

VOLUME I of III

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI TO RICHLAND COUNTY

Court of Common Pleas

The Honorable Grace Gilchrist Knie, Circuit Court Judge

Case No. 2015-CP-40-00331

Steven Bosnell Gillian, #282336,

PETITIONER,

v.

State of South Carolina,

RESPONDENT.

Appellate Case No.: 2022-000769

APPENDIX

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1 STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

2 COUNTY OF RICHLAND

3
4 STATE OF SOUTH CAROLINA)

5 -VS-)

Transcript of Record

6 STEVEN GILLIAN,)

01-GS-40-1201

7 Defendant.)

8
9 February 25-28 & March 1, 2002
10 Columbia, South Carolina

11
12 V O L U M E I O F I I

13
14 B E F O R E:

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

16
17 A P P E A R A N C E S:

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

21 SHEILA RENEE MIMS, Assist. Pub. Defender
22 BEATTY I. BUTLER, Asst. Pub. Defender
23 Attorney for the Defendant

24 L. COCONUT PANTSARI, R.P.R.
25 Circuit Court Reporter

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Date: 2-25-02County: Richland

VOIR DIRE

Case No: 01-GS-40-1201Pl./State: StateJudge: WestbrookState/Pl's. Atty: Momalon/CampbellDefendant: Steven GillianDefense Atty: Mums/ButlerCourt Reporter: Pantsari

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Juror No.	Name	Sex	Race	Court	Strikes		
					Plaintiff	Defense	Accept
258	Albert Murphy	m	B		State		
37	Melvin Broome	m	B			✓(1)	
63	John Coleman	m	B		✓(1)		✓(1)
297	Dina Rodriguez	F	W				
185	Lakeisa Gae	F	B		✓(2)		✓(2)
35	Donna Bught	F	W			✓(2)	
361	Tracy Winn	F	B		✓(3)		
351	Bonnie Watts	F	W				✓(3)
163	Nathaniel Hicks	m	B				✓(4)
369	Clarence Young	m	B			✓(3)	
259	Sarah Murray	F	B				✓(5)
109	Johnny Faulkenberry	m	W				✓(6)
339	Martha Thompson	F	B				✓(7)
172	Ruth Hunter	F	B				✓(8)
76	Robert Crotchfield	m	W				✓(9)
228	Lawrence Mayo	m	B		✓(4)		
118	John Frazier	m	W			✓(4)	
43	Marcia Pounson	F	B			✓(5)	

*For the court column, please indicate who made the motion to strike the jurors "for cause" with a "C" for Court, "P" for Plaintiff or "D" for Defense

1 THE COURT: Counsel, let me note, this is
2 in the matter of State versus Steven Gillian. All
3 counsel and parties are present. The Defendant is
4 present. I have voir dire requests from both
5 sides.

6 Do either of you have any objection to
7 the other's requests? Defense, do you have any
8 objection to the State's requests? I don't have your
9 requests, I have potential witnesses.

10 Mr. McMahon or Ms. Campbell, do you have
11 any additional voir dire requests?

12 MR. MCMAHON: No, Your Honor.

13 THE COURT: Do you have any objection to
14 the defense's requests?

15 MR. MCMAHON: Your Honor, I was just
16 reading through them.

17 THE COURT: Go ahead and take a second and
18 look through them.

19 (Pause.)

20 MR. MCMAHON: Judge, I have no objections
21 to their requests as long as it's reciprocal; and
22 they are asked about the Solicitor's Office, Public
23 Defender, defense lawyers.

24 Also, where they ask about victims of
25 crime, if anybody has ever had a family member been

1 accused or charged with a crime, something of that
2 nature.

3 THE COURT: Okay.

4 MR. MCMAHON: But I have no objections.

5 THE COURT: Any objection to that from the
6 defense?

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

8 THE COURT: Are we ready to bring the jury
9 in then? Is the State ready?

10 MR. MCMAHON: Yes, sir.

11 THE COURT: Defense?

12 MS. MIMS: Yes, sir.

13 THE COURT: Madame Clerk, let's see if we
14 can bring our jurors in.

15 (The jury panel enters the courtroom.)

16 THE COURT: Counsel, we have all of our
17 potential jurors present.

18 Ladies and gentlemen of the jury venire,
19 the solicitor is now prepared to call the next case.
20 Mr. Solicitor, would you call your case, please.

21 MR. MCMAHON: May it please the Court.
22 Indictment 01-GS-40-1201, the State versus Steve
23 Gillian, indictment for murder. The State is ready
24 for trial, Your Honor.

25 THE COURT: All right. Is the defense

1 ready?

2 MS. MIMS: Yes, sir, Your Honor.

3 THE COURT: Thank you, ma'am. Ladies and
4 gentlemen, as you have heard, the State now calls the
5 case of the State versus Steven Gillian. As you have
6 heard, the State charges Mr. Gillian with the offense
7 of murder.

8 Now, I hasten to tell you that the charges
9 are brought by this indictment, which I hold in my
10 hand; and this document is called an indictment. An
11 indictment simply is a statement of the charges
12 against the Defendant.

13 It does not mean that he is guilty of the
14 charges. It does not mean he has done what is
15 alleged. The State will have to prove that. Later I
16 will tell you how they go about having to prove that,
17 but I wanted to be sure you understand that is what
18 this document is.

19 I will read from it at this time the
20 indictment. This is the allegation as to the offense
21 charged. It alleges that Steven Gillian did in
22 Richland County, on or about January 28, 2001,
23 feloniously, willfully and with malice aforethought
24 kill one Jason Ward by means of a gunshot wound to
25 the head; and the victim died as a proximate result

1 thereof. Again, these are the charges against the
2 Defendant. Of course, the State must prove the
3 charges.

4 There are some questions that I must ask
5 you. Let me note first, Madame Clerk, as I
6 understand this jury has been previously qualified
7 this morning; is that correct?

8 CLERK: Yes, sir.

9 THE COURT: Were they sworn at the time?

10 CLERK: No, sir, I don't believe so.

11 THE COURT: Madame Clerk, if you would,
12 would you give the jury the oath at this time and
13 just ask them -- just give them the standard oath.

14 Ladies and gentlemen, let me ask if you
15 would rise please and raise your right hand. At this
16 time the clerk will administer to you the oath.

17 (The jury panel is duly sworn.)

18 THE COURT: If any juror was not able to
19 take the oath, would you indicate at this time by
20 standing.

21 (There was no response.)

22 THE COURT: All jurors have taken the oath
23 and are under oath. Now, the reason we do that is
24 because we have some questions that we must ask you
25 specifically related to this case. Of course, we

1 must have you under oath as we do so.

2 If any of these questions apply to you, I
3 would ask that you stand, give us your name and your
4 jury number, if you can remember it. If you can't,
5 we will certainly try to find it for you. Then we
6 will take up the question at that time.

7 First of all, let me begin by introducing
8 to you some folks who will be involved in this case.
9 I will introduce to you attorneys and litigants and
10 will also at a later point discuss with you certain
11 witnesses involved in the case.

12 Certainly anyone who is here, we will have
13 them stand for your benefit so you can see who they
14 are. But if they are not here, of course, you
15 wouldn't be able to see them.

16 I will certainly tell you: Don't be
17 concerned if anyone is not here because they do not
18 have to be here at this particular point. So I just
19 want to be sure you understood that ahead of time.

20 First of all, prosecuting the case for the
21 State will be Mr. Knox McMahon and Ms. Luck Campbell.
22 Is any member of the jury venire related by blood,
23 marriage, business, social or otherwise to
24 Mr. McMahon or Ms. Campbell?

25 (There was no response.)

1 THE COURT: Of course, this case is
2 prosecuted by the Fifth Circuit Solicitor's Office.
3 Does any member of the jury venire, either you or
4 your family or close friend, ever had any
5 relationship or any dealings with the Fifth Circuit
6 Solicitor's Office?

7 (There was no response.)

8 THE COURT: The Defendant is Mr. Steven
9 Gillian. This is Mr. Gillian. Would you ask him to
10 stand so they can see who is.

11 (The Defendant stands.)

12 THE COURT: Is any member of the jury
13 venire related by blood, marriage, social, business
14 or otherwise to Mr. Steven Gillian?

15 (There was no response.)

16 THE COURT: Thank you. Mr. Gillian is
17 represented by Ms. Sheila Mims Duke and Mr. Beatty
18 Butler of the Public Defender's Office. Has any
19 member of the jury venire, again you or a family
20 member or close friend, ever had any dealings or any
21 relationship with the Richland County Public
22 Defender's Office?

23 (There was no response.)

24 THE COURT: Is anyone related by blood,
25 marriage, social, business or otherwise to either

1 Ms. Mims Duke or Mr. Butler?

2 (There was no response.)

3 THE COURT: Thank you. Ladies and
4 gentlemen, I also read to you a moment ago the
5 allegations against the Defendant. Does any member
6 of the jury venire know anything or have you ever
7 heard anything about this case in any way?

8 (There was no response.)

9 THE COURT: Now, the following people may
10 be witnesses in this case. This is a rather lengthy
11 list of folks. I am going to call the names one at a
12 time.

13 Again, if they are here, we will let them
14 stand so you can see who they are. But if they are
15 not, don't be concerned because they don't have to
16 necessarily be here at this time.

17 Again, we are just going to call them one
18 at a time. Let me ask also first, did any member of
19 the jury venire have any relation by blood, marriage,
20 social, business or otherwise to the deceased in this
21 case, Mr. Jason Ward?

22 (There was no response.)

23 THE COURT: The following people may or may
24 not be witnesses. Mr. Jake Arline, spelled
25 A-R-L-I-N-E. Is anyone, again, related by blood or

1 marriage, by business or by social means or otherwise
2 to Mr. Jake Arline?

3 (There was no response.)

4 THE COURT: I won't ask that question every
5 time. I will simply cite the name from this point.
6 If you have such relationship with any of these
7 people just stand and let us know. Ms. Rachel
8 Armstrong.

9 (There was no response.)

10 THE COURT: Matthew Bellamy.

11 (There was no response.)

12 THE COURT: Ronald Bethea, spelled
13 B-E-T-H-E-A.

14 (There was no response.)

15 THE COURT: Zachary Bogue, spelled
16 B-O-G-U-E.

17 (There was no response.)

18 THE COURT: Jessie Boot, spelled B-O-O-T.

19 (There was no response.)

20 THE COURT: Agnes Boozer.

21 (There was no response.)

22 THE COURT: James Brady.

23 (There was no response.)

24 THE COURT: James Brewer.

25 (There was no response.)

1 THE COURT: Clinton Brown.

2 (There was no response.)

3 THE COURT: Jason Canady, spelled
4 C-A-N-A-D-Y.

5 (There was no response.)

6 THE COURT: Joseph Canfield.

7 (There was no response.)

8 THE COURT: Brandon Cannon.

9 (There was no response.)

10 THE COURT: Esther Catalano, spelled
11 C-A-T-A-L-A-N-O.

12 (There was no response.)

13 THE COURT: Anne Cipkala, spelled
14 C-I-P-K-A-L-A, Ann Cipkala.

15 (There was no response.)

16 THE COURT: Kevin Douglas Cook.

17 (There was no response.)

18 THE COURT: Richie Cunliffe, spelled
19 C-U-N-L-I-F-F-E.

20 (There was no response.)

21 THE COURT: Matthew Dickerson.

22 (There was no response.)

23 THE COURT: Jim Ellis.

24 (There was no response.)

25 THE COURT: Ruth Ellis.

1 (There was no response.)

2 THE COURT: Bossell Gillian. Bossell is
3 spelled B-O-S-E-L-L, Gillian.

4 (There was no response.)

5 THE COURT: Clinton Gillian.

6 (There was no response.)

7 THE COURT: Tyler Gillian.

8 (There was no response.)

9 THE COURT: Mike Glenn.

10 (There was no response.)

11 THE COURT: Jessica Gour, spelled G-O-U-R.

12 (There was no response.)

13 THE COURT: David C. Grice, spelled
14 G-R-I-C-E.

15 (There was no response.)

16 THE COURT: Lee Houlis, spelled
17 H-O-U-L-I-S.

18 (There was no response.)

19 THE COURT: Jared Hunsucker.

20 (There was no response.)

21 THE COURT: Malcolm Jackson.

22 (There was no response.)

23 THE COURT: Dustin Johnson.

24 (There was no response.)

25 THE COURT: Wendy Johnson.

1 (There was no response.)

2 THE COURT: David Jordan.

3 (There was no response.)

4 THE COURT: John Stacey Lawler, spelled
5 L-A-W-L-E-R.

6 (There was no response.)

7 THE COURT: Sandra Lawler.

8 (There was no response.)

9 THE COURT: Austin Lee.

10 (There was no response.)

11 THE COURT: Irene Michalski, spelled
12 M-I-C-H-A-L-S-K-I.

13 (There was no response.)

14 THE COURT: Bill Muller, spelled
15 M-U-L-L-E-R.

16 (There was no response.)

17 THE COURT: Nancy Muller.

18 (There was no response.)

19 THE COURT: Ronnie Muller.

20 (There was no response.)

21 THE COURT: Joseph Myers.

22 (There was no response.)

23 THE COURT: Talia Orred, spelled O-R-R-E-D.

24 (There was no response.)

25 THE COURT: Jeremiah Page.

1 (There was no response.)
2 THE COURT: Kayce Porter.
3 (There was no response.)
4 THE COURT: Ali Rayfield, spelled
5 R-A-Y-F-I-E-L-D. Ali is spelled A-L-I.
6 (There was no response.)
7 THE COURT: Barbara Snipes.
8 (There was no response.)
9 THE COURT: Michael Snipes -- oh, is this
10 Barbara Snipes here?
11 MR. MCMAHON: Yes, sir.
12 THE COURT: This is Mrs. Barbara Snipes.
13 Is anybody related to Mrs. Barbara Snipes?
14 (There was no response.)
15 THE COURT: Mr. Michael Snipes. Was this
16 Mr. Snipes?
17 MR. MCMAHON: Yes, sir.
18 (There was no response.)
19 THE COURT: Joseph Spence.
20 (There was no response.)
21 THE COURT: Matthew Stone.
22 (There was no response.)
23 THE COURT: Miranda Ward.
24 (There was no response.)
25 THE COURT: That's one group. Again,

1 anyone think you may know or know of any of these
2 particular witnesses or have a relationship with
3 these witnesses?

4 (There was no response.)

5 THE COURT: Also from BellSouth, Mr. Roddy
6 McDonald, who is custodian of records.

7 (There was no response.)

8 THE COURT: From the Columbia Police
9 Department, custodian of records, Mr. Ronald Felder.

10 (There was no response.)

11 THE COURT: From the Lexington County
12 Sheriff's Department, Investigator Kevin Collins.

13 (There was no response.)

14 THE COURT: Investigator P.C. Faglie,
15 spelled F-A-G-L-I-E.

16 (There was no response.)

17 THE COURT: Vicki Hallman.

18 (There was no response.)

19 THE COURT: Jim Hickman.

20 (There was no response.)

21 THE COURT: Deputy Mike Phipps.

22 (There was no response.)

23 THE COURT: Linda Raines.

24 (There was no response.)

25 THE COURT: And an Officer L. Roof, don't

1 know what the first name is, just initial L. Roof.

2 (There was no response.)

3 THE COURT: From the Palmetto Richland
4 Memorial Hospital, Dr. Jeffrey Welsh.

5 (There was no response.)

6 THE COURT: From the Richland County
7 Coroner's Office, Gary Watts.

8 (Juror stands.)

9 THE COURT: Yes, ma'am, what is your name
10 and number, please?

11 JUROR: Laura Parnell, but I don't know my
12 number.

13 THE COURT: We can find your number.
14 Madame Clerk, do you have it there?

15 CLERK: 268.

16 THE COURT: You are number 268,
17 Mrs. Parnell. Mrs. Parnell, what relationship do you
18 have with Mr. Watts?

19 JUROR: I know him. He was an ex-partner
20 with my business at one time.

21 THE COURT: If he were a witness in the
22 case, would that affect your ability to give both
23 sides a fair trial in this case?

24 JUROR: No, it wouldn't.

25 THE COURT: Would it cause you -- by the

1 fact that you know him, would it cause you to tend to
2 believe him more or less than other witnesses?

3 JUROR: Yes.

4 THE COURT: You think it would?

5 JUROR: Yes.

6 THE COURT: You would tend to believe him
7 more or less than other witnesses by the fact you
8 know him?

9 JUROR: Right.

10 THE COURT: Thank you, ma'am. You can have
11 a seat. Anyone else?

12 (Juror stands.)

13 THE COURT: Yes, sir, what is your name and
14 number?

15 JUROR: 213.

16 THE COURT: What is your name?

17 JUROR: Stan Lindler.

18 THE COURT: Okay, Mr. Lindler.

19 JUROR: I do work for BellSouth and know
20 Roddy McDonald.

21 THE COURT: We are going back some. You
22 know Mr. McDonald?

23 JUROR: Not personally. I know who he is.

24 THE COURT: You know who he is. If he
25 testified, would that affect your ability to give

1 both sides a fair trial?

2 JUROR: No, sir.

3 THE COURT: Would you tend to believe him
4 more or less than anyone else?

5 JUROR: No, sir.

6 THE COURT: Thank you, sir. Anyone else?
7 (Juror stands.)

8 THE COURT: Yes, sir, what is your name and
9 number, please?

10 JUROR: Charlie May. My number is 226.

11 THE COURT: Okay.

12 JUROR: I know Dr. Welsh.

13 THE COURT: We are still going back, right?

14 JUROR: Yes.

15 THE COURT: What relationship do you have
16 with Dr. Welsh?

17 JUROR: He is a neighbor of mine.

18 THE COURT: All right. Would that affect
19 your ability to give both sides a fair trial if he
20 testified?

21 JUROR: No, sir.

22 THE COURT: And by the fact that you know
23 him, would that tend to cause you to believe him more
24 or less than other witnesses?

25 JUROR: No, sir.

1 THE COURT: Thank you, sir. Anyone else?

2 (There was no response.)

3 THE COURT: Also from the Richland County
4 Coroner's Office, Steve Zobel.

5 (There was no response.)

6 THE COURT: From the Richland County
7 E.M.S., an E.M.T. Mr. or Mrs. Crawford and a Mr. or
8 Mrs. Young. We just know the last names of these
9 E.M.T.s.

10 (There was no response.)

11 THE COURT: From the Richland County
12 Sheriff's Department, again, Investigator W.F. Berry,
13 B-E-R-R-Y.

14 (There was no response.)

15 THE COURT: Investigator Trish Collins.

16 (There was no response.)

17 THE COURT: Investigator Jody Davis.

18 (There was no response.)

19 THE COURT: Sergeant Chuck Earles, spelled
20 E-A-R-L-E-S.

21 (There was no response.)

22 THE COURT: Investigator Anna Elsey,
23 E-L-S-E-Y.

24 (There was no response.)

25 THE COURT: Investigator J.E. Ewing,

1 E-W-I-N-G. This is Investigator Ewing up here.

2 (There was no response.)

3 THE COURT: Thank you, sir. Tina Goff,
4 G-O-F-F.

5 (There was no response.)

6 THE COURT: Investigator Ray Livingston.

7 (There was no response.)

8 THE COURT: Investigator Bill Mann.

9 (There was no response.)

10 THE COURT: Investigator or Sergeant Scott
11 McDonald.

12 (There was no response.)

13 THE COURT: Lieutenant Zane Padgett.

14 (There was no response.)

15 THE COURT: Deputy Michael Pearson. This
16 is Deputy Pearson up here.

17 (There was no response.)

18 THE COURT: Thank you, sir. Investigator
19 Steve Pearson.

20 (There was no response.)

21 THE COURT: Investigator Cassandra
22 Richardson.

23 (There was no response.)

24 THE COURT: Lieutenant Stan Smith. This is
25 Lieutenant Smith.

1 (There was no response.)

2 THE COURT: Thank you, sir. Captain Jim
3 Stewart. Did someone raise their hand back there?
4 Oh, you are just stretching. Okay. Captain Jim
5 Stewart.

6 (There was no response.)

7 THE COURT: Investigator J.E. White.

8 (There was no response.)

9 THE COURT: Also from the South Carolina
10 Law Enforcement Division, which is sometimes referred
11 to by the acronym of S.L.E.D., if you hear someone
12 talk about S.L.E.D., that is the South Carolina Law
13 Enforcement Division. Agent Cecil Bradstreet.

14 (There was no response.)

15 THE COURT: Agent Ila Simmons.

16 (There was no response.)

17 THE COURT: Agent Ken Whitler, spelled
18 W-H-I-T-L-E-R.

19 (There was no response.)

20 THE COURT: Also from SunCom, Giovanni
21 Papard, custodian of records.

22 (There was no response.)

23 THE COURT: Dr. Peggy Wadman, W-A-D-M-A-N.
24 This is Dr. Wadman.

25 (There was no response.)

1 THE COURT: Thank you, ma'am. Again, all
2 these witnesses are potential witnesses, and all of
3 these may not necessarily testify. These are all
4 potential witnesses.

5 Again looking back, anybody know of any
6 relationship that you may even think you may have
7 with any of these folks, by blood, marriage,
8 business, social manner or otherwise?

9 (There was no response.)

10 THE COURT: Thank you. Also a few other
11 questions. Is any member of the jury venire related
12 by blood or marriage to or a friend or acquaintance
13 of a member of any law enforcement agency?

14 In other words, are you related by blood
15 or marriage, friendship, social, business or
16 otherwise to anyone who works for any law enforcement
17 agency?

18 (Jurors stand.)

19 THE COURT: Always please stand. Sometimes
20 it's hard to see the hands. Go ahead and stand now
21 if you need to answer.

22 (Jurors stand.)

23 THE COURT: Yes, ma'am, what is your name
24 and number, please?

25 JUROR: My name is Annette Rooney, 299.

1 THE COURT: Okay.

2 JUROR: My brother-in-law is a police
3 officer.

4 THE COURT: What agency is he with?

5 JUROR: With the Allentown police force.

6 THE COURT: Would that affect your ability
7 to give both sides a fair trial in this case?

8 JUROR: No, sir.

9 THE COURT: And would that relationship
10 tend to cause you to believe a law enforcement
11 officer over anyone else?

12 JUROR: No, sir.

13 THE COURT: It would not. Thank you,
14 ma'am. Yes, ma'am, your name and number, please?

15 JUROR: Carolyn Cooks. I believe it's 67.

16 THE COURT: Go ahead.

17 JUROR: My brother-in-law works for the
18 Richland County Detention Center.

19 THE COURT: What is his name?

20 JUROR: Donald Weston.

21 THE COURT: Would that affect your ability
22 to give both sides a fair trial?

23 JUROR: No, sir.

24 THE COURT: And would it tend to cause you
25 to believe a law enforcement officer over anyone

1 else?

2 JUROR: No, sir.

3 THE COURT: Thank you, ma'am. Yes, sir
4 your name and number, please?

5 JUROR: John Frazier, number 118.

6 THE COURT: Go ahead.

7 JUROR: Charlie McNair with the West
8 Columbia Police is a friend of mine.

9 THE COURT: Would that affect your ability
10 to give both sides a fair trial?

11 JUROR: No.

12 THE COURT: Would it tend to cause you to
13 believe a law enforcement officer over anyone else?

14 JUROR: No.

15 THE COURT: Thank you, sir. Yes, your name
16 and number, please?

17 JUROR: Albert Murphy, 258.

18 THE COURT: Go ahead.

19 JUROR: I have a cousin who is with the
20 highway patrol.

21 THE COURT: A highway patrolman is your
22 cousin?

23 JUROR: (Nods head.) (Indicating
24 affirmative response.)

25 THE COURT: Is that right?

1 JUROR: Yes, sir.

2 THE COURT: Would that affect your ability
3 to give both sides a fair trial?

4 JUROR: No, sir.

5 THE COURT: Would it cause you to believe a
6 law enforcement officer over anyone else?

7 JUROR: No, sir.

8 THE COURT: Thank you. Again, anyone else
9 related by blood or marriage to anyone who is --
10 blood or marriage, social, business or otherwise --
11 to anyone employed by law enforcement agency?

12 (There was no response.)

13 THE COURT: Is any member of the jury
14 venire related by blood or marriage, social --

15 (Juror stands.)

16 THE COURT: Yes, sir, what is your name and
17 number, please?

18 JUROR: My name is Richard Diggs, number
19 91. I teach in Richland School District Two. We
20 have an S.R.O. at the school.

21 THE COURT: Would that affect your ability
22 to give both sides a fair trial?

23 JUROR: No, sir.

24 THE COURT: Would it cause you to believe a
25 law enforcement officer over anyone else?

1 JUROR: No, sir.

2 THE COURT: Thank you, sir. Anyone else?

3 (There was no response.)

4 THE COURT: Is anyone related by blood or
5 marriage, business or social acquaintance or
6 otherwise to anyone who works for the Attorney
7 General's Office, any Solicitor's Office or any
8 prosecuting attorney's office?

9 (Jurors stand.)

10 THE COURT: Yes, sir, your name and number?

11 JUROR: Mike Molony, 247.

12 THE COURT: Okay.

13 JUROR: Charlie Condon is my cousin.

14 THE COURT: In fact, I think his middle
15 name is Molony also. How close a cousin is he, first
16 second, third?

17 JUROR: First cousin.

18 THE COURT: Do you admit how close he is?
19 Would that affect your ability to give both sides a
20 fair trial?

21 JUROR: No, it would not.

22 THE COURT: Would it cause you to believe a
23 law enforcement officer over anyone else?

24 JUROR: No, it would not.

25 THE COURT: Thank you, sir. Yes, ma'am,

1 your name and number, please?

2 JUROR: I don't know my number, but it's
3 Pamela Bender.

4 THE COURT: Bender?

5 JUROR: Bender.

6 THE COURT: Let's find your number. Is it
7 B-E-N-D-E-R?

8 JUROR: Right.

9 CLERK: Twenty-one.

10 THE COURT: You are number 21, Mrs. Bender.
11 Go ahead.

12 JUROR: I know Heather Wise and Elizabeth
13 Leevy.

14 THE COURT: I think they are in the
15 Solicitor's Office, right?

16 JUROR: Yes.

17 THE COURT: Do you have any particular
18 relationship to them or do you just happen to know
19 them?

20 JUROR: I play tennis with one of them and
21 have been friends with the other.

22 THE COURT: Are they decent tennis players?

23 JUROR: Which one?

24 THE COURT: Would that affect your ability
25 to give both sides a fair trial?

1 JUROR: No.

2 THE COURT: Would it cause you to believe
3 anybody in the State's case over anyone else?

4 JUROR: No.

5 THE COURT: Thank you, ma'am. Anyone else?
6 (Juror stands.)

7 THE COURT: Yes, sir, your name and number,
8 please sir?

9 JUROR: I'm Charlie May, number 226.

10 THE COURT: Yes, sir.

11 JUROR: I am close friends with the
12 Solicitor of Kershaw County, John P. Meadors.

13 THE COURT: Would that affect your ability
14 to give both sides a fair trial?

15 JUROR: No, sir.

16 THE COURT: And would it cause you to
17 believe anyone with the State's case over anyone
18 else?

19 JUROR: No, sir.

20 THE COURT: Thank you, sir. Anyone else?
21 (Juror stands.)

22 THE COURT: Yes, sir, your name and number,
23 please?

24 JUROR: Johnny Frazier, 118.

25 THE COURT: Okay.

1 JUROR: Butch Reynolds, a former Lexington
2 County officer --

3 THE COURT: Yes, sir, I think he is
4 retired.

5 JUROR: -- I play golf with him quite
6 often.

7 THE COURT: Would that affect your ability
8 to give both sides a fair trial in this case?

9 JUROR: I don't think so.

10 THE COURT: Thank you, sir. Anyone else?

11 (There was no response.)

12 THE COURT: Is any member of the jury
13 venire related by blood or marriage, social
14 acquaintance, business or otherwise to anyone who
15 works for the Public Defender's Office in Richland
16 County or for any Public Defender's Office or for any
17 attorney who does criminal defense work?

18 (There was no response.)

19 THE COURT: Has any member of the jury
20 venire ever been employed by any law enforcement
21 agency, whether civilian or military?

22 (There was no response.)

23 THE COURT: Now, is any member of the jury
24 venire a member of or a contributor to any group
25 which has as its purpose the promotion of law

1 enforcement or victims' rights?

2 Some examples of these groups -- these are
3 not the only ones -- but some examples would be
4 M.A.D.D., which is Mothers Against Drunk Drivers;
5 S.A.D.D., Students Against Drunk Drivers.

6 There is a group called C.A.V.E., which is
7 Citizens Against Violent Crime; C.A.D.R.E, Citizens
8 Advocating a Revival of Decency and Ethics, groups
9 such as that or any group that promotes law
10 enforcement or victim's rights? Either you or a
11 family member ever been a member of any group such as
12 this or contributed to these groups?

13 (There was no response.)

14 THE COURT: I think I have asked, counsel,
15 number five on this particular list here and
16 number six also.

17 Now, does any member of the jury venire
18 have an immediate family member or a friend who has
19 ever been a victim or a witness in a case involving a
20 violent crime?

21 (Jurors stand.)

22 THE COURT: What is your name and number,
23 please, ma'am?

24 JUROR: Carolyn Cooks, 67.

25 THE COURT: Okay.

1 JUROR: I have a niece that was shot.

2 THE COURT: Was that here in Richland or
3 somewhere else?

4 JUROR: I want to say Sumter County.

5 THE COURT: Would that affect your ability
6 to give both sides a fair trial?

7 JUROR: I don't believe so.

8 THE COURT: Thank you, ma'am. Is there
9 anyone else?

10 (Juror stands.)

11 THE COURT: Yes, sir, Mr. Frazier, I
12 believe. I am getting where I know some of you when
13 you stand up. What is your number, Mr. Frazier?

14 JUROR: 118.

15 THE COURT: Go ahead.

16 JUROR: My brother-in-law was murdered a
17 few years ago. My wife and me, on June 26th, we went
18 to Huntsville, Texas to view the execution.

19 THE COURT: Would that affect --

20 JUROR: I thought I should tell you about
21 that.

22 THE COURT: Sir?

23 JUROR: I thought I should tell you about
24 that.

25 THE COURT: Would that affect your ability

1 to give both sides a fair trial?

2 JUROR: I don't think so.

3 THE COURT: Thank you, sir. Is there
4 anyone else?

5 (There was no response.)

6 THE COURT: Has any member of the jury
7 venire or again an immediate family member or close
8 friend ever been charged with a violent crime, either
9 arrested or charged or convicted, either you, a
10 family member or close friend?

11 (There was no response.)

12 THE COURT: Now, does any member of the
13 jury venire know of any other reason why you could
14 not give both sides a fair trial in this case?

15 (There was no response.)

16 THE COURT: Counsel, let me ask all of you
17 to approach just one moment, please.

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

21 THE COURT: State, are you ready to begin
22 the process of drawing the jury?

23 MR. MCMAHON: Yes, sir.

24 THE COURT: Defense?

25 MS. MIMS: Yes, Your Honor.

1 THE COURT: I believe it will be five and
2 ten, counsel. Any objection to that?

3 MS. MIMS: No, sir.

4 THE COURT: Ladies and gentlemen, at this
5 time we are going to begin with the procedure of
6 drawing the jury. The clerk will basically handle
7 that procedure for me at this time.

8 She has done this many times. She will
9 treat you kindly and gently. All you have to do is
10 just basically follow her instructions, and she will
11 tell you how to do it.

12 Madame Clerk, are you ready?

13 CLERK: Yes, sir.

14 (The jury is impaneled at 1:05 p.m.)

15 (During the jury selection process, the
16 jurors were called forward and peremptory strikes
17 were exercised as noted by the attached voir dire
18 sheet made a part of this record at page 12.)

19 THE COURT: Counsel, let me ask all of
20 y'all to approach one second if you would, please.

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

24 THE COURT: As I understand, for the record
25 there are no motions under Batson versus Kentucky or

1 under Batson related to racial exclusion, and none
2 under J.E.B. versus Alabama related to gender
3 exclusion. As I understand it, there are no other
4 motions related to jury selection; is that correct?
5 From the State?

6 MS. CAMPBELL: That's correct, Your Honor.

7 THE COURT: From the defense?

8 MS. MIMS: That's correct, Your Honor.

9 THE COURT: Thank you. Ladies and
10 gentlemen, we are going to be prepared to get started
11 with you in a little while. Obviously it's
12 1:00 o'clock. We don't want to hold you right now.

13 We are going to ask you -- I have a few
14 motions that I have to take up before we get started.
15 I don't want you to have to sit back in the jury room
16 while we are doing it.

17 What I will do is give you a little bit of
18 extra time during the lunch break. I will ask you to
19 be back at 3:30. At that time we will be prepared to
20 get started.

21 The bailiffs are going to show you in just
22 a moment where the jury room is. You will report to
23 that jury room at 3:30. Of course, we will be
24 prepared to get started from there.

25 It's very, very important that you not talk

1 about this case with anybody or any case like it or
2 anything similar to it. Of course, don't let anyone
3 talk with you about the case.

4 That includes conversations among
5 yourselves. Certainly you can do whatever you wish
6 during the lunch break. You can have lunch with each
7 other of anyone else or whatever, just no talking
8 about the case.

9 Obviously, you do need to tell your family
10 and friends or coworkers where you are going to be,
11 what you are doing. You certainly want to do that.
12 But just don't -- you can tell them what kind of
13 case it is -- but just don't go into any kind of
14 details about it.

15 With that in mind, I will ask you to go
16 with the bailiffs. They will show where the jury
17 room is. Be back there at 3:30. Thank you.

18 (The jury is excused for lunch at
19 1:07 p.m.)

20 THE COURT: At this time the jury has
21 retired. Do you want to go ahead and take a lunch
22 break and come back and do the motions after lunch?

23 MS. CAMPBELL: May I check with my doctor
24 real quick?

25 THE COURT: Sure.

1 (Pause.)

2 MS. CAMPBELL: That's good, Your Honor.

3 THE COURT: Defense, is that okay?

4 MS. MIMS: Yes, sir.

5 THE COURT: Let's come back at 2:30, and we
6 will start back up then. See you at 2:30.

7 (Whereupon there was a luncheon recess.)

8 THE COURT: Counsel, I understood we had
9 some motions in the Gillian case.

10 MS. CAMPBELL: Yes, sir. I think the first
11 thing we can take up is the issue about his
12 competency and responsibility.

13 THE COURT: And is the defense ready for
14 that?

15 MS. MIMS: Yes, sir, Your Honor.

16 THE COURT: Let's at this time enter into a
17 hearing under the auspices of Charles Blair. Madame
18 Solicitor, what do you have?

19 MS. CAMPBELL: Your Honor, I have got
20 Dr. Peggy Wadman.

21 PEGGY WADMAN, being first
22 duly sworn, testified as follows:

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

25 THE WITNESS: My name is Peggy Wadman.

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 (The following testimony was reported in
2 camera.)

3 DIRECT EXAMINATION

4 BY MS. CAMPBELL:

5 Q Dr. Wadman, where are you employed?

6 A I am employed at the William S. Hall Psychiatric
7 Institute. I am actually employed with the
8 Palmetto Health Alliance, the U.S.C. School of
9 Medicine; and I work at the William S. Hall
10 Psychiatric Institute.

11 Q What do you do there?

12 A I am in a forensic fellowship training program.

13 Q Can you tell this judge a little bit about your
14 training and your education.

15 A Okay. I received my Bachelor's degree in
16 Journalism from U.S.C., the University of South
17 Carolina, in 1980 and had a career as journalist
18 before I went back to medical school.

19 I went to medical school at the U.S.C.
20 School of Medicine from 1993 to 1997, completed
21 a residency in psychiatry from 1997 to 2001,
22 and entered a forensic fellowship in July of
23 2001.

24 Q And have you ever been qualified before as an
25 expert in the field of forensic psychiatry?

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 A Yes, I have.

2 MS. CAMPBELL: Your Honor, at this time we
3 offer Dr. Wadman as an expert in forensic psychiatry.

4 THE COURT: Any objection?

5 MS. MIMS: Just a moment, Your Honor.

6 (Pause.)

7 THE COURT: Let me know also if you have
8 any voir dire questions.

9 MS. MIMS: I don't have anything.

10 THE COURT: Based on that I will find the
11 witness qualified as an expert in the area of
12 forensic psychiatry. As such, she may be allowed to
13 give an opinion. Obviously, I will make a
14 determination as to the weight to be given to the
15 opinion. Go ahead.

16 BY MS. CAMPBELL:

17 Q Dr. Wadman, in reference to Steven Gillian, did
18 you have an opportunity to perform certain
19 evaluations on him?

20 A Yes, I did.

21 Q And this case was actually referred to you by
22 Court order; is that correct?

23 A Yes, it was.

24 Q What was the purpose of you meeting with and
25 evaluating Steven Gillian?

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 A The orders asked for a competency evaluation, a
2 criminal responsibility, and capacity to
3 conform.

4 Q And what documents or what background was
5 provided to you prior to your actual meeting
6 with Mr. Gillian?

7 A I actually had 91 sources of information. I
8 don't know if you want me to go over each one.

9 Q A part of that was a review or a copy of the
10 investigative file in this case?

11 A Yes, a copy of the investigative file.

12 Q Were there also certain psychiatric records
13 pertaining to the Defendant that were provided
14 to you?

15 A Yes, there were. There were some from Charter
16 Hospital, from Lexington Mental Health Center.
17 Also, we conducted two evaluations, one on
18 August 13th and one on September 14th. Those
19 were interviews with him, Mr. Gillian.

20 Q Was there any additional testing done on
21 Mr. Gillian?

22 A Yes, we actually did quite a large workup on
23 him. We had a neurologist examine him and do an
24 electroencephalogram which showed some
25 abnormalities. I don't know if you want me to

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 go into that right now.

2 Q That's okay.

3 A And did a scan on his head.

4 Q I show you a copy of your report in this case.
5 I will hand one to the judge.

6 (Hands to Court.)

7 Q Is that a copy of your report?

8 A Yes, it is.

9 MS. CAMPBELL: Your Honor, at this time we
10 offer it as a Court's exhibit.

11 THE COURT: Any objection?

12 MS. MIMS: No objection, Your Honor.

13 THE COURT: Without objection, that will be
14 Court's Number 1.

15 (Court's Exhibit Number 1, report of
16 finding, is marked for purposes of the record.)

17 BY MS. CAMPBELL:

18 Q Doctor, for the record a complete list of
19 everything you reviewed is in this report?

20 A Yes, it is.

21 Q Doctor, can you briefly tell the Court what
22 your findings were in this case as far as
23 Mr. Gillian is concerned, taking them in any
24 order you want.

25 A Sure. Regarding the conclusion for competency,

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 we found he was competent to stand trial at that
2 time. Also, we talked to him before this
3 hearing here and determined that he remains
4 competent.

5 Q You found him competent back when you evaluated
6 him when?

7 A We evaluated him on August 13th and
8 September 14th of 2001.

9 Q And without going into the substance of your
10 reasons for finding him competent, are they
11 outlined in your report?

12 A Yes, they are.

13 Q Again, this morning, you had an opportunity --
14 you and Dr. Frierson -- to meet with the
15 Defendant again?

16 A Yes, we did.

17 Q That is to make sure that his mental status has
18 not changed appreciably?

19 A That's true.

20 Q This morning when you had a chance to meet with
21 him again, you found that he was still
22 competent?

23 A Yes, he is still competent.

24 Q Do you make any findings as far as criminal
25 responsibility?

DR. PEGGY WADMAN -IN CAMERA DIRECT- BY MS. CAMPBELL

1 A Yes, we did. We determined that he was
2 criminally responsible, that he was not
3 suffering from a mental illness at the time of
4 the alleged offense which would have impaired
5 his ability to know legal right, legal or moral
6 right, from legal or moral wrong.

7 Q Again, your reasons for that are outlined in
8 your report?

9 A Yes, they are.

10 Q Did you make final determinations?

11 A Yes. We also concluded that he had the capacity
12 to conform his behavior at the time of the
13 alleged offense.

14 Q Again, your conclusions regarding capacity to
15 conform, you didn't find he was suffering from
16 any mental illnesses?

17 A That's correct. He was not suffering from a
18 mental illness in our expert opinion.

19 Q And the findings that you made in your report,
20 are they still true today?

21 A Yes, they are.

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

24 THE COURT: Cross examination.

25 MS. MIMS: Thank you, Your Honor. May it

DR. PEGGY WADMAN -IN CAMERA CROSS- BY MS. MIMS

1 please the Court.

2 THE COURT: Yes, ma'am.

3 CROSS EXAMINATION

4 BY MS. MIMS:

5 Q Dr. Wadman, after seeing Steven twice,
6 August 13th and September 14th, you did find
7 that he was capable of understanding the nature
8 of the charges against him. Also, he was able
9 to assist counsel in defending himself. But you
10 found that with reservations. Can you explain
11 that?

12 A I am not clear about the reservations.

13 Q It's on -- do you have a copy of the evaluation?

14 A Yes, I do.

15 Q Actually on the front page on B. it says, "The
16 above-named individual is capable of
17 understanding the nature of the charges and is
18 capable of assisting counsel in his own defense,
19 with reservations."

20 A Yes. The reservations were in the
21 recommendation's portion of the report. We said
22 that we reserved the right to change our opinion
23 regarding criminal responsibility and capacity
24 to conform should further medical or psychiatric
25 records become available which might indicate

DR. PEGGY WADMAN -IN CAMERA CROSS- BY MS. MIMS

1 that he may have suffered from a mental illness
2 at the time of the alleged offense.

3 Q So with reservations is just if more evidence
4 comes in?

5 A Exactly, if more evidence came in that would
6 change our original opinion.

7 Q And when you diagnosed him on August or actually
8 when you evaluated him on August 13th, you took
9 some notes, and these are your notes from
10 August 13th; is that correct? Is that your
11 signature on the bottom?

12 A These are not my notes. This is actually -- we
13 fill these out when we are going to refer them
14 for further testing. Yes, these are -- this is
15 something that I filled out.

16 Q Something that you would use to refer for
17 further testing?

18 A Yes, that's correct.

19 (Attorneys confer.)

20 MS. CAMPBELL: We have no problem. We can
21 put in all her notes.

22 MS. MIMS: I just want to put these in as
23 an exhibit, Your Honor.

24 THE COURT: Again, that's without objection
25 and would be Court's Exhibit 2.

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1 (Court's Exhibit Number 2, evaluation and
2 diagnosis, is marked for purposes of the record.)

3 BY MS. MIMS:

4 Q On these notes that you made where I guess you
5 were referring him for these diagnoses, you
6 actually had him diagnosed with impulse control
7 disorder; is that right?

8 A Could I see that, please?

9 Q Yes. (Hands to witness.)

10 A I do -- I'm not sure who I was referring to
11 because it's cut off from the top. This looks
12 like it may have gone to the M.R.I. people. I'm
13 not sure.

14 Q And you were ordering an M.R.I. for Steven?

15 A Yes, I sure did.

16 Q Then on diagnosis you do have impulse control
17 disorder?

18 A Yes.

19 Q On the first page there, you also have R. slash
20 O. I think that means rule out?

21 A Yes, that means rule out.

22 Q And you have bipolar disorder beside that?

23 A Right.

24 Q Were you able to rule out bipolar disorder?

25 A Yes, we did rule out bipolar disorder.

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1 Q When did you do that, on your next meeting?

2 A Yes, I guess at the next meeting. I would have
3 to look back through my notes. One of the
4 things that we do, the reason that I put all
5 these on here, is because it gives the
6 neurologist -- I think this was to neurology --
7 it gives them an idea of all the different
8 things that we might be considering. It just
9 gives them more information in which to do his
10 evaluation.

11 Q So bipolar disorder did come out? I mean, that
12 is something you were concerned about?

13 A Yes, we thought about that.

14 Q Thank you. Going back to the impulse explosive
15 -- what is it?

16 A Impulse control disorder.

17 Q Thank you very much. He had already been
18 diagnosed with this previously, as you noted in
19 your notes, in 1997 by Lexington County Mental
20 Health?

21 A Yes.

22 Q So there had been a previous diagnosis of this
23 before?

24 A I would have to go back through my notes to look
25 at that, but I believe that's where that was

DR. PEGGY WADMAN -IN CAMERA CROSS- BY MS. MIMS

1 from.

2 Q Having this type of disorder, is this something
3 that may make you have problems with maybe
4 focusing?

5 A Well, I didn't diagnose -- in other words, I
6 don't think that he has impulse control
7 disorder. One of the things that we do when we
8 first send these out for evaluation when we are
9 trying to come to some conclusion is we base --
10 give them a diagnosis. To be more correct, I
11 probably should have said rule out impulse
12 control disorder order or impulse control
13 disorder by history.

14 Q But you did diagnosis him for a moment there
15 with impulse control disorder?

16 A I actually put that on the sheet, yes, I did.

17 Q And it didn't make to this (indicating), to the
18 actual evaluation?

19 A No, it didn't. Once we got all the information
20 in and had all the testing done -- and I don't
21 think the psychological testing had been
22 completed at that point either -- then we came
23 up with our final diagnosis.

24 Q Going to the M.R.I. that you ordered and the
25 E.E.G. that you ordered, those came back

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1 abnormal?

2 A Yes, they did.

3 Q You ordered those after you found out Steven has
4 sustained two head injuries where he suffered
5 loss of consciousness?

6 A One was documented and one was self reported,
7 but there were no medical records to
8 substantiate that.

9 Q The M.R.I. actually came back with left
10 anterior, inferior frontal lobe region?

11 A Yes, that's correct.

12 Q You also had an abnormal E.E.G.?

13 A Yes.

14 Q Do any of these -- can you absolutely say that
15 having the abnormal M.R.I and abnormal E.E.G.,
16 can you absolutely say that they would not cause
17 a loss of concentration or take away from his
18 ability to focus?

19 A No, I can't. I can't say that. I think the
20 injury though, what we concluded, was the injury
21 was done after the alleged incident for which he
22 is charged.

23 Q Right. But the injury could have perhaps
24 affected his ability to focus?

25 A Yes.

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1 Q Affect his concentration?

2 A Yes.

3 Q Affect his ability to listen?

4 A It could. That's why we asked for psychological
5 testing, to test for that. We were looking. We
6 looked at that and we ordered the psychological
7 testing to make sure that he could focus, to see
8 if he had any deficits, what we call frontal
9 lobe deficits; and the neuropsychologist
10 concluded that there weren't any.

11 Q How about hallucinogen abuse? Would that
12 create -- I guess being addicted to
13 hallucinogenic drugs for a long period of time,
14 would that do anything to prohibit the ability
15 to focus or to take away from his concentration
16 level?

17 A I couldn't say.

18 Q He was also previously diagnosed with attention
19 deficit, hyperactivity disorder?

20 A In the past as a child, I believe that he was --
21 we don't have any records. I think without
22 looking back at my notes, I can't remember if we
23 actually had records that had that on there or
24 if his mother said that he had been diagnosed
25 with that.

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1 But looking back, we determined that
2 retrospectively when we looked at his history,
3 it seemed that he had that, that he had
4 attention deficit disorder as a child.

5 Q And you yourself noted that during your
6 examination of him, he was anxious and fidgety
7 throughout the evaluation?

8 A Yes.

9 Q Do you remember that?

10 A Yes.

11 Q If you take into account or if you consider the
12 M.R.I. and the E.E.G. and as you said yourself,
13 you couldn't -- that that could take away from
14 the ability to focus or maybe affect the
15 concentration level. As you said, you couldn't
16 rule that out.

17 If you consider that, if you consider the
18 attention deficit disorder that he suffered as a
19 child, if you considered that he was previously
20 diagnosed with impulse control disorder, and if
21 you consider that you yourself also had seen his
22 inability to focus, his agitation and him being
23 anxious, do you think that these things could
24 interfere with his ability to understand or to
25 assist his attorney in his own defense, in

DR. PEGGY WADMAN -IN CAMERA CROSS- BY MS. MIMS

1 understanding and focusing on the trial or in
2 understanding and focusing on the nature of the
3 allegations?

4 A That's a long question.

5 THE COURT: Do you need to have the
6 question broken down?

7 THE WITNESS: I think so. Could you break
8 that down. I'm not sure what question I am
9 answering.

10 BY MS. MIMS:

11 Q Actually competency. Considering all of these
12 things, do you still absolutely feel that he is
13 able to understand or able to focus completely
14 on his defense, that he is able to truly assist
15 his attorneys in his trial?

16 A Yes, if he chooses to.

17 Q If he chooses to?

18 A If he chooses to.

19 Q Okay. Explain that, I guess, Doctor.

20 A I mean, I think when you look at the history and
21 after all the testing that we did, the
22 psychological testing, and as you said the other
23 things that we looked at, what you see with
24 Mr. Gillian is a great deal of impulsivity and
25 some --

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1 I think on one of his diagnoses that we
2 thought that he had a personality disorder.
3 What I mean by that is if he decides to
4 participate, I think that he is capable of doing
5 that; but if he decides not to, then he is not
6 going to.

7 Q Okay.

8 MS. MIMS: Beg the Court's indulgence.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 BY MS. MIMS:

12 Q What role exactly did the neuropsychologist play
13 in you finding Steven competent?

14 A One of the things I asked her to do was to rule
15 out any type of frontal lobe syndrome or
16 frontal lobe damage because we did find the
17 abnormalities on the M.R.I. as we said.

18 So I wanted to make sure that the frontal
19 lobe -- I am getting into probably something
20 that a neurologist should -- but it is where all
21 the executive functions are: Planning, being
22 able to carry out tasks, being able to think, a
23 lot of the organization and whatnot, the types
24 of things that we are talking about.

25 So I wanted to make sure that he didn't

DR. PEGGY WADMAN -IN CAMERA REDIRECT- BY MS. CAMPBELL

1 have any deficits in that area that would
2 interfere with our evaluation of his competency.
3 So she did what is called R-bans (phonetic), the
4 repeatable battery for assessment of
5 neuropsychological status.

6 She also did what is called a S.I.R.S.,
7 which is a structure interview of reported
8 symptoms. Then she did a clinical interview
9 with him. Based on her findings she found there
10 was no evidence of significant frontal lobe
11 damage that would interfere with his ability.

12 Q So that weighed pretty heavily on your findings
13 towards competency?

14 A Not heavily. It was just one more piece of
15 evidence, including all the other information
16 that we had.

17 MS. MIMS: I don't have any other questions
18 for the Court.

19 THE COURT: Any redirect?

20 MS. CAMPBELL: Just A couple of questions.

21 REDIRECT EXAMINATION

22 BY MS. CAMPBELL:

23 Q Your opinion is you found him competent then and
24 he is competent here today?

25 A Yes.

DR. PEGGY WADMAN -IN CAMERA REDIRECT- BY MS. CAMPBELL

1 Q As far as his diagnosis, she tried to infer that
2 there was some other diagnoses. He doesn't have
3 a very good personality. Is that antisocial
4 personality disorder?

5 A Well, he has -- we believe that he has
6 antisocial personality disorder.

7 Q But that doesn't in any way interfere with his
8 competency?

9 A No, it does not.

10 Q And other than that, I note that he has an
11 alcohol dependence?

12 A Yes.

13 Q And that you diagnosed him with cannabis
14 dependence. That would be marijuana?

15 A Yes, both of those in a controlled environment.

16 Q He also has been diagnosed with cocaine abuse?

17 A Yes.

18 Q And hallucinogenic abuse. That would be L.S.D.?

19 A Right, and Ecstasy.

20 Q That's Ecstasy. I wondered what that was.

21 Other than that he has just got an antisocial
22 personality disorder and a head injury?

23 A Yes.

24 Q You haven't diagnosed him as bipolar or anything
25 like that?

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1 A No.

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

4 THE COURT: Any recross?

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

6 THE COURT: Thank you, Doctor. You can
7 step down.

8 MS. CAMPBELL: Your Honor, may she be
9 excused?

10 THE COURT: Yes, ma'am, you are free to go
11 if you would like, Doctor. Thank you. Anything
12 else?

13 MS. CAMPBELL: No, sir.

14 THE COURT: From the State?

15 MS. CAMPBELL: No, sir.

16 THE COURT: From the defense?

17 MS. MIMS: Your Honor, I guess, first of
18 all, I would just have to object to them finding him
19 competent without a neuropsychiatrist here to testify
20 as to their findings and to personally get up here
21 and say what the problems were. We have an abnormal
22 E.E.G. and an abnormal M.R.I., but we don't have the
23 neuropsychologist here to talk about that.

24 I would object to that and, you know, I
25 guess also, Your Honor, just ask that he be found

1 incompetent to stand trial, of course, pending
2 bringing in the neuropsychologist.

3 We would ask that you find him incompetent
4 based on the fact that he has been diagnosed
5 previously with these mental disorders, with impulse
6 disorder and also has been diagnosed -- I think I
7 understand the doctor said this wasn't her diagnosis
8 at this time, but it was obviously a concern.

9 She obviously had reservations based on
10 what she put in her evaluation on the very first
11 page. So we would ask that he be found
12 incompetent for that pending the testimony of the
13 neuropsychiatrist.

14 THE COURT: Ms. Campbell.

15 MS. CAMPBELL: Your Honor, I think the
16 record speaks for itself, as well as her testimony.

17 THE COURT: Anything else, Ms. Mims?

18 MS. MIMS: No.

19 THE COURT: Counsel, I am going to find
20 that the Defendant is competent to stand trial at
21 this time based on the report. I further note that
22 Dr. Wadman was qualified as an expert in the area of
23 forensic psychiatry and made her report based on the
24 records, in fact, numerous records.

25 First of all, there was the prior

1 admissions, also prior treatments, also statements of
2 various individuals and other reports. Apparently
3 there was some, according to the records, a total of
4 about apparently 91 different statements, reports,
5 reviews, medical records, all combined.

6 After doing that, including a comment or a
7 session today, she has made her report. I find --
8 and I realize the written report, as you know, was
9 dated September 28, 2001. She has, of course,
10 supplemented that orally today.

11 Based on that I find that the Defendant is
12 competent to stand trial at this time, that he is
13 capable of understanding the nature of the charges
14 against him and participating with counsel and
15 assisting counsel in his defense.

16 He did at the time of the alleged offense
17 have the ability to differentiate right and wrong and
18 had the capacity to conform his conduct to the
19 requirements of the law.

20 Certainly, there are some various problems
21 attached to Mr. Gillian's situation; but based on
22 that and the record of the doctor, along with other
23 records, it is appropriate for him to stand trial at
24 this time.

25 MS. MIMS: Thank you, sir.

1 THE COURT: Any other motions at this time
2 from the State?

3 MS. CAMPBELL: Not as far as that goes,
4 Your Honor.

5 THE COURT: Defense?

6 MS. MIMS: Not in terms of this.

7 THE COURT: Okay. We have what, 30
8 minutes, before the jury comes in?

9 MR. MCMAHON: Your Honor, may it please the
10 Court.

11 THE COURT: Yes, sir.

12 MR. MCMAHON: I think they have some Lyle
13 motions.

14 THE COURT: Okay.

15 MR. MCMAHON: There are several different
16 issues; and if I could just lay it for the Court
17 perhaps factually.

18 THE COURT: Certainly.

19 MR. MCMAHON: I have done this with you
20 before, making a proffer of what I think the
21 testimony will present and giving you certain
22 documents. Ms. Duke Mims and Mr. Butler just
23 indicated to me there were some Lyle issues.

24 Perhaps I can determine what issues they
25 would say are Lyle issues. I think the first one,

1 Your Honor, is a burglary which occurred January 26th
2 of 2001. I will hand up just a calendar.

3 (Hands to Court.)

4 MR. MCMAHON: That particular burglary --

5 THE COURT: It was what date now?

6 MR. MCMAHON: January 26th, that Friday, of
7 2001.

8 THE COURT: Okay.

9 MR. MCMAHON: It occurred at [REDACTED] [REDACTED]
10 [REDACTED] [REDACTED] Lexington. The body of the victim, I
11 would point out now, was discovered at approximately
12 8:38 Sunday morning, January 28th.

13 Judge, during the course of this
14 investigation into the homicide, after discovering
15 the body of the victim, the officers then began
16 backtracking the victim's movements on the night of
17 Saturday the 27th and the early morning hours of
18 Sunday the 28th.

19 In tracking his movements, it led them to
20 various people and ultimately to some period of time
21 that he spent with the Defendant in the early morning
22 hours of Sunday, January the 28th of 2001, the day
23 his body was discovered that morning.

24 Going back to that burglary, Your Honor,
25 officers were able to determine six individuals that

1 were responsible for the burglary on Old Chapin Road;
2 and those individuals were: Jessie Boot, Brandon
3 Cannon, David Grice, Dustin Johnson, Jeremiah Page,
4 and Steven Gillian.

5 From interviewing all of these individuals,
6 excluding the Defendant, they all admitted
7 involvement in the burglary, admitted meeting behind
8 Gilligan's restaurant on Highway 6 in Lexington.

9 There the Defendant basically had a
10 planning session and keys to the residence, had a map
11 to the residence, turned the map and the keys over to
12 Jeremiah Page; and the individuals went to the house
13 twice on that one day of the 26th.

14 Among the items stolen, there was some
15 coins stolen, there were some silverware stolen,
16 various other personal items. There was a pistol
17 stolen.

18 That pistol was described as a five-shot
19 Taurus .38 special blue steel, brown handle revolver.
20 It was reported stolen on the 26th by Mrs. Muller and
21 her husband. It's listed under firearms, \$350.

22 (Hands to Court.)

23 MR. MCMAHON: Judge, that firearm testimony
24 would show, both from Boot, Cannon, Grice, Page, and
25 Johnson, that it was turned over that day to the

1 Defendant, that the Defendant was basically the
2 ringleader of this burglary.

3 As a matter of fact, he went and had keys
4 made. He had keys to this residence he had gotten
5 from somewhere, he had keys made at the Wal-Mart on
6 Harbison Boulevard. We have a video of he and
7 Mr. Jeremiah Page having five keys made at that
8 Wal-Mart on Harbison Boulevard around 12:30, I guess,
9 the date of the 26th.

10 The testimony is the gun was turned over to
11 him on that Friday. Then on that Saturday the 27th,
12 he had conversations with Jeremiah Page about trying
13 to get shells. The gun was not loaded according to
14 our testimony on the 26th when it was stolen. He was
15 trying to get shells for it.

16 He had one individual, Dustin Johnson, call
17 a third party, Joseph Canady, and try to get shells
18 from Joseph Canady because he knew Joseph Canady was
19 a hunter. He was unable to do so.

20 Mr. Gillian also was -- I don't know if you
21 call him or I don't know if you characterize rappers
22 as black or white. He is a member of the white race
23 and was a rapper known as Solomon or 2 Cocky or
24 something like that.

25 At any rate, he would go to a studio out on

1 Monticello Road. That day he rode out -- he called
2 an individual named Andre Robertson, Dre was his
3 name; and he told him he would be out to the studio
4 in a couple of hours on the 27th.

5 When he went other there, he attempted to
6 get Dre to go buy shells for him for this .38 Taurus.
7 Dre wouldn't do it. Dre told him basically, "You
8 know, you are going to get in trouble." He was
9 unsuccessful getting shells from Dre.

10 He ultimately got Dustin Johnson, who had a
11 fake I.D. in the name of Michael Duke, to go back to
12 the Wal-Mart on Harbison Boulevard; and Dustin
13 Johnson purchased a box of 50 full-metal jacketed
14 U.M.C. .38 special shells.

15 We have the receipt for that purchase. We
16 have the video for that purchase. In the video you
17 see Dustin Johnson. Across the aisle or the counter
18 from Dustin Johnson, Mr. Johnson, then there is the
19 clerk at the Wal-Mart.

20 Then on the other side of the counter is
21 who we contend is the Defendant in this case,
22 Mr. Gillian. So that is where he got the rounds on
23 the 27th for the .38 that was stolen on the 26th.

24 Judge, as the case develops, Mr. Ward got
25 off work around 11:30 on the night of the 27th. He

1 and Mr. Gillian were -- quote -- friends -- unquote.
2 They had gotten together in the early morning hours
3 of the 28th.

4 Mr. Ward had left work with two coworkers,
5 Mr. Clint Brown and Ms. Wendy Johnson. They dropped
6 by the Suburban Lodge where Mr. Ward was staying. He
7 got a change of clothes. He didn't change them.

8 Then he left the Suburban Lodge with Clint
9 and Wendy. They ultimately end up at Clint and
10 Wendy's apartment in Lexington County, Palmetto
11 Pointe, off of Lake Murray Boulevard.

12 While there, he asked them about going to a
13 party with him with a guy named Steve. He received a
14 phone call, Mr. Jason Ward did. Clint and Wendy
15 declined going to the party.

16 He asked directions to the back entrance
17 where the barricades were at Palmetto Pointe. Our
18 testimony, I think would show, that Mr. Gillian
19 picked him up.

20 It would be inferentially shown that
21 Mr. Gillian picked up Jason Ward from the barricade
22 at Palmetto Pointe Apartments sometime in the early
23 morning hours of the 28th.

24 Gillian and Mr. Ward then went to a party
25 over in Coldstream. This is now into the morning of

1 the 28th at Mike Glenn's house. Mr. Ward had been
2 there previously -- excuse me -- Mr. Gillian had been
3 there previously in the evening to the Glenn
4 residence with Jeremiah Page.

5 Ward and Gillian stayed at the Glenn
6 residence for a period of time. Ward then called
7 back over to Clint and Wendy's. They went back --
8 Ward went back to Clint and Wendy's and brought
9 Steven Gillian with him this time.

10 This is going to get on up into even
11 earlier in the morning of the 28th. While there,
12 they talked. I think Jason Ward and Clint played
13 some cards. Ms. Johnson went to bed about quarter to
14 five that morning, about 4:45, leaving Clint, Jason
15 and the Defendant up.

16 The Defendant received a phone call, said
17 he had to leave, somebody had been shot. He was kind
18 of in a rush to leave. We contend that phone call
19 was about 4:54 that morning.

20 He leaves. He ends up back over at the
21 Glenn residence. Our testimony would show that
22 Jeremiah Page called him, claiming that he had been
23 kicked out of the party.

24 Mr. Gillian went over there to avenge his
25 co-defendant's in the burglary's rights, I guess you

1 would say. When he got to the Glenn residence, he
2 basically began slapping or hitting around anybody in
3 his way, so to speak.

4 There then became a conflict of whether
5 Jeremiah had really told him the truth about being
6 beaten up or if the fellows that Jeremiah claimed had
7 beat him up were telling the truth.

8 The result of that Mr. Gillian then
9 basically beats Jeremiah, beats him all around the
10 kitchen island. He is slapping everybody around.
11 Mr. Ward, the victim, who had come there with him
12 then interrupts Mr. Gillian in an attempt to get him
13 from beating these folks up.

14 The testimony is that Ward basically takes
15 him to the floor, punches him one time, Gillian gets
16 irate, threats are passed. We have witnesses who
17 will talk about threats, such as, "I will trick Jason
18 into leaving with me. You are going to read about
19 this in the paper in the morning. I will kill the
20 M.F.," stuff such as that.

21 Then we have witnesses that have them
22 leaving off the patio together, walking towards the
23 driveway where the cars are parked together at 5:30
24 or later.

25 Mr. Ward's body is found at 8:38. We have

1 witnesses that hear shots at approximately 6:30 in
2 the morning in the area behind Boozer, around Dutch
3 Square.

4 As they continue investigating the case,
5 Your Honor, there will be further testimony that he
6 told a member of his family, I believe his brother --
7 his cousin -- that he had lured or had gotten the
8 victim to go back behind Boozer's under the pretense
9 of showing him, the victim, how he, Gillian, had
10 broken into Dems.

11 The officers did some research on that
12 break-in of Dems and found that it had been broken
13 into back on July the 4th of 2000. There were about
14 30 -- and, Judge, to be quite frank with you, if they
15 don't sell it at the Wal-Mart, I don't know what kind
16 of watch it is -- but it's a Tag Heuer watch, an
17 expensive watch they tell me. It's nothing I would
18 be shopping for. But about 30 of those watches were
19 stolen.

20 We have individuals, Mr. Dustin Johnson for
21 example, that claim to have pawned those watches at
22 Malcolm Jackson's place over on Saint Andrews Road,
23 which is a silver shop or gold or jewelry shop that
24 he had gotten from the Defendant.

25 So I think there are several areas -- while

1 the burglary is important is I guess on one thing --
2 the victim was shot five times. One of those is
3 entrance and exit. Four rounds were recovered.

4 Those four rounds are .38 caliber rounds
5 consistent with a right twist, five groove weapon.
6 When the S.L.E.D. first gave the report they included
7 Taurus as a type of weapon.

8 When the officers got the information on
9 the bullets, they bought an identical box of bullets.
10 That box of bullets is consistent with the bullets
11 that Mr. Johnson purchased on the evening of the 27th
12 with Mr. Gillian also in the frame.

13 The murder weapon was never recovered.
14 There is testimony that the officers searched his car
15 on the afternoon of the 28th with consent. They did
16 not find a weapon in the car. Later on information
17 developed that he would hide the gun between the fire
18 wall and the hood. They did not check under the
19 hood.

20 At a later time they went back when it was
21 impounded, the gun was not there, never recovered.
22 No bullets were ever recovered from the Defendant's
23 vehicle or the Defendant's residence or a weapon
24 recovered.

25 Various items have been recovered from the

1 burglary, Your Honor, at locations that are
2 associated again with the Defendant in my opinion.
3 For example, some items that belonged to the Mullers
4 were found on Systems Lane, which is off of Weed
5 Drive. His parents's home is at the intersection of
6 Weed and Innsbruck.

7 There were items of these key envelopes, I
8 call them, where if you have a key made, they slip it
9 in an envelope for you at Wal-Mart. There were a
10 number of those found in a trash can at a lake house
11 owned by a friend of the Defendant's.

12 There was also a .40-caliber magazine found
13 in the trash at the same lake house, a .40-caliber
14 magazine had been stolen from the Muller residence.
15 Judge, we have Mrs. Muller, who, of course, reported
16 the weapon stolen.

17 We have her ex-husband who purchased the
18 weapon for her that describes it obviously as a
19 five-shot, four-inch Taurus, the same description as
20 that that was stolen.

21 So we think the burglary is important
22 because it puts the murder weapon in the Defendant's
23 hand or what we inferentially would argue is the
24 murder weapon within -- I actually figured it up --
25 within about 40 hours.

1 The weapon probably existed for 105,000
2 hours before it made it in his hands. In less than
3 two days, it's used in the commission of a homicide
4 is our position on that.

5 That's the part on the burglary. Then, of
6 course, the fight over at the Glenn residence, if
7 they say that's a Lyle issue, we think that, of
8 course, goes to --

9 MR. BUTLER: I'm sorry, I don't mean to
10 interrupt you. I will concede the fight is not the
11 problem. No problem with that.

12 MR. MCMAHON: I wasn't sure on that.

13 THE COURT: Okay.

14 MR. MCMAHON: Of course, the murder weapon
15 is from the burglary. Then, Judge, the Dems'
16 robbery, he connects those two. He connects those
17 two by his statement.

18 I think it's important in a case, a
19 circumstantial, case where you find the body if you
20 associate the location of where the body is found
21 with the Defendant, with the individual that is
22 accused of the crime, as opposed to just finding the
23 body behind Boozer Shopping Center.

24 He makes that connection, and I think that
25 goes to identity, the identity of the perpetrator.

1 Now, I will say this factually. Dems was not entered
2 by the back. He was not -- the body of the victim
3 was not found in the rear of Boozer Shopping Center
4 that is behind Dems.

5 It's an L., Boozer Shopping Center is. It
6 runs and kind of T.s off of Bush River Road and then
7 cuts towards Saint Andrews Road.

8 Of course, Dems is on that side that cuts
9 toward Saint Andrews Road. The body of the victim is
10 found behind Boozer on the side that comes out of
11 Bush River Road.

12 Dems was actually entered by a kind of
13 smash and grab. The front door was smashed in.
14 Somebody went in, about as far as from the rail to
15 His Honor's bench and broke the case and got the
16 watches out.

17 So I'm not saying factually that is what he
18 is doing, but he makes that connection by the
19 statements he gives to family members; and we have
20 all these statements.

21 Judge, I have statements of all the
22 co-defendants of the burglary I could provide for the
23 Court to review. I have statements of both his
24 cousin and his brother concerning the break-in at
25 Dems. I don't know if there are any other issues of

1 Lyle they want addressed. I'm not sure.

2 MR. BUTLER: The most complicated one is
3 the one you have dealt with at great length already:
4 Allegations of drug use fall under Lyle and
5 allegations of drug dealing would fall under Lyle.

6 MR. MCMAHON: I was not planning on getting
7 into that. If they are not getting into it, I'm not
8 getting into it is kind of my theory on the drug
9 dealing. I don't think it's a drug case.

10 MR. BUTLER: Threats, others than those
11 made on the night of the party at the Glenn house, if
12 there are any other threats.

13 MR. MCMAHON: Up here on River Drive?

14 MR. BUTLER: I can't remember where it was.
15 I saw it somewhere. Anything other than what
16 happened on the night of incident is a prior bad act
17 as far as I'm concerned.

18 MR. MCMAHON: Judge, I don't think I am
19 going back to any prior threats prior to the night of
20 the incident. I do not have that in my lineup now.
21 If I change it, I certainly will notify the defense
22 and notify the Court. I do not have that in the
23 lineup now.

24 My main focus on the Lyle is the burglary
25 on Old Chapin Road and the association of the crime

1 scene with the break-in at Dems. That would not
2 include anything that occurred at the Glenn house,
3 with the exception of any conversations about drugs
4 at the Glenn house.

5 MR. BUTLER: You are not going to get into
6 that?

7 MR. MCMAHON: No, I was not going to get
8 into any drug conversations at the Glenn house; but I
9 am going to get into threats.

10 MR. BUTLER: I think those are fine.

11 THE COURT: All right. Mr. Butler.

12 MR. BUTLER: Thank you. I would agree with
13 the State's position if the only evidence placing the
14 Defendant with the gun was the burglary. Let me see
15 if I can simplify this for my own sake.

16 THE COURT: Yes, sir.

17 MR. BUTLER: S.L.E.D., when they tested the
18 ballistics from the rounds that were exhumed from the
19 victim's body, said -- the ballistic report -- said
20 that one of the guns that could have done this is a
21 Taurus .38, among three, six, eight other guns. May
22 I pass this up, Your Honor.

23 THE COURT: Yes, sir.

24 (Hands to Court.)

25 MR. BUTLER: So the fact that -- I would

1 make this part of the record as well. The fact that
2 the Defendant --

3 THE COURT: Do you want to make this a
4 Court's exhibit's?

5 MR. BUTLER: Whatever Your Honor's
6 preference is.

7 THE COURT: Let her go ahead and mark it
8 first.

9 (Court's Exhibit Number 3, S.L.E.D.
10 firearms report, is marked for purposes of the
11 record.)

12 MR. BUTLER: May it please the Court.

13 THE COURT: Go ahead.

14 MR. BUTLER: So the fact that the Defendant
15 is alleged to have been in possession of a gun that
16 is consistent with eight other guns that may or may
17 not be the murder weapon, I will concede that is
18 relevant given that relevancy is a mental threshold.

19 The problem is that the prior bad act,
20 which is the burglary and the stealing of the gun,
21 isn't necessary to place the gun with the Defendant
22 prior to the murder of the victim.

23 Mr. McMahon says as much himself. I agree
24 with him that several of the other co-defendants in
25 the burglary -- and Mr. McMahon alluded to the

1 evidence supporting the fact or the allegation that
2 the Defendant is responsible for the burglary -- I
3 will concede the clear and convincing evidence
4 standard for Lyle is met.

5 The problem I have is the logical
6 relationship between the burglary and the killing is
7 not met, primarily because, for example, Jeremiah
8 Page, who is a co-defendant in the burglary and a
9 State's witness, can say everything that is necessary
10 to put the gun with the Defendant. He gives a
11 statement on page 8. I would like to hand this up to
12 Your Honor real quickly.

13 (Hands to Court.)

14 MR. BUTLER: On the bottom of page 8,
15 Investigator Jackson questions Jeremiah Page about
16 the gun, he asks "How many bullets did the .38
17 hold?"

18 "It only held five."

19 "Describe the pistol to me."

20 "It was dark metal. It had a wooden
21 handle. It was gold in color on the handle, and it
22 said Taurus. It was made in Brazil."

23 I would like to make this a Court's exhibit
24 as well if I could please.

25 THE COURT: All right.

1 (Court's Exhibit Number 4, statement of
2 Jeremiah Page, is marked for purposes of the record.)

3 MR. BUTLER: There is independent evidence
4 placing the alleged murder weapon with the Defendant,
5 irrespective of the burglary. The burglary is no
6 more relevant than it would be if he had bought the
7 gun at a pawn shop or it was his own gun.

8 That then becomes irrelevant under 403 and
9 prejudicial under 403 and prejudicial under Lyle.

10 Lyle itself has its own built-in prejudicial
11 standard. So I guess what I'm saying is I am
12 agreeing that his being in possession of the gun
13 would fall under the Lyle exception.

14 I think it would be an identity exception.
15 I don't need to make Mr. McMahon's arguments for him,
16 but I would agree. His buying the bullets, I agree
17 that comes in. But the source of where the gun came
18 from is not -- what is relevant is him being in
19 possession of the gun.

20 If all we knew was that the gun was stolen
21 and that the Defendant had stolen the gun, then the
22 burglary would be necessary to place him with the
23 gun; but it's not.

24 There is some language in the Lyle case law
25 that says relevance is equivalent to necessary. The

1 prior bad act comes in sort of by necessity. We
2 don't want to have to get into the prior bad act, but
3 the prior bad act contains in it some evidence that
4 is necessary to prove an element of the offense that
5 is being tried.

6 So in this case the fact that he may have
7 been in possession of a gun that may be the murder
8 weapon, I agree is relevant. The fact the gun was
9 taken from a burglary is not and would not meet the
10 Lyle exception.

11 So I think that they can have witnesses who
12 can come in and say, "Yeah, he had a gun like that.
13 It was Taurus. It only shot five shots. It was a
14 .38."

15 The State would be able to satisfy the
16 requirements that they need to make with respect to
17 placing the gun with him and making that gun the
18 murder weapon, to the extent they will be able to at
19 all without bringing in the burglary. The burglary
20 becomes completely extraneous and unnecessary and
21 prejudicial. Beg the Court's indulgence one moment,
22 please.

23 THE COURT: Yes, sir.

24 (Pause.)

25 MR. BUTLER: Another way of saying this,

1 Your Honor, is that he is no more or less the
2 perpetrator of the burglary -- I'm sorry -- he is no
3 more or less the perpetrator of the murder because
4 the gun was stolen in a burglary.

5 He may be more likely the murderer because
6 he had that gun, but you don't need the burglary to
7 put him with the gun. So for that reason we would
8 move to exclude the evidence of the underlying
9 burglary.

10 I could add -- and if I am wrong, I would
11 like the State to correct me -- I think that this
12 would lengthen the trial close to a day. Maybe I am
13 wrong, but it's a lot more evidence that is going to
14 come in if we get into the burglary. I just appeal
15 to that by way of judicial economy.

16 I think the only reason that the State
17 would really want the burglary in is to allow the
18 propensity interest that because he committed crimes,
19 he committed this crime as well. The other crime is
20 not necessary to put him with the gun.

21 So we would move to exclude the evidence of
22 the underlying burglary for that reason, conceding
23 that his having the gun should come in and his
24 attempting to buy bullets should come in.

25 With respect to the burglary at Dems, again

1 to clarify for my own purposes, the victim's body is
2 found behind Boozer Shopping Center. Dams is in
3 Boozer Shopping Center. However the body is found
4 behind Boozer Shopping Center and not behind Dams.
5 Dams was broken into the front at the other end of
6 the mall.

7 However, I agree with Mr. McMahon, his
8 statement is sufficient to bring that in. I agree
9 with that. The Defendant's statement that, "I took
10 him back there to show him how I broke into Dams," I
11 will concede that that is relevant and that should
12 come in.

13 But to prove it beyond that is irrelevant.
14 The statement itself is sufficient to prove the
15 underlying burglary. Beyond the fact that he says he
16 did it is irrelevant.

17 It's sufficient that the Defendant is to
18 have said to somebody, "I took him back there to
19 show him how I broke into the place," because that
20 really is what is important. It goes to place him
21 behind the Boozer Shopping Center. He says it so
22 you don't need all the other facts of the underlying
23 burglary.

24 In all candor I am less concerned about the
25 Dams. I think that is probably a closer one and a

1 better Lyle situation. I think that the statement
2 itself is sufficient.

3 I would also say that the evidence that the
4 Defendant actually committed that burglary would not
5 be by the clear and convincing standard. Unlike the
6 first burglary, which I say there is clear and
7 convincing evidence, the evidence that this Defendant
8 committed the burglary at Dems would not be by the
9 clear and convincing standard.

10 You have evidence that he said that's why
11 he took Jason Ward, the victim of the murder, to this
12 location. Then you have got other people saying that
13 he had him pawn watches. I would say that is clear
14 and convincing evidence of possession of stolen
15 goods.

16 I think it's not clear and convincing
17 evidence that he committed the burglary, and I think
18 the statement itself is sufficient. That would be
19 our position.

20 THE COURT: Anything else on that,
21 Mr. McMahon?

22 MR. MCMAHON: Judge, I guess I will take
23 them in reverse order since he just talked about the
24 theft at Dems where he says he is going to show him
25 how he broke in Dems.

1 I think I can get into it with two
2 witnesses, an officer and the owner of Dems, to show
3 that the burglary had been committed and what items
4 had been stolen and what items have been recovered.
5 Based on this information, that's how they started
6 recovering these items.

7 So I did not intend to put, for example,
8 the owner of the pawn shop up necessarily to say, "I
9 bought these from so and so," because Dustin Johnson,
10 as you remember, involved in the burglary at Old
11 Chapin, was also involved in the pawning of the
12 watches from Dems.

13 I was intending to do that. As Mr. Butler
14 says, I think the Defendant himself associated the
15 crimes as -- to give you an example, as Felix
16 Cheeseboro associated the barber shop crime with
17 Cee-Allah-Born, the cab driver homicide.

18 That, I think, is clear to where I am not
19 trying to go into trying the Dems homicide, but since
20 he has associated the Dems homicide with the Dems
21 burglary with our homicide, then it meets that
22 standard under Lyle on identity and on Cheeseboro.

23 Your Honor, going to the weapon, there are
24 several cases. One I think is Nixon Quarrels. As
25 His Honor remembers, this was a case tried before

1 George Bell Timmerman. Nixon Quarrels stole an
2 automobile down here at Marion and Gervais Street.

3 They then used that stolen automobile to
4 abduct a young lady right outside of Gaston at what
5 was the Pantry or Seven/Eleven. The Court says,
6 "Putting ourselves in the position of the trial judge
7 of this case, it is easy to conclude with his ruling
8 that Donald -- Donald was the owner of the vehicle
9 who had his car stolen -- Donald's testimony was
10 admissible. The car theft occurred within a short
11 time." It's got approximately two hours before the
12 robbery. Of course, I used the time of 40 hours
13 before the homicide.

14 "The car theft and the attendant
15 circumstances and facts are so related to the charged
16 crime they constitute evidence that there was a
17 common scheme or plan between the crime."

18 I am not saying it was a common plan and
19 scheme between the burglary on Old Chapin Road and
20 the homicide, but I am saying it goes to the issue of
21 identity of who ends up with that gun and where that
22 gun comes from.

23 "Without the getaway car, the robbery would
24 have been unlikely." I think you can just plug in
25 without a murder weapon, the murder would have been

1 unlikely, perhaps without this particular weapon.

2 "And even less likely of ensuring the kidnapping and
3 rape. The relevancy to the car theft to the crimes
4 charged is patently, easily perceived."

5 Judge, another case -- I don't have it in
6 the courtroom -- is Bo Southerland, Robert
7 Southerland. I believe they used the weapon, which
8 was never recovered, to kill the victim in that case
9 which was a shotgun that they had stolen from a
10 burglary in Calhoun County.

11 I believe that was admissible as a prior
12 bad act. And in that particular case -- I have sent
13 for that case so I can review a little of those facts
14 in Southerland and Cooper. Then, again, Your Honor,
15 I think Cheeseboro where you have got a gun used in
16 one homicide and a gun used in the other that links
17 it up.

18 Judge, I don't think they are going to
19 stipulate that he had the murder weapon. With the
20 propensity, if you will of Richland County jurors
21 sometimes, I want to tie up all those loose ends of
22 each and every individual that might have been in
23 possession or might have been in the presence of that
24 weapon, who ended up with that weapon on Friday the
25 26th and how it came to be in his possession. It

1 also corroborates people like Jeremiah Page making
2 the keys which is on video.

3 Of course, I am getting into the argument
4 because I think Mr. Butler conceded the clear and
5 convincing aspect of it. But it corroborates these
6 various other individuals on the video, on the keys
7 on the video, on purchasing the ammunition in this
8 case. So I think it is necessary, I think it is
9 obviously relevant, and I think it is necessary under
10 the standard.

11 THE COURT: Mr. Butler.

12 MR. BUTLER: Can I respond briefly?

13 THE COURT: Yes, sir.

14 MR. BUTLER: It does corroborate what
15 those people say but only with respect to the
16 burglary. I am saying the burglary is irrelevant.
17 It doesn't corroborate the fact that he has got the
18 gun. The weapon is no more in the Defendant's hand
19 because it was stolen. How he got the weapon is
20 irrelevant.

21 I agree in the Nixon case and as
22 Mr. McMahon laid out in the Southerland case, I won't
23 disagree with him -- I don't recall it right
24 offhand -- but if the only evidence putting him
25 with the gun was with the burglary, let's say, all

1 these same witnesses, "Yeah, we broke into the
2 house. There was a gun. It was a .38. It was a
3 five shooter and it was a Taurus, and we took that
4 out of there." And if that was the only evidence
5 putting him with the gun, I would concede that it
6 comes in.

7 The problem is there is independent
8 evidence putting him with the gun, so they don't need
9 the burglary. The only reason to bring up the
10 burglary is to make him look like a criminal and hope
11 that the propensity from the inference of that
12 burglary carries over to the charge that is being
13 tried today.

14 We won't stipulate that he had the murder
15 weapon. But let's assume that he was caught. This
16 is why the burglary is relevant. The burglary is
17 relevant only because it puts him with the gun. If
18 he was caught with the gun, they wouldn't try to
19 bring the burglary in. They know they couldn't
20 because he is caught with the gun.

21 He is not caught with the gun, so they need
22 some evidence to put the gun in his hand. It's not
23 the burglary that does it. It's these other
24 witnesses, Jeremiah Page, who happens to be involved
25 in the burglary, too.

1 But Jeremiah Page can say, "I saw him with
2 the gun. It was this kind of gun," and it doesn't
3 matter. It's no more relevant that it was stolen if
4 then if it was his own gun or his father's gun.

5 Where the gun came from does not anymore put the gun
6 in his hands. They have got somebody to put the gun
7 in his hands.

8 Under Lyle, under 404 (B), under 403, we
9 would move to exclude -- I guess I would say that
10 this is a motion in opposition. I want to make clear
11 that it's our position that the State, as proponents
12 of the evidence, has the burden. But we would move
13 in opposition to that evidence coming in.

14 MR. MCMAHON: Judge, I need to give you a
15 copy. I finally got my copy of Southerland, 477
16 S.E.2d 862. "Southerland contends that the trial
17 Judge erred in allowing the State to introduce
18 evidence that he stole a shotgun used to kill Quinn
19 from a trailer two weeks before the murder. Then he
20 traded the shotgun for drugs the day after the
21 murder. We disagree."

22 Then it goes through the fact that the
23 evidence showed that Southerland possessed the
24 shotgun at the time of the murder. The shotgun was
25 the type used to kill Quinn, and Southerland disposed

1 of the shotgun after the murder.

2 "This evidence established identity and a
3 common scheme; therefore, we found that the trial
4 judge properly admitted the evidence." That was, I
5 think, Judge Anderson. Yes, sir, it was Judge
6 Anderson in that particular case.

7 MR. BUTLER: I think that would be fine.
8 This is the last thing I will say, I promise.

9 THE COURT: It's all right.

10 MR. BUTLER: If the only person who would
11 say it was a Taurus and a .38 and it was a five
12 shooter, if the only person who could say that would
13 be the victim of the burglary, we wouldn't be having
14 this argument.

15 The burglary would then be necessary to
16 put that gun in his hands. But other witnesses can
17 put it there, and the burglary doesn't have anything
18 to do with it at that point.

19 If nobody knew what kind of gun it was but
20 the victim, I would agree the victim would have to
21 come in and say, "Yes, it was a Taurus and a five
22 shooter and .38." But Jeremiah Page says all those
23 things. So they don't need the victims of the
24 burglary, and they don't need the burglary coming
25 in.

1 MR. MCMAHON: Judge, they tell me now that
2 the homeowner is going to have the same credibility
3 as a co-defendant in the burglary. That goes to the
4 issue of me having to prove this case beyond a
5 reasonable doubt, not to meet the standard of Lyle of
6 clear and convincing evidence.

7 MR. BUTLER: It's still the co-defendant
8 who is saying the house was burglarized. If it was
9 the victim who was saying he saw him, the Defendant,
10 burglarize the house, then that argument would have
11 some merit. But it's still the co-defendant saying
12 they burglarized the house. Credibility is still an
13 issue there.

14 THE COURT: I understand. Counsel, under
15 Rule 403, of course, I am required to conduct a
16 balancing procedure. In conducting the procedure,
17 one thing I have got to look at obviously is the
18 potential prejudice to the Defendant, particularly
19 unfair prejudice that would result from it.

20 Given the circumstances and the nature of
21 the witnesses who have got to testify at this time,
22 I am going to have to find that it would be
23 admissible, obviously one being the fact there is a
24 co-defendant's testimony involved as opposed to the
25 testimony of a homeowner.

1 I don't know with what degree of
2 particularity that the co-defendant can testify,
3 except what I have seen obviously in the statement
4 that is up here before me at this time.

5 But in terms particularly of the degree of
6 proof that can be presented, I think the State is in
7 a position where they would necessarily have to be
8 able to present that testimony. So I am going to
9 deny the motion to bar that admission.

10 MR. BUTLER: Just for the record, 404 (B),
11 State versus Lyle, Rule 403, both as to the burglary
12 on the 26th on Old Chapin Road and the burglary at
13 Dams and to preserve the record with a
14 contemporaneous objection, I would hope that it would
15 be sufficient to say the objection, "State V. Lyle or
16 objection reference pretrial hearing, prior bad
17 acts."

18 I would ask the State if they would agree
19 that issue is not being waived if we object as just
20 stated and that that would preserve the record.

21 THE COURT: Mr. McMahon, I assume --

22 MR. MCMAHON: Yes, sir, that would be fine.
23 I have no objection to that.

24 MR. BUTLER: Thank you.

25 THE COURT: Sure. What other motions do we

1 have? Any from the defense?

2 MS. MIMS: I think a lot of this has been
3 covered probably with the Lyle, Your Honor, in terms
4 of the motion to keep the drugs out.

5 (Attorneys confer.)

6 MS. MIMS: I assume that we would need a
7 Denno hearing, Your Honor, Jackson V. Denno, if they
8 are going to put in the Defendant's statement. I
9 don't think Mr. McMahon -- he and I spoke earlier --
10 I don't know if he has made that decision at this
11 time. I guess we would bring that up again once the
12 investigator takes the stand.

13 THE COURT: What about that, Mr. McMahon?

14 MR. MCMAHON: Yes, sir. I said when we get
15 to that point, I would put the Court on notice.

16 THE COURT: It's probably a good idea to
17 actually do it at that point to have some freshness
18 to it.

19 MS. MIMS: Yes, sir. We are also asking to
20 have some photos introducing the body at the scene of
21 the crime, whenever they choose to bring that in, we
22 at that time would have some problems with that.

23 THE COURT: Obviously we --

24 MS. MIMS: We can do that then.

25 THE COURT: We will certainly have that in

1 camera.

2 MS. MIMS: Yes, sir. Beg the Court's
3 indulgence.

4 THE COURT: Sure.

5 (Pause.)

6 MS. MIMS: I think that's it, Your Honor.
7 Oh, we would ask the witnesses be sequestered.

8 THE COURT: Any objection from the State?

9 MR. MCMAHON: Aside from, of course, the
10 mother and the step-dad and the chief officer, I
11 don't care.

12 THE COURT: You certainly can.

13 MR. MCMAHON: Can I keep one other officer
14 in here?

15 MS. MIMS: I would ask that they be
16 excluded, Your Honor, just one officer in the
17 courtroom.

18 THE COURT: That's fine.

19 MR. MCMAHON: As long as it's reciprocal.

20 MS. MIMS: Yes, sir.

21 THE COURT: Certainly, certainly. We will
22 grant the motion. It applies both ways. It does not
23 apply to any rebuttal witnesses called by the State.
24 Any motions from the State?

25 MR. MCMAHON: No, sir.

1 THE COURT: Counsel, are you ready to go
2 ahead and start or do you want to take a short break
3 before we do the openings?

4 MS. MIMS: A really short break, Your
5 Honor.

6 THE COURT: Take about ten minutes.

7 MS. MIMS: That will be fine. Thank you
8 very much.

9 THE COURT: Thank you.

10 (Whereupon there was a recess.)

11 THE COURT: Counsel, before we begin, let
12 me ask the State how long do you anticipate your case
13 taking in total?

14 MR. MCMAHON: Three or four days, Your
15 Honor.

16 THE COURT: Three or four days.

17 MR. MCMAHON: We have give or take about 38
18 witnesses.

19 THE COURT: We obviously will probably need
20 to go late some evenings, I assume, is that going to
21 be correct?

22 MR. MCMAHON: Yes, sir, that's fine with
23 us.

24 THE COURT: Well, it could be either that
25 or the weekend as you know. I assume that you would

1 rather go later in the evenings than go on the
2 weekend.

3 MR. MCMAHON: Yes, sir.

4 THE COURT: Does anybody have any feelings
5 about that? Nobody seems to want to go the weekend,
6 I notice that. Let's see how we are doing with it.
7 By tomorrow or Wednesday evening, we might need to
8 take a look. We won't do it today. I don't want to
9 catch the jury off guard. I will tell them to be
10 prepared for it later in the week.

11 MR. MCMAHON: We have about five witnesses
12 we would like to put up today. I don't think any of
13 them would be particularly long.

14 THE COURT: The openings shouldn't be that
15 long, should they?

16 MR. MCMAHON: We like to try to get them up
17 today.

18 THE COURT: Well, let's shoot for it.

19 MR. MCMAHON: Thank you.

20 THE COURT: The defense ready?

21 MS. MIMS: Yes, sir.

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

23 (The jury returns to the courtroom at
24 4:10 p.m.)

25 THE COURT: At this time all parties and

1 attorneys are in the courtroom and all jurors have
2 returned.

3 Ladies and gentlemen, I apologize for being
4 a little late getting you in. We had some matters we
5 were taking up. It took a few minutes to get all
6 that, but we are now prepared to begin.

7 At this time, Madame Clerk, would you put
8 the jury, the jury panel, under oath for me, please
9 ma'am.

10 (The jury is duly sworn.)

11 THE COURT: At this time all jurors are now
12 sworn. Ladies and gentlemen, as we told you, this is
13 the case of the State of South Carolina versus Steven
14 Gillian. By virtue of the indictment I showed you a
15 few moments ago, they charge Mr. Gillian with the
16 offense of murder.

17 Now, as I told you, the indictment is
18 merely a statement of the charges against the
19 Defendant. It is not part of the evidence. It
20 doesn't mean the Defendant did anything wrong. It is
21 simply designed to give him notice of what he is
22 charged with.

23 The State, of course, must prove the
24 charges in this trial; and that's why you are sitting
25 where you are. To this charge the Defendant pleads

1 not guilty. That thereby places upon the State the
2 burden of proving him guilty beyond a reasonable
3 doubt.

4 It is a cardinal rule of our law that a
5 defendant in any criminal trial is always presumed
6 innocent, unless and until the State has proven him
7 guilty beyond a reasonable doubt.

8 Now, you sit as finders of fact in this
9 case. That is a very wide discretion that is
10 accorded only to you, and nobody can disturb your
11 findings of the facts in the case. That's something
12 that cannot be appealed. Anything I say can be
13 appealed, but what you do as the jury cannot be
14 appealed.

15 As finders of fact, you must also be the
16 judges of the credibility, or in other words, the
17 believability of the witnesses. That means that as
18 to every witness who testifies, you determine how
19 credible you find that witness.

20 You may believe everything a witness says
21 or you may believe nothing they say or you may
22 believe any part of it and throw out the rest. You
23 may also believe one witness against all of the
24 others or vice-versa. That is all within your
25 discretion as jurors, a very wide discretion again

1 accorded to you.

2 Now, in making your determinations, you
3 must consider only the evidence which comes into this
4 case. Let's talk about what evidence is and what
5 evidence is not.

6 First of all, evidence simply is this. It
7 is the testimony of the witnesses who take this
8 witness chair and testify, plus any other documents
9 or items or exhibits that may come in through those
10 witnesses. That's what the evidence is. That's all
11 the evidence is. Now, there is a lot of it, but
12 that's what you are focusing on with the evidence.

13 Then what is not evidence? Well, first,
14 anything you may have heard outside of this courtroom
15 or any ideas you may have gotten about a case such as
16 this outside of this courtroom is not evidence; and
17 you must put that aside.

18 You must not consider it in any way. In
19 other words, you must focus only on what comes into
20 this courtroom, what you see and hear in the
21 courtroom.

22 Anything the lawyers say is not evidence.
23 The lawyers are going to obviously be quite a bit
24 involved. They will ask questions of the witnesses,
25 but those questions are only designed to get the

1 evidence from the mouth of the witness.

2 They also will have opening and closing
3 statements. Those statements are only their
4 interpretation of the evidence in the case. Of
5 course, it's up to you to freely accept or reject
6 anything that the lawyers may say as to the evidence.
7 So anything the lawyers say is not considered
8 evidence, only what comes from the mouth of the
9 witness.

10 Anything that I say is not evidence. My
11 role is to sit as the instructor of the law. You
12 must accept any instruction I give on the law to you
13 as correct. If I am wrong on anything, there is a
14 time and a place where it can be corrected. But
15 for purposes of this case, you must accept it as
16 correct.

17 Let me caution you now that it is not
18 what you think the law should be. It is, in fact,
19 what I tell you that the law is. Remember, I told
20 you that you have wide discretion when it comes to
21 the facts.

22 You do not have that discretion when it
23 comes to the law. You must accept the law strictly
24 as I give it to you and apply it to the facts as you
25 find them.

1 From time to time, the attorneys may
2 object to various things. Don't be concerned if an
3 attorney objects more than you think he or she
4 should. There are certain times under our rules that
5 they have to object. So you shouldn't hold it
6 against them.

7 You see, our rules, just like any other
8 language, speak in a certain way. In a courtroom
9 the lawyers can only talk in certain ways. There
10 are times in order to correct that, they have to
11 object. So don't be concerned. Don't hold it
12 against them. Don't hold it against either side if
13 a lawyer objects more than you think he or she
14 should.

15 When I rule on an objection, certainly I
16 don't have any feeling either way about one side of
17 the case. I simply am applying the rules of evidence
18 to that particular objection. That's all that I'm
19 doing.

20 It's very important -- and let me note.
21 From time to time, we will ask you to step out of the
22 courtroom while we take up certain matters. Again,
23 don't be concerned about that.

24 In fact, when you sit in those chairs for a
25 while, you may welcome the opportunity to go back and

1 forth a little bit; but certainly we will keep that
2 to a minimum.

3 It's important, as I told you earlier, that
4 you not discuss the case with anyone. Don't let
5 anyone discuss the case with you. The only time you
6 should discuss the case is at the very end when you
7 go into the jury room to deliberate on the verdict.
8 That's when you discuss the case and not until that
9 time.

10 Why do we do that? It's very simple. You
11 know, it's human nature -- I guess we all like to
12 think that we can talk about something and not form
13 opinions. But the fact is that's not true. We fool
14 ourselves when we think that. It's human nature that
15 if we talk about it, we are going to at least form
16 the seed of some opinion.

17 So you don't want to do it. You just want
18 to stay away from any opinion, not just with anybody
19 outside the courtroom, but even among yourselves.
20 Stay away from any discussion of the case
21 whatsoever.

22 I think the best advise I can give you is
23 to pay close attention. Observe the witnesses
24 closely. Listen closely. When it comes time, we
25 will ask you to take the law as I give it to you and

1 make your findings of fact and arrive at a proper and
2 just verdict.

3 What we will do is this. Today we will
4 start with opening statements. Then once the opening
5 statements are made by the attorneys, we will then
6 get into the evidence. Of course, we will continue
7 that. It's going to take probably take three or four
8 days to do that.

9 When the evidence is completed, then the
10 attorneys will have closing statements. After that I
11 will give you a final instruction of the law. At
12 that time it is going to be your case. We will turn
13 it over to you at that point.

14 We certainly will move as expeditiously as
15 we can. Let me note that there will be some -- we
16 won't do that this evening because we caught you off
17 guard by putting you on the jury here.

18 But later in any of the following days, we
19 may need to go a little later, depending on how the
20 time looks. We will try not to go later in the
21 evening, but certain we will try to stay in touch and
22 determine how that will impact your schedule.

23 We will give you all the notice that we
24 can. As you can gather, it will be either that or
25 possibly going into the weekend. We will certainly

1 do everything we can to move it along. With that in
2 mind, I ask you at this time to give the attorneys
3 your undivided attention for their opening
4 statements.

5 Would there be any exception to this charge
6 from the State?

7 MS. CAMPBELL: None, Your Honor.

8 THE COURT: From the defense?

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

10 THE COURT: Madame Solicitor.

11 MS. CAMPBELL: May it please the Court. On
12 January 28th of 2001, Jason Ward was lured into an
13 alley behind Boozer Shopping Center when his friend
14 pulled out a revolver and shot him once in the back
15 of the neck.

16 After Jason Ward fell to the ground, he
17 then pointed that gun at his head and shot him four
18 more times in the face. The man that murdered Jason
19 Ward, the man that executed Jason Ward, his name is
20 Steven Gillian. Ladies and gentlemen, this man
21 (indicating) is Steve Gillian.

22 My name is Luck Campbell. I am an
23 assistant solicitor here in the Fifth Circuit. It is
24 basically made up of the Columbia area, Richland
25 County, and Kershaw County, which is in the Camden

1 area. I will be one of two prosecutors. Also with
2 me is Knox McMahon seated at the table. He will be
3 another prosecutor involved in this case.

4 You have one charge before you, ladies and
5 gentlemen. As the judge instructed earlier, there is
6 one indictment in this case. Very simply, Steven
7 Gillian is indicted for the offense of murder. The
8 grand jurors of this county have true billed this
9 indictment.

10 Let me be the first to tell you that this
11 indictment is not evidence in the case. The evidence
12 in the case will come from the stand up here
13 (indicating). But this indictment is important. It
14 has kind of a twofold purpose.

15 Number one, it tells that Defendant what he
16 has been charged with; and, number two, outlined on
17 the back of this indictment are the elements of the
18 offense that we must prove.

19 I want to talk to you a little bit right
20 now briefly about the law in this case. Very simply,
21 ladies and gentlemen, in this case the State has
22 alleged that Steven Gillian did while in Richland
23 County, on or about January 28 of the year 2001, a
24 little over a year ago, feloniously, willfully, and
25 with malice aforethought kill one Jason Ward by means

1 of gunshots wounds to the head; and that the victim
2 died as a proximate result thereof.

3 I want to talk to you a little bit about
4 the terms involved in murder. Very simply, ladies
5 and gentlemen, the law in this State has defined
6 murder in the following manner. It is very simply:
7 The intentional killing with malice aforethought.

8 What does the word malice mean? It is the
9 intentional killing. That's easily understood. What
10 is malice? It's in popular sense traditionally, very
11 simply, it's the base of the word malicious, if you
12 think of it that way.

13 In its popular sense it means ill will or
14 hatred towards another. But in its legal sense it
15 can be much broader than that. Very simply, ladies
16 and gentlemen, in its legal sense it is the general
17 malignant recklessness for the lives and safety of
18 others or it is a condition of the mind that shows a
19 heart regardless or devoid of social duty and fatally
20 bent on mischief.

21 Those are some of the terms I wanted to put
22 before you at this point. The judge will give you
23 the law at the end. So listen carefully. But as you
24 listen to the testimony develop, as the evidence is
25 presented to you, think about that term malice. Was

1 this a malicious killing?

2 The burden of proof in every criminal case,
3 as it should be, is on the State of South Carolina to
4 prove this Defendant guilty beyond a reasonable
5 doubt. Ladies and gentlemen, I submit in this case
6 that is a burden the State welcomes.

7 I want to talk to you briefly about the
8 facts. This all took place last year on Super Bowl
9 Sunday, a chain of events that we will piece before
10 you -- and you will be hearing from a lot of
11 witnesses. You will hear about a chain of events
12 that started on Friday afternoon of that Super Bowl
13 Sunday, the 26th, and continued throughout that
14 weekend.

15 Jason Ward was 22 years old. He worked
16 full-time for his stepfather during the week, and he
17 also had a second job where he worked in a place
18 called Captain D.s, a restaurant over there on Broad
19 River Road.

20 He worked as a waiter there sometimes at
21 night and especially on the weekends. On that
22 Saturday evening, the 27th, he got off work around
23 11:30. While he had been at work, he had been
24 talking to two of his friends, a young couple that
25 worked there.

1 Their names were Wendy and Clint. They
2 actually lived together. He had made plans to go
3 over to their apartment that night after he got off
4 work around 11:30 and just hang out with them for a
5 while. That's what he did.

6 After he got off work, Clint then gave him
7 a ride back to the place where he was staying where
8 he was able to pick up some clothes to change into.
9 Then he went over to Wendy's and Clint's.

10 Sometime after midnight after he got there,
11 he got a phone call from his friend, a man named
12 Steven Gillian, who is about the same age, maybe a
13 year or two younger.

14 Steven had gone to a party -- all this is
15 taking place over in the Saint Andrews and Irmo area.
16 There was a party going on, some teenagers, a good
17 bit younger than these two. It was happening at a
18 young man named Michael Glenn's house.

19 Steven Gillian and his friend Jason Ward
20 had a conversation, and it was agreed upon that Steve
21 would come -- he was already at Michael Glenn's
22 party -- he would come and get Jason and take Jason
23 to the party, and that's what happened.

24 Sometime after 2:00 o'clock that morning,
25 he went and got Jason Ward. He picked him up, and he

1 took him back to Michael Glenn's party, and they
2 stayed for a while. There were a lot of younger kids
3 there, so they didn't stay that long. They got kind
4 of bored.

5 Then Steven Gillian and Jason Ward left
6 that party and went back over to Wendy's, back over
7 to Clint's apartment, and hung out with them actually
8 playing cards. By this time it's getting pretty
9 late, past four in the morning.

10 They weren't planning on going back; but
11 around 4:54 that morning, Steven Gillian on his cell
12 phone got a phone call from another young friend of
13 his, a young man named Jeremiah Page.

14 Jeremiah Page was in an uproar. He started
15 telling Steven Gillian how he had been maliciously
16 beaten up at Michael Glenn's party. He was still
17 there. They had pounced on him and had thrown him
18 out of the house.

19 Steve Gillian decided to go to the aid of
20 his young friend, Jeremiah Page, and he went back to
21 the party back in Irmo; and he took Jason Ward with
22 him.

23 When they got to the house, both Steve and
24 Jason went inside. They were first confronted with
25 Jeremiah, who was back in by that point. He started

1 getting loud and started getting out of control.

2 He confronted the two young men that
3 supposedly had beaten up Jeremiah. They told him
4 what had really happened, that Jeremiah had been out
5 of control.

6 At that point Steve's anger turned towards
7 Jeremiah. He thought he had lied to him. He got
8 angry, and he got so angry that he grabbed Jeremiah
9 and he threw him up against the counter, and he threw
10 him into the sink; and he categorically proceeded to
11 beat him up, until finally he threw him out the back
12 door.

13 But he was out of control. He couldn't
14 even stop at that point. There was a whole group of
15 these young kids -- 15, 16, 17 years old -- watching
16 as Steven Gillian wreaked havoc on Jeremiah Page.

17 He just went around the room and started
18 slapping them, hitting them in the head. Finally he
19 grabbed one of them and head butted him, broke his
20 nose. At that point Jason Ward had had enough, and
21 he told him, "Steve, stop it. Quit picking on these
22 little kids. Stop it."

23 But Steven Gillian couldn't stop it. So
24 Jason Ward interceded. He grabbed Steve and he put
25 him in a headlock, and he took him down to the floor;

1 and he hit him until he agreed to quit.

2 He humiliated Steve Gillian in front of all
3 those little kids who he had terrorized. Steve ran
4 out into the back. Jason stayed inside. You will
5 hear how that night he started saying things about
6 what he was going to do.

7 He started talking about, "Hey, y'all are
8 going to read about this in the paper tomorrow,"
9 having threatened to kill Jason Ward, how he
10 indicated he was going to trick Jason into going with
11 him to get him away from the house.

12 Finally, ladies and gentlemen, that night
13 at that party, you will hear how between six and 6:30
14 those two young men, Jason Ward and Steven Gillian,
15 left the party.

16 Residents who live near Boozer Shopping
17 Center were up early that morning. You will hear
18 from between the hours of about 6:30 and 6:45, people
19 living within a half mile heard what they thought was
20 a gunshot.

21 Then there was a pause. Then they heard
22 another succession of gunshots, three or four more in
23 a row. They didn't know that much about it then, but
24 they thought about it later that day.

25 You will hear how the maintenance man at

1 Dutch Square Shopping Center, which is directly
2 behind Boozer, heard the same kind of shots. He
3 called the police stating there were shots fired.
4 The police actually responded and searched the area
5 around Dutch Square but couldn't find anything.

6 You will also hear how that morning two
7 women were at Boozer Shopping Center. They were both
8 going to work. One was the owner of the shopping
9 center, and one was another lady that worked in one
10 of the stores. They were riding around, as they
11 often did, to check the area to make sure there was
12 no vandalism involved.

13 You will hear how around 8:30 that morning,
14 they drove up into the back alley behind Boozer
15 Shopping Center, and they panicked because they saw a
16 body lying in a pool of blood; and they called the
17 police.

18 The police responded. When they got there,
19 they found Jason Ward dead, shot once to the back of
20 the neck on this side (indicating), the right side;
21 and there were four more holes in his face.

22 The police continued to investigate. As
23 they investigated, they started interviewing people
24 from the party, people last seen. They found out
25 through their investigation that Steve Gillian had

1 been involved in a burglary that occurred that Friday
2 night. Friday, Saturday, Jason Ward gets off work,
3 this is Sunday morning that the body is found.

4 That Friday night there was a burglary in
5 Lexington County, how Steven Gillian and five other
6 young men went into this house, five or six other
7 young men. One of the items they got was a
8 revolver.

9 This revolver was unique. It was called a
10 Taurus. What made it so unique is it's one of those
11 you have to put the bullets in individually. This
12 gun held five -- not six -- five bullets, the exact
13 same number of bullets that were found -- the exact
14 same number of shots to Jason Ward's head costing him
15 his life.

16 The person that was in possession of that
17 gun from Friday afternoon on was Steven Gillian. You
18 will hear how on that Saturday he was desperate to
19 get someone to purchase bullets for him. You have to
20 be over 21.

21 You will hear how he got one of his young
22 friends who had a fake I.D. to go to Wal-Mart for
23 him. You will actually see a videotape where you
24 will see this young man, Dustin Johnson, purchasing
25 .38 specials. It was a .38-caliber revolver.

1 In the background you will see Steven
2 Gillian looking on as his friend purchases bullets
3 for him. You will hear how the police were able to
4 get some of those bullets.

5 When they recovered the bullets from the
6 autopsy and took those bullets, an expert at S.L.E.D.
7 was able to compare them. The bullets from the brain
8 of Jason Ward matched the ammunition that he got
9 Justin to purchase for him.

10 Finally, ladies and gentlemen, you will
11 hear from some of his family members. You will hear
12 how when he got home between nine and 9:30 that
13 morning, he went in to talk to his brother Clint.

14 That morning he told his brother, he
15 bragged to his brother, about what had happened, how
16 he had shot Jason, how they had gotten into a fight,
17 how he had shot him and that he kept staring at him
18 so then he just had to shoot him a few more times to
19 make him quit staring.

20 After talking to his brother like that,
21 then he went over to his cousin's house. He told his
22 cousin, bragging again about how he kicked five or
23 six kids at a party, kid's asses at a party. Then he
24 looked at him and said, "I killed somebody, Yo."

25 He talked about how he lured Jason into

1 that back alley under the premise to show how he had
2 done another burglary at Dams and how that once he
3 got him back there, he shot him.

4 Now, ladies and gentlemen, after you have
5 heard all the evidence, the judge is going to
6 instruct you on the law. When he instructs you on
7 the law, he is going to send you back to your jury
8 room. You are going to be asked to render a verdict
9 based on the facts and the law in this case.

10 All the State asks in this case, ladies
11 and gentlemen, is that you reach a verdict that
12 literally speaks the truth. It's a Latin word,
13 verdict. Veredicto is the Latin phrase. That's
14 where verdict comes from. It means simply to speak
15 the truth.

16 The State of South Carolina merely asks
17 that you hold Steven Gillian responsible for his
18 choices, for his revenge back on January 28th, and
19 find him guilty for what he did. Thank you.

20 THE COURT: Madame Defense Counsel.

21 MS. MIMS: Thank you, Your Honor. May it
22 please the Court.

23 THE COURT: Yes, ma'am.

24 MS. MIMS: Murder is a heinous offense.
25 It's the most serious crime in this country. It

1 carries the most severe penalties of any other
2 offense that a person can commit, and it should.

3 When a person commits a murder, we as a
4 society want to know who did it; and we want to know
5 fast. Why do we want to know fast? Because we want
6 that person out of our community. We want to keep us
7 safe.

8 But sometimes in our zeal to find out who
9 committed this crime, we draw conclusions too
10 quickly. Sometimes we make a leap of faith based
11 merely on suspicion. That's what happened in this
12 case.

13 The police talked to a lot of kids; and
14 they became suspicious of one person, Steven Gillian.
15 Throughout that suspicion, they narrowed it down;
16 and they began to focus merely on Steven Gillian.
17 Any other leads, any other tips that existed
18 weren't paid attention to. They only focused on
19 that person.

20 The solicitor is right. You are going to
21 hear from a lot of witnesses on this stand. You are
22 going to hear a lot of evidence from here
23 (indicating). There's also evidence you are going to
24 hear about that doesn't exist.

25 You are going to hear that there is no

1 physical evidence tying Steven Gillian to this
2 offense. There is no D.N.A. There is no blood.
3 There's no gun powder residue. There are no
4 witnesses. There's no fiber. There's no hair.
5 There is nothing physically tying Steven to this
6 offense.

7 I ask that as you listen to the witnesses
8 who come up here and testify before you, that you
9 apply your common sense to them. You think about
10 what is there and please carefully consider what is
11 there.

12 Please also think about what needs to be
13 there if this type of murder happened. What else
14 isn't there that should be? I think if you
15 carefully review this evidence and you take your
16 time, you will find that Steven Gillian is not
17 guilty of murdering Jason Ward. Thank you very
18 much for your time.

19 THE COURT: Is the State ready to call
20 your first witness?

21 MS. CAMPBELL: Your Honor, the State calls
22 Mrs. Catalano.

23 THE COURT: Let me note, ladies and
24 gentlemen, it will take a minute or two for each of
25 the witnesses to get here. I have ordered the

ESTHER CATALANO -DIRECT- BY MS. CAMPBELL

1 witnesses to be sequestered, which means that they
2 are obviously not in the courtroom before their
3 testimony. So they have to take a minute or two to
4 get them and bring them in here. Please be patient
5 with us on that.

6 ESTHER F. CATALANO, being
7 first duly sworn, testified as follows:

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

10 THE WITNESS: My name is Esther F.
11 Catalano.

12 DIRECT EXAMINATION

13 BY MS. CAMPBELL:

14 Q Mrs. Catalano, where do you work?

15 A At the Hallmark Shop in Boozer Shopping Center.

16 Q How long have you been working at the Hallmark
17 Shop in Boozer Shopping Center?

18 A Approximately four years.

19 Q Where do you live here in town, ma'am?

20 A I live on Delph Lane.

21 Q How far is Delph Lane from Boozer Shopping
22 Center?

23 A Approximately a half a mile.

24 Q Were you living on Delph Lane back in January of
25 last year?

ESTHER CATALANO -DIRECT- BY MS. CAMPBELL

1 A Yes, I was.

2 Q Were you home on the evening -- the early
3 morning hours of January the 28th?

4 A Yes.

5 Q And that morning -- what time do you usually get
6 up, ma'am?

7 A Sometimes five, sometimes six.

8 Q And that morning around six or 6:30 that
9 morning, did you hear something unusual that
10 caught your attention?

11 A Yes, I did.

12 Q Can you tell the jury what you heard around 6:30
13 that morning?

14 A I went out to get my newspaper.

15 Q Yes, ma'am.

16 A And I heard a shot, bang, and a pause. Then
17 bang, bang, bang.

18 Q At the time you heard one shot first; is that
19 correct?

20 A Yes.

21 Q And then you said there was a pause. Was it a
22 matter of seconds until the next shot?

23 A Yes.

24 Q So you heard the one shot. Then there is a
25 pause, and then you heard several more shots?

ESTHER CATALANO -DIRECT- BY MS. CAMPBELL

1 A Yes.

2 Q How many more shots? Are you sure the exact
3 number?

4 A I'm not sure but probably three or four.

5 Q Three or four?

6 A Yes.

7 Q And that was while you were outside of your
8 house that morning?

9 A Yes.

10 Q At the time did you report that to the police?

11 A Not at the time. I went back in the house and
12 turned the radio on to see if I could get any
13 news about it. I didn't hear anything. Later
14 that evening -- I don't remember which news -- I
15 heard it, saw it on T.V.

16 Q When you saw it on T.V., what brought your
17 attention that you associated these gunshots
18 with what you saw on T.V.?

19 A I did.

20 Q What was it -- because what direction was your
21 house or what direction did you hear the
22 gunshots coming from?

23 A I'm not very good at that.

24 Q Was it the same area that Boozer Shopping Center
25 was in?

ESTHER CATALANO -DIRECT- BY MS. CAMPBELL

1 A Yes.

2 Q So that night you saw something on the news
3 about a shooting at Boozer?

4 A Yes.

5 Q And at that point you made a connection, right?

6 A Yes, I did.

7 Q So then did you call the police?

8 A Yes, I did.

9 Q And did you tell them what you had heard that
10 morning?

11 A Yes.

12 Q That's all I have, ma'am. Thank you.

13 THE COURT: Cross.

14 MS. MIMS: I have no questions.

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

17 MS. CAMPBELL: The State calls Jim Ellis.
18 Your Honor, may she be excused?

19 THE COURT: Yes, ma'am, you are free to go,
20 Mrs. Catalano.

21 JAMES CLAY ELLIS, SR., being
22 first duly sworn, testified as follows:

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

25 THE WITNESS: James Clay Ellis, Sr.

CLAY ELLIS -DIRECT- BY MS. CAMPBELL

DIRECT EXAMINATION

BY MS. CAMPBELL:

Q Hey, Mr. Ellis. Where are you employed?

A Southern Mutual Church Insurance.

Q Do you live here in town?

A Yes, ma'am.

Q Where do you live?

A Over in the Forest Acres area.

Q Back in January of last year, where did you live?

A The Saint Andrews side of town, Fairhaven Drive.

Q Fairhaven Drive?

A Yes, ma'am.

Q Is that close in proximity to the Dutch Square, Boozer Shopping Center?

A Yes, ma'am.

Q Approximately how far is it from the Boozer Shopping Center, do you know?

A Probably three/fourths to a mile as the crow flies.

Q Turning your attention back to that Super Bowl Sunday, that 28th, that morning were you and your wife up for any particular reason?

A Yes, ma'am.

Q What was going on?

CLAY ELLIS -DIRECT- BY MS. CAMPBELL

1 A We had a sick child, and he was throwing up.

2 Q And about what time of morning were y'all up
3 with him, do you remember?

4 A We were up early, from five on probably.

5 Q Turning your attention to around 6:30, 6:45, did
6 you hear something unusual that morning?

7 A Yes, ma'am.

8 Q What was that?

9 A We heard what we thought were gunshots.

10 Q Can you describe to this jury how you heard
11 them or the manner in which you heard the
12 gunshots.

13 A We heard one shot, and then there was a pause.
14 Then there was three or four more. It was like
15 boom, a pause, and then boom, boom, boom.

16 Q And approximately what time was that that you
17 you heard that?

18 A Somewhere between 6:30 and 7:00 o'clock.

19 Q In what direction of town was the sound coming
20 from, could you tell?

21 A It appeared to be coming back from the Dutch
22 Square area.

23 Q The Dutch Square area?

24 A Back up the hill as we refer to it.

25 Q Back up the hill. And then Boozer Shopping

CLAY ELLIS -DIRECT- BY MS. CAMPBELL

1 would be right above it on a hill; is that
2 correct?

3 A Yes, ma'am.

4 Q I want to show you this map. I think you
5 reviewed it at our request. Do you recognize
6 this?

7 A Yes, ma'am.

8 Q This is just a map -- not showing all the
9 roads -- but of Richland County?

10 A Yes, ma'am.

11 Q Specifically the Dutch Square area?

12 A Yes, ma'am.

13 MS. CAMPBELL: Your Honor, at this time we
14 offer it into in evidence.

15 THE COURT: Any objection?

16 MS. MIMS: I have no objection, Your Honor.

17 MS. CAMPBELL: Without objection.

18 (State's Exhibit Number 1, map, is received
19 into evidence.)

20 BY MS. CAMPBELL:

21 Q You can step down here. Let me unlock you.

22 A (Witness leaves the witness stand.)

23 Q I think I can just hold it. You have got to
24 come over here though because she will not be
25 able to hear you. Mr. Ellis, I point out here

CLAY ELLIS -DIRECT- BY MS. CAMPBELL

- 1 on this map (indicating) where the Boozer
2 Shopping Center is portrayed; is that correct?
3 A Yes, ma'am, not to scale, but it's pretty close.
4 Q This is right here (indicating), right?
5 A Yes, ma'am.
6 Q In what part of town was the house that you were
7 living in when you heard the gunshots that
8 morning?
9 A We would be back off Bush River Road, back down
10 in here (indicating).
11 Q Back down in there. Approximately how far is
12 that from your house?
13 A Probably a mile, three-fourths of a mile.
14 Q And, again, the area from which you heard the
15 shots coming was the Boozer Shopping Center,
16 Dutch Square area?
17 A Back up that way, yes, ma'am.
18 Q That's all I have. You can step back up.
19 A (Witness resumes the witness stand.)
20 Q What time was that approximately?
21 A Somewhere between 6:30 and 7:00 o'clock.
22 Q Thank you.

23 MS. CAMPBELL: I have nothing further.

24 THE COURT: Cross.

25 MS. MIMS: No questions, Your Honor.

RON FELDER -DIRECT- BY MS. CAMPBELL

1 THE COURT: You can step down. Thank you,
2 sir. You are free to go if you like.

3 THE WITNESS: Thank you.

4 MS. CAMPBELL: The State calls Ron Felder.

5 RON FELDER, being first duly
6 sworn, testified as follows:

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

9 THE WITNESS: Officer Ron Felder with the
10 Columbia Police Department.

11 DIRECT EXAMINATION

12 BY MS. CAMPBELL:

13 Q Officer Felder, you are employed with the
14 Columbia Police Department?

15 A Yes, I am.

16 Q How long have you been working with the Columbia
17 Police Department?

18 A I've been with the Columbia Police Department
19 for approximately six years.

20 Q So that would be since 1995?

21 A Yes.

22 Q Prior to that were you also employed with law
23 enforcement?

24 A Yes, I was.

25 Q Where did you work then?

RON FELDER -DIRECT- BY MS. CAMPBELL

1 A Lexington County.

2 Q And how long were you employed with the
3 Lexington County Sheriff's Department?

4 A About five years.

5 Q So you have a total of over ten years
6 experience?

7 A Yes, I have.

8 Q What are your duties with the Columbia Police
9 Department, sir?

10 A Right now I am working for the community. I
11 work with the community response team.

12 Q And what is the community response team?

13 A The City has different police officers and
14 different communities. You work basically for
15 that community handling all the problems of that
16 community.

17 Q Back in January of last year, what were your
18 duties involved with then?

19 A I was on the patrol shift.

20 Q As part of your patrol shift, are you the guy if
21 I call 911, you might come help me?

22 A Yes, I would.

23 Q Specifically turning your attention to the early
24 morning hours of January 28th, that would be
25 that Sunday morning, did you respond to a call

RON FELDER -DIRECT- BY MS. CAMPBELL

1 at the Dutch Square area?

2 A Yes, I did.

3 Q And what time were you responding to that call,
4 sir?

5 A Dispatch time was 6:59.

6 Q 6:59 a.m.?

7 A Yes, it was.

8 Q What type of call were you responding to?

9 A Shots fired.

10 Q Was there any other information about who may
11 have fired the shots?

12 A No.

13 Q In fact, it is indicated that no one was seen
14 firing the shots?

15 A That's correct.

16 Q Approximately how long did it take you to get to
17 the Dutch Square Shopping Center?

18 A Approximately eight minutes or so. I was coming
19 from North Main and 20.

20 Q Once you got there, did you make contact with
21 anyone working at Dutch Square?

22 A Yes, I did, the custodian.

23 Q The custodian?

24 A Yes.

25 Q Based on the information he gave you, what did

RON FELDER -DIRECT- BY MS. CAMPBELL

1 you do?

2 A I circulated the area behind Burlington Coat
3 Factory. They have a loading dock area. I went
4 around that, came out on Bush River Road, cut
5 through Boozer Shopping Center.

6 Boozer comes back out into Broad River
7 Road. I cut back through Broad River Road.
8 There's a little cut-through between the
9 Suburban Lodge and the church that leads back
10 into the Dutch Square area. I circulated for a
11 while and then cleared the call.

12 Q And when you say you cleared the call, were you
13 able to find any indication of the shots being
14 fired?

15 A No, I was not.

16 Q I will show you a copy of this call sheet. Do
17 you recognize that?

18 A Yes, I do.

19 Q Does that call sheet kind of outline the time
20 periods when you made your call?

21 A Yes, it is.

22 MS. CAMPBELL: Your Honor, at this time we
23 offer it into evidence at this time.

24 THE COURT: Any objection.

25 MS. MIMS: No objection.

RON FELDER -DIRECT- BY MS. CAMPBELL

1 THE COURT: Without objection.

2 (State's Exhibit Number 2, incident report
3 and call sheet, is received into evidence.)

4 BY MS. CAMPBELL:

5 Q You also mentioned, Officer, that you circulated
6 certain areas; and I want you to show the jury.
7 But, first, do you recognize this photograph?

8 A Yes, I do.

9 Q It is an aerial photograph depicting the Dutch
10 Square and the Boozier Shopping Center area?

11 A Yes, it is.

12 MS. CAMPBELL: Your Honor, at this time I
13 offer this, subject to the objection.

14 MS. MIMS: I don't have any objection, Your
15 Honor.

16 THE COURT: Without objection.

17 (State's Exhibit Number 3, aerial
18 photograph, is received into evidence.)

19 MS. CAMPBELL: Your Honor, may he step
20 down?

21 THE COURT: Yes, you may.

22 A (Witness leaves the witness stand.)

23 Q Officer Felder, you indicated that you searched
24 certain areas in Dutch Square. Can you point
25 out on here for this jury where Dutch Square

RON FELDER -DIRECT- BY MS. CAMPBELL

1 is.

2 A The whole complex --

3 COURT REPORTER: Judge?

4 THE COURT: If you would, how about turn
5 around. Officer, if you would face this way and
6 speak as clearly as you can so the court reporter can
7 hear what you are saying.

8 A This whole area here (indicating) is Dutch
9 Square.

10 Q It is all Dutch Square?

11 A Yes, it is.

12 Q That would be this big area here (indicating)
13 with this bigger building?

14 A Yes.

15 Q And you indicated that you circulated first
16 around the Dutch Square parking lot and the
17 loading area. Can you show the jury where that
18 is.

19 A Yes. I came in through this direction
20 (indicating), met the actual complainant, the
21 custodian who called in the call. Here
22 (indicating) is the loading dock area. I came
23 out, came back on up to Bush River Road, came
24 through Boozer Shopping Center area.

25 Right up here (indicating) is Broad River

RON FELDER -DIRECT- BY MS. CAMPBELL

1 Road, come back through. Here (indicating) is
2 the cut-through between the church. This
3 (indicating) is the Suburban Lodge, and I came
4 back through this way (indicating).

5 Q So you indicated you went through the loading
6 dock area?

7 A Yes.

8 Q And then you went around, you said, into Boozer
9 Shopping Center. Did you go in the alley? Are
10 you familiar with the alley?

11 A Yes, I am.

12 Q But you went into the --

13 A The front portion.

14 Q So you didn't get to that alleyway in the back?

15 A No, I didn't.

16 Q Is this alleyway depicted on here?

17 A Yes, it is. If you look closely, that
18 (indicating) is the alley.

19 Q And it goes all the way around?

20 A All the way around.

21 Q Specifically in regard to this part where my
22 pencil is right here (indicating), the part that
23 backs up to Dutch Square, how is that elevation
24 in comparison to the loading area you did
25 search?

RON FELDER -DIRECT- BY MS. CAMPBELL

1 A It's probably a 75-degree incline. It's
2 probably right at 12, 13-foot high.

3 Q So right here (indicating) where this -- I guess
4 you call that a dirt part.

5 A Yes.

6 Q That is actually a pretty steep hill; is that
7 right?

8 A Yes, it is.

9 Q So the alley behind Boozer Shopping Center, if
10 you are down in the loading area, which was the
11 area you searched.

12 A Yes, ma'am.

13 Q Would you be able to see anything right up in
14 the road up here (indicating)?

15 A No, ma'am.

16 Q And you were not able to see anything that
17 morning?

18 A No, I didn't.

19 Q And you never actually went in the alley behind
20 Boozer?

21 A No, I did not.

22 Q But you did search all the other areas?

23 A Yes, I did.

24 MS. CAMPBELL: May I publish this to the
25 jury?

RON FELDER -CROSS- BY MR. BUTLER

1 THE COURT: Yes, ma'am.

2 BY MS. CAMPBELL:

3 Q Officer, after you cleared that report and did a
4 search of the general area, did you have an
5 occasion to go back to the scene that morning?

6 A Yes, I did.

7 Q And what was the purpose of that?

8 A The purpose was a call came out to assist
9 Richland County with -- they found a body. I
10 actually wanted to get back up there because I
11 was the first one called out there, and I wanted
12 to see where they found the body at.

13 Q Once you got there, did you understand why in
14 your search you were not able to see the body?

15 A Yes, I did.

16 Q That's all I have. Please answer any questions
17 from defense counsel.

18 THE COURT: Cross.

19 CROSS EXAMINATION

20 BY MR. BUTLER:

21 Q Good afternoon, Officer. How are you?

22 A Good afternoon, fine.

23 Q You are Officer Felder. Do you go by officer?

24 A Felder, yes.

25 Q You are with the City of Columbia?

RON FELDER -CROSS- BY MR. BUTLER

1 A Yes, I am.

2 Q You said something about the maintenance man.
3 Was he the only person you saw when you got
4 there?

5 A Yes, it was, the custodian.

6 Q Where was he?

7 A He was coming out of the back area of the movie
8 theater.

9 Q Did you know he was the maintenance man at the
10 time?

11 A Yes, I did.

12 Q And how did you recognize him as the maintenance
13 man?

14 A Well, that's my general area; and I know pretty
15 much, at that time, pretty much most of the
16 people that worked there. He was also pushing
17 out a trash cart.

18 Q And he is not the one who called the police?

19 A My understanding he was.

20 Q Do you have a copy of the statement you gave to
21 Investigator Richardson?

22 A No, I do not in front of me.

23 MR. BUTLER: May I approach the witness,
24 Your Honor?

25 THE COURT: Yes, sir.

RON FELDER -CROSS- BY MR. BUTLER

1 BY MR. BUTLER:

2 Q Do you recognize that as a statement you gave
3 Investigator Richardson?

4 A Yes.

5 Q Do you remember speaking with him about who
6 called; and you told him, no, he did not call?

7 A Let me refresh my memory.

8 Q Sure take your time.

9 (Pause.)

10 A Okay, yes. I understand what you are saying.
11 He told me a lady told him.

12 Q A lady told him what?

13 A She heard some shots fired.

14 Q But he told you that he was not the one who
15 called?

16 A Yes.

17 Q You mentioned Suburban Lodge?

18 A Uh-huh. (Indicating affirmative response.)

19 Q Where is the Suburban Lodge in reference to both
20 Boozer Shopping Center and the cinemas or Dutch
21 Square where you were first alerted to?

22 A The Suburban Lodge is north of General Cinemas,
23 and the west portion of it actually borders --
24 that same fence line borders Suburban Lodge and
25 the top of Boozer Shopping Center.

RON FELDER -CROSS- BY MR. BUTLER

1 Q Would it help if you would diagram it? Could
2 you do that for me? Well, let me look at this.
3 This is State's 3. I'm not sure because I am
4 not familiar with that. Can you see it in
5 State's 3?

6 A Yes (indicating).

7 MR. BUTLER: Can the witness step down,
8 Your Honor?

9 THE COURT: Yes, sir.

10 A (Witness leaves the witness stand.)

11 Q Show the jury if you could, please, on State's 3
12 where the Suburban Lodge is.

13 A Right about here (indicating).

14 Q The Suburban Lodge is in the bottom left-hand
15 corner?

16 A Yes, it is.

17 Q And Boozer is where?

18 A This is the Boozer Shopping center right here
19 (indicating).

20 Q You said initially when you arrived you were not
21 able to see the victim's body?

22 A That's correct.

23 Q But when you came back the second time, you
24 were?

25 A Yes.

RON FELDER -CROSS- BY MR. BUTLER

1 Q And the victim's body was where?

2 A Approximately up in this general area
3 (indicating)..

4 Q This here (indicating) is Boozer?

5 A Yes.

6 Q And the Suburban Lodge is here (indicating)?

7 A Yes.

8 Q You could walk through the back of this store,
9 and you could get to the Suburban Lodge?

10 A No, you can't. It has a fence line, a fence.

11 Q But if you were able to go around the fence or
12 over the fence, you can get to it?

13 A Yes.

14 Q You can step back up.

15 A (Witness resumes the witness stand.)

16 Q The body was at the back of the store, not at
17 the front?

18 A Correct.

19 Q Do you happen to know where Dams jewelry store
20 is?

21 A Yes, I do.

22 Q In relation to where the body was found, where
23 is Dams jewelry store?

24 A If I remember correctly, if my memory serves me
25 right, Dams is on the -- if you make an

RON FELDER -CROSS- BY MR. BUTLER

1 L-shape --

2 Q Let me do it this way. It's simpler. Boozer
3 kind of looks like this (indicating), doesn't
4 it, right, more or less?

5 A Right.

6 Q And the body was found somewhere around here
7 (indicating)?

8 A Somewhere around there.

9 Q In back. Dems is over here (indicating), right?

10 A Somewhere up in there.

11 Q And the front of Dems is there (indicating)?

12 A Somewhere up in there.

13 MR. BUTLER: Beg the Court's indulgence.

14 THE COURT: Yes, sir.

15 (Pause.)

16 MR. BUTLER: That's all I have. Thank you,
17 sir.

18 THE COURT: Any redirect?

19 MS. CAMPBELL: Your Honor, did he want to
20 move that into evidence? We have no objection.

21 MR. BUTLER: I am not moving it in. If
22 they want to move it in, I have no objection.

23 MS. CAMPBELL: That's all. We have nothing
24 further.

25 THE COURT: You can step down.

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 MR. MCMAHON: The State calls Irene
2 Michalski.

3 IRENE MICHALSKI, being first
4 duly sworn, testified as follows:

5 CLERK: Have a seat in the witness box and
6 please spell your last name.

7 THE WITNESS: My name is Irene Michalski,
8 M-I-C-H-A-L-S-K-I.

9 DIRECT EXAMINATION

10 BY MR. MCMAHON:

11 Q Ma'am, do you mind if I call you Miss Irene?

12 A Sure, they all do.

13 Q Good. Do you mind speaking up so all of us can
14 hear you?

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

17 Q Where do you live? What area do you live in?

18 A I live in Irmo.

19 Q And how long have you lived in the Irmo area?

20 A Around ten years.

21 Q Now, where do you work, Miss Irene?

22 A Educational Wonderland at the Boozer Shopping
23 Center.

24 Q And what type of business is Educational
25 Wonderland?

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 A We sell school supplies to teachers, parents,
2 and day cares.

3 Q How long have you been in that business?

4 A Maybe around 12 years or so.

5 Q Is Boozer Shopping Center the only location of
6 Educational Wonderland?

7 A We have four other stores.

8 Q Four others. So that's one of five?

9 A No, one of four.

10 Q One of four. Now, do any of the other members
11 of your family work for Educational Wonderland?

12 A My daughter and my son.

13 Q So it's kind of a family business?

14 A It's family operated.

15 Q I want to direct your attention back to the
16 early morning hours of Sunday, January the 28th
17 of last year. Did you have an occasion to leave
18 your home to go to a particular location that
19 morning?

20 A I went to church.

21 Q And what time did church start?

22 A Eight o'clock, but I left early. I said a
23 prayer and I lit a candle, and I left early.

24 Q So when you say you left early, you got to
25 church on time?

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 A I got there around 7:30. The mass is at eight.
- 2 Q And you didn't stay for the whole mass?
- 3 A No, sir.
- 4 Q That's what you mean by leaving early?
- 5 A Yes.
- 6 Q And where is your church at?
- 7 A Lady of the Hills on Ashland Road.
- 8 Q That's right off of Bush River Road?
- 9 A That's right.
- 10 Q When you left church early, where did you go
- 11 from there?
- 12 A I went to work at our Educational Wonderland
- 13 store.
- 14 Q Do you go directly from leaving church to
- 15 Educational Wonderland?
- 16 A Yes, sir.
- 17 Q Are you normally opened on Sunday or Sunday
- 18 morning?
- 19 A No, we are not open on Sundays.
- 20 Q What was your purpose in going in that morning?
- 21 A I went to decorate the windows and to clean the
- 22 store.
- 23 Q Would you normally do that when you are not open
- 24 for business?
- 25 A Yes.

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 Q Now, when you got to Boozer that morning, did
2 you go -- what door would you normally enter
3 your business?

4 A The front door, but I never got that far because
5 I had seen someone at Barnette's Wallpaper,
6 someone had threw the plants over, the flower
7 pots and the flowers were out; and the dirt was
8 out of the pots.

9 Q That kind of piqued your interest to where you
10 didn't go directly in your business?

11 A Yes.

12 Q Now, did you follow up on what you saw?

13 A Then I drove on the other side around
14 Barnette's. I seen the Federal Express box on
15 the ground. It was open. It was opened.
16 Someone turned it over.

17 Q Now, having seen the flower pots at Barnette's
18 and the mailbox at -- did you say Federal
19 Express?

20 A Yes.

21 Q What did you next do? What next happened,
22 Miss Irene?

23 A I was afraid to go into the store. So I went in
24 the back way to see if anybody broke in our
25 store, but it was okay.

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 Q The back way, is there an alleyway back there?

2 A Yes.

3 Q And while you were in that alleyway, did you
4 notice anyone else?

5 A When I was checking our back door, I seen
6 Mrs. Boozer pass by me. So she kept driving.

7 Q Now, Boozer Shopping Center is the name of where
8 your business is at?

9 A Uh-huh. (Indicating affirmative response.)

10 Q What is the relationship of Mrs. Boozer to the
11 Boozer Shopping Center?

12 A Mrs. Boozer owns the shopping center.

13 Q And do you know about what age lady Mrs. Boozer
14 is?

15 A My gosh, she must be 79 or so.

16 Q What direction -- she was in an automobile?

17 A Yes.

18 Q And you were in an automobile?

19 A Yeah. I was checking the door while she was
20 past me, and I waved to her.

21 Q As a result of seeing Mrs. Boozer passing you in
22 the alleyway and the automobile, what did you
23 then do?

24 A She kept driving and she stopped at the end of
25 the buildings. So I got in my car, and I went

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 to say hello to her.

2 Q From where you were at behind Educational
3 Wonderland to where Mrs. Boozer stopped, you
4 could see that entire distance?

5 A Yes.

6 Q When she stopped, what did you do?

7 A I got in my car and went there to say hello to
8 her. I got out of the car and I said hello to
9 her. She said, "I think there is a dead man
10 there." I looked around and there was a dead
11 man --

12 MS. MIMS: Object to hearsay.

13 THE COURT: Sustained.

14 MR. MCMAHON: Your Honor, we would offer
15 that, of course, under 803 (1).

16 THE COURT: I understand. It's not
17 necessary to have the testimony. She can testify to
18 what she did in response to what anybody said.

19 BY MR. MCMAHON:

20 Q Did you have a conversation with Mrs. Boozer?

21 A No, she said we better --

22 Q Don't go into what she said. Did she make a
23 statement to you?

24 A No, just about the dead body.

25 Q Did you look behind the shopping center in that

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 area where she was at?
- 2 A Behind?
- 3 Q Yes, ma'am.
- 4 A I just looked.
- 5 Q And what did you see in that area?
- 6 A I seen someone laying on the ground.
- 7 Q What did that person's -- what did it appear the
- 8 condition of that person to be?
- 9 A It was just laying still.
- 10 Q As a result of that, Miss Irene, what did you or
- 11 Mrs. Boozer do?
- 12 A We were going to call 911.
- 13 Q Did you have a cell phone?
- 14 A I did, but I didn't use it right. I didn't
- 15 press the right number.
- 16 Q Not being able to call on your cell phone, then
- 17 what did y'all do?
- 18 A We went to Dunkin' Donuts. That's where
- 19 Mrs. Boozer called 911.
- 20 Q Both you and she went over to Dunkin' Donuts?
- 21 A Yes.
- 22 Q Did either you or Mrs. Boozer remain there?
- 23 A Mrs. Boozer did with the police. We waited
- 24 until the police came.
- 25 Q Now, I want to show you an item. You have seen

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 this before?

2 A Uh-huh. (Indicating affirmative response.)

3 Q I showed you this before you testified?

4 A Uh-huh. (Indicating affirmative response.)

5 Q Does this depict some of the area of Boozer
6 Shopping Center and Educational Wonderland and
7 these various locations we have referred to?

8 A Yes.

9 MR. MCMAHON: Your Honor, I would offer
10 this into evidence.

11 THE COURT: Any objection?

12 MS. MIMS: No objection, Your Honor.

13 THE COURT: Without objection.

14 (State's Exhibit Number 4, diagram of
15 Boozer Shopping Center, is received into evidence.)

16 MR. MCMAHON: Your Honor, may the witness
17 step down?

18 THE COURT: Yes, ma'am. Be sure, ma'am
19 step down here. Be sure to speak up so the court
20 reporter can hear you.

21 BY MR. MCMAHON:

22 Q You stand on this side (indicating). Now,
23 Miss Irene, this (indicating) being Bush River
24 Road and this (indicating) being the area of
25 Boozer Shopping Center. What road is this out

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 here (indicating)? What road would be out this
2 way (indicating)?

3 A It's Broad River Road.

4 Q Broad River Road?

5 A Yes.

6 Q Where would your business be located at Boozer
7 Shopping Center?

8 A Educational Wonderland.

9 Q Here (indicating)?

10 A Right.

11 Q And I believe you mentioned some flower pots at
12 Barnette's?

13 A Barnette's is right here (indicating). The
14 flower pots were turned over. The flowers were
15 out.

16 Q As a result of that, you never went in your
17 store?

18 A No.

19 Q In the front?

20 A No.

21 Q Now, before I go any further, do you know
22 Mrs. Catalano?

23 A Huh-uh. (Indicating negative response.)

24 Q That testified previously?

25 A Oh, I met her, yes.

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 Q You met her.
- 2 A I don't know her name.
- 3 Q Do you know the Hallmark Store in Boozer?
- 4 A Yes.
- 5 Q Where is it in relation to Educational
- 6 Wonderland?
- 7 A Right here (indicating).
- 8 Q So it's right next door?
- 9 A It's right next door.
- 10 Q Let me ask you one more before I go any further.
- 11 How about Dems House of Diamonds?
- 12 A Dems House is right here (indicating).
- 13 Q This is in the correct order?
- 14 A Yes.
- 15 Q There are other buildings, but these are in
- 16 correct order; is that right?
- 17 A (Witness nods.) (Indicating affirmative
- 18 response.)
- 19 Q The shopping center back over here (indicating)?
- 20 A Uh-huh. (Indicating affirmative response.)
- 21 Q What shopping center is that?
- 22 A Dutch Square Mall.
- 23 Q And my favorite restaurant, where is the
- 24 Chick-Fil-A? Where is Chick-Fil-A at on here?
- 25 A On Bush River Road.

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

1 Q It would be down here (indicating)?

2 A Right here (indicating).

3 Q I've got my bearings. Now, you see your flower
4 pots over here (indicating) and what do you do?

5 A I drove over here (indicating) behind. That's
6 where I seen the Federal Express box.

7 Q The Federal Express box is over here
8 (indicating)?

9 A Yes.

10 Q As a result of that, then where do you go?

11 A I drove around here (indicating), all the way to
12 the back of our store, and checked our back
13 door.

14 Q Was your back door all right?

15 A Yes, sir.

16 Q Where was it that you see Mrs. Boozer?

17 A I drove all the way down at the end here
18 (indicating), again to the buildings.

19 Q When did you first see Mrs. Boozer?

20 A I was checking the back door, and she drove past
21 me.

22 Q Was she coming from this direction (indicating),
23 coming towards you?

24 A Yes.

25 Q Towards me now?

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q You were able to see where she was going?
- 3 A Oh, yes.
- 4 Q Then you decide to do what?
- 5 A I was going to go say hello to her.
- 6 Q Now, when you got down here (indicating), are
- 7 you able to see back in this direction
- 8 (indicating)?
- 9 A Yes.
- 10 Q And this (indicating) is part of Boozer also; is
- 11 that correct?
- 12 A Yes.
- 13 Q And this (indicating) would be kind of an
- 14 alleyway behind Boozer?
- 15 A Yes, sir.
- 16 Q Are you able to look and see in this direction
- 17 (indicating), in this area down here
- 18 (indicating)?
- 19 A Uh-huh. (Indicating affirmative response.)
- 20 Q And what, if anything, do you see back there?
- 21 A There was somebody laying on the ground.
- 22 Q In this alleyway?
- 23 A Uh-huh. (Indicating affirmative response.)
- 24 Q As a result of that, was that when you tried to
- 25 use your cell phone?

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 A That's right.
- 2 Q And were not able to?
- 3 A That's right.
- 4 Q I believe you said you then go over to...
- 5 A Dunkin' Donuts.
- 6 Q And where is that located?
- 7 A Right in our shopping center right here
- 8 (indicating).
- 9 Q Right there. Both you and Mrs. Boozer go over
- 10 there?
- 11 A Yes.
- 12 Q You didn't get close up there?
- 13 A No, I didn't get out of the car at all.
- 14 Q I believe you can go back and have your seat,
- 15 Miss Irene.
- 16 A Sure. (Witness resumes the witness stand.)
- 17 Q Just a couple of other questions.
- 18 A Okay.
- 19 Q When you said you left church early that day,
- 20 about what time do you think it was that you
- 21 arrived at Boozer Shopping Center?
- 22 A Maybe around a quarter after or ten after. I
- 23 really don't know.
- 24 Q A quarter after or ten after. What time is
- 25 church?

IRENE MICHALLSKI -DIRECT- BY MR. MCMAHON

- 1 A Eight o'clock.
- 2 Q So you are talking about after eight?
- 3 A Yes.
- 4 Q So sometime a quarter after, ten after eight?
- 5 A Yes, sir.
- 6 Q Is when you get to Boozer; is that right?
- 7 A Yes.
- 8 Q And how much time passes from when y'all had
- 9 seen this person in the alley laying on the
- 10 ground until y'all called the police?
- 11 A It must have been around ten minutes or so.
- 12 Q That's using your phone and getting back over to
- 13 Dunkin' Donuts?
- 14 A Yes, sir.
- 15 Q And later on that day, did the police talk with
- 16 you?
- 17 A No, just to Mrs. Boozer.
- 18 Q Did you talk with them on the phone?
- 19 A I talked to a lady on the phone, a cop, a police
- 20 lady.
- 21 Q A police lady on the phone --
- 22 A Uh-huh. (Indicating affirmative response.)
- 23 Q -- that same day?
- 24 A Yes.
- 25 Q Thank you, ma'am.

1 MR. MCMAHON: I don't have any further
2 questions.

3 THE COURT: Cross?

4 MS. MIMS: No questions, Your Honor.

5 THE COURT: You can step down. Thank you,
6 ma'am.

7 MR. MCMAHON: The State calls Michael
8 Pearson. May we approach, Your Honor?

9 THE COURT: Yes, sir.

10 (Whereupon there was a bench conference off
11 the record in the presence of the jury but out of the
12 hearing of the jury.)

13 THE COURT: For the record, do you want to
14 let the court reporter mark these, Mr. McMahon?

15 MR. MCMAHON: Yes, sir.

16 THE COURT: We will let her mark them, and
17 then you can use them. I will note that I had a
18 discussion with counsel. We will put it on the
19 record when I let the jury go.

20 MR. BUTLER: Just for the record, Your
21 Honor, objection under 403.

22 THE COURT: So noted.

23 (Attorneys confer.)

24 MR. MCMAHON: Judge, I also have two other
25 closer aerial shots that they have previously seen

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 and didn't object to.

2 THE COURT: Okay.

3 MR. MCMAHON: I will get all these marked.

4 (State's Exhibit Number 5, aerial

5 photograph; Number 6, aerial photograph; Number 7,

6 photograph of alley with body; Number 8, photograph

7 of alley with body: and Number 9, photograph of alley
8 with body, are received into evidence.)

9 MR. MCMAHON: The State calls Michael
10 Pearson.

11 MICHAEL DURHAM PEARSON,
12 being first duly sworn, testified as follows:

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

15 THE WITNESS: Michael Durham Pearson.

16 DIRECT EXAMINATION

17 BY MR. MCMAHON:

18 Q Mr. Pearson, how are you currently employed?

19 A At this time currently I am in the United States
20 Army.

21 Q You were a Richland County sheriff's deputy?

22 A Yes.

23 Q And are a Richland County sheriff's deputy?

24 A Yes. I was activated through the National
25 Guard.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q How long have you been with the Sheriff's
2 Department?

3 A Going on eight years.

4 Q What was your position with the Sheriff's
5 Department upon you being activated?

6 A A road supervisor corporal.

7 Q What district were you assigned?

8 A Region four, which is the Broad River, Saint
9 Andrews Road area.

10 Q I want to ask you just a couple of other things.
11 How long have you been in the military?

12 A Going on eight years.

13 Q And what is your time in the military, what
14 areas does it involve?

15 A Six years as a combat engineer and two years as
16 an M.P.

17 Q Those two years as an M.P., is that what you are
18 currently activated as, an M.P.?

19 A Yes, I am.

20 Q Where are you stationed at now?

21 A Fort Stewart, Georgia.

22 Q When were you activated?

23 A On December 4th.

24 Q I want to direct your attention back to
25 January the 27th, 28th of 2001. Were you on

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 duty that particular Sunday morning?

2 A Yes, sir, I was. I was on day shift.

3 Q Day shift, what hours does that cover?

4 A That runs from seven in the morning until seven
5 in the evening as part of your shift.

6 Q What area of the county were you assigned duties
7 as a patrol supervisor that day?

8 A Region four.

9 Q Did you get a call to go to a particular
10 location in region four?

11 A Yes, I did.

12 Q What location and what was the nature of that
13 call?

14 A It was a person down call, Boozer Shopping
15 Center. Behind Manifest Discs and Tapes is the
16 location that was given out.

17 Q All this area we are going to be talking about,
18 the area behind Manifest Discs -- is that the
19 name of it?

20 A Discs and tapes.

21 Q Say again.

22 A Manifest Disk and Tapes.

23 Q Manifest Discs and Tapes, all that area is
24 located in Richland County?

25 A Yes, it is.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q Now, upon your arrival what did you observe?

2 A Upon my arrival I came through the parking lot.
3 I went to the rear of Manifest. At that time as
4 I was going down, I noticed what appeared to be
5 a person laying on the ground.

6 Q Which direction, could you tell us, did you come
7 in from, Corporal Pearson?

8 A I would have been heading, I believe that is
9 north, behind the building.

10 Q Would you have come off of Bush River Road?

11 A I came off Broad River Road and cut through the
12 parking lot diagonally and looked through the
13 entire parking lot before I went behind the
14 buildings.

15 Q About what time was it that you received this
16 call?

17 A Around 8:30, 8:35, somewhere in that time
18 period.

19 Q I have a number of diagrams. I believe you have
20 looked at these before, is that correct, State's
21 Exhibit Number 1?

22 A Yes.

23 Q Does that show generally the road map of that
24 area?

25 A Yes, it does.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q And State's Exhibit Number 4 also, does this
2 show the diagram of the general area of Boozer
3 Shopping Center?

4 A Yes, it does.

5 MR. MCMAHON: Your Honor, may the officer
6 step down?

7 THE COURT: Yes, sir. Just be sure to
8 speak up so the court reporter can hear you.

9 THE WITNESS: Yes, sir.

10 A (Witness leaves the witness stand.)

11 Q If you will stand on this side (indicating) for
12 me, Mr. Pearson. I want to start with, if I
13 could, State's Exhibit Number 1. Could you
14 point out on here for us where Boozer Shopping
15 Center is.

16 A It's right at the intersection of Bush River
17 Road and Broad River Road.

18 Q Is there an entrance to Boozer off of Broad
19 River Road?

20 A Yes, there is.

21 Q Is there an entrance to Boozer off of Bush River
22 Road?

23 A Yes, there is.

24 Q We have heard a little talk about the Suburban
25 Lodge. Do you know where it's located?

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

- 1 A Yes, I do.
- 2 Q Could you kind of generally point that out on
3 State's 1.
- 4 A It would be adjacent to Broad River Road beside
5 Boozer Shopping Center.
- 6 Q So it would be -- if I said north of Boozer?
- 7 A Yes, it would.
- 8 Q On the same side of the road?
- 9 A Yes.
- 10 Q As Boozer?
- 11 A Yes.
- 12 Q We have also heard some talk of Captain Tom's
13 restaurant, I believe. Are you familiar with
14 that location?
- 15 A Yes, I am.
- 16 Q Where would it be located at just generally on
17 this map?
- 18 A It would be the opposite side from Boozer near
19 Long Creek Drive.
- 20 Q On Broad River Road?
- 21 A Yes.
- 22 Q On the other side of the road. It's got here
23 Captain Tom's restaurant. It's further up
24 towards 20?
- 25 A It's towards I-20.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q Now, I want to go to State's Exhibit Number 4.
2 Is any part of Broad River Road depicted on
3 State's 4?

4 A That would be this road (indicating) that would
5 be running this way (indicating).

6 Q I am going to show you a photograph -- let me
7 ask you before I get there, how about any part
8 of Bush River Road?

9 A Yes, Bush River Road runs here (indicating)
10 east/west.

11 Q I want to refer you to State's Exhibit Number 5
12 and ask you if you see any part of Bush River
13 Road on State's 5?

14 A Yes, that would be this road right here
15 (indicating).

16 Q So if I orientate it, I would turn it kind of in
17 this direction here (indicating); is that right?

18 A Yes, that's correct.

19 Q So what are we looking at here? Give an
20 orientation of State's 4.

21 A Right here (indicating) is Manifest Discs and
22 Tapes. That would be the same building that
23 would be on this corner right there
24 (indicating).

25 Q So this (indicating) is the Manifest area?

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 A Yes.

2 Q And you can come on back to where it cuts in
3 here (indicating) and here (indicating)? That
4 is the cut in here (indicating)?

5 A Yes, it is.

6 Q That's the area where I am pointing to now?

7 A Yes, sir.

8 Q Can you see on State's Exhibit Number 5 any part
9 of this area (indicating)?

10 A Yes, you do.

11 Q Point that out for me.

12 A That would be the roof of this building that you
13 see here (indicating).

14 Q That would be part of what?

15 A Dutch Square Mall.

16 Q Dutch Square Mall. Describe for the jury,
17 please, the terrain between the back of Boozer
18 on the Manifest Side and the back of Dutch
19 Square.

20 A It's separated by a fence. The fence is on top
21 of a steep rough grade that would take you down
22 into the Dutch Square Mall parking lot from the
23 back alley of Boozer.

24 Q This is not level?

25 A No, it's not.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q Between the two, which is higher?

2 A Boozer Shopping Center would be higher.

3 Q If you stand here (indicating) where I am going
4 to now on Boozer, you can look down?

5 A You would be looking down.

6 Q You can see down into the Dutch Square parking
7 lot?

8 A (Witness nods.) (Indicating affirmative
9 response.)

10 Q If you come along here (indicating), are you
11 able to see up on the driveway level?

12 A No.

13 Q Of Boozer?

14 A No, you can probably see the edge of the roof of
15 the building.

16 Q This actually indicates, "Steep downgrade," here
17 (indicating); is that correct?

18 A Yes.

19 Q Now, this area is fenced?

20 A Yes, it is.

21 Q And is it fenced from back of this point all the
22 way back out towards --

23 A Towards Broad River Road.

24 Q -- Broad River Road?

25 A Yes, it is.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

- 1 Q Dutch Square Theater, are you familiar with
2 that?
- 3 A Yes, I am.
- 4 Q Where would that be located?
- 5 A That would be here (indicating), the left corner
6 of this map.
- 7 Q If I show you State's Exhibit Number -- let's go
8 to State's 3. Do you see part of the theater on
9 State's 3?
- 10 A Yes, you do.
- 11 Q Point that out for us.
- 12 A It's right here (indicating).
- 13 Q Here (indicating). Do you see any part of this
14 section (indicating) of Boozer?
- 15 A Yes, you do. It is along here (indicating),
16 these shops along here (indicating).
- 17 Q Right along here (indicating)?
- 18 A Yes, sir.
- 19 Q The photographs kind of look like this
20 (indicating)?
- 21 A Yes, sir.
- 22 Q The same way; is that right?
- 23 A (Witness nods.) (Indicating affirmative
24 response.)
- 25 Q That (indicating) would be the theater?

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 A Yes, it would.

2 Q And that (indicating) would be the other end of
3 Boozer; is that right?

4 A Yes, sir.

5 Q We have heard some talk about the Suburban
6 Lodge. Do you see the Suburban Lodge indicated
7 on State's 4?

8 A Yes.

9 Q Where is that located at?

10 A It's adjacent to Boozer right here (indicating),
11 and Broad River Road.

12 Q That faces Broad River Road?

13 A Yes, it does.

14 Q Is there any separation between Boozer Shopping
15 Center and Suburban Lodge?

16 A There is a chain-link fence.

17 Q That is pointed out on there also?

18 A Yes.

19 Q Point that out for the jury.

20 A It would be the fence that runs right between
21 here (indicating), between the two buildings.

22 Q Now, describe for me which way you came in.

23 A When I came in, I came from Broad River Road
24 heading south in this direction (indicating). I
25 turned in because I wanted to angle the parking

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 lot and make sure there was nothing here.

2 We didn't know an exact location. I came
3 in, angled the parking lot, didn't see anything;
4 and at that time I turned to go down the alley.
5 That is at which time I noticed the victim.

6 Q Approximately where -- I realize this is not to
7 scale -- in the alley are you referring to?

8 A That would have been -- here (indicating) is a
9 dumpster, before I crossed the dumpster,
10 somewhere in this area (indicating).

11 Q Let me show you State's Exhibit Number 5, again
12 this (indicating) being this area (indicating).

13 A Yes, sir.

14 Q Could you kind of point out on here
15 approximately where?

16 A Yes, sir. I stopped my vehicle somewhere in the
17 dumpster here (indicating) and probably
18 somewhere right in here (indicating).

19 Q Right in here (indicating)?

20 A Yes, sir.

21 Q What did you observe?

22 A I observed a person to be laying down on the
23 ground.

24 Q Now, what are your duties and responsibilities
25 when you make such an observation as the first

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 officer on the scene?

2 A As the first officer on the scene, your first
3 responsibility is to secure the scene. Once I
4 saw the scene was secure, I approached up to the
5 victim.

6 E.M.S. was also to respond. I then set up
7 the perimeter considered to be the crime scene,
8 to make sure no one comes in or tampers with any
9 evidence and keep control of who comes in and
10 out by documenting and writing it down on a
11 log.

12 Q First of all, you do document and do certain
13 reports in regards to that?

14 A You do an incident report. You do a basic
15 incident report.

16 Q Look at that. What is that document there?

17 A That is a basic incident report.

18 Q Is that what you filled out, you prepared?

19 A Yes, sir, this is my handwriting.

20 Q What time did you receive the call, Corporal
21 Pearson, and what time did you arrive?

22 A My dispatch time is showing 08:38 and arrival
23 time was around 8:40.

24 Q Was there anyone else there upon your arrival?

25 A No.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q You say you start notifying other divisions
2 within your department?

3 A Yes.

4 Q And securing the scene?

5 A Yes.

6 Q Did you do that?

7 A Yes, I did.

8 Q We will get into that momentarily. I want to
9 ask you or I want to show you a couple more
10 photographs, State's Exhibit Number 7, 8, and 9.
11 Are you familiar with these photographs?

12 A Yes, I am.

13 Q As a matter of fact, do you see your patrol
14 vehicle in any of these photographs?

15 A This (indicating) would be the vehicle door.

16 Q Here (indicating)?

17 A Yes.

18 Q What area are we looking at as far as this
19 photograph is concerned, orientating to State's
20 4?

21 A This is a loading dock. This is a little bit
22 from an angle out of the loading dock in this
23 general area right here (indicating).

24 Q Would we be looking back in this direction
25 (indicating)?

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 A Yes, sir, I'm sorry. Your back would be towards
2 the theaters, and you would be looking towards
3 Bush River Road.

4 Q This area over here (indicating) would be what?

5 A This area is Dutch Square Mall.

6 Q What road would be out this way (indicating)?

7 A Bush River Road.

8 Q You see right in here (indicating), it looks
9 like a yellow line?

10 A Yes.

11 Q What is that?

12 A That's our crime scene tape. It's a barrier.

13 Q And what is the purpose of that?

14 A To keep people out, to show not to make entry
15 into it.

16 Q What is that item here (indicating)?

17 A That would be the victim.

18 Q Is that the condition and the position that you
19 found the victim in?

20 A Yes.

21 MR. MCMAHON: May I publish this to the
22 jury, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. MCMAHON:

25 Q If I go to State's 6 -- excuse me -- State's 8,

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 again, this would be a closer shot?

2 A Yes, it would.

3 Q As I look at this, the feet would be pointing
4 towards Bush River?

5 A Yes, they would.

6 Q Toward Bush River.

7 A Bush River Road.

8 Q Could you take -- I will try to take it off for
9 you. Could you place this sticker in the
10 approximate position on State's Exhibit 4 where
11 you observed the body.

12 A (Witness complies.) Before the loading dock
13 with his feet facing towards Bush River Road.

14 Q This would be, like I said, not be to scale; but
15 the head would be up this way (indicating) and
16 the feet towards Bush River Road?

17 A Yes, sir.

18 Q Did you move or alter the condition of the
19 victim in any manner?

20 A No, I didn't.

21 Q This would be -- what would this be here
22 (indicating)?

23 A His arm.

24 Q Which arm is that?

25 A It's the left.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q The left arm.

2 MR. MCMAHON: May I publish, Your Honor?

3 THE COURT: Yes, sir.

4 BY MR. MCMAHON:

5 Q Now, referring to State's Exhibit Number 9,
6 which direction are we looking at on State's 9?

7 A You would be looking at Broad River Road, which
8 would be parallel; and you are looking towards
9 where the movie theaters are.

10 Q So the shot would be taken in this direction
11 (indicating) shooting back this way
12 (indicating); is that correct?

13 A Yes, sir.

14 Q Again, up towards the top, I see this item here
15 (indicating), this ribbon. What is that?

16 A That's our crime scene barrier tape.

17 MR. MCMAHON: May I publish?

18 THE COURT: Yes, sir.

19 BY MR. MCMAHON:

20 Q What is the purpose of that crime scene barrier
21 tape?

22 A That is to control entry in and out of the crime
23 scene due to security.

24 Q Now, what division within your department did
25 you notify, Corporal Pearson?

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 A Our lab unit and our investigations unit.

2 Q Was E.M.S. notified?

3 A Yes, E.M.S. was responding along with me.

4 Q Do you keep any type of crime scene log?

5 A Yes, we do.

6 Q Explain to the jury what a crime scene log is
7 and specifically what you do to keep it.

8 A A crime scene log is anyone who enters and
9 exists the crime scene within that yellow
10 barrier tape, so you have a record of who
11 actually has been inside the crime scene and who
12 has left it and their times.

13 Q I will ask you if you can identify this
14 document.

15 A Yes, that would be the crime scene log of
16 Richland County.

17 Q Who prepared or who filled out that crime scene
18 log?

19 A I did. It's my handwriting and my name.

20 Q Who does it indicate the first person was that
21 arrived at the crime scene?

22 A Myself.

23 Q Who was second and third?

24 A That would be Crawford and Young, the E.M.S.
25 technicians.

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Q Were you there when they arrived?

2 A Yes.

3 Q And recorded their arrival?

4 A Yes, I did.

5 Q What action did they take as far as the body of
6 the victim was concerned?

7 A They went to approach the victim. They looked
8 at him briefly. He was unresponsive, at which
9 time I got their information; and they left the
10 crime scene.

11 Q Do you notify other divisions within your
12 department?

13 A Yes.

14 Q That being?

15 A That being investigations and lab.

16 Q And did investigations and lab respond to the
17 crime scene?

18 A Yes, Investigator Ewing was the first
19 investigator to respond.

20 Q I believe you can retake the stand. I will ask
21 you a few more questions about the crime scene.

22 A (Witness resumes the witness stand.)

23 Q You say Investigator Ewing, how about any major
24 crime scene supervisor?

25 A Yes. It was actually the Major of the Sheriff's

MICHAEL PEARSON -DIRECT- BY MR. MCMAHON

1 Department investigation division responded,
2 along with at that time Sergeant Smith.

3 Q Along with at that time Sergeant Smith, now
4 Lieutenant Smith, Stan Smith?

5 A Yes.

6 Q What about the crime scene officers, did they
7 respond?

8 A The lab technicians?

9 Q Yes.

10 A Yes, they did.

11 Q And who was that?

12 A Sergeant Earles and Lieutenant Padgett.

13 Q And what would their duties and responsibilities
14 be?

15 A Their duties would be to basically process the
16 crime scene.

17 Q You still maintain security during that period
18 of time?

19 A Yes.

20 Q That they would have been processing the scene;
21 is that correct?

22 A That's correct.

23 Q Were you able to observe any injuries to the
24 body of the victim?

25 A Yes, I was.

MICHAEL PEARSON -CROSS- BY MS. MIMS

1 Q And what injuries did you observe, Corporal
2 Pearson?

3 A I could notice a type of trauma to the head, the
4 face area, and a large pool of blood by the head
5 area of the body.

6 Q You indicated up in this area (indicating)?

7 A Yes.

8 Q Is that where you observed trauma?

9 A Yes. You could see the clotting, so there was
10 some type of injury.

11 Q And the body would have been removed for an
12 autopsy?

13 A Yes.

14 Q To another location?

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

17 Q Thank you, Corporal Pearson. Answer any
18 questions the defense lawyers may have.

19 A Yes, sir.

20 THE COURT: Cross examination.

21 MS. MIMS: Thank you, Your Honor. May it
22 please the Court.

23 CROSS EXAMINATION

24 BY MS. MIMS:

25 Q Mr. Pearson, I want to just go back very briefly

MICHAEL PEARSON -CROSS- BY MS. MIMS

- 1 to this.
- 2 A Okay.
- 3 Q Back at Boozer. Can you tell me where -- one
- 4 more time -- the victim's body was found behind
- 5 Manifest?
- 6 A In that area.
- 7 Q In that general area?
- 8 A Yes.
- 9 Q And that's right here (indicating)?
- 10 A Yes.
- 11 Q And Dams House of Diamonds is right here
- 12 (indicating)?
- 13 A Yes, it is.
- 14 Q On the opposite side of Boozer Shopping Center?
- 15 A Yes.
- 16 Q You mentioned you were the first one on the
- 17 scene, correct?
- 18 A Yes, I was.
- 19 Q And you stayed there for a while?
- 20 A Yes, I stayed there the entire time until the
- 21 victim was removed.
- 22 Q So you were there when the I.D. techs came?
- 23 A Yes.
- 24 Q And I.D. techs, when they come to a scene, they
- 25 collect things from the body of the victim?

MICHAEL PEARSON -CROSS- BY MS. MIMS

1 A Yes, they do.

2 Q They collect hair?

3 A I mean, I can just speculate. I was not
4 observing what they were collecting that day.
5 My back had been towards them to make sure no
6 one breaches the barrier of the tape.

7 Q So you didn't see them collect anything?

8 A No.

9 Q But they were there?

10 A Yes, they were.

11 Q And that is their job?

12 A Yes, it is.

13 Q To collect evidence from the body of the victim?

14 A Yes, and the area.

15 MS. MIMS: Beg the Court's indulgence.

16 (Pause.)

17 MS. MIMS: I have nothing further. Thank
18 you.

19 THE COURT: Any redirect?

20 MR. MCMAHON: Nothing on redirect.

21 THE COURT: You can step down. You are
22 free to go if you like.

23 MR. MCMAHON: I am not sure he wants to be
24 excused.

25 THE COURT: If you wish to, you can go. If

1 you wish to stay, you can stay.

2 THE WITNESS: Thank you, Judge.

3 THE COURT: Counsel, why don't we go ahead
4 and take a break for the day and come back in the
5 morning. Any problem from the State with that?

6 MR. MCMAHON: No, sir.

7 THE COURT: Any objection from the defense?

8 MS. MIMS: Your Honor, I think we need to
9 approach quickly. We will do that in just a moment.

10 THE COURT: Do you want to let the jury go?

11 MS. MIMS: Yes, sir.

12 THE COURT: Ladies and gentlemen, we will
13 go ahead and take a recess for the day. I will ask
14 you to be back in the morning at 9:30. Just be in
15 the jury room at 9:30, and we will be prepared to get
16 started back then.

17 Again, remember, be sure to remember --
18 it's very important -- not to talk about the case
19 with anybody. We will see you in the morning at
20 9:30. Hope you have a good evening.

21 (The jury is excused for the day at
22 5:37 p.m.)

23 THE COURT: Let me note for the record
24 that there were some photographs that were admitted
25 over objection of defense counsel. We had a

1 conference here at the bench. I indicated to
2 counsel at that time -- we had discussions from
3 counsel at that time.

4 I indicated what I would do is let them put
5 it on the record when the jury was dismissed. Of
6 course, I will certainly note for the record again,
7 the objections were made timely and appropriately.
8 Do you want to renew the objections?

9 MR. BUTLER: If I could.

10 THE COURT: Let me ask you. Do you have
11 them there in your hand, Mr. McMahon?

12 MR. MCMAHON: Yes, sir.

13 THE COURT: What numbers are they?

14 MR. MCMAHON: Judge, I had a couple others
15 I was going to offer and didn't. If I could just
16 mark those for identification.

17 THE COURT: Mark those as Court's exhibit
18 if you would. Let me look at them.

19 (Hands to Court.)

20 (Court's Exhibits Number 5 and 6,
21 photographs of the victim, are marked for purposes of
22 the record.)

23 THE COURT: These are State's Exhibits 7,
24 8, and 9 that were particularly discussed.
25 Mr. Butler, I think you were going to address those.

1 MR. BUTLER: Thank you, Your Honor. The
2 color photographs of the victim as he appeared found
3 at the incident location we object to as being
4 unfairly prejudicial and irrelevant.

5 Under Rule 403, there is no dispute that
6 the victim was shot and killed. No dispute that he
7 was shot and killed and found behind Boozer Shopping
8 Center, behind Manifest Discs and Tapes, where he was
9 found. The pictures don't show anything that is in
10 dispute.

11 They are not probative of anything, and
12 they are cumulative to State's 4. I believe I
13 brought that up at the bench. I didn't know the
14 exhibit number. There is a diagram that is detailed.
15 I would assume it is to scale. The witness did, in
16 fact, mark where the body was found.

17 The position of the body is irrelevant.
18 Mr. McMahon appealed to the fact that there was
19 crime scene tape shown in the photographs at side
20 bar. I offered to stipulate that there was crime
21 scene tape.

22 I am not sure why that would be relevant
23 anyway. There were statements in the defense's
24 opening statement where we appealed to lack of
25 evidence. The lack of evidence was appealed to, not

1 the lack of following procedures.

2 So for all those reasons, we move to
3 exclude those photographs under Rule 403.

4 THE COURT: Mr. McMahon, Ms. Campbell, did
5 you want to put anything on the record?

6 MR. MCMAHON: Judge, I just think they are
7 relevant. I think several cases, State versus Kelly
8 and a recent case -- as a matter of fact, I have got
9 it here, which happens to be unpublished, State
10 versus Yvonne Frederick, where I think the position
11 of the body goes to the issue of malice because it
12 shows the manner in which the Defendant left the
13 body. Those are nondeath penalty cases. Those
14 photographs, 7, 8, and 9, I believe, Your Honor?

15 THE COURT: Yes, sir.

16 MR. MCMAHON: Certainly are not close
17 shots. They are taken at somewhat of a distance. I
18 did not point out through this officer the actual
19 blood. He testified to it, but I did not use the
20 photographs to point that out.

21 I pointed out the position of the body and
22 such like that. I think that all ties into being
23 associated with the Defendant at the crime scene at
24 Boozer Shopping Center and his prior burglary of Dams
25 and the manner in which he lured the victim back

1 there. So I would rest on those cases, both Kelly
2 and Frederick. Thank you.

3 THE COURT: Anything else you want to put
4 on the record about it, Mr. Butler?

5 MR. BUTLER: No, sir.

6 THE COURT: Counsel, as I ruled then, under
7 Rule 403 I found that the probative value is such
8 that certainly it's significant in the sense that it
9 gives the jury a pictorial view of the scene and
10 where the body was, the direction of the body.

11 Obviously a chart can do it to some degree
12 but certainly doesn't have the probative nature that
13 a photograph does. While there is some graphic
14 nature to it, it's certainly not so severe that it
15 would cause unfair prejudice to the Defendant's case.
16 In balancing those, I felt it was appropriate to
17 allow them to be admitted.

18 Anything else at this point? Are we
19 through for the day? Have a good day. See you in
20 morning. I will be here a little earlier. If you
21 need anything, come in about 9:15; and we will take
22 it up then.

23 MR. MCMAHON: What time are we starting,
24 Judge?

25 THE COURT: Nine-thirty.

1 (Whereupon the proceedings were concluded
2 for February 25, 2002.)

3 (The following proceedings were reported on
4 February 26, 2002.)

5 THE COURT: I understand we have all our
6 jurors. Is the State ready?

7 MR. MCMAHON: Yes, sir, the State is ready.

8 THE COURT: Is the defense ready?

9 MS. MIMS: Yes, sir.

10 THE COURT: Let's bring the jury in,
11 please, sir. One thing before you do. Counsel, I
12 got a note yesterday from a juror, Mrs. Green, who
13 simply says, "I was employed for two years with the
14 Popowski law firm from 1995 to '97 located on
15 Blanding Street. I was a receptionist."

16 Apparently she just realized this, I guess,
17 later on. Does anybody have anything you want to put
18 on the record about this or any motions regarding
19 this juror from the state?

20 MR. MCMAHON: No, sir.

21 THE COURT: Defense?

22 MS. MIMS: No, sir.

23 THE COURT: We will give this to the court
24 reporter as a Court's exhibit. Let's bring the jury
25 in.

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 (Court's Exhibit Number 7, note from juror,
2 is marked for purposes of the record.)

3 (The jury returns to the courtroom at
4 9:35 a.m.)

5 THE COURT: All parties and attorneys are
6 in the courtroom and all jurors have returned.
7 Solicitor.

8 MS. CAMPBELL: May it please the Court.
9 The State calls Investigator Ray Livingston.

10 RAY A. LIVINGSTON, being
11 first duly sworn, testified as follows:

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

14 THE WITNESS: My name is Ray A. Livingston.

15 THE COURT: Go ahead and spell your last
16 name, please.

17 THE WITNESS: L-I-V-I-N-G-S-T-O-N.

18 THE COURT: Thank you, sir.

19 DIRECT EXAMINATION

20 BY MS. CAMPBELL:

21 Q Investigator Livingston, where are you employed?

22 A Richland County Sheriff's Department.

23 Q What do you do there?

24 A I'm a forensics investigator.

25 Q As a forensics investigator, can you tell this

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 jury what you do.

2 A Yes. Our details include going out to crime
3 scene investigations, collecting evidence for
4 different crimes, fingerprints and any other
5 kind of evidence, collecting anything connected
6 with the crime.

7 Q How long have you been in law enforcement?

8 A Since '95.

9 Q And prior to 1995, what was your profession?

10 A I was in the U.S. military, retired after 23
11 years of service.

12 Q And what rank did you retire from the U.S.
13 military?

14 A E-7, Sergeant First Class.

15 Q Then in 1995 you joined the Sheriff's
16 Department?

17 A Yes.

18 Q How long have you been involved in the forensic
19 unit?

20 A Eighteen months.

21 Q Can you tell the jury a little bit about your
22 education and training to be a forensic
23 investigator.

24 A I received most of my training at the South
25 Carolina Criminal Justice Academy. I received

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 training in fingerprint and latent
2 investigations. I received training in crime
3 scene photography.

4 I also went out to the University of
5 Louisville for homicide investigation and went
6 to the University of Maryland, also for homicide
7 investigation.

8 Q Have you had any specific training in the area
9 of photographing and fingerprinting?

10 A I have.

11 Q And specifically as to fingerprint collection
12 and comparison?

13 A Yes, ma'am.

14 MS. CAMPBELL: Your Honor, at this time we
15 offer him as an expert in crime scene investigation.

16 THE COURT: Any objection?

17 MS. MIMS: No, sir.

18 THE COURT: Without objection this witness
19 will be qualified as an expert in the area of crime
20 scene investigation.

21 Ladies and gentlemen, let me tell you what
22 this means if I might. Most witnesses are testifying
23 as to something they may know about the case
24 personally. Some witnesses can do that and can also
25 be allowed to give opinions, and they are called

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 expert witnesses.

2 They are allowed to testify as such because
3 of their background, training, qualifications,
4 education or experience in a particular area and
5 again can give an opinion in that area.

6 Now, when an expert testifies and gives an
7 opinion, you are not bound by the opinion of the
8 expert. It is meant to guide you in your
9 deliberations. You may give it total weight, no
10 weight or partial weight or whatever you choose.
11 That's entirely within your discretion.

12 Is there any exception to the charge from
13 the State?

14 MS. CAMPBELL: No, sir.

15 THE COURT: Defense?

16 MS. MIMS: No, sir.

17 THE COURT: Go ahead.

18 BY MS. CAMPBELL:

19 Q Investigator Livingston, can you tell this jury
20 typically when you go to, say, a homicide crime
21 scene, what steps you go through when you
22 initially get to a scene.

23 A The first step we go through is we take and we
24 walk through the scene. As a crime scene
25 investigator, what I will do is walk around the

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 scene, pick out certain evidence that I will
2 need for the Court case.

3 Then I will take and I will photograph the
4 scene, do a 360-degree photograph of the scene
5 area. Then if any other evidence, such as
6 fingerprints or physical evidence needs to be
7 collected, we will then do that.

8 Q Turning your attention back to January 28th of
9 the year 2001, did you have an occasion to
10 respond to the Boozer Shopping Center?

11 A Yes, ma'am.

12 Q What time were you dispatched to that area?

13 A I was dispatched at 9:00 o'clock.

14 Q What time did you actually arrive at the Boozer
15 Shopping Center?

16 A Nine-fifteen.

17 Q What kind of call were you responding to that
18 day?

19 A I was told that they had found a body in the
20 back of Boozer Shopping Center.

21 Q When you say you went at 9:15, that would be
22 9:15 in the morning?

23 A In the morning.

24 Q When you got to the Boozer Shopping Center, what
25 did you find?

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A Once I got to Boozer Shopping Center, the
2 officers pointed out to me where the deceased
3 was laying. I observed a white male with his
4 right forearm across his chest dressed in a
5 striped shirt and blue jeans, brown shoes.
6 There was a lot of blood that was protruding
7 from his head there. He was laying on his back
8 there.

9 Q So he was laying on his back face up in a pool
10 of blood?

11 A Yes.

12 Q And had it already been determined that he was
13 deceased?

14 A Yes. E.M.S. already arrived at the scene and
15 they were gone when I got there and determined
16 that he was dead.

17 Q In doing your walk-through, of course, you are
18 careful not to disturb any evidence; is that
19 correct?

20 A Yes, ma'am.

21 Q Were you able to observe any obvious wounds to
22 this man?

23 A I observed wounds to the back of his neck and
24 then to the side of his face. We weren't sure
25 whether they were exit wounds or protruding

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 wounds. Anyway, there was about four to five of
2 them.

3 Q But they appeared to be gunshot wounds?

4 A Yes, ma'am.

5 Q Initially when you arrived on the scene, the
6 first thing you did was to photograph the area?

7 A Yes, ma'am.

8 Q I will show you what has been introduced as
9 State's Exhibits 7, 8, and 9 and ask if you
10 recognize those photographs.

11 A Yes, ma'am, these are photographs that I took.

12 Q These are the photographs you actually took that
13 morning?

14 A Yes, ma'am.

15 Q In State's Exhibit 7, 8, and 9, is this how the
16 body appeared when you first came in contact
17 with it?

18 A Yes, ma'am.

19 Q Once you had actually photographed the area of
20 the body, what did you do next?

21 A After I photographed the body, I did
22 fingerprints and G.P.R.s G.P.R.s are a gun
23 powder residue kit. We do everybody, victims
24 and suspects to determine if the suspect or the
25 victim had fired a weapon. I did the gun powder

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1 residue and a fingerprint analysis.

2 Fingerprints were taken to take back with
3 us and then determine who the individual was.
4 If we hadn't known him, we run it through what
5 we call the A.P. system, Automatic Fingerprint
6 Identification System. We run it through there,
7 and it will spit out his real name if he had
8 been arrested before.

9 Q Let me ask you this. You said you took his
10 fingerprints from him actually?

11 A Yes, ma'am.

12 Q So this is when you take known fingerprints?

13 A Yes.

14 Q Did you try to attempt to collect any
15 fingerprints off his body anywhere?

16 A No.

17 Q And why is that, Investigator?

18 A Because he was still fully clothed.

19 Q And would that clothing be conducive to anyone
20 leaving fingerprints on him?

21 A No, not the clothing wouldn't.

22 Q The gunshot residue kit, that is later sent off
23 and tested at S.L.E.D.?

24 A Yes, ma'am.

25 Q Once you got his actual known prints or the

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 prints from his actual fingers and you did the
2 other testing, did you remove any items from his
3 pockets?

4 A Yes. When once we determined -- when I got the
5 G.P.R. and the fingerprints, what I did then was
6 went through and checked his pockets to make
7 sure to see if he had any identification, which
8 he did. He had his identification, and I think
9 there was \$225 in cash on him.

10 Q Two hundred twenty-five or 205?

11 A Two hundred five, excuse me.

12 Q And the South Carolina I.D. card, what did you
13 do with that?

14 A I turned the I.D. card and the money over to the
15 coroner who was already there.

16 Q So once you had examined the body and removed
17 those items and photographed the area, did you
18 search that general area -- was anyone else
19 helping you that morning?

20 A Yes, Sergeant Earles.

21 Q Sergeant Chuck Earles?

22 A Yes, ma'am.

23 Q Did y'all do a search of the area?

24 A We did a search of the area. We did a search
25 immediately around the area. Then we went

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 over -- from Boozer Shopping Center, we went
2 over to Dutch Square, the side entrance over
3 there to Dutch Square. We also checked that
4 area also.

5 Q What were you looking for, Investigator?

6 A Looking for projectiles, looking for casings,
7 anything that would give us any clues.

8 Q Explain to me, because I am not real familiar
9 with guns, when you say projectiles and casings,
10 are these parts of what we call bullets?

11 A Yes, ma'am.

12 Q When you say the projectile, what part of the
13 bullet are you looking for in that area?

14 A We are looking for the bullet and looking for
15 where the bullet entered there, passed through
16 the body and it will come out. Some will
17 mushroom and some will stay in tact. You look
18 at a time wall in case they went out and hit the
19 wall and stuck into the wall, but we didn't find
20 any.

21 Q So the projectiles y'all were looking for would
22 have been the ones that actually passed through
23 the body?

24 A Yes.

25 Q That is the part that actually enters the body?

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A Right.

2 Q And is it unusual for you not to find any
3 projectiles of a through and through wound, say,
4 through the abdomen?

5 A No, ma'am.

6 Q Why is that, Investigator?

7 A Some we just never find. Some bullets, the way
8 they are made, will disintegrate once they hit
9 the body and come out. It will just split up
10 into different pieces there.

11 Q In the area that you were looking, were there
12 buildings like with concrete walls around them?

13 A Yes, ma'am.

14 Q Does that have an effect, even if the bullet has
15 gone through, on ricocheting a bullet out of
16 the area?

17 A It could have went through the body, hit a fence
18 post, could have went through the body and hit a
19 telephone post, anything, and just totally
20 destroyed the round.

21 Q You were also looking for what you call shell
22 casings. Can you explain that to me. What is
23 that?

24 A The shell casing is the casing that the bullet
25 is packed in. We never found any of that

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 either.

2 Q You say the casing the bullet is packed in, so
3 that is not the part that enters the body?

4 A No, that's the part that stays within -- with an
5 automatic weapon, it would be the part that is
6 ejected. With a revolver, it would be the part
7 that stays in the revolver.

8 Q Let me get this straight. There are two types
9 of guns, automatics and revolvers?

10 A Yes, ma'am.

11 Q In a revolver, how is a revolver loaded?

12 A A revolver is loaded from the hand side down.

13 Q It's the one with the round thing that spins?

14 A Yes.

15 Q And You individually load those?

16 A Right, and the automatic is magazine loaded.

17 Q With a revolver does that expel the shell casing
18 once the shot is fired?

19 A No, ma'am.

20 Q So that shell casing would actually remain in
21 that gun?

22 A It would.

23 Q With a semiautomatic it's a different story?

24 A Yes.

25 Q Explain that to the jury.

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A The shell casing, every time the gun is fired,
2 the shell casing will be ejected from the
3 weapon.

4 Q Typically with a semiautomatic gun or an
5 automatic as it is sometimes referred to, there
6 is a magazine that is put in it, right?

7 A Yes, ma'am.

8 Q Then when it is shot, the shell casing comes
9 out?

10 A Yes, ma'am.

11 Q How far does the shell casing usually fly from
12 where the shot is fired?

13 A It depends. It depends. It could be five to
14 ten feet.

15 Q Five to ten feet. We are talking about feet not
16 a matter of miles?

17 A Yes, ma'am.

18 Q So with a semiautomatic, you would expect,
19 unless someone collected them, to find shell
20 casings?

21 A Yes, ma'am.

22 Q In this case how many shell casings did you
23 find?

24 A None.

25 Q Was the body then -- after you had canvassed the

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 area and y'all said you looked through the area,
2 what areas were you searching that day?

3 A We searched the Boozer Shopping Center area, and
4 we also searched the Dutch Square area.

5 Q That would be the Dutch Square area right below
6 that loading area?

7 A Yes, ma'am.

8 Q Describe to the jury this alley where the body
9 was found and then the loading area. Are they
10 on the same plane or how are they separated?

11 A No. The Dutch Square area is kind of down, and
12 we were up. So if I am looking up here
13 (indicating) working up here (indicating), we
14 would have to come out and walk around and go
15 down because it's offset there.

16 Q So there is a pretty significant incline there?

17 A Yes, ma'am.

18 Q After you had processed the scene and attempted
19 to find everything you could, was the body then
20 removed and taken to the morgue?

21 A Yes, ma'am.

22 Q Subsequent to that, did the fire department
23 respond to the scene?

24 A Yes, ma'am.

25 Q What was the purpose in that?

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A The fire department responded to the scene
2 because we had to wash down the blood there.

3 Q When you say you were washing down the blood,
4 was there a pretty significant pool of blood?

5 A There was a significant pool of blood there.

6 Q Why would you have the fire department in to
7 wash it down?

8 A They had to wash it down because of the
9 biohazard.

10 Q Did you have an occasion that afternoon around
11 noon to attend an autopsy in this case?

12 A Yes, ma'am.

13 Q Where did that autopsy take place?

14 A At the Richland Memorial Hospital at the morgue.

15 Q Who was actually performing the autopsy?

16 A Dr. Welsh, I think is the name.

17 Q Yes.

18 A And Mrs. Rosemary Cook was the attendant.

19 Q At that autopsy were you able to -- or was the
20 doctor able to or did you observe him in trying
21 to determine what kind of entrance and exit
22 wounds were involved here?

23 A Yes, ma'am.

24 Q Was he able to determine how many actual bullet
25 wounds were to the neck area?

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A There was one to the neck area.

2 Q And you also mentioned earlier that you observed
3 several into the face area; is that correct?

4 A Yes, ma'am.

5 Q And were you able to determine how many exactly
6 were shot in the face?

7 A Four to the face. I think it was four to the
8 face area.

9 Q There at the autopsy did you also take
10 possession of certain items?

11 A Yes, ma'am. We took possession of his clothing,
12 the victim's clothing. We also took possession
13 of the projectiles.

14 Q And Sergeant Earles actually took possession of
15 those items?

16 A Yes, ma'am.

17 Q He was attending that also?

18 A Yes, ma'am.

19 Q Did you collect any other evidence while you
20 were there?

21 A We looked for some trace evidence there. We
22 collected some hair and some other fibers from
23 the victim's clothing, which turned out, I don't
24 think, to match up to much of anything.

25 Q But that was standard procedure, and y'all

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 followed your procedure?

2 A Yes, ma'am.

3 Q Turning your attention to January the 31st, I
4 believe that would be three days later, were you
5 also involved in further investigation of this
6 case?

7 A Yes, ma'am.

8 Q In executing a search warrant?

9 A Yes, ma'am, on a vehicle. I believe it was a
10 1988 Plymouth Reliance. Myself, along with my
11 supervisor, Lieutenant Zane Padgett, we
12 conducted a search of the vehicle that had been
13 suspected of being used in the homicide.

14 We executed a search warrant. We did a
15 collection kit, which we tried to collect any
16 kind of evidence that was there on the seats,
17 fingerprints on the windows, inside of the
18 windows and on the outside. We also did a
19 tape test. We like to call it that, a trace
20 test, to put up anything that is out of the
21 ordinary.

22 Q I will show you two photographs and ask if you
23 recognize this automobile.

24 A Yes, ma'am.

25 Q Is that the car y'all executed the search

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 warrant on?

2 A Yes, ma'am.

3 Q Who actually -- did you actually take these
4 pictures?

5 A Yes, ma'am.

6 MS. CAMPBELL: Your Honor, at this time I
7 offer them into evidence.

8 MS. MIMS: Without objection, Your Honor.

9 THE COURT: Without objection.

10 (State's Exhibits Number 10 and 11,
11 photographs of the automobile, are received into
12 evidence.)

13 BY MS. CAMPBELL:

14 Q Let me back up a little bit. I missed
15 something. You executed the search warrant, and
16 you were looking for any kind of obvious
17 evidence involved in this homicide?

18 A Yes, ma'am.

19 Q Was there any obvious evidence that y'all took
20 from there of the homicide?

21 A There was nothing there that we could use.

22 Q But you did test for the presence of any blood
23 on the seats?

24 A Yes, ma'am.

25 Q The result of that was?

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 A Negative.

2 Q You also said that you collected any kind of
3 trace evidence that might be there?

4 A Yes, ma'am.

5 Q You also mentioned that you dusted the car for
6 latent prints; is that correct?

7 A Yes, ma'am.

8 Q That was on the inside and the outside?

9 A Inside and outside.

10 Q Were you able to get any prints, any
11 fingerprints, from this car?

12 A No, ma'am, not usable prints.

13 Q Explain to this jury what a usable print is.

14 A A usable print is a print where I can get all
15 the -- get the core and the delta in there, not
16 a smudge. I can use that print if it's a real
17 good latent. I can get a certain count, nine to
18 ten counts on the ridge lines.

19 Ridge lines are inside of your hand, in the
20 palm. If you were to put your hand on
21 something, you can see the little lines in your
22 hands in the fingers there. Those are called
23 ridge lines. If we get nine to ten of those, we
24 can normally make a good count and probably get
25 a good identification on the individual.

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

1 Q So, Investigator, if I touch, say, this piece of
2 wood, am I necessarily going to leave a good
3 print?

4 A No, not necessarily.

5 Q Are there different factors involved?

6 A Yes, ma'am.

7 Q As to my ability to leave a print. Even if I
8 am, say, touching glass?

9 A Yes, ma'am.

10 Q But in this case did you make any independent
11 observations about the condition of this car
12 when y'all got there on the 31st, which was
13 three days after the murder?

14 A We were thinking that that car had been washed
15 and cleaned up real good.

16 Q And that's how it appeared to you?

17 A Yes, ma'am.

18 Q But you weren't able to get any prints usable
19 enough to even identify, say, the owner or the
20 driver of the car?

21 A No, ma'am.

22 Q On February 1st, did you also have an occasion
23 to take some more photographs in this case?

24 A February the 1st?

25 Q Yes, sir.

RAY LIVINGSTON -DIRECT- BY MS. CAMPBELL

- 1 A I think that was in the airplane.
- 2 Q Yes, sir. I am showing you State's Exhibits 3,
3 5, and 6. Do you recognize those photographs?
- 4 A Yes, ma'am, those are one that I took from the
5 plane.
- 6 Q And those photographs represent the area where
7 the body was found; is that correct?
- 8 A Yes, ma'am.
- 9 Q The Dutch Square area or the Boozer Shopping
10 Center area. You also took possession and
11 helped transport certain items of evidence in
12 this case?
- 13 A Yes, ma'am.
- 14 Q You said you collected the gunshot residue kit.
15 Then on the 12th of February, did you transport
16 that to S.L.E.D.?
- 17 A Yes, ma'am.
- 18 Q And in addition to that, you also took a box of
19 Remington .38-caliber special bullets?
- 20 A Yes, ma'am.
- 21 Q That was also transported by you to S.L.E.D.?
- 22 A Yes, ma'am.
- 23 Q During the time period those items were in your
24 possession, they were not altered or tampered
25 with in any way; were they?

RAY LIVINGSTON -CROSS- BY MS. MIMS

1 A No, ma'am.

2 Q That's all I have, Investigator. Please answer
3 any questions of the defense.

4 THE COURT: Cross.

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

7 CROSS EXAMINATION

8 BY MS. MIMS:

9 Q Investigator Livingston, how are you doing?

10 A I'm doing good.

11 Q You collect evidence --

12 A Yes, ma'am.

13 Q -- primarily. That's what you did in this case?

14 A Yes, ma'am.

15 Q You get prints -- you mentioned that you got
16 prints from the victim in this case. You got
17 the victim's print and you do that so you can
18 compare those later with any evidence that is in
19 the case?

20 A With him, no, ma'am. We did it with him, from
21 the victim, to make sure that we had the right
22 person.

23 Q The right person?

24 A Yes, ma'am.

25 Q But you could also use those prints if you

RAY LIVINGSTON -CROSS- BY MS. MIMS

1 needed to compare them, say, to a suspect, to
2 evidence dealing with a suspect?

3 A Yes, ma'am, we could.

4 Q Like a suspect vehicle, for instance?

5 A Yes.

6 Q You also get hair, and you also talk about
7 getting the suspect's vehicle since we are on
8 that topic. You got hair -- you tested for hair
9 and fiber?

10 A Yes, ma'am.

11 Q And you didn't find anything in the vehicle?

12 A No, ma'am.

13 Q But the car had hair and fiber in it; is that
14 right?

15 A The car itself had been cleaned. I mean, it had
16 some hair in it but not enough to really tell
17 who it could be compared to.

18 Q You said it looked clean?

19 A Yes, ma'am.

20 Q But you did find usable prints in the car or
21 nonusable prints?

22 A Nonusable prints.

23 Q So they weren't washed off?

24 A No, ma'am. It could have been the wrecker
25 driver. It could have been someone passing by

RAY LIVINGSTON -CROSS- BY MS. MIMS

1 the car.

2 Q But there were prints on the inside of the car,
3 they just weren't usable?

4 A They were not usable.

5 Q You mentioned that when you got to the scene,
6 you noticed that it was a very bloody scene?

7 A Yes, ma'am.

8 Q The fire department actually had to come and
9 wash out the blood?

10 A Uh-huh. (Indicating affirmative response.)

11 Q But you found no blood in the vehicle?

12 A No blood in the vehicle.

13 Q You also collected hair and fiber from the
14 victim's clothing in this case?

15 A Yes, ma'am.

16 Q Why do you do that?

17 A That's Just part of the routine. We found him
18 outside laying in an alleyway. It's just
19 routine.

20 Q So that pretty much it can be used later to
21 maybe compare to anything dealing with the
22 suspect again; is that right?

23 A Yes, ma'am.

24 Q Just to tie a suspect to the scene?

25 A You can, yes, ma'am.

RAY LIVINGSTON -CROSS- BY MS. MIMS

1 MS. MIMS: Beg the Court's indulgence.

2 (Pause.)

3 BY MS. MIMS:

4 Q Investigator Livingston, just a couple more
5 questions. If you find just one hair in a
6 vehicle, that's enough for a comparison; isn't
7 that right?

8 A You can, but...

9 Q You can extract D.N.A. from a piece of hair?

10 A I don't know about the D.N.A. part.

11 Q But you can test one piece of hair?

12 A You can test one piece of hair.

13 Q Thank you very much.

14 MS. MIMS: No further questions.

15 THE COURT: Redirect?

16 MS. CAMPBELL: No, sir.

17 THE COURT: You can step down, Officer.

18 You are free to go if you like or you can stay if you
19 like.

20 MR. MCMAHON: The State calls Chuck Earles.

21 CHARLES ALBERT EARLES, being
22 first duly sworn, testified as follows:

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

25 THE WITNESS: My name is Charles Albert

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 Earles, E-A-R-L-E-S.

2 DIRECT EXAMINATION

3 BY MR. MCMAHON:

4 Q Sir, by whom are you employed?

5 A The Richland County Sheriff's Department.

6 Q How long have you been employed with the
7 Richland County Sheriff's Department?

8 A I have been a deputy with Richland County since
9 August of 1993.

10 Q What various positions have you held during that
11 nine-year period of time?

12 A I have been an arson investigator, road deputy,
13 forensic investigator, and Sergeant of the
14 forensic science section.

15 Q And how long have you been a sergeant in the
16 forensic science section?

17 A Just over a year now.

18 Q What are your duties and responsibilities
19 generally, Sergeant Earles?

20 A First and foremost, all of us in the forensic
21 science section are crime scene investigation,
22 fingerprint analysis, evidence collection.
23 Submission. I, as the Sergeant, act as a
24 supervisor over the investigators and such.

25 Q Could you relate for the jury, please, just very

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 briefly your educational background, your
2 training, your experience in your particular
3 field of expertise in crime scene processing and
4 examination.

5 A My basic education, I have a Bachelor of Science
6 degree from the University of South Carolina. I
7 spent 20 years as a paramedic before getting
8 into law enforcement.

9 As part of my law enforcement training, I
10 attended the Criminal Justice Academy. From
11 there, then I moved into the forensic science
12 section.

13 We did training from the Criminal Justice
14 Academy and various other instructors from
15 around the country in crime scene analysis,
16 fingerprint, photography, arson investigations,
17 a variety of classes related to crime scene
18 investigation.

19 Q How many crime scenes would you go to in an
20 average month? Give us an idea.

21 A Anywhere from 30 to 50.

22 Q If you are not at a crime scene, are you back at
23 the lab processing evidence generally?

24 A Yes, and paperwork.

25 Q Is a majority of that paperwork? Is that a

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 majority of your time?

2 A Yes.

3 Q Have you testified in the past in courts of
4 record in South Carolina as an expert in the
5 field of crime scene processing?

6 A I have not been qualified as an expert, no,
7 sir.

8 Q How about -- but you have had all the training.
9 For example, Mr. Livingston would be under your
10 supervision; is that correct?

11 A That's correct.

12 Q And you have completed the various courses in
13 crime scene photography and fingerprint
14 analysis?

15 A Yes, sir, also blood pattern analysis, crime
16 scene investigation school, behavioral aspects
17 of crime scene reconstruction, foot and tire
18 wear impressions.

19 Q That 30 to 50 crime scenes that you would go to
20 and either process or assist in processing,
21 would that be over the entire period of time you
22 have been assigned to the forensic science
23 section, not just your assignment as supervisor
24 of the forensic science section?

25 A That's correct. That would be the average month

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 for an investigator in the forensic science
2 section.

3 Q And results of your examinations have been
4 submitted as part of case files, forensic case
5 files, of the Richland County Sheriff's
6 Department; is that correct?

7 A Yes, that's true.

8 MR. MCMAHON: Your Honor, I would offer
9 Sergeant Earles as an expert in the field of crime
10 scene processing, photography, and fingerprint
11 analysis.

12 THE COURT: Any objection?

13 MS. MIMS: No objection, Your Honor.

14 THE COURT: Ladies and gentlemen, again as
15 you have heard, this witness will also be qualified
16 as an expert. Remember that I told you, an expert is
17 allowed to testify as such as because of his
18 qualifications, his background, training,
19 qualification, and education and experience in a
20 particular area and is allowed to give an opinion in
21 that area. You are not bound by the opinion of any
22 expert. You decide how much weight and credibility
23 to give to it.

24 Is there any exception to the charge from
25 the State?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 MR. MCMAHON: No, Your Honor.

2 THE COURT: Defense?

3 MS. MIMS: No, sir.

4 THE COURT: Go ahead.

5 BY MR. MCMAHON:

6 Q Sergeant Earles, as part of your duties and
7 responsibilities, were you called to a scene
8 behind the Boozer Shopping Center in the early
9 morning hours of January the 28th of 2001?

10 A Yes, I was.

11 Q And approximately what time -- what was the
12 nature of the call that you were responding to?

13 A I was notified that there had been a homicide
14 shooting behind Boozer Shopping Center.

15 Q When you arrived was any other forensic
16 investigator already present?

17 A That's correct. Investigator Livingston was
18 present and was taking pictures.

19 Q That was Investigator Livingston that testified
20 just previous to you; is that correct?

21 A That's correct.

22 Q Upon your arrival, would you have been in charge
23 of the scene or even though you are a sergeant,
24 would you have been assisting Investigator
25 Livingston in documenting and processing the

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 scene?

2 A It's our procedure that the first investigator
3 on the scene is in charge, and I am there to
4 assist in any way that I can.

5 Q Describe for the jury, please, your observations
6 of the scene upon your arrival.

7 A I came in from the back side of Boozer Shopping
8 Center and was met by some officers outside of
9 some crime scene tape. I talked with them
10 briefly, waved to Investigator Livingston to let
11 him know I was there. He waved me into the
12 crime scene.

13 I noted there was crime scene tape on each
14 end of the parking lot. This was behind Boozer
15 Shopping Center. So we had kind of like an
16 alleyway.

17 The crime scene tape that I had encountered
18 at the other end prior to getting to Bush River
19 Road, there was crime scene tape at the building
20 in the back of Boozer Shopping Center on one
21 side and a six foot chain-link fence separating
22 Boozer Shopping Center and Dutch Square on the
23 other side.

24 Q If I refer to State's Exhibit Number 4, and I
25 think you can keep your seat. We are referring

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 to this area back in here (indicating) as the
2 crime scene; is that correct?

3 A Yes, that's correct.

4 Q Which direction would you have come in from,
5 Sergeant? Just point from there.

6 A I came in from up here (indicating).

7 Q That's what you call the back side?

8 A Yes. I came in from the Broad River Road side
9 behind the shopping center.

10 Q Was there both crime scene tape -- if I call it
11 above where the body was at and below where the
12 body was at?

13 A Yes.

14 Q And you referred to a chain-link fence. Is that
15 depicted on there?

16 A Yes, sir, that is this line right here
17 (indicating).

18 Q And that chain-link fence separates Boozer
19 Shopping Center from Dutch Square?

20 A Dutch Square Mall.

21 Q Is that correct?

22 A Yes.

23 Q If I look at these photographs, I think it's
24 State's Exhibits 7 and 8, perhaps 7 and 9. Did
25 both of those photographs depict a fair and

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 adequate representation of the scene and show
2 part of the crime scene tape?

3 A Yes, they do.

4 Q What is the purpose of that crime scene tape?

5 A It's to set up a boundary through which no one
6 is allowed unless they are part of the actual
7 investigation. We post officers at the crime
8 scene tape to make sure that no one unauthorized
9 enters.

10 Q I understand you said Investigator Livingston is
11 taking photographs, and y'all take 360-degree
12 photographs of the scene?

13 A Yes, we do.

14 Q What does that mean? What is the purpose of
15 that?

16 A We want to document the scene as completely and
17 as accurately as we can. As we enter the scene,
18 we take photographs. We walk all the way around
19 the inner part of the scene where the body is
20 found, taking 360-degree photographs facing in
21 and also facing out.

22 Q And that's what Investigator Livingston was
23 doing at the time?

24 A That's correct.

25 Q Now, upon completion of the photographing and

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 upon your arrival, what type of examination do
2 you do in the assistance of Investigator
3 Livingston?

4 A My examination at this point was pretty much
5 superficial. I did a general overview of the
6 body, searched the area around the body,
7 actually searched the whole area from crime
8 scene tape to crime scene tape, looking for any
9 relevant evidence, any shell casings,
10 projectiles, anything that may at some point
11 become important, anything that we may want to
12 collect.

13 Q I want to talk about that overview of the body.
14 Were you able to observe the body and any
15 injuries to the body while still at the scene?

16 A Yes. Initially we could see several gunshot
17 wounds to the left cheek of the victim.

18 Q This area (indicating)?

19 A Yes.

20 Q This area here (indicating). Were you able,
21 prior to leaving the scene, to see other
22 injuries to the body of the victim?

23 A Yes. When we rolled the body up at that point,
24 we rolled the body up; and Investigator
25 Livingston took pictures of what we found. We

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 looked a little closer, and we also found
2 another gunshot wound to the back of the neck.

3 Q So you have one in the back of the neck and
4 several in the left cheek; is that correct?

5 A That's correct.

6 Q Obviously an autopsy was done later. You
7 attended the autopsy?

8 A Yes, I did.

9 Q We will talk about that momentarily. But you
10 said you checked pretty much from crime scene
11 tape to crime scene tape for any relevant
12 evidence that you might see; is that correct?

13 A Yes, that's correct.

14 Q And you talked about shell casings?

15 A Yes, sir.

16 Q Why was shell casings important?

17 A If we were to find shell casings on the scene,
18 that would be an indication of a semiautomatic
19 weapon or some sort automatic weapon, some sort
20 of weapon that ejects the shell casings after it
21 had been fired, was used.

22 Q Obviously the injuries you observed appeared to
23 be gunshot wounds?

24 A Yes, they did.

25 Q When we talk about shell casings and handguns,

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 you are familiar with guns?

2 A Yes, sir.

3 Q I take it you have to, from time to time, be
4 armed with a weapon as part of your duties and
5 responsibilities?

6 A Yes, sir, I do.

7 Q Are you familiar with automatic, semiautomatic,
8 handguns, and revolvers?

9 A Yes, sir, I am.

10 Q Can you explain just very generally and briefly
11 what the differences are and how shell casings
12 come into play on that?

13 A When an automatic or semiautomatic weapon is
14 used, as part of the firing function, once the
15 bullet fires, the gases from the gun powder
16 cause the gun to function. As part of that
17 function, it ejects the shell casings from a
18 round that was just fired and feeds another
19 round up into it.

20 On a revolver, you have a cylinder that
21 holds the bullets. As the trigger is pulled,
22 the cylinder rotates. The hammer drops down
23 onto the chamber that is in line with the
24 barrel, and the bullet is fired. The shell
25 casing remains in the weapon. As the trigger is

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 pulled again, the cycle starts again.

2 Q So your search for shell casings, a
3 semiautomatic will eject the casing at the point
4 where the weapon is fired?

5 A That's correct.

6 Q You didn't find any shell casings in this
7 search?

8 A No, we did not.

9 Q And that was a thorough detailed search from
10 crime scene tape to crime scene tape in that
11 entire area behind Boozer Shopping Center?

12 A Yes, sir.

13 Q Now, a revolver, if you fire a revolver even
14 multiple times, it does not eject the shell
15 casing; is that correct?

16 A No, it does not.

17 Q Now, bullet wounds, I want to talk with you just
18 a moment. This is not the first homicide you
19 have ever gone to where there were bullet wound
20 injuries?

21 A No, it's not.

22 Q Are there times when a bullet will enter the
23 human body and exit the body?

24 A Yes.

25 Q In addition to looking for shell casings, did

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 y'all make any type of search, detailed search,
2 in looking for bullets?

3 A Yes, that was part of what we were looking for
4 through the entire search. Also, once we move
5 the body, we do an initial search down the back
6 of the body.

7 There was a large amount of blood on the
8 pavement. We had the fire department come in,
9 and we gently washed away all that blood
10 looking for anything that may have been in that
11 blood.

12 Q What areas behind Boozer Shopping Center, either
13 the ground or the walls and such, did y'all
14 search to see if you could find any indication
15 of a bullet or an exit from a bullet?

16 A As part of the search not only do we search the
17 parking lot, but the walls of Boozer Shopping
18 Center and the walls of Dutch Square on the
19 other side, which was approximately 35 to
20 40-yards away.

21 All of that was fairly freshly painted.
22 When I say fairly freshly painted, it wasn't
23 peeling off. So any marking on the wall would
24 be an indication that a bullet had hit those.

25 Q And you did not find any bullets on the ground,

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 the wall behind Boozer and over into the area of
2 Dutch Square?

3 A No, we found no projectiles or shell casings.

4 Q Now, Sergeant Earles, also, I believe
5 Investigator Livingston being in charge of the
6 scene so to speak, would process the body for
7 gun primer residue, bag the hands, such as that;
8 is that correct?

9 A That's correct.

10 Q And also for any potential trace evidence off
11 the body?

12 A Yes.

13 Q How is the body removed, prepared to be moved
14 and removed for autopsy?

15 A Investigator Livingston did the gunshot residue
16 test there on the scene. We did bag the hands
17 in order to protect any trace evidence there may
18 have been there.

19 The plan was to do fingernail scrapings and
20 a better search under more controlled conditions
21 at the autopsy. So bags were placed over the
22 hands. The body was placed in a clean, new,
23 white sheet. The body was wrapped up, placed in
24 the body bag; and the body bag was sealed.

25 Q From there, where and when was the autopsy

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 conducted?

2 A The autopsy was conducted later that day.

3 Q At Richland Memorial?

4 A At Richland Memorial.

5 Q You recall that being Dr. Welsh?

6 A Yes.

7 Q And Dr. Welsh has performed many autopsies; is
8 that correct?

9 A Yes, I have been with him on several.

10 Q You attended and Investigator Livingston
11 attended the autopsy?

12 A Yes, we did.

13 Q What is the purpose in law enforcement officers
14 attending a forensic autopsy such as this?

15 A To document anything that is found
16 photographically and to collect any evidence
17 that is found.

18 Q At the autopsy were y'all able to determine --
19 you observed the exact number of wounds to the
20 body of the victim?

21 A Yes.

22 Q And how many were here?

23 A There were four entrance wounds to the left
24 cheek and one to the back of the neck.

25 Q So there were five total?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 A Yes.

2 Q And these were documented photographically also;
3 is that correct?

4 A That's correct.

5 Q Now, when there are these types of injuries, is
6 there any attempt to recover bullets from any of
7 the entrance wounds for which there is not a
8 corresponding exit wound?

9 A Yes. Any time we have a projectile in a
10 victim's body, we make every attempt to collect
11 those.

12 Q And in this particular case, I believe one of
13 the entrance wounds on the left cheek, there was
14 an exit wound; is that correct?

15 A There was an exit wound.

16 Q So there was a potential for recovering four
17 bullets from the body of the victim; is that
18 right?

19 A Yes.

20 Q Do they also X-ray that area where the bullet
21 wounds are --

22 A Yes.

23 Q -- and an attempt to try to locate them?

24 A There was an X-ray of the head taken.

25 Q Now, before I actually get to the recovery of

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 those bullets, Sergeant Earles, did you and
2 Investigator Livingston make any additional
3 detailed examination of the body of the victim
4 at the autopsy?

5 A Yes, we did. We did a thorough search of the
6 body from head to toe, using both the available
7 light, which is a bright flourescent light in
8 the autopsy room, as well as an alternative
9 light source, which is a piece of equipment that
10 we have which generates light in different wave
11 lengths, different colors. We look through
12 filters. This will make different things glow,
13 fluoresce, will make it stand out where they are
14 easier to see.

15 Q When you say different things, explain to us a
16 little bit what you are talking about.

17 A It could be hairs, fibers, pieces of paper or
18 anything that is not readily visible to the
19 naked eye.

20 Q And that procedure was conducted, correct?

21 A Yes, that's correct.

22 Q Now, certain items were turned over to
23 Investigator Livingston at the autopsy and
24 certain items were turned over to you from the
25 autopsy; is that correct?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 A That's correct.

2 Q I want to show you several items, Sergeant
3 Earles. Can you identify each of these items
4 for me. Just tell me if you can identify them
5 or not. Then I will have them marked, and we
6 can talk a little bit more about them.

7 A (Pause.) Yes, sir, I can.

8 Q Were those items that were turned over to you
9 from the autopsy?

10 A Yes, those were the projectiles that were
11 removed from the victim's head and given
12 directly to me.

13 MR. MCMAHON: Your Honor, I would offer
14 these into evidence, and I understand without
15 objection.

16 THE COURT: Any objection?

17 MS. MIMS: No, sir.

18 THE COURT: Without objection.

19 (State's Exhibits Number 12 through 15,
20 bullets recovered from autopsy, are received into
21 evidence.)

22 BY MR. MCMAHON:

23 Q I will refer to these one at a time,
24 Investigator Earles. What is this item, State's
25 Exhibit Number 12?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 A This would be the projectile that was given to
2 me that Dr. Welsh collected from under the skin
3 on the right side of the skull.

4 Q How do you know? Are there markings on that
5 particular item that indicate to you that that
6 was the projectile given to you and where it
7 came from?

8 A Yes, the packaging that is here with it. I try
9 not to mark the projectile itself. That will
10 determine -- that may cause problems with
11 ballistics.

12 Q Like here 1-C.E.?

13 A That's correct, 1-C.E. When I mark evidence, I
14 number them and use my initials.

15 Q As I go through 12, 13, 14, and 15, they will go
16 serially 2-C.E., 3-C.E., 4-C.E. That appears on
17 each and every one; is that correct?

18 A That's correct.

19 Q There is a label appearing on here: Homicide.
20 Ward, Jason E.; date; case number, location,
21 Livingston and Earles; is that correct?

22 A Yes.

23 Q Does that label appear on each and every one?

24 A Yes, it does.

25 Q Of these containers?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 A Yes.

2 Q Is there an indication of the location that
3 State's 12 came from?

4 A My notation on that is made on the evidence
5 sheet.

6 Q And also there appears to be some writing on
7 this also?

8 A Yes, that's correct. I did that at the time
9 they were collected. When Dr. Welsh was telling
10 me where it came from, I wrote it on the cup.

11 Q So this is the projectile?

12 A Yes.

13 Q The bullet right here (indicating)?

14 A Yes, sir.

15 Q And this tells where it came from: Right
16 parietal under skin, it appears to be.

17 A Yes, sir.

18 Q That is one of how many total?

19 A Four.

20 Q So if I go to State's 13, that should have
21 2-C.E. with the same label?

22 A Yes.

23 Q Again, this (indicating) being the projectile?

24 A Yes, sir.

25 Q I think it says right parietal brain; is that

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 correct?

2 A Yes, sir, that's what it says.

3 Q State's 14 would be C.E.3?

4 A Yes, sir.

5 Q Again, the same label, this being the projectile
6 in the skull behind the right ear?

7 A Yes, sir.

8 Q And finally State's 15 should be C.E.4, same
9 labeling?

10 A Yes, sir.

11 Q Left temple?

12 A Yes, sir.

13 Q Who turned those items over to you, Sergeant
14 Earles?

15 A Dr. Welsh turned them over to me.

16 Q What date were they turned over to you?

17 A That would be Sunday the 28th, the day of the
18 shooting.

19 Q So actually in the autopsy room?

20 A That's correct.

21 Q They were turned over to you by the pathologist
22 performing the autopsy?

23 A Yes, sir.

24 Q What did you do with those items on that Sunday
25 the 28th?

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 A I packaged them and prepared the paperwork to
2 take them to the S.L.E.D. lab.

3 Q And explain to the jury how you packaged them.
4 I will hand you one of them, State's 12
5 perhaps.

6 A I made sure they were adequately padded so they
7 would not bounce around inside the container. I
8 didn't want to mess up any of the markings that
9 are on the projectile.

10 I prepared the label which has all the
11 information -- the case information, the
12 victim's information, the location -- put the
13 evidence tape over so as to seal it and then
14 boxed them all in a box to take to S.L.E.D.

15 Q Now, the night of the 28th, where would these --
16 S.L.E.D., I hate to say, but the lab might not
17 be open on Sunday night, the 28th?

18 A That is correct, S.L.E.D. lab would not be.

19 Q Where were those items kept on the night of the
20 28th, and then what did do you with them
21 thereafter?

22 A They were secured in the lab at the Sheriff's
23 Department under lock and key. Then The next
24 day I personally took them out to the S.L.E.D.
25 laboratory.

CHUCK EARLES -DIRECT- BY MR. MCMAHON

1 Q So you got them on the 28th from the autopsy
2 room and when did you take them to S.L.E.D.?

3 A On the 29th.

4 Q For forensic testing?

5 A That's correct.

6 Q And you are not a ballistics expert?

7 A No, sir.

8 Q You don't do the firearms examination; is that
9 correct?

10 A That is correct.

11 Q And you documented all of that as far as the
12 28th and the 29th?

13 A Yes, I did.

14 Q While they were in your possession, you didn't
15 change or alter them in any manner?

16 A No, sir.

17 Q Thank you, Sergeant Earles. Answer any
18 questions the defense might have.

19 THE COURT: Cross.

20 MS. MIMS: No questions.

21 THE COURT: You can step down. Thank you,
22 sir.

23 MR. MCMAHON: The State calls Gary Watts.

24 GARY WATTS, being first duly
25 sworn, testified as follows:

GARY WATTS -DIRECT- BY MR. MCMAHON

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

3 THE WITNESS: It's Gary Watts, W-A-T-T-S.

4 DIRECT EXAMINATION

5 BY MR. MCMAHON:

6 Q Sir, what is your occupation?

7 A I'm the Coroner for Richland County.

8 Q And how long have you been the Coroner of
9 Richland County?

10 A I've been the Coroner since January of last
11 year.

12 Q Coroner Watts, would you relate for the jury,
13 please, just very generally and briefly your
14 educational background, your training, your
15 experience in your particular field of
16 expertise.

17 A Yes, sir. I have been basically in law
18 enforcement for about 23 years. I was a police
19 officer for three years with the City of Forest
20 Acres back in '75. In 1979 I came to work with
21 the Richland County Coroner's Office as an
22 investigator, became Coroner January of last
23 year.

24 I have investigated probably four to 5,000
25 death cases in that period of time. Education

GARY WATTS -DIRECT- BY MR. MCMAHON

1 was through the South Carolina Criminal Justice
2 Academy and various other forensic schools
3 around the country over the past 20-something
4 years.

5 Q Coroner, as part of your duties and
6 responsibilities -- well, let me ask you a
7 little bit about the setup of your office
8 before I get to that point. Do you have
9 assistant or deputy coroners assigned in your
10 office?

11 A That's correct. We have approximately 18 deputy
12 coroners that work with me in the office.

13 Q Does either yourself or a deputy coroner respond
14 to the scene of any circumstances where a body
15 is found under suspicious conditions?

16 A That's correct.. The Coroner's Office responds
17 to all unattended deaths or any death that
18 appears to be suspicious that occur outside the
19 medical facility. We also respond to accidents
20 and/or, as I said, suspicious activity that
21 occurred, even inside the medical facility.

22 Q Prior to you being Coroner, you said you were
23 up in the area of thousands. I believe you said
24 four to 5,000 over the 20-something years?

25 A That's correct.

GARY WATTS -DIRECT- BY MR. MCMAHON

1 Q About how many calls would your office handle a
2 year, Coroner?

3 A We handle approximately 2,000 cases a year.

4 Q Did you have an occasion to be called by one of
5 your deputy coroners to the scene behind Boozer
6 Shopping Center on Sunday, January the 28th of
7 last year, of 2001?

8 A That's correct. I was notified by Deputy Zobel,
9 one of our deputies, that he had found a body
10 behind Boozer Shopping Center. That was on the
11 28th.

12 Q As a result of that, did you respond to that
13 scene?

14 A I did.

15 Q Now, we have various photographs. This is
16 State's 7, 8, and 9. Do those appear to be fair
17 and adequate representations of the scene as it
18 appeared upon your arrival, Coroner?

19 A (Pause.) Yes, sir, it does.

20 Q In addition to that, I believe your office would
21 take some Polaroid photographs there immediately
22 at the scene also; correct?

23 A That's correct. We document the scene also, not
24 as extensively as when we have the forensic lab
25 there; but we do document what we see also.

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1 Q Now, what are your duties and responsibilities
2 when you get to a scene like that having been
3 called by one of your deputies? What do you
4 then do?

5 A Well, the deputies generally notify me if it's
6 something suspicious to come out. I generally
7 like to go by the scene at least, talk to the
8 deputies, see if there is anything we can assist
9 them with, either at the scene.

10 Sometimes we will assist in doing
11 notification of the family if they are tied up
12 with the investigators at the scene and work
13 with law enforcement at that scene.

14 Q Do y'all, you or your assistants, examine, do a
15 cursory examination of the body at the scene?

16 A It's a very slight examination at the scene,
17 especially if criminal activity is suspected
18 because we don't want to disturb anything or
19 lose any evidence.

20 So it's a very slight examination at the
21 scene. Most of the body is protected or the
22 evidence is protected until we get to the
23 morgue.

24 Q As part of that examination, do you attempt to
25 see if -- well, I don't have my wallet with

GARY WATTS -DIRECT- BY MR. MCMAHON

1 me -- attempt to see if an individual may have
2 some type of identification on him or her?

3 A That's correct.

4 Q And was there certain identification received
5 from the body of the victim at the scene?

6 A Yes, sir.

7 Q Was that given over to you, I believe by
8 Investigator Livingston?

9 A I don't know if it was handed to me directly or
10 to Investigator Zobel from our office.

11 Q I understand.

12 A But our office did assume it.

13 Q Do you have that I.D.?

14 A I have the I.D. card, yes, sir.

15 Q This is the I.D. card that came into your
16 possession at the scene?

17 A That's correct.

18 MR. MCMAHON: Your Honor, I would offer
19 this into evidence.

20 THE COURT: Any objection?

21 MS. MIMS: No objection.

22 (State's Exhibit Number 16, I.D. card of
23 Jason Ward, is received into evidence.)

24 BY MR. MCMAHON:

25 Q Coroner, this appears to be a South Carolina

GARY WATTS -DIRECT- BY MR. MCMAHON

1 identification card; correct?

2 A That's correct.

3 Q When you get a card like this that has got the
4 name and the address on it, what steps do you
5 then take in relationship to that card and the
6 body that had been discovered?

7 A In this incident I went to the location and took
8 one of the investigators from the county with
9 me, Investigator Ewing, and responded to this
10 location to try to find next of kin on this
11 individual.

12 Q Who is the individual listed and what is the
13 address given?

14 A This is Jason Ward and the address -- you will
15 have to excuse me. I don't have my glasses --
16 it looks like [REDACTED]
17 [REDACTED].

18 Q Coroner, I have got my magnifying glass. I
19 never come to court without it.

20 A I may need it, sir.

21 Q Does it indicate the age of Mr. Ward?

22 A It does and we took the information. I can read
23 it off my report a little bit better. The date
24 of birth was [REDACTED], 22 years of age.

25 Q You go to that address again on Sweet Wood

GARY WATTS -DIRECT- BY MR. MCMAHON

1 Circle, you say, along with a county
2 investigator?

3 A That's correct.

4 Q Detective Ewing?

5 A Correct.

6 Q Upon arrival at that Sweet Wood address, were
7 you able to make contact with any individuals
8 that the victim was related to?

9 A We were. We notified the mother at that
10 address, and I believe it was the stepfather who
11 lived at that address also.

12 Q The mother being Mrs. Barbara Snipes?

13 A That's correct.

14 Q All this is documented in your report?

15 A Yes, sir.

16 Q The stepfather, I believe would be Mr. Michael
17 Snipes, this lady and gentleman seated here on
18 the front row?

19 A That's correct.

20 Q Coroner, when you and the officers talk to an
21 individual's family members in a situation like
22 this and a body has been found under these
23 circumstances, what information are y'all
24 attempting to get, in addition to notification
25 of the family?

GARY WATTS -DIRECT- BY MR. MCMAHON

1 A Understandably, the Sheriff's Department, their
2 investigators, are looking for different
3 information a lot of times than we are. But a
4 lot of it is the same.

5 Obviously, we want to find out as much
6 about where the individual had been, possibly
7 if they knew where he was the previous night,
8 where he was living, maybe who his associates
9 or friends might have been, someone so they
10 can track back to sort of putting a time line
11 together on this individual prior to his
12 death.

13 Q Were you able to determine whether or not
14 Jason was living with the Snipes' at the time?

15 A They informed us that he was living at the
16 Suburban Lodge on Broad River Road.

17 Q And as a result of that information, did they
18 know the room number and the location and was
19 that passed on to other officers back at the
20 Boozer Shopping Center?

21 A I don't remember if they told us the exact room
22 number, but the information was radioed back to
23 the investigators at the scene. They responded,
24 I believe, to the lodge and got the room number
25 if we didn't have it. I just don't remember if

GARY WATTS -DIRECT- BY MR. MCMAHON

1 we actually were given the room number.

2 Q As far as the investigators at the scene -- and
3 maybe this is testing your memory a little too
4 much, Coroner -- do you recall if Lieutenant
5 Smith had already arrived at the scene before
6 you and Detective Ewing had left to go talk to
7 the family?

8 A I believe Lieutenant Smith was there, also Major
9 Wilson and a couple of other investigators from
10 the county.

11 Q So y'all get this information from the mom, and
12 it is passed back to officers at the scene?

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

15 Q The Suburban Lodge, are you familiar with that
16 location?

17 A Yes, sir.

18 Q That location is in close proximity, if you
19 will, to the Suburban Lodge?

20 A It's pretty much next door to the back side of
21 the Boozer Shopping Center.

22 Q Coroner, when you had an occasion to leave the
23 Snipes' residence, where did you then go?

24 A We stayed with the family for a little while and
25 then responded back to the location of the

GARY WATTS -DIRECT- BY MR. MCMAHON

1 incident behind Boozer Shopping Center and then
2 from there went over to the Suburban Lodge to
3 the room where Mr. Ward had been staying.

4 Q Were y'all able to determine if he had a
5 roommate and who the roommate was?

6 A I don't remember the roommate's name, but it was
7 determined that he had a roommate. I believe a
8 couple of the investigators were already in the
9 room at that time trying to track down the
10 roommate.

11 Q And that would have been the type of information
12 that the Sheriff's Department investigators
13 would have been following up on; is that
14 correct?

15 A That's correct, and putting together the time
16 line.

17 Q And you actually went over to the room?

18 A We went back to the room to secure some more
19 personal effects that belonged to Jason for the
20 family.

21 Q Coroner, additionally, in a case like this an
22 autopsy is standard?

23 A That's correct.

24 Q And this autopsy, I believe, was performed by
25 Dr. Welsh at Richland Memorial?

GARY WATTS -DIRECT- BY MR. MCMAHON

1 A It was Welsh or Catalano. Hold on one second
2 and I can tell you. It was Dr. Welsh.

3 Q He is one of several pathologists that perform
4 forensic autopsies on behalf of the Richland
5 County Coroner's Office?

6 A That's correct.

7 Q Thank you, Coroner. I don't have any further
8 questions?

9 THE COURT: Any cross?

10 MS. MIMS: No cross, Your Honor.

11 THE COURT: Thank you, sir. You can step
12 down. You are free to go or you can stay if you
13 wish. Counsel, why don't we take about a ten-minute
14 break.

15 Ladies and gentlemen, we will take about a
16 ten-minute recess. During the recess be sure not to
17 talk about the case with anyone. See you back in a
18 few minutes.

19 (The jury retires to the jury room.)

20 THE COURT: Anything before we recess from
21 the State?

22 MR. MCMAHON: No, sir.

23 THE COURT: Anything from the defense?

24 MS. MIMS: No, sir.

25 THE COURT: We will see you back in about

1 ten minutes.

2 (Whereupon there was a recess.)

3 THE COURT: Do you need Ms. Campbell before
4 you start?

5 MR. MCMAHON: I'm ready.

6 THE COURT: Counsel, I have another note
7 from the jury which says: Is each piece of evidence
8 supposed to be passed around for all the jury to see
9 as we are shown it or afterwards?

10 I assume that means do they see it now or
11 do they see it afterwards. I will clarify that and
12 let them know that they will have all the evidence
13 with them in the jury room at the appropriate time.

14 (Court's Exhibit Number 8, note from jury,
15 is marked for purposes of the record.)

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

17 (The jury returns to the courtroom.)

18 THE COURT: All parties and attorneys are
19 in the courtroom and all jurors have returned.

20 Let me ask, first, Mr. Crutchfield, I will
21 ask if you will serve as the foreman of the jury,
22 please, sir. You don't have to do anything right
23 now, but we will advise you later what you have to
24 do.

25 Also, jurors, I received a note from one of

1 you asking something to the effect of: Is the
2 evidence, all the evidence, supposed to be passed
3 around to you or do you get it afterwards?

4 Basically the answer is either way is okay.
5 It doesn't have to be passed around to you now.
6 Sometimes the attorneys may want you to see a
7 particular item at a particular time.

8 As you notice, they will move to publish
9 it. That's when we let them give it to you and pass
10 it around. They normally won't do that unless they
11 ask me about that first.

12 At the end of the case, you will have all
13 of that evidence. All of the exhibits will be in the
14 jury room with you when you go through your
15 deliberations. So the answer is you will basically
16 see some of it as you go through; but at the end of
17 it, you will have all of it when you deliberate.

18 Are you ready to call your next witness?

19 MR. MCMAHON: Yes, sir. The State calls
20 Wendy Johnson.

21 WENDY JOHNSON, being first
22 duly sworn, testified as follows:

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

25 THE WITNESS: Wendy Johnson.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

DIRECT EXAMINATION

BY MR. MCMAHON:

Q Wendy, I will ask you to speak up for us so everybody on the jury can hear you; okay?

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

Q How old are you?

A Twenty.

Q Where are you from?

A Columbia, South Carolina.

Q Where did you go to high school at?

A A. C. Flora.

Q What do you do now, Wendy?

A I just go to school.

Q And where do you go do school now?

A Midlands Tech.

Q Are you nervous today?

A Very.

Q Wendy, where do you live now and who do you live with?

A I live with my father at Quail Run.

Q That's in Columbia?

A Yes, sir.

Q Generally what area?

A Forest Acres near Fort Jackson.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 Q Now, Wendy, I want to ask you first off if you
2 know a few people. Do you know Clint Brown?
3 A Yes, sir.
4 Q And how do you know Clint?
5 A He was my old roommate.
6 Q Would you describe him as your boyfriend?
7 A Yes, sir.
8 Q If I look outside, do I see him kind of looking
9 in the courtroom now?
10 A Yes, sir.
11 Q Is he still your boyfriend?
12 A Yes, sir.
13 Q Going back to January of 2001, where were you
14 living?
15 A I was living at Palmetto Pointe.
16 Q Where is Palmetto Pointe?
17 A Off of Lake Murray Boulevard.
18 Q That's kind of right outside of the town of
19 Irmo?
20 A Yes, sir.
21 Q Is that correct?
22 A (Witness nods.) (Indicating affirmative
23 response.)
24 Q And who were you living there with?
25 A I was living with Clint Brown.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 Q That was an apartment that you and he had?
- 2 A Yes, sir.
- 3 Q Where was Clint working back then?
- 4 A Captain Tom's.
- 5 Q And Captain Tom's is located on what road?
- 6 A Broad River Road.
- 7 Q What was he doing at Captain Tom's? What kind
- 8 of work did he do?
- 9 A He was a cook.
- 10 Q How about yourself, were you working?
- 11 A I was a hostess and a waitress at Captain Tom's.
- 12 Q Did y'all know Jason Ward?
- 13 A Yes, sir.
- 14 Q How did you know Jason?
- 15 A We worked with him.
- 16 Q So he was also employed at Captain Tom's?
- 17 A Yes, sir.
- 18 Q What did he do at Captain Tom's, Wendy?
- 19 A He was a waiter.
- 20 Q About how long had you known him?
- 21 A A few months, since he started working there.
- 22 Q The only way you knew Jason was as a co-worker
- 23 at Captain Tom's; is that correct?
- 24 A Yes, sir.
- 25 Q Now, Wendy, I want to go back to Saturday,

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 January 27th, Sunday, January 28th. As a
2 hostess at Captain Tom's, did you have to
3 document when you were present and when you
4 left?

5 A Yes, sir.

6 Q And how did that work? What did you have to do?

7 A We clocked in every day.

8 Q So there was a time card to show when you would
9 go to work and when you would leave?

10 A Yes, sir.

11 Q I want to show you a copy of an item. You have
12 seen this before today, correct?

13 A Yes, sir.

14 Q Does that appear to be your time card for that
15 week ending Saturday, January the 27th of '01?

16 A Yes, sir.

17 Q Does that show what time you clocked in and what
18 time you clocked out on that Saturday?

19 A Yes, sir.

20 Q What does it say? What time did you go to work
21 and what time did you get off?

22 A I arrived at work at 3:37 and got off at 11:13.

23 Q And that was 11:13 that night?

24 A Yes, sir.

25 Q Was Clint also working that night?

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Would you and Clint have rode together?

3 A Yes, sir.

4 Q Did he have an automobile?

5 A Yes, sir.

6 Q Did you have an automobile?

7 A No, sir.

8 Q Does it appear also on the other side indicating
9 when Clint came to work and what time he got to
10 work and what time he got off on that same day?

11 A Yes, sir.

12 Q What are those times?

13 A He arrived at 1:53 and he left at 11:28.

14 Q He clocked out at 11:28?

15 A Yes, clocked out.

16 Q I want to go to that 11:28 time.. I believe you
17 clocked out about 15 minutes earlier.

18 MR. MCMAHON: Your Honor, I would offer
19 this into evidence.

20 MS. MIMS: No objection.

21 THE COURT: Without objection.

22 (State's Exhibit Number 17, copy of time
23 clock records, is received into evidence.)

24 BY MR. MCMAHON:

25 Q I want to just show the jury this very briefly

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 where this is highlighted on the right. On the
2 right side is Clint's listed at the top?

3 A Yes, sir.

4 Q On this side (indicating) is Wendy Johnson?

5 A Yes, sir.

6 Q Where it's highlighted that is the exact date;
7 is that correct?

8 A Yes, sir.

9 Q That's where you got the times from of 11:13 and
10 11:28 that Saturday night?

11 A Yes, sir.

12 MR. MCMAHON: Your Honor, I would publish
13 it, but there is something on the back that I have
14 not introduced. So perhaps if I make another copy
15 before I do publish it.

16 THE COURT: Sure, you can do that. You can
17 do that at a later time.

18 MR. MCMAHON: Thank you.

19 Q Now, Jason worked that night?

20 A Yes, sir.

21 Q As a waiter at Captain Tom's?

22 A Yes, sir.

23 Q And I will not show you his time card, but did
24 he get off about the same time y'all did?

25 A Yes, sir.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 Q Do you know where he was living?

2 A Suburban Lodge.

3 Q Do you know how he would -- where was the
4 Suburban Lodge? Tell the jury about how far the
5 Suburban Lodge was from Captain Tom's.

6 A About less than a block.

7 Q So walking distance?

8 A Walking distance, yes.

9 Q Do you know whether or not how Jason would get
10 to work?

11 A He would walk to work.

12 Q He didn't have an automobile?

13 A No, sir.

14 Q Had you or Clint had any conversations with
15 Jason while y'all were at work on that Saturday
16 evening at Captain Tom's about plans for after
17 work?

18 A Yes, sir.

19 Q What were your plans? What did y'all three
20 plan?

21 A He was just going to come over and hang out.

22 Q To come over and hang out. From Captain Tom's
23 to y'all's apartment at Palmetto Pointe, that
24 would not normally be walking distance; is that
25 correct?

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 A No, sir.
- 2 Q So what was the plan on when y'all got off of
- 3 how y'all were going from Captain Tom's to
- 4 Palmetto Pointe, Wendy?
- 5 A We stopped at Suburban Lodge for him to get a
- 6 change of clothes, and --
- 7 Q Excuse me. I didn't mean to interrupt you. You
- 8 are doing fine.
- 9 A Then we went to one of our friend's house.
- 10 Clint went in and talked to him for a moment,
- 11 and then we proceeded to go to Palmetto Pointe.
- 12 Q Tell the jury who all left Captain Tom's
- 13 together that Saturday night.
- 14 A Me, Clint Brown and Jason.
- 15 Q Whose automobile were you in?
- 16 A Clint Brown's.
- 17 Q Where was the first stop?
- 18 A River -- I am trying to think. It's Suburban
- 19 Lodge. I'm sorry, I was thinking about the
- 20 apartment.
- 21 Q Now, did all of y'all get out and go in Suburban
- 22 Lodge or what happened there?
- 23 A No, he just ran upstairs and ran to his hotel
- 24 room to get his clothes.
- 25 Q Did he change clothes at Suburban Lodge?

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 A No, sir.
- 2 Q And let me ask you, do the waiters or did the
3 waiters at Captain Tom's, were they required to
4 wear a particular uniform?
- 5 A Yes, sir, black pants and a Captain Tom's
6 uniform T-shirt.
- 7 Q And Jason had that on that Saturday evening?
- 8 A Yes, sir.
- 9 Q And he had it on when y'all went to Suburban
10 Lodge?
- 11 A Yes, sir.
- 12 Q And he had it on when y'all left?
- 13 A Yes, sir.
- 14 Q Y'all left Suburban Lodge. I believe you said
15 you stopped by a friend's house for a few
16 minutes?
- 17 A Yes, sir.
- 18 Q About how long?
- 19 A I would say maybe ten minutes at the most, ten
20 to fifteen, just long enough for Clint to run in
21 and speak to him.
- 22 Q And from there you went?
- 23 A To Palmetto Pointe.
- 24 Q So who all arrived at Palmetto Pointe? Can you
25 give us a general idea if you got off work --

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 if Clint got off at 11:28, you stopped at
2 Suburban Lodge, stopped at a friend's -- about
3 what time would you say you arrived at Palmetto
4 Pointe?

5 A Midnight maybe.

6 Q So now we are at midnight on Saturday night, the
7 28th, going into -- excuse me -- Saturday night,
8 the 27th, going into Sunday morning, the 28th;
9 is that right?

10 A Yes, sir.

11 Q Now, when y'all got to Palmetto Pointe, was
12 anybody else present at y'all's apartment?

13 A No, sir, just us three.

14 Q What happened initially when y'all were at
15 Palmetto Pointe, Wendy?

16 A We came home, we sat down for a second, we spoke
17 a little. We decided, you know, that we all
18 needed to take showers because we just got off
19 work. So everybody proceeded to take showers
20 and stuff. Jason mentioned the party and asked
21 us if we wanted to go.

22 Q Did y'all have plans?

23 A Yes, sir, we had friends coming over.

24 Q So did you or Clint decide whether or not you
25 were or were not going to the party that Jason

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 had mentioned?
- 2 A Yeah, we weren't going to go because we had
- 3 friends coming.
- 4 Q During this initial period of time back at
- 5 Palmetto Pointe, was Clint there that entire
- 6 time?
- 7 A No, sir. He went over to -- a friend of ours
- 8 got a hotel room, Tyre, and he went to go visit
- 9 him.
- 10 Q About how long was Clint gone to visit Tyre?
- 11 A Maybe 30 or 45 minutes.
- 12 Q During that time what were you doing?
- 13 A I took a shower, played video games.
- 14 Q That's when you showered and changed?
- 15 A Yes, sir.
- 16 Q And then Jason?
- 17 A (Witness nods.) (Indicating affirmative
- 18 response.)
- 19 Q When he got out of the shower and redressed, did
- 20 he have his Captain Tom's shirt on?
- 21 A No, sir.
- 22 Q As a matter of fact, we will talk about it
- 23 later. Did that remain there at your house?
- 24 A Yes, sir.
- 25 Q Did Clint stay at y'all's apartment all

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 throughout the morning of January 28th?

2 A He went like to Tyre's house. After that, yeah,
3 he was there the whole entire time.

4 Q Did Jason stay at y'all's apartment throughout
5 the morning of January 28th?

6 A No, sir.

7 Q While he was there the first time --

8 A Uh-huh. (Indicating affirmative response.)

9 Q -- did you talk to anyone on the phone?

10 A I believe he spoke to someone about the party.

11 Q But you don't know who?

12 A Don't know who.

13 Q Did you or Clint take Jason from y'all's
14 apartment at Palmetto Pointe to any other place?

15 A No, sir.

16 Q The only time he was in Clint and your car that
17 night was from Captain Tom's to Palmetto Pointe;
18 is that right?

19 A Yes, sir.

20 Q Now, when Jason left going to the party, to your
21 knowledge he was walking or meeting a friend or
22 you don't know?

23 A I don't know. He left and I wasn't sure.

24 Q And then Clint returned?

25 A Yes, sir.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 Q Now, when Clint got back, you and Clint were at
2 y'all's apartment. About approximately what
3 time are we talking about now? Can you give us
4 an idea?
- 5 A Between one or two.
- 6 Q And you weren't watching a watch?
- 7 A No, sir.
- 8 Q I believe you mentioned previously that y'all
9 had some friends that may come over?
- 10 A Yes, sir.
- 11 Q Who were those friends?
- 12 A Zack and Kelly.
- 13 Q Is Zack a male and Kelly a female?
- 14 A Yes, sir.
- 15 Q Did they come over?
- 16 A Yes, sir.
- 17 Q And visit?
- 18 A Yes.
- 19 Q Later on that morning of the 28th, Wendy, did
20 you receive a phone call?
- 21 A Yes, sir.
- 22 Q And who was that phone call from?
- 23 A Jason.
- 24 Q Who all talked to Jason on that phone call?
- 25 A Me and Kelly.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 Q So your friend Kelly?
- 2 A I think she answered the phone.
- 3 Q That's why she talked to him?
- 4 A Yeah.
- 5 Q Then she handed the phone to you and you talked
- 6 to him?
- 7 A Yeah.
- 8 Q As a result of that conversation, what did you
- 9 tell Jason?
- 10 A That he could come back over if he would like.
- 11 Q And did he come back to y'all's house?
- 12 A Yes, sir.
- 13 Q When he came back to y'all's house, who was with
- 14 him?
- 15 A Steve.
- 16 Q That's Steven Gillian, the Defendant in this
- 17 case?
- 18 A Yes, sir.
- 19 Q Had you met him before that night?
- 20 A No, sir.
- 21 Q When Jason and Steven Gillian got there, was
- 22 Zack and Kelly still at your apartment?
- 23 A No, they had already left.
- 24 Q They had left?
- 25 A Yes, sir.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 Q About how much time passed, if you can tell us,
2 from when you received or you talked to Jason on
3 the phone until Jason arrived?

4 A A few hours, maybe an hour or two.

5 Q And he arrived with Steve?

6 A Yes, sir.

7 Q So approximately what time are we talking about?
8 Do you remember what time Zack and Kelly left or
9 about what time Steve and Jason got there?

10 A After four.

11 Q After four?

12 A Yes.

13 Q And you were still up?

14 A Yes, sir.

15 Q Clint was still up?

16 A Yes, sir.

17 Q Now, what happened? What did the four of y'all
18 do when Jason and Gillian, the Defendant,
19 arrived?

20 A Basically just sat around and hung out for a
21 little bit and, you know, talked. Then I went
22 to bed.

23 Q About what time did you go to bed?

24 A Around 4:30, 4:45.

25 Q When you went to bed -- y'all's apartment, how

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

- 1 is it set up? Where is the bedroom?
- 2 A Upstairs.
- 3 Q When you went to bed, who all was downstairs?
- 4 A Steve, Jason, and Clint.
- 5 Q And was that the last time you saw Jason and
- 6 Steve was downstairs with Clint; is that
- 7 correct?
- 8 A Yes, sir.
- 9 Q You had gone to bed leaving those guys
- 10 downstairs?
- 11 A Yes, sir.
- 12 Q Again, about what time was that?
- 13 A About 4:30, 4:45.
- 14 Q Later on that day, that Sunday, were y'all
- 15 contacted by the police?
- 16 A Yes, sir.
- 17 Q And did an officer come out and talk with you?
- 18 A Yes, sir.
- 19 Q Both you and Clint?
- 20 A Yes, sir.
- 21 Q Did you turn over certain items to the officer
- 22 that had been left at your home by Jason?
- 23 A Yes, sir.
- 24 Q What were those items, Wendy?
- 25 A His Captain Tom's uniform.

WENDY JOHNSON -DIRECT- BY MR. MCMAHON

1 Q And that was that Sunday?

2 A Yes, sir.

3 Q Now, do you recall as far as Steven Gillian is
4 concerned, did he say anything about his
5 occupation or what he did for a living?

6 A Not to my knowledge.

7 Q Not during the period of time you were in his
8 presence?

9 A No, sir.

10 Q He and Jason had arrived there together?

11 A Yes, sir.

12 Q Thank you. I don't have any further questions.
13 Answer any questions the defense might have.

14 THE COURT: Cross.

15 MS. MIMS: We have no questions, Your
16 Honor.

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

20 MR. MCMAHON: Clint Brown.

21 CLINT ALEXANDER BROWN, being
22 first duly sworn, testified as follows:

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

25 THE WITNESS: Clint Alexander Brown.

CLINT BROWN -DIRECT- BY MR. MCMAHON

DIRECT EXAMINATION

BY MR. MCMAHON:

Q Clint, where are you from?

A Charleston. Charleston, South Carolina.

Q Part of your time did you go to school up here in Columbia?

A Yes.

Q Where did you finish high school at?

A Irmo High School.

Q What year?

A '99.

Q How old are you?

A Twenty.

Q And where are you presently employed?

A Fat Buddy's.

Q That's in Wide Water Square?

A Do what?

Q Is that in Wide Water Square on Broad River Road?

A It's on Broad River Road. I don't know if it's Wide Water Square.

Q On Broad River Road. That's a restaurant?

A Uh-huh. (Indicating affirmative response.)

Q Clint, do you know the young lady that just testified, Wendy Johnson?

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 A Yeah, that's my girlfriend.

2 Q And previous, did you and Wendy live together at
3 Palmetto Pointe Apartments?

4 A Yes, sir.

5 Q Did y'all have a phone at that residence?

6 A Yes.

7 Q Do you recall what the phone number was?

8 A [REDACTED].

9 Q [REDACTED]?

10 A Right.

11 Q Did y'all live at Palmetto Pointe Apartments
12 back in --

13 MR. BUTLER: Excuse me, Your Honor. A
14 juror says She can't hear him.

15 THE COURT: If you would, Mr. Brown, pull
16 the microphone down just a little bit.

17 THE WITNESS: Can you hear me now?

18 BY MR. MCMAHON:

19 Q Back in January of 2001, y'all lived at Palmetto
20 Pointe?

21 A Right.

22 Q And that was y'all's phone number at that time?

23 A Right.

24 Q Where were you working then, Clint?

25 A Captain Tom's.

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 Q And where was Wendy working?

2 A The same place.

3 Q What was your job at Captain Tom's and what was
4 Wendy's?

5 A I was a cook. She was a hostess.

6 Q Now, y'all had to keep time records, time cards
7 for your work?

8 A Right.

9 Q And showing you what has been previously marked
10 as State's Exhibit Number 17, is that your time
11 card for the period of time that we are
12 referring to?

13 A Yeah, that's it.

14 Q Speak up now.

15 A Yeah, that's it.

16 Q And that shows Saturday the 27th of January?

17 A Right.

18 Q What hours did you work that day?

19 A 1:53 to 11:28.

20 Q Now, did you know Jason Ward?

21 A Yeah.

22 Q And how had you met Jason Ward?

23 A I had met him a year before that. He was one of
24 my girlfriend's friend's boyfriend or whatever.

25 Q So you met him as an acquaintance?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A Right.
- 2 Q Before he worked at Captain Tom's?
- 3 A Uh-huh. (Indicating affirmative response.)
- 4 Q Was he working at Captain Tom's that January of
- 5 2001?
- 6 A Yes, sir.
- 7 Q What was his job there?
- 8 A He was a waiter.
- 9 Q Had there been any conversations about you and
- 10 he and Wendy getting together after work on the
- 11 27th?
- 12 A Yes, he asked me.
- 13 Q Do you know where he was living, Clint?
- 14 A He was living at Suburban Lodge.
- 15 Q And how far is Suburban Lodge from Captain
- 16 Tom's?
- 17 A A fourth of a mile.
- 18 Q Walking distance?
- 19 A Walking distance. Five minutes, I guess.
- 20 Q Do you know whether or not Jason had an
- 21 automobile?
- 22 A No, he didn't.
- 23 Q What was y'all's plans after work on
- 24 January 28th, you and Wendy and Jason?
- 25 A He had a party to go to. We were just going to

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 go to my house, and he had a party. He said
2 something about that.
- 3 Q So when y'all left Captain Tom's that night, how
4 did y'all leave and who all left together?
- 5 A Me, Wendy, and then Jason in my car.
- 6 Q Where did y'all first stop?
- 7 A We stopped at Suburban Lodge.
- 8 Q What was your purpose in stopping there?
- 9 A He had to get extra clothes.
- 10 Q As a waiter, did he wear a Captain Tom's shirt?
- 11 A Right, Captain Tom's shirt.
- 12 Q And he had that on?
- 13 A Uh-huh. (Indicating affirmative response.)
- 14 Q When you got to Suburban Lodge, about how long
15 was it that y'all stopped at Suburban Lodge?
- 16 A Like ten minutes maybe.
- 17 Q Did you go in or did Wendy go in?
- 18 A Just him.
- 19 Q And come right back?
- 20 A Yeah, he came right back.
- 21 Q Did he change clothes at Suburban Lodge or did
22 he do that later?
- 23 A He did that later.
- 24 Q From Suburban Lodge where did y'all then go,
25 Clint?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A We went to my friend Mike's house.
- 2 Q From there where did you go?
- 3 A We went to Palmetto Pointe to my apartment.
- 4 Q About how long were y'all at Mike's house?
- 5 A Maybe ten minutes, just to stop by and left.
- 6 Q And then you go to Palmetto Pointe Apartments
- 7 and where is that located at?
- 8 A Lake Murray Boulevard. It's right --
- 9 Q I cut you off there at the end. Lake Murray
- 10 Boulevard what?
- 11 A It's right off that.
- 12 Q And that's a short distance outside the Town of
- 13 Irmo?
- 14 A Yeah, I think it's in Irmo.
- 15 Q When y'all got to your apartment at Palmetto
- 16 Pointe, was anyone else there?
- 17 A No, no.
- 18 Q So it's you, Wendy, and Jason arriving at
- 19 Palmetto Pointe Apartments; correct?
- 20 A Uh-huh. (Indicating affirmative response.)
- 21 Q What happened after y'all got there?
- 22 A I had got a call from my friend Tyre, so I was
- 23 going to go over there for a few minutes. Jason
- 24 asked if he could take a shower. So I said
- 25 sure. Wendy took a shower, I guess. That's

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 what happened.
- 2 Q So you go to see your friend Tyre?
- 3 A Uh-huh. (Indicating affirmative response.)
- 4 Q Jason and Wendy are still there, correct?
- 5 A Right.
- 6 Q You had had some conversations with Jason about
- 7 going to the party?
- 8 A Yeah.
- 9 Q And had you decided or had you and Wendy decided
- 10 whether y'all were or were not going to the
- 11 party?
- 12 A Yeah, we decided we weren't.
- 13 Q Were not?
- 14 A Yeah.
- 15 Q Had y'all made any plans for any friends to come
- 16 over?
- 17 A Well, that's why I stopped at Mike's. Yeah, I
- 18 guess.
- 19 Q Who was coming over?
- 20 A Zack and Kelly.
- 21 Q So you stopped at Mike's. Was Zack and Kelly at
- 22 Mike's when you stopped?
- 23 A Yeah.
- 24 Q And then they were coming over later. Zack and
- 25 Kelly are friends of y'all's?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A Right.
- 2 Q Now, when you got back from Tyre's.
- 3 A Uh-huh. (Indicating affirmative response.)
- 4 Q To visit Tyre. Did you see Jason?
- 5 A Yeah.
- 6 Q Where did you see him at?
- 7 A He was walking out the door. He was about to
- 8 leave.
- 9 Q Had he changed clothes?
- 10 A Yeah.
- 11 Q He didn't have his Captain Tom's shirt on?
- 12 A Didn't have his Captain Tom's shirt.
- 13 Q What happened when you saw him there?
- 14 A He came with me, and he asked me where the
- 15 second entrance to Palmetto Pointe was because
- 16 it was the second entrance that was blocked off.
- 17 I told him, and he said, "I'm going to a party.
- 18 I might come back a little bit later."
- 19 Q And he left?
- 20 A He left.
- 21 Q And you gave him directions to the second
- 22 entrance?
- 23 A To the second entrance.
- 24 Q Now, when he left, he left walking from your
- 25 apartment to that second entrance?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A Yes.
- 2 Q And you went on in your home?
- 3 A Yeah, I went inside.
- 4 Q I take it Zack and Kelly visited for a period of
5 time?
- 6 A Yeah.
- 7 Q And we are getting on up to the early morning
8 hours?
- 9 A Uh-huh. (Indicating affirmative response.)
- 10 Q Mid morning hours of the 28th, correct?
- 11 A Right.
- 12 Q Did y'all -- or did a phone call come in to your
13 home?
- 14 A Yeah, but I didn't answer it.
- 15 Q Who answered it?
- 16 A Wendy, and Kelly talked on the phone, too.
- 17 Q Do you remember between the two, who answered?
- 18 A Wendy.
- 19 Q And Wendy talked on the phone?
- 20 A Uh-huh. (Indicating affirmative response.)
- 21 Q And had a conversation with whoever it was?
- 22 A Yeah.
- 23 Q Now, did somebody show up at your apartment
24 after that phone call?
- 25 A A while later.

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 Q How much time passed from the phone call to when
2 they showed up?

3 A I would say like maybe two or three hours.

4 Q And who showed up?

5 A Jason and Steve.

6 Q That's Steve Gillian, the Defendant in this
7 case?

8 A Right.

9 Q And you didn't mind Jason coming over?

10 A No.

11 Q When Jason and Steve got there, where was Zack
12 and Kelly?

13 A They had already gone home.

14 Q They were gone?

15 A They were gone.

16 Q There was never a time in your apartment when it
17 was you, Wendy, Jason, Steve, and Zack and
18 Kelly?

19 A No.

20 Q Now, when Jason and Steve arrived, kind of the
21 reverse of that question, who was at your
22 apartment?

23 A When Jason and Steve -- can you say that again?

24 Q I will try. When Jason and Steve got to your
25 apartment, who was there?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A Me and Wendy.
- 2 Q So Zack and Kelly had left from the time the
- 3 call came in until Jason and Steve arrived?
- 4 A Uh-huh. (Indicating affirmative response.)
- 5 Yeah.
- 6 Q What happened when they got there? What did
- 7 y'all do, Clint?
- 8 A Just sat around. I mean, we didn't do anything
- 9 else besides play video games and cards.
- 10 Q Was Wendy up --
- 11 A Yeah.
- 12 Q -- when they got back? What area of y'all's
- 13 apartment did y'all sit around in?
- 14 A The living room.
- 15 Q And I believe you met Steve that night?
- 16 A Yeah.
- 17 Q Do you know what his job was?
- 18 A No.
- 19 Q Did he say anything about what his occupation
- 20 was?
- 21 A Huh-uh. (Indicating negative response.)
- 22 Q Now, was there a time when Wendy wasn't in your,
- 23 Jason, and Steve's presence?
- 24 A Yeah.
- 25 Q What did she do?

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 A She went to sleep.

2 Q And where did she go to go to sleep?

3 A Upstairs.

4 Q And about what time was it that Wendy went
5 upstairs to go to sleep?

6 A A little before five. I don't know exactly what
7 time.

8 Q You are talking about a little bit before
9 5:00 a.m.?

10 A A.m.

11 Q Five in the morning. So that now leaves who
12 downstairs?

13 A Me, Jason, and Steve.

14 Q And what are y'all doing?

15 A Just playing cards. Me and Jason are playing
16 cards.

17 Q What is Steve doing?

18 A Sitting there and talking, I guess.

19 Q Now, as y'all -- it was you and Jason playing
20 cards, and Steve sitting there. What happened
21 next, Clint?

22 A A phone call. Steve got a phone call, and he
23 was talking on the phone.

24 Q Let me stop you a minute. Did the phone call to
25 Steve come in on [REDACTED]?

CLINT BROWN -DIRECT- BY MR. MCMAHON

- 1 A No.
- 2 Q What phone did it come in on?
- 3 A His cell phone, I guess.
- 4 Q So he had a cell phone with him?
- 5 A Uh-huh. (Indicating affirmative response.)
- 6 Q But you didn't know that cell phone number?
- 7 A No.
- 8 Q If I asked you now what that number was, you
- 9 wouldn't know it?
- 10 A No.
- 11 Q Were you in the room and present when he
- 12 received the phone call?
- 13 A Yeah.
- 14 Q Did he receive that phone call after Wendy had
- 15 gone to bed?
- 16 A Yeah.
- 17 Q About what time had she gone to bed?
- 18 A She went to bed a little bit before five.
- 19 Q Now, could you hear Steve's part of the phone
- 20 call?
- 21 A No. I mean, all I heard was the end, whenever
- 22 he got off the phone. I wasn't really
- 23 listening.
- 24 Q So you are not eavesdropping, so to speak. You
- 25 are not listening to his conversation. When he

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 gets off the phone, does he saying anything that
2 you can hear to Jason or to you?

3 A Yeah. He said, "Jason, we got to go. Somebody
4 just got shot. We got to go."

5 Q What was his demeanor?

6 A He seemed like, you know, he was in hurry. He
7 was worried or something.

8 Q And this is Steve?

9 A Steve.

10 Q And what is Jason's demeanor?

11 A He didn't really take it as -- he kind of blew
12 it off like it was nothing.

13 Q What did Jason continue to do?

14 A Just play cards.

15 Q You said Steve said somebody had gotten what?

16 A Shot.

17 Q Shot. Now, what did Steve then do?

18 A Steve, you know, I guess -- he didn't think
19 Jason was coming or something. So he went to
20 his car and started it up, you know.

21 Q You saw him go out the door?

22 A Saw him go out the door.

23 Q Heard the car crank up?

24 A Heard the car.

25 Q Then what happened? What does Jason do?

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 A So Jason, I guess, thought, you know, he was
2 serious. So he went back into the kitchen -- or
3 he went out to tell him to stop. Then he went
4 back in the kitchen and got his beer, and then
5 they left.

6 Q So Jason goes outside and tries to stop Steve?

7 A Right.

8 Q And goes back in the kitchen and gets his beer?

9 A Right.

10 Q And heads back out?

11 A Uh-huh. (Indicating affirmative response.)

12 Q So where do you last see Jason?

13 A Leaving the house.

14 Q With Steve?

15 A Right.

16 Q About what time was that?

17 A Five-fifteen, 5:30, something like that.

18 Q A.m.?

19 A Right.

20 Q As a matter of fact, that is the last time you
21 ever see Jason?

22 A Yeah.

23 Q Or Steve?

24 A Or Steve.

25 Q Now, later on that day, sometime maybe even that

CLINT BROWN -DIRECT- BY MR. MCMAHON

1 afternoon, did you have an occasion to talk with
2 the police officers?

3 A Yeah. About 2:00 o'clock I'm sleeping, and he
4 called up and said, "Hey."

5 Q And you talked with him?

6 A Yeah.

7 Q And that same day they come over?

8 A Uh-huh. (Indicating affirmative response.)

9 Q And Wendy talked with him?

10 A Wendy talked to him.

11 Q And Wendy gave him certain items that Jason had
12 left at the house?

13 A Yeah.

14 Q That was Jason and the Defendant together in
15 this case, Steven Gillian; but you didn't know
16 his last name?

17 A I don't know his last name.

18 Q But that was Jason and Steve that were together?

19 A Yeah.

20 MR. MCMAHON: I don't have any other
21 questions.

22 THE COURT: Cross.

23 MS. MIMS: No questions of this witness.

24 THE COURT: You can step down. You are
25 free to go if you like or you are free to say.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 THE WITNESS: Okay.

2 MS. CAMPBELL: Richie Cunliffe.

3 RICHARD CUNLIFFE, being
4 first duly sworn, testified as follows:

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

7 THE WITNESS: My name is Richard Cunliffe.

8 DIRECT EXAMINATION

9 BY MS. CAMPBELL:

10 Q Richie, you are going to have to sit up a little
11 bit so you can be near that microphone; okay?

12 Richie, How old are you?

13 A Nineteen.

14 Q And what do you do right now? What are you
15 doing?

16 A I go to Tech, Midlands Tech.

17 Q What kind of courses are you taking at Midlands
18 Tech?

19 A Like basic courses: History, English, Math.

20 Q Do you live here in Columbia?

21 A Yeah.

22 Q Do you still live with your parents?

23 A Huh-uh. (Indicating negative response.)

24 Q Did you graduate from high school?

25 A Yeah, I did.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 Q When did you graduate?
- 2 A 2001.
- 3 Q What high school did you graduate from, Richie?
- 4 A Dutch Fork High School.
- 5 Q And do you know the Defendant in this case,
- 6 Steve Gillian?
- 7 A Yes.
- 8 Q And tell this jury how you know Steve Gillian.
- 9 A I met him through friends of mine and then like
- 10 seeing him at parties and stuff. He called me
- 11 sometimes. I was pretty good friends with him
- 12 like last year.
- 13 Q You were pretty good friends with him last year?
- 14 A Before last year.
- 15 Q Before January of last year?
- 16 A Yeah.
- 17 Q So in the fall of the year 2000 and then in
- 18 January, y'all were doing some stuff together?
- 19 A Yeah, hanging out.
- 20 Q Is he a little bit older than you?
- 21 A Yeah, I guess.
- 22 Q Just a year or so?
- 23 A Yes, ma'am.
- 24 Q Did you know Jason Ward?
- 25 A Not really. I met him like one time before

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 that.

2 Q When you say before that, we are talking about
3 the party at Michael Glenn's house?

4 A I met him at a party at my house before.

5 Q A party at your house before?

6 A Yes, ma'am.

7 Q And how long before Mikey Glenn's house that you
8 had met Jason Ward?

9 A Approximately, I don't know, two or three
10 months.

11 Q Two or three months. Who was Jason Ward with
12 when you met him at the party at your house?

13 A With Steve.

14 Q With Steve Gillian?

15 A Yes.

16 Q And Steve Gillian, do you see him here in the
17 courtroom?

18 A Yeah.

19 Q Can you point him out for the jury.

20 A Right there (indicating).

21 Q Sitting over here (indicating)?

22 A Yes.

23 Q Right here (indicating) in the red and blue tie?

24 A Yeah, in the middle. Do I need to use the mike?
25 I don't really like that mike.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q You are fine. Just talk.

2 A All right.

3 Q So Steve Gillian, you testified, was a pretty
4 good friend of yours; and you just knew Jason,
5 basically met him once?

6 A Yeah.

7 Q I will turn your attention back to Super Bowl
8 Sunday, that Super Bowl weekend last year.

9 A (Witness nods.) (Indicating affirmative
10 response.)

11 Q That Saturday night, the 27th, earlier in the
12 evening before 9:00 o'clock, where were you?

13 A I was at my friend Mikey Glenn's house.

14 Q Your friend Mikey Glenn's house?

15 A Yes.

16 Q Where does Mikey live?

17 A In Coldstream.

18 Q In Coldstream. Is that in the Irmo area of
19 town?

20 A Yeah, I guess. Yes, ma'am. I am not that good
21 with directions, but yeah.

22 Q And that night who all was hanging at Mikey's
23 before 9:00 o'clock?

24 A I know it was me, my friend D.P. who I had been
25 riding with, Joe Canfield, Mike Durastein

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 (phonetic), and Mikey, a couple of other people.
2 Maybe it was --

3 COURT REPORTER: Judge?

4 THE COURT: You need to pronounce your
5 words a little bit better.

6 THE WITNESS: I'm sorry.

7 BY MS. CAMPBELL:

8 Q And a lot louder.

9 A The mike messes me up. Can I please go without
10 the mike? When I hear my own voice, that messes
11 me up. I will be loud, I promise.

12 THE COURT: Whatever you need,
13 Mr. Cunliffe. Move the mike if you want to.

14 THE WITNESS: That would be better.

15 THE COURT: You just need to be sure and
16 pronounce your words --

17 THE WITNESS: Yes, sir.

18 THE COURT: Listen to me.

19 THE WITNESS: Yes, sir.

20 THE COURT: Pronounce your words more
21 distinctly. The court reporter has to pick
22 everything up.

23 THE WITNESS: I'm sorry about that.

24 BY MS. CAMPBELL:

25 Q Do you feel better now?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A Yes.

2 Q So y'all were over at the house hanging with
3 quite a few of your friends. Were Steve or
4 Jason over there at that point before 9:00
5 o'clock?

6 A No, they're not.

7 Q Around 9:00 o'clock p.m. that evening, did y'all
8 leave Mikey's house?

9 A Yes, ma'am.

10 Q Who were you with?

11 A I was riding with D.P. Plyer, and two girls were
12 with us.

13 Q And at that point had you seen Steve or Jason
14 that evening?

15 A No, I hadn't yet.

16 Q When you left Mikey's house around 9:00 p.m. on
17 the 27th, that Saturday night, where did y'all
18 go?

19 A We went to a friend of mine, Blaine Reedy's
20 house.

21 Q Blaine Reedy's house?

22 A Yes, ma'am.

23 Q What part of town did Blaine Reedy live in?

24 A Like over off Broad River Road kind of.

25 Q So it's still on that same side of town?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q Why were you going to Blaine Reedy's house with
3 your friends that night?

4 A I guess her parents were out of town, and she
5 just said we could come over. She was having
6 people over.

7 Q And when you got to Blaine Reedy's house, how
8 long did y'all stay there approximately?

9 A Probably stayed there 45 minutes, approximately
10 30 minutes.

11 Q And why did you leave Blaine Reedy's house after
12 about 30 minutes, 45 minutes?

13 A Yes, ma'am, we heard about another party to go
14 to. It was Parker --

15 COURT REPORTER: Judge, I didn't
16 understand.

17 THE COURT: Just slow down a little when
18 you go through the names. Parker somebody.

19 THE WITNESS: Parker Valek, V-A-L-E-K.

20 BY MS. CAMPBELL:

21 Q Parker Valek?

22 A Yeah.

23 Q And y'all were going to Parker's house that
24 night, right?

25 A Yes, ma'am.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q And you heard about another party over there.

2 Where does Parker live, what part of town?

3 A Parker lives over towards Chapin, I'm pretty

4 sure, off of Broad River Road. Once again, I am

5 terrible at directions. I am like the worse

6 there is.

7 Q Okay.

8 A All right.

9 Q While you were over at Blaine Reedy's house

10 before you left to go to Parker's house, did you

11 get any phone calls?

12 A Yes, I got a phone call from Steve at like 9:30

13 approximately.

14 Q You got a phone call from Steve?

15 A Yes, ma'am.

16 Q And what was the substance -- without saying

17 what he said -- what was the substance of that

18 phone call?

19 A That was just like, "What are you doing

20 tonight?" I was like "I am not sure yet man,

21 but I will call you back."

22 Q Later that night did you get another phone call

23 shortly thereafter?

24 A Yes, ma'am.

25 Q From Steve?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Again what was the substance of those
- 3 conversations when you were talking to Steve?
- 4 A That was when we were about to go to Parker
- 5 Valek's. He asked me where it was and how to
- 6 get there. I said, "I'm not driving. I'm not
- 7 exactly sure, but my friend knows, and we will
- 8 meet up with you." So we met him at a gas
- 9 station down the road like from where the party
- 10 was going to be.
- 11 Q These phone calls were while you were still at
- 12 Blaine Reedy's house?
- 13 A Yes, ma'am.
- 14 Q Approximately what time would that have been?
- 15 A Ten o'clock approximately.
- 16 Q Approximately. Could it have been earlier?
- 17 A Yes, ma'am.
- 18 Q And those were those two phone calls, right?
- 19 A Yes, ma'am.
- 20 Q And what was your phone number that he was
- 21 calling you on, do you remember?
- 22 A Yeah, I do, [REDACTED].
- 23 Q [REDACTED]?
- 24 A [REDACTED].
- 25 Q Is that your cell phone?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q Then after those phone calls, y'all go and you
- 3 meet up with Steve; is that correct?
- 4 A Yes, ma'am.
- 5 Q Who was with Steve when y'all met up with him
- 6 that night?
- 7 A It was Steve, Jeremiah Page and Thomas Moss.
- 8 Q Jeremiah Page?
- 9 A Yes, ma'am.
- 10 Q And then Thomas Moss?
- 11 A Yes, ma'am.
- 12 Q Do you remember where y'all met up with them?
- 13 A Once again, it was a gas station right around
- 14 there.
- 15 Q Right near Parker Valek's house?
- 16 A Yes, ma'am.
- 17 Q And once you had met up with him, did he then
- 18 follow y'all to Parker Valek's?
- 19 A Yeah, he did.
- 20 Q Again, who were you riding with at this point?
- 21 A I was riding with D.P. Plyer and the two girls.
- 22 Q Once you got to Parker Valek's house, did y'all
- 23 go in?
- 24 A Yes, ma'am.
- 25 Q Approximately how long, approximately?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Approximately 20, 30 minutes we were there.
- 2 Q And again we are using these times. You are not
- 3 looking at a watch, are you, that night?
- 4 A No, no.
- 5 Q And y'all stayed there for awhile. Why did you
- 6 leave?
- 7 A Parker asked me to get Steve, and like there was
- 8 a bunch of Chapin kids there, too. He was --
- 9 Q Slow down. Slow down.
- 10 A He didn't know Steve. There was also a bunch of
- 11 Chapin kids there that had arrived like at the
- 12 same time just about. He asked me if we could
- 13 all go ahead and just help him out and leave.
- 14 He was also worried about the police coming and
- 15 stuff.
- 16 Q And did y'all leave?
- 17 A Yes, we did.
- 18 Q And did Steve also leave at the same time you
- 19 did?
- 20 A Yeah, he did.
- 21 Q At this point in the evening, had you seen Jason
- 22 Ward yet?
- 23 A No, I hadn't seen Jason.
- 24 Q So y'all leave Parker Valek's house after being
- 25 about there how long?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A Probably 20 or 30 minutes, not long.

2 Q Once you leave his house, where did you go?

3 A We went back to Blaine Reedy's house. At this
4 point Blaine wasn't home yet. So there was --
5 we were all waiting at Blaine's like in the
6 driveway and parked up and down the street.

7 Q So you go back to Blaine Reedy's house?

8 A Yes, sir.

9 Q But Blaine is not there?

10 A No, we were waiting on her. She was like on her
11 way back, I guess.

12 Q So there are a lot of cars just parked up and
13 down the street?

14 A Yes, ma'am.

15 Q And no one is in the house actually, are they?

16 A No.

17 Q Were you inside or outside of your car waiting
18 for her?

19 A Outside of my friend's car.

20 Q Where was Steve?

21 A He was outside as well.

22 Q While you were waiting for Blaine to return to
23 start the party up again, what happened?

24 A The police came while we were there.

25 Q The police came?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yeah, the police came.
- 2 Q Do you know why the police came?
- 3 A Just because there was a bunch of cars in the
- 4 driveway and all around the neighborhood.
- 5 Q And when the police came, what happened?
- 6 A The police came and like searched the cars and
- 7 everything. Steve ran around the back of the
- 8 house, and he wasn't there. Like, I don't know,
- 9 they didn't question him or anything.
- 10 Q Let me get this straight. Steve was standing
- 11 out near you where the police came?
- 12 A Yes.
- 13 Q You said what did he do?
- 14 A He went around to the back of the house.
- 15 Q How did you characterize it?
- 16 A Ran around. Well, I wasn't paying attention. I
- 17 don't actually remember him running, but I know
- 18 he wasn't there when we were getting questioned.
- 19 Q So he went around the back of the house?
- 20 A Yeah.
- 21 Q And you were being questioned by the police, and
- 22 he had disappeared?
- 23 A Yeah.
- 24 Q Did you leave Blaine Reedy's house then after
- 25 the police talked to you?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yeah, we did.
- 2 Q Was Steve with you?
- 3 A No, he wasn't. No, ma'am.
- 4 Q Who were you with at this point?
- 5 A I was still with D.P. Plyer and those two girls,
6 still in the same car.
- 7 Q When you left Blaine's house the second time,
8 what was the plan? Where were y'all going?
- 9 A We were going to Mikey Glenn's house, my friend
10 Mikey.
- 11 Q How did you know to go there?
- 12 A He gave us a call and said, "Come over." That
13 was like our little hangout, our little party
14 house. We went back there.
- 15 Q Were Mikey's parents out of town that weekend,
16 too?
- 17 A Yes, they were.
- 18 Q So y'all were going back over there; is that
19 correct?
- 20 A Yes.
- 21 Q When you left Blaine Reedy's house and went to
22 Mikey's house, was Steve with you?
- 23 A No, he wasn't.
- 24 Q Once you got back to Mikey's house -- and this
25 is all in the same part of town. I know you are

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 not good with directions.
- 2 A Yeah.
- 3 Q But you will say that is the same part of town?
- 4 A Yeah, the same part.
- 5 Q After getting to Mikey's house, did you get
- 6 another phone call?
- 7 A Yes, I did.
- 8 Q And who was the phone call from?
- 9 A It was from Steve.
- 10 Q What phone was he calling you on?
- 11 A My phone.
- 12 Q This phone right here (indicating), this phone
- 13 number?
- 14 A Yeah.
- 15 Q This is the phone he was calling you on. How
- 16 long was it after you had been at Mikey's house,
- 17 did he call you?
- 18 A Shortly after. It was probably about -- I don't
- 19 know -- 12, one, approximately. I'm not sure of
- 20 the exact time.
- 21 Q What was Steve wanting from you at that point?
- 22 A Just asking me what I was doing and everything.
- 23 I said, "We are over here at Mikey's, man. You
- 24 can come on over."
- 25 Q After that did Steve show up?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yeah, he showed up.
- 2 Q And the first time he showed up, do you remember
- 3 who he was with?
- 4 A No, not really. I can't -- I know he showed up
- 5 and then either ten or fifteen minutes later, he
- 6 left and then came back. Pretty soon after
- 7 that, he was with Jason Ward and Jeremiah.
- 8 Q So when he showed up at Mikey's house sometime
- 9 after that third phone call to you that night,
- 10 right?
- 11 A Yes.
- 12 Q And you don't know who he was with initially?
- 13 A No. No, ma'am.
- 14 Q But you know at some time after he got there, he
- 15 then left?
- 16 A Yes, ma'am.
- 17 Q And then he returned?
- 18 A Yes, ma'am.
- 19 Q And when he returned, Jason Ward, you saw him?
- 20 A Yes, ma'am.
- 21 Q During this evening you also saw Jeremiah Page;
- 22 is that right?
- 23 A Yes, ma'am.
- 24 Q Do you know where he went when he left the party
- 25 shortly and came back?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A No, I'm not sure. He might have gone to pick up
2 Jason.

3 MR. BUTLER: Objection, speculation.

4 THE COURT: Sustained.

5 BY MS. CAMPBELL:

6 Q After he came back, were you still at the party
7 the whole time?

8 A Yeah, I was there. Yes, ma'am.

9 Q Approximately how long were Jason and Steve
10 staying at the party that first time you saw
11 Jason?

12 A Approximately two, two and a half hours.

13 Q This is all approximate?

14 A Approximately, yeah.

15 Q And sometime that evening did they leave?

16 A Yes.

17 Q After Jason and Steve left, was Jeremiah Page
18 still there at the party?

19 A Yes, he was.

20 Q Did you have an occasion after Jason and Steve
21 left to leave the party?

22 A Excuse me?

23 Q Did you leave that party that night to go to the
24 store?

25 A Yeah, I went to the store that night.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q And was that after Jason and Steve had left?

2 A Yes.

3 Q And you went to the store. Do you remember why?

4 A I think we bought some cigarettes.

5 Q And when you came back from the store, this is
6 getting pretty late; isn't it?

7 A Yeah, it's late.

8 Q What happened when you got back to Mikey's Glenn
9 house?

10 A Come back, go inside and I find out all this
11 drama was going on. I find out --

12 MR. BUTLER: Objection, hearsay.

13 THE COURT: Sustained.

14 BY MS. CAMPBELL:

15 Q You can't talk about what they told you, okay?

16 A All right.

17 Q When you got back to the house, were people
18 agitated?

19 A Yeah, people were agitated.

20 Q Did you see Jeremiah Page when you got back to
21 the house?

22 A Yes.

23 Q Where was Jeremiah Page when you saw him?

24 A In the kitchen.

25 Q And what was going on with Jeremiah?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A I saw his lip was bleeding a little bit. I
2 heard -- he was apologizing to Kiah and Austin
3 because he had like been blaming them for
4 hitting him. He said, "Y'all jumped me." But
5 then he was saying, "No, I was running my mouth.
6 I was out of control, my fault."

7 Q Did you know approximately what time is it? Do
8 you have any clue?

9 A It's late.

10 Q So that's going on in the kitchen, right?

11 A Yes, ma'am.

12 Q Sometime after that did you have an occasion to
13 see Steve Gillian and Jason Ward show back up at
14 the party?

15 A Yes.

16 Q And do you know approximately how long that was
17 after you saw Jeremiah apologizing?

18 A Two hours, probably about -- no, after he
19 apologized?

20 Q Yes.

21 A Oh, all right. Ten minutes.

22 Q And when they showed up, where were you?

23 A I was in the kitchen.

24 Q Tell this jury what happened when Steve Gillian
25 and Jason Ward showed back up.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Can I get some water, please? My mouth is
2 really dry. I can't even talk.
- 3 Q Sure. Are you okay now?
- 4 A Yeah, I'm good.
- 5 Q When they showed back up, tell the jury what
6 happened.
- 7 A They showed back up and Steve is real mad. He
8 like comes in and starts yelling at everybody.
9 He is like -- can I curse in here? He is just
10 saying, "Where is Kiah Stone and Austin Lee?"
11 He hits me in the head and comes around and
12 slaps everybody in the head.
- 13 Q You say he slaps everybody in the head. How
14 many people are in the kitchen at that point,
15 approximately?
- 16 A Probably six, five or six.
- 17 Q Who were some of the people in the kitchen with
18 you that night, Richie?
- 19 A I was in the kitchen, Joe Canfield was in the
20 kitchen, Trey was in the kitchen, Jared was in
21 the kitchen, Mikey was in the kitchen. I'm
22 pretty sure, yeah.
- 23 Q And he slaps you in the head?
- 24 A Yes, ma'am.
- 25 Q Did he slap other people in the head?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am.
- 2 Q What was he saying when he was going around
3 slapping y'all in the head?
- 4 A "Where is Kiah Stone and Austin Lee? Where is
5 "Kiah Stone and Austin Lee?"
- 6 Q "Where is Kiah Stone and Austin Lee?"
- 7 A Yeah.
- 8 Q And those were two people that were at the party
9 also, right?
- 10 A Yes, ma'am.
- 11 Q So he is looking for them, and they weren't in
12 the kitchen at that point?
- 13 A No, ma'am.
- 14 Q After he slaps you in the head and slaps the
15 other kids in the head, what were y'all doing?
- 16 A I was just sitting there watching him and just
17 like, "What's going on?" I didn't know what was
18 going on. I had just been to the gas station.
19 Then I am just sitting there, and I'm like
20 looking around, watching everybody get hit. I
21 don't know where Kiah and Austin are at, but I
22 am just sitting there.
- 23 Q Do Kiah and Austin show up in the kitchen?
- 24 A Yeah, they walked downstairs. I guess they
25 heard it.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q When they walked downstairs, did they have a
2 confrontation with Steve?

3 A Yes.

4 Q Where is Jason Ward during all this?

5 A Jason is in the room, I guess sitting at the
6 table. I'm pretty sure.

7 Q Is Jason Ward hitting anybody or saying any of
8 this stuff to anybody?

9 A No. No, ma'am.

10 Q When Austin and Kiah show up, what happens?

11 A Steve automatically comes to Austin and is
12 saying, "Did you hit this kid? Did you hit this
13 kid?"

14 Q Do you know what kid they were referring to?

15 A Yeah, Jeremiah Page.

16 Q "Did you hit this kid," and they were referring
17 to Jeremiah Page?

18 A Yes.

19 Q What else did Steve say?

20 A It didn't really start yet. He just started
21 like interrogating them and asking them stuff.
22 I remember there was like a cabinet right there
23 in the Glenn house. He was pushing them up
24 against that and saying like, "Why did you hit
25 Jeremiah?"

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q And was Austin able to talk to him?

2 A Yeah, he said -- do you want me to just go
3 ahead?

4 Q You can't talk about what Austin said. It's a
5 hearsay problem.

6 A All right.

7 Q But after listening to Austin, did Steve's whole
8 attitude toward Austin change?

9 A Yes.

10 Q Did he direct his anger towards someone else?

11 A Yes.

12 Q And who did he get mad at at that point?

13 A He turned to Jeremiah and say, "I've known this
14 kid my whole life. I've known this kid. I've
15 know you two weeks, and you expect me to trust
16 you over him?"

17 Q Then what does he do with Jeremiah?

18 A Then he just starts hitting Jeremiah and
19 throwing him all around the house.

20 Q Where was he hitting him?

21 A Like pushing him up against counters and stuff,
22 threw him in the sink, I remember, and just
23 hitting him around the house. I remember he
24 went around like that little circle of the
25 kitchen like two times, just getting thrown

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 around.

2 Q What is Jeremiah doing while Steve is beating
3 him up?

4 A Nothing, just getting beat up.

5 Q Did you intercede at that point?

6 A I guess no. He was just saying, "Steve, man, I
7 didn't do it. Just believe me." What was the
8 second question? I missed it.

9 Q Did Steve ever make any threats towards Austin
10 or anybody else in the room?

11 A Yeah, he said, to Austin, he said, "If you are
12 lying to me, you better get in the witness
13 protection for the rest of your life."

14 Q Witness protection?

15 A Yes, ma'am.

16 Q For the rest of your life?

17 A (Witness nods.) (Indicating affirmative
18 response.)

19 Q Did Steve say anything else in your presence
20 about trusting people, things of that nature?

21 A No. He said -- he said this near the end of the
22 time when I was there in the room. He said,
23 "Y'all aren't my friends. Y'all don't pick my
24 phone calls up." He said, "How can I trust
25 y'all? I can't even trust my mom." He said, "I

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 can't trust myself."

2 Q Once he had finished getting Jeremiah or hitting
3 him around the room a couple of times, what did
4 he do with Jeremiah?

5 A Austin threw Jeremiah out the door.

6 Q And was Steve still in the room?

7 A Yeah.

8 Q And he is saying all this stuff you just told us
9 about, right?

10 A Uh-huh. (Indicating affirmative response.)

11 Q At that point what are you trying to do?

12 A I go up -- well, at this point I am still
13 sitting there just watching it. When Steve
14 comes back in, I said, "Steve, you hit me hard,
15 man. You slapped me hard."

16 I am just trying to talk to him. Then
17 Austin tries to say something, and he turns back
18 to Austin and says, "You may do this to this
19 little kid," or whatever and starts hitting on
20 Austin again.

21 Q After hitting on Austin again, did he turn back
22 towards you?

23 A Yeah. I said, "Steve, man, why are you doing
24 all this?" I said, "I thought we were cool." I
25 was like, "You know we all respect you. Why are

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 you going to do this?"

2 He said, "Y'all aren't my friends. You
3 never pick up my phone calls." Right when he
4 said that, I was walking around the table, and
5 he head butts me pretty hard in the face.

6 Q When he head butted you in the face, what part
7 of your face did he hit?

8 A Like right there (indicating) on my nose, the
9 top of my nose.

10 Q Once he head butted you, did you stay downstairs
11 anymore?

12 A I kind of went down like that (indicating) and
13 just held my nose. I heard Jason say, "Why are
14 you messing with these kids, man? They are
15 scared of you. They don't want to fight you,"
16 like that. That's pretty much when I headed
17 upstairs.

18 Q And you went upstairs at that point?

19 A Yes.

20 Q Do you know anything more that happened after
21 that?

22 A Not really. Jason came up and checked my nose
23 out and was like, "It's not broken," but it was.
24 He just came and looked at it and stuff.

25 Q So Jason came and checked on you?

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 A Yeah.

2 Q Did you see Jason and them leave that night?

3 A No, I didn't.

4 Q When all this was going on, do you have any idea
5 what time it was exactly?

6 A It was late, like five, 5:30, six,
7 approximately. It was late.

8 Q You mentioned that Jason was checking your nose
9 and said it wasn't broken, but it was?

10 A Yes, it was broke.

11 Q Do you recognize this picture?

12 A Yes, ma'am.

13 Q Is that a picture of you actually taken four
14 days later?

15 A Uh-huh. (Indicating affirmative response.)

16 Q Or five days later?

17 A Yes, ma'am.

18 MS. CAMPBELL: We offer it in evidence.

19 THE COURT: Any objection?

20 MR. BUTLER: Without objection.

21 (State's Exhibit Number 18, photograph of
22 Cunliffe, is received into evidence.)

23 BY MS. CAMPBELL:

24 Q Did the police contact you after that night?

25 A Yes, ma'am, the next day.

RICHIE CUNLIFFE -DIRECT- BY MS. CAMPBELL

1 Q And you went down a couple of days later and
2 gave a statement to them?

3 A Yeah, that night, like Super Bowl Sunday, that
4 night, one of them came and just asked me stuff;
5 but I didn't give them a statement.

6 Q But you did give a formal statement in this case
7 a few days later?

8 A Yes, ma'am.

9 Q Did you remember what Steve was wearing that
10 night?

11 A Yes.

12 Q What was he wearing?

13 A I don't know his pants. I know he was wearing a
14 red Ecko sweatshirt.

15 Q I am going to show you this item. I have asked
16 you to look at this before, haven't I?

17 A Uh-huh. (Indicating affirmative response.)

18 Q Does this look like the sweatshirt he was
19 wearing that night?

20 A Yes.

21 MS. CAMPBELL: Your Honor, at this time we
22 mark it for I.D.

23 (State's Exhibit Number 19, sweatshirt in
24 bag, is marked for identification.)

25 MS. CAMPBELL: Beg the Court's indulgence.

RICHIE CUNLIFFE -CROSS- BY MR. BUTLER

1 (Pause.)

2 BY MS. CAMPBELL:

3 Q Richie, that's all I have. Answer any of their
4 questions.

5 A All right.

6 THE COURT: Cross.

7 MR. BUTLER: May it please the Court.

8 THE COURT: Yes, sir.

9 CROSS EXAMINATION

10 BY MR. BUTLER:

11 Q Good morning, Richie.

12 A Good morning.

13 Q Do you mind if I call you Richie?

14 A You can do that.

15 Q You go by Richie, right?

16 A Yes, sir.

17 Q I just have a few questions for you. You said
18 at some point you left and you came back, and
19 Jeremiah Page was bleeding from the lip?

20 A Yes, sir.

21 Q And he was apologizing to Austin Lee and
22 somebody else?

23 A Yes, sir.

24 Q And Steve wasn't there at that point?

25 A No.

RICHIE CUNLIFFE -CROSS- BY MR. BUTLER

1 Q So he would not have been there whenever
2 Jeremiah's lip got busted or whatever happened?

3 A No.

4 Q And you weren't there either?

5 A No, sir.

6 Q And he was apologizing saying, "I was just out
7 of control"?

8 A Uh-huh. (Indicating affirmative response.)

9 Q Or something like that?

10 A "I was running my mouth."

11 Q "I was running my mouth. I was out of control"?

12 A Yes, sir.

13 Q This is a high school party at a friend of
14 your's house?

15 A Yes, sir.

16 Q And parents were out of town?

17 A Yes, sir.

18 Q Is it safe to say that there was alcohol being
19 consumed?

20 A Yes, sir.

21 Q Safe to say that Jeremiah had consumed alcohol?

22 A Yes, sir.

23 Q Would you say Jeremiah was drunk?

24 A I don't hang out with him much. I don't know.
25 Every time I have been around him, he pretty

RICHIE CUNLIFFE -CROSS- BY MR. BUTLER

1 much acts like that all the time.

2 Q And you said that Steve was saying certain
3 things to different people who were there, but
4 you never heard him threaten Jason Ward; did
5 you?

6 A No.

7 Q And you didn't see any fight between Steve and
8 Jason Ward?

9 A No, sir.

10 Q And you didn't see them leave together?

11 A No, sir.

12 Q Didn't hear them talk about leaving together?

13 A Oh, yeah. I mean, I heard them talking about
14 leaving all that night. I know Jason wanted to
15 leave.

16 Q Jason wanted to leave, but you didn't see them
17 leave together?

18 A No, sir.

19 Q And you didn't hear them say, "Okay, we are all
20 going to leave together now"?

21 A Not like that, no, sir.

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

24 THE COURT: Yes, sir.

25 (Pause.)

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 MR. BUTLER: That's all I have.

2 THE COURT: Any redirect?

3 MS. CAMPBELL: No, sir.

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

6 THE WITNESS: All right.

7 MR. MCMAHON: The State calls Mike Glenn.

8 MICHAEL THOMAS GLENN, being
9 first duly sworn, testified as follows:

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

12 THE WITNESS: Michael Thomas Glenn.

13 DIRECT EXAMINATION

14 BY MR. MCMAHON:

15 Q How are you, sir?

16 A Good, sir.

17 Q Where are you from?

18 A I'm from Irmo. Right now I'm at the Citadel.

19 Q Where did you graduate from high school?

20 A Dutch Fork High School.

21 Q I want you to speak up, Mike, so that everybody
22 on the jury can hear you; okay?

23 A Yes, sir.

24 Q How old are you?

25 A Eighteen.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q What year did you graduate from Dutch Fork?

2 A 2001.

3 Q And you say you are at the Citadel now?

4 A Yes, sir.

5 Q So you came up either last -- you came up this
6 morning to testify?

7 A Last night, sir.

8 Q Last night?

9 A Yes, sir.

10 Q To testify. And you are, I guess, what is known
11 as a knob at the Citadel, a freshman?

12 A Yes, sir.

13 Q What company are you in?

14 A Bravo.

15 Q And what is your major?

16 A Biology.

17 Q Mr. Glenn, I want to ask you a few questions
18 going back to January of 2001. Were you in
19 school then and where?

20 A Yes, sir, I was in Dutch Fork.

21 Q You would have been a senior at Dutch Fork; is
22 that correct?

23 A Yes, sir.

24 Q And where were you living then?

25 A I was living at [REDACTED] in the Brittany

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 subdivision.

2 Q [REDACTED] [REDACTED] [REDACTED]. What subdivision?

3 A Brittany.

4 Q How would I get there? Where is that Brittany
5 subdivision and Lime Bay located at, Mike?

6 A It's right close to the dam. It's off Old Bush
7 River Road. You turn off Old Bush River Road
8 and on to Coldstream Drive. It's the
9 neighborhood on the left.

10 Q So if you turn off of Old Bush River Road onto
11 Coldstream Drive?

12 A Yes, sir, it's the third neighborhood on the
13 left.

14 Q Are you familiar with Palmetto Pointe
15 Apartments?

16 A Yes, sir, it's right up the street.

17 Q How far is Palmetto Pointe apartments from 33
18 Lime Bay?

19 A It's about half a mile.

20 Q About a half a mile?

21 A Yes, sir.

22 Q Now, where y'all's house sits at, have you got a
23 back yard?

24 A Yes, sir.

25 Q And after you get out of your back yard, what do

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 you have?

2 A A golf course.

3 Q A golf course?

4 A Yes, sir.

5 Q Can you walk from your back yard, cut across the
6 golf course and get over to Palmetto Pointe?

7 A Yes, sir.

8 Q What route would you drive from Lime Bay to go
9 to Palmetto Pointe?

10 A To drive you would come out of my driveway and
11 you take a right on Long Bay and take a left
12 down the main street in Brittany, which is
13 Brittany Way. Then you get to the stop sign and
14 take a left onto Coldstream Drive and go about
15 half a mile and turn left into Palmetto Pointe.

16 THE COURT: Turn left onto what drive?

17 THE WITNESS: On to Coldstream Drive.

18 THE COURT: Costal?

19 THE WITNESS: Coldstream.

20 BY MR. MCMAHON:

21 Q Mike, try to pronounce your words a little bit
22 if you could for us.

23 A Yes, sir.

24 Q So how long a drive would it be from Lime Bay to
25 Palmetto Pointe?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 A Maybe 30 seconds.

2 Q Pretty quick?

3 A Yes, sir.

4 Q And I want to take you back to Saturday night,
5 Sunday morning, the 28th. How old would you
6 have been then?

7 A I was 18.

8 Q Eighteen. That Saturday night did you have an
9 occasion to be out with any of your friends?

10 A Yes, sir.

11 Q Just generally and briefly, Saturday night who
12 were you with and where did you go -- I don't
13 want a lot of detail -- on Saturday night?

14 A Yes, sir, it was me, Jared Hunsucker, Richie --

15 Q Jared Hunsucker?

16 A Yes.

17 THE COURT: Again, you have got to slow
18 down on the names, okay?

19 A It was myself, my brother, Trey Glenn.

20 Q Trey Glenn?

21 A Yes, sir, Richie Cunliffe.

22 Q Richie Cunliffe that just testified?

23 A Yes, sir, Jared Hunsucker.

24 Q Jared Hunsucker?

25 A Yes, sir, and Joe Canfield.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Joe Canfield?

2 A Yes, sir.

3 Q Where did y'all go? What did y'all do the early
4 part of that Saturday evening?

5 A We originally went over to the girl's house,
6 Blaine Reedy's. We left there probably about
7 9:30, ten, to go out to Parker Valek's lake
8 house out in Chapin.

9 Q Parker Valek's lake house, when you said out in
10 Chapin, that's only a few miles on up the road?

11 A Yes, sir.

12 Q Did y'all stay at Parker's very long?

13 A Maybe for an hour.

14 Q When you left Parker's, where were you going to?

15 A We were headed back toward Blaine Reedy's.

16 Q Did you make it back to Blaine Reedy's?

17 A No, sir.

18 Q Who was with you, when you say we?

19 A Me and Jared Hunsucker were in my car.

20 Q You and Jared?

21 A Yes, sir.

22 Q Y'all were on the way back to Blaine Reedy's?

23 A Yes, sir.

24 Q And you didn't make it back. What diverted
25 y'all from Blaine's?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

- 1 A There were cops at her house.
- 2 Q You had heard that on the cell phone?
- 3 A Yes, sir.
- 4 Q It would be fair to say a lot of y'all have cell
5 phones?
- 6 A Yes, sir.
- 7 Q As a result of knowing that the officers were at
8 Blaine Reedy's, you didn't go?
- 9 A Yes, sir.
- 10 Q You did not go?
- 11 A No, we do not go.
- 12 Q Where did you go?
- 13 A Me and Jared went back to my house. It was
14 about 12:30, 12, around there. We called my
15 brother and the rest of the guys to come over
16 there.
- 17 Q So this is on into after midnight on the 28th?
- 18 A Yes, sir.
- 19 Q Approximately?
- 20 A Yes, sir.
- 21 Q At your house on Lime Bay?
- 22 A Yes, sir.
- 23 Q Parents aren't home?
- 24 A No, sir.
- 25 Q Friends are over. Y'all are having a party?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Some of y'all are drinking?
- 3 A Yes, sir.
- 4 Q And some of y'all are not old enough to drink?
- 5 A Yes, sir.
- 6 Q Steve Gillian, did you know Steve Gillian?
- 7 A Yes, sir.
- 8 Q How long had you known him?
- 9 A I'd known him since middle school.
- 10 Q So y'all, say, grew up together? Y'all went to
- 11 middle school and high school together?
- 12 A Yes, sir.
- 13 Q Did he have an occasion to be over there that
- 14 night?
- 15 A He was over there, yes, sir.
- 16 Q Him and a number of other people?
- 17 A Yes, he was with our group, like all my friends.
- 18 Q Did you meet a person, a young man named
- 19 Jeremiah?
- 20 A Yes, sir.
- 21 Q When did you meet Jeremiah and who was he with?
- 22 A He came over with Steve. I'd never really seen
- 23 him before until that night.
- 24 Q Let me show you a photograph.
- 25 (Attorneys confer.)

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 BY MR. MCMAHON:

2 Q Do you recognize this photograph?

3 A Yes, sir.

4 Q Who is that a photograph of?

5 A That's Jeremiah.

6 Q This is Jeremiah?

7 A Yes, sir.

8 Q He was there with Steve that night?

9 A Yes, sir.

10 Q Part of the night?

11 A Yes, sir.

12 MR. MCMAHON: Your Honor, I would offer
13 this into evidence, I understand without objection.

14 THE COURT: Any objection?

15 MS. MIMS: No objection.

16 (State's Exhibit Number 20, booking photo
17 of Jeremiah Page, is received into evidence.)

18 MR. MCMAHON: May I publish it?

19 THE COURT: Yes, sir.

20 BY MR. MCMAHON:

21 Q You had not -- I am handing State's 20 to the
22 juror -- you had not met Jeremiah before the
23 early morning hours of the 28th; is that
24 correct?

25 A No, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

- 1 Q And he appeared to be with Steve Gillian?
- 2 A Yes, sir.
- 3 Q Now, did you see Steve at your house throughout
- 4 the entire early morning hours of the 28th?
- 5 A No, sir, he left.
- 6 Q And when he left, did he have occasion to come
- 7 back?
- 8 A He left to go to Palmetto Pointe to meet up with
- 9 Jason.
- 10 Q And when he returned, was Jason with him?
- 11 A Yes, sir.
- 12 Q To your knowledge while Steve was gone, did
- 13 Jeremiah remain at the Glenn house?
- 14 A Jeremiah stayed there.
- 15 Q This is the only photograph -- well, not the
- 16 only photograph -- but this is a photograph I
- 17 have of Jason, State's 16. That's who you are
- 18 referring to?
- 19 A Yes, sir.
- 20 Q Did you know Jason Ward?
- 21 A I had met him a couple of times beforehand.
- 22 Q Who had you met with him, Mike?
- 23 A Through Steve.
- 24 Q Steve left to go to Palmetto Pointe to pick up
- 25 Jason and returned?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Now, are all three -- Steve, Jason Ward, and
3 Jeremiah -- at your house?

4 A Yes, sir.

5 Q Did you know Jeremiah's last name?

6 A No, sir.

7 Q And there is a party?

8 A Yes, sir.

9 Q Correct?

10 A (Witness nods.) (Indicating affirmative
11 response.)

12 Q Now, was there an occasion that Steve and Jason
13 left?

14 A At the very end, like maybe five, around that
15 time.

16 Q Did you have an occasion to witness any incident
17 between Jeremiah and any of the other guys that
18 were at your house?

19 A Jeremiah kind of lost it for a while. My
20 friends Austin and Kiah just took him and threw
21 him outside, kicked him out. He eventually
22 calmed down, and they let him back inside.

23 Q When you say they took him and threw him
24 outside, I guess there are ways of throwing
25 people and there are ways of throwing people.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Did you see what injuries, if any, Jeremiah
2 sustained as a result of Kiah --

3 A No.

4 Q -- and Austin?

5 A No, they just like held his arms and just like
6 walked him outside and locked the door.

7 Q And you say he lost it for awhile?

8 A He lost it, yes.

9 Q When that was occurring, when that was
10 occurring, did you see Steve there or Jason
11 there?

12 A They weren't there.

13 Q They weren't there?

14 A No, sir.

15 Q So they had gone for that period of time and
16 returned?

17 A Yes, sir.

18 Q Later on they --

19 A Jeremiah called Steve, and Steve came back with
20 Jason.

21 Q Now, where was Jeremiah put out of the house at,
22 Mike?

23 A They took him out the kitchen door, the back
24 door.

25 Q I want to show you some photographs --

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 (Attorneys confer.)

2 BY MR. MCMAHON:

3 Q I want to show you some photographs and a
4 diagram and ask if you can identify these
5 photographs as photographs as part of the area
6 of the Glenn house?

7 A Yes, sir.

8 Q And also this diagram, you have seen this
9 before?

10 A Yes, sir.

11 Q Is that diagram one level of the Glenn house?

12 A It's the first level of my house.

13 MR. MCMAHON: Your Honor, I would offer
14 these three photographs and the diagram in evidence,
15 I understand without objection.

16 THE COURT: Any objection?

17 MS. MIMS: No, sir.

18 THE COURT: Without objection.

19 (State's Exhibit Number 21, photograph of
20 the back of the house; Numbers 22 and 23, photographs
21 of the kitchen; and Number 24, a diagram of the first
22 floor, are received into evidence.)

23 MR. MCMAHON: Your Honor, may the witness
24 step down?

25 THE COURT: Sure. Be sure, Mr. Glenn, to

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 speak up clearly while you are down there; okay?

2 THE WITNESS: Yes, sir.

3 THE COURT: The court reporter has got to
4 hear everything you say and take it down. That's why
5 you need to speak clearly so she can hear you.

6 THE WITNESS: Yes, sir.

7 MR. MCMAHON: I will be right here.

8 THE COURT: Mr. Glenn, go on the other side
9 and face back this way; okay?

10 (Witness complies.)

11 BY MR. MCMAHON:

12 Q Now, Mr. Glenn, I want you to -- Mike, I want
13 you to keep your voice up for us; okay?

14 A Yes, sir.

15 Q This would represent one floor of the Glenn
16 residence at ■ ■ ■, correct?

17 A Yes, sir.

18 Q Can you point out on this diagram where the
19 front door would be.

20 A The front door is right here (indicating).

21 Q Where do you park cars if there are not a lot of
22 cars?

23 A They are always lined up like two apiece on the
24 garage -- in the driveway.

25 Q So this driveway (indicating), Lime Bay would be

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 out here (indicating); correct?

2 A Yes, sir, Lime Bay is out here (indicating).

3 Q Now, is there a back door to the residence?

4 A Yes, sir, right there (indicating).

5 Q How were most of the folks coming into the
6 residence?

7 A Everybody that ever came to my house always came
8 up through the driveway, around the back steps
9 to the back yard, and on the patio through the
10 back door.

11 Q So if I know you, that's kind of the known way
12 to get in?

13 A Yes, sir.

14 Q If it's somebody at the front door, it's
15 probably not somebody you know real well; is
16 that right?

17 A Don't go to the door went it's at the front
18 door.

19 Q And you go up these steps (indicating)?

20 A Yes, sir.

21 Q And you turn this way (indicating) and come in
22 this back door (indicating)?

23 A Yes, sir.

24 Q When you come in the back door, what area of the
25 house are you in?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 A This (indicating) is the kitchen right when you
2 come in the back door.

3 Q Referring to State's Exhibit Number 21, do you
4 recognize that photograph?

5 A Yes, sir.

6 Q What is this a photograph of?

7 A That's the patio to the back side of the house.

8 Q So what is this right here (indicating)?

9 A That's the patio.

10 Q And point to where the patio is here.

11 A It's right here (indicating).

12 Q Now, this door (indicating), is this door that I
13 am pointing to represented on State's Exhibit
14 21?

15 A Yes, sir, that's the kitchen door.

16 Q And these windows (indicating)?

17 A Yes, sir.

18 Q Where would they be?

19 A Right there (indicating).

20 Q And it appears there would be a table inside
21 here (indicating), correct?

22 A Yes, sir.

23 MR. MCMAHON: Your Honor, may I hand 21 and
24 these various exhibits to the jury?

25 THE COURT: Yes, sir, certainly.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 BY MR. MCMAHON:

2 Q Additionally, if you go to 23, how does 23
3 orient to 24? What are you looking at here?

4 A That's the head of the kitchen table looking out
5 the kitchen windows.

6 Q So this table (indicating) in the photograph
7 would be graphically displayed as this table
8 (indicating)?

9 A Yes, sir.

10 Q These windows (indicating), point to them on the
11 diagram for me, Mike.

12 A Right there (indicating).

13 Q And then this door (indicating)?

14 A Yes, sir, that's the kitchen door.

15 Q And point to that on the diagram for me.

16 A (Witness complies.)

17 Q As you go in this door (indicating), what area
18 is to your left as you go in?

19 A That's the kitchen area, the refrigerator and
20 the island and stove and all that.

21 Q Now, referring to State's Exhibit number 22.

22 A Yes, sir.

23 Q Is part of the island, the kitchen island,
24 represented on State's 24?

25 A Yes, sir, right there (indicating).

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q So this the island here (indicating)?

2 A Yes, sir.

3 Q You can walk, as it shows in the diagram,
4 completely around?

5 A Yes, sir.

6 Q Now, was there a room in which there was a pool
7 table?

8 A Yes, sir, the game room.

9 Q Where was it at?

10 A It's right through here (indicating), right here
11 (indicating)

12 Q Can you see the entrance to that?

13 A Yes, sir, that's right there (indicating).

14 Q Right here (indicating)?

15 A Yes, sir.

16 Q Where I am looking at now, can you see the pool
17 table in this?

18 A Yes, sir -- no, sir the pool table is
19 downstairs. We had moved it out.

20 Q So in this photograph, the pool table, where it
21 was sitting was not in here?

22 A Before we moved it, you would have been able to
23 see it.

24 Q I understand. The bedrooms are -- and these
25 other rooms are listed in the correct order; is

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 that right?

2 A Yes, sir.

3 Q As far as that floor is concerned. The
4 bedrooms, where would they be?

5 A All the bedrooms were on the second story.

6 Q Upstairs?

7 A Yes, sir.

8 Q Is there a garage in the house?

9 A Yes, sir.

10 Q How can you get access to the garage from inside
11 the house?

12 A There is a kitchen door right here (indicating)
13 that leads downstairs into the basement.

14 Q That is down below?

15 A Yes, sir.

16 Q There is a stair case right here (indicating)?

17 A Yes, sir. There is a foyer right here
18 (indicating), and there's steps that lead up to
19 second level. Then the kitchen, there is a door
20 right here (indicating) that goes up underneath
21 those down to the basement.

22 Q You said that Jeremiah, State's 20, was there
23 with Steven Gillian, the Defendant in this case,
24 for awhile; correct?

25 A Yes, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

- 1 Q And Steve left. Where was most of the party
2 taking place?
- 3 A It was right in the kitchen and playing pool.
4 That was it.
- 5 Q Steve leaves for a while. He comes back with
6 Jason?
- 7 A Yes, sir.
- 8 Q And Jason and Steve leave again?
- 9 A Yes, sir.
- 10 Q And that is when the incident you talked about
11 occurred with Jeremiah and your friend, Kiah
12 Stone?
- 13 A Yes, sir.
- 14 Q And your friend Austin Lee?
- 15 A Yes, sir.
- 16 Q What door are you talking about that Jeremiah
17 was put out of?
- 18 A Jeremiah was upstairs, and they took him down
19 through the front, like the front steps; and
20 just escorted him out that door.
- 21 Q This door (indicating)?
- 22 A Yes, sir.
- 23 Q And the door in the photograph going around that
24 shows out in the patio?
- 25 A Yes, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Now, he was outside for a period of time?

2 A Yes, sir.

3 Q Did he come back in?

4 A Yes, sir. After he calmed down, they let him
5 back in.

6 Q When he came back in, who, if anyone, did he
7 call?

8 A Steve.

9 Q And who returned?

10 A Steve and Jason.

11 Q So now we have Steve and Jason returning. I
12 want to show you a photograph. Does this
13 photograph depict the face area of how Steve
14 looked that night?

15 A Yes, sir.

16 (Attorneys confer.)

17 MR. MCMAHON: Your Honor, I move this into
18 evidence, I understand without objection.

19 MS. MIMS: No objection.

20 THE COURT: Without objection.

21 (State's Exhibit Number 25, booking photo
22 of the Defendant, is received into evidence.)

23 BY MR. MCMAHON:

24 Q So now you have Steve and Jason return?

25 A Yes, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q And Jeremiah, State's 20, is back in the house?

2 A Yes, sir.

3 Q Having called Steve?

4 A Yes, sir.

5 Q When Steve and Jason returned, Mike, where do
6 they go?

7 A They came up into the kitchen and started a
8 commotion, with Steve yelling at Austin and Kiah
9 for jumping Jeremiah.

10 Q Describe for the jury, please, what was Steve
11 Gillian's demeanor when he comes in and starts
12 yelling at Kiah?

13 A He came in, hearing his friend got jumped by all
14 of us, and was getting in their faces, asking
15 like why they jumped him and just threatened to
16 beat them up for jumping his friend.

17 Q And what did you see Steve then do?

18 A I came -- I was upstairs when he came back in.
19 When he came in, there was a loud commotion with
20 his yelling and all that. So I came downstairs.
21 By the time I got to these steps right here
22 (indicating), he had Austin Lee over here
23 (indicating). He pushed Austin and Austin flew
24 up against the wall and fell down.

25 Q And let me show you another photograph and ask

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 you if you can identify this photograph.

2 (Attorneys confer.)

3 BY MR. MCMAHON:

4 Q Can you identify that photograph?

5 A Yes, sir.

6 Q Who is that a photograph of?

7 A Austin Lee.

8 MR. MCMAHON: Your Honor, I would offer
9 this, I understand without objection.

10 MS. MIMS: No objection.

11 THE COURT: Without objection.

12 (State's Exhibit Number 26, photograph of
13 Austin Lee, is received into evidence.)

14 BY MR. MCMAHON:

15 Q This is a photograph of Austin and the way his
16 face appeared?

17 A Yes, sir.

18 Q In that photograph it's the area under his left
19 eye?

20 A Yes, sir.

21 MR. MCMAHON: May I publish?

22 THE COURT: Yes, sir.

23 BY MR. MCMAHON:

24 Q What occurred next?

25 A Steve proceeded back into the kitchen. We

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 all -- me and Austin and Kiah Stone -- all went
2 back in the kitchen following him. We were all
3 standing around.

4 Steve was yelling, griping about how we
5 never picked up his phone calls, saying we
6 weren't his friends for not picking up the phone
7 and telling him where we were. He proceeded to
8 slap a couple of us, and he went over --

9 Q Let's break that down. When you say, "He
10 slapped a couple of us," who are you talking
11 about?

12 A He slapped Kiah Stone, Austin Lee, and Joe
13 Canfield.

14 Q Go ahead.

15 A Then he came around and Richie was standing
16 about right here (indicating). Richie said,
17 "Steve, what are you talking about? We are your
18 friends." Steve told Richie to shut up, and he
19 head butted him in the nose.

20 Q I had a photograph of Richie Cunliffe right
21 here, Number 18?

22 A Yes, sir.

23 Q And this appears to have some areas of injury
24 under both eyes?

25 A Yes, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Now, what occurred next?

2 A Richie ran upstairs to go take care of his nose.
3 It was bleeding. Jason stood up. He was
4 sitting at the head of the kitchen table. He
5 finally stood up and was like, "Steve quit
6 picking on these little high school kids." He
7 was like, "Grow up. They are a lot younger than
8 you. Grow up. Pick on -- don't pick on little
9 high schoolers."

10 Q Was there ever an incident between Steve and
11 Jeremiah?

12 A There was. That was the commotion when I came
13 downstairs. I didn't see it.

14 Q You didn't see the commotion between Steve and
15 Jeremiah?

16 A No, sir. I was upstairs. That was the
17 commotion. I came downstairs and he was with
18 Austin and Kiah.

19 Q So after this incident with Austin Lee, with
20 Kiah Stone, with Richie Cunliffe, with Joe
21 Canady and with you?

22 A He never touched me.

23 Q Who was the other one?

24 A It was Joe Canfield, Richie, Austin, Kiah; and
25 that was it.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q That's when Jason said what?

2 A Jason said, "Stop picking on little high
3 schoolers."

4 Q And all of y'all were in high school?

5 A Yes, sir.

6 Q What happens next?

7 A Steve told Jason that he was nothing and to shut
8 up.

9 Q Steve was directing that comment to Jason?

10 A Yes, sir.

11 Q Let me back up a minute. During any of this
12 time, did you see Jason being aggressive towards
13 anybody?

14 A No, sir. He just sat at the kitchen table and
15 didn't say a word.

16 Q What table?

17 A Right here (indicating).

18 Q So he wasn't aggressive towards Richie?

19 A No, sir.

20 Q Towards Austin?

21 A No, sir.

22 Q Towards Jeremiah?

23 A No, sir.

24 Q Towards Joe Canfield?

25 A No, sir.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Towards Kiah Stone?

2 A Nobody.

3 Q Towards nobody?

4 A No, sir.

5 Q He tells or he makes this comment to Steve, and
6 then what is Steve's reaction to that?

7 A Steve, I guess, he was shocked like that his
8 friend was standing up for us. He takes offense
9 to what he said and starts getting in Jason's
10 face. Jason just proceeds to walk around the
11 island, and Steve follows him like saying stuff
12 in his ear.

13 Q When you say getting in his face, describe that
14 for the jury, Mike.

15 A He is just like talking to him saying he is
16 nothing. Jason isn't anybody to him. He
17 follows him telling, you know --

18 Q Steve is telling Jason that?

19 A Yes, sir.

20 Q How close is he to him when he is saying that?

21 A He is less than a foot.

22 Q Closer than this (indicating)?

23 A Yes, sir.

24 Q Closer than this (indicating)?

25 A He is like right at his ear.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Right here (indicating)?

2 A Yes, sir.

3 Q What is Jason's reaction?

4 A Jason, he like -- Steve told Jason to hit him,
5 and Jason said no. He took like five minutes of
6 Steve yelling at him, and Jason was like, "No, I
7 am wearing a nice shirt." He was like, I'm
8 wearing a \$50 shirt --"

9 MS. MIMS: I object to the hearsay.

10 BY MR. MCMAHON:

11 Q Don't go into what Jason said, but he doesn't
12 hit him?

13 A He doesn't hit him.

14 Q Where is Jason at?

15 A They are walking around the kitchen, pacing back
16 and forth around each other.

17 Q Is Jason walking towards Steve or away from
18 Steve?

19 A He is walking away, and Steve is following him.

20 Q Then tell the jury what you observed, what Jason
21 does after how many minutes?

22 A Probably about five or ten.

23 Q Would you describe that as taunts?

24 A Yes, sir.

25 Q Then what did Jason do?

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 A Jason took off his shirt and finally turned
2 around and told Steve to stop, to stop taunting
3 him and stuff. Eventually Steve kept getting
4 in his face, telling him, you know, to bring it
5 on.

6 So Jason head tossed him and punched him
7 maybe like once or twice, like all in three
8 seconds, and pinned him on the ground and told
9 him to calm down.

10 Q When you say the ground, are you talking about
11 the floor?

12 A Yes, sir, he threw him on the ground right in
13 front of the kitchen door.

14 Q So Jason head tossed him, and you are talking
15 about getting him on his head and --

16 A He threw him down. Jason just like laid on him,
17 pinned him down, and told him to calm down.

18 Q Describe for the jury, did Jason hit Steve?

19 A Maybe once. It all happened within three
20 seconds before he had Steve on the floor.

21 Q Then what does Jason do?

22 A Steve finally agreed he was going to calm down.
23 So Jason gets off of him, and they both get up.
24 Austin takes Steve outside to try to talk to him
25 and calm him down.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 Q Where outside?

2 A Out the kitchen door.

3 Q Out to the patio?

4 A On the patio.

5 Q What does Jason do?

6 A Jason stands inside and paces around for a
7 little bit. Then he goes outside and talks to
8 Steve for about five minutes.

9 Q So there was about five minutes of this where
10 Jason takes up for y'all, five minutes over this
11 taunting. How long is this fight between Steve
12 and Jason?

13 A That takes maybe three seconds.

14 Q And then Steve goes outside?

15 A Steve goes outside as Austin tries to talk to
16 him because Austin was like one of Steve's best
17 friends. So Austin was trying to calm him down.

18 Q Now, do you hear any statements now made by
19 Steve?

20 A I didn't. When they were outside, Jason went
21 outside to talk to him. I didn't hear any
22 statements back then. Five minutes later they
23 come both back inside. Jason was saying,
24 "Steve, just take me home. Take me home."
25 Steve was saying, "Why don't we go to my house

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 where we can fight fair, and I won't get in
2 trouble."

3 Q Ultimately what happens?

4 A Jason wouldn't leave with him at first. Steve
5 is saying, "I thought you were my boy. Why
6 can't you leave with me?" Jason was saying, "I
7 was your boy yesterday, I maybe tomorrow; but
8 I'm not right now."

9 Eventually he keeps telling Jason over and
10 over, "Come to my house, and we can fight fair
11 where I won't get in trouble." So eventually
12 Jason just grabs his shirt off the island and
13 says, "All right, Steve, whatever. Just take me
14 home."

15 Q Where did they head out?

16 A They left out the back door, and I followed them
17 out on the patio. As they walked around the
18 back steps, Steve yelled out, "You will see this
19 in the newspaper tomorrow."

20 Q Now, who was the last person you saw Jason Ward
21 with?

22 A Steve.

23 Q And that is Steve, the Defendant in this case?

24 A Yes, sir.

25 Q Point to him for us.

MICHAEL GLENN -DIRECT- BY MR. MCMAHON

1 A (Indicating.)

2 Q And where was the last place you saw Jason Ward
3 with Steve Gillian?

4 A They turned to walked down the driveway to
5 Steve's car.

6 Q What is the last thing you heard Steve Gillian
7 say?

8 A "You will see this in the newspapers tomorrow."

9 Q After that time, Mike -- and would this be the
10 correct route to go if one had a car parked down
11 here?

12 A Yes, sir, his car was parked out by the street
13 by Lime Bay.

14 Q Do you know whether or not Jason had an
15 automobile?

16 A He didn't have one.

17 Q After you saw them two there, did you see Jason
18 Ward anymore?

19 A No, sir.

20 Q At your house that night?

21 A No, sir.

22 Q Did you see Steve Gillian anymore?

23 A No, sir.

24 Q You can retake the stand.

25 A Yes, sir. (Witness resumes the witness stand.)

MICHAEL GLENN -DIRECT- BY MS. MIMS

1 Q That's the last time and the last place you saw
2 either one of them?

3 A Yes, sir.

4 Q Now, the next day officers came to your house?

5 A Yes, sir.

6 Q I guess it was that Sunday afternoon that they
7 came to your house?

8 A Yes, sir.

9 Q And they talked with you at that time?

10 A Yes, sir.

11 Q It might have been Captain Smith?

12 A Yes, sir, and it was Detective Ewing.

13 Q And Investigator Ewing, kind of a big guy?

14 A Yes, sir.

15 Q You talked with them and cooperated with them at
16 that time?

17 A Yes, sir.

18 Q Thank you, Mike. Answer any questions the
19 defense has for you.

20 THE COURT: Cross.

21 MS. MIMS: Thank you, Your Honor. May it
22 please the Court.

23 CROSS EXAMINATION

24 BY MS. MIMS:

25 Q Mike?

MICHAEL GLENN -DIRECT- BY MS. MIMS

- 1 A Yes, ma'am.
- 2 Q I will call you Mike. You were having a party
3 at your house; is that right?
- 4 A Yes, ma'am.
- 5 Q Your parents were out of town?
- 6 A Yes, ma'am.
- 7 Q And there was drinking?
- 8 A Yes, ma'am.
- 9 Q And when Steven comes back to the house and when
10 Jeremiah is at the house, it's pretty late in
11 the morning?
- 12 A Yes, ma'am.
- 13 Q So people had been drinking for quite awhile?
- 14 A Most of us.
- 15 Q Most of you had been for quite awhile. You say
16 Jeremiah had started acting up?
- 17 A Yes, ma'am.
- 18 Q And you mentioned that he was escorted out of
19 the house?
- 20 A Yes, ma'am.
- 21 Q But he was probably more than escorted out of
22 the house, wasn't he?
- 23 A Not from anything I saw.
- 24 Q You didn't see him with a busted lip?
- 25 A No, ma'am.

MICHAEL GLENN -DIRECT- BY MS. MIMS

1 Q Then there is a fight after Steve and Jason get
2 there?

3 A Yes, ma'am.

4 Q Or a scuffle. You see Jason Ward throw Steven
5 to the ground?

6 A Yes, ma'am.

7 Q And he punches him?

8 A Yes, ma'am.

9 Q Didn't he actually punch him about four or five
10 different times?

11 A It all happened within three seconds. It
12 couldn't have been many times.

13 Q Did you remember telling investigators it was
14 probably four or five times?

15 A Yes, ma'am.

16 Q Okay.

17 A It was just a guess.

18 Q And after that Steven walked outside?

19 A Yes, ma'am.

20 Q And a little later Jason went outside?

21 A Yes, ma'am.

22 Q And then they eventually came back into the
23 house?

24 A Yes, ma'am.

25 Q While they were in the house, they were walking

MICHAEL GLENN -DIRECT- BY MS. MIMS

1 around?

2 A Yes, ma'am.

3 Q And you hear Jason tell Steven, "I want to

4 leave"?

5 A Yes, ma'am.

6 Q He told Steven, "Take me home"?

7 A Yes, ma'am.

8 Q Is that right?

9 A Yes, ma'am.

10 Q Jason wanted to go?

11 A Yes, ma'am.

12 Q This is a picture of Steven. Is this what he

13 looked like on the night of that party?

14 A Yes, ma'am.

15 Q This is what he looked like on January 28th?

16 A Yes, ma'am.

17 Q He had facial hair?

18 A Yes, ma'am.

19 Q Your house backs up onto a golf course; is that

20 right?

21 A Yes, ma'am.

22 Q In fact, it's like directly on the golf course?

23 A Yes, ma'am.

24 Q How far would you say -- like here (indicating)

25 is your back yard. How far would you say the

MICHAEL GLENN -DIRECT- BY MS. MIMS

1 golf course is from your back yard?

2 A The point from where that picture is taken,
3 probably about 30-yards.

4 Q Very close?

5 A Yes, ma'am.

6 Q You saw Jason and Steven walk out of the house
7 together?

8 A Yes, ma'am.

9 Q And you say you heard Steven say, "You will hear
10 about this in the paper tomorrow"?

11 A Yes, ma'am.

12 Q Did he say that pretty loud?

13 A Yes, ma'am.

14 Q Where were you standing when he said that?

15 A I was on the edge of the patio.

16 Q And you say they were going around the corner?

17 A Yes, ma'am.

18 Q That was said pretty loudly?

19 A Yes, ma'am.

20 Q Jason Ward would have heard that?

21 A Yes, ma'am.

22 Q You say they left the party between 4:30 and
23 5:00 o'clock?

24 A I wasn't looking at my watch. It was just a
25 guess.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q That just a guess you gave the police at that
2 time?

3 A It could have been earlier or could have been
4 later.

5 Q But that's what you told the police at the time?

6 A Yes.

7 MS. MIMS: I have no further questions,
8 Your Honor.

9 THE COURT: Any redirect?

10 MR. MCMAHON: Nothing on redirect, Your
11 Honor.

12 THE COURT: You can step down. You are
13 free to go if you want to, Mr. Glenn, or you can
14 stay.

15 THE WITNESS: Yes, sir.

16 MATTHEW SCOTT DICKERSON,
17 being first duly sworn, testified as follows:

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

20 THE WITNESS: Matthew Scott Dickerson.

21 DIRECT EXAMINATION

22 BY MR. MCMAHON:

23 Q Matthew, you will have to speak up so all these
24 folks on the jury can hear you; okay?

25 A Okay. Matthew Scott Dickerson.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

- 1 Q How old are you, Matt?
- 2 A Twenty.
- 3 Q Did you finish high school?
- 4 A Yes, sir.
- 5 Q Where did you go to high school and when did you
- 6 finish?
- 7 A I went to Dutch Fork and I finished in 2000.
- 8 Q What is your present occupation, Matt?
- 9 A Student.
- 10 Q Where are you a student at?
- 11 A Well, I'm taking a semester off right now from
- 12 Midlands Tech.
- 13 Q Do you work anywhere?
- 14 A Yes, sir.
- 15 Q Where do you work?
- 16 A I work for my father at United Van Lines.
- 17 Q United Van Lines. I believe that's your dad
- 18 seated here in the courtroom right behind that
- 19 rail; is that right?
- 20 A Yes, sir.
- 21 Q And how long has your dad been in that business?
- 22 A I couldn't tell you how long.
- 23 Q Do you ever remember him not being in that
- 24 business, Matt?
- 25 A No, sir.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q And what kind of work do you do at United Van
2 Lines?

3 A Manual labor.

4 Q That's good for you.

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

7 Q Matt, I want to direct your attention back to
8 January of 2001 and ask you if you know a few
9 people before we even talk about a particular
10 weekend. Mike Glenn, do you know Mike who just
11 stepped out the back door?

12 A Yes, sir.

13 Q How do you know Mike?

14 A He is the brother of my roommate and best
15 friend, Trey Gillian.

16 Q So Mike has got a brother named Trey?

17 A Yes.

18 Q And Trey is your roommate and friend?

19 A Yes, sir.

20 Q Did y'all go to high school together?

21 A Yes, sir.

22 Q Also Steve Gillian, the Defendant in this case,
23 did you know Steve Gillian?

24 A Yes, sir.

25 Q How long have you known him?

MATT DICKERSON -DIRECT- BY MR. MCMAHON

- 1 A Maybe three years, not long at all.
- 2 Q You knew him by name, knew him by sight?
- 3 A Yes, sir.
- 4 Q You had seen him other places besides the Glenn
- 5 residence that we are going to talk about in a
- 6 few minutes; is that right?
- 7 A Yes, sir.
- 8 Q Matt, how about a young man named Jeremiah? Did
- 9 you know Jeremiah?
- 10 A Not before that night, sir.
- 11 Q I will show you a photograph. Can you identify
- 12 that photograph for us?
- 13 A That is Jeremiah.
- 14 Q And when did you meet Jeremiah?
- 15 A That night exactly.
- 16 Q So before then you didn't know him?
- 17 A No, sir.
- 18 Q And Jason Ward, did you know Jason Ward?
- 19 A Yes, sir.
- 20 Q And how did you know Jason? How long had you
- 21 known him?
- 22 A I wouldn't even say a year.
- 23 Q And this is an I.D. card with a picture of Jason
- 24 on it; is that correct?
- 25 A Yes, sir.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q State's Exhibit 16. I want to talk about that
2 Saturday night, the 27th, and that Sunday
3 morning, the 28th. Were you out with your
4 friends that Saturday night?

5 A Yes, sir.

6 Q I don't want a lot of details about Saturday
7 night, but just generally where did you go?
8 What did you do that Saturday night leading up
9 to going to the Glenn residence? And, Matt,
10 please keep your voice up for us.

11 A Okay. I met up with Trey and his girlfriend
12 Melissa, and we went to a party in Chapin that
13 the owner of the house told everybody to leave.
14 So we ended up going back to Trey's house, his
15 father's house, and getting a phone call from, I
16 think, Austin Lee, a friend of ours and going
17 over to Mikey's house.

18 Q Going to Mikey Glenn's house?

19 A Yes, sir.

20 Q And that's the house located at ■ ■ ■?

21 A Yes, sir.

22 Q I have some photographs of it. This looks like
23 a photograph of the back of it?

24 A Yes, sir.

25 Q State's 21 and 22 and 23 are photographs of

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 parts of the interior of the house?

2 A Yes, sir.

3 Q About what time would you say you arrived at
4 Mikey's house, and who were you with when you
5 got there?

6 A After midnight, and I was with Trey Glenn.

7 Q There was a party?

8 A Yes, sir.

9 Q And Mike's parents were not home?

10 A No, sir.

11 Q And there was a number of young people there?

12 A Yes, sir.

13 Q Some of whom were under age?

14 A Yes, sir.

15 Q There was drinking, the consumption of alcohol;
16 is that right?

17 A Yes, sir.

18 Q Now, after you arrived at Mikey's house, did you
19 see Steve Gillian?

20 A Yes, sir.

21 Q Where did you first see him there, and who did
22 you see him with initially?

23 A I guess I just saw him somewhere in the house,
24 and he was with Jeremiah. I know that.

25 Q Do you recognize this photograph?

MATT DICKERSON -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Who is that a photograph of?
- 3 A That's Steve Gillian.
- 4 Q So Steve and Jeremiah, you see them together?
- 5 A Yes, sir.
- 6 Q Initially. Is there a period of time that
- 7 Jeremiah is at the house and Steve is gone?
- 8 A Yes, sir.
- 9 Q When you next see Steve at the house, is anyone
- 10 else there with him?
- 11 A After he had been there, after he had left and
- 12 come back?
- 13 Q Yes, sir.
- 14 A Yes, sir.
- 15 Q Who is that?
- 16 A Jason Ward.
- 17 Q Jason?
- 18 A Yes, sir.
- 19 Q So would there be a period of time when Jeremiah
- 20 is at the house with Steve?
- 21 A Yes, sir.
- 22 Q And Jason is not there?
- 23 A Yes, sir.
- 24 Q Steve leaves?
- 25 A Yes, sir.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q And returns. Jason, Steve, and Jeremiah are
2 there; is that correct?

3 A Yes, sir.

4 Q Now, after that time does Steve and Jason have
5 an occasion to leave again?

6 A Yes, sir.

7 Q And when Steve leaves that second time and
8 leaves with Jason, is Jeremiah still there?

9 A Yes, sir.

10 Q And do you recall an incident happening while
11 Steve and Jason was gone involving Jeremiah?

12 A Yes, sir.

13 Q And do you know generally and briefly what
14 happens, Matt?

15 A I just know he had an altercation with Kiah
16 Stone and Austin Lee. He had done something
17 they didn't much appreciate, and they made him
18 leave.

19 Q Do you know what door they made him leave by?

20 A Yes, sir, the back door.

21 Q One of those photographs I showed you a minute
22 ago, can you point out what door you are
23 referring to there, Matt?

24 A Yes, sir. That door right there (indicating).

25 Q That door right there (indicating)?

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Referring to State's 21. Now, was Jeremiah
3 still at the residence but outside the residence,
4 for a period of time?

5 A Yes, sir.

6 Q And did he have an occasion to come back in the
7 residence after he had been put out by Kiah and
8 Austin?

9 A Not that I saw.

10 Q After he had been put out by Kiah and Austin,
11 did you see Steve or Jason return?

12 A I saw them come in the back door. I didn't see
13 them like get there or anything.

14 Q When you say you didn't see them get there, you
15 didn't see them drive up there?

16 A Yes, sir.

17 Q But you saw Steven Gillian and Jason Ward come
18 in the back door?

19 A Well, I walked into the kitchen area. They were
20 already there. So I assume they did come in the
21 back door.

22 Q What, if anything, did you observe Steve doing
23 then?

24 A At that time he was yelling at Jeremiah.

25 Q And what, if anything, was he yelling at

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Jeremiah?

2 A He was yelling at Jeremiah because Jeremiah had
3 told Steve that Austin and Kiah had jumped him
4 or roughed him up and thrown him out. Austin
5 had just told Steve that that was not true. So
6 he was angered at Jeremiah about lying to him.

7 Q So Steve's anger was directed towards?

8 A Jeremiah.

9 Q Jeremiah. And as a result of that, what did he
10 do?

11 A He started hitting him in the face and punching
12 and slapping him.

13 Q Wait a minute. Wait a minute. Steve is hitting
14 who?

15 A Jeremiah.

16 Q In his face?

17 A Yes.

18 Q How big is Jeremiah? How big a fellow is he?

19 A Maybe a little bit over five feet, not that
20 tall.

21 Q A little bit over five feet or six feet? Five
22 feet?

23 A Five feet.

24 Q And where is Steve hitting him at?

25 A In the face and in the mouth.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q What room of the house is that occurring in?

2 A In the kitchen.

3 Q What area of the kitchen?

4 A Around the island area of the kitchen.

5 Q When you say around the island area, when he hit
6 him, what is that causing to Jeremiah's body?

7 A He's falling over.

8 Q On the floor?

9 A Onto the floor and into things that might happen
10 to be behind him.

11 Q And how does he get up?

12 A Steve picks him up.

13 Q He doesn't get up on his own to get hit again?

14 A No, sir.

15 Q Steve does what?

16 A He picks him up.

17 Q And hits him again?

18 A Yes, sir.

19 Q What does he hit him with?

20 A His hands.

21 Q What is he saying?

22 A I do not recall what he is saying, just a lot of
23 yelling.

24 Q When you say the island area, Matt, referring to
25 State's Exhibit Number 24, do you recognize this

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 diagram as a general floor plan of the Glenn
2 residence?

3 A Yes, sir.

4 Q This (indicating) being the back door and the
5 island. You are talking about the cooking
6 island there in the kitchen?

7 A Yes, sir.

8 Q What areas of that island is Steve hitting
9 Jeremiah?

10 A All around the island.

11 Q So he would hit him and he'd get up, knock him
12 down, get up and slap him around, around the
13 island?

14 A Yes, sir.

15 Q How many times around the island?

16 A At least three.

17 Q What is Jeremiah doing?

18 A Crying and trying to cover his face.

19 Q Now, is there a time that Steve stops hitting,
20 stops beating Jeremiah?

21 A Yes.

22 Q What happens then?

23 A After he stops hitting Jeremiah, he just starts
24 to go on some kind of ran-about, something. I
25 wasn't really paying too much attention to what

MATT DICKERSON -DIRECT- BY MR. MCMAHON

- 1 he was saying after he had hit Jeremiah.
- 2 Q And does he hit anyone else at that time?
- 3 A He head butts Richie.
- 4 Q Head butts. What do you mean head butts?
- 5 A He took his head and hit him in the face with
- 6 it, the top of his head.
- 7 Q That is (indicating) Richie Cunliffe?
- 8 A Yes, sir.
- 9 Q State's 18. That is a picture of Richie?
- 10 A Yes, sir.
- 11 Q Do you see any injuries on him?
- 12 A Yes, sir.
- 13 Q Where are they at?
- 14 A Right around his nose and eyes.
- 15 Q And Steve hits him, head butts him?
- 16 A Yes, sir.
- 17 Q And what type of damage or injury does that do
- 18 to Richie?
- 19 A I didn't see it up close, but he grabbed his
- 20 nose and he moved out of the room quickly.
- 21 Q Does Steve hit anybody else?
- 22 A Yes, sir.
- 23 Q Who then?
- 24 A Austin Lee.
- 25 Q And what part of Austin's body does he hit?

MATT DICKERSON -DIRECT- BY MR. MCMAHON

- 1 A I think his eye.
- 2 Q State's 26, is that a photograph of Austin Lee?
- 3 A Yes, sir.
- 4 Q Do you see injury on that?
- 5 A Yes, sir.
- 6 Q What area?
- 7 A The eye.
- 8 Q Now, does anybody stand up to Steve at that
- 9 point, Matt?
- 10 A Yes, sir.
- 11 Q Who?
- 12 A Jason Ward.
- 13 Q What does Jason do?
- 14 A Jason just tells him --
- 15 MS. MIMS: Objection, hearsay.
- 16 THE COURT: Sustained.
- 17 BY MR. MCMAHON:
- 18 Q What does he do?
- 19 A What does Jason do?
- 20 Q Not what he says, what does he do?
- 21 A He grabs Steve and kind of roughed him up a
- 22 little bit to calm him down and make him stop.
- 23 Q What is Steve saying to Jason?
- 24 A To get off of him.
- 25 Q Before that what, if anything, did Steve say to

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Jason?

2 A I do not recall.

3 Q You don't recall?

4 A No, sir.

5 Q Now, specifically physically what does Jason do
6 to Steve?

7 A Somehow he got him on the ground, and then he
8 hit him.

9 Q And how long does it take Jason to actually get
10 Steve on the ground and hit him?

11 A Not long at all, like a second maybe.

12 Q Does Jason let Steve up?

13 A Yes, sir.

14 Q When Jason lets Steve up, where does Steve go
15 and where does Jason go?

16 A Jason stays in the kitchen while Steve walks
17 outside.

18 Q And where in the kitchen is Jason, Matt?

19 A Jason is sitting at the kitchen table.

20 Q I think there is a photograph -- let me ask you,
21 do you recognize this area here (indicating),
22 State's 23?

23 A Yes, sir.

24 Q Is that the table Jason is sitting at?

25 A Yes, sir.

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 Q Where is Steve at this time?

2 A He is on the other side of that window beside
3 the table.

4 Q Out on the patio?

5 A Yes, sir.

6 Q What is occurring between them now, between
7 Jason Ward and Steve now?

8 A Jason was just sitting quietly at this chair,
9 and Steve was outside. Austin Lee was trying to
10 calm him down, but he was staring inside at
11 Jason.

12 Q What, if anything, did you hear Steve say?

13 A I didn't hear any of his conversation with
14 Austin.

15 Q Is there ever a time when you hear Steve and
16 Jason talk with each other?

17 A Jason gets irritated with Steve looking at him
18 through the window and goes outside and says
19 something along the line of, "Let's go."

20 MS. MIMS: Objection, hearsay.

21 THE COURT: Sustained.

22 BY MR. MCMAHON:

23 Q Don't go into what Jason says. What do you hear
24 Steve say?

25 A "We can finish this in my back yard," something

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 along those lines.

2 Q They are both out on the patio then?

3 A They were at that time, yes.

4 Q What do you next hear Steve say besides, "We can
5 finish this in my back yard"?

6 A That we would hear about it in either in the
7 newspaper or the T.V., something. I don't know
8 which one.

9 Q Who says that?

10 A Steve.

11 Q What does he say?

12 A He says we would hear about it tomorrow on the
13 news or T.V. I don't remember which he said.

14 Q Now, do you see Steve and Jason leave the
15 patio?

16 A I don't see them leave the patio. No, I was
17 standing inside when they went outside.

18 Q Where do you last see them?

19 A I last see Steve standing on the patio and
20 Jason walking through the back door. That's the
21 last I saw.

22 Q That's the last you see either Steve or Jason;
23 is that correct?

24 A Yes, sir.

25 Q After you no longer see either one of them, the

MATT DICKERSON -DIRECT- BY MR. MCMAHON

1 same question really, you don't see Jason
2 anymore at the Glenn residence in the early
3 morning hours?

4 A No, sir.

5 Q Nor Steve?

6 A No, sir.

7 Q What route would he take from the Glenn
8 residence to get back to his car?

9 A He would have to go through the back yard, walk
10 to the driveway and down the steps in front of
11 the driveway to his car.

12 Q Do you know whether or not Steve had a car?

13 A I think he did.

14 Q Do you know whether or not Jason had a car?

15 A No, sir, I don't know if he had a car.

16 Q But you never saw either one of them again
17 separately?

18 A No, sir.

19 Q Now, could you describe for us, please, if you
20 recall what type of top or shirt Steve had on?

21 A A red Ecko sweatshirt with some kind of logo on
22 it, like an animal logo on something.

23 Q I want to show you what has been marked for
24 identification as State's Exhibit 19. It was
25 similar to this?

MATT DICKERSON -CROSS- BY MS. MIMS

1 A Yes, sir.

2 Q Is this what you call a red Ecko sweatshirt with
3 some type of animal on it?

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

6 Q Right there (indicating)?

7 A Yes, sir.

8 Q Is that what he had on the last time you saw
9 him?

10 A Yes, sir.

11 MR. MCMAHON: Your Honor, I have no further
12 questions.

13 THE COURT: Cross?

14 MS. MIMS: Very quickly, Your Honor.

15 CROSS EXAMINATION

16 BY MS. MIMS:

17 Q Matt, you said that the last time or at the end
18 of the night when this was all ending, you saw
19 Jason standing on the patio; is that right?

20 A No, I saw Steve standing on the patio.

21 Q I'm sorry. Steven was on the patio, and Jason
22 Ward was walking out the kitchen door?

23 A Yes.

24 Q Is that right?

25 A Yes, ma'am.

MATT DICKERSON -REDIRECT- BY MR. MCMAHON

1 Q And that's the last time you saw anybody, Steve
2 or Jason that night?

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

5 Q You didn't see them walk down the stairs, and
6 you didn't see them walk down to the driveway;
7 is that right?

8 A No, ma'am.

9 Q You didn't see them get into any car, did you?

10 A No, ma'am.

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

13 THE COURT: Redirect?

14 REDIRECT EXAMINATION

15 BY MR. MCMAHON:

16 Q What time was that, Matt, approximately?

17 A Maybe 5:30, real early in the morning.

18 Q Thank you.

19 MR. MCMAHON: I don't have any further
20 questions.

21 THE COURT: Anything else?

22 MS. MIMS: No, sir.

23 THE COURT: You can step down. You are
24 free to leave or stay if you wish. Do you think we
25 should take a lunch break at this point? It would

1 be hard to squeeze another witness in, I would
2 think.

3 Ladies and gentlemen, we will go ahead and
4 take a break for lunch at this point. I will ask
5 you to be back in the jury room at 2:15. We will be
6 prepared to get started -- quiet, please. Please
7 have a seat.

8 Ladies and gentlemen, be sure you don't
9 talk about the case with anyone. Don't let anyone
10 talk about it with you. See you back at 2:15.
11 Everyone remain seated while the jury leaves.

12 (The jury is excused for lunch at
13 12:52 p.m.)

14 THE COURT: Counsel, anything before we
15 recess, for the State?

16 MR. MCMAHON: Judge, just administratively,
17 we are moving along pretty well.

18 THE COURT: Yes, sir.

19 MR. MCMAHON: Actually, I think regardless
20 of how late we work tonight, I think we will rest
21 tomorrow sometime. How late do you want to go? So I
22 can kind of plan my witnesses.

23 THE COURT: Unless there is a need to, I
24 don't see that we would have to go past 5:30 or six;
25 would we?

1 MR. MCMAHON: All right, sir.

2 THE COURT: Don't look at the court
3 reporter. Look at me.

4 MR. MCMAHON: She is giving me a hard look.

5 THE COURT: I know. Her feelings about
6 this are legendary. I don't see where we need to go
7 past 5:30 or six, would we?

8 MR. MCMAHON: All right, sir.

9 THE COURT: Do you need to?

10 MR. MCMAHON: I just have to see how many
11 witnesses I need to get here. That's all.

12 THE COURT: Let's see how it works.

13 MR. MCMAHON: I think we are moving a
14 little bit quicker than I thought.

15 THE COURT: Defense, anything before we
16 recede?

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

18 THE COURT: See you back at 2:15. Thank
19 you.

20 (Whereupon there was a luncheon recess.)

21 THE COURT: Is the State ready?

22 MR. MCMAHON: Yes, sir.

23 THE COURT: Is the defense ready?

24 MS. MIMS: Yes, sir.

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

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 (The jury returns to the courtroom at
2 2:25 p.m.)

3 THE COURT: All parties and attorneys are
4 in the courtroom and all jurors have returned.
5 Solicitor, call your next witness.

6 MR. MCMAHON: The State calls Austin Lee.

7 AUSTIN LEE, being first duly
8 sworn, testified as follows:

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

11 THE WITNESS: Austin Lee.

12 THE COURT: Spell your first and last name,
13 if you would, please.

14 THE WITNESS: A-U-S-T-I-N, L-E-E.

15 DIRECT EXAMINATION

16 BY MR. MCMAHON:

17 Q Mr. Lee, how old are you?

18 A I'm 19.

19 Q And I want you to speak up so that all members
20 of the jury can hear you, okay?

21 A Yes, sir.

22 Q What do you do now?

23 A I'm a student at Costal Carolina.

24 Q Costal Carolina is located in?

25 A Myrtle Beach.

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 Q Are you a freshman there?

2 A Yes, sir.

3 Q Where did you go to high school?

4 A Dutch Fork High School.

5 Q When did you graduate?

6 A Last year, 2001.

7 Q Now, I want to direct your attention back to
8 January of 2001 and ask you if you know several
9 people involved in this particular case. Do
10 you know Mike Glenn and his brother, Trey
11 Glenn?

12 A Yes, sir.

13 Q Do you know Richie Cunliffe?

14 A Yes, sir.

15 Q Kiah Stone?

16 A Yes, sir.

17 Q Matt Dickerson?

18 A Yes, sir.

19 Q Do you know the Defendant in this case, Steven
20 Gillian?

21 A Yes, sir.

22 Q What I'm showing you now, State's Exhibit Number
23 25, is that photograph of Mr. Gillian?

24 A Yes, sir.

25 Q How did you know him, Austin?

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 A He lived about half a mile up the street from my
2 best friend, Kiah Stone's house. We use to play
3 basketball.
- 4 Q How many years do you think you have known
5 Steven Gillian?
- 6 A Since I was about 13, six years.
- 7 Q Now, did you know Jason Ward?
- 8 A I knew who he was.
- 9 Q Know him on sight, know him by name?
- 10 A Yes, sir.
- 11 Q How did you know him? Who did you first meet
12 him with?
- 13 A With Steve.
- 14 Q With Steve. Did you know a young man named
15 Jeremiah?
- 16 A Yes, sir.
- 17 Q And how did you know Jeremiah, and who did you
18 meet with him?
- 19 A He was affiliated with Steve also.
- 20 Q I am showing you two other photographs, State's
21 Exhibit Number 16. Is that a photograph on that
22 identification card of Jason Ward?
- 23 A Yes, sir.
- 24 Q And State's 20, is that a photograph of
25 Jeremiah?

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Now, I want to direct your attention back to
3 Saturday the 27th and Sunday the 28th of
4 January.

5 MR. MCMAHON: Your Honor, I will offer a
6 calendar of 2001, I understand without objection.

7 MS. MIMS: No objection.

8 THE COURT: Without objection.

9 (State's Exhibit Number 27, calendar of
10 January, is received into evidence.)

11 BY MR. MCMAHON:

12 Q Just for time line purposes, I will be talking
13 about Saturday the 27th and Sunday the 28th of
14 January of 2001. Before I go there, did you
15 have a cell phone back then?

16 A Yes, sir.

17 Q What was your cell phone number?

18 A [REDACTED].

19 Q [REDACTED]?

20 A That's correct.

21 Q Now, did you ever receive any phone calls from
22 Steven Gillian back during this period of time?

23 A Yes, sir.

24 Q Did you receive one the evening of the 27th of
25 January, that Saturday? Would that be unusual?

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 A No, sir.
- 2 Q Do you specifically recall a phone conversation
3 with him that night?
- 4 A No, sir.
- 5 Q But it would not be unusual if you had one?
- 6 A Right.
- 7 Q Now, let's talk just a few minutes, just very
8 briefly and generally, about that Saturday
9 night, the early part of that evening. What
10 did you do? Where did you go? Who were you
11 with?
- 12 A I was with Joe Canfield, Kiah Stone in Mikey
13 Glenn's car. We headed to Parker Valek's house
14 to go to a party.
- 15 Q Where was Parker Valek's house located at?
- 16 A Far out in Chapin.
- 17 Q That was up on the lake in Chapin?
- 18 A Yes, sir.
- 19 Q Did y'all stay there?
- 20 A Until approximately 11:30.
- 21 Q From there where did you go?
- 22 A To Mikey's house, Mikey Glenn's.
- 23 Q Mike's Glenn house is at [REDACTED] Road?
- 24 A Yes, sir.
- 25 Q You had been there before?

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q And you are familiar with that location?

3 A Yes, sir.

4 Q Now, that particular party at Mikey's house, his
5 parents weren't home?

6 A Correct.

7 Q And these photographs, 21, 22, and 23, are these
8 photographs of the house, part of the exterior,
9 part of the interior of ■ ■ ■, the Glenn
10 residence?

11 A Yes, sir.

12 Q Now, some of the fellows I named earlier -- Matt
13 Dickerson, Trey Glenn, Richie Cunliffe, Kiah
14 Stone -- were they at the party?

15 A Yes, sir.

16 Q Did you have an occasion to see Steven Gillian
17 at the party?

18 A Yes, sir.

19 Q When you first saw him at the party, do you know
20 who he was with and how he had arrived?

21 A He was alone and his car was in the driveway.

22 Q And did you ever see Jeremiah at the party?

23 A No, sir.

24 Q At any time that night did you see Jeremiah at
25 the Glenn residence?

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Do you know who he was with and how he had
3 arrived?
- 4 A He had arrived with Steve.
- 5 Q So was there a time that Jeremiah and Steve were
6 at the party at the Glenn residence?
- 7 A Yes.
- 8 Q Now, Austin, was there a time that Jeremiah was
9 at the party and Steve was not?
- 10 A Yes, sir.
- 11 Q Do you know if he came back with anyone else,
12 Steve?
- 13 A Yes, sir.
- 14 Q And who did he come back with?
- 15 A Jason Ward.
- 16 Q So Steve and Jeremiah are at the party for
17 awhile?
- 18 A Yes, sir.
- 19 Q Steve leaves?
- 20 A Yes, sir.
- 21 Q And returns with Jason Ward?
- 22 A Yes, sir.
- 23 Q So is there a time at the Glenn party in which
24 Steve Gillian, Jason Ward, and Jeremiah were at
25 the party?

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Now, you remain there at the party, Austin.

3 Does Steve and Jason leave?

4 A Yes, sir.

5 Q And while they are gone, does an incident occur
6 with Jeremiah?

7 A Steve had left to go get Jason, I presume; and
8 the incident happened while he was gone and
9 Jeremiah was there by himself.

10 Q While Jeremiah is there by himself, is there an
11 incident that occurs between you, Kiah, and
12 Jeremiah?

13 A Yes, sir.

14 Q Explain what occurs to the jury.

15 A We were upstairs in Mikey's sister's bedroom,
16 and Jeremiah just pretty much started flipping
17 out and tried to swing at me. I just held him
18 there, wouldn't let him swing. We asked him to
19 leave. He left.

20 On his way out, he started knocking things
21 over, boxes, bottles, on his way out. Kiah
22 opened the door. Kiah Stone gave him a
23 moderately little push and told him to leave,
24 and he told Kiah that's a good way to get a
25 bullet in his ass.

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 Q Which door did Jeremiah go out?
- 2 A The back door.
- 3 Q So what room was he going through to go to that
- 4 back door?
- 5 A The kitchen.
- 6 Q When you talked about boxes and bottles being
- 7 knocked down, where did that happen at?
- 8 A In the kitchen and through the whole house,
- 9 anything that was sitting out.
- 10 Q Had Jeremiah been drinking?
- 11 A Yes, sir.
- 12 Q Was he under the influence? Could you tell?
- 13 A I presume.
- 14 Q And Kiah pushed him in the back out the back
- 15 door?
- 16 A Yes, sir.
- 17 Q When this happened was Steve there?
- 18 A No, sir.
- 19 Q Was Jason there?
- 20 A No, sir.
- 21 Q Now, did you have occasion to see Jeremiah later
- 22 on that night after he had been put out of the
- 23 Glenn house?
- 24 A Yes, sir.
- 25 Q And where did you next see him and when?

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 A In the kitchen.

2 Q By the way, you said Jeremiah made a statement
3 going out the back door. What was that?

4 A He told Kiah and I assume me, too, "That's a
5 good way to catch a bullet in your ass."

6 Q Now, he is outside for a period of time,
7 Jeremiah?

8 A Yes, sir.

9 Q After this incident with you and him and Kiah?

10 A Yes, sir.

11 Q And you see him where?

12 A I saw him later in the kitchen.

13 Q Do you know if he had used the telephone?

14 A No, sir.

15 Q You do not know?

16 A I don't know.

17 Q Did anyone return back to the Glenn house?

18 A Yes, sir.

19 Q And who was that?

20 A Steve and Jason Ward.

21 Q Where were you at when Steve and Jason returned?

22 A At first I was down in the garage smoking a
23 cigarette.

24 Q When you say down in the garage, is there a
25 stairwell from the kitchen in the Glenn house

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 that will allow one to go down in the garage?

2 A Yes, sir.

3 Q I have shown you before State's Exhibit Number

4 24, this being that back patio area and the

5 kitchen area. The stairwell right here

6 (indicating) off the kitchen, that goes down to

7 the garage?

8 A Yes, sir.

9 Q You say you were down there. Who were you down

10 there with, Austin?

11 A Matt Dickerson and Kiah Stone.

12 Q And what were you doing?

13 A Smoking a cigarette.

14 Q What brought your attention to come back up into

15 the kitchen?

16 A A large amount of noise, commotion, upstairs.

17 Q When you heard that, what did you do?

18 A Threw our cigarettes down and went upstairs to

19 see what was going on.

20 Q When you got in the kitchen, what was going on

21 and what happened?

22 A As soon as I opened the door, Steve hit me.

23 Q Steve who?

24 A Gillian.

25 Q And how did he hit you?

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 A With his fist.

2 Q And what, if anything, was he saying?

3 A I don't recall. He was just angry.

4 Q And what did he appear to be angry about?

5 A Me not answering -- me not answering his phone
6 calls and the fact that Kiah Stone and I had
7 escorted Jeremiah out of the house.

8 Q Let me ask you, is this a photograph, State's
9 Exhibit Number 26, taken of you on February the
10 2nd?

11 A Yes, sir.

12 Q Does that show an injury under your left eye?

13 A Yes, sir.

14 Q Is that the area that you were struck by Steve?

15 A Yes, sir.

16 Q What else did you observe Steve do or say when
17 you first went up the stairs and got hit?

18 A He was going crazy hitting everybody.

19 Q Who else did he hit?

20 A Joe Canfield. He grabbed my friend, Kiah Stone.
21 He didn't hit him, but he grabbed him. Then he
22 went crazy on Jeremiah, threw him in the
23 microwave on the table.

24 Q And what area was this occurring in?

25 A All in the kitchen.

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 Q Where in relationship to the island in the
2 kitchen?
- 3 A All the way around it.
- 4 Q And what specifically was Steve doing to
5 Jeremiah?
- 6 A Beating him up.
- 7 Q And what was he beating him with?
- 8 A His fist.
- 9 Q Where was he hitting him at?
- 10 A Everywhere.
- 11 Q When he would hit him, what would that cause
12 Jeremiah to do?
- 13 A To hit the ground.
- 14 Q When you say the ground, the floor?
- 15 A Yes, sir.
- 16 Q About how big is Jeremiah?
- 17 A Five-four maybe, 120-pounds.
- 18 Q Would you say he is short and light?
- 19 A Yes, sir.
- 20 Q Now, I want to show you another photograph,
21 State's Exhibit Number 18. Do you recognize
22 that person?
- 23 A Yes, sir.
- 24 Q Who is that?
- 25 A Richie Cunliffe.

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 Q What, if anything, did Steve do to Richie
2 Cunliffe?

3 A Head butted him.

4 Q Describe what you mean when you say head butted
5 him.

6 A He threw his forehead forward into Richie nose.

7 Q What damage, if any, did that cause to Richie's
8 nose?

9 A Swollen nose, black eyes, presumably broken
10 nose, bleeding.

11 Q And what did Richie do when Steve head butted
12 him?

13 A Got out of there as soon as possible, went
14 upstairs.

15 Q During this time -- is all of this taking place
16 there in the kitchen?

17 A Yes, sir.

18 Q During this time did you see Jason Ward?

19 A Yes, sir.

20 Q Where was Jason?

21 A Sitting at the kitchen table.

22 Q Did he hit you?

23 A No, sir.

24 Q Did Jason hit Kiah Stone?

25 A No, sir.

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 Q Richie Cunliffe?

2 A No, sir.

3 Q Matt Dickerson?

4 A No, sir.

5 Q What, if anything, did Jason do or say at this
6 time?

7 A Nothing.

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

9 THE COURT: Sustained.

10 BY MR. MCMAHON:

11 Q What occurred next after Steve beat Jeremiah?

12 A Jason stood up and told Steve he was going to
13 stop --

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

15 THE COURT: As to anything Mr. Ward may
16 have said, the objection is sustained.

17 MR. MCMAHON: May I be heard?

18 THE COURT: Sure. Do you want to approach?

19 (Whereupon there was a bench conference off
20 the record in the presence of the jury but out of the
21 hearing of the jury.)

22 BY MR. MCMAHON:

23 Q Now, Mr. Gillian hit a number of people and
24 Jeremiah. Did anybody intervene against
25 Mr. Gillian?

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q And who was that?
- 3 A Jason Ward.
- 4 Q And did he do that -- don't tell me what he
- 5 said -- but did he do that by making a
- 6 statement?
- 7 A Did he do?
- 8 Q Did he say something to Steve Gillian?
- 9 A Yes, sir.
- 10 Q Don't tell me what he said. As a result of him
- 11 saying something to Steve Gillian, what did
- 12 Steve do?
- 13 A Began pushing Jason.
- 14 Q Where was this confrontation taking place?
- 15 A In the kitchen.
- 16 Q When you say began pushing him, how close was
- 17 Steve to Jason at this time, Austin?
- 18 A In his face.
- 19 Q And how was he pushing him?
- 20 A Pretty hard.
- 21 Q What part of Steve's body was coming in contact
- 22 with Jason to push him?
- 23 A His chest and his hands.
- 24 Q And as a result of that, what was Jason doing?
- 25 A He was telling Steve to get his hands off of

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 him.
- 2 Q Don't go into what he was saying.
- 3 A Backing up.
- 4 Q Backing up. He wasn't going towards Steve?
- 5 A No, sir.
- 6 Q He was going away from Steve?
- 7 A Yes, sir.
- 8 Q Where in this area is this occurring?
- 9 A Around this center block (indicating) in the
- 10 kitchen.
- 11 Q So Mr. Gillian is pushing Jason around this
- 12 (indicating)?
- 13 A Yes, sir.
- 14 Q The kitchen island. The same kitchen island
- 15 that he beat Jeremiah around?
- 16 A Yes, sir.
- 17 Q Now, do you hear Steve during this time making
- 18 any threats to Jason?
- 19 A No, sir.
- 20 Q Ultimately what does Jason do?
- 21 A Takes his shirt off.
- 22 Q And then what?
- 23 A They began wrestling.
- 24 Q And how long is the wrestling between Jason and
- 25 Steve?

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 A Two minutes.
- 2 Q And what occurred? Just describe for the jury
3 what occurred between Jason and Steve.
- 4 A They wrestled around the ground a little while.
5 I saw Jason cock his hand back like he was going
6 to hit Steve, but he never swung.
- 7 Q Who wins that wrestling?
- 8 A I would say Jason did because he got up.
- 9 Q When Jason gets up, what does Steve do?
- 10 A Gets up also.
- 11 Q What does he say or where does he go?
- 12 A He asked Jason to follow him back to his house
13 so they could continue the fight there.
- 14 Q That's what Steve asked Jason?
- 15 A Yes, sir.
- 16 Q At that time does Jason go? Does he agree to
17 go?
- 18 A No, sir.
- 19 Q Does he want to go?
- 20 A No, sir.
- 21 Q Where does Steve go, Austin?
- 22 A Where does he go?
- 23 Q Yes.
- 24 A He goes outside to sit down on the porch.
- 25 Q When you say outside to sit down on the porch,

ALSTON LEE -DIRECT- BY MR. MCMAHON

- 1 again, you are talking about this patio?
- 2 A Yes, sir.
- 3 Q And where is Jason?
- 4 A He is inside. He sat back down at the kitchen
- 5 table.
- 6 Q This table here (indicating)?
- 7 A Yes, sir.
- 8 Q Where are you?
- 9 A I'm outside.
- 10 Q So you are outside with Steve?
- 11 A Yes, sir.
- 12 Q Now, what, if anything, does Steve say then
- 13 while you are outside with him, Austin?
- 14 A "You will see this shit in the newspaper
- 15 tomorrow."
- 16 Q You hear Steve say that?
- 17 A Yes, sir.
- 18 Q Now, when he says that, do you recall
- 19 specifically if anybody else is outside then?
- 20 A I believe Michael Dursey.
- 21 Q Where is Jason when you hear Steve say that?
- 22 A He's inside.
- 23 Q And what else does he say?
- 24 A Steve?
- 25 Q Uh-huh. What, if anything, does he say about

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 the witness program?

2 A He told --

3 MS. MIMS: I will object, Your Honor,
4 leading.

5 THE COURT: This is as to the Defendant?

6 MR. MCMAHON: Yes, sir.

7 THE COURT: I will give him a little bit of
8 room. Go ahead.

9 A He told Kiah Stone and I that we needed to join
10 the witness relocation program.

11 Q Steve tells who?

12 A Kiah Stone and myself.

13 Q He tells you what?

14 A That we needed to join the witness relocation
15 program.

16 Q Austin, do you remain there on the patio?

17 A Yes, sir.

18 Q And what do you ultimately observe Steve and
19 Jason do? Where do you ultimately observe them
20 go?

21 A They left together.

22 Q Where do they leave from?

23 A They left -- Jason walked through the kitchen,
24 said he was ready to go, he was tired of being
25 at the house seeing him beat all the kids up.

ALSTON LEE -DIRECT- BY MR. MCMAHON

1 They walked down the stairs, those brick stairs
2 leading to the driveway. That's the last place
3 I saw both of them walking down.

4 MR. MCMAHON: Your Honor, may the witness
5 step down?

6 THE COURT: Certainly, yes, sir.

7 (Witness leaves the witness stand.)

8 BY MR. MCMAHON:

9 Q You were pointing to State's Exhibit Number 34.
10 Step on this side (indicating) for me, Austin.
11 Keep your voice up. You don't have the
12 microphone right now. Point out for the jury
13 where is the last place you saw Jason Ward.

14 A I saw Jason walk out here (indicating). Steve
15 got up from the chair. They walked down these
16 steps (indicating) and then down these brick
17 stairs (indicating) leading to the driveway.

18 Q And were the cars parked out in this area out
19 here (indicating)?

20 A Yes, sir, they were in the driveway.

21 Q When you saw Steve, when you saw Steve Gillian
22 and Jason Ward walk out towards that driveway
23 together, did you see anybody else?

24 A No, sir.

25 Q Do you ever see Jason Ward again?

ALSTON LEE -CROSS- BY MS. MIMS

1 A No, sir.

2 Q That night did you ever see Steven Gillian
3 again?

4 A No, sir.

5 Q To your knowledge do they leave together?

6 A Yes, sir.

7 Q As they had arrived together?

8 A Yes, sir.

9 Q Thank you. You can retake the stand.

10 A (Witness resumes the witness stand.)

11 Q Answer any questions the defense lawyers may
12 have.

13 THE COURT: Cross.

14 MS. MIMS: Thank you, Your Honor. May it
15 please the Court.

16 CROSS EXAMINATION

17 BY MS. MIMS:

18 Q Good afternoon, Austin. Can I call you Austin?

19 A Sure.

20 Q People were drinking at this party?

21 A Yes, ma'am.

22 Q A lot of drinking?

23 A No more than any other high school party.

24 Q It's a high school party, so there's a good bit
25 of drinking going on?

ALSTON LEE -CROSS- BY MS. MIMS

- 1 A Yes, ma'am.
- 2 Q And some people were intoxicated?
- 3 A Yes ma'am.
- 4 Q Were you intoxicated?
- 5 A Yes, ma'am.
- 6 Q And Jeremiah was intoxicated, wasn't he?
- 7 A Yes, ma'am.
- 8 Q In fact, he was pretty intoxicated?
- 9 A I couldn't tell you that. I'm not Jeremiah.
- 10 Q No, you're not. But Jeremiah got pretty upset
- 11 and started maybe talking a lot of stuff.
- 12 Jeremiah started talking about Uzis?
- 13 A Uzis?
- 14 Q Yeah.
- 15 A I don't remember Uzis.
- 16 Q Do you remember him talking about his nine?
- 17 A No.
- 18 Q But he got thrown out the house for being
- 19 reckless?
- 20 A Right, but he didn't say anything about the gun.
- 21 Q Until he told you he was going to shoot you in
- 22 the ass?
- 23 A He didn't tell me he was going to shoot me in
- 24 the ass. He said, "That's a good way to catch
- 25 a bullet in your ass," and he looked at Kiah

ALSTON LEE -CROSS- BY MS. MIMS

1 Stone.

2 Q But he smashed up the house a little bit on his
3 way out, knocked over some beer cans? In fact,
4 I think he had torn up a bed earlier in the
5 house; isn't that right?

6 A I believe so.

7 Q But in the end he told you it's a good way to
8 get a bullet in your ass on his way out the
9 door?

10 A Yes, ma'am.

11 Q You mentioned a while ago that Steven told you
12 that you would need to go into the witness
13 protection program?

14 A Yes, ma'am.

15 Q Wasn't that actually in regard to something that
16 happened earlier when he was talking about lying
17 to him about Jeremiah?

18 A No, ma'am.

19 Q Do you know why Richie Cunliffe would testify to
20 that?

21 A No, ma'am.

22 Q So as Jason and Steven are walking outside -- I
23 think at some point they are both outside on the
24 patio; is that right?

25 A As soon as Jason walked out the back door, Steve

ALSTON LEE -CROSS- BY MS. MIMS

1 got up; and Jason didn't even stop. They just
2 started walking.

3 Q They kept walking?

4 A Right.

5 Q Jason didn't say anything to Steve?

6 A He said --

7 Q He said, "Let's go"?

8 A Actually he said, "Fuck it, let's go."

9 Q So it was Jason's idea to leave the party?

10 A Yes.

11 MS. MIMS: Beg the Court's indulgence, Your
12 Honor.

13 (Pause.)

14 MS. MIMS: I have no further questions,
15 Your Honor.

16 THE COURT: Any redirect, Mr. McMahon?

17 MR. MCMAHON: Could you give me a moment,
18 Your Honor.

19 THE COURT: Sure.

20 (Pause.)

21 MR. MCMAHON: I have nothing on redirect.

22 THE COURT: You can step down, Mr. Lee.

23 You can stay if you wish or you are free to go if you
24 want to.

25 MS. CAMPBELL: The State calls Rachel

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 Armstrong.

2 RACHEL MONROE ARMSTRONG,
3 being first duly sworn, testified as follows:

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

6 THE WITNESS: Rachel Monroe Armstrong.

7 DIRECT EXAMINATION

8 BY MS. CAMPBELL:

9 Q Rachel, how old are you?

10 A Sixteen.

11 Q Where do you go to school?

12 A I went to Irmo, and just recently I am being
13 home schooled.

14 Q You have to slow down. You went to where?

15 A I was at Irmo, and then I just recently became
16 home schooled.

17 Q You have recently become home schooled?

18 A Uh-huh. (Indicating affirmative response.)

19 Q Last year when were you 15, I guess, you were at
20 Irmo High School?

21 A Yes, ma'am.

22 Q And what year are you in school, junior,
23 sophomore?

24 A Junior.

25 Q So last year you would have been a sophomore?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q In January of last year, you would have been 15
3 years old?

4 A Yes, ma'am.

5 Q Do you remember -- turning your attention back
6 to January the 27th, that was a Saturday night,
7 going to a party at Mikey Glenn's house?

8 A Yes, ma'am.

9 Q Tell this jury how you ended up going to that
10 party that night.

11 A Well, first of all, we had gone to Parker
12 Valek's; and something happened there. We all
13 had to leave. We ended up at Blaine Reedy's,
14 but she was not there. Then we had gotten a
15 call saying we could go to Mikey's. So that's
16 when we went.

17 Q Who were you supposed to be staying with that
18 night?

19 A Talia Orred.

20 Q Talia Orred?

21 A Yes, ma'am.

22 Q And were y'all supposed to be going to Mikey's
23 party that night?

24 A We had not planned on it, no.

25 Q But you ended up going out. How did you end up

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 getting to Mikey's party? Who all was riding
2 with you?

3 A I drove: Me, Ali, Ali Rayfield, Jessie Gore and
4 Cayce Porter.

5 Q And those were all close friends of yours?

6 A Yes, ma'am.

7 Q And all those girls are about 15 or 16?

8 A Yes, ma'am.

9 Q And y'all all went over to Mikey Glenn's party.
10 Do you remember about what time of night it was
11 when you got over to the party?

12 A I would say about midnight maybe.

13 Q And when you got to the party, at first y'all
14 were just mingling around?

15 A Yes, ma'am.

16 Q And were you drinking that night?

17 A No, ma'am. I was driving, and I was helping a
18 friend who had had too much to drink.

19 Q But there were other people drinking that night?

20 A Uh-huh. (Indicating affirmative response.)

21 Q And when you got there -- do you know a guy
22 named Steve Gillian?

23 A I had heard of him, yes.

24 Q You had heard of him. But that night was the
25 first night you had ever seen him?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 A Not the first night I had ever seen him. I had
2 seen him once before when I had gone out with
3 one of my friends, D.P.

4 Q So you had met him through another friend
5 before?

6 A Yes, ma'am, once.

7 Q And that night when you got to the party or
8 after you got to the party, after awhile did you
9 notice that Steve Gillian was there?

10 A Yes, ma'am.

11 Q Did you know a guy named Jason Ward?

12 A No, ma'am, never heard of him.

13 Q Did you meet him that night?

14 A Yes, ma'am.

15 Q And how did you end up meeting Jason Ward?

16 A With my friend Cayce Porter. They had known
17 each other for a long time through tennis.

18 Q Through tennis?

19 A Yes, ma'am.

20 Q Do you remember Steve Gillian being at the party
21 for awhile and then leaving?

22 A Yes, ma'am, he left around two.

23 Q Around 2:00 a.m.?

24 A Yes, ma'am.

25 Q And did he return back to the party that night?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 A Uh-huh. (Indicating affirmative response.)

2 Q When he came back to the party, was anybody with
3 him?

4 A That's the first time I saw Jason.

5 Q So when Steve left and came back to the party
6 was the first time you saw Jason Ward?

7 A Yes, ma'am.

8 Q Do you know a guy named Jeremiah Page?

9 A I did not meet him until that night.

10 Q Was Jeremiah at the party that night?

11 A Yes, ma'am.

12 Q In fact, he was there the entire night?

13 A Uh-huh. (Indicating affirmative response.)

14 Q So he leaves around 2:00 a.m., and then they
15 come back. Do you how long they stayed at the
16 party before leaving again?

17 A No, I don't know.

18 Q But after they left -- Steve Gillian and Jason
19 Ward -- was there an incident involving Jeremiah
20 Ward (sic)?

21 A Uh-huh. (Indicating affirmative response.)

22 Q I mean, Jeremiah Page, excuse me.

23 A Uh-huh. (Indicating affirmative response.)

24 Q Can you tell the jury about that.

25 A We were in Mikey's sister's room, and he was

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 banging his head against the wall and laughing
2 about it. You know, everybody thought it was
3 just him just being drunk or something.

4 Then he kept on doing it harder and harder.
5 Steve came in and like he got mad. Before that
6 he had broken the bed, and he had a piece of the
7 bed and he was swinging it around. Kiah had
8 grabbed it from him before he could hit anybody.
9 That's when Steve -- that's like what started
10 the whole thing.

11 Q Let's go back because you are skipping over to
12 when Steve comes back. Before Steve comes back,
13 the incident in the bedroom, that's when Kiah
14 and Austin were involved?

15 A I don't know about Austin, but I remember Kiah
16 just grabbing him and keeping him from hitting
17 somebody.

18 Q Do you remember him being escorted out of the
19 house at that point? Did you witness that?

20 A Huh-uh. (Indicating negative response.)

21 Q But you were aware that he was thrown out of the
22 house?

23 A Yes, ma'am.

24 Q And did you continue to stay upstairs at that
25 point?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 A Yes, ma'am.

2 Q Who all was upstairs with you?

3 A Ashley Philby, Cayce Porter --

4 Q You are going to have to slow down when you say
5 names.

6 A Ashley Philby.

7 Q Some of your girlfriends? Is that sufficient?

8 A Yes.

9 Q And y'all are upstairs?

10 A Uh-huh. (Indicating affirmative response.)

11 Q And after Jeremiah had this incident and had
12 been thrown out of the house, at a later time
13 did you hear some more scuffling downstairs?

14 A Yes, ma'am.

15 Q Who could you hear arguing?

16 A I just heard Steve yelling and screaming and
17 breaking things.

18 Q Did you go downstairs immediately?

19 A No, ma'am, not immediately.

20 Q But once the screaming and yelling and the
21 breaking things had died down, did you go
22 downstairs?

23 A Yes, ma'am.

24 Q Tell the jury what time of night this is. Is it
25 getting pretty late?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

- 1 A Yes, ma'am. I would say it was anywhere between
2 like 4:30, three to four.
- 3 Q To five? You don't know. Was it in the early
4 morning hours?
- 5 A Uh-huh. (Indicating affirmative response.)
- 6 Q When you went downstairs after you heard Steve
7 Gillian yelling and breaking things, what did
8 you find? Tell the jury.
- 9 A Steve was standing with his shirt off yelling
10 at -- it seemed like he was mad at Jason and
11 Jeremiah for something, and so he was just
12 yelling about that.
- 13 Q Where was everybody when you saw them, inside or
14 outside?
- 15 A Inside. Everybody was kind of standing around
16 seeing what was going on.
- 17 Q You said you heard Steve yelling things. Do you
18 remember what he was yelling initially?
- 19 A Huh-uh. (Indicating negative response.)
- 20 Q But you could hear him yelling?
- 21 A Yes, ma'am.
- 22 Q At some point did Steve go outside?
- 23 A Yes, ma'am. He was outside smoking a cigarette.
- 24 Q And did you go outside to talk to Steve?
- 25 A Yes, ma'am.

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 Q Why were you going outside to talk to Steve at
2 that point?

3 A I was just going to see what happened because I
4 wasn't really sure what happened. There was a
5 lot of people at first out there.

6 Q So you hadn't witnessed the incident between
7 Jason and Steve?

8 A No, ma'am.

9 Q Once you got outside -- this was right before
10 Steve Gillian left the party?

11 A Yes, ma'am.

12 Q You said you went and tried to talk to him?

13 A Yes, ma'am.

14 Q Did he make any statements to you about his
15 plans that night?

16 A Yes, ma'am. First, he was saying -- he kept
17 saying that him and Jason had been boys for six
18 years. First he said he wasn't going to do
19 anything. He wasn't going to hurt him.

20 Then randomly he kind of snapped and said
21 he was going to trick him into coming back to
22 his house. He popped his head in the door and
23 told him to come with him back to his house, and
24 Jason kept refusing. Then he told him -- do you
25 want me to keep going?

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 Q You can keep going on.

2 A Then I went inside and I told him not to go. I
3 told him what Steve had been saying. He was
4 kind of staring out. He didn't say anything,
5 and Steve just kept insisting that he come with
6 him. So he got mad and just picked up his beer
7 and went out the door with him.

8 Q Prior to you going in and telling Jason not to
9 go with him about what he was saying, did he say
10 anything about reading it in the newspaper?

11 A Yes, ma'am. He said, "You are going to hear
12 about this in the news tomorrow morning."

13 Q So while you were out trying to calm down Steve
14 Gillian, he first said he wasn't going to hurt
15 him?

16 A Yes, ma'am.

17 Q But then you said he kind of changed, and he
18 said he was going to trick him into going with
19 him?

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

22 Q That's when he went inside and wanted him to go
23 with him?

24 A Yes, ma'am.

25 Q That would be the same time that he -- what did

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 he say to you that you just said about the
2 newspaper?

3 A "You are going to hear about this in the
4 newspaper tomorrow morning."

5 Q And based on that conversation you had with
6 Steve Gillian, you were concerned enough to go
7 and try to warn Jason?

8 A Yes, ma'am.

9 Q But Jason --

10 A He wasn't even paying attention, I don't think.

11 Q When Steve was imploring him or trying to get
12 Jason to go with him, do you remember what he
13 was saying to Jason?

14 A He just kept saying, "Jason, come on. We're
15 boys. Let's just go back to my house and talk
16 about it." That was it.

17 Q And finally you said you saw Jason pick up his
18 beer?

19 A Uh-huh. (Indicating affirmative response.)

20 Q And he went out the door?

21 A Yes, ma'am.

22 Q And where was Steve at this point?

23 A He was outside waiting for him. Then I saw them
24 both pass by the window to leave.

25 Q Going in the direction that you would exit the

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 house?

2 A Yes, ma'am.

3 Q Was that out of the back of the house?

4 A Uh-huh. (Indicating affirmative response.)

5 Q Did you see anyone else walking off with the two
6 of them at that point?

7 A No.

8 Q Did you see either Jason or Steve again that
9 night or the next morning?

10 A No, ma'am.

11 Q Do you remember what Steve was wearing that
12 night?

13 A He had a red-hooded sweatshirt on and jeans, I
14 think.

15 Q A red-hooded sweatshirt. Did it have any kind
16 of distinctive markings on it?

17 A It had some weird kind of like markings on it
18 with black around the edges.

19 Q White with black on around it. I will show you
20 this that has been marked as State's Exhibit 19.
21 Is that the thing you are talking about, the
22 white mark with the black on it?

23 A It looked something like that, yes, it did.

24 Q Let me back up, too. Jeremiah, he had been
25 thrown out of the house; but he was allowed back

RACHEL ARMSTRONG -DIRECT- BY MS. CAMPBELL

1 in the house?

2 A I'm not sure.

3 Q But you were able to see him early the next
4 morning?

5 A Yes, ma'am, about 7:30.

6 Q And he was still at the house?

7 A Well, he had left and he came back. He was
8 sitting in the pool room in a chair when me and
9 Jessie walked in. He looked kind of banged up.
10 We asked him where he had been all night. He
11 said he slept outside.

12 Q You say he looked banged up, how banged up was
13 he?

14 A He had cuts all over his head, he had a black
15 eye, and a swollen lip.

16 MS. CAMPBELL: Beg the Court's indulgence.

17 (Pause.)

18 BY MS. CAMPBELL:

19 Q Let me get this straight. After you went inside
20 to talk to Jason, after talking to Steve
21 Gillian, you saw the two of them walking off
22 together off the back porch?

23 A Yes, ma'am.

24 Q And no one else?

25 A Nobody else.

RACHEL ARMSTRONG -CROSS- BY MS. MIMS

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

3 THE COURT: Cross.

4 MS. MIMS: Thank you, sir. May it please
5 the Court.

6 CROSS EXAMINATION

7 BY MS. MIMS:

8 Q A couple of questions. I just want to take you
9 back to Jeremiah in the beginning just to get a
10 picture of how belligerent he was at the time.
11 He was banging his head into the wall; is that
12 right?

13 A Uh-huh. (Indicating affirmative response.)

14 Q And at one point he actually broke the bed?

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

17 Q And was swinging a piece of it around?

18 A (Witness nods.) (Indicating affirmative
19 response.)

20 Q And the only reason he didn't really hit anybody
21 is because Kiah Stone stepped in?

22 A Uh-huh. (Indicating affirmative response.)

23 Q Is that right?

24 A (Witness nods.) (Indicating affirmative
25 response.)

RACHEL ARMSTRONG -CROSS- BY MS. MIMS

1 Q And took it away from him at that point?

2 A Yes, ma'am, from what I can remember.

3 Q I'm sorry?

4 A From what I can remember, yes, ma'am.

5 Q And that was the point when everybody said, "You
6 need to leave"?

7 A I think so.

8 Q And he was escorted out shortly thereafter?

9 A Yes.

10 Q And this is early in the morning? This is
11 earlier in the morning?

12 A Yes, ma'am.

13 Q Now, after the commotion when Jason and Steve
14 had come back to the house -- first, when they
15 came back, you were still upstairs; isn't that
16 right?

17 A Yes, ma'am.

18 Q And there was some commotion downstairs. You
19 came down after the commotion; is that right?

20 A Uh-huh. (Indicating affirmative response.)

21 Q You mentioned at some point Steven goes outside
22 onto the patio?

23 A (Witness nods.) (Indicating affirmative
24 response.)

25 Q You went out there as well?

RACHEL ARMSTRONG -CROSS- BY MS. MIMS

1 A (Witness nods.) (Indicating affirmative
2 response.)

3 Q That's when you heard him say, "I'm going to get
4 Jason to leave"?

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

7 Q How many people were out there at that time?

8 A Well, everyone was kind of out there talking to
9 him. When I came out there, everybody came back
10 inside. So it was just me and him and some
11 other guy that I'd never seen before.

12 Q At first there were a few people out there
13 standing there with him?

14 A Yes, ma'am.

15 Q And you mentioned at the end that Steven said,
16 "You are going to hear about this in the paper
17 tomorrow"?

18 A (Witness nods.) (Indicating affirmative
19 response.)

20 Q Was Jason outside with Steven at the time?

21 A No.

22 Q Your testimony is that Jason was not outside at
23 the time?

24 A Right, he was in the kitchen.

25 MS. MIMS: Beg the Court's indulgence.

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

1 (Pause.)

2 MS. MIMS: That's all.

3 THE COURT: Any redirect?

4 MS. CAMPBELL: No, sir.

5 THE COURT: You can step down. You are
6 free to stay if you like or you can go if you wish.

7 MS. CAMPBELL: Your Honor, may we approach?

8 THE COURT: Yes, ma'am.

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

12 MS. CAMPBELL: The State calls Zachary
13 Bogue.

14 ZACHARY BOGUE, being first
15 duly sworn, testified as follows:

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

18 THE WITNESS: Zach Bogue, Z-A-C-H,
19 B-O-G-U-E.

20 DIRECT EXAMINATION

21 BY MS. CAMPBELL:

22 Q You are going to have to talk a little bit
23 louder than that. Pull that microphone up a
24 little maybe. How old are you, Mr. Bogue?

25 A Thirty-six.

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

- 1 Q Where do you live?
- 2 A West Columbia.
- 3 Q Back in January of last year, did you live in
- 4 the Broad River Road area?
- 5 A Yes.
- 6 Q What do you do for a living?
- 7 A I'm a tennis pro.
- 8 Q You are a tennis pro?
- 9 A Yes.
- 10 Q Where do you give lessons or where do you teach?
- 11 A Saint Andrews Park and Lake Murray and private
- 12 courts.
- 13 Q How long have you been doing that, sir?
- 14 A Since about 18 years.
- 15 Q Did you know Jason Ward?
- 16 A Yes, ma'am.
- 17 Q Tell this jury how you knew Jason Ward.
- 18 A We were tennis partners. We used to play a lot
- 19 of tennis. We were roommates and good friends.
- 20 Q So Jason Ward was a pretty good tennis player?
- 21 A Very good, yes, ma'am.
- 22 Q You mentioned that you were roommates at one
- 23 point; is that correct?
- 24 A Yes.
- 25 Q When was that?

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

1 A Last year for about a month.

2 Q Was that January of last year?

3 A Yes, ma'am.

4 Q And tell this jury how y'all ended up rooming
5 together at the Suburban Lodge, I believe; is
6 that correct?

7 A Yes, ma'am. We were both looking for a place to
8 live. He had been living with some roommates
9 and had recently moved out, and we decided to
10 room together at the Suburban Lodge until maybe
11 we found an apartment or something.

12 Q So your intention was to stay at the Suburban
13 Lodge on a temporary basis until you could find
14 a suitable apartment?

15 A Yes, ma'am.

16 Q And, in fact, when all this happened, y'all had
17 been there, I believe, less than a month?

18 A Right.

19 Q That is a common practice at Suburban Lodge,
20 people stay there several months and move on to
21 something permanent?

22 A Yes, ma'am.

23 Q On what floor of the Suburban Lodge were y'all
24 staying back in January of last year?

25 A The second floor.

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

- 1 Q Let me turn your attention to the night of
2 January 27th. That was Super Bowl weekend.
- 3 A Yes, ma'am.
- 4 Q That Saturday night were you at y'all's room at
5 the Suburban Lodge?
- 6 A Yes, ma'am.
- 7 Q Do you remember the room number?
- 8 A No, ma'am.
- 9 Q It was on the second floor?
- 10 A Yes, ma'am.
- 11 Q And that night did you have an occasion to see
12 your roommate?
- 13 A Yes.
- 14 Q When was that?
- 15 A It was that night, probably between 11 and 12
16 that night.
- 17 Q And how do you know it was between 11 and 12?
- 18 A I was watching an Agassi tennis match. It
19 started around ten, 10:30 that night.
- 20 Q And you remember him coming in. Where had he
21 been earlier that night?
- 22 A At work.
- 23 Q When he came in that night, how was he dressed
24 when you saw him sometime between 11 and 12?
- 25 A He had on his clothes that he wears while

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

1 waiting tables.

2 Q That would be the Captain Tom's shirt?

3 A Captain Tom's uniform, yes, ma'am.

4 Q When he came in that night, did he stay very
5 long?

6 A No, he was in a big rush.

7 Q Did he even stop to take a shower or change his
8 clothes?

9 A No, ma'am. He did not take a shower, and he did
10 grab a shirt off the rack.

11 Q He did grab a shirt off the rack?

12 A Yes, ma'am.

13 Q Without going into it, did y'all have a
14 conversation?

15 A Yes.

16 Q You can't say what he said. Y'all had a
17 conversation about where he was going?

18 A Yes, ma'am.

19 Q And did you decide whether or not you wanted to
20 go with him?

21 A I decided I didn't.

22 Q But did you have another conversation about
23 plans for the next day?

24 A Yes, the next day we said --

25 Q You can't say what he said. I'm sorry. Those

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

- 1 are the rules. So then he grabbed his clothes
2 and left; is that correct?
- 3 A Yes, ma'am.
- 4 Q Did you see him anymore that night?
- 5 A No.
- 6 Q Were you in your room that night?
- 7 A Yes, all night.
- 8 Q And he never came home?
- 9 A No, ma'am.
- 10 Q Was that unusual?
- 11 A Yes, he had only stayed out before maybe once or
12 twice.
- 13 Q The next day, that afternoon, did you have
14 the occasion -- did the police find you?
- 15 A Yes, ma'am.
- 16 Q And where did that take place?
- 17 A I had taken my girlfriend to see the circus. On
18 my way to drive her back to her place, my car
19 was pulled over.
- 20 Q By the police?
- 21 A Yes.
- 22 Q At that point was that the first time you became
23 aware of what had happened to Jason?
- 24 A Yes, ma'am.
- 25 Q Did you go down and talk to them and cooperate

ZACH BOGUE -DIRECT- BY MS. CAMPBELL

1 with them at that point?

2 A Yes, ma'am.

3 Q Did you know who Jason was ultimately -- you
4 didn't know what he was doing that night
5 specifically, did you?

6 A No.

7 Q And the last time you saw Jason Ward alive was
8 sometime shortly before midnight?

9 A Yes, ma'am.

10 MS. CAMPBELL: Beg the Court's indulgence.

11 (Pause.)

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

14 THE COURT: Cross.

15 MS. MIMS: No cross, Your Honor.

16 THE COURT: You can step down. You are
17 free to go if you like or you can stay if you wish.

18 MS. CAMPBELL: Your Honor, may we approach?

19 THE COURT: Yes, ma'am.

20 (Whereupon there was a bench conference off
21 the record in the presence of the jury but out of the
22 hearing of the jury.)

23 THE COURT: Ladies and gentlemen, let's
24 take a short break at this point and give you a
25 chance to get in the jury room. While you are there,

1 be sure not to talk about the case. We will bring
2 you back out in just a few minutes.

3 (The jury retires to the jury room.)

4 THE COURT: The jury is secured. Anything
5 before we break, from the State?

6 MS. CAMPBELL: No, sir.

7 THE COURT: Anything from the defense?

8 MS. MIMS: No, sir.

9 THE COURT: We will take a few minutes. We
10 will stand in recess.

11 (Whereupon there was a recess.)

12 THE COURT: Counsel, we have received yet
13 another note from the jury. This one is from
14 Mr. Crutchfield, who is the foreman, indicating that
15 he knows the last witness, just refers to him as
16 Zach.

17 I think Mr. Bogue -- it says, "He used to
18 be a tennis pro at Lake Murray Water -- or something
19 like that -- where I was a member. I also know
20 Michael -- is that Durton, Durstein or something like
21 that -- who is not a witness but whose name was
22 mentioned as being there."

23 He says this would not interfere with his
24 deciding right from wrong. Do you want to follow
25 that up at all, from the State?

1 MR. MCMAHON: No, sir.

2 THE COURT: Defense?

3 (Pause.)

4 THE COURT: All right, Mrs. Mims Duke.

5 MS. MIMS: Yes, sir, Your Honor. I think
6 the problem is that if I had known this ahead of time
7 that he knew Mr. Bogue, who is a very good friend of
8 the victim's, I certainly would have struck him.

9 I think I do have a problem with him
10 knowing Mr. Bogue, considering what good friends
11 they were or what good friends he was with the
12 victim. I would just ask that an alternate be put
13 in for him.

14 THE COURT: I think I probably need to
15 conduct some questioning of him first. Mr. McMahon,
16 what is your position on that? I think that is
17 similar to the other juror, too, who used to work for
18 the Powpowski defense firm.

19 MR. MCMAHON: Mrs. Green?

20 THE COURT: Mrs. Green I think it was.

21 MR. MCMAHON: Judge, based on him notifying
22 the Court and based on his representations that it
23 would not affect his fairness and impartiality, I
24 think he is qualified to serve; however, we leave it
25 to the Court's discretion. Thank you.

1 THE COURT: Let me bring him in and just
2 ask him a few questions and see. Mr. Bailiff, would
3 you ask Mr. Crutchfield to come in, please, sir.

4 (The juror enters the courtroom.)

5 THE COURT: Mr. Crutchfield, have a seat,
6 please, sir. You sent a note a few minutes ago, I
7 believe, indicating that you know or you used to know
8 Mr. Bogue; is that correct.

9 JUROR: Yes, sir. He was a tennis coach
10 at a club I was a member of.

11 THE COURT: Did you know him personally or
12 have any dealings with him?

13 JUROR: No.

14 THE COURT: You knew he was there?

15 JUROR: He gave some lesson to my team as a
16 team maybe once or twice, but I never knew him
17 personally.

18 THE COURT: I gather you didn't have any
19 social relationship with him?

20 JUROR: No, none.

21 THE COURT: Those are the only times you
22 encountered him?

23 JUROR: Yes, sir.

24 THE COURT: Would that fact give you any
25 problems with giving both sides a fair trial in this

1 case?

2 JUROR: Not at all.

3 THE COURT: Would it tend to cause you to
4 believe Mr. Bogue's testimony above anyone else?

5 JUROR: No, sir.

6 THE COURT: By the fact you knew him?

7 JUROR: No, sir.

8 THE COURT: Let me ask if you will step
9 back to the jury room.

10 MS. MIMS: Your Honor, before he does that,
11 I also understand he has some knowledge of Michael
12 Durstein, if you would question him about that.

13 THE COURT: You said you knew Mr. Durstein?

14 JUROR: I know his parents. When I heard
15 the name Mike Durstein, he was never called to be a
16 witness; but I heard that name. I do know him. I
17 wanted y'all to know that.

18 THE COURT: How do you know his parents?

19 JUROR: I go to church with them. They are
20 in my Sunday school class.

21 THE COURT: Do you know him at church also?

22 JUROR: I have met him, but I have never
23 been with him socially.

24 THE COURT: Would that affect your ability
25 to give both sides a fair trial in this case?

1 JUROR: No, sir.

2 THE COURT: I guess I can't ask you if it
3 would cause you to believe him more because he is not
4 going to testify anyway.

5 JUROR: Right.

6 THE COURT: Let me ask you to step back to
7 the jury room just one minute, okay?

8 JUROR: Yes, sir.

9 (The juror leaves the courtroom.)

10 THE COURT: Anything else on it? It
11 appears that, one, Mr. Durstein was not a pivotal
12 player in all this. He knew Mr. Durstein obviously a
13 little better than he knew Mr. Bogue and indicated
14 that gave him no problem. His limited exposure to
15 Mr. Bogue apparently was not a problem either.

16 MS. MIMS: Yes, sir, we would still request
17 that the alternate be seated.

18 THE COURT: I note that and would deny the
19 motion. Given the way he has answered, I think it's
20 appropriate to allow him to stay on the jury.
21 Anything else?

22 MR. MCMAHON: Your Honor, perhaps just to
23 move along, our next series of witnesses will be
24 getting into the burglary on Old Chapin Road. I will
25 put up the officer that investigated the case for

1 Lexington County, to just very briefly go through
2 just parts of his investigation, so to speak.

3 Part of his investigation involved the
4 recovery of certain items of property that were
5 stolen from the Muller residence. Among those are
6 some coin books and some personal identifying papers
7 and the locations that they were found. I will have
8 him identify these items and where they were found
9 and such.

10 Also there was some items found in the
11 trash at a residence up off of Counts Ferry Road near
12 Old Hendrix Landing. In that trash can, they found a
13 box that had some .40-caliber rounds in it and found
14 some envelopes, all of the keys that we contend came
15 from the Wal-Mart on Harbison Boulevard.

16 We were going to get that out through this
17 officer. I have shown them all these items. They
18 have been in the custody of the Lexington County
19 Sheriff's Department. I have shown all these items
20 to the defense lawyers to review.

21 There is also a safe that was taken out of
22 that house at an earlier time by the Defendant and
23 another person. We do not intend to offer that safe,
24 but they have seen all those items that are in the
25 possession of the Sheriff's Department.

1 There is a coin book that we got out of his
2 great grandparents' house which is directly from
3 his -- the Defendant's great grandparents' house --
4 which is located directly behind his parents' house,
5 and he had some access in and out of their house.

6 We intend to offer that. I just thought it
7 may hasten things. I know they have objections
8 generally to the Lyle testimony, but that's my next
9 series of witnesses.

10 THE COURT: As I recall, were you not
11 proving -- or going into the burglary, and the only
12 other witness you would have as to the Defendant's
13 possession of the pistol was Mr. Page; is that
14 right?

15 MR. MCMAHON: Was what?

16 THE COURT: Mr. Page was the only other
17 witness?

18 MR. MCMAHON: Not the only one. I have all
19 the co-defendants in the burglary.

20 THE COURT: Okay.

21 MR. MCMAHON: I have one of the residents
22 of the house also testifying about the house being
23 burglarized obviously and items being stolen.

24 THE COURT: Yes, sir.

25 MR. MCMAHON: What was missing from the

1 safe and what those items are or were. I have
2 Mr. Page. I have Mr. Jessie Boot who is a
3 co-defendant in the burglary. I have Mr. Brandon
4 Cannon who is a co-defendant in the burglary. I have
5 Mr. David Grice who is a co-defendant in the
6 burglary.

7 As you say, Jeremiah Page. Also I have
8 Dustin Johnson who is a co-defendant in the burglary
9 and involved in the purchase of the ammunition from
10 the Wal-Mart on that Saturday the 27th.

11 THE COURT: Okay.

12 MR. MCMAHON: So two of the six
13 co-defendants in the burglary are involved in other
14 aspects of the case. Mr. Page is involved, of
15 course, in the party also; and Mr. Johnson is
16 involved in the purchase of the ammunition.

17 THE COURT: Anything else the defense wants
18 to put on the record about it?

19 MR. BUTLER: Yes, sir. Just because the
20 motion that we made in opposition was made, I guess,
21 in limine, I have been told that motions and rulings
22 in limine are not final. I just need to ask for a
23 final ruling from Your Honor relating back to our
24 position pretrial on the Lyle evidence.

25 That motion was made to exclude it all

1 based under Rule 404 (B), Rule 403 of the South
2 Carolina Rules of Evidence and State V. Lyle. If it
3 wasn't clear the first time, I would like to also
4 make an additional argument.

5 At some point even if the burglary comes
6 in, as Your Honor has ruled, at some point the
7 evidence becomes cumulative. My position earlier was
8 that he didn't need to get to the burglary at all to
9 get the gun with the Defendant.

10 Because Jeremiah Page, and I presume
11 others, could also say that the gun, with all the
12 necessary features would make it consistent with the
13 murder weapon from the State's point of view. They
14 could get all that evidence from Jeremiah Page.

15 If Your Honor is inclined to let in the
16 burglary as well, at some point that also becomes
17 cumulative. Every co-defendant is testifying as to
18 the same thing. So we would move to limit the
19 evidence of the burglary.

20 If Your Honor is inclined to let it in, as
21 you have previously ruled, I need a final ruling from
22 you on that.

23 THE COURT: Yes, sir, I understand. The
24 reason I asked all that is I wanted to note one
25 thing. That is, given the testimony I have heard up

1 to this point, particularly as to Mr. Page, before he
2 even gets to the witness stand, there are already
3 reasons to believe that there could be problems with
4 his credibility just by various versions of his
5 conduct on the evening of the events that have been
6 discussed.

7 Of course, he, as with any of
8 the-co-defendants, there are questions related to
9 them, too. So it is appropriate then for the State
10 to be able to -- I think it's even more appropriate
11 now from what I heard at the limine point -- for them
12 to be able to do so because of those problems. With
13 that in mind, again, I am going to allow the
14 testimony over objection to be introduced.

15 MR. BUTLER: If I could add one other
16 thing. Our objection is to all testimony and all
17 items of evidence that will be introduced. That's a
18 running objection throughout all the testimony. I
19 believe that the State has agreed that that issue is
20 preserved, and we have not waived that issue as long
21 as we have done it as we have done it.

22 THE COURT: Yes, sir, that is my
23 understanding. Is that your understanding,
24 Mr. McMahan?

25 MR. MCMAHON: Yes, sir. Could I get these

1 marked now, and we will know what they object to.

2 THE COURT: Yes, sir.

3 MR. MCMAHON: That's the reason I brought
4 it up now.

5 THE COURT: Let her do that.

6 (State's Exhibit Number 28 through 32,
7 photographs; Number 33, bag containing papers and
8 other items; Number 34, bag containing coin holder
9 and books; Number 35, box containing key holders and
10 ammunition; Number 36, coin magazine; Number 37 and
11 38, photographs, are received into evidence.)

12 MR. MCMAHON: Twenty-eight through 38 are
13 marked. I believe as to the last two, I think 37 and
14 38, I don't think they have any objections to them
15 anyway. That's the Defendant's house and his great
16 grandparents' house. I think the others would go
17 into the heart of the burglary. That's all I have,
18 Your Honor.

19 THE COURT: Do you have any objection,
20 Mrs. Duke Mims, to any of the particular exhibits?

21 MS. MIMS: Just subject to the previous
22 objection, Your Honor.

23 THE COURT: We note that. Are we ready to
24 bring the jury in? Is the State ready?

25 MR. MCMAHON: Yes, sir, the State is ready.

1 THE COURT: Is the defense ready?

2 MS. MIMS: Yes, sir.

3 THE COURT: Let's bring the jury in,
4 please. Counsel, do you want me to give the jury an
5 instruction, a special instruction, on this evidence
6 that is coming in?

7 MR. BUTLER: Yes, sir. I guess I should
8 also say that we would request an instruction, but
9 also that would not cure whatever prejudice that the
10 evidence has.

11 MR. MCMAHON: What instruction? I don't
12 mean to interrupt.

13 THE COURT: As you know on any of this, we
14 are required by the Supreme Court to give a limiting
15 instruction as to -- hold the jury back one second.
16 They can wait in the hall. This won't take but a
17 second.

18 As you know, the limiting instruction is to
19 the effect that this can be considered only for
20 limited purposes as related to the issue of intent as
21 allowed in the rules and that they cannot consider it
22 simply to decide the character of the Defendant in
23 this case.

24 MR. MCMAHON: Judge, I take it that is
25 under Timmons and other cases that go back.

1 THE COURT: We learned a big lesson in
2 Timmons.

3 MR. MCMAHON: Yes, sir, I did it.

4 THE COURT: And I did it.

5 MR. MCMAHON: But now it's only limited to
6 where it can't be used for character; but they could
7 use it circumstantially, not only for intent but for
8 identity.

9 THE COURT: Yes, sir.

10 MR. MCMAHON: Do you give a charge such as
11 that?

12 THE COURT: That's normally what I do. I
13 specify what it's limited to; but particularly I, of
14 course, let them know it's not presented to show any
15 aspect of Mr. Gillian's character.

16 MR. MCMAHON: All right, sir.

17 THE COURT: Any exception to that charge?

18 MR. BUTLER: I guess the only thing I would
19 add is from that they can't infer because he is
20 accused of other crimes that he must also be guilty
21 of this crime.

22 THE COURT: Certainly.

23 MR. BUTLER: That's a prohibited inference.
24 Again, just so it's clear for the record our position
25 is that that evidence is prejudicial nonetheless and

1 that no instruction would cure the prejudice.

2 THE COURT: I understand.

3 MR. MCMAHON: My concern is -- and I maybe
4 overthinking this late in the day -- is that they
5 can use the evidence from the burglary to
6 circumstantially infer that he is the perpetrator of
7 the homicide because it places inferentially the
8 murder weapon in his hands 40 hours before the
9 homicide.

10 THE COURT: Yes, sir.

11 MR. MCMAHON: You see the point I am
12 making? I am sure your charge adequately covers
13 that. I just want to make sure. And I understand
14 they can't say, "Just because you are a burglar, you
15 are a murderer. But if you a burglar with a murder
16 weapon, it smells pretty bad for you," is kind of the
17 point I want to make.

18 THE COURT: Yes, sir.

19 MR. MCMAHON: Thank you, judge.

20 THE COURT: Anything else on that?

21 MR. BUTLER: No, sir.

22 THE COURT: Let's bring them in, please.

23 (The jury returns to the courtroom.)

24 THE COURT: Ladies and gentlemen, you are
25 going to hear some testimony at this time that is

1 going to in essence accuse -- and it's up to you
2 obviously to decide whether or not it's proven -- but
3 to accuse the Defendant of participation in what is
4 called a prior bad act, in other words, another
5 offense that accuses him of a burglary two days
6 before the allegations in this offense.

7 I want to be sure you understand that is
8 allowed to be introduced only for a limited purpose.
9 That limited purpose is done to prove identity, and
10 it's done to prove intent. It can only be considered
11 for those purposes.

12 From that you cannot consider this as
13 having any reflection on the character of
14 Mr. Gillian, nor can you use it to say or to infer
15 that because he may have done a burglary two days
16 before, that he also did this.

17 You cannot tie them together in that sense.
18 It can be used only to prove again identity and to
19 prove intent. You may use it to circumstantially
20 infer that he committed this offense if you find that
21 it proves identity or proves intent but certainly not
22 to show his character and not to just infer that he
23 may have done this because he did something else.

24 Any exception to that charge from the
25 State?

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1 MR. MCMAHON: No, Your Honor.

2 THE COURT: From the defense?

3 MR. BUTLER: No, sir.

4 THE COURT: Go ahead.

5 MR. MCMAHON: The State calls Kevin
6 Collins.

7 KEVIN L. COLLINS, being
8 first duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MR. MCMAHON:

11 Q Would you introduce yourself to the jury,
12 please, sir.

13 A Yes. My name is Kevin L. Collins. I'm a
14 detective with the Lexington County Sheriff's
15 Department.

16 Q How do you spell your last name, Mr. Collins?

17 A C-O-L-L-I-N-S.

18 Q How many years of law enforcement experience do
19 you have, Detective Collins?

20 A Twelve.

21 Q And those 12 years, where is that spent? And
22 what were your positions and duties during that
23 period of time?

24 A The first approximately eight years I was with
25 the City of Columbia Police Department. I

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1 worked on the street as a street officer and
2 also on the S.W.A.T. team. Part of the time I
3 also worked as an investigator part-time filling
4 in on evening shift, night shift, as a
5 detective.

6 Then I was with Lexington County for four
7 years. For the first approximately two years at
8 Lexington County, I was a resident deputy
9 responsible for answering calls as well as
10 investigations in uniform in the Lexington part
11 of Lexington County. For the past approximately
12 two years, I have been a detective.

13 Q As part of your duties and responsibilities as a
14 detective with the Lexington County Sheriff's
15 Department, did you have an occasion to
16 investigate a burglary which occurred in y'all's
17 county on January 26th of 2001?

18 A Yes, I did.

19 Q And in what location did this burglary occur?

20 A It was [REDACTED].

21 Q That is located in Lexington County; is that
22 correct?

23 A That is in Lexington County.

24 Q What type of building or residence is that? Is
25 that a private residence, [REDACTED]?

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1 A It is a private residence down toward the end of
2 Old Chapin Road on the lake.

3 Q And what is the name of the family that resides
4 at that location?

5 A The Muller family.

6 Q What was the date and the time, beginning and
7 ending, that this burglary occurred at that
8 location, Detective Collins?

9 A Initially it was reported to have happened
10 between 8:40 in the morning and 4:45 in the
11 afternoon on January the 26th.

12 Q I want to show you a photograph, State's Exhibit
13 Number 28, and ask you if you can identify this
14 photograph for us, please.

15 A Yes, that's the Muller house.

16 Q This is the Muller residence?

17 A Yes, it is.

18 Q Located on Old Chapin Road?

19 A Yes.

20 Q And prior to --

21 MR. MCMAHON: May I publish this to the
22 jury, Your Honor?

23 THE COURT: Yes, sir.

24 BY MR. MCMAHON:

25 Q Prior to today, Detective Collins, you had the

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1 opportunity to review what is now marked as
2 State's Exhibit Number 1; is that correct?

3 A Yes, I have reviewed the map.

4 MR. MCMAHON: Your Honor, may the witness
5 step down for a moment?

6 THE COURT: Yes, sir. Officer Collins, be
7 sure just to keep your voice up so the court reporter
8 can take down what you say. If you would go to that
9 side (indicating) and face in this direction
10 (indicating), please.

11 THE WITNESS: Yes, sir.

12 THE COURT: Thank you, sir.

13 BY MR. MCMAHON:

14 Q Could you point out for me, Officer Collins, if
15 you would -- this being parts of Richland and
16 parts of Lexington County -- of course, this
17 (indicating) being the Town of Lexington. Could
18 you point out for us where approximately the
19 1400 block of Old Chapin Road is.

20 A This is Old Chapin Road here (indicating) going
21 down to the point. The Muller house, as you are
22 going toward the lake, would be on the left side
23 down near the end.

24 Q It's actually on the lake, on the water; is that
25 correct?

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1 A Yes, it is.

2 Q And all this blue obviously in here (indicating)
3 represents Lake Murray?

4 A Yes.

5 Q You can retake the stand. I will get you to get
6 back down and show some more places on the map
7 in a little bit, but I just wanted to get that
8 straight.

9 A (Witness resumes the witness stand.)

10 Q When you were assigned to investigate this
11 incident, were items reported stolen from this
12 burglary?

13 A Yes.

14 Q And generally what were those items?

15 A As listed on the original report, there was a
16 firearm, which was a revolver; a collection of
17 sterling silverware estimated to be about \$2,000
18 worth; a safe that was taken; a coin collection
19 estimated to be worth about \$30,000; jewelry
20 estimated to be worth about \$9,500; and a
21 videotape.

22 Q A videotape. Did the house have a security
23 system that recorded movement in the house?

24 A Yes, it did. That's the tape that was taken.
25 It was from the security video machine.

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1 Q Were you assigned to follow up on this
2 investigation from the day it happened on
3 January 26th?

4 A I received the report on the 27th.

5 Q On the next day, on that Saturday the 27th?

6 A Yes.

7 Q And that is when you began your investigation?

8 A Yes. I contacted Mrs. Muller by phone that day.

9 Q Now, did you remain involved in the
10 investigation and did you receive any contact
11 from another law enforcement agency in regards
12 to this case on Monday the 29th of January of
13 2001?

14 A Yes, I did, from the Richland County Sheriff's
15 Department.

16 Q And as a result of that, did you become involved
17 with both Richland County and following up on
18 that burglary and certain individuals that may
19 have been responsible for committing this
20 burglary?

21 A Yes, I did.

22 Q Who was the first individual that you talked
23 with, that you discussed this burglary with,
24 Detective Collins? Individual, not officer.

25 A That would have been Jeremiah Page.

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1 Q And when did you first talk to Jeremiah Page?

2 A That was on the 29th.

3 Q And did you take a statement from him at that
4 time?

5 A Yes, I did.

6 Q Had he been cooperating with Richland County to
7 your knowledge?

8 A Yes, he had been talking to them and had
9 provided a statement to them.

10 Q As a result of Richland County contacting you
11 and you interviewing Mr. Page, did Mr. Page then
12 cooperate with you as far as this burglary is
13 concerned?

14 A Yes, he did.

15 Q And that began on January 29th?

16 A Yes, sir.

17 Q As a result of that, did you go to any
18 particular locations and assist or were items
19 recovered from particular locations in Lexington
20 County in regards to this burglary?

21 A Yes, sir.

22 Q I want to show you what has previously been
23 marked State's 33. Could you look at those
24 items and tell us if you can identify them for
25 us, please.

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1 A Yes, I can.

2 Q What are those items and where were they
3 recovered?

4 A These were recovered in an overgrown, weedy,
5 wooded area off of Systems Lane in the Irmo
6 area. It runs off of Weed Drive.

7 Q Systems Lane runs off of Weed Drive in Irmo?

8 A Yes, sir.

9 Q And how far is -- when you say runs off of it, I
10 take it that Systems Lane actually intersects
11 with Weed Drive?

12 A Yes, it does.

13 Q How far is the intersection of -- are you
14 familiar with the Defendant in this case, Steve
15 Gillian?

16 A Yes, I am.

17 Q Do you know where his parents' residence was?

18 A Yes, sir.

19 Q Where was his parents' residence located at?

20 A On Weed Drive, at the corner of Weed and
21 Innsbruck.

22 Q And how far is the corner of Weed and Innsbruck
23 from the intersection of Weed and Systems Lane?

24 A I don't know in terms of distance but the
25 equivalent of several blocks. It's not very

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1 far.

2 Q And if I show you a photograph, State's Exhibit
3 37, what is this a photograph of?

4 A That's the Gillian house on Weed Drive.

5 Q And this (indicating) would be Weed Drive?

6 A In the foreground of the picture.

7 Q And where would Innsbruck be?

8 A Innsbruck, as you look at that picture, would be
9 to your right, to the right of that house.

10 Q And do you see a house in the background of this
11 picture, so to speak?

12 A I do. You can see the white end of it between
13 the two trees.

14 Q If I show you State's 38, is that a picture of
15 the house you see in the background of 37?

16 A Yes, it is.

17 Q And whose house is that on Innsbruck?

18 A That is the home of the Defendant's great
19 grandparents.

20 Q So his parents live on the corner of Weed and
21 Innsbruck?

22 A Yes.

23 Q And his great grandparents live at the first
24 house on the left as you go down Innsbruck from
25 Weed; is that correct?

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1 A Yes, the yards actually adjoin each other.

2 Q Now, these items you found on Systems Lane, that
3 were located on Systems Lane that you have
4 identified for us, are there names on some of
5 these items?

6 A Yes, there certainly are.

7 Q What name is that?

8 A This one is William M. Muller, Mr. William
9 Muller.

10 Q Does that appear to be instructions for some
11 type of lock?

12 A Yes, for a safe actually, the owner's manual,
13 operating instructions for the safe.

14 Q And all of these appear to be what I would call
15 self identifying items to Mr. William M. Muller?

16 A Yes.

17 Q And Gail J. Muller as a matter of fact on this
18 one (indicating)?

19 A Yes.

20 Q Now, the lady that initially reported this
21 burglary, what was her name?

22 A Nancy Muller.

23 Q Is that Mr. Muller's present wife?

24 A Yes, it is.

25 Q As far as you know. And Sandra Gail, that was

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1 his marriage license to Sandra Gail, his former
2 wife?

3 A Yes, that was in these items found off Systems
4 also.

5 Q These were just out in a weeded area off of
6 Systems Lane off of Weed Drive?

7 A Correct.

8 Q Now, were personal items such as that reported
9 stolen in the burglary?

10 A There was, as I mentioned, a safe that was
11 reported stolen; and those were the type of
12 items that one could keep located in a small
13 personal safe like that, paperwork.

14 Q Additionally, I want to show you State's
15 Exhibit Number 34 and ask you if you can
16 identify these items and where these items
17 were recovered from.

18 A Yes. These are coin catalogs and coin folders,
19 basically coin collector items, folders with
20 spaces to put coins of various denominations
21 into them. All the coins have been removed.
22 These were found scattered along the roadside as
23 if thrown from a car.

24 Q What road?

25 A On Irmo Drive.

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1 Q Where is Irmo Drive in relationship to Systems
2 Lane and Weed Drive?

3 A Irmo Drive runs more or less parallel to Weed
4 Drive. If you turn off of Irmo Drive onto
5 Systems Lane -- which Systems Lane is just a
6 little dirt road. It's not really much of a
7 road. The others are paved roads and get a fair
8 amount of traffic.

9 Systems Lane is just a dirt road with wood
10 and brush on both sides. If you follow it
11 through several hundred yards, I would say, it
12 comes into the back of a neighborhood, a
13 subdivision. You can go through that
14 subdivision and come out on Irmo Drive in the
15 vicinity of where these things were found.

16 Q Were y'all assisted by anyone in the recovery of
17 these items?

18 A Yes. There was a lady who lives on Irmo Drive
19 who talked to us about these things and helped
20 us to locate them where they had been found.

21 Q Now, I want to ask you a couple of other
22 things. Were you able, as part of your
23 investigation, to determine any connection
24 between the Defendant in this case, Steve
25 Gillian, and the Muller residence or any member

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1 of the Muller family?

2 A Yes. It was my understanding from
3 Mrs. Muller --

4 MS. MIMS: Objection, Your Honor, to
5 hearsay.

6 THE COURT: Sustained.

7 BY MR. MCMAHON:

8 Q Officer, additionally, did y'all search other
9 areas in regards to this burglary?

10 A Yes, we did.

11 Q And did you search a location up on the lake? I
12 will show you a photograph, State's Exhibit
13 Number 32. Do you recognize that photograph?

14 A Yes, I do.

15 Q Whose residence is that?

16 A That's the Cipkala residence. It's on Rocky
17 Cove Road. It's on the lake.

18 Q Do you know what Mrs. Cipkala's occupation is?

19 A I believe she owns All My Children. It's a
20 children's consignment store.

21 Q Are you aware of any of her employees who may or
22 may not work at All My Children consignment
23 store?

24 A I know that the Defendant's brother Clint was
25 employed at All My Children, and I believe the

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1 Defendant was also.

2 Q The Defendant's brother Clint and you believe
3 the Defendant was employed at All My Children
4 consignment store?

5 A I believe so.

6 Q Where is that consignment store located at,
7 Detective Collins?

8 A I believe it's on Bush River Road. I would have
9 to look at a map. It's in Irmo right beside the
10 shopping center.

11 Q Where the Kroger is at?

12 A Where the Kroger and Kentucky Fried Chicken,
13 K.F.C.

14 Q Highway 60, would that be right?

15 A Yes, I believe so.

16 Q You weren't a resident deputy in Irmo?

17 A That wasn't my area.

18 Q Y'all had an opportunity to search the area of
19 the Cipkala residence up on Rocky Cove?

20 A Yes.

21 Q Is that also on the lake?

22 A Yes, it is.

23 Q And did y'all recover certain items from that
24 area of the Cipkala residence?

25 A Yes, we did.

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1 Q I want to show you what has previously been
2 marked as State's Exhibit Number 35. Do you
3 recognize these items here?

4 A Yes, I do.

5 Q And first off, what is this?

6 A This is a box that ammunition came in,
7 .40-caliber, .40 Smith and Wesson ammo for a
8 pistol.

9 Q And, Detective, I will take out -- I keep
10 getting this powder on my hands -- what is this
11 powder?

12 A That is the fingerprint dust from these being
13 processed.

14 Q These items were processed by y'all's forensic
15 laboratory to determine if you could recover any
16 prints off of them?

17 A Yes, they were.

18 Q And was there any success in that to your
19 knowledge?

20 A I have to check my notes. But to my memory, I
21 don't think we did successfully lift any prints.

22 Q What are these items?

23 A Those are key tags from the purchase of new keys
24 when you have keys cut. The keys are numbered
25 for the blanks, and the blank keys are attached

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 to those cards.

2 The key cutter at the store determines
3 which blank you need to copy your particular
4 key. It pulls that blank from the rack and cuts
5 your key. They usually give these with the key
6 that you buy at Wal-Mart.

7 Q Let me make sure. I think there just appears to
8 be five. I don't see any others in there; is
9 that right?

10 A Yes, I believe that is all.

11 Q Does the name of the business appear on there?

12 A Yes, Wal-Mart.

13 Q Wal-Mart. And where were these envelopes or
14 sleeves for the keys from Wal-Mart, where were
15 these found?

16 A They were in a trash can beside the Cipkala
17 house. That's also where the .40-caliber ammo
18 box was found in an otherwise empty trash can.

19 MR. MCMAHON: Your Honor, I would be glad
20 to hand this around; but it's got fingerprint powder
21 all over it.

22 THE COURT: Certainly. It's not necessary.

23 BY MR. MCMAHON:

24 Q Did y'all ever recover a .38-caliber taken from
25 the burglary?

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 A No, we didn't.

2 Q Or any weapon taken from the burglary?

3 A No, we didn't.

4 Q Now, additionally, did y'all have the
5 opportunity on, I think, the 30th to search the
6 Weed Drive residence, the parents' of Steve
7 Gillian?

8 A Yes.

9 Q I want to show you another item, State's Exhibit
10 Number 36. Can you identify this item for us,
11 please.

12 A Yes.

13 Q What is that item?

14 A This is a Coin Age magazine, coin collector's
15 magazine. It was located in the Innsbruck
16 house, the Defendant's grandparents' house, in
17 the bedroom of his cousin, Tyler Gillian.

18 Q So it was not in -- it was not in the house on
19 Weed Drive, it was in the house in the
20 background, State's Exhibit Number --

21 A Yes.

22 Q I hid it from myself. Which house was it in,
23 between 37 and 38?

24 A The one in your left hand.

25 Q This house (indicating)?

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

- 1 A Yes.
- 2 Q That's where that item came from?
- 3 A Yes.
- 4 Q Mr. Collins, besides Jeremiah Page -- was
- 5 Jeremiah Page charged with a crime?
- 6 A Yes, he was.
- 7 Q What crime was he charged with?
- 8 A First degree burglary.
- 9 Q And first degree burglary based on the entry
- 10 into what house?
- 11 A The Muller house on Old Chapin Road.
- 12 Q Were there other individuals charged with the
- 13 burglary of that residence on January 26th?
- 14 A Yes, there were.
- 15 Q And what other individuals?
- 16 A Steven Gillian, David Grice, Brandon Cannon,
- 17 Dustin Johnson, and Jessie Boot.
- 18 Q Did he give you a statement, Mr. Page, and
- 19 cooperate?
- 20 A Yes, he did.
- 21 Q Did Mr. Grice, Cannon, Johnson and Boot
- 22 cooperate?
- 23 A Yes.
- 24 Q All of those are charged and Mr. Gillian with
- 25 burglary in the first degree?

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 A Yes.

2 Q Additionally, did you have the opportunity to
3 take into y'all's custody tapes, videotapes,
4 from the Wal-Mart on Harbison Boulevard?

5 A Yes.

6 Q And those tapes covered the period of the 26th
7 and the 27th of January of 2001?

8 A Yes.

9 Q And those have been in evidence, either your
10 custody or custody of the Richland County
11 Sheriff's Department, since you took them into
12 your possession?

13 A Yes.

14 Q Back during the investigation of this crime?

15 A Yes.

16 Q And why did you take them into your possession?

17 A Because the statements that I received indicated
18 that they had gone, the Defendants had gone, to
19 that Wal-Mart to get keys cut to the Muller
20 residence. So they were taken in order to
21 search for evidence of that.

22 Q And, Detective Collins -- with Your Honor's
23 permission -- if you step down for me just a few
24 more minutes.

25 A (Witness leaves the witness stand.)

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

- 1 Q Can you point out on here for me these various
2 locations. Let's start with Weed Drive and
3 Innsbruck. Does that appear on here?
- 4 A Yes, this (indicating) is Weed Drive. This
5 (indicating) is Highway 6, sometimes known as
6 North Lake, going up toward Chapin and going
7 toward the dam in this direction (indicating).
- 8 Q This would be the dam here (indicating)?
- 9 A This would be the dam here (indicating).
- 10 Q This (indicating) would be up towards
11 Ballentine?
- 12 A Ballentine, up there. So that's (indicating)
13 Highway 6. This is Weed Drive right here
14 (indicating). Innsbruck runs off of Weed Drive
15 over to Highway 6.
- 16 Q And the house we saw in the picture on State's
17 37 is the house at the intersection of Weed
18 Drive and Innsbruck?
- 19 A Yes.
- 20 Q That house (indicating). Then 38 is the first
21 house on the left on Innsbruck, correct?
- 22 A Yes.
- 23 Q Approximately where would Systems Lane be on
24 Irmo drive?
- 25 A Systems Lane is not on the map, but it runs off

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 of Weed Drive. It intersects with Weed Drive
2 somewhere in here (indicating). It's between
3 Highway 60 and Innsbruck and runs off this
4 direction (indicating) toward Irmo Drive, which
5 is also not on the map.

6 Q Systems Lane is where you located some of these
7 assorted self identifying papers of William
8 Muller; is that correct?

9 A That's correct.

10 Q Would you place this (indicating) on the map in
11 that general area where these assorted papers
12 would have been located.

13 A (Witness complies.) Right in there
14 (indicating).

15 Q And that's these items here, State's 33?

16 A Yes, those items.

17 Q Now, you talked about these other items, for
18 example, the various coin booklets and such in
19 State's 34, these items here (indicating)?

20 A Yes.

21 Q And they were found on Irmo Drive. Could you
22 point out approximately where Irmo Drive would
23 be.

24 A Irmo Drive runs between Highway 60 and 6
25 (indicating), as I said, roughly parallel with

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 Weed Drive, somewhere in here (indicating).

2 Q Would you place these tabs on there in the
3 general location of where those items were
4 found.

5 A (Witness complies.) The coin books were
6 generally over here (indicating) on Weed. Is
7 this about the coin magazine?

8 Q Yes, sir. I will talk to you about that in just
9 a minute.

10 A Okay.

11 Q So that's the coin books there?

12 A Yes. Folders, I guess, would be another name
13 for them.

14 Q Next was the coin magazine. Where was that
15 recovered?

16 A That was from the Defendant's great
17 grandparents' house on Innsbruck. That would
18 be -- this maybe will cover everything up, but
19 roughly right in there (indicating).

20 Q Additionally, you found these key tabs and the
21 box with the .40-caliber ammunition at whose
22 residence?

23 A At the Cipkala residence on Rocky Cove Road.

24 Q That is this residence here (indicating),
25 State's 32?

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 A Yes, it is.

2 Q Point out for us if you would back up to Old
3 Chapin Road.

4 A That would be going across the dam and back over
5 here (indicating) to the Old Chapin Road
6 residence. If you come back up old Chapin to
7 Old Cherokee, you can take it all the way out to
8 Highway 378 and just down a little ways to
9 Counts Ferry.

10 Rocky Cove is in here (indicating) off of
11 Counts Ferry also on the lake, about where that
12 arrow head is would be where the Cipkala
13 residence is.

14 Q Now, there was an ammo box recovered there?

15 A Yes, in the trash can.

16 Q Would you place that in that general area where
17 that ammo box was. That's what I am showing now
18 from State's Exhibit 35; is that correct?

19 A Yes, that's it, and the foam packing material
20 from inside of it.

21 Q That's the box and that's the packing?

22 A Correct.

23 Q Additionally, the five key tabs that we went
24 through?

25 A The same place.

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 Q And, again, would you place that in that area.

2 A (Witness complies.) I will just stick it beside
3 that one.

4 Q A couple more quick questions. You have
5 oriented us to the map. I noticed on my map Old
6 Chapin Road, at the intersection of Old Chapin
7 and Old Cherokee, can you point that out for us,
8 please.

9 A Old Chapin and Old Cherokee intersect right
10 there (indicating).

11 Q Does Old Chapin actually come right on back into
12 Lexington?

13 A Yes, it does. It would come in right about here
14 (indicating). That's where the Rush's is, where
15 Hites used to be.

16 Q Yes, sir.

17 A Right in there. It's an Eckerd's now.

18 Q So it comes right straight on into Lexington?

19 A Right.

20 Q Is there any business located at the
21 intersection of Old Chapin and Old Cherokee?

22 A There is a convenience store, gas station right
23 there at that intersection.

24 Q Let me show you a photograph. Do you recognize
25 that as that Shell Station on Old Chapin and Old

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 Cherokee?

2 A Yes, That's the one.

3 Q And that's State's Exhibit Number 30?

4 A Yes. That is a picture taken from roughly at
5 the station looking out toward the gas islands.

6 Q Most stations, as you can see in this one, have
7 pay phones out there?

8 A Yes.

9 Q That's what that appears to there (indicating)?

10 A It certainly does.

11 Q Between Old Chapin and Old Cherokee and the
12 Muller residence, okay, is there any business
13 located down here on the left before you get to
14 the Muller residence?

15 A Eddie Ho's Bistro. It used to be known as --
16 sorry, I forgot the name of what it used to be.
17 But, yes, that is Eddie Ho's.

18 Q That is State's 31?

19 A Yes.

20 Q And does the name B.B.'s ring a bell?

21 A B.B.'s is what it used to be. I think it had
22 just fairly recently turned into Eddie Ho's
23 Bistro at this time.

24 Q That is the same building. What side of Old
25 Chapin Road is B.B.'s located on, Detective

KEVIN COLLINS -DIRECT- BY MR. MCMAHON

1 Collins, as you go from the Shell Station to the
2 Muller residence?

3 A It would be on your left.

4 Q On your left. Just one final question since you
5 can orient us to it. Do you recognize this
6 photograph, State's 29?

7 A Yes.

8 Q What is that?

9 A Gilligan's restaurant in Lexington on Highway 6.

10 Q That would be where it's marked in here
11 (indicating), Gilligan's?

12 A Yes.

13 Q Now, is there a theater anywhere around
14 Gilligan's?

15 A More or less across the street from it is Past
16 Time Pavilion movie theater.

17 Q How would you go from Gilligan's restaurant to
18 the Old Chapin Road residence?

19 A Actually I put Gilligan's -- that's right. The
20 easiest way would be to take a right out of the
21 parking lot, straight down the hill to the
22 intersection of North Lake and Old Cherokee, and
23 Old Cherokee up to the intersection where that
24 gas station is and veer to the right on Old
25 Chapin and straight out.

KEVIN COLLINS -CROSS- BY MS. MIMS

1 Q Thank you. I don't have any further questions.
2 You can retake the stand.

3 A (Witness resumes the witness stand.)

4 Q Answer any questions the defense lawyer may
5 have.

6 THE COURT: Cross.

7 MS. MIMS: Thank you, Your Honor.

8 CROSS EXAMINATION

9 BY MS. MIMS:

10 Q Hi, Investigator Collins.

11 A Hi.

12 Q You met with Investigator Stan Smith and
13 Investigator Ewing and Jeremiah Page, I think,
14 on January 29th last year. Do you remember that
15 meeting?

16 A Yes, I do. I was just trying to make sure we
17 had the date right.

18 Q And during that time you were able to talk to
19 Jeremiah Page?

20 A Yes.

21 Q And he gave a statement, in fact, I think during
22 that time when he was there on that day with you
23 guys?

24 A Yes.

25 Q And he told you a little bit about -- he told

KEVIN COLLINS -CROSS- BY MS. MIMS

- 1 you a lot about who was involved in the
2 burglary?
- 3 A Yes.
- 4 Q On Old Chapin Road?
- 5 A Yes, he did.
- 6 Q And after giving a statement -- I don't know if
7 it was on that day, but I think it was -- he was
8 arrested for burglary in the first degree?
- 9 A Yes.
- 10 Q And he was taken to the Lexington County jail?
- 11 A That's correct.
- 12 Q And he had given you some names. I mean, quite
13 frankly, when he first talked to you, he had
14 given you this name (indicating); and he had
15 given you, I think, Dustin. He told you two
16 others were involved, but he didn't know their
17 names. Isn't that right, at first?
- 18 A Several others, yeah. He did not have all the
19 names right at first.
- 20 Q The first time he just kind of laid out a couple
21 of names and said, "I'm not sure of everybody
22 else"?
- 23 A (Witness nods.) (Indicating affirmative
24 response.)
- 25 Q At that point somewhere thereafter, he was

KEVIN COLLINS -CROSS- BY MS. MIMS

1 transported to the Lexington County jail; is
2 that right?

3 A Yes.

4 Q And shortly thereafter his mother, I think,
5 called you or called another investigator
6 saying, "Oops, Jeremiah does know the other
7 names"?

8 A Uh-huh. (Indicating affirmative response.)

9 Q Do you recall that?

10 A (Witness nods.) (Indicating affirmative
11 response.)

12 Q And at that point he came forward with everyone
13 else's name?

14 A I would have to check my notes on which ones,
15 but I believe it was all the rest of them at
16 that time.

17 Q He was able to give you more information at that
18 point?

19 A Yes.

20 Q Once he was incarcerated?

21 A That's correct.

22 Q And after he was incarcerated, you mentioned
23 also that you took him out of jail or that there
24 was some arrangement worked out where he was
25 able to make a bond and get out of jail so that

KEVIN COLLINS -CROSS- BY MS. MIMS

1 he could help out with the burglary?

2 A Yes, although initially he was just signed out.

3 He was still in custody but just signed out.

4 Q So at one point he was just signed out, but he
5 did assist with the burglary?

6 A Yes.

7 Q And went back to jail?

8 A (Witness nods.) (Indicating affirmative
9 response.)

10 Q And then I think there was some type of
11 conversation with his attorney, and he was taken
12 to bond court; is that right?

13 A As I recall. I didn't get directly involved in
14 the bond issues.

15 Q But he did make bail --

16 A Yes.

17 Q -- at some point. Let me ask you this as well.

18 I don't think it's on the map that was just
19 shown. Are you familiar with where Jeremiah
20 Page lives?

21 A Yes.

22 Q And I don't think it's on here, but can you tell
23 us sort of the vicinity of where his house would
24 be located on this map?

25 A (Witness leaves the witness stand.) Over near

KEVIN COLLINS -CROSS- BY MS. MIMS

1 where the coin books were found. If you go from
2 Systems over to Irmo Drive, where Irmo Drive
3 cuts through here (indicating), it's a
4 subdivision off of Irmo Drive.

5 Q Off of Irmo Drive?

6 A Yes.

7 Q Right by where the coin books was found?

8 A In the general vicinity.

9 Q Is where Jeremiah Page lives?

10 A Yes.

11 Q Thank you very much.

12 A (Witness resumes the witness stand.)

13 MS. MIMS: Beg the Court's indulgence, Your
14 Honor.

15 THE COURT: Yes, ma'am.

16 (Pause.)

17 MS. MIMS: I have no further questions.

18 THE COURT: Redirect?

19 MR. MCMAHON: Nothing on redirect, Your
20 Honor.

21 THE COURT: You can step down, Officer.
22 You are free to go if you like or you can stay if you
23 wish.

24 THE WITNESS: Thank you.

25 MR. MCMAHON: The State calls Ronnie

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 Muller.

2 RONALD MULLER, being first
3 duly sworn, testified as follows:

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

6 THE WITNESS: My name is Ronald Muller,
7 R-O-N-A-L-D, M-U-L-L-E-R.

8 DIRECT EXAMINATION

9 BY MR. MCMAHON:

10 Q Mr. Muller, how are you employed?

11 A I am employed with Aquarian Pools of Columbia.
12 It's a company my brother owns.

13 Q And what is your brother's name?

14 A Brother is William Muller.

15 Q And where do you live?

16 A I live in the lower level of my brother's home.

17 Q And that's located at what address?

18 A [REDACTED].

19 Q That's on the lake, on lake Murray?

20 A Yes, sir, it is.

21 Q How long have you lived there, Mr. Muller?

22 A Since February '98.

23 Q Now, your brother William, where is he at this
24 week?

25 A He is on a trip in Beaver Creek, Colorado.

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 Q And what is his wife's name?

2 A Nancy Muller.

3 Q Back in January of 2000, were you and your
4 brother Bill and his wife Nancy living at the
5 Old Chapin residence?

6 A Yes, we were.

7 Q And could I ask you, what is Nancy's present
8 physical condition, Mr. Muller?

9 A It's unstable. She has an aneurism in the back
10 of her brain in the back of one of her eyes here
11 approximately three weeks or so ago. It started
12 to swell due to treatment. She was in the
13 hospital for approximately two weeks, and she is
14 now out of the hospital; but she is taking
15 oxygen treatments daily to help reduce the
16 swelling.

17 Q She wasn't able to be here and appear in court
18 today?

19 A I believe she might be unstable to appear in
20 court.

21 Q Now, Mr. Muller, I want to go back to
22 January 26th of 2001. What occurred at that
23 residence on Old Chapin Road that day?

24 A It was a break-in. I heard about it through my
25 brother over the radio, an Extel two-way radio

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 that the home had been broken into and
2 completely ransacked.

3 Q And you actually live in that residence also in
4 the downstairs?

5 A I live in the downstairs area, yes, sir.

6 Q Could you tell us, did you have the opportunity
7 to view the residence on that day, January the
8 26th?

9 A Yes, sir.

10 Q Was there any type of video security system in
11 that residence?

12 A There is a video security system covering all
13 doors and some rooms in the house.

14 Q And do you know what, if anything, was done with
15 the videotape that was in the security system?

16 A The videotape at that time was missing.

17 Q Additionally, did you notice any forced entry?

18 A No, sir, did not.

19 Q So as far as examining the residence, the doors
20 and all, there wasn't any sign of actual
21 breaking to get into the residence?

22 A None that I observed, no, sir.

23 Q Now, were you familiar with some of the various
24 items in the residence and what had been taken?

25 A Yes, sir.

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 Q Were there any safes in that residence?

2 A There were two safes. There was a small safe
3 that probably could be transported out of there
4 by a human being.

5 Q And was there another safe in there?

6 A There is another safe, approximately two foot by
7 two foot by two foot. It's more of a floor safe
8 that would be very difficult to remove.

9 Q And where were they located at?

10 A In the walk-in closet in the master bedroom.

11 Q And of those two safes, was one of them your
12 brother's and one of them your sister-in-law's?

13 A Yes.

14 Q Of the two which one was your brother's and
15 which one was the sister-in-law's?

16 A The smaller one.

17 Q The smaller one was your brother's?

18 A The smaller one that could be physically removed
19 from the premises.

20 Q It was your brother's?

21 A Yes, sir.

22 Q And then there was a larger safe?

23 A A larger safe.

24 Q Which was his wife's?

25 A Which contained items for Nancy's personal

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 items.

2 Q I want to ask you specifically about some items.
3 You have seen some of these items before you
4 came into court today. State's Exhibit number
5 33, I believe -- yes, sir -- did you have an
6 opportunity to review these items before you
7 came into court today?

8 A I did.

9 Q And some of these are self identifying items in
10 the name of William M. Muller?

11 A Yes.

12 Q And are these among -- and specifically this
13 question -- are these among some of the items
14 that were taken from the home that day?

15 A To my understanding they were, yes, sir.

16 Q Also your brother had a coin collection?

17 A He had a coin collection since we were boys.

18 Q Since what?

19 A Since we were boys.

20 Q And these items (indicating) appear to be those
21 of your brother's?

22 A Yes, sir. The blue books would be what we had
23 when we were children. He collected these coins
24 for years.

25 Q They were also taken. Now, additionally, were

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 you familiar with whether or not your
2 sister-in-law Nancy had any type of weapon?

3 A Yes, she did.

4 Q What type of weapon did you recall her having,
5 Ronnie?

6 A She had a .38-caliber revolver.

7 Q Do you know under what circumstances or when she
8 had gotten that weapon?

9 A It was explained to me that she received it when
10 she was -- from one of her former husbands.

11 MS. MIMS: Your Honor, objection to
12 hearsay.

13 THE COURT: Sustained. I think he said it
14 was explained to him.

15 BY MR. MCMAHON:

16 Q Let me ask it like this, Ronnie. Was Bill
17 Nancy's -- let me get this right -- was Bill
18 Nancy's first husband?

19 A No, sir.

20 Q And do you know what her previous husband's name
21 was?

22 A No, sir, I do not. I do know her maiden name
23 was Bailey.

24 Q Her maiden name was Nancy Bailey?

25 A I don't know if it was her maiden name. Her

RONNIE MULLER -DIRECT- BY MR. MCMAHON

1 name was Bailey when she got married to my
2 brother.

3 Q How long had Nancy and your brother Bill been
4 married approximately?

5 A They would have been married approximately -- I
6 believe this March would be five years.

7 Q Do you know whether or not she had that weapon
8 when they got married?

9 A I don't know if she had it. The first time I
10 saw it is when I came down here to live, and I
11 asked to put some stuff in the safe.

12 Q Where did she keep that weapon?

13 A She kept it in the large safe in her walk-in
14 closet.

15 Q And you said it was a .38 revolver?

16 A Yes, sir.

17 Q And do you recall how many shots that .38
18 revolver held?

19 A It had a revolver chamber, five shots.

20 Q Do you recall that specifically, the five shots?

21 A I recall that because I had never seen a
22 five-shot revolver. I was under the impression
23 all revolvers were six shots. When she showed
24 it to me, that kind of stuck in my mind.

25 Q One further thing. You talked about the house

RONNIE MULLER -CROSS- BY MS. MIMS

1 being ransacked. Describe what you mean by
2 that.

3 A Drawers pulled out, books pulled out, furniture,
4 you know -- your cushions raised up. It was
5 just a total mess.

6 Q Among other items missing was that firearm
7 missing from the safe of your sister-in-law?

8 A That's what I was told, yes, sir.

9 Q Thank you.

10 MR. MCMAHON: I don't have any further
11 questions.

12 THE COURT: Cross.

13 MS. MIMS: Thank you, Your Honor.

14 CROSS EXAMINATION

15 BY MS. MIMS:

16 Q Good afternoon.

17 A Good afternoon.

18 Q It is Mr. Muller; is that right?

19 A I'm Mr. Muller, yes.

20 Q You are not the owner of the house?

21 A No, ma'am, I am not.

22 Q You are staying there with your sister-in-law?

23 A I live there.

24 Q And it was you and your sister-in-law living in
25 the house?

RONNIE MULLER -CROSS- BY MS. MIMS

1 A My brother, my sister-in-law, and myself are
2 permanent residents.

3 Q And after the time the break-in happened
4 whenever they had discovered the break-in
5 happened, she is the one who called the police;
6 is that right?

7 A Yes, she is one that discovered it to my
8 knowledge.

9 Q And she is the one who gave the police report in
10 this case?

11 A Yes.

12 Q And she is the one who told the investigators
13 everything --

14 MR. MCMAHON: Your Honor, I object to
15 hearsay.

16 THE COURT: Sustained.

17 BY MS. MIMS:

18 Q Do you know -- how many times have you seen that
19 pistol in the past?

20 A Once.

21 Q One time?

22 A Yes.

23 Q And she is the owner of the pistol?

24 A Yes, she is.

25 MS. MIMS: Beg the Court's indulgence, Your

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Honor.

2 (Pause.)

3 MS. MIMS: No further questions.

4 THE COURT: Any redirect?

5 MR. MCMAHON: Nothing on redirect Your

6 Honor.

7 THE COURT: Mr. Muller, you can step down.

8 You are free to go or you can stay if you wish.

9 MR. MCMAHON: The State calls Jessie Boot.

10 JESSIE OWEN BOOT, being
11 first duly sworn, testified as follows:

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

14 THE WITNESS: Jessie Owen Boot.

15 DIRECT EXAMINATION

16 BY MR. MCMAHON:

17 Q How old are you, sir?

18 A Eighteen, sir.

19 Q And where do you live?

20 A In West Columbia behind Lowe's.

21 Q Who do you live with?

22 A My mother and my father.

23 Q Now, Jessie, you are charged with certain
24 offenses in Lexington County in regards to a
25 burglary; is that correct?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q Do you know what offenses you are charged with?

3 A First degree burglary.

4 Q And do I have anything to do with those charges?

5 A No, sir.

6 Q Do you have a lawyer that represents you on your
7 burglary charges in Lexington County?

8 A Yes, sir, he is sitting right over there.

9 Q And your lawyer is Mr. Holler?

10 A Yes, sir.

11 Q The gentleman seated in the third row back here
12 (indicating)?

13 A Yes, sir.

14 Q And he represents you over there?

15 A Yes, sir.

16 THE COURT: Counsel, let me ask all of you
17 to approach just one moment. Mr. Holler, why don't
18 you come up, too.

19 (Whereupon there was a bench conference off
20 the record in the presence of the jury but out of the
21 hearing of the jury.)

22 MR. MCMAHON: Thank you, Your Honor. May
23 it please the Court.

24 Q Is that your lawyer there?

25 A Yes, sir.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q Mr. Holler. Now, Jessie, I want to ask you
2 about some individuals involved in that burglary
3 and who you knew and when you knew them. First
4 off, before this burglary did you know Brandon
5 Cannon?

6 A No, sir.

7 Q Before this burglary did you know David Grice?

8 A No, sir.

9 Q Before this burglary did you know Steve Gillian?

10 A No, sir.

11 Q The Defendant.

12 A No, sir.

13 Q And before this burglary did you know Jeremiah
14 Page?

15 A No, sir.

16 Q You see this list of names up here?

17 A Yes, sir.

18 Q Did you know any one of those individuals?

19 A I knew Dustin.

20 Q Dustin Johnson?

21 A Yes, sir.

22 Q And how did you know Dustin Johnson?

23 A I dated his sister.

24 Q That would be his sister, Laura?

25 A Yes, sir.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q Now, I want to direct your attention back to
2 January 27th. I want you to answer specifically
3 whatever questions I ask, okay?

4 A Yes, sir.

5 Q Did you have conversations about this burglary
6 with Dustin Johnson?

7 A Yes, sir.

8 Q As a result of those conversations, whatever
9 they were between you and Dustin Johnson, did
10 you agree to become involved in this burglary?

11 A Yes, sir.

12 Q And that would have been approximately
13 January 23rd; is that correct?

14 A Yes, sir.

15 Q Now, going from January 23rd specifically to
16 January the 26th, when and where were you
17 supposed to meet any individuals to commit this
18 burglary?

19 A At Gilligan's restaurant.

20 Q That was Gilligan's restaurant located where?

21 A In Lexington across from the movie theater.

22 Q If I show you State's Exhibit Number 29.

23 A That's it.

24 Q Is that the restaurant where you were supposed
25 to meet these individuals?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 A Yes, sir.
- 2 Q Did you know exactly who all you were supposed
3 to meet?
- 4 A No, sir.
- 5 Q Now, you say that restaurant is in Lexington.
6 What is across the street from that restaurant,
7 Jessie?
- 8 A The movie theater.
- 9 Q When you got to Gilligan's, what time of day are
10 we talking about?
- 11 A It was around 1:00 o'clock.
- 12 Q In the daytime or nighttime?
- 13 A Daytime.
- 14 Q How did you get from your home to Gilligan's
15 restaurant?
- 16 A My car.
- 17 Q What kind of car did you have?
- 18 A A black Nissan Sentra.
- 19 Q When you got there, was anybody already there?
- 20 A Yes, sir.
- 21 Q Who was that?
- 22 A Dustin Johnson.
- 23 Q Anybody else?
- 24 A David and Brandon were there in a white Century.
- 25 Q So David and Brandon were there in a white

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 Century?
- 2 A Yes, sir.
- 3 Q That's these two fellows here (indicating)?
- 4 A Yes, sir.
- 5 Q Had you ever met them before?
- 6 A No, sir.
- 7 Q You are using the name David and Brandon now.
- 8 How did you learn those names?
- 9 A I just saw them up there when you showed me the
- 10 list.
- 11 Q But did you learn those names during or after
- 12 the burglary?
- 13 A I didn't even know their names until the other
- 14 day when I came up here and talked to you.
- 15 Q Now, did anyone else arrive or who all arrived
- 16 at Gilligan's?
- 17 A Altogether?
- 18 Q Total. Who all is at Gilligan's?
- 19 A Jeremiah, Steven, Dustin, David and Brandon, and
- 20 me.
- 21 Q Six people?
- 22 A Yes, sir.
- 23 Q How did Steven get there, did you see?
- 24 A He drove his white car.
- 25 Q And do you know if anyone was with him?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 A Jeremiah.
- 2 Q I want to show you a photograph. You didn't
- 3 know Jeremiah?
- 4 A Huh-uh. (Indicating negative response.) No,
- 5 sir.
- 6 Q That's a photograph, State's 25, of Steven?
- 7 A Yes, sir.
- 8 Q And who is this a photograph of?
- 9 A Jeremiah.
- 10 Q They were together?
- 11 A Yes, sir.
- 12 Q Now, was there any planning at Gilligan's about
- 13 how the burglary was going to be conducted?
- 14 A No, sir, that was at the Shell Station.
- 15 Q Had there been any statements made by Steve at
- 16 Gilligan's?
- 17 A Yes, sir.
- 18 Q What were they?
- 19 A To meet at the Shell where he was going to call
- 20 and make sure nobody was at the house.
- 21 Q Who is saying that?
- 22 A Steven.
- 23 Q Did anybody have any keys or any map?
- 24 A Steven had a map and keys.
- 25 Q And where did you see the keys?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 A He had them in his hand.
- 2 Q Where were you at when you first saw them,
- 3 Jessie?
- 4 A Standing outside the car.
- 5 Q At what location?
- 6 A At Gilligan's.
- 7 Q Gilligan's. Who had the keys?
- 8 A Steve.
- 9 Q You said he had a map. What was the map to?
- 10 A It was like a map of the house where all the
- 11 cameras were at.
- 12 Q What, if anything, did you see Steve Gillian do
- 13 with the map and the keys?
- 14 A He handed them to Jeremiah.
- 15 Q Why did he do that?
- 16 A Because he didn't want to go inside the house.
- 17 Q Who didn't?
- 18 A Steven.
- 19 Q Steven Gillian wasn't going in the house?
- 20 A No, sir.
- 21 Q Everybody else was?
- 22 A Yes, sir.
- 23 Q When y'all left Gilligan's, where were y'all
- 24 going to stop first?
- 25 A The Shell Station.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q And what happened between Gilligan's and the
2 Shell Station?

3 A Ran out of gas.

4 Q So one, two, three, four, five, six. Did all
5 the cars go from Gilligan's to the Shell
6 Station?

7 A Yes, sir.

8 Q Or did any of them stay at Gilligan's?

9 A My car stayed at Gilligan's.

10 Q So all of them didn't go. Yours stayed at
11 Gilligan's?

12 A Yes, sir.

13 Q And you rode with someone else?

14 A Dustin.

15 Q Dustin?

16 A In the Riviera.

17 Q And what happened to Dustin's car?

18 A Ran out of gas.

19 Q On the way to the burglary, y'all ran out of
20 gas?

21 A Yes, sir.

22 Q How many different cars were y'all in, Jessie?

23 A Three.

24 Q Three. Would have been the Riviera of Dustin?

25 A The white old car.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 Q The white old car of Steven. And?
- 2 A The Century.
- 3 Q The Century of these two (indicating)?
- 4 A Yes, sir.
- 5 Q Which was the newest car?
- 6 A The Riviera.
- 7 Q The one that ran out of gas?
- 8 A Yes, sir.
- 9 Q Did it run out of gas before y'all even got to
- 10 the Shell Station?
- 11 A Yes, sir.
- 12 Q ~~What did y'all do?~~
- 13 A Went next door. I think Dustin went next door
- 14 and knocked on somebody's door, and he gave him
- 15 a gas can with some gas in so he could make it
- 16 to the gas station.
- 17 Q On the way to the burglary, you run out of gas.
- 18 You borrow a gas can. Who goes and gets the
- 19 gas, do you remember?
- 20 A Dustin. Oh, who went and got the gas with the
- 21 gas can? Steven.
- 22 Q And they come back and get Dustin's car going?
- 23 A Yes, sir.
- 24 Q What do y'all do with the gas can?
- 25 A Gave it back to the person next door.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q Then from there where do y'all go?

2 A Up to the Shell Station.

3 Q Why were y'all going to the Shell Station,
4 Jessie?

5 A To call and make sure nobody was home at the
6 Muller residence.

7 Q And whose idea was that?

8 A Steven.

9 Q I don't have a picture of where y'all ran out of
10 gas; but is this, State's number 30, the Shell
11 Station?

12 A Yes, sir.

13 Q Do you see the phones out there?

14 A Yes, sir.

15 Q So you are going to call and make sure nobody is
16 home, correct?

17 A Yes, sir.

18 Q And is that done?

19 A Yes, sir.

20 Q And as a result of that, where do you go then
21 and who all goes?

22 A Me and Dustin rode in his car, and Jeremiah and
23 David and Brandon rode in the white Century, and
24 Steve rode by himself. He went and pulled off
25 and stopped on like a dirt road somewhere by the

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 house.

2 Q To kind of map it out a little bit, this being
3 that Friday the 26th?

4 A Yeah.

5 Q How many times that Friday afternoon, the 26th,
6 did y'all go in that house?

7 A Twice.

8 Q Twice. When I say that house, I want to show
9 you State's Exhibit Number 28. Is that the
10 house y'all went into?

11 A Yes, sir.

12 Q The first time just tell the jury generally and
13 briefly what happened and who all went in that
14 house the first time that afternoon.

15 A Me, Dustin, Brandon, David, and Jeremiah walked
16 in the house. Jeremiah, Brandon, and David went
17 back to the safe room; and I walked back there
18 last and opened the safe.

19 There was a gun sitting there, and Jeremiah
20 picked up the gun. After I seen him pick up the
21 gun and walk outside, I think there was a box of
22 coins and a movie that he took also.

23 Q Everybody of that six goes in this house the
24 first time?

25 A Except for Steve.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q The first time, except Steve Gillian; is that
2 right?

3 A Yes, sir.

4 Q Who has the keys to the house and the map to the
5 house?

6 A Jeremiah.

7 Q Were they used, the keys, to get in the house?

8 A No, sir.

9 Q To your knowledge?

10 A No, sir, the door was unlocked.

11 Q The door was unlocked. But Jeremiah had keys to
12 the house?

13 A Yes, sir.

14 Q Who had given him those keys?

15 A Steve.

16 Q When you first went in the house that first
17 time, what is the first thing anyone did as far
18 as the security system in the house?

19 A Jeremiah got the tape out.

20 Q And then where did they go?

21 A Back to look at a little closet in the back of
22 the house where the safe was at.

23 Q Did you go back there?

24 A Yes, sir, I opened the safe.

25 Q Your hands were on the safe?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 A Yes, sir.

2 Q As a matter of fact, your fingerprints were on
3 the safe?

4 A Yes, sir.

5 Q And you said something about that later, didn't
6 you?

7 A Yes, sir.

8 Q Now, there were certain items in the safe?

9 A Yes, sir.

10 Q Among those were there any type of firearm in
11 the safe?

12 A Yes, sir, there was a revolver. It was black
13 and had a brown handle.

14 Q A black revolver with brown handles?

15 A Yes, sir.

16 Q How long -- tell the jury -- do you think y'all
17 were in that house that first time on the 26th?

18 A Approximately five, six minutes.

19 Q Briefly?

20 A Yes, sir.

21 Q Was there any trashing of the house when y'all
22 went in the first time?

23 A No, sir.

24 Q For that brief period of time.

25 A Yes, sir.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q From there where were y'all supposed to go?

2 A Back to B.B.'s.

3 Q Why?

4 A That's where we were going to meet Steve at.

5 Q You mentioned back to B.B.'s, what was B.B.'s?

6 A It was a restaurant.

7 Q Do you see this photograph?

8 A Yes, sir.

9 Q State's 31. What is that a photograph of?

10 A B.B.'s.

11 Q Why were y'all going back to meet Steve?

12 A Because he wanted all the goods.

13 Q And that's what y'all were doing?

14 A Yes, sir.

15 Q When you got back to Steve, did y'all stay at
16 B.B.'s right then or go somewhere else?

17 A We went to B.B.'s and Steve got the gun. Then
18 we went back to the house after he got the gun.

19 Q I want to talk about Steve and the gun. What
20 happened when y'all got back to Steve?

21 A He asked what we had gotten, and Jeremiah told
22 him that he had gotten the gun, and he gave it
23 to him.

24 MS. MIMS: Objection to the hearsay, Your
25 Honor.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 THE COURT: Sustained.

2 MR. MCMAHON: Your Honor, I think under --
3 may I be heard?

4 THE COURT: Yes, sir.

5 MR. MCMAHON: I don't want to make the
6 argument in front of the jury.

7 THE COURT: That's all right.

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

11 MR. MCMAHON: Thank you, Your Honor.

12 THE COURT: I will let it in.

13 BY MR. MCMAHON:

14 Q Now, when y'all get back to Steve after y'all
15 had gone in the house the first time, Jessie,
16 what occurs?

17 A Jeremiah gave Steven the gun.

18 Q What else did Steven do when y'all got back with
19 just the items y'all had taken out the house the
20 first time?

21 A Got hysterical, started yelling.

22 Q When you say got hysterical and started yelling,
23 what was he saying and what was he doing?

24 A Saying he wanted to kill everybody.

25 Q Why?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 A Because there wasn't anything worth value
2 besides the gun.

3 Q What, if anything, did he search?

4 A Repeat the question one more time.

5 Q Did he search David's vehicle?

6 MS. MIMS: Objection to the leading, Your
7 Honor.

8 BY MR. MCMAHON:

9 Q What, if anything, did he do before y'all went
10 back to the house?

11 A Went and searched everybody's car to make sure
12 they weren't hiding anything from him.

13 Q Grice's car?

14 A Yes, sir.

15 Q Dustin's car?

16 A Yes, sir.

17 Q Now, what did Jeremiah do with that gun?

18 A Handed it to Steve.

19 Q And what did you see Steve do with the gun?

20 A Put it in a brown paper bag and put it in his
21 trunk.

22 Q Now, after that meeting with Steve, did any of
23 y'all go back to that residence?

24 A Yes, sir.

25 Q And why was there an agreement to go back?

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 A I had my fingerprints on the safe.
- 2 Q And who else wanted to go?
- 3 A Steve, because he wanted to make sure there
- 4 wasn't nothing in the house and wanted to
- 5 ransack the place.
- 6 Q So you look at this jury, and you say you wanted
- 7 to go back why?
- 8 A To get my fingerprints off the safe.
- 9 Q And Steve wanted to go why?
- 10 A To make sure there wasn't anything valuable in
- 11 the house and wanted to go look through
- 12 everything. We didn't look through everything.
- 13 We just went in the safe when we went the first
- 14 time.
- 15 Q Did everybody go back to the house --
- 16 A No, sir.
- 17 Q -- that second time. Who went back?
- 18 A Everybody except for David and Brandon.
- 19 Q And do you recall where they stayed?
- 20 A I don't know where they went. I guess...
- 21 Q They were out of your presence?
- 22 A Yes, sir.
- 23 Q What happened when y'all went back to the house
- 24 the second time on the 26th, Jessie?
- 25 A Me, Jeremiah and Steve and Dustin went inside.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 I walked back immediately when I got inside to
2 the safe room and wiped my fingerprints off and
3 walked back out and got in the car. But when I
4 was in there, I observed Steve like pulling all
5 the drawers open and just putting it in a
6 pillowcase, a bunch of jewelry, I guess.

7 Q And what, if anything, did Steve do to the
8 house?

9 A Tore it up bad.

10 Q Explain to the jury what you mean by tore it up.

11 A Kicking stuff over, ripping all the drawers out,
12 dumping everything out.

13 Q Trashing it?

14 A Yes, sir.

15 Q What, if anything, did y'all leave with that
16 second time, Jessie?

17 A Steven had a pillowcase in his hand full of a
18 bunch of jewelry, I think; and I think there was
19 some baseball cards and some coins.

20 Q Now, when y'all left that second time, where was
21 your car?

22 A At Gilligan's still.

23 Q So where did you go when y'all left that second
24 time?

25 A Back to my car.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

- 1 Q And from Gillian's, where did you go?
- 2 A To Mrs. Cipkala's house.
- 3 Q Who is Mrs. Cipkala?
- 4 A I guess one of Steven's friends.
- 5 Q Did you know her?
- 6 A No, sir.
- 7 Q And did you go to Mrs. Cipkala's?
- 8 A Yes, sir.
- 9 Q I'm showing you State's 32.
- 10 A Yes, sir, that's it.
- 11 Q Do you know what highway that is up off of?
- 12 A 378.
- 13 Q Is that (indicating) Mrs. Cipkala's house on the
- 14 lake?
- 15 A Yes, sir.
- 16 Q And why did y'all go up there? What happened up
- 17 there?
- 18 A Steve wanted to look at all the stuff that he
- 19 had got from the house.
- 20 Q And were any items disposed of up there?
- 21 A Yes, sir. Jeremiah went and threw the keys in
- 22 the lake, I think. He went back to the back
- 23 yard somewhere and threw them somewhere. There
- 24 was also a bunch of jewelry dumped out out
- 25 there.

JESSIE BOOT -DIRECT- BY MR. MCMAHON

1 Q Now, Jessie, you gave a statement in this case;
2 correct?

3 A Yes, sir.

4 Q Actually you gave a statement on January 31st.
5 You didn't see Mr. Gillian on the next day, the
6 27th or the 28th?

7 A No, sir.

8 Q Did you ever see him after?

9 A I haven't seen him again since today.

10 Q And that's the Defendant here in this courtroom,
11 correct?

12 A Yes, sir.

13 Q Have you always cooperated with the officers?

14 A Yes, sir.

15 Q And the authorities?

16 A Yes, sir.

17 Q Who was the last person you saw with that gun?

18 A Steven.

19 Q And where was it at?

20 A He put it in his trunk.

21 Q That's the last time you saw it?

22 A Yes, sir.

23 Q And that's the last day you saw him?

24 A Yes, sir.

25 Q Answer any questions the defense might have.

JESSIE BOOT -CROSS- BY MS. MIMS

1 THE COURT: Cross.

2 MS. MIMS: Thank you, Your Honor. May it
3 please the Court.

4 CROSS EXAMINATION

5 BY MS. MIMS:

6 Q Good afternoon, Mr. Boot.

7 A Good afternoon.

8 Q I'm going to go back to the beginning, okay?

9 A All right.

10 Q The last time you saw -- or as everyone is going
11 into the house, and we are talking about
12 everybody on that list right there, excluding
13 Steven Gillian; right?

14 A Yes, ma'am.

15 Q As everybody is going into the house, the person
16 who had the keys in their hand is Jeremiah?

17 A Yes, ma'am.

18 Q But you didn't need the keys because the door
19 was open?

20 A Yes, ma'am.

21 Q You mentioned in your report to the police -- do
22 you remember making your report?

23 A Yes, ma'am.

24 Q Or giving a statement?

25 A Yes, ma'am.

JESSIE BOOT -CROSS- BY MS. MIMS

- 1 Q In your statement to the police, you mention
2 that Jeremiah seemed familiar with the house?
- 3 A Yes, ma'am.
- 4 Q In fact, I think you said it seemed like he had
5 been there before?
- 6 A Yes, ma'am.
- 7 Q He knew to go straight to that little closet
8 where the surveillance video was?
- 9 A Yes, ma'am.
- 10 Q And he knew to take that video out?
- 11 A Yes, ma'am.
- 12 Q And I think you are the one who found the safe
13 initially?
- 14 A Yes, ma'am.
- 15 Q And Jeremiah is the one who grabbed the gun?
- 16 A Yes, ma'am.
- 17 Q He is the one who had it with him?
- 18 A Yes, ma'am.
- 19 Q Everyone, as we said just to be clear, went into
20 that house?
- 21 A Yes, ma'am.
- 22 Q Excluding Steven Gillian. That includes Dustin
23 Johnson. He was in that house as well?
- 24 A He walked in for a couple of minutes and walked
25 back out, but he did go in the house.

JESSIE BOOT -CROSS- BY MS. MIMS

- 1 Q But he did go in the house?
- 2 A Yes, ma'am.
- 3 Q Now, you went back a second time; and you wanted
- 4 to go back particularly because you felt you had
- 5 left prints on the safe?
- 6 A Yes, ma'am.
- 7 Q At that point Dustin Johnson went back to the
- 8 house?
- 9 A Yes, ma'am.
- 10 Q And you went back to the house?
- 11 A And Steve and Jeremiah.
- 12 Q Steven and Jeremiah. And David Grice and
- 13 Brandon were gone?
- 14 A Yes, ma'am.
- 15 Q You mentioned that you saw Steven holding the
- 16 gun, in between, I think?
- 17 A Yes, ma'am.
- 18 Q In between going back to the house?
- 19 A At B.B.'s.
- 20 Q At B.B.'s. You never told the police though
- 21 that you saw Steven put the gun in the trunk,
- 22 did you?
- 23 A No, ma'am.
- 24 Q That's a pretty important thing, isn't it?
- 25 A They never asked me what he did with it when it