approach a minute?

21 (Bench conference held off the record in the presence
22 of the jury but out of the hearing of the jury.)

23 MR. BULSA: Thank you, Your Honor.

24 BY MS. ANDERSON

25 Q Mr. Spicer, I have a few more questions.

Clarence Spicer
Cross-examination by Mr. Vieth

1 Do you have a conviction for possession with intent to
2 distribute crack cocaine?

3 A Yes, I do.

4 Q You were found guilty in 1996?

5 A Yes.

6 Q Do you also have a failure to stop for a blue light?

7 A Yes, I do.

8 Q When was that?

9 A 2000.

10 Q In 2000, or was it 2004?

11 A It happened in 2000. I went to court in 2004.

12 Q Okay. And you were found guilty.

13 A Yes.

14 Q Okay. Thank you.

15 MR. VIETH: May it please the Court.

16 CROSS-EXAMINATION

17 BY MR. VIETH

18 Q Mr. Spicer, how old are you?

19 A Twenty-five.

20 Q Twenty-five. And when Lance was in your house a few
21 weeks before -- and I think you said November.

22 A Yeah.

23 Q And this was early December as I recall. So, and then
24 you were gone, you said, a week or so before. So probably
25 right before you left to go out of town Lance was in your

Clarence Spicer
Cross-examination by Mr. Vieth

1 house, is that right?

2 A That's around that same time.

3 Q And is he kind of an age -- is he in the age bracket
4 of people that would be coming into your house, 16 or 17?

5 A No, he isn't.

6 Q Are most of the people that would be coming and going
7 in your house in your age bracket like 20's and early 30's?

8 A Yes.

9 Q So it's kind of unusual that someone his age would be
10 coming into your house to play games or anything else that
11 went on there.

12 A Yes.

13 Q And was there any other things that went on in your
14 house other than -- that would attract these people to come
15 over there other than playing games?

16 A Not that I know of.

17 Q Okay. All right. So you just had a good game
18 selection? Is that what it amounts to?

19 A I had a good game record.

20 Q Okay. And from the, from the certainty that we know
21 of in here, is that Lance knocked on the door, and you
22 opened it. And did you give a -- do you recall whether you
23 gave a video interview with -- I know you gave a lot of
24 statements, and I am not going to pinpoint you to things.
25 You might get tied up. Did you say that he had his hands

Clarence Spicer
Cross-examination by Mr. Vieth

1 on his hood when he opened the door on the tape?

2 A Yes.

3 Q Didn't you say that?

4 A Yes.

5 Q And it was like he was pushing it back?

6 A Yes.

7 Q Okay. So when he knocks on the door and opens it,
8 he's pushing the hood back realistically fully exposing his
9 face.

10 A Yes.

11 Q Okay. Now, with both hands occupied pushing a hood
12 back, that eliminates him having a gun in his hands, didn't
13 it?

14 A I am not sure if he used both hands to do it.

15 Q Well, I thought you said he did, that he pulled the
16 hood back with two hands.

17 A I never said that.

18 Q Okay. So he pulled it back with one hand?

19 A He moved the hood out of his face.

20 Q Okay. And then was that on the level before you take
21 the step up or was that actually -- I can't visualize the
22 depth of that wall, of that little block there. When
23 someone knocks on your door, if they stand up are they
24 going to be just flush to the door?

25 A What do you mean?

Clarence Spicer
Cross-examination by Mr. Vieth

1 Q And it's probably not that big of a deal, but just
2 trying to get -- I'm just going to. This, the lower part
3 of this where the step-up is, I am not going to be very
4 good at focusing this, but essentially what I am talking
5 about is you have the walkway. When people have what I
6 would call a common walkway, they come upstairs and walk to
7 another apartment. Then you have this little step-up right
8 there to get -- be about the size of this it looks like
9 from this floor to this floor. Do you know what I am
10 talking about?

11 A Yes.

12 Q My question is if a person knocked on your door would
13 they have to be standing below that walkway.

14 A Yes.

15 Q They would, wouldn't they?

16 A Yes.

17 Q Okay. And then so when someone knocks on the door,
18 you opened it. Lance is pulling his hood back and takes
19 the step up at that point.

20 A Yes.

21 Q Okay. And you say what's up, and before much could be
22 done after that you say a masked individual with a gun
23 comes around the corner or right behind him, is that right?

24 A Yes.

25 Q And then in one of the statements that you gave I

Clarence Spicer
Cross-examination by Mr. Vieth

1 believe -- do you recall talking to an investigator with
2 the coroner's office by any chance?

3 A I am not sure.

4 Q Okay. On December the 10th if there was a statement
5 that said, "Mr. Spicer stated at this time he attempted to
6 close the door by slamming it at which point the possible
7 suspect's arm was caught in the door as it closed and this
8 is when the weapon discharged striking Mr. Howze," is
9 that -- all of that's accurate, isn't it? That's what you
10 have been saying.

11 A Yes.

12 Q And the point of it is that at the point, "The
13 possible suspect's arm was caught in the door as it closed,
14 and this is when the weapon discharged." So be it
15 right-handed or left-handed, that door is closing in the
16 direction of the sofa that Mr. Howze was sitting on, isn't
17 it?

18 A Yes.

19 Q Okay. And when that gun discharged, no one further
20 came in the house and said, you know, this is a holdup,
21 this is a robbery or anything like that. They took off,
22 didn't they?

23 A Yes.

24 Q They ran. And I assume you were unarmed.

25 A Yes.

Clarence Spicer
Redirect examination by Mr. Bulsa

1 Q And really no one at that point after that gun
2 discharged did anything further except leave quickly. They
3 didn't try to force their way in by any means.

4 A No.

5 Q Okay. And I believe in the report from Sergeant
6 Taylor on December the 10th when you went to city hall and
7 identified Mr. Lance out of a lineup, when he says without
8 hesitation he picked Lance Lyles out of a six-photo lineup,
9 that would be accurate. It didn't take you long to do
10 that, did it?

11 A No, it didn't.

12 Q I mean, it was without hesitation.

13 MR. VIETH: I believe that's all the questions I have,
14 Your Honor. Thank you.

15 MR. BULSA: Briefly in reply.

16 THE COURT: Okay.

17 REDIRECT EXAMINATION

18 BY MR. BULSA

19 Q Clearance, any doubt that the first man was Lance
20 Lyles?

21 A No.

22 Q Did it appear to you that these men were acting
23 together?

24 A Yes.

25 Q Is that why you said they shot?

Clarence Spicer
Recross-examination by Ms. Anderson

1 A Yes.

2 Q And you were not inviting them into your home.

3 A No.

4 Q Any entrance was without your consent.

5 A Yes, sir.

6 Q Thank you. That's all I have.

7 MS. ANDERSON: I have one.

8 RECROSS-EXAMINATION

9 BY MS. ANDERSON

10 Q Going back to the coroner's investigative notes, you
11 also stated that two individuals with both of them having
12 black ski masks on, didn't you?

13 A That was during the heat of the moment. I didn't have
14 time to just settle down. I was just telling them exactly
15 what I felt.

16 Q And this was done on December 10th, I believe.

17 A No. I didn't say that.

18 Q So you saw them. You talked. Let's see. So this was
19 at the scene. You said that there were two individuals
20 with black ski masks on.

21 A If I said it, they wrote it down wrong or something.

22 Q Okay. So you're saying now there was just one ski
23 mask?

24 A Yes.

25 Q Okay. But in this statement you did say two.

Clarence Spicer
Recross-examination by Ms. Anderson

1 A Is that what you see?

2 Q Yes, sir. Would you like to see it?

3 A If you say it, it's there.

4 Q Okay. So you don't remember this.

5 A Not exactly, no.

6 Q Okay. That's all the questions I have.

7 MR. VIETH: No, sir.

8 THE COURT: You may step down.

9 All right. Ladies and gentlemen, we are going to
10 recess for the afternoon.

11 Let me remind you of the caution given you prior to
12 excusing you for lunch.

13 During the overnight recess do not have any
14 discussions of any type with any person whatsoever about
15 this case. That includes just telling the fact that you
16 are sitting on a case called State versus whatever. You
17 can't discuss that. You can't discuss it in any fashion
18 whatsoever.

19 Now, after you've reached a decision in the case you
20 can talk about it as much or as little as you'd like, but
21 you are not permitted to talk about it until after you have
22 reached your decision in the case.

23 Also, do not permit yourselves to be exposed to any
24 type of media coverage, whether it be television or radio
25 or newspaper. You have to avoid it. Don't look at it;

1 don't listen to it; don't read it.

2 Your decisions have to be based upon what you see and
3 hear in the courtroom during the trial. You cannot allow
4 yourselves to be influenced by any outside consideration,
5 because if you overhear discussions or you read articles or
6 look at things on T. V. or listen to them on the radio,
7 they might be wrong, or it might be they are talking about
8 another case and you misunderstand. So, in any event,
9 avoid any type of media exposure. Have no discussions and
10 do not conduct any research or do any investigation on your
11 own.

12 With that, do have a good evening. Please report
13 directly to your jury room at 9:30 in the morning, at
14 9:30 in the morning. Have a good evening.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: All right. Any matters to address before
18 we recess?

19 MR. BULSA: Not by the state, Your Honor.

20 MS. ANDERSON: Nothing, Your Honor.

21 MR. VIETH: Nothing, Your Honor.

22 THE COURT: And, Mr. Vieth, you will remind Mr. Lyles
23 of his obligation to appear on time in the morning.

24 MR. VIETH: Yes, sir; yes, sir.

25 THE COURT: Court is in recess until 9:30 in the

1 morning.

2 END OF PROCEEDINGS MARCH 13, 2006

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1 (Proceedings March 14, 2006)
2 (The following takes place outside the presence of the
3 jury.)
4 (Photographs marked State's Exhibits Nos. 17 and 18.)
5 THE COURT: Any matters to address before the jury is
6 brought in?
7 MR. BULSA: Nothing by the state.
8 MS. ANDERSON: Your Honor, we wanted to address my
9 motion to suppress the first three statements made by my
10 client.
11 THE COURT: Is that the next witness?
12 MR. BULSA: No, sir.
13 THE COURT: Well, we will do that before they testify.
14 How long is it going to be before we get to that?
15 MR. BULSA: Probably five or six witnesses.
16 THE COURT: Okay. Anything else?
17 MS. ANDERSON: No, sir.
18 THE COURT: All right. Bring the jury in.
19 (The following takes place in the presence of the
20 jury.)
21 THE COURT: Good morning, ladies and gentlemen.
22 As you know, when we left yesterday the state had
23 begun with their presentation of evidence. So we are going
24 to continue with that presentation this morning.
25 Mr. Bulsa.

Scott Hill
Direct examination by Mr. Bulsa

1 MR. BULSA: Scott Hill.

2 SCOTT HILL, having been first
3 duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BULSA

5 Q Scott, how old are you?

6 A Seventeen.

7 Q Do you go to school?

8 A Yes.

9 Q Where do you go to school?

10 A Dorman High School.

11 Q What grade are you?

12 A 12th.

13 Q Do you have plans for after school?

14 A Yes.

15 Q What kind of plans?

16 A Go to college.

17 Q Okay. Have you been accepted yet?

18 A Not yet. I am still sending out applications.

19 Q Where do you live, Scott?

20 A I live in Rose Hill, but they changed the name to
21 Crown Point, in Spartanburg.

22 Q Okay. Rose Hill Apartments, that's off Powell Mill
23 Road?

24 A Yes.

25 Q And how long have you lived there?

Scott Hill
Direct examination by Mr. Bulsa

1 A For three years now.

2 Q Who do you live with?

3 A My mom and my brother.

4 Q Anybody else?

5 A No.

6 Q Do you work?

7 A Yes.

8 Q What kind of job do you have?

9 A I work at Moe's. It's a restaurant.

10 Q Moe's?

11 A Yes.

12 Q What kind of restaurant is that?

13 A It's in the Dorman Center.

14 Q And when do you work there?

15 A During the week. It will like show on my schedule on
16 which days I do and which days I don't.

17 Q About how many hours do you work a week?

18 A Around 35.

19 Q Scott, do you remember an incident back in December of
20 2004 where someone was shot at Rose Hill Apartments?

21 A Yes.

22 Q Do you recall being out that night?

23 A Yes.

24 Q And had you gone anywhere around 9:00 o'clock or so,
25 before 9:00 o'clock?

Scott Hill
Direct examination by Mr. Bulsa

- 1 A Yes, sir.
- 2 Q And where had you been?
- 3 A I went to Hollywood Video.
- 4 Q And where is Hollywood Video?
- 5 A That's down W. O. Ezell near, right at the Dorman
6 Center and Wal-Mart.
- 7 Q It's right off W. O. Ezell in front of the Dorman
8 Center?
- 9 A It's like next to it.
- 10 Q Next to the entrance?
- 11 A Yes.
- 12 Q All right. And what were you going there for?
- 13 A I was returning a game.
- 14 Q When you say a game, a video game?
- 15 A Yes.
- 16 Q Were you by yourself?
- 17 A Yes.
- 18 Q What route did you take to get over there?
- 19 A I took the back passageway through the parking lot.
- 20 Q Okay. Through the parking lot of the old Home Depot.
- 21 A Yes.
- 22 Q Let me show you State's Exhibit No. 12 on the
23 overhead. Have you seen that before?
- 24 A Yes.
- 25 Q Have we showed it to you in a pretrial meeting?

Scott Hill
Direct examination by Mr. Bulsa

1 A Uh-huh.

2 Q Does this show the pathway?

3 A Yes.

4 Q Okay. If you would, look up at the screen. Do you
5 see the pathway? I will orient you. This will be Rose
6 Hill Apartments. That will be the Home Depot.

7 A It's right there.

8 Q Right in here?

9 A Uh-huh.

10 Q And so you would walk through there and then cut
11 through here.

12 A Yeah.

13 Q Okay. Now, did you take that same path going home?

14 A Yes.

15 Q Let me show you State's Exhibit No. 17. Do you
16 recognize that?

17 A Uh-huh.

18 Q What is that?

19 A That's the passageway.

20 Q Okay. This is a picture of the path?

21 A Yeah.

22 Q I will display that on the overhead. That's the path
23 that you walked on?

24 A Yes.

25 Q Now, was this around 9:00 o'clock in the evening?

Scott Hill
Direct examination by Mr. Bulsa

- 1 A You mean that picture?
- 2 Q No. When you were walking on the path.
- 3 A Oh, yeah, yes.
- 4 Q Okay. And was it dark outside?
- 5 A Yeah.
- 6 Q Was there any light on that path?
- 7 A Not on the path, but there's a street light nearby.
- 8 Q There was a street light. Let me show this picture.
- 9 You showed us the distance of the path. Is this the street
- 10 right there?
- 11 A Yeah.
- 12 Q And there's a street light near there?
- 13 A Yeah.
- 14 Q Does it shine into the pathway?
- 15 A A little bit.
- 16 Q Okay. When you were walking on this path did anything
- 17 happen?
- 18 A Yes. On my way back.
- 19 Q Speak up a little bit louder.
- 20 A On my way back, yes.
- 21 Q And what happened?
- 22 A Well, I just heard a few gunshots, and then like two
- 23 people ran by me.
- 24 Q You need to speak up a little bit louder. It's hard
- 25 to hear you over the machine.

Scott Hill
Direct examination by Mr. Bulsa

1 A I heard two gunshots, and then two people ran towards
2 me.

3 Q Now, as we're looking at this picture, would you be
4 walking towards us?

5 A Yes.

6 Q Okay. And these people that ran by you, in which
7 direction were they going?

8 A Outwards toward the -- toward the rock.

9 Q Okay. Toward the pavement we see in the building.

10 A Yes.

11 Q Is that right? Okay. Did you notice anything about
12 these two people?

13 A They had on a mask and they were holding guns.

14 MS. ANDERSON: Your Honor, I am sorry. I am having a
15 real hard time hearing Mr. Hill.

16 THE COURT: You need to speak up, please.

17 THE WITNESS: Okay.

18 A They had a mask and there were two guns.

19 Q When you say two guns, what do you mean?

20 A Two guns.

21 Q Did one man have each gun or --

22 A Oh, no. Both of them had one.

23 Q Okay. Both of them had a gun.

24 A Yes.

25 Q The sound of the shots that you heard, could you tell

Scott Hill
Direct examination by Mr. Bulsa

1 about where they came from? You are walking on this path.

2 Which building do you live in?

3 A All the way back there.

4 THE COURT: You are going to need to speak up, please,
5 and use the microphone.

6 A In the back.

7 Q When you say back, close to Powell Mill Road?

8 A Yes.

9 Q Okay. So you are going to be walking in that
10 direction. Whereabouts? Do you recall, where did you hear
11 the shots?

12 A Over there.

13 Q All right. When you say over there, which way? Tell
14 me which way to point it.

15 A Down.

16 Q Down over here somewhere?

17 A Yeah.

18 Q Okay. So you heard the shots to your right. If you
19 are walking this way, it would be off to your right?

20 A Yes.

21 Q Okay. And then you saw these men run past you. Was
22 it light enough for you to identify anybody?

23 A No.

24 Q What did you do after you -- or as you saw those men?

25 A Afterwards, they ran by me.

Scott Hill
Direct examination by Mr. Bulsa

1 Q Do you know where they were running?

2 A I stepped to the side.

3 Q Why did you step to the side?

4 A I didn't want to get in their way.

5 Q And why didn't you want to be in their way?

6 A They probably would have shot me.

7 Q How were you -- what did you think or what did you
8 feel at that time?

9 A Nervous.

10 Q Why so?

11 A Because something serious had just happened and if I
12 was to get, if I was to interrupt like what was going on
13 they -- I'd probably be, would have been shot.

14 Q You need to speak up a little bit. The court reporter
15 is having --

16 A Like I didn't want to get involved in what was going
17 on. So I didn't want anything to happen to me.

18 Q And where did you step to?

19 A Like inside where those bushes are.

20 Q Okay. Off of the dirt-way into the bushes or grass
21 area?

22 A Yeah, uh-huh.

23 Q How fast were these men running?

24 A Pretty fast.

25 Q What did you do after they passed you?

Scott Hill
Direct examination by Mr. Bulsa

1 A I ran to my friend's house who lived closer towards
2 the path.

3 Q Why did you run to his house?

4 A It was the only place I knew that was closest to where
5 I was.

6 Q And why did you run there instead of your mother's
7 house?

8 A Because my mother's house was a further distance, like
9 their building was ahead of mine.

10 Q Okay. I am trying to let the jury understand why you
11 stopped at your friend's instead of going to your mother's.
12 What does the closeness have to do with why you stopped
13 there?

14 A Because the police and everything. I am pretty sure
15 they would have come to the scene of the crime afterwards,
16 and I thought it would be safer just to go to his house
17 instead of having to go all the way home.

18 Q What were you afraid of?

19 A Everything that had just happened.

20 Q Now, you didn't see anybody get shot. You heard some
21 shots, right?

22 A Yeah.

23 Q Okay. And you saw men running with guns.

24 A Yes.

25 Q And did you think they were the ones that just shot?

Scott Hill
Cross-examination by Ms. Anderson

1 A Yes.

2 Q Did you see anybody else out that night?

3 A No.

4 Q Scott, answer any questions either one of these
5 lawyers have for you. Okay?

6 A Okay.

7 CROSS-EXAMINATION

8 BY MS. ANDERSON

9 Q Mr. Miller, this happened nearly a year, and a long
10 time ago, didn't it?

11 A Yes.

12 Q Okay. How old were you then?

13 A What do you mean?

14 Q How old were you?

15 A I was 15.

16 Q Okay. Now, when you saw the men running, what did you
17 say they were dressed in?

18 A Dark clothing.

19 Q Okay. You also testified they had masks on, ski masks
20 on.

21 A Yes.

22 Q Both of them?

23 A Yes.

24 Q Okay. You also testified that they both had guns.

25 A Yes.

Scott Hill
Cross-examination by Mr. Vieth

1 Q All right. Can you describe the guns?

2 A One was silver and one was black.

3 Q Okay. Could you tell any difference between who had
4 which gun?

5 A No.

6 Q Okay. Could you tell any difference between the two
7 men and their height?

8 A No, because the passageway is kind of like at a slope.
9 So I couldn't really tell.

10 Q So you were kind of down in a hole?

11 A Like, like one was in front and one was in back.

12 Q Uh-huh.

13 A And since it's like at a slope you can't really tell
14 who is in front or not.

15 Q Okay. So you are saying the path was at a slope,
16 right?

17 A Yes.

18 Q Okay. But you are positive that you saw two guns.

19 A Yes.

20 Q Thank you.

21 CROSS-EXAMINATION

22 BY MR. VIETH

23 Q Mr. Hill, when you look at that path, the picture, how
24 much further this way would that path go before you got to
25 the apartment complex, as a guess?

Scott Hill
Cross-examination by Mr. Vieth

1 A Well, after that path is a street there, and then you
2 cross the street, and then you'll see the other apartments.

3 Q All right. So is that photograph, if you know, is
4 that taken from a path or is that taken on the road? I
5 mean, is the road that close to the parking lot there?

6 A Someone could have been standing on the street like
7 when you get off coming this way. It would be like a
8 street there. That goes over.

9 Q All right. But if someone were leaving the
10 apartment -- and I guess that's a shortcut that a lot of
11 y'all use to go to the Hollywood Video or even to the other
12 apartment complex up there, right?

13 A Yes.

14 Q That's a common. It looks to me like it's kind of a
15 worn path right there. It's not an unused path.

16 A Okay.

17 Q I'm asking you. You've used that path. Was that the
18 first time you ever used that path?

19 A No, it wasn't the first time.

20 Q Okay. It is a common pathway for people that live
21 over in that Rose Hill area to walk and go wherever they
22 are going, over at Home Depot or Hollywood Video or
23 whatever.

24 A Yes.

25 Q Is that a common walkway? Would you say it is the

Scott Hill
Cross-examination by Mr. Vieth

1 size of a length of a football field from the apartments to
2 this road, to that cement; or is it shorter or longer? And
3 I am not asking for exact dimensions, just best guess. If
4 you started walking from right there until you got to where
5 the complexes were, about how far of a walk would it be?

6 A It depends on which complex you are going to.

7 Q All right. The complex you heard shots from, about
8 how far would that be from that end of the walkway?

9 A It wouldn't be that far.

10 Q All right. Longer than this courtroom?

11 A Yes.

12 Q All right. Is it a football field?

13 A Maybe something like this courtroom to the one that's
14 out there, over there.

15 Q To the courtroom that's on the other side.

16 A Yeah.

17 Q So if we were looking at the courtroom over there on
18 the other side, go through these doors into the hallway and
19 into the courtroom over there, from about there to about
20 where you are would be what someone would walk to get from
21 that complex to there.

22 A Yeah.

23 Q Roughly.

24 A Yeah.

25 Q That's what you would think. So that doesn't take

Scott Hill
Cross-examination by Mr. Vieth

- 1 less than about a minute, does it?
- 2 A Yeah.
- 3 Q Is that right?
- 4 A Yeah.
- 5 Q Okay. And so a minute at the most. It would probably
- 6 take about 30 seconds if I started walking from here to
- 7 that courtroom.
- 8 A Yeah.
- 9 Q And then in that point in time, where are you when you
- 10 hear what -- I think you said, first of all, you heard a
- 11 few shots, and then you changed it and said you heard a
- 12 couple of shots.
- 13 A Yeah.
- 14 Q Okay. Do you know what you heard?
- 15 A I heard gunshots.
- 16 Q I know that. But when you said a few shots, I wrote
- 17 it down. And then you came back the next statement to Mr.
- 18 Bulsa and said two shots. I am just curious as to which
- 19 one, do you know, if you know, whether it was two or a few?
- 20 A Well, I don't remember now how many exactly. So
- 21 that's why I am saying it was a few.
- 22 Q All right. That's fair enough.
- 23 A But it was more than one.
- 24 Q Sir?
- 25 A It was more than one.

Scott Hill
Cross-examination by Mr. Vieth

1 Q Okay. And it could have been more than two.

2 A Yeah.

3 Q Okay. And when you talked to the officer a couple of
4 days later you indicated that in the time it takes to walk
5 from here to there two people went running by, which would
6 have taken about ten seconds or so, I guess, if you are
7 running from me to that courtroom or you to that courtroom.

8 A Yeah.

9 Q Okay. And in that period of time, granted there's a
10 light somewhere, but that's a dark passageway. There is
11 trees there, isn't there?

12 A Yeah.

13 Q Okay. You were able to see in that span of time two
14 people, two guns and two ski masks.

15 A Yeah.

16 Q Okay. And when I think of a ski mask, I'm thinking of
17 something that maybe has an eye opening here and the rest
18 of it is pulled down. Is that what you refer to as a ski
19 mask?

20 A Yeah.

21 Q Did they have any -- did these people have anything
22 else with them?

23 A No.

24 Q Okay. And after that ten seconds or so passed by,
25 then you walked on to another residence in that apartment

Scott Hill
Cross-examination by Mr. Vieth

1 complex and stayed.

2 A Yeah.

3 Q Is that right? Now, where would the street light be
4 in relation to the start of that path and the end of that
5 courtroom over there? Where would it be in relation to
6 where you were?

7 A In the road.

8 Q In the road. And the road is between you and the
9 courtroom over there?

10 A Yeah.

11 Q Okay. Is it closer to the apartment complex or closer
12 to this picture?

13 A It's about right in between.

14 Q About right in between.

15 A Yeah.

16 Q Okay. And there's a road that cars drive by?

17 A Yes.

18 Q Okay. And where is that light on the road in relation
19 to the path, to the left or to the right of it?

20 A It's to the right.

21 Q To the right of the path. Okay. So when you're
22 walking toward the courtroom and you get to the road,
23 wherever it is, there's a street light somewhere over in
24 here.

25 A Yes.

Scott Hill
Cross-examination by Mr. Vieth

1 Q No. I'm sorry. Over here to the right. Is that what
2 you are saying?

3 A Yeah.

4 Q To the right of you, to your right.

5 A Yeah.

6 Q There's a street light up there, and that light
7 illuminates that road.

8 A Yes.

9 Q Okay. Now, where were the two people that you saw in
10 relation to the road, on the far side of the road or on
11 your side of the road?

12 A My side.

13 Q And by your side, I am talking about the side furthest
14 away from the apartment complex. So they had crossed the
15 road.

16 A No.

17 Q They were on the other side of the road.

18 A No.

19 Q Sir?

20 A No.

21 Q They were on -- all right. Let's say that for
22 purposes -- I don't want to mess you up. There's a road,
23 and on the right side of the road is the apartment
24 complexes.

25 A Yes.

Scott Hill
Cross-examination by Mr. Vieth

1 Q The street light would be to the right of the trail,
2 the right side of the trail.

3 A Crest on the other side. There ain't no crest over
4 there.

5 Q The other side of the road?

6 A Yeah.

7 Q Okay. So the road is -- the road is going, and I
8 don't know what's north, south, east or west. Let's assume
9 just for purposes of talking that that roadway goes east
10 and west and the road goes north and south. Is that right?

11 A Okay.

12 Q The road is perpendicular to the path.

13 A Yeah.

14 Q Okay. And on the apartment side of the road is a
15 street light to the right of the path but on the right
16 side, on the apartment side, of the road, or do you know?
17 If you don't know, that's fine.

18 A I don't know.

19 Q Okay. All right. Well, then where were you when the
20 two people passed you? Were you on the side of the -- on
21 the side of the -- were you in the pathway to the left of
22 the road closer to where you would come from, or were you
23 on the path to the right of the road but closer to the
24 apartment complex?

25 A When they passed me I was like right there.

Scott Hill
Cross-examination by Mr. Vieth

1 Q You were right there. So, and if that picture -- I'm
2 sure it's going to be difficult for us to estimate. But
3 that picture to me looks like you are only about five or
4 six steps from getting on the pavement. Is that about what
5 you recall?

6 A Yeah.

7 Q Okay. So you're telling us that that picture pretty
8 much accurately represents not only the path but where you
9 were when you saw them run by you.

10 A Yeah.

11 Q Okay. And then you would walk further on about half
12 way down here somewhere, and you would find the road.

13 A Yes.

14 Q Is that right? And then on the right side of the road
15 is where you find the light.

16 A The what?

17 Q The light.

18 A Yes.

19 Q Okay. All right. That's all the questions I have.

20 Thank you.

21 MR. BULSA: Nothing further from Mr. Hill.

22 THE COURT: You may step down.

23 MR. BULSA: We ask that he be excused.

24 THE COURT: Any objection?

25 MS. ANDERSON: None, Your Honor.

Brian Durbin
Direct examination by Mr. Bulsa

1 MR. VIETH: No, sir.

2 THE COURT: You may be.

3 (Whereupon, the witness was excused.)

4 MR. BULSA: Brian Durbin.

5 BRIAN DURBIN, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Brian, if you would, introduce yourself to us.

9 A My name is Brian Durbin.

10 Q And how old are you?

11 A Twenty-one.

12 Q Where do you live?

13 A Campobello, South Carolina.

14 Q Were you raised in Campobello?

15 A For the last -- since I was eight I lived there.

16 Q So you consider yourself from Campobello?

17 A Pretty much.

18 Q Okay. This machine makes some noise. We are going to
19 use it with some overheads. I need for you to speak up so
20 we can hear you over it. Okay?

21 A All right.

22 Q Use that microphone.

23 Brian, where do you go to school?

24 A I go to Beacon University at Evangel Cathedral.

25 Q What is that?

Brian Durbin
Direct examination by Mr. Bulsa

- 1 A It's a seminary.
- 2 Q And how long have you been going there?
- 3 A Since August.
- 4 Q Of 2005?
- 5 A Yes, sir.
- 6 Q Did you attend school anywhere else before that?
- 7 A Spartanburg Methodist last year, year 2004 and 2005.
- 8 Q So you attended Spartanburg Methodist for one full
- 9 year.
- 10 A Yes, sir.
- 11 Q Where did you go to high school?
- 12 A I went to Landrum High School.
- 13 Q Do you work anywhere?
- 14 A Yeah. I work at Tryon Health and Fitness Club in
- 15 Tryon, North Carolina.
- 16 Q About how many hours do you put in?
- 17 A Eight hours a day.
- 18 Q What are you studying at the Beacon University?
- 19 A We study the Bible.
- 20 Q What do you intend to do with that?
- 21 A I am going to be a minister.
- 22 Q What were you studying at Spartanburg Methodist?
- 23 A General courses. It was my first year.
- 24 Q Now, Brian, where did you live when you were attending
- 25 Spartanburg Methodist?

Brian Durbin
Direct examination by Mr. Bulsa

- 1 A I lived in Campobello.
- 2 Q So you stayed at home.
- 3 A The first semester I stayed at home and the second
- 4 semester I stayed on campus.
- 5 Q And then you moved back home?
- 6 A Yes, sir.
- 7 Q All right. So did you know Tavaris Howze?
- 8 A Yes, sir.
- 9 Q How did you know him?
- 10 A I met him at the school. He went to Spartanburg
- 11 Methodist.
- 12 Q Did y'all have classes together?
- 13 A No, we didn't have classes.
- 14 Q How did y'all meet?
- 15 A I just saw him hanging out, you know, in the game room
- 16 and outside the school.
- 17 Q Did y'all become friends?
- 18 A Yeah, we became friends.
- 19 Q Do you recall about when that would have been?
- 20 A Maybe October and November, around that time.
- 21 Q So a month or two after school has started.
- 22 A Yes, sir.
- 23 Q Did you start hanging out with him and spending time
- 24 with him?
- 25 A Yeah.

Brian Durbin
Direct examination by Mr. Bulsa

1 Q Where would y'all spend time together?

2 A We went over to his apartment sometimes, and we would
3 hang out at the school.

4 Q So you are familiar with where he lived.

5 A Yes, sir.

6 Q Is that Rose Hill Apartments?

7 A Yes, sir.

8 Q And when you would visit him at Rose Hill did you meet
9 any of his neighbors?

10 A Yes, sir.

11 Q Who?

12 A See. It was Clearance.

13 Q You call him See?

14 A Yeah, I call him See. It was Clarence.

15 Q Okay. You called him See.

16 A Yeah, I called him See.

17 Q Okay. Clearance went by See and Tavaris went by Tee?

18 A Yes, sir.

19 Q Did you have a nickname?

20 A No, sir.

21 Q What would y'all do, or would you go over there to
22 See's house to play games?

23 A Yes, sir.

24 Q What kind of games?

25 A Played def-jim and Play Station Two games, anything

Brian Durbin
Direct examination by Mr. Bulsa

1 like that.

2 Q Is that, was that common?

3 A I mean, I probably went over to his house about ten
4 times, to Tee's house.

5 Q How often did you go over to Clearance's house?

6 A Maybe, probably about half that many times.

7 Q Seems a little unusual for people your age to be
8 playing video games. Is that just something you grew up
9 doing?

10 A Yeah. Well, not really, but I enjoyed it. I still
11 play a little bit.

12 Q Okay. Now, Brian, do you recall the night that
13 Tavaris was killed?

14 A Yes, sir. I mean, I don't remember everything
15 probably, but pretty much most of it.

16 Q Had you seen him that day?

17 A Yes, sir.

18 Q Do you recall, first of all do you recall, what day of
19 the week this was? Do you recall what day of the week it
20 was?

21 A No, sir.

22 Q Okay. Was it during the week?

23 A Yeah, it was during the week.

24 Q Okay.

25 A Because I had class.

Brian Durbin
Direct examination by Mr. Bulsa

- 1 Q So y'all had classes that day. Speak up.
- 2 A Yes, sir.
- 3 Q And do you recall about when you met up with Tavaris?
- 4 A Probably about 3:00 or 4:00 maybe.
- 5 Q And where did y'all meet up?
- 6 A I went over to his house.
- 7 Q Okay. And at any point did y'all go to Clearance's
- 8 house?
- 9 A Yes, sir. It was probably close to about
- 10 8:00 o'clock.
- 11 Q Okay. And did you ever leave that area?
- 12 A Yeah. I went. I probably left around 8:15 to go to
- 13 the cafeteria before it closed.
- 14 Q How long were you gone?
- 15 A About 15 or 20 minutes, and then I came back. I got
- 16 there a little bit after 8:30, probably around 8:40 or
- 17 8:45.
- 18 Q And when you came back to Clearance's house, what did
- 19 you see?
- 20 A I knocked on the door, and he opened it. And I saw
- 21 Tee laying on the ground. And he said somebody tried to
- 22 rob him, he thinks somebody tried to rob him. He wasn't
- 23 exactly sure what they were doing. But I just saw him
- 24 laying on the ground. And I just thought they were playing
- 25 with me because he said somebody shot him or whatever.

Brian Durbin
Direct examination by Mr. Bulsa

- 1 Q Was it your plan to come back to the apartment --
- 2 A Yeah.
- 3 Q -- after you ate?
- 4 A Yeah. I was planning on coming back.
- 5 Q So you told him I am going to get something to eat and
- 6 I will be back?
- 7 A Yeah.
- 8 Q Okay. After Clearance told you what happened, what
- 9 did you do?
- 10 A I was kind of -- I just thought they were playing with
- 11 me actually. So I kind of, you know, went over and, you
- 12 know, looked, kind of lifted up, tried to lift him up a
- 13 little bit. And I saw a little bit of blood. So, you
- 14 know, I was pretty sure it was real. And I asked him, you
- 15 know, if he called the ambulance or the 9-1-1 or whatever
- 16 to see if like somebody could come and help him because I
- 17 really didn't know what to do.
- 18 Q And he had already called?
- 19 A Yeah. Somebody had already called.
- 20 Q Okay. And did you stay there?
- 21 A Yeah, I stayed.
- 22 Q What's the next thing that happened?
- 23 A I went, and I was outside, you know, just leaning on
- 24 the wall probably for about ten minutes until the
- 25 paramedics or the cops got there, whatever. And then they,

Brian Durbin
Direct examination by Mr. Bulsa

1 you know, they asked me a couple of questions, and they
2 told me I could leave because I didn't see anything. So I
3 just went home.

4 Q Did the police later come back and find you?

5 A Yeah. They came to my house and I had to come down
6 here.

7 Q You gave a statement?

8 A Yes, sir.

9 Q Okay. Did you -- you said you lifted, tried to lift,
10 Tavaris up.

11 A Yeah. I kind of lifted him up on his shoulder a
12 little bit.

13 Q Do you recall where he was lying?

14 A He was right by the door.

15 Q Was he near the love seat?

16 A Yeah. He was kind of in between the two seats there.

17 Q Other than lifting him up to see if something really
18 happened, did you move him any other?

19 A No, sir.

20 Q Did you notice any injury to him?

21 A No. I couldn't see like where the wound was at.

22 Q You saw blood.

23 A Yeah. I saw it on the floor.

24 Q All right. Thank you. Brian, answer any questions
25 either attorney has for you.

Brian Durbin
Cross-examination by Ms. Anderson

1 A All right.

2 CROSS-EXAMINATION

3 BY MS. ANDERSON

4 Q Mr. Durbin, you did not know what Mr. Spicer's name
5 was?

6 A No, sir; no, ma'am.

7 Q Didn't you give a statement saying you thought his
8 name was Cecil?

9 A Yes, ma'am.

10 Q So you really didn't know him at all.

11 A Not very well.

12 Q And you knew Mr. Howze because y'all were at school
13 together.

14 A Yes, ma'am.

15 Q And did you say you did not live there, you lived in
16 Campobello?

17 A Campobello, yes, ma'am.

18 Q Okay. And so that's why you stayed at school all day
19 long?

20 A Yeah.

21 Q I noticed you would play pool most of the day.

22 A Uh-huh.

23 Q But you did not see what happened at all.

24 A No, ma'am.

25 Q Thank you.

Ernest Howze
Direct examination by Mr. Bulsa

1 MR. VIETH: I have no questions, Your Honor.

2 THE COURT: You may step down.

3 MR. BULSA: Nothing further. We ask that he be
4 excused, Your Honor.

5 THE COURT: Any objection?

6 MR. VIETH: No, sir.

7 MS. ANDERSON: No, Your Honor.

8 THE COURT: You may be excused.

9 (Whereupon, the witness was excused.)

10 MR. BULSA: May we approach, Your Honor?

11 THE COURT: Yes.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 MR. BULSA: Ernest Howze.

15 ERNEST HOWZE, having been
16 first duly sworn, testified as follows:

17 DIRECT EXAMINATION BY MR. BULSA

18 Q Mr. Howze, would you introduce yourself to us?

19 A I'm Ernest Howze.

20 Q Where do you live, sir?

21 A Chester, South Carolina.

22 Q You are Tavaris' father?

23 A That's correct.

24 Q What kind of work do you do?

25 A I work for Cargill, Inc. We produce scheduled oil

Ernest Howze
Direct examination by Mr. Bulsa

1 (sic).

2 Q How long have you been employed there?

3 A Seventeen years.

4 Q How many children do you have?

5 A I had two. Unfortunately, I only have one now.

6 Q And where did Tavaris fall in the children?

7 A He was my oldest.

8 Q And your other child, is that a boy or a girl?

9 A It's a boy 17 years old.

10 Q Was Tavaris raised in Chester?

11 A Most of his life, yes. We moved away to Atlanta for
12 three or four years, and then we moved back to Chester.

13 Q Where did he go to high school?

14 A Louisville High School.

15 Q Is that in Chester?

16 A That's a little town outside of Chester, but it's in
17 Chester County, Richburg.

18 Q What kind of things did he do there?

19 A Excuse me?

20 Q What kind of things did he do?

21 A He played football, high school football, where they
22 won a state championship.

23 Q What caused him to come to S. M. C?

24 A Well, he had attended another college, and he didn't
25 like the environment. So he finished the first year out

Ernest Howze
Direct examination by Mr. Bulsa

1 and then sat out a year and worked, and then we kept on him
2 about if you stay out too long you'll get out, of not
3 wanting to go.

4 So he worked. And he started talking to some people
5 and got interested in Spartanburg Methodist. And he got on
6 the phone and got all the legwork and paperwork done. And
7 he was accepted. And he and I came over one Friday
8 afternoon to get scheduling and to tour the campus.

9 Q Where did he work when he laid out a year?

10 A At Winn-Dixie in Rock Hill, South Carolina.

11 Q Did he still stay at home after he graduated?

12 A Yes, sir; yes, sir.

13 Q Did you help him find a place here?

14 A Actually, Rose Hill was referred to us by one of the
15 administrators at the college that was helping us; said
16 there was a lot of college students that lived there.

17 Q Were you helping pay the way?

18 A Well, we actually paid all of his way -- his rent,
19 utilities, because we wanted him to continue his education.

20 Q Did he have a roommate?

21 A None whatsoever.

22 Q Okay. Was there a reason for that?

23 A No, because he was just coming over here, and we were
24 just paying for his. You know, he stayed by himself.

25 Q Did y'all really know anybody in this area?

Ernest Howze
Direct examination by Mr. Bulsa

1 A Only -- to live over here, no.

2 Q Did you stay in contact with him while he was in
3 school?

4 A We talked probably several times a week, sometimes
5 more than twice a day.

6 Q Are you familiar with any of his friends in the
7 apartment complex?

8 A The only one I ever met was Brian.

9 Q Brian.

10 A And I had came over previously onewekend to work on
11 his car, and my car broke down. So he met me half way with
12 my wife so I can come back and pick up her car. And Brian
13 was with him.

14 Q Do you recall the last time you saw Tavaris before his
15 death?

16 A Yes. It was the Sunday before this tragedy. We had
17 just returned home from church, and he called and said he
18 was on his way home, because he had just gotten up because
19 he had worked late. He had got a job at Papa John's. So
20 we were like, well, come on. So he came on.

21 Q So he had just started working.

22 A He had received one paycheck and would have received
23 another that Thursday.

24 Q Did he appear to be having any problems to you?

25 A No. He loved it. I never seen him so happy at a

Ernest Howze
Direct examination by Mr. Bulsa

1 school, and he was actually doing good. He loved it.

2 Q Now, when did you learn of his death?

3 A Actually I didn't learn of it until I got over here
4 that Wednesday night.

5 Q Okay. What did you hear first?

6 A Well, we received a telephone call from some other
7 people that knew some of the other people from where we
8 lived that he had been shot. Other than that, we didn't
9 know nothing.

10 So my wife and I started out over here, and her
11 brother called. So we turned around and go back and get
12 him. And she wouldn't come. So my brother-in-law and I
13 came.

14 And upon arriving at the scene, they just took us out
15 into the mobile unit, and that's where they talked to us at
16 and finally told us what had happened.

17 Q Were you able to see him that evening?

18 A No, sir.

19 Q I asked you to bring a photograph, State's Exhibit No.
20 18. Is this your son?

21 A Yes, sir.

22 Q When was that picture taken?

23 A While a student at Spartanburg Methodist.

24 Q So that's what he appeared to look like at his death?

25 A Yes, sir.

Ernest Howze
Direct examination by Mr. Bulsa

1 Q And how old was he?

2 A Twenty-one.

3 Q When was his birthday?

4 A He would have turned 22 on February 8th of 2005.

5 Q Mr. Howze, I don't know if they have any questions,
6 but you can answer any questions the attorneys have.

7 MS. ANDERSON: I don't have any questions.

8 MR. VIETH: No questions, Your Honor.

9 THE COURT: You may step down.

10 MR. BULSA: Your Honor, we are moving a little faster
11 than we thought. We are checking on a couple of witnesses.

12 (Pause.)

13 MR. BULSA: He is on his way, Your Honor.

14 MR. SMITH: I beg the Court's indulgence, Your Honor.
15 We have asked the officer to remove his weapon.

16 MR. BULSA: May we approach, Your Honor?

17 (Bench conference held off the record in the presence
18 of the jury but out of the hearing of the jury.)

19 THE COURT: All right. Ladies and gentlemen, I have
20 got a couple of matters to address before we go any
21 further.

22 I will ask you to please go to your jury room. Do not
23 yet discuss the case. I will bring you back in just a few
24 minutes.

25 (The following takes place outside the presence of the

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 jury.)

2 THE COURT: What about the witnesses for the
3 suppression?

4 MR. BULSA: They are here, Your Honor.

5 THE COURT: Sir?

6 MR. BULSA: They are here.

7 THE COURT: Let's go ahead and do that then.

8 MS. ANDERSON: Your Honor, would it be possible to
9 take a quick bathroom break?

10 THE COURT: Okay. We will take ten minutes.

11 (Whereupon, a recess was taken.)

12 THE COURT: All right. Bring the jury in, please.

13 (The following takes place in the presence of the
14 jury.)

15 THE COURT: All right. Mr. Bulsa.

16 MR. SMITH: Your Honor, the state calls Officer
17 William Swanlund.

18 WILLIAM SWANLUND, having been
19 first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. SMITH

21 Q Officer Swanlund, please state your name for the court
22 reporter, and spell your last name if you will, please.

23 A William Swanlund, S-W-A-N-L-U-N-D.

24 Q And what's your occupation?

25 A I'm a police officer.

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 Q And by whom are you employed?

2 A Spartanburg Public Safety Department.

3 Q Officer Swanlund, did you complete the criminal
4 justice academy?

5 A Yes, sir.

6 Q What year did you do that?

7 A 2003.

8 Q What type of training did you receive there?

9 A Basic law.

10 Q Did you receive training in how to be a first
11 responder on a crime scene and how to secure a crime scene?

12 A Yes, sir.

13 Q What are your current duties at the police department?

14 A I'm in the traffic division.

15 Q What were you duties on December the 8th of 2004?

16 A I was a patrol officer.

17 Q On December the 8th were you dispatched to Apartment
18 306-K located at 201 Powell Mill Road?

19 A Yes, sir.

20 Q Is 201 Powell Mill Road, 306 Apartment K, in the city
21 of Spartanburg?

22 A Yes, sir.

23 Q In the county of Spartanburg?

24 A Yes, sir.

25 Q What time did you get the call?

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 A 2102 hours.

2 Q What time did you arrive?

3 A I believe I arrived two minutes after.

4 Q Would you consider that a quick response or a slow
5 response?

6 A It was a quick response.

7 Q Quick response?

8 A Yes, sir.

9 Q When you got there, what was the first thing you saw?

10 A I saw Mr. Spicer.

11 Q Mr. Clearance Spicer?

12 A Yes, sir.

13 Q Do you see him in the courtroom today?

14 A Yes, sir. He's right there.

15 MR. SMITH: Let the record show that the witness has
16 identified the victim in this case, Mr. Clearance Spicer.

17 Q Once you got there did Mr. Spicer flag you down?

18 A Yes, sir, he flagged me down.

19 Q What observations did you make about Mr. Spicer at the
20 time he flagged you down?

21 A He was very upset and hysterical.

22 Q What was he saying?

23 A He was telling me that his friend had been shot, and
24 he was pointing upstairs.

25 Q When he said that his friend had been shot, did he

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 talk about who had shot him?

2 A Well, I ran upstairs to check on the victim first, and
3 then we talked.

4 Q And what did he say as to the suspects?

5 A He stated that he was in his apartment and heard a
6 knock on the door and opened the door and there's two
7 suspects standing outside of his door.

8 Q What, if anything, did he tell you he did in regard,
9 when he saw the two suspects standing outside his door?

10 A Well, one of them said what's up, I believe, and then
11 one of them pulled out a silver handgun. He tried to shut
12 the door on one of the suspect's arms.

13 Q Did he describe, did he give a general description as
14 to their clothing?

15 A I don't remember him doing that.

16 Q Did he give a description of any gun, any weapons?

17 A It was a silver handgun, is what he said.

18 Q Did he say how many handguns he saw?

19 A One.

20 Q Were there any other people at the apartment when you
21 got there, along with Mr. Spicer?

22 A There was one other black male there.

23 Q Did you determine who he was?

24 A No, sir. Investigation --

25 Q I'm sorry?

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 A Investigations spoke with him.

2 Q Were there other police officers arriving about this
3 time?

4 A Yes, sir.

5 Q About how many?

6 A About, I would say about 12.

7 Q Did you secure the crime scene?

8 A Yes, sir.

9 Q Did you go inside the apartment?

10 A Yes, sir.

11 Q What did you observe when you went inside the
12 apartment?

13 A I saw a black male laying face down in the living
14 room.

15 Q About how long -- you said that about 12 people came.
16 About how long was it before investigators began to show
17 up?

18 A About 20 minutes.

19 Q And when they showed up did you brief them or did one
20 of the other officers who had arrived brief them on what
21 was going on?

22 A Sergeant Donald briefed them.

23 Q At this point who was in charge of the crime scene?
24 You were the first responder.

25 A Yes, sir.

William Swanlund (In-camera)
Direct examination by Mr. Smith

1 Q You were in charge of it initially. Who was in charge
2 of the crime scene?

3 A Sergeant Donald.

4 Q What role were you playing in the securing of that
5 crime scene?

6 A I roped the crime scene off and began a crime scene
7 walk.

8 Q And describe a crime scene walk. What is that?

9 A It lists everybody who comes into the roped-off area
10 and what their purpose is and where they work for.

11 Q Did you see any crime scene technicians present?

12 A Yes, sir.

13 Q What were they doing?

14 A They were taking pictures of the area, the scene.

15 Q Did you observe any of the investigators do any
16 canvassing or looking for evidence?

17 A Yes, sir. They were around the yard and knocking on
18 doors to the other apartments.

19 Q Approximately how many crime scenes have you been to
20 in your experience as a police officer?

21 A Dozens and dozens.

22 Q Would you consider this a major crime scene?

23 A Yes, sir.

24 Q Would you consider this a major effort by the police
25 department in your professional experience?

William Swanlund
Cross-examination by Ms. Anderson

1 A Yes, sir.

2 Q Did you observe a command post being set up?

3 A Yes, sir, in the parking lot.

4 Q Do you know who was in charge of that command post?

5 A Lieutenant Michaels drove the command post to that
6 location.

7 Q When you left Apartment 306-K had the crime scene been
8 secured?

9 A Yes, sir.

10 Q And had you turned it over to a more senior
11 investigator?

12 A Yes, sir.

13 Q And that investigator was who?

14 A It was Lieutenant Lamb, I believe.

15 Q Lieutenant Lamb?

16 A Yes, sir.

17 Q Thank you. Please answer any questions counsel may
18 have.

19 CROSS-EXAMINATION

20 BY MS. ANDERSON

21 Q Officer Swanlund, you have been working, you had been
22 working, for the city how long when this occurred?

23 A About two years.

24 Q Okay.

25 A About two and a half years actually.

William Swanlund
Cross-examination by Ms. Anderson

1 Q Well, if you graduated in 2003 and this happened in
2 2004 --

3 A About, well, it happened in 12/8/2004. My three years
4 would have been that year. About two years.

5 Q Okay. Now, did you prepare an incident report?

6 A Yes, ma'am.

7 Q Is this it? You have got it in your hand.

8 A Yes, ma'am.

9 Q Okay. Now, that one is different than mine. When was
10 robbery added to that?

11 A I'm not sure. This is the one they gave me about a
12 week ago.

13 Q Okay. So may I look at this?

14 A Yes, ma'am.

15 Q All right. Would you say this was exactly like the
16 one I had except robbery is added to it?

17 A Yes, ma'am.

18 Q Okay. What's before that though, the incident type?

19 A Murder.

20 MR. BULSA: Your Honor, objection. I don't think
21 that's relevant on the issue at hand.

22 THE COURT: Well, let me see y'all just a minute.

23 (Bench conference held off the record in the presence
24 of the jury but out of the hearing of the jury.)

25 THE COURT: I sustain the objection.

William Swanlund
Cross-examination by Ms. Anderson

- 1 MR. SMITH: Thank you, Your Honor.
- 2 Q Yeah. I did give yours back.
- 3 A Yes, ma'am.
- 4 Q Now, was this the first large crime scene that you had
5 secured?
- 6 A No, ma'am.
- 7 Q Okay. There had been others.
- 8 A Yes, ma'am.
- 9 Q How many people would you say arrived? I think you
10 said 12.
- 11 A Around 12 people.
- 12 Q Did you have to keep this log --
- 13 A Yes, ma'am.
- 14 Q -- of who came in? How long did you handle the log?
- 15 A About two hours and five minutes, I believe.
- 16 Q Okay. When did Sergeant Brewster take over?
- 17 A I never talked to Sergeant Brewster.
- 18 Q Okay. So she was -- of course you have her arriving
19 at 2112.
- 20 A Are you talking about Investigator Brewster?
- 21 Q I'm sorry. Investigator Brewster.
- 22 A Yes, ma'am.
- 23 Q She became the lead investigator, is that correct?
- 24 A I believe so, yes, ma'am.
- 25 Q Okay. And she was there at 2112. Did you have any

William Swanlund
Cross-examination by Ms. Anderson

1 dealings with her?

2 A No, ma'am.

3 Q Now, in your report -- you did write this report,
4 correct?

5 A Yes, ma'am.

6 Q All right. And if you'll look at the second page, did
7 Mr. Spicer tell you there were two subjects standing there
8 with black masks?

9 A Yes, ma'am.

10 Q Okay. He said that both of them had on black masks.

11 A I believe so at the time, yes, ma'am.

12 Q And he said that one of the subjects drew a silver
13 handgun.

14 A Yes, ma'am.

15 Q And is that when he told he tried to shut the door?

16 A When they drew the gun, yes, ma'am.

17 Q Okay. Not before.

18 A Yes, ma'am.

19 Q Okay. And he also states that the subject fired one
20 shot.

21 A Yes, ma'am.

22 Q Okay. You said you didn't talk with Brian Durbin.

23 A No, ma'am. Brian Durbin?

24 Q The other black male that was there.

25 A No, ma'am.

Dr. John David Wren
Direct examination by Mr. Bulsa

1 Q And Mr. Spicer could not give you any description of
2 the suspects other than they had on ski masks.

3 A Yes, ma'am.

4 Q Black masks. Excuse me. Not ski masks. Black masks.

5 MS. ANDERSON: That's all the questions I have.

6 MR. VIETH: I have no questions, Your Honor.

7 THE COURT: You may step down.

8 MR. BULSA: Your Honor, we would ask he be excused.

9 THE COURT: Any objection?

10 MS. ANDERSON: We would like to keep Officer Swanlund
11 if we could.

12 MR. VIETH: At least where we can get him if we need
13 him.

14 THE COURT: All right. Well, he may be excused at the
15 present time.

16 You remain under subpoena however. So you will have
17 to be available when called.

18 THE WITNESS: Okay.

19 MR. BULSA: Thank you. The state calls Dr. Wren.

20 DR. JOHN DAVID WREN, having
21 been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA

23 Q Dr. Wren, please introduce yourself to the jury.

24 A John David Wren.

25 Q What's your occupation?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A I am a pathologist.

2 Q And you work with Spartanburg Regional?

3 A I work for Spartanburg Pathology Consultants which
4 does the pathology at Spartanburg Regional Medical Center
5 and Mary Black Hospital.

6 Q How long have you been doing this profession?

7 A I started to work in Spartanburg on October the
8 18th of 1982 after finishing my residency at the Medical
9 University of South Carolina.

10 Q So over 20 years.

11 A Twenty-three.

12 Q You've testified in courts as a forensic pathologist
13 before?

14 A Yes, sir, in multiple counties in this state.

15 Q Qualified as an expert in that field?

16 A Yes, sir.

17 MR. BULSA: Any challenge by defense to his
18 qualifications?

19 MS. ANDERSON: None.

20 MR. VIETH: None whatsoever.

21 MR. BULSA: We would move that he is qualified as an
22 expert in forensic pathology.

23 THE COURT: He is so qualified without objection.

24 Q Dr. Wren, as part of the pathologist's profession do
25 you perform autopsies on persons?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A That's part of a pathologist's job.

2 Q And the reason to perform an autopsy is to determine
3 cause of death?

4 A Yes.

5 Q Did you perform an autopsy on Tavaris Howze back in
6 December of 2004?

7 A Yes, sir, I performed an autopsy on Tavaris Howze on
8 February, I mean, December the 9th of 2004 beginning at
9 approximately 10:00 a.m. in the Spartanburg Regional
10 Medical Center Autopsy Room.

11 Q During that procedure what injuries did you note to
12 Mr. Howze?

13 A The only acute injuries that I recall was a gunshot
14 wound to the left temporal region.

15 Q Would you show the jury where that would have been?

16 A It was a small caliber gunshot wound in the left
17 temporal region two inches from the top of his head, two
18 and three quarter inches to the left of the midline. If
19 you measure around the contour of his head, it was 3.75
20 inches around, basically where I am pointing.

21 Q What was the path of that bullet?

22 A This bullet measured 20 one-hundredths of an inch in
23 diameter. It didn't have -- no abrasion borders, no
24 stifling, no tattooing, indicating that was a distant
25 gunshot wound. And the path of that bullet was slightly

Dr. John David Wren
Direct examination by Mr. Bulsa

1 upward.

2 It was front to back. From the front measuring
3 horizontally to the back, it was about 70 degrees, 60 to 70
4 degrees. And it went from left to right.

5 And the projectile was recovered from the posterior
6 fossa of the cranial vault which is the -- there are three
7 depressions on each side at the base of the brain, and
8 those are called fossa, F-O-S-S-A. And the posterior one
9 was where the bullet was recovered.

10 Q What size was Mr. Howze?

11 A He was 67 inches in length and weighed 240 pounds.

12 Q That's about 5' 7"?

13 A 5' 7", something of that nature. Now, it can be plus
14 or minus two inches after death.

15 Q Giving information that his body was found located on
16 the floor near a doorway opening, could you surmise what
17 position he might have been in when he was shot?

18 A Well, he could have been in lots of positions,
19 anything, which the bullet would have been coming from his
20 left side, and since the head can move over a wide range of
21 positions, he could have been in most any position. He
22 could have been anywhere from lying on the floor -- of
23 course his left side would have had to have been up -- or
24 he could have been standing up if his head was leaned over.

25 Q Could he have been in a sitting position?

Dr. John David Wren
Direct examination by Mr. Bulsa

1 A Yes, he could have.

2 Q And based on the path of the bullet, how might his
3 head have been positioned facing?

4 A From where the assailant was standing, his head would
5 have been turned away from the assailant.

6 For instance, if you were the assailant, then I would
7 have had to turn something of, depending on where you had
8 the gun and how high you had it, I would have had to have
9 moved my head somewhere like that. I would have been
10 looking this way.

11 Q So he would not have been looking at the assailant.

12 A No.

13 Q Now, what kind of -- what would a wound of that sort
14 cause a person to do? Would he have been able to move, or
15 would he have fallen immediately to the ground?

16 A It's often hard to predict, but this gunshot wound
17 went through the majority of the brain near the midline and
18 the internal capsule of the brain, which is where nerve
19 fibers go to and from the body.

20 Inside the brain there's a white streak surrounded by
21 gray matter, and it passed through there. So that controls
22 the right side of the body. So he would not have moved his
23 right side after the bullet went through there.

24 Q So it would --

25 A He could have moved his left agonally, meaning just

Dr. John David Wren
Direct examination by Mr. Bulsa

1 before he died.

2 Q Would it be consistent that he could have fallen to
3 the floor?

4 A Yeah.

5 Q Do you have an opinion, an expert opinion, as to how
6 long he might have lived following that shot?

7 A Probably five or ten minutes maybe.

8 The vital centers of the brain are at the base of the
9 brain in the brain stem so that a person's heart and
10 respiratory function can continue for some length of time
11 until anoxia or straight trauma from the gunshot wound will
12 cause death, but there was some bleeding there. So I
13 figured five or ten minutes maybe at the outset.

14 Q The bleeding shows he didn't die immediately?

15 A Right.

16 Q Ultimately, what was the cause of death?

17 A I assigned a cause of death, which means that's what
18 caused it, as a gunshot wound to the head.

19 Q And did you recover the bullet?

20 A Yes, I did. As I said, I recovered it from the
21 posterior fossa on the right side and labeled the bullet
22 and gave some rough dimensions and forwarded it to Officer
23 Robert Talanges of the Spartanburg City Police Department.
24 I have noted that bullet was rather distorted.

25 MR. BULSA: If I can get this marked as evidence.

Dr. John David Wren
Cross-examination by Ms. Anderson

1 MS. ANDERSON: Without objection.

2 MR. VIETH: Without objection from Mr. Lyles.

3 (Fragments marked State's Exhibit No. 19.)

4 Q Doctor, I will show you what's been marked State's
5 Exhibit No. 19. Do you recognize that?

6 A If I can find it, get it out of here. This is labeled
7 F-A-O-4277, which is the autopsy number, with his name.
8 And I wrote down bullet. I can't read the in-between part,
9 but I signed it and dated it, and often put it in these
10 containers.

11 Without taking a magnifying glass, this is consistent
12 with the bullet that I removed. It's a small caliber
13 bullet.

14 Q And that's what you forwarded to Officer Talanges.

15 A Yes.

16 Q Thank you, Dr. Wren. That's all I have. Answer any
17 questions defense counsel may have.

18 CROSS-EXAMINATION

19 BY MS. ANDERSON

20 Q Dr. Wren, you are saying that was one bullet, although
21 there are two pieces there.

22 A Yes. That's just a little shard, fragment of it.
23 They often split apart when they go into the head or
24 through bone.

25 Q I just had one question. You noticed that -- you

Dr. John David Wren
Cross-examination by Ms. Anderson

1 noted that his liver was grossly enlarged.

2 A Yes.

3 Q Is there a problem there?

4 A No. It didn't cause his death. I didn't -- I assign
5 autopsy -- I assign autopsies at homicides and suicides. I
6 often sign those out. But I do save tissues and look at
7 them later.

8 If there's a question, I go back to them and look at
9 them. But it was grossly enlarged, meaning that a liver
10 weighs between twelve and fifteen hundred grams usually.
11 His weighed 2,200 grams.

12 And I said it was slightly grainy in consistency.
13 That often goes along, not necessarily all the time, but it
14 often goes along with some of the hepatitis involving the
15 liver. They can also be fatty and be enlarged, or they can
16 just be congested.

17 And sometimes when people are heavy the liver will
18 weigh more. So I looked at the slides later, but I never
19 put anything down about those. I usually go back if
20 there's anything extremely important and do an addendum,
21 but in this case I didn't.

22 MS. ANDERSON: Thank you, your Honor. Excuse me.

23 Q Thank you, Dr. Wren.

24 MR. VIETH: I have no questions of Dr. Wren.

25 THE COURT: You may step down. Thank you.

David Hogsed
Direct examination by Mr. Bulsa

1 MR. BULSA: We ask that he be excused.

2 THE COURT: Any objection?

3 MR. VIETH: No, sir.

4 MS. ANDERSON: No, sir.

5 THE COURT: You may be excused. Thank you.

6 (Whereupon, the witness was excused.)

7 MR. BULSA: The state calls David Hogsed.

8 DAVID HOGSED, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MR. BULSA

11 Q Officer, please introduce yourself to the jury.

12 A David Hogsed.

13 Q Who are you employed by?

14 A The Spartanburg County Sheriff's Office.

15 Q Did you formerly work for the Spartanburg Public
16 Safety Department?

17 A Yes, sir, I did.

18 Q How long were you with the Public Safety Department?

19 A Approximately 16 years.

20 Q What were your duties when you left that agency?

21 A I was assigned to the forensics division.

22 Q How long had you been assigned to that division?

23 A A little over five years.

24 Q So that would have been your duty back in December of
25 2004.

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Okay. As being part of that assignment you -- were
3 you directed to certain crime scenes?

4 A I was actually working the second shift on
5 December the 8th and heard the call dispatched to a patrol
6 officer and then responded.

7 Q And as part of your duties do you respond to crime
8 scenes such as this one?

9 A Yes.

10 Q And what are your duties once you get there?

11 A To document the crime scene and collect evidence on
12 the crime scene and process evidence that may be collected
13 at a crime scene if necessary.

14 Q How do you determine what to collect?

15 A It all determines on what type of crime scene that you
16 are working. On a homicide if we are not sure what we are
17 dealing with, usually the crime scene techs will pretty
18 much take everything.

19 Q On this case in particular, December the 8th, do you
20 recall having been briefed on what had occurred?

21 A Not when I first arrived, but prior to entering the
22 house on the search warrant that was completed I was
23 briefed, yes.

24 Q And when you arrived was the crime scene secured?

25 A Yes. There was officers standing outside the

David Hogsed
Direct examination by Mr. Bulsa

1 apartment door speaking with the witnesses. I asked them
2 to take the witnesses down to the parking lot, and Sergeant
3 McDonald stood outside the door securing the scene while I
4 got the camera equipment and so forth.

5 Q And was the victim still in the apartment?

6 A Yes, he was. I could see a black male lying face down
7 on the living room floor by a sofa and a love seat.

8 Q So as you entered the crime scene, what were you
9 looking to recover?

10 A Anything that may be relevant to how the person
11 died -- how he died, the manner and cause of death, and
12 also to help determine any suspects that may have been
13 there.

14 Q And based on your viewing of the scene was it apparent
15 that he had been shot and fell where he lay?

16 A Yes. It appeared that he may have stood up at one
17 time or tried to stand up and fell. There was a bullet
18 hole, bullet wound, apparent to the left side of the head.

19 Q Could you tell if perhaps he had been seated on a
20 couch or love seat?

21 A It appeared that he had actually been seated on the
22 love seat. There were some items to the left, to the end
23 closest to the door, and some items on the far end of the
24 love seat. But the center portion of the love seat was
25 clear. There was nothing there.

David Hogsed
Direct examination by Mr. Bulsa

1 Q Let me show you this diagram that's been marked
2 State's Exhibit No. 15. Do you recognize that?

3 A Yes, I do.

4 Q Is that a diagram of that scene?

5 A Yes. I completed this with the computer program.

6 Q And on that diagram you have numbers and letters.

7 What are those, the significance?

8 A The numbers are actually out of the evidence that we
9 collect. The letters or legends, they will tell you what
10 type of furniture are items that are around those evidence
11 items.

12 Q Okay.

13 MR. BULSA: Could I have this marked for
14 identification?

15 (List marked State's Exhibit No. 20 for
16 Identification.)

17 MS. ANDERSON: Your Honor, excuse me.

18 Q Did you prepare a legend to go along with those
19 numbers and letters?

20 A Yes, I did.

21 Q And State's Exhibit No. 20 for Identification, can you
22 identify what this is?

23 A This is the legend that was completed that corresponds
24 with the crime scene diagram.

25 Q And did you prepare that document?

David Hogsed
Direct examination by Mr. Bulsa

1 A Yes, I did.

2 Q Was it prepared at the same time as the other item,
3 State's Exhibit No. 15?

4 A Yes. Usually what I would do is once I finish the
5 crime scene diagram and do my legend, they were done -- the
6 crime scene diagram was done and saved to a disc, computer
7 disc. The legend was done and also saved to a computer
8 disc. The computer disc then would have been placed into
9 evidence.

10 MS. ANDERSON: I will object, Your Honor.

11 THE COURT: All right. Let me see it.

12 (Bench conference held off the record in the presence
13 of the jury but out of the hearing of the jury.)

14 MR. BULSA: Your Honor, I offer State's Exhibit 20
15 into evidence.

16 THE COURT: Any objection?

17 MS. ANDERSON: No, sir.

18 MR. VIETH: No, sir.

19 THE COURT: It is admitted.

20 (List marked State's Exhibit No. 20.)

21 Q Officer, State's Exhibit 20 is a legend to your
22 diagram, is that correct?

23 A That's correct.

24 Q Did you perform or did you create a more detailed
25 report for the police file?

David Hogsted
Direct examination by Mr. Bulsa

1 A I did a supplemental report.

2 Q Okay. And in your supplemental did you add more
3 details as to that legend, as to what you recovered? Were
4 you more descriptive in your report?

5 A Yes. In my actual writeup on the report I am sure I
6 was more descriptive as to where each item was and maybe
7 the physical characteristics, where they were located.

8 Q And why would you have done that?

9 A The legend is just telling what the item is in the
10 diagram. My report does a more detailed report as to the
11 condition it was in and so forth.

12 Q Okay. So State's No. 20 was to aid an observer of
13 State's No. 15.

14 A That's correct. It's an aid, again, an aid just to
15 tell what the items are on the diagram.

16 Q Okay. So when the jury takes this back into the jury
17 room they can look at your legend and they will know what
18 these numbers and letters mean.

19 A Yes.

20 Q Is this diagram a complete diagram of the whole
21 apartment?

22 A That's one of the whole apartment, yes, sir.

23 Q Okay. And does it appear to be to scale?

24 A No. It's not to scale.

25 Q So we walk in this room to the right near the living

David Hogsed
Direct examination by Mr. Bulsa

1 area; to the left the dining area; and then the kitchen and
2 the bedrooms to the rear.

3 A That's correct.

4 Q You only show one bedroom. Do you know if there were
5 more bedrooms?

6 A I don't recall a second bedroom.

7 Q We know two people were living there.

8 A I don't recall a second bedroom.

9 Q Okay. All right. Now, as you collected these items
10 what, if anything, did you do with them?

11 A They would have been taken back to city hall, Public
12 Safety Department, packaged and then placed into evidence.

13 Q Who decided if anything needed to be done with them?

14 A Basically, we usually sit down with the lead
15 investigators, went over what was collected and had a
16 discussion. And if any items were to be analyzed at SLED
17 or by us, it would be done at that time.

18 Q So the investigators would then decide if anything
19 needed to be done.

20 A Well, myself and the investigators.

21 Q Okay. So the jury can see what we are talking
22 about -- so in this case you identified Mr. Howze as number
23 one, and then the phone belt clip, cigarette filter,
24 ashtray, cellular headphone, cellular phone headset, keys,
25 ashtray. Talking about in this case. Why did you mark all

Dávid Hogsed
Direct examination by Mr. Bulsa

1 of these items?

2 A Again, when we first started working with the crime
3 scene we didn't know the circumstances to the incident. We
4 don't actually sit and talk to the witnesses. The
5 investigators do that. Patrol officers speak with them.
6 So we are basically going in blind, so to speak.

7 Q Okay. All of these items you collected appear to be
8 in the living area, predominantly in the living area. Did
9 you think that there might have been a struggle or
10 something that took place?

11 A Yes, sir. The headphones on the ground, the keys on
12 the ground, the phone clip being off the waistline,
13 Mr. Howze's actual pants being below his buttocks, we
14 didn't know if a struggle had occurred.

15 The sofa which is "A" from the indentions in the
16 carpet, you could tell that the corner had been moved back,
17 the corner closest to the doorway had been slid back
18 several inches. So we didn't know if a struggle had taken
19 place within the residence in that area.

20 Q And you noted an object behind the door there, number
21 12.

22 A That is the actual -- the cordless phone that was
23 found, item number ten, it was on a barstool over by the
24 hallway entrance. That was the plastic compartment-door
25 cover for that phone that slides over the battery.

David Hogsed
Direct examination by Mr. Bulsa

1 Q And number 12 goes with number ten.

2 A That's correct.

3 Q And number 12 was on the ground.

4 A Yes, it was.

5 Q Carpet. Okay. I've got number 14, a beer can. Where
6 is that?

7 A It's outside.

8 Q It's outside. Okay. There it is. What was the
9 significance of that?

10 A I'm not real sure who pointed that out to us, but we
11 didn't know if anybody involved in this incident had been
12 drinking beer and which direction they ran. So we
13 collected it at the time just in case.

14 Q You tried to be as careful and collect as much things
15 that might be relevant.

16 A That's correct.

17 Q Whether they were or not later, you don't know.

18 A True.

19 Q And did you photograph these items?

20 A Yes, we did.

21 Q Okay. Now, did you participate in the search or
22 collection of any other evidence?

23 A No, sir, I did not.

24 Q Okay. All right. Thank you. Answer any questions
25 defense counsel has.

David Hogsed
Cross-examination by Ms. Anderson

1 CROSS-EXAMINATION

2 BY MS. ANDERSON

3 Q Okay. Now, this is the report that you prepared for
4 court, is that correct?

5 A Somebody stamped a red copy on it. I don't know who
6 did that.

7 Q Did you prepare this?

8 A Yes. I did that using Microsoft Word on a computer.

9 Q Okay. Now, it varies from your original report. Look
10 at number four on your original report where you have it
11 listed as an ashtray with cigarette filters. What do you
12 have on your original report?

13 A Number four?

14 Q Uh-huh.

15 A In my report, ashtrays containing cigarette filters
16 and partially-smoked, hand-rolled cigarette containing
17 green plant material. Up there all I filled in was the
18 cigarette filters.

19 Q Okay. But you did find a partially-smoked,
20 hand-rolled cigarette containing green plant material by
21 the front of the green sofa.

22 A Yes, ma'am. It was photographed.

23 Q Okay. Now, let me get the diagram here. So number
24 four if I can get this to focus a little bit better --
25 well, can you point out where number four is?

David Hogsed
Cross-examination by Ms. Anderson

1 A Can I step down?

2 Q Yes. Please.

3 (Whereupon, the witness left the stand.)

4 Q This is the pointer. You can use that. That's fine.
5 Where is number four on this?

6 A Here.

7 Q All right. That's where the location of the ashtray
8 was.

9 A Yes, ma'am.

10 Q Okay. Did you -- now, you said -- you can sit down.
11 (Whereupon, the witness returned to the stand.)

12 Q You said you were responsible for cataloging the
13 evidence that you collected in putting where everything was
14 found in the crime scene, correct?

15 A Yes, ma'am.

16 Q What did you do with the stuff that you recovered? I
17 mean, did you send any of this out for testing?

18 A I did not request it personally.

19 Q Uh-huh. Okay.

20 A I did not do that.

21 Q So you don't know if the partially-smoked, hand-rolled
22 cigarette containing green plant material was tested.

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

24 Q Did you search the bedroom or the kitchen or the
25 bathroom?

David Hogsed
Cross-examination by Ms. Anderson

1 A Yes. There was actually myself -- and I do recall two
2 investigators going through the rest of the house.

3 Q Okay. So y'all's search warrant included the entire
4 house, not just where the actual incident occurred.

5 A Yes, ma'am.

6 Q Okay. You have no notes on what you found in the rest
7 of the house.

8 A There was nothing else collected by me from that, from
9 the rest of the house.

10 Q Okay. Let me point, get your attention to if I can
11 find a list, the number 13, the Daisy B-B gun.

12 A Yes, ma'am.

13 Q Okay. What else did you find that pertained to the BB
14 gun? I don't see if it's on your list. You don't have
15 that numbered.

16 A I did not draw all of the -- are you talking about the
17 pellet holes in the wall?

18 Q Yeah.

19 A I did not draw all of the pellet holes in the wall.

20 Q What about the small balloon? Where was that?

21 A It's actually on, it's the one on the -- that
22 represents the small balloon.

23 Q Okay. So the balloon was setting on the couch.

24 A Yes, when we entered the residence.

25 Q Okay. And where -- and you said that you -- in your

Dāvid Hogsed
Cross-examination by Ms. Anderson

1 report that you had determined that someone had been
2 sitting on the sofa shooting the BB gun at the balloon.

3 A Yes, ma'am. That was corresponding with the
4 investigators.

5 Q Uh-huh.

6 A The BB gun was actually found. And there should be
7 another diagram showing the BB gun in the diagram. It was
8 actually found when we moved the sofa back.

9 Q Okay. You've got number 13 as the BB gun.

10 A There's another diagram where the BB gun has been
11 added. In this diagram it's not there because it wasn't
12 found. There is a second diagram showing it.

13 Q Do you have that first diagram?

14 A I don't have it, no, ma'am, not with me.

15 Q Okay.

16 A It would have been placed into evidence at city hall.

17 Q And you didn't bring it today?

18 A No, ma'am.

19 Q What else was added to it?

20 A Nothing else.

21 Q Just the BB gun.

22 A Yes.

23 Q What else did y'all find about the BB gun?

24 A Over the entertainment center in this area there was
25 BB's and pellets in the wall of the upper portion of the

1 wall near the ceiling.

2 Q Okay. And it was y'all -- did you ask anyone, or how
3 did you find out that somebody had been shooting BB's?

4 A Once the BB gun was found, corresponding with
5 investigators that was interviewing witnesses, we were told
6 that they had been sitting the couch actually shooting at
7 the -- it is a little small balloon and had a little stick
8 on it like goes in a coffee cup when you buy it. And they
9 were actually shooting at it.

10 Q But you videotaped the whole scene?

11 A I recall videotaping the outside and the living room
12 portion. I don't recall if we walked all the way through
13 the apartment.

14 Q All right. Why did you leave out the part about the
15 partially-smoked, hand-rolled cigarette in State's Exhibit
16 20 which lists everything you found?

17 A That's a legend. It just -- I don't know. I can't.
18 I mean, it may have just been a mistake on my part.

19 Q Just one moment.

20 (Pause.)

21 Q Could you identify this document?

22 A That's the same as -- this is just the living room
23 area and showing the entrance to the hallway, but it's not
24 the whole apartment itself. It's just the living room
25 area.

David Hogsed
Cross-examination by Ms. Anderson

1 Q Was this the diagram you were talking about? You can
2 see it better --

3 A No. This diagram, the first one that you were looking
4 at, is what I saw when I entered the items numbered. And
5 we see number 13 showing an arrow going through it. That's
6 the one that you had there.

7 Q Let me see this one. Is this your original?

8 A That's a rough-draft drawing. It would have been done
9 with a pen or a pencil on the scene.

10 Q And what were you saying wasn't on there that was
11 added later?

12 A It was done in steps, is the way I drew it. You have
13 one of the overall apartment; one of the living room; and
14 then one of the living room showing the measurements to
15 Mr. Howze's location without all of the furniture and so
16 forth; and then when we took triangulization measurements.

17 Q What kind of measurements?

18 A Triangulization.

19 Q Is that what that is?

20 A It is.

21 Q Okay.

22 A It's taking two points, running measurements from each
23 point triangulating.

24 Q To where the victim was?

25 A To where the victim was, yes, ma'am.

Robert Charles Talanges
Direct examination by Mr. Bulsa

1 Q All right. But I am still confused because you have
2 got 13 in this one and ten in this one, but you said it was
3 added, item number 13.

4 A It's not added. The diagrams, this shows number 13
5 with a line because it was under the sofa.

6 Q Oh, okay. And you -- someone pulled it out and put it
7 on the top of the sofa.

8 A Right. Once we moved the sofa and found -- this
9 diagram showing it's under the sofa. You will not be able
10 to see it with the naked eye until it's moved.

11 Q Okay. So that's the only change in the diagram.

12 A Yes, ma'am.

13 Q Thank you.

14 MS. ANDERSON: Those are all the questions I have.

15 MR. VIETH: Your Honor, I have no questions.

16 THE COURT: You may step down.

17 MR. BULSA: Robert Talanges.

18 ROBERT CHARLES TALANGES,
19 having been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA

21 Q Introduce yourself to the jury, please.

22 A Robert Charles Talanges.

23 Q Who are you employed by?

24 A Spartanburg County Sheriff's Office.

25 Q Were you formerly employed with the Public Safety

1 Department?

2 A Yes, I was.

3 Q And when you were with the Public Safety Department,
4 what was your last job with them?

5 A Basically worked investigations, the C. I. D. division
6 and crime scene forensics.

7 Q Did you assist -- would you and Officer Hogsed kind of
8 work together?

9 A Yes, we did.

10 Q And on December the 8th of 2004 did you and he process
11 a crime scene at Rose Hill Apartments?

12 A Yes, we did.

13 Q Was he the lead forensics officer?

14 A Yes, he was.

15 Q We just saw a diagram he prepared. Did you
16 participate in any of that?

17 A I was at the location. I don't think I did much of
18 the diagram, but I was at that scene.

19 Q You assist in photographing the scene?

20 A Yes, I did.

21 Q Did you also attend the autopsy of Tavaris Howze?

22 A Yes, I did.

23 Q What was the purpose for that?

24 A To collect any physical evidence from the victim, as
25 well as photograph the autopsy.

Robert Charles Talanges
Direct examination by Mr. Bulsa

1 Q Did you recover any evidence?

2 A I believe we did.

3 Q What did you recover from the autopsy?

4 A A bullet.

5 Q State's Exhibit 19, would that have been the item that
6 you recovered from Dr. Wren?

7 A It's marked with the victim's name and Dr. Wren's
8 initials. Yes, it would be.

9 Q And what did you do with that bullet?

10 A Once I retrieved it from Dr. Wren, it's placed in an
11 evidence envelope, and it's submitted to the evidence
12 custodian officer. If he's not in, it's dropped in a
13 secure evidence storage locker. From there it's taken to
14 SLED by a custodian.

15 Q Okay. Let me show you some documents. Do you
16 recognize those documents?

17 A This is a SLED form, initial form. It's filled out
18 for any evidence being submitted to SLED for analysis.

19 Q Would you have been the officer that transported that
20 State's Exhibit 19 to SLED?

21 A Yes, I was.

22 Q And did you send any other evidence with that bullet?

23 A G. S. R. kit, lead bullet, and says A. D. C. C. I. 22
24 meg bullets. That's all that was sent.

25 Q And where did those bullets come from?

Robert Charles Talanges
Cross-examination by Ms. Anderson

1 A I think they were retrieved from a search warrant if I
2 am not mistaken.

3 Q Okay. Did you participate in the execution of the
4 search warrant for those bullets?

5 A No, I did not.

6 Q You just transported them down there as part of your
7 duties.

8 A That is correct.

9 Q Okay. Thank you. Answer any questions counsel may
10 have.

11 CROSS-EXAMINATION

12 BY MS. ANDERSON

13 Q Is this the only report you made? Is this all of it?

14 A I believe so.

15 Q Okay. Just one page.

16 A I assume that's correct.

17 Q Okay. And I couldn't see the report you were looking
18 at was --

19 A It's a forensics request.

20 Q And this was a request for what?

21 A G. S. R. kit from victim; lead bullet; and also some
22 bullets that were recovered.

23 Q Do you know where those bullets were recovered?

24 A No, I don't.

25 Q You said it was a search warrant.

Robert Charles Talanges
Cross-examination by Mr. Vieth

1 A They did a search warrant on, I think, a suspect's
2 house.

3 Q Do you know which suspect?

4 A No, I don't. I wasn't involved in any of the search
5 warrants.

6 Q Okay. Did -- so you didn't get the results back on
7 those.

8 A No, I did not. That would go to the lead
9 investigator.

10 Q Okay. And you -- this is where you sent the bullets
11 in.

12 MS. ANDERSON: Just one minute, Your Honor.

13 (Pause.)

14 Q So basically you really have nothing to say about the
15 incident other than you collected the evidence and sent it
16 to SLED.

17 A I assisted in collecting it and submitted to SLED,
18 that's correct.

19 Q Okay. And were these the only items you assisted in
20 submitting to SLED?

21 A Per my SLED analysis report, yes.

22 Q Thank you.

23 CROSS-EXAMINATION

24 BY MR. VIETH

25 Q Officer, the chain of custody then, which I assume

Robert Charles Talanges
Cross-examination by Mr. Vieth

1 you're establishing, are you the only person in the chain
2 that takes -- that took the evidence from the investigating
3 officer to Columbia?

4 A At collection from the -- my part in the autopsy, it
5 would go from myself to the evidence custodian who would
6 store it. And since it went to SLED and I delivered it,
7 personally delivered it, he would sign it back to myself.
8 And I would take it to SLED, and they would do -- would be
9 checked into their induction area at SLED.

10 Q Okay. So it just went from the coroner's office to
11 like an evidence room by you until you delivered it.

12 A That's correct.

13 Q So you check it in and check it out.

14 A That's correct.

15 Q And then physically drive it to SLED for whatever
16 analysis is being done.

17 A That is also correct.

18 Q And then what do they do? They call you when it's
19 done and you are also the one that goes and brings it back,
20 or was there anything else? Who brought it back?

21 A Usually whoever, our custodian, evidence custodian,
22 either he will pick it, or whoever takes the next trip to
23 SLED would bring it back.

24 Q So you had nothing to do with retrieving anything you
25 took to Columbia. You just took it there.

Robert Charles Talanges
Cross-examination by Mr. Vieth

1 A Not at that time. I have retrieved stuff but not at
2 that time.

3 Q Not in this particular case.

4 A No, sir.

5 Q Thank you. That's all.

6 MR. BULSA: Nothing further.

7 THE COURT: You may step down.

8 MR. BULSA: May we approach?

9 (Bench conference held off the record in the presence
10 of the jury but out of the hearing of the jury.)

11 THE COURT: All right. Ladies and gentlemen, we are
12 going to break at this time for lunch.

13 I'm going to ask that you report back to your jury
14 room this afternoon at 2:00 o'clock, at 2:00 o'clock this
15 afternoon.

16 Keep in mind my caution previously given you. Don't
17 discuss the case with anyone; do not permit anyone to
18 discuss it with you; do not permit yourselves to be exposed
19 to any type of media coverage, whether it be television or
20 radio or newspapers.

21 When you come back or after you've had your lunch,
22 please report directly to the jury room. Please be there
23 not later than 2:00 o'clock this afternoon. Have a good
24 lunch.

25 (The following takes place outside the presence of the

1 jury.)

2 THE COURT: All right. Now, I understand the defense
3 has moved to exclude statements provided to law enforcement
4 by each of the defendants based upon lack of voluntariness.

5 MS. ANDERSON: Yes, sir.

6 THE COURT: Is that the case with Mr. Jeter?

7 MS. ANDERSON: Yes, sir.

8 THE COURT: What about Mr. Lyles?

9 MR. VIETH: No, sir, not Mr. Lyles.

10 THE COURT: You are not moving to exclude his
11 statement?

12 MR. VIETH: Correct.

13 THE COURT: Okay.

14 MR. BULSA: Could I inquire as to which statement she
15 is challenging?

16 MS. ANDERSON: I am challenging the statement made on
17 12/10/04 and 12/11/04 and 12/14/04. He made another
18 statement in September, but I was with him. So I am not
19 challenging that statement.

20 THE COURT: Tell me that again. Tell me which one you
21 are challenging.

22 MS. ANDERSON: The last statement which was made on
23 9/14/05.

24 THE COURT: Okay.

25 MS. ANDERSON: And Mr. Bulsa pointed out I had a

Stacy Watson (In-camera)
Direct examination by Mr. Bulsa

1 mistake in my motion.

2 The statement was taken at the university school.

3 They did not take him to headquarters on the first one. So

4 I would correct my motion.

5 And number two, he was interviewed at university

6 school by Investigators Hearst and Winningham.

7 THE COURT: All right. Mr. Bulsa.

8 MR. BULSA: Your Honor, I guess we will start with the

9 first statement. I will start with Stacy Watson.

10 STACY WATSON, having been

11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BULSA

13 Q Okay. Mr. Watson, this is a hearing. We don't have

14 the jury here, so I am going to cut right to the point.

15 You are employed with the university school.

16 A Yes, sir, Spartanburg County Alternative School.

17 Q In what capacity?

18 A In Spartanburg County.

19 Q What are your duties at the school?

20 A I am intervention counselor.

21 Q Okay. And back on December the 10th of 2004, do you

22 recall some officers with the city coming out and speaking

23 with you?

24 A Yes, sir.

25 Q And were they asking specifically to speak with Joshua

Stacy Watson (In-camera)
Direct examination by Mr. Bulsa

1 Jeter?

2 A Yes, sir.

3 Q Do you remember whether Mr. Jeter came? Was he spoken
4 to at the school?

5 A Yes, sir, he was spoken to at the school.

6 Q And where was he spoken?

7 A In my office.

8 Q And how did he get to your office?

9 A I went to get him out of the classroom. I asked him,
10 told him there were some detectives here to talk to him and
11 would he like to talk to them.

12 Q And what did he say?

13 A Yes.

14 Q So you gave him the opportunity and he accepted it.

15 A Yes.

16 Q And what would you have done if he had said no?

17 A I would have took him back to class and just told the
18 detectives he refused to talk to them.

19 Q Okay. But he actually agreed to accompany you to
20 where?

21 A My office.

22 Q And do you recall who the officers were?

23 A Willingham and Hearst and Taylor.

24 Q So three officers came out there.

25 A Yes.

Stacy Watson (In-camera)
Direct examination by Mr. Bulsa

1 Q And if you could, describe the demeanor of that
2 interview, the atmosphere.

3 A In my office, pretty much laid back. They just asked
4 a few questions about where they were that day, that night.
5 They proceeded to tell -- well, Josh proceeded to tell them
6 what all he did that day, where he was.

7 They asked him would he write it and put it in writing
8 in a statement, and he agreed.

9 Q He wasn't under arrest, was he?

10 A No, no, sir.

11 Q He would have been free to leave if he decided he
12 didn't want to talk.

13 A Right.

14 Q So he was in not in a custody situation.

15 A No, sir.

16 Q So no rights were actually read to him on that
17 occasion.

18 A No, sir.

19 Q Did he appear to understand what was taking place?

20 A As far as asking questions where they were that day,
21 yes, sir.

22 Q What grade level was he in school?

23 A I believe at the time Josh was a ninth grader.

24 Q And do you recall how old he was?

25 A Sixteen at the time.

Stacy Watson (In-camera)
Cross-examination by Ms. Anderson

1 Q Okay. Do you know when his birthday was?

2 A I think it was that day or the next day. I am not
3 sure. I knew it was coming up soon.

4 Q He was around 17.

5 A Right.

6 Q Okay. Did the officers try to coerce him in any way?

7 A No, sir.

8 Q Did you see or hear any threats being made?

9 A No, sir.

10 Q Did they make him any promises?

11 A No, sir.

12 Q So was there any pressure whatsoever?

13 A Not from my perception.

14 Q Okay. Thank you. Answer any questions either defense
15 counsel has.

16 CROSS-EXAMINATION

17 BY MS. ANDERSON

18 Q Okay. Mr. Watson you say you are the intervention
19 counselor. What does did mean?

20 A I assist the principal and I assist the grade-level
21 guidance counselor.

22 Q In what?

23 A Behavior, grades, outside agencies coming in to talk
24 to some of the kids, different -- drug abuse commissions,
25 attendance.

Stacy Watson (In-camera)
Cross-examination by Ms. Anderson

- 1 Q Actually the officers came to you talk about Lance
2 Lyles and Josh Jeter, is that correct?
- 3 A Yes, ma'am; yes, ma'am.
- 4 Q You mentioned they, they wanted to talk with them.
- 5 A Yes, ma'am.
- 6 Q So it was about both of them.
- 7 Now, you went and got Josh out of the classroom.
- 8 A Yes, ma'am.
- 9 Q Did you tell Josh he didn't have to come with you?
- 10 A No, I didn't tell him he didn't have to. I just asked
11 him would he like to speak with the detectives.
- 12 Q You didn't tell him he did not have to go if he didn't
13 want to.
- 14 A No, ma'am.
- 15 Q Okay. When he got in the room there were three
16 policemen there, correct?
- 17 A Yes.
- 18 Q And you.
- 19 A Yes, ma'am.
- 20 Q And is it the standard practice of your school not to
21 have a parent or guardian when the police come over to
22 interrogate one of your students?
- 23 A We have had detectives before to talk to students with
24 their permission.
- 25 Q With the student's permission.

Stacy Watson (In-camera)
Cross-examination by Ms. Anderson

1 A Uh-huh.

2 Q But your policy is it doesn't matter what the parents
3 want.

4 A I'm not sure about the policy. I have never called a
5 parent to accompany them.

6 Q But you didn't tell Mr. Jeter he didn't have to talk
7 to them if he didn't want to.

8 A No, ma'am.

9 Q Okay. So he comes in the room, 16 years old, with you
10 a grown man and three grown investigators, correct?

11 A Yes, ma'am.

12 Q And you believed that he felt like he was free to
13 leave?

14 A Just my perception.

15 Q That was just your perception.

16 A Yes, ma'am.

17 Q Okay. You had no one else in there with him.

18 A No, ma'am, as long as we have a school official in
19 there.

20 Q And what did they ask him?

21 A Just where he was, what did he do that day, where he
22 was that night and who he was with.

23 Q Okay. And --

24 A I am pretty sure there was more questions that they
25 asked, but that's what I can recall.

Stacy Watson (In-camera)
Redirect examination by Mr. Bulsa

1 Q And you allowed them to question him.

2 A Yes, ma'am.

3 Q And you allowed them to ask him to write a statement.

4 A Yes, ma'am.

5 Q Okay.

6 MS. ANDERSON: That's all I have.

7 MR. BULSA: Just briefly in reply, Your Honor.

8 REDIRECT EXAMINATION

9 BY MR. BULSA

10 Q Mr. Watson, what would you have done as a school
11 official if these officers had become overbearing with
12 Josh?

13 A I would have asked Josh to leave. I would have
14 stopped them and asked Josh to leave.

15 MS. ANDERSON: Your Honor, I would object. That
16 didn't come up in my cross-examination, in my cross.

17 THE COURT: Overruled.

18 Q So Ms. Anderson said you didn't call a parent. You
19 were acting or protecting Josh's interest.

20 A Uh-huh.

21 Q Is that accurate?

22 A Yes.

23 Q Is that part of your job?

24 A Yes, ma'am -- yes, sir.

25 Q Okay. So you asked Josh if he would speak to them.

Stacy Watson (In-camera)
Recross-examination by Ms. Anderson

1 He agreed. You accompanied him. You stayed during the
2 whole interview. And did you escort him back to class?

3 A Yes. I allowed him to go back to class, wrote him a
4 pass back to class.

5 Q Thank you.

6 MR. BULSA: That's all I have.

7 RECROSS-EXAMINATION

8 BY MS. ANDERSON

9 Q Mr. Watson, you said that you were there to protect
10 Josh's interest.

11 A Yes, ma'am.

12 Q And did you not think he needed an attorney?

13 A Well, I am not educated as far as how far the law
14 goes, but at the same time I was sitting in as a school
15 official.

16 Q I understand that. But did the detectives tell you
17 this was a murder investigation?

18 A They didn't tell me anything at the time. They just
19 wanted to speak with him.

20 Q You didn't know what it was about?

21 A Not, not until it was over with.

22 Q Okay. But you used your judgment that you didn't
23 think he need an attorney or his parent there.

24 A Yes, ma'am.

25 Q Thank you.

David Hearst (In-camera)
Direct examination by Mr. Bulsa

1 THE COURT: Step down.

2 MR. BULSA: The state calls David Hearst.

3 DAVID HEARST, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA

6 Q Detective Hearst, I am going to ask you some questions
7 about the interview of Joshua Jeter at the university
8 school.

9 Did you accompany some other officers to that location
10 to speak with him?

11 A Yes, I did.

12 Q And do you recall how this interview was conducted?

13 A It was at the office of -- I think his name is Stacy
14 Wilson. And we -- the purpose of us going there, we was
15 trying to get a picture of Mr. Lyles.

16 Mr. Wilson asked us did we want to talk to the guy.
17 And he got in touch with him. And they came to the office.

18 Q Okay. Now, you spoke to him individually, right?

19 A Yes, sir.

20 Q And we are going to focus right now with Joshua Jeter.

21 A Okay.

22 MS. ANDERSON: Could I ask the officer to speak up?

23 THE WITNESS: Okay.

24 Q Mr. Jeter came to the office.

25 A Yes, sir.

David Hearst (In-camera)
Direct examination by Mr. Bulsa

- 1 Q Okay. And y'all met in Mr. Watson's office.
- 2 A Yes, sir.
- 3 Q And about how long did the interview last?
- 4 A It started at 11:45 and it was over at 11:55.
- 5 Q Okay. I believe you got a copy of what I am looking,
- 6 State's Exhibit No. 1, is that right?
- 7 A Yes, sir, the same one.
- 8 Q Whose handwriting is that in?
- 9 A That's in my handwriting, sir.
- 10 Q Okay. And why is it in your handwriting?
- 11 A Usually I write it for them, but it's written like
- 12 it's in their words.
- 13 Q Okay. Was Mr. Jeter in custody at this time?
- 14 A No, he wasn't.
- 15 Q So no Miranda warnings were read to him.
- 16 A No. We just wanted to get a statement of his
- 17 whereabouts. That's it.
- 18 Q And if he had decided not to talk to you, what would
- 19 you have done?
- 20 A I wouldn't have talked to him.
- 21 Q Okay. Did y'all promise him anything to talk to him?
- 22 A No, sir, we didn't.
- 23 Q Did you coerce him in any way?
- 24 A No, sir.
- 25 Q Did you pressure him or threaten him in any way?

David Hearst (In-camera)
Cross-examination by Ms. Anderson

1 A No, sir.

2 Q Now, once he gave you this statement, did he read over
3 it?

4 A Yes, he read over it and signed it.

5 Q And did he have an understanding in your opinion of
6 what was going on?

7 A Yes, he did.

8 Q So in this statement, State's Exhibit No. 1, you
9 listed his age as 17 years, is that correct?

10 A I did, yes. That was information I got from him.

11 Q And did he appear to understand what was taking place?

12 A Yes.

13 Q Did he have any questions about it?

14 A Not that I can recall.

15 Q Did you sign it as a witness?

16 A Yes, I did.

17 Q Who else witnessed it?

18 A Investigator Winningham.

19 Q Sergeant Taylor also there?

20 A He was there too.

21 Q Thank you. Answer any questions Ms. Anderson has.

22 CROSS-EXAMINATION

23 BY MS. ANDERSON

24 Q I am going to ask you to speak up a little bit. I
25 couldn't hear you or Mr. Bulsa very well in this.

1 Okay. Officer, you were, you went over to the school
2 to get, you said, a picture of Lance Lyles.

3 A Yes.

4 Q Why did you ask to speak to my client?

5 A Mr. Wilson asked us did we want to talk to him about
6 what was happening.

7 Q Who did?

8 A Mr. Wilson asked us did we need to talk to him.

9 Q Who is Mr. Wilson?

10 A He is one of the teachers out at the alternative
11 school.

12 Q And he asked you if you wanted to speak to Josh?

13 A He asked us did we want to talk to any one of the
14 gentlemen.

15 Q Okay. But I am confused. I thought you asked -- you
16 went over to the university school to get a picture of
17 Lance Lyles.

18 A That was our purpose, yes.

19 Q Okay. And how did Mr. Jeter come up into this?

20 A My understanding, that the two gentlemen were hanging
21 together.

22 Q Okay. So you didn't go over there and ask to speak to
23 him?

24 A No, I didn't.

25 Q And who suggested that you speak to him?

David Hearst (In-camera)
Cross-examination by Ms. Anderson

1 A Mr. Wilson asked did we need to talk to him.

2 Q And who is Mr. Wilson?

3 A The teacher at the alternative school.

4 Q The teacher or the principal or --

5 THE COURT: I think he is referring to Mr. Watson.

6 THE WITNESS: Watson.

7 THE COURT: You might want to clear that up.

8 MS. ANDERSON: Oh, okay.

9 Q So the counselor, Mr. Watson, asked you if you wanted
10 to speak to Josh.

11 A Yes.

12 Q Why is that?

13 A I guess -- I can't answer that, ma'am. I don't know.

14 Q So you didn't go over there to speak to him.

15 A I went over other to get a picture, but he asked did
16 we want to speak to him about what was going on, and we
17 went from there.

18 Q Okay. And it was you, four men, and a 16 years old.

19 A Okay, yeah.

20 Q Is that correct?

21 A Mr. Watson and Investigator Winningham, Sergeant
22 Taylor and myself.

23 Q Okay. And what did you ask him?

24 A We just asked him what was he doing on the date of the
25 incident.

David Hearst (In-camera)
Cross-examination by Ms. Anderson

1 Q Okay. You didn't give him any Miranda warnings.

2 A No. We just asked him did he want to give us a
3 statement, and he said yes.

4 Q Okay. Did you give him any choice though?

5 A He could have told us no.

6 Q Well, let me ask you this though. He is 16 years old.
7 Did you say, now, you don't have to do this, you don't have
8 to talk to us? Did you tell him that?

9 A No.

10 Q So as far as you know a 16-year-old with four grown
11 men, you're asking him questions, and you don't go, now,
12 you don't have to talk to us, you don't have to write a
13 statement.

14 A Mr. Watson asked him did you want to talk to these
15 guys.

16 Q I know. But did any of you ask him or tell him -- did
17 any of you tell him he didn't have to talk to you?

18 A Not that I can recall.

19 Q Thank you.

20 MR. BULSA: No further questions.

21 THE COURT: You may step down.

22 MR. BULSA: Your Honor, that's the state's showing on
23 statement number one.

24 THE COURT: All right. Let's go to the next one.

25 MR. BULSA: We will do the next one. Officer

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 Brewster.

2 PAULA BREWSTER, having been
3 first duly sworn, testified as follows:

4 DIRECT EXAMINATION BY MR. BULSA

5 Q Officer Brewster, I am going to show you State's
6 Exhibit Nos. 2 and No. 3 for purposes of this hearing. Do
7 you recognize those?

8 A Yes.

9 Q Are those statements given by Josh Jeter?

10 A Yes, they are.

11 Q Okay. And I'm referring to both of them because you
12 were the investigator on both and you read him his rights
13 on both and wrote each statement, correct?

14 A Yes, I did.

15 Q State's Exhibit No. 2, referring to statement number
16 two, was that given on December the 11th?

17 A Yes, it is.

18 Q Okay. And where was it given?

19 A Spartanburg Public Safety.

20 Q And how is it that Mr. Jeter came to be at Spartanburg
21 Public Safety?

22 A He was brought to Spartanburg Public Safety.

23 Q By whom?

24 A Investigators Hearst and Willingham.

25 Q Okay. So they went and picked him up somewhere and

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 brought him back.

2 A Yes, they did.

3 Q And turned him over to you --

4 A Yes.

5 Q -- for the purpose of being interviewed.

6 A Yes.

7 Q So he was actually in custody at that point?

8 A Yes, he was.

9 Q He wasn't under arrest.

10 A No, he was not under arrest.

11 Q But he was in your custody.

12 A Yes.

13 Q Would he have been allowed to leave if he wanted to
14 leave?

15 A Yes.

16 Q Even though y'all would have given him a ride home,
17 how would he have gotten home?

18 A Excuse me?

19 Q If the police officers give him a ride to city hall,
20 how would he have gotten home if he said he wanted to
21 leave?

22 A Give him a ride back home.

23 Q Is that, in fact, what happened? Do you recall or do
24 you know?

25 A I believe his mother came up there.

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 Q And picked him up on statement number two?

2 A Yes. I believe she came and responded to the
3 Spartanburg Public Safety Office.

4 Q Okay. Now, we have got the pre-interrogation waiver
5 form. I believe you actually videotaped that process, did
6 you not?

7 A Yes, I did.

8 (Video marked State's Exhibit No. 21 for
9 Identification.)

10 Q I show you what's been marked State's Exhibit 21 for
11 this hearing. Is that the video?

12 A Yes, it is.

13 Q Okay. That pertains to statement number two.

14 A Yes.

15 MR. BULSA: Your Honor, I think it might be best if
16 you just watch this.

17 THE COURT: Okay. How long does that take?

18 MR. BULSA: This portion should not take but a few
19 minutes, Your Honor.

20 THE COURT: Does it have sound?

21 MR. BULSA: That's what I am looking at, Your Honor.

22 THE COURT: Maybe we better go ahead.

23 MR. BULSA: Apparently we don't have any sound, Your
24 Honor.

25 THE COURT: Well, y'all work on that during lunch. We

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 will take the testimony right now.

2 MR. BULSA: Okay. All right. We can watch it. We
3 just can't hear it.

4 Q Tell us what took place.

5 A He was brought into the interview room. I got a
6 pre-interrogation waiver form.

7 I asked him his name, address, phone number, social
8 security number, which he did not know his social security
9 number, date of birth, how old he was.

10 I wrote down the date and time that this took place.
11 And then I read him this form which contains the statement
12 of rights, this top portion. I read them off, checked them
13 off as I read them. And I asked him if he understood them
14 and he said he did.

15 I asked him to read them and put his initials beside
16 each checkmark indicating that he read them. And once he
17 got finished reading them and understanding them, then he
18 signed his name. And I witnessed it.

19 Q Did he have any questions at any time during any of
20 those?

21 A No.

22 Q Did he ever indicate he did not want to speak to you?

23 A No.

24 Q What did you do after you read him that first part of
25 the form?

P  ula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 A I moved down to the waiver of rights. I read this
2 portion to him. "Fully understanding my rights that have
3 been explained to me, I wish to waive, give up, my rights
4 to talk to Officer Brewster in reference to a murder at
5 Rose Hill Apartment.

6 Q So you informed him what it was about.

7 A Yes.

8 Q Okay. And what was his response to that statement?

9 A He wanted to give a statement. I advised him if he
10 wanted to make a statement after finishing reading this
11 last sentence to him, sign here. And he signed and he
12 provided a statement.

13 Q And you witnessed those signatures?

14 A Yes.

15 Q What was the purpose of videotaping it?

16 A The purpose of videotaping was to have his statement
17 not only written but also videoed.

18 Q Did you in any way coerce him to give up his rights?

19 A No, sir, I did not.

20 Q Did he understand what was going on --

21 A Yes.

22 Q -- in your opinion?

23 A Yes. In my opinion he understood.

24 Q How many grades of school did he indicate he went
25 through?

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 A It's not written on this form.

2 Q Not on this form. Okay. How long did this interview
3 take place?

4 A It began at 12:45 p.m. and it ended at 3:00 p.m.

5 Q All right. And once it was over, what happened?

6 A He was able to -- he left with his mother, I believe.

7 Q And then he gave a third statement on the 14th, is
8 that correct, State's Exhibit No. 3?

9 A Yes.

10 Q And tell us how he came to be at city hall that day.

11 A His mother brought him.

12 Q His mother brought him?

13 A Yes.

14 Q Was it at the request of any police officers?

15 A I'm not for sure. She just showed up with him, and I
16 reinterviewed.

17 Q Okay. She showed up. And were you already -- were
18 you waiting on him?

19 A I really don't recall that, whether I was waiting on
20 him or not.

21 Q Okay. And you reinterviewed him following the same
22 procedures.

23 A Yes.

24 Q Using this same type form?

25 A Yes.

Paula Brewster (In-camera)
Direct examination by Mr. Bulsa

1 Q The same process in going over those rights?

2 A Yes.

3 Q So he not only had them read to him on the 11th, he
4 also had them read to him on the 14th.

5 A Yes.

6 Q Did he have any different questions?

7 A Did he have any questions?

8 Q About the rights.

9 A No.

10 Q Did he ever say he didn't want to talk to you?

11 A No, he did not.

12 Q Are you telling us that he voluntarily came down on
13 his on the 4th?

14 A Him and his mother came together.

15 Q But you don't recall whether it was at the request of
16 yourself or another officer or they just came on their own.

17 A I know I didn't request him to come back.

18 Q Okay. All right. Did you give any thought to whether
19 his mother should participate in the interview?

20 A She was in the investigation division. I advised her
21 that we was going to take him over here and interview him
22 again, and she was fine with that.

23 Q Okay. And how old was he on each of these dates?

24 A He was 17 on both days.

25 Q Did you ever make him any promises?

Paula Brewster (In-camera)
Cross-examination by Ms. Anderson

1 A No.

2 Q Threaten him in any way?

3 A No.

4 Q Coerce him in any fashion?

5 A No.

6 Q Did he understand what was taking place?

7 A Yes, sir.

8 Q He was released on the 11th. What happened to him on
9 the 14th?

10 A I believe he was released. I can't recall, but I
11 believe he was released back to his mother and went home.

12 Q When was a warrant obtained for him?

13 A I can't recall that. I don't have the warrant in
14 front of me.

15 Q Okay. Answer any questions Ms. Anderson has.

16 CROSS-EXAMINATION

17 BY MS. ANDERSON

18 Q Just one second.

19 (Pause.)

20 Q Officer Brewster, you don't have a copy of the warrant
21 with you, do you?

22 A Excuse me?

23 Q You don't have a copy of the warrant with you, do you?

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

25 Q Okay. Let me ask you this. Go to the second

Paula Brewster (In-camera)
Cross-examination by Ms. Anderson

1 statement first. You went over the rights with him. Did
2 you know when his birthday was?

3 A I asked.

4 Q Did you know he had just turned 17?

5 A You are talking about Exhibit 2 or Exhibit 3? Which
6 one do you want me --

7 Q I am talking about statement number two.

8 A What dates have you got on that, the 14th?

9 Q This was the 11th.

10 A Okay. The 11th. Yes, I knew when he turned 17.

11 Q Which was the day before.

12 A Yes.

13 Q And you went over the rights with him. Did you ever
14 tell him you can get up and walk out?

15 A No, I didn't tell him he can get up and walk out. I
16 read the rights to him.

17 Q Now, you sent, or did you send Hearst and Winningham
18 to pick him up?

19 A I believe all three of us went looking for him.

20 Q Who?

21 A All three of us.

22 Q Okay. Where did you find him?

23 A I believe we found him at 501 Camelot Drive, Apartment
24 26.

25 Q So you went to his home, picked him up and brought him

Páula Brewster (In-camera)
Cross-examination by Ms. Anderson

1 to headquarters.

2 A Yes.

3 Q All right. And the second statement, it was you and
4 Officer Hearst in there.

5 A I believe Officer Hearst was in there.

6 Q Okay. Neither one of you told this young man that he
7 could leave if he wanted to.

8 A I don't recall me saying that at all, no.

9 Q You said his mother came up there.

10 A Yes.

11 Q Did you ask her if she wanted to be in on the
12 interview?

13 A No.

14 Q Okay. Did you tell her he was free to leave at any
15 time?

16 A I don't believe I talked to her until after the
17 interview.

18 Q Okay. Now, on statement number three, that was on
19 12/14. Now, you said that Mr. Jeter came in with his
20 mother that day.

21 A Yes.

22 Q You weren't looking for him. Did you tell him he did
23 not need to make this statement?

24 A No, I didn't tell him that, I don't believe.

25 Q Okay. And on this statement you have, "I have

Paula Brewster (In-camera)
Cross-examination by Ms. Anderson

1 completed 8th grade and I can read and write."

2 A Yes.

3 Q Okay. Do you remember, was anyone else in with you
4 when you interviewed him?

5 A I'm not for sure if Sergeant Taylor was there or not
6 at that time.

7 Q Do you remember telling him that we know this was an
8 accident, come on and tell us all about it, we know you
9 didn't mean to hurt anybody?

10 A I believe I used them words.

11 Q Okay. But you never used the words you don't have to
12 talk to us, you can leave.

13 A Not that I recall, no.

14 Q And I believe this is -- I believe you arrested him.
15 I don't believe he ever left y'all's custody after that.
16 I've got on the warrant that it was signed on December the
17 14th of 2004. So I'm assuming y'all arrested him on the
18 spot.

19 A A warrant was probably obtained the same day. I can't
20 tell you whether he was arrested at that time.

21 Q Okay. But you don't think he went home from there.

22 A His mother was still there. So I can't tell you that
23 he was arrested at that time. I am not for sure.

24 Q Okay. You did get the warrant on the 14th.

25 A If it has got the 14th on it, yes.

Joshua Jeter (In-camera)
Direct examination by Ms. Anderson

1 Q Okay. That's all the questions I have.

2 MR. BULSA: Nothing further.

3 THE COURT: Step down. Anything further?

4 MR. BULSA: Not from the state.

5 THE COURT: Ms. Anderson.

6 MS. ANDERSON: Josh Jeter.

7 THE COURT: Okay.

8 JOSHUA JETER, having been
9 first duly sworn, testified as follows:

10 DIRECT EXAMINATION BY MS. ANDERSON

11 Q Please state your name.

12 A Joshua Jeter.

13 Q Okay. And what's your birthday?

14 A 12/10/87.

15 Q Do you remember the, on, I believe it was on your
16 birthday on 12/10/04, do you remember Mr. Watson coming to
17 get you?

18 A Yes, ma'am.

19 Q Okay. When Mr. Watson -- where were you when
20 Mr. Watson came to you?

21 A I was in the cafeteria.

22 Q Okay. And what did Mr. Watson say when he came in
23 there?

24 A He said that the police wanted to talk to me.

25 Q Okay. Did he tell you you didn't have to talk to

Joshua Jeter (In-camera)
Direct examination by Ms. Anderson

1 them?

2 A No, ma'am.

3 Q Did he say you don't have to come to the office if you
4 don't want to?

5 A No, ma'am.

6 Q So you went with him to the office, correct?

7 A Yes, ma'am.

8 Q And when you got in the office was there Mr. Watson
9 and three officers in there?

10 A Yes, ma'am.

11 Q Okay. Did any of them ever tell you you can get up
12 and walk out?

13 A No, ma'am.

14 Q Did you feel like you could get up and walk out?

15 A No, ma'am.

16 Q Did you feel like you had to talk to them and that you
17 had to write a statement?

18 A Yes.

19 Q All right. What about the next time on 12/11? Were
20 you at home?

21 A Yes, ma'am.

22 Q And who came to your door?

23 A Investigator Hearst.

24 Q And who else?

25 A And I don't know the other one's name.

Joshua Jeter (In-camera)
Direct examination by Ms. Anderson

- 1 Q Okay. Was it a male or a female?
- 2 A A man.
- 3 Q Okay. So two men came to your house. And what did
- 4 they say to you?
- 5 A I can't recall that.
- 6 Q Well, did they say come on we are going to take a ride
- 7 or we are taking you to city hall, we are taking you?
- 8 A They said they going to take me to the city hall.
- 9 Q For what?
- 10 A I, I can't recall what they said really.
- 11 Q Okay. But did you feel like you had an option? Did
- 12 you feel like you had to go with them?
- 13 A Yes, ma'am.
- 14 Q Did you feel like you could have said, no, Officer
- 15 Hearst, I don't want to go?
- 16 A I don't feel like I could have said that.
- 17 Q So when you got in there and Officer Brewster talked
- 18 to you, and Officer Hearst, at any time did you feel like
- 19 you could get up and walk out?
- 20 A No, ma'am.
- 21 Q Did you feel like you had to give this statement?
- 22 A Yes, ma'am.
- 23 Q Okay. Now, on the third one on 12/14, your mother
- 24 took you to the police station, is that correct?
- 25 A Yes, ma'am.

Joshua Jeter (In-camera)
Cross-examination by Mr. Bulsa

1 Q Was it your idea to go?

2 A It was my mother's.

3 Q Okay. Did she give you a choice about whether you
4 could go or not?

5 A No, ma'am.

6 Q Okay. When you got there did you feel that you had to
7 talk to the officers?

8 A Yes, ma'am.

9 Q Did you feel like you could get up and walk out?

10 A No, ma'am.

11 Q In fact, were you not arrested that day?

12 A Yes, ma'am.

13 Q And you have been in jail ever since?

14 A Yes, ma'am.

15 Q Okay. But at any point during any of these three
16 statements that you gave did you feel like you didn't have
17 to be there and you didn't have to talk?

18 A I felt like I did.

19 Q All right. Answer any questions Mr. Bulsa might have.

20 CROSS-EXAMINATION

21 BY MR. BULSA

22 Q You felt like you had to give a statement?

23 A Yes, sir.

24 Q Okay. So you voluntarily gave those statements,
25 didn't you?

Joshua Jeter (In-camera)
Cross-examination by Mr. Bulsa

1 A Yes, sir.

2 Q You understood what was taking place.

3 A Yes, sir.

4 Q Anybody threaten you?

5 A No, sir.

6 MS. ANDERSON: Mr. Bulsa, I am really having a hard
7 time hearing you. I'm sorry.

8 Q As long as he can hear me. Did you feel like you had
9 to tell the truth?

10 A Yes, sir.

11 Q Did you tell the truth?

12 A Half of it.

13 Q Half of it. None of your statements are the same, are
14 they?

15 A Two or three of them.

16 Q Two or three of them. Which two are the same?

17 A I can't -- the 10th and the 11th.

18 Q Okay. When you denied even being over at Rose Hill.

19 A Yes, sir.

20 Q All right. You're telling me that everything leading
21 up to Rose Hill is the truth in those two?

22 A Yes, sir.

23 Q And you understood completely what you were doing.

24 A Yes, sir.

25 Q You told the police just a little bit, to a certain

Joshua Jeter (In-camera)
Cross-examination by Mr. Bulsa

1 point, and then you stopped, right?

2 A Yes, sir.

3 Q Okay. So you, in essence, gave a statement and then
4 stopped giving the rest of the story, right?

5 A Yes, sir.

6 Q Okay. So you knew exactly what you were doing.

7 A At the beginning I didn't even know what it was about
8 on 12/10.

9 Q Right, right. They weren't accusing you of anything,
10 were they? They were just asking you your whereabouts.

11 A I know.

12 Q Right? Isn't that the way it took place?

13 A Yes, sir.

14 Q Okay. And you gave that short statement we saw,
15 State's Exhibit No. 1, the first statement. You just told
16 them how you went home from school and hooked up with Lance
17 and drove over to your brother's house, right?

18 A Yes, sir.

19 Q Okay. And then the other two, you knew what they were
20 talking about, right?

21 A Yes, sir.

22 Q You knew it was some serious business, right?

23 A Yes, sir.

24 Q Okay. And you freely gave a statement.

25 A Yes, sir.

Joshua Jeter (In-camera)
Redirect examination by Ms. Anderson

1 Q Okay. Thank you.

2 MR. BULSA: That's all I have.

3 MS. ANDERSON: One thing.

4 REDIRECT EXAMINATION

5 BY MS. ANDERSON

6 Q You understood, what does voluntary mean?

7 A Ma'am?

8 Q What does voluntary mean?

9 A Means that I gave it on my own, I guess.

10 Q So that's what you told the solicitor, that you gave
11 these statements on your own and you wanted to.

12 A I felt like I had no choice.

13 Q Okay. So when you're saying you voluntarily gave the
14 statements, you are also, you are stating you didn't think
15 you had a choice to give it. Is that correct?

16 A Yes.

17 Q Okay. When the solicitor asked you what freely, that
18 you gave it freely, what do you think he meant by that?

19 A That I gave it on my own.

20 Q You mean that the words actually came out of your
21 mouth?

22 A Yes.

23 Q Okay. Did it mean that -- that it meant that you
24 wanted to give it?

25 A Yes.

Joshua Jeter (In-camera)
Redirect examination by Ms. Anderson

1 Q Okay. So you wanted to give these statements.

2 A Not really.

3 Q Okay. But did you feel like you had to give them?

4 A Yes, ma'am.

5 Q That's all. Thank you.

6 MR. BULSA: Nothing further.

7 THE COURT: Step down. Is that all?

8 MS. ANDERSON: Yes, sir.

9 THE COURT: Anything further?

10 MS. ANDERSON: No, sir.

11 THE COURT: Any argument?

12 MS. ANDERSON: Yes, sir.

13 THE COURT: Okay.

14 MS. ANDERSON: Your Honor, I think that is very plain
15 from the officers' testimony and from the school
16 intervention counselor that Mr. Jeter was not given an
17 option in coming. He was not told by any of the grown men
18 that he didn't have to come to the office and that he did
19 not have to speak to these men.

20 It was a 16-year-old turning 17-years-old that day
21 surrounded by four grown men. I do not believe that he
22 felt that he could walk out of the room and that he didn't
23 have to talk to these people.

24 On the other two times he was picked up by the
25 officers and was taken to the interrogation room at the

1 city. And he was never told, yet they read him his rights.

2 He finished the 8th grade. I am not sure that he
3 understood, and I believe he testified that he did not
4 believe that he could get up and walk out of that room.
5 And no one, and these officers testified no one, told him
6 he could leave and that he didn't have to talk.

7 The third time his mother brought him, and evidently
8 he does mind his mother. I don't believe he wanted to go
9 then. And, again, Officer Brewster did not tell him, no,
10 you don't have to do this.

11 I don't believe that when he was answering Mr. Bulsa's
12 questions that he truly understands what voluntarily means
13 and what freely means, but I do think that he did testify
14 that he thought he had to talk to those people and he had
15 to give them statements.

16 And for that reason I don't believe that his
17 statements were voluntarily and freely given. I believe
18 that he was a young man just turning 17 who really needed
19 some guardian's guidance in this and --

20 THE COURT: I thought you said his mother was with
21 him.

22 MS. ANDERSON: Well, his mother came, made him come
23 the third time.

24 THE COURT: All right. Well, that's his guardian,
25 isn't it?

1 MS. ANDERSON: Yes, sir. But on the other two there
2 was no guardians.

3 THE COURT: Well, I understand. But what's your
4 position? You say the first two he didn't have his
5 guardian with him and therefore it was not voluntary; and
6 the third time he had his guardian with him who told him to
7 go give the statement. And you're saying that she made him
8 do it.

9 MS. ANDERSON: Yes, sir.

10 THE COURT: So, I mean, how? What circumstances would
11 have to exist before you would believe the statement could
12 be voluntarily made?

13 MS. ANDERSON: I guess if he understood that he could
14 have walked out and never talked to the officers ever the
15 first two times. He was never -- he never understood that,
16 that he didn't have to talk to them. No one explained it
17 to him, and he didn't have any guidance then.

18 THE COURT: Well, are you saying that when they
19 explained those rights to him that he -- that they read to
20 him and that he read back to them or read to himself and
21 initialed it, he didn't understand what it mean to say you
22 have the right to remain silent?

23 MS. ANDERSON: No. I don't think he understood that.

24 THE COURT: Okay. Well, he didn't tell me that, but
25 maybe he didn't.

1 What else?

2 MS. ANDERSON: That's all, Your Honor.

3 THE COURT: All right. Mr. Bulsa, do you want to
4 respond?

5 MR. BULSA: Your Honor, I think it's clear. You
6 directed it to the pre-interrogation waiver form. It's
7 clear that he was explained his rights and the fact that he
8 did not have to speak and could stop speaking and get a
9 lawyer.

10 I think it's clear from his testimony he knew exactly
11 what was going and he understood what was taking place. He
12 knew just to tell enough the first couple of statements to
13 get him in and out of there.

14 We feel that he more than understood his rights. And
15 as he stated, he freely and voluntarily gave those
16 statements.

17 THE COURT: Well, based upon the totality of the
18 circumstances relating to the interrogation, I do find that
19 the statements made by the defendant were freely and
20 voluntarily made, that he was not coerced, he was not
21 promised anything, he was not threatened.

22 The two occasions where you could construe that he was
23 in custody he was, in fact, advised of his constitutional
24 rights. They were read to him. He was asked to read them
25 for himself and to initial those that he understood, and

1 apparently he indicated that he did, in fact, understand
2 each of those rights. He initialed those rights, and I
3 find based upon the testimony voluntarily relinquished
4 those rights and provided a statement without any threat or
5 coercion being present; and therefore the statements will
6 be allowed to be introduced and considered by the jury.

7 All right. Any other matters to address before we
8 recess for lunch?

9 MR. BULSA: Not from the state.

10 MS. ANDERSON: No, sir.

11 THE COURT: Court is in recess until 2:00 o'clock.

12 (Whereupon, a recess was taken.)

13 THE COURT: Let me see y'all just a minute, please,
14 before the jury comes in.

15 (Bench conference held off the record.)

16 THE COURT: All right. Are we ready for the jury?

17 MR. BULSA: Yes, sir.

18 MR. VIETH: Yes, sir.

19 MS. ANDERSON: Yes, sir.

20 THE COURT: Bring them in.

21 (The following takes place in the presence of the
22 jury.)

23 THE COURT: All right. The jury is present.

24 Mr. Bulsa.

25 MR. BULSA: Ed Guthro.

Edgar Victor Guthro
Direct examination by Mr. Bulsa

1 Q Did you have an occasion to ever go to the home of
2 Lance Lyles?

3 A Yes, sir. On 12/10 at roughly 1900 at night, Sergeant
4 Taylor had directed myself and Investigator Bradley to go
5 and watch the house, the Lance Lyles residence, while they
6 were in the process of obtaining an arrest warrant for him.

7 Q Now, 1900 hours is 7:00 o'clock p.m.

8 A Yes, sir.

9 Q And where did Mr. Lyles live?

10 A 522 Singingwood Lane, I think it was.

11 Q And whereabouts is that in Spartanburg?

12 A Be on the west side off of Camelot.

13 Q Is that near where the old Home Depot was?

14 A Yes, sir.

15 Q Camelot is the road that runs right into the Home
16 Depot at Market Square.

17 A No. Camelot runs between J. B. White and West Main.

18 Q W. O. Ezell.

19 A Yes.

20 Q As you come down Camelot at W. O. Ezell you look at
21 the old Home Depot site.

22 A Yeah, oh, yeah.

23 Q Okay. So it was in that neighborhood you and
24 Investigator Bradley went?

25 A To 522 Singingwood Lane, yeah.

Edgar Victor Guthro
Direct examination by Mr. Bulsa

1 Q All right. And you said to watch the house.

2 A Yes, sir. We didn't know if anybody was there or not
3 initially, but that's what we were there for, was to watch
4 the house. If anybody left, check with them and that type
5 of thing.

6 Q All right. And did you ever -- were you ever told to
7 go into that house at that time?

8 A No, sir.

9 Q Okay. What occurred while you were sitting there?

10 A When we arrived the first thing we noticed was the
11 lights, every light in the house being turned off and on
12 and at different intervals. One room would come on and go
13 off, and then another room would upstairs, downstairs, all
14 over the house. And we watched that for about 20 minutes
15 roughly. And then Sergeant Taylor called us and advised us
16 that they had obtained a warrant.

17 Q What were you to do then?

18 A Well, we were to wait until they got there. But at
19 about 30 seconds after he told us they had the warrant a
20 black male dressed in black exited, came out of the
21 residence and started walking down the road.

22 Q Did you recognize that person?

23 A No.

24 Q What happened after that person came out?

25 A I advised Sergeant Taylor that a subject had came out

Edgar Victor Guthro
Direct examination by Mr. Bulsa

1 of the house. He advised us to stop that person. As we
2 started to stop that person a second individual came out of
3 the house.

4 Q Who was that second individual?

5 A At first I didn't know. I knew he was dressed in
6 blue. We pulled up beside him and he faced -- just a
7 couple of feet away. He faced the car and we recognized
8 him as Lance Lyles.

9 Q How did you recognize him?

10 A I had been looking at a picture of him.

11 Q And he was the person you were there to stop and
12 arrest.

13 A Yes, sir.

14 Q What took place?

15 A Investigator Bradley asked him to step over to the
16 car. And when he did that Mr. Lyles took off running. The
17 other individual also ran. And we -- they ran up the road
18 for a short distance and then turned off through some
19 houses on the left.

20 Investigator Bradley jumped out of the car and
21 actually pursued them. I stopped him in between some
22 houses there figuring one or the other would probably
23 double back. The individual addressed in black did double
24 back, but he passed on the other side of the house and I
25 wasn't able to get to him.

Edgar Victor Guthro
Direct examination by Mr. Bulsa

1 Q What kind of vehicle were y'all in?

2 A I think we were in a Ford Taurus at that time.

3 Q And how were you dressed?

4 A I don't recall for certain but most likely civilian
5 clothes. And doing what we were doing, most likely blue
6 jeans.

7 Q And did these persons know who you were?

8 A I don't know that they did or didn't. I couldn't say.

9 Q Did you tell them you were police?

10 A I did not, and I don't recall Investigator Bradley
11 doing that. He may have, but I don't recall it.

12 Q Did you do anything other than pulling up next to them
13 that caused them to run?

14 A No.

15 Q Did you draw a weapon on them?

16 A No.

17 Q Do you remember if you said anything to them?

18 A I didn't speak to them at all. Investigator
19 Bradley -- the only thing I recall him saying was asking
20 Lance Lyles to step over to the car.

21 Q And his response was to run.

22 A To run.

23 Q And the other person also ran.

24 A Yes, sir.

25 Q And once y'all gave chase and you didn't catch them in

Edgar Victor Guthro
Direct examination by Mr. Bulsa

1 that short time --

2 A No.

3 Q -- what did you do?

4 A Dog units were called, K-9 units. Other investigators
5 responded; patrol units responded. And eventually they
6 took on that pursuit trying to locate these two
7 individuals. And myself and Investigator Porter, and I
8 think Investigator Hogsed, and a few others executed a
9 search warrant at 522 Singingwood.

10 Q And you told us at the beginning that you were there
11 waiting on an arrest warrant for Mr. Lyles.

12 A That's correct.

13 Q When did the search warrant --

14 A I believe it was obtained at the same time. I am not
15 certain.

16 Q Okay. That was a search warrant for Lance Lyles'
17 residence.

18 A That's correct.

19 Q Do you know if he had been caught before you served
20 the search warrant?

21 A I know he was caught while he were executing that
22 warrant because it came over our radios.

23 Q Who was responsible for collecting the items for the
24 search warrant?

25 A For collecting them, I believe, I think that warrant

Edgar Victor Guthro
Cross-examination by Ms. Anderson

1 was executed by Investigator Hogsed.

2 Q Did you recover anything yourself?

3 A No, sir, I don't believe I did.

4 Q What was the residence, again, where you were?

5 A I believe it's 522 Singingwood.

6 Q Do you have it in your notes?

7 A Let me look here. Actually, I don't have the address
8 listed. I have Singingwood Lane to watch the residence of
9 Lance Lyles.

10 Q Okay.

11 A So I am not sure where I am coming up with 522.

12 Q So you don't recall the number.

13 A No, sir.

14 Q The residence on Singingwood? The residence on
15 Singingwood Lane?

16 A Yes.

17 Q Thank you. Answer any questions either attorney has.

18 CROSS-EXAMINATION

19 BY MS. ANDERSON

20 Q Officer Guthro, you're stating that Lance Lyles ran
21 when he saw y'all.

22 A Yes, ma'am.

23 Q Okay. And that you did execute the search warrant but
24 you did not participate in getting any items from his
25 house.

Edgar Victor Guthro
Cross-examination by Mr. Vieth

1 A I assisted in the search inside and outside. I don't
2 recall that I am actually the one that located any of the
3 items that were collected.

4 Q Were items located?

5 A Yes.

6 Q What was located?

7 A As I recall, I believe there was a jacket and a red
8 ski mask and had some ammunition.

9 Q What kind of ammunition?

10 A I don't recall the caliber. I want to say .22, but I
11 am sort of guessing. I don't recall for sure.

12 Q Okay. But you don't remember anything else about what
13 was recovered?

14 A That's all I recall.

15 Q Do you remember where the ammo was recovered?

16 A Again, I'm, I believe it was from the bedroom on the
17 right at the top of the stairs out of a dresser, but I am
18 not a hundred percent certain on that either.

19 Q Do you know whose bedroom it was?

20 A No, I do not.

21 Q Thank you.

22 CROSS-EXAMINATION

23 BY MR. VIETH

24 Q Officer, very brief. The warrant for his arrest you
25 were familiar with was in the process of being executed by

Edgar Victor Guthro
Cross-examination by Mr. Vieth

1 someone other than you. Were you just there as a stakeout
2 kind of?

3 A Yes, sir. And the warrant was being obtained by
4 another investigator.

5 Q Okay. All right. So y'all are sent. Two of you were
6 sent to monitor the house to see. You didn't know anyone
7 was in there except the lights going on and off.

8 A Other than lights going on and off in every room,
9 that's all.

10 Q Okay. And then you get some radio dispatch saying the
11 warrants are being issued now.

12 A Yes, sir. We were contacted by Sergeant Taylor
13 advising us that they had obtained the warrants.

14 Q Okay. And then was your next procedure -- had two
15 people not walked out, would your next procedure have been
16 to knock on the door?

17 A No, sir. We would have waited for the other
18 investigators to arrive.

19 Q Okay. And would those investigators have been in
20 uniform typically?

21 A There would probably -- most of them would have been
22 in civilian clothes, but normally there would have been a
23 uniformed officer who responded as well.

24 Q Okay. And then when two subjects walked out -- do you
25 know who the second subject was?

Edgar Victor Guthro
Cross-examination by Mr. Vieth

1 A I don't recall the name now.

2 Q Okay. That's fine. Two subjects walked out.

3 A Yes.

4 Q And closed the door, walking down the street. And
5 y'all pull up to the side. And I believe you say the other
6 officer, not you, Investigator Boozer --

7 A Bradley.

8 Q Bradley. Said come over here.

9 A Asked him to step to the car, yes.

10 Q And the car was what kind of car?

11 A I believe it was a Ford Taurus that we were in at that
12 time.

13 Q And with that they broke into a run.

14 A Yes, sir. And they weren't exactly right together.
15 The first individual came out of the house, and several
16 seconds had passed before Mr. Lyles came out of the
17 residence. So he was probably an estimated 20 yards
18 further. The first individual was probably 20 yards
19 further down the road than Mr. Lyles when we pulled up
20 beside Mr. Lyles.

21 Q Okay. So you pulled up to the first fellow, and he
22 took off.

23 A The second one to come out of the house.

24 Q Okay. The second one to come out of the house was
25 Lyles?

Edgar Victor Guthro
Redirect examination by Mr. Bulsa

1 A Yes, sir.

2 Q Okay. And the first one ran as well.

3 A He ran as well. I don't know because he -- if it was
4 because he observed Mr. Lyles running or what the deal was,
5 but they both ran.

6 Q Okay. And to your knowledge that arrest warrant was
7 issued subject to an eye witness identification by
8 Mr. Spicer. Is that your information?

9 A I have no real involvement in that particular part. I
10 am vaguely familiar with it, but I would hesitate to answer
11 on that.

12 Q Fair enough. Thank you. That's all I have.

13 MR. BULSA: Just briefly.

14 REDIRECT EXAMINATION

15 BY MR. BULSA

16 Q You stated you got there at 7:00. When did they begin
17 to run?

18 A I'm sorry?

19 Q When did they begin to run?

20 A Roughly 20 minutes after we arrived. About 20 minutes
21 later we were advised by Sergeant Taylor that they obtained
22 the warrants. And just within seconds of being advised of
23 that the first individual came out of the house, and then
24 the second.

25 Q So about 7:20.

Steve Lamb
Direct examination by Mr. Bulsa

1 A Roughly.

2 Q Thank you.

3 A Yes, sir.

4 THE COURT: Step down.

5 MR. BULSA: Steve Lamb.

6 MR. VIETH: Your Honor, can we approach while Mr. Lamb
7 is coming up?

8 (Bench conference held off the record in the presence
9 of the jury but out of the hearing of the jury.)

10 STEVE LAMB, having been first
11 duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MR. BULSA.

13 Q All right. Lieutenant, if you would, introduce
14 yourself to the jury.

15 A My name is Steve Lamb. I am a lieutenant with the
16 Public Safety Department in the investigation division.

17 Q Make sure you speak up. How long have you been a
18 lieutenant?

19 A About eight years.

20 Q And you are assigned to investigations?

21 A Yes, sir.

22 Q Does that mean you are the head of the investigations?

23 A Yes, sir.

24 Q How long have you been in that position?

25 A About four years in investigations.

Steve Lamb
Direct examination by Mr. Bulsa

1 Q How long have you been in police work?

2 A Fifteen years.

3 Q All with the city of Spartanburg?

4 A Yes, sir.

5 Q Now, as the lieutenant do you respond to crime scenes?

6 A Yes, sir.

7 Q Do you recall the incident on December the 8th of 2004
8 at Rose Hill Apartments?

9 A Yes, sir, I do.

10 Q Did you respond to that location?

11 A Yes, sir, I did.

12 Q For what purpose?

13 A Just to be a liaison for all the investigators and the
14 patrol division and to set up a command post there at the
15 scene.

16 Q Describe what a command post is to us.

17 A We set up a command post where myself and Sergeant
18 Taylor were responsible for passing out assignments,
19 assessing information that's come into our command post.
20 We have a, basically a, Winnebago that we bring out; find
21 out information in the neighborhood, information that's
22 going on in the case. And then we send out assignments.

23 Investigators are assigned to canvass the area, follow
24 leads, prioritize those. All of those come back in by
25 phone and radio and Nextel back to us. That's just a

Steve Lamb
Direct examination by Mr. Bulsa

1 central process in the area for us.

2 Q And on this occasion, well, on all occasions do you
3 assign a lead investigator?

4 A Yes, we do.

5 Q But other investigators also assist that person.

6 A Yes, they do.

7 Q So you could have multiple investigators involved in
8 one case.

9 A We do.

10 Q All right. At that point at Rose Hill did you get
11 involved in the investigation other than assigning?

12 A No, sir, I did not.

13 Q I am going to fast forward a couple of days,
14 December 10th. Did you become involved in the chase of
15 Lance Lyles?

16 A Yes, I did.

17 Q Explain to us how you became involved, and when.

18 A Okay. We had signed arrest warrants, murder warrants
19 on Lance Lyles. Two investigators, Investigator Guthro and
20 other investigator, went to his residence in Camelot, a
21 community in our city. They went just to set up on the
22 area just to do some surveillance while the warrants are
23 being signed, wanted to make sure if he is there or not.

24 As we are on the way towards that area, Investigator
25 Guthro calls me on the radio and says that two subjects had

Steve Lamb
Direct examination by Mr. Bulsa

1 ran from the residence. One of the subjects had a blue
2 jacket on and dark clothing, or pants on and a blue jacket.
3 The other one had on all black. He identified Mr. Lyles on
4 site as the individual in the blue jacket.

5 As soon as he called me, we responded out there. Most
6 of our unit responded. We knew we had someone that we had
7 just charged with murder. We knew that we did not have a
8 weapon. We knew it was a subdivision area. We knew that
9 they just did a home invasion, what we believed. They
10 could actually do that again. We were concerned about the
11 safety of the community.

12 We set up another command, another command post area.
13 Myself, Sergeant Taylor and my boss, Captain Hardy, was
14 there. We requested several different organizations. We
15 requested county helicopter to respond. We requested the
16 county's investigation division to assist us. We felt like
17 we had a high threat level running in our community. We
18 had no idea where they were at.

19 At that point we started to assess what we could do.
20 We called our K-9 dogs in to try to track the area. Our
21 SWAT team was on an unrelated search warrant. As soon as
22 they finished that search warrant, we respond them to the
23 area.

24 Their tactical commander put people up in certain
25 areas just for the protection of the community. That was

Steve Lamb
Direct examination by Mr. Bulsa

1 locked down for quite some time. We were stopping cars
2 coming and going out, checking with the residents, knocking
3 on doors. We had our division and the patrol and stuff
4 that was working that.

5 My responsibility was to keep that flowing, keep the
6 flow of information between our different radios and
7 Nextels and the information coming in from patrol and
8 several different divisions.

9 I left the command post after a short period of time,
10 after everything was stabilized and we could not locate
11 them, about 45 minutes to an hour after I was there.

12 I'm traveling up Camelot, which is near the Home Depot
13 on the west side of the town. As I pull out of Camelot I
14 see two individuals walking out of, out from behind a house
15 or from a residence, walking up to the edge of the road.
16 And they start going by the old library.

17 I noticed one was wearing a blue jacket. It was two
18 black males, I could tell. One was wearing a light blue
19 jacket. The other one was wearing all dark.

20 I called out on the radio, like I said, that I felt
21 like this was the two individuals we were looking for.

22 As I go up Camelot near the Kentucky Fried Chicken, I
23 turn around in the middle of the road in my vehicle. I
24 have an unmarked blue Taurus. I positioned my car where I
25 was sort of in the drive of the library parking lot.

Steve Lamb
Direct examination by Mr. Bulsa

1 I turn my blue light on. I was basically facing them;
2 started to open my door to get out. I felt like they were
3 both going to flee. They both did. They both immediately
4 took off running as soon as I turned on my blue light.

5 I felt like the one in the blue, I wanted to make sure
6 I followed him. The one in all black ran back into Camelot
7 and went behind and towards the residential area.

8 Mr. Lyles is in blue. He took off running. He run
9 from my vehicle and run over towards Kentucky Fried
10 Chicken.

11 I got back in the car. I turned around. He ran
12 behind my vehicle. I just did a U-turn into the road. I
13 still had my blue light on trying to get him to stop. He
14 continued running. He runs across Kanpai parking lot,
15 which is Kanpai Tokyoo, that area. He runs across the
16 parking lot.

17 I am still behind him in my car, blue lights on. He
18 appears to be out of breath. He is not running that fast.
19 I just kinda holler at him out the window and tell him it's
20 the police and he needs to stop.

21 He runs across the street, which is Reidville Road.
22 As he is running across the street, by that time as he runs
23 in the parking lot of the Home Depot the county helicopter
24 says I've got him or says I see him. They throw their
25 light on him. He's running through the parking lot.

Steve Lamb
Direct examination by Mr. Bulsa

1 I drive across Reidville Road. I see that he runs in
2 behind the Baskin-Robbins. He run in behind
3 Baskin-Robbins. So I take off in my vehicle on the
4 opposite side of the building.

5 There's apartment complexes, Baskin-Robbins and a row
6 of businesses. I knew if he run behind there, there's an
7 opening in the fence so people can walk through.

8 He pulls, I mean, I pull around back. He takes off
9 running. I come around the opposite side and get out of my
10 vehicle and run up towards the alleyway there that he is
11 in. He is climbing over the fence. It's like a wall, and
12 there's a fence.

13 As I holler at him, he jumps down and takes off
14 running back towards Baskin-Robbins. I continue to follow
15 him.

16 By that time several investigators and officers are
17 there. He runs inside Baskin-Robbins. And Sergeant Taylor
18 and Captain Hardy actually arrest him there inside that
19 business while it was open. That's basically my
20 involvement in the chase.

21 Q Let me ask you a few specific questions. Do you
22 recall when you first learned he was running?

23 A On my supplemental, I'll give the times that I have.
24 I've got 1945, which is 7:45. That's about the time that
25 Guthro, Investigator Guthro, saw him running from the

Steve Lamb
Direct examination by Mr. Bulsa

1 residence.

2 Q Okay. And what was the time when he was apprehended?

3 A And 8:45 is the approximate time, is about the time
4 that I saw him and he ran from the scene.

5 Q Is that an hour at least?

6 A Yes, sir. It's from 7:30 to 8:45. A little bit
7 longer than an hour.

8 Q Okay. And how many officers were involved in this
9 search?

10 A I would guesstimate around 30 probably, because we
11 requested the county's investigation division respond, and
12 the helicopter responded, and some of our patrol units.

13 The entire patrol unit was there, our investigation
14 division there, and then of course our SWAT team responded.
15 So I would say around 30 people in that neighborhood.

16 Q Okay. So you had marked cars as well as unmarked
17 cars.

18 A Correct.

19 Q And people in uniform as well as people in plain
20 clothes.

21 A Correct, yes.

22 Q And dogs?

23 A Yes. Responded the K-9 team.

24 Q And helicopters.

25 A Correct.

Steve Lamb
Direct examination by Mr. Balsa

1 Q And while you were following Mr. Lyles were you
2 radioing to other people?

3 A Yes. I just basically gave out where he was running
4 towards.

5 I knew that he was running into another apartment
6 complex area. He was in a business area. I wanted to make
7 sure other people knew where he was at because we had
8 several organizations that were working on different radios
9 so we could apprehend him before he got into the community
10 again.

11 Q And did the helicopter participate at that point?

12 A Yes. They actually -- I remember seeing actually
13 their light on top of him as he is running through the Home
14 Depot, the car lot right beside Home Depot, which is -- the
15 B. P. parking lot is adjacent to Home Depot. As he ran
16 through, the helicopter actually got him within their
17 light.

18 Q And this would have been nighttime, dark.

19 A Yes, sir. It was dark.

20 Q And how was the traffic?

21 A The traffic wasn't too bad. One thing I do remember
22 is that when I went across Reidville Road traffic just
23 stopped because I think they knew what was going on because
24 of all the officers and because of my vehicle. And he ran
25 through traffic. Luckily, he wasn't hit. He ran through

Steve Lamb
Direct examination by Mr. Bulsa

1 traffic, and just like the normal evening.

2 Q Just a second.

3 MR. BULSA: I would like to get this marked as an
4 exhibit.

5 MR. VIETH: Without objection.

6 MS. ANDERSON: Without objection, Your Honor.

7 MR. BULSA: This marked as well.

8 MS. ANDERSON: No objection, Your Honor.

9 MR. VIETH: No objection, Your Honor.

10 (Photographs marked State's Exhibits Nos. 22 and 23.)

11 Q Lieutenant Lamb, let me show you what's been marked as
12 State's Exhibit 22. Do you recognize this?

13 A Yes. This is Camelot.

14 Q Speak up.

15 A This is Camelot Drive, Reidville Road.

16 Q Okay. I am going to put it on the stand and ask you
17 to come down in a minute.

18 A Okay.

19 Q So make sure you are oriented to it.

20 A Yes, sir.

21 Q Okay. I am going to show you what's been marked as
22 State's Exhibit No. 23. Do you recognize what that
23 displays?

24 A Yes, sir.

25 Q Okay. If I may ask you to step down.

Steve Lamb
Direct examination by Mr. Bulsa

1 (Whereupon, the witness left the stand.)

2 Q If you would, step down. Remember you have to speak
3 up.

4 A Okay.

5 THE COURT: Have him take the other side, please.

6 Q Take the other side. As we display this, I am going
7 to display State's Exhibit 23 on the overhead. Can you
8 explain what 23 is? Okay? It's really not coming into
9 focus too well. All right. What is it we are seeing on
10 the overhead, State's 23?

11 A May I move over here?

12 Q Yes, sir.

13 A Okay. Pointer. This is where Mr. Lyles' residence is
14 at and Investigator Guthro was at. And this is the Camelot
15 community. All of these little blocks here are residences.

16 We knew that once he had ran from that residence that
17 everyone in this area, we felt like, was in jeopardy. We
18 had no idea where he was running to. We had had an idea
19 that he would possibly run back towards W. O. Ezell.

20 We had set up. We set up patrols that had blocked off
21 these streets to see if we could see parameters here. They
22 actually went down through the creek bed, tremendous areas
23 through there they are trying to cover.

24 The area that I actually saw him at -- let me see if I
25 can just see it here -- which is Winchester Place, right

Steve Lamb
Direct examination by Mr. Bulsa

1 here is the library, Kentucky Fried Chicken. This is Home
2 Depot. This is the B. P. This is where the 31-Flavors Ice
3 Cream is at.

4 I actually saw him right here where these two streets
5 are crossing. He was walking. They had come out of the --
6 they'd come out of the residential area here. They were
7 walking towards the Home Depot area.

8 Q That's kind of blurry, but if you would, identify for
9 the jury what the red circle is.

10 A The red circle is the crime scene. That is the Powell
11 Mill crime scene. That's actually where the homicide took
12 place. This is Travis Jeter's residence.

13 Q Who is Travis Jeter?

14 A He's involved in this case, one of the residents that
15 we felt like he was going back to.

16 Q Is he related to Josh Jeter?

17 A Yes, I believe he is. I am not sure exactly how.

18 Q Okay. And he lived in what apartment complex?

19 A He lived in -- I can't think of the name of it now.
20 They have changed several times, which is the fence that --
21 right here is the fence I was talking about. This is the
22 area he was climbing over the fence at into that apartment
23 complex.

24 Q Lance Lyles was climbing, continuing to climb over?

25 A Yes, yes, sir.

Steve Lamb
Direct examination by Mr. Bulsa

1 Q And that's when the spotlight of the helicopter was on
2 him?

3 A Yes, sir.

4 Q Now, the jury will have this in their deliberations,
5 and you can't quite see it on here, but is this an aerial
6 photograph of what we are seeing on the map?

7 A Yes, it is.

8 Q And 22 is a photograph of 23, and it sets out
9 buildings.

10 A Correct.

11 Q And roadways.

12 A Correct.

13 Q Whereas, this overhead will set out the street names,
14 is that right?

15 A Yes, sir. That's correct.

16 Q You can have a seat.

17 (Whereupon, the witness returned to the stand.)

18 Q Were you in your vehicle outside the Baskin-Robbins
19 when he was apprehended?

20 A No. I was actually on foot behind the Baskin-Robbins.

21 Q What were you doing?

22 A I pulled past the Baskin-Robbins. I went to the other
23 end of the building. That's when I exited my vehicle. I
24 went running back behind the building, and that's when he
25 was climbing over the fence.

Steve Lamb
Direct examination by Mr. Bulsa

1 I hollered at him and identified myself. He jumped
2 over the fence and ran back towards the Baskin-Robbins end
3 of the building. He's behind the building in that
4 alleyway.

5 So I went behind the building and followed him, and at
6 that time he runs. There were some people in line there.
7 He runs and goes inside the business, and that's when the
8 two officers actually arrested him.

9 Q Did you have any contact with him after the arrest?

10 A No.

11 Q Okay.

12 A He was arrested and put into a patrol unit, I believe,
13 and taken back to city hall.

14 In my time -- at that time I refocused on the second
15 person that was missing, the second person we saw running.
16 I sent the K-9 unit exactly where they run back into the
17 apartment, I mean, into the residential area. I told the
18 helicopter where they went in so that we started a second
19 search to try to locate that person, and which we did not
20 locate.

21 Q Was that person ever identified?

22 A Not to my knowledge. I am not sure. We never located
23 him that night.

24 Q Were you aware that a search was being done of
25 Mr. Lyles' residence?

Steve Lamb
Cross-examination by Ms. Anderson

1 A Yes.

2 Q Was that being undertaken during this chase?

3 A Yes, sir, it was. I did not go to that search.

4 Q Okay. Thank you, Officer. Answer any questions
5 either attorney has.

6 A Yes, sir.

7 CROSS-EXAMINATION

8 BY MS. ANDERSON

9 Q Lieutenant Lamb, how long did you say this chase
10 lasted?

11 A Do you mean the time that -- from leaving the
12 residence, or the time that I saw him?

13 Q The entire time that Mr. Lyles ran.

14 A I would say about an hour of time that we were
15 searching.

16 Q That you were looking for him?

17 A Yes, ma'am.

18 Q And after he was apprehended he was arrested --

19 A Yes.

20 Q -- on the charges that we are here today about.

21 A Yes.

22 Q Thank you. That's all the questions I have.

23 CROSS-EXAMINATION

24 BY MR. VIETH

25 Q Lieutenant Lamb, on your investigation, you got

Steve Lamb
Cross-examination by Mr. Vieth

1 involved early on. You were there, I believe, on the 8th.

2 A Yes, sir.

3 Q You have your supplemental report by any chance?

4 A Yes, I do.

5 Q Just real briefly, you get there to the residence of
6 the -- the residence over where Mr. Howze was shot.

7 A Yes, sir.

8 Q That's the one at 2115 hours.

9 A Uh-huh.

10 Q And what is that in my time? I'm -- my military days
11 are gone. What is 2115? Is that 9:15?

12 A Yes, sir.

13 Q And that's 9:15 at night on the 8th, and that was the
14 day of the incident.

15 A Yes, sir.

16 Q And by 2255, which is about an hour and a half later,
17 you've already got a notation here that the first suspect
18 was a slim black male with gold teeth and the first suspect
19 was not wearing a mask. The second suspect was a male who
20 had on a dark-in-color ski mask.

21 A Yes.

22 Q So that information had been provided to you within
23 about an hour and a half after you arrived there.

24 A Yes, sir. That's just, that's how we gathered some
25 basic suspect information.

Steve Lamb
Cross-examination by Mr. Vieth

1 Q Right. When you -- when the warrant was issued for
2 his arrest based on, I assume, between the time you got
3 this information identifying the fellow without the mask
4 and then the defendant, there was pictures gathered from
5 here and there to get a lineup together. Then Mr. Spicer
6 identified Mr. Lyles from the lineup, and that led to the
7 arrest warrant.

8 A Yes, sir.

9 Q Is that kind of procedurally how it went?

10 A Yes, sir.

11 Q And then in anticipation of that event officers were
12 watching the residence.

13 A Correct.

14 Q And that's when the chase took place that you
15 described, is that right?

16 A Yes.

17 Q And was it fair to say that he was exhausted,
18 dehydrated and everything else when you made the arrest?
19 Was he worn out from running?

20 A He was most likely tired, yes.

21 Q And were you the one that actually made the arrest, do
22 you recall?

23 A No, sir. I was not.

24 Q Do you know whether any weapons were found from him
25 leaving that house that night when he was just walking

Russell Porter
Direct examination by Mr. Bulsa

1 until the time he got caught? I am sure y'all checked all
2 of that area out there. Did he have a weapon on him at the
3 time of arrest?

4 A From the time he left his residence to the time that
5 we saw him again, there was a tremendous amount of time, a
6 tremendous amount of space. We had no idea where he went.

7 We did search the area where he was arrested at and
8 did not find any weapon. That's a tremendous area that we
9 went through, and we had not been able to locate anything.
10 We're talking several community blocks and residences.

11 Q And even based on the evidence that you had received
12 from Mr. Spicer, based on what Mr. Spicer told you, you had
13 no reason to think he had a weapon, did you?

14 A Well, we had actually charged him with murder, and he
15 was involved in this, correct.

16 Q Being two people were together and someone died.

17 A Yes.

18 Q Okay. That's all. Thank you.

19 MR. BULSA: Nothing further.

20 THE COURT: You may step down.

21 MR. BULSA: Russell Porter.

22 RUSSELL PORTER, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Officer Porter, introduce yourself to the jury.

Russell Porter
Direct examination by Mr. Bulsa

- 1 A My name is Russell Porter.
- 2 Q And who are you employed by?
- 3 A Spartanburg Public Safety Department.
- 4 Q And what are your duties there?
- 5 A I am currently assigned to the criminal investigation
6 division.
- 7 Q How long have you been an investigator?
- 8 A Investigator for about five years.
- 9 Q How long have you been a police officer?
- 10 A About 15.
- 11 Q All with the public safety?
- 12 A Yes, sir.
- 13 Q Were you involved in the investigation of the death of
14 Tavaris Howze?
- 15 A Yes, I was.
- 16 Q Were you involved in the initial investigation?
- 17 A Yes, sir.
- 18 Q There were other investigators as well investigating,
19 is that correct?
- 20 A That's correct.
- 21 Q Was one of your primary duties to execute a search
22 warrant on the residence of Lance Lyles?
- 23 A Yes, it was.
- 24 Q Do you recall when you executed that search warrant?
- 25 A Do you mean the exact date?

Russell Porter
Direct examination by Mr. Balsa

1 Q Yes, sir.

2 A I don't know the date exact.

3 Q I show you a copy of the warrant. Does that refresh
4 your memory?

5 A Yes.

6 Q When was it?

7 A December the 10th of 2004.

8 Q Okay. Do you recall when it was executed, the time of
9 day?

10 A It was about 8:20 or 8:25 p.m. that evening.

11 Q Are you aware if anything else was taking place while
12 you were executing that warrant?

13 A Just prior to us going to the residence to execute the
14 search warrant Mr. Lyles was arrested.

15 Q Arrested or being searched for?

16 A He was actually caught by the time I think we began
17 the search warrant of his residence.

18 Q Did you participate in the search of him?

19 A Initially began. Once the chase ensued with him, I
20 actually stayed on the street where his residence was.

21 Q You stayed on Singingwood, right? Is that what you
22 are telling us?

23 A Right.

24 Q Okay. And are you aware that other officers were
25 looking for him?

Russell Porter
Direct examination by Mr. Bulsa

1 A Yes.

2 Q Okay. And during the execution of this search warrant
3 were items recovered?

4 A Yes, there were.

5 Q And were photographs taken?

6 A Yes, there were.

7 MR. BULSA: These are marked as exhibits, I believe,
8 without objection.

9 MR. VIETH: That's correct.

10 MS. ANDERSON: No objection.

11 (Photographs marked State's Exhibits Nos. 24 through
12 29.)

13 Q While they are viewing them I am going to show you
14 these pictures marked State's Exhibit 24 through 29. Are
15 those accurate depictions of what was recovered?

16 A Yes, they are.

17 Q On the search warrant, tell us what was recovered.

18 A Recovered 75 to 80 .22 long-rifle high-powered rounds;
19 a mini mag or mini magazine round from the bedroom
20 nightstand; two rim-fired shell casings from the dresser
21 drawer in the bedroom; a foo-doo denim jacket with red ski
22 mask, in the left pocket 41 .380 caliber rounds -- 41, 40,
23 41 .40 caliber Winchester rounds; 13 .40 Smith and Wesson
24 rounds.

25 Q Show you State's Exhibit No. 24. What is this?

Russell Porter
Direct examination by Mr. Bulsa

- 1 A It's foo-doo denim pants.
- 2 Q And this one?
- 3 A That's the red ski mask.
- 4 Q Where was that ski mask found?
- 5 A Found in the left pocket of the denim jacket.
- 6 Q It was found inside that jacket.
- 7 A Yes.
- 8 Q Okay. State's Exhibit 26. What does that show?
- 9 A It shows a box of bullets inside of a dresser drawer.
- 10 Q Okay. Is that a closer shot?
- 11 A .22 gun rifle rounds in a box --
- 12 Q I'm sorry. The court reporter is having trouble.
- 13 A Same picture. .22 long rifle or rounds in a box in a
- 14 drawer.
- 15 Q Okay. Do those have any particular significance?
- 16 A Say that again.
- 17 Q Do those have any particular significance to the case?
- 18 A I'm not sure.
- 19 Q Okay. Do you recall what size round the victim was
- 20 shot with?
- 21 A No, sir. I didn't know.
- 22 Q You didn't know.
- 23 A I didn't know.
- 24 Q So you were taking everything you saw.
- 25 A Right.

Russell Porter
Direct examination by Mr. Bulsa

1 Q Okay. And State's Exhibit No. 28, what does that show
2 us?

3 A Two fired shell casings on the top of the dresser on
4 their primer ends.

5 Q State's Exhibit 29, is that a close up?

6 A Yes, it is.

7 Q What size were those?

8 A I have no designation of those.

9 Q All right. Were these, were these found in the same
10 bedroom as these?

11 A See two pictures again.

12 Q One is with the two rounds on the dresser, State's
13 Exhibit 29. Were they in the same bedroom as State's
14 Exhibit 27?

15 A I'm actually not sure.

16 Q You don't recall?

17 A I don't recall, not sure.

18 Q Okay.

19 MR. VIETH: No objection.

20 MS. ANDERSON: No objection.

21 MR. BULSA: May it please the Court, Your Honor. If I
22 may put these inside the evidence bag to mark. Be
23 appropriate? Keep them all together.

24 THE COURT: What are you trying to offer?

25 MR. BULSA: Just mark the bag and put these, bag in

Russell Porter
Direct examination by Mr. Bulsa

1 the bag they were collected in.

2 THE COURT: Does the bag identify what's in there?

3 MR. BULSA: Yes, sir, it does. Well, it principally
4 does, yes, sir. Okay.

5 (Rounds marked State's Exhibit No. 30; shells marked
6 State's Exhibit No. 31.)

7 Q All right. Let me show you what's been marked State's
8 Exhibit 30. Those are the rounds that were found in the
9 house.

10 A Yes, they are.

11 Q And State's Exhibit 31. Are those the .22 shells or
12 rounds?

13 A Yes, they are.

14 Q And did you place these into evidence?

15 A Yes, I did.

16 Q Okay. Were you aware of whether any of these rounds
17 were sent down to the state law enforcement division?

18 A I'm not personally aware, but I assume they were. But
19 I'm not personally aware.

20 Q You didn't request they be sent.

21 A I personally did not, no, sir.

22 Q So you did your part and collected them and turned
23 them in.

24 A That's correct.

25 Q Thank you. Answer any questions either attorney has.

Russell Porter
Cross-examination by Ms. Anderson

1 CROSS-EXAMINATION

2 BY MS. ANDERSON

3 Q Officer Porter, okay. You had a search warrant for
4 209 Singing Lane. Is that the name? Singingwoods Lane.

5 A Singingwoods Lane, yes, ma'am.

6 Q And that was the Lyles -- Lance Lyles' residence.

7 A Yes.

8 Q You didn't have a search warrant to search Josh
9 Jeter's residence, did you?

10 A No, I did not.

11 Q And to your knowledge was Josh Jeter's residence ever
12 searched?

13 A Not to my knowledge.

14 Q But when you searched the Lyles residence you found
15 these .22 -- are these not .22's?

16 A Yes, they are.

17 Q Are there some missing?

18 A Yes, there are.

19 Q About how many?

20 A Maybe 20.

21 Q Okay. Are missing out of this. And this would go in
22 a .22.

23 A A long rifle or handgun, yes, ma'am, either one.

24 Q Okay. Let's see. What is this?

25 A Box of .40 Smith and Wesson rounds.

Russell Porter
Cross-examination by Ms. Anderson

1 MS. ANDERSON: Mr. Bulsa, these are all entered into
2 evidence, aren't they?

3 MR. BULSA: Yes, ma'am.

4 MS. ANDERSON: Okay.

5 Q Now, what is that?

6 A A box of .40 caliber rounds.

7 Q Okay. Now, that wouldn't fit into a .22.

8 A That's correct.

9 Q Are some of those missing?

10 A Yes, they are.

11 Q All right. And what's this?

12 A A box, another box, of .40 Smith and Wesson 180 grain
13 rounds.

14 Q Okay. Are any missing out of there?

15 A Yes, there are.

16 Q Okay. Now, again, that wouldn't go in a small
17 caliber.

18 A That's correct.

19 Q Okay. What about that?

20 A Those two are separate.

21 Q Yeah.

22 A Okay.

23 Q Now, is that the 13 -- no. What is that 41, .380?

24 A .380's.

25 Q So, again, that wouldn't go in a small caliber.

Russell Porter
Cross-examination by Ms. Anderson

- 1 A That's correct.
- 2 Q But these would.
- 3 A Yes, they would.
- 4 Q Now, were these shells from that?
- 5 A I am not sure. It doesn't say. They were separate.
- 6 So I don't know if they came from this batch or not.
- 7 Q In the picture they are setting on the dresser, is
- 8 that correct?
- 9 A That's correct.
- 10 Q In fact, that's these right here, correct?
- 11 A That's correct.
- 12 Q Now, this was in Lance Lyles' residence.
- 13 A That's correct.
- 14 Q And this was just setting out on the dresser.
- 15 A Right.
- 16 Q And this is a better picture of the dresser.
- 17 A Yes.
- 18 Q Now, was it in this dresser that you found the
- 19 ammunition? Or I believe this is a different one, right?
- 20 A I say back standing beside the bed, yes, that's a
- 21 different dresser.
- 22 Q Okay. But the other dresser is right beside it,
- 23 correct? That's what this --
- 24 A Looks like that.
- 25 Q Same dresser. And those were the .22's, right?

Russell Porter
Cross-examination by Ms. Anderson

- 1 A Yes.
- 2 Q Now, y'all didn't find any guns, did you?
- 3 A They were actually guns in the -- no, ma'am. We
- 4 didn't recover any guns, no.
- 5 Q There were no guns in the Lyles residence.
- 6 A I think there were weapons in the mother and father's
- 7 bedroom.
- 8 Q In the mother and father's bedroom?
- 9 A Yes.
- 10 Q But you didn't take those?
- 11 A I don't think so.
- 12 Q Were any of them a .22?
- 13 A No.
- 14 Q Were they larger, I mean?
- 15 A Larger caliber.
- 16 Q Okay. All right. So you didn't take those guns. Was
- 17 this Lance Lyles' bedroom?
- 18 A I am not sure which kid's bedroom it was.
- 19 Q Okay. And, again, you did not search Josh Jeter's
- 20 house.
- 21 A No, I did not.
- 22 Q Just one minute. Now, the clothing that you took,
- 23 that was because it matched the description that Clearance
- 24 Spicer had given or --
- 25 A Yes. That's correct.

Frank Dan DeFreese
Direct examination by Mr. Bulsa

1 Q All right. Thank you. Let me move all of this.

2 Thank you.

3 MR. VIETH: I have no questions.

4 THE COURT: You may step down.

5 MR. BULSA: Dan DeFreese.

6 FRANK DAN DEFREESE, having
7 been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BULSA

9 Q Hello, Agent DeFreese. Please introduce yourself to
10 the jury.

11 A My name is Frank Dan DeFreese.

12 Q And who are you employed by?

13 A I work for the South Carolina Law Enforcement
14 Division. I'm assigned to the forensic services laboratory
15 in Columbia.

16 Q What is your specialty?

17 A Within the laboratory I'm assigned to the firearm and
18 toolmark analysis unit. And my principal duties are the
19 analysis of firearm and toolmark evidence.

20 Q How long have you held that position?

21 A This last time about 12 years. I began my career at
22 SLED assigned to the firearm and toolmark unit. I was
23 employed in January of 1967. And at that time I undertook
24 a course of instruction in the techniques of firearm and
25 toolmark identification.

Frank Dan DeFreese
Direct examination by Mr. Bulsa

1 I was instructed by Lieutenant Millard Cate who
2 established the SLED laboratory when SLED itself was
3 established in 1947.

4 After about two and a half years of studying the
5 techniques of these identifications under his direct
6 supervision, I began accepting cases on my own and
7 testifying as to my results, which I have been doing since
8 September of 1969. I've testified in courts throughout
9 this state and in other states and in federal court.

10 Q Qualified as an expert in firearm and toolmark
11 identification?

12 A Yes, sir.

13 Q About how many times?

14 A I don't know exactly. I think I am somewhere in
15 excess of 600 times now.

16 MR. BULSA: Any challenge to his qualifications?

17 MS. ANDERSON: I am --

18 MR. VIETH: No objection to his qualifications.

19 THE COURT: No challenge?

20 MR. VIETH: No challenge from me.

21 MS. ANDERSON: None from me either, Your Honor.

22 MR. BULSA: Your Honor, I would offer him as an expert
23 in firearm and toolmark identification.

24 THE COURT: He is so qualified.

25 Q Agent DeFreese, let me direct your attention to your

Frank Dan DeFreese
Direct examination by Mr. Bulsa

1 Case Number L0413817 where the victim is listed as Tavaris
2 Howze.

3 A Yes, sir.

4 Q Okay. I show you what's been marked State's Exhibit
5 Nos. 19 and 31. Were those two items submitted to you for
6 analysis?

7 A Yes, sir, they were.

8 Q And what tests were you asked to perform on those?

9 A Principally with the bullet and bullet fragment in
10 State's Exhibit 19, I was asked to determine what possible
11 firearms may have fired this bullet; and I also as part of
12 that, I compared the construction of the bullet in State's
13 Exhibit 19 with the bullet portions of the cartridge case
14 of the whole cartridges in State's Exhibit 31.

15 Q Let me first direct your attention to State's 19.
16 What caliber of bullet is that?

17 A It's a .22.

18 Q And what types of firearms would fire that?

19 A This bullet is, could have been a portion of a .22
20 short-long or long rifle. And it could have been fired by
21 any .22 long rifle caliber firearm, which there are pistols
22 and revolvers and rifles that are all chambered for .22
23 long rifle. There are very few firearms chambered for .22
24 long, and there are a few firearms that are chambered only
25 for .22 short.

Frank Dan DeFreese
Direct examination by Mr. Bulsa

1 Q So it could have been fired by a handgun or a rifle?

2 A Correct. It could be a pistol; could be a revolver;
3 could be a rifle.

4 Q And in your comparison of State's 19 with State's 31,
5 I believe it is --

6 A Yes, sir.

7 Q -- what were your results?

8 A I found the bullet portions of the unfired cartridges
9 in State's 31 were consistent in their construction with
10 the bullet fragments in State's Exhibit 19 and that they
11 could have come from the same source.

12 Q You can't say for certainty.

13 A No, no.

14 Q And why not?

15 A Well, there's simply no way to tell. The fragments
16 that are present in State's 19 are copper plated lead
17 fragments. The bullets in State's Exhibit 31 are copper
18 plated lead bullets.

19 The placement of some of the structures, the
20 cannellures or the crimping groove, are approximately in the
21 same location. But other -- I can't say that some other
22 manufacturer doesn't put a structure like that in exactly
23 the same location. So that they are consistent with being
24 from the same source, but I can't say for certain that they
25 were from exactly the same source and not some other.

Frank Dan DeFreese
Cross-examination by Ms. Anderson

1 Q So perhaps it came from the same box or perhaps it did
2 not.

3 A Perhaps, yes.

4 Q Okay. Agent DeFreese, answer any questions either
5 attorney may have.

6 CROSS-EXAMINATION

7 BY MS. ANDERSON

8 Q Mr. DeFreese, I am Pat Anderson. I represent Josh
9 Jeter in this case. And I believe in your report you gave
10 a long list of possible guns that could have fired the
11 bullet fragments.

12 A Yes, ma'am. The larger of the two fragments in
13 State's Exhibit 19 is the one that had the better marks on
14 it. But even they were rather severely damaged.

15 I could tell that the markings, the width of the land
16 and groove impressions, was consistent with a six land and
17 groove right-hand twist gun which is probably the most
18 popular land and groove general rifling characteristic in
19 .22 caliber. So I don't know how many, but probably 70 or
20 80 or some large number.

21 Q So this list in your report is the large number that
22 it -- possibilities of guns.

23 A Yes. Of course only one would have actually fired
24 that one but --

25 Q Yes, sir.

Frank Dan DeFreese
Cross-examination by Mr. Vieth

1 A But that's the number of guns that have land and
2 groove class characteristics that are close enough to those
3 that I found on State's Exhibit 19 that I could say that
4 may could have fired it.

5 Q So basically what you're saying is that the bullet
6 fragments from the victim's -- from the victim's head
7 could, were consistent with the bullets that were found at
8 Mr. Lyles' home.

9 A Yes.

10 Q The ones that you were submitted.

11 A Yes. They are consistent in their construction.

12 Q And you can't say for sure that they came out of the
13 same box, but they are consistent.

14 A They could have come out of the same box but they also
15 could not have.

16 Q Thank you.

17 CROSS-EXAMINATION

18 BY MR. VIETH

19 Q I don't have any questions as to that issue. You are
20 familiar with, I guess, the size of a .22.

21 A Yes, sir.

22 Q I'm not. Let me. In relation to -- and let me grab
23 this thing. Is a .22 pistol smaller than this Scotch tape
24 holder, or is it -- in width, can you give us some
25 dimensions of what a .22 would look like, or in relation to

Frank Dan DeFreese
Redirect examination by Mr. Bulsa

1 even this box?

2 A Actually, no.

3 Q You cannot?

4 A And the reason I say that is .22 caliber firearms, or
5 especially .22 caliber handguns, are made in sizes that
6 vary from not much bigger than a silver dollar all the way
7 up to just really extremely large handguns and rifles.

8 So the -- it's an extremely popular caliber, and it's
9 made in a tremendous number of different sizes.

10 Q Okay. So when you say a .22, a person doesn't really,
11 doesn't know what he means when he says as far as the
12 dimensions of the weapon is concerned.

13 A No. The diameter of the bore of the cartridge --

14 Q Bore of the .22.

15 A -- compared to the size of the handgun or shoulder gun
16 that fires it, there's no real relationship between the
17 two. There are great big ones and little bitty ones.

18 Q Thank you.

19 MR. VIETH: I don't have any other questions.

20 REDIRECT EXAMINATION

21 BY MR. BULSA

22 Q I've got a few on that line since Mr. Vieth brought it
23 up.

24 Agent DeFreese, is there any rule of thumb regarding
25 how much force it takes to squeeze a trigger of a .22

1 pistol?

2 A No, there is no fixed rule of thumb on it.

3 Some .22 pistols, particularly those that are adaptive
4 for target shooting purposes, have extremely light trigger
5 pulls. Most of them for general plinking and hunting
6 purposes have trigger pulls that fall within the normal
7 range; and of course you get guns that are defective that
8 have trigger pulls that are extremely heavy.

9 So there's no relationship between the caliber and
10 what one might expect to see as the trigger pull.

11 Q In your experience with firearms -- no rounds were
12 found, no spent shell casings were found at the scene.
13 Would that suggest a revolver was used?

14 A Either a revolver or some other manually operated
15 firearm.

16 For instance, a Derringer would not, in a handgun
17 would not, leave cartridge cases in a way that a
18 semiautomatic pistol would leave. If it were a rifle, a
19 bolt-action rifle or lever action, if it were not operated
20 would not leave a cartridge case, whereas a semiautomatic
21 one would automatically extract and eject a cartridge case.

22 Q Let's assume we have a .22 revolver.

23 A Yes, sir.

24 Q Doesn't leave any shell casings.

25 A Correct.

Frank Dan DeFreese
Redirect examination by Mr. Bulsa

1 Q Without having a weapon is there any way you can tell
2 us how easy it is to pull that trigger?

3 A No.

4 Q In fact, aren't there two ways to fire that kind of
5 weapon?

6 A If it's a double-action revolver there would be two
7 different ways to do it.

8 Q So are there single-action revolvers as well?

9 A Yes. There are double-action only, single-action only
10 and then double-action revolvers that are capable of both
11 single and double-action modes of operation.

12 Q Which is easier to pull, single or double?

13 A Normally the single, because in the single action your
14 finger is only doing one thing, which is to fire. So you
15 manually have to cock the hammer. And in a single-action
16 pistol or revolver it usually takes a fairly light pull of
17 the trigger to discharge it.

18 In a double-action revolver or pistol, when you pull
19 the trigger you're doing two things. You're cocking the
20 hammer, and at some point in time you are firing. And the
21 double-action pull is normally heavier and over a longer
22 distance to accomplish those two tasks.

23 Q Do each two types of guns require deliberate actions
24 to pull the trigger?

25 A Yes, and/or to cock the hammer.

Frank Dan DeFreese
Redirect examination by Mr. Bulsa

1 Q Thank you.

2 MR. BULSA: That's all I have.

3 THE COURT: Anything else?

4 MR. VIETH: No, sir.

5 MS. ANDERSON: No, sir.

6 THE COURT: Thank you. You may step down.

7 MR. BULSA: Your Honor, we would ask that Agent
8 DeFreese be excused.

9 THE COURT: Any objection?

10 MS. ANDERSON: No, sir.

11 MR. VIETH: No, sir.

12 THE COURT: You may be. Thank you.

13 (Whereupon, the witness was excused.)

14 THE COURT: Ladies and gentlemen of the jury, I have a
15 funeral to attend this afternoon. So we are going to
16 recess for the balance of the day.

17 I will ask you to continue to follow the instruction
18 previously given, and that is you are not to discuss the
19 case in any fashion with any person. Do not permit any
20 person to discuss the case with you, or to try to.

21 Do not conduct any research or do your own
22 investigation into any issue that might have arisen during
23 the trial; and do not allow yourselves to be exposed to any
24 type of media coverage of the trial, whether that be
25 television or radio or newspaper articles.

1 With those cautions and instructions in mind, you are
2 excused for the balance of the afternoon. Please report
3 directly to your jury room at 9:30 in the morning, at
4 9:30 in the morning. Have a good afternoon.

5 (The following takes place outside the presence of the
6 jury.)

7 THE COURT: Court is in recess until 9:30 in the
8 morning.

9 END OF PROCEEDINGS MARCH 14, 2006

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1 (Proceedings March 15, 2006)

2 (The following takes place outside the presence of the
3 jury.)

4 THE COURT: All right. Are we ready for the jury?

5 MR. BULSA: Yes, sir.

6 MR. VIETH: Yes, sir.

7 MS. ANDERSON: Yes, sir.

8 THE COURT: Bring them in, please.

9 (The following takes place in the presence of the
10 jury.)

11 THE COURT: Good morning, ladies and gentlemen.

12 I apologize for the delay in having you brought back,
13 but I had some matters that arose this morning that I did
14 not anticipate, and they took a little bit longer than I
15 had thought they would.

16 But we are now ready to get back to the trial of the
17 case for which you have been selected to decide. And you
18 know that when we recessed yesterday the state was still in
19 the midst of their presentation of evidence. So we are
20 going to continue that presentation this morning.

21 Mr. Bulsa.

22 MR. BULSA: Thank, Your Honor. The state calls Chris
23 Taylor.

24

25

Chris Taylor
Direct examination by Mr. Bulsa

- 1 CHRIS TAYLOR, having been
2 first duly sworn, testified as follows:
3 DIRECT EXAMINATION BY MR. BULSA
4 Q Officer, please introduce yourself to the jury.
5 A My name is Sergeant Chris Taylor.
6 Q Who are you employed with?
7 A I am employed with Spartanburg Public Safety
8 Department.
9 Q What capacity?
10 A I'm a sergeant in the criminal investigation division.
11 Q How long have you been an investigator?
12 A Since 1997, January.
13 Q How long have you been a sergeant?
14 A Since 2000.
15 Q Lieutenant Lamb would be your superior.
16 A Yes, sir.
17 Q And on December 8th of 2004 did you assist Lieutenant
18 Lamb with a command post?
19 A Yes, I did.
20 Q And that was at Rose Hill Apartments?
21 A Yes, it was.
22 Q What was your involvement at the crime scene?
23 A Being a sergeant in the investigation division, my job
24 is to assign the investigators to lead on the case, as well
25 as to assign on different tasks with other investigators.

Chris Taylor
Direct examination by Mr. Bulsa

1 Q Did you assist in any of those investigators?

2 A Yes, I did.

3 Q Did you personally speak with Mr. Spicer on the
4 evening of this incident?

5 A Yes, I did. He was at city hall. I came to city hall
6 after I made sure all of the signs was started as far as at
7 Rose Hill. Investigator Brewster was talking to him, and I
8 went in and sat in while she interviewed him.

9 Q And was that the only time you spoke with Mr. Spicer?

10 A No, sir. I talked to him on the following day around
11 6:00 or so in the afternoon, the next day.

12 Q What was the reason for that additional conversation?

13 A We had developed some new information and we was
14 trying to see if he remembered anything since the initial
15 shock maybe had worn off of him and he would be able to
16 talk to us more information-wise.

17 Q And was he able to?

18 A Yes, he was. While we was talking to him he
19 remembered seeing one of the guys at this apartment a
20 different day. But he remembered the guy's name. So he
21 called someone on the telephone and he got the person's
22 brother's name and from that --

23 Q What did you do with that information?

24 A With that information I had one of the investigators
25 look in our records management system and see if he could

Chris Taylor
Direct examination by Mr. Bulsa

1 identify Leonard Lyles, to see if he had any brothers that
2 was younger than him, which we were able to find.

3 Before we did that we went as far as in our mug-shot
4 system to see if there was anyone in there that was younger
5 than Leonard Lyles for Mr. Spicer to see if he could
6 identify the person.

7 Q Okay. Now, what was the identification information
8 you had for Mr. Spicer?

9 A Mr. Spicer -- when he called and found out that
10 Leonard Lyles, who was the guy that was introduced as
11 Leonard Lyles's brother Banks --

12 Q So you got the name of Banks.

13 A Right.

14 Q Okay. And what did you do with this information?

15 A Like I say, we went to the records management system
16 and started to see if we could identify who was Banks and
17 what was the real name for Banks.

18 Q Okay. And did you eventually obtain a photograph?

19 A Yes, we do. We obtained a photograph. Once we
20 obtained the photograph, we had to go to what they call
21 alternative school, which is the university school out in
22 the county.

23 We tried first to contact Dorman High School, which
24 was the school that he would have been going to but for
25 some reason that he wasn't allowed to go to that school and

Chris Taylor
Direct examination by Mr. Bulsa

1 was going to the alternative school.

2 Q And where is that alternative school?

3 A The alternative school is out there off of, I think
4 it's Blackstock Road, somewhere out that way, somewhere
5 back off in the woods.

6 Q What was your purpose for actually going there?

7 A We went to try to see if we could identify who Banks
8 is, and we found out that Banks' real name was Lance Lyles.

9 So we went there and talked to the counselor over
10 there who was Mr. Stacy Watson. When I went in there to
11 talk to Mr. Watson, I had with me Investigator Hearst and
12 Investigator Winningham. And when I, soon as I said, I
13 said I want to know if you have got any information as far
14 as this guy Lance. And before I could get Lyles out, he
15 said you're talking about Lyles. And I said yes, sir. And
16 I said he's in school today.

17 So we go from that point. He went and checked to see
18 if he was willing to talk to us.

19 He was willing to talk to us. So he came to
20 Mr. Watson's office and we talked to him.

21 When I talked to him at first we was asking about
22 where was his whereabouts on that date of December the 8th.
23 His story was that --

24 MR. VIETH: Your Honor, there's no -- I don't know if
25 he is going into a statement at this point or not. If he

Chris Taylor
Direct examination by Mr. Bulsa

1 is, I think there has got to be some -- let me approach
2 with you right quick.

3 (Bench conference held off the record in the presence
4 of the jury but out of the hearing of the jury.)

5 THE COURT: Ladies and gentlemen, let me ask you to
6 please go to your jury room. This should take only about
7 two minutes, but I need to address one matter outside of
8 your presence. So please go to your jury room. I will
9 bring you right back.

10 (The following takes place outside the presence of the
11 jury.)

12 THE COURT: Mr. Taylor, you in your discussions with
13 Lance Lyles at the university school, Mr. Lyles, Lance
14 Lyles, told you I think about his bother having been
15 arrested or taken to jail.

16 THE WITNESS: Yes, sir.

17 THE COURT: Both sides, the solicitor and the defense,
18 have agreed that that information is not to be presented to
19 the jury unless you are otherwise instructed to do so.

20 So during this questioning by the prosecutor, by Mr.
21 Bulsa, you are not to relate to the jury that particular
22 information.

23 In other words, you are not to testify at the present
24 unless I specifically direct you to do so about that
25 information regarding Leonard Lyles.

Chris Taylor
Direct examination by Mr. Bulsa

1 THE WITNESS: Yes, sir.

2 THE COURT: You can talk about the other information
3 that Mr. Lyles provided you and the discussions that you
4 had, but you are not to relate to the jury that part of the
5 conversation or that part of the statement about Mr. Lyles
6 being taken to jail or Mr. Lyles being arrested on a
7 warrant. Okay.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. Anything further?

10 MR. VIETH: No, sir.

11 MS. ANDERSON: Your Honor, I just, for the record, I
12 did not ask that that be excluded. You had said both
13 sides. I did not ask that it be excluded.

14 THE COURT: I'm sorry. Mr. Vieth has agreed with Mr.
15 Bulsa, or Mr. Bulsa has agreed with Mr. Vieth, not to allow
16 that to be disclosed to the jury.

17 Ms. Anderson, do you perceive there to be some
18 relevance in that information to this case?

19 MS. ANDERSON: I am not sure at this time.

20 THE COURT: Okay. Well, if it becomes relevant, then
21 it obviously can come in by anybody that wants to introduce
22 it, but I don't perceive any relevance at the present. And
23 I think the state agrees it's not, and that's the reason
24 they've agreed with Mr. Vieth not to disclose it.

25 All right. Bring the jury back.

Chris Taylor
Direct examination by Mr. Bulsa

1 (The following takes place in the presence of the
2 jury.)

3 THE COURT: All right. Mr. Bulsa.

4 MR. BULSA: Thank you, Your Honor.

5 BY MR. BULSA

6 Q Sergeant Taylor, you were telling us about your visit
7 to the alternative school.

8 A Yes, sir. Well, Mr. Lyles came to Mr. Watson's
9 office. I proceeded to introduce myself and Investigator
10 Winningham and Investigator Hearst to him. And I told him
11 I would like to talk to him. I said this man came up in
12 one of our investigations.

13 Q Had he been specifically identified through a photo
14 lineup or anything at this time?

15 A No, sir.

16 Q Were you trying to get a picture from him in this
17 fashion?

18 A Yes. That's why we initially went to the alternative
19 school, to get a photograph if there was one available.

20 Q And while you were there did you then speak to him
21 about his whereabouts on the night of December the 8th?

22 A Yes. As far as in the conversation, I asked him where
23 was he on Wednesday night, and he told me that he was at
24 Apartment Six over at Charleston Place Apartments.

25 Q And whose apartment is it?

Chris Taylor
Direct examination by Mr. Bulsa

1 A Apartment Six would have been Travis, which is Josh
2 Jeter's brother.

3 Q Okay. And did he say about what time he was there?

4 A He more or less talked about that he was there with
5 Travis' roommate, Tony. They was playing N. F. L. 2005. I
6 asked him what time did he leave. He said he left about
7 8:00 o'clock. He caught a ride with Josh Jeter to go home.

8 And then I asked him, I said, well, did you go by Rose
9 Hill Apartments. He stated no. And then when I confronted
10 him again, I said, well, someone stated they saw you over
11 there. He got a little nervous, and at that point we let
12 him go to his room.

13 At that point I asked Mr. Watson do he have a close
14 friend, which Mr. Watson said, yes, Josh Jeter, they're
15 real close.

16 Q Let me ask you a little bit more about Mr. Lyles
17 before we get to Josh Jeter.

18 A Okay.

19 Q Did it ever come up in conversation whether he wore
20 gold teeth?

21 A Yes. I did. I asked him did he ever wear gold
22 fronts. And at the time he said, no, he couldn't wear them.
23 at school. But after he left I asked Mr. Watson has he
24 ever had him wearing gold teeth at school. He said, yes,
25 he had told him about he couldn't wear them at school.

Chris Taylor
Direct examination by Mr. Bulsa

1 Q So he told you he was at Travis Jeter's apartment but
2 denied going to Rose Hill.

3 A Right. He denied going there.

4 Q And you gave him the opportunity to tell if he had.

5 A Yes, I did.

6 Q Did you tell him the subject matter?

7 A Of course I just told him it was about we was
8 following up on investigation of something that happened at
9 Rose Hill.

10 Q Okay. And do you recall the date that you went to the
11 alternative school?

12 A That would have been on the 10th, two days later.

13 Q All right. Now, you started to tell us about Josh
14 Jeter. Why was Josh Jeter brought into this conversation?

15 A Because we knew it was people that went into the
16 apartment. And so we was trying to figure out whether a
17 close friend was Josh Jeter or not.

18 Q Did you then speak to Mr. Jeter?

19 A We spoke to Mr. Jeter, but Mr. Watson has to go and
20 get Mr. Jeter and asked him would he be available to talk
21 to us. And he came there and talked to us with no problem.
22 He gave us a statement, in fact.

23 Q Did he tell you where he had been?

24 A When we talked to him -- let me look at my
25 supplemental here.

Chris Taylor
Direct examination by Mr. Bulsa

1 Well, he started out initially saying he wasn't going
2 anywhere, and his story kept changing. Then he said he
3 went to Charleston Place, Apartment A-6, with his brother
4 Travis. He said he was playing a football video game, and
5 then he said that Banks, who we found out is Lance Lyles,
6 was with him.

7 Q Okay.

8 A After he finished giving the statement, Mr. Jeter went
9 back to class. And we asked could Mr. Lyles come back up
10 to the office.

11 Q And did you speak to him again?

12 A Yes, we spoke to him again. And at this point he gave
13 a statement to Investigator Hearst.

14 Q Okay. Is Jeter's actually a written statement first,
15 and then Mr. Lyles?

16 A Right.

17 Q Okay.

18 A Also, we had to get photographs of him. So I had
19 Mr. Watson e-mail some photographs of Mr. Lyles, as well as
20 Mr. Jeter, back to my office.

21 Q Okay. During any of these interviews did either
22 person, Lyles or Jeter, admit they were at Rose Hill?

23 A No, no.

24 Q After this shooting and death of Mr. Howze was it
25 publicized?

Chris Taylor
Direct examination by Mr. Bulsa

1 A Yes, it was.

2 Q How was it publicized?

3 A Well, since he was a Spartanburg Methodist College
4 student, there was a big writeup in the newspaper, as well
5 as being on the news as far as about the death.

6 Q That would have been on the 9th?

7 A Excuse me?

8 Q That would have been on December the 9th.

9 A On December the 9th, yes, sir.

10 Q And this conversation with both individuals was on the
11 10th.

12 A Yes, sir.

13 Q Lieutenant, for the record, I have got State's Exhibit
14 32 entered without objection, photographic lineup.

15 MR. VIETH: Without objection.

16 MS. ANDERSON: Without objection.

17 (Lineup marked State's Exhibit No. 32.)

18 Q Officer, is that a lineup that was put together of Mr.
19 Lyles?

20 A Yes, sir.

21 Q And was that shown to Mr. Spicer?

22 A Yes, it was.

23 Q On what date was it shown to Mr. Spicer?

24 A That was showed on the 10th, which would have been a
25 Friday.

Chris Taylor
Direct examination by Mr. Bulsa

1 Q Would that have taken place, would that procedure have
2 taken place, after your conversation with Mr. Lyles?

3 A Yes, sir. It was like about 15 minutes till 6:00.

4 Q And was Mr. Spicer able to identify him?

5 A Without hesitation he picked out Lance Lyles.

6 Q And once you obtained that, the identification in that
7 fashion, what did you do?

8 A From that point I had spoke to Investigator Brewster
9 to go and see a magistrate about seeking a warrant for
10 Mr. Lyles' arrest, charged with homicide.

11 Q That would have been in the evening hours?

12 A Yes.

13 Q What did you do once you got the arrest warrant?

14 A Once I got the arrest warrant -- but prior to that I
15 had investigators go in that area, sit in the area to try
16 to watch the house and see if any movement.

17 From that point we went to the solicitor office, I
18 mean to the magistrate's office, and got the warrant.

19 Once I got the warrant, I contacted the investigators
20 out there and told them to go ahead and see if you can
21 locate him, to pick him up.

22 Q What took place to your knowledge?

23 A During that time Investigator Bradley and Investigator
24 Guthro, they tried to stop him, but Mr. Lyles ran.

25 Q What did you -- did you personally participate in the

Chris Taylor
Direct examination by Mr. Bulsa

1 chase?

2 A Yes, I did. What we did, we set up, tried to set up a
3 command-post type of environment without the command post
4 to try to locate him, because a murder warrant is a
5 high-risk warrant.

6 So at that point we was just trying to get as many
7 people as we could get in the area to keep anybody from
8 getting away.

9 I guess probably 45 minutes or so, Lieutenant Lamb was
10 out riding around, and myself and Captain Hardy was in a
11 vehicle, other investigators around, as well as county
12 officers, as well as our patrolmen was out as far as riding
13 around trying to locate them. And we set up a parameter to
14 try to keep the person inside.

15 Lieutenant Lamb called and told me that he had sights
16 on them. There's a wood line behind the old library. So
17 we was heading that way. And then all of sudden, they was
18 running again.

19 So we came across Camelot Drive off of W. O. Ezell,
20 and so we got over here near Market Square. We was over
21 there by Baskin-Robbins.

22 At this point Lyles runs. He runs in front of us and
23 runs inside of Baskin-Robbins where Captain Hardy and
24 myself goes in and apprehended him.

25 Q Okay. And what was done with him after you arrested

Chris Taylor
Direct examination by Mr. Bulsa

1 him?

2 A After we arrested him we had him transported to city
3 hall.

4 Q Okay. And what was his condition?

5 A He was, he was really tired. He was sweating
6 profusely.

7 He just fell on top of the counter, in fact. When he
8 went into Baskin-Robbins, he just fell on the counter.

9 Q How about at city hall? How was he acting?

10 A At city hall he was throwing up from all of the
11 running up and stuff. We figured he was dehydrated. One
12 of the investigators got him some Gatorade or some type of
13 fluid because he was throwing up and everything.

14 Q Did you notice whether he was wearing any gold teeth?

15 A I did. I didn't take them from him because his
16 mother -- because of his age, we allowed his mother to come
17 in. She was at city hall. We allowed her to come into the
18 interview room. She snatched them out of his mouth.

19 Q The gold teeth out of his mouth?

20 A Yes, sir.

21 Q Why didn't you take them from her as evidence?

22 A Well, she was so upset, and we didn't want to cause
23 any more trouble with her. And we knew we was videotaping
24 the whole interview. So it was on video tape that she
25 snatched them out of his mouth.

Chris Taylor
Cross-examination by Ms. Anderson

1 Q Answer any questions that Ms. Anderson or Mr. Vieth
2 has.

3 CROSS-EXAMINATION

4 BY MS. ANDERSON

5 Q Sergeant Taylor, you said you originally went to get a
6 picture of Lance Lyles at the university stool?

7 A Yes, yes, ma'am.

8 Q Called the alternative school or the university
9 school.

10 A Yes.

11 Q Okay. And ended up talking to Lance Lyles.

12 A Yes, ma'am.

13 Q How was it you ended up talking to Josh Jeter?

14 A When I talked to Mr. Watson and asked was this a
15 friend of his, of Mr. Lyles, that went to school with him,
16 and he told us it was Josh Jeter.

17 Q So that was the only reason you called Josh Jeter in?

18 A And besides the fact that Lance said that he was with
19 his friend Josh Jeter. So we wanted to talk to him anyway.

20 Q Okay. Now, you said in your report that when you were
21 questioning Mr. Lyles about being at Rose Hill he became
22 very uncomfortable. Is that correct?

23 A Yes, ma'am.

24 Q And this was -- what did Lance tell you? When was the
25 last time he had been to Rose Hill?

Chris Taylor
Cross-examination by Ms. Anderson

1 A He said the last he had been there he had went to see
2 a friend of his named Kendrick Lynch back sometime in
3 August.

4 Q Okay. And didn't you ask him if he was sure about
5 that?

6 A Yes, ma'am.

7 Q And what happened then?

8 A That's when he became very unsteady moving in the
9 chair, squirming around a little bit. You could see him
10 looking away from me when I am talking to him. He became
11 uncomfortable.

12 Q And you also asked him what he had on on Wednesday,
13 didn't you?

14 A Yes, ma'am.

15 Q What did he tell you?

16 A He didn't remember for sure, but he said that he
17 probably had on his yellow school shirt.

18 Q Okay. Did you tell him someone said he had been over
19 at Rose Hill recently?

20 A Yes, I did.

21 Q And what did he say to that?

22 A Let's see. He stated he didn't remember being in an
23 apartment recently.

24 Q Okay. And after that you talked to Josh.

25 A Yes, ma'am.

Chris Taylor
Cross-examination by Ms. Anderson

1 Q And he gave you a statement.

2 A Yes, he did.

3 Q And you said his story kept changing. What were you
4 talking about, whether he was with Lance or what?

5 A Well, the story kept changing because at first he was
6 saying he was at home, that he didn't go anywhere. Then he
7 changed his story that he was out. Then he changed his
8 story he was over to his brother's house; changed it when
9 he got there; whether he walked in; whether he drove there.
10 The story was changing.

11 Q Okay. But he made a written statement.

12 A Yes, he did.

13 Q And said he had been over to his brother's.

14 A Yes, ma'am.

15 Q You got the warrant for murder against Lance Lyles on
16 December the 10th?

17 A Yes, ma'am.

18 Q And were you over at the house? You had sent someone
19 over to the Lyles' house, correct?

20 A Yes, ma'am.

21 Q And you weren't ever over there, were you?

22 A No, ma'am.

23 Q But you did participate in the chase?

24 A The little bit of chase that you can say I was in. I
25 just happened to go on out Camelot Road and heard that they

Chris Taylor
Cross-examination by Ms. Anderson

1 was crossing W. O. Ezell Boulevard.

2 Q But it took them a little bit of time to catch
3 Mr. Lyles, didn't it?

4 A Yes, ma'am.

5 Q And a lot of man hours, a lot of manpower.

6 A Yes, ma'am.

7 Q You said that after you got him, after y'all caught
8 him, you took him to city hall. His mother was with him in
9 the interview the entire time?

10 A She came in. She wasn't there when we first started
11 because Investigator Hearst was in with him initially,
12 which he was throwing up in the trash can in the interview
13 room. And, like I say, I was coming from out there from W.
14 O. Ezell Boulevard. So she got there about the same time I
15 did.

16 Q And she absolutely told him to keep his mouth shut.

17 A Yes, ma'am.

18 Q In a lot of different ways.

19 A Yes, ma'am.

20 Q A lot of cussing.

21 A She was very upset.

22 Q Okay. And you said that she snatched the gold teeth
23 out of his mouth.

24 A Yes, ma'am. She reached into his mouth and pulled
25 them out.

Chris Taylor
Cross-examination by Ms. Anderson

1 Q But you did not keep them.

2 A No, ma'am.

3 Q Did Mr. Spicer ever get to see the gold teeth?

4 A No, ma'am.

5 Q But he had no problem identifying Lance Lyles.

6 A Not at all.

7 Q And I believe you had talked with him, with
8 Mr. Spicer. And he had said that Lance had been over to
9 his house with his brother.

10 A Yes, ma'am.

11 Q Okay. And that -- do you remember when they said it
12 was?

13 A This was in the second time I talked to Mr. Spicer,
14 and that's at the point he had called on the phone and
15 talked to someone. He had remembered that Lance's brother
16 Leonard had been over there along with him.

17 Q So he had to call someone on the phone to ask?

18 A What was the name.

19 Q Did you find out who he talked to?

20 A No, ma'am.

21 Q But you have a video of Lance's interview with his
22 mother.

23 A Yes, ma'am.

24 Q But Lance never told you any more than in his original
25 statement, did he?

Chris Taylor
Redirect examination by Mr. Bulsa

1 A No, ma'am.

2 Q Thank you.

3 MR. VIETH: I have no questions, Your Honor.

4 THE COURT: You may step down.

5 MR. BULSA: Just briefly, Your Honor.

6 THE COURT: Okay.

7 REDIRECT EXAMINATION

8 BY MR. BULSA

9 Q Ms. Anderson was asking you about the mother
10 participating in one of the interviews. Why did you allow
11 that?

12 A Because of his age and the fact that she was very
13 adamant and stuff. And, like I say, he was throwing up.
14 So I was concerned about him throwing up and everything.

15 Q And just look at this. Does this document tell you
16 what his age was?

17 A Yes, sir.

18 Q How old was he?

19 A Sixteen.

20 Q And do you know how old Josh Jeter was?

21 A Seventeen.

22 Q Okay. Thank you. That's all I have.

23 MR. VIETH: Just a quick follow up.
24
25

Chris Taylor
Cross-examination by Mr. Vieth
Recross-examination by Ms. Anderson

1 CROSS-EXAMINATION

2 BY MR. VIETH

3 Q On the 16, being 16, can you look and see that it was,
4 in fact, about three months into his 16th birthday? He had
5 just left 15, I believe, about three months earlier.

6 A Yes, sir.

7 Q Thank you. That's all.

8 RECROSS-EXAMINATION

9 BY MS. ANDERSON

10 Q On December 10th, was that not Josh Jeter's birthday?

11 A If I was seeing his paperwork, I could tell you,
12 ma'am. He had turned 17 one day.

13 Q His birthday was December 10th.

14 A Right.

15 Q So the day that you arrested Lance Lyles is the day
16 that Josh Jeter turned 17.

17 A Yes, ma'am.

18 Q Thank you.

19 MR. BULSA: Nothing further.

20 THE COURT: Step down.

21 MR. BULSA: Stacy Watson.

22 STACY WATSON, having been
23 first duly sworn, testified as follows:

24 DIRECT EXAMINATION BY MR. BULSA

25 Q Please introduce yourself to the jury if you would,

Stacy Watson
Direct examination by Mr. Bulsa

1 please.

2 A Stacy Watson, Spartanburg County Alternative School,
3 intervention counselor.

4 Q Okay. And how long have you been with the alternative
5 school?

6 A Seven years.

7 Q Have you been an intervention counselor all of that
8 time?

9 A Yes, sir.

10 Q What is your education?

11 A College degree.

12 Q From where?

13 A Wingate University.

14 Q Is that in counseling?

15 A Speech communication.

16 Q Did you get this job right out of college?

17 A No, sir.

18 Q What else did you do?

19 A I worked at a group home in North Carolina, and I did
20 mortgages.

21 Q Do you live here in Spartanburg?

22 A Yes, sir.

23 Q Are you from Spartanburg?

24 A Yes, sir.

25 Q Now, did Lance Lyles and Josh Jeter attend the

Stacy Watson
Direct examination by Mr. Bulsa

1 alternative school?

2 A Yes, sir.

3 Q Did you have any contact with them?

4 A Yes, sir.

5 Q Were they friends?

6 A Yes, sir, to my perception.

7 Q How would you describe that relationship between the
8 two?

9 A Spent most of their time together, those two.
10 Different classes, but they were friends.

11 Q I believe they were actually different grades.

12 A Yes, sir.

13 Q Who is the older one of the two?

14 A Well, at the time I think both were the same age. I
15 think Lance was further in education than Josh.

16 Q But Josh was actually a little older.

17 A Yes, sir.

18 Q All right. Do you know how they came to school? Did
19 they come to school together?

20 A I can't recall if they came together. They have left
21 together before.

22 Q Okay. Do you know how often they would leave
23 together?

24 A Maybe a few times. I can't recall.

25 Q Was it unusual for them to leave together?

Stacy Watson
Direct examination by Mr. Bulsa

1 A No, sir.

2 Q And what opportunities at school did they have to
3 spend time together?

4 A In passing, class changes. I can't remember if they
5 had lunch together.

6 Q But in those occasions you saw enough to see that they
7 were good friends?

8 A Yes, sir.

9 Q Do you know if they spent time together outside of
10 school?

11 A I'm not one hundred percent sure.

12 Q Just the fact that you saw them leave together.

13 A Yes.

14 Q Did they appear to have any closer friends at the
15 school than each other?

16 A Not to my perception.

17 Q So if they chose to be with somebody at school, it
18 would have been each other.

19 A Yes.

20 Q Mr. Watson, do you recall officers with the city
21 police department coming to the school on December the
22 10th of 2004?

23 A Yes, sir.

24 Q And you met with those officers.

25 A Yes.

Stacy Watson
Direct examination by Mr. Bulsa

1 Q Did you have an occasion to bring Josh Jeter and speak
2 to him?

3 A Yes.

4 Q Tell us how that took place.

5 A Well, they first came, and they inquired about Lance.

6 And they asked me was there anybody he hanged with or
7 talked to at school that would be a close friend. And I
8 brought Josh's name up. And I went and got him, and I told
9 Josh on the way that I had some investigators to talk to
10 him and did he want to talk to them, and he agreed.

11 Q Who did you bring up there first?

12 A I want to say Josh. I can't recall, not a hundred
13 percent, about that.

14 Q So it could have been Lance first, if asked Lance
15 first.

16 A Yes, it could have been Lance first.

17 Q But, in either event, you brought both boys up there.

18 A Yes, sir.

19 Q Did you give them the choice of coming and speaking to
20 the officers?

21 A I told them we had some investigators that wanted to
22 talk to them and did you want to talk to them.

23 Q And each of them agreed to go speak to them.

24 A Yes.

25 Q Were you present when each was spoken to?

Stacy Watson
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Do you know if each one gave a written statement to
3 the police?

4 A I remember them writing a statement down.

5 Q Did either one of them appear pressured or threatened
6 or coerced by the police?

7 A Not to my knowledge.

8 Q What was the atmosphere?

9 A From my perception it was kind of laid back. I mean,
10 you can tell the nervousness in both Josh and Lance. But
11 far as the investigators, they seemed to be just kind of
12 laid back at the time.

13 Q Did they seem to understand what was taking place?

14 A Yes.

15 Q Did they appear to have any problem speaking with the
16 police?

17 A Not from my perception.

18 Q Were you aware of the homicide that occurred in the
19 city a couple of days prior to this?

20 A I probably heard about it on the news, just in
21 hearing, getting dressed for work, but never paid it any
22 attention.

23 Q Did you, did the police, share that information with
24 you?

25 A After the, after the fact.

Stacy Watson
Direct examination by Mr. Bulsa

1 Q Okay. Now, the police officers wrote the statements
2 for these individuals.

3 A Yes.

4 Q And you were present during that.

5 A Yes.

6 Q Did you actually sign as a witness?

7 A I can't remember if I signed for a witness or not.

8 Q Okay. But you witnessed it, regardless of whether you
9 signed it or not.

10 A Yes.

11 Q Did both of them appear to give voluntary statements?

12 A Yes.

13 Q Do you know of whether Lance Lyles wore gold teeth?

14 A He had worn them before, and it's prohibited in our
15 school. I told him to put it in his pocket. He's not the
16 only student that I have ever told that to.

17 Q You stated each boy appeared nervous.

18 A Yes.

19 Q Did they appear to be forthright and forthcoming with
20 the officers?

21 A Yes.

22 Q But you didn't know exactly what was going on. What
23 would have happened if the officers started to pressure
24 these boys? What would you have done?

25 A I probably would have just stopped them, and being

Stacy Watson
Cross-examination by Ms. Anderson

1 that they was in my environment, I probably would have just
2 stopped the whole thing and removed the kids out of my
3 office and probably told the officers to, you know, maybe
4 get in touch with their parents before we go any further.

5 Q You didn't see any need to do that though, did you?

6 A No, sir.

7 Q Did either individual ever say they wanted to stop
8 talking to the officers?

9 A No, sir.

10 Q Did either one ask for their mother or father to be
11 there?

12 A No, sir.

13 Q Thank you. Answer any questions either defense
14 counsel may have.

15 CROSS-EXAMINATION

16 BY MS. ANDERSON

17 Q Mr. Watson, what's your title?

18 A Intervention counselor.

19 Q What does that mean?

20 A I intervene at times when students are having
21 behavioral problems. I assist the director of the school
22 and our guidance counselor.

23 Q How long have you been doing it?

24 A Seven years.

25 Q How long?

Stacy Watson
Cross-examination by Ms. Anderson

- 1 A Seven years.
- 2 Q Okay. And on that day you went down and got Lance
- 3 Lyles out of class.
- 4 A Uh-huh, yes, ma'am.
- 5 Q And what did you tell him?
- 6 A I said some investigators are here to talk to you,
- 7 would you like to talk to them.
- 8 Q Okay. Did you tell him he didn't have to talk to
- 9 them?
- 10 A No, ma'am, I didn't tell him that.
- 11 Q Did you tell him it was totally up to him whether or
- 12 not he wanted to come to your office to talk with them?
- 13 A No, ma'am, I didn't tell him that. I just asked him
- 14 if he wanted to talk to them.
- 15 Q What about Josh Jeter?
- 16 A Same thing.
- 17 Q So you didn't tell Josh Jeter he did not have to come
- 18 and talk with these people.
- 19 A No, ma'am.
- 20 Q How big is your office?
- 21 A It's fairly small.
- 22 Q Ten by ten?
- 23 A I am not sure.
- 24 Q Is it as big as the jury box?
- 25 A Probably half the size.

Stacy Watson
Cross-examination by Ms. Anderson

- 1 Q Okay. So half the size of the jury box. And had you.
2 A I got two sections to my office.
3 Q Okay. So what does that mean?
4 A I've got an outer office and I have an inside office.
5 Q Okay. Well, where were y'all talking to the boys?
6 A In my inside office.
7 Q So in half the size of the jury box.
8 A Yes.
9 Q Okay. And you had you and had David Hearst.
10 A Yes.
11 Q Correct? And who else -- Winningham?
12 A Yes.
13 Q And --
14 A Taylor.
15 Q And Chris Taylor.
16 A Yes, ma'am.
17 Q All of y'all full grown men.
18 A Yes, ma'am.
19 Q Okay. A lot bigger than these guys.
20 A Yes, ma'am.
21 Q Well, I mean, y'all are a lot older than 16.
22 A Yes, ma'am.
23 Q Okay. And you had them in a little bitty office. And
24 you never told them they didn't have to talk to them, did
25 you?

Stacy Watson
Cross-examination by Ms. Anderson

1 A No, ma'am.

2 Q And you're saying you were not aware that this was a
3 homicide investigation?

4 A Not right, not at the time.

5 Q Did you not think it might have been a good idea to
6 check with their parents whether or not they wanted them to
7 talk to the police?

8 A Maybe should have been, but I specialize in education
9 and not in law enforcement.

10 Q I know. But you're responsible for these children
11 when they are in your care.

12 A Yes, ma'am.

13 Q Okay. And you're saying the atmosphere was laid back.
14 Now, how could it be laid back with two 16-year-olds with
15 you big men?

16 A I didn't see them pressuring them. They didn't raise
17 their voice. It was a simple talking.

18 Q But you said the boys were nervous.

19 A I guess it's just a characteristic of a young guy.

20 Q Well, I mean, excuse me. They're in a little bitty
21 office with three grown, four grown men questioning them.

22 A Yes, ma'am.

23 Q Could that not have caused their nervousness?

24 A I can't answer that.

25 Q Well, you're the one that said they were nervous.

Stacy Watson
Cross-examination by Mr. Vieth

1 A From my perception they did seem a little nervous.

2 Q But you don't know why.

3 A I guess because they were talking to investigators at
4 the time.

5 Q And you said that you thought they understood that
6 they didn't have to talk to them.

7 A When I asked them did they want to talk to them, they
8 had the opportunity.

9 Q But you didn't say you don't have to.

10 A No, ma'am, I didn't.

11 Q Okay. They weren't read their rights, were they?

12 A No, ma'am.

13 Q Okay. You said they appeared to give these statements
14 voluntarily. Do you believe those boys thought they had a
15 choice?

16 A Like I said, I don't specialize in the law, law side.
17 They asked them did they want to write a statement. They
18 agreed.

19 Q Okay. And you said the boys appeared to be forthright
20 with them.

21 A Yes.

22 MS. ANDERSON: That's all the questions I have.

23 CROSS-EXAMINATION

24 BY MR. VIETH

25 Q Mr. Watson, do you know Mr. Lyles' dad?

Stacy Watson
Cross-examination by Mr. Vieth

1 A Yes, sir.

2 Q And it's true, isn't it, that most of the time he
3 would pick up his son at the alternative school?

4 A Yes, sir.

5 Q And by far way, that's the way he would go home, with
6 his dad.

7 A Yes, sir.

8 Q So on the occasion that you may have seen the two of
9 them together, at any time that you recall Lance leaving,
10 it was with his dad.

11 A Yes, sir.

12 Q Is that right? And on the statements that were given,
13 assuming the interviews took place around midday, did they
14 appear to be lengthy in any way -- ten minutes, 20 minutes,
15 an hour, two hours, you got to get --

16 A I can't remember, but I don't think it was an hour.

17 Q For the whole thing?

18 A For the whole thing, I don't think it took an hour.

19 Q Okay. So when they came in, and I guess they come to
20 you first and asked can they see Mr. Lyles.

21 A Yes.

22 Q And at that point until you think they talked to
23 Mr. Lyles, talked to Mr. Jeter, the whole episode didn't
24 take more than, best guess?

25 A I can't recall. It's been two years ago, maybe.

Stacy Watson
Redirect examination by Mr. Bulsa

1 Q Well, that's fair, fair statement. But do you think

2 it was an all-morning event or --

3 A No. It wasn't an all-morning event.

4 Q If the statements, an interview form, indicates that
5 one statement may have been 11:45 to 11:55, and one may be
6 from 12:00 o'clock to 12:15, would that -- would that be
7 possible?

8 A It could be possible.

9 Q Everything done within about a half-hour.

10 A That's possible.

11 Q That's all I have. Thank you very much.

12 MR. BULSA: Just briefly in redirect.

13 REDIRECT EXAMINATION

14 BY MR. BULSA

15 Q Mr. Watson, was it uncommon for officers to come and
16 speak to people at school?

17 A No, sir.

18 Q And the way you described it occurred here, is that
19 the way it typically takes place?

20 A Yes, sir.

21 Q Thank you. That's all I have.

22 THE COURT: Step down.

23 MR. BULSA: Your Honor, we ask Mr. Watson be excused.

24 THE COURT: Any objection?

25 MS. ANDERSON: No objection.

David Hearst
Direct examination by Mr. Bulsa

1 THE COURT: He may be.

2 (Whereupon, the witness was excused.)

3 MR. BULSA: David Hearst.

4 DAVID HEARST, having been
5 first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA

7 Q Please introduce yourself to the jury. Introduce
8 yourself to the jury, please.

9 A Investigator David Hearst, Spartanburg Department of
10 Public Safety.

11 Q What capacity?

12 A I'm one of the investigators there.

13 Q Okay. And how long have you been employed there?

14 A I been employed for ten years.

15 Q How long have you been an investigator?

16 A A little bit, about two.

17 Q About two years?

18 A About two.

19 Q So you would have started back in 2004.

20 A Right around that timeframe.

21 Q Did you assist Sergeant Taylor in the investigation in
22 the death of Tavaris Howze?

23 A Yes, I did.

24 Q And as part of that investigation did you go to the
25 alternative school to speak with a couple of individuals?

David Hearst
Direct examination by Mr. Bulsa

1 A Yes, I did.

2 Q Wasn't your reason to go there to try to find a Lance
3 Lyles?

4 A It was to find a picture of him.

5 Q Okay. And were you able to learn anything about
6 Mr. Lyles?

7 A Not very much. Mr. Watson was telling us about, that
8 he always hanged with this other guy.

9 Q And were you able to speak to Mr. Lyles?

10 A Yes, we were.

11 Q And did Mr. Lyles give a statement?

12 A Yes, he did.

13 Q Why did y'all seek to get a statement from him?

14 A Just wanted to know about his whereabouts the day of
15 the incident.

16 Q I show you what's been marked State's Exhibit 5 for
17 identification. Do you recognize that?

18 A Yes, I do. I took that statement.

19 Q Okay. And what time did that statement begin?

20 A 12:00 o'clock.

21 Q And when did it end?

22 A 12:10.

23 Q So it was a ten-minute statement?

24 A Ten minutes.

25 Q And who wrote that statement?

David Hearst
Direct examination by Mr. Bulsa

1 A I wrote it for him.

2 Q Why did you write it?

3 A Just something that I usually do so you can understand
4 the statement.

5 Q Were those his words?

6 A Yeah. I wrote it just as he was telling me.

7 Q Was in custody at that time?

8 A No, he wasn't.

9 Q Did y'all ask him if he wanted to give a statement?

10 A Yes, we did.

11 Q And did he agree to give one to you?

12 A He agreed to give us a statement.

13 Q Did you pressure him or coerce him in any way?

14 A No, we didn't.

15 Q Make any promises?

16 A No. I didn't.

17 Q What was the purpose of obtaining that statement?

18 A Like I said, again, to learn about his whereabouts the
19 night of the incident.

20 Q Okay. To sum it up. And that is pretty much what he
21 told you?

22 A The statement, uh-huh.

23 Q All right.

24 MR. BULSA: If I may get this one marked.

25 (Witness interview form marked State's Exhibit No. 1-A

David Hearst
Direct examination by Mr. Bulsa

1 for Identification; statement marked State's Exhibit No. 1-B
2 for Identification; witness interview form marked State's
3 Exhibit No. 5-A for Identification; statement marked State's
4 Exhibit No. 5-B for Identification.)

5 Q Officer, first if you would, look at what's been
6 marked State's Exhibit 5-B. Is that a portion of the
7 statement of 5-A?

8 A Yes.

9 Q Okay.

10 MR. BULSA: Your Honor, I would move 5-B into
11 evidence.

12 MR. VIETH: Without objection.

13 MS. ANDERSON: Could I see it one second?

14 THE COURT: Let Ms. Anderson see it.

15 MR. BULSA: That is the one of Lance Lyles.

16 MS. ANDERSON: Without objection.

17 (Statement marked State's Exhibit No. 5-B.)

18 Q If you would, publish 5-B to the jury. Read the
19 statement as it is on that document there.

20 A This is statement of Lance Lyles, black male, 16 years
21 of age, given at the office of Mr. Stacy Watson at the
22 university school.

23 "On 12/8/04 I was at Charleston Place (Westgate Pines)
24 playing a game at Tony and Travis' house. We was playing
25 NFL" -- okay. "We was playing NFL 2K5. I was at Tony and

David Hearst
Direct examination by Mr. Bulsa

1 Travis' house until about 8:00 o'clock p.m. Then I went to
2 my house at 209 Singingwood Lane." Signed by Lance Lyles
3 and witnessed by David Hearst and Dale Winningham.

4 Q Dale Winningham. Is he another officer?

5 A Yes. That was my partner at the time.

6 Q Was Sergeant Taylor there with you?

7 A Yes, he was.

8 Q Okay. Now, I show you State's Exhibit No. 1-A and
9 1-B. Is 1-A a statement of Josh Jeter?

10 A Yes.

11 Q And 1-B is the same statement.

12 A Yes.

13 Q Okay.

14 MR. BULSA: Your Honor, I would move 1-B into
15 evidence, statement of Josh Jeter.

16 THE COURT: Show it to Ms. Anderson.

17 MS. ANDERSON: No objection.

18 MR. VIETH: No objection.

19 THE COURT: It is admitted without objection.

20 (Statement marked State's Exhibit No. 1-B.)

21 Q I'm going to ask you a few questions before you
22 publish this one. How was it that you came to speak to
23 Josh Jeter?

24 A The same way it was I came to talk to Lance. Stacy
25 Watson called them to his office.

Dávid Hearst
Direct examination by Mr. Bulsa

1 Q Okay. And did the interview take place in a similar
2 fashion?

3 A Same fashion, sir.

4 Q Same officers present?

5 A Same officers present.

6 Q Was there any coercion used with him?

7 A No, there wasn't.

8 Q Did he voluntarily give you a statement?

9 A Yes, he did.

10 Q You didn't threaten or coerce him in any fashion, did
11 you?

12 A No, I didn't.

13 Q How long was his interview?

14 A Start time was 11:45. It was over at 11:55.

15 Q Ten minutes for him as well.

16 A Yes, sir.

17 Q And did you write his statement?

18 A Yes, I did.

19 Q For the same reasons as Mr. Lyles?

20 A Same reasons.

21 Q If you would, publish it off 1-B.

22 A "This is the statement of Joshua Jeter, black male, 17
23 years of age. Statement was given in the office of Stacy
24 Watson of the university school.

25 "On 12/8/04 I came to school. I left school around

David Hearst
Cross-examination by Ms. Anderson

1 3:15. Then I went home. I was at home for a couple of
2 hours. I left the house about 6:00 p.m. I went to
3 Charleston Place (Westgate Pines). Then the police had
4 came to the apartment complex and I started walking to my
5 brother's house. Once there I stayed about 20 minutes, and
6 I went to my house."

7 Signed by Joshua Jeter and witnessed by Dale
8 Winningham and David Hearst.

9 Q Did either boy admit to you that they had been at Rose
10 Hill Apartments that night?

11 A No, they didn't.

12 Q Were they asked if they had been at Rose Hill
13 Apartments?

14 A Yes, they were.

15 Q Did they deny being there?

16 A Each denied being there.

17 Q Thank you. Answer any questions -- excuse me.
18 Neither boy was in custody.

19 A Neither one of them was.

20 Q And they didn't have to give a statement, did they?

21 A They didn't ask have to give a statement.

22 Q Answer any questions Mr. Vieth or Ms. Anderson has.

23 CROSS-EXAMINATION

24 BY MS. ANDERSON

25 Q Officer Hearst, the alternative school and the

David Hearst
Cross-examination by Ms. Anderson

1 university school are the same, one in the same.

2 A Yes, it is.

3 Q Y'all have been calling it different things, so I just
4 want to make sure it's the same school.

5 A Okay.

6 Q Now, you said that each statement took ten minutes.
7 Now, that's just, that's not how much time you spent with
8 them, is it?

9 A I just spent time enough to get a statement. That's
10 all we had.

11 Q But I am saying you are saying your interview started
12 at 12:00.

13 A Uh-huh. That's what time the interview started.

14 Q And that's not the writing of this. The interview
15 ended at 12:10.

16 A Uh-huh.

17 Q So that included talking to them and writing it?

18 A I told him as he was talking to me. I was writing
19 down everything he said word for word.

20 Q Okay. So in that ten minutes that you talked to each
21 child, each boy, you wrote your statement and discovered,
22 you know, talked to them about everything in ten minutes.

23 A After I wrote the statement, yes.

24 Q Okay. Did you ever tell them they didn't have to talk
25 to you?

David Hearst
Cross-examination by Mr. Vieth

1 A No. We told them that -- we asked them did they want
2 to give us a statement.

3 Q But did you ever say you don't have to give us one?

4 A I can't recall that.

5 Q Okay. And it was you, four grown men and these two
6 boys.

7 A Yes, ma'am.

8 Q And nobody ever said you don't have to talk to us.

9 A I can't recall that, ma'am.

10 Q Okay. But you're saying that the whole time, that the
11 statements you got from each of them took ten minutes.
12 That's talking to them and writing.

13 A Uh-huh.

14 Q Okay. Would you have talked to Josh Jeter if
15 Mr. Watson had not told you he was a friend of Lance Lyles?

16 A No.

17 Q Thank you.

18 CROSS-EXAMINATION

19 BY MR. VIETH

20 Q Officer, y'all didn't by any chance say that if they
21 didn't give a statement that y'all would go to city hall
22 with them, would you? I mean, were y'all going to tell
23 these boys or did y'all tell these boys if they don't give
24 a statement --

25 A We didn't tell them nothing like that, sir.

David Hearst
Cross-examination by Mr. Vieth

1 Q Okay. So if they had come in and said we don't want
2 to talk about anything, period, y'all would have just left.

3 A That would have been the end of it.

4 Q And the entire conversation when you get there that
5 morning, you're seeing Lance because you have a reason to
6 talk to Lance.

7 A Uh-huh.

8 Q Right?

9 A Well, we just wanted a picture. That was the reason
10 why we went to the school.

11 Q You went there to get a picture and then talk to him.
12 Okay. And then, but, I mean, there's a reason you went to
13 get the picture. You had a reason as part of your
14 investigation to think that Lance may have been in the
15 area.

16 A Yes.

17 Q Okay. So you got your suspicions when you were
18 talking to these boys that they may have been in the area.

19 A Yeah.

20 Q Okay. And with those suspicions it was not a matter
21 where you said we are here to find out what y'all were
22 doing on this night and you can either tell us now or we'll
23 take you down to city hall and make you give a statement.
24 Nothing like that.

25 A Nothing, nothing was said in that manner.

Paula Brewster
Direct examination by Mr. Bulsa

1 Q All right. Thank you very much.

2 MR. BULSA: Nothing further.

3 THE COURT: You may step down.

4 MR. BULSA: The state calls Officer Brewster.

5 PAULA BREWSTER, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA

8 Q Officer, please introduce yourself to the jury.

9 A I am Paula Brewster.

10 Q Who are you employed by?

11 A Spartanburg Public Safety Department.

12 Q In what capacity?

13 A Currently assigned to the patrol division.

14 Q How long have you been an officer?

15 A Come March 18th will be 18 years.

16 Q Did you used to work in the investigation division?

17 A Yes, I did.

18 Q When?

19 A For the last eight years.

20 Q You since transferred to patrol?

21 A Yes.

22 Q Were you an investigator on the Tavaris Howze
23 homicide?

24 A Yes, I was.

25 Q Were you assigned as the lead investigator?

Paula Brewster
Direct examination by Mr. Bulsa

1 A Yes.

2 Q When did you first respond to this crime scene?

3 A I first responded to the crime scene on December the
4 8th of 2004. I responded about 9:00 o'clock at night.

5 Q Shortly after the shooting?

6 A Yes.

7 Q What was the condition of the crime scene at that
8 time?

9 A At that time the -- when I arrived the door was
10 cracked open and nobody was inside the apartment.

11 Q Was anybody processing the scene?

12 A They was waiting on the search warrant.

13 Q Did you observe the scene while you were there?

14 A Yes.

15 Q Did you actually go into the apartment?

16 A Not at that time.

17 Q Did you observe it from the doorway?

18 A From the doorway through the crack.

19 (Photographs marked State's Exhibits No. 11-A and B for
20 Identification.)

21 Q Let me show you what's been marked State's Exhibit No.
22 11-A for identification purposes. Is that an accurate
23 depiction of the scene that you saw looking through the
24 doorway?

25 A Yes.

Paula Brewster
Direct examination by Mr. Bulsa

1 Q Okay. And show you 11-B. Is that also an accurate
2 depiction? Out of deference to their family, we removed
3 the body from the scene. Other than that, is it the same
4 picture?

5 A Yes.

6 Q From that picture, if you were looking in, could you
7 see? Can you see the couch to the right of the door?

8 A Yes.

9 MR. BULSA: Your Honor, I move 11-B into evidence.

10 MS. ANDERSON: No objection.

11 MR. VIETH: No objection, Your Honor.

12 THE COURT: It's admitted.

13 A (Photograph marked State's Exhibit No. 11-B.)

14 Q Is that essentially what the scene looked like before
15 it began being processed?

16 A Yes.

17 Q Okay. As it began, when they processed it, they were
18 putting numbers identifying certain objects?

19 A Yes.

20 Q Okay. This would be the first view before anybody was
21 really moving anything.

22 A Yes, it would.

23 Q Okay. How long did you yourself stay at the scene?

24 A I probably was at the scene for about, probably about,
25 15 or 20 minutes.

Paula Brewster
Direct examination by Mr. Bulsa

1 Q Okay. Why did you stay there for that short of time?

2 A I stayed there for that short of period of time until
3 I had another investigator there to do the search warrant
4 for the apartment, and then I went to do some interviews.

5 Q Okay. So as lead investigator you turned the crime
6 scene over to someone else?

7 A Yes.

8 Q Okay. And did Investigators Hogsed and Talanges
9 process that scene?

10 A Yes.

11 Q And were they processing it while you were at city
12 hall?

13 A Yes.

14 Q And why did you go to city hall?

15 A To interview Mr. Clearance Spicer.

16 Q And Mr. Spicer is the resident of that apartment.

17 A Yes.

18 Q And why did you go the city hall to interview him?

19 A That's where I had him taken.

20 Q And what was the purpose of interviewing him so soon?

21 A He was the only witness we had.

22 Q Was the apartment complex canvassed? And describe
23 what canvassing is.

24 A Yes. The apartment was canvassed where officers went
25 out to different buildings and canvassed each apartment and

Paula Brewster
Direct examination by Mr. Bulsa

1 knocked on each door looking for any potential witnesses to
2 the incident that took place.

3 Q You heard from Scott Hill. Was he developed through
4 that canvassing?

5 A Yes, he was developed through a canvass.

6 Q Was any other witness developed that might have seen
7 anything?

8 A No, sir.

9 Q Now, once you spoke to Mr. Spicer, what else did you
10 do?

11 A I also had a G. R. says -- G. R. S. kit done on
12 Mr. Spicer.

13 Q Okay. What was the purpose of that?

14 A To show whether or not that any firearm had been
15 discharged by his hand.

16 Q Okay. But the evidence was he was pushing a door
17 closed.

18 A Yes, sir.

19 Q And the firearm was discharged near his hand.

20 A Yes, sir.

21 Q Okay. Did you try to obtain any video tapes from
22 businesses in the area?

23 A Yes. I sent an investigator out to obtain videos from
24 several businesses within that area.

25 Q What was that for?

Paula Brewster
Direct examination by Mr. Bulsa

1 A That was for to see if we can capture a suspect
2 fleeing from the scene on video.

3 Q Did any of that show anything?

4 A No, sir.

5 Q Did you also speak to Brian Durbin?

6 A Yes, I did.

7 Q Why did you interview him?

8 A Mr. Durbin was there prior to, and he had left to go
9 back to the school, and he returned shortly after the
10 incident took place.

11 Q You thought he might have information to help?

12 A Yes.

13 Q Did you search Mr. Howze's apartment?

14 A Yes. We had a consent to do so.

15 Q Why did you search the victim's apartment?

16 A The victim's apartment is where they was at initially
17 until they went up to Mr. Spicer's apartment.

18 Q Okay. So Mr. Howze lived below Mr. Spicer.

19 A Yes.

20 Q Did you think you would gain any information from his
21 apartment?

22 A We was unsure whether or not the suspect might have
23 been down there at any time, so we checked it to see if we
24 could find any evidence that may lead us to a suspect.

25 Q So you were covering it from different angles.

Paula Brewster
Direct examination by Mr. Bulsa

1 A Yes, sir.

2 Q Did you participate in the identification process of
3 Lance Lyles?

4 A Yes, I did.

5 Q Were you present when a lineup was shown to him, shown
6 to Mr. Spicer, of Lance Lyles?

7 A Yes.

8 Q I show you State's Exhibit No. 32. Is that the lineup
9 that was shown to him?

10 A Yes. It was.

11 Q And you witnessed that procedure?

12 A Yes, myself and Sergeant Taylor.

13 Q Did Mr. Spicer have any problem identifying Mr. Lyles?

14 A No, sir, he did not.

15 Q Were you present when Mr. Lyles was arrested on the
16 10th?

17 A I was not present exactly when they arrested him, no.

18 Q Did you participate in the chase of him?

19 A No.

20 Q Okay. Was he taken to city hall?

21 A Yes.

22 Q Did you have contact with him there?

23 A Yes.

24 Q What was his condition that you saw him in?

25 A He appeared to be exhausted from running.

Paula Brewster
Direct examination by Mr. Bulsa

- 1 Q Did you do anything to help him?
- 2 A Yes. I bought him a Gatorade and had the cuffs
3 removed so that he could drink it slowly.
- 4 Q Once Mr. Lyles was arrested, where did you direct your
5 investigation?
- 6 A Excuse me?
- 7 Q Where did you direct your investigation after
8 Mr. Lyles was arrested?
- 9 A I directed the investigation towards his associate,
10 Josh Jeter, also.
- 11 Q Did you or any other officers go to Mr. Jeter's
12 residence?
- 13 A Yes.
- 14 Q For what purpose?
- 15 A To see if we can locate Mr. Jeter.
- 16 Q Was he located?
- 17 A Not at first. Eventually, he was.
- 18 Q Okay. And when you found him, what happened?
- 19 A We transported him to Spartanburg Public Safety
20 Department for an interview.
- 21 Q Was he actually in custody at that point?
- 22 A Yes. You would say that.
- 23 Q He wasn't under arrest but he was in your custody.
- 24 A Yes.
- 25 Q For the purposes of talking to him.

Paula Brewster
Direct examination by Mr. Bulsa

1 A Yes.

2 Q And did he speak with you?

3 A Yes, he did.

4 Q Did he have an option of not speaking with you?

5 A Yes, he did.

6 Q In fact, did you read him his so-called Miranda
7 rights?

8 A Yes, I did.

9 Q Because he was in custody, you informed him of those
10 rights?

11 A Yes, I did.

12 Q Do you recall the date in which you first interviewed
13 Mr. Jeter?

14 A I believe that would be December the 11th.

15 Q Okay. I show you what's been marked State's Exhibit
16 2-A for Identification. Do you recognize that document?

17 A Yes.

18 Q What is it?

19 A It's a pre-interrogation waiver form.

20 Q Does it bear your signature?

21 A Yes, it does.

22 Q Bear the signature of Joshua Jeter?

23 A Yes, it does.

24 Q Did that get filled out on the evening or on the day
25 of December the 11th of 2004?

Paula Brewster
Direct examination by Mr. Bulsa

1 A Yes, it did at 12:45 p.m.

2 MR. BULSA: Your Honor, I would move this into
3 evidence, pre-interrogation waiver form on December the
4 11th.

5 MS. ANDERSON: No objection.

6 THE COURT: It's admitted.

7 (Pre-interrogation waiver form dated December 11, 2004,
8 marked State's Exhibit No. 2-A.)

9 Q If you would, tell the jury what process you undertook
10 to read Mr. Jeter his rights.

11 A I filled the first section out with his name, address,
12 date of birth, date and time, phone number.

13 I also gave a statement of his rights. I advised him
14 that he had a right to remain silent. "Anything you say
15 can and will be used against him in a court of law. You
16 have a right to talk to a lawyer and have a lawyer present
17 with you while you are being questioned. And if you cannot
18 afford to hire a lawyer, a lawyer will be appointed free of
19 any cost to represent you before any questions begins. You
20 have a right to stop answering questions at any time."

21 I checked each one of them off. And I went down and
22 read, "The above rights have been read to me by
23 Investigator P. Brewster. I read the above rights and I
24 fully understand them."

25 I advised him to read them, put his initials besides