

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

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S.C. Supreme Court

CLYDE L. MCBRIDE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213470

APPENDIX

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ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
06-GS-40-12480 - 12482

State of South Carolina)
)
) TRANSCRIPT OF RECORD
) (Trial)
)
Clyde Leroy McBride,)
)
) Defendant.

April 2, 3, 4, 2007
Columbia, South Carolina

BEFORE:

THE HONORABLE G. THOMAS COOPER, JR., JUDGE

APPEARANCES:

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Monday, April 2, 2007

THE COURT: All right, counsel. This is the case of State v. Clyde Leroy McBride. Correct?

MR. SUTHERLAND: Yes, sir.

THE COURT: All right. Ready to strike a jury?

MR. SUTHERLAND: The defense is ready, Your Honor.

THE COURT: All right. I have no Voir Dire from either side. I have my regular Voir Dire, but any special requests from Voir Dire from either side?

MR. SUTHERLAND: Just from the defense, anything about law enforcement or victim advocate, that regular stuff, sir.

THE COURT: I'll do that.

MS. CAMPBELL: From the State, just make it reciprocal. Victims' rights groups or Public Defender's Office, things of that nature.

THE COURT: And accused of?

MS. CAMPBELL: That's fine.

THE COURT: Accused of?

MS. CAMPBELL: Accused of, Your Honor. Thank you.

THE COURT: All right. Ms. Falcioni, do your thing. Mr. Sutherland.

MR. SUTHERLAND: Yes, sir.

1 **THE COURT:** Your client is in custody?

2 **MR. SUTHERLAND:** He is, Your Honor.

3 (Pause)

4 **THE BAILIFF:** The jury is all present, Your
5 Honor.

6 **THE COURT:** Good. All right. Thank you very
7 much. Good afternoon, ladies and gentlemen. Welcome
8 to the Court of General Sessions for the Fifth
9 Judicial Circuit. This is the criminal division of
10 our court system, and those of you who are selected
11 on the jury today will be sitting on a criminal case.
12 You probably understand that we have basically two
13 divisions of our court systems here in the Circuit
14 Court. They are the Court of Common Pleas which is
15 the civil division and the Court of General Sessions
16 which is the criminal division. But we have
17 maintained these names of our court system throughout
18 history, and probably since Colonial times that's the
19 way they've been named. So as I said, those of you
20 who are selected on this jury this morning, we're
21 going to go through a jury selection process in just
22 a minute, will be sitting on a criminal jury.

23 I'm going to tell you something about it in just
24 a minute and I'm going to introduce the parties to
25 you. But before I do that I first want to tell you

1 that what I hold in my hand are what are known as
2 indictments. These are the formal documents that
3 bring any case into court. They're not evidence of
4 anything.

5 Any time an individual is charged in an
6 indictment brought before the Court of General
7 Sessions in the state of South Carolina or anywhere
8 in the United States, they are presumed innocent of
9 the charges that the State brings against them until
10 proven guilty of those charges beyond a reasonable
11 doubt by the State.

12 So when I read to you the elements that the
13 defendant is charged with, you're not to infer or
14 imply anything from that that the defendant is guilty
15 of anything. He is presumed innocent at this stage
16 of the proceedings, and I want to emphasize that to
17 you at this stage.

18 And I will read to you what the charges are in
19 just a minute, introduce the defendant to you. But
20 as you probably know, the way that any case is
21 prosecuted, the state of South Carolina moves forward
22 with the prosecution or conducts the prosecution.
23 Now, that is done by what's known as the Solicitor's
24 Office. You may have already met Solicitor Giese
25 this morning at your jury qualification period. I

1 don't know if he was there, but sometimes he attends.
2 And he will not actually be prosecuting this case
3 today because two of his deputy solicitors will be
4 prosecuting the case.

5 But before I introduce them to you I need to
6 know if any member of the jury panel is related by
7 blood, connected by marriage or employment or a close
8 personal acquaintance of Mr. Barney Giese who is
9 actually the elected -- your elected Fifth Judicial
10 Circuit solicitor. Any member of the jury panel know
11 Mr. Giese, have any familial relationship with him or
12 go to church with him or know his children or
13 anything like that? Anybody have any connection with
14 Mr. Giese?

15 Yes, sir. And when I ask you to, when you raise
16 your hand, I'm going to ask you to stand and just
17 tell me your jury number. Now, we're going through
18 an experiment here in Richland County, particularly
19 in the General Sessions Court. In the criminal court
20 we're identifying jurors by their number. And I've
21 sort of taken a poll every week since the first of
22 the year, and it seems that jurors prefer to be
23 identified by number and not by name, and
24 particularly in the criminal court system for
25 whatever personal reasons they may have. So when you

1 do stand, I'm going to ask you to identify yourself
2 by number if you know your juror number. I mean, I
3 know it's only Monday but I hope you know your
4 number. And just tell me, just answer whatever
5 question I have asked. So the gentleman with the
6 striped shirt on, your number, please?

7 *JUROR:* Juror 63.

8 *THE COURT:* Number 63. And what is your
9 connection with Solicitor Giese?

10 *JUROR:* I went to school with his daughters and
11 his son.

12 *THE COURT:* All right. Do you see them on any
13 other type of regular basis, either social or
14 business or anything of that nature?

15 *JUROR:* No, Your Honor.

16 *THE COURT:* Well, let me ask you this, Mr. --
17 and this is the hard part -- Mr. 63. Mr. 63, would
18 that fact in any way interfere with your ability to
19 give both the State and the defendant a fair and
20 impartial trial in this case?

21 *JUROR:* No, Your Honor.

22 *THE COURT:* Thank you very much. Anybody else?
23 All right. Now, the two deputy assistant solicitors
24 who will be prosecuting the case today are
25 Ms. Kathryn Luck Campbell and Mr. Dan Goldberg. I'm

1 go to ask both of these attorneys to stand. Any
2 member of the jury panel related by blood or
3 marriage, connected by marriage or employment or a
4 close personal acquaintance of either Ms. Kathryn
5 Luck Campbell or Mr. Dan Goldberg? If so, please
6 stand. Anybody know either of these two attorneys?
7 Thank you, counsel.

8 Any member of the jury panel know any member of
9 the Solicitor's Office, anybody that works in the
10 Solicitor's Office in the Fifth Judicial Circuit,
11 either here in Richland County or in Kershaw county?
12 Because Kershaw county is also a part of this
13 judicial circuit. Yes, ma'am. Your number, please?

14 **JUROR:** 61.

15 **THE COURT:** Madam 61.

16 **JUROR:** I know Heather Weiss.

17 **THE COURT:** Heather Weiss. All right. And in
18 what capacity? Is it --

19 **JUROR:** I work for the City of Columbia Police
20 Department.

21 **THE COURT:** Ma'am?

22 **JUROR:** I work for the Columbia City of Columbia
23 Police Department.

24 **THE COURT:** Well, you're going to probably stand
25 up more than once in this thing.

1 JUROR: Most likely.

2 MS. CAMPBELL: I'm going to ask you some other
3 questions. And you work with Ms. Weiss in a
4 professional relationship?

5 JUROR: Yes.

6 THE COURT: Do you have a relationship outside
7 of that, either church or --

8 JUROR: No, sir.

9 THE COURT: Church or social or anything of that
10 nature?

11 JUROR: No, sir.

12 THE COURT: Would that fact, Ms. 61, in any way
13 interfere with your ability to give both the State
14 and defendant a fair and impartial trial?

15 JUROR: No, sir.

16 THE COURT: All right. Thank you very much.

17 THE BAILIFF: Stand, please.

18 THE CLERK: Stand up.

19 JUROR: 45.

20 THE COURT: The reason I ask you to stand is so
21 the court reporter can hear what you have to say.
22 All right. Number 45.

23 JUROR: Yes, sir.

24 THE COURT: Yes, sir.

25 JUROR: I have worked with Ms. Campbell before

1 on previous cases. I've testified for her several
2 years ago.

3 *THE COURT:* All right. And what type business?

4 *JUROR:* Physician. I was a witness in a case.

5 *THE COURT:* Oh. As a witness?

6 *JUROR:* Yes, sir.

7 *THE COURT:* Would that fact in any way interfere
8 with your ability to give both the State and
9 defendant a fair and impartial trial?

10 *JUROR:* No, sir.

11 *THE COURT:* All right. Thank you very much,
12 sir. Anybody else? Any member of the jury panel or
13 any member of your family, since the State frequently
14 represents law enforcement agencies, any member of
15 the jury panel or any member of your family connected
16 with law enforcement as an employee or in any way or
17 capacity -- and by law enforcement I mean the broad
18 spectrum of law enforcement. That would include the
19 City of Columbia Police Department, Richland County
20 Sheriff's Office, SLED, FBI, Secret Service, any
21 military law enforcement agents, any agency that is a
22 law enforcement agency that either you or any member
23 of your family is connected with? If so, please
24 stand. And Madam 61 works for the City of Columbia
25 Police Department. Is that correct?

1 JUROR: (Nods head affirmatively).

2 THE COURT: All right. Is this case being
3 brought on behalf of the City or the County?

4 MS. CAMPBELL: County.

5 THE COURT: The Richland County Sheriff's
6 Office, Sheriff's Department?

7 MS. CAMPBELL: Yes, sir.

8 THE COURT: Ma'am, on the front row.

9 JUROR: 44.

10 THE COURT: Number 44. What is your connection?

11 JUROR: My husband works at McIntyre Security at
12 McIntyre Air Force base.

13 THE COURT: At McIntyre security?

14 JUROR: Yes.

15 THE COURT: Madam 44, would that fact in any way
16 interfere with your ability to give both the State
17 and defendant a fair and impartial trial in this
18 case?

19 JUROR: No, sir.

20 THE COURT: Thank you very much, ma'am. Yes,
21 sir. Number?

22 JUROR: I am 29.

23 THE COURT: All right, sir.

24 JUROR: My niece works for law enforcement down
25 in Charleston.

1 *THE COURT:* All right. Would that fact in any
2 way interfere with your ability to give both the
3 State and the defendant a fair and impartial trial in
4 this case?

5 *JUROR:* Not at all.

6 *THE COURT:* Thank you very much, Mr. 29. Yes,
7 ma'am, with the striped shirt. You.

8 *JUROR:* Number 40.

9 *THE COURT:* Number 40. Okay.

10 *JUROR:* My son-in-law is an M.P. in the Army.

11 *THE COURT:* Son-in-law is an M.P. All right.
12 Would that fact in any way interfere with your
13 ability to give both the State and the defendant a
14 fair and impartial trial?

15 *JUROR:* No, sir.

16 *THE COURT:* Got to ask the question. All right.
17 Thank you, ma'am. Yes, sir.

18 *JUROR:* Number 47.

19 *THE COURT:* 47. All right, sir.

20 *JUROR:* My brother works for the border patrol.

21 *THE COURT:* Brother. Would that fact in any way
22 interfere with your ability to give both the State
23 and the defendant a fair and impartial trial?

24 *JUROR:* No, sir.

25 *THE COURT:* And the lady with the flowered

1 dress.

2 JUROR: Number 49.

3 THE COURT: Number 49.

4 JUROR: Your Honor, does that include Department
5 of Corrections?

6 THE COURT: Sure.

7 JUROR: Okay. My husband works at the
8 Department of Corrections.

9 THE COURT: All right. Would that fact in any
10 way interfere with your ability to give both the
11 State and the defendant a fair and impartial trial?

12 JUROR: Not at all.

13 THE COURT: Thank you very much, Madam 49. Yes,
14 ma'am.

15 JUROR: 48.

16 THE COURT: 48. Okay.

17 JUROR: I have a second cousin who works for
18 SLED.

19 THE COURT: Could you give me the name?

20 JUROR: Marshall Coleman.

21 THE COURT: Marshall Coleman. Okay. I know
22 there's a list of witnesses in this case. There may
23 be some SLED witnesses on the case. Let me ask you
24 this, Madam 48. Would that fact in any way interfere
25 with your ability to give both the State and

1 defendant a fair and impartial trial?

2 JUROR: No, sir.

3 THE COURT: All right. And, Madam 61, would the
4 fact that you work for the Columbia Police
5 Department, would that in any way interfere with your
6 ability to give both the State and the defendant a
7 fair and impartial trial in this case?

8 JUROR: I'm not an officer. No, sir.

9 THE COURT: Let me ask you, ma'am; what type of
10 position do you hold with the Columbia Police
11 Department?

12 JUROR: I work in the administrative services.

13 THE COURT: Administrative services?

14 JUROR: Mm-hmm (affirmative).

15 THE COURT: Okay. I just didn't know if you
16 were road patrol or an investigator.

17 JUROR: No, sir.

18 THE COURT: Yes, sir.

19 JUROR: 150.

20 THE COURT: 150?

21 JUROR: 150.

22 THE COURT: Okay.

23 JUROR: I'm retired from the Department of
24 Corrections.

25 THE COURT: All right. Would that fact in any

1 way interfere with your ability to give both the
2 State and the defendant a fair and impartial trial?

3 *JUROR:* No, sir.

4 *THE COURT:* Thank you very much. Anybody else?
5 All right. I'm going to go one step further, ladies
6 and gentlemen and ask if any member of the jury panel
7 is a member of or a supporter of or contributor to
8 any group which has as its primary function the
9 support of law enforcement or victims' rights or
10 things of that nature.

11 Let me give you some examples. Mothers Against
12 Drunk Drivers, Students Against Drunk Driving or
13 Citizens Against Violence or groups even such as the
14 Sheriff's Association, the South Carolina Troopers'
15 Association; any of these groups.

16 I would even include in with that Sister Care,
17 groups which have as their primary function the
18 support of law enforcement or the support of victims
19 of crime, victims or victims' rights; I guess even
20 the Austin Wilkes Society that works with police on
21 this.

22 It's just helpful if we know a little bit about
23 you and whether you support any of these particular
24 groups. So, if you do, if you'll please stand and
25 give me your number. Yes, ma'am.

1 JUROR: Number 118.

2 THE COURT: All right.

3 JUROR: And the group is Sister Care.

4 THE COURT: Let me find your -- number 118.

5 Sister Care?

6 JUROR: Yes.

7 JUROR: Number 194.

8 THE COURT: Troopers?

9 JUROR: Yes.

10 THE COURT: Let me find your number. Mr. 194,

11 let me ask you -- and I always ask jurors this.

12 Lawyers get tired of hearing me say it. But Mr. 194.

13 JUROR: Yes.

14 THE COURT: When you joined the Troopers'

15 Association, did you get the little sticker to put on

16 the back of your car?

17 JUROR: I didn't get the sticker. I just sent

18 in donations to it.

19 THE COURT: You're supposed to get a little

20 sticker on the back of your car. Now, everybody else

21 out here knows what you're talking about.

22 JUROR: I know what you're talking about.

23 THE COURT: Well, you'd better put it on your

24 car.

25 JUROR: Yes, sir.

1 **THE COURT:** Because I've been told you won't get
2 a ticket. I don't know if that's true or not. Don't
3 say that I said it. That's what I've heard.

4 **JUROR:** I don't think I'll test it, Your Honor.

5 **THE COURT:** You're a good man. All right.
6 Thank you very much, sir. Anybody else? All right.

7 Now, ladies and gentlemen, the defendant in this
8 case today is Mr. Clyde Leroy McBride. This is
9 Mr. McBride on your right. He's not the one with the
10 white shirt and tie. I'll ask if any member of the
11 jury panel is related by blood or connected by
12 marriage or employment or a close personal
13 acquaintance of Mr. Clyde Leroy McBride? If so,
14 please stand. Anybody know Mr. McBride?

15 All right. Mr. McBride is represented in this
16 matter today by Attorney Tivis Sutherland, an
17 attorney who practices law here in Columbia. I'll
18 ask if any member on the jury panel is related by
19 blood, connected by marriage to Mr. Tivis Sutherland
20 or if you have been represented by him or have been
21 represented by him either in the past or at the
22 present time? Anybody know Mr. Sutherland or have
23 been represented by Mr. Sutherland? If so, please
24 stand. All right. Thank you, counsel.

25 Any member of the jury panel or any member of

1 your family ever been represented by the Public
2 Defender's Office of Richland County? And Mr.
3 Sutherland does not work for the Public Defender's
4 Office, but it would be helpful to know if any member
5 of the jury panel or any member of your family has
6 ever been represented by the Public Defender's office
7 in Richland County? If so, please stand. Yes,
8 ma'am. And your number, please?

9 *JUROR:* Juror number 86.

10 *THE COURT:* 86. And let me just -- I'm not
11 going to ask you anything about the case. But let me
12 ask you, was it you or a member of your family?

13 *JUROR:* It was my son.

14 *THE COURT:* Your son. And how long ago was
15 that?

16 *JUROR:* About five years ago.

17 *THE COURT:* About five years ago. That matter
18 is resolved now?

19 *JUROR:* Yes, sir.

20 *THE COURT:* All right. Would that fact in any
21 way, ma'am, interfere with your ability to give both
22 the State and defendant a fair and impartial trial?

23 *JUROR:* No, sir.

24 *THE COURT:* All right. Thank you very much.
25 Anybody else?

1 All right. Ladies and gentlemen, as I said, the
2 indictments charge the defendant; that is, Mr.
3 McBride, with three different crimes, all of which
4 are alleged to have taken place on or about August
5 the 29th, 2005. So it's 18 months ago now or
6 thereabouts. They charge the defendant, Mr. McBride,
7 with armed robbery in that on or about August the
8 29th he did rob Gayle Roberts by -- and I'm going
9 to -- Ms. Roberts, is she present?

10 MS. CAMPBELL: (Nods head affirmatively).

11 THE COURT: Yes, ma'am. All right. I'm going
12 to introduce Ms. Roberts to you in just a minute.
13 But the charges are that he robbed Ms. Roberts with
14 some sort of a deadly weapon August 29th, 2005.
15 Where did this take place, Solicitor, allegedly?

16 MS. CAMPBELL: It's the Lower Richland area,
17 Your Honor, on -- I believe it's --

18 THE COURT: What road?

19 MS. CAMPBELL: Harmon Road.

20 THE COURT: Harmon Road in Lower Richland
21 County. Is that correct? A residence or a place of
22 business?

23 MS. CAMPBELL: Residence.

24 THE COURT: At a residence. That's the first
25 charge. And I want you to hear that it was Harmon

1 Road in Lower Richland County because some of you may
2 live there. I don't know where you live. You may
3 live in that area.

4 The second charge is that on that same day and
5 at that same time he did kidnap Ms. Roberts. And the
6 third charge is that he, Mr. McBride, is charged with
7 burglary in the first degree which means that he
8 entered the residence of Ms. Roberts. So there are
9 three charges, burglary in the first degree, armed
10 robbery and napping.

11 Now I need to know if any member of the jury
12 panel knows anything about the case. That's the
13 reason I'm telling you this, knowing about it, if you
14 live in that area, heard something about it, read
15 something in the paper. I have no idea whether it
16 was in the press, on television, anything of that
17 nature. Does anything in what I've described to you
18 so far jog your memory a little bit about something
19 that may have happened back in 2005? Yes, sir. And
20 what is your number, please?

21 *JUROR:* 91.

22 *THE COURT:* I'm going the wrong way. Yes, sir,
23 Mr. 91. And what do you recall about it?

24 *JUROR:* I am a close neighbor of these, fairly
25 close, right off of Harmon Road. In fact, I was

1 raised on Harmon Road.

2 THE COURT: All right. And you obviously
3 heard -- did you hear about it?

4 JUROR: Yes, sir. Yes, sir.

5 THE COURT: And did you recall whether you
6 discussed it with anybody? Friends?

7 JUROR: Probably family.

8 THE COURT: Family?

9 JUROR: Yeah. I know all of her family.

10 THE COURT: Are you related to her?

11 JUROR: No, sir. Not really. I don't guess.
12 Well, where we're from out there, we're related
13 somewhere.

14 THE COURT: I was going say; everybody in the
15 neighborhood is sort of a little bit kin, right?

16 JUROR: Yeah.

17 THE COURT: Okay. Mr. Goff, all right. I need
18 to ask you if you can be fair and impartial. But I'm
19 going to hesitate to ask you that question because
20 you're so close to it. So, do you think you could be
21 fair to both parties?

22 JUROR: Probably not. Probably not.

23 THE COURT: It would be hard to do so, wouldn't
24 it?

25 JUROR: (Nods head affirmatively).

1 THE COURT: All right. Thank you very much,
2 sir. Yes, ma'am. I'm sorry. Yes, sir. Front row.

3 JUROR: Number 29. And I remember seeing it on
4 television and hearing about -- I mean, reading it in
5 the paper.

6 THE COURT: Do you recall whether it caused
7 you -- I mean, it caused you to communicate with
8 other people about it? I mean, did you know anybody
9 in it or know any of the --

10 JUROR: I didn't know anybody.

11 THE COURT: You just heard about it on the
12 press?

13 JUROR: Yeah. And I live -- well, I live about
14 probably about four miles from there.

15 THE COURT: All right. But you don't know Ms.
16 Roberts?

17 JUROR: No.

18 THE COURT: I'll ask you the same question,
19 Mr. 29. Would that fact that you had some exposure
20 to this case through the press, would that in any way
21 influence your decision? I mean, do you think that
22 you could give both the State and the defendant a
23 fair and impartial trial?

24 JUROR: I would. I would give them a fair and
25 impartial trial.

1 THE COURT: All right. Thank you very much,
2 Mr. 29. Yes, ma'am.

3 JUROR: Number 49.

4 THE COURT: Number 49. Yes, ma'am.

5 JUROR: I live in the Lower Richland area. And
6 I remember me and my husband, my husband and I was
7 watching the news and we discussed it a little bit.

8 THE COURT: This case?

9 JUROR: Yeah.

10 THE COURT: All right. Do you live close to the
11 area I described?

12 JUROR: I would say roughly five to ten miles
13 away.

14 THE COURT: Okay. Do you happen to know Ms.
15 Roberts?

16 JUROR: I don't.

17 THE COURT: Never met her?

18 JUROR: No.

19 THE COURT: You have no reason to -- Ms. 49,
20 based on the fact that you knew a little bit about it
21 through the press and maybe discussed it with your
22 husband or somebody else, would that fact keep you
23 from rendering a fair and impartial decision to both
24 parties in this case?

25 JUROR: It wouldn't.

1 THE COURT: All right. It's important, and I
2 hope you all, everybody understands it's important
3 that we have a jury that is not biased to start off
4 with. So that's why I'm asking these fairly pointed
5 questions.

6 All right. Ladies and gentlemen, I'm going to
7 read a list of witnesses. It's a rather lengthy list
8 but most of them are law enforcement officers. And
9 the question is the same with regard to all of them:
10 Is anybody member of the jury panel related by
11 marriage, employment, a close personal acquaintance
12 of any one of the following. And I'll pause between
13 each one. Just raise your hand if any of these
14 people are familiar to you.

15 And I'll ask at this time Ms. Gayle Roberts to
16 stand because I'm not sure everybody has met Ms.
17 Roberts. This is Ms. Roberts. She will be a witness
18 in this case. Anybody know Ms. Roberts? Thank you,
19 ma'am.

20 Investigator Shawn McDaniels with the Richland
21 County Sheriff's Department. Janell McMillan with
22 the Richland County Sheriff's Department. Now,
23 obviously -- or I'll just tell you -- a lot of these
24 witnesses are not here right now. And they will be
25 called presumably at different points in the trial.

1 Investigator Robert Oates with the Richland
2 County Sheriff's Department. Sergeant Gregory
3 Chumley with the Richland County Sheriff's
4 Department. Joshua Saathoff. Erwin Roberts. Gray
5 Amick, Richland County Sheriff's Department. Agent
6 Freeman works in Orangeburg. Investigator Scott
7 McDonald, the Richland County Sheriff's Office.

8 Captain Stan Smith with the Richland County
9 Sheriff's Department. Deputy Wayne Barker with the
10 Richland County Sheriff's Department. Lieutenant
11 Rogalis, Calhoun county Sheriff's Department. Chief
12 David Wilson, the Richland County Sheriff's
13 Department.

14 Investigator Edmonds, Richland County Sheriff's
15 Department. Damon Wilson. Deion Jenkins. Stan
16 Richards, Richland County Sheriff's Department. Anna
17 Clemens. Oh. I'm sorry. Your number again?

18 **JUROR:** 194.

19 **THE COURT:** 194. And --

20 **JUROR:** I know Investigator Edmonds.

21 **THE COURT:** Edmonds?

22 **JUROR:** Yes, sir.

23 **THE COURT:** Let me just ask, is it a close
24 personal relationship? I mean, is it a social
25 relationship, or are you involved in a men's, I mean,

1 a fraternity with him or go to church with him or --

2 JUROR: Well, it's business and personal.

3 THE COURT: Business and personal. All right.
4 Well, I don't know what his role in this case is, but
5 I do need to ask the fact that you know Investigator
6 Edmonds, he's not your partner in business? Or is
7 he?

8 JUROR: No.

9 THE COURT: I mean, he's not that close?

10 JUROR: He's one of my customers.

11 THE COURT: One of your customers. Okay. All
12 right. Would that fact in any way interfere with
13 your ability to give both the State and the defendant
14 a fair and impartial trial?

15 JUROR: No, sir.

16 THE COURT: Thank you very much. All right. We
17 were down to Anna Clemens. Lonnie Gross, Richland
18 County Sheriff's Department. Trish Collins, Richland
19 County. Patricia Reid, Richland County. Eddie Cole
20 with some County Towing service. Tena Goff, Richland
21 County Sheriff's Department. Joy Delatorre, Richland
22 County Sheriff's Department. Bev Crane, Richland
23 County Sheriff's Department. Paul McManus.

24 All right, ladies and gentlemen. I need to ask
25 if any member of the jury panel or any member of your

1 family, now that you know what the charges are in
2 this case, I need to know if any member of the jury
3 panel or any member of your family has ever been the
4 victim of a crime of violence? A victim of a crime
5 of violence. Any member of the jury panel or any
6 member of your family?

7 And when you stand, I'm just going to ask some
8 real basic questions. I'm not going to ask you to
9 get into it in any great detail. Yes, ma'am. And
10 your number, please?

11 *JUROR:* 205.

12 *THE COURT:* All right. Ms. 205, can you tell
13 me, was it you or a member of your family?

14 *JUROR:* It was a member of my family. My
15 mother-in-law and father-in-law was robbed in their
16 driveway.

17 *THE COURT:* How long ago did that take place?

18 *JUROR:* About four years ago.

19 *THE COURT:* Ms. 205, would that fact in any
20 way -- or do you feel you could be fair and impartial
21 to both parties in this case, given that part of your
22 family history?

23 *JUROR:* Yes, I could.

24 *THE COURT:* Thank you very much. The lady with
25 the black dress on.

1 JUROR: Brown shirt?

2 THE COURT: My eyes are failing me. A brown
3 shirt.

4 JUROR: Juror 228.

5 THE COURT: Number 28?

6 JUROR: 228.

7 THE COURT: 28. Oh, 228. Yes, ma'am.

8 JUROR: My stepfather's brother and sister were
9 killed by a robber.

10 THE COURT: Step --

11 JUROR: My stepfather's brother and sister.

12 THE COURT: Stepfather's brother and sister?

13 JUROR: Yes.

14 THE COURT: Ma'am, would that fact and that part
15 of your -- how long ago did that take place?

16 JUROR: This was in Jersey. One was 12 years
17 ago and the other one was maybe 14 years ago.

18 THE COURT: All right. Would that fact in any
19 way interfere with your ability to give both the
20 State and the defendant a fair and impartial trial?

21 JUROR: No.

22 THE COURT: All right. Thank you, Ms. 228. The
23 lady with the orange sweater and black --

24 JUROR: Number 118.

25 THE COURT: 182?

1 JUROR: 118.

2 THE COURT: 118. Yes, ma'am.

3 JUROR: Domestic violence.

4 THE COURT: How long ago?

5 JUROR: Last year.

6 THE COURT: All right. Would that fact in any
7 way interfere with your ability to give both the
8 State and the defendant a fair and impartial trial?

9 JUROR: No, it would not.

10 THE COURT: It would not. Thank you very much.
11 Yes, sir.

12 JUROR: 91.

13 THE COURT: Mr. 91. I've got to flip back and
14 forth on this list. Yes, sir.

15 JUROR: Right before Christmas my son had a
16 four-wheeler stolen. And about a week later my
17 cousin's son had a pick-up stolen out of the
18 driveway. And all this is probably within a quarter
19 of a mile of where we all live.

20 THE COURT: Thank you very much, Mr. 91. Yes,
21 sir, with the black shirt.

22 JUROR: Number 47. I had two people break into
23 our house while they were home.

24 THE COURT: How long ago? Two years?

25 JUROR: About seven years ago.

1 THE COURT: Seven years. Would that fact in any
2 way interfere with your ability to give both the
3 State and the defendant a fair and impartial trial?

4 JUROR: It would not.

5 THE COURT: All right. And your number, please?

6 JUROR: 196.

7 THE COURT: Yes, ma'am.

8 JUROR: It was domestic violence five years ago.

9 THE COURT: All right. You or a member of your
10 family?

11 JUROR: A member of my family.

12 THE COURT: All right. Would that fact in any
13 way interfere with your ability to give both the
14 State and the defendant a fair and impartial trial?

15 JUROR: No, sir.

16 THE COURT: All right. Thank you very much,
17 Madam 196. All right. Now, just the opposite of
18 that question I asked you about victims. Any member
19 of the jury panel or any member of your family been
20 accused of in a formal sense now a crime of violence,
21 accused of committing a crime of violence? If so,
22 please stand. And I forgot your number.

23 JUROR: 118.

24 THE COURT: 118. Is that the same --

25 JUROR: Yes.

1 THE COURT: -- incident you spoke of earlier?

2 JUROR: Yes.

3 THE COURT: All right. Thank you very much.

4 And Ms. 118 has indicated that would not interfere
5 with her ability to give both the State and the
6 defendant a fair and impartial trial. Am I correct?

7 JUROR: You are correct.

8 THE COURT: Yes, ma'am.

9 JUROR: 196. It's the same incident.

10 THE COURT: Ma'am?

11 JUROR: It's the same incident.

12 THE COURT: The same incident. And again, since
13 you indicated that would not interfere with your
14 ability to give -- would the fact that that person
15 was charged in any way interfere with your ability to
16 give the State and the defendant a fair and impartial
17 trial?

18 JUROR: (Shakes head negatively).

19 THE COURT: Thank you very much. All right,
20 ladies and gentlemen. Given what I've told you about
21 the case -- and, Mr. 91, I understand your
22 position -- is there any member of the jury panel,
23 given the facts as I told you, and those are only the
24 allegations as I have also told you, that would
25 prevent you from giving both the defendant a fair and

1 impartial trial for any reason? In other words, any
2 member of the jury panel know of any reason why they
3 could not give both the State and the defendant a
4 fair and impartial trial other than Mr. 91?

5 Anything further from the State?

6 MS. CAMPBELL: Nothing, Your Honor.

7 THE COURT: From the defense?

8 MR. SUTHERLAND: Not from the defense, sir.

9 THE COURT: All right. Madam Clerk, give us a
10 jury, please.

11 THE CLERK: Yes, sir. Ladies and gentlemen of
12 the jury panel, as I call your number, please come to
13 the microphone at the center of the courtroom
14 bringing any personal belongings with you and state
15 your occupation. Number 202.

16 (White female)

17 JUROR: Elizabeth Caulk, marketing assistant.

18 THE CLERK: What says the State?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: What says the defense?

21 MR. SUTHERLAND: Please swear the juror.

22 THE CLERK: Please have a seat in the jury box.

23 THE COURT: Remind them to give their number. I
24 said remind them to give their number.

25 JUROR: When you come up, just give your number,

1 not your name. Number 148.

2 THE COURT: Well, we like your names, but ...

3 (Black female)

4 JUROR: Number 148, retired army veteran and
5 work for FDRI at Ft. Jackson.

6 THE CLERK: What says the State?

7 MS. CAMPBELL: Please present the juror.

8 THE CLERK: What says the defense?

9 MR. SUTHERLAND: Please excuse the juror.

10 THE CLERK: Please have a seat in the back of
11 the courtroom. Number 235.

12 (White male)

13 JUROR: Number 235, financial adviser.

14 THE CLERK: What says the State?

15 MS. CAMPBELL: Please present the juror.

16 THE CLERK: What says the defense?

17 MR. SUTHERLAND: Please swear the juror.

18 THE CLERK: Please have a seat in the jury box.
19 Number 187.

20 (White female)

21 JUROR: 187. I'm an accountant.

22 THE CLERK: What says the State?

23 MS. CAMPBELL: Please present the juror.

24 THE CLERK: What says the defense?

25 MR. SUTHERLAND: Please swear the juror.

1 THE CLERK: Please have a seat in the jury box.

2 Number 96.

3 (Black female)

4 JUROR: Number 96, hostess.

5 THE CLERK: What says the State?

6 MS. CAMPBELL: Please present the juror.

7 THE CLERK: What says the defense?

8 MR. SUTHERLAND: Please swear the juror.

9 THE CLERK: Please have a seat in the jury box.

10 Number 40.

11 (White female)

12 JUROR: Number 40, retired nurse.

13 THE CLERK: What says the State?

14 MS. CAMPBELL: Please present the juror.

15 THE CLERK: What says the defense?

16 MR. SUTHERLAND: Please excuse the juror.

17 THE CLERK: Please have a seat in the back of
18 the courtroom.

19 THE COURT: All right, counsel. Approach the
20 bench just one second.

21 MR. SUTHERLAND: Yes, sir.

22 (Whereupon, a bench conference is had)

23 THE CLERK: Number 80.

24 (Black male)

25 JUROR: Number 80, sales marking.

1 THE CLERK: What says the State?

2 MS. CAMPBELL: Please excuse the juror.

3 THE CLERK: Please have a seat in the back of

4 the courtroom. Number 199.

5 (Black female)

6 JUROR: Number 199, assistant manager at

7 Lourie's.

8 COURT REPORTER: I didn't hear her, Your Honor.

9 THE BAILIFF: You've got to speak up loud.

10 JUROR: 199, assistant manager at Lourie's.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SUTHERLAND: Please swear the juror.

15 THE CLERK: Please have a seat in the jury box.

16 Number 34.

17 (Black female)

18 JUROR: Number 34, Hollow Packing National.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. SUTHERLAND: Please swear the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Number --

25 THE COURT: All right. Where is the other

1 cellphone?

2 MR. SUTHERLAND: It's not mine.

3 THE COURT: Go ahead.

4 THE CLERK: Number 203.

5 (White male)

6 JUROR: Number 203, physician.

7 THE CLERK: What says the State?

8 MS. CAMPBELL: Please present the juror.

9 THE CLERK: What says the defense?

10 MR. SUTHERLAND: Please swear the juror.

11 THE CLERK: Please have a seat in the jury box.

12 Number 209.

13 (White male)

14 JUROR: 209, self-employed.

15 THE CLERK: What says the State?

16 MS. CAMPBELL: Please present the juror.

17 THE CLERK: What says the defense?

18 MR. SUTHERLAND: Please swear the juror.

19 THE CLERK: Please have a seat in the jury box.

20 Number 26.

21 (White male)

22 JUROR: Number 126, and I'm a minister.

23 THE CLERK: What says the State?

24 MS. CAMPBELL: Please excuse the juror.

25 THE CLERK: Please have a seat in the back of

1 the courtroom. Number 14.

2 (Black male)

3 *JUROR:* Number 14. I do security at a club.

4 *THE CLERK:* What says the State?

5 *MS. CAMPBELL:* Please excuse the juror.

6 *THE CLERK:* Please have a seat in the back of
7 the courtroom. Number 191.

8 (White female)

9 *JUROR:* 191, retail manager.

10 *THE CLERK:* What says the State?

11 *MS. CAMPBELL:* Please present the juror.

12 *THE CLERK:* What says the defense?

13 *MR. SUTHERLAND:* Please excuse the juror.

14 *THE CLERK:* Please have a seat in the back of
15 the courtroom. Number 63.

16 (White male)

17 *JUROR:* Number 63, substitute teacher at
18 Cardinal Newman School and a temporary consultant at
19 Pets, Inc.

20 *THE CLERK:* What says the State?

21 *MS. CAMPBELL:* Please present the juror.

22 *THE CLERK:* What says the defense?

23 *MR. SUTHERLAND:* Please excuse the juror.

24 *THE CLERK:* Please have a seat in the back of
25 the courtroom. Number 69.

1 (Black female)

2 JUROR: Shirley Flood, assistant teacher and a
3 certified med tech.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Please present the juror.

6 THE CLERK: What says the defense?

7 MR. SUTHERLAND: Please swear the juror.

8 THE CLERK: Please have a seat in the jury box.

9 Number 3.

10 (White female)

11 JUROR: Juror number 3, housewife.

12 THE CLERK: What says the State?

13 MS. CAMPBELL: Please present the juror.

14 THE CLERK: What says the defense?

15 MR. SUTHERLAND: Please excuse the juror.

16 THE CLERK: Please have a seat in the back of
17 the courtroom. Number 205.

18 (White female)

19 JUROR: Number 205. I work for a photo company.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SUTHERLAND: Please excuse the juror.

24 THE CLERK: Please have a seat in the back of
25 the courtroom. Number 150.

1 (Black male)

2 JUROR: Number 150, retired.

3 THE CLERK: What says the State?

4 MS. CAMPBELL: Please present the juror.

5 THE CLERK: What says the defense?

6 MR. SUTHERLAND: Please excuse the juror.

7 THE CLERK: Please have a seat in the back of
8 the courtroom. Number 194.

9 (Black male)

10 JUROR: 194, master barber, self-employed.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SUTHERLAND: Please excuse the juror.

15 THE CLERK: Please have a seat in the back of
16 the courtroom. Number 61.

17 (White female)

18 JUROR: Number 61, City of Columbia Police
19 Department, administrative secretary.

20 THE CLERK: What says the State?

21 MS. CAMPBELL: Please present the juror.

22 THE CLERK: What says the defense?

23 MR. SUTHERLAND: Please excuse the juror.

24 THE CLERK: Please have a seat in the back of
25 the courtroom. The strike count is nine for the

1 defense and three for the State. Number 138.

2 (Black male)

3 JUROR: Number 138, Dry Select Backgrounds.

4 THE CLERK: What says the State?

5 MS. CAMPBELL: Please excuse the juror.

6 THE CLERK: Please have a seat in the back of
7 the courtroom. Number 29.

8 (White male)

9 JUROR: Number 29, director of operations,
10 Capitol City Food, Inc.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please present the juror.

13 THE CLERK: What says the defense?

14 MR. SUTHERLAND: Please swear the juror.

15 THE CLERK: Please have a seat in the jury box.
16 Number 48.

17 (White female)

18 JUROR: Number 48, occupational therapist.

19 THE CLERK: What says the State?

20 MS. CAMPBELL: Please present the juror.

21 THE CLERK: What says the defense?

22 MR. SUTHERLAND: Please swear the juror.

23 THE CLERK: Please have a seat in the jury box.

24 Number 44.

25 (Black female)

1 JUROR: Number 44, clinical technician.

2 THE CLERK: What says the State?

3 MS. CAMPBELL: Please present the juror.

4 THE CLERK: What says the defense?

5 MR. SUTHERLAND: Please excuse the juror, sir.

6 THE CLERK: Please have a seat in the back of
7 the courtroom. Number 230.

8 (White male)

9 JUROR: Number 230, licensed clinical
10 psychologist.

11 THE CLERK: What says the State?

12 MS. CAMPBELL: Please excuse the juror.

13 THE CLERK: Please have a seat in the back of
14 the courtroom. Number 157.

15 (Black female)

16 JUROR: Number 157, progressive english
17 literature.

18 THE CLERK: Does the State challenge for cause?

19 MS. CAMPBELL: Please present the juror.

20 THE CLERK: Does the defense challenge for
21 cause?

22 MR. SUTHERLAND: Please seat the juror.

23 THE CLERK: Please have a seat in the jury box.

24 THE COURT: Counsel, one or two alternates?
25 Lengthy case?

1 MS. CAMPBELL: Whichever you prefer.

2 THE COURT: Well, approach the bench.

3 (Whereupon, a bench conference is had)

4 THE COURT: Draw two alternates, please.

5 THE CLERK: Yes, sir. Number 45.

6 (White male)

7 JUROR: Number 45, physician.

8 THE CLERK: What says the State?

9 MS. CAMPBELL: Please present the juror.

10 THE CLERK: What says the defense?

11 MR. SUTHERLAND: We'd like to strike the juror

12 for cause.

13 THE COURT: Cause?

14 MR. SUTHERLAND: He was a prosecution witness in

15 the case.

16 THE COURT: Approach the bench.

17 MR. SUTHERLAND: Yes, sir.

18 (Whereupon, a bench conference is had)

19 MR. SUTHERLAND: Please excuse the juror.

20 THE CLERK: Please have a seat in the back of

21 the courtroom. Number 55.

22 (White female)

23 JUROR: Number 55, registered nurse.

24 THE CLERK: What says the State?

25 MS. CAMPBELL: Please present the juror.

1 **THE CLERK:** What says the defense?

2 **MR. SUTHERLAND:** Please swear the juror.

3 **THE CLERK:** Please have a seat in the jury box.

4 Number 118.

5 (Black female)

6 **JUROR:** Number 118, data technician, portrait
7 painter.

8 **THE CLERK:** What says the State?

9 **MS. CAMPBELL:** Please present the juror.

10 **THE CLERK:** What says the defense?

11 **MR. SUTHERLAND:** Please swear the juror.

12 **THE CLERK:** Please have a seat in the jury box.

13 **THE COURT:** All right, counsel. Any objection
14 to the jury selection process?

15 **MS. CAMPBELL:** Nothing from the State, Your
16 Honor.

17 **MR. SUTHERLAND:** Not from the defense, Your
18 Honor.

19 **THE COURT:** All right. Fine. Thank you very
20 much.

21 All right, ladies and gentlemen, members of jury
22 panel who were not selected on this case, I'm going
23 to ask you now to return to the jury assembly room at
24 which time you may find further assignments for
25 today. I doubt that, but there may be some later in

1 the week. I do want to take this opportunity to
2 thank you for coming, thank you for being willing to
3 serve, thank you for being candid in your answers to
4 my questions. I may see you later in the week; I may
5 not. But have a nice day, those of you who are
6 heading out. And maybe I'll see you later in the
7 week. Good luck to all of you. Thank you very much.

8 All right, Ladies and Gentlemen of the Jury.
9 There are a number of -- before we start this case,
10 before we start the actual trial, there are a number
11 of things, legal matters I need to take up with the
12 attorneys before we actually start the testimony. So
13 I'm going to dismiss you now for the day and ask you
14 to be back in your jury room at 9:30.

15 I'm going to ask you to do several things.
16 First off, the bailiffs are going to show you where
17 your jury room is. In other words, throughout the
18 trial you will occupy a jury room on the third floor
19 here. So when you return in the morning don't go
20 back to the jury assembly room. The bailiffs are
21 going to tell you how to get up here. And come back
22 directly to the jury room at which time we'll start
23 the trial.

24 Now, another thing I need to ask you to do is
25 not discuss this case with anyone else over the

1 evening hours, not members of your family or friends
2 or anyone else, because you don't know much about the
3 case. I don't know much about the case. I don't
4 know much more than you do about it at this point in
5 time. So it would be improper to start discussing it
6 with anybody over the evening hours.

7 The third thing I'm going to ask you to do when
8 you return to the jury room in the morning, there
9 will be some coffee waiting for you. So take a few
10 minutes, get to know each other. And I'm going to
11 ask you to select one of your members, it doesn't
12 matter who it is, except the last two ladies chosen,
13 selected could not serve as Foreman of the Grand Jury
14 or a Foreperson of the Grand Jury I should say.

15 I'm going to ask you to select one of your
16 members to be the foreperson of the jury. I always
17 tell jurors the foreperson doesn't get paid any more
18 than anybody else. It's just something that we need
19 to have one person who will eventually write the
20 verdict in the case if that becomes necessary.

21 That person, whoever it may be, will take the
22 seat occupied by the first lady chosen on the front
23 row here with the print dress. I guess that's called
24 a print dress. And will occupy that seat throughout
25 the trial. The rest of the seats don't have any

1 names on them. I just want you to sit where you're
2 comfortable, where you can hear and see the witnesses
3 at this witness stand and wherever it's most
4 convenient and comfortable for you. And as I say,
5 the seats don't have any names on them. You don't
6 have to sit in the same seat every time. Just as you
7 sort of come in and out of the courtroom you'll see
8 how that works.

9 The last thing I'm going to ask you to do is to
10 have a pleasant evening. See you at 9:30 in the
11 morning. We'll get started at that time. Thank you
12 very much.

13 (Jury out at 3:53 p.m.)

14 **THE COURT:** All right counsel. Any matters of a
15 pre-trial nature?

16 **MR. SUTHERLAND:** Yes, sir. Your Honor, at this
17 time I'd like to first to renew my discovery motion.

18 **THE COURT:** All right.

19 **MR. SUTHERLAND:** All right. I'd like to move to
20 settle the record of the State's witnesses. I mean,
21 I know the law enforcement people wouldn't --

22 **THE COURT:** All right. Well, make your
23 discovery motion.

24 **MR. SUTHERLAND:** Oh. Just renew my motion for
25 discovery, my discovery motion.

1 THE COURT: I need some response from them.

2 MS. CAMPBELL: I think we've supplied
3 everything, Your Honor. We do have the evidence here
4 today. We've given him a copy of all the
5 photographs. In addition to that we've gone through
6 discovery I think several times and provided him
7 anything. I'll be glad to meet with him again today
8 and let him go through the original case jacket.

9 THE COURT: Is that satisfactory?

10 MR. SUTHERLAND: Yes, sir.

11 THE COURT: Next motion. Settle the record?

12 MR. SUTHERLAND: To settle the record of the
13 State's witnesses who are not law enforcement.

14 THE COURT: Any problem with that?

15 MS. CAMPBELL: No, sir. Ms. Roberts does not
16 have any record. As far as witnesses we anticipate
17 putting up, we are putting up potentially either the
18 owner of the towing service or the tow truck driver.
19 I'll check on that. I don't know whether or not they
20 have records at this point.

21 THE COURT: We'll have them for you in the
22 morning, Mr. Sutherland.

23 MR. SUTHERLAND: Thank you, sir.

24 THE COURT: Anything else?

25 MR. SUTHERLAND: Yes, sir. At this time I would

1 like to make a showing that the defense is entitled
2 to a Franks hearing, sir, on the arrest warrant.

3 *THE COURT:* All right. Well, let's do one other
4 thing. It's my understanding if we're going to -- if
5 there is a Jackson v. Denno, could we take that up
6 first and maybe let the officers go? I'm not sure
7 which would be more convenient.

8 *MS. CAMPBELL:* That's fine, Your Honor.

9 *THE COURT:* Does that suit you?

10 *MR. SUTHERLAND:* Yes, sir. I believe that that
11 would be fine, Your Honor.

12 *THE COURT:* Is the Franks hearing going to
13 require witnesses?

14 *MR. SUTHERLAND:* Yes, sir. I believe that it
15 would require --

16 *MS. CAMPBELL:* I'm sure we could come to some
17 agreement on what the facts are. If we talk to him,
18 I think we may be able to knock it out. We'll just
19 make representations as officers of the court. If
20 there is a problem with that, I'll bring it up.

21 *THE COURT:* All right.

22 *MR. SUTHERLAND:* Well, I had anticipated cross
23 examining the officer.

24 *THE COURT:* What officers?

25 *MR. SUTHERLAND:* Investigator McDaniels.

2 MR. SUTHERLAND: Yes, sir.

4 THE COURT: Well, let's take up the statement.

6 MS. CAMPBELL: The State calls Sergeant
7 McDaniels.

9 WALTER S. MCDANIELS, after affirming to tell the
10 truth, testifies as follows:

14 WITNESS: Walter McDaniels.

15 DIRECT EXAMINATION

17 Q Sergeant McDaniels, where are you employed?

18 A The Richland County Sheriff's Department.

19 | 0 What do you do there, sir?

20 A I am currently a sergeant of the cold case unit.

21 Q I want to turn your attention back to 2005, August of
22 2005. Did you get assigned a case involving a
23 victim, Ms. Roberts, in this case?

24 A Yes, I did, ma'am.

25 | 0 And initially, from the actual crime scene at her

1 residence, were you initially able to develop a
2 suspect in the case?

3 A Initially, no, ma'am.

4 Q Were you aware that her car was taken during the
5 course of the robbery?

6 A Yes, I was.

7 Q And did you also become aware during the course of
8 your investigation that that car was recovered?

9 A Yes, I did.

10 Q When was the car recovered?

11 A It was recovered actually on the 25th of September.

12 Q Of September. This crime actually occurred on, I
13 believe it's August 29th?

14 A August 29th, 2005.

15 Q Once the car was recovered, did you become aware that
16 the car was actually processed by crime scene
17 investigators?

18 A Yes, I was.

19 Q As part of that crime scene investigation, did they
20 actually swab the steering wheel of the inside of the
21 car?

22 A Yes, they did, ma'am.

23 Q Once that was done, was a DNA profile developed from
24 the swab from the steering wheel inside the car?

25 A Yes, it was.

Walter S. McDaniels - Direct by Ms. Campbell (In camera)

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1 Q And was that ultimately run through what's known as
2 CODIS?

3 A Yes, it is.

4 Q Can you explain to the judge, what's CODIS?

5 A It is a known data base that stores DNA information.

6 Q Were you then later notified about a CODIS match in
7 this case?

8 A I was.

9 Q Who did the CODIS match to?

10 A It matched to Mr. Clyde Leroy McBride.

11 Q Based on that information, did you also have a
12 general description of Mr. McBride?

13 A I did. From the initial report I had a description
14 also.

15 Q From the initial report from Ms. Roberts?

16 A Yes, ma'am.

17 Q And did you compare that to the physical description
18 you had of Clyde Leroy McBride?

19 A Yes, I did.

20 Q Based on that information, did you then draw up a
21 warrant in this case?

22 A I did. Yes, ma'am.

23 Q And once the warrant was secured, was it for a
24 felony?

25 A Yes, it was.

1 Q Once that was secured, did you make any attempts to
2 arrest the defendant?

3 A I did.

4 Q And tell the judge how that happened?

5 A I actually made contact with the South Carolina
6 Probation and Parole Agent Freeman. Her name was
7 given in addition to the CODIS hit. Once I made
8 contact with her, she advised me that the defendant
9 would be in on a particular day. We had some
10 miscommunication initially, and then actually on
11 December 8th I was called by Agent Freeman and she
12 told me that Mr. McBride would be in that morning at
13 11:30. I then got a phone call approximately 11:15
14 from Agent Freeman. She told me that Mr. McBride was
15 in the office. I told her I was on my way. And I
16 made contact with Mr. McBride in Orangeburg at the
17 South Carolina Probation and Parole office.

18 Q At that point did you then place him under arrest for
19 the outstanding warrant?

20 A Yes, I did.

21 Q I believe that warrant was for armed robbery?

22 A Yes, ma'am.

23 Q Did you transport him back to the Richland County
24 Sheriff's Department?

25 A Yes, I did.

Walter S. McDaniels - Direct by Ms. Campbell (In camera)

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1 Q And prior to doing any questioning of the defendant,
2 did you advise him of any rights?

3 A I did, ma'am.

4 Q Where did that take place?

5 A That took place at the Richland County Sheriff's
6 Department here in Columbia. I did inform Mr.
7 McBride in Orangeburg of why he was being placed
8 under arrest.

9 Q And what did you tell him about why he was being
10 arrested?

11 A I told him he was under arrest for armed robbery and
12 it was as a result of his DNA being matched to the
13 victim's vehicle.

14 Q Okay. Once you got him back to the Sheriff's
15 Department, you said you advised him of his rights.
16 I want to show you a copy of this
17 interrogation/advice of rights sheet. Do you
18 recognize that?

19 A Yes, I do, ma'am.

20 Q Is that the original sheet you actually used in this
21 case?

22 A Yes, it is.

23 Q And the name at the time -- whose handwriting is this
24 at the top?

25 A That's my handwriting.

1 Q And I notice that there are some rights we go through
2 and then there are some X's over here. Tell the
3 judge how you actually advised him of his rights on
4 that day?

5 A We used this form here to actually advise him. I
6 read the verbiage out, and also it's broken down into
7 segmented sentences. I actually went through each
8 sentence, stopped, paused, asked him if he
9 understood. He stated yes, and I would check each
10 box next to each sentence.

11 Q After you advised him of his rights, did he in any
12 way acknowledge that he understood his rights?

13 A Yes, he did. He --

14 Q How was that?

15 A He signed it.

16 Q That's his signature over here on the right side?

17 A Yes, ma'am, it is.

18 Q Whose signature is that as a witness?

19 A That's my signature.

20 Q Once he had been advised of his rights, indicated he
21 understood them, did you then continue with the
22 waiver of rights?

23 A Yes, I did. At the bottom here I actually went into
24 a little more details pertaining to his rights. It
25 says: "I have read this statement of my rights. I

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1 understand what my rights are. I am willing to talk
2 and answer questions. I understand and know what I
3 am doing. No promises have been made to me and no
4 pressure or coercion of any kind has been used
5 against me." Again I asked him if he understood that
6 prior to checking it. He stated yes, and then I then
7 checked it.

8 Q And once you asked him whether or not he waived those
9 rights, did he indicate whether or not he was willing
10 to talk to you?

11 A He stated that he was willing.

12 Q Okay. And at that point did you have him acknowledge
13 that on this sheet of paper, the second signature?

14 A Yes. He signed it.

15 MS. CAMPBELL: Your Honor, at this time we offer
16 it for purposes of this hearing as State's Exhibit 1.

17 (WHEREUPON, State's Exhibit No. 1 is marked for
18 identification.)

19 Q And the time the advice of rights were initiated, is
20 that indicated on here?

21 A Yes, it is.

22 Q What time was that?

23 A That's actually at 13:24 hours.

24 Q So that would be 1:25 in the afternoon?

25 A Yes, ma'am.

1 Q Thank you. Your Honor, may I hand this up? at any
2 point when you advised him of his rights or at any
3 time while he was in custody prior to asking him a
4 question specifically about this case -- because
5 before you just told him why you were arresting him,
6 right?

7 A Yes, I did.

8 Q Prior to asking him any questions, did you promise
9 him anything to get him to talk to you?

10 A No, ma'am.

11 Q Did you threaten him in any way?

12 A No, ma'am.

13 Q Did you try to coerce him in any way?

14 A No.

15 Q Did you deprive him of any creature comforts, such as
16 wouldn't let him go to the bathroom or no water or
17 anything like that?

18 A No, ma'am.

19 Q At any time did he appear to be under the influence
20 of any intoxicating liquors or drugs?

21 A No, he did not.

22 Q And in your opinion as an investigator, was he
23 cooperating? Was he voluntarily cooperating with
24 you?

25 A Yes, he was.

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1 Q At any time did he tell you he didn't want to talk to
2 that you any more?

3 A No, ma'am.

4 Q At any time did he tell you he didn't want to talk to
5 you until he talked to his lawyer or he wanted his
6 lawyer?

7 A No, ma'am.

8 Q Once you had advised him of his rights and he
9 indicated he wanted to talk to you, did you then get
10 a statement from the defendant?

11 A Yes, I did.

12 Q I'm going to show you one, two -- a six-page
13 statement and ask if you recognize that?

14 A Yes, I do.

15 Q Is that this statement that you actually took from
16 the defendant in December of '05?

17 A Yes, it is, ma'am.

18 Q And I notice that there is some questions and answers
19 in there. You were asking the questions?

20 A I was; yes, ma'am.

21 Q Whose words are those in the answer form?

22 A Mr. McBride.

23 Q And tell the judge basically how you took the
24 statement and how it got reduced to writing?

25 A I typed it and I asked the questions, typed the

1 question, asked him the question. Then I would type
2 up his -- I would type his answer.

3 Q Once he was able to answer all the questions and they
4 were reduced to a typewritten form, did you then give
5 him the opportunity to go back and change anything?

6 A Yes, I did.

7 Q How did that occur?

8 A I read the statement to him. I read his statement to
9 him and I asked if there was anything he wanted to
10 change. And I believe on the -- actually at the end
11 of it I asked him if there was anything he wanted to
12 add to the statement. That's my normal practice. Is
13 there anything you would like to add to this
14 statement is what I asked him the second to the last
15 question.

16 Q And that's when you went back and added that?

17 A Yes, ma'am. He'd added that actually. He wanted to
18 add that to his statement.

19 Q Once you had gone through the statement, reduced it
20 to writing and then in gone back through with it with
21 him and he added the part he wanted added, did he
22 then go through and acknowledge that this was his
23 statement?

24 A Yes, he did.

25 Q Is that his signature here at the end of each page?

Walter S. McDaniels - Direct by Ms. Campbell (In camera)

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1 A Yes, it is, ma'am.

2 Q Down here at the notary, who is that?

3 A That's me.

4 Q At any time again during the course you were talking
5 to him; this was initialed at I believe 1:30?

6 A Yes, ma'am.

7 Q And where did the interview actually take place?

8 A Richland County Sheriff's Department headquarters.

9 Q And in what room?

10 A It was actually in my cubicle.

11 Q Okay. At any point did he indicate that he didn't
12 back want to talk any more?

13 A No, ma'am.

14 Q Did you threaten him in any way or promise him
15 anything?

16 A No, I did not.

17 Q During the entire time until you reduced it to
18 writing and everything, did anyone force him to give
19 you a statement?

20 A No, ma'am.

21 Q And did he ever ask for an attorney?

22 A No, he did not.

23 Q Do you know approximately how long it was that you
24 all -- the statement took?

25 A I'm not sure how long.

1 Q Thank you. Please answer any questions the defense
2 may have.

3 MR. SUTHERLAND: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. SUTHERLAND

7 Q Sir, you indicated in your report that you took Mr.
8 McBride into custody over in Orangeburg at 13:00
9 hours?

10 A Actually in my initial follow-up it's an approximate
11 time that actually I made it down there. I got the
12 phone call at approximately 11:15. I immediately
13 left. It's about a 40-minute drive to Orangeburg;
14 made contact with him approximately anywhere between
15 12:00 to 12:15, came back to the Sheriff's Department
16 here in Columbia, got here about 1:00; well, between
17 1 and 1:15 in Columbia.

18 Q So then your report, it's not accurate that you took
19 him into custody at that point to your knowledge?

20 A Oh, I have it right here. The follow-up that
21 indicates that I made contact with him; again, that's
22 an approximate time. It's not ...

23 Q Well, is it important to be accurate about these
24 rights in case you're in court maybe testifying about
25 something?

Walter S. McDaniels - Cross by Mr. Sutherland (In camera)
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1 A That was the purpose of documenting on the actual
2 advice of rights and on the statement.

3 Q I think on -- was it you logged into your computer at
4 13:22, did the advice of rights at 13:25, and then it
5 was 13:30 that was the time of the statement? Is
6 that right, sir?

7 A I believe that is.

8 Q Okay. Just to be clear. So your testimony here
9 today is that you did not pick him up at 13:00. Beg
10 the Court's indulgence, sir. Okay. He was taken
11 into custody in Orangeburg. Was that
12 approximately -- you said you got the call at 11:15?

13 A Anywhere between 11 and 11:15 I got the call.

14 Q And they said that he was in custody and you could
15 come pick him up?

16 A They said that he was in the office.

17 Q Yeah.

18 A If I may, actually if you would refer back to the
19 same follow-up, earlier where it states on the
20 November 17th of '05 at 09:00 hours, it says that an
21 armed robbery warrant was obtained from the
22 magistrate. And up under that there's another
23 caption that indicates --

24 Q Okay.

25 A -- I called Agent Freeman. What I'm saying to you is

1 that it's not uncommon for an initial time to be
2 given or a time to be given and other things are
3 actually occurring all at one time. There's no
4 accurate time on every specific move in a follow-up.
5 However, when we are taking a statement, we are
6 required to record the exact time.

7 Q So in the follow-up, if you go in to interview
8 somebody, you just approximate your times in
9 follow-up reports and you only put the correct time
10 on statements in original incident reports. Is that
11 what you're saying?

12 A Right. During the course of the investigation there
13 are many different things that may occur
14 simultaneously. So with respect to that, not
15 everything is documented as really to time to the T.
16 However, again, when we're taking or we're advising
17 an individual of his rights, his Miranda rights, and
18 also taking their statement, you were correct when
19 you stated I signed it into my computer at 13:22. He
20 was advised of his rights at 13:25 and his statement
21 began at 13:30.

22 Q All right. So, just you don't keep accurate time in
23 follow-up reports. I've got that. How long do you
24 think he was in custody prior to your arriving back
25 at the Sheriff's Department that day? Because you

Walter S. McDaniels - Cross by Mr. Sutherland (In camera)

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1 had said -- I asked you if they had taken him into
2 custody, but you had said they just said that he was
3 in the office. Do you know if they arrested him when
4 he came in or -- you hear what I'm saying? What time
5 did they take him into custody down in Orangeburg?

6 A Well, you would have to ask Agent Freeman that. I do
7 know that she had a copy of the arrest warrant. But
8 what she advised Mr. McBride of I have no idea. I do
9 know that when I came in he was not in handcuffs. I
10 can only testify to the time that I actually placed
11 him under arrest and brought him back to Richland
12 County.

13 Q So they didn't unhook him and you hooked him up?

14 A Excuse me?

15 Q So you unhook him. And you didn't hook him up? He
16 was just standing there?

17 A I don't recall him being in handcuffs or under
18 arrest.

19 Q Do you have any contemporaneous case notes of
20 anything that you take of this stuff, or is it just
21 all after the fact you go and approximate times? I
22 mean, what I've got from you, what I got from the
23 Solicitor's Office is a report telling me that on a
24 certain date and time you did X on a certain date and
25 time you did Y. And if all we get, I mean, is this;

1 what we get, you just go in and say I think around
2 11:30; I mean, is that where we are? Do you have
3 some contemporary case notes or something that you
4 turned over to the Solicitor's Office?

5 A No, I do not.

6 Q So you've just got a good memory?

7 A The information that was recorded during the time of
8 the investigation was actually typed up and
9 submitted.

10 Q So you don't know when he was taken into custody?

11 A I can tell you when I took him into custody.

12 Q Well, let me go look at this summary thing of yours
13 here and see if I can make some sense out of it.

14 Okay. It says you were informed --

15 A Where are you at, sir?

16 Q Okay. This is 05-08-36629. This is back slash 1.
17 So this is not the initial entry that you have but
18 it's the first in the series of reports that you
19 have. This is page 3 of 3 and it says: "At 11:30 I
20 was informed by Agent Freeman that McBride was in
21 custody." It doesn't say in your report that you
22 were informed that he was in the office. But is this
23 one of them things where you wrote it later and you
24 just thought she said he was in custody? What I'm
25 trying to get is, I'm just trying to figure out what

1 happened. And, you know, we're guessing about times
2 and we're guessing about what people said. I mean,
3 I'm just --

4 **MS. CAMPBELL:** Objection, Your Honor. Can he
5 ask a question?

6 **THE COURT:** Yes, sir. I think ask a question.
7 And the question is, Mr. Sutherland -- I know you
8 know this -- is whether or not the statement was
9 voluntary. A, was he in custody? B, was he
10 interrogated? And, C, was the statement voluntary?
11 That's the issue.

12 **MR. SUTHERLAND:** Yes, sir.

13 **THE COURT:** I'm not going to allow you to
14 proceed with your cross examination. But if you'll
15 focus on that issue, that's what I have to decide.
16 It's not a fishing expedition.

17 **MR. SUTHERLAND:** I just getting worked up
18 sometimes, Your Honor.

19 **THE COURT:** It's not a fishing expedition in the
20 old sense of the term. And there's no jury here.

21 **MR. SUTHERLAND:** Oh, yes, sir.

22 **THE COURT:** I understand. Go ahead.

23 **MR. SUTHERLAND:** All right. I'll calm down.
24 Okay.

25 **Q** So, you don't know when he was taken into custody by

1 the probation agent down there? You know that you
2 took him into custody at 13:00 hours?

3 A I took him into custody prior to that.

4 Q Prior to that. I am looking at the report again.
5 Man. Okay. What time did you take him into custody,
6 please?

7 A I took him custody anywhere between 12:00 and 12:30,
8 somewhere around that time. It was after 12:00. I
9 do know that, that day.

10 Q When you arrested him, did he tell you that he wants
11 a lawyer?

12 A No, he did not.

13 Q When you arrested him, you testified earlier that you
14 just stated that you were placing him under arrest
15 for armed robbery. That's right?

16 A Yes, sir.

17 Q Okay. And so you just put him in the vehicle and
18 came back to Columbia, didn't say anything to him in
19 the car?

20 A I told him that it was as a result of his DNA being
21 picked up off of the steering wheel of the victim's
22 vehicle.

23 Q All right. And this was in the car riding back?

24 A Yes, sir.

25 Q How much do you think you talked to him? A little?

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1 A lot? Some? Out of a 45, 55-minute trip, how much
2 time do you think you were talking to him during that
3 time?

4 A I recall talking about incidental things, nothing
5 related to the case. We never discussed the case
6 until we got back to headquarters.

7 Q And when you got back to headquarters, did you have
8 him like in, was it an armless, straight-backed
9 chair? This was in your cubicle you said, right?

10 A Yes, it was, sir.

11 Q Did you have him like cuffed around the legs or
12 anything?

13 A No, sir. Actually his handcuffs were removed and he
14 sat in a chair inside my cubicle.

15 Q How long was he in your custody prior to giving the
16 statement?

17 A Prior to giving the statement?

18 Q Yes.

19 A I picked him up inbetween 12 and 12:30. An hour and
20 give or take 20 or 30 minutes.

21 Q And you testified earlier that you went through the
22 advice of rights sheet with him?

23 A Yes. I did.

24 Q Okay. And was this at the 13:30, at the same time
25 you went through the advice of rights with him or

1 was -- you hear what I'm saying? The thing says that
2 it was typed at 13:30. It says given at 13:30 hours,
3 notarized it, the statement. Did he sign the Miranda
4 form and then you just typed up that part of the
5 statement and then you all talked for a while, or was
6 the whole statement ready to be reported at 13:30?

7 A Oh, no, sir. He was advised of his rights at 13:25.
8 We went through the advice of rights. He signed in
9 two places on that particular form and we began the
10 statement at 13:30. We began typing it.

11 Q And what time did you finish, finish typing the
12 statement?

13 A I'm not sure of that, to be honest with you. You
14 know, it's a six-page statement. I'm not sure.

15 Q Okay. Again, the only thing that you told him,
16 talked to him about in the case was the DNA, told him
17 there was a DNA match in the car on the way back?

18 A Right. That's all I told him.

19 MR. SUTHERLAND: I have no further questions,
20 Your Honor, at this time.

21 THE COURT: Anything further?

22 MS. CAMPBELL: No, sir. We just ask that the
23 statement be marked for identification as State's
24 Exhibit 2. I forgot to put it in.

25

1 (WHEREUPON, State's Exhibit No. 2 is marked for
2 identification.)

3 THE COURT: Come down. Thank you. Next
4 witness.

5 MS. CAMPBELL: Nothing further from the State.

6 THE COURT: From the defense?

7 MR. SUTHERLAND: Your Honor, do they need to get
8 the probation or the probation, parole agent here
9 that took him into custody or ...

10 THE COURT: For what purpose?

11 MR. SUTHERLAND: Well, just, it's just a
12 government agent that took him into custody at that
13 particular time.

14 THE COURT: Well, there's no question that he
15 was in custody.

16 MR. SUTHERLAND: Yes, sir. It's just an inquiry
17 on my part, sir.

18 THE COURT: I don't see if there is an issue as
19 to whether he was in custody at the time of the
20 interrogation. The interrogation didn't take place
21 until he got back to Columbia as I understand it.
22 That's the only evidence I have in front of me at the
23 present time. I think the State takes the position
24 he was in custody. That would require them to go to
25 the next step and show that -- or the defense could

1 show that he was not in custody and was not under
2 interrogation, in which case then there is an issue
3 of voluntary -- a different issue.

4 MR. SUTHERLAND: Yes, sir.

5 THE COURT: But once he is -- unless -- I don't
6 know of any reason to have whoever took him into
7 custody. The question is whether he was in custody
8 at the time of the interrogation.

9 MR. SUTHERLAND: Yes, sir. Thank you, Your
10 Honor.

11 THE COURT: Now, do you wish to call any
12 witnesses on this issue?

13 MR. SUTHERLAND: I would like to call Mr. Clyde
14 McBride to the stand.

15 THE COURT: All right, sir. Come around.

16 CLYDE L. MCBRIDE, after being duly sworn,
17 testifies as follows:

18 THE CLERK: Thank you. Please have a seat on
19 the witness stand. State your full name for the
20 record.

21 WITNESS: My name is Clyde Leroy McBride.

22 MR. SUTHERLAND: May it please the Court, sir?

23 THE COURT: Yes, sir.

24 DIRECT EXAMINATION

25 BY MR. SUTHERLAND

Clyde L. McBride - Direct by Mr. Sutherland (In camera)

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1 Q Mr. McBride, when you were -- what time were you
2 taken into custody by the people at the probation
3 office? Just, I'm curious.

4 A They don't have an exact time that you report, but I
5 think I reported something like about 10:30, maybe
6 10:45.

7 Q Okay.

8 A And I had to wait in line because they had other
9 people waiting to see agents because you've got to
10 sign in. But anyway, when they called my name to
11 come in the back, they put me in cuffs then.

12 Q Okay.

13 A Because he said that they had got a call from
14 Richland County Sheriff's Department from Sergeant
15 Walter McDaniels that they had a warrant for my
16 arrest. But she couldn't never find the warrant.
17 But she said it was faxed to her but she couldn't
18 find it at that point in time.

19 So at the point in time when they put me in
20 restraints, that's when they got on the phone and
21 called him. It may have been 11:30. It could have
22 been 11:15. I don't know exactly what time it was.
23 And they put handcuffs on me and put shackles on me,
24 and they got on the phone and called him.

25 It took him about 45 minutes to an hour to get

1 there. Then they had to send somebody out there to
2 escort him back in because he didn't know exactly
3 where the office was located at. So when they
4 brought him back, he came in. And that's when he
5 told me that I was being arrested for armed robbery.

6 I asked him, For what? And he said, Armed
7 robbery. He said, Your prints was found inside of a
8 vehicle that was involved in a crime. I asked him, I
9 said, Well, what's that got to do with me? Just like
10 that. And he said, Well, you tell me what that got
11 to do with you. Like that. And I said, Well, I want
12 to talk to a lawyer. So --

13 Q Okay. Let me stop you there. I'm sorry to interrupt
14 you. How long -- you didn't have a watch or you
15 don't have any idea. It's just when he got there you
16 think?

17 A Yeah. Whenever he got there and they went and meet
18 him and escorted him back to the office. Now, I
19 don't know precise what time it was or nothing like
20 that.

21 Q But your testimony is when he put the handcuffs on
22 you and said you were being arrested for armed
23 robbery, did he confront you with any evidence in the
24 case?

25 A No. There wasn't no evidence in the case he

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1 presented. All he said that my DNA was found inside
2 a car that was involved in a crime. He never give me
3 no specific car or nothing like that. He just said a
4 car. That's when I came back at him with; What's
5 that got to do with me?

6 Q Okay.

7 A You know what I'm saying? And he said, Well, you
8 tell me. And that's when he took the handcuffs and
9 the shackles off me that belonged to Agent Freeman,
10 my agent, and he put belly chains on me and leg irons
11 on me.

12 Q Belly chains?

13 A That stuff that you wrap around your waist. He put
14 that stuff on me. And once he did that, that's when
15 he went to read my memoranda (sic) rights after I
16 request for a lawyer.

17 Q So you're saying he was Mirandizing you at this
18 location up in Orangeburg, too?

19 A Yeah.

20 Q Okay. So, he's putting the belly chains and he's
21 hooking up your legs, shackling your legs and your
22 cuffs. And is he reading your rights to you as he's
23 doing this or -- I mean, he reads these rights to
24 you. What did you say to him again?

25 A He read my rights after I asked him for a lawyer.

1 Q Okay.

2 A Because he asked me to read the warrants. And I told
3 him, I said, Well, I can't hardly read that well.
4 You have to read the warrant to me. So he read the
5 warrant. That's how I know he was talking about a
6 car instead of just, you know, just a simple, just,
7 your DNA was found in this car.

8 Q Okay. And after he Mirandized you, did he put you in
9 the car, or did you talk to him there or anything?
10 Or did you all -- what happened?

11 A After he put me in the car, we left and we proceeded
12 to come back to Columbia, he got in this discussion
13 about he know I did it because my prints were found
14 in this car and my DNA supposed to have been found
15 inside the victim's house on some type of evidence in
16 the house. You know what I'm saying. It's supposed
17 to be something he was saying, like a face towel or
18 juice, something he was talking about. But anyway,
19 he said my DNA was found inside the victim's car and
20 inside the victim's house. That was his exact words.

21 And I told him, I said, Well, man, if you know
22 all this information, you need to be trying to take
23 me to the jailhouse where I can call a lawyer. So he
24 said, Oh, you want to be funny, just like that right
25 there. So that's when he proceeded on. And so

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1 that's when I told him, I said -- and he told me, he
2 said, You might as well go ahead and confess to the
3 crime because of the simple fact you're already on
4 parole and you're going to jail either way you look
5 at it because your prints were found inside this car.

6 And he said, Well, I'll tell you what. If you
7 cooperate with me, I'll see what I can do. I'll go
8 talk to the judge and the solicitor and see if I can
9 get you five years probation, one year recommendation
10 time served. His exact words.

11 Q And at any time while -- so your testimony is that he
12 was talking to you and you were answering back to
13 him. Now, during all this stuff that you were
14 talking about, you said that you asked for a lawyer
15 back in Orangeburg, right?

16 A When he first arrested me.

17 Q Did you ever bring that up again at any time during
18 the trip back to Columbia?

19 A Yeah. During the time when we was going back to
20 Columbia and he kept -- when he said about the car,
21 about if I confessed to the crime and all this and
22 that being a third, and that's when I asked him, I
23 said, Well, you sure you should still be talking to
24 me after I asked you for a lawyer, to talk to a
25 lawyer, and take me to jail? Then he didn't say

1 nothing. He looked at me. He just kept driving.

2 It's just like it was just pissing him off to hear
3 me, you know, just talk to him.

4 Q Don't use that word. You're making him mad. I'm
5 sorry, Mr. McBride. Go ahead. You know the Court
6 doesn't talk like that. Okay. So you asked him --
7 now, what words did you use? Because it's pretty
8 important, exactly what you said. You just testified
9 about asking him whether it was okay for him to talk
10 to you. Just what did you say to him one more time,
11 real clear? I'm just asking for that lawyer
12 sentence.

13 A I asked him was it legal for him to still be talking
14 to me after I have request for a lawyer, for an
15 attorney. He didn't say nothing. He just looked at
16 me.

17 Q And how long do you think that was after the first
18 time -- or do you just not know -- the first time you
19 asked for a lawyer?

20 A I didn't really pay it no attention because he just
21 kept going on and on and on.

22 Q Now, you just testified that he stopped talking to
23 you when you asked him if it was legal what he was
24 doing?

25 A Right.

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1 Q So that was it? He just stopped talking? What was
2 the next time that he had communication towards you
3 or you had communication towards him?

4 A When we got to the Sheriff's Department. And that's
5 when I asked him, I said, Well, man, I thought you
6 supposed to be taking me to the jailhouse instead of
7 the Sheriff's Department. And so that's when he put
8 me in the little cell that they've got. He put me in
9 the little cell they've got. So I said, Man, I said,
10 Look here. I want a lawyer, man. Like that. So, he
11 never did took the restraints off of me until about
12 five or six hours later. And then the only reason
13 why he took that off because he said he bringing me
14 some legal paperwork that supposed to be for an
15 attorney that he told me to go ahead and sign, which
16 I never read. But he told me to go ahead and sign
17 it, it's for a lawyer.

18 Q All right. Let's back up a little bit now. What I'm
19 most interested in right now; you said that it was
20 when you got back to the Sheriff's Department. And
21 so you started talking back to him?

22 A Yeah.

23 Q And you said that, Aren't you supposed to be taking
24 me to jail?

25 A Yeah.

1 Q Okay. Now, how long after that -- you said that he
2 put you in a cell over at the Sheriff's Department?

3 A Yeah. He put me in one of them little cells.

4 Q Now, how long do you think you sat in there before
5 you went and sat down with him? He testified that he
6 had interviewed you at his cubicle. Is that your
7 recollection?

8 A He never interviewed me nowhere, because he let me
9 stay in the cell because of the simple fact I
10 wouldn't cooperate with him. He didn't never took
11 the shackles or the belly chains off of me until
12 about seven hours later after being in that cell.
13 That's when he brought some paper to me and asked me
14 to go ahead and sign the paper. If you want a
15 lawyer, sign these papers here. I signed the paper.
16 I didn't read the paper. I just signed the paper.

17 Q So you're testifying now then that you never
18 knowingly, intelligently -- that's law talk. You
19 never waived your rights? Is that what you're
20 saying? Or do you -- it's important, you know. Do
21 you remember going over that thing with him?

22 A He never advised me of no memorandum (sic),
23 paperwork, period. He never advised me of that. The
24 only time he read my memoranda (sic) rights is when
25 he took me from Orangeburg from my parole and

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1 probation officer. And he read that off a little
2 card that he got out of his suit jacket that was on
3 the back of the card. That's the only time I
4 remember my rights was read to my knowledge.

5 Q Okay. Now, you testified earlier that there was some
6 kind of talk about probation, that he was going to
7 help -- that you said that he said he was going to
8 help you out. But you testified that you weren't
9 helping him out. That's what you just testified to,
10 right?

11 A Yeah.

12 Q Okay. And so then you just sat in a cell?

13 A (Nods head affirmatively).

14 Q All right. And then he took you up to wherever it
15 was, his desk, his little cubicle or something?

16 A No. He brought the paperwork to the cell where I was
17 at. He never let me out. This man never let me out
18 the cell, man. So for some reason, he felt that I
19 was going to run or whatever the case might be, he
20 never took me out of the cell. He just took the
21 belly chains off of me, came back about a couple of
22 hours later and handed me the paperwork, opened the
23 door and handed me the paper and told me to sign the
24 paper. He took the belly chains with him and left me
25 with the shackles. I had the shackles on the whole

1 time until I got to the county jail, which was about
2 11:00 that night.

3 Q So your recollection is it's around 11:00 that you
4 did some kind of paperwork? Or no? 11:00 that you
5 got out of jail and went down to the jail? I'm
6 sorry. I just missed what you just said.

7 A When we left the jail, it probably been about 10 --
8 about 10 something he went to the warrant division.
9 And then from the warrant division, we got to the
10 jail. When I got to the jail, I think like at 11:00,
11 news was on or something. I had to go to the bond
12 court. I think that was due like about 11:15 or
13 11:20, something like that. As soon as they booked
14 me in, I was ready to go to bond court.

15 Q Okay. So you stopped by the warrant division on the
16 way down to the jail?

17 A Yes, sir.

18 Q And we're talking about down at Alvin S. Glenn?

19 A Yes, sir.

20 Q How long after that did you get that other warrant
21 served on you?

22 A Oh, they served the warrants when I went to bond
23 court.

24 Q Okay. At the bond hearing? So that's like about
25 11:20 or something?

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1 A Yeah. Like about 11:20, 11:30.

2 Q All right. I don't have any further questions for
3 you. You know, this is just about the facts of the
4 case. You hear what I'm saying? It's just about the
5 circumstances surrounding your rights. So I'll be
6 objecting if there is any of that other stuff.

7 A Mm-hmm (affirmative).

8 Q Thank you, sir.

9 THE COURT: Questions from the State?

10 MS. CAMPBELL: Yes, sir.

11 CROSS EXAMINATION

12 BY MS. CAMPBELL

13 Q I want to show you what's been marked as --

14 THE COURT: Ms. Campbell.

15 MS. CAMPBELL: Sir? I apologize.

16 Q I wanted to show you what's been marked as State's
17 Exhibit No. 1 and State's Exhibit No. 2. Do you
18 recognize that?

19 A I recognize it.

20 Q And is that your signature in those two places?

21 A Mm-hmm (affirmative).

22 Q Okay. And I want to show you what's marked as
23 State's Exhibit No. 2. It's a six-page statement.
24 You've seen that in the discovery, right?

25 A Mm-hmm (affirmative).

1 Q Do you recognize that? Is that your signature on
2 each page?

3 A Mm-hmm (affirmative).

4 Q And your testimony here today is that he promised you
5 one year suspended on one year's probation or
6 something?

7 A He promised me -- he said out his own mouth if I
8 would confess to the crime, he would recommend that I
9 get five years probation and one year time served.

10 Q Okay. Do you remember that you were so upset with
11 our office that you actually wrote the Attorney
12 General?

13 A Who?

14 Q The Attorney General. Henry McMaster. You know that
15 name.

16 A Yes.

17 Q And in this thing you say that now there is a written
18 statement that the defendant gave at a motion but
19 there is a statement that is sworn but not written
20 and someone signed my name on this statement that has
21 been typed out?

22 A Yeah.

23 Q So you were alleging here that someone else forged
24 your name. But today you admit these are your
25 signatures?

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1 A I admit that that's my signatures. But I don't admit
2 to signing these papers right here, because when he
3 gave me these papers right here, I never read them
4 papers. He just give them to me. He never went over
5 them paperwork. He never did. And he know he
6 didn't.

7 Q The thing that you wrote to the Attorney General, is
8 this your handwriting?

9 A Yes, it's my handwriting.

10 Q Okay. So you can read and write?

11 A Yeah.

12 Q Okay. And, in fact, I was looking through your file
13 just a minute ago, and you've got probably a good 20
14 motions that you filed personally with a lot of
15 legal-ease and everything else, right?

16 A No. A lot of those motions that you've got in there,
17 a lot of guys filed them. With the case load on me,
18 a lot of guys filed them for me.

19 Q Okay. But you can read and write?

20 A I mean, I can read to a certain level.

21 Q And in this case you talk about North Carolina vs.
22 Alford which is the correct way to say it. I always
23 say it backwards. You talk about preliminary
24 hearings, due process, equal protection, privileges,
25 immunities of citizens, life, liberty of property,

1 due process of law. You understand what all those
2 terms mean?

3 A In some sense. Not really. I just rough draft it
4 and just copy it from whomever I get them from. I
5 can't sit here and tell you that I understand all of
6 them. I know that I don't. But it's just that when
7 people do them, I just go over here and rough draft
8 back over them and just run them.

9 Q But here you're saying that someone else signed your
10 signature. But now you're saying you were tricked
11 into signing your signature?

12 A What I'm saying is this right here. Mr. McDaniels
13 knows personally that he never did sit down with me
14 and went over none of this stuff with me. When he
15 presented this stuff to me, he told me that I was
16 signing legal documentation for a lawyer. That was
17 his exact words. Now, the bottom line of this right
18 here, I didn't see none of this right here until my
19 motion. I heard of it at bond court.

20 Q Well, you must have signed it at some point?

21 A I'm not saying that I didn't sign it. What I'm
22 saying is this right here. I didn't was aware of
23 what I was signing. He never did brought this to my
24 attention, what I was signing. He told me I was
25 signing legal documentation. That was his exact

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1 words.

2 Q Okay. You've been arrested before?

3 A I've been arrested plenty of times.

4 Q Tons of times?

5 A Yeah.

6 Q You've been advised of your rights before?

7 A Plenty of times.

8 Q You understood what your rights were?

9 A Yeah. But I never signed none of these. I was
10 advised by the same way he advised me with the little
11 card. You have the right to remain silent. In my
12 whole time in my life being locked up, being in
13 trouble with the law, I never did sign a statement.

14 Q Okay. Well, let me ask you this. See where it says
15 "your rights" right there?

16 A Yeah.

17 Q Can you read that first line?

18 A "Before we ask you any questions you must understand
19 your rights."

20 Q So you are able to read this?

21 A Yes, I can read.

22 Q Okay. And this statement, State's Exhibit No. 2, is
23 six different pages?

24 A Yes.

25 Q And you signed each one of them?

1 A Yes. But I'm saying he never -- see, it ain't the
2 point whether I can read or not. It's the point that
3 he did not do his job. He did not went over this
4 statement to me. He lied and told me that I was
5 signing legal documentation for an attorney. That's
6 what he told me. He never give me the opportunity to
7 read that. It ain't the point whether I can read or
8 not. It's the point of him doing his job. That's
9 the point. He knew he didn't do that.

10 Q So even though you've been arrested on multiple
11 occasions and been advised of your rights over and
12 over and over, you knew what your rights were.
13 There's no question about that, right?

14 A Yes, I knew what my rights were.

15 Q You said he tricked you into signing these two
16 documents, this one six times and this one two times?

17 A My testimony here today is this here, is that he knew
18 that what he was doing when he did not advise me of
19 what type of paperwork that I was signing. He knew
20 this here. Him being a law enforcement officer and I
21 being the suspect, he knew that he supposed to have
22 went over that paperwork with me. He not supposed to
23 put them paperwork in my face and say, Here, sign
24 that right there. No. He supposed to go over that
25 hisself (sic).

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1 Q Because you know what was supposed to happen?

2 A He knew the rule right there hisself. He supposed to
3 automatically sit down with me and look over every
4 stitch of that paper, not sit there and try to hide
5 nothing and put it in my face and then get me to sign
6 something and then later on you come behind me and
7 you can throw it in my face and say, Yeah, well, you
8 signed this right here and you signed that right
9 there. That man knows good and well I did not give
10 him no statement, ma'am. That man knew that.

11 Q Why when you wrote the Attorney General you said
12 something completely different, that someone had
13 forged your signature?

14 A Yeah. Because of the simple fact someone had to have
15 forged my signature because I don't remember signing
16 this. This is why I told you that. I did not
17 remember signing that. And you know I don't remember
18 signing that day. Because when he presented this to
19 me, he presented this to me as legal documentations
20 for an attorney. That's the way he presented it to
21 me.

22 Q Are these your words in the statement?

23 A No, those are not my words. Those his words, his
24 words thinking about what happened. The same way he
25 tried to manipulate me in that car. The same thing.

1 That man know I ain't commit this crime. He already
2 know that.

3 Q And you knew what your rights were? You've been
4 through the system on multiple occasions?

5 MR. SUTHERLAND: Your Honor, if I may. She's
6 been -- this is about the fourth time that she's
7 asked him that. He's given the same answer.

8 A She's trying to cover up the fact that he didn't do
9 his job. That man who is sitting in this courtroom
10 right here, and I'll tell him like I tell you all, he
11 sit in this courtroom. He knew good and well when he
12 came and got me, he know that they had restraints on
13 me. He know this here.

14 That man took the restraints off me, put belly
15 chains on me and an anklet bracelet on me like I was
16 some animal, like I'm going to run away from him or
17 something like that there. That man already knew,
18 when he came and got me, he already knew, he already
19 figured in his heart that's the man right there. He
20 already figured that when he come and got me.

21 That's why when we'd gotten in the car he tried
22 to manipulate me in the car. Well, your DNA was
23 found inside the victim's house and on the steering
24 wheel in the car from driving it. He already knew
25 good and well. It was already in his mind. He said

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1 that I was the man that had committed the crime. He
2 already knew that.

3 That's why he manipulated me and tried to get me
4 to sign that paperwork, because he know if he'd have
5 came at me any other time or in any other way I'd
6 have cooperated with that man. He knew that. That's
7 why when he stuck that paperwork to my face, he told
8 me I was signing for a legal attorney, legal
9 documentation for a lawyer. He knew that.

10 Q On the seven different pieces of paper?

11 A Yeah. On seven different -- I tell you, the man
12 never read them to me.

13 MS. CAMPBELL: I have nothing further.

14 THE COURT: Anything further?

15 MR. SUTHERLAND: Brief redirect, Your Honor.

16 REDIRECT EXAMINATION

17 BY MR. SUTHERLAND

18 Q All right, Mr. McBride. Basically your testimony
19 here today is you requested an attorney in
20 Orangeburg. You requested an attorney or you asked
21 them if it was legal.

22 MS. CAMPBELL: Objection, Your Honor, just to
23 the leading. If he could let him answer.

24 Q Okay. You asked for an attorney in Orangeburg?

25 A (Nods head affirmatively).

1 Q Yes?

2 MS. CAMPBELL: Objection, Your Honor.

3 THE COURT: That's leading.

4 MS. CAMPBELL: It's leading.

5 Q How many times did you ask for a lawyer?

6 A Huh?

7 Q How many times do you think you asked for a lawyer,
8 or do you remember?

9 A Probably about three occasions.

10 Q Okay. And it's your testimony today that you were
11 told that the papers you were signing were to get you
12 that lawyer?

13 A Yes.

14 MR. SUTHERLAND: Okay. I have no further
15 questions at this time, Your Honor.

16 THE COURT: All right. You may come down.
17 Anything further?

18 MS. CAMPBELL: No, sir.

19 THE COURT: Come on down. Anything further from
20 the defense?

21 MR. SUTHERLAND: Your Honor, it's the position
22 of the defense that he invoked his right to counsel
23 several times according to his testimony, that he was
24 continued to be questioned afterwards. And it's our
25 position that under Davis vs. The United States, the

1 officer is not allowed to badger him and to continue
2 to request of him information or to continue to fire
3 information at him in trying to get him to confess,
4 that once he makes the implication that he wants to
5 speak to a lawyer that the officer shouldn't have
6 continued to question him, sir.

7 With respect to the voluntariness of the
8 statement, based on his testimony with the way that
9 he was shackled and just with the circumstances that
10 he testified to, it's in the record, there is no way
11 that the defense could see this as a voluntary
12 statement in light of his testimony here today, sir.

13 *THE COURT:* All right. Anything further from
14 the State?

15 *MS. CAMPBELL:* No, sir.

16 *THE COURT:* All right. All right. Thank you.
17 Well, as in any -- well, not in any case, but in many
18 cases, these issues come down to the issue of
19 credibility. And you understand that I must find the
20 standard by which the voluntariness is judged is by a
21 preponderance of the evidence, not anything more than
22 that. It's a question of whether it's admissible; in
23 other words, whether it can go to the jury.

24 And at this point in time I have carefully
25 considered the evidence offered by the State and the

1 defendant and am convinced by a preponderance of the
2 evidence and so find that before the alleged
3 statement was obtained from the defendant the
4 defendant was fully advised of his rights under the
5 Fifth and Six Amendments to the Constitution of the
6 United States and that the defendant was advised of
7 the Constitutional safeguards required by Miranda v.
8 Arizona as follows.

9 The defendant was advised prior to the
10 interrogation that he had a right to remain silent.
11 The defendant was advised prior to the interrogation
12 that if he waived his right to remain silent and made
13 a statement, such statement could and would be used
14 against him in a court of law. The defendant was
15 advised prior to any interrogation he had the right
16 to employ and select an attorney of his own choice
17 and if he did not have the money, the funds or
18 resources to employ an attorney, the State would
19 appoint an attorney, provide an attorney for him if
20 he so desired without cost or expense to him.

21 He had the right to have his attorney present
22 with him at all times during all interviews and all
23 interrogations. The defendant was advised prior to
24 any interrogation he had the right to consult with
25 his attorney before interrogation. He was advised

1 prior to interrogation he had the right to interrupt
2 or terminate the interrogation at any time, that he
3 had the further right to stop answering questions at
4 any time during the interrogation and was advised
5 prior to any interrogation that if during the
6 interrogation he desired an attorney, the
7 interrogation would cease until an attorney was
8 provided for him and that he'd be given an
9 opportunity to consult with his attorney prior to
10 further interrogation.

11 He knowingly and intelligently waived his rights
12 under the Fifth and Sixth Amendments to the
13 Constitution of the United States and the
14 Constitutional safeguards required by Miranda v.
15 Arizona, that the alleged statement obtained from the
16 defendant was freely and voluntarily given without
17 duress, coercion, without undue influence, without
18 reward, without promise or hope of reward, without
19 promise of leniency, without threat of injury and
20 without compulsion or inducement of any kind, that
21 such alleged statement was the voluntary product of
22 the free and unconstrained mind and will of the
23 defendant.

24 I find all these conclusions by a preponderance
25 of the evidence. I find the statement is admissible

1 into evidence.

2 Now, certainly there are conflicting -- there is
3 certainly conflicting evidence as to when the
4 statement was given and when the interrogation
5 started, under what conditions. But even if the
6 defendant was arrested somewhere about midday, I
7 mean, 12:00, 12:30, and the statement was taken at --
8 I don't have it in front of me. Let me have it just
9 so I can make this record clear.

10 **MS. CAMPBELL:** This is the advice of rights and
11 this is the statement.

12 (Document handed to the Court)

13 **THE COURT:** That the statement was taken
14 approximately an hour to an hour and a half after the
15 arrest, during which period the defendant was being
16 transported from Orangeburg to Columbia, that was
17 when the advice of rights occurred. The statement
18 itself was taken approximately five minutes after
19 that which would have been approximately 1:30 p.m., I
20 don't think that's an unreasonable period of time
21 before the confession or the statement was taken.

22 In other words, if the statement had been taken
23 at 11:00 at night, I'd feel more concerned about it.
24 But it was taken apparently immediately upon arrival
25 at the Richland County Sheriff's Office. So it's a

1 period of time prior to the statement, which is an
2 element. I mean, it's an element to be considered.
3 It was not unduly lengthy.

4 The conditions at the -- I have heard nothing to
5 indicate that the conditions at the Sheriff's Office
6 were coercive. There was no depriving the defendant
7 of anything that he asked for or needed other than
8 there's a question about whether he wanted a lawyer.
9 And again, I have got to make this decision based on
10 what I believe is the credible evidence and weigh the
11 evidence.

12 This issue can certainly be brought before the
13 jury and let them make the decision. That's
14 ultimately the decision maker on the statements. And
15 I would so advise the jury that the defendant's
16 rights must be protected, and if they were
17 convinced -- that they would have to be convinced the
18 statement was freely and voluntarily given before
19 they could rely on it.

20 So given the fact that the statement was taken
21 in close proximity to the time of the arrest, the
22 lack of any apparent coercion -- and I have to rely
23 on; I mean, I have to judge credibility on the
24 question of whether or not an attorney was requested,
25 I find it hard to believe quite frankly that a

1 six-page -- that the defendant would have believed
2 that a six-page statement was something requesting an
3 attorney, maybe seven pages of documents requesting
4 an attorney.

5 I think the State amply showed that the
6 defendant has the ability to read and write. And if
7 he really wanted an attorney, it's unlikely that he
8 would have gone to the -- even if he had not had an
9 attorney present, he would at least have read the
10 statement and said, That's not so. That's not me.
11 That's not so. I'm not going to sign it.

12 But since there is no coercion or undue lapse of
13 time prior to the time the statement was given,
14 there's no reason why the defendant should have
15 signed the statement implicating -- and I assume it's
16 inculpatory; I haven't even read it -- but that he
17 should have signed a statement, which he admits is
18 his signature, if he didn't read it. I mean, if he
19 wanted a lawyer, he had every right to a lawyer. I
20 mean, on several places it says: "I have the right
21 to stop talking and talk to a lawyer." So, by the
22 preponderance of the evidence I find that the
23 statement is admissible.

24 Now, you had another issue you wished to take
25 up. And that was a Franks issue. Is that correct?

1 MR. SUTHERLAND: That's correct, Your Honor. We
2 had hoped to make a showing to the Court that we were
3 entitled to a Franks hearing on the arrest warrant.
4 I do have exhibits. I have given a copy of
5 everything to the solicitors.

6 THE COURT: All right. Well, you might want to
7 give them to me.

8 MR. SUTHERLAND: Yes, sir. And the first thing,
9 if I could get it marked as Court Exhibit 1, this is
10 my memorandum obviously in favor of the showing in
11 favor of us being able to have a hearing. The second
12 item is a copy of the arrest warrant.

13 THE COURT: All right.

14 MR. SUTHERLAND: The third item is a copy of the
15 warrant worksheet affidavit.

16 THE COURT: Of what?

17 MR. SUTHERLAND: The warrant worksheet and
18 affidavit.

19 THE COURT: The warrant worksheet?

20 MR. SUTHERLAND: In support. Yes, sir. The
21 fourth item is a copy of the bond setting from
22 December 14th, 2005. And then the fifth and final
23 item is a transcript of the Schmerber hearing in
24 front of The Honorable Judge John on February 15th of
25 this year.

1 (WHEREUPON, Court's Exhibit No. 1 is marked for
2 identification.)

3 (WHEREUPON, Court's Exhibit No. 2 is marked for
4 identification.)

5 (WHEREUPON, Court's Exhibit No. 3 is marked for
6 identification.)

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10 identification.)

11 (WHEREUPON, Court's Exhibit No. 6 is marked for
12 identification.)

13 (WHEREUPON, Court's Exhibit No. 7 is marked for
14 identification.)

15 **MR. SUTHERLAND:** Sir, the argument of our
16 position of having a Franks hearing is pretty
17 straightforward. The argument is, and this is
18 according to the testimony of Investigator McDaniels
19 at the preliminary hearing; it's also according to
20 his statement to Judge Lloyd at the bond hearing.
21 Actually maybe I should just go in the order that
22 these occurred.

23 He stated to Judge Lloyd at the bond hearing --
24 Mr. McBride showed me the transcript the day I got
25 the case, February 14th. I read the transcript and I

1 noticed that he had told Judge Lloyd that the only
2 reason or the sole basis -- my interpretation of what
3 he's saying is right there -- for the probable cause
4 for the arrest warrant was that there was a CODIS hit
5 in this vehicle.

6 And I noted that at that time in front of Judge
7 Lloyd he offered to the Court that the car had been
8 missing for three weeks or so. It ended up being 27
9 days.

10 So when he came up to testify at the Schmerber
11 hearing, I just wanted to make sure. I asked him,
12 "The sole basis of the probable cause is the CODIS
13 match?" Okay. And this is actually language that I
14 have quoted in the memoranda. "And nothing other
15 than the CODIS match?" "Nothing. Yeah. No, sir.
16 Not on anything besides that."

17 I asked him, "How long was the car missing? I
18 think we went over that. That was 25 days or so?"
19 And his answer was, "Correct."

20 I have the language in the warrant affidavit
21 quoted on the front page of the memorandum as well as
22 the affidavit in the warrant itself. He has stated
23 to one judge at the bond setting and testified under
24 oath at a Schmerber hearing basically that everything
25 in the warrant is conclusory except for the CODIS

1 hit, that he's just making allegations in the warrant
2 affidavit and that the one piece of evidence that he
3 included in there that's separate and apart from the
4 allegations is that there was a CODIS hit.

5 What he left out was that the car had been
6 missing for 27 days. And it is our position that
7 that is a critical omission for the finding of a
8 probable cause for an armed robbery. If a vehicle
9 was missing for 27 days, it could have been down at
10 Ringling Brothers with 20 clowns in it at some point.

11 I mean, our argument is that if you insert the
12 omitted language, if you insert that the car was
13 missing for 27 days, and the only evidence that they
14 have is that there is a CODIS match, all that says is
15 at some point he might have been -- he was either in
16 the car or just his DNA material was transferred into
17 the car. It doesn't say anything about him being at
18 an incident location. It doesn't say anything about
19 him pointing a gun at anybody.

20 And since the armed robbery warrant is the only
21 warrant that was obtained here, that's what we're
22 talking about. But there is no evidence of anything
23 other than his statements.

24 Now, when they were up there testifying just a
25 few minutes ago, I thought they were trying to slip

1 something in there. I didn't can get ahold of it.
2 But there was some other sort of evidence that they
3 had. But he's done testified two times. There is
4 nothing but this CODIS hit. And the CODIS hit, it's
5 the position of the defendant that if you assert a
6 car is missing for 20 days, they don't have probable
7 cause to issue an arrest warrant. Maybe for auto
8 tampering or something. But they don't have probable
9 cause to issue an arrest warrant for an armed
10 robbery.

11 *THE COURT:* Well, let me ask you this.

12 *MR. SUTHERLAND:* Yes, sir.

13 *THE COURT:* As I understand *Franks v. Denno*,
14 you've probably done a lot more research on it than I
15 have lately, it requires a substantial,
16 substantial --

17 *MR. SUTHERLAND:* Yes, sir.

18 *THE COURT:* -- preliminary showing --

19 *MR. SUTHERLAND:* Yes, sir.

20 *THE COURT:* -- that a false statement -- false
21 statement --

22 *MR. SUTHERLAND:* Yes, sir.

23 *THE COURT:* -- knowingly and intentionally --
24 knowingly and intentionally or with reckless
25 disregard for the truth was included in the

1 affidavit, in the warrant affidavit and that that
2 allegedly false statement is necessary for a finding
3 of probable cause.

4 In other words, I think you've got -- and I have
5 not looked at what you've submitted to the Court, but
6 I would have to find, at least perhaps believe that
7 there was a knowing and intentional misstatement.
8 Now, what you're talking about as I understand it is
9 a paucity of the evidence or a lack of evidence or
10 lack of substantial evidence upon which the
11 magistrate can base his warrant. But I think you
12 have to go one step further and show that to even get
13 a hearing that there is -- because you've got to make
14 a substantial preliminary showing that it's a false
15 statement knowingly and intentionally made or with
16 reckless disregard for the truth. So I think that's
17 what I've got to look at and if that's what you're
18 claiming took place.

19 MR. SUTHERLAND: Yes, sir.

20 THE COURT: So, in other words, but what I
21 understand you're saying is whether the officer knew
22 it or not, he neglected to add into the affidavit the
23 car was missing for 27 days, neglected as opposed to
24 intentionally misrepresented that. Am I --

25 MR. SUTHERLAND: Well, what we are actually

1 prepared to argue, the Fourth Circuit cases have not
2 made a determination as to whether an omission,
3 whether recklessness can be inferred from an
4 omission. It looked earlier on I think in the case
5 that it's the only copy I brought because I didn't
6 know some -- we talked about some stuff. But the
7 case that I brought is United States v. Copely. And
8 in that case it appeared to me that they were leaning
9 against --

10 *THE COURT:* It's a Fourth Circuit case?

11 *MR. SUTHERLAND:* Yes, sir.

12 *THE COURT:* Okay.

13 *MR. SUTHERLAND:* That they were actually leaning
14 against the omission being an inference that you
15 could infer from the omission itself recklessness.
16 But there has been a more recent case, and I believe
17 it is United States v. Shorter, that some of the --
18 and I had these cases with me but they've got my only
19 copy of Copely.

20 *THE COURT:* That's all right.

21 *MR. SUTHERLAND:* But the United States v.
22 Shorter I believe is a case that came out just this
23 past February. I want to be clear. But it's a
24 Fourth Circuit case that points out that they did not
25 inculpably address the specific issue of whether or

1 not just omitting something, you can infer
2 recklessness from it.

3 And actually when I was doing the research I was
4 a little worried when I read Copely. But when I read
5 the more recent case, they specifically pointed out
6 in the footnote number 2 that they had not decided in
7 this circuit whether or not recklessness could be
8 inferred from the omission.

9 They mentioned some of the Eighth Circuit cases.
10 I mean, I have an Eighth Circuit case. There are
11 tons: The 8th, the 5th, the Second Circuit. A lot
12 of circuits do infer recklessness from the omission
13 itself. But the position of the Fourth Circuit is
14 that they said stated specifically that the issue was
15 not before them in this case that they just ruled on
16 this past February. So they decided not to rule on
17 it, but they pointed out that they had not addressed
18 the issue in dicta earlier in Copely or in any other,
19 on a circuit level, any other cases.

20 So it just appears that they're waiting for a
21 specific case where an omission -- because the
22 omission had to be an omission of a critical fact.

23 *THE COURT:* Sure.

24 *MR. SUTHERLAND:* And one of the things that the
25 courts have said, and this is something that I agree

1 with, that any time an officer leaves something
2 that's potentially exculpatory out of an affidavit is
3 no reason for all the fuss of having a hearing and
4 everything and possibly suppressing evidence.

5 But what we view the 27 days as, we view it as
6 something that's critical to the determination,
7 because the arguments that I was making earlier about
8 the clowns being in the car and all that, that we
9 view it as being critical to the determination of
10 probable cause upon the warrant, particularly in
11 light of where he has testified and stated to the
12 Court and testified under oath that that's the only
13 reason for the probable cause in the warrant, that
14 basically everything else is just a recitation of the
15 facts; it's conclusory stuff.

16 And so our position is that a warrant setting
17 aside the conclusory information that says the car
18 was missing for 27 days and his DNA was found in it
19 is not -- does not make probable cause for an armed
20 robbery. Even if the car was 27 days earlier taken
21 in an armed robbery, I mean, there is just no
22 connection other than the genetic material found.

23 So what we're arguing is if you insert the
24 omission that there is no probable cause, that's the
25 argument that we're making. And we're arguing that

1 it's a critical omission.. And of course, like I said
2 before, they haven't addressed that specific issue if
3 of the Fourth Circuit, but they've cited Eighth
4 Circuit cases that say that you can infer
5 recklessness from an omission.

6 It's our position -- I am not casting any
7 unnecessary aspersions on the investigator here --
8 that recklessness could be inferred, that there's a
9 reckless disregard for the truth where the only
10 information that's of any value to a magistrate is
11 that they recovered this genetic material and then
12 that 27-day period where the car was missing is left
13 out of there. it's just essential and critical to the
14 determination of probable cause.

15 **THE COURT:** The cases -- I have a small --

16 **MR. SUTHERLAND:** Oh, the Small principle there?

17 **THE COURT:** No, sir. Let me finish my sentence.

18 **MR. SUTHERLAND:** Oh, sorry, Your Honor.

19 **THE COURT:** My wife does that to me. She
20 anticipates what I'm going to say. I said I have a
21 small knowledge of Franks. And Franks talks about --
22 let's leave the knowingly and intentionally out. If
23 you're going to the recklessness of the affidavit, it
24 talks about a reckless disregard for the truth.
25 That's Franks.

1 U.S. vs. Charles is a 1998 case. I don't have
2 anything more recent than that. But that says the
3 warrant contains a deliberately or recklessly false
4 allegation. In other words, it doesn't say an
5 omission. It doesn't talk about omissions. It talks
6 about false allegations. Franks talks about
7 statements, a false statement of reckless disregard
8 for the truth. In other words, they talk about
9 false, false statements --

10 MR. SUTHERLAND: Yes, sir.

11 THE COURT: -- in the affidavit as opposed to
12 incomplete statements in the affidavit. So, I'm
13 going to read your materials. But that's the way I
14 understand Franks v. Delaware. And that's why it's a
15 heavy burden to show that police officers made false
16 statements. But they have to be false, not just
17 negligently reckless in the civil sense --

18 MR. SUTHERLAND: Yes, sir.

19 THE COURT: -- as I understand it. I may be
20 wrong. I've been wrong before.

21 MR. SUTHERLAND: Did you want me to give you
22 copies of the cases that I had and give copies to the
23 solicitor?

24 THE COURT: Well, it's hard for me to rule on
25 something that you want me to rule on if you don't

1 show me the law that you rely on.

2 MR. SUTHERLAND: Well, I'm just thinking. I
3 mean, the wireless and the laptop stuff, I just
4 didn't know. But I'll get it to you right now.

5 THE COURT: Do you see my law clerk here today?

6 MR. SUTHERLAND: I do not.

7 THE COURT: I don't either.

8 MR. SUTHERLAND: Okay.

9 THE COURT: I want you to submit anything that
10 you need to flesh out the record in the event you
11 need it for appellate purposes or PCR purposes.

12 MR. SUTHERLAND: I'm sorry. I was just making
13 sure I wasn't handing them something with any marking
14 on it. That's United States v. Shorter, and that's a
15 more recent one. I'll speak loud so they can hear
16 me. That's the recent case that I was talking about.

17 THE COURT: They're not listening to you anyway.

18 MR. SUTHERLAND: They probably should. That's
19 the more recent case that I was talking about with
20 regard to the Fourth Circuit's opinion on the
21 recklessness of omissions.

22 THE COURT: All right. Are you ready for me to
23 hear from the State?

24 MR. SUTHERLAND: Yes, sir.

25 THE COURT: Let's hear from the State. The

1 State's position.

2 MS. CAMPBELL: Your Honor, our position is
3 regardless, if there is no intentional act -- and
4 you've outlined our position pretty well. But even
5 if the omission had been added, it wouldn't change
6 the probable cause in this case because it was found
7 inside the car on the steering wheel. So our
8 position is there was, number one, no intentional or
9 reckless omission of any material fact.

10 THE COURT: All right. Well, I think what he's
11 saying is that evidence should have been in front of
12 the magistrate.

13 MS. CAMPBELL: And I understand --

14 THE COURT: And then the magistrate could or
15 could not have issued the warrant. At least it would
16 have been an additional fact for them to consider.

17 MS. CAMPBELL: I understand his position. But
18 our position would be even with the additional fact,
19 there's still probable cause even if you have to rise
20 to that level, which in South Carolina,
21 traditionally -- and this is older law -- I don't
22 know that -- I mean, I know that we've always had to
23 have probable cause for the search warrant. But in
24 some of the cases, like Town of Mayesville vs. Clamp,
25 these are the only South Carolina cases I can find.

1 And it's an old case. But it talks about how in an
2 arrest warrant you don't even need that.

3 Additionally, Your Honor, I believe the law
4 still goes to the fact that a police officer, if he
5 has knowledge of a felony can make a warrantless
6 arrest regardless.

7 *THE COURT:* Well, that didn't take place in this
8 case.

9 *MS. CAMPBELL:* No, sir. But I'm just saying
10 that shouldn't be a higher standard. We just simply
11 feel like his argument does not have merit with these
12 facts in this case.

13 *THE COURT:* All right. I understand. All
14 right. Anything further?

15 *MR. SUTHERLAND:* Nothing from the defense, sir.
16 Let me just get this stuff together.

17 *THE COURT:* All right. Well, I will take it
18 under advisement. I'll read your material and give
19 you a decision in the morning.

20 *MR. SUTHERLAND:* Thank you, Your Honor.

21 *MS. CAMPBELL:* Thank you, Your Honor.

22 *THE COURT:* If a hearing becomes necessary,
23 we'll have conduct it before we bring the jury.

24 *MR. SUTHERLAND:* Yes, sir. Thank you.

25 *THE COURT:* All right. Anything else?

1 MS. CAMPBELL: No, sir.

2 THE COURT: All right. 9:30.

3 (Whereupon, the proceedings are concluded for
4 the day, to be reconvened tomorrow morning)

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Tuesday, April 3, 2007

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10 identification.)

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12 identification.)

13 **THE COURT:** All right, counsel. I have -- the
14 jury is not all present, so we might as well go ahead
15 and -- I have reviewed the material presented by the
16 defendant. And although at this stage of the
17 proceedings I do not find any evidence of a false or
18 misleading statement made to the magistrate in the
19 material submitted by the defendant; however, there
20 may be a question of whether or not the affidavit
21 supporting the arrest warrant had an omission that
22 was critical to the determination of probable cause.

23 Now, this -- the cases submitted by the
24 defendant deal with search warrants. It's a Fourth
25 Amendment protection. We're dealing here with an

1 arrest warrant. I don't know whether there's any
2 difference. The standard for an affidavit to make an
3 arrest may be different than a standard to invade
4 someone's home with a search warrant.

5 But, nevertheless, I do believe that Franks is
6 controlling law; that is, Franks v. Delaware. And I
7 think the Court should in an effort to be fair to the
8 defendant -- the defendant is facing very serious
9 charges, all of which carry substantial, substantial
10 penalties. If convicted, the defendant could
11 basically end up with a sentence of life in prison.
12 It's not a life without parole situation, but the
13 cumulative effect of all three of these indictments
14 could, as I say, end up basically a sentence, a life
15 sentence or what amounts to a life sentence.

16 And I think that it would be prudent for the
17 Court to err on the side of caution in this case and
18 allow the defendant to conduct whatever he deems
19 appropriate in terms of a hearing pursuant to Franks.

20 Now, again, the case that I think is most
21 significant in South Carolina is the Missouri case.
22 It's a 1999 case, a three and two decision, a Supreme
23 Court decision written by Justice Toal in which case
24 she found the search warrant for the residence where
25 the crack cocaine was discovered deficient because

1 the arresting officer, or at least the investigating
2 officer, testified unequivocally that the statement
3 was false. There's no such testimony in this case so
4 far that I have seen either in the bond hearing or
5 the Schmerber hearing or yesterday during the Jackson
6 v. Denno hearing.

7 As I understand the challenge of the defendant,
8 the affidavit lacks three words, and they are:
9 "Three weeks later". If you insert the three words
10 "three weeks later" before the sentence "the vehicle
11 was recovered and the DNA profile was collected from
12 the steering wheel", that's the challenge as I
13 understand it from the defendant.

14 And the question becomes whether or not that
15 omission, A, was delivered; or, B, was of such a
16 critical nature that had that language been inserted
17 in the warrant, I mean, in the affidavit, that the
18 magistrate would most likely have not found probable
19 cause.

20 So I'm going to allow the defendant to offer
21 such evidence as he thinks appropriate for the
22 simple -- for the purpose of determining whether or
23 not, A, there was an intentional misrepresentation to
24 the magistrate; and, if so, was that
25 misrepresentation critical to the determination of

1 probable cause by the magistrate on which basis the
2 issue -- the arrest warrant as opposed to a search
3 warrant.

4 So -- and I'll hear from either party that
5 wishes to address that issue.

6 **MR. SUTHERLAND:** Your Honor, if we may, we'd
7 like to call Investigator McDaniels to the stand and
8 ask him about these issues, sir.

9 **THE COURT:** All right. Let me just for the
10 record, anything from the State?

11 **MS. CAMPBELL:** Your Honor, we respectfully would
12 disagree with your position on this. However, if
13 we're going to have a hearing, it would be the
14 defense's motion I would assume. So I assume we just
15 need to hear from the investigator? Because we can
16 stipulate that those three words were not in the
17 affidavit.

18 **THE COURT:** I know that. So I don't know what
19 else the defendant plans in terms of hearing but I'm
20 allowing him to have that hearing. And other than
21 Investigator McDaniels, would you plan to call
22 anybody else or offer any other --

23 **MR. SUTHERLAND:** No one other than Investigator
24 McDaniels, Your Honor.

25 **THE COURT:** All right. Let's go. I think we

1 can move this right along.

2 **THE BAILIFF:** All the jurors are here, Your
3 Honor.

4 **THE COURT:** Investigator, you're under oath as
5 to yesterday. I will caution you that you're still
6 under oath.

7 **WITNESS:** Yes, sir.

8 **WALTER S. MCDANIELS,** after being reminded he is
9 still sworn, testifies as follows:

10 **MR. SUTHERLAND:** May it please the Court, sir.

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

12 DIRECT EXAMINATION

13 **BY MR. SUTHERLAND**

14 **Q** Investigator McDaniels, you stated on the record in
15 front of Judge Lloyd on December 14th, 2005 that --
16 and this is following a recitation of alleged facts
17 -- "The vehicle was later recovered approximately
18 three weeks later. Through our DNA capabilities we
19 were able to pull a DNA profile off of the steering
20 wheel. Based on that alone, I made contact with Mr.
21 McBride." Do you recall making that statement to
22 Judge Lloyd?

23 **A** Yes, I do.

24 **Q** Okay. You felt it was important to notify the Court
25 at the bond setting that the car had been missing for

1 over three weeks?

2 A Yes.

3 Q Okay. Why was it important to tell Judge Lloyd that
4 the car was missing for over three weeks at the bond
5 setting?

6 A Well, with respect to the DNA, the CODIS hit, when I
7 articulated this to Judge Lloyd, what I meant by that
8 was that was the primary influence as it pertained
9 that we based on the other stuff, the similarities in
10 size, height, I mean as far as the height and the
11 weight is concerned, that in addition to, we would
12 not have made an arrest just based off of height and
13 weight even though, you know, the victim gave a very
14 detailed description on the initial report. An
15 arrest warrant would not have been issued just as a
16 result of that alone in itself. When I articulated
17 this to Judge Lloyd, that was the primary influence,
18 for lack of a better term, that promoted us to
19 actually get an arrest warrant.

20 Q So your testimony now is that -- and I heard this a
21 little bit yesterday during the Denno hearing. I
22 anticipated something of this nature to come up. So
23 your testimony now is that whereas you told Judge
24 Lloyd and you also told Judge John at the Schmerber
25 hearing where you were under oath that the sole basis

1 for the probable cause was the CODIS hit; but it's
2 your testimony here today that in addition to that,
3 the height and weight was consideration for the
4 probable cause?

5 A I mean, there are other determining factors in
6 establishing probable cause. We would not have had
7 enough probable cause if the CODIS hit was absent.

8 Q But you're changing your testimony from the Schmerber
9 hearing. The sole basis of the probable cause was
10 the CODIS hit?

11 A I'm not changing my statement. I am telling you that
12 there are a lot of other instigating factors in
13 establishing probable cause, and the CODIS hit was
14 not the only one. There were other instigating
15 factors. There was the actual, again the height and
16 weight, also the fact that this individual here, he
17 had an actual residence that was near the victim's
18 house, was clearly indicated on his rap sheet. So
19 there are other factors that play a role. But you --
20 and again, I still stand on this; we would not have
21 had enough probable cause without the actual CODIS
22 hit.

23 Q Because you didn't have any evidence?

24 A Are you asking me a question or are you telling me?

25 Q No. I'll withdraw that. So you're amplifying your

1 sworn testimony and your statement to Judge Lloyd and
2 your testimony to the initial magistrate, today to
3 include a height and weight description, to include
4 that somebody lives in a certain area. None of this
5 stuff has ever come up before. I questioned you
6 about the probable cause on February the 14th, and
7 you told me in no uncertain terms, I probably asked
8 you two or three times because that's what I was
9 trying to get you to say --

10 MS. CAMPBELL: Objection, Your Honor. Can he
11 ask a question?

12 THE COURT: Well, I'm going to allow it. Go
13 ahead.

14 Q. I probably asked you two or three times -- I'd have
15 to go through the transcript -- that's what I was
16 trying to get from you because that's what happened.
17 You said the sole basis for probable cause. You
18 didn't say one of the factors that I'm considering
19 for probable cause is this, but there's no other
20 stuff that I'm going to testify to under oath because
21 you're asking me about it.

22 You're amplifying your testimony today because
23 the truth is that the sole basis, like you testified
24 and like you told Judge Lloyd and like you said
25 before, before the magistrate, the sole basis for the

1 probable cause was that you got that CODIS hit.

2 There's no identification at the scene. There's
3 no physical evidence recovered from the scene that
4 matches any chemical testing, any biological testing
5 that's gone on in this case. The only thing you had
6 was the CODIS hit. And it's based on that you told
7 the magistrate, you told Judge Floyd, you told Judge
8 John. The sole basis for the probably cause was the
9 CODIS hit. And now you're changing your testimony.
10 Is that right?

11 A I'm not changing my testimony. Actually I'm trying
12 to explain to you that there are other factors that
13 are taken into consideration. Had the initial
14 description given by the victim been so far off, you
15 know, six-foot-one and 200 and some odd pounds, I
16 would have been very hesitant to actually not go a
17 step further beyond the CODIS hit to establish a
18 warrant, obtaining the warrant.

19 I am telling you that there are other factors
20 involved. I'm not adding or taking away from what
21 I'm saying. What I'm actually doing is explaining to
22 you that there are other factors that are taken into
23 consideration before we actually seek an arrest
24 warrant. And, no, they're not always put into the
25 affidavit.

1 Q Oh, I understand that part.

2 A Okay. They're not always put into the affidavit.

3 But had the initial description given us as
4 pertaining to the suspect's demographic description,
5 if they would have been so far off that they were not
6 consistent from the initial report when she was first
7 contacted by the initial officer, in addition to what
8 I received from the actual CODIS hit from South
9 Carolina Probation and Parole, you know, matching the
10 information as it pertained to his residence at the
11 time; one of his addressed that he used, he used one
12 less than four or five miles away from the victim's
13 house and an additional one in Orangeburg.

14 So there are other factors. I'm not, you
15 know -- basically I'm telling you, I'm giving you the
16 inner workings of an investigation. And, no, they're
17 not always, you know, depicted on an affidavit. No,
18 they're not.

19 Q No. I understand that part. I'm not taking issue
20 with that part. Why didn't you tell me this
21 February 14th when I was asking about it?

22 A It didn't come up.

23 Q It didn't come up? I asked -- all right. It didn't
24 come up. That's your testimony today. You testified
25 yesterday that -- I'm going to go back to that tussle

1 we had about your reports -- that you put approximate
2 times in your reports, that you fill them out at some
3 point in the future. You go back and fill in
4 approximate times for the things that you do. These
5 are the kind of records that you keep.

6 I asked you whether you took him into custody at
7 the 13:00 and you said no. And we had a back and
8 forth about this approximation in your notes. And I
9 believe you said you might have taken him into
10 custody 12:15 or 12:30. Is that what you recall from
11 your testimony?

12 MS. CAMPBELL: Objection, Your Honor, as to
13 relevance on this line of questioning.

14 THE COURT: I'm not sure this is relevant.
15 What's the relevance of that question?

16 MR. SUTHERLAND: The relevance is, Your Honor,
17 that he's adapting his testimony to suit what he is
18 being confronted with throughout this process.
19 Yesterday the type of the timing was, the point of
20 the timing yesterday was for me to pin him down about
21 when he picked him up and when he brought him back.
22 He wouldn't let me do that. I'm just trying to
23 demonstrate his credibility.

24 THE COURT: All right. Go ahead.

25 Q So you said a number of different times, we squabbled

1 about this for probably 15 minutes yesterday, that
2 your reports aren't accurate, that they are just an
3 estimation, that you picked him up about 12:15,
4 12:30. Is that what you recall?

5 A Inbetween 12 and 12:30 is what I actually said. Yes,
6 sir.

7 Q Inbetween 12 and 12:30. But not at 13:00?

8 A No, I did not.

9 Q So if I've got --

10 A When I made contact, initial contact with him at
11 13:00.

12 Q If I've got an arrest warrant from Mr. McBride that
13 says Orangeburg, the location of the arrest was
14 Orangeburg county Department of Probation and Parole
15 and that the timing of the arrest was 13:00, is the
16 arrest report -- is that another kind of report that
17 you just guess on?

18 A You know, you have to also remember that inbetween
19 when I picked him up and actually traveling time, you
20 know, it would be consistent with whatever I actually
21 wrote down on my initial follow-up. Those times are
22 not accurate all the time.

23 Q Even -- you don't even put accurate times on arrest
24 reports?

25 A I mean, at times they're not as accurate as they need

1 to be. No, they're not. On the arrest report. But
2 I thought clearly yesterday that we supported that,
3 you know, when the statement was taken, what time I
4 actually signed into my computer. But there are some
5 field notes that are not accurate, you know, to the
6 to the T. I'm not going to remember at 18:31 I
7 actually made contact.

8 You know, so much goes on during an
9 investigation that you put approximate times. But
10 there are some requirements in place, like for
11 example, statements, when you advise someone of their
12 rights. Those do in fact have to be accurate.

13 Q So the time that you arrest somebody, the time you
14 put on an arrest report is not important when you
15 know you're going to be questioned in these pre-trial
16 hearings? Because, I mean, you basically know what
17 the elements as far as custody, I mean, that this is
18 not significant to you, or it's only -- the --

19 A Is that a question?

20 Q The point that I'm trying to get to is that every
21 time I'm asking you something you're coming up with
22 some way it out of it.

23 MS. CAMPBELL: Objection, Your Honor.

24 THE COURT: Ask questions. No editorializing.

25 MR. SUTHERLAND: Yes, sir. Yes, sir. Yes, sir.

1 THE COURT: Please. Please, Mr. Sutherland.

2 MR. SUTHERLAND: Absolutely.

3 THE COURT: Ask a question. You don't need to
4 editorialize about what your opinion of this witness
5 is.

6 MR. SUTHERLAND: Yes, sir.

7 THE COURT: That's inappropriate.

8 MR. SUTHERLAND: I am sorry.

9 Q I apologize, Sergeant McDaniels.

10 A That's fine. When initiating an arrest, I assume
11 this is your question?

12 THE COURT: Sir, wait until he asks a question.

13 A I apologize.

14 Q I'm going to go back to the information about the
15 timing. We established it was 27 days. The period
16 of time between the car being taken, the time it was
17 in circulation, the time it was recovered was 27
18 days. That you informed Judge Lloyd, you felt it was
19 important to inform Judge Lloyd that the car was
20 missing for over three weeks. Why wasn't it
21 important enough to include in your affidavit before
22 the magistrate that the car was missing?

23 A Again, that's -- that's not something that wasn't
24 articulated to the magistrate when I obtained the
25 warrant. Everything doesn't go in an affidavit, to

1 be honest with you. But I do recall articulating
2 that to the actual -- to Judge Cuff.

3 Q Okay. So you articulated that as a basis for
4 probable cause to the issuing magistrate where your
5 prior testimony and statements in court have been
6 that the sole basis for the probable cause was the
7 CODIS hit. Is that accurate?

8 A I do recall articulating that to Judge Cuff. And I
9 also recall him asking me where was the actual sample
10 taken from after I explained to him that it had been
11 three weeks. I told him the steering wheel material.

12 MR. SUTHERLAND: All right. I have no further
13 questions for this witness at this time, Your Honor.

14 THE COURT: All right. Anything from the State?

15 MS. CAMPBELL: Yes.

16 CROSS EXAMINATION

17 BY MS. CAMPBELL

18 Q Did you intentionally not put -- when you're doing an
19 affidavit, is there only so much room that you have
20 to put this?

21 A There is.

22 Q And in this case did you intentionally or maliciously
23 leave out the fact that that car was found sometime
24 later?

25 A No, ma'am. I did not.

1 Q And, in fact, in your warrant, do you put in that
2 that there was a CODIS hit from the steering wheel?

3 A I did.

4 Q And the fact that it was found, the CODIS hit was
5 found on the interior of the car, specifically the
6 steering wheel of the stolen car, was that
7 significant?

8 A It was.

9 Q And was that put in the warrant?

10 A Yes, it was.

11 Q And if this car had been found three months later or
12 six months later with the CODIS hit, would you still
13 have sought the same warrant?

14 A I would have if it was from the interior.

15 Q And in your investigation in this case, did Leroy
16 McBride have any reason to be inside this woman's
17 car?

18 A None at all, ma'am.

19 MS. CAMPBELL: That's all I have, Your Honor.

20 THE COURT: Anything further?

21 MR. SUTHERLAND: Nothing further for this
22 witness, Your Honor.

23 THE COURT: All right. You may come down, sir.
24 Thank you very much. Anything further?

25 MR. SUTHERLAND: Nothing further. If we could

1 proceed to arguments?

2 THE COURT: Sure. I'll be glad to hear from
3 you.

4 MR. SUTHERLAND: Your Honor, it's the position
5 of the defense that I started to hear this happening
6 yesterday during the Denno hearing where he was
7 adding additional facts as if there had been some
8 other basis for the probable cause when his sworn
9 testimony is that there was none.

10 If one were to consider, I guess he is under
11 oath two times now saying two different things; but
12 now he knows what I was after when I was asking him
13 these questions. He had no idea at the Schmerber
14 hearing. It's our position that the most credible of
15 the two instances of sworn testimony would be that at
16 the Schmerber hearing where he testified that the
17 sole basis for the probable cause was the CODIS hit.

18 It is the position of the defense that this was
19 a critical -- the 27 days that was left out of the
20 warrant, he just testified the three months, six
21 months, that stretch of time doesn't really impact
22 what the argument is here. The argument is that when
23 he left 27 days, I know he testified that he told the
24 magistrate all that.

25 THE COURT: Right.

1 MR. SUTHERLAND: But we just don't believe that.
2 Where there's 27 days, that's a significant factor..
3 The CODIS hit, that's a significant factor.
4 Everything else in the warrant is conclusory. That's
5 been admitted to by him prior to today.

6 It's the position of the defense that he left
7 out a critical fact. We would ask the Court to infer
8 recklessness from the omission of this critical fact
9 because we believe that if it had been included in
10 the warrant it would have obviated the probable cause
11 for an armed robbery warrant. Perhaps auto tampering
12 warrant.

13 THE COURT: How do you get to that?

14 MR. SUTHERLAND: Basically the warrant leaving
15 the conclusory parts out, the warrant just says there
16 was a CODIS hit, setting aside the parts that were
17 his conclusions in there. As far as the evidence,
18 the only evidence presented to the issuing magistrate
19 in that warrant is there was a CODIS hit. It says
20 this happened over here and there was a CODIS hit.
21 So the only evidence --

22 THE COURT: He said the victim was robbed.

23 MR. SUTHERLAND: Well, but as far as evidence of
24 him being the person, as far as evidence of him being
25 the person that committed this offense, probable

1 cause to believe that he is the person --

2 THE COURT: Do you interpret the lack of the
3 three weeks to be some kind of exculpatory --

4 MR. SUTHERLAND: It is the position of the
5 defense, sir, that a car that's missing for 27 days,
6 the magistrate would want to consider that. Because
7 as I said yesterday, that thing could have been down
8 at a circus. It could have been anywhere and any
9 number of people could have been in there, including
10 somebody whose genetic material was found in the car
11 that had nothing whatever to do with the offense
12 being alleged in the warrant.

13 THE COURT: All right. Let me hear from the
14 State.

15 MS. CAMPBELL: Your Honor, the warrant has been
16 incorporated into the record. Is that correct?

17 THE COURT: It has.

18 MS. CAMPBELL: Okay. Your Honor, quoting from
19 Missouri: "There will be no Franks violation of the
20 affidavit, including the omitted acts, if the
21 affidavit still contains sufficient information to
22 establish probable cause."

23 Our position is that had the affidavit included
24 that the vehicle was not recovered for three weeks,
25 there would still be sufficient probable cause. And

1 that would be our position.

2 **THE COURT:** All right. Now, let me just say
3 that included in the record is the Richland County
4 Sheriff's Department's warrant worksheet.

5 **MS. CAMPBELL:** Then I'm going to ask to
6 incorporate the other warrant, Your Honor.

7 **THE COURT:** The warrant itself, I have the
8 warrant. I don't have a separate affidavit other
9 than this warrant worksheet.

10 **MS. CAMPBELL:** Yes, sir. The language I'm
11 referring to is in the warrant and the warrant
12 worksheet I believe.

13 **THE COURT:** They're identical.

14 **MS. CAMPBELL:** Yes, sir.

15 **THE COURT:** Okay. The search warrant generally
16 contains a lot more facts than an arrest warrant.
17 Not that that's relevant. But I have reviewed the
18 warrant and the warrant worksheet. Now, if I --
19 actually if I go back to Shorter, the U.S. Supreme
20 Court case, the District Court in that case conducted
21 a Franks hearing without requiring that Shorter make
22 a preliminary hearing, which we've done here, but
23 denied relief on the merits.

24 And the Supreme Court affirmed that ruling,
25 saying first Shorter -- and we'll take this case,

1 McBride -- failed to present any evidence beyond the
2 mere fact of the omission itself that Sergeant Drews'
3 failure to substitute. The evidence presented here,
4 that Sergeant -- well, not Sergeant, but Mr.
5 McDaniels' failure to include the omitted material in
6 the affidavit was either intentional or the product
7 of reckless disregard, the affect of the admission on
8 the validity of the affidavit. And the fact of an
9 omission standing alone is not sufficient to
10 demonstrate intent or reckless disregard, referring
11 to Copely.

12 Second, and I'm just paraphrasing from Shorter,
13 the inclusion in the affidavit of the omitted fact
14 that Shorter had stated he did not have any marijuana
15 on the evening of April 13th -- and you could say the
16 omitted fact that the vehicle was recovered three
17 weeks later -- would not have negated probable cause.

18 Even if, as McBride contends, there could be no
19 problem cause to believe the marijuana would be found
20 in the apartment, the affidavit would still provide
21 ample probable cause to support the issuance of a
22 search warrant in that case, arrest warrant in this
23 case, and it goes on about marijuana.

24 And then I go to State v. Missouri, the South
25 Carolina case that says: "We begin with the

1 presumption that the Fourth Amendment does not
2 require an affidavit to include all potentially
3 exculpatory evidence in the affidavit. We realize
4 this" -- and this is Missouri -- "this case presents
5 a close call on the probable cause determination.
6 However, the combination of the police officer" --
7 and in that case there was a deliberate falsehood.
8 They found combination of the officer's deliberate
9 falsehood and his omission of critical facts polluted
10 the affidavit to the extent the magistrate could not
11 have found that probable cause existed to issue the
12 search warrant.

13 But I cannot find that the -- if I or the Court
14 inserts the words, three words "three weeks later", I
15 see that it has no stronger relationship to probable
16 cause than without that language. The fact that
17 there is a -- maybe I'm missing the point, Mr.
18 Sutherland. But the fact that a DNA profile was
19 collected from the steering wheel of this vehicle to
20 me is sufficient probable cause to issue the warrant.
21 I so rule.

22 **MR. SUTHERLAND:** Yes, sir.

23 **THE COURT:** All right. Now, counsel, I need to
24 see you. We've got a problem. I don't know how big
25 of a problem.

1 (Whereupon, a bench conference is had)

2 THE COURT: We'll stand at ease for about ten
3 minutes. Oh, by the way, number 202 is our
4 foreperson.

5 (Whereupon, a break is taken)

6 THE COURT: I've conferred with the -- that's a
7 flexible schedule on her part. The child is not
8 here. It's just something she has to do. All right.
9 Anything else before we bring the jury?

10 MR. SUTHERLAND: Your Honor, there was that one
11 issue that we discussed in chambers about the
12 probation, the parole agent. And I just wanted to
13 put it on the record --

14 THE COURT: All right.

15 MR. SUTHERLAND: -- that we agreed that they
16 weren't going to bring up the fact that this person
17 was working at probation and parole. Obviously we
18 think it is exceedingly prejudicial.

19 THE COURT: Well, you understand that?

20 MS. CAMPBELL: Yes, sir.

21 THE COURT: Location of the arrest, you can say
22 at somebody's office or something.

23 MR. SUTHERLAND: That's all from the defense,
24 sir.

25 THE COURT: Anything else from the State?

1 MS. CAMPBELL: No, sir.

2 THE COURT: Bring the jury, please.

3 MS. CAMPBELL: Judge, do you have the
4 indictments?

5 THE COURT: Ma'am?

6 MS. CAMPBELL: Do you have the indictments?

7 THE COURT: I do.

8 MS. CAMPBELL: Thanks.

9 (Jury in now at 10:07 a.m.)

10 THE BAILIFF: All the jurors are present, Your
11 Honor.

12 THE COURT: All right. Thank you very much.
13 Good morning, ladies and gentlemen. We're ready to
14 begin the trial now. Madam Clerk, will you swear the
15 jury, please?

16 THE CLERK: Yes, sir. Ladies and Gentlemen of
17 the Jury, please stand and raise your right hand to
18 be sworn. After this oath, please acknowledge by
19 answering "I do".

20 (Whereupon, the jury is sworn).

21 THE CLERK: Thank you. You may be seated.

22 THE COURT: All right, ladies and gentlemen.
23 First I want to thank you, Madam 202, for agreeing to
24 serve as Foreperson of this jury. And I have
25 provided each of you, if you wish to do so, with pads

1 and pencils to make notes. And I want to give you a
2 caution to start with, that if you decide to take
3 notes, and the trial may last two or three days, so
4 it might be helpful if you do that, but it's up to
5 you entirely.

6 But if you do that, I want to caution you that
7 those notes are for your benefit only. Remembering
8 maybe some of the testimony from your own notes, that
9 is not to be used to try to convince somebody that
10 you heard something that they didn't. In other
11 words, I wrote it down, so it's got to be right, so
12 you might -- you forgot and I wrote it down; in other
13 words, not to be used to try to convince another
14 juror as to what you heard or thought you heard and
15 that you took notes on.

16 So with that, just a preliminary caution, you're
17 certainly, as I said, welcome to take notes. Before
18 we begin this trial I want to tell you this trial
19 probably will be a little bit different from what you
20 may expect. Many people do not have the chance to
21 attend actual court hearings as you are now doing and
22 they may think from watching television or movies or
23 reading books that trials are always full of
24 excitement and intense action. While these things
25 they be true at times, this trial is not for

1 entertainment.

2 It is a fundamental part of our democracy, a
3 search for the truth in an effort to try to make sure
4 that justice is done between the parties before the
5 court. Searching for the truth and making sure that
6 justice is done is often a slow, deliberate and
7 representative process, the opposite of what you may
8 have seen on television or in movies or in books.

9 This courtroom is a place of honor dedicated to
10 the protection and preservation of citizens' rights
11 through what many have called the greatest system of
12 justice ever created. The attorneys appearing before
13 you are advocates for the parties they represent but
14 first and foremost they are officers of this court
15 sworn to uphold the integrity and fairness of our
16 judicial system and help you in a search for the
17 truth.

18 You should expect them to be professional,
19 competent and ethical in the representation of their
20 clients' interests. And remember you also have taken
21 an oath to try this case and reach a fair and just
22 verdict. So you are also expected to be professional
23 and reasonable and ethical. So I want to thank you
24 at this time for accepting this important
25 responsibility of jury service and your contribution

1 to our justice system today.

2 Now, we're about to enter into the trial of the
3 case of The State vs. Clyde Leroy McBride which I
4 told you in some of the questioning, the Voir Dire
5 period that we went through yesterday. What I now
6 say is intended to serve as an instruction to the
7 trial of the case. These are not remarks about the
8 law of the state of South Carolina as it applies to
9 this case, because I'll tell you more about that at
10 the conclusion of the trial and before you retire to
11 render your verdict. This is merely an explanation
12 of the procedure that we'll follow during the trial
13 so you may better understand what may be happening
14 from time to time.

15 Now, the defendant is charged in three
16 indictments, as I mentioned to you yesterday, with
17 the crimes of burglary first degree, armed robbery
18 and kidnapping. And I'll explain the elements of
19 each of these crimes to you later in the trial.

20 Now, these indictments I caution you again are
21 simply the charge by which the case is brought into
22 court. They are not in any sense evidence of the
23 allegations they contain. The defendant has pled not
24 guilty to each of these indictments, and the State
25 therefore has the burden of proving each of the

1 elements of the indictments to you beyond a
2 reasonable doubt.

3 And it will be your duty, ladies and gentlemen,
4 to decide whether the State has met that burden.
5 Your purpose as jurors is to determine the facts.
6 You are the sole judges of the facts. If at any time
7 I make any comment regarding the facts, you must
8 disregard that. You are to determine the facts from
9 the testimony you hear and any other evidence that's
10 introduced into court.

11 It will be up to you to determine the inferences
12 which may be properly drawn from that evidence. It's
13 especially important that you perform your duty of
14 determining the facts diligently and conscientiously
15 because ordinarily there is no way to correct an
16 erroneous determination of the facts by a jury.

17 On the other hand and with equal emphasis, the
18 same law that makes you the judges of the facts makes
19 me the judge of the law. The law as given to you by
20 the Court is the only law you may consider. You must
21 accept and follow it even though you may disagree
22 with it. I cannot tell you what the facts are, and
23 you should not disagree with me about what the law is
24 or what the law should be.

25 Your job is to take the law as I explain it to

1 you and apply it to the facts as you find them from
2 the witnesses, testimony of the witnesses and any
3 other evidence that's introduced during the course of
4 the trial.

5 And after doing that you will render your
6 verdict, a true and just verdict under the solemn
7 oath you just took as jurors. And until I advise you
8 to begin your deliberations you must not discuss this
9 case with anyone, including your fellow jurors,
10 friends, family members or anyone involved in the
11 case. And after the case is submitted to you, in
12 other words, once it's turned over to you at the end
13 of the trial, you must discuss it only in the jury
14 room with your fellow jurors.

15 It's important that you keep an open mind and
16 not decide any issue in this case until all the
17 evidence has been presented, the parties have made
18 their closing arguments and I've instructed you on
19 the law of the state of South Carolina as it applies
20 to this case.

21 It's your solemn responsibility to determine the
22 guilt or the innocence of the defendant. Your
23 verdict must be based solely on the evidence as
24 presented to you in this trial and on the law as I
25 instruct you at the close of the trial. And in just

1 a moment the solicitor will make what is called an
2 opening statement in which the solicitor will explain
3 to you what the issues in the case are or what the
4 solicitor thinks the issues in the case are and what
5 the evidence will show.

6 The attorney for the defendant may also make
7 such an opening statement. I caution you that what
8 the attorneys tell you in their opening statements is
9 not evidence in this case. It's only their
10 contention as to what the issues are.

11 The evidence in the case will be presented to
12 you by testimony of the sworn witnesses from this
13 witness stand and any exhibits that may be introduced
14 during the course of the trial.

15 Now, from time to time you may hear the lawyers
16 or one of the lawyers say something like, I believe
17 we have a question of law or a matter of law to
18 discuss with you; or, May we approach the bench? Or
19 sometimes I myself might find it necessary to excuse
20 you from the courtroom from a short period of time
21 while the attorneys and I discuss a matter of law.

22 The reason for this is because you are the
23 judges of the facts in this case and sometimes when I
24 am discussing matters of law with the attorneys it
25 may be necessary for me to make some comment about

1 the facts in connection with a ruling or whether some
2 particular law applies or doesn't apply. I'm not
3 supposed to tell you what the facts are, so I'll
4 excuse you from the courtroom while these discussions
5 take place so that in no way will you be influenced
6 by anything that I say or do in connection with the
7 facts.

8 In determining what the true facts are you must
9 decide whether or not the testimony of any witness is
10 believable. It will be my responsibly to rule as a
11 matter of law whether testimony is admissible; that
12 is, allowed to be entered into court, but once that
13 testimony is admitted, once you hear it, whether you
14 believe it or not is solely up to you.

15 In deciding whether to believe a witness you
16 have a right to consider the interest of that
17 witness, the bias of that witness or the prejudice of
18 that witness or the opportunity for that witness to
19 have seen the matters and things about which that
20 witness may testify and the way the witness acts on
21 the witness stand.

22 You have the right to consider anything that's
23 in this record that will help you evaluate the
24 testimony of these witnesses. That means it's your
25 duty to pay close attention to the witnesses, observe

1 the witnesses, listen to the attorneys and to the
2 Court. Try not to let your thoughts wander but give
3 strict attention to the testimony in the case so at
4 the end of all of the testimony after the arguments
5 of counsel and the charge on the law by the Court you
6 will then be in a position to determine what the true
7 facts are and apply the law to those facts and thus
8 render a true and just verdict.

9 It will be your added duty, Madam Forelady, to
10 preside in the jury room, be the jury's spokesperson
11 here in court. It will also be your duty to write
12 the verdict if that becomes necessary, but I'll give
13 you further instructions about that at the conclusion
14 of the case.

15 All right, counsel. You may now begin the
16 trial. Solicitor, you may make your opening remarks.

17 **MS. CAMPBELL:** May it please the Court?

18 **THE COURT:** Yes, ma'am.

19 **MS. CAMPBELL:** On August 29th of 2005, Gayle
20 Roberts was unloading her groceries in her yard when
21 a man armed with a pistol wearing a mask approached
22 her, forced her into her home at gunpoint, demanded
23 money, car keys, barricaded her in her own storage
24 room and escaped in her vehicle.

25 The man who robbed and kidnapped and burglarized

1 Ms. Roberts, his name is Clyde Leroy McBride. And,
2 ladies and gentlemen, this is Clyde McBride.

3 My name is Luck Campbell, and I'm an assistant
4 solicitor here in the Fifth Circuit which is made up
5 basically of Kershaw County and the Columbia area, of
6 Camden and Columbia. And I along with Dan Goldberg,
7 we're the prosecutors handling this case.

8 Now, as the judge told you in the very beginning
9 as he was talking to you yesterday, there are
10 indictments in this case. There are three separate
11 indictments that all arise out of the same offense.
12 Because often when a person commits a crime, he may
13 commit multiple crimes just arises out of the same
14 sets of facts.

15 And as the judge also told you, these
16 indictments are not evidence. But they do serve a
17 very important role, ladies and gentlemen, because
18 basically they put the State on notice as to what the
19 elements of the offenses are that we have to prove
20 and against whom we are proving them. And they also
21 put the defendant on notice as to what the State
22 alleges he had to do.

23 In this case the Grand Jury has true billed
24 three indictments. And, ladies and gentlemen, I want
25 to talk briefly about the law and I'll address them

1 more later, but briefly about the law in this case.

2 The first of the indictments -- and I'm not
3 taking them in any particular order -- is burglary in
4 the first degree. And very simply, ladies and
5 gentlemen, the State must prove that Clyde Leroy
6 McBride did while here in Richland County, on August
7 the 29th, 2005, willfully and unlawfully enter the
8 dwelling. In this case he actually went in through a
9 window but that's not necessary. An unlawful entry
10 of any kind by anyone who is not supposed to be in
11 your home makes it a burglary.

12 He did it without consent with the intent to
13 commit a crime therein. And that the defendant was
14 armed with a deadly weapon and/or threatened the use
15 of a deadly weapon or a displayed what appeared to be
16 a deadly weapon.

17 In this case there is going to be no dispute
18 that a deadly weapon was involved. One was a pistol.
19 One was actually a .22 rifle that was found at the
20 home.

21 The second of these indictments is armed
22 robbery. In burglary first we also have to prove an
23 aggravating circumstance, proving that he was armed
24 while in the commission of a crime, that he caused
25 harm to a person there. We don't have to prove each

1 and every aggravating circumstance, the judge may
2 instruct you. Just one of those takes it from
3 burglary in the second degree to burglary in the
4 first degree.

5 We also must prove armed robbery. And it's the
6 same set of facts, that the defendant on August the
7 29th while in Richland County did commit the crime by
8 feloniously taking from the person or presence of
9 Gayle Roberts by means of force or intimidation goods
10 or monies of Gayle Roberts; in this case U.S.
11 currency among other things, with the intent to
12 deprive the owner permanently of such items.

13 In armed robbery you don't even have to prove
14 that an actual gun was used. In this case again,
15 there was an actual pistol that was displayed and
16 repeatedly put in her face.

17 The final of these charges, ladies and
18 gentlemen, is kidnapping. And in our State the
19 definition of kidnapping is pretty simple. Again,
20 that Clyde Leroy McBride on or about August 29th did
21 unlawfully seize, confine, inveigle, decoy, kidnap,
22 abduct or carry away. And notice the "or" in there.

23 Any time a person's freedom is taken from them
24 for any amount of time, be it a matter of seconds,
25 minutes, hours or days, it then constitutes a

1 kidnapping in this state.

2 The judge will instruct you at the end about the
3 law. And I want to talk a little bit more about the
4 facts. Before I do that I want to say one thing.

5 The burden of proof in criminal cases is on the State
6 of South Carolina to prove his guilt, Clyde McBride's
7 guilt, beyond a reasonable doubt, as it should be.
8 That is our burden; and, ladies and gentlemen, I
9 submit in this case, perhaps more than any other,
10 with these facts that is a burden the State welcomes.

11 Ms. Roberts, she is an instructor's aid at a
12 local elementary school. She deals or taught or
13 helped teach the special needs children. She'd done
14 it I think a total of 29 years, 24 --

15 MR. SUTHERLAND: Your Honor, objection to
16 relevance.

17 THE COURT: Overruled. Go ahead --

18 MR. SUTHERLAND: Yes, sir.

19 MS. CAMPBELL: -- in our system. On that
20 afternoon after work she stopped by the grocery store
21 to get some groceries. And she arrived at her home
22 about 3:45. And it was a normal day, just like any
23 other day for this woman who worked.

24 When she got home she started to get out of her
25 car and take her groceries out of the car when she

1 noticed someone approaching her. It was a man. He
2 had a mask. He had a gun. He had gloves. And he
3 looked at her and said, "Grandma, come on. I'm not
4 going to hurt you but come on."

5 And Gayle Roberts tried to comply, but she has
6 kind of disability. She has difficulty walking. He
7 got impatient. She wasn't moving fast enough. He
8 was sticking the gun in her face. "Come on. I want
9 your money. I want your bank account number." He
10 got her into her house. Once she's in her house,
11 he's like, just starts saying, "Your son owes me
12 \$5,000 for drugs." She doesn't know what he's
13 talking about. She's like, "No."

14 He keeps demanding money. She finally gives him
15 \$20. She gives him her wallet. He demands her car
16 keys. He forces her back to the back porch in her
17 house and shoves her into a storage room. She tries
18 to get out. And at that point he pushes a freezer
19 and a refrigerator in front of there to make sure she
20 couldn't get out. He had the car keys, and little
21 bekownst to her, he was going through her purse.
22 And he had got 300 more dollars. And he had her
23 where he needed her. And at that point she could
24 hear the car crank up and he left in her car.

25 Police responded. They put out a BOLO,

1 be-on-the-lookout for her car, put out the
2 information about it. Shortly thereafter officers
3 were able to fall in behind the car that was last
4 seen heading towards the Orangeburg area down 26.
5 Officers arrived at the scene. They processed the
6 scene hoping to get DNA or any other materials there
7 at the scene.

8 They also noticed during this time period that
9 the dog had been shot, the dog that was in her
10 backyard. They collected blood samples from the dog.
11 They tried to collect any DNA there at the scene.

12 About three weeks later, almost four weeks
13 later, the car was found right where it had been seen
14 off 26 kind of in a wooded area. And it was
15 recovered. At that point police towed the car back
16 to Richland County where again they processed the
17 scene, as they should. In this case they took swabs
18 from the interior of the car to try to see if they
19 could identify who had taken it.

20 They took a swab from the steering wheel of the
21 car that was stolen from Ms. Roberts some 27 days
22 earlier, and they put it in what's known as a data
23 base where they can run the sample that's taken from
24 the car, the forensic sample against known DNA
25 samples from other people. It's called CODIS.

1 And when they ran that, it came back with a
2 match. One person could have been the contributor of
3 the DNA on the steering wheel. And it wasn't Ms.
4 Roberts. It was Clyde Leroy McBride.

5 At that point the police followed up. They got
6 a warrant. They attempted to find him. On
7 December 8th of 2005, they located Mr. McBride in
8 Orangeburg, transported him back to headquarters.
9 Once back at headquarters he was advised of his
10 rights, as he should be.

11 At that point he chose to give his version of
12 events. And you will hear from Sergeant McDaniels
13 about how he gave his version of what happened that
14 day and that he was sorry, he wished he'd never done
15 it. He admitted to robbing, burglarizing and
16 kidnapping Ms. Roberts.

17 And, ladies and gentlemen, that's something else
18 you'll hear in this case. At the conclusion of the
19 case all we ask is that once you've heard all the
20 evidence and consider it and apply the law as the
21 judge gives it to you that you hold him responsible
22 for his choice to terrorize Ms. Roberts, to rob her
23 to pay for his bills. That's all we ask. Thank you.

24 **THE COURT:** Mr. Sutherland.

25 **MR. SUTHERLAND:** May it please the Court? Good

1 morning, ladies and gentlemen. Ms. Campbell did a
2 fine job of reciting the accusations in this case.
3 That's exactly what they are. She said so herself.
4 His Honorable Court has told you so. This is their
5 version, the government's version of what happened in
6 this case.

7 The evidence is not going to come from here.
8 It's going to come from right here. You're going to
9 be able to judge the credibility of the evidence.
10 You're going to make up with your own minds
11 individually and collectively about what kind of
12 weight you want to give to the evidence. Is there
13 anything wrong?

14 They say that there was a statement. You're
15 going to be able to judge whether it was freely and
16 voluntarily made and whether the statement itself was
17 credible, whether they're his words, whether they're
18 the words of somebody else.

19 You'll be able to evaluate the scientific
20 evidence in this case. You'll be able to evaluate
21 everything. This is the process. From the very
22 beginning, every judge from jury qualifications to
23 jury selection to the present has told you all how
24 important this is, how important this is to our
25 country, us as individuals.

1 When our government accuses us of a crime, they
2 bring to bear a lot of power against. And really the
3 only place as citizens that we have to turn is to a
4 jury. There is no way that American citizens can
5 compete with the government. That's why we have such
6 strict rules, such high burdens of proof.

7 I don't care how much money somebody has,
8 they've got more. And if they run out, they can
9 raise taxes. So the evidence that you're going to
10 hear is going to come from right here. It's up to
11 you. Use your conscience. Use your sense of duty to
12 your country.

13 This is not -- although it may appear at times
14 to look like the stuff on T.V., as the judge said,
15 this isn't about television. This is about real
16 life. This is about citizenship. Consequences.
17 This is about who we are. Our judicial system is one
18 of the most important strands of the fiber of the
19 American being, what it means to be an American
20 citizen.

21 We do believe that we will test this evidence as
22 it is put forward, cross examine, scrutinize it as
23 you will later scrutinize it. And we do believe that
24 there are substantive problems with this case. And
25 we do believe at the end of the day that you will

1 make a sound judgment and that you will find in favor
2 of Mr. McBride. Thank you all.

3 THE COURT: All right. Solicitor, call your
4 first witness.

5 MR. GOLDBERG: Thank you, Your Honor. The State
6 calls Gayle Roberts.

7 GAYLE ROBERTS, after being duly sworn, testifies
8 as follows:

9 THE CLERK: Thank you. Please have a seat in
10 the witness stand and state your full name for the
11 record.

12 THE WITNESS: My name is Gayle Roberts.

13 COURT REPORTER: Would you scoot the microphone
14 towards you, please. Thank you.

15 DIRECT EXAMINATION

16 BY MR. GOLDBERG

17 Q Good morning, Ms. Roberts.

18 A Good morning.

19 Q Just make sure you keep your voice up for the court
20 reporter, please.

21 A Yes.

22 Q Ms. Roberts, would you please tell this jury a little
23 bit about yourself, who you are, where you're from,
24 what you do?

25 A I've lived in the Horrell Hill/Hopkins area all my

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1 life. I am a retired instructional assistant with
2 Richland School District one. I'm a widow and I have
3 two children. And I just live a very quiet life. I
4 have many friends. And that's about it.

5 Q How long have you been widowed?

6 A Six years.

7 Q What kind of work was your husband in?

8 A He worked the South Carolina Army National Guard. He
9 retired from there.

10 Q How old are your children?

11 A My children will be -- they're 41 and 36.

12 Q And what are their names?

13 A Linda, my daughter; and Ernie Roberts, my son.

14 Q And you said what part of Richland County did you
15 live in?

16 A I was raised on Richland Boulevard right in Hopkins.
17 But I've lived most of my life as a married woman on
18 Harmon Road. That's in the Horrell Hill section of
19 Hopkins.

20 Q And the Lower Richland portion of the county?

21 A Yes, sir.

22 Q And you were living there back in August of '05?

23 A Yes, sir.

24 Q And were you working back in '05?

25 A Yes, sir. That was my last year working.

1 Q You're retired now?

2 A Yes, sir.

3 Q Do you still do some work with the school?

4 A Yes, sir. I volunteer twice a week at the school
5 that I retired from.

6 Q But August of '05 you were still fully employed?

7 A Yes, sir.

8 Q I want to take you back to August 29th, 2005.

9 A Yes, sir.

10 Q And I'd like for you to tell the jury what you were
11 doing that day.

12 A I left school a little early, about 20 minutes to 3
13 and ran by the grocery store and I went by Kroger and
14 went to Bojangle's, got me a large drink and
15 something for lunch the next day. I went home.

16 And as I was turning in the driveway, I stopped
17 and got my mail and I came around. I have a free
18 standing carport. And I pulled around into my
19 carport. I had just gotten out of my car; and, like
20 I said, I had groceries to unload. I had my purse on
21 my arm and had my drink in the other.

22 And I heard a male voice. And for a split
23 second I thought it was my son because that's the
24 only male voice that's around my house. And I turned
25 and I saw a masked man with a gun coming towards me.

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1 And he said, Don't worry, grandma. I'm not going to
2 hurt you, or something like that. And all I could
3 say was, "Oh, God, oh, God."

4 Q Take your time.

5 A Anyway, he came to me and motioned me away from my
6 car and was taking, walking me with his, I think he
7 had me by the arm or my shoulder. I'm not sure. And
8 he was leading me up to my backyard. And I wasn't
9 sure where he was taking me. I just know it was away
10 from my home. And by that time I was getting mad. I
11 was scared to death but I was getting a little mad.
12 I had the cup of drink still in my hand, and
13 foolishly I threw it on him. What I thought I could
14 do I did not know. I just felt like I had to do
15 something.

16 At that point he stopped taking me up towards
17 the back of my place and turned around and then
18 guided me to my back porch. But while he was walking
19 me in the backyard, he first told me that I owed him
20 \$5,000. I said, "No, I don't." He said, "Well, your
21 son does." I said, "No." And he said, "He owes me
22 \$5,000 for drugs." I told him, I said, "My son
23 doesn't do drugs." He says, "You don't know anything
24 about your son." And then I said, "Ernie does not do
25 drugs." That was the first time I used his name.

1 Q Let me stop and ask you a few questions along those
2 lines.

3 A Certainly.

4 Q You said when he first approached you you heard a
5 male voice and you thought it was your son?

6 A Yes, sir.

7 Q Who else lives at your home?

8 A Just my son and myself.

9 Q Okay. And is that why you thought it might have been
10 his voice, because he lives there?

11 A Yes, sir. He occasionally would get home early and
12 he'd park in the backyard. And I didn't really look.
13 Like I said, you do things by rote. You don't pay
14 attention to things.

15 Q Is your house right on the road on Harmon Road?

16 A Not right on it. It's off the road a ways.

17 Q How far back off the road would you say?

18 A Oh, I guess over half the length of a football field,
19 maybe more.

20 Q And what kind of car were you driving that day?

21 A A 1999 red Dodge Stratus.

22 Q Where did you get that car from?

23 A The previous year -- excuse me -- my husband died in
24 2000. And in 1999 my car was totaled. And we went
25 to go buy a car. And that was the last thing he and

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1 I bought together.

2 Q And that's the car you were driving that day?

3 A Yes, sir.

4 Q What kind of car does Ernie drive?

5 A He drives -- at the time he was driving a black
6 Viper, a black Chevrolet truck.

7 Q Did you see any other cars at your house?

8 A No, sir.

9 Q Can you describe for me what the man looked like when
10 you got -- when he approached you at your car?

11 A He was covered up, like I said, from head to toe. He
12 had a ski mask on. He was wearing gloves. He wore a
13 grayish white shimmery two-piece, like an athletic
14 suit. It had stripes down the legs or whatever. And
15 he was not very tall, very slender. But he had a
16 chrome small handgun in his hand.

17 Q A handgun?

18 A And I won't ever forget that as long as I live. And
19 like I said, he -- like I said, he just kept asking
20 for a certain amount of money, \$5,000. And --

21 Q Could you see -- well, let me ask you this. Where
22 was the handgun pointed?

23 A At me.

24 Q The whole time?

25 A Pretty much. I mean, I didn't look at it. But, you

1 know, I wouldn't have gone anywhere if he hadn't been
2 pointing it at me.

3 Q Did you notice anything about -- you started to
4 describe his physical appearance?

5 A Yes, sir.

6 Q Did you notice anything else about him?

7 A No, sir. Like I said, he was maybe a head taller
8 than me; maybe, not more. I don't know. Not very
9 tall. And, like I say, he was very slender, very
10 slight build. I could not tell what race he was or
11 anything like that. I just knew that he was not a
12 very good person.

13 Q Could you tell what shade of skin color he had?

14 A No, sir. All I could see was a little bit of skin
15 right here. And I told the investigators it could
16 have been a dark skinned white person or a light
17 skinned black person. It could be a Mexican. It
18 could have been -- I mean, I gave them the whole
19 realm. It could be anybody. I did not know.

20 Q You say he had a ski mask on?

21 A Yes, sir.

22 Q At that time?

23 A Yes, sir.

24 Q Describe for me the inside of your house and what
25 sort of some of the rooms look like, whose rooms,

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1 where, what they look like?

2 A It's a very simple layout. My husband built it.
3 Starting at the front, it's the kitchen and then the
4 dining room, the den, the living room. Then there's
5 a hallway and then there's a bedroom. That's my
6 son's. And on the opposite of it is a bathroom. On
7 the end is a bedroom facing the road. It used to be
8 my daughter's. And then the master bedroom with the
9 bathroom near it.

10 Q Is it pretty clear that you're not the only one who
11 lives there?

12 A Very obviously.

13 Q How is that?

14 A Well, my son, like I said, he's 36 now and he's --
15 and some things don't change. He still lives like a
16 teenager. His clothes are here and yonder. And you
17 can pretty well tell that, you know, it's a room
18 that's lived in.

19 Q Are pictures in your house?

20 A All over the place. Mainly the den.

21 Q And what, if anything, did he say to you as you got
22 up to the house?

23 A Like I say, first of all, he said, called me grandma
24 and said he wasn't going to hurt me. And then he
25 immediately just, you know, started asking for the

1 money. And that's pretty much all he was talking
2 about, that he wanted the money, that my son owed him
3 the money, that he owed him the money for drugs. And
4 I knew my son did not do drugs.

5 Q How did you know that?

6 A My son is a truck driver with a CDL and they do
7 random drug testing all the time.

8 Q What's a CDL?

9 A It's a certain type of driver's license you have to
10 have to drive a tractor trailer.

11 Q He got drug tested as part of that?

12 A Oh, quite often.

13 Q And you said that he grabbed your arm and started
14 guiding you somewhere. Where was he guiding you?

15 A Up towards the back of my place. To some people it
16 doesn't look like a hill, but if you walk up very
17 many times, you realize it's a hill. And I knew that
18 my legs -- at the end of the day my legs hurt much
19 more. And quite honestly, I was not going to be
20 taken up there. I did not know what this man was
21 going to do with the gun, but I was not going to have
22 my children find me in those woods and not know where
23 I was. If he was -- if anything was going to be
24 done, it was going to be done there in my backyard.

25 Q Is that why you threw the drink on him?

1 A Yes, sir.

2 Q And what happened after you threw the drink on him?

3 A He changed his mind and direction and led me to my
4 porch.

5 Q So is it a front porch or a back porch?

6 A Back porch.

7 Q I went to show you what's been marked as State's
8 Exhibit 10 just for identification and have you look
9 at that.

10 A Yes, sir. That's my back porch. And the window is
11 the storage room.

12 MR. GOLDBERG: Your Honor, at this time we'd
13 move State's 10 into evidence.

14 MR. SUTHERLAND: Without objection, Your Honor.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibit No. 10 is admitted
17 into evidence.)

18 Q And you if you could just kind of point for me with
19 this.

20 A Yes, sir.

21 Q Where on this picture generally is the carport that
22 you pulled into?

23 A Over in this direction.

24 Q Over here?

25 A Yes, sir. It's free standing.

1 Q So would it be over here or over here?

2 A It would be over here.

3 Q Okay.

4 A This is the end of my house. This is the kitchen and
5 the porch area. And that's where my carport is that
6 leads right into my kitchen.

7 Q So when you said he was leading you kind of up a
8 hill, would that be away from this porch here?

9 A It would be right along in here.

10 Q Okay. And why was it so difficult for you to walk up
11 that hill?

12 A Because it's an incline. And any incline is hard for
13 me to walk because I think my feet are higher than
14 they are. And I'll trip and I'll fall sometimes.
15 And if I usually walk up that hill, I take a cane
16 with me.

17 Q After you threw the drink on him --

18 A Yes, sir.

19 Q -- and he led you back towards the house --

20 A Yes.

21 Q -- is this where he was leading you?

22 A Yes, sir; into that door.

23 Q Into this door?

24 A Yes, sir. That's my back door.

25 Q Okay. And is this into your house or --

1 A No. That's into the back porch.

2 Q Okay. And what else was part of that porch?

3 A The storage room.

4 Q Where is that located? Could you point that out?

5 A Right here. That window is in my storage room.

6 Q There is a door to get into that storage room?

7 A Yes, sir.

8 Q Through the porch?

9 A Yes, sir. Inside the porch, there's a door in there.

10 Q What did you keep on that porch?

11 A My husband was a keeper. And there is tools and

12 things, but there is a chest freezer and there is an

13 upright freezer and there's an old refrigerator that

14 we keep extra drinks and things in and some cabinets

15 for tools and things. It's a very cluttered porch.

16 Q I want to show you what's been marked as State's 15

17 and 18 and have you look at those.

18 A Yes, sir. Okay. Yes, sir. That's the freezer

19 that's been --

20 Q No. Let's just --

21 A I'm sorry.

22 Q That's okay. Just tell us what you see in those

23 pictures?

24 A I see a brown cabinet that's on my porch. I see an

25 upright freezer, and I see part of the refrigerator

1 and the door to my storage room.

2 Q How about in State's 18?

3 A I see a closer look at the -- this other picture, I
4 see more of the refrigerator leaning up against the
5 storage room door and the freezer beside it.

6 Q Thank you. And do these photos fairly and accurately
7 represent how these items appeared on that day?

8 A After they were moved, yes.

9 MR. GOLDBERG: Your Honor, at this time we'd ask
10 to put State's 15 and 18 into evidence.

11 MR. SUTHERLAND: I have no objection, Your
12 Honor.

13 THE COURT: Without objection.

14 (WHEREUPON, State's Exhibit No. 15 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 18 is admitted
17 into evidence.)

18 Q And now, if you wouldn't mind, just describing that
19 for the jury, please, what we're looking at here?

20 A This right here is the upright freezer. Back right
21 here is the other refrigerator. And this is the door
22 to my storage room.

23 Q Okay. That's State's 15. And then State's 18?

24 A This is the closer view. This is the door again.
25 And this is the refrigerator that was pushed up

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1 against the door, and here is the freezer that was
2 moved to go up against it.

3 Q And when you first were taken onto the porch by Mr.
4 McBride, were those items where they are in these
5 pictures?

6 A Oh, no, sir. No.

7 Q Where were they when you first came onto the porch?

8 A Well, where they always are. The upright freezer is
9 up against the wall, the house wall. And then
10 there's the double window. And then the refrigerator
11 is up against the storage room wall.

12 Q And what happened once you got on the porch?

13 A He took me to go to the storage room. He opened the
14 door.

15 Q Did he still have the gun on you?

16 A Oh, yes, sir.

17 Q You got in the storage room. And then what?

18 A Well, he started asking me for my bank numbers, my
19 cellphone. He wanted money. And my son had given me
20 the previous Friday some money for his bills. I
21 write checks for his bills. He --

22 Q Why does he do that?

23 A He has a hard time keeping a straight checking
24 account. So he just gives me the cash and I write
25 the checks and he -- and I was supposed to stop at

1 the bank that afternoon but I did not. I had
2 forgotten.

3 Q Was that the only money you had in your wallet?

4 A I had a 20 and two or three 1's that I had that was
5 mine. And that was mine. The other was going to go
6 back in the bank to reimburse myself for the bills I
7 had written for him. And I thought I was being smart
8 and I wasn't. I thought I was changing the money out
9 where he couldn't see. And I was going to giving him
10 the 20 something dollars and try to keep the \$300
11 hid. Well, I wasn't as smart as I thought I was and
12 undoubtedly I did the wrong thing. When he got my
13 wallet he got the \$300 in cash. And he got my keys.
14 And then the door was locked.

15 Q The door. Which door?

16 A The door to the storage room.

17 Q Okay.

18 A And I did another stupid thing. I kicked the door
19 open.

20 Q Why did you do that?

21 A I really don't know. I just didn't know that I
22 wanted to be -- I didn't need to be in there. I
23 didn't think it was right that I was locked in there.
24 And I don't run very fast. But I don't know whether
25 I thought I would just, you know, catch him unawares

1 or whatever. I don't know. I was just acting on
2 instinct.

3 Q So what happened after you kicked open the door?

4 A He immediately forced me back into the storage room,
5 and that's when he manhandled the refrigerator. It's
6 an old one. It's very heavy. And he eventually got
7 it pushed in front of the door. And then he worked.
8 It was very hard for him. And he managed to get the
9 freezer over enough to tip it over to lean up against
10 the refrigerator.

11 Q And he had already gotten your keys at that point?

12 A He had gotten my keys; like I said, my cellphone, my
13 wallet. At one point in time he was on his cellphone
14 and he was talking to someone. I could hear him say,
15 "She says she doesn't have the \$5,000." And that's
16 the only thing I ever heard him say beyond that.

17 Q What's the next thing you saw or heard him do?

18 A Well, after he moved the refrigerator and the freezer
19 in front, he got my keys, and I heard my car crank up
20 and leave.

21 Q What did you do after that?

22 A I started pushing and hitting my shoulder as hard as
23 I could, the door, trying to dislodge the freezer,
24 refrigerator. Eventually the freezer fell back on
25 its legs and then I worked and pushed and pushed and

1 pushed 'til I finally got the --

2 Q Take your time.

3 A Finally got the refrigerator moved enough that I
4 could squeeze through. And then I got -- I couldn't
5 go into my house because I have dead bolts and the
6 door was locked. So I had to go out my porch and go
7 around to my kitchen stoop. We had -- at that time
8 we had a key hidden. And I went in my kitchen door.
9 And I went to the phone to call 911 but the phone
10 line was cut. And I remember during the storm that
11 that phone had gone out but my cordless worked. So I
12 went as fast as I could to my bedroom, got the
13 cordless phone, and thank God it was working. And I
14 called 911.

15 And I gave them the information of what had
16 happened and everything and described my car. And
17 for the life of me, I couldn't hardly remember the
18 numbers, but I could remember the letters on my
19 license tag. And then it wasn't too long after that
20 that the deputy sheriffs arrived.

21 Q What is the license tag on your car?

22 A 114 KHE.

23 Q I want to show you State's 34 for identification and
24 have you look at that. What is that?

25 A 114 KHE.

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1 Q Is that your car?

2 A Yes, sir.

3 Q Is that the car you were driving that day?

4 A Yes, sir.

5 Q Was that car at your house when you got out of that
6 storage closet?

7 A No, it was not.

8 MR. GOLDBERG: At this time, Your Honor, we move
9 State's 34 into evidence.

10 MR. SUTHERLAND: Without objection, Your Honor.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit No. 34 is admitted
13 into evidence.)

14 Q So you called 911?

15 A Yes, sir.

16 Q Did you walk around your house while you were waiting
17 for the police?

18 A Yes, sir.

19 Q What, if anything, did you notice about your house
20 while you were walking around?

21 A Well, I noticed in my bedroom that someone had been
22 lying on my bed. And there was -- in the bathroom
23 there was an empty Pepsi can and a washcloth that had
24 been taken out of my linen closet. And I didn't do
25 much of anything else after that because I didn't

1 want to touch anything. But I just kind of was
2 perusing, just -- and I walked back to the kitchen.
3 I was trying to get in touch with my children. And,
4 like I said, I was just --

5 Q Did you notice if any items from the house had been
6 moved?

7 A At that point in time, no, I didn't. In days, as the
8 days passed, you see things, you know.

9 Q What did you see?

10 A Well, even that evening -- I'm a diabetic. And I
11 have a little plastic basket on top of my
12 refrigerator that holds my syringes and my alcohol
13 pads and I my glucosometer. And when I went to go
14 check my blood sugar, even it was unzipped, had been
15 opened, you know. I found a serrated edged knife in
16 the living room where my lockbox had been forced open
17 with it. And my son said there were things moved
18 around in his room, you know, pictures and things
19 that were moved around in his room.

20 Q Did you or your son keep any firearms in your house?

21 A Yes, sir. My son does.

22 Q What kind of firearm is that?

23 A He has a shotgun. But it was where it was supposed
24 to be. But there was a .22 rifle that was standing
25 by the back door. Whenever the investigators were

1 looking, they found it. And there was an X Box that
2 belonged to my son.

3 Q Video game system?

4 A Yes, sir.

5 Q Where was that?

6 A At the time it was found sitting outside the back
7 door. But the box itself was in my son's closet.
8 The X Box was attached in the living room to his TV.

9 Q It was hooked up?

10 A Yes, sir. It had been meticulously put back in the
11 box that it came from. And it was an unusual looking
12 one. It was a -- my son worked for Pepsi and he had
13 one a promotional. And the X Box was Mountain Dew
14 Green. And it was an unusual one. Like I said, it
15 had been put back together in the box.

16 Q And you said that you could not see the person's
17 face. Is that right?

18 A No, sir.

19 Q But you were able to get a general look at the
20 person?

21 A Yes, sir.

22 Q Did you give that description to the police?

23 A Yes, sir.

24 Q Okay. And how does the description you gave to the
25 police compare with the build of the defendant you

1 see in the courtroom today?

2 A It matches.

3 Q Is your house in Richland County?

4 A Yes, sir.

5 Q And did you all have a dog?

6 A My son does, but it's kind of our dog. He's a black

7 lab.

8 Q What's the dog's name?

9 A Beg your pardon?

10 Q What's the dog's name?

11 A Mason.

12 Q Is it an inside dog or an outside dog?

13 A Outside dog.

14 Q Does he just run around free or --

15 A No. He's in a pen.

16 Q I want to show you what's been marked as State's

17 No. 9. Tell me what you see in that picture.

18 A I see Mason's pen and his doghouse. And I see Mason

19 standing in front of his pool, his favorite place to

20 be.

21 Q Is there a fence on that?

22 A It's an electric fence. You can't hardly see it. If

23 you look at the -- you have to see the stakes that

24 are in the ground for you to realize it. But it's an

25 electric fence. And he is a very wary of it.

1 Q Does State's 9 fairly and accurately depict how the
2 pen looked on that day?

3 A Exactly, sir. Yes, sir.

4 MR. GOLDBERG: Your Honor, at this time we'd put
5 State's 9 into evidence.

6 MR. SUTHERLAND: Without objection, Your Honor.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 9 is admitted
9 into evidence.)

10 Q Again, if you could just kind of describe what we see
11 in this picture for the jury, please?

12 A Okay. That's my backyard. And, like I said, it's --
13 like I said, there's this house. And you see a
14 little black spot. That's Mason. He's in front of
15 his pool. He has a very large pen. You can't see it
16 from there, but it goes way back. He has a pen but
17 he has lots of running room.

18 Q Can you describe how that electric fence works?

19 A It's -- they actually call it a weed controller.
20 It's plugged into an electrical source and you run
21 the wire around. It's hooked onto -- I can't think
22 of the words right now, but things that don't
23 conduct. And it's all the way around his pen. It's
24 three lines of wire. And if you touch it, and I have
25 unfortunately done it many times, it's a very, very

1 sharp, hot shock, electrical shock.

2 Q Has mason ever tried to get out of the pen?

3 A He tried a couple of times and he burned his nose.

4 And so if you tell him not to burn your nose, he
5 backs up. He knows what it means.

6 Q And was Mason at your house on August 29th of '05?

7 A Yes, sir, he was.

8 Q What, if anything, did you notice about him after all
9 this happened?

10 A When things kind of calmed down, I realized I didn't
11 hear him barking.

12 Q Is that unusual?

13 A Very, very unusual. He is my outside alarm. If
14 anybody drives in my yard, I know. And I wasn't
15 thinking about it at the time, and then I got to
16 thinking that he is not barking. And at that time
17 the deputy sheriffs were there. And one walked with
18 me out there. And at the time I was able to climb
19 over the fence. And I walked. I called his name a
20 couple of times. I actually thought he was dead,
21 quite honestly. And finally he opened his eyes and
22 looked at me and he kind of crawled towards me. He
23 was cowed. He was scared. And I talked to him, and
24 he -- you know, his tail started wagging a little
25 bit. So he was I figured -- but then I had to go

1 back and take care of questions and things.

2 And when my children got there, I was telling
3 them that he wasn't acting right. And they walked
4 out to check on him. And my daughter was petting
5 him. And when she did, she came up with blood on her
6 hands. And that's when the investigators checked to
7 see if it was -- took a sample to see whether it was
8 human blood or dog blood. He had been -- he had been
9 shot.

10 Q Did you get to examine him yourself?

11 A Yes, sir. In fact I cleaned it and I watched it. It
12 wasn't severe enough, thank God, to take him to a
13 vet. But I watched it. It was a raw place by his
14 ear, right at the top of his ear.

15 Q A raw place?

16 A Yes, sir.

17 Q Ms. Roberts?

18 A Yes, sir.

19 Q When this person pointed that gun in your face and
20 demanded you did what he said, what did you think was
21 going to happen to you?

22 A Quite honestly, I didn't know. All I know is I
23 just -- I just kept saying, "Oh, God, oh, God." And
24 I know He's the reason I'm here, because I did not
25 know what that man was going to do to me. I did not

1 know.

2 Q Thank you, ma'am. Please answer any from defense
3 counsel.

4 A Thank you.

5 THE COURT: Mr. Sutherland.

6 MR. SUTHERLAND: May it please the Court.

7 CROSS EXAMINATION

8 BY MR. SUTHERLAND

9 Q You doing all right, ma'am?

10 A I'm fine.

11 Q Okay, ma'am. You testified earlier that you arrived
12 home, you think it was around 10 to 4 in the
13 afternoon?

14 A Approximately.

15 Q Approximately?

16 A Yes, sir.

17 Q So like maybe five minutes either way?

18 A Either way.

19 Q Okay. And that you left at about 20 'til 3. So you
20 just went to the store and you went to Bojangle's and
21 then you came home pretty much?

22 A That's exactly correct. Yes, sir.

23 Q The person that confronted you at your house had on a
24 ski mask. You testified to that?

25 A Yes, sir.

1 Q Okay. And you also testified that you told the
2 investigator that you couldn't identify the race of
3 the person, whether he was a dark skinned white
4 person, light skinned black person or a Mexican
5 person?

6 A That's exactly correct.

7 Q Okay. Do you remember -- I mean, this ski mask, was
8 it like one big hole or was it two?

9 A It was joined together right here. And so I could
10 see --

11 Q That little thing where it comes together?

12 A So I could see just a little bit of flesh right here.
13 That's why I said it could have been a light skinned
14 black person, a dark skinned white person, Hispanic
15 or even a Mexican. Because, you know, I couldn't
16 tell.

17 Q Yes, ma'am. And the clothes just -- you described
18 them at a track suit?

19 A Yes. Like I said, long sleeved, long pants. Like I
20 said, gloves, light colored gloves.

21 Q And you told Investigator McDaniels that this person
22 had your cellphone. Was it like in the purse or
23 something when --

24 A It was hanging off the edge. He could obviously see
25 I had a cellphone. I just clipped it on the edge of

1 my purse. And that was one of the first things he
2 asked me for, was my cellphone. And he also had a
3 cellphone of his own.

4 Q Yes, ma'am. And you testified this person was
5 talking on his cellphone. But this was his
6 cellphone. This wasn't your cellphone?

7 A No. It was not mine.

8 Q Okay. But he was talking on the phone to anybody
9 about some alleged \$5,000 debt for drugs or something
10 like that?

11 A He just said that "She said she doesn't have the
12 \$5,000." That's what I heard him say.

13 Q Did you -- is that about the only thing you heard, or
14 was there any ongoing conversation or just that one
15 time on the phone?

16 A Well, with the exception of him asking me several
17 times for the money of my son, that, there was not a
18 lot of conversation. No, sir.

19 Q Do you think or do you have any way to know who might
20 have been on the other end of that phone?

21 A No, sir. I know that cellphones today, you can hear
22 the voices. But I was in the storage room. I am not
23 sure if he was talking to someone or if he was -- I
24 don't know if that was -- I don't really know.
25 That's all I heard him say.

1 Q I understand. All right. No further questions, Your
2 Honor. Thank you.

3 THE COURT: Anything further?

4 MR. GOLDBERG: No, sir.

5 THE COURT: You may come down, ma'am. Thank you
6 very much. Call your next witness.

7 MR. GOLDBERG: The State calls Deputy McMillan.

8 JANELL MCMILLAN, after being duly sworn,
9 testifies as follows:

10 THE CLERK: Thank you. Please have a seat on
11 the witness stand and state your full name for the
12 record.

13 WITNESS: Janell McMillan.

14 DIRECT EXAMINATION

15 BY MR. GOLDBERG

16 Q Deputy McMillan. Is that right?

17 A Yes, sir.

18 Q Where are you employed?

19 A Richland County Sheriff's Department.

20 Q How long have you been employed there?

21 A Approximately four years.

22 Q And what are your duties with the Sheriff's
23 Department?

24 A At the time I was assigned as a patrol unit, I was
25 located in the Lower Richland area, assigned there.

- 1 Q You are now, or you were then?
- 2 A I was then.
- 3 Q In August of '05?
- 4 A Yes, sir.
- 5 Q Are you pretty familiar with that area?
- 6 A Yes, sir.
- 7 Q Are you still with the Sheriff's Department?
- 8 A Yes, sir.
- 9 Q Okay. Are you on active duty right now?
- 10 A No. Not at this time.
- 11 Q Okay. Did you have some sort of an injury?
- 12 A Yes, sir.
- 13 Q What kind of an injury?
- 14 A Ankle injury.
- 15 Q Did you at the time though?
- 16 A No, sir.
- 17 Q And on August 29th of '05, you were patrolling that
- 18 area. Is that correct?
- 19 A Yes, sir.
- 20 Q Lower Richland area. Did you receive a call over
- 21 dispatch?
- 22 A Yes. I was dispatched. I believe it was a burglary
- 23 call.
- 24 Q And what did you do in response to that call?
- 25 A I responded to the location which was 378 Harmon

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1 Road.

2 Q And do you remember if there were any other details
3 over the dispatched call?

4 A Yes. There was information about the victim's
5 vehicle that was taken from the scene and the suspect
6 that was driving it.

7 Q And do you recall what that was?

8 A It came across as a black male driver wearing a ski
9 mask, and the vehicle was a red Stratus.

10 Q Did you generate an incident report as a result of
11 all this?

12 A Yes, sir.

13 Q If I showed it to you, would it help refresh your
14 memory as to some of the details, if necessary?

15 A Yes, sir.

16 Q Let me just put that up there. Okay. So once you
17 got the call, what did you do?

18 A I responded. I was actually near the Bluff Road
19 side, Lower Richland Boulevard and Bluff Road area.
20 And it took me approximately ten minutes to get from
21 that end over to the incident location on Harmon
22 Road. Initially I had passed the house and Ms.
23 Roberts was waving her hand when I backed up and
24 pulled into the driveway which was quite long.

25 Q What do you mean it was quite long?

1 A It's about -- it sits pretty much about a quarter
2 mile off the roadway. So you can't see the house
3 when you're passing by that well since it sits back
4 off the road.

5 Q And so when you pulled up, what did you do?

6 A I encountered the victim, Ms. Roberts, who was very
7 hysterical, crying.

8 Q Upset?

9 A Upset. Very.

10 Q Was she able to discuss with you immediately what
11 happened, or did you have to wait a few minutes? Or
12 how did all that work?

13 A We had to wait a little while. She was very upset
14 and very skittish. And so I had to let her calm down
15 a little bit before we could go into detail of what
16 had happened.

17 Q Do you recall what time you were dispatched and what
18 time you would have arrived at the scene?

19 A I was dispatched at 4:17 and I arrived at 4:27.

20 Q Once Ms. Roberts calmed down, what information did
21 you get about what had happened?

22 A She had stated that she had left her place of
23 employment and went --

24 MR. SUTHERLAND: Your Honor, I'd like to object
25 to the hearsay. She's already testified to these

1 facts.

2 THE COURT: Overruled. It's an excited
3 utterance.

4 Q Go ahead.

5 A That she had left her place of employment and went to
6 the grocery store. And upon returning home from the
7 grocery store she got out of her vehicle and was
8 getting ready to start unloading the groceries that
9 she had purchased when a gentleman approached her
10 from the rear of her house wearing a ski mask and a
11 gun in his hand.

12 Q Did she say what he did with the gun and what he did
13 in general?

14 A That he pointed it in her face and was demanding
15 money for a drug debt.

16 Q And then what did she say happened?

17 A She said that he had forced her back into the
18 residence into a storage unit which was located on an
19 enclosed porch area behind her house.

20 Q And you said a storage area?

21 A Yes, sir.

22 Q Okay. And did she say what he did in terms of
23 locking her in there?

24 A That he had placed -- well, forced her in there and
25 then had moved some appliances that were located on

1 the porch in front of the door so she could not exit
2 it.

3 Q Again -- I'm sorry -- what was the description of the
4 suspect that you had?

5 A That he was five-six, 140 pounds, unknown on the hair
6 color, brown eyes, approximately 24 to 25 years of
7 age, black male.

8 Q And then the clothing?

9 A That he was wearing a dark colored ski mask and gray
10 work gloves.

11 Q All right. And then what happened?

12 A That he was demanding money from her, took her purse
13 and taken the money of out of her purse, that she
14 believed at the time was just a \$20 bill and a couple
15 of 1's, her cellphone.

16 Q As you talked to her, did other members of the
17 Sheriff's Department arrive on the scene?

18 A Yes, sir. When you respond to a scene you assess the
19 situation and you see if you need any other units to
20 come to secure it. Investigators, since we are the
21 first responders and it was a scene that needed to be
22 processed, I contacted Investigator Oates who came
23 out to process the scene for any evidence and also
24 the on-call investigator which was Chief Wilson.

25 Q About how long did it take for them to respond to the

1 scene?

2 A I believe they showed up within approximately 30
3 minutes.

4 Q What were you doing during that time?

5 A At that time I was still with the victim going over
6 what had happened.

7 Q And what, if anything, did she say about the money
8 for drugs and all those statements?

9 A She had stated that she didn't know what the guy, the
10 suspect was talking about, that her son didn't do any
11 kind of drugs, she had never known her son to be
12 involved with any drugs. She was just clueless on
13 what he was asking for.

14 Q Did either of her children arrive at the scene while
15 you were there?

16 A Yes. Both her son and daughter.

17 Q What happened once Investigator Oates and Chief
18 Wilson arrived?

19 A That's when I got with them and went over possible
20 points of entry and obtaining any evidence that might
21 need to be processed at the scene.

22 Q And at some point did you follow up with Ms. Roberts
23 about this incident?

24 A Yes, sir. The time that I had left in working the
25 Lower Richland area was approximately three to four

1 months, and every night that I did work or daytime, I
2 would stop by the residence and check on her if she
3 was home or check on the residence, make sure
4 everything was all right. And the dog.

5 Q What, if anything, else did you learn about this
6 incident in stopping by there?

7 A That in fact the dog had been injured, shot.

8 Q And in making the incident report that you generated,
9 what's the purpose of that report?

10 A The purpose of the report is just a first initial
11 report just to gather facts. It's not a detailed,
12 thorough investigation. That's what happens when it
13 gets sent to an investigator to pursue further. But
14 we try and get the structure of what had happened in
15 the incident, just the basis.

16 Q Thank you. Those are all my questions.

17 A Thank you.

18 THE COURT: Mr. Sutherland.

19 MR. SUTHERLAND: May it please the Court.

20 CROSS EXAMINATION

21 BY MR. SUTHERLAND

22 Q Deputy, what's your rank with the department?

23 A Senior deputy.

24 Q Senior deputy. All right. Okay. Senior Deputy

25 McMillan. You've already answered, you know, how you

1 came to be there. How long do you think you were
2 there before any other deputies arrived?

3 A 30. 30 minutes.

4 Q While you were there, would you say that it was your
5 responsibility to secure the scene? Or what steps
6 did you take as far as securing the scene? Or were
7 you basically spending most of your time with Ms.
8 Roberts?

9 A I was spending most of my time with Ms. Roberts going
10 over what had exactly happened, where her and the
11 suspect were located and trying to find out what
12 areas needed to be processed.

13 Q Okay. Do you know what your departure time was?

14 A I was there for several hours.

15 Q Okay.

16 A When this report was actually given to the
17 investigator, I had given it to him before I had left
18 the residence. And that's why there is no depart
19 time on there.

20 Q Okay. Did you go you through the house at all?

21 A Yes, sir.

22 Q Did you see -- were there any weapons in that house?

23 A There was the weapon that was located outside the
24 residence, but I didn't see any other weapons in
25 there.

1 MR. SUTHERLAND: I have no further questions of
2 this witness, Your Honor.

3 THE COURT: All right. Anything further?

4 MR. GOLDBERG: No, sir.

5 THE COURT: All right. You may come down,
6 Officer. Thank you very much.

7 WITNESS: Thank you.

8 THE COURT: Ladies and gentlemen, let's take a
9 short break. I'm going to ask you to just go to your
10 jury room, relax for a few minutes. We'll be about
11 ten minutes. We'll call you. Thank you.

12 (Jury out at 11:15 a.m.)

13 THE COURT: Mr. Sutherland, do you have any
14 objection to the last witness being excused?

15 MR. SUTHERLAND: None whatever, Your Honor.

16 THE COURT: You're free to go. Thank you very
17 much. We'll stand at ease for about ten minutes.

18 (Whereupon, a break is taken)

19 THE COURT: All right, counsel. Are you ready
20 for the jury?

21 THE MS. CAMPBELL: The State's ready.

22 MR. SUTHERLAND: The defense is ready.

23 THE COURT: Bring the jury, please.

24 (Jury in at 11:35 a.m.)

25 THE BAILIFF: All the jurors are present, Your

1 Honor.

2 THE COURT: Thank you very much. All right,
3 Solicitor, call your next witness, please.

4 MS. CAMPBELL: The State calls Robert Oates.

5 ROBERT C. OATES, after affirming to tell the
6 truth, testifies as follows:

7 WITNESS: I affirm.

8 THE CLERK: Thank you. Please have a seat in
9 the witness stand and state your full name for the
10 record.

11 WITNESS: Robert Cecil Oates.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL

14 Q Investigator Oates, where are you employed?

15 A Richland County Sheriff's Department.

16 Q What do you do there, sir?

17 A I'm a crime scene investigator.

18 Q Can you tell this jury what your duties include as a
19 crime scene investigator?

20 A To respond to the crime scene in the unincorporated
21 areas of the county, to locate, to document and to
22 collect evidence of a crime.

23 Q Can you tell this jury a little bit about your
24 training and your education in the field of crime
25 scene?

1 A Basic education is bachelor's degree in science at
2 the University of South Carolina; Criminal Justice
3 Academy, a law enforcement officer; also trained in
4 basic crime scene investigation, blood spatter
5 analysis, crime scene reconstruction and evidence
6 handling techniques and such.

7 Q Does that include like the collection and/or
8 comparison of fingerprints?

9 A Yes. Also -- that's all.

10 Q Have you been qualified as an expert before in crime
11 scene investigation?

12 A Yes.

13 MS. CAMPBELL: Your Honor, at this time we'd
14 offer him as an expert in crime scene investigation.

15 THE COURT: Voir Dire or examination?

16 MR. SUTHERLAND: Without objection, Your Honor.

17 Q I want to turn your attention back to August the 29th
18 of 2005. Did you have an occasion to respond to a
19 crime scene of a burglary, robbery, kidnapping at 378
20 Harmon Road?

21 A Yes.

22 Q What part of the county is that in?

23 A It's in the region one which is Lower Richland, Lower
24 Richland area of Richland County.

25 Q What time did you arrive on the scene that night,

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1 sir?

2 A 18:05 hours. It was 6:05 p.m.

3 Q Is that when you received the call?

4 A That's when I received -- I arrived -- I'm sorry.

5 18:35 is when I arrived, 6:35 p.m.

6 Q And when you received the call, were you actually at
7 headquarters that day?

8 A To my knowledge. To my knowledge, yes.

9 Q So it takes about 30 minutes to get to the lower side
10 down there?

11 A Yes.

12 Q Once you got to the Harmon Road address what, if
13 anything, did you do?

14 A I first of all made contact with Deputy McMillan,
15 which I always do, make contact with the responding
16 deputy to interview them, get their information,
17 basic information, and also have them tell me what
18 they've seen since they were the first ones at the
19 actual incident location for their -- what they've
20 see, their opinion.

21 Q And without going into what she said, you can't say
22 that, but did you get information about the crime
23 scene and areas into needed to be processed?

24 A Yes, I did.

25 Q And did that include the interior of the house?

1 A Yes, it did.

2 Q As well as the carport area?

3 A Yes.

4 Q Initially, when you go to a crime scene, before you
5 collect any evidence, is it proper to photograph?

6 A Yes. We definitely want to photograph the scene
7 outside and inside prior to touching or moving
8 anything so we can document and show what the scene
9 looks like when I first arrive.

10 Q And in this case, as in every case, would you
11 photograph the exterior first and then move inside?

12 A That's correct.

13 Q I'm going to show you two photographs that are
14 already into evidence, State's Exhibits No. 9 and 10.
15 Do you recognize those?

16 A Yes, I do.

17 Q And why do you recognize those photographs?

18 A I took those photographs.

19 Q And do those fairly and accurately depict the
20 exterior of the residence when you arrived that
21 evening?

22 A Yes, it does.

23 Q And again I'm going to show you some additional
24 photographs before I ask you to step down. State's
25 Exhibits 7, 6, 5, 33, 32, 27, 26, 8, 4 and 3. I

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1 first ask you, just do you recognize those?

2 A Yes.

3 Q Do those fairly and accurately depict the exterior of
4 the residence and the carport area as you found it
5 that night?

6 A Yes, they do.

7 Q Did you in fact take these photographs?

8 A I did take those photographs.

9 MS. CAMPBELL: Your Honor, at this time we offer
10 these into evidence.

11 THE COURT: Let him look at them.

12 MS. CAMPBELL: They've been provided to the
13 defense.

14 THE COURT: Make sure it's the same ones.

15 MR. SUTHERLAND: Without objection, Your Honor.

16 (WHEREUPON, State's Exhibit No. 3 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 4 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 5 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 6 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 7 is admitted
25 into evidence.)

1 (WHEREUPON, State's Exhibit No. 8 is admitted
2 into evidence.)

3 (WHEREUPON, State's Exhibit No. 26 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 27 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 32 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 33 is admitted
10 into evidence.)

11 Q While you're still up there, once you had
12 photographed the exterior, did you also -- I'll get
13 to the processing you did later. But did you also
14 photograph the interior of the residence?

15 A Yes, I did.

16 Q And I'm going to show you photographs, State's
17 Exhibits 31, 30, 29, 28, 20, 21, 19, 23, 24, 22, 14,
18 17, 25, 13, 12, 11. And I need to re-mark this one
19 as 49. First see if you recognize those. Mark this
20 state's Exhibits 49.

21 COURT REPORTER: I have that 44 is the next in
22 order.

23 MS. CAMPBELL: We have marked some others.
24 We're keeping up with it.

25 COURT REPORTER: Sure.

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1 (WHEREUPON, State's Exhibit No. 45 is marked for
2 identification.)

3 (WHEREUPON, State's Exhibit No. 46 is marked for
4 identification.)

5 (WHEREUPON, State's Exhibit No. 47 is marked for
6 identification.)

7 (WHEREUPON, State's Exhibit No. 48 is marked for
8 identification.)

9 (WHEREUPON, State's Exhibit No. 49 is marked for
10 identification.)

11 A Yes.

12 Q And finally, State's Exhibit No. 49 which is taken
13 out of order. I apologize.

14 A Yes.

15 Q And do those fairly and accurately depict the
16 interior of the residence as you found it?

17 A Yes.

18 Q There was also a back porch. I show you State's
19 Exhibits 16 and 48. Do you recognize those?

20 A Yes.

21 Q And do those fairly and accurately depict the back
22 porch area and the entrance in the back?

23 A Yes.

24 MS. CAMPBELL: Your Honor, at this time we'd
25 offer these into evidence.

1 **THE COURT:** Look at them.

2 **MR. SUTHERLAND:** Without objection.

3 (WHEREUPON, State's Exhibit No. 11 is admitted
4 into evidence.)

5 (WHEREUPON, State's Exhibit No. 12 is admitted
6 into evidence.)

7 (WHEREUPON, State's Exhibit No. 13 is admitted
8 into evidence.)

9 (WHEREUPON, State's Exhibit No. 14 is admitted
10 into evidence.)

11 (WHEREUPON, State's Exhibit No. 17 is marked for
12 identification.)

13 (WHEREUPON, State's Exhibit No. 19 is admitted
14 into evidence.)

15 (WHEREUPON, State's Exhibit No. 20 is admitted
16 into evidence.)

17 (WHEREUPON, State's Exhibit No. 21 is admitted
18 into evidence.)

19 (WHEREUPON, State's Exhibit No. 22 is admitted
20 into evidence.)

21 (WHEREUPON, State's Exhibit No. 23 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 24 is admitted
24 into evidence.)

25 (WHEREUPON, State's Exhibit No. 25 is admitted

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1 into evidence.)

2 (WHEREUPON, State's Exhibit No. 28 is admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit No. 29 is admitted
5 into evidence.)

6 (WHEREUPON, State's Exhibit No. 30 is admitted
7 into evidence.)

8 (WHEREUPON, State's Exhibit No. 31 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 48 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 49 is admitted
13 into evidence.)

14 Q Finally, before you step down, State's Exhibits
15 No. 18 and 15 which are already into evidence, do you
16 recognize those?

17 A Yes.

18 Q And are those photographs you also took of the back
19 porch area when you went to the scene that night?

20 A Yes.

21 MS. CAMPBELL: Your Honor, may the witness step
22 down?

23 THE COURT: Yes, sir. Yes, ma'am.

24 Q If you'd come over on this side because I think it's
25 easier for the court reporter to hear you. Starting

1 with the exterior of the residence, State's Exhibit
2 No. 10, can you tell the jury, what does that show?

3 A That's showing the rear porch area focusing towards
4 the porch. It's a section of the backyard aiming in
5 that direction, toward the back door, toward the
6 porch.

7 Q State's Exhibit No. 9, what was that?

8 A This is another view of the backyard. If I am facing
9 the back door, it's to the right and then extends in
10 front, goes around in a circular motion to show
11 another area of the backyard, going a little bit
12 farther from the back porch door.

13 Q And I notice State's Exhibit No. 9 shows there's a
14 dog in it?

15 A Yes.

16 Q Was that significant in your investigation that
17 night?

18 A Yes.

19 Q And how is that, sir?

20 A We found -- or I was told by the victim that the dog
21 had blood around its collar area. And I photographed
22 the animal at that distance. Of course I didn't go
23 back there back then. I photographed the animal.

24 Q State's Exhibit No. 3, what does that show?

25 A That's the back or side kitchen entrance, exterior

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1 steps, left side of the front area.

2 Q State's Exhibit No. 4, what does that show?

3 A That's the actual door itself there, a closer view,
4 shot, going into the kitchen. And actually that's
5 taken between the exterior carport.

6 Q Okay.

7 A That's not attached to the home.

8 Q I'm pointing to these two.

9 A Yes. That's the bars there that the actual carport
10 stands on. It's free standing.

11 Q State's Exhibit No. 8, do you recognize that?

12 A Yes. That is a side shot from that left side where
13 the standing carport is from the corner of the house.
14 It's like a long shot of the backyard which puts in
15 that back door area a little bit more showing a
16 little bit more of the backyard.

17 Q State's Exhibit No. 26, do you recognize this?

18 A Yes. That is the -- kind of a back shot of the rear
19 bathroom window area.

20 Q And State's Exhibit No. 27, what is that?

21 A That's a closer shot, bringing the window in, seeing
22 that it's opened, slightly opened there.

23 Q During the course of your investigation, this window
24 in State's Exhibit No. 27, was that significant?

25 A Yes, it was.

1 Q Why is that, sir?

2 A The window was to opened and was found by the victim
3 also to be opened. It was not originally opened.

4 Q State's Exhibit No. 32, do you recognize that?

5 A Yes, ma'am. That is a photograph of me behind the
6 carport and I was taking a shot from the back to the
7 front so you could see the actual free standing
8 garage.

9 Q State's Exhibits No. 33 and 5, what do those show?

10 A That is the -- let me see. That is what -- when I
11 approached the victim and got her information, she
12 told me that of course the suspect was out at her
13 vehicle. And I looked in the sand of course in that
14 area and I observed shoe impressions in the sand.
15 And that's basically taking a photograph of those
16 areas that far off. That then showed the area where
17 the shoe impressions are.

18 Q State's Exhibits 7 and 6, are those closer up
19 photographs of that area?

20 A Yes, they are. They are close up shots of the area
21 where the shoe impressions are.

22 Q The interior of the house, State's Exhibit No. 11,
23 do you recognize that?

24 A Yes. That is the interior kitchen.

25 Q And State's Exhibit No. 49?

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1 A I believe that is another shot of the kitchen. What
2 I'm doing is doing a 360 shot of the kitchen area
3 from different sides, different shots.

4 Q State's Exhibits 12 and 13 again?

5 A Yes. That's another shot there.

6 Q And when you go to the crime scene, even though you
7 get information from the initial officer, do you know
8 exactly what may or may not be relevant?

9 A No, ma'am. I do another thorough investigation of my
10 own at the crime scene.

11 Q State's Exhibit No. 25, what is that?

12 A That is a box of .22 unspent shells that was found
13 sitting on top of the kitchen table.

14 Q Are they what I would call bullets?

15 A Yes. Bullets.

16 Q Okay. And that was taken where in the house?

17 A On the kitchen table. It was not originally there,
18 from what the victim told me.

19 Q State's Exhibit No. 17, what is that?

20 A That is a picture of a half full plastic bottle of
21 orange juice.

22 Q Where was that located in the residence?

23 A The back porch area on top of the freezer.

24 Q On top of the freezer?

25 A Yes. On top of the freezer.

1 Q State's Exhibit No. 14, do you recognize that?

2 A Yes, ma'am. That is a shot or a photograph of the
3 middle living room area.

4 Q State's Exhibits 23, 24, and 22, what do those show?

5 A I believe -- let's see -- the middle picture here is
6 going to be of the rear master bedroom. It's a
7 straight photograph as we're entering into that
8 bedroom to give you a view of that. And this here,
9 over here is another shot within that bedroom and
10 also another area angle of the bedroom. It's 360 but
11 it's in increments. So it's different shots. It
12 couldn't have been all at once.

13 Q State's Exhibit No. 19, what does that show?

14 A That's the rear bathroom where the window was up.
15 That was the interior to the bathroom.

16 Q And the window you're referring to in State's Exhibit
17 21?

18 A Yes. That is an up close shot of the bathroom window
19 or the bathroom with the blinds down from the inside
20 out.

21 Q State's Exhibit No. 20, what does that show?

22 A That is, upon searching or looking through the
23 bathroom, I noticed an empty Diet Pepsi 12-ounce can
24 on top of the sink, and also a rag, a white
25 washcloth. And I photographed that. I asked the

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1 victim was that originally there prior to me
2 photographing it. She said, no, it wasn't. So that
3 was out of place.

4 Q State's Exhibit No. 28, what does that show?

5 A That is the inside of the waste basket or trashcan
6 which at that time in the rear bathroom was placed
7 behind the toilet, underneath the toilet area.

8 Q And 29 is a closer up view --

9 A Yes.

10 Q -- of the interior of that trashcan?

11 A Yes, ma'am.

12 Q What was significant to you in this trashcan?

13 A Well, normally inside of a trashcan I don't find
14 unspent bullets or .22. I looked at them later.
15 They turned out to be .22 long rifle bullets inside
16 the waste basket.

17 Q And State's Exhibits 30 and 31, what did you
18 photograph in those?

19 A Those, I'm looking further around the toilet area. I
20 found a spent .22 long rifle cartridge case lying up
21 under the toilet.

22 Q And what's the difference -- when you're talking
23 about unspent versus spent, what's happened to make
24 it go from unspent to a spent shell casing?

25 A Basically the bullet on the end of the bullet area or

1 the metal or the jacket has been shot out of a gun
2 and is no longer on the tip of it. It's just the
3 shell. All of the powder, gun powder and everything
4 has been expelled. It's an empty shell.

5 Q I show you what's been marked as State's Exhibit
6 No. 48. What does that show?

7 A That is a photograph entering into the rear porch
8 area from the living room.

9 Q From the living room area?

10 A That's right. From the living room area.

11 Q And I show you State's Exhibit No. 15.

12 A Okay. During the course of the investigation we
13 learned that the victim was placed in the rear, I
14 call it laundry room area, storage room area, by the
15 suspect and moved refrigerator items in front of the
16 door. That's just a picture showing that of the end
17 result after the victim had escaped. Okay. And that
18 is to show where they are after that point. When I
19 arrived, that's where the refrigerator items were.

20 Q Is there anything significant that's shown in either
21 of these pictures -- you can't see them all in this
22 one -- but that you found next to the door?

23 A Yes. The .22 long rifle was --

24 Q Can you point it out on here?

25 A -- propped up against -- right here.

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1 Q It's cut off, a little bit of it? That's the top of
2 it?

3 A Yes. Not a very good shot.

4 Q And that's where it was when you got there?

5 A Yes.

6 Q State's Exhibits No. 18 and 16, again show what
7 areas?

8 A Okay. That is another close up shot leading into the
9 laundry area or the back storage area where the
10 victim was kept. It's just another close up shot of
11 that area.

12 MS. CAMPBELL: Permission to publish the
13 photographs?

14 THE COURT: Without objection.

15 MR. SUTHERLAND: Yes, ma'am.

16 Q When we were going through the pictures you mentioned
17 that one of the things you observed were some shoe
18 prints in some sand at the carport area?

19 A Yes.

20 Q What quality were those shoe prints?

21 A Very light quality. The only significance that
22 really popped out to me was the Reebok emblem in the
23 middle of the shoe. Upon looking at the tread or the
24 soles of the shoe, being that it was in sand, it was
25 very light, a very light print on the sand. So I

1 chose to photograph the shoe impression using oblique
2 light which is actually taking a flashlight or a
3 flash from a camera at an angle above the top of the
4 object, this being the shoe impression; and it will
5 illuminate it to where when I take the picture it
6 will bring up the soles or try to get the pattern a
7 little better with that.

8 Q Okay. And the photographs we have submitted is the
9 extent of what you could get?

10 A Yes.

11 Q And were you able to do any molds from that or
12 anything?

13 A No, ma'am. I chose not to attempt a mold because of
14 the sand. Being sand, it is very, very loose. Upon
15 trying to apply the mold, it could damage or destroy
16 the print. So I chose to photograph it, do the best
17 I could in photographing it.

18 Q And in choosing to do any kind of shoe comparisons at
19 a later date, is there what's called a distinguishing
20 characteristic or something that has to be there to
21 do any significant comparisons?

22 A That's right.

23 Q Can you explain that to the jury?

24 A Upon taking photographs of a shoe impression -- I
25 said a shoe impression -- a photograph of that.

1 Basically on the scene I photograph it as close to
2 the photograph as possible to enable to try to
3 compare that at a later date at the lab. Basically a
4 process of making an imprint of that shoe impression
5 on another piece of plastic that we use. Basically
6 you could compare the two together that were on the
7 scene. And if there were any various shoes that were
8 collected, it can be compared between them, too.

9 And what we're looking for is characteristics
10 within the shoe. Of course, you know, the shoe
11 manufacturers, a lot of those are the same. I mean,
12 there's not many shoes that are being made now in the
13 United States.

14 What we look for is distinguishing
15 characteristics, maybe a rock in one part of a blade.
16 It's called the blade part of the shoe, or a place of
17 the shoe where it's torn out or worn, things like
18 this.

19 That's what we look for, if that would have been
20 there, to kind of distinguish that pair of shoes, you
21 know, as a very distinguishable characteristic from a
22 basic pattern or track that you would find when you
23 first buy your shoes, you know.

24 Q And in your report you note that you could see that
25 one has a Reebok emblem?

1 A Yes. That was distinctive to me right off the bat.

2 Yes.

3 Q Other than that, were there any other distinguishing
4 characteristics in these prints?

5 A No. No, ma'am. Upon looking at them closer, the
6 tread being in sand was very, very light. And the
7 impression was not of good quality, I would say, to
8 define these distinguishing characteristics.

9 Q You mentioned that you found a Diet Pepsi can?

10 A Yes, ma'am.

11 Q Was that collected there at the scene also?

12 A I collected it. Yes, ma'am.

13 Q And you also mentioned a white washcloth. Did you
14 also collect that?

15 A Yes. I sure did.

16 Q What was your thinking on that?

17 A Well, the white washcloth was damp still and it had
18 some dark markings on it like dirt. And being that
19 the victim said that prior to her leaving that day
20 the washcloth was not on the bathroom sink and the
21 empty Diet Pepsi can was not on the sink, I guess I
22 put two and two together and went ahead and collected
23 the can. Because if there's normally just something
24 that's there that's not supposed to be there, then
25 we'll collect it.

1 Q And again, you don't know whether or not it has any
2 significance or not when you collected it. But it's
3 better to collect it than not?

4 A Right. Right. I cannot say that this person did do
5 that. But it is out of place and very suspicious.
6 So I'll take it and collect it for later processing.

7 Q And there was also I think a bottle of orange juice
8 that you collected?

9 A Yes. A half full plastic bottle of orange juice.

10 Q In the bathroom area you mentioned or we talked about
11 the photographs showing the -- well, let me start
12 with the kitchen area. In the kitchen area you
13 mentioned that there was a box of ammunition?

14 A Yes.

15 Q And I ask you to open that and just check and see if
16 you recognize that. Do you need a knife?

17 A I've got it.

18 Q Okay.

19 A Thank you. Do you just want me to look in here?

20 Q You can pull it out if you want. Is it dirty?

21 A Yes, ma'am.

22 Q And was that the item you collected off the table
23 that day?

24 A Yes, it is. Yes, ma'am.

25 Q And is it in a little bit different condition now?

1 A Yes.

2 Q And why is that, sir?

3 A Upon taking the evidence back to the lab, I then used
4 magnetic powder across the paper surface which is
5 very porous -- you can't see it with the naked eye --
6 and ran across it to see if I could find any latent
7 fingerprints.

8 Q Okay. And I hand you -- that's State's Exhibit
9 No. 46. State's Exhibit No. 47, what does that show?

10 A Three unspent .22 long rifle bullets which means they
11 still have the lead on top, and one spent .22 long
12 rifle.

13 Q And those were the items that you photographed of the
14 bathroom and were later collected. Is that correct?

15 A Yes.

16 MS. CAMPBELL: Your Honor, at this time we offer
17 State's Exhibit Nos. 46 and 47 into evidence.

18 THE COURT: Objection?

19 MR. SUTHERLAND: Without objection, Your Honor.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibit No. 46 is admitted
22 into evidence.)

23 (WHEREUPON, State's Exhibit No. 47 is admitted
24 into evidence.)

25 Q Did you also collect any samples of blood there at

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1 the scene that day?

2 A I did. Yes, I did.

3 Q Where was that collected?

4 A After being told that the family pet in the rear, a
5 black Labrador retriever had some blood around the
6 collar area, I went out and -- well, I had the owner
7 go with me. I think her son went with me, I believe.
8 But I wouldn't go out there by myself. And which she
9 did her job. He did his job. And I had him hold him
10 while I took a swab real quick of blood around the
11 collar.

12 Q And it turns out that was actually blood from where
13 he'd been grazed?

14 A Right. Mm-hmm (affirmative). Yes, ma'am.

15 Q While you were there, did you process the crime
16 scene?

17 A Yes, I did.

18 Q For fingerprints?

19 A I sure did.

20 Q And what were the results? What areas did you
21 process, and tell the jury if you found anything?

22 A I focused on the rear porch area, the screen door.
23 It was a glass storm door on the interior side.
24 After learning that that's where the victim was
25 brought into the house in the back back there. Even

1 though it was reported that the suspect did have
2 gloves, I don't go with that as a determined thing.
3 So I went ahead and processed that area and did
4 develop three latent fingerprints.

5 Q Where was that?

6 A On the interior rear porch storm door glass, the top
7 part section, the top section just above inside the
8 handle area. Three latent prints. Which latent
9 prints are, you don't see them until you develop
10 them. And once I developed them, I went ahead and
11 collected them.

12 The rear bathroom window, of course established
13 that the window was up and it wasn't prior to the
14 victim's departure. When she came home this was
15 found. I processed the outside window frame and
16 glass and interior window frame and glass with black
17 powder. I didn't find any prints on those.

18 Q Is it unusual not to find prints, say, on a
19 windowsill?

20 A It is. It depends on the condition of the wood and
21 also where the suspect touches it; I mean, like in
22 the event of breaking in.

23 Q And if a person has on gloves when they're committing
24 a burglary, do you expect to find prints?

25 A I don't expect to if a suspect is wearing gloves. I

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1 still remain optimistic. I don't --

2 Q But in order for them to leave a print they're going
3 to have to remove the gloves?

4 A Right. Right. Most definitely.

5 Q Did you process any other areas in the house?

6 A Let's see. I did process the .22 caliber rifle for
7 any prints also but didn't find any on that.

8 Q No prints on that either?

9 A Mm-hmm (affirmative). No. No, ma'am.

10 Q The items that you collected, did you later have an
11 opportunity to process them or request testing on
12 them?

13 A Yes, I did. Yes, ma'am.

14 Q And did you process the Diet Pepsi can?

15 A I sure did.

16 Q And what was the result when you processed the can?

17 A During processing the Diet Pepsi can using black
18 powder, I found no latent prints or no fingerprints.

19 Q Let me ask you this. When you're talking about
20 finding a latent print, it doesn't mean necessarily
21 nobody has handled that item, does it?

22 A A latent print?

23 Q A latent print, tell them what you have to have in
24 order to collect a usable latent print?

25 A Well, basically, if a person has transferred oils

1 from their fingers to an object, using the magnetic
2 powder or the black powder, there is no set amount of
3 ridges. Your fingerprint is a ridge. You have
4 ridges on your finger. But there is no set rule on
5 how many you need to have for analyzation.

6 Q But ...?

7 A But we've got to have at least enough. You have
8 different types of patterns, the fingerprints. So
9 we've got to have at least enough to determine what
10 pattern it is before we go into any kind of
11 characteristics of the fingerprint.

12 Q And if I walk up here and touch this like that, am I
13 necessarily going to leave a print?

14 A Not necessarily. It depends on how you touch an
15 item, the angle that you touch it. Like paper, if I
16 touch this, I have to really -- if I just grab it
17 like this, you'd think I'd leave a fingerprint. But
18 if you think, I haven't really touched it that much.
19 It's basically just sitting on top of my fingers.
20 But if I grab it like this right here and throw it
21 down, well, now I've applied enough pressure and all
22 of the oils from my finger now have really gotten in
23 contact with the surface.

24 So, you really have to -- it's not like
25 television. You really have to touch an item at a

1 certain area at a certain angle, you know, to get a
2 fingerprint.

3 Q And are you familiar with the term "smudge"?

4 A Oh, yes.

5 Q What does that mean?

6 A Basically, the person that touches an item with not
7 enough force or a certain angle; say, when you open
8 up a door, a lot of times you'll look behind you,
9 you'll move your hand across it but your hand will
10 slide; it won't grip it. A lot of times that's a
11 smudge. You have the outline of a finger or fingers
12 or a palm, but the actual finger has moved or moved
13 up. It hasn't stayed long enough to make an
14 impression on that object. So you have a smudge,
15 which is basically there i no ridge detail. There is
16 no ridges in that pattern.

17 Q And, in fact, the slightest movement?

18 A Right. The slightest movement can cause that.

19 Q So when you're talking about this produced no prints,
20 it's produced no usable prints that you could use,
21 right?

22 A Right.

23 Q And if a person is wearing gloves, are they going to
24 be able to leave any prints?

25 A No. Hmm-mm (Negative).

1 Q So on the Diet Pepsi can you got no usable prints?

2 A Right. No usable prints. Yes.

3 Q Did you also process the unspent .22 caliber
4 Winchester shell casings as well as the spent?

5 A Yes. I sure did.

6 Q And what were the results?

7 A There were no fingerprints on those items either.

8 Q No usable fingerprints?

9 A No usable fingerprints. Yeah.

10 Q The box of shell casings, you mentioned earlier that
11 you had processed them?

12 A Yes.

13 Q Did you get anything from that?

14 A No, ma'am. No usable fingerprints.

15 Q And finally the orange juice, was that processed for
16 prints?

17 A Yes. The plastic container of orange juice was
18 processed using black powder. No prints, no usable
19 prints.

20 Q And your findings when you processed these items,
21 would that be consistent with someone having worn
22 gloves?

23 A Not finding any fingerprints, yes. It could be.

24 Q Turning your attention to September the 13th, did you
25 have an occasion to return to the residence and do

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1 some further attempts to find fingerprints?

2 A Yes. I sure did.

3 Q And what areas did you process at that point?

4 A Okay. I returned out to the residence. Ms. Roberts
5 had found some possible areas that might have been
6 tampered with that during the course of my first
7 investigation wasn't revealed. So I went back out
8 and of course to see if I could find any additional
9 evidence or anything to collect. I did respond back
10 out there.

11 Q And what items did you process when you responded
12 back there?

13 A In the back porch, of course there's a kitchen
14 window. There's a sink. Exterior inside the porch
15 around the kitchen window there were some -- well,
16 she wanted me to check around there to see if there
17 were any fingerprints. So I did use black powder
18 there on the exterior glass and frame. And no
19 prints, no usable prints were found there.

20 Q Did you process any other things while you were
21 there?

22 A Yes. A screwdriver that was there. It couldn't be
23 determined whether the suspect had used the
24 screwdriver. But at that time it appeared out of
25 place to the victim. So I said okay. So I went

1 ahead and of course dusted that for prints also.

2 Q What were your results?

3 A There were no prints on that either, which is not
4 unusual.

5 Q Finally, did you go to a rear bedroom?

6 A Yes. The rear bedroom wall, I returned back in there
7 from concerns. I think that was her son's room that
8 I returned to. I think it was near a gun rack.

9 There was a rack up there on the back wall. And
10 there was concerns that maybe there were some prints
11 on the rear wall next to that. I used the black
12 powder on that wall surface which didn't generate any
13 fingerprints.

14 Q So, basically, in your processing of the house, you
15 were able to get three fingerprints from the glass on
16 the storm door going outside?

17 A Yes. That's correct.

18 Q And is that normal in the processing of a scene, just
19 to be able to find that many usable prints?

20 A Yes. Yes.

21 Q And when you collect evidence at the scene, can you
22 tell whether or not it belongs to the victim or the
23 perpetrator or whomever?

24 A No. Not at that time.

25 Q Beg the Court's indulgence. Thank you, sir. I don't

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1 have any further questions.

2 THE COURT: Mr. Sutherland.

3 CROSS EXAMINATION

4 BY MR. SUTHERLAND

5 Q How you doing, sir?

6 A All right. Thank you.

7 Q Let's see. I had you arriving, is it 18:35 or 18:38,
8 around that time?

9 A 18:35. Yes, sir.

10 Q Okay. Was Deputy Chief Wilson there when you got
11 there?

12 A Yes, he was. To my knowledge; yes, sir.

13 Q Okay. The sum total of everything you've been
14 testifying is you took a number of pictures. I
15 believe it was around 88 of them. Does that sound
16 right?

17 A Yes.

18 Q Okay. And --

19 A I'm not sure.

20 Q -- you went over to the house in certain areas
21 looking for fingerprints?

22 A Right.

23 Q And the only place you got prints that you could lift
24 was on that back porch door?

25 A That's correct, yes.

1 Q And Ms. Campbell was asking you if it was consistent
2 with people wearing gloves not to be able to find any
3 prints. But, I mean, obviously just because -- if
4 somebody doesn't have gloves on, that doesn't mean
5 that they're going to leave prints somewhere. Is
6 that correct, sir?

7 A Would you -- it doesn't make a --

8 Q Well, if --

9 A Go ahead.

10 Q You processed all these areas in the house and you
11 found three usable prints?

12 A Right.

13 Q Obviously it's a home and people have been all over
14 the place. And what I'm saying is, you don't leave
15 prints just because you do not have a glove on? Does
16 that make sense to you?

17 A Yeah.

18 Q Okay.

19 A That's right. That's correct. You can touch areas
20 and not leave fingerprints.

21 Q I just wanted to make sure we're on the same page.

22 A That's okay.

23 Q I sort of phrase things a little funny sometimes.

24 Okay. You ran through a database, you ran those
25 three fingerprints that you got and they didn't come

1 up as -- you didn't get a hit on those, right?

2 A Right. I didn't run them. I sent them to our latent
3 fingerprint section.

4 Q Okay.

5 A And Investigator Collins ran those.

6 MR. SUTHERLAND: Okay. I have no further
7 questions of this witness, Your Honor.

8 THE COURT: Anything further?

9 MS. CAMPBELL: No, sir.

10 THE COURT: Any objection to the witness being
11 excused?

12 MR. SUTHERLAND: None whatever, sir.

13 THE COURT: You may come down, sir. Thank you
14 very much.

15 MS. CAMPBELL: The State calls Investigator Stan
16 Richards.

17 IVAN S. RICHARDS, after being duly sworn,
18 testifies as follows:

19 THE CLERK: Thank you. Please have a seat in
20 the witness stand and state your full name for the
21 record.

22 WITNESS: Ivan Stan Richards.

23 DIRECT EXAMINATION

24 BY MS. CAMPBELL

25 Q Investigator Richards, where are you employed?

1 A Richland County Sheriff's Department.

2 Q What do you do there, sir?

3 A I am currently a senior analyst in the crime scene
4 division of the forensics office.

5 Q Can you tell this jury a little bit about your
6 training and education in crime scene investigation?

7 A I attended the St. Neal's University in Florida. I
8 am a graduate of both the Northeast Georgia and South
9 Carolina Criminal Justice Academies. I have been
10 trained in latent print development, latent print
11 verification, advanced palm print verification, crime
12 scene photography, crime scene reconstruction, crime
13 scene investigation, blood spatter analysis, shoe
14 wear and tire print impression analysis.

15 Q For the record, you did not respond to the crime
16 scene on Harmon Road in this case?

17 A I did not.

18 Q And, in fact, your involvement was somewhat limited I
19 think, I believe involving the car?

20 A That's correct.

21 Q Now I want to turn your attention to September the
22 25th around 6:15. Did you have an occasion to log in
23 a car into your compound?

24 A Yes, I did. I was notified by our desk sergeant
25 that --

Ivan S. Richards - Direct by Ms. Campbell

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1 MR. SUTHERLAND: Briefly, sir?

2 THE COURT: Yes.

3 MR. SUTHERLAND: May we approach?

4 THE COURT: Sure.

5 (Whereupon, a bench conference is had)

6 MR. SUTHERLAND: I withdraw my objection, Your
7 Honor.

8 THE COURT: Thank you.

9 Q Investigator Richards, on September the 25th of 2005,
10 you were mentioning that you were taking possession
11 of a car?

12 A Yes. I received a vehicle from a County Towing
13 company that had been brought to our facility on Two
14 Notch Road I believe from Lexington County. It was a
15 red in color Dodge Stratus, '99, with a tag number of
16 114 KHE.

17 Q Okay. And I believe in your report you mentioned
18 that the vehicle was from a location on Culler Road
19 in Sandy Run in Lexington County?

20 A That's correct. That's what I was told, that it was
21 coming from that location.

22 Q And I show you what's been marked as State's Exhibit
23 No. 34. Do you recognize that?

24 A I recognize the color and the make and the tag number
25 which is of the vehicle that I took into my

1 possession.

2 Q And when you took that vehicle in your possession, do
3 you all do anything to make sure it remains secure
4 while it's in your possession?

5 A Yes. It is secured in our garage facility which a
6 secured climate controlled pending processing or for
7 the purpose of processing that vehicle.

8 Q And that vehicle was secured by you on September 25th
9 when you received it from the tow company?

10 A It was.

11 Q And during the course of time it was in your
12 compound, are you aware of anyone being able to alter
13 it, tamper with it or get to it in any way?

14 A I am not aware of that; no, ma'am.

15 Q And was it later processed by another crime scene
16 investigator?

17 A It was.

18 Q And who was that?

19 A Investigator Reed Enzor.

20 Q Thank you, sir. That's all I'd have.

21 MR. SUTHERLAND: May it please the Court.

22 CROSS EXAMINATION

23 BY MR. SUTHERLAND

24 Q Sir, basically your testimony is you received the
25 vehicle and you secured it in your facility?

1 A That's it.

2 Q Is that correct? Thank you. Thank you. No further
3 questions, Your Honor.

4 A All right.

5 THE COURT: All right. Any objection to this
6 witness being excused?

7 MR. SUTHERLAND: None whatsoever, sir.

8 THE COURT: All right. You may come down, sir,
9 and you're excused. Thank you very much.

10 THE WITNESS: Yes, sir.

11 MS. CAMPBELL: Your Honor, may we approach?

12 THE COURT: Sure.

13 (Whereupon, a bench conference is had)

14 THE COURT: All right, ladies and gentlemen of
15 the jury. Counsel, we're just trying to work through
16 the schedule, keep things moving. We've got a slight
17 hold up on the next witness. So I guess the best and
18 most efficient use of our time at this point would be
19 to go ahead and take our lunch break. It's 12:20.

20 I'm going to ask you to be back in the jury room
21 at 1:30, at which time we'll continue the trial. Is
22 that enough time for everybody? A little over an
23 hour. At which time we'll continue the trial. Again
24 I'll ask you not to discuss the case among yourselves
25 when you return to the jury room or with anyone else

1 over the lunch hour. I hope you have a pleasant
2 lunch. We'll see you at 1:30.

3 (Jury out at 12:20 p.m.)

4 *THE COURT:* We'll stand at ease until 1:30 or
5 thereabouts.

6 *MR. SUTHERLAND:* Thank you, sir.

7 (Whereupon, a lunch break is taken)

8 *THE COURT:* All right, counsel. Are you ready
9 for the jury?

10 *MR. GOLDBERG:* The State's ready, Your Honor.

11 *THE COURT:* Defense ready?

12 *MR. SUTHERLAND:* The defense is ready, Your
13 Honor.

14 *THE COURT:* Bring the jury, please.

15 (Jury in at 1:40 p.m.)

16 *THE BAILIFF:* All the jurors are present, Your
17 Honor.

18 *THE COURT:* Thank you very much. All right,
19 ladies and gentlemen. I hope you had a pleasant
20 lunch. We're now ready to continue with the trial.
21 Solicitor, call your next witness.

22 *MR. GOLDBERG:* The State calls Eddie Cole.

23 EDWARD COLE, after being duly sworn, testifies
24 as follows:

25 *THE CLERK:* Thank you. Please have a seat in

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1 the witness stand and state your full name for the
2 record.

3 WITNESS: Edward Cole.

4 DIRECT EXAMINATION

5 BY MR. GOLDBERG

6 Q Mr. Cole, back in 2005, specifically September of
7 2005, where were you employed?

8 A County Towing and Recovery.

9 Q And where is that business located?

10 A South Congaree.

11 Q Is that in Lexington?

12 A Yes, sir. Lexington County.

13 Q And what were your duties with County Towing
14 Recovery?

15 A To tow and recover vehicles.

16 Q Generally, when you receive a call to go out to a
17 vehicle, how do you receive that call?

18 A Either by the individual customer or a motor club or
19 law enforcement.

20 Q And when you respond to these locations and actually
21 tow a vehicle, do you fill out some kind of a form
22 documenting what happened?

23 A Yes, sir.

24 Q What is that called?

25 A A tow slip.

1 Q I want to show you what's been marked as State's 45.

2 Do you recognize that?

3 A Yes, sir.

4 Q And what do you recognize that to be?

5 A One of our tow slips.

6 Q What's the date on it?

7 A 9-25-05.

8 Q Okay.

9 MR. GOLDBERG: At this time, Your Honor, we'd
10 move State's 45 into evidence.

11 MR. SUTHERLAND: Without objection, Your Honor.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit No. 45 is admitted
14 into evidence.)

15 Q That's from September 25 of 2005?

16 A Yes, sir.

17 Q Okay. And what area were you dispatched to?

18 A Sandy Run area of Lexington County on Culler Road.

19 Q Is that where the vehicle was located?

20 A Yes, sir.

21 Q What kind of vehicle are we talking about it?

22 A It is a '99 Dodge Stratus, red in color.

23 Q Do you know the license plate of that car?

24 A 114 KHE.

25 Q Who requested that you go out and tow the vehicle?

Edward Cole - Direct by Mr. Goldberg

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1 A Lexington County Sheriff's Department for Richland
2 County Sheriff's Department.

3 Q And were you provided with a reason for the tow?

4 A It was basically a stolen recovery.

5 Q Is there certain boxes that you have to check on the
6 tow slip?

7 A Yes, sir.

8 Q Which ones did you check?

9 A Abandoned, because the vehicle was in the middle of
10 the woods, nobody there, stolen and impounded.

11 Q You said this was on Culler Road?

12 A Yes, sir.

13 Q I want to show you State's 50. If you could tell us
14 generally what this area is? I have a pointer for
15 you.

16 A I-26, exit 129. That's Culler Road right there. And
17 the vehicle was off of this road in the woods..

18 Q And does this map fairly and accurately depict how
19 that area appeared?

20 A Yes, sir.

21 MR. GOLDBERG: At this time we would move
22 State's 50 into evidence.

23 MR. SUTHERLAND: Without objection, Your Honor.

24 THE COURT: Without objection.

25

1 (WHEREUPON, State's Exhibit No. 50 is admitted
2 into evidence.)

3 Q And is there a box on the sheet that indicates who
4 ordered the tow?

5 A Yes. Actually at the top right of the slip you'll
6 see where it says "requested by".

7 Q And what does it say?

8 A Lexington/Richland Counties.

9 Q Is there also another box further down that says
10 "towed per order of", I believe in the middle of the
11 page?

12 A Yeah. Local police.

13 Q Local police. And where did the vehicle get towed
14 to?

15 A Richland County Sheriff's Department headquarters on
16 Two Notch Road.

17 Q And while you were in possession of the vehicle, did
18 you ever enter the vehicle?

19 A No.

20 Q Will you ever enter vehicles when you tow them?

21 A No. Well, I mean, sometimes. But when law
22 enforcement tells us not to touch anything --

23 Q On this occasion did you enter the vehicle?

24 A No.

25 Q Did you alter or tamper with it in any way --

Edward Cole - Direct by Mr. Goldberg

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1 A No.

2 Q -- on the inside?

3 A (Shakes head negatively).

4 Q And at the bottom of the tow slip, did you sign this
5 sheet?

6 A Yes, sir.

7 Q Thank you. That's all I have.

8 MR. SUTHERLAND: May it please the Court?

9 THE COURT: Cross examination.

10 MR. SUTHERLAND: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. SUTHERLAND

13 Q Mr. Cole, the Lexington County Sheriff's Department
14 called you to come tow this car?

15 A Yes, sir.

16 Q Okay. Did they meet you out by the vehicle?

17 A I believe there was a deputy out there when I got
18 there.

19 Q So the deputy out there would have been the one that
20 maybe told you not to touch --

21 A Right.

22 Q -- the vehicle?

23 A Right.

24 Q Okay. Do you remember the deputy's name?

25 A No. I sure don't.

1 MR. SUTHERLAND: I have no further questions of
2 this witness, Your Honor.

3 THE COURT: Redirect?

4 MR. GOLDBERG: No, sir.

5 THE COURT: All right. You may come down, sir.
6 May the witness be excused? Without objection.

7 MR. SUTHERLAND: Without objection, Your Honor.

8 THE COURT: Next witness.

9 MS. CAMPBELL: The State calls Trish Collins.

10 PATRICIA M. COLLINS, after being duly sworn,
11 testifies as follows:

12 THE CLERK: Thank you. Please have a seat in
13 the witness stand and state your full name for the
14 record.

15 WITNESS: Patricia Marie Collins.

16 DIRECT EXAMINATION

17 BY MS. CAMPBELL

18 Q Investigator Collins, where are you employed?

19 A At the Richland County Sheriff's Department.

20 Q And what do you do there?

21 A I am a crime scene investigator and a latent print
22 examiner.

23 Q Can you tell this jury a little about your education
24 and your training in crime scene?

25 A Oh. I've been to numerous classes as far as crime

1 scene and latent print development, basic fingerprint
2 school which was a 40-hour course on the way
3 fingerprints are made, how they develop, numerous
4 hours of internal training on the development of
5 latent fingerprints and lots and lots of looking at
6 them.

7 Q And you have testified of course as an expert in
8 fingerprint comparisons?

9 A I have.

10 MS. CAMPBELL: Your Honor, at this time we'd
11 offer her as an expert in fingerprint comparison as
12 far as crime scene investigation goes.

13 MR. SUTHERLAND: Without objection, sir.

14 THE COURT: Without objection.

15 Q Investigator Collins, in this case you didn't
16 actually respond to the crime scene, did you?

17 A No, ma'am.

18 Q Nor to the car crime scene either?

19 A No, ma'am.

20 Q But at some point did Investigator Oates forward you
21 some fingerprints?

22 A He did.

23 Q And I believe there were three fingerprints that were
24 taken off the back screen door?

25 A That's correct.

1 Q Storm door? Excuse me. Storm door.

2 A That's correct.

3 Q And once you got those fingerprints tell the jury
4 what, if anything, you attempted to do?

5 A The first thing I did was I examined them to see if I
6 thought that they were suitable to be suited --
7 excuse me -- suitable to be submitted to our AFIS
8 system, the computer database that we have. And I
9 submitted them to AFIS. There were no hits or no
10 positive results that were received back. And I kept
11 them on file in my office until earlier this year. I
12 was requested to make a comparison.

13 Q And did you compare those fingerprints to Clyde
14 McBride?

15 A I did.

16 Q And did those fingerprints match Clyde McBride?

17 A No.

18 Q And do you know whether or not those fingerprints
19 matched any of the actual occupants of the home?

20 A No, I don't.

21 Q Thank you. I don't have anything further.

22 THE COURT: Questions?

23 MR. SUTHERLAND: May it please the Court?

24 CROSS EXAMINATION

25 BY MR. SUTHERLAND

Patricia M. Collins - Cross by Mr. Sutherland

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1 Q Just briefly, ma'am. You got no match from AFIS and
2 they did not match Mr. McBride?

3 A That's correct.

4 Q Thank you. No further questions, Your Honor.

5 THE COURT: All right, ma'am. You may come
6 down. May the witness be excused? Without
7 objection.

8 MR. SUTHERLAND: Without objection, sir.

9 THE COURT: Next witness.

10 MS. CAMPBELL: The State calls Bev Crane.

11 BEVERLY L. CRANE, JR., after being duly sworn,
12 testifies as follows:

13 THE CLERK: Thank you. Please have a seat in
14 the witness stand and state your full name for the
15 record.

16 WITNESS: Beverly L. Crane, Jr.

17 DIRECT EXAMINATION

18 BY MS. CAMPBELL

19 Q Investigator Crane, where are you employed?

20 A Richland County Sheriff's Department.

21 Q And what do you do there now, sir?

22 A I'm an investigator with them now. At the time that
23 we're speaking of here in this timeframe I was in the
24 evidence room as an evidence technician.

25 Q As an evidence technician?

1 A (Nods head affirmatively).

2 Q And is the evidence room set up so that it's kept
3 secure?

4 A It is.

5 Q Specifically, I want to turn your attention to
6 certain items, I believe items 1 through 7. Did you
7 have an occasion to receive those items from
8 Investigator Oates?

9 A I did. I checked in items 1 through 7.

10 Q And when did Investigator Oates actually turn items 1
11 through 7 over to you? Are you referring to the
12 paperwork?

13 A I am. 9-13-2005 at 13:37.

14 Q 9-13 of 2005?

15 A Right.

16 Q So that would be September 13th of 2005?

17 A Right.

18 Q Once you took items 1 through 7 and put them into
19 your custody, would they have remained secured until
20 they were checked out again?

21 A They were.

22 Q There in the evidence room?

23 A They were.

24 Q And when you were handling them or processing them
25 in, you didn't do anything to alter them or change

Beverly L. Crane, Jr. - Direct by Ms. Campbell

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1 them in any way, did you?

2 A No, ma'am. When evidence is turned in, it's turned
3 in sealed and --

4 Q You also received some additional items including
5 item number 10 I want to focus on which was a swab
6 from a steering wheel. When did you receive item
7 number 10?

8 A I received it on 9-26-2005.

9 Q And who actually checked the swab from the steering
10 wheel into the evidence room?

11 A Ms. Patricia Enzor Reed who is the --

12 Q And is she a crime scene investigator with you all?

13 A She is.

14 Q And other than checking all these items into
15 evidence, did you have any further involvement in
16 this case?

17 A No, ma'am.

18 Q Thank you, sir.

19 THE COURT: Cross?

20 MR. SUTHERLAND: Your Honor, I have no questions
21 of this witness.

22 THE COURT: All right. Thank you very much,
23 sir. You may come down, sir. May the witness be
24 excused? Without objection.

25 MR. SUTHERLAND: Oh. Without objection. I'm

1 sorry, Your Honor.

2 **MS. CAMPBELL:** The State calls Tena Goff.

3 TENA GOFF, after being duly sworn, testifies as
4 follows:

5 **THE CLERK:** Thank you. Please have a seat in
6 the witness stand and state your full name for the
7 record.

8 **WITNESS:** Tena Goff.

9 DIRECT EXAMINATION

10 **BY MS. CAMPBELL .**

11 **Q** Investigator Goff, where are you employed?

12 **A** At the Richland County Sheriff's Department.

13 **Q** And what do you do there?

14 **A** I am the evidence custodian.

15 **Q** And you're in charge of the evidence room?

16 **A** I am.

17 **Q** And how long have you been handling those duties?

18 **A** For the past ten years.

19 **Q** Can you explain to the jury a little bit about how
20 things are processed into the evidence room and how
21 it kept secure while you maintain custody of it?

22 **A** There are two different ways that you can submit
23 evidence, either to us personally, hand-to-hand; or
24 we have temporary storage lockers outside the
25 evidence room in our log-in area. If during the

1 normal business hours we are there, you can hand it
2 to us. If after hours or on weekends, you put them
3 in these lockers. Once they're locked, no one can
4 get into them except for the evidence custodians.

5 Q Turning your attention to this case and items 1
6 through 7, specifically item number 2, did you have
7 an opportunity to handle that or sign that out to
8 another investigator?

9 A I did.

10 Q And who did you sign it out to?

11 A On October 3rd of 2005 I signed it over to Dr. Gray
12 Amick.

13 Q And who is Dr. Gray Amick?

14 A He is our DNA analyst leader at the Sheriff's
15 Department.

16 Q Turning your attention to item number 10 which is the
17 swab from the steering wheel, did you also have the
18 opportunity --

19 MR. SUTHERLAND: Your Honor, I'm sorry. May we
20 approach briefly, sir?

21 THE COURT: Sure.

22 (Whereupon, a bench conference is had)

23 MR. SUTHERLAND: I withdraw my objection, Your
24 Honor.

25 THE COURT: Yes, sir.

1 Q Turning your attention to item number 10, did you
2 have an opportunity to handle that evidence as well?

3 A Yes.

4 Q And when did you actually, and how did you handle
5 that evidence?

6 A It was requested at the same time item number 20 was.
7 On October 3rd, 2005 I gave that to Dr. Gray Amick as
8 well.

9 Q And in reviewing the chain of evidence in this case
10 from the time it was processed in by Investigator
11 Reed or Enzor Reed and given over to Investigator
12 Crane, from that point on September 13th of 2005
13 until it was checked out to Dr. Amick, did anyone
14 alter it or tamper with it in any way?

15 A No.

16 Q And it was kept secure in your facility?

17 A Yes.

18 Q Did you also at a later date come in possession of
19 what's known as a buccal swab?

20 A Yes, ma'am.

21 Q And who actually checked that into your evidence
22 room?

23 A I did.

24 Q Who was the submitting officer?

25 A Investigator Reed.

1 Q And is she with the crime scene investigation unit?

2 A She is.

3 Q And when did she actually check that into you?

4 A It was February 16th of 2007.

5 Q Once that item was submitted into your care, was it
6 properly logged in?

7 A Yes, it was.

8 Q And when you're referring to these items which is
9 item number 2, item number 10 and the buccal swab
10 that was later submitted at a later date, in your
11 review, as the evidence custodian for Richland
12 County, was all that evidence handled properly?

13 A Yes, it was.

14 MS. CAMPBELL: Thank you.

15 MR. SUTHERLAND: May it please the Court?

16 THE COURT: Cross examination.

17 CROSS EXAMINATION

18 BY MR. SUTHERLAND

19 Q Ms. Goff, from whom -- let's see. I'm talking
20 about -- actually I have no questions for this
21 witness, Your Honor.

22 THE COURT: Okay.

23 MR. SUTHERLAND: Sorry.

24 THE COURT: May the witness be excused? You may
25 come down, ma'am. May the witness be excused?

1 Without objection.

2 MR. SUTHERLAND: Without objection, Your Honor.

3 MS. CAMPBELL: The State calls Joy Delatorre.

4 JOY DELATORRE, after being duly sworn, testifies
5 as follows:

6 THE CLERK: Thank you. Please have a seat in
7 the witness stand and state your full name for the
8 record. And if you could spell your last name,
9 please.

10 WITNESS: Joy Delatorre, D-E-L-A-T-O-R-R-E.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL

13 Q Investigator Delatorre, where are you employed?

14 A Richland County Sheriff's Department.

15 Q And what do you do there, ma'am?

16 A I am an evidence technician in the evidence and
17 property room.

18 Q And you work in the same evidence room we've been
19 referring to here in court?

20 A Yes, ma'am.

21 Q In March of this year did you have an occasion to
22 turn a buccal swab over to a DNA person?

23 A Yes, ma'am.

24 Q And what date did that occur, ma'am?

25 A March 23rd.

Joy Delatorre - Direct by Ms. Campbell

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1 Q Of 2007?

2 A Yes, ma'am.

3 Q Who did you turn that swab, that buccal swab over to?

4 A Dr. Gray Amick.

5 Q And he is with the DNA lab?

6 A Yes, ma'am.

7 Q And that's the same swab that was actually clocked in
8 by Tena Goff?

9 A Yes, ma'am.

10 Q And to your knowledge, during the time period it was
11 in your custody from February the 16th of '07 until
12 you checked it out March 23rd of '07, did anyone
13 alter it, tamper with it or do anything with to it?

14 A No, ma'am.

15 Q Thank you, ma'am.

16 THE COURT: Cross?

17 MR. SUTHERLAND: I have no questions of this
18 witness, Your Honor.

19 THE COURT: You may come down. Thank you very
20 much, ma'am. May the witness be excused?

21 MR. SUTHERLAND: Without objection.

22 THE COURT: Without objection.

23 MS. CAMPBELL: Your Honor, may I approach?

24 THE COURT: Sure.

25 (Whereupon, a bench conference is had)

1 *THE COURT:* All right, ladies and gentlemen.
2 Counsel advised me that we've been running through
3 these witnesses fairly fast and there are witnesses
4 that are in transit, on the way here. We anticipated
5 they'd be here by 2:00, or at least counsel did. But
6 they're not quite here yet. So we're just going to
7 take about a ten-minute break, and as soon as the
8 remaining witnesses arrive we'll call them. So just
9 don't discuss the case among yourselves while you're
10 in the jury room. Just relax for a few minutes.
11 Thank you very much. You're excused to go to the
12 jury room.

13 (Jury out at 2:01 p.m.)

14 *THE COURT:* We'll stand at ease for ten minutes,
15 thereabouts.

16 (Whereupon, a break is taken)

17 *THE COURT:* Counsel ready for the jury?

18 *MS. CAMPBELL:* The State's ready.

19 *MR. SUTHERLAND:* The defense is ready, Your
20 Honor.

21 *THE COURT:* Bring the jury, please.

22 (Jury in at 2:25 p.m.)

23 *THE BAILIFF:* Your Honor, all the jurors are
24 present, Your Honor.

25 *THE COURT:* Thank you. All right, Solicitor.

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1 Call your next witness.

2 MR. GOLDBERG: The State calls Patricia Reed
3 Enzor.

4 PATRICIA R. ENZOR, after being duly sworn,
5 testifies as follows:

6 THE CLERK: Thank you. Please have a seat in
7 the witness stand and state your full name for the
8 record.

9 WITNESS: My name is Patricia Reed Enzor.

10 DIRECT EXAMINATION

11 BY MR. GOLDBERG

12 Q Where are you employed?

13 A The Richland County Sheriff's Department.

14 Q How long have you worked there?

15 A Since 2001.

16 Q What are your duties with the Sheriff's Department?

17 A I am currently a crime scene investigator.

18 Q What does that entail?

19 A I respond to calls, anything from simple assaults,
20 homicides, burglaries. I just, sort of like a TV
21 show, I collect the evidence that's left behind by
22 the suspects.

23 Q Do you also have other duties that would take place
24 at the Sheriff's Department?

25 A Yes. I also work a line unit as well as needed

1 backing up other deputies.

2 Q Are any of your forensic duties, do they take place
3 at the Sheriff's Department as well?

4 A Yes, sir.

5 Q Back on September 26th of '05, were you requested to
6 process a vehicle?

7 A Yes, sir, I was.

8 Q And what vehicle was that?

9 A It is a '99 Dodge Stratus, red in color.

10 Q What's the tag number on that?

11 A 114 K, kilo, H, hotel, E, echo.

12 Q What exactly were you requested to do with that
13 vehicle?

14 A I was requested to process it. I was advised that
15 the vehicle had been involved in a burglary. So I
16 was requested to process it for any type of physical
17 evidence that might be on the vehicle or in the
18 vehicle.

19 Q Okay. And what exactly did you do with the vehicle?

20 A What I started to do is photograph the vehicle on the
21 outside and on the inside before anything was
22 touched. After I did that I processed different
23 parts of the vehicle with black powder to see if I
24 could find any fingerprints. The specific areas that
25 I processed was the interior and the exterior of the

1 driver's side door and the rearview mirror all with
2 black powder.

3 Q How exactly did you -- you said with black powder?

4 A It's black powder. It's black powder. You stick a
5 brush in it and when you put it up against the top of
6 a surface, if fingerprints are there, it's going to
7 lift it up.

8 Q Did you find any fingerprints?

9 A No, I did not.

10 Q What else did you do with the vehicle?

11 A At that time I swabbed several locations on the
12 vehicle for DNA analysis. I swabbed the exterior
13 handle area of the driver's side door, the interior
14 handle or pull area of the driver's side door, the
15 gear shift and the steering wheel.

16 Q Where did all this take place?

17 A At our forensic garage at headquarters on Two Notch
18 Road.

19 Q I want to show you what's been marked as State's 35
20 through 43 and just ask you if you recognize those
21 pictures?

22 A Yes, sir. I recognize them. I took those
23 photographs.

24 Q Did you take them of that vehicle on that day?

25 A Yes, sir.

1 Q And do these photos fairly and accurately depict that
2 vehicle as it appeared that day?

3 A Yes, sir.

4 MR. GOLDBERG: At this time, Your Honor, we move
5 State's 35 through 43 into evidence.

6 MR. SUTHERLAND: Without objection, Your Honor.

7 THE COURT: Without objection.

8 (WHEREUPON, State's Exhibit No. 35 is admitted
9 into evidence.)

10 (WHEREUPON, State's Exhibit No. 36 is admitted
11 into evidence.)

12 (WHEREUPON, State's Exhibit No. 37 is admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit No. 38 is admitted
15 into evidence.)

16 (WHEREUPON, State's Exhibit No. 39 is admitted
17 into evidence.)

18 (WHEREUPON, State's Exhibit No. 40 is admitted
19 into evidence.)

20 (WHEREUPON, State's Exhibit No. 41 is admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit No. 42 is admitted
23 into evidence.)

24 (WHEREUPON, State's Exhibit No. 43 is admitted
25 into evidence.)

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1 Q Okay. And if I could just get to you point out in
2 these photographs -- you don't have to stand down --
3 where you processed car. This is State's 37.

4 A This is the driver's side door area. I processed
5 this entire area here for any possible fingerprints,
6 including on the glass.

7 Q And in State's 43?

8 A Also I didn't mention, on the outside after I did the
9 black powder, this is one of the locations where I
10 did swab for DNA evidence.

11 Q On the handle?

12 A On the handle area of the driver's side front door.

13 Q How about State's 43?

14 A 43. The steering wheel, I swabbed for DNA. And if
15 you look a little bit further behind it, you see the
16 handle area where you pull the door shut. That's
17 also where I swabbed for DNA.

18 Q Okay. And also did you say you did the gear shift as
19 well?

20 A Yes, sir, I did. I apologize. I did do the gear
21 shift.

22 Q For prints or for DNA?

23 A For DNA.

24 Q And again, is this State's 40 just another angle of
25 that?

1 A Yes, sir.

2 Q Okay. Thank you. Oh. And I'm sorry. One other
3 question. State's 42 and 41, were these items in the
4 vehicle when you received it?

5 A Yes, sir.

6 Q Thank you.

7 A Mm-hmm (affirmative).

8 Q Once you took the swabs, I believe there was four
9 swabs. Is that correct?

10 A Yes, sir. Four swabs.

11 Q What did you do with them?

12 A Let me see. I packaged them. They come -- each swab
13 has an individual swab box that you place them in. I
14 put them in separate envelopes so there would be no
15 cross contamination, meaning one swab wouldn't touch
16 another one and cause the evidence to transfer.
17 After I did that I packaged them, sealed them and
18 submitted them to evidence.

19 Q When did you do that?

20 A The same day, on the 26th of September. And I
21 personally handed it to Bev Crane who was the
22 evidence person working at that time.

23 Q Also let me ask you; what is a buccal swab?

24 A A buccal swab is when you take a swab and you run it
25 on the inside of your mouth near your cheek. And

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1 what it does is it just collects skin cells and
2 buccal swab cells up in here that give you DNA.

3 Q Did you have an opportunity to take a buccal swab
4 from the defendant, Mr. McBride?

5 A Yes, I did. I was requested to come to the
6 courthouse on February the 15th where I was requested
7 to take a buccal swab on the defendant.

8 Q What did do you with that after you took the swab?

9 A I packaged it again in the individual box. It was
10 stored overnight in my evidence locker which is
11 secured at headquarters. The next day it was
12 submitted to evidence and given hand-to-hand to --
13 person-to-person -- excuse me -- to Tena Goff.

14 Q And that would be on February 16th of this year?

15 A That's correct.

16 Q Thank you. That's all I have.

17 A Yes, sir.

18 MR. SUTHERLAND: May it please the Court?

19 THE COURT: Cross examination.

20 CROSS EXAMINATION

21 BY MR. SUTHERLAND

22 Q Ms. Reed?

23 A Yes, sir.

24 Q You just testified you collected a swab from Mr.
25 McBride. That was on February the 15th?

1 A That is correct.

2 Q And you turned it in the next day at 7:17 in the
3 morning?

4 A Yes.

5 Q And you testified that this was in your evidence
6 locker?

7 A My evidence locker; yes, sir.

8 Q But you recovered no prints from the vehicle?

9 A No, sir.

10 Q To whom did you take the DNA samples again?

11 A The first set of DNA samples as on the 26th was --
12 excuse me -- September the 26th was to Bev Crane.

13 Q Oh, okay. I've got it.

14 A And then on February the 16th to Tena Goff.

15 MR. SUTHERLAND: I have no further questions of
16 this witness, Your Honor.

17 THE COURT: Redirect?

18 MR. GOLDBERG: No, sir.

19 THE COURT: All right. You may come down,
20 ma'am. Thank you very much. May this witness be
21 excused?

22 MR. SUTHERLAND: Without objection.

23 THE COURT: Without objection. Call your next
24 witness.

25 MS. CAMPBELL: The State recalls Investigator

1 Oates.

2 THE COURT: You're still under oath, sir. We
3 don't need to re-swear you again.

4 ROBERT C. OATES, after being recalled and
5 reminded he is still sworn, testifies as follows:

6 DIRECT EXAMINATION

7 BY MS. CAMPBELL

8 Q Investigator Oates, I apologize. I neglected to ask
9 you two questions this morning. You mentioned that
10 you did your final processing on the Pepsi can as
11 well as the orange juice bottle, the washcloth and
12 things of that nature on September the 13th of 2005.
13 Is that correct?

14 A Yes.

15 Q And after you had done what you needed to do, did you
16 then submit certain items for testing for DNA?

17 A Yes. I sure did. Yes, ma'am.

18 Q And those items would include the swab from the neck
19 of the dog and item number 2, the Diet Pepsi can?

20 A Yes.

21 Q As well as the washcloth and the orange juice
22 container?

23 A Yes.

24 Q And you actually logged those items into the evidence
25 room to Investigator Bev Crane on September the 13th

1 of 2005?

2 A Yes.

3 Q While those items were in your possession for that
4 about two-week period, did you keep them secure?

5 A Yes. I did.

6 Q And explain to the jury how they were kept secure
7 while you they were in your possession?

8 A Okay. In our laboratory we have these large like
9 metal storage lockers. And on the outside of each
10 locker, each investigator is assigned a locker. And
11 there is a Master lock that a hasp is on each door
12 lock. And each lock is separate and different. As
13 an example, my lock has only one key. Well, it has
14 two keys, one for me and one for my immediate
15 supervisor which is locked up in their office. And
16 also our laboratory is also guarded by key card. So
17 only those who have access for the laboratory can get
18 in. You have to have that access key first.

19 Q And while you had these items in your possession and
20 until you actually logged them into the evidence
21 room, did anyone alter them, tamper with them or do
22 anything to them?

23 A No.

24 Q They were secure in your custody?

25 A Yes. They were secure. Yes, ma'am.

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1 Q Thank you.

2 THE COURT: Questions?

3 MR. SUTHERLAND: May it please the Court?

4 CROSS EXAMINATION

5 BY MR. SUTHERLAND

6 Q Sir, hi. When did you testify that you took the item
7 number 2, that you took these items into your
8 custody?

9 A When did I testify to this?

10 Q Oh. Just now she asked you when -- there was a date.
11 Was it September 13th or --

12 A It was September -- the date that she stated,
13 9-13-2005.

14 Q And these items were in your custody?

15 A Yes.

16 Q For how long?

17 A I believe she said two weeks.

18 Q Okay. Just a minute. Your Honor, may we approach,
19 sir?

20 THE COURT: Sure.

21 (Whereupon, a bench conference is had)

22 MR. SUTHERLAND: I have no further questions of
23 this witness, Your Honor.

24 THE COURT: All right. Any redirect?

25 MS. CAMPBELL: No, sir.

1 **THE COURT:** You may come down, sir. The witness
2 free to leave? Without objection?

3 **MR. SUTHERLAND:** Without objection, sir.

4 **THE COURT:** Next witness.

5 **MS. CAMPBELL:** The State calls Jay Russell.

6 **GERALD A. RUSSELL,** after being duly sworn,
7 testifies as follows:

8 **THE CLERK:** Thank you. Please have a seat in
9 the witness stand and state your full name for the
10 record.

11 **WITNESS:** My name is Gerald Allen Russell.

12 DIRECT EXAMINATION

13 **BY MS. CAMPBELL**

14 **Q** Investigator Russell, where are you currently
15 employed?

16 **A** Forest Acres Police Department.

17 **Q** Back in August of 2005, where were you employed?

18 **A** Richland County Sheriff's Department.

19 **Q** And what did your duties include there?

20 **A** Crime scene investigator or crime scene analyst. I
21 responded to all types of crime scenes, processed the
22 scenes for physical evidence, collect evidence, bring
23 that evidence back to the laboratory; and if need be
24 process it there, package it and forward it on to the
25 evidence department so they can be sent out to the

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1 different disciplines, whatever needed to be done
2 with it.

3 As well as evidence that was brought in, say, by
4 deputy sheriffs that collected evidence on the scenes
5 or investigators who collected evidence on the
6 scenes, they submitted the evidence, and I would go
7 down to what we call an E.I.N. unit. It's basically
8 evidence turned in by others other than the crime
9 scene unit. I would go down and pick those packages
10 up, bring them back up to the lab, sign out for them,
11 bring them back up to the lab and process them if
12 need be.

13 Q Specifically turning your attention to September the
14 15th of 2005, did you check out certain items
15 involved in this case?

16 A Yes, ma'am.

17 Q And did those items include item number 2, the Diet
18 Pepsi can?

19 A It probably is.

20 Q Items 1 through 7?

21 A Yes, ma'am.

22 Q I guess is a better way to put it?

23 A Yes, ma'am.

24 Q And I notice that you checked it out for just a few
25 minutes. Why did you check that evidence out and why

1 did you return it so quickly?

2 A I did most of what we call the E.I.N., the evidence
3 turned in by others other than the forensic science
4 unit. A lot of times you go down, the evidence room
5 is a real busy place but real meticulous. Sometimes
6 items may get put -- on a label, one of the crime
7 scene investigators may fill out his label and put on
8 there and check "latent" which means it needs to be
9 processed for latents. But we just switched into a
10 system like this. A lot of times they checked that
11 they'd already done it.

12 On that particular day that evidence was given
13 to me and I signed for it because it had an evidence
14 label checked "latent". I immediately realized since
15 I took it all back up to the laboratory that one of
16 my fellow crime scene investigators had already
17 processed it for latents when he collected it from
18 the scene. And then what he needed to do -- one of
19 the evidence clerks or whatever had mistakenly just
20 signed it out to me. I immediately took it back down
21 to evidence and I signed it back in.

22 Q And when you got that evidence, did you ever even
23 break the seal on the box?

24 A No, ma'am.

25 Q Did you ever alter it or tamper with it? And it had

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1 already been processed by that point. Is that
2 correct?

3 A That's correct. Yeah. I realized that. I actually
4 scratched out I think on the label and initialed that
5 date.

6 Q And during the approximately 12 minutes you had it in
7 your possession, did you alter with it or tamper with
8 it in any way?

9 A No, ma'am.

10 Q Did you even break the seals on the box or the
11 individual seals on any of the packages?

12 A No, ma'am.

13 Q And did anyone else have an opportunity to alter
14 anything or change anything before you got it back
15 into evidence?

16 A No, ma'am.

17 Q And that was that same day, a few minutes later?

18 A Yes, ma'am.

19 MS. CAMPBELL: Thank you, Your Honor. I don't
20 have anything further.

21 MR. SUTHERLAND: May it please the Court?

22 THE COURT: Yes.

23 CROSS EXAMINATION

24 BY MR. SUTHERLAND

25 Q Sir, just a couple of things.

1 A Yes, sir.

2 Q You said that -- you testified that you mistakenly
3 got this evidence. Run us through that one more
4 time. How was it that --

5 A There is an evidence label that has a lot of
6 information on the front. One of the things you can
7 check off is "latents".

8 Q Okay.

9 A At that time the way we worked things, if that box
10 had "latents" checked, it immediately came up to what
11 we call the E.I.N. unit. It was something that
12 needed to be processed for latents. So, along with
13 probably I don't know how many other cases that I
14 picked up that day at that time to process, because
15 of that check on there, I believe it was Bev Crane
16 went ahead and signed that out to me under the -- I
17 guess the mistake there was he was thinking it was
18 something put in by a line unit or another
19 investigator other than crime scene.

20 Q Okay.

21 A I take usually a large cart, I take that cart back
22 upstairs. Before I break any seals or open anything,
23 I examine that label on the front of there, make sure
24 I know where it came from, the case numbers on it,
25 make sure everything is perfect that I need before I

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1 can do anything with it.

2 When I started doing that I realized that
3 Investigator Oates had turned that in and had checked
4 latents because he had obviously processed it for
5 latent prints. He had turned it in. Mr. Crane saw
6 "latents". He gave to it me. I scratched through
7 the check where he put "latents" on there, dated it
8 and initialed it and took it back to the evidence
9 department, signed it right back in; 10, 15 minutes
10 time lapse. That's going from downstairs back up to
11 the lab and back.

12 MR. SUTHERLAND: I have no further questions of
13 this witness, Your Honor.

14 THE COURT: Redirect?

15 MS. CAMPBELL: No, sir.

16 THE COURT: All right. You may come down, sir.
17 Thank you very much. May this witness be excused?
18 Without objection.

19 MS. CAMPBELL: The State calls Dr. Gray Amick.

20 MR. SUTHERLAND: Your Honor, I hate to keep
21 doing this. May we approach the bench?

22 THE COURT: Sure. Go ahead and swear the
23 witness.

24 DR. GRAYSON AMICK, after being duly sworn,
25 testifies as follows:

1 THE CLERK: Thank you. Please have a seat in
2 the witness stand and state your full name for the
3 record.

4 THE COURT: Sir, maybe if you confer with
5 counsel -- if you need to approach, you certainly may
6 do so. But if you confer with counsel, you may
7 have --

8 MR. SUTHERLAND: All right.

9 WITNESS: My name is Grayson Amick.

10 (Whereupon, a bench conference is had)

11 THE COURT: All right, ladies and gentlemen.
12 There's a matter of law I need to take up with the
13 attorneys; I sort of indicated at the beginning of
14 the trial. So I'm going to ask you to go to the jury
15 room for just minute, let me get this straightened
16 out, after which I'll let you know when we're ready.

17 (Jury out at 2:47 p.m.)

18 THE COURT: Yes, sir. All right, Mr.
19 Sutherland.

20 MR. SUTHERLAND: Your Honor, the defense
21 believes that there is a missing link in the chain of
22 custody on this vehicle. We had -- when we
23 approached earlier, they said that they were going to
24 do the chain out of order. However, they're calling
25 the DNA guy now. The Lexington County deputy who had

1 custody of the vehicle prior to Mr. Cole, the tow
2 truck driver, --

3 THE COURT: I thought the tow truck driver found
4 the vehicle in the woods.

5 MR. SUTHERLAND: His testimony when I examined
6 him was that there was a Lexington County deputy
7 there that told him not to touch anything inside of
8 the car, sir.

9 THE COURT: The State's position?

10 MS. CAMPBELL: The State's position is we have
11 provided the chain, Your Honor. Everyone who has
12 touched the car, moved the car in any way has been
13 provided. I mean, I understand I think his argument
14 goes to the weight, not the admissibility. Of course
15 he is going to argue I know in closing that
16 20 million people could have touched that car in the
17 time period between when it was driven from her house
18 until it was recovered 27 days later.

19 However, Your Honor, we have -- and I think our
20 obligation is to put up everyone, who was the tow
21 truck driver who took the car, who moved the car,
22 testified he didn't do anything to it, and everyone
23 up until the point of the testimony we put up.

24 THE COURT: Is the testimony that the Lexington
25 County deputy located the car? Is that where we are?

1 MR. SUTHERLAND: The testimony from Mr. Cole --
2 I keep wanting to call him Mr. Lowe; I don't know
3 why. Maybe that's a towing company. The testimony
4 from Mr. Cole was that there was a Lexington County
5 deputy there. I asked him if he knew the deputy's
6 name. He said no. I asked him if this was the
7 deputy that he had testified on direct that had told
8 him not to touch anything inside the vehicle, and he
9 testified yes.

10 And it's just the defense does believe that this
11 was in the custody of the Lexington County Sheriff's
12 Department and this particular unknown deputy. And
13 it would be the position of the defense that they
14 need to provide this link in the chain or that they
15 can't admit this into evidence, Your Honor.

16 THE COURT: You can't un-ring the bell. Is that
17 what you're telling me?

18 MR. SUTHERLAND: Yes, sir. And, I mean, the
19 only reason that we agreed to do the chain out of
20 order was --

21 THE COURT: Do you know who the deputy is?

22 MS. CAMPBELL: No, sir. I mean, we've never
23 represented we were putting up a deputy. We told him
24 we were putting up the tow truck driver because he's
25 the one that actually handled the car.

1 MR. SUTHERLAND: But I actually said the tow
2 truck driver and the deputy when we were up there.

3 THE COURT: Well, the question is whether
4 that --

5 MS. CAMPBELL: Your Honor, under his theory, he
6 would have to put up anyone that may have walked by
7 the car at any point. I mean, we cannot account
8 until we start handling the evidence ourselves.

9 MR. SUTHERLAND: Well, I mean, I just might add
10 that I think it was Sergeant Chumley's report that
11 said that it was recovered by the Lexington County
12 Sheriff's Department.

13 THE COURT: I haven't seen that.

14 MR. SUTHERLAND: Oh. Yes, sir.

15 MS. CAMPBELL: It doesn't say that.

16 MR. SUTHERLAND: They haven't had any testimony
17 or offered it into evidence, but it is in the
18 discovery.

19 THE COURT: Well, you know, you say it was in
20 the custody of the Lexington County Sheriff's
21 Department; yet, the tow truck operator said he
22 located it down in the woods, which doesn't indicate
23 to me that the Lexington County Sheriff's Department
24 took custody of the car apparently. I don't know
25 what happened. But the vehicle was obviously located

1 and the tow truck operator was called. So I don't
2 know that that's a vital link in the chain as to who
3 found the car.

4 **MR. SUTHERLAND:** Beg the Court's indulgence for
5 a minute.

6 **THE COURT:** Sure.

7 **MR. SUTHERLAND:** Your Honor, if I may, and I
8 forget; these are marked up with a highlighter. But
9 I have located it. Let's see. The State vs.
10 Chisolm. I would just cite the complete chain of
11 evidence, tracing possession from the evidence that
12 is initially controlled to its final analysis must be
13 established at the start as practical. That's citing
14 State v. Carter. The missing link --

15 **THE COURT:** What year is it? What's the date on
16 that?

17 **MR. SUTHERLAND:** Oh.. What's the date on --

18 **THE COURT:** That case.

19 **MR. SUTHERLAND:** This is 355 South Carolina 175,
20 the Court of Appeals, 2003.

21 **THE COURT:** There are recent cases on the
22 chain -- and that may be it -- that says as
23 practical.

24 **MR. SUTHERLAND:** I believe that's what the
25 language of Rule 6 I believe is. Also I have State

1 v. Taylor. That's 360 South Carolina 18, from 2004.
2 And that's just the highlighted portion that I have
3 here. "Where there are unexplained gaps in the chain
4 of possession leading to conjecture, the identities
5 of people who handled the evidence and the manner of
6 handling, the evidence is inadmissible."

7 *THE COURT:* Well, let me look at State v.
8 Fryburger which is a 2005 case. I think the tow
9 truck operator testified the vehicle was abandoned,
10 did he not?

11 *MR. SUTHERLAND:* He said that he checked it as
12 an abandoned vehicle.

13 *THE COURT:* Right.

14 *MR. SUTHERLAND:* But as -- okay. This is
15 operating out of pure memory, so I don't want to --
16 he checked abandoned vehicle but he also checked law
17 enforcement agency.

18 *THE COURT:* Requested that he pick it up?

19 *MR. SUTHERLAND:* You know what? I've got this
20 thing. May I look at the ticket, sir?

21 *THE COURT:* Look at anything you want to.

22 *MR. SUTHERLAND:* Thank you, sir.

23 *THE COURT:* There's got to be some evidence that
24 the vehicle was handled by or taken into custody by
25 to even make that a link of a chain. And whether or

1 not the absence of that link is determinative of
2 whether this evidence can come in or not is a
3 separate question. I mean, there's got to be some --
4 I'm not clear that it is a link in the chain.

5 MR. SUTHERLAND: Yes, sir.

6 THE COURT: I mean, there's a chain from the day
7 that the car was stolen 'til the day the car was
8 processed. And as you stated, it could have been in
9 Ringling Brothers & Barnum and Bailey Circus.

10 MR. SUTHERLAND: 20 clowns, yes.

11 THE COURT: The State is not offering -- I don't
12 believe the State has to prove every link in that
13 chain. As I say, to determine whether this evidence
14 is admissible or not, the State certainly has to
15 prove that they handled the evidence in a manner that
16 prevented spoliation, whether it's fungible or
17 non-fungible goods.

18 MR. SUTHERLAND: Yes, sir.

19 THE COURT: And unless you can show me when the
20 tow truck operator says I found an abandoned vehicle
21 in the woods, maybe somebody called him with the
22 license plate number and that alerted law enforcement
23 and law enforcement sent a tow truck. I think that's
24 the -- I would overrule your objection.

25 MR. SUTHERLAND: Yes, sir. Just I appreciate

1 being heard, Your Honor.

2 *THE COURT:* Yes, sir. I mean, any time you need
3 to make a record, you need to make a record.

4 *MR. SUTHERLAND:* Yes, sir.

5 *THE COURT:* I understand that.

6 *MR. SUTHERLAND:* Thank you, Your Honor.

7 *THE COURT:* Ready for the jury?

8 *MS. CAMPBELL:* The State's ready.

9 *THE COURT:* Bring the jury, please.

10 (WHEREUPON, State's Exhibit No. 50 is marked for
11 identification.)

12 (WHEREUPON, State's Exhibit No. 51 is marked for
13 identification.)

14 (Jury in at 2:58 p.m.)

15 *BAILIFF:* All the jurors are present.

16 *THE COURT:* Thank you very much. Mr.
17 Sutherland, just for the record, State v. Taylor
18 indicates that this may be a credibility issue and
19 not an admissibility issue.

20 *MR. SUTHERLAND:* Yes, sir.

21 *THE COURT:* I overrule the objection.

22 *MR. SUTHERLAND:* Thank you, sir.

23 *THE COURT:* All right, Solicitor, you may
24 continue.

25 *MS. CAMPBELL:* May it please the Court?

DIRECT EXAMINATION

BY MS. CAMPBELL

Q Dr. Amick, where are you employed?

A The Richland County Sheriff's Department.

Q And if you can speak up a little. For some reason today it's hard to hear. And what do you do there, sir?

A I'm the technical leader of the DNA laboratory.

Q Can you tell this jury a little about your education and training in the DNA field?

A Yeah. I have a bachelor's of science in biology in 1999 and a Ph.D. in biochemistry in 1993 from the University of South Carolina. From then I was employed at the South Carolina Law Enforcement Division, commonly known as SLED, for approximately 11 years where I obtained training from court qualified experts in several fields, including forensic DNA analysis and forensic serology analysis.

I was also involved in validating their current PCR or DNA procedure and writing the protocol. In '04 I was employed by the Richland County Sheriff's Department to start up their DNA laboratory, which we did. I also have published in peer review journals and attended continuing education and workshops throughout my career in forensics.

1 Q And you have been qualified before as an expert in
2 DNA analysis?

3 A Yes, I have.

4 Q On approximately how many occasion?

5 A Close to 50.

6 MS. CAMPBELL: Your Honor, at this time we'd
7 offer him as an expert in DNA analysis.

8 THE COURT: Voir Dire?

9 MR. SUTHERLAND: No objection, Your Honor.

10 THE COURT: Without objection.

11 Q I want to turn your attention to the case involving
12 Leroy McBride. And Gayle Roberts is the actual
13 victim in the case. Did you receive certain items in
14 this case?

15 A I did.

16 Q And when did you first receive any evidence?

17 A It would be approximately October of '05.

18 Q October of '05?

19 A Mm-hmm (affirmative).

20 Q Specifically I believe October 3rd of '05?

21 A I don't have the chain in front of me, but my
22 worksheets indicate I started work October of '05.

23 Q And when you received those items, who did you get
24 them from?

25 A Again, I don't have the chain in front of me. But

1 normally I would work receive them from the evidence
2 department. So whoever is working in evidence would
3 go down and transfer those items to me directly.

4 Q And when you receive any items for DNA analysis, do
5 you check initially to make sure that they're sealed
6 properly or packaged properly?

7 A I do.

8 Q And in this case was everything packaged properly
9 that was submitted to you?

10 A It was.

11 Q And what items were submitted to you for analysis?

12 A Initially I received items 1, 2, 3, 5, 8, 9, 10 and
13 11 which is swab from the neck of a dog, a swab --

14 Q That is item number 1?

15 A That's my item number 1.

16 Q Is the swab from the dog?

17 A Correct. A Diet Pepsi can. A washcloth.

18 Q That's item number 3?

19 A Yep. Item 3 is a washcloth. Item 5 is orange juice
20 container with a lid. Number 8 is swab exterior
21 driver door. Number 9 is swab interior driver door
22 pull. Number 10 is swab from the steering wheel.

23 Q 10?

24 A Yes. And 11 is swab from the gear shift. I also
25 received a buccal swab or DNA standard from McBride

1 which is item 11 at a later date.

2 Q That would be item number 12?

3 A 12. Correct.

4 Q And item number 11 was a swab from the --

5 A Gear shift.

6 Q And then item number 12 you received later?

7 A That's correct.

8 Q We'll get back to that. And that's what we call a
9 buccal swab?

10 A That's correct.

11 Q And what is a buccal swab?

12 A It's a swab from the buccal cavity which is your
13 mouth.

14 Q When you received these initial eight items, the
15 first eight items in there, were there any suspects
16 in the case that you were aware of?

17 A No. There was not.

18 Q Tell this jury exactly what you proceeded to do and
19 what kind of testing you're trying to do at that
20 point?

21 A Well, I treated this pretty much like every case that
22 evidence is collected at the scene of a crime and
23 subsequent car recovered that's associated with this
24 crime. And the evidence would have been collected by
25 the crime scene people and submitted to the evidence

1 room. I'd receive it. And I'm trying to basically
2 develop a DNA profile from those items of who may
3 have touched an item or who may have either -- if
4 there is blood involved, whoever had left a body
5 fluid on an item.

6 And I would do that first by doing some
7 serology. Is there body fluid on the item or not,
8 and what is the body fluid? If not, I would go
9 straight for trying to develop a DNA profile from
10 those items.

11 Q And what were the results when you did your testing
12 in this case of those first eight items?

13 A There was -- I did indicate that there was some blood
14 on item 1. However, I did no serology on anything
15 else; basically tried to develop a DNA profile
16 straight from those items. My results that I
17 published in my report are basically there was no
18 significant interpretable DNA developed from items 2,
19 3, 5, 9 and 11.

20 Q Okay. Was there significant interpretable results
21 from item 10?

22 A Yes. The DNA profile I developed from item 10 was
23 from an unknown male at the time and was entered into
24 the Combined DNA Indexing System, or CODIS.

25 Q And what is CODIS?

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1 A It's a database, a national database of DNA samples.

2 Q Okay. And I want to show you this table, State's
3 Exhibit No. 51. Does this actually reflect what your
4 results were?

5 A That appears to be a photocopy of a table and my
6 results. Correct. A table of my report.

7 MS. CAMPBELL: Your Honor, at this time we'd
8 offer State's Exhibit 51 into evidence.

9 MR. SUTHERLAND: Your Honor, we'd prefer just to
10 have him testify about the results rather than have
11 the report go back to the jury.

12 MS. CAMPBELL: It's not the report I'm going to
13 put in, just the table which is the actual data.

14 THE COURT: Let me see it. I haven't seen it.

15 MS. CAMPBELL: Yes, sir.

16 MR. SUTHERLAND: I withdraw the objection, Your
17 Honor.

18 THE COURT: Overruled. All right.

19 COURT REPORTER: No. 51 is in, Your Honor.

20 THE COURT: Yes, ma'am.

21 (WHEREUPON, State's Exhibit No. 51 is admitted
22 into evidence.)

23 Q And I'll get back to the chart in a minute. You
24 mentioned on item number 10 that you were able to
25 have -- and you used the word significant

1 "interpretable" physical results. What does that
2 mean?

3 A Basically that means that depending on the amount of
4 DNA that's on an item I may not get enough
5 information when I do it to really draw a conclusion
6 on my report. So there just wasn't enough DNA there
7 basically.

8 Q To give any defendant the benefit, if there's not
9 enough DNA there, you don't make an interpretation?

10 A That's right. We don't draw a conclusion and publish
11 that on a report.

12 Q In this case however you did submit item number 10
13 which is the swab from the steering wheel into CODIS?

14 A That's correct.

15 Q And what were the results when you submitted it to
16 the national database?

17 A The results were that we got what's called a hit.
18 And that is, our evidence matched a person that was
19 already in the database.

20 Q And who was the person that item number 10 matched?

21 A That would be Leroy McBride.

22 Q Once you got that information, did you then turn that
23 information over to Investigator or Sergeant
24 McDaniels?

25 A Yes.

1 Q Whenever you get a CODIS hit, do you then go back and
2 get another known sample to double check to make sure
3 all the information is correct?

4 A That's right. The way it works is, after we that
5 investigative information from the database -- and
6 that database is maintained by SLED; so they send us
7 that name from the database -- we'll contact the
8 investigator and say, this is some investigative
9 information on this case. And they will carry on
10 their investigation with that information.

11 And what we request they do, if that turns out
12 to be probative investigative information, is they
13 will collect a buccal swab from that individual, a
14 standard DNA sample from that individual, and submit
15 that to the laboratory. And we would run that, get a
16 profile and match it again, write a report on that
17 data.

18 Q And was that done in this case?

19 A It was.

20 Q And, in fact, was a known sample, the buccal swabs,
21 item number 12, submitted to you in I believe
22 February or March of this year?

23 A That's correct.

24 Q You mentioned these tables. State's Exhibit 51 is a
25 table you generated from your results after you had

1 done all your testing. Is that correct?

2 A That's correct.

3 Q And I notice item number 1 is not on here. Why is
4 that?

5 A Item 1, there was no DNA about extracted from it.

6 Q And also item number -- another one is not on here.

7 A 8.

8 Q 8. Which would be the swab from the driver door.

9 Again, is that because there was no DNA?

10 A That's correct. No DNA was developed from those.

11 Q Okay. Your Honor, may the witness step down?

12 THE COURT: Certainly.

13 Q And if you can come over here. And I'll get out of
14 your way. The item numbers 2, 3, 4 and 5 are here,
15 those correspond with the actual evidence you did the
16 testing on. Is that correct?

17 A They do.

18 Q And I notice there are numbers on this chart. What
19 do the numbers signify, or how are those used in
20 doing your testing?

21 A These numbers here?

22 Q Yes.

23 A These numbers basically represent the DNA profile in
24 an empirical fashion, so to speak. So, it's
25 basically, we look at several different sites of the

1 DNA molecule and get a profile from each site. And
2 the combination of all these numbers and all these
3 different sites is basically your genetic fingerprint
4 or your DNA profile.

5 Q So is this the manner in which you're able to reduce
6 to it a table so that you can use it later?

7 A That's right. And this is also the manner in which
8 this empirical data goes into like a database so it
9 can be matched to either other evidence or other
10 people there.

11 Q In this case items 10 and 12 are a full match. But
12 can you also have what's known as a partial match?

13 A You can.

14 Q And in this case however, between items 10 and 12,
15 what were the results?

16 A The results were that it was a match. And then we
17 would associate that with a frequency, a population
18 statistic. But it is a match between the item that
19 was developed -- the profile that was developed from
20 item 10 and this individual's standard.

21 Q I notice in the items 3, 5 and 9 that there are
22 blanks in these boxes. You weren't even able to get
23 enough to assign an allele to them?

24 A That's correct. There was no DNA profile at all
25 developed in those items.

1 Q And item number 2, you said you couldn't do any
2 significant interpretable results. However, you were
3 able to develop some alleles there. That would be
4 from the Pepsi can from the scene?

5 A That's right.

6 Q And what are the significance of those alleles when
7 compared to his known numbers?

8 A Well, like I said, they didn't meet the threshold of
9 me reporting them. But if you look at these numbers
10 and compare them to the standard, they also match
11 Leroy McBride. They didn't meet the threshold of me
12 reporting that result and associating it on the
13 report, but you can easily determine that they did
14 also match Leroy McBride.

15 Q Okay. Thank you, sir. You mentioned that you were
16 able to report out a match between item 10 and item
17 12 which confirmed the CODIS hit. Is that correct?

18 A That's correct.

19 Q You also mentioned that you get a statistical -- I
20 can't use these words -- probability --

21 A That's right.

22 Q -- of it occurring in someone else. Is that correct?

23 A That's correct. It reads that the DNA profile
24 developed from item 10 matches Leroy McBride, item
25 12. And the frequency of seeing this profile in the

1 Caucasian population is approximately one in
2 1.4 quintillion; and in the African-American
3 population, approximately one in 24 quadrillion.

4 Q How many zeroes are in quadrillion?

5 A Fifteen.

6 Q And how many people are on the face of the earth?

7 A Approximately six billion.

8 Q And a billion has how many circles?

9 A Twelve.

10 Q So this is more -- 20 exponentially. In your
11 opinion, based on the statistical numbers you got
12 back in this case, were you able to make any
13 conclusions?

14 A In my opinion, Leroy McBride is the source, the
15 contributor of the profile I developed in item 10.

16 Q On item 10 which matched to item 12. Could it be
17 anyone else on earth?

18 A Like I said, he's the source of that stain.

19 Q Thank you, sir.

20 THE COURT: Cross examination.

21 MR. SUTHERLAND: May it please the Court. Yes,
22 sir.

23 CROSS EXAMINATION

24 BY MR. SUTHERLAND

25 Q Dr. Amick, your report that you issued is pretty

1 straightforward. You said that there is no
2 significant interpretable DNA developed from items 2,
3 3, 5, 9 and 11. And that would include item number 2
4 that she was questioning you about earlier. Is that
5 correct, sir?

6 A That's correct.

7 Q So you deal in making scientifically valid
8 conclusions. And the scientifically valid conclusion
9 that you made in this case was that item number 10
10 was a match for Mr. McBride but nothing else was. Is
11 that correct, sir?

12 A That's what was reported. Correct. There are other
13 conclusions that I was asked about and there's other
14 data that I was asked about.

15 Q But these wouldn't be conclusions that would meet any
16 standard to go into your report?

17 A That's correct. It didn't meet a threshold to be
18 reported.

19 Q All right. So the sum total of your report is the
20 item, the DNA swab from the steering column, was
21 matched to Mr. McBride?

22 A That's correct.

23 MR. SUTHERLAND: I have no further questions,
24 Your Honor.

25 THE COURT: Any redirect?

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1 MS. CAMPBELL: No, sir.

2 THE COURT: You may come down, sir. Thank you
3 very much. May the witness be excused? Without
4 objection?

5 MR. SUTHERLAND: Without objection, Your Honor.

6 THE COURT: Next witness, please.

7 MS. CAMPBELL: The State calls Shawn McDaniels.

8 THE COURT: Be sworn. You need to be sworn.

9 THE WITNESS: I do?

10 THE COURT: Yeah.

11 THE WITNESS: I do affirm.

12 WALTER S. MCDANIELS, after affirming to tell the
13 truth, testifies as follows:

14 WITNESS: I do affirm.

15 THE CLERK: Thank you. Please have seat in the
16 witness stand and state your full name for the
17 record.

18 WITNESS: Walter Shawn McDaniels.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL

21 Q Sergeant McDaniels, where are you employed?

22 A Currently employed with the Richland County Sheriff's
23 Department.

24 Q What do you do there, sir?

25 A Currently I'm sergeant over the cold case homicide

1 team.

2 Q Over the last several years have you participated in
3 multiple investigations involving major cases?

4 A Yes, I did. I was assigned to the armed robbery
5 division as an investigator.

6 Q Did you become involved in the investigation of what
7 led to be Clyde Leroy McBride?

8 A Yes, I did.

9 Q And when did you become involved in the case?

10 A On August 30th of 2005.

11 Q And explain to the jury how that happens, how the
12 case would be assigned to you?

13 A After the initial report is written, the next day the
14 case is bumped up to CID. At that time I would take
15 whatever information is offered on the initial report
16 and try to obtain as much information leading to the
17 suspect as possible.

18 Q And when you say it's bumped up to CID, what does CID
19 stand for?

20 A It's the criminal investigative division for the
21 Richland County Sheriff's Department.

22 Q Initially when you received the report in this case,
23 did you contact the victim?

24 A Yes, I did.

25 Q And did you get some information about a possible use

1 of a cellphone at that point?

2 A I did. When I initially received the report, I
3 entered it into a database at the Sheriff's
4 Department known as AFIS. I then made contact with
5 the victim after reviewing the report to see if she
6 could add anything, any additional information to
7 what we already had on the initial report as it
8 pertained to the suspect and the sequence of events
9 during the actual incident.

10 Q And when you received the initial incident report,
11 would that have given a description of the person she
12 saw?

13 A Yes. She did give a description. She stated that
14 the individual was a -- based on the initial incident
15 report -- a black male about five-six, 140, dark
16 colored ski mask with gray work gloves.

17 Q So the victim, did she indicate whether or not she
18 was able to see his face?

19 A He was wearing a mask during the time of the
20 incident.

21 Q Did you also come into some information about him
22 having used a cellphone there during the crime?

23 A Yes, I did. According to the victim, the individual
24 that was present was actually on the phone relaying
25 some information as it pertained to whatever it was

1 he was doing to her to possibly someone on his
2 cellphone.

3 Q And were you able to gather any pertinent information
4 as far as his cellphone towers or cellphones in this
5 case?

6 A No. Initially that was pretty much all we had, was,
7 you know, based on what the victim provided for us.
8 I attempted to retrieve information off of two
9 cellphone towers located in that area. I thought it
10 was going to be quite easy because it's a rural area
11 and only a certain amount of phone companies are
12 allowed to work off of these two cellphone towers.
13 And we were unable to get anything in addition.

14 Q And why was that? Did you know the cellphone number
15 of the perpetrator?

16 A No, I did not.

17 Q And without that information, were they able to help
18 you any?

19 A No, they were not.

20 Q Were you also made aware from the initial report that
21 her car was stolen in addition to money and other
22 things?

23 A Yes. The individual actually after placing her into
24 the storage area of her back porch went through her
25 pocketbook and took \$300 in cash and took her car

1 keys and left the scene in her vehicle.

2 Q And during the course of your investigation, did you
3 also become aware of where the vehicle last, what
4 area it was last seen in?

5 A I was. It was actually last seen getting off of an
6 exit ramp --

7 MR. SUTHERLAND: Objection. Hearsay, Your
8 Honor.

9 THE COURT: All right. I'll sustain that.

10 Q You can't say what it was. But did you also get
11 information about what area it was last seen in?

12 A I did.

13 Q Later in September, a little over three weeks later,
14 did you become aware that the vehicle had been
15 recovered?

16 A I was aware of that.

17 Q And did the Sheriff's Department process that vehicle
18 at that point?

19 A They did. We had it -- it was towed back to our
20 headquarters on Two Notch Road.

21 Q And basically, when you are doing an investigation,
22 you work out certain parts of it; then people with
23 crime scene do certain parts, too. Is that correct?

24 A Yes. Yes, ma'am.

25 Q And did you make sure as the lead investigator in

1 this case that crime scene had processed all the
2 appropriate -- the crime scene, the initial crime
3 scene and then later the car?

4 A Yes, I did.

5 Q Were you aware of certain items which had been
6 submitted for DNA testing?

7 A I was. Yes, ma'am.

8 Q Initially, in the first month or so of this case,
9 were you able to develop any suspects?

10 A No, ma'am.

11 Q But did you continue investigating the case?

12 A I did. On -- approximately seven days after I was
13 assigned this case, I was assigned to an unrelated
14 homicide on September the 6th. But I did in fact
15 interview the son of Ms. Roberts in order to further
16 the investigation.

17 Q And based on your interview and investigation of the
18 son, did he have anything to do with this?

19 A No, ma'am.

20 Q Turning your attention to November 16th of 2005, did
21 you get some information from Dr. Gray?

22 A I did. I was notified by Dr. Gray that a CODIS hit
23 had been established; obtained rather.

24 Q And that the profile belonged to whom? It's in your
25 notes?

1 A That it belonged to Clyde Leroy McBride.

2 Q And did it indicate an address on him?

3 A It did. I do know that it was an Orangeburg address.
4 If you'll give me one moment.

5 Q Are you referring to your notes?

6 A Yes. Okay. It belonged to -- the actual
7 confirmation, it belonged to Clyde Leroy McBride on
8 [REDACTED] in Orangeburg; black male,
9 five-eight, 140. And it gave date of birth.

10 Q Based on that information that you got from Dr.
11 Amick, did you then obtain a warrant from a
12 magistrate in this case?

13 A Yes, I did.

14 Q Subsequent to that did you make arrangements --
15 turning your attention -- and just follow me on
16 this -- on December the 8th of 2005, did you go to
17 Orangeburg to arrest the defendant?

18 A Yes, I did.

19 Q And approximately what time was it when you came in
20 contact with the defendant in Orangeburg?

21 A Approximately anywhere between 12 p.m. and 12:30 p.m.

22 Q So that's around lunchtime?

23 A Yes, ma'am.

24 Q Did you then in fact place him under arrest in
25 Orangeburg?

1 A I did. Yes, ma'am.

2 Q Once he was under arrest, did you then transport him
3 back to Richland County?

4 A I did. We drove back here from Orangeburg to
5 headquarters on Two Notch Road.

6 Q And what was the purpose in you taking him back to
7 headquarters?

8 A To interview him.

9 Q Prior to interviewing him, did you do anything?

10 A I advised him of his Miranda rights.

11 Q And how did that -- where did that take place?

12 A It took place at the Richland County Sheriff's
13 Department at headquarters.

14 Q When you said you advised him of his Miranda Rights,
15 I want to show you what's been marked as State's
16 Exhibit No. 1, this interrogation/advice of rights
17 form. Do you recognize that?

18 A I do. Yes, ma'am.

19 Q And is that the form you actually used on the
20 defendant that day?

21 A Yes, it is.

22 Q And please just relate, are those the advice of
23 rights and the waiver of rights that you used with
24 him that day?

25 A Yes, ma'am.

1 Q And does that indicate his signature with you
2 witnessing his signature?

3 A Yes, it does.

4 MS. CAMPBELL: Your Honor, at this time we'd
5 offer it into evidence.

6 THE COURT: Any objection?

7 MR. SUTHERLAND: Without objection, Your Honor.

8 THE COURT: Without objection.

9 (WHEREUPON, State's Exhibit No. 1 is admitted
10 into evidence.)

11 Q The information at the top, the handwriting at the
12 top, whose handwriting is that?

13 A That is my handwriting.

14 Q And what information is up there?

15 A Name: Clyde Leroy McBride; place: Richland County
16 Sheriff's Department headquarters; officer: Sergeant
17 W. McDaniels; date: December 8th, 2005; time: 13:25
18 hours, which is 1:25 p.m.

19 Q And just for the record, prior to this, when you
20 arrested him, did you tell him what you were
21 arresting him for?

22 A In Orangeburg I did. I told him he was under arrest
23 for armed robbery.

24 Q And when you went through his rights after you filled
25 out that information on the top, did you then go

1 through his rights with him?

2 A Yes, ma'am, I did.

3 Q And explain to the jury exactly how you did that and
4 what rights were explained to him that day?

5 A The written form of the advice of rights is broken
6 down into segments. I went through each sentence
7 with him. I asked him: "Before we ask you any
8 questions, you must understand your rights." I would
9 pause, ask him to respond. And upon his response,
10 which in this case was Mr. McBride, he stated yes on
11 each sentence; and I would then check the box next to
12 each sentence to ensure the fact that he is aware of
13 his Miranda rights.

14 Q And once you had explained each of his Miranda rights
15 to him, did he indicate whether or not he understood
16 them?

17 A Yes, he did; by signing them.

18 Q And that's the signature I believe about half way
19 down the page?

20 A Yes, ma'am.

21 Q Subsequent to that, before asking him any questions,
22 did you take another step to ensure he understood his
23 rights?

24 A Yes, ma'am. At the bottom of the same form there is
25 a section called waiver of rights. And it clearly

1 states: "I have read this statement of my rights and
2 I understand what my rights are. I am willing to
3 talk and answer questions. I understand and know
4 what I am doing. No promises have been made to me.
5 No pressure or coercion of any kind has been used
6 against me." And again he signed his name.

7 Q Okay. And once he signed off on both places, did he
8 indicate he wished to talk to you?

9 A Yes, he did.

10 Q What information, if any, had you given him about
11 what evidence you had in the case?

12 A In Orangeburg I did tell him that his DNA was pulled
13 off of the steering wheel of the victim's vehicle.

14 Q When you were advising him of his rights, did he
15 appear to understand you?

16 A Yes, he did.

17 Q Did he answer you coherently?

18 A Yes, ma'am.

19 Q Did he appear to be under the influence of any drugs
20 or alcohol or anything like that?

21 A No, ma'am.

22 Q Did you threaten him in any way or promise him
23 anything?

24 A No, ma'am.

25 Q At any point did he tell you he didn't want to talk

- 1 to you any more?
- 2 A No, ma'am.
- 3 Q Did he want to tell you his story?
- 4 A Yes, he did.
- 5 Q Once you had advised him of his rights and he had
6 signed off on two different places and indicated he
7 wanted to talk to you, did you initiate a statement?
- 8 A Yes, I did.
- 9 Q And I'm going to show you what's been marked as
10 State's Exhibit No. 2 and ask first if you just
11 recognize that?
- 12 A I do.
- 13 Q And is that the statement that was given by the
14 defendant, Clyde Leroy McBride?
- 15 A Yes, ma'am. It is.
- 16 Q And just for the record, the time that you actually
17 advised him of rights was what time?
- 18 A At 1:25 p.m.
- 19 Q And the time that you actually initiated the
20 statement was what time?
- 21 A 1:30, p.m.
- 22 Q And where were you questioning him? Where was he?
- 23 A At headquarters inside of my cubicle.
- 24 Q So it was you and he?
- 25 A Yes, ma'am.

1 Q What question did you initially ask him?

2 A I initially asked him: "What can you tell me about
3 the incident that occurred while you were at 378
4 Harmon Road on August 29th, 2005?"

5 Q And I notice this is a typewritten form. How did
6 that process occur?

7 A I actually typed it up during the actual interview.

8 Q Okay. And if you can just go through -- this was a
9 question and answer type form?

10 A Q and A form.

11 Q And all the questions come from whom?

12 A The questions come from me. I would then ask him the
13 question. And whatever he stated after that, I would
14 type it up and then ask another question. And
15 whatever he answered with, I would type that up and
16 so on and so on.

17 Q In response to your initial question about what
18 happened back on August the 29th, what did he tell
19 you?

20 A He stated: "I was visiting my home boys by the name
21 of Daniel Wilson and Deion Jenkins. They live off of
22 Old Mt. Elon Church Road. I had spent the night at
23 Damon's house because he was supposed to take me to
24 work the next day."

25 COURT REPORTER: Could you slow down a little

1 bit, please?

2 A Sure.

3 Q Let me stop you before we do that. Your Honor, at
4 this time we'd offer it into evidence, State's
5 Exhibit 2.

6 THE COURT: Any objection?

7 MR. SUTHERLAND: Beg the Court's indulgence.
8 Only the previous objections, Your Honor, in the
9 trial.

10 THE COURT: Subject to the defendant's previous
11 objection, the document is admitted.

12 (WHEREUPON, State's Exhibit No. 2 is admitted
13 into evidence.)

14 Q If you can start over and just speak up and just
15 speak fairly slow.

16 A Sure.

17 Q You speak even faster than I do.

18 A It's the Jersey in me.

19 Q If you could speak up and speak clearly.

20 A Sure. In answering my first question, he stated: "I
21 was visiting my home boys by the name of Damon Wilson
22 and Deion Jenkins. They live off of Old Mt. Elon
23 Church Road. I had spent the night at Damon's house
24 because he was supposed to take me to work the next
25 day. He didn't 'cause he left early.

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1 "I started walking about 12:30, 1:00 in the day.
2 I think I was walking to town and had seen the house
3 and stopped by and knocked on the door and nobody
4 came to the door. So I stayed outside about ten
5 minutes. And then that is when her dog came. I used
6 a stick to pry open the screen door, and once I got
7 in I started looking around. I know I was thirsty
8 for a drink and I drank an orange juice. That was
9 all I done while I was in the screened porch area.

10 "The door to the house was already opened. I
11 went inside the house and looked around. I didn't
12 touch nothing. I went in a bedroom and saw the guns
13 under the bed, and that is when I got on my knees and
14 got the gun. I pulled the .22 out and looked at it.
15 I put the gun back down on the bed.

16 "I went back outside and the dog started
17 barking. I went over there to where the dog was and
18 that is when he almost bit me. I went back in the
19 house and got the gun and then I shot the dog. I
20 think that he got shot. By that time it was about 30
21 minutes that I was on the outside.

22 "That is when she drove up. When she drove up I
23 was standing like at the back where you get ready to
24 go into the screen door. I heard the car pull up and
25 when she pulled into the carport I saw that she was

1 getting groceries out of the car. By the time she
2 got around the side of the house, that is when I
3 stood up and told her, 'Come on, grandma. Come into
4 the house.' I asked her where her money was. Then
5 we got inside the screened porch and that is when I
6 told her to give me money. She said that she didn't
7 have nothing but \$20.

8 "I told her that I was going to put her in the
9 laundry room. She was saying, 'Just don't hurt me.'
10 I told her that I wasn't going to hurt you. She gave
11 me the \$20 because she said that was all that she
12 had. When I put her in the room she pushed the door
13 back on me. When she pushed the door out on me, the
14 door hit me and I fell into the refrigerator.

15 "I said, 'All right, grandma. Go back in the
16 room.' She started screaming and hollering, saying
17 that she didn't have no money. She stated that \$20
18 was all that she had. She went back in the room and
19 that is when I took the refrigerator and leaned it up
20 over across the door to keep her from coming out.
21 She left her pocketbook, and that's when I looked in
22 the pocketbook and found the \$300 in cash. She had a
23 pocketbook and the keys sitting by each other.

24 "That is when I got the keys and took the car.
25 I got there by Garners Ferry Road, and that is when

1 we got into the chase with some deputies that got
2 behind me. The deputy got behind me on Garners Ferry
3 Road. I got on I-77, Charleston, and took it to
4 I-26. I then got off at an exit numbered 136. I was
5 traveling at a high rate of speed on a shoulder with
6 the deputy behind me. We were both going 100 miles
7 per hour. It was a lot of traffic. I turned off of
8 exit 136 and made a left and another left turn. They
9 were quick turns.

10 "When I made the exit, I made a left onto the
11 main road and then I made the first, the very first
12 left and I ditched the car. I don't even know what
13 road that was, but I ditched the car."

14 That was his answer to my first question.

15 Q Did you do some follow-up questions after he answered
16 your first question?

17 A Yes, I did.

18 Q And are those also included on that statement?

19 A Yes, it is.

20 Q What were those?

21 A The next question that I asked him was: "What were
22 you wearing during the incident?"

23 "I was wearing a yellow shirt. I had a gray
24 sweater but it looked like a jacket. I know I had on
25 a yellow shirt and gray sweater-like jacket and blue

1 pants with a white stripe down the side of them."

2 I then asked him: "Did you ever tell the victim
3 that her son owed you some money?"

4 "A No. I never -- I don't even know that lady.
5 Why would I say something like that?

6 "Q Describe the gun that you used to shoot
7 the victim, the victim's dog?

8 "A It was a .22 rifle."

9 I then asked him: "Where did you get the orange
10 juice?"

11 "A Out of the refrigerator on the screened porch.
12 It was at the back."

13 My next question was: "What exactly did you
14 take from the house outside of the victim's vehicle
15 and her money from her pocketbook?"

16 He stated: "Nothing."

17 "Q Describe the victim's vehicle for me?"

18 He stated it was a burglary Dodge Stratus.

19 I then asked him: "Where is the mask that you
20 wore during the incident?"

21 "A Somewhere in the woods where I ditched the
22 car."

23 I then asked him: "How close to the car is the
24 mask?"

25 He answered: "About 30 yards."

1 I asked him to describe the mask to me. He
2 stated it was a regular, black mask made out of
3 pajama material. I then asked him: "Do you mean
4 thermal material?" He said, "Yes." I asked him
5 to -- I said, "Explain to me how you made a mask out
6 of thermal material."

7 "A I took a pair of pajama pants and cut the legs.
8 I then cut holes in it for the eyes."

9 I asked him: "Did you leave the victim's house
10 with the handgun?" He stated, "No." I then asked
11 him: "Did you have a gun prior to breaking into the
12 victim's residence?" He stated, "No." I then asked
13 him: "Did you have a gun during your encounter with
14 the victim?" He stated, "No." I then asked him:
15 "Did you have a gun while you were being pursued by a
16 deputy on I-77 of I-26?" He stated, "No."

17 I asked him: "Did you have any gloves on during
18 the incident?" He stated, Yes. They were brown work
19 gloves." I asked him, "Why did you take the gloves
20 off in the car when you were driving away from the
21 scene?" He stated, "I don't know. I panicked." I
22 then asked him, "Do you remember taking them off?"
23 He stated, "Yes. There was so much going on."

24 I asked him, "Where can I find the clothes and
25 gloves that you wore during the incident?" He

1 stated, "I threw the gloves out and I came out of the
2 clothes. I left them where the car was. I had a
3 pair of shorts under them, so I left it." I asked
4 him, "Can you describe the victim to me?" He stated,
5 "Little old lady. She was short and I think she
6 walked with a limp. She was white. She was about
7 195."

8 I then asked him, "Did you ask her to walk up
9 the hill when you first made contact with her?" He
10 stated, "Yes." I asked him, "Why?" He said,
11 "Because I wasn't trying to hurt her. It really
12 wasn't a hill, number one. She started walking. I
13 wanted her to hurry up and she said that she couldn't
14 walk that fast. I wanted her to come on."

15 I then asked him, "Did you try to remove an X
16 Box from the victim's residence?" He stated, Yes. I
17 left it by the door." I asked him, "Which door did
18 you leave it by?" He stated, "The back door." I
19 then asked him, "Do you remember what room you got
20 the X Box from?" He stated, "It was out of the front
21 room." I asked him, "Did you remove any of the games
22 or DVD's?" He stated, "No. I don't think so.
23 Unless they were sitting on the top of the box."

24 I then asked him, "In retrospect, would you have
25 done anything different back on August 29th of 2005?"

1 He stated, "I would have never done it." I then
2 asked him, "When you left Wilson's house, at what
3 point did you decide to break into the victim's house
4 and why?" He stated, "when I was walking I knew my
5 rent was due, car payment had been due. My
6 intentions when I first walked up to the lady's house
7 was to just leave. But then I was thinking about my
8 old lady telling me about the bills. We don't have
9 no way to go. That was when I decided I had to come
10 up with some fast money."

11 I asked him, "When you heard the victim driving
12 up, why didn't you just leave?" He answered by
13 stating, "I figured that somebody had seen me; but,
14 to be honest, that is a good question. I never
15 really thought about that. Really I figured that she
16 had seen me. I was standing by the steps and then
17 she had to turn into the carport. That is why I
18 didn't leave."

19 I asked him, "What did you do with the orange
20 juice container after you drank from it?" He stated,
21 "i think I left it out on the freezer or whatever
22 that was on the back porch." I then asked him, "Is
23 there anything you would like to add to this
24 statement?" He answered my stating, "Nothing, but
25 I'm sorry what I did. I can't change the hands of

1 time. I'm just sorry about what happened. If I had
2 the chance again, I wouldn't do it. I wanted to tell
3 the lady that I'm sorry that it happened like that.
4 I never really meant to do her no harm. I was under
5 a lot of pressure, a lot of financial pressure. I
6 hope she accepts my apology." The last question I
7 asked him was: "Is this statement the whole truth?"
8 And he stated, "Yes."

9 Q Once he had made the initial part of that statement,
10 did you then take any steps to go over it with him to
11 make sure it was correct?

12 A I read it back over with him. Actually, the second
13 to the last question, I asked him -- we read it
14 already, and then I asked him that, "Is there
15 anything you want to add to the statement", after
16 reading over it for the first time, and he added that
17 part about the apology.

18 Q Once you had gone over the statement and he'd added
19 the part he wanted to add, the apology at the end,
20 did he acknowledge that was his statement in any way?

21 A He did, by signing it in two places on each page.

22 Q And is that standard procedure?

23 A Yes, it is.

24 Q And I notice that it's notarized I believe by you.
25 Is that correct?

1 A Yes, ma'am.

2 Q And the charges that Mr. McBride was charged with
3 were what charges?

4 A Armed robbery, burglary first and kidnapping.

5 Q I skipped a couple of things. Back when the initial
6 report was made, you knew the car was stolen; was a
7 BOLO put out?

8 A Yes, it was.

9 Q And what does that mean?

10 A It means be on the look -- it's an abbreviation for
11 be-on-the-lookout. It's what is given out to
12 adjoining agencies as well as the Richland County
13 Sheriff's Department.

14 Q He also in a statement referenced some deputy being
15 behind him. Are you aware of who the deputy was?

16 A I do know that it was an actual deputy working with
17 us that was working off duty at the time. Deputy
18 Wayne Barker.

19 Q And do you know where he currently is? Deputy
20 Barker?

21 A He is actually I believe in the military.

22 Q Yes, sir. In Afghanistan?

23 A In Afghanistan, yeah. In the military. He no longer
24 works with the Sheriff's Department.

25 Q I want to show you what's been marked as State's

1 Exhibit No. 44. Do you recognize this map?

2 A Yes, ma'am.

3 Q Does that show the general area of where this crime
4 took place?

5 A Yes, it does.

6 MS. CAMPBELL: Your Honor, at this time we'd
7 offer it into evidence.

8 MR. SUTHERLAND: Without objection, Your Honor.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit No. 44 is admitted
11 into evidence.)

12 Q Moving your attention to February of this year, were
13 you present when Investigator Reed or Enzor Reed, is
14 it?

15 A Yes, ma'am.

16 Q Was here to take a swab from the defendant?

17 A Yes, ma'am. I was present.

18 Q The person that you saw the swab come from as well as
19 the person that gave this statement, do you see him
20 here in the courtroom?

21 A Yes, I do.

22 Q Can you point him out for the jury?

23 A He is the individual at the table on my left in the
24 white shirt with the beige tie.

25 Q During the course of your investigation, did you

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1 become aware of some different addresses for the
2 victim? I mean for the defendant. Excuse me.

3 A I did. I was aware --

4 MR. SUTHERLAND: Objection. Relevance.

5 MS. CAMPBELL: Just to show his familiarity with
6 the two areas.

7 THE COURT: Well, first let the record indicate
8 that the defendant -- I mean the witness --
9 identified the defendant. What was the last
10 question?

11 Q Did you become aware of a couple of addresses for the
12 defendant?

13 THE COURT: What's the relevance? Approach the
14 bench. Come on up.

15 (Whereupon, a bench conference is had)

16 THE COURT: Objection overruled.

17 MR. SUTHERLAND: Yes, sir.

18 Q Specifically, were you aware of addresses in
19 Orangeburg?

20 A Yes, I was.

21 Q And had the defendant ever lived in the area where
22 the victim lived prior?

23 A Yes, ma'am.

24 Q On what road? Elon Church?

25 A Wait a minute. I do know that it was actually -- I

1 have it right here.

2 Q Was it in the Horrell Hill area?

3 A Yes, it was.

4 MR. SUTHERLAND: Objection. Leading, Your
5 Honor.

6 THE COURT: Overruled. Go ahead.

7 Q Finally, did you ever show the victim a photo line-up
8 in this case after you interviewed the defendant?

9 A No, I did not.

10 Q Why was that?

11 A The individual was wearing a mask during the time of
12 the incident.

13 Q She did, however, give a physical description of the
14 defendant?

15 A She did.

16 Q And how did that compare to Clyde Leroy McBride?

17 A It matched.

18 Q Thank you, sir. Please answer any questions the
19 defense may have.

20 THE COURT: Let's take about a ten-minute break.

21 MR. SUTHERLAND: Yes, sir.

22 THE COURT: Ladies and gentlemen, before the
23 cross examination let's just take about a ten-minute
24 break. It's time maybe to get some refreshments and
25 relax for a minute. We'll continue after the break.

1 Don't discuss the case among yourselves while you're
2 in the jury room.

3 (Jury out at 3:46 p.m.)

4 *THE COURT:* We'll stand at ease for ten minutes.
5 Sergeant, don't speak to anybody. Don't talk to
6 anybody about the case. You understand?

7 *WITNESS:* I do.

8 (Whereupon, a break is taken)

9 *THE COURT:* Counsel, let me see you.

10 *MR. SUTHERLAND:* Yes, sir.

11 (Whereupon, a bench conference is had)

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

13 (Jury in at 4:02 p.m.)

14 *THE BAILIFF:* All the jurors are present, Your
15 Honor.

16 *THE COURT:* All right. Ladies and gentlemen, I
17 assume this is from the forelady about the jurors
18 haven't seen all the pictures. We're going to just
19 allow you to take a few minutes before we resume the
20 cross examination, circulate the pictures and when
21 you're finished with looking at them as much you'd
22 like to, we'll continue with the cross examination.

23 You can do them one at a time and pass them or
24 however you'd like to do it. And, by the way, you
25 will have them in the jury room after the case is --

1 all the testimony, you'll have them in the jury room.

2 (Pause)

3 (WHEREUPON, Court's Exhibit No. 8 is marked for
4 identification.)

5 THE COURT: Anybody else? All right. Let's
6 continue with the cross examination.

7 MR. SUTHERLAND: May it please the Court?

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. SUTHERLAND

11 Q Sergeant McDaniels, how long have you been with the
12 Richland County Sheriff's Department?

13 A Seven years, sir.

14 Q You've interrogated a lot of people during that time?

15 A Yes, I have.

16 Q How many times have you been to the incident location
17 at [REDACTED]

18 A How many times have I been there?

19 Q Yes, sir.

20 A I never went to the actual incident location. I sent
21 back Investigator Oates to meet with the victim in an
22 effort to collect additional evidence.

23 Q You've testified previously that the sole basis for
24 the probable cause to arrest Mr. McBride was the
25 CODIS hit, was the DNA match. Is that correct?

1 A Yes. That was one of the reasons actually. Yes,
2 sir; the primary reason why we got a warrant for his
3 arrest.

4 Q And this statement which you just read into the
5 record which came on the heels of his arrest is the
6 other piece of the puzzle. You arrested him because
7 of the CODIS hit, and then this statement is the
8 other end, the other piece of the puzzle as far as
9 the case is concerned. Is that correct? Or I'm just
10 misstating it?

11 A I mean, it is considered testimonial evidence.

12 Q So you have a DNA match from the steering column in
13 the car and a confession?

14 A Yes. And also the match in the height, weight that
15 was indicated during the initial report by the
16 victim.

17 Q Okay. The match in height, weight. You had -- in
18 that initial report you had skin color as a black
19 male. Is that correct?

20 A Yes.

21 Q You were here when Ms. Roberts testified earlier?

22 A I was.

23 Q And she said that she told the investigator that she
24 couldn't tell what race?

25 A Right. When I initially made contact with Ms.

1. Roberts, she was unsure of the race. She admitted to
2 initially telling them that she thought it may have
3 been a light skinned black male or a dark skinned
4 white male. She was unsure of the race. And I think
5 she was really careful not to blame a specific race,
6 to be honest with you. That's the impression that I
7 got after speaking with her.

8 Q Well, then why does it say black male in the report?

9 A That is what -- according to the initial officer,
10 that's what the reporting officer -- that is what she
11 actually stated to her.

12 Q Okay.

13 A Otherwise, we would have put unknown.

14 Q Okay. Your report, your investigative record,
15 investigative follow-up?

16 A Yes, sir.

17 Q States that you took Mr. McBride into custody at
18 13:00 hours?

19 A It states that I was -- yeah, that I met with him and
20 took McBride in custody. He was transported back to
21 headquarters. It actually states the sequence of
22 events around 13:00 hours.

23 Q And you don't think it's important to have the
24 accurate time in the report?

25 A When dealing with suspects, victims, witnesses,

1 whomever in the field, it's not feasible to stop and
2 accurately record each step. However, there are --
3 so basically, it is not uncommon for field notes to
4 be as it relates to time approximate in nature.

5 However, there are specific duties during the
6 course of an investigation where it is required to
7 accurately document the time. An example of that
8 would be when advising the individual of their
9 rights. I believe in this case, 13:22 I signed onto
10 my computer which is at 1:22 p.m. At 1:25 it's
11 documented that he was advised of his rights, and at
12 1:30 p.m. his statement was initiated on my computer.

13 Q Okay. But these reports are important, right? After
14 all, you may be in court 16 month later being asked
15 about what time you took someone into custody?

16 A Right. Again, during field notes an approximate time
17 is put there to -- and it is put there as a guide,
18 for lack of a better term, as to what happened around
19 that time. And the actual statement you're referring
20 to states that 13:00 hours I met and took McBride in
21 custody. He was transported back to headquarters.
22 When we arrived at headquarters, he was advised.
23 Clearly all that didn't happen at 13:00 hours, at
24 1 p.m. That's what happened as it pertains to the
25 sequence of events approximately around that time.

1 But I in fact made initial contact with him inbetween
2 12 and 12:30 p.m. on that particular day.

3 Q Now, you're aware that one of the factors that may be
4 considered in determining whether or not a statement
5 was voluntary is the length, that length of time a
6 person was in custody?

7 A Yes, sir. I am.

8 Q So you didn't think that it was important enough to
9 write down that actual time?

10 A Inbetween my initial contact between 12 and
11 12:30 p.m. and the time of the actual statement,
12 that's if you have time to drive back from
13 Orangeburg, get back here. I don't think that a
14 reasonable individual would come to the conclusion
15 that that was an excessive stint of time. No.

16 Q I understand. I'm just trying to figure out why your
17 records aren't straight here. These reports that you
18 write, they're used by others assisting you in the
19 investigation and by the Solicitor's Office. Is that
20 right?

21 A Yes, sir.

22 Q So you at least want to try to be accurate and
23 complete in the reports?

24 A Again, it's not uncommon for field notes to have an
25 approximate time.

1 Q Okay.

2 A With respect to safety issues as well. I'm not going
3 to place him under arrest and then stop and document
4 the exact time that I handcuffed him. That wouldn't
5 be feasible. And it would be unsafe, if not
6 impossible.

7 Q So the time is just not important?

8 A I'm not saying that time is not important, sir.
9 That's why the approximate time was put down.

10 Q All right. How long -- you said you've been with the
11 Sheriff's Department, I believe it was seven years.
12 Have you been taking statements from people accused
13 of crimes for that whole seven years?

14 A Five of those seven years.

15 Q Five of those seven years. Do you undergo any kind
16 of training with respect to interrogations, training
17 seminars or ...?

18 A Yes, I do. I attended an FBI interview and
19 interrogation class. I also attended four separate
20 homicide schools within the United States. And I,
21 too, am a graduate of South Carolina Criminal Justice
22 Academy and a soon to be graduate of Springfield
23 College in May.

24 Q And do you attend seminars -- are you familiar with
25 the Reed technique of interviewing?

1 A I'm not too familiar with that. I do -- some of my
2 coworkers are. But I spend more time in homicide
3 schools across the country.

4 Q I want to ask you about what you said on the car on
5 the way back. Did you confront Mr. McBride with the
6 information that was available to you about the CODIS
7 hit from the steering column of the vehicle?

8 A I did. In Orangeburg when I initially made contact
9 with Mr. McBride, I told him he was under arrest for
10 armed robbery. I did also explain to him that his
11 DNA was obtained from the steering wheel of the
12 victim's vehicle. Yes, I did.

13 Q Did you say anything further? Did you exaggerate,
14 embellish or make up any details about evidence
15 available to you at that time?

16 A No, I did not. I told him I didn't want to discuss
17 the case until we got back to Columbia. I told him I
18 didn't have my file, the complete file in front of
19 me, and we would discuss it as soon as we got back.

20 Q Okay. So when you got back to Columbia, you
21 testified that you logged onto your computer at 13:22
22 hours. I believe the advice of rights was given at
23 13:25 hours and that the time on the statement is
24 13:30 hours. Is that correct?

25 A Yes, sir.

- 1 Q Okay. So, the timeline here, it's your testimony
2 that you arrested him between 12 and 12:30. And that
3 would -- I believe it's about a 50, 55-minute trip
4 back from Orangeburg. Is that -- do you agree with
5 that?
- 6 A It's approximately 40 to 45 minutes, depending on
7 traffic.
- 8 Q Okay. I want to ask you, when you were -- you said
9 that you talked to him in your cubicle?
- 10 A Yes, sir.
- 11 Q Okay. Did you tell him that you were trying to help
12 him out?
- 13 A Did I tell him I was trying to help him out?
- 14 Q Yes, sir. Yes, sir. I'm just asking.
- 15 A No, sir.
- 16 Q But you did tell him that the DNA was in the car?
- 17 A I did tell him that.
- 18 Q Did you tell him that the car was missing for 27
19 days?
- 20 A I don't know if I went and explained that to him or
21 explained to him when we located the vehicle. I
22 don't know if I went into that detail. I don't
23 recall.
- 24 Q Okay. Thank you, sir. Did you at any time tell him
25 that he was going to go to prison but if he signed a

1 statement he would get probation?

2 A No, sir.

3 Q Okay. Were there any other witnesses to the
4 statement?

5 A No, sir. It was just Mr. McBride and myself.

6 Q Is it your custom to notarize the statements that you
7 take from people yourself or to go before another
8 notary?

9 A I am a notary, you know; so I can do it myself.

10 Q Okay. You typed the statement up yourself. That's
11 what you testified to earlier, correct?

12 A Yes, I did. It was done in a Q and A format. I
13 would ask a question; he would answer. I would type
14 up his answer. I would type a question; he would
15 answer.

16 Q Okay. Are you willing to testify -- are you
17 testifying here today that in the statement, the
18 statement contains -- other than the question
19 portions, the statement contains only his words, his
20 answers, none of your words? Is that your testimony
21 here today?

22 A Yes, sir.

23 Q Okay. I want to actually ask you about some of the
24 words in the statement.

25 A I don't have it.

1 Q Let's see. This has to do with -- okay. This is
2 going to be on page 2, right down where he, according
3 to this, is telling you --

4 A I don't have it, sir. I'm sorry.

5 Q You don't have it?

6 THE COURT: It's right here.

7 Q Here you go.

8 A Thank you.

9 Q You're welcome. This is the part that you read into
10 the record earlier. I'll just read it to you, then
11 ask you a couple of questions about it. It says:
12 "The deputy got behind me on Garners Ferry Road. I
13 got on I-77, Charleston, took it to I-26, and then I
14 got off at exit number 136."

15 The next sentence is: "I was traveling at a
16 high rate of speed on the shoulder with the deputy
17 behind me."

18 Who says "I was traveling at a high rate of
19 speed" when they're talking about speeding?

20 A In this case, Mr. McBride said that, sir.

21 Q I have -- as a law enforcement officer, when you
22 yourself or other law enforcement officers write
23 reports about vehicles going down the highway, that
24 is a pretty common phrase: "The vehicle was
25 traveling at a high rate of speed." Isn't it?

1 A Yes, sir.

2 Q Okay. Normal people don't talk that way. Maybe
3 physicists. But "traveling at a high rate of speed",
4 people say that they were speeding, that they were
5 hauling -- well, I won't say that -- that they were
6 flying or that they were really moving. Among the
7 general population, how many people have you met that
8 say "I was traveling at a high rate of speed"? It's
9 Mr. McBride?

10 A You're asking me a question?

11 Q That's it. That's it.

12 A Okay. It's not uncommon for me. With respect to TV,
13 things of that nature, I mean, that verbiage is used
14 all the time in public view, again through the media,
15 through what have you. But it's not uncommon for
16 witnesses or suspects or victims to try to
17 communicate in a language they think, the only
18 language they think law enforcement understands. So,
19 I was -- I mean, that's what he said and that's what
20 I typed up.

21 Q So it's your belief -- this is your testimony -- it's
22 your belief that regular folks say "I was traveling
23 at a high rate of speed" when they're talking about
24 driving really fast?

25 A I mean, I don't know about regular folks.

1 Q Okay. Well, I mean, you were just saying that people
2 watch TV and that they pick up on these phrases and
3 that when they're speaking with law enforcement
4 officers, they want to communicate with them perhaps
5 like they know what they're talking about. That's
6 what you just testified to, --

7 A Yeah.

8 Q -- that people see this stuff on TV?

9 A Right.

10 Q So I was just trying to summarize it up. Regular
11 folks would say "I was traveling at a high rate of
12 speed" when they're talking about going 80, 90, maybe
13 100 miles an hour, something like that?

14 A I can only testify to what he said during our
15 interview.

16 Q When you interview people, when you interrogate
17 people, do you ask them about their educational
18 background?

19 A It is not my practice; no, sir. I usually through
20 the course of the interview based on their responses,
21 you know, whether they understand what it is that I'm
22 saying to them. I don't generally ask, you know,
23 their educational background.

24 Q You just ask them if they can read and write
25 basically?

1 A I'm very careful about making derogatory statements
2 when interviewing somebody. I don't normally ask
3 that. I just take the time to assess based on the
4 interview.

5 Q Don't you think it's significant to your ability to
6 evaluate their capacity to understand what is
7 happening to them, isn't an educational background
8 something that you might want to consider?

9 A Again, I -- generally I assess, you know, the
10 situation myself. And to add to that, that is also
11 why I read the statement back to them, to make sure
12 that they do understand.

13 Q Okay. Now, this may be a little nitpicky here.

14 A Hmm? I'm sorry?

15 Q This may be a little nitpicky here.

16 A Yes, sir.

17 Q But I'm going to ask you about another sentence in
18 this statement.

19 A What page are you on?

20 Q This is actually the one -- I had actually read that
21 to you. It's the one prior to: "I was traveling at
22 a high rate of speed on the shoulder with the deputy
23 behind me." This is the one just prior to that. "I
24 was on I-77, Charleston, took it to I-26. I then got
25 off at exit number 136."

1 In your experience, do most people know or when
2 they take exits, if I take a Piney Grove exit or the
3 Harbison Road exit, who in your experience knows the
4 exit numbers of exits that they take? Or do you
5 believe that that's just general knowledge, that
6 people speak that way when they talk about taking an
7 exit somewhere? I'm not talking about road trips
8 like to Pennsylvania or something. Do you think --

9 A I might not -- I didn't understand the question. I'm
10 sorry.

11 Q Do you think people usually speak that way when they
12 are speaking of an exit that they would take off of
13 an interstate in an area they're familiar with?

14 A Yes, sir.

15 Q Okay. Fair enough.

16 A Certainly the numbers. They may not know the name,
17 but certainly the numbers.

18 Q Certainly the numbers but not the names?

19 A They may not know the name of the exit. But 136 is
20 not unusual to remember if you're exiting. Or
21 general people --

22 Q So if I take the Strom Thurmond Boulevard exit onto
23 I-77 two or three times a week and I have no idea
24 what exit number that is, I am just unusual? And
25 that's okay if that's your judgment. But it's just

1 not making sense of me. That's all.

2 A People see things differently. I don't know. I
3 mean, I can't answer that question, sir. I wish I
4 could. I do not know what other people use to
5 remember their routes. I'm sorry.

6 Q All right.. I'm just asking. You testified earlier
7 about the vehicle being found. Where was the vehicle
8 found?

9 A There's something in the report that I received said
10 that it was actually found in Lexington County.

11 Q In Lexington County?

12 A Vehicle recovered off I-26 near exit 129.

13 MR. SUTHERLAND: Beg the Court's indulgence. I
14 have no further questions of this witness, Your
15 Honor.

16 THE COURT: Redirect.

17 MS. CAMPBELL: Just one.

18 REDIRECT EXAMINATION

19 BY MS. CAMPBELL

20 Q I'm going to hand you this document. Don't say what
21 it is. Have you had the opportunity to see that
22 before?

23 A Yes, ma'am.

24 Q Would you agree with me that this defendant has a
25 pretty incredible vocabulary?

1 A Yes, I would.

2 Q Nothing further.

3 MR. SUTHERLAND: Yes, Your Honor. I don't know
4 what that just was. But I have no further questions.

5 THE COURT: All right. Thank you. All right,
6 sir. You may come down.

7 WITNESS: Thank you, sir.

8 THE COURT: Call your next witness.

9 MS. CAMPBELL: The State rests, Your Honor.

10 THE COURT: All right. All right, ladies and
11 gentlemen. That's all the testimony that you will
12 hear from the State. The remaining -- the defendant
13 certainly has the opportunity now to present its
14 defense. But before they do that there are some
15 legal matters I need to take up with the attorneys
16 before we continue. That's going to take a little
17 bit of time and I'm not going to -- I think I'm not
18 going to hold you here while that takes place and
19 then bring you back in.

20 It's 4:30. I'm going release you for the day.
21 We're going to have to go into tomorrow anyway. So,
22 I'll ask you to be back in the jury room at 9:30 in
23 the morning. Again, don't discuss the case among
24 yourselves when you return to the jury room or with
25 anyone else over the evening hours. I hope you have

1 a pleasant evening. We'll continue the trial at 9:30
2 in the morning. Thank you very much.

3 (Jury out at 4:31 p.m.)

4 *THE COURT:* All right. Any motions?

5 *MR. SUTHERLAND:* Oh, yes, sir. At this point I
6 would renew all of my prior motions and objections,
7 the Franks, the U.S. vs. Edwards or Edwards vs. --
8 no. I think it's United States v. Edwards -- on
9 the -- as far as him invoking his right to an
10 attorney pre-trial, the Denno objections, and the
11 various objections throughout the course of the
12 trial, sir.

13 *THE COURT:* All right. Anything else?

14 *MR. SUTHERLAND:* Yes, sir. At this time I would
15 move for a directed verdict. It's the belief of the
16 defense that the State did not present competent
17 evidence to the jury by which they might render a
18 verdict of guilty, sir.

19 *THE COURT:* All right. As to your motions for
20 reconsideration, I guess your motions to -- you can
21 sit down.

22 *MR. SUTHERLAND:* Yes, sir.

23 *THE COURT:* Unless you have something else.

24 *MR. SUTHERLAND:* I do not, Your Honor.

25 *THE COURT:* I feel the -- in renewing the

1 objections to the admissibility of the evidence which
2 I have previously ruled on, I overrule those
3 objections and move on to the motion for directed
4 verdict.

5 And taking the evidence in the light most
6 favorable to the State as to the notion for directed
7 verdict, I feel the evidence goes beyond that of mere
8 conjecture or suspicion, that there is evidence,
9 either direct or circumstantial evidence or some
10 combination of both, which reasonably tends to prove
11 the guilt of the defendant or from which the guilt
12 may be logically and reasonably deduced if that
13 evidence is taken in the light most favorable to the
14 State. So I must respectfully deny your motion for a
15 directed verdict.

16 Now, I'll ask if the presentation of the
17 defense, if the defendant wishes to testify.

18 MR. SUTHERLAND: May we have a couple of
19 minutes, Your Honor?

20 THE COURT: Well, let me advise him of his
21 rights first. If you'll stand, Mr. McBride. We have
22 now reached the stage of the trial where you may
23 present your defense. Do you understand that?

24 MR. MCBRIDE: Yes, sir.

25 THE COURT: You have the right to testify in

1 your own behalf and you have the right not to
2 testify. I am going to explain to you your rights in
3 that regard.

4 I now advise you that you have the right to
5 invoke the protections given to you by the Fifth
6 Amendment to the Constitution of the United States
7 and a similar counterpart provision of the
8 Constitution of the state of South Carolina.

9 The Fifth Amendment to the Constitution of the
10 United States provides in part: No person shall be
11 compelled in any criminal case to be a witness
12 against himself or herself. This provision of
13 Constitutional law means that you cannot be compelled
14 or required to testify in this case.

15 This is a right and a privilege which the law
16 extends to you. It's a personal privilege, and no
17 with one can waive this right except you. You have
18 the right not to testify, but you also have the right
19 to testify. The Court will grant you the right to
20 consult as much as you wish with your lawyer before
21 you make this decision.

22 If you elect not to testify, your failure to
23 testify cannot be used by the State as any inference
24 of guilt. Your failure to testify cannot be
25 considered by the jury in its deliberations. If you

1 elect to testify and waive the privilege extended to
2 you by the Fifth Amendment to the Constitution of the
3 United States, I advise you now that you will then
4 assume the role of a witness in this case. You will
5 then waive or give up your Constitutional privilege
6 against self-incrimination.

7 This means if you voluntarily take the witness
8 stand and testify, you will subject yourself to the
9 same rules that govern any and all other witnesses.
10 You may be examined and cross examined on any
11 relevant issue in this case. You may be impeached,
12 and your record may be -- you may be asked about your
13 criminal record, if you have one, to the same extent
14 as any other witness; all of which are, however,
15 subject to the rules of evidence of the courts of the
16 state of South Carolina.

17 I further advise you that if you elect to take
18 the witness stand and testify, this decision on your
19 part must be freely, voluntarily, intelligently, and
20 with knowledge of the protections given to you by the
21 Fifth Amendment to the Constitution of the United
22 States, and with knowledge of the consequences of
23 your election to testify.

24 I'll ask you: Do you wish to consult further
25 with your attorney?

1 MR. MCBRIDE: Yes, sir.

2 THE COURT: All right. Have you discussed with
3 your attorney whether you should testify or not so
4 far?

5 MR. MCBRIDE: Yes, sir.

6 THE COURT: All right. Do you understand what I
7 have explained to you?

8 MR. MCBRIDE: Yes, sir.

9 THE COURT: Do you have any questions about what
10 I have explained to you?

11 MR. MCBRIDE: No, sir.

12 THE COURT: All right. I tell you what I'm
13 going to do. I'm going to just give you the evening
14 hours to discuss this issue.

15 MR. SUTHERLAND: Yes, sir.

16 THE COURT: And I'll expect your response at
17 9:30 in the morning, and we'll continue the trial.
18 All right?

19 MR. SUTHERLAND: Yes, sir. Thank you, Your
20 Honor.

21 THE COURT: We'll stand at ease until 9:30 in
22 the morning.

23 MS. CAMPBELL: Requests to charge, Your Honor,
24 I've got one coming. And is there any way we could
25 get a copy of your charge?

1 THE COURT: Yeah. I've got it. Just one
2 minute, Jessie. We're not quite through. All right.
3 Requests to charge. Just have a seat, Mr. McBride.

4 MS. CAMPBELL: On the kidnapping.

5 THE COURT: The continuing offense?

6 MS. CAMPBELL: (Nods head affirmatively).

7 THE COURT: Yes.

8 MS. CAMPBELL: I'll get a copy for you.

9 THE COURT: We can print them now or print them
10 and have them for you in the morning. Do you want
11 them now? All right. We'll print them now. We'll
12 give you our standard jury charges. And you can look
13 over them at the evening, object to them. Or if you
14 have any additions or corrections, we'll be glad to
15 take that up with you at 9:30 in the morning.

16 All right. If you'll just wait a few minutes.
17 I mean, you can go ahead. We're at ease. But I'm
18 going to deliver them to you just as soon as they
19 come out of the printer.

20 MR. SUTHERLAND: Yes, sir.

21 THE COURT: All right.

22 (Whereupon, the proceedings are concluded for
23 the day, to be reconvened tomorrow morning)

24

25

1 Wednesday, April 4, 2007

2 *THE COURT:* Is the State ready to proceed?

3 *MS. CAMPBELL:* The State's ready, Your Honor.

4 *THE COURT:* The defense ready to proceed?

5 *MR. SUTHERLAND:* The defense is ready, Your
6 Honor...

7 *THE COURT:* All right. At this time the
8 State -- before we bring the jury, for the record,
9 will the State present any witnesses? Will -- I'm
10 sorry. Will the defense present any witnesses?

11 *MR. SUTHERLAND:* We will not, sir.

12 *THE COURT:* Mr. McBride, it's my understanding
13 from your attorney then you choose not to testify.
14 Is that correct?

15 *MR. MCBRIDE:* Yes, sir.

16 *THE COURT:* All right. And you understand that
17 I will give the jury the instructions that I told you
18 about yesterday, that I will inform the jury that
19 they shall not, should not and cannot consider your
20 failure to testify as any evidence against you. Do
21 you understand that?

22 *MR. MCBRIDE:* Yes, sir.

23 *THE COURT:* All right. I will do that. All
24 right. Thank you very much.

25 Now, Mr. Sutherland.

1 MR. SUTHERLAND: Sir?

2 THE COURT: Do you want to announce that the
3 defense rests, or do you want me to announce it?

4 MR. SUTHERLAND: I believe the Court -- well, --

5 THE COURT: Either way? I'll do it.

6 MR. SUTHERLAND: Yes, sir. That will be fine.

7 THE COURT: All right. You will argue last.

8 MR. SUTHERLAND: Yes, sir.

9 THE COURT: The State ready for the jury?

10 MS. CAMPBELL: The State's ready.

11 THE COURT: Defense ready for the jury?

12 MR. SUTHERLAND: The defense is ready.

13 MS. CAMPBELL: Your Honor, for the record, I'm
14 doing the law and he's going to do the facts.

15 THE COURT: That's fine.

16 MS. CAMPBELL: Thank you.

17 THE COURT: Just ...

18 MS. CAMPBELL: Are you going to tell me to be
19 brief?

20 THE COURT: (Shakes head negatively).

21 (Jury in at 11:03 a.m.)

22 THE BAILIFF: The jury is all present, Your
23 Honor.

24 THE COURT: All right. Thank you very much.

25 Good morning, ladies and gentlemen. First I want to

1 apologize for the delay. Things just didn't go as
2 they were planned this morning. But we're all here
3 and we're ready to continue with the trial or
4 conclude the trial.

5 Now, at this point in time in the trial the
6 defense has notified the Court that they plan to
7 present no evidence or present no witnesses. So at
8 this stage you have seen and heard all of the
9 evidence you will hear in this case. The remaining
10 portion of the trial will consist of the final
11 summations of the attorneys and my charge to you on
12 the law as it applies to this case.

13 The State will argue first and will go through
14 an explanation of their understanding of the law and
15 their understanding or summarization of the facts,
16 followed by the defendant's opportunity to close
17 their argument, after which I will instruct you or
18 tell you about the law as it applies to this case.

19 All right, Solicitor, you may proceed.

20 **MS. CAMPBELL:** May it please the Court? Good
21 morning. The first thing I want to do is take this
22 opportunity to thank you on behalf of the state of
23 South Carolina, the citizens of Richland County for
24 your service in this case, on behalf of Mrs. Gayle
25 Roberts for your willingness to become involved in

1 this process.

2 And as you have probably realized over the past
3 two days, although this trial has been somewhat
4 brief, it is a very important case both to the
5 citizens of Richland County and to the defendant,
6 Clyde Leroy McBride.

7 I know none of you volunteered for this
8 necessarily, but I think you've come to understand,
9 or I hope you have, that is this a serious matter,
10 and we appreciate your service.

11 I am going to talk a little bit about the law
12 and then Mr. Goldberg is going to get up here and
13 talk to you a little bit about the facts in the case.
14 Then you're going to hear from the defense attorney.
15 We will not have the opportunity to get back up and
16 say anything at that point.

17 I want you to be sure and understand though that
18 the law you must use in this case is the law as the
19 judge gives it to you. He's going to talk to you and
20 charge you with a charge of the law right after you
21 hear from us. He is going to charge you what the law
22 is and the law you have to apply. And that's applied
23 to the facts you find them, what you find what
24 happened back on August 29th of 2005.

25 If I misquote or say something different from

1 what the judge tells you the law is, it's not
2 intentional. You take the law though as he gives it
3 to you. And in that same vein, if either side
4 mischaracterizes the facts, you remember them.
5 Because the 12 of you individually and back there
6 collectively are the sole finders of the facts. So
7 if you remember anyone's testimony that doesn't jibe
8 with what we say, you all are the sole finders of the
9 facts.

10 You've heard all the evidence you can consider
11 in this case. You must base your verdict on the
12 evidence. And what is the evidence? It's the
13 testimony, the sworn testimony from this stand and
14 the physical evidence that will be back in the jury
15 room with you. You cannot and should not do it based
16 on questions by attorneys, fishing expeditions,
17 innuendo, conjecture, speculation, or just plain
18 wishful thinking on the part of someone.

19 If a person is asked a question such as, did you
20 promise him anything to make him talk to you, and the
21 answer is, no, then that is the evidence. The
22 question itself does not create evidence. The
23 evidence is the sworn answer.

24 I want to take a second, too, to apologies if
25 over the last several days if I have done anything to

1 offend anyone. Mr. Goldberg. Sometimes we get
2 caught up in legal wrangling. You've been sent out
3 of the courtroom before while we have had legal
4 issues come up and things of that nature. If we have
5 done anything to offend you, please, please don't
6 hold that against the State and don't hold that
7 against Gayle Roberts. It was not intentional on our
8 part.. Sometimes my questions get clumsy, sloppy in
9 my attempt to get it out quicker. So please don't
10 hold that against the State of South Carolina.

11 Now, criminal cases are unique in that as you
12 have noticed and you've heard references to reports,
13 statements that were taken, DNA reports and things of
14 that nature; those are not admissible in criminal
15 cases, because the law recognizes that in criminal
16 cases the defendant has a right, as he should, to
17 confront each and every witness against him.

18 So even if there is like a doctor's report, it's
19 not admissible. There have been no depositions,
20 nothing, no videotapes, anything of that nature. And
21 that's because you all have the opportunity and the
22 defendant has the right to confront the witnesses so
23 that can you judge their credibility. They have to
24 appear before you, talk about their credentials,
25 their expert opinion in certain cases, what they saw

1 in certain cases. That is totally up to you to
2 decide to be able to judge the credibility of each
3 and every witness. And that's the reason you've
4 heard reference to reports that aren't necessarily in
5 evidence. They aren't admissible. The testimony is
6 admissible.

7 Now, the burden of proof in a criminal case is
8 upon the state of South Carolina to prove Clyde Leroy
9 McBride guilty beyond a reasonable doubt. And as I
10 said in my opening, that's exactly where the burden
11 should be. We should have to prove that that man
12 committed these crimes beyond a reasonable doubt.

13 Now, the law has defined in order to help you
14 somewhat what is a reasonable doubt; what does that
15 mean. In a case, State v. Darby, one way to look at
16 it is, it's the kind of doubt that would cause a
17 reasonable man to hesitate to act. The courts have
18 taken it a little bit further. And the judge will
19 charge you.

20 What is a reasonable doubt, proof beyond a
21 reasonable doubt. Very simply, ladies and gentlemen,
22 there is proof that's beyond some doubt. But proof
23 beyond a reasonable doubt is proof that leaves you
24 firmly convinced of the defendant's guilt. And let
25 me repeat that. Proof that leaves you firmly

1 convinced of the defendant's guilt.

2 There are very few things in this world that we
3 know with absolute certainty, and in criminal cases
4 the law does not require proof that overcomes every
5 possible doubt. If, based on your consideration of
6 the evidence, you are firmly convinced that the
7 defendant is guilty of the crime charged, you must
8 find him guilty. If, on the other hand, you feel
9 that there is a real possibility that this defendant
10 is not guilty, you should give him the benefit of the
11 doubt and find him not guilty.

12 Very simply, the law recognizes that people
13 inherently can doubt anything to some degree. We
14 don't have to prove beyond every possible doubt.
15 Although I submit, ladies and gentlemen, the evidence
16 in this case rises above reasonable doubt. If you
17 are firmly convinced of the defendant's guilt, you
18 should return a verdict of guilty.

19 Now, as the judge told you in the beginning,
20 there are three indictments that arise out of this
21 single chain of events of what happened that day.
22 And those are going to be three separate verdicts
23 that you are asked to return when you get back there.
24 And I want to talk to you a little bit about what the
25 law is about each of those.

1 The first charge is burglary in the first
2 degree. And, very simply, ladies and gentlemen, a
3 person is guilty of burglary in the first degree if
4 he enters a dwelling. And notice the language there.
5 Even in this case whether he came in, as he says,
6 through a screen door; or, as we say, through a
7 window, it doesn't matter. It's an unlawful entry
8 because he did not have the right to enter Gayle
9 Roberts' residence.

10 Enters a dwelling. You notice "or a dwelling".
11 That means home. It's not a building. There are two
12 different levels of burglary. Without consent. And
13 there is no dispute in this case it was without
14 consent. And with the intent to commit the crime in
15 the dwelling.

16 And, ladies and gentlemen, he wasn't just
17 wandering through. He was there for the sole purpose
18 of robbing someone, of stealing from someone. That
19 is burglary. What makes it the first degree, the
20 judge will tell you, you must find one of the
21 following aggravating circumstances. He'll actually
22 talk to you about three of them.

23 Whether while affecting entry, or while in the
24 dwelling; it doesn't matter at what point, but while
25 in the dwelling, or in immediate flight he is armed

1 with a deadly weapon or explosive, or he threatens
2 the use of a deadly weapon, which isn't on here, or
3 displays -- we don't have to prove all of these; just
4 one of them -- or what is or appears to be a knife,
5 pistol, revolver, rifle, shotgun.

6 In his confession alone, even though he was
7 trying to lessen his culpability, which Mr. Goldberg
8 will talk to you about, he admits to being armed
9 while in there. You know, he says he only shot the
10 dog. And he didn't use a gun to get Ms. Roberts to
11 go into that space?

12 In his confession alone, even though he's trying
13 to lessen his culpability because you notice he stays
14 away from the handgun, he becomes armed with a .22.
15 And you have proof. You have bullets; what I call
16 bullets, what they projectiles. Whatever. You have
17 this stuff. In his confession he confesses to being
18 armed while robbing her, by his own words, even
19 though he tries to less in his culpability.

20 It doesn't matter whether he is armed when he
21 enters, he becomes armed while he's in there or he's
22 armed when he leaves. And I submit, ladies and
23 gentlemen, he went in there with his little gun. He
24 found another gun that he used to shoot the dog who
25 was in a pen out in back. But I guess he was barking

1 so he had to shut him up. Burglary in the first
2 degree.

3 Now, the second charge the judge will talk to
4 you about -- and he may take a little longer than I
5 have; I don't know -- is armed robbery. Or in the
6 statute it's called robbery while armed with a deadly
7 weapon. A person who commits armed robbery while
8 armed with a pistol, dirk, slingshot, metal knuckles,
9 razor or other deadly weapon; or while alleging
10 either by actions or words he was armed while using a
11 representation of a deadly weapon or any object which
12 a person present during the commission of a robbery
13 reasonably believed to be a deadly weapon.

14 And when I explain an armed robbery, I want to
15 talk to you a little bit about something called a
16 lesser-included offense, because robbery is really a
17 larceny but the person becomes armed or threatens
18 them.

19 And what is larceny? Very simply, it's
20 stealing. Larceny is, say, I have a locker at school
21 and it's locked and someone breaks into my locker and
22 takes my books while I'm not there. That's a
23 larceny. That's stealing. What rises to the level
24 of robbery -- and the judge will explain some of this
25 to you -- is when a person, when you take it from the

1 person or presence of a person, then it becomes the
2 next level, a strong armed robbery. When it becomes
3 an armed robbery is when you don't just threaten them
4 or try to intimidate them into taking it from your
5 person or your presence.

6 There is no dispute. Nobody is going to get up
7 here and argue that this wasn't a robbery, because it
8 was taken off of her, \$20 at least, purse, keys were
9 taken from her personal presence.

10 It becomes an armed robbery when they use a
11 weapon, such as the handgun; or even if they use a
12 fake one and it looks like a gun; or even if they use
13 a pipe in their hand and the person reasonably
14 believes it to be a weapon. Because the Legislature
15 in its wisdom recognizes that bad things happen when
16 people are either armed or represent themselves to be
17 armed. People get hurt. So that's why they say it
18 doesn't matter if it's a real gun.

19 In this case the testimony is that it was a
20 chrome pistol. But it doesn't even matter. As long
21 as she reasonably believed it to be a pistol, that's
22 all that matters. That's robbery. It's a larceny
23 coupled with a taking from the person or presence by
24 means of force or intimidation; and then the armed
25 with what represents to be a weapon or it is a

1 weapon. That's the armed robbery.

2 Kidnapping is the final verdict form you will be
3 asked to -- the final indictment or charge you will
4 be asked to render a verdict. And what is
5 kidnapping? And as I said in my opening, in our
6 state it's very simple. And it's hard to imagine
7 because classically a kidnapping you think of someone
8 being stuck in the trunk of a car and taken over
9 state lines. That is not what kidnapping is defined
10 as in our state.

11 Kidnapping occurs when one unlawfully seizes,
12 confines, inveigles, decoys, kidnaps, abducts, or
13 carries away any other person by any means whatsoever
14 without authority of law.

15 And I submit, ladies and gentlemen, this is
16 somewhat of a classic kidnapping. When you are
17 barricaded in a storage room of your own home by
18 someone who is robbing you, it is a kidnapping.

19 Some of the terms the judge will define to you,
20 and he'll define a lot of them, and notice you've got
21 all these words: Confines, inveigles, decoys,
22 kidnaps, seizes, abducts. We don't have to prove
23 each and every one of them. It's an either or
24 situation. We just have to prove that he did one.

25 I submit, ladies and gentlemen, to seize means

1 to take hold of suddenly or forcibly, like when he
2 grabbed her to get her up the hill faster. Confine
3 means to limit, restrict or enclose within bounds.
4 It can mean imprison or shut in or keep in. And I
5 submit, ladies and gentlemen, there is no dispute in
6 this case that putting Mrs. Roberts in that room and
7 barricading her in with her freezer and her
8 refrigerator constitutes a kidnapping.

9 Remember her testimony was it took her about 15
10 minutes to finally push it so that the one thing came
11 off so that she could get out. That's kidnapping.

12 The judge will also charge you a kidnapping
13 commences one is wrongfully deprived of his freedom,
14 or her freedom, and continues until freedom is
15 restored. You will not hear from him that there is
16 any amount of time that it has to occur. Although in
17 this case I submit it started at the moment he
18 restricted her movement and made her go into that
19 house, and it continued until she fought her way out
20 of that room, over whatever amount of time that may
21 have been; that's a kidnapping in our law.

22 Just like when you won't hear the judge say that
23 there is any time period, as in armed robbery, it
24 doesn't matter if he look 1 dollar or 1 million
25 dollars. The amount doesn't affect whether or not a

1 robbery occurred.

2 In this case U.S. currency is sufficient, one
3 dollar, one cent. And the car, the keys. The keys
4 alone would be sufficient. You won't hear any dollar
5 amount that has to be met. So those are the charges
6 that are going to be before you.

7 Now, the judge will also charge you that there
8 are two different kinds of evidence typically in
9 cases. And in this case that's true. You've got
10 direct evidence and circumstantial evidence. Direct
11 evidence, ladies and gentlemen, is like eye witness
12 testimony. It's what you hear, see, feel, what you
13 get through your senses. Direct testimony. What Ms.
14 Roberts saw that day, she is an eye witness to the
15 crime. That is direct testimony.

16 Circumstantial evidence is a chain of facts or
17 circumstances from which another fact or a
18 circumstance can be inferred. The judge will say
19 this a little bit better than I do. But basically,
20 DNA, classic circumstantial evidence. The car is
21 abandoned. It's recovered three to four weeks later.
22 When the swabs are taken from inside the car on the
23 steering wheel and it comes back to that man, that's
24 circumstantial evidence. You can infer reasonably
25 from that circumstance that he is the one who took

1 the car, because he's not supposed to be in it.

2 That's circumstantial evidence.

3 Now, a case can be totally eye witness
4 testimony. It can be totally circumstantial
5 testimony. In this case we have both. We have what
6 Ms. Roberts told you, his description, everything
7 like that. It is totally and completed corroborated
8 by the circumstantial evidence.

9 And the judge will tell you you don't have to
10 think that one type of evidence is better than
11 another. Use them in combination. You don't give
12 greater weight to eye witness versus circumstantial.
13 The weight you give to any evidence is totally up to
14 you. But you can use those both.

15 And in this case, ladies and gentlemen, all the
16 direct testimony from Ms. Roberts is totally and
17 completely corroborated by the circumstantial
18 evidence and by the defendant's own statement, even
19 though he tries to lessen his culpability.

20 You also heard from several people that were
21 qualified as experts and as expert witnesses.
22 Experts, just because they're qualified -- and the
23 reason we have to go through the qualifications and
24 then submit them as an expert is because normally a
25 person such as myself who is not an expert in

1 anything can't come in and give opinions or talk
2 about what the results of DNA testing are. And
3 that's the reason we go through that and qualify them
4 as experts, because there's an exception.

5 If a person has certain training or certain
6 credentials, then they are allowed to come in here
7 and tell you the results of, say, DNA testing or the
8 results of when they processed the crime scene. Like
9 we qualified Investigator Oates. Investigator Oates,
10 in of itself, his doing of the crime scene is totally
11 corroborated by a person who committed this crime
12 with gloves on. Yet, he may have slightly touched
13 the Coke can to his mouth which accounts for the DNA
14 which he didn't think about. But it's totally
15 corroborated.

16 If we came in here and had fingerprints from the
17 crime scene and she said that he was gloved, that is
18 not corroborated. But that's why we qualified him as
19 an expert, and other people, too. But simply that's
20 expert testimony.

21 The judge will also tell you in every case we
22 have to prove criminal intent. And he will say that,
23 you know, criminal intent is, the easiest way to
24 define it is it's a conscious wrongdoing. We can't
25 go in and dissect someone's mind and figure out

1 exactly what they were thinking at the time to some
2 mathematical certainty. So the law says you can look
3 at the circumstances and the surroundings around the
4 time of the crime to infer whether or not there is
5 criminal intent. And I submit, ladies and gentlemen,
6 no one can get up here and argue that this wasn't
7 criminal intent.

8 And the final thing, a couple of things I wanted
9 to talk to you about, in this case there was what's
10 called a statement. And before you can consider a
11 statement, you must consider the circumstances around
12 which it was given. You can consider a person's,
13 say, their age, a statement from a 12-year-old versus
14 a statement from a 20-something-year-old.

15 You can consider their mental capacity. Were
16 they impaired, under the influence of anything?
17 Things of that nature. The judge will give you a
18 list about education, all the different things you
19 can consider when doing this.

20 But most importantly, you must determine if it
21 is a voluntary statement for you to use it, did the
22 defendant make the statement? Was the defendant --
23 and this is key -- warned of his Constitutional
24 rights?

25 And in this case, ladies and gentlemen, he

1 signed off in two different places acknowledging what
2 his Constitutional rights were. He responded
3 coherently, and he was able because he wanted to give
4 you his version of events. He waived those rights.
5 It is very important that the defendant be advised of
6 his rights, because that is his rights. And in this
7 case there's good police work in this case.

8 Did the defendant knowingly and intelligently
9 waive his rights? And, luckily, we have a sheet
10 where he signed off on it. And was the statement
11 given voluntarily? And the evidence says he was in
12 this case in this courtroom. But it's very important
13 for you to consider whether or not he was advised of
14 his rights prior to giving this statement. And there
15 was no dispute.

16 The final thing I want to talk to you about is
17 credibility. The judge will talk to you and he will
18 tell you; you can believe one witness against many,
19 many against one. You can believe a part of a
20 witness's testimony, all of it, none of it. That is
21 totally your province.

22 But when considering what a witness says and
23 their credibility or believability, consider; did
24 they have a bias or motive, something to gain or
25 lose? Did they have an interest in the case? Were

1 they forthright or hesitant? Has their testimony
2 changed over time?

3 Most importantly, is their testimony
4 corroborated by the other testimony? Is their
5 testimony corroborated by the evidence? Those are
6 factors. But it is totally up to you ultimately,
7 like I said individually and once you get back there
8 collectively, to determine the credibility of each
9 and every witness.

10 All the State asks in this case, ladies and
11 gentlemen, is to reach a verdict that simply speaks
12 the truth. Hold Clyde McBride responsible for his
13 choices. For whatever reason he was in that house,
14 whether it was the wrong house or not, he went in
15 there with criminal intent and he committed these
16 crimes. And all we ask is that you hold him
17 responsible for his actions and his choices. Thank
18 you.

19 MR. GOLDBERG: May it please the Court?

20 THE COURT: Mr. Goldberg.

21 MR. GOLDBERG: Good morning. When Mr.
22 Sutherland got up here and gave his opening remarks
23 at the beginning of the trial, he told you something
24 that I found very interesting. I even took a note of
25 it as he said it. He told you that this case was

1 about consequences. And I could not agree with that
2 any more.

3 Clyde McBride must be held accountable for his
4 actions. He must face the consequences of his
5 actions. And they were his actions, mind you. Don't
6 let yourself get distracted from how we know that he
7 committed these offenses.

8 We know, number one, that his DNA and his alone
9 was found inside of Ms. Roberts' car. We know that
10 his physical appearance as you see him today matches
11 the description for the most part given by the
12 victim, Ms. Roberts. And, third, we have his
13 statement. We have his signed, sworn confession
14 admitting what he did on August 29th of 2005. As a
15 result, he must be held accountable.

16 Now, when Mr. Sutherland gets up here and
17 addresses you, he's going to try and offer I believe
18 a few explanations as to why Mr. McBride is not
19 guilty of these offenses. And he may tell you
20 certain things like the DNA could have gotten in that
21 car at any point during the 27 days it was gone. The
22 description was inaccurate. Or maybe even he'll tell
23 you that the statement was not voluntary, that it
24 wasn't his words, that's not what Mr. McBride was
25 trying to say, things like that.

1 Those arguments remind me an awful lot of a
2 story they tell you in law school where a priest and
3 a lawyer are walking down the street and they get to
4 the street corner, standing there waiting for the
5 light to change. The priest looks down and he sees a
6 puddle. He can see clearly to the bottom of the
7 puddle. At the bottom of the puddle there's a nice,
8 shiny silver dollar sitting right there.

9 He says, "Oh, look at that. A silver dollar."
10 The lawyer picks up a stick, stirs up the dirt, silt
11 and mud, clouds up the puddle; and he looks at the
12 priest and he says, "What silver dollar?"

13 And I submit to you this is no different. This
14 case is not about Investigator McDaniels using
15 approximate times in his field notes. It's not about
16 whether or not the clothes that Mr. McBride was
17 wearing that day were found near the car. It's not
18 about whether it was exit 129 or exit 136 or the name
19 of the exit or whether people remember names or
20 numbers of exits. And it's certainly, certainly not
21 about the level of the defendant's vocabulary. It's
22 not about what phrase he used when he described, he
23 described how he fled from the police as he was being
24 chased while in Ms. Roberts' car down I-26 towards
25 Orangeburg, where he had a residence incidentally.

1 It's not about any of those things.

2 This case is about the truth and the truth
3 alone. It's about getting to the bottom of that
4 puddle, finding that silver dollar. And the truth in
5 this case is that Clyde McBride committed these
6 offenses, plain and simple.

7 This is the first time that I've had an
8 opportunity to directly address you, and I also want
9 to thank you for your service and the attention that
10 you've paid during the last two days of this case.
11 At this point I want to go briefly through the facts
12 of the case and what you've heard, the testimony
13 you've heard.

14 You know that on August 29th, 2005, Mr. McBride
15 broke into Gayle Roberts' home when she wasn't home.
16 He rummaged around the house. I think he grabbed an
17 X Box, a .22 caliber firearm. He wasn't done at that
18 point. He waited around until she got there.

19 When she got there, he approached her. She is
20 getting out of her car. He points at a gun at her
21 face, tells her to get out of the car, to give him
22 her money. He robs her. He locks her in a storage
23 closet on her porch, takes her keys. He actually
24 locks her in there twice. She was able to fight her
25 way out one time. He takes her keys, her cellphone,

1 her money and drives off in her car.

2 Now, how do we know that he did this? Because
3 he told you he did it. He admitted it. He admitted
4 it to Investigator McDaniels in his statement in his
5 words that he signed twice on each page after being
6 advised of his rights.

7 What did he tell McDaniels? "I went inside of
8 the house." Those are his words. You have the
9 statement. It's in evidence. You'll be able to read
10 it for yourself. "I went inside the house. I told
11 her to give me the money. I took the refrigerator
12 and leaned it across the door to keep her from coming
13 out."

14 Right there in that statement alone he has
15 admitted the kidnapping. Because as Ms. Campbell
16 just told you, he didn't have to take her anywhere.
17 He didn't even have to tie her up. But when he put
18 her in that room and he confined her in there so that
19 she could not get out, so that her liberty was
20 restrained, he committed a kidnapping. And he told
21 you about it in his words.

22 He told you about the burglary when he said, "I
23 went inside the house." You'll see in the statement
24 not only did he go inside the house, he went in there
25 with an intent to commit a crime. He told you that

1 his old lady was on him for money, that they had
2 bills to pay, and he said he needed money. He went
3 in that house to get money.

4 Now, whether or not it was the right house, I
5 don't know. He kept demanding money for drugs that
6 her son, Ms. Roberts' son, owed for drugs. Maybe he
7 had the wrong house. I don't know. But the point is
8 he was in that house and he wasn't allowed to be in
9 there. And he went in there to commit a crime. And
10 while he was in there to get the money he armed
11 himself. He denies he had the chrome handgun, but he
12 doesn't deny that he picked up that .22.

13 Let's talk about that .22. These are his words.
14 "I shot the dog." Ms. Roberts told you that her dog,
15 her son's dog, stays outside in a pen with an
16 electric fence that he couldn't get over if he wanted
17 to. He has learned his lesson from that.

18 Mr. McBride told you that he went out there, he
19 had an encounter with the dog, and then he goes back
20 into the house, makes an extra effort to go back into
21 the house to get the gun, point it out of the window
22 and fire it at the dog. We know he fired it there
23 because the shell casing and the spent bullet was
24 found in the bathroom. His words: "I shot the dog."

25 And then finally, an apology? He says, "I'm

1 sorry"? After all that he says, "I'm sorry." He is
2 asked if he wants to add anything to his statement,
3 and he says, "I'm sorry." Ladies and gentlemen, an
4 apology is not a consequence for your actions. It's
5 not good enough.

6 Ms. Campbell told you just a minute ago that you
7 all are the judges of the facts in this case and
8 about credibility. One of the biggest roles you're
9 going to have as the judges of the facts is looking
10 back on the testimony that you've heard from this
11 witness stand trying to decide if those witnesses are
12 credible or believable. That's just another word for
13 credible. Believable. Is what this person was
14 telling me believable?

15 It's something you do every day of your lives.
16 You may not know it. But if it's at the water
17 cooler, down the hallway or wherever you encounter
18 people, somewhere inside of you you're trying to
19 decide, do I believe what this person is telling me?
20 And this is no different with some of these people
21 were on the witness stand.

22 First you had Ms. Roberts. You want to talk
23 about credibility. She got up here, as painful as it
24 was, told you exactly what happened to her that day.
25 She described the events, how she was coming in from

1 work. She had stopped at the store, at Bojangle's.
2 She gets out of her car, hears a voice, thinks it's
3 her son at first because that's the only voice she
4 would expect to hear at her house even though his car
5 wasn't there.

6 Then the next thing she knows, there is a chrome
7 handgun pointed at her by a man she's never seen in a
8 ski mask demanding money, demanding her, "Come on,
9 grandma. Let's go." He walks her out into the
10 backyard. And she tells you that he is walking her
11 away from the house towards the woods.

12 She told you that when he was doing that she
13 decided for whatever reason she wasn't going to let
14 him do it. Even though he had a gun, she was not
15 going to let her children have to go looking for her
16 body in the woods. That's what she said. So, right
17 or wrong, she throws her drink on him. And it kind
18 of startles him. He changes his mind. He backs off
19 that plan.

20 So he decides he is going to lead her into the
21 house. He leads her onto the porch. He's taken her
22 money at this point. Or he's demanding money, the
23 drug money she knows nothing about, that her son
24 according to her has never been involved in any kind
25 of activity like that.

1 And he takes Ms. Roberts, opens up a storage
2 room, puts her inside of it and closes the door.
3 Excuse me. Demands her keys first. He gets her
4 money, the keys, her cellphone. She is able to fight
5 through this. She is fighting for her life at this
6 point and is able to undo the latch on the door, kick
7 open the door basically.

8 So just to make sure that she is not going to go
9 anywhere, to reinforce the kidnapping, he puts her in
10 there again and he moves a giant refrigerator and a
11 freezer in front of the door so that she can't get
12 out, so that she is stuck there. And then she hears
13 him drive off in her car, calls 911.

14 The police respond. She provides a description:
15 About five-six, about 140 pounds. You all have seen
16 Mr. McBride. Is that description pretty far off?
17 It's about right. She initially says from the 911
18 call that it was a black male. But she goes back and
19 thinks about it and says, well, maybe I'm not sure.
20 I could only see the skin in the ski mask and it may
21 have been a light skinned black person, maybe a dark
22 skinned white person, maybe an Hispanic person. She
23 was close. She didn't want to be definitive about it
24 if she wasn't totally sure. She was close. And the
25 description, the physical description was right on:

1 Five-six, 140.

2 You have heard from Janell McMillan, the first
3 officer on the scene. She told you about how she
4 encountered Ms. Roberts. She was extremely upset,
5 hysterical I believe she said, crying. It took a few
6 minutes to get her to calm down before they could
7 talk about what happened.

8 McMillan took a report. She took down the
9 description from Ms. Roberts, the ski mask, dark ski
10 mask, gloves, the jumpsuit, the stripe on the
11 jumpsuit. Which if you look in his statement, it's
12 in there. He tells you, he tells McDaniels, ski
13 mask, work gloves, stripe on the jumpsuit. It's
14 corroborated.

15 McMillan calls her supervisors. They come out
16 there. Their investigator comes out there. Robert
17 Oates comes out to process the scene. When he gets
18 out there he does everything he's supposed to do. He
19 takes photographs. He dusts for fingerprints in
20 certain places. He collects swabs, blood, swabs off
21 of the Pepsi can and other items inside the house.
22 He takes those swabs and seals them properly and he
23 delivers them to the evidence room without tampering
24 with them in any way.

25 He tells that you he didn't find any

1 fingerprints. Fingerprints don't appear when you're
2 wearing gloves. Mr. McBride told you he had gloves
3 on. Ms. Roberts told you he had gloves on.

4 He says he found a shoe print. He couldn't get
5 anything from it. And you heard the investigator
6 talk about how sand is not the easiest material to
7 work with when trying to get a shoe print and that if
8 he had tried to do it, it would have destroyed the
9 sample and he wouldn't have gotten anything anyway.
10 But he took to items that he had, did the proper
11 packaging and delivered them into evidence.

12 You heard from Stan Richards who testified that
13 he was working at the Sheriff's Department and he
14 received a 1999 red Dodge Stratus, 114 KHE, which is
15 the license tag. Gayle Roberts' Dodge Stratus that
16 her husband, the last thing they bought together
17 before he died had given her. And he took that into
18 custody. It had been brought to him from a tow truck
19 in Lexington.

20 You heard from the tow truck driver. He came in
21 and said, "I got a call. There was an abandoned car
22 beside the Interstate out near Sandy Run which, by
23 the way, is between here and Orangeburg. I went and
24 picked it up. I didn't go inside it. I didn't alter
25 it in any way. I just took it to the Sheriff's

1 Department on Two Notch Road and dropped it off.

2 Trish Collins testified that she examined some
3 fingerprints, couldn't get any prints off of them
4 from the crime scene. Not a surprise. Gloves.
5 There's not going to be any fingerprints.

6 You then heard from Patricia Reed Enzor who told
7 you that once Investigator Richards had gotten hold
8 of the car she went to process it. She took
9 photographs of it. She dusted some for prints. She
10 took swabs looking for DNA from the inside and
11 outside the door, the steering wheel and the gear
12 shift, and that she took those items, she collected
13 them, sealed them up properly, the swabs, and again
14 put them in her locker, checked them out of her
15 locker and gave them to the evidence room so that
16 eventually they could be tested.

17 She also told you about how she took a buccal
18 swab, the swab from inside Mr. McBride's mouth,
19 sealed it up properly and delivered it to the
20 evidence room.

21 You heard from Bev Crane, Joy Delatorre, Tena
22 Goff, Jay Russell. All these people testified as to
23 the chain of custody in this case. They didn't do
24 anything improper. They maintained the integrity of
25 the items as they were being passed back and forth

1 from person-to-person for examination.

2 And then you heard from Gray Amick. He is the
3 DNA analysis expert. And he told you that the DNA
4 that was taken from the steering wheel from Ms.
5 Roberts' car unequivocally was Clyde McBride's, that
6 there was only one person out of 24 quadrillion which
7 is -- that's 15 zeroes behind it. One in
8 24 quadrillion. Unequivocally, unequivocally it
9 belonged to Clyde McBride. He ran it against DNA in
10 the known national database and it matched. No doubt
11 about it.

12 He also told you about how he checked about this
13 item number 2, this Pepsi can that had been inside of
14 Ms. Roberts' house. And he didn't tell you that he
15 could reach a definitive conclusion about who that
16 belonged to, but he did tell you that there's some
17 pretty striking similarities.

18 *MR. SUTHERLAND:* Objection. Facts not in
19 evidence, Your Honor.

20 *THE COURT:* All right. Sustained.

21 *MR. GOLDBERG:* He told you that certain
22 characteristics he found were similar to the
23 characteristics of certain elements found in the DNA
24 of Clyde McBride. He couldn't say for certain that's
25 who it was. You make what you want of that.

1 The great thing about DNA is that it can either
2 incriminate or it can exonerate someone. Either way.
3 I submit to you, ladies and gentlemen, that based on
4 Dr. Amick's testimony it's incredibly incriminating
5 in this case. It puts Clyde McBride inside Gayle
6 Roberts' car. No question about it.

7 The last witness you heard from was Shawn
8 McDaniels. He testified about the investigation that
9 he conducted. Once he got the information back from
10 Dr. Amick that there had been a hit in this national
11 database matching up to Mr. McBride, he went looking
12 for him. Not only did it come back with Mr.
13 McBride's name, but it came back with a physical
14 description of him. I believe it was about five-six,
15 140. And he went looking for him and he found him in
16 Orangeburg, the same direction he was heading on
17 August 29th.

18 He took him into custody. He advised him of his
19 Miranda rights. He told him he was being arrested
20 for armed robbery and that his DNA had been found in
21 Ms. Roberts' car. And then he drove him back to
22 Columbia, told him, I don't want to talk during the
23 ride; let's wait 'til we get back.

24 They get back to the Sheriff's Department. They
25 go to his cubicle. He is not handcuffed. He doesn't

1 deprive him of any liberties: Water, food, anything,
2 bathroom. And he asked him what happened. They go
3 through his statement. He advises him of his rights
4 again, the advice of rights form right here. He
5 clearly goes through it, has him sign it twice, once
6 making sure he understands his rights and, second,
7 making sure that he knows he is waiving his rights
8 and giving up his rights.

9 And then they proceed to go through a question
10 and answer session of what happened. And, ladies and
11 gentlemen, on every single page of that statement,
12 all six pages that were typed up, you'll see Leroy
13 McBride's signature twice, once stating that he's
14 made it freely and voluntarily without any kind of
15 fear, threat, promise; and another time to say that
16 I've read this statement and it's my statement.

17 It's six pages, two signatures on each. That's
18 12 times, 12 times he signed that piece of paper
19 stating: It's voluntary, this is my statement, this
20 is what I want to say, this is what happened.

21 McDaniels told you he had an opportunity to
22 review that statement. McBride had had an
23 opportunity to review that statement. And at one
24 point he even wanted to add something to it. At the
25 end, is there anything else you wish to add? So they

1 went back and added something. The apology is what
2 he wanted to add. And why did he want to do that?
3 Why did Clyde McBride want to give a statement in
4 this case?

5 He wanted to get his story out there. He wanted
6 someone to know what he did. But if you notice, he
7 tried to distance himself as much as he could from
8 the things that would make him look the worst;
9 specifically, the gun.

10 As I said before, I went through what he said,
11 he told you, he told you by way of this statement,
12 and he told Investigator McDaniels, that he went into
13 the house. He said that he looked around. He got
14 the gun. He shot the dog. He said that he
15 approached Ms. Roberts, that he demanded money from
16 her. He admitted that he put her in the closet twice
17 and that he took her car.

18 The only thing, the only thing he does not admit
19 to is the gun. Because he knew, he knew that if he
20 told him about that gun, that changes everything.
21 And that makes it look that much worse.

22 So the question is, how are you going to believe
23 that Mr. McBride didn't commit these offenses? In
24 order to believe his story, in order to believe that
25 it wasn't him or that the statement wasn't his or

1 that Investigator McDaniels altered the statement,
2 you have to believe that a number of people put their
3 careers on the line in order to frame a man who just
4 so happened to have the same physical appearance as
5 the person found in the DNA match.

6 You would have to believe that Shawn McDaniels
7 is a liar, flat out, that what he told you on the
8 witness stand is not true. Why would somebody like
9 McDaniels throw away everything he has worked for;
10 seven years at the Sheriff's Department, multiple
11 training sessions with the FBI, homicide workshops,
12 interrogation workshops, he's been doing
13 interrogations I think he said four or five years I
14 think he said. Why would he do something that flies
15 in the face of everything he has worked for just to
16 set up a man that he knows didn't do it? Is that a
17 reasonable thought? Is that possible? Is that
18 believable?

19 Gayle Roberts, why would she lie? Why would she
20 lie about the gun being in her face? If McBride
21 didn't have a gun, why would she give him her car
22 keys? She already fought back a little bit when he
23 did have a gun by throwing the drink in his face.
24 So, if he doesn't have a gun, what's the worst that
25 could happen if she fights back a little bit and

1 doesn't give him the keys, if she resists? What's he
2 going to do? Push her down and take her keys anyway?
3 Why would she make that up?

4 Use your common sense, Ladies and Gentlemen.
5 You've been told to leave your biases and prejudices
6 at the door and not to let them influence you in how
7 you examine this case. But no one told you couldn't
8 use your common sense.

9 Think about it. Think about the testimony that
10 was given, the evidence that was presented. Is it
11 reasonable to believe that all these people were
12 engaged in this giant setup just to pin this on Mr.
13 McBride?

14 The thing that makes this case so credible and
15 believable is that there are some inconsistencies.
16 If it were a setup, everything would be identical.
17 Everything would be identical. McDaniels would have
18 precise notes to the second in his field photos about
19 what time he did this and what time he did that.

20 The story in McBride's statement would be
21 perfectly in line with what Gayle Roberts said
22 happened. There would be no discrepancies at all.
23 But there are. Because when McBride gave the
24 statement he tried to spin it in the most favorable
25 way he could towards him. That's what makes it

1 credible.

2 And the last thing that I want to mention is
3 along those lines. If Shawn McDaniels was going to
4 go out of his way to alter this statement, to change
5 it in any way, to make it different from what McBride
6 had to say, a make it look better for Ms. Roberts, to
7 make it look like they have the right guy when they
8 don't, to make it look perfect; why wouldn't he have
9 put in the statement that McBride had a gun? Don't
10 you think he would have done that?

11 Don't you think if he really, really was trying
12 to stick it to somebody that he didn't know had done
13 it or not he would have put in there that he had a
14 gun? Use your common sense. Is it reasonable to
15 believe the story being presented?

16 Ms. Campbell mentioned that in this case you're
17 going to be asked to come up with a verdict and that
18 verdict comes from the Latin word and it means to
19 speak the truth. That's all we're asking for, is for
20 you to speak the truth.

21 You remember the testimony. You'll have the
22 evidence. You figure it out. Look for the truth,
23 and you're going to find it shining bright as day at
24 the bottom of that puddle. And you'll pick it up.
25 And that truth shouts out loud and clear, beyond a

1 reasonable doubt, almost beyond any doubt, that Clyde
2 Leroy McBride is guilty of armed robbery, guilty of
3 burglary first degree, and he's guilty of kidnapping.
4 Thank you.

5 *THE COURT:* Mr. Sutherland.

6 *MR. SUTHERLAND:* May it please the Court, Judge?

7 *THE COURT:* Yes, sir.

8 *MR. SUTHERLAND:* All right. I agree with Ms.
9 Campbell that this Honorable Court is going to
10 instruct you all on the law. And I would just ask in
11 that regard, in all that time she spent talking about
12 the law, please just listen to the judge. That's his
13 role. He is going to give you all precise
14 instructions on the law.

15 Mr. Goldberg, he was correct, I think, in
16 pointing out some of the problems that I saw with the
17 State's case. He seemed a little overly concerned
18 towards the end with this grand conspiracy that's
19 going on to frame Mr. McBride talk.

20 I don't know how many people are going to lose
21 their careers. I don't know if you all decide that
22 the statement is not credible for whatever reason
23 that anything is going to happen to Investigator
24 McDaniels. I don't see how that could impact any
25 other career of the multitude of witnesses that we

1 had up here. And I think that they explained the
2 chain witnesses. Some of them I didn't even ask
3 questions to. I'd look a silly. Oh, so, you got the
4 truck? Yes. All right. Thank you. I just asked no
5 questions.

6 I think, you know, there are just -- there are
7 two issues, two evidentiary issues on which your
8 decision to going to turn. You heard everything.
9 You all are going to remember this stuff. He told
10 his lawyer joke, which was not entertaining because
11 I've actually heard it in the courtroom a bunch of
12 times. But he's a lawyer, too, by the way.

13 There are two evidentiary issues on which this
14 case is going to turn. One is the DNA and one is the
15 statement. It's about as straightforward as it gets.
16 Dr. Amick testified. I don't think there's anything
17 really that hampers his credibility. He is a Ph.D in
18 biochemistry. He is a government agent. He works
19 for the government. And that is bias. That's
20 something that you consider.

21 But perhaps the only thing was where Ms.
22 Campbell kept trying to get to him to say, there's a
23 partial match, a partial match; and he kept saying,
24 threshold, threshold, it doesn't meet the threshold.
25 Well, we're talking about science. We're not talking

1 about throwing darts here. When he says something
2 doesn't meet the threshold, it means he can't say
3 what it is. It's that simple.

4 It's pretty important because they want to put
5 him inside of that house with that Pepsi can. But
6 there was no scientifically valid evidence to support
7 their contention that he was drinking the soda in
8 that house. There is not. Dr. Amick testified to
9 it. And whatever they want to imply with their
10 questions and whatever they want to try to say in
11 front of you all in their closing, it's just simply
12 not provable. There is no evidence that he took a
13 sip from that Pepsi can, period. It's all
14 implications. It's not something to be considered
15 when making the decision.

16 Why is that important? Because we heard various
17 other testimony. We heard Ms. Roberts -- I'm sorry
18 to be leaning but I'm a little tired. We heard Ms.
19 Roberts. She testified that she tried to get back
20 inside of her house. She tried the front door and
21 the back door, and they were both deadbolted.

22 Actually, I can't use the one that I have. I
23 don't know what exhibit number it is. But if you all
24 recall, when Investigator Oates arrived, he said that
25 he tries to preserve the scene exactly as it is. He

1 takes photographs of everything just as they are. He
2 doesn't want to disturb anything because he is
3 performing a crime scene investigation. He's
4 gathering evidence, important evidence that
5 potentially could end up in front of a jury.

6 I do recall Investigator Oates saying that the
7 window, they're alleging that the point of entry is
8 the rear window on this house. I recall him even
9 saying that it was open. I asked him directly, was
10 Deputy Chief David Wilson on the scene when you
11 arrived? He said yes. Deputy Chief Wilson did not
12 testify. So what I'm going to rely on to basically
13 rebut that testimony, which is important -- you know,
14 we're talking about entering into this -- we're
15 talking about basically their story of what happened.

16 It's going to take me a little while to flip
17 through these things. I don't remember the exhibit
18 number. Oh, Lord. Okay. There was actually a
19 couple of these. These would be Exhibits 26 and 27.
20 This is the picture. This is it from far away. And
21 you cannot really tell anything. You can tell that
22 the window was closed.

23 This is the interesting picture. This is going
24 to have to be a judgment that you make what you know
25 about what the little latch on your window is at home

1 when it's locked, when it's unlocked. You've got to
2 make the judgment about whether the window was locked
3 or unlocked. But there's no doubt that the window
4 was closed, no doubt whatever. You all are going to
5 have this. You will be able to look at it as closely
6 as you want. And you can try to figure out, like I
7 did.

8 I've got it on the computer. I kept zooming in
9 to get a look at the latch. But their testimony is
10 that he went in through this window, that he entered
11 this house.

12 They point to a shell casing in the house, to
13 shells that were in the house. This is the stuff
14 that's in the bag. These are all the things that
15 were in the house before. There is another resident
16 in the house that doesn't testify or did not testify.

17 They did not put him inside that house with
18 their scientific evidence or pointing to things that
19 were already in the house. Or the spent shell
20 casing. They did not put him in the house.

21 The second DNA result is pretty solid in my
22 judgment. I take issue with their characterization
23 of what he said. But it appears to me that there's
24 only one allele -- let me look at the report again
25 and be sure. Okay. There is one, two, three. And

1 you all will have -- this is that big blown up chart
2 thing when they were trying to get you to think he
3 was drinking that Pepsi in there. This.

4 But you all will be able to look. And, you
5 know, we're not geneticists or anything like that.
6 But who said what and what are you able to put
7 together in your mind from what you've heard and what
8 you've seen on this stand?

9 There are one, two, three. Okay. There are
10 three substantive variations I would say. And then
11 it looks like one, two, three minor variations. He
12 is the DNA expert. I'm not. The only -- I mean, you
13 guys, you all are the ones that decide now. I'm not
14 sitting up here, you know, telling you what to
15 decide. I mean, if you don't want to find him
16 credible for whatever reason, I would understand it.
17 But, you know, feel free to do so. Just, his only
18 bias is that he's a government agent. He testifies
19 all the time for these people. It's his living to
20 help them out in court.

21 So the second DNA test that's on the steering
22 wheel. And Mr. Goldberg was correct. He was correct
23 to anticipate that I was going to come up here and
24 speak to you about this DNA that was found in the
25 steering column on this car that was missing for 27

1 days. Because that's exactly what it was.

2 There was never any identification. They're
3 pointing to some height and weight description.
4 They're saying, well, at first Ms. Roberts, you know,
5 said it was a black dude, but then Investigator
6 McDaniels said she didn't want to be racial, so then
7 she said it might have been a white dude or a Mexican
8 dude. This is something we all heard in here.

9 They didn't have any evidence whatever to go on,
10 nothing that could identify whoever did this. If it
11 was him, it was a light skinned black dude or a dark
12 skinned white guy or a Mexican guy. That's what she
13 knows. I don't know -- he is up here saying, why
14 would she lie? You know, why would she lie about
15 this? I don't see what there is for her to lie
16 about. I mean, she got up here and she told it like
17 she remembered it.

18 Is it possible that she is misremembering some
19 things? Well, it's possible that anybody
20 misremembers things. It's also possible that people
21 misremember things when they go through a traumatic
22 experience. I find it credible that she says that
23 her description that she gave to the investigator was
24 that whole rigmarole I just went through. It says in
25 his report that she gave black male as a description.

1 There is no real issue, because obviously you
2 know I'm going to be raising questions about
3 Investigator McDaniels' credibility. Necessarily, I
4 hope that he helped me out to some extent yesterday.
5 But he's a very difficult witness for me to get my
6 arms around.

7 I mean, he literally reminds me of when I was a
8 kid. I lived with my grandmother for about a year
9 and a half. And there was this little sour apple
10 three out in the backyard. And I would be out there,
11 a little six-year-old, shaking it and shaking it and
12 shaking it. I knew the apples were up there but I
13 couldn't get them to fall out. That's what I felt
14 like when I was cross examining him.

15 And they, you know, tried to inoculate this to
16 you all a little bit. But he testified, he's got in
17 two reports, two reports that he arrested Mr. McBride
18 at 13:00 hours. He gets on the stand, and I say,
19 Well, isn't that a factor that the jury is supposed
20 to consider in whether or not a confession was freely
21 and voluntarily made, the length of time in custody?
22 Yes. Isn't that a important? And I'm going to
23 paraphrase him here. No, because I had better things
24 to do.

25 Well, you don't have better things to do than to

1 write down relevant and important evidence. He says,
2 Well, you know, I don't have time to do this, that
3 and the other. It takes four pencil strokes to write
4 down what time it is. And he knows 16 months later
5 he's not doing to be able to remember anything. He's
6 coming in here and he's testifying to stuff that he's
7 read. And about these timing issues, he's just
8 adjusting the timing issues to match up with what
9 he's got on the Miranda waiver and what he's got on
10 the confession. It is straightforward and simple.

11 His reports don't match this other paperwork.
12 And rather than he has an explanation for everything;
13 I remember I was questioning him and that really
14 reading this thing -- I was at a Mexican restaurant
15 one night and I couldn't not think about this case.
16 And I had this statement here with me and I'm reading
17 through it. And I got to that particular part. I've
18 got the statement here. And I've said it a million
19 times, but I just want to be accurate.

20 Here it is. "I was traveling at a high rate of
21 speed on the shoulder with the deputy behind me." I
22 asked him -- and frankly, I was stunned, because he
23 agreed with me. I said, I always see that kind of
24 stuff in police reports. Is that police talk? Is
25 that is that cop talk? And he said yes. And I'm

1 paraphrasing everything. You all heard it. But you
2 saw it, too.

3 And I said, Well, what's that going in here? I
4 said -- and I actually said this. A physicist or
5 something? And he says he must have been watching TV
6 and watching cop shows to know how we talk and he
7 wanted to talk to me in the way that I would talk to
8 him -- lost a little bit of track of that.

9 But just the most interesting point about that
10 is one time -- I've had several opportunities to
11 cross examine Investigator McDaniels -- one time he
12 just answers the question straight and then he goes
13 back and then cleans it up after with that TV
14 business. This is not a normal person. Normal
15 people don't talk like this. Nobody says, "I was
16 traveling at a high rate of speed" on the shoulder
17 with a deputy behind me.

18 Now, why is that important? Because it's
19 important. It's credible. It tells you you've got
20 to use your common sense. I am telling you what I
21 think about this stuff. You've got to use your
22 common sense when you're looking at this. Have you
23 ever met anybody in your entire life who has ever
24 said to you, "I was traveling at a high rate of
25 speed" when they're talking about, I was flying down

1 the Interstate or I was hauling -- now, he did put
2 some slang in here. "I was visiting my home boys."
3 So we've got a little bit of slang here in the
4 beginning, but then we've got cop talk here in the
5 end.

6 Now, honestly, I don't know about that business
7 about the exit stuff. That just didn't make sense to
8 me. I literally have no clue. How you get to the
9 mall? You take Harbison. How do I get to my buddy,
10 Max's, house? Take the Piney Grove exit. It never
11 occurs to me unless I'm going to Florida or to West
12 Virginia or something and I've got a map or I do Map
13 Quest; and, you know, when you do Map Quest, it has
14 the little things on the said that say take exit 136.

15 It seems small. I know that it must seem small.
16 But it is very important. It's very important. If
17 you just using your common sense and your life
18 experience don't feel right about admitted cop talk
19 being in a statement, then it raises concerns about
20 the statement as a whole. This is something -- this
21 is logic. It's something that necessarily follows
22 from that.

23 I have never until I started asking people I
24 know and actually having them -- I have never heard
25 anybody say that. But I have seen 200 times, like I

1 said, when I questioned them in incident reports when
2 government agents, police officers are talking about
3 people driving fast.

4 Investigator McDaniels notarized this report or
5 this statement. What that means is this is -- and
6 I'd better use the one I've got. This is a sworn
7 statement with two empty spaces for the witnesses.
8 Why do you have people witness these statements? Why
9 do you have another deputy -- or deputy. Right.
10 He's RC. He's Richland County. Why do you have
11 another deputy witness a statement like this or a
12 secretary or somebody?

13 Because if you come into court and there's
14 something wrong or there's something apparently
15 wrong, you're going to be asked about it. You're
16 going to be asked about it. He has sloppy note
17 taking. No witnesses on here. This a sworn
18 statement before him. So he is the taker of the
19 oath. I must as a matter of duty and belief from the
20 discrepancies that I find in here present to you that
21 I don't find this credible. I do not find this
22 credible.

23 The government is very powerful. They can put
24 together a case against an American citizen like you
25 can't believe. They can bring -- they had one

1 investigator. They wanted to put something back on
2 the stand, they called him up off the street. They
3 have all these nice charts. They have all the
4 scientists. They have all the power that our tax
5 money can buy and they're able to put together a
6 case.

7 Mr. Goldberg was talking about, well, why would
8 he put this in there or why would he put that in
9 there? I don't know. But why is that in there when
10 it's very difficult to find the chink in this armor,
11 it's very difficult for an American citizen
12 confronted with this kind of evidence and these
13 serious, grave accusations to basically find a way to
14 defend himself against the government?

15 He pled not guilty. He said he didn't do it.
16 Who is he? A dude that can't afford a lawyer. So he
17 gets me, something of a regular cat, but he gets me
18 appointed to represent him. So then he and I; and
19 everything over here, every agent, every tax dollar,
20 I am all he's got. I found a weakness in this case.
21 I'm telling you about it because it's hard to find
22 weaknesses in these cases because they usually put
23 them together.

24 And despite what he says, they don't run around
25 randomly writing times in reports. They know this

1 stuff is important. According to this, he picked him
2 up at 1:00 in Orangeburg. He is giving him his
3 Miranda rights at 5623 Two Notch Road 25 minutes
4 later? And then he's taking his statement five
5 minutes later. So 30 minutes later, 30 minutes after
6 he is arrested in Orangeburg, we've got this big
7 statement?

8 It doesn't make any sense. And that's why he
9 was up here telling you that I write random times
10 down. You can use your common sense about this.
11 Because this Honorable Court is going to instruct you
12 on voluntariness of confessions. And one of the
13 things -- and he knew, and I asked him about it --
14 but one of the things is the length of time in
15 custody.

16 What in the world kind of sense does it make for
17 a government agent who has been doing this for seven
18 years and knows that it's important to be like, oh, I
19 had better things to do than to write down the real
20 time. He knows his times were off between his report
21 and his statement. Why? I don't know. He typed the
22 statement. He notarized the statement. He wrote the
23 report. He did everything. He says this is Mr.
24 McBride's signature. He says it. Nobody else.

25 Ladies and gentlemen, I'm losing my voice. But

1 I want you to know I appreciate your being here just
2 like they said they appreciate your being here. This
3 is serious business. The only chance an American
4 citizen has is for his fellow members of his
5 community, his fellow citizens to come in here and
6 scrutinize this stuff. They don't get to just say
7 it. He doesn't get to just sit up here and say,
8 yeah, he signed this, he signed that. This stuff
9 gets tested. And when it doesn't make sense, it
10 doesn't make sense.

11 And you know what reasonable doubt is. A
12 reasonable doubt is a doubt that would cause an
13 ordinary person to hesitate to act. It's up to you
14 all. The judge is going to instruct you. And I told
15 you all not to listen to Ms. Campbell and don't
16 listen to me. But he is going to say that. It's
17 your doubt. Each of you individually.

18 If you don't like that there's cop talk,
19 admitted cop talk in here, guess what? You can say I
20 doubt the whole thing. And nobody can do anything to
21 you. They can't make you convict him. They can't
22 make you make any decision. You're free members of
23 this society. They are the government. The
24 Constitution of the United States is written against
25 them for us. It protects us from them. They have no

1 more power in this case. It's over for them. It's
2 up to you all.

3 Please do the right thing. Please listen to the
4 judge and think about this stuff. Use your best
5 judgment and look at these exhibits. And I guess
6 we'll see you all in a little while. Thanks.

7 *THE COURT:* All right, ladies and gentlemen.
8 You have now heard the evidence and the arguments of
9 both the State and the defendant. I'll explain to
10 you the law as it applies in this case.

11 Under our Constitution and Code of Laws only the
12 jury can make findings of fact in this case. I am
13 not permitted to indicate to you how I may feel about
14 the facts. If I have said or done anything in this
15 case which would indicate to you that I have an
16 opinion concerning the facts of the case, then you
17 should disregard that. The jury must independently
18 weigh the evidence presented in this trial and render
19 a verdict based solely on that evidence.

20 Now, the same Constitution and laws that
21 designate and make you the finders of fact also make
22 me the instructor of the law. If you have some idea
23 as to what the law is, what the law ought to be and
24 it does not agree with what I now tell you the law
25 is, you are obligated under the oath which you've

1 taken to abandon that preconception on your part and
2 accept and apply the law precisely as I now state it
3 to you.

4 The indictments in this case, and there are
5 three, charge the defendant with burglary in the
6 first degree, armed robbery and kidnapping. I'll
7 remind you again the fact that the defendant was
8 arrested, charged and indicted in this case is not
9 evidence in this case. It cannot be considered by
10 you as evidence of guilt in this case, nor does it
11 create any presumption or inference of guilt.

12 This document is simply -- or these documents --
13 are simply formal written instruments which contain
14 the charges made by the State against the defendant.
15 It's the formal documents by which the cases are
16 brought into court.

17 Now, these indictments, as I have indicated,
18 allege several different offenses against the
19 defendant. Each indictment charges a separate and
20 distinct offense. You must decide each indictment
21 separately on the evidence and the law applicable to
22 that indictment uninfluenced by your decision as to
23 any other indictment. The defendant may be convicted
24 or acquitted on any or all of the charges, offenses
25 charged, and you'll be asked to write a separate

1 verdict of guilty or not guilty on each indictment.

2 Now, the defendant has pled not guilty to this
3 indictment. That plea puts the burden on the State
4 to prove the defendant guilty. A person charged with
5 committing a crime in South Carolina is never
6 required to prove himself or herself innocent. This
7 is an important rule of law in this country that the
8 defendant in a criminal trial will always be presumed
9 to be innocent of the crime for which the indictment
10 was issued unless guilt has been proven by evidence
11 satisfying you of that guilt beyond a reasonable
12 doubt.

13 This presumption of innocence does not end when
14 you begin your deliberations but it accompanies the
15 defendant throughout the trial until you reach a
16 verdict of guilt based on evidence satisfying you of
17 that guilt beyond a reasonable doubt.

18 The presumption of innocence, in other words, is
19 not a mere legal theory. It's not a legal phrase.
20 It's a substantial right to which every defendant is
21 entitled. This presumption of innocence accompanies
22 a defendant from the time he or she is charged,
23 throughout the trial, until you reach a verdict of
24 guilt based on evidence satisfying you of that guilt
25 beyond a reasonable doubt.

1 What is a reasonable doubt at law? A reasonable
2 doubt is the kind of doubt that would cause a
3 reasonable person to hesitate to act. Let me repeat
4 that. A reasonable doubt is the kind of doubt that
5 would cause a reasonable person to hesitate to act.

6 The State has the burden of proving the
7 defendant guilty beyond a reasonable doubt. Some of
8 you may have served as jurors in civil cases where
9 you were told it's only necessary to prove a fact is
10 more likely true than not true, such as by the
11 greater weight or preponderance of the evidence. In
12 criminal cases, however, the State's proof must be
13 more powerful than that. It must be beyond a
14 reasonable doubt.

15 Proof beyond a reasonable doubt is proof that
16 leaves you firmly convinced of the defendant's guilt.
17 There are very few things in this world we know with
18 absolute certainty, and in criminal cases the law
19 does not require proof that overcomes every possible
20 doubt. If, based on your consideration of the
21 evidence, you are firmly convinced of the defendant's
22 guilt of the crimes charged, you must find the
23 defendant guilty. If, on the other hand, you think
24 there is a real possibility that the defendant is not
25 guilty, you must give the defendant the benefit of

1 the doubt and find the defendant not guilty.

2 Now, there are two types of evidence which has
3 been mentioned, and they have been presented during
4 this trial: Direct evidence and circumstantial
5 evidence. Direct evidence is the testimony of a
6 person who claims to have actual knowledge of a fact,
7 such as an eye witness. This is evidence which
8 immediately establishes the main fact to be proven.

9 Circumstantial evidence, on the other hand, is
10 proof of a chain of facts or circumstances indicating
11 the existence of a fact. It's evidence which
12 immediately establishes the collateral facts from
13 which the main fact may be inferred. Circumstantial
14 evidence is based on inference, in other words, and
15 not on personal knowledge or observation. But the
16 law makes no distinction between the weight or value
17 of either direct or circumstantial evidence, nor is a
18 greater degree of certainty required of
19 circumstantial evidence than of direct evidence.

20 You should weigh all of the evidence in the
21 case. After weighing all of the evidence, if you're
22 not convinced of the defendant's guilt beyond a
23 reasonable doubt, then you must find the defendant
24 not guilty.

25 Now, necessarily, you must determine the

1 credibility of the witnesses who have testified in
2 this case. Credibility simply means believability.
3 It becomes your duty as jurors to analyze and
4 evaluate the evidence and determine which evidence
5 convinces you of its truth.

6 In determining the believability of the
7 witnesses who have testified in this case, you may
8 believe one witness and not believe others, or you
9 may believe several witnesses over one witness. You
10 may believe a part of the testimony of a witness,
11 reject the remaining part of the testimony of the
12 same witness.

13 You may believe a witness's testimony in its
14 entirety or reject the witness's testimony in its
15 entirety. You may consider whether any witness has
16 exhibited to you any interest, bias, prejudice or
17 other motive in this case. And you may consider the
18 appearance and manner of the witness on the witness
19 stand.

20 Now, the defendant is alleged to have made a
21 statement. And you will find that in the evidence
22 that you take to the jury room. I have admitted it
23 into evidence in this case. While I have determined,
24 the Court has determined, that the statement was
25 admissible, I instruct you that you make the ultimate

1 decision as to whether or not the defendant made the
2 statement.

3 If the defendant did make the statement, you
4 must determine whether the statement was made by the
5 defendant voluntarily and of his own free will. This
6 means that the statement was not caused by pressure,
7 fear or threats or coercion or intimidation or by
8 hope or a promise of leniency or a reward of any
9 kind.

10 In determining whether the statement was
11 voluntary, you should consider both the
12 characteristics of the defendant and the details of
13 the questioning.

14 Some of the factors that you may consider are
15 the age of the defendant, the defendant's education
16 or lack of education, the defendant's mental ability,
17 the defendant's I.Q., the defendant's background and
18 environment, place and length of the detention, the
19 nature of the questioning and the lack of advice
20 thereof to the defendant of his Constitutional
21 rights; including, but not limited to, the right to
22 remain silent, that any statement could have been
23 used against him in a court of law, the right to have
24 a lawyer present; if he could not afford a lawyer,
25 that a lawyer would be appointed to represent him

1 without any cost; and that he could stop making his
2 statement at any time.

3 You must carefully consider all of the
4 surrounding circumstances before you give any weight
5 to the alleged statement. The State has the burden
6 of proving beyond a reasonable doubt that the alleged
7 statement was voluntary. If you determine it was,
8 you may give the statement any further consideration
9 that you deem proper. You must decide what weight,
10 if any, should be given to the alleged statement. If
11 you determine the alleged statement was not the free
12 and voluntary statement of the defendant, you should
13 not consider the statement at all.

14 Now, the rules of evidence that govern our
15 courts ordinarily do not permit witnesses to testify
16 about opinions or conclusions. An exception to this
17 rule exists where witnesses we call expert, that we
18 call expert witnesses who have been qualified by
19 education and experience to become expert in some art
20 or science or profession may state an opinion as to
21 relevant and material matter in which the witness
22 claims to be an expert and may also state the reasons
23 his opinion.

24 An expert's testimony, however, is to be given
25 no greater weight than that of any other witness's

1 testimony simply because the witness is an expert.
2 Further, you are not required to accept an expert's
3 opinion even though it's not contradicted.

4 Now, I want to instruct you and I want to
5 emphasize this point most emphatically. I instruct
6 you and emphasize the fact that the defendant did not
7 testify is not a factor to be considered by you in
8 any way in your deliberations and in your
9 consideration on the question of guilt or innocence
10 of the defendant.

11 It must not be considered by you in any manner
12 whatsoever. The defendant has the Constitutional
13 right to remain silent, and the assertion of this
14 right must not be considered by you in your
15 deliberations.

16 I repeat: Under your oath you are to draw no
17 conclusion whatsoever from the fact that the
18 defendant in this case did not testify. The fact
19 that this defendant did not testify should not even
20 be discussed in the jury room. The burden of proof,
21 as I have stated to you, is on the State. The
22 defendant is not required to prove his innocence.
23 The burden of proof remains on the State to prove
24 guilt beyond a reasonable doubt.

25 Now, in order to establish criminal liability

1 criminal intent is required. For example, the mental
2 state required to be proven by the State for some
3 particular crime might be a particular purpose with
4 intent or some knowledge, recklessness or criminal
5 negligence.

6 Criminal intent must be proven by the State
7 beyond a reasonable doubt. Criminal intent is always
8 a matter that must be determined by the jury from the
9 circumstances surrounding the situation. There is no
10 way to prove intent to a mathematical certainty.
11 There is no way medical science can dissect a
12 person's brain and determine what the person had in
13 mind. So the law says that criminal intent may be
14 inferred from the circumstances shown to have existed
15 at the time and place. And this is how you make a
16 determination of whether or not the element requiring
17 intent was present.

18 It's not necessary to establish intent by direct
19 and positive evidence, but intent may be established
20 by inference in the same way as any other fact, by
21 taking into consideration the acts of the parties and
22 all the facts and circumstances of the case.

23 Criminal intent is a mental state, a conscious
24 wrongdoing. It's up to you to determine what the
25 defendant intended to do based on the circumstances.

1 shown to have existed. Criminal intent can arise
2 from an action or a failure to act. It may arise
3 from negligence or recklessness or indifference to
4 duty or to consequences that are considered by the
5 law to be the equivalent of criminal intent.

6 Now, as you know, the defendant is charged with
7 first degree burglary. The State must prove beyond a
8 reasonable doubt that the defendant entered a
9 dwelling without consent. A dwelling is any building
10 or portion of a building in which a person ordinarily
11 sleeps. A building constructed as a dwelling that
12 has never been occupied cannot be considered a
13 dwelling for purposes of burglary. But a building is
14 a dwelling even if the residents are temporarily
15 absent from the building.

16 In order to prove that the defendant entered the
17 dwelling, the State does not have to show that the
18 defendant's entire body entered the dwelling. The
19 smallest entry is sufficient. It may be any part of
20 the body such as a hand or foot or even an instrument
21 such as a hook or some other instrument to gain
22 entry.

23 In addition, the State does not have to prove
24 that force was used to gain entry. If a person
25 enters a building by using deception or artifice or

1 trick or misrepresentation to get consent to enter,
2 then this is also entry without consent.

3 Next the State must prove beyond a reasonable
4 doubt that the defendant intended to commit a crime,
5 either a felony or a misdemeanor at the time of the
6 entry. The mere entry into a dwelling without
7 consent is not burglary. The intent to commit a
8 crime -- if the intent to commit the crime is formed
9 after the entry, it's still not a burglary.

10 On the other hand, if the defendant intended to
11 commit a crime at the time of the entry, it is a
12 burglary even if the intent was abandoned after the
13 entry. It does not matter that the intended crime
14 was not completed. Intent may be shown by acts or
15 the conduct of the defendant and any other
16 circumstances from which you may naturally and
17 reasonably infer intent.

18 And finally, the State must prove beyond a
19 reasonable doubt that when entering or while in the
20 dwelling or when fleeing the defendant or an
21 accomplice was armed with a deadly weapon or
22 explosive or uses or threatens to use a dangerous
23 instrument, displays what appears to be a knife or a
24 pistol or a revolver or a rifle or a shotgun or any
25 other firearm.

1 A deadly weapon is any article, instrument or
2 substance which is likely to cause death or great
3 bodily harm. Whether an instrument has been used as
4 a deadly weapon depends on the facts and
5 circumstances of each case. That's burglary in the
6 first degree.

7 The defendant is also charged with armed
8 robbery. In order to prove this offense, the State
9 must prove beyond a reasonable doubt that the
10 defendant took personal property from the defendant
11 (sic) or in the presence of another person. Property
12 is in the presence of a person if it's within the
13 person's reach or inspection or observation or
14 control so that the person could if not overcome with
15 violence or prevented by fear keep possession of that
16 property.

17 The State must also prove beyond a reasonable
18 doubt the defendant carried away the property
19 intending to permanently deprive the owner of the
20 property and to keep the property for the defendant's
21 own use. The slightest removal of the property or
22 the complete possession of the property even for an
23 instant by the defendant is sufficient to show a
24 taking and carrying away of the property.

25 Taking and carrying away of the property must

1 have been done with violence or by putting the owner
2 of the property in fear of violence. And finally,
3 the State must prove beyond a reasonable doubt that
4 the defendant was armed with a deadly weapon or while
5 alleging either by action or word that he was armed
6 while using a representation of a deadly weapon or
7 any object which a person present during the
8 commission of the robbery reasonably believed to be a
9 deadly weapon during the robbery.

10 A deadly weapon obviously is any article,
11 instrument or substance which is likely to cause
12 death or great bodily harm. Whether an instrument
13 has been used as a deadly weapon depends on the facts
14 and circumstances of each case.

15 Third, the defendant is charged with kidnapping.
16 The State must prove beyond a reasonable doubt that
17 the defendant knowingly and unlawfully seized,
18 confined, inveigled, decoyed, kidnapped, abducted or
19 carried away another person without authority of law.
20 To do a thing unlawfully is to do it willfully
21 against the law.

22 Knowingly means with knowledge; consciously, not
23 accidentally. Seize means to take hold of suddenly
24 or forcibly. Confine means to limit, restrict or
25 enclose within bounds, imprison or shut or keep in.

1 Inveigle -- that's a good word -- means to lure,
2 entice or lead astray by false representation. Decoy
3 means to lure by, as if by decoy. A decoy is
4 something to entice a person into a trap. Kidnap is
5 to remove a person against his will by unlawful force
6 or by fraud. Abduct means to carry off secretly or
7 by force or for an illegal purpose.

8 To carry away obviously means to remove. A
9 kidnapping commences when one is wrongfully deprived
10 of his freedom, her freedom, and continues until that
11 freedom is restored.

12 Now, the State does not have to prove that the
13 defendant did all of these things. Instead, if you
14 find beyond a reasonable doubt the defendant did any
15 of these things, you may find the defendant guilty of
16 kidnapping.

17 Something that is done without authority of law
18 is something which the law does not sanction, permit,
19 allow, condone or provide justification for. A
20 kidnapping does not have to be for any personal or
21 monetary gain or for any illegal purpose but may be
22 for any reason whatsoever.

23 Kidnapping is a continuing offense. The offense
24 commences when one is wrongfully and unlawfully
25 deprived of his freedom and continue, as I said,

1 until that freedom is restored.

2 Now, ladies and gentlemen, there are two
3 possible verdicts which you may, must, or may find on
4 each indictment. They are guilty or not guilty.
5 There is no significance whatsoever in the order in
6 which I state these possible verdicts. Simply, one
7 must be stated first.

8 Ladies and gentlemen, your verdict must be
9 unanimous. Mr. Foreman, when the jury agrees on the
10 verdict, you'll write the verdict on the back of the
11 Indictments. And the indictments will go to the jury
12 room with you on what we call the face of the
13 indictment as opposed to the body of the indictment.
14 In the bottom left-hand corner is a place for your
15 verdict. If you will sign, indicate whether you find
16 the defendant guilty or not guilty on each
17 indictment, sign your name, date it, knock on the
18 jury room door, and we will accept or receive your
19 verdict.

20 Now, I'm going to ask you to retire to the jury
21 room at this time. Do not begin your deliberations
22 until you receive the indictments and all of the
23 evidence. Once all of the evidence comes into the
24 jury room with the indictments, you may then begin
25 your deliberations.

1 It's my understanding that we've ordered lunch
2 for you. It should be here by now. You take
3 whatever suits your pleasure, to eat before you
4 deliberate or eat while you deliberate or don't eat
5 at all.

6 All right. Thank you very much, ladies and
7 gentlemen. If you'll just retire to the jury room at
8 this time.

9 (Jury out at 12:36 p.m.)

10 THE COURT: Any exceptions to the charge from
11 the State?

12 MS. CAMPBELL: Part of your charge was the
13 following are examples of instruments which may be
14 deadly weapons. You just chose not to do that?

15 THE COURT: Well, I did it once. I didn't think
16 I needed to do it twice.

17 MS. CAMPBELL: I don't believe you did it once.

18 THE COURT: I did do it once. And, by the way,
19 my eyes are dilated. But that's no excuse. I
20 thought I got through it pretty good. I'm sorry, Ms.
21 Campbell. But I thought I did it under the burglary
22 first charge. If I can get there. On the burglary
23 first charge I said the defendant may be armed with a
24 deadly weapon, explosive or uses or threatens to use
25 a dangerous instrument, displays what appears to be a

1 knife, pistol, revolver, rifle, shotgun or other
2 firearm. Now, I'll be glad to say it again on armed
3 robbery if that's what you want.

4 MS. CAMPBELL: That's okay, Judge.

5 THE COURT: I'm sorry?

6 MS. CAMPBELL: That's fine.

7 THE COURT: Okay. Anything from the defendant?

8 MR. SUTHERLAND: No exceptions, Your Honor.

9 THE COURT: All right. Let's check the
10 evidence.

11 MR. SUTHERLAND: Actually though, Your Honor, I
12 brought Exhibit 2 back with me from over here.

13 THE COURT: Give it back.

14 MR. SUTHERLAND: Sorry.

15 THE COURT: Yes, sir, Mr. Sutherland.

16 MR. SUTHERLAND: Sir, we would hope that a jury
17 form might be able to go back instead of the
18 indictments to the jury. We would just object that
19 the indictments are just prejudicial, and we would
20 hope, you know, that a guilty, not guilty would do.

21 THE COURT: Overruled.

22 MR. SUTHERLAND: Thank you, sir.

23 (Pause)

24 THE COURT: All right. Let's check the
25 evidence. Any objection to releasing the alternate?

1 *MS. CAMPBELL:* No objection.

2 *MR. SUTHERLAND:* (Shakes head negatively):

3 (Pause)

4 (Whereupon, the jury begins deliberating at
5 12:40 p.m.)

6 (Whereupon, the alternates are excused)

7 *THE COURT:* All right, counsel. The jury
8 informs us that we have a verdict. Are you ready to
9 receive the verdict?

10 *MS. CAMPBELL:* The State's ready.

11 *MR. SUTHERLAND:* The defense is ready, sir.

12 *THE COURT:* All right. Bring the jury.

13 (Jury in at 2:00 p.m.)

14 *THE BAILIFF:* The jury is all present, Your
15 Honor.

16 *THE COURT:* Thank you very much. Madam
17 Forelady, has the jury reached a verdict?

18 *FOREPERSON:* Yes, sir.

19 *THE COURT:* Will you hand it to the bailiff,
20 please.

21 (Forelady complies)

22 *THE COURT:* All right, Madam Clerk. Publish the
23 verdicts, please.

24 *THE CLERK:* Yes, sir. Indictment number
25 2006-GS-40-12480, The State of South Carolina vs.

1 Clyde Leroy McBride, indictment for burglary first:
2 We, the jury, find the defendant guilty.

3 Indictment number 2006-GS-40-12482, The State of
4 South Carolina vs. Clyde Leroy McBride, indictment
5 for armed robbery: We, the jury, find the defendant
6 guilty.

7 Indictment number 2006-GS-40-12481, the State of
8 South Carolina vs. Clyde Leroy McBride, indictment
9 for kidnapping: We, the jury, find the defendant
10 guilty.

11 Madam forelady, was this your verdicts and the
12 verdicts of the entire jury?

13 MADAM FORELADY: Yes, ma'am.

14 THE CLERK: Thank you.

15 THE COURT: Any desire to poll the jury?

16 MR. SUTHERLAND: Poll the jury, please, Your
17 Honor.

18 THE COURT: Go ahead. Poll the jury.

19 THE CLERK: Ladies and Gentlemen of the Jury,
20 I'm going to ask you two questions relating to your
21 verdicts. Please answer yes or no to each question as
22 I call your number.

23 Number 202, was this your verdict?

24 JUROR: Yes, ma'am.

25 THE CLERK: Is it still your verdict?

1 JUROR: Yes, ma'am.

2 THE CLERK: Number 235, was this your verdict?

3 JUROR: Yes.

4 THE CLERK: Is it still your verdict?

5 JUROR: Yes.

6 THE CLERK: Number 187, was this your verdict?

7 JUROR: Yes.

8 THE CLERK: Is it still your verdict?

9 JUROR: Yes.

10 THE CLERK: Number 96, was this your verdict?

11 JUROR: Yes.

12 THE CLERK: Is it still your verdict?

13 JUROR: Yes.

14 THE CLERK: Number 199, was this your verdict?

15 JUROR: Yes.

16 THE CLERK: Is it still your verdict?

17 JUROR: Yes, ma'am.

18 THE CLERK: Number 34, was this your verdict?

19 JUROR: Yes.

20 THE CLERK: Is it still your verdict?

21 JUROR: Yes.

22 THE CLERK: Number 203, was this your verdict?

23 JUROR: Yes.

24 THE CLERK: Is it still your verdicts?

25 JUROR: Yes.

1 THE CLERK: Number 209, was this your verdict?

2 JUROR: Yes.

3 THE CLERK: Is it still your verdict?

4 JUROR: Yes.

5 THE CLERK: Number 69, was this your verdict?

6 JUROR: Yes.

7 THE CLERK: Is it still your verdict?

8 JUROR: Yes.

9 THE CLERK: Number 29, was this your verdict?

10 JUROR: Yes.

11 THE CLERK: Is it still your verdict?

12 JUROR: Yes.

13 THE CLERK: Number 48, was this your verdict?

14 JUROR: Yes.

15 THE COURT: Is it still your verdict?

16 MR. SUTHERLAND: Yes.

17 THE CLERK: Number 157, was this your verdict?

18 JUROR: Yes.

19 THE CLERK: Is it still your verdict?

20 JUROR: Yes.

21 THE CLERK: The jury has been polled, Your
22 Honor.

23 THE COURT: All right. Thank you very much.

24 All right, Ladies and Gentlemen. That will complete
25 your service on this case. I want to thank you very

1 much. These difficult matters have to be resolved,
2 and I appreciate and thank you on behalf of the court
3 system and the litigants in this case. I always tell
4 jurors this system can do without me; this system can
5 do without these jurors; this system cannot on the
6 other hand do without you. You're such an important
7 part of the judicial system of this country that the
8 system would truly fall apart if it weren't for
9 citizens who are willing to come sit and make these
10 difficult decisions.

11 Now, the remaining portion of this case will
12 consist of the sentencing of the defendant. We do
13 this contemporaneously with the jury's verdict in
14 this county and most anywhere in this state, because
15 it's not like television, as we said earlier. We
16 don't wait and sentence at some time later. We go
17 ahead and complete the case right now. And you're
18 welcome to stay for that.

19 I'm going to dismiss you now. And you can
20 either come back into the courtroom. And we're going
21 to take about a ten-minute break. The clerk is going
22 to talk to you in the back for just a minute. If you
23 don't choose to come back and witness the sentencing
24 portion of this proceeding, I'm going to ask you to
25 return to the jury assembly room because it's my

1 understanding there may be other cases that are going
2 to be called, you may be called upon to sit on this
3 week.

4 We still have -- it's Wednesday afternoon. But
5 it's my understanding that some other cases may be --
6 short cases may be coming up this week. So, those of
7 who wish to stay for the sentencing, if you'll just
8 after you go back to the jury room, collect your
9 belongings, just come back around. The bailiff is
10 going to show you how to come around and sit in the
11 gallery and witness the sentencing proceeding.

12 If you do not wish to do so, you're excused to
13 go to the jury assembly room for further
14 instructions. So, again I want to thank you. Good
15 luck to all of you. And have a happy Easter.

16 (Whereupon, the jurors are excused from the
17 trial of the case).

18 *THE COURT:* All right. We'll reconvene in ten
19 minutes.

20 (Whereupon, a break is taken)

21 *THE COURT:* All right. Mr. Sutherland, bring
22 your client. All right, Solicitor.

23 *MS. CAMPBELL:* May it please the Court, Your
24 Honor. Standing next to me is the victim in the
25 case, Ms. Gayle Roberts. I think she would like to

1 briefly address the Court before we address his prior
2 record.

3 *THE COURT:* All right. Yes, ma'am.

4 *MS. ROBERTS:* Yes, sir. I just wanted to say
5 that this incident that happened on that August
6 afternoon has changed me completely. I don't come
7 home the way I used to. I do things now that I have
8 to do every day just to make myself feel safe. But
9 most importantly, I close my eyes and I see that gun
10 pointed at me. And I'm not sure if I'll ever forget
11 that.

12 *MR. GOLDBERG:* His prior history, if you're
13 ready, Your Honor?

14 *THE COURT:* Yes, sir.

15 *MR. GOLDBERG:* He has convictions from 1987 for
16 burglary second degree.

17 *THE COURT:* All right. Let's go slowly now.

18 *MR. GOLDBERG:* Okay. Yes, sir. 1987
19 convictions for burglary second degree.

20 *THE COURT:* And what was the disposition of
21 that?

22 *MR. GOLDBERG:* 15 suspended on five years of
23 confinement and five years probation.

24 *THE COURT:* So he did five years active on
25 burglary second?

1 MR. GOLDBERG: That's the way I read it, Your
2 Honor.

3 THE COURT: 1987?

4 MR. GOLDBERG: Yes, sir. And I believe on that
5 same date he also was convicted of grand larceny.
6 That sentence was run concurrently, five years
7 concurrent. Additionally, on that same date, auto
8 breaking, five years to run concurrently. Petty
9 larceny, 30 days concurrent, and use of vehicle
10 without owner's consent, five years run concurrent.

11 THE COURT: All right.

12 MR. GOLDBERG: In 1989 out of Sumter County, a
13 conviction for use of vehicle without permission, two
14 years suspended to six months confinement.

15 THE COURT: So he spent six years in the
16 Department of Corrections on that one. Right?

17 MR. GOLDBERG: I'm sorry?

18 THE COURT: Six years or six months?

19 MR. GOLDBERG: On the use of vehicle, it was two
20 suspended on six months confinement.

21 THE COURT: Six months?

22 MR. GOLDBERG: Yes, sir. And three years
23 probation.

24 THE COURT: That was still active?

25 MR. GOLDBERG: That was in 1999.

1 THE COURT: That was still an active sentence?

2 MR. GOLDBERG: Yes, sir. Then in 1994 he had a
3 probation revocation. It was revoked ten years,
4 suspended to two years, the way I read it.

5 THE COURT: Did somebody call probation? They
6 wanted to have --

7 THE CLERK: She just told me to give you the
8 disposition sheets.

9 THE COURT: Well, she said something about
10 parole.

11 MS. CAMPBELL: He may be on parole.

12 THE COURT: Go ahead. 1994, what was the
13 charge?

14 MR. GOLDBERG: It was a probation revocation.

15 THE COURT: Probation revocation.

16 MR. GOLDBERG: Yes, sir.

17 THE COURT: And what was the sentence?

18 MR. GOLDBERG: It says he was revoked ten years,
19 suspended to two years.

20 THE COURT: So he did two years at the
21 Department of Corrections on that one?

22 MR. GOLDBERG: Yes, sir.

23 THE COURT: All right.

24 MR. GOLDBERG: 1996, conviction for grand
25 larceny. He received five years, active sentence.

1 THE COURT: Five years.

2 MR. GOLDBERG: Burglary second degree.

3 THE COURT: The same? '96?

4 MR. GOLDBERG: Yes, sir. 15 years run --

5 THE COURT: Is that an active?

6 MR. GOLDBERG: Yes, sir.

7 THE COURT: Active 15?

8 MR. GOLDBERG: That's correct.

9 THE COURT: In 1996 he got 15 years on a
10 burglary second?

11 MR. GOLDBERG: Yes, sir. On the same date he
12 had the grand larceny I mentioned, five years
13 concurrent. Additionally, a failure to stop. He got
14 three years concurrent. He also got a possession of
15 a stolen vehicle the same day, 30 days, and a petty
16 larceny for 30 days, all to run concurrent.

17 Your Honor, I also show a conviction from the
18 state of Mississippi from 1992. It's for burglary of
19 a residence. I believe it's Mississippi. It might
20 be Missouri. The disposition is unknown in terms of
21 the sentence according to this sheet.

22 THE COURT: All right.

23 MR. GOLDBERG: And also, Your Honor, he has
24 convictions out of the state of North Carolina. In
25 1995 he was charged with possession of a stolen

1 vehicle. His sentence was eight to ten months,
2 active sentence. And finally, Your Honor, again in
3 North Carolina in 1995, once he was sentenced to
4 that, he escaped from that facility. He was on
5 escape status until 2001, at which point he was
6 detained. And then he was convicted for the escape
7 and received a sentence of six to eight months active
8 time in 2001. And that would be the extent of his
9 record.

10 *THE COURT:* So the last incarceration was a
11 15-year sentence in '96 on the burglary second
12 charge?

13 *MR. GOLDBERG:* I believe so, Your Honor.
14 However, he also had -- it looks like he had to do a
15 little bit of time on that escape. And his court
16 date for that was 2001.

17 *THE COURT:* But that would be of 2002, whatever
18 his time was, I would think.

19 *MR. GOLDBERG:* Yes, sir. I would think.

20 *THE COURT:* All right. Mr. Sutherland.

21 *MR. SUTHERLAND:* May it please the Court, sir?
22 Mr. McBride is 39 years old. He was employed at a
23 temporary service at the time of his arrest. There
24 is no disputing that he has had consistent problems
25 with the law.

1 I can say that I have known him for six or seven
2 weeks, that we've had a good relationship, that he's
3 always been kind and thoughtful and he's cooperated
4 fully in the preparation of his defense. He does
5 have family members who care about him, some of which
6 have been here today.

7 Your Honor, we would just ask the Court to
8 consider giving Mr. McBride a chance to one day
9 return to society. Being 39 years old, I do not
10 believe that after a substantive period of time that
11 he would be a threat to society. In fact, I mean, I
12 don't believe that he is now. He's been convicted by
13 a jury of his peers. And we would just hope that he
14 might one day have a chance to return to society,
15 return to his family and hopefully lead a productive
16 life there from, sir.

17 **THE COURT:** All right. Mr. McBride, do you have
18 anything you want to tell me?

19 **MR. MCBRIDE:** No, sir.

20 **THE COURT:** The kidnapping offense, the
21 kidnapping conviction makes him eligible to be listed
22 on the sexual offender registry. Does the State have
23 any position on whether or not -- since it appears
24 that this was not a sexual offense?

25 **MS. CAMPBELL:** We would agree it's not a sexual

1 offense.

2 *THE COURT:* So, you understand that?

3 *MR. SUTHERLAND:* Yes, sir.

4 *THE COURT:* I am not going to order that he be
5 placed on the sexual offender registry. If I did not
6 order that, he would automatically be placed on the
7 sexual offender registry.

8 Mr. McBride, you understand that the potential
9 sentences in this case, or in these various cases,
10 because you were convicted of burglary in the first
11 degree, the minimum sentence for that charge is 15
12 years. Do you understand that?

13 *MR. MCBRIDE:* Yes, sir.

14 *THE COURT:* And the maximum is life in prison.

15 *MR. MCBRIDE:* Yes, sir.

16 *THE COURT:* Do you understand that?

17 *MR. MCBRIDE:* Yes, sir.

18 *THE COURT:* And life means life without parole.
19 The armed robbery charge, I have to sentence you to a
20 minimum of ten years in jail. Do you understand
21 that?

22 *MR. MCBRIDE:* Yes, sir.

23 *THE COURT:* And I could sentence you up to a
24 maximum of 30 years on that charge. Do you
25 understand that?

1 MR. MCBRIDE: Yes, sir.

2 THE COURT: And on your kidnapping charge, that
3 has no mandatory minimum, but I can sentence you up
4 to 30 years on that charge. Do you understand that?

5 MR. MCBRIDE: Yes, sir.

6 THE COURT: And I also have the authority to run
7 all those sentences consecutive to each other. Do
8 you understand that?

9 MR. MCBRIDE: Yes, sir.

10 THE COURT: And all of those charges carry a
11 mandatory, I mean a no parole status that would mean
12 that you would have to serve at least 85 percent of
13 whatever sentence you receive. Do you understand
14 that?

15 MR. MCBRIDE: Yes, sir.

16 THE COURT: All right. I also have to consider
17 that your record is not too good. You spent five
18 years -- you were sentenced to five years. You
19 didn't spend the full five years in jail in 1987. In
20 1989 you got six months on that vehicle charge. You
21 got two years on a probation revocation in 1994. You
22 got 15 years in the penitentiary in 1996. And here
23 all of these offenses are very similar, which means
24 that you continue to do the same kind of behavior
25 that you've been doing since 1987, for the last --

1 what -- 20 years.

2 I'm afraid I can't have much sympathy for your
3 condition. Plus, I am concerned about this victim
4 not ever, not ever having to worry about you invading
5 her privacy or taking advantage of her in the future.

6 MS. CAMPBELL: Judge, she is making the jurors
7 leave before sentencing.

8 MS. COX: I'm sorry, Your Honor.

9 THE COURT: Just hold them just a minute,
10 please. Let them stay.

11 MS. COX: Judge Few needs them for a case.

12 THE COURT: That's fine. He can have them in
13 ten minutes.

14 MS. COX: He's waiting in the courtroom right
15 now.

16 THE COURT: Well, just tell him I said so,
17 please.

18 MS. COX: All right.

19 THE COURT: I told you all you can stay and you
20 can stay. I'm older than he is. I've got more
21 seniority than he does. All right, Mr. McBride. On
22 all three of your charges, the sentence of the Court
23 is you be committed to the State Department of
24 Corrections for a period of 30 years. All sentences
25 to run concurrent. You're given credit for time

1 served. Good luck to you, sir.

2 MR. SUTHERLAND: Thank you kindly, Your Honor.

3 MR. GOLDBERG: Thank you, Your Honor.

4 THE COURT: Now you can go.

5 (Whereupon, the proceedings are concluded)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 2nd, 3rd and 4th days of April, 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

July 26, 2007

Jenny H. Williams

Jenny H. Williams, Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLYDE LEROY MCBRIDE,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

ROBERT M. PACHAK
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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ATTORNEY FOR APPELLANT

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STATEMENT OF ISSUE ON APPEAL

Whether the affidavit in the arrest warrant provided sufficient probable cause for the magistrate to issue the warrant?

STATEMENT OF THE CASE

Appellant was convicted of armed robbery, kidnapping, and first degree burglary after a jury trial held before the Honorable G. Thomas Cooper, Jr. on April 2-4, 2007, in Richland County. Thirty (30) year sentences were imposed on each charge.

This appeal follows.

ARGUMENT

The affidavit in the arrest warrant provided insufficient probable cause for the magistrate to issue the warrant.

On August 29, 2005, the victim was robbed at gun point at her home. She was forced inside and currency and her car keys were taken. The suspect also took her car. On September 25, 2005, the car was recovered off of I-26 in Lexington County. The steering wheel of the car was swabbed for DNA which was found to match appellant's DNA profile.

Defense counsel moved for a hearing pursuant to Franks v. Delaware, 438 U.S. 154, 98 S.Ct. 2674 (1978) because the affidavit left out a material fact in the affidavit thereby making it misleading to an issuing magistrate. No where did the affidavit state that the victim's car had been recovered 27 days after the date of the incident. During that 27 days appellant could have walked by and tampered with the vehicle leaving his DNA on it. That did not mean that he committed the armed robbery and burglary 27 days earlier. (ROA p. 101, line 1 – p. 105, line 10)

The trial judge ruled that the omission of the 27 days was not intentional and that its inclusion would not have negated probable cause. (ROA p. 138, line 15 – p. 140, line 21) That ruling was in error.

The exclusion of relevant evidence in an arrest warrant does not have to be done intentionally to show that probable cause is lacking. If the exclusion was done recklessly relief may still be sought. United States v. Shorter, 328 F.3d 167 (4th Cir. 2003); United States v. Colkley, 899 F.2d 297 (4th Cir. 1990).

CONCLUSION

Because relevant and substantial evidence was recklessly omitted from the arrest warrant, appellant's conviction should be reversed.

Respectfully submitted,



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of January, 2008.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

CLYDE LEROY MCBRIDE,

APPELLANT

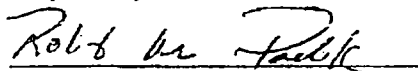
PETITION TO BE RELIEVED AS COUNSEL

Counsel for Clyde Leroy McBride states:

1. He is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. He has reviewed the record of appellant's trial before Judge G. Thomas Cooper, Jr., which was held on April 4, 2007, and, in his opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. He has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, he asks the Court to relieve him as counsel for Clyde Leroy McBride.

Respectfully submitted,



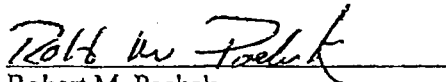
Robert M. Pachak
Appellate Defender
ATTORNEY FOR APPELLANT

This 29th day of January, 2008.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

January 29th, 2008


Robert M. Pachak
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

G. Thomas Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

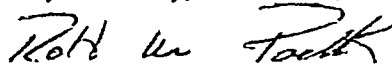
V.

CLYDE LEROY MCBRIDE,

APPELLANT

CERTIFICATE OF SERVICE

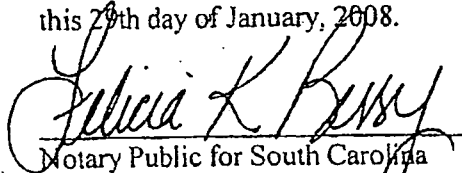
The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal has been served on Clyde Leroy McBride, #237724 at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899 this 29th day of January, 2008.



Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of January, 2008.



(L.S.)
Notary Public for South Carolina

My Commission Expires: August 15, 2010

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Richland County

The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

CLYDE LEROY McBRIDE,

Appellant.

BRIEF OF RESPONDENT

HENRY DARGAN McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

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WARREN B. GIESE
Solicitor, Fifth Judicial Circuit

P. O. Box 192
Columbia, S. C. 29202
(803) 576-1800

ATTORNEYS FOR RESPONDENT

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TABLE OF AUTHORITIES

Cases:

<u>Anders v. California</u> , 386 U.S. 738 (1967)	4
<u>Benton v. Pellum</u> , 232 S.C. 26, 100 S.E.2d 534 (1957)	5
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<u>State v. Sweet</u> , 374 S.C. 1, 647 S.E.2d 202 (2007)	5
<u>State v. Taylor</u> , 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004)	5

STATEMENT OF ISSUE ON APPEAL

The State was not required to establish a strict chain of custody for the car in which law enforcement found Appellant's DNA because the car itself was non-fungible evidence. To the extent the car was relevant to the chain of custody for the DNA evidence, the State identified each person who collected and/or handled the car after it was located, and reasonably demonstrated how they handled it.

STATEMENT OF THE CASE

Respondent concurs with Appellant's procedural Statement of the Case.

STATEMENT OF FACTS

On August 29, 2005, a woman was robbed at gunpoint in her Richland County, South Carolina, home. The robber stole money and the victim's car. (Record on Appeal [R.], pp. 160-186). Police spotted the car, but lost it after a high speed chase down an interstate highway. (R., pp. 3-5-307).

Approximately one month later, the victim's car was found in some woods in Lexington County, South Carolina. Local police contacted a towing service to collect the car and take it to the Richland County Sheriff's Department. A Lexington County Sheriff's deputy secured the scene until the tow truck arrived. (R., pp. 231-232, 235-239).

When processing the car for evidence at the Richland County Sheriff's Department, an officer collected a DNA sample from the steering wheel. (R., pp 255-259). A CODIS search revealed the DNA matched Appellant Clyde Leroy McBride ("McBride"), who was subsequently arrested in Orangeburg County, South Carolina. (R., pp. 279-284, 291-298). After his arrest, McBride confessed to the robbery. (R., pp. 302-313).

On March 15, 2006, the Richland County Grand Jury indicted McBride on one count of kidnapping, one count of first degree burglary, and one count of armed robbery. The matter was called for a jury trial on April 2, 2007, before the Honorable G. Thomas Cooper, Jr., Circuit Court Judge.

The State presented testimony regarding the robbery and subsequent recovery of the victim's car. The tow truck driver testified he was dispatched to an area in Lexington County to tow a car for the Richland County Sheriff's Department. He stated a Lexington County deputy was at the location when he arrived, and told him not to touch anything in the car. He then towed the car to the Richland County Sheriff's Department on Two Notch Road

in Columbia. (R., pp. 235-239).

After testimony regarding collection of evidence from the car, the State called a DNA expert witness. McBride objected to the DNA testimony on the ground the State failed to establish a complete chain of custody for the car. He contended the Lexington County deputy who was at the scene when the tow truck driver arrived was a vital link in the chain of custody. The State argued the tow truck driver was the first one to actually take the car and move it, and all chain witnesses from that point had been presented. The circuit court admitted the evidence, finding there was no evidence the Lexington County Sheriff's Department deputy took custody of the car. (R., pp. 270-279).

The DNA expert testified he compared the DNA found in the car to a sample taken from McBride and determined they matched. He stated the probability the DNA belonged to someone else was one in twenty-four quadrillion for the African-American population, and there are only six billion people on Earth. (R., pp. 278-289).

The jury convicted McBride of all charges, and the circuit court sentenced him to thirty years incarceration on each charge, to run concurrent. (R., pp. 411-426). This appeal followed.

Appellate counsel initially submitted a no merit brief pursuant to Anders v. California, 386 U.S. 738 (1967). By Order dated August 5, 2009, the South Carolina Court of Appeals ordered briefing on the following issue:

In order to establish a complete chain of custody for the DNA, must the State also establish a complete chain of custody for the vehicle in which the DNA was discovered?

ARGUMENT

The State was not required to establish a strict chain of custody for the car in which law enforcement found Appellant's DNA because the car itself was non-fungible evidence. To the extent the car was relevant to the chain of custody for the DNA evidence, the State identified each person who collected and/or handled the car after it was located, and reasonably demonstrated how they handled it.

Rulings regarding the admission of evidence are submitted to the trial court's discretion. State v. Foster, 354 S.C. 614, 582 S.E.2d 426, 429 (2003). Appellate courts will not reverse a trial court's rulings regarding the admissibility of evidence absent an abuse of discretion. *Id.*; see also State v. Governor, 362 S.C. 609, 608 S.E.2d 474, 476 (Ct. App. 2005).

When an analyzed substance has passed through several hands, the identity of individuals who acquired the evidence, and what was done with it between the taking and the analysis, "must not be left to conjecture." State v. Sweet, 374 S.C. 1, 647 S.E.2d 202, 205 (2007) (citing Benton v. Pellum, 232 S.C. 26, 100 S.E.2d 534 (1957)). "[I]f the identity of each person handling the evidence is established, and the manner of handling is reasonably demonstrated, no abuse of discretion by the trial court is shown in admitting the evidence absent proof of tampering, bad faith, or ill-motive." *Id.* at 205-206 (citing State v. Taylor, 360 S.C. 18, 598 S.E.2d 735 (Ct. App. 2004)).

Testimony from each custodian of fungible evidence is not required to establish a chain of custody sufficient to admit the evidence. *Id.* Courts have been willing to fill gaps in the chain of custody due to an absent witness where other evidence establishes the identity of those who have handled the evidence and reasonably demonstrates how it was handled. *Id.*

In contrast to the strict chain of custody requirements for admission of fungible

evidence, a strict chain of custody is not required when the evidence is non-fungible, with fairly unique and readily identifiable characteristic. State v. Freiburger, 366 S.C. 125, 620 S.E.2d 737, 741 (2005); State v. Rogers, 361 S.C. 178, 603 S.E.2d 910, 914 (Ct. App. 2004); State v. Glenn, 329 S.C. 300, 492 S.E.2d 393, 395 (Ct. App. 1997). The trial court has broad discretion to admit such evidence merely on the basis of testimony the item is the one in question, and it is in a substantially unchanged condition from when it was acquired. Freiburger, 620 S.E.2d at 741-42.

The car at issue in this case was clearly non-fungible and readily identifiable as the car in question. The victim identified a picture of the car as the one she owned, and the license tag matched her tag number. Therefore, a strict chain of custody was not required for the car itself.

To the extent the car was relevant to the chain of custody for the DNA evidence found on the steering wheel, the State established a complete chain of custody. Each person who handled the car was identified, and their testimony amply demonstrated how they handled the car while in their possession.

The only "link" McBride contends was missing from the chain of custody was the Lexington County deputy who was there when the tow truck arrived. As the circuit court found, however, there was no indication the deputy took possession of the car or handled it in any way. Rather, it is apparent the deputy simply secured the scene where the car was located, and then waited until the tow truck arrived. In essence, the deputy was the equivalent of a first responder to any crime scene who secures the scene until other officers come in and gather evidence.

The first person to "handle" the car was the tow truck driver, who was identified and

testified at trial. Each person in the chain thereafter was identified and testified regarding their handling of the evidence. Therefore, the State established a complete chain of custody as to the car for purposes of the DNA evidence, and the trial court properly admitted the DNA evidence.

CONCLUSION

Based on the foregoing, Respondent respectfully submits that Appellant's conviction and sentence should be affirmed.

Respectfully submitted,

HENRY DARGAN McMASTER
Attorney General

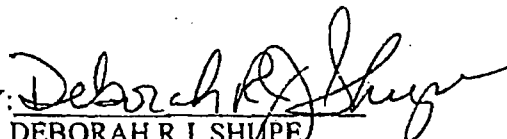
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

DEBORAH R.J. SHUPE
Assistant Attorney General

WARREN B. GIESE
Solicitor, Fifth Judicial Circuit

BY:


DEBORAH R.J. SHUPE

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

ATTORNEYS FOR RESPONDENT

December 4, 2009

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

 Appeal from Richland County

 The Honorable G. Thomas Cooper, Jr., Circuit Court Judge

STATE OF SOUTH CAROLINA,

Respondent,

v.

CLYDE LEROY McBRIDE,

Appellant.

PROOF OF SERVICE

I, Ellen DuBois, certify that I have served the within Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

Robert M. Pachak
 Assistant Appellate Defender
 South Carolina Commission on Indigent Defense
 Division of Appellate Defense
 PO Box 11589
 Columbia, SC 29211-1589

I further certify that all parties required by Rule to be served have been served.

This 4th day of December, 2009.


 ELLEN DUBOIS
 Legal Assistant

Office of Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3727

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Clyde Leroy McBride,

Appellant.

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-357
Submitted June 1, 2010 – Filed July 12, 2010

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Deborah R.J. Shupe; and

Solicitor Warren Blair Giese, all of Columbia, for
Respondent.

PER CURIAM: Clyde Leroy McBride appeals his convictions for first-degree burglary, kidnapping, and armed robbery. On appeal, McBride argues the State failed to prove a complete chain of custody for DNA evidence because it failed to establish a complete chain of custody for the vehicle in which his DNA was discovered. The State was not required to prove the chain of custody for the vehicle because it possesses unique identifiable characteristics. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741-42 (2005). The State introduced evidence that the samples used for DNA testing were taken from the victim's stolen vehicle. No further authentication was required. Accordingly, because the State proved the chain of custody from the time the samples were collected from the vehicle until they were tested for DNA, we affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); see State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (noting a complete chain of custody must be established, as far as practicable, tracing possession from the time a sample is collected until the final custodian by whom it is analyzed).

AFFIRMED.

FEW, C.J., THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Richland)

2010CP4005492

Clyde Leroy McBride)
Full name and prison number, if any, of applicant)

v.)

STATE OF SOUTH CAROLINA)

Name of Respondent)

ATTORNEY GENERAL)

APPLICATION FOR

POST-CONVICTION RELIEF

2010 AUG 16 AM 9:31
JEANNETTE W. MCBRIDE
C.C.P. & G.S.
FILED
RICHLAND COUNTY

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention MCCORMICK CORRECTIONAL INSTITUTION
386 Redemption Way McCormick, S.C. 29899
2. Name and location of Court which imposed sentence Richland County General
Session Court 1701 Main Street Columbia S.C. 29201
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 06-GS-40-12480 Burglary 1st
 - (b) 06-GS-40-12481 Kidnapping
 - (c) 06-GS-40-12482 Armed Robbery
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 4/4/07 - 30 yrs Concurrent
 - (b) 4/4/07 - 30 yrs Concurrent
 - (c) 4/4/07 30 yrs Concurrent

ATTACHMENT
TO

(9)(A) AND (10)(A)

APPLICANTS POST-CONVICTION RELIEF APPLICATION.

AS A MATTER OF INTRODUCTION, THE APPLICANT, Clyde McBride, Respectfully submits That the EVENTS WHICH TRANSPIRED IN THE INSTANT CASE CONSTITUTE A DENIAL OF THE APPLICANT'S RIGHTS TO DUE PROCESS OF LAW AS GUARANTEED BY THE FIFTH AMENDMENT TO THE UNITED STATES CONSTITUTION AND TO EFFECTIVE ASSISTANCE OF COUNSEL AS GUARANTEED BY THE SIXTH AMENDMENT TO THE UNITED STATES CONSTITUTION, THESE ERRORS WAS NOT MERELY procedural, BUT SUBSTANTIALLY INFRINGED UPON THE APPLICANT'S CONSTITUTIONAL RIGHTS TO DUE PROCESS OF LAW. AT A MINIMUM, THE APPLICANT REQUEST A HEARING BE held ON THE ISSUES.

EXHIBIT (A)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

TRIAL COUNSEL WAS INADEQUATE, AND CONSTITUTIONALLY INEFFECTIVE ASSISTANCE COUNSEL, AND DID RENDER DEFICIENT PERFORMANCE IN FAILING TO:

- (1.) RAISE (OR) CHALLENGE FALSE STATEMENT IN A ARMED ROBBERY WARRANT AFFIDAVIT DURING A FRANKS V. DELWARE HEARING ON A MOTION TO SUPPRESS;
- (2.) CONDUCT AN INDEPENDENT INVESTIGATION INTO THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE ARREST WARRANT AFFIDAVIT INFORMATION AND ARREST;
- (3.) CONDUCT AN INDEPENDENT INVESTIGATION INTO THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING APPLICANT MERRANDA RIGHTS AND A POST-ARREST STATEMENT;
- (4.) ADEQUATELY PREPARE APPLICANT CASE FOR TRIAL; AND PRESENT APPLICANT A DEFENSE;

- (5) PURSUE AT SUPPRESSION HEARING THE ISSUE OF WHETHER CONFLICTING EVIDENCE RENDERED STATEMENT INVOLUNTARY;
- (6) MAKE A CONTEMPORANEOUS OBJECTION TO THE STATEMENT BEING READ IN TO EVIDENCE;
- (7) REQUEST TRIAL COURT TO INSTRUCT THE JURY REGARDING A STATEMENT, REGARDING ISSUES WHERE THERE WAS CONFLICTING EVIDENCE;
- (8) OBJECT TO TRIAL JUDGE'S REMARKS WHICH TENDED TO INDICATE HIS OPINION AS TO WHEN APPLICANT WAS GIVEN HIS MIRANDA RIGHTS, AND WHEN INTERROGATION BEGAN AND WHEN THE STATEMENT WAS GIVEN, AND WHEN APPLICANT WAS ATTESTED;

TRIAL COURT ABUSE OF DISCRETION:

- (9) TRIAL COURT ABUSE OF DISCRETION BY NOT GIVEN THE JURY PROPER INSTRUCTION REGARDING THE ISSUES WHERE THERE WAS CONFLICTING EVIDENCE ABOUT THE STATEMENT.

5. Check whether a finding of guilty was made

- (a) after a plea of guilty N/A
- (b) after a plea of not guilty yes
- (c) after a plea of nolo contendere N/A

6. Did you appeal from the judgment of conviction or the imposition of sentence? yes

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

- i. Appeal from Probation Court
- ii. Probation Court
- iii. SOUTH CAROLINA COURT OF APPEAL

(b) the result in each such Court to which you appealed:

- i. REVERSED FROM TO CONVICTION
- ii. REVERSED
- iii. AFFIRMED

(c) the date of each such result:

- i. DATE OF MY APPEAL
- ii. DATE OF MY APPEAL
- iii. DATE OF MY APPEAL AFFIRMED 07/12/2010

(d) if known, citations of any written opinion or orders entered pursuant to such results:

- i. N/A
- ii.
- iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) N/A
- (b)
- (c)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) TRIAL COURT ABUSE OF DISCRETION
- (c)

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) SEE ATTACHED SHEET

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law ?

N/A

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

N/A

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) N/A

(d) any other petitions, motions or applications in this or any other Court?

N/A

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. N/A

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. N/A

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) ~~_____~~
- (b) NO
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? yes
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? N/A

STATE OF SOUTH CAROLINA)

VERIFICATION

COUNTY OF _____)

I, Clyde McBride # 237724, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Clyde McBride # 237724

Sworn to and subscribed before me

This 4 day of Aug., 2018.

Penny G. Mator

L.S.

Notary Public for South Carolina

My Commission Expires Jul 28, 2018

RICHLAND COUNTY
FILED
2018 AUG 16 AM 9:31
ANNETTE W. MCBRIDE
C.C.P. & G.S.

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Clyde McBride # 237724, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Clyde McBride # 237724
Applicant

Sworn to and subscribed before me

This 4 day of Aug., 2018.

Penny G. Mator

L.S.

Notary Public for South Carolina

My Commission Expires: Jul 28, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
	)	
MCBRIDE Clyde L -	)	2010CP4005492
# 00237724,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 16, 2010, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by Tivis Cooley Sutherland, Esquire. On April 4, 2007, the Applicant pled guilty and was sentenced by The Honorable G. Thomas Cooper, Jr.. Following a jury trial, the Applicant had been indicted and/or convicted of the following: Burglary/(After 6/20/85) 1st Degree, Kidnapping and Armed Robbery - (2006-GS-40-12480;81;82).

¹

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2010CP4005492&CourtType=G&CaseType=Civil&CourtAgency=40002>

<u>Offender Type</u>	Adult-straight Sentence
<u>Offense</u>	Kidnapping
<u>Sentence Start Date</u>	12/08/2005
<u>Sentence Length</u>	30 YRS, 0 MOS, 0 DYS
<u>Admission Date</u>	04/05/2007
<u>Committing County</u>	Richland
<u>Location</u>	Mccormick
<u>Projected Release Date</u>	06/17/2033
<u>Projected Parole Date</u>	Not Eligible
<u>Supervised Furlough Eligibility</u>	Not Eligible
<u>Sex Offender Registry</u>	No

2

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

² <https://sword.doc.state.sc.us/incarceratedInmateSearch/incarceratedInmateFaceSheet.do?id=00237724&youth=N&type=F>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

Direct Appeal

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated July 28, 2010:

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Clyde Leroy McBride,

Appellant.

Appeal From Richland County
G. Thomas Cooper, Jr., Circuit Court Judge

Unpublished Opinion No. 2010-UP-357
Submitted June 1, 2010 – Filed July 12, 2010

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
Assistant Attorney General Deborah R.J. Shupe; and

Solicitor Warren Blair Giese, all of Columbia, for
Respondent.

PER CURIAM: Clyde Leroy McBride appeals his convictions for first-degree burglary, kidnapping, and armed robbery. On appeal, McBride argues the State failed to prove a complete chain of custody for DNA evidence because it failed to establish a complete chain of custody for the vehicle in which his DNA was discovered. The State was not required to prove the chain of custody for the vehicle because it possesses unique identifiable characteristics. See State v. Freiburger, 366 S.C. 125, 134, 620 S.E.2d 737, 741-42 (2005). The State introduced evidence that the samples used for DNA testing were taken from the victim's stolen vehicle. No further authentication was required. Accordingly, because the State proved the chain of custody from the time the samples were collected from the vehicle until they were tested for DNA, we affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Pagan, 369 S.C. 201, 208, 631 S.E.2d 262, 265 (2006) ("The admission of evidence is within the discretion of the trial court and will not be reversed absent an abuse of discretion."); see State v. Carter, 344 S.C. 419, 424, 544 S.E.2d 835, 837 (2001) (noting a complete chain of custody must be established, as far as practicable, tracing possession from the time a sample is collected until the final custodian by whom it is analyzed).

AFFIRMED.

FEW, C.J., THOMAS, and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The application for post conviction relief (PCR) was filed August 16, 2010:

ATTACHMENT

TO

(9)(A) and (10)(A)

Applicants post-conviction relief application.

AS A MATTER OF INTRODUCTION, THE APPLICANT, Clyde McBride, respectfully submits that the events which transpired in the instant case constitute a denial of the applicant's rights to due process of law as guaranteed by the fifth amendment to the United States Constitution and to effective assistance of counsel as guaranteed by the sixth amendment to the United States Constitution, these errors was not merely procedural, but substantially infringed upon the applicant's constitutional rights to due process of law. AT A MINIMUM, THE APPLICANT REQUEST A HEARING BE held ON THE ISSUES.

EXHIBIT (A)

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL.

TRIAL COUNSEL WAS INADEQUATE, AND CONSTITUTIONALLY
INEFFECTIVE ASSISTANCE COUNSEL, AND DID RENDER
DEFICIENT PERFORMANCE IN FAILING TO:

- (1) RAISE (CA) CHALLENGE FALSE STATEMENT IN A
ARMED ROBBERY WARRANT AFFIDAVIT DURING A
FRANKS V. DELAWARE HEARING ON A MOTION TO SUPPRESS;
- (2). CONDUCT AN INDEPENDENT INVESTIGATION EN TO
THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING
THE ARREST WARRANT AFFIDAVIT INFORMATION AND
ARREST;
- (3). CONDUCT AN INDEPENDENT INVESTIGATION EN TO
THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING
APPLICANT MIRANDA RIGHTS AND A POST-ARREST
STATEMENT;
- (4) ADEQUATELY PREPARE APPLICANT CASE FOR TRIAL; AND
PRESENT APPLICANT A DEFENSE;

- (5) PURSUE AT SUPPRESSION HEARING THE ISSUE OF WHETHER CONFLICTING EVIDENCE RENDERED STATEMENT INVOLUNTARY;
- (6) MAKE A CONTEMPORANEOUS OBJECTION TO THE STATEMENT BEING READ INTO EVIDENCE;
- (7) REQUEST TRIAL COURT TO INSTRUCT THE JURY REGARDING A STATEMENT, REGARDING ISSUES WHERE THERE WAS CONFLICTING EVIDENCE;
- (8) OBJECT TO TRIAL JUDGE'S REMARKS WHICH TENDED TO INDICATE HIS OPINION AS TO WHEN APPLICANT WAS GIVEN HIS MIRANDA RIGHTS, AND WHEN INTERROGATION BEGAN AND WHEN THE STATEMENT WAS GIVEN, AND WHEN APPLICANT WAS ARRESTED;

TRIAL COURT ABUSE OF DISCRETION:

- (9) TRIAL COURT ABUSE OF DISCRETION BY NOT GIVEN THE JURY PROPER INSTRUCTION REGARDING THE ISSUES WHERE THERE WAS CONFLICTING EVIDENCE ABOUT THE STATEMENT.

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Imperfective Assistance of Counsel

(b) Total Court Abuse of Discretion

18. State clearly the relief you seek in filing this application. CONVICTION VACATED, REVERSED, REMITTANCE

(Trans): ~~transcription~~ ~~transcription~~ ~~transcription~~ ~~transcription~~ ~~transcription~~

~~(Discontinued) Project Discontinued~~

III.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Edward Bender, Esquire regarding when the hearing should be set.⁴

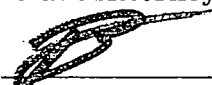
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

BRIAN T. PETRANO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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bpetrano@scag.gov

February 15, 2011

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scattorneygeneral.com/inside/pdf/5th.pdf>

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

MCBRIDE Clyde L -
00237724,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010CP4005492

CERTIFICATE OF SERVICE

1. I am an employee of the Respondent in the above-captioned action.
1. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
2. I have this day served a copy of the a letter in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Edward Bender
Post Office Box 2426
Columbia, SC 29202

DATED February 15, 2011.


 Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
Clyde Leroy McBride, #237724,	)	C/A No.: 2010-CP-40-5492
	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
	)	
Defendant.	)	

APPLICANT'S TRIAL BRIEF

The Applicant hereby submits this *Trial Brief* for the Court's consideration in this matter.

I. Statement of Facts of the Case.

A. This case was filed on August 16, 2010, by the Applicant, acting *pro se*. Undersigned counsel was appointed to represent the Applicant by *Order* of the Honorable Alison Renee Lee dated March 7, 2011 (filed March 9, 2011).

B. Applicant seeks relief from three (3) sentences of thirty (30) years imprisonment, running concurrently, following his convictions on the following indictments:

- i. Indictment No. 2006-GS-40-12480 (Burglary 1st);
- ii. Indictment No. 2006-GS-40-12481 (Kidnapping); and,
- iii. Indictment No. 2006-GS-40-12482 (Armed Robbery).

C. Applicant was brought to trial on Monday, April 2, 2007. He was represented by Tivis Colley Sutherland, IV, before the trial judge, the Hon. G. Thomas Cooper, Jr.

D. Applicant was arrested in December 2005 and remained in jail for approximately sixteen (16) months prior to trial. His attorney did not get the case until February 2007 and had only about forty-five (45) days to prepare. During this period,

Applicant saw his attorney at the jail almost every Friday until the trial [approximately seven (7) times]. Applicant implored his attorney to investigate the discovery that had been provided by the State (particularly the "statement" allegedly signed by the Applicant and the totality of the circumstances surrounding the arrest warrant affidavit) in order to be prepared to challenge them at trial; however, the attorney performed no investigation.

E. This case had two (2) unusual aspects: i) the DNA evidence implicating Applicant was taken from a car stolen from the victim that had been missing for twenty-seven (27) days prior to being processed by crime scene investigators; and, ii) the Applicant's "statement" was presented to Applicant for signature by a law enforcement officer who told Applicant that he needed to sign the pages to "get a lawyer". It is clear that the DNA evidence and the "statement" were the basis of the jury's verdict of guilty – without them, it is inconceivable that a verdict could have been returned beyond a reasonable doubt.

F. Additionally, during the trial, Applicant's counsel failed to object to a number of instances of hearsay testimony which further prejudiced the Applicant.

G. At Applicant's insistence, his attorney moved for a Franks vs. Delaware hearing to challenge the arrest warrant. At Applicant's insistence, his attorney also moved for a Jackson v. Denno hearing to challenge the voluntariness of Applicant's "statement".

H. Applicant's attorney was clearly ineffective in representing Applicant's interest in the Jackson v. Denno hearing; in fact, the trial judge had to stop the attorney's cross-examination of the arresting officer to explain the three questions to be addressed in such a hearing (Tr. pg 69, lines 7-11).

I. Applicant's attorney was clearly ineffective in representing Applicant's interest in the Franks vs. Delaware hearing; in fact, the trial judge advised the attorney on the required showing (Tr. pg 106, lines 4-18).

II. Legal Issues

Plea counsel was deficient in representing Applicant and, but for such errors, there is a reasonable probability that the outcome would have been different, to-wit:

a. In Franks v. Delaware, the United States Supreme Court held that the Fourth and Fourteenth Amendments gave a defendant the right in certain circumstances to challenge the veracity of a warrant affidavit after the warrant had been issued and executed." State v. Missouri, 337 S.C. 548, 553, 524 S.E.2d 394, 396 (1999).

Franks outlined a two-part test for challenging the warrant affidavit's veracity. Franks v. Delaware, 438 U.S. 154, 155-56 (1978). First, to mandate an evidentiary hearing, there must be "allegations of deliberate falsehood or of reckless disregard for the truth [as to statements included in the warrant affidavit], and those allegations must be accompanied by an offer of proof." Id. at 171. At the hearing, the defendant has the burden of proving the allegations of perjury or reckless disregard for the truth by a preponderance of the evidence. Id. at 155-56; see State v. Jones, 342 S.C. 121, 126-27, 536 S.E.2d 675, 678 (2000) (holding a defendant is entitled to challenge misstatements in a warrant affidavit if the following criteria are met: "(1) the defendant's attack is more than conclusory and is supported by more than a mere desire to cross-examine; (2) the defendant makes allegations of deliberate falsehood or of reckless disregard for the truth which are accompanied by an offer of proof; and, (3) the affiant has made the allegedly false or reckless statement").

Second, if the deliberate falsehood or reckless disregard for the truth has been established, the court must consider the affidavit's remaining content, with the affidavit's false material set to one side, to determine if it is sufficient to establish probable cause. If the court determines probable cause does not exist after the false material is omitted from the analysis, "the search warrant must be voided and the fruits of the search excluded to the same extent as if probable cause was lacking on the face of the affidavit." Franks, 438 U.S. at 155-56; see Missouri, 337 S.C. at 553-54, 524 S.E.2d at 396-97 (adopting the two-prong Franks test).

b. Applicant was entitled to a Jackson v. Denno [378 U.S. 368 (1964)] independent evidentiary hearing outside the presence of the jury to challenge the introduction of evidence "that was allegedly obtained by conduct violative of the defendant's constitutional rights." State v. Patton, 322 S.C. 408, 410, 472 S.E.2d 245, 247 (1996) (quoting State v. Blassingame, 271 S.C. 44, 47-48, 244 S.E.2d 528, 530 (1978)). If the State seeks to introduce a defendant's statement into evidence, the trial court is charged with making an initial determination, through an evidentiary hearing, as to whether the statement was voluntarily made. State v. Washington, 296 S.C. 54, 55-56, 370 S.E.2d 611, 612 (1988). "The trial judge's determination of the voluntariness of a statement must be made on the basis of the totality of the circumstances, including the background, experience and conduct of the accused." State v. Franklin, 299 S.C. 133, 138, 382 S.E.2d 911, 914 (1989).

Applicant submits that his attorney failed to adequately present Applicant's challenge to the voluntariness of the "statement", thereby prejudicing Applicant's case by allowing into evidence a purported "confession" to be considered by the jury.

III. Legal Authority

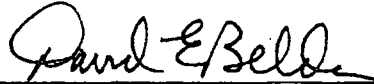
For Applicant to be granted relief as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective assistance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Brown v. State, 340 S.C. 590, 533 S.E.2d 308 (2000). Applicant believes his counsel's performance fell below the professional norms and believes the record supports this contention.

The second step in the analysis—whether Applicant was prejudiced by the deficient representation. Strickland v. Washington, 466 U.S. at 687. The Applicant's convictions clearly show the prejudice he suffered.

PRAYER FOR RELIEF

Based on the foregoing, Applicant prays that the Court vacate his sentence as violative of the Sixth Amendment and remand this case to Richland County Court of General Sessions.

Respectfully submitted,



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ATTORNEY FOR PLAINTIFF

November 16, 2011

State of South Carolina

Court of Common Pleas

County of Richland

2010-CP-40-05492

Clyde L. McBride

-VS-

The State of South Carolina

TRANSCRIPT OF RECORD

November 16, 2011

Columbia, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge.

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

David Belding, Esquire
Attorney for the Applicant

Brian T. Petrano, Esquire
Attorney for the State

Daphne D. Helms
Circuit Court Reporter

I N D E XWitnessClyde L. McBride

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Tivis C. Sutherland, IV

Direct Examination by Mr. Belding.....32

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1 **The Court:** All right. This is? This is McBride; is
2 that right?

3 **Mr. Petrano:** Mr. Clyde McBride.

4 **The Court:** McBride. Clyde L. McBride. Yes, sir.

5 **Mr. Petrano:** Thank you, Your Honor. This is 2010-CP-
6 40-05492, Mr. Clyde L. McBride. It's a Richland County PCR
7 filed on August 16th, 2010. It was a jury trial in front of
8 Judge G. Thomas Cooper on April 4, 2007. He was represented
9 by Mr. Tivis Sutherland who, for the record, is here present
10 in the courtroom.

11 Mr. McBride had been indicted by the March 2006 term of
12 the Richland County grand jury, three charges: 2006-GS-40-
13 12482, that was an armed robbery. 408 was a first degree
14 burglary, and 481 was a kidnapping. There was no registry
15 associated with the kidnapping and a total of 30 years for
16 each charge, each conviction. All concurrent.

17 There was a direct appeal. It should all be in your
18 packet. The South Carolina Court of Appeals affirmed his
19 conviction on July 12th, 2010, in Opinion Number 2010-UP-357.
20 That was ultimately remitted on July 28th, 2010, making this
21 application timely.

22 On that, I will turn it over to Mr. David Belding, the
23 applicant's current counsel of record. Thank you, Your
24 Honor.

25 **The Court:** Thank you, sir. Mr. Belding.

1 **Mr. Belding:** Thank you, Your Honor. If it please the
2 Court, I'd like to call Mr. Clyde McBride to the stand.

3 **The Court:** Come around, Mr. McBride.

4 **Mr. Belding:** And if it please the Court, I'd like to
5 hand up a brief on behalf of the applicant.

6 **The Court:** Beg your pardon?

7 **Mr. Belding:** I'd like to hand up a brief that I've
8 prepared on behalf of the applicant. A copy has been given
9 to Mr. Petrano.

10 Clyde L. McBride, after being duly sworn, testified
11 as follows:

12 **The Court:** All right. Mr. McBride, please take a seat.
13 Tell us your full name and spell your last name for the
14 record.

15 **The Witness:** Clyde Leroy McBride, M-C-B-R-I-D-E.

16 **The Court:** Where are you originally from, Mr. McBride?
17 The Pee Dee somewhere?

18 **The Witness:** Columbia.

19 **The Court:** Columbia? All right. Now McBride is a Pee
20 Dee area name.

21 **Mr. Belding:** Dillon County has got a lot of them.

22 **The Court:** Yeah, a lot of them.

23 **Mr. Belding:** A lot in Dillon County. May it please the
24 Court? Thank you, Your Honor.

25 **The Court:** Yeah.

Direct Examination

By Mr. Belding:

Q. Mr. McBride, are you currently incarcerated, sir?

A. Yes, sir.

Q. Where are you incarcerated?

A. McCormick Correctional Institution in McCormick County.

The Court: Speak up, Mr. McBride, please.

The Witness: McCormick Correctional Institution,
McCormick County.

The Court: All right.

By Mr. Belding:

Q. McCormick. Exactly. And you're serving sentences for
three convictions; correct?

A. Yes, sir.

Q. And those convictions are burglary in the first;
correct?

A. Yes, sir.

Q. Kidnapping; correct?

A. Yes, sir.

Q. And armed robbery?

A. Yes, sir.

Q. And you appeared in front of the Honorable G. Thomas
Cooper and tried this case back in 2007; correct?

A. Yes, sir.

Q. What was the sentence you received for those three

1 convictions?

2 A. Thirty years altogether.

3 Q. On each one?

4 A. Yes, sir.

5 Q. All running concurrently?

6 A. Yes, sir.

7 Q. All right. So you're serving a 30-year sentence. Now,

8 prior to your -- the date of your trial which started on

9 April the 2nd of 2007, when were you arrested?

10 A. December the 8th, 2005.

11 Q. Okay. So you got 15 months, 16 months, something like
12 that, in jail?

13 A. Yes, sir.

14 Q. Okay. During that time, who represented you?

15 A. Well, on this case I had like -- I had numerous lawyers.
16 I had like three lawyers out of the public defender's office.
17 I think Manning released the last one I had, Ms. Megan Lee,
18 because I---

19 The Court: I'm sorry. Did he mention my name?

20 Mr. Belding: I think -- I think -- I think he said
21 Judge Manning released one of the attorneys.

22 The Witness: Yeah, Megan Lee.

23 The Court: All right. Slow down now. Was I -- was I
24 in any way involved in any previous hearings?

25 Mr. Petrano: Absolutely nothing in my records show that

1 but---

2 Mr. Belding: I haven't seen---

3 The Court: Excuse me, Mr. McBride.

4 The Witness: Yes, sir.

5 The Court: Were you before -- have you ever appeared in
6 front of me before?

7 The Witness: I appeared in front of you on this case
8 here in order to get Mr. Sullivan (verbatim) right there. He
9 was appointed to me once you relieved Ms. Megan Lee. I think
10 it was like February the 14th, 2007.

11 The Court: But I never heard the merits or anything.

12 The Witness: No, you never heard the merits of the
13 case.

14 The Court: Well, let's double-check.

15 Mr. Petrano: I am not -- well, first of all, Judge
16 Cooper did the trial.

17 Mr. Belding: Exactly. That is true.

18 Mr. Petrano: There's no debate there.

19 The Court: So we might have had a PCR hearing that I
20 continued or something?

21 Mr. Belding: No. No, I think what happened was---

22 Mr. Petrano: Motion to relieve counsel.

23 Mr. Belding: Motion to relieve counsel that you heard
24 in this case and relieved the previous attorney and was --
25 and I believe appointed Mr. Sutherland.

1 The Court: Is that correct, Mr. Sutherland?

2 Mr. Sutherland: Yes, sir. That's what---

3 The Court: All right. So what he said is correct.

4 Mr. Sutherland: Yes, sir.

5 The Court: But I never had anything to do with the
6 merits of this case.

7 Mr. Petrano: No, no. You were admin -- general
8 sessions admin---

9 The Court: Okay. All right.

10 Mr. Petrano: ---in '05 or '06, I think.

11 The Court: If I have heard something about your case, I
12 can't hear this now is what I'm saying, but that being my
13 involvement, maybe releasing one counsel and appointing
14 somebody else, does anybody have any objection to that?

15 Mr. Belding: No. I think it's clearly---

16 The Court: Do you, Mr. McBride?

17 The Witness: No, sir.

18 The Court: All right. Okay.

19 Mr. Belding: Clearly administrative mode.

20 The Court: Okay. All right.

21 Mr. Belding: Thank you, Your Honor.

22 The Court: I just wanted to make sure. Go ahead.

23 By Mr. Belding:

24 Q. And was that the only involvement of Judge Manning in
25 your case?

1 A. Yes, sir.

2 Q. Okay. Thank you. Now, when was -- was February the
3 14th of 2007 -- is that when Mr. Tivis Sutherland was
4 appointed to represent you?

5 A. Yes, sir.

6 Q. Okay. And you went to trial on April the 2nd, 2007.

7 A. Yes, sir.

8 Q. Correct?

9 A. Yes, sir.

10 Q. Was that about 45 days, something like that?

11 A. Yes, sir.

12 Q. Okay. When did you first meet with Mr. Sutherland?

13 A. February the 15th, the next day following the relieve of
14 counsel, the next day up in the courthouse.

15 Q. Okay. How much time did you spend with him?

16 A. I spent about a good 45, 55 minutes. He just basically
17 just went over the case, let me know he just got my case and
18 he was going to get with me once I get back to the county,
19 things like that.

20 Q. Okay. Where were you at the time? Here?

21 A. Yeah, I was---

22 Q. At the courthouse?

23 A. Yes, sir.

24 Q. Okay. How many times in those 45 days do you think you
25 met with him?

1 A. I met with him just about every Friday. Maybe he missed
2 about one or two Fridays all the way up to the court date.

3 Q. Okay. What did you all talk about?

4 A. We talked about the strategy, how I was going about
5 dealing with the case, and I brought up a lot of motions to
6 him that I wanted, you know, him to present before the Court
7 before they picked a jury or whatever.

8 Q. Okay. What motions did you ask Mr. Sutherland to make
9 on your behalf?

10 A. A Franks versus Delaware motion and a Jackson versus
11 Denno hearing motion.

12 Q. Okay. Now, let's -- let's go through those. The Franks
13 versus Delaware hearing, what was your motion made on in
14 Franks versus Delaware? What was your contention?

15 A. The motion made on Franks vs. Delaware was based on the
16 fact that they had left out exculpatory evidence that would
17 have to me made the warrant misleading to the magistrate and
18 would not have established probable cause for the magistrate
19 to issue the warrant.

20 Q. And was the misleading or omitted information the fact
21 that the car -- this case involved a high-speed chase. It
22 was very unclear from reading some of the materials as to
23 whether or not you were actually caught at the scene or what
24 happened or if you got away. Ultimately, I was able to
25 determine that whoever, you know, drove that car away on this

1 high-speed chase got away. Is that correct?

2 A. Yes, sir.

3 Q. Okay. And from the date of this high-speed chase to
4 when the car was discovered was a period of how long?

5 A. Twenty-seven days. Approximately 27 days.

6 Q. Okay. And that information, that 27 days where this car
7 was sitting out in the middle of nowhere, was not disclosed
8 to the magistrate as part of the warrant. Is that correct?

9 A. Yes, sir.

10 Q. Okay. And was that a part of the basis for the Franks
11 v. Delaware hearing to challenge the arrest warrant?

12 A. Yes, sir.

13 Q. Okay. Did Mr. Tivis Sutherland make that motion on your
14 behalf?

15 A. Yes, sir.

16 Q. Okay. What happened at the hearing?

17 A. Well, Judge Cooper, he allowed the -- he allowed us to
18 have the hearing, but he ruled against us because he said in
19 his own words that he felt like being that the D.N.A. was
20 found in the car, the 27 days didn't make no difference. So
21 he -- he didn't let me have the motion. He denied the
22 motion.

23 Q. Okay. Now, they found your D.N.A. on the steering
24 wheel? Is that what the State claimed?

25 A. Yeah, they said they found it on the steering wheel.

1 They didn't say what kind of D.N.A. All they just said is
2 they found D.N.A. on the steering wheel. It never get -- it
3 never went into an elaboration of what type of D.N.A. it was
4 or nothing like that. They just said they found D.N.A.,
5 tried to trace it back to the scene of the crime. Apparently
6 there wasn't no D.N.A. at the scene of the crime placing me
7 at the scene of the crime -- of the crime so... They waited
8 two or three months and they decided to take a warrant out
9 based on the D.N.A. that was found in the car.

10 Q. How did they connect that D.N.A. to you?

11 A. I think my D.N.A. was already on the database in the
12 N.C.I.C. database of S.L.E.D.

13 Q. Did you ever hear the term a CODIS hit, C-O-D-I-S,
14 CODIS?

15 A. I heard it when I went to trial. That was the first
16 time I ever heard of it.

17 Q. Okay. Do you have any idea what that is?

18 A. No, not really.

19 Q. Okay. Was it your understanding that it was a database
20 of D.N.A. information?

21 A. Yes, sir.

22 Q. Okay. And you had previously provided a sample of your
23 D.N.A.

24 A. Yes, sir.

25 Q. Correct? And in what capacity did you do that? Why did

1 you provide a sample of your D.N.A.?

2 A. Well, the solicitor's office had ordered me to give up
3 D.N.A. So when I got Mr. Sullivan (verbatim) as my attorney,
4 he just said, "Well, we'll just go ahead with the motion and
5 we'll just see what all, you know, they got." So that's how
6 I ended up giving up the D.N.A.

7 **The Court:** Schmerber motion? Is that what...

8 **Mr. Belding:** A Schmerber hearing. Correct, Your Honor.
9 By Mr. Belding:

10 Q. Okay. So you recall this Schmerber hearing.

11 A. Yes, sir.

12 Q. Okay. And you know what Schmerber is; right?

13 A. Yes, sir.

14 Q. Ultimately you said Judge Cooper denied the motion at
15 the Franks v. Delaware hearing; correct?

16 A. Yes, sir.

17 Q. All right. Now, did you also ask your attorney to make
18 what we call a Jackson versus Denno---

19 A. Yes, sir.

20 Q. ---motion hearing? What is that all about?

21 A. That's dealing with a voluntary statement that the
22 arresting officer said that I had give him. So I got with
23 Mr. Sullivan, and me and him went over the actual statement
24 dealing with the statement itself. So I told him -- he asked
25 me did I give the officer a statement. I told him no. So we

1 went into different things dealing with the statement, and I
2 pointed out different things to him to show him that there's
3 no way possible I could have give this officer a statement
4 based on his investigative report and the time that he say
5 that the statement was given and, therefore, on -- to
6 transport me from where he arrested me at all the way back to
7 where I had given him the statement at.

8 Q. There's two really interesting parts to that whole
9 hearing. One is the time frame. Now, where were you when
10 you were arrested?

11 A. I was at -- in Orangeburg.

12 Q. Orangeburg.

13 A. Yes, sir.

14 Q. Where?

15 A. At the probation and parole office.

16 Mr. Petrano: Your Honor, I'm going to object at this
17 point. These are all things that happened at the trial. I
18 don't understand what the relevance is as far as PCR. All
19 these things actually occurred. It's not as though counsel
20 didn't do these things.

21 Mr. Belding: The applicant -- the applicant contends
22 that his lawyer ineffectively represented him at these two
23 hearings for reasons that I'm trying to elucidate.

24 The Court: At the Schmerber hearing and at Jackson
25 versus Denno?

1 Mr. Belding: Yes.

2 The Court: Well...

3 Mr. Petrano: Thank you.

4 The Court: All right. Go ahead.

5 Mr. Belding: I appreciate it, Your Honor.

6 By Mr. Belding:

7 Q. You were -- you were visiting your probation agent in
8 Orangeburg?

9 A. Yes, sir.

10 Q. Okay. And they detained you there? They didn't let you
11 leave? Is that right?

12 A. Well, he faxed the -- he faxed the original warrant
13 there which was the armed robbery warrant. He faxed that
14 there so when I came---

15 The Court: He who?

16 The Witness: The investigator that was over the case.

17 By Mr. Belding:

18 Q. A Richland County sheriff's deputy?

19 A. Yeah, Investigator McDaniel. He faxed the arrest
20 warrant over there to them. So they hold me and got in
21 contact with him and tell him that I was already contained,
22 so he came and got me.

23 Q. Okay. And approximately -- now, this all came up at
24 this hearing, correct, the timeline?

25 A. Yes, sir.

1 Q. What was the investigator's name?

2 A. Investigator Walter McDaniel.

3 Q. McDaniels. Exactly. Now, didn't Investigator McDaniels
4 testify that he drove from the Richland County Sheriff's
5 Department to Orangeburg to get you and then bring you back?

6 A. Yes, sir.

7 Q. Okay. And was there a problem with the timeline as far
8 as what was written down on the officer's investigative
9 report?

10 A. Yes, sir.

11 Q. And what was that problem?

12 A. The timeline was that he said that he picked me up
13 between 12 and 12:30, but his investigative report stated
14 that he picked me up at 1:00. He testified it took him
15 45 minutes to almost an hour to transport me from Orangeburg
16 back to Columbia, and if you look at on the -- the advice of
17 rights form, he stated on there that it's got 1:00 on
18 there -- I mean it's got 12:30 on the advice of rights form.

19 Q. Okay.

20 A. Then it got -- on there they got -- the actual statement
21 they got on there at 1:30, that I initially gave him a
22 statement at 1:30.

23 Q. So the actual documents in the case had times that
24 couldn't have happened that way; is that right?

25 A. The time was inconsistent. Even with Judge Cooper, he

1 find that the time was inconsistent and he ruled -- well, he
2 didn't rule. He just basically said it was conflicting
3 evidence dealing with the time that the statement was given.
4 He ain't went into no detail why. He just said that he found
5 that there was conflicting evidence.

6 Q. Okay. And did you discuss all this with Mr. Sutherland
7 prior to the hearing?

8 A. Yes, sir.

9 Q. Okay. Did he present that argument to the Court?

10 A. Yes, sir.

11 Q. Okay. The judge didn't rule your way?

12 A. No, he didn't rule.

13 Q. The second part is about the voluntariness of this
14 statement. Now, how many pages was this statement?

15 A. I think it's like seven.

16 Q. Seven pages?

17 A. Seven pages.. I think something like that.

18 Q. Okay. Did you write it out yourself?

19 A. No, I didn't write the statement.

20 Q. Did you give a voluntary statement---

21 A. No.

22 Q. ---to the police?

23 A. No, sir.

24 Q. Okay. Were you given your Miranda rights?

25 A. No, sir.

1 Q. Okay. Were you handed something to sign while you were
2 in custody?

3 A. Well, when we got to the county jail -- I mean, as he
4 was transporting me, he went in all this long discussion,
5 this and that and what he think and all this and that and the
6 third, but as we got to the complex, to the sheriff's
7 department, he asked me did I want a lawyer. I told him,
8 "Yeah, I want a lawyer," which I was telling him that the
9 whole time he was transporting me.

10 So he put me in the holding cell. So when he came back,
11 he told me -- he said, "Well, are you going to tell me what
12 happened?" I said, "There ain't nothing to tell you. What
13 I'm going to tell you is that I want a lawyer." So we went
14 about two or three hours, and he brought some papers to me.
15 I never read the paper. I just signed the paper - you know
16 what I'm saying - where I give them to the county. You know
17 what I'm saying? So when I signed the paper, he told me the
18 paper had been for an attorney.

19 Mr. Petrano: Your Honor -- once again, Your Honor, this
20 is -- he's just going through the hearing. This is all in
21 the record. This all happened.

22 The Court: What's your point, Mr. Belding?

23 Mr. Belding: My point is is that Mr. McBride---

24 The Court: How is it relevant?

25 Mr. Belding: Mr. McBride feels that Mr. Sutherland was

1 ineffective in---

2 **The Court:** So he feels a certain way. Does that make
3 it relevant? I mean, that's his subjection.

4 **Mr. Belding:** Well, I understand, and what I'm trying to
5 show through the applicant is that he had ineffective
6 representation.

7 **The Court:** Go ahead, Mr. Belding.

8 **Mr. Belding:** Thank you. And let me get right to---

9 **The Court:** And unfortunately he could proffer it
10 anyway, Mr. Petrano.

11 **Mr. Petrano:** Or we could just read the transcript and
12 hear all this again.

13 **Mr. Belding:** Well, that's true.

14 **Mr. Petrano:** It's a long transcript though, but
15 interestingly---

16 **The Court:** And this is not going to be a very long
17 trial because I'm going to stop soon.

18 **Mr. Belding:** I hope so.

19 **The Court:** People have got to eat. I mean, we might
20 have to resume tomorrow morning or this afternoon, but I
21 mean, you know, I'm not -- I'm not pushing you; you know
22 that.

23 **Mr. Belding:** I understand.

24 **The Court:** But this thing ain't going to last longer
25 than 1:00. These people have got to eat. They've got to

1 eat. We've got to go. People are tired. If it's going to
2 take much longer than that, we might as well stop now and
3 come back after lunch. I don't know. How long is it going
4 to take? Help me out a little bit.

5 **Mr. Belding:** Let me see if I can get it done by 1:00.

6 **The Court:** That's your part; right?

7 **Mr. Belding:** Right.

8 **The Court:** Let's stop and go to lunch. We'll come back
9 in an hour and a half. People are tired.

10 **Mr. Belding:** 2:00?

11 **The Court:** Huh?

12 **Mr. Belding:** 2:00?

13 **The Court:** Well, an hour and a half if you're counting.

14 **Mr. Belding:** I got it.

15 **The Court:** See y'all at 2:00. Let's take a little
16 break. People are tired. It's good. And I don't -- I don't
17 -- I don't want you to rush. I don't want to cut you short.
18 We'll just come back at 2:00. See y'all then.

19 (Whereupon, a lunch break was taken.)

20 **The Court:** Thank you. Please take your seats. Oh,
21 boy. Everybody ready? You may come back on the stand, Mr.
22 McBride. You're still under oath, sir. I think Mr. Belding
23 was in the middle of reading about 40 pages of transcripts.
24 Is that where we left off?

25 **Mr. Belding:** During the break I cut it down to about

1 39, Your Honor.

2 The Court: All right. You may resume---

3 Mr. Belding: So that we can get through this.

4 The Court: Okay. You may resume.

5 Mr. Belding: And I did check with Daphne. The last
6 couple of -- five minutes of testimony were about lunch.
7 Before that we were talking about this statement that was
8 given at the sheriff's department. I just want to finish
9 that point; okay?

10 The Court: I'm not going to stop you.

11 Mr. Belding: May it please the Court?

12 The Court: Yes, sir.

13 By Mr. Belding:

14 Q. All right. Mr. McBride, where we were was we were
15 talking about the fact that there was a written statement
16 that you signed that was -- that came up at your trial. Do
17 you remember that?

18 A. Yes, sir.

19 Q. Okay. Now, my understanding from your testimony is
20 that, first of all, do you recall testifying in this trial --
21 and I'm just for reference on page 78 of the transcript at
22 line three. Do you recall testifying that when the officer
23 who came to you -- that's Investigator McDaniels?

24 A. Yes, sir.

25 Q. Correct? He asked you to read the warrants against you,

1 and you said, and I'm quoting, "And I told him -- I said,
2 'Well, I can't hardly read that well.'" Do you recall
3 stating that under oath?

4 A. Yes, sir.

5 Q. Okay. And also further on in the -- in the transcript
6 on page 81 at line four you described what happened at the
7 sheriff's department. Do you, in fact, read very well, Mr.
8 McBride?

9 A. I can read to a certain degree. I ain't going to say I
10 read very well. I can read to a certain degree.

11 Q. Now, this statement we were talking about, you didn't
12 write the statement, did you?

13 A. No. He wrote it.

14 Q. Investigator McDaniels wrote it out, and it was six,
15 seven pages, something like that?

16 A. Yes, sir.

17 Q. Okay. And then he came to you and this is, as I recall
18 your testimony, three hours after you had been picked up,
19 transported back. Is that correct?

20 A. Yes, sir.

21 Q. Okay. Where were you during that three hours?

22 A. In the holding cell.

23 Q. Okay. At the sheriff's department?

24 A. Yes, sir.

25 Q. Okay. And after awhile and -- and he'd asked you if you

1 wanted to make a statement, and your answer was what?

2 A. I told him -- he asked me did I want to make a
3 statement. I tell him that I want to see an attorney.

4 Q. Okay. Now, at some point in the I guess, what, mid to
5 late afternoon he comes to your holding cell with some
6 papers; right?

7 A. Yes, sir.

8 Q. And what did he tell you the papers were for?

9 A. He told me the papers were for an attorney, so that's
10 why I signed them. He told me to go ahead and sign them.
11 That's when he put the X's and all the other stuff on them.

12 Q. Okay. All right. Now, you had to actually sign
13 multiple pieces of paper; correct?

14 A. Yes, sir.

15 Q. Did you read any of them?

16 A. No, I didn't read none of it.

17 Q. In your trial you were actually asked by the solicitor,
18 Ms. Campbell -- she said, "You didn't read this stuff, and
19 yet you signed your name all over it." Did you explain how
20 that occurred?

21 A. Yeah, I told -- in the trial I told her it's just that
22 when he give me the papers, I didn't ask no questions because
23 he said they been for an attorney. So I took his word for
24 what it was and I just signed them.

25 Q. Okay. Did you go over that with your attorney, Mr.