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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Charleston County

Honorable R. Kirk Griffin, Circuit Court Judge

JAKE ANTONIO WILSON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000498

APPENDIX

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1 A Yes, ma'am.

2 MS. CARDILLO: May I approach, Your Honor?

3 THE COURT: You may.

4 Q (By Ms. Cardillo) Just look at that and tell
5 me when you are done reviewing.

6 A Each one of these pieces of paper indicates
7 that I collected the GSR.

8 Q Officer Unterbrink, I'm going to show you what
9 was previously marked and admitted as State's Exhibit
10 60 and 65. I'm going to try to do this all at once
11 so we can go through this a little bit quicker.

12 One moment, Court's indulgence. Grab some
13 evidence.

14 THE COURT: Make sure you show it to
15 Mr. Grimes.

16 MS. CARDILLO: Yes, ma'am.

17 Q (By Ms. Cardillo) Now, Officer Unterbrink,
18 I'm about to hand you a lot of exhibits. I'm going
19 to go through them as I am giving them to you.

20 In this case, did you have an opportunity to
21 transfer evidence from the Wappoo Creek where you
22 collected it and store the evidence to SLED?

23 A Yes.

24 Q Okay. I am going to show you what has been
25 marked as State's proposed Exhibit No. 3, which is a

1 projectile; State's proposed Exhibit No. 72; State's
2 proposed Exhibit 71; State's admitted Exhibit 65;
3 State's admitted Exhibit No. 60. And I'm going to
4 need to have these marked.

5 (Whereupon, State's Exhibit Nos. 73 and 74
6 were marked for identification.)

7 Q (By Ms. Cardillo) And State's proposed
8 Exhibit 73 and 74. Were you --

9 THE COURT: Do you have any objection to the
10 exhibits, Mr. Grimes?

11 MR. GRIMES: I don't believe they've
12 established --

13 THE COURT: Is there an objection?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: You may proceed.

16 MS. CARDILLO: Thank you, Your Honor.

17 Q (By Ms. Cardillo) If you could, explain what
18 items I just -- what are each item that I just handed
19 to you with the number?

20 A Exhibit No. 73 and 74 are the two GSR kits
21 that we just mentioned.

22 Q What did you do with those?

23 A I transported them from the crime scene office
24 to SLED.

25 Q What did you do with those items once you

1 transported them to SLED, or State Law Enforcement
2 Division?

3 A There is an employee there at the intake
4 office who then takes possession of those items.

5 Q Do you have to sign them in?

6 A Yes.

7 Q Did you do that in this case?

8 A Yes.

9 Q Let's move along. In the box, which was
10 Exhibit No. 60, which was the handgun. What did you
11 do with that item? Did you transfer that item?

12 A I did. My name is listed here as the person
13 who took possession of it and then turned it over to
14 SLED in the same fashion as the two GSRs.

15 Q I just want to be clear. You transferred it
16 from the evidence with Charleston Police Department
17 to SLED?

18 A That's correct.

19 Q And you were in custody and control of it?

20 A Yes.

21 Q During that transfer?

22 A Yes.

23 Q And same process as once you get to SLED,
24 signing it in and so forth?

25 A That's correct.

1 Q And what is State's proposed Exhibit 71 and
2 72?

3 A 71 and 72, same thing where my initials are
4 here where I took possession of it from the crime
5 scene office, transported it to SLED where they then
6 took possession of it. Same procedure.

7 Q And it was under your custody and control the
8 entire time?

9 A That's correct.

10 Q From your recollection, it has not been
11 tampered with and is in substantially the same
12 condition?

13 A Yes, ma'am. That's correct.

14 Q And finally State's 65 and State's proposed
15 Exhibit 62, which is the projectile. You may have to
16 open that.

17 A Yes, ma'am. Same thing would be true with
18 this. That's number 62.

19 Q And again with No. 65, same process?

20 A This came separately. My name is not on that
21 particular one.

22 Q I'm sorry about that.

23 MS. CARDILLO: The Court's indulgence for one
24 moment.

25 Q (By Ms. Cardillo) Let me just clarify with

1 you really quickly. This box included the firearm
2 and the shell casings?

3 A It was inside.

4 Q Would that be why you -- but you would have
5 transferred this entire box?

6 A Box, that's right.

7 MS. CARDILLO: Thank you, Officer Unterbrink,
8 for your patience. I really appreciate it. If you
9 have -- Mr. Grimes may have some questions for you,
10 if wouldn't mind answering those.

11 THE WITNESS: Sure.

12 THE COURT: Any cross-examination of the
13 witness?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: You may proceed.

16 CROSS-EXAMINATION

17 BY MR. GRIMES:

18 Q Just ask you a couple questions about the
19 chain that the State's been asking about.

20 Do you know the name of the employee up at
21 SLED you turned the stuff over to?

22 A Specifically the name, no, I do not.

23 Q Let me ask you quick question about the
24 gunshot residue test you performed. When you perform
25 those tests, you fill out a little worksheet?

1 A There is a worksheet that goes with it, yes.

2 Q And the purpose of that is to give the
3 examiner some background information?

4 A That's correct.

5 Q It would include stuff whether someone washed
6 their hands or not?

7 A That's correct.

8 Q In this case, you checked and Mr. Wilson did
9 not wash his hands?

10 A That's correct.

11 Q And finally, you don't know what happened out
12 there at [REDACTED] the morning of July 8th, do you?

13 A I do not.

14 Q You don't know if it was a murder?

15 You know it has been charged as a murder, but
16 you don't know if it was actually a murder, do you?

17 A I don't know anything about the scene itself.

18 Q You don't know if it's a manslaughter case?

19 A No.

20 Q You don't know if it was an accident case?

21 A I do not know the details of this particular
22 case outside of what I performed.

23 MR. GRIMES: Okay. Thank you.

24 THE COURT: Any redirect of the witness?

25 MS. CARDILLO: Yes, Your Honor. Very briefly.

1 THE COURT: You may proceed.

2 REDIRECT EXAMINATION

3 BY MS. CARDILLO:

4 Q Mr. Grimes asked you about you had checked and
5 he did not wash his hands. Is that in your presence?

6 A That was just in my presence. I always ask
7 the officer present what they know, and I always ask
8 did the person wash their hands since they were at
9 the station.

10 Q Only at the station, not preceding that?

11 A Well, I always ask usually the arresting
12 officer is present, or at least the transporting
13 officer is present. And I will ask that person, did
14 the individual that I am about to do the GSR on wash
15 his or her hands.

16 Q That is something maybe they may or may not
17 know before their arrival at the scene?

18 A Correct.

19 MS. CARDILLO: Thank you. I have nothing
20 further.

21 THE COURT: Any objection to the witness being
22 excused?

23 MR. GRIMES: I just have a couple quick
24 follow-up questions.

25 THE COURT: You may proceed.

1 RE CROSS-EXAMINATION

2 BY MR. GRIMES:

3 Q Did you talk with any officer on the scene
4 about whether Mr. Wilson washed his hand?

5 A No, sir, I did not.

6 Q Did you receive any information that he did
7 wash his hands?8 A I received no information that he washed his
9 hand.10 Q If you had received information, you would go
11 back and change that report, correct?12 A If I knew that the person had washed their
13 hands, I would have marked that on the form because
14 otherwise it would not be accurate.

15 MR. GRIMES: Thank you.

16 THE COURT: Anything further from the State?

17 MS. CARDILLO: No, Your Honor.

18 THE COURT: Any objection to the witness being
19 excused?

20 MS. CARDILLO: None from the State.

21 THE COURT: Any from the defense?

22 MR. GRIMES: No, ma'am.

23 THE COURT: Sir, you are excused. You may
24 call your next witness.

25 MR. WILLIAMS: Thank you, Your Honor. State

1 calls Amy Stephens.

2 MS. AMY STEPHENS,
3 after having first been duly sworn to state the
4 truth, the whole truth and nothing but the truth,
5 testified on her oath as follows:

6 THE COURT: You may proceed.

7 MR. WILLIAMS: Thank you, Your Honor.

8 DIRECT EXAMINATION

9 BY MR. WILLIAMS:

10 Q Ma'am, where do you work?

11 A I work for the South Carolina Law Enforcement
12 Division, also known as SLED.

13 Q What do you do at SLED?

14 A I'm a forensic technician in the evidence
15 control department.

16 Q What do you do as a technician?

17 A We log in all the evidence that is submitted
18 to us by all the agencies throughout the state of
19 South Carolina. We give it a lab number and item
20 number. We package it appropriately, then we put it
21 into our evidence room.

22 Q Do you see lot of items in that job?

23 A We do.

24 Q About how many a day or week would you say you
25 see?

1 A We can see anywhere from 100 to 500 a day. It
2 just depends.

3 Q So when somebody comes in with something, what
4 do you do personally?

5 A We have what we call log-in sheets. They have
6 to fill out the request form, which includes a log-in
7 sheet, with all of their information. And then we
8 have our inventory sheet, which describes all the
9 evidence and the analysis that they would like on it.

10 We enter it into our computer system, which
11 generates a lab number for the case, an item number
12 for each piece of evidence. We package it in a
13 sealable pouch, envelope, or box; affix the label to
14 each of those pieces of evidence; scan it to the
15 appropriate location; and scan the paperwork into our
16 system.

17 Q Ms. Stephens, have you testified to this a
18 lot?

19 A Yes.

20 Q Good. I'm going to ask you to slow down a
21 little bit. You're going really fast. When somebody
22 comes in, there is a database, some data entry?

23 A We have what we call the beast. It's an
24 inventory system that we enter the information into
25 and it creates the lab number for us.

1 Q And you enter information?

2 A Yes.

3 Q Who else enters information into that
4 database?

5 A We have three other technicians that can enter
6 that information, plus our crime scene department.

7 Q You are able to basically print out that
8 information at any given time?

9 A We have what we call our receipt that
10 generates after we make the lab number.

11 Q And even later on in time, like in preparation
12 for this case?

13 A Yes.

14 Q Do you have that with you today?

15 A Yes.

16 Q Are you pretty much, any time you come in
17 court, you print that up?

18 A What we do is we bring the chain of custody,
19 which shows whoever touched each piece of evidence.

20 Q Can you explain a little bit more what chain
21 of custody is, at least for SLED purposes?

22 A A chain of custody is a list that itemizes
23 each piece of evidence -- Item 1, Item 2 -- and it --
24 what we do is whenever we touch a piece of evidence,
25 we have to scan our barcode label that each person in

1 the lab has. We scan it into our custody. The chain
2 of custody records the time and the date and the
3 person who handles that piece of evidence and the
4 location that we put it in or another person that we
5 transfer it to.

6 Q I'm going to show you, for instance, State's
7 proposed 74. Do you recognize at least that bar
8 code, for example?

9 A I recognize the lab number and item number.

10 Q So you have a barcode and then there is one on
11 the item?

12 A Yes.

13 Q How does it work that you are able to track
14 the evidence based on those barcodes?

15 A This barcode right here, if I was going to
16 take it into my custody, I would scan my label that
17 says Amy Stephens, then scan this barcode right here.
18 When you look at it on the computer system, it would
19 say it's in Amy Stephens' custody.

20 Q That's how things move along?

21 A Right.

22 Q The records that are kept in your data system
23 are made by people who have knowledge at the time of
24 the information input?

25 A Right.

1 Q And it's maintained in the regular course of
2 business by SLED?

3 A Yes.

4 Q I'm going to go show you -- do you have your
5 records there?

6 A I have my chain of custody.

7 Q How many items -- let me ask you first, was
8 there a lab number assigned to this case?

9 A Yes. Lab number was L0710815.

10 Q How many items were received by SLED or by
11 you?

12 A I received a total of 17 items in this case.

13 Q I want to ask you about just some of those
14 items. I don't want to go through all 17. What was
15 item number one?

16 A Item number one is described as a handgun, S&W
17 .32 long revolver with five rounds, serial number
18 554507.

19 Q And item number two?

20 A Cartridge case described as fired shell
21 casing.

22 Q Item number three?

23 A Projectile recovered from victim Pendergrass.

24 Q Item numbers four and five?

25 A Item number four was a gunshot residue kit

1 from Pendergrass; item number five is a gunshot
2 residue kit from Wilson.

3 Q Items six and seven?

4 A Item six is a shirt described as shirt from
5 subject Wilson; item seven is blue jeans from subject
6 Wilson.

7 Q Items eight and nine?

8 A Eight is shoes -- or excuse me, left shoe from
9 subject Wilson; and item number nine is right shoe
10 from subject Wilson.

11 Q And items 11 and 12?

12 A Item 11 is a blood standard from Jake Antonio
13 Wilson; and item 12 is a blood standard from Latoya
14 Pendergrass.

15 Q When these items come in, as you said, they
16 get scanned. Where do they go from there? How do
17 you know where they go?

18 A Whatever the analysis is, we have several
19 different departments that we have labels for in our
20 evidence room and certain spots that we have them.
21 We have a refrigerator for our toxicology and our DNA
22 evidence. And then we have certain shelves where we
23 put trace intake evidence and our evidence processing
24 evidence.

25 Q Does it get tracked in the same way?

1 A Everything has a barcode that we just scan the
2 barcode and place the evidence on the appropriate
3 shelf.

4 Q When the items come in, how do you know where
5 it came from?

6 A We have a submitting officer who will print
7 and sign at the bottom of our inventory sheet, and
8 that's how we know who submits it.

9 Q You have that in your record as well?

10 A I do.

11 Q Do you show who the submitting officer was in
12 this case, on at least items we talked about?

13 A I believe every item was submitted by Randall
14 Unterbrink of the Charleston City Police Department.

15 Q Now I want to talk to you about this chain of
16 custody. How long is it, for I guess an explanation,
17 how many people do these things go through?

18 A It depends on if it goes through one
19 department, two departments. I mean, all of us
20 technicians and evidence control can touch it from
21 logging it in to giving it to an analyst, to taking
22 it back from an analyst, setting it on a shelf, to
23 turning it into an agency.

24 Q Can you explain, for example, how something
25 would go through multiple analysts?

1 A Through multiple analysts?

2 Q Right.

3 A You'd have to ask an analyst that question.

4 Q But sometimes they go through several?

5 A They do. They can come down, if it's for
6 different departments, they can bring it back down to
7 us for storage purposes and then the analyst from a
8 different department can come and pick it up.

9 Q How about different departments?

10 A Most departments have a technician in their
11 department that will come pick up for them, but an
12 analyst can come and pick up their own evidence.

13 Q So for instance if you have a gun that was
14 going to be tested for DNA, that would be one
15 department. But it could also be tested for
16 functionability or for testing against cartridges
17 could be a different department?

18 A Correct.

19 Q So it would be through department to
20 department sometimes?

21 A Right.

22 MR. WILLIAMS: I'm going to have this marked,
23 Your Honor.

24 THE COURT: Show it to Mr. Grimes first. Any
25 objection, Mr. Grimes?

1 MR. GRIMES: No, ma'am.

2 THE COURT: Marked and admitted without
3 objection.

4 (Whereupon, State's Exhibit No. 75 is admitted
5 into evidence.)

6 Q (By Mr. Williams) Ms. Stephens, for the
7 record, it's State's 75. Can you look at that?

8 A This is our chain of custody.

9 Q That's the same thing you brought in with you?

10 A Correct.

11 Q Just going -- I want to go as quickly as I can
12 through some of those items. With the first item,
13 the handgun, it looks like it came to you at some
14 point when it first came in?

15 A Yes.

16 Q And that it went through two individuals and
17 back to you again?

18 A It did.

19 Q Then through three individuals and back to you
20 once more?

21 A Yes.

22 Q Looks like it went through two or three
23 departments?

24 A It had actually only went to two.

25 Q Okay. Do you know who the analysts were that

1 saw it?

2 A Suzanne Cromer, Kenneth Whitler, Betty Butler,
3 Manuel Ortuno, and David Black.

4 Q And as far as the next item, item two, I
5 believe that's the fired shell casing cartridges,
6 looks like you handled that three separate times?

7 A It's the same as item one. They're all in one
8 container.

9 Q So those all went together?

10 A Yes.

11 Q Item three was a projectile recovered from the
12 victim?

13 A Correct.

14 Q You handled that, looks like it went through
15 two or three other people to someone to analyze it?

16 A I only handled it twice.

17 Q What was that?

18 A I only handled it twice.

19 Q Okay. That was coming in and going back out
20 again?

21 A Correct.

22 Q As far as the GSR kits four and five, those
23 came into you?

24 A They did.

25 Q They then went to Ms. Perry?

1 A Well, I actually put them in our trace
2 evidence intake storage, and then a forensic
3 technician, Nicki Garrett, took them out of our
4 intake storage.

5 Q And that went to a person named McReynolds
6 after that?

7 A Lisa McReynolds, she's a forensic technician
8 in the trace department.

9 Q Then the record shows it went to Mr. Moskal,
10 who's an analyst?

11 A Correct.

12 Q Those would have been kept secure under all
13 SLED guidelines?

14 A Yes.

15 Q Nobody tampered with them, nobody opened them?

16 A No.

17 Q Except for the person handling the chain?

18 A Here, the analyst is the only person who would
19 open it.

20 Q As far as Items 6, 7, 8, 9, the shirt, pants,
21 two shoes, do those all have the same chain?

22 A Yes. They are all in one container together.

23 Q And that was from you to Ms. Williams again
24 and then to Mr. Ortuno?

25 A Well, what we did is we put in our temporary

1 room, I took it out of our temporary room, put it in
2 our renovated evidence room, and then Shalonda
3 Williams took it off of our shelf and gave it to
4 Manuel Ortuno.

5 Q As far as 11 and 12, the two blood standards,
6 again, you received those and those went to Ms.
7 Brown, I think Sherrie Brown, then Mr. Logan?

8 A Yes, that's correct.

9 Q And he would have tested them, that's his job?

10 A Yes.

11 Q Other items were received and essentially
12 everything that came in in this case, you handled?

13 A I did, I logged in every item in this case.

14 Q As far as you know, everything was handled
15 safe, securely through SLED protocols?

16 A Yes.

17 MR. WILLIAMS: Nothing further, Your Honor.

18 THE COURT: Any questions for the witness?

19 MR. GRIMES: Briefly.

20 THE COURT: You may proceed.

21 CROSS-EXAMINATION

22 BY MR. GRIMES:

23 Q Do you work in any of the laboratories?

24 A No, sir. We are on the very first floor, and
25 there's no -- evidence control is the only department

1 on that floor.

2 Q You received all this stuff from, I'm not sure
3 how to pronounce his last name, Unterbrink?

4 A Unterbrink from Charleston City Police
5 Department.

6 Q All right. Do you know, do the analysts wear
7 gloves when they're working with these?

8 A You'd have to ask an analyst. I'm not an
9 analyst.

10 Q All right. You weren't there at the scene of
11 the shooting, were you?

12 A No, sir. We work in Columbia, South Carolina.

13 Q You don't know what happened that night, do
14 you?

15 A No, sir.

16 Q There is no --

17 MR. GRIMES: Thank you.

18 THE COURT: Any redirect of the witness?

19 MR. WILLIAMS: No, Your Honor.

20 THE COURT: Any objection to the witness being
21 excused from the State?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: From the defense?

24 MR. GRIMES: No, ma'am.

25 THE COURT: Ma'am, you're excused.

1 THE WITNESS: Thank you.

2 THE COURT: You're welcome.

3 Call your next witness.

4 MR. WILLIAMS: State calls Suzanne Cromer.

5 MS. SUZANNE CROMER,

6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on her oath as follows:

9 THE COURT: You may proceed.

10 MR. WILLIAMS: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. WILLIAMS:

13 Q Ms. Cromer, where do you work?

14 A I'm employed by the South Carolina Law
15 Enforcement Division, commonly referred to as SLED.

16 Q What do you do at SLED?

17 A I'm a firearm and tool mark examiner.

18 Q What does that mean?

19 A In the firearms department, we look at
20 ammunition components such as bullets, cartridge
21 cases, shotgun shells to determine if they were fired
22 by or loaded into and ejected out of a specific
23 firearm.

24 Q You were subpoenaed here for a case -- this
25 particular case?

1 A Yes, sir, I am.

2 Q And that's defendant Jake Wilson. I believe
3 you also signed a lab number. Do you have your chain
4 of custody here today?

5 A Yes, sir, I do.

6 Q I am going to give States Exhibit 75. Do you
7 recognize that?

8 A Yes, sir. This look like our chain of
9 custody.

10 Q What was your role in this case? What did you
11 do?

12 A I was originally assigned this case, but --
13 and I picked up the evidence from our log-in
14 department.

15 After reading a note in our computer
16 information system where I saw that it was going to
17 court on a particular week I was going to be on
18 vacation, I had it assigned to another examiner.

19 Q So you actually handled the evidence?

20 A No. I just picked up the box. I never opened
21 it, never touched any of it. Just the box.

22 Q So you were, quote, in the chain of custody?

23 A Yes, sir.

24 Q But then it was reassigned to somebody else?

25 A Yes, sir.

1 Q Who was that?

2 A David Black.

3 Q So you never touched the evidence outside of
4 the package?

5 A No, sir.

6 MR. WILLIAMS: Thank you. Nothing else.

7 THE COURT: Any questions of the witness?

8 CROSS-EXAMINATION

9 BY MR. GRIMES:

10 Q Ms. Cromer.

11 A Yes, sir.

12 Q You don't know what happened that night, do
13 you?

14 A No, sir.

15 MR. GRIMES: Thank you.

16 THE COURT: Any redirect?

17 MR. WILLIAMS: No, Your Honor.

18 THE COURT: Any objection to the witness being
19 excused from the State?

20 MR. WILLIAMS: None, Your Honor.

21 THE COURT: From the defense?

22 MR. GRIMES: No, ma'am.

23 THE COURT: Ma'am, you are excused. Have a
24 good day.

25 THE COURT: Mr. Forman, ladies and gentlemen,

1 we are going to take an advantage of this break in
2 testimony to give you a very short recess. During
3 this break, please do not discuss the case. Please
4 do not discuss it among yourself and please leave
5 your notepads in your seats. We should be out about
6 maybe 10 minutes. Just enough time for you all to
7 use the restroom if you need to.

8 (Whereupon, the jurors exit the courtroom.)

9 THE COURT: Anything before we take short
10 break?

11 MS. CARDILLO: None from the state.

12 THE COURT: Anything from the defense?

13 MR. GRIMES: No, ma'am.

14 THE COURT: Okay. We will be at ease for a
15 few moments.

16 (Whereupon, a recess was taken.)

17 THE COURT: You may proceed. Is the State
18 ready to proceed?

19 MR. WILLIAMS: Yes, Your Honor.

20 THE COURT: Defense ready to proceed?

21 MR. GRIMES: Yes, ma'am.

22 THE COURT: Who's going to be offering
23 evidence about the introduction of the cell phone?

24 MS. CARDILLO: You mean which witness, Your
25 Honor?

1 THE COURT: Yes.

2 MS. CARDILLO: Sergeant Goldstein was going to
3 be testifying about the obtaining of the cell phone
4 at the booking desk where the defendant was arrested
5 and being booked at the headquarters before he was
6 interviewed. I was not having any computer -- I'm
7 sorry, computer cell phone analyst testify to those.

8 THE COURT: As a preliminary matter, I will
9 tell you that the statements are admissible. They're
10 admissible to show malice and intent. They are also
11 relevant as well as the threats are admissible to
12 show malice. There's an abundance of case law on
13 that point. They are also admissible under 404(B) to
14 show evidence of intent.

15 I have also come across a case that indicates
16 that threats are not considered bad acts. They would
17 not be susceptible to a Lyle analysis. I just need
18 to deal with the issues dealing with his ability to
19 effectively cross-examine the witness regarding the
20 credibility issue and the fact that they were not
21 disclosed or given to them.

22 Determining whether there is any prejudice in
23 that, which I don't think there is because the
24 records can be obtained, and we will go from there.
25 But at this point, they will be admissible and they

1 will come in. I will make a more complete ruling at
2 the appropriate time when she testifies.

3 MR. GRIMES: Just for the record, what is the
4 case law?

5 THE COURT: There are an abundance of them
6 from the Supreme Court as well as other case law
7 going back to 1971.

8 Please bring in the panel.

9 They are considered an admission against
10 interest and they are not a crime -- or crime not
11 subject to conviction, so they are not subjected to
12 the clear and convincing evidence standard.

13 (Whereupon, the jurors enter the courtroom.)

14 THE COURT: Ladies and gentlemen, I hope you
15 enjoyed your break. We will now resume the trial.

16 Please call your next witness.

17 MR. WILLIAMS: Thank you, Your Honor. State
18 calls saw Selina Kinard.

19 MS. SELINA KINARD,
20 after having first been duly sworn to state the
21 truth, the whole truth and nothing but the truth,
22 testified on her oath as follows:

23 THE COURT: You may proceed.

24 MR. WILLIAMS: Thank you, Your Honor.

25 DIRECT EXAMINATION

1 BY MR. WILLIAMS:

2 Q Ma'am, where do you work?

3 A SLED, South Carolina Law Enforcement Division.

4 Q What do you do there?

5 A I'm an evidence control technician.

6 Q Are you familiar with the term chain of
7 custody?

8 A Yes, sir.

9 Q What case are you here for today?

10 A For our lab number L0710815.

11 Q What was your role in that chain of custody up
12 to the time of testing?

13 A Several pieces of evidence I took from the
14 evidence room and gave to either an analyst or when
15 it was brought back to me from the analyst, put it
16 into our evidence room.

17 Q Did you bring your chain of custody with you
18 today?

19 A Yes, I did.

20 Q Let me show State's 75. Is that the same?

21 A Yes, sir, it appears to be the same.

22 Q You said you handled several items. Which
23 items do have at least noted in your report that you
24 handled?

25 A Item number one, which is noted as a sealed

1 box containing a handgun described as a Smith &
2 Wesson .32 long revolver with five rounds. On
3 5/21/08, I took it out of our evidence room and gave
4 it to Ken Whitler, who is an analyst in the firearms.

5 Then on 6/3/2008, I received it from David
6 Black, who is also an analyst in firearms.

7 Q That would have been after it was tested?

8 A Yes.

9 Q I want to know up the point of the test.

10 A Yes.

11 Q Did you do the same thing with item two, a
12 cartridge case and fired shell casings?

13 A Yes. 5/21/08, that was also given to Ken
14 Whitler, who is an analyst.

15 Q Did you handle anything else prior to testing?

16 A According to my chain, no.

17 Q You may have handled things afterwards, after
18 it was tested?

19 A After testing, yes, sir.

20 Q So we can get them and bring them into court?

21 A Right.

22 Q Would you have tampered with any of the items,
23 opened them, do anything with them?

24 A No, sir. When I got them, they were sealed in
25 our evidence room and handed off to an analyst who at

1 that time was also sealed, evidence was sealed.

2 MR. WILLIAMS: Thank you. No further
3 questions.

4 THE COURT: Any questions for the witness?

5 MR. GRIMES: Yes, ma'am.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. GRIMES:

9 Q Ms. Kinard, do you know whether SLED has the
10 ability to analyze cell phones?

11 A I'm sorry?

12 Q Do you know whether SLED has the ability to
13 analyze cell phones?

14 MR. WILLIAMS: I will object to anything
15 outside the scope of direct.

16 THE COURT: You have to lay a proper
17 foundation to ask the question, Mr. Grimes.
18 Sustained.

19 Q (By Mr. Grimes) What does SLED do?

20 A In my department, our department is called
21 evidence control. And in our department, we take in
22 evidence from agencies across South Carolina and at
23 that time we log it in according to the information
24 that that particular officer provides to us and we
25 seal it, have them initial the seals. We send the

1 paperwork through the system.

2 Q Do you receive cell phones a lot?

3 A Actually, we work on a self-contained basis,
4 which means whatever the officer has on our log-in
5 sheet, that's what we log in. You know, as far as
6 seeing evidence, a lot of times we will not
7 physically see the evidence, so.

8 Q Would officers from various jurisdictions send
9 in cell phones for SLED to analyze?

10 A I imagine they can; we accept any evidence.

11 Q All right. Do you recall receiving any cell
12 phones in this case?

13 A In this particular case, I would have not seen
14 the actual evidence. What I would have seen would
15 have been just a box that I took into my custody and
16 gave to, in this instance, Kenneth Whitler, who was
17 an analyst for firearms.

18 Q Do you know what was in the box?

19 A According to the chain, it was a gun.

20 Q Okay. So you just handled the gun?

21 A And bullets, right.

22 Q Gun bullets from this case?

23 A Right.

24 Q And you don't know what happened that night,
25 do you?

1 A No, sir. I have not idea.

2 MR. GRIMES: All right. Thank you.

3 THE COURT: Any redirect?

4 MR. WILLIAMS: No, Your Honor.

5 THE COURT: Any objection to the witness being
6 excused from the State?

7 MR. WILLIAMS: None, Your Honor.

8 THE COURT: From the defense?

9 MR. GRIMES: No, ma'am.

10 THE COURT: Ma'am, your excused.

11 Call your next witness.

12 MR. WILLIAMS: State calls Kenneth Whitler.

13 MR. KENNETH WHITLER,

14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on her oath as follows:

17 THE COURT: You may proceed.

18 MR. WILLIAMS: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MR. WILLIAMS:

21 Q Mr. Whitler, where do you work?

22 A I work for South Carolina Law Enforcement
23 Division.

24 Q What do you do at SLED?

25 A I'm a firearms tool mark examiner.

1 Q Have you testified in that area as an expert
2 before?

3 A Yes, sir.

4 Q In this case, you did not analyze any guns?

5 A No, sir, I didn't.

6 Q How were you involved?

7 A My only involvement was when I was --
8 inadvertently was given a piece of evidence and I
9 transferred it to the appropriate examiner.

10 Q What was the -- how was it inadvertent or what
11 was the problem getting it to you at that point in
12 time?

13 A I went downstairs. I was collecting a lot of
14 evidence, and it was put in the cart I was using.
15 And when I got upstairs to verify that it had all
16 been transferred properly in the computer, discovered
17 that I had a box that I wasn't assigned the case.

18 So I took the box to the appropriate examiner
19 who was assigned the case and we transferred custody.
20 I had total custody for about eight minutes.

21 Q Did you touch the item at all?

22 A No, sir. The box was -- like I said, I took
23 the box and realized it wasn't mine and gave it to
24 the appropriate examiner.

25 Q And that was on a gun and cartridge casing?

1 A I don't know what was in the box. It was
2 Container A. Like I said, once I realized that
3 container was not for a case that I had, I
4 transferred it to the examiner who did it.

5 Q You got into the chain of custody although you
6 did not examine anything?

7 A That's correct.

8 Q Is that all contained in the chain of custody
9 that's part of the database that you all have?

10 A Yes, sir.

11 Q I should ask you, were you out there the night
12 that this crime happened?

13 A No, sir. As I said, my only connection with
14 this was the box was put in my cart with the other
15 evidence.

16 MR. WILLIAMS: Thank you. No further
17 questions.

18 THE COURT: Any questions for the witness?

19 MR. GRIMES: No, ma'am.

20 THE COURT: Any objection to the witness being
21 excused?

22 MR. WILLIAMS: Not by State, Your Honor.

23 THE COURT: From the defense?

24 MR. GRIMES: No, ma'am.

25 THE COURT: Sir, you are excused.

1 call your next witness.

2 MR. WILLIAMS: State calls Betty Butler.

3 MS. BETTY BUTLER,

4 after having first been duly sworn to state the
5 truth, the whole truth and nothing but the truth,
6 testified on her oath as follows:

7 THE COURT: You may proceed.

8 MR. WILLIAMS: Thank you.

9 DIRECT EXAMINATION

10 BY MR. WILLIAMS:

11 Q Ma'am, where do you work?

12 A State Law Enforcement Division, also known as
13 SLED.

14 Q What do you do at SLED?

15 A I'm a forensic technician in the evidence
16 processing unit in DNA.

17 Q You are familiar with the case you are here
18 for today in court?

19 A Yes, I am.

20 Q Are you one of what they call chain of custody
21 at SLED on the case?

22 A Yes, I did.

23 Q Do you have that with you?

24 A Yes.

25 Q I am going to show State's Exhibit 75. Do you

1 recognize that?

2 A Yes, I do.

3 Q Is that the same as chain of custody you ran?

4 A Yes, it is.

5 Q What was your role in this case prior -- or up
6 to the -- any of the items being tested?

7 A I went in evidence control department and Amy
8 Stephens, who works there, she gave me a sealed box.

9 Q What did you do with the sealed box?

10 A I brought it back to evidence processing unit.
11 Kept it in my custody for a while and gave it to
12 Manuel Ortuno.

13 Q He would have then processed it further?

14 A Yes, he did.

15 Q Did you ever tamper with any of the evidence
16 or manipulate it in any way beyond transporting it?

17 A No, I did not.

18 Q You were basically just a person in the chain?

19 A Yes, I was.

20 Q That's all contained in State's 75, the list
21 of all your activities?

22 A Yes.

23 MR. WILLIAMS: Thank you. Nothing else.

24 THE COURT: Any questions for the witness?

25 MR. GRIMES: Just a couple.

1 THE COURT: You may proceed.

2 CROSS-EXAMINATION

3 BY MR. GRIMES:

4 Q You work in the DNA lab?

5 A Yes, I do. It's called evidence processing
6 unit in the DNA lab, yes.

7 Q All right. And when you are handing the
8 evidence, would you wear gloves?

9 A Sometimes we do, yes.

10 Q Because sometimes skin cells can be
11 transferred, you don't want to contaminate any
12 evidence?

13 A Yes.

14 Q And you weren't out there on the night this
15 happened, were you?

16 A No, I was not.

17 Q And you don't know how this shooting happened,
18 do you?

19 A No, I do not.

20 MR. GRIMES: All right. Thank you.

21 THE COURT: Any redirect?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: Any objection to the witness being
24 excused?

25 MR. WILLIAMS: Not by the State, Your Honor.

1 THE COURT: From the defense?

2 MR. GRIMES: No, ma'am.

3 THE COURT: Ma'am, you are excused.

4 You may call your next witness.

5 MS. CARDILLO: Thank you, Your Honor. State
6 calls Sherrie Brown.

7 MS. SHERRIE BROWN,
8 after having first been duly sworn to state the
9 truth, the whole truth and nothing but the truth,
10 testified on her oath as follows:

11 THE COURT: You may proceed.

12 MR. WILLIAMS: Thank you.

13 DIRECT EXAMINATION

14 BY MR. WILLIAMS:

15 Q Ms. Brown, where do you work?

16 A SLED.

17 Q That's State Law Enforcement Division?

18 A Yes, it is.

19 Q what do you do there?

20 A I'm a technician within the DNA department.

21 Q Do you often testify as to chain of custody?

22 A Yes.

23 Q why are you here today?

24 A I was given a lovely subpoena notice.

25 Q Did you look at the chain of custody in this

1 case?

2 A Yes.

3 Q Do you have a copy with you?

4 A Yes, I have my own copy.

5 Q I'm going to show you State's 75. Do you
6 recognize that item?

7 A I recognize the lab number.

8 Q Can you look at the report, see if it looks
9 familiar to you or at least compare it to your chain?

10 A Yes.

11 Q I want ask you, you were involved in handling
12 of two blood standards, Items 11 and 12?

13 A Correct.

14 Q What did you do with those two items?

15 A On both items, I received item number 11, SLED
16 light, item number 11, I received it from Amy
17 Stephens; and item number 12, same thing, Amy
18 Stephens.

19 Q What did you do with those items?

20 A They were placed -- I took custody of it and
21 transferred them physically and in the computer to a
22 location in the DNA department called DNA-R.

23 Q Who was the next person to handle those items?

24 A Ken Bogan.

25 Q Did he actually perform an analysis on them?

1 A Yes.

2 MR. WILLIAMS: No further questions. Thank
3 you.

4 THE COURT: Any questions for the witness?

5 MR. GRIMES: A few questions.

6 THE COURT: You may proceed.

7 CROSS-EXAMINATION

8 BY MR. GRIMES:

9 Q Ms. Brown, do you wear gloves when you are
10 handling the evidence in the DNA lab?

11 A Yes.

12 Q Why is that?

13 A It's just a universal precaution.

14 Q Precaution against transferring your DNA to an
15 item in evidence?

16 A That, and also just for safety reasons.

17 Q In case a piece of evidence has something on
18 it, you don't want to get that?

19 A Right.

20 Q Going to the first reason, SLED equipment is
21 pretty sophisticated, right?

22 A Yes.

23 Q And sensitive?

24 A (Affirmative head shake.)

25 Q And -- the court reporter has to hear you say

1 yes.

2 A Yes.

3 Q And so if you're handling a gun or an item
4 just with your hand, possibly that could put your DNA
5 on it and SLED equipment could pick that up?

6 A True. But evidence that comes -- it's in a
7 heat-sealed pouch from evidence control.

8 Q I understand that. But if you for some reason
9 handled the gun out of the pouch with your hand, that
10 could possibly leave your DNA on there, it would
11 contaminate the gun?

12 A Theoretically, yes.

13 MR. GRIMES: Okay. Thank you.

14 THE COURT: Any redirect?

15 MR. WILLIAMS: None, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused from the State?

18 MR. WILLIAMS: No, Your Honor.

19 THE COURT: From the defense?

20 MR. GRIMES: No, ma'am.

21 THE COURT: Ma'am, you are excused.

22 THE WITNESS: Thank you.

23 THE COURT: You may call your next witness.

24 MS. CARDILLO: State calls Manuel Ortuno.

25 MR. MANUEL ORTUNO,

1 after having first been duly sworn to state the
2 truth, the whole truth and nothing but the truth,
3 testified on her oath as follows:

4 THE COURT: You may proceed.

5 MS. CARDILLO: Thank you, Your Honor.

6 DIRECT EXAMINATION

7 BY MS. CARDILLO:

8 Q Mr. Ortuno, where are you employed?

9 A At the South Carolina Law Enforcement
10 Division, commonly referred to as SLED.

11 Q And how long have you been employed there?

12 A Little over 18 years.

13 Q Okay. You had to think about that for a
14 minute.

15 What are your present duties there?

16 A I am forensic DNA analyst, and I'm also team
17 leader responsible for the evidence processing unit.

18 Q Are you familiar with Lab Number L0710815?

19 A Yes, that's SLED's lab number.

20 Q And what was your role in that case or that
21 lab number?

22 A The work that I performed on this case dealt
23 with the examination of evidence for potential
24 serological evidence that could then be sent to DNA
25 for further analysis.

1 Q And you do that yourself?

2 A I did that myself, yes.

3 Q what items were submitted to you?

4 A I received a shirt, blue jeans, a left shoe, a
5 right shoe, gold teeth covers and then subsequently a
6 Smith & Wesson .32 long revolver with five rounds.

7 Q what did you do in your analysis of the blue
8 jeans, shirt, left and right shoe?

9 A I tested for the potential evidence that could
10 be probative in subsequent DNA analysis. So
11 basically I tested for blood in this particular case
12 is probably what you want me to say.

13 Q And did you find any on those items?

14 A The five items that I tested for blood were
15 negative for blood, no blood was detected.

16 Q I am going to show you what has been
17 previously marked or admitted as State's proposed
18 Exhibit 60 and 65, which came out of the same box.
19 Do you recognize these?

20 A This has my writing on the outside seal and it
21 is a revolver It's locked in here. If it has this
22 serial number on it, it would be the handgun that I
23 examined. Without taking it out, I can't verify
24 that, but the box does have my writing on it.

25 Q I think you can. I think it's just kind of

1 shoved in there. You can pull it out.

2 A Okay.

3 Q I just want you to make sure.

4 A Yes, this is the handgun that I swabbed for
5 what we call touch DNA, skin cells that transfer upon
6 holding or grabbing an item.

7 Q And are these items in substantially the same
8 condition as when you, I guess, swabbed them?

9 A To the best of my knowledge, they are.

10 Q Let me show you what has been marked as
11 Exhibit Number 76.

12 (Whereupon, State's Exhibit No. 76 is marked
13 for identification.)

14 Q (By Ms. Cardillo) I'm going to show you what
15 has been marked as State's proposed Exhibit 72 and
16 76.

17 THE COURT: Any objection, Mr. Grimes?

18 MR. GRIMES: No, ma'am.

19 THE COURT: Marked and admitted without
20 objection.

21 (Whereupon, State's Exhibit No. 76 is admitted
22 into evidence.)

23 Q (By Ms. Cardillo) Do you recognize these
24 items?

25 A I do not recognize 72, this is a SLED item

1 that's subsequent to my analysis. However, State's
2 Exhibit 76 is the heat-sealed pouch that I generated
3 containing the swabs that were collected from the
4 handgun. It has my writing and my initials.

5 Q What did you do with the swabs once you
6 obtained them?

7 A Once I obtained the swabs, I collected the
8 swabs, I turned this over directly to Agent Ken
9 Bogan, who then performed the DNA analysis.

10 Q How do you go about doing a swab on a handgun?

11 A It's actually quite simple. We are looking
12 for skin cells that could possibly be on any item.
13 Therefore if the skin cells are there, we could
14 possibly generate a DNA profile.

15 You take a sterile swab, in this case two
16 swabs, put a couple drops of sterile water on them,
17 and vigorously rub whatever location you're
18 interested in collecting. In this particular case
19 with the gun, I focused on the handle, the grip, as
20 well as the trigger. The places most likely where
21 you would have force applied and possibly have skin
22 cells transferred.

23 Q And you said you then transferred this to Ken
24 Bogan?

25 A Upon swabbing, I then, through long sticks, I

1 break the bottom part, I insert the two swabs in here
2 after they've dried, seal it, initial it, put it in a
3 heat-sealed pouch, initial, heat-sealed, date, and
4 then transfer directly to, in this particular case,
5 Ken Bogan, who was assigned the DNA portion of the
6 case.

7 Q And he would be the one that would then open
8 the pouch?

9 A That's correct. And he has his initials on
10 here, so he worked it as well.

11 Q Okay. Thank you.

12 Mr. Ortuno, how closely do you look for blood
13 on items of clothing submitted?

14 A That would depend. If there is a request for
15 blood, you are going to be much more meticulous in
16 examining an item for the presence of blood, since
17 that's the request.

18 In this case, the request was for ownership,
19 possible handling of an item. If I would have seen
20 something on the handgun that appeared to be blood, I
21 would have tested it for blood. I did not note
22 anything that stood out, since once again, the
23 request was for ownership, was for skin cells.

24 Q What about for the clothing?

25 A Now, for the clothing, you are much more

1 rigorous in terms of what I do. We have a
2 magnifying glass. Actually, it's a portable system
3 with a light source that allows us to really look at
4 the fibers and you examine the entire article or
5 articles.

6 Any -- in fact, since I wrote no blood
7 detected, anything that I thought could possibly be
8 blood, I actually tested, swabbed, and performed a
9 presumptive test for blood.

10 If it had come up positive, I would have cut
11 out that portion and sent it to Ken Bogan. In this
12 particular case, none of the items that I looked at
13 contained such indication. All the testing was
14 negative.

15 Q Mr. Ortuno, I don't have any further questions
16 for you. If you would be so kind as to answer any of
17 Mr. Grimes'. Thank you.

18 THE COURT: Mr. Grimes.

19 MR. GRIMES: Thank you, Your Honor. May it
20 please the Court.

21 CROSS-EXAMINATION

22 BY MR. GRIMES:

23 Q Exhibit 76, did you have that?

24 A Is that the handgun?

25 Q I think the swabs from the handgun.

1 A Oh, the swabs. No, I don't.

2 Q Here we go.

3 A Thank you.

4 Q You did two swabs; is that correct?

5 A Let me verify that. That's correct.

6 Q You did one swab for the handle of the gun?

7 A Actually, I used both. I dabbed the two swabs
8 together, then I rub them together.

9 Q Okay.

10 A So it's as if it were one big swab.

11 Q Did you do anything to -- did you swab sort of
12 the cock of the gun?

13 A Just the entire handle and the trigger.

14 Q You did not swab the barrel or anything?

15 A No.

16 Q And from the swabs, can you tell where DNA
17 came from, whether it's from the handle or the
18 trigger?

19 A I could not. If I had done them separately,
20 it's possible. But the danger with that is there are
21 so few skin cells available to work with that you
22 want to increase the likelihood of getting the
23 profile at all, so I combine. There are some people
24 who do each one individually, but you risk not having
25 enough to get anything.

1 Q That makes sense.

2 Let me ask you a couple questions about the
3 equipment up at SLED. It's fairly sensitive?

4 A The DNA equipment?

5 Q Yes, sir.

6 A Yes, they're state-of-the-art.

7 Q And when you're handling a gun, would you wear
8 gloves?

9 A Yes, of course.

10 Q Why is that?

11 A Well, because you don't want to put your skin
12 cells -- in the case of skin cells, you don't want to
13 put your DNA anywhere. When you touch something, you
14 would be inadvertently doing that.

15 Q So is it fair to say it's possible because
16 someone just touches something briefly, like that,
17 that would leave DNA there?

18 A It's very possible, yes.

19 MR. GRIMES: All right. Thank you. I have no
20 further questions.

21 THE COURT: Any redirect?

22 MS. CARDILLO: No, Your Honor.

23 THE COURT: Any objection to the witness being
24 excused?

25 MS. CARDILLO: None from the State.

1 MR. GRIMES: No, ma'am.

2 THE COURT: Sir, you are excused.

3 THE WITNESS: Thank you, Your Honor.

4 THE COURT: You may call your next witness.

5 MS. CARDILLO: State calls Michael Moskal.

6 MR. MICHAEL MOSKAL,

7 after having first been duly sworn to state the
8 truth, the whole truth and nothing but the truth,
9 testified on her oath as follows:

10 THE COURT: You may proceed.

11 MS. CARDILLO: Thank you, Your Honor.

12 DIRECT EXAMINATION

13 BY MS. CARDILLO:

14 Q Mr. Moskal, where are you employed?

15 A I am currently employed by the South Carolina
16 Law Enforcement Division, commonly known as SLED.

17 Q What do you do at SLED?

18 A I am a trace analyst, and right now I'm
19 qualified to analyze gunshot residue, distance
20 determination, and accelerants.

21 Q And how long have you been involved in the
22 trace examination with SLED?

23 A Little over two years.

24 Q And what about before that?

25 A Before that, I taught high school chemistry at

1 Summerville High School for seven years.

2 Q Now, you mentioned that in trace examination,
3 what exactly is trace examination?

4 A Trace evidence deals with evidence that's for
5 the most part are things we cannot see with our naked
6 eyes. The types of evidence that we are going to
7 look at again are gunshot residue, which are little
8 tiny particles that come out of a weapon when it's
9 fired. We look at glass, fibers, accelerants, things
10 that are left over after a fire. Those are the types
11 of evidence that we examine in trace evidence.

12 Q What education and training have you had in
13 the area of trace examination?

14 A When I was employed by SLED I began an
15 in-house training. There was a six-month training
16 period for analysis of gunshot residue. It included
17 lectures on what GSR was, where it came from, how it
18 was produced, as well as reading literature books,
19 instrumentation lectures, testing, working with a
20 court-qualified GSR analyst as well.

21 And at the end of that six-month period, I had
22 a mock trial that I was given where I had to analyze
23 everything, do a mock testimony and present that to
24 the department and it was passed successfully.

25 Q Are you certified by SLED in GSR examination?

1 A Yes, ma'am.

2 Q How many, approximately, gunshot residue tests
3 have you performed yourself?

4 A For myself after training, I've probably
5 analyzed well over 700 GSR kits, which relates to
6 about 300 cases.

7 Q Have you ever been qualified as an expert in
8 the area of gunshot residue examination?

9 A Yes, ma'am, I have.

10 Q How many times, approximately.

11 A Today will be about the fifth.

12 Q Have you ever qualified in South Carolina
13 circuit courts, criminal cases?

14 A Yes, ma'am, all five.

15 Q Okay. And --

16 MS. CARDILLO: Your Honor, at this time, the
17 state would offer Mr. Moskal as an expert in trace
18 examination.

19 THE COURT: Any objections or questions?

20 MR. GRIMES: No, ma'am.

21 THE COURT: So admitted. You may proceed.

22 MS. CARDILLO: Thank you, Your Honor.

23 Q (By Ms. Cardillo) Briefly explain to me what
24 is exactly gunshot residue?

25 A Okay. Gunshot residue is everything that

1 comes out of a weapon when it's fired. It's going to
2 include any dirt, grime, grease that might be left in
3 there from previous firing as well as from cleaning.
4 It also includes burnt and unburnt particles that
5 come out of the cartridge case when it's fired as
6 well as components that come out of the primer.

7 Q How does gunshot residue get on someone?

8 A When a weapon is fired, those particles that
9 are produced come out of any opening on that weapon.
10 It would be the muzzle end, it could be the ejector
11 port. If you had a revolver, it's going to be the
12 cylinder gaps around the -- where the cartridge cases
13 are held inside that weapon. So when the weapon is
14 fired, all of those materials come out in a cloud and
15 they land on anything that's in the vicinity of that
16 weapon.

17 Q Let me show you what's already been admitted
18 as State's Exhibit 60.

19 You mentioned a revolver. How would gunshot
20 residue, if you could explain to the jury while
21 holding this gun, how -- where it would come out
22 exactly, gunshot residue.

23 A With this being a revolver, the muzzle end
24 here is going to have the majority of the gunshot
25 residue coming out of the front end. But the other

1 place it's going to be here is if this cylinder were
2 locked into position, there is a gap between the back
3 of that cylinder and this plate here.

4 Gunshot residue could come out of that. There
5 is also these openings where if the weapon was
6 loaded, you'd see the front end of the cartridge case
7 or the bullet in there. There is an opening in there
8 where the gunshot residue could come out as well as
9 between the cylinder and this opening right here.

10 So revolvers actually have a lot more places that
11 gunshot residue can exit it than say something like a
12 semi-automatic weapon.

13 Q Good. Now, how does gunshot or -- how did
14 gunshot residue remain on a living -- or how long
15 does it remain on, say, you or I?

16 A Okay. As long as a person is living and
17 breathing, we're taking our hands, we are putting
18 them in our pockets, we're rubbing hair, we are doing
19 bodily activities like that. Anything like that
20 begins to remove gunshot residue from our hands.
21 It's a very fragile type of evidence.

22 For those of you who do any baking, if you had
23 flour on your hands in the kitchen, 20, 30 minutes
24 later, that flour is going to be everywhere you
25 touched. That's kind of what gunshot residue is.

1 The longer you wait, the more it's removed, as well
2 as it's also absorbed through our skin just through
3 normal body metabolism-type processes. And so it
4 lasts for somebody not doing anything majorly active
5 for up to six hours.

6 Q How about somebody who has passed away?

7 A As soon as -- or when a person is deceased,
8 their bodily activity and natural absorption stop.
9 And so barring an outside interference, whether it's
10 rain, a paramedic or something washing down the
11 hands, as soon as bodily activity ceases, that
12 gunshot residue is going to stay there until it's
13 removed some other way.

14 Q How are samples collected of gunshot residue?

15 A On gunshot residue, a GSR kit, when the
16 officer opens it up, it's going to have several
17 different pieces in there that he is going to use.
18 It's going to have an information sheet where he
19 looks at it, it has a place for him or her to put
20 their name, the time they're collecting it, the time
21 the shooting occurred, the name of who they're
22 collecting the GSR kits from, as well as if they
23 know, they can put down the type of weapon it was,
24 the caliber, number of shots fired. All of that goes
25 on for us to help make our decisions. There is also

1 a sheet in there that informs them on how to properly
2 collect the GSR kit.

3 Once they get through that type of stuff,
4 there are two types of evidence they are going to
5 collect from us. There is series of -- well, let me
6 back up. They're going to collect evidence from four
7 areas. They're going to do a right palm, a right
8 back, a left palm, and a left back. Those are the
9 four areas they're going to collect and send to us.

10 The two types they do, one is a particle lift.
11 It's a round aluminum tab that has basically really
12 sticky double-sided tape on it. That officer is
13 going to take one particle lift from each of those
14 four areas. He is going to dab it all over that
15 hand. He is going to seal it up and send it. So we
16 will get four particle lifts.

17 And then there is a series of cotton swabs and
18 individual test tubes labeled for each one of those
19 four areas. And he takes that cotton swab and puts a
20 dilute nitric acid on it, and rubs that across the
21 hands, slides it into the appropriate test tube,
22 seals it up and sends it to us at SLED.

23 Q Now relative to this case, your Lab Number
24 L07107815, did your lab receive GSR kits in this case
25 from the victim Latoya Pendergrass and the defendant,

1 Jake Antonio Wilson?

2 A Yes, ma'am, we did.

3 Q And how do you -- well, let me show you what
4 has been marked as State's proposed Exhibit 73 and
5 74, and ask you if recognize these items?

6 A I do recognize these. When I get my evidence
7 and I finish with my analysis, I seal it up with the
8 date when I sealed this and it has my initials. And
9 both Item 73 and 74 bear my initials.

10 MS. CARDILLO: Your Honor, at this time, State
11 would offer into evidence.

12 THE COURT: Have you shown them to Mr. Grimes
13 any objection.

14 MR. GRIMES: No, ma'am.

15 THE COURT: Marked and admitted without
16 objection. You may proceed.

17 MS. CARDILLO: Thank you, Your Honor.

18 (Whereupon, State's Exhibit Nos. 73 and 74 are
19 admitted into evidence.)

20 Q (By Ms. Cardillo) When were these items
21 received, Mr. Moskal?

22 A May I refer to my notes?

23 Q Please.

24 A Both Item 73 and 74 were received in trace
25 evidence on 7/27 of '07.

1 Q What testing exactly did you perform on these
2 two kits?

3 A On these two kits, when these two types of
4 evidence come in, the cotton swabs and the particle
5 lifts, we analyze the cotton swabs first because what
6 they're going to tell us is a quantity of metals on
7 the hands.

8 When that cartridge case is fired, it produces
9 barium, lead and antimony. The unique thing about
10 those three elements is that the cartridge case is
11 the only area of those three together exists and give
12 us a specific gram morphology. So when we get the
13 evidence in, we do the cotton swabs first so that we
14 can see whether a threshold amount of those metals is
15 present or not.

16 And if the analysis shows that a certain
17 threshold level is present, then we take the particle
18 lift to a scanning electron microscope and we look at
19 discrete particles to see if they are round, which
20 would be produced in the firing of a weapon and
21 whether or not they contain those three elements as
22 one unit together or not.

23 Q And what are those results of the testings you
24 performed on the sample obtain from the victim,
25 Latoya Pendergrass?

1 A In the samples collected from Latoya
2 Pendergrass, on those four areas I referred to
3 earlier, the right palm, right back, left palm, and
4 the left back, all four areas did not indicate the
5 presence of gunshot residue based on the quantities
6 of metals that were there.

7 Q Now, as I previously asked you, Latoya was
8 deceased at the time the GSR was conducted. How did
9 that affect your conclusion or opinion?

10 A Again, once a person has deceased, barring any
11 outside activity removing those particles, what's on
12 her hand should be indicative of what was there when
13 the weapon was fired.

14 Q How long would GSR remain on someone? You
15 mentioned earlier different reasons for what must be
16 taken into account, but typically, what is the --

17 A For somebody who's just doing typical clerical
18 work, filing papers, not using the bathroom, not
19 doing any washing of the hands or those activities,
20 just typical clerical, nonactive work, it would
21 remain on the body of a living person up to six
22 hours.

23 Q Now, in the present case, there has been
24 testimony that the weather was rather humid and rainy
25 that morning. Would that affect the level of GSR you

1 would find on somebody or lack thereof?

2 A That could. Any fluid that moves over the
3 hands -- again, I said earlier that gunshot residue
4 is very fragile. Any fluid flowing over the hands is
5 going to begin to remove what is there. So if it was
6 raining or high humidity outside and the person's
7 hand were sweaty or wet, have a lot of moisture,
8 those could certainly begin to remove the metal off
9 their hands.

10 Q What about holding children in your arms or
11 your hands?

12 A Again, any movement of your hand, washing or
13 wiping across something, yes, ma'am, that will begin
14 to remove those particles.

15 Q Does a negative result on a living person
16 necessarily mean that the person did not fire the
17 gun?

18 A No, ma'am. In fact, we have actually tested a
19 weapon in the lab where we knew somebody fired and we
20 collected the GSR kit very relative or shortly
21 thereafter in a ten-minute period and it did not meet
22 our quantities that we look for. So negatives do not
23 always mean the person has not fired.

24 Q What -- did you also analyze the GSR kit for
25 the defendant in this case, Jake Wilson?

1 A Yes, ma'am.

2 Q And what were your results?

3 A On Jake Antonio Wilson, again on the four
4 areas, right palm, right back, left palm, and left
5 back, the quantities of metal did not indicate the
6 presence of gunshot residue.

7 Q Now, are there levels of gunshot residue?

8 A We have a threshold level of the metals that
9 we're looking for where based on testing that was
10 done in the department where if we haven't reached
11 that threshold level is not consistent with our data
12 of having gunshot residue.

13 Q What about the range of gunshot residue when
14 it is -- when it comes off of a weapon, such as a
15 revolver? How -- do you know how far it would extend
16 out?

17 A I have not done any testing on this specific
18 weapon. But the general -- general consensus is that
19 on a weapon like this, that GSR is going to go out
20 for at least about a two-foot range.

21 MS. CARDILLO: May I have one moment, Your
22 Honor?

23 THE COURT: Uh-hum.

24 MS. CARDILLO: Thank you, Mr. Moskal. If you
25 would answer any questions from Mr. Grimes.

1 THE WITNESS: Yes, ma'am.

2 THE COURT: Mr. Grimes?

3 MR. GRIMES: Thank you, Your Honor.

4 THE COURT: You may proceed.

5 CROSS-EXAMINATION

6 BY MR. GRIMES:

7 Q Good morning, Mr. Moskal.

8 A Good morning.

9 Q Was there any indication that Ms. Pendergrass'
10 hands had been exposed to the rain that day?

11 A I don't have any information as to what her
12 hands were exposed to.

13 Q Okay. And if someone is being fired at close
14 range, and they have their hand up defensively,
15 possibly there would be gunshot residue on their
16 hands?

17 A Yes, sir, it is very possible.

18 MR. GRIMES: Thank you. I have no further
19 questions.

20 THE COURT: Any redirect?

21 MS. CARDILLO: Just briefly.

22 THE COURT: You may proceed.

23 REDIRECT EXAMINATION

24 BY MS. CARDILLO:

25 Q Mr. Moskal, if a victim who was deceased had

1 held up their hands in a defensive-type motion from a
2 gun, would there necessarily be gunshot residue on
3 that person?

4 A It's going to -- part of it's going to depend
5 on the distance.

6 Q If they were relatively close, say within two
7 feet?

8 A If they were within two feet, I would have
9 expected to have found something, yes, ma'am.

10 MS. CARDILLO: Thank you.

11 THE COURT: Any objection to the witness being
12 excused from the State?

13 MS. CARDILLO: I'm sorry, Your Honor, may I
14 ask one more question?

15 THE COURT: Sure.

16 Q (By Ms. Cardillo) Mr. Moskal, let me ask, if
17 there was a struggle over the gun, what would be your
18 opinion of gunshot residue on the deceased victim's
19 hands?

20 MR. GRIMES: Objection, outside the scope of
21 redirect or cross.

22 THE COURT: Overruled. You asked about the
23 myriad of powder locations. It is within the scope.

24 THE WITNESS: With a weapon like this
25 revolver, with a large number of openings around

1 there, I would expect if somebody were struggling
2 over that and their hands were close to that weapon
3 when it was fired, I would expect to have found some
4 gunshot residue.

5 MS. CARDILLO: Thank you.

6 THE WITNESS: Yes, ma'am.

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

9 MS. CARDILLO: None from the State, Your
10 Honor.

11 THE COURT: From the defense?

12 MR. GRIMES: May I ask two questions?

13 THE COURT: Uh-hum.

14 RECROSS-EXAMINATION

15 BY MR. GRIMES:

16 Q First question, would your opinion change if
17 you knew Mr. Wilson admitted to shooting
18 Ms. Pendergrass within two feet?

19 A No, sir. I have data and my testimony is
20 based on the data in front of me.

21 MR. GRIMES: Thank you.

22 THE WITNESS: Yes, sir.

23 MR. GRIMES: That's it.

24 THE COURT: Any further questions from the
25 State?

1 MS. CARDILLO: No, Your Honor.

2 THE COURT: Any objection to the witness being
3 excused from the State?

4 MS. CARDILLO: No, Your Honor.

5 THE COURT: From the defense?

6 MR. GRIMES: No, ma'am.

7 THE COURT: Sir, you are excused.

8 THE WITNESS: Thank you.

9 THE COURT: You're welcome.

10 Mr. Foreman, ladies and gentlemen, we are
11 going to take advantage of this break in testimony to
12 take our lunch recess. We won't be back until about
13 2:30. There are matters of law that the attorneys
14 and I need to deal with before we go to lunch. This
15 is why we have a little bit of an extended lunch
16 recess today.

17 During this break, please do not discuss the
18 case among yourselves or with anyone else. Again,
19 please make sure you are not exposed to any media
20 accounts about this case or do any independent
21 research on the Internet.

22 When you return from lunch, please come
23 directly to the jury room. Do not have contact with
24 anyone in or about the courthouse. Enjoy your lunch,
25 see you at 2:30.

1 (Whereupon, the jurors exit the courtroom.)

2 THE COURT: Okay. Was there any exception to
3 opening up the cell phone from the State?

4 MS. CARDILLO: No, Your Honor.

5 THE COURT: From the defense?

6 MR. GRIMES: No, ma'am.

7 THE COURT: Okay. Where is the cell phone at?

8 MR. WILLIAMS: Is it okay if the detective
9 watches in case he needs to be a witness?

10 THE COURT: What's he going to be a witness
11 to?

12 MR. WILLIAMS: What happens next.

13 THE COURT: He would not be a witness to that.
14 This is a matter of discovery.

15 MR. WILLIAMS: As long as you are okay with
16 it.

17 THE COURT: I'm okay with it. He cannot be a
18 witness to something. I would imagine that forensic
19 people would have found that text message, would they
20 not? This is defendant's phone, correct?

21 MS. CARDILLO: It should be.

22 THE COURT: I'm referring to the Sprint
23 Motorola Razor belongs to the deceased, correct?

24 MS. CARDILLO: Yes.

25 THE COURT: Did you inquire whether her mother

1 could find her cell phone bill?

2 MS. CARDILLO: She indicated she may be able
3 to find a couple.

4 THE COURT: Do you think she might be able to
5 do that at lunchtime, bring them back with her? How
6 far away does she live?

7 MS. CARDILLO: I think she can have somebody
8 bring them to her.

9 THE COURT: I think that might be a good idea.

10 MS. CARDILLO: Your Honor, over the break, Ms.
11 Gadsden called her husband to see if her husband
12 could locate any of the bills and he could not.

13 THE COURT: Okay. I'm doing it this way so
14 that nobody will be able to question. If the State
15 did it, there could be some question; if the defense
16 did it, could be a question. If the Court's doing
17 it, there is no question.

18 I have no stake in any of this. It looks like
19 it's going to have to be able to charge a little bit
20 before we can get it to come on. This might take
21 awhile. Did anybody check with the cell phone
22 company to see if you could get the records?

23 MR. GRIMES: We had our investigator check.
24 The only way they would have kept records of
25 Mr. Wilson's sister phone is if they had subscribed

1 to the detail bill services.

2 THE COURT: Guess what cell phone company has
3 it whether you subscribe to it or not, just like Bell
4 South has all your detailed phone numbers. They
5 don't give it to you, but they have it. Cell phone
6 company has it whether you subscribe to it or not.

7 MR. GRIMES: With all due respect, you think
8 that they hold on to these records for that period of
9 time?

10 THE COURT: Your investigator said that?

11 MR. GRIMES: Yes, ma'am. He said he talked to
12 a manager over there, Mr. Farrow. He basically said
13 the customer has to subscribe to the detail billing
14 telephone services, then the records would be
15 available, placed in archive indefinitely.

16 Mr. Farrow did state, however, 99 percent of
17 the customers do not subscribe to this service and
18 those records would not be saved.

19 THE COURT: Did he actually look at the phone
20 number to see whether those records were available.
21 I don't need general information. I need you to go
22 in the system, look up the phone number to see if the
23 records exists. You talk to a manager at a cell
24 phone company, get general information, they're going
25 to give you a general line. They need to go into

1 their records in their computer, look up that phone
2 number, see if those phone records exist. That is
3 what we need. Did you give them the phone number to
4 look it up?

5 MR. GRIMES: Yes, ma'am.

6 THE COURT: You gave them the phone number and
7 you asked them to look at that particular phone
8 number and to locate those phone records?

9 MR. GRIMES: I think he is in the process of
10 doing that now.

11 THE COURT: That's what we need. Did you all
12 make any attempt -- I'm referring to the State -- did
13 you make any attempt to find a detailed record,
14 billing to this telephone and I'm referring to the
15 deceased's Motorola phone number through I believe
16 you all told me Sprint?

17 MR. WILLIAMS: SunCom.

18 MS. CARDILLO: We did not.

19 THE COURT: You need to over the lunch break,
20 somebody needs to do it.

21 MS. CARDILLO: Okay.

22 THE COURT: Every company has different
23 policies.

24 MR. WILLIAMS: Your Honor, do you want us to
25 obtain the month of July record?

1 THE COURT: You need to obtain records
2 relating to the statement you plan to produce. You
3 claim that he made a bunch of calls the day before,
4 those are the records Mr. Grimes needs. You need to
5 get more information whether they detail calls,
6 whether they simply did the amount of calls, whether
7 they dumped all that information off the memory.

8 MS. CARDILLO: We have that that shows when
9 they retrieved it. I can ask -- we have him under
10 subpoena to be here this afternoon.

11 MR. GRIMES: Your Honor.

12 THE COURT: Okay. I have a list of her
13 several calls. One through eight. Doesn't tell me,
14 yeah, tell me a date and time it came. Now this, of
15 course, does not tell me whether some calls were
16 deleted or not. But certainly it answers Mr. Grimes'
17 question regarding the availability of cell records
18 to the extent that we know they're available or that
19 you all will be able to get from the cell phone
20 companies.

21 But it has here listed, the eighth call was
22 [REDACTED]-0200; seventh call was [REDACTED]-5006;
23 sixth call was simply J, which I would have to
24 imagine would mean Jake, or just his initial, just
25 J. When you program someone's name to your phone,

1 the number doesn't come up, their name comes up or
2 their initial or whatever you programmed it to be.

3 Fifth call is [REDACTED] -- I'm having trouble
4 reading it. It keeps going out because the battery.
5 This phone's been damaged. Okay. Fifth call was
6 [REDACTED] 89978 (sic); fourth call was mother; third
7 call was Des, D-E-S; second call is [REDACTED] 65471
8 (sic); and the first call was [REDACTED] 3866.

9 The eighth call was received at 12:50 a.m. on
10 7/8/07. This won't let me go down. But would not --
11 let me -- I think the phone is damaged. It won't
12 allow me to scroll down and tell me the dates and
13 times these other calls were received, but they would
14 have to have been received before the eighth phone
15 call.

16 And also, I know that there would be more --
17 and also the J, sixth call, indicates came from a
18 cell phone because there's a little icon that comes
19 up that shows you whether it was cell or not and
20 apparently number four from her mother also came from
21 a cell phone.

22 MR. GRIMES: Your Honor, J did that say?

23 THE COURT: Just a letter J. I can't scroll
24 down to -- but I think it's because of the phone
25 needs to be charged some more. So maybe after lunch

1 it'll be able to show us.

2 It's also been broken and it's finicky, and
3 that's an aside, although this is nothing to do with
4 it. I owned one of these phones and that's why I got
5 rid of it. They're extremely finicky. They never
6 work, and the battery goes in and out, has very poor
7 battery life. It's one of design flaws of the
8 telephone.

9 For example, the battery just went out. I
10 don't know whether it just needs to charge or what
11 the situation is, but we will let it stay plugged in
12 during lunch. The courthouse will be -- this
13 courtroom will be locked, but for whatever reason it
14 won't allow me to scroll down the way it's supposed
15 to on the little pad to give us more information.
16 Because it would give you call times and everything
17 else under another icon. It would give you it on
18 this one. I don't know why it won't let me scroll
19 down.

20 MR. WILLIAMS: The report we have has the same
21 list of numbers but they don't give us time duration.

22 THE COURT: This would, but it just won't let
23 me scroll down.

24 MR. WILLIAMS: We do know what the number is
25 for J and those things.

1 THE COURT: Then please provide those to
2 Mr. Grimes.

3 MR. WILLIAMS: Those were given to him in the
4 initial discovery.

5 THE COURT: Oh, then you have them then.

6 MR. GRIMES: We have that stuff. We had no
7 idea it was going to be these allegations of threats
8 on the phones.

9 THE COURT: Well, case law says they're
10 admissible. My concern was about you having the
11 ability and means to cross-examine the witness about
12 the times of the phone calls may have taken place or
13 the number of calls that may have taken place, but
14 after I have thought through it some more, I think
15 you will not be denied that opportunity because
16 certainly the lack of records is something you can
17 actually argue in your favor.

18 You can simply ask -- I'm not going to tell
19 you what you should ask, but certainly I think you
20 know how to effectively cross-examine a witness and
21 the lack of those records certainly would be quite
22 frankly in your client's benefit. I don't see any
23 prejudice in that.

24 But the fact that I was under the impression
25 that you didn't have the calls at all, but now I know

1 that you do have them and you have a list from the
2 forensic folks. So I'm not concerned about any
3 prejudice now. I thought the phone calls did not
4 exist at all and certainly they do. All those issues
5 go to weight, not admissability. You certainly can
6 question the witnesses regarding that.

7 And the fact that there is no empirical, for
8 lack of a better word, of or corroboration of what
9 she says happened, we will deal with that at the time
10 the witness actually testifies. I'm going to let the
11 phone charge during lunch, see if it allows us.

12 But apparently one of the other problems, and
13 I use that word loosely, is that the forensic people
14 took the sim card out of the phone, which is the
15 memory card. So I don't know where it's located.

16 MR. GRIMES: Your Honor, I did have a couple
17 of additional points.

18 THE COURT: It just says something about put
19 -- indicates sim card needs to go back into the
20 telephone, yes.

21 MR. GRIMES: Yes, Your Honor. I have a couple
22 of additional points.

23 THE COURT: I'm not going to argue it,
24 Mr. Grimes.

25 MR. GRIMES: I understand.

1 THE COURT: I'm going to argue it and hear
2 full argument at the time the witness is said to
3 testify.

4 MR. GRIMES: Okay.

5 THE COURT: I did all this for your all's
6 benefit so you could have this information over lunch
7 to explore further what you need to to have
8 meaningful cross-examination the witness.

9 MR. GRIMES: Thank you, Your Honor.

10 THE COURT: You're welcome. Have a good
11 lunch.

12 (Whereupon, a recess was taken.)

13 THE COURT: For many reasons, as I indicated,
14 with the Motorola phone batteries are finicky and
15 unreliable. But as best as this has charged, it has
16 a list of calls, but it will not allow -- I don't
17 know whether this little wheel that operates it is
18 damaged, I don't know whether it's old, whether it
19 just quit working, but it will now allow you to
20 scroll down to tell us the time information of the
21 other phone numbers.

22 But I would imagine the forensic people should
23 have been able to identify this information. The
24 phone is just like a little computer, they store
25 everything until you delete it. And even when you

1 delete it, they still can retrieve it.

2 so I need for you all to ask your forensic
3 people from the city whether they can get what we
4 would call envelope information on each of those
5 phone calls. It should be able to tell you the time
6 that they came in. Because this is just not working,
7 whatever the little control thing is not working.

8 Yes, ma'am.

9 MS. CARDILLO: We did speak with -- my
10 investigator spoke with the legal department for
11 SunCom, an Antoinette, and said it was for the phone
12 records on the victim from that date, it would take
13 three to four business days. We inquired about
14 whether we could get online records and they said
15 they only do 2008 forward for online records.

16 THE COURT: You told them it was urgent? It
17 really doesn't take them that long to do it.

18 MR. CARDILLO: We did, Your Honor. We do have
19 the phone number, if you would like to inquire as
20 well, from the same person.

21 THE COURT: They have them, don't they?

22 MS. CARDILLO: I would assume that they do. I
23 would have to ask my investigator to follow up.

24 THE COURT: It is really -- I just wanted you
25 all to make your best efforts to get it. My

1 perception of the matter is that the envelope
2 information does not affect the admissability of the
3 testimony. Nor does it really affect Mr. Grimes'
4 ability to meaningfully cross-examine the witness.

5 I think the lack of records, frankly, is more
6 to his client's benefit. And there are many other
7 ways he can cross-examine her regarding the
8 credibility of her statements and the believability
9 of her statements.

10 Based on what Mr. Grimes has represented to
11 the Court, he would not have been able to get his
12 client's details anyway, since he said he was using
13 his sister's phone, the cell phone company says if
14 you don't subscribe to that service they don't keep
15 the records.

16 MS. CARDILLO: I'm sorry, Your Honor?

17 THE COURT: You need to find out from the city
18 if they can get the envelope information and call
19 them themselves.

20 MR. WILLIAMS: They're on their way.

21 THE COURT: All right. Who's the State's next
22 witness?

23 MS. CARDILLO: Your Honor, State's next
24 witness is David Black from SLED.

25 THE COURT: Who would be your witness after

1 that?

2 MS. CARDILLO: That would be Sergeant
3 Goldstein, and after that would also Ken Bogan with
4 SLED.

5 THE COURT: Okay. Anything further before we
6 proceed from the State?

7 MS. CARDILLO: Nothing from the State, Your
8 Honor.

9 THE COURT: Anything from the defense?

10 MR. GRIMES: No, ma'am. Just there will be a
11 Jackson v Denno issue before Sergeant Goldstein
12 testifies.

13 THE COURT: Please make me aware of it so that
14 we can have an in-camera hearing regarding that.

15 MS. CARDILLO: I will bring that up before I
16 call him to the stand after Mr. Black.

17 THE COURT: How much of Detective Goldstein's
18 testimony can we go through before we go to the
19 Jackson v Denno?

20 MS. CARDILLO: A lot of it is the course of
21 the investigation.

22 THE COURT: I would like to proceed with as
23 much of the testimony as we can, and we will proceed
24 with the Jackson v Denno, we will stop when we get to
25 that point and do the in-camera hearing.

1 MS. CARDILLO: All right.

2 (Whereupon, the jurors enter the courtroom.)

3 THE COURT: Mr. Foreman, ladies and gentlemen,
4 I hope that you all had a restful lunch. We will now
5 resume with the trial.

6 You may call your next witness.

7 MS. CARDILLO: Thank you, Your Honor.

8 State calls David Black.

9 THE COURT: Could counsel approach for me
10 while we are waiting on Mr. Black to come in?

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 MR. DAVID BLACK,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on his oath as follows:

17 THE COURT: You may proceed.

18 MS. CARDILLO: Thank you, Your Honor.

19 DIRECT EXAMINATION

20 BY MS. CARDILLO:

21 Q Mr. Black, by whom are you employed?

22 A I'm employed with the South Carolina State Law
23 Enforcement Division, better known as SLED. I'm a
24 firearms examiner assigned to the firearms department
25 in the forensic science laboratory.

1 Q And how long have you been employed in this
2 capacity at SLED?

3 A I have been employed with SLED for 17 years.
4 Prior to SLED, I was employed with the Richland
5 County Sheriff's Office for a tad over six years. As
6 far as a firearms examiner, January will be six
7 years. Prior to that, I spent 14 years as a latent
8 print examiner, crime scene investigator.

9 Q What are your duties and responsibilities as a
10 firearms examiner?

11 A As a firearms examiner, I exam firearms and
12 firearms-related evidence, I examine ammunition and
13 ammunition components, I examine tool and tool
14 mark-related evidence. I also do serial number
15 restoration, physical fracture matches, and also I'm
16 an IBIS technician. This stands for Integrated
17 Ballistic Identification System. This is where I can
18 actually take fired bullets and cartridge cases, put
19 it in a computer and it will search them against our
20 unsolved files.

21 Q What is your educational background?

22 A I have an associate of arts degree in criminal
23 justice Florence-Darlington Technical College. I
24 transferred to the University of South Carolina in
25 Columbia and received a bachelor of science degree in

1 criminal justice with a minor in sociology.

2 Q And what is your training as a firearms
3 examiner?

4 A Prior to being a firearms examiner for 14
5 years, I did latent fingerprint work and crime scene
6 investigations. During this 14 years, I became
7 extensively familiar with different firearms,
8 different types of ammunition, how firearms operate,
9 how they work.

10 I went to several schools that taught us about
11 firearms during that time. When I transferred over
12 to the firearms department, there is a three-year
13 in-house training program. In this three-year
14 program, at least half of the time is spent on the
15 microscope doing microscopic comparisons.

16 Also, there are segments of training, and each
17 segment of training there is a written test, oral
18 test, and practical exams. You had to pass each
19 segment before you can go to the next. And at the
20 end of the training, there was a cumulative
21 three-year testing of written, oral and practical
22 exams.

23 There have been a number schools I have been
24 to, an armor school such as Glock, High Point, Smith
25 & Wesson. I also have been to a number of schools

1 that actually showed firearms being manufactured and
2 ammunition being manufactured.

3 I'm also a member of some professional
4 organizations where I had some training at their
5 seminars.

6 Q What professional organizations are those?

7 A I'm a member of the Association of Firearm and
8 Tool Mark Examiners known as AFTE. I'm a member of
9 the International Association for Identification, and
10 also the South Carolina Division of the International
11 Association for Identification.

12 Q Agent Black, what is firearm identification?

13 A Firearms identification is a discipline of
14 forensic science whose main purpose is to determine
15 whether a bullet or cartridge case or some other
16 ammunition component was fired from a particular
17 firearm. Firearms identification is primarily
18 concerned with the examination and comparison of the
19 marks left on ammunition components, like bullets and
20 cartridge cases, while in contact with a particular
21 firearm.

22 Firearms identification is based on the
23 principle that the marks that are left on these
24 bullets and cartridge cases, while in contact with a
25 specific areas of a firearm, are unique to that

1 particular firearm. These marks, which are visible,
2 can be observed, can be evaluated, can be examined
3 and can be compared. And through this comparison
4 process, it can be determined and concluded whether
5 this bullet or cartridge case was fired from a
6 particular firearm.

7 Now, in cases where you don't have a firearm
8 to examine, you can actually take the fired
9 components, like bullets and cartridge cases, and
10 compare bullets to bullets, cartridge cases to
11 cartridge cases and determine if they were fired by
12 the same firearm or not.

13 Q Have you ever been qualified as an expert in
14 the field of firearms examination?

15 A Yes, ma'am, I have.

16 Q And roughly how many times?

17 A Since I completed the training program and
18 have been going to court over the past year, five
19 times.

20 Q And have you been qualified as such in courts
21 in South Carolina?

22 A Yes, ma'am, all of them are in general
23 sessions court.

24 Q In Charleston County?

25 A Some are in Charleston County, yes, ma'am.

1 MS. CARDILLO: Your Honor, at this time the
2 State would offer Agent David Black as an expert in
3 firearms examinations.

4 THE COURT: Question or objections?

5 MR. GRIMES: No questions, no objections.

6 THE COURT: So admitted.

7 MS. CARDILLO: Thank you, Your Honor.

8 Q (By Ms. Cardillo) Agent Black, I want to show
9 you what has been marked as Exhibits 60 and 65. And
10 also Exhibit No. 62.

11 A Yes, ma'am, I have it.

12 Q Thank you. With regard to this case, your lab
13 number L0710815, did you have an occasion to examine
14 some evidence submitted by the Charleston Police
15 Department?

16 A Yes, ma'am, I did.

17 Q And can you identify those items?

18 A Yes, ma'am. State's Exhibit 60 is a Smith &
19 Wesson -- .32 Smith & Wesson long caliber revolver
20 bearing the serial number of 554507. Also, in the
21 top strap of the revolver, I engraved the SLED lab
22 number, item number, my initials DWB.

23 State's Exhibit 65 contains one fired
24 cartridge case, and five unfired cartridges. They
25 also bare the SLED laboratory number, item number,

1 and my initials DWB.

2 And State's Exhibit 62, yes, ma'am, is a fired
3 bullet which also bears the SLED laboratory number,
4 item number, and my initials DWB. And on the fired
5 bullet, the fired cartridge case, I also engraved
6 that information on it, too.

7 MS. CARDILLO: Thank you. Your Honor, at this
8 time, the State would move for the admission, and I
9 think some have already been admitted of the
10 firearms, No. 60 and Exhibit 65 have already been
11 admitted. The State would move at this time --

12 THE COURT: Please show them to Mr. Grimes.

13 MS. CARDILLO: Yes, Your Honor. State at this
14 time would move for the admission of the projectile
15 Exhibit No. 62.

16 THE COURT: Any objection?

17 MR. GRIMES: No, ma'am.

18 THE COURT: Marked and admitted without
19 objection.

20 MS. CARDILLO: Thank you.

21 (Whereupon, State's Exhibit No. 62 is admitted
22 into evidence.)

23 Q (By Ms. Cardillo) Now, did you examine these
24 items?

25 A Yes, ma'am, I did.

1 Q And based on your examination of these items,
2 what were your conclusions?

3 A On my examination of the items, State's
4 Exhibit 62, the fired bullet, and the fired cartridge
5 case, State's Exhibit 65, were fired by the revolver,
6 State's Exhibit 60.

7 Q And can you please explain your examination
8 process of the submitted evidence on these particular
9 items and how you reached these results?

10 A Yes, ma'am. When I receive the evidence, the
11 first thing I do is document the evidence as I
12 receive it. I have worksheets that I use, also take
13 photographs. I have a digital camera. I document
14 the condition that the items were in, how they were
15 packaged. The worksheets that I fill out gives me
16 certain statistical information, biographical
17 information, the make, model, serial number, caliber,
18 that sort of thing.

19 Once I finished all my documentation, I began
20 to examine, in this case the revolver, and make sure
21 that it's functioning properly before I do any test
22 firing. That's done for safety reasons. In my
23 examination of the revolver, the safeties were
24 functioning properly, it has two, it has a hammer
25 block and a rebound slide.

1 At that point, I went and did my test firing.
2 At SLED, in the firearms department, we have a bullet
3 recovery room and we have a tank -- water tank that
4 extends two floors of our building. And literally
5 with jet propulsion with the water to break up the
6 water and with the vent system, I fire 90 degrees
7 into the tank. This is the safest way to recover the
8 fired bullets and prevent any damage to these
9 bullets.

10 Once I recover the bullets and the cartridge
11 cases, I mark them with a SLED lab number, item
12 number, test and my initials. And then I take these
13 items and I compare them to the evidence, the fired
14 bullets and cartridge case, on a comparison
15 microscope.

16 And the comparison microscope is basically two
17 microscopes. You have two eyepieces and you have a
18 bridge that connects the two. What I can do is place
19 the evidence on the left-hand stage and the test
20 fired on the right-hand stage and I can move or
21 manipulate these items and compare them, look at them
22 at the same time.

23 When I find a spot on both the evidence that
24 matches with the test, I do a phase mark to orient
25 the two and from there I begin closer examination

1 until I find whether or not it was fired by whatever
2 particular firearm. And if it is, I call it a match.
3 If it's not, it's a non-match. But in this case, it
4 was a match.

5 Q So then I guess -- I am not very familiar with
6 firearms at all.

7 A Okay.

8 Q So the bullet that was recovered or that was
9 submitted to you, that was recovered from the victim,
10 matched the gun that was found?

11 A Yes, ma'am. In particular, what I am looking
12 for, in a rifled barrel, and this revolver has a
13 rifled barrel, in the bore it has something called
14 rifling. And this rifling is either where metal is
15 cut or taken away, or it's formed by the
16 manufacturer.

17 The tools that are used will actually mark the
18 inside of the barrel. The raised portion of rifling
19 is known as lands. The depressed areas between the
20 lands are known as grooves. As the bullet is fired
21 through the barrel, if you can think for a moment,
22 since it's football season, think of a football
23 player, think of the quarterback.

24 When he takes the football and he throws the
25 football, the football has a spiraling motion to it.

1 When the bullet goes through a rifled barrel, it's
2 twisting. It does the same thing. It gives a
3 spiraling motion to the bullet which helps stabilize
4 the bullet. That affects its distance and its
5 accuracy.

6 But those lands and grooves are also marked on
7 the bullet. And what I am looking for are the
8 accidental marks and characteristics that are in the
9 lands and grooves. I'm comparing those from the test
10 to the evidence. And if I have sufficient
11 characteristics that match, then you have an
12 identification.

13 Q I think you've explained a lot of this
14 already, but in this case, this was a Smith & Wesson
15 .32 revolver?

16 A Yes, ma'am.

17 Q How exactly does a revolver work when compared
18 to other types of handgun?

19 A Okay. I'm going to be somewhat limited in
20 what I can do for safety reasons, I realize, with the
21 tie and whatnot. A revolver is a handgun, meaning
22 that it can be operated by one hand. The revolver
23 has a cylinder and this particular has a swing-out
24 cylinder. The cylinder rotates around the axis of
25 the barrel. In the cylinder, there are a number of

1 chambers. Each chamber can hold one cartridge or one
2 live round of ammunition. It has not been fired yet.

3 with a double-action revolver, when you pull
4 the trigger fully to the rear, the cylinder will
5 rotate, lock in place with the barrel, the hammer is
6 cocked. And then once at a point the sear is
7 released, the hammer goes forward, striking the
8 primer, which ignites the powder in the cartridge and
9 sends the bullet down the barrel. The weapon is
10 fired.

11 So in double-action, the pulling of the
12 trigger rotates the cylinder, cocks the weapon and
13 fires the revolver. Most double-action revolvers can
14 also be fired in single action. By manually cocking
15 the hammer back, by manually cocking the hammer,
16 you're rotating the cylinder and you're cocking the
17 firearm. When you pull the trigger, the only thing
18 you are doing in a single-action fire is firing the
19 weapon. That's all that it does.

20 Q Somebody would have to literally pull back
21 the --

22 A Hammer? Yes, ma'am. This is the hammer, this
23 is the hammer spur. The area you would typically
24 grab to pull the hammer back, because the cylinder
25 won't lock in the cylinder window, I can't

1 demonstrate that for that reason. But yes, you would
2 have to physically, manually pull the hammer back
3 first before you can fire single-action fire.

4 Q Then you have to put your finger on the
5 trigger to pull it?

6 A Yes, ma'am.

7 Q While you had this firearm, did you do any --
8 were you able to determine if it functioned properly
9 and how did you do that?

10 A Yes, ma'am. Prior -- as I said before, prior
11 to test firing, there are certain things I did to
12 make sure that the firearm is safe. And even after I
13 test fired, you know, when I did my test fire, yes,
14 it is working, you had to pull the trigger to get it
15 to fire.

16 When I test fired this firearm, because it is
17 a revolver, I did four test fires -- two with double
18 action where you had to pull the trigger all the way
19 through to do all the things I talked about, and two
20 with single action where I cocked the hammer and made
21 sure it fired. Part of that function testing is to
22 make sure when I cocked the hammer that I couldn't
23 bump it or strike it to make it go off. That didn't
24 happen.

25 After my test fire, prior to doing my trigger

1 pull test -- correct that -- I did it after the
2 trigger pull test. I also did too some tests to
3 determine did the hammer block work. The hammer
4 block is a mechanism inside the revolver that
5 prevents the hammer from striking the firing pin
6 unless the trigger is pulled. That worked properly.

7 The rebound slide is more -- they're both
8 designed to prevent accidental discharges. But
9 literally I cocked the revolver and with a rubber
10 mallet, I struck the hammer to see if it would fire
11 without me touching the trigger and it did not. That
12 informed me that the rebound slide was working also.

13 No, I had to work within certain parameters.
14 If I were to go, say, 10 feet up and drop this
15 revolver to see if it would fire, it would probably
16 break the revolver. That's not possible. So that's
17 the reason why we use the methods that we do.

18 Q You mentioned two safety mechanisms?

19 A Yes, ma'am. It has a hammer block and a
20 rebound slide. These are actually made by Smith &
21 Wesson but they started in their revolvers. Both
22 were functioning in this revolver.

23 Q Why are those on this revolver?

24 A They're there to hopefully prevent accidental
25 discharge. That's what they're hoped for.

1 Q You mentioned something about trigger pull.

2 A Yes, ma'am.

3 Q What does that mean?

4 A Trigger pull is a system of weights that we
5 use to determine the amount of force or the amount of
6 weight needed to pull the trigger. It is done with a
7 device where it is kind of an L-shape where we
8 actually hang weights in quarter pound increments. I
9 do it both with double action and single action. And
10 in the single action mode, if I may refer to my
11 notes.

12 Q Please.

13 A In single action, it takes approximately
14 two-and-three-fourths pounds of pressure, at least
15 that amount, to cause it to fire in single action.
16 That's to cock the hammer and the only thing you have
17 to do is just pull the trigger to make it fire.

18 To give you an idea of weight-wise, a half
19 gallon of milk weighs probably four pounds. So if
20 you can imagine taking your index finger and lifting
21 a half gallon of milk with your index finger, that's
22 approximately four pounds. In single-action mode, it
23 takes at least two-and-three-fourths pounds for it to
24 fire in single action.

25 Now, in double-action mode, which is going to

1 take more weight, more pressure, the range was
2 approximately eleven pounds in double-action.
3 Meaning that the hammer is forward as you see it now
4 against a frame pulling the trigger to rotate the
5 cylinder, cock the firearm and fire the firearm.

6 And if you took -- a gallon of milk weighs
7 approximately eight pounds. If you think about
8 holding a gallon of milk and a half gallon of milk
9 with one finger, that will give you an idea of the
10 weight.

11 Q And that's how much weight it would take to
12 pull with your finger --

13 A How much force.

14 Q Force. Okay.

15 A To cause this firearm to fire.

16 MS. CARDILLO: May I have just a moment, Your
17 Honor?

18 THE COURT: Yes, ma'am.

19 MS. CARDILLO: Thank you. I have no further
20 questions of Agent Black.

21 THE COURT: Any cross-examination of the
22 witness?

23 MR. GRIMES: Yes, ma'am. May I have one
24 moment?

25 THE COURT: Yes.

1 CROSS-EXAMINATION

2 BY MR. GRIMES:

3 Q Good afternoon, Agent Black.

4 A Good afternoon, sir. How are you?

5 Q Good. How are you?

6 A Fine, thanks.

7 Q You prepared a report in this case, correct?

8 A Yes, sir, I did.

9 Q Basically a two-page report?

10 A Yes, sir.

11 MR. GRIMES: May I approach?

12 THE COURT: You may.

13 MR. GRIMES: Mark this Defendant's Exhibit No.

14 1 for identification.

15 THE COURT: Marked for ID only.

16 (Whereupon, Defendant's Exhibit No. 1 was
17 marked for identification.)18 Q (By Mr. Grimes) I'm going to show you a copy
19 of Exhibit 1 for identification.

20 A Yes, sir.

21 Q What is that?

22 A This is a copy of the firearms report of my
23 examination of the revolver, the fired cartridge case
24 and the fired bullet. The evidence that was
25 submitted to me by Charleston Police Department.

1 Q Did you prepare any other reports in this
2 case?

3 A No, sir. This is the only report that I
4 issued.

5 Q When you were talking about the trigger pull
6 test, you did not prepare a report on that?

7 A No, sir. That's something we normally do not
8 put in our report. Our report is strictly of the
9 scientific examination of the evidence. It's a part
10 of our notes, part of our case file, which is
11 available for your examination or anyone's
12 examination, but it's not part of the report, no,
13 sir.

14 Q If it was available for my examination, do you
15 know why it wasn't sent to me?

16 A I have no idea, sir. I know with SLED if you
17 contact us, we will help you in getting a copy of our
18 notes and whatnot.

19 Q And you said you tested it, sort of with a
20 hammer and mallet, hit it? I guess cocked the gun
21 back and hit it?

22 A Yeah, part of the safety to determine if the
23 safety features were operating and were working, one
24 of the things that I did was take a hammer, I cocked
25 the revolver where it was single-action fire, and

1 then with a rubber mallet I struck the hammer,
2 without touching the trigger, to see if I could get
3 it to fire and it did not.

4 That let's me know that the safety features
5 that are built into the firearm were working. The
6 only way I could get the revolver to fire was when I
7 pulled the trigger.

8 Q Did you prepare a report on that?

9 A Again, no, sir I did not. It's a part of my
10 worksheets and my case notes.

11 Q Again, do you know why that was not sent to
12 us?

13 A No.

14 MS. CARDILLO: Objection, Your Honor.

15 THE COURT: Basis?

16 MS. CARDILLO: Speculation. The case agent
17 would not have known why this information --

18 THE COURT: No speaking objections. Please
19 approach.

20 (Whereupon, a discussion was held at the bench
21 off the record.)

22 THE COURT: Objection withdrawn. You may
23 proceed.

24 Q (By Mr. Grimes) Do you know why that report
25 was not sent to us?

1 THE COURT: You asked that question.

2 MR. GRIMES: I don't know if he answered it or
3 not.

4 THE COURT: He answered the question. Move
5 along.

6 Q (By Mr. Grimes) I was a little confused with
7 what you said about single action and double action.
8 Is it single action, is that when you cock it back,
9 then pull trigger?

10 A Yes, sir, that's correct.

11 Q Single action, just when you pull the trigger?

12 A I think you just confused me.

13 Q I'm sorry. When I was looking at the gun, it
14 seems like you could cock the gun back.

15 A Correct.

16 Q And then to fire, you would have to pull
17 trigger?

18 A Correct. When you cock the hammer on the
19 revolver and just pull the trigger back, that is
20 single-action fire.

21 Q What is the double action?

22 A Double action is when the hammer is forward on
23 the frame as it is now, if you pull the trigger all
24 way back through the full motion and cycle, the
25 cylinder will rotate, lock in place, the hammer will

1 come to the rear, and then when the sears release,
2 the hammer will go forward firing the firearm.

3 Q All right. Now, do you know what happened in
4 this case?

5 A I have no idea. None, sir.

6 Q Did you receive any incident reports in this
7 case?

8 A Not that I'm aware of, no, sir. The basis of
9 my examination is whether or not the bullet and
10 cartridge case were fired by this firearm and was the
11 firearm functioning.

12 Q And sounds like you did some other extra
13 things, too?

14 A Part of our worksheet protocol that we do when
15 we have firearms, yes, sir, function test, trigger
16 pull, yes, that's part of our routine of what we do.
17 That's part of the protocol.

18 Q If someone, I guess, when you were testing it
19 in the lab -- I'm trying to think of the right word
20 -- optimal condition, no one's pulling the gun
21 around, waving it, anything like that?

22 A No, sir. When I have the firearm, I think I'm
23 answering your question properly, I have control of
24 the firearm. I am working within certain boundaries,
25 certain protocols in a safe manner, yes. That's what

1 I am doing.

2 Q So on the night of the incident, there may be
3 different variables. You know, someone maybe had
4 their finger on the trigger, trigger was already
5 halfway pulled, that could affect how much weight it
6 would take for the gun to fire?

7 I'm not sure if that makes sense. I guess I'm
8 trying to say if you say it's a two-and-three-fourths
9 pounds to pull the trigger back?

10 A Yes. In single action, yes, sir. In single
11 action, meaning that if the revolver was cocked
12 already, it's for a single action fire, then yes,
13 it's going to take at least two-and-three-quarter
14 pounds of force or weight to cause it to fire, yes,
15 sir.

16 Q For example, if someone had a gun, maybe
17 already had it cocked or was doing something with it,
18 someone hit their hands --

19 A As long as the trigger is pulled, the revolver
20 is going to fire. It takes someone pulling the
21 trigger to cause the revolver to fire, whether it's
22 in double action or single action.

23 Q And by pulling the trigger, it can be done on
24 purpose, someone shooting somebody?

25 A Yes.

1 Q Or it could be done sort of as an accident,
2 people struggling over a gun?

3 A If people are struggling over a gun yes, sir,
4 it's possible it may fire. Yes, sir.

5 Q Or if someone says, get the gun out of my
6 face, and hits their hand --

7 A I don't --

8 Q Is it possible?

9 A I guess it's possible, yes, sir. I don't know
10 all the variables of what happened. Again, I wasn't
11 there. Is it possible? Yes, sir, I guess it's
12 possible.

13 MR. GRIMES: Thank you.

14 THE WITNESS: Yes, sir.

15 MR. GRIMES: May I have moment, please, Your
16 Honor?

17 THE COURT: Yes.

18 MR. GRIMES: Thank you, Your Honor. I have no
19 other questions.

20 THE COURT: Any redirect of the witness?

21 MS. CARDILLO: Thank you, Your Honor.

22 REDIRECT EXAMINATION

23 BY MS. CARDILLO:

24 Q Agent Black, so someone would have had to have
25 pulled the trigger for it to go off is what you said?

1 MR. GRIMES: Objection, leading.

2 THE COURT: Sustained, leading. Rephrase.

3 Q (By Ms. Cardillo) Did somebody have to pull
4 the trigger for the gun to go off?

5 THE COURT: Sustained, leading.

6 Q (By Ms. Cardillo) Let me ask you this way, to
7 make the gun fire, how would you do that?

8 A To make this revolver fire, whether it's in
9 double-action mode or single-action mode, you have to
10 pull the trigger the make the revolver fire.

11 Q And would hitting the side of the gun or the
12 barrel of the gun, would that cause the trigger to go
13 off?

14 A When I had the firearm with my testing, no, it
15 would not. The only way the revolver would fire is
16 the trigger had to be pulled.

17 Q And when you talked about the hammer, how
18 would that -- would somebody have to pull that
19 hammer?

20 A In single action, if you want to fire it in
21 single action, yes, you'd have to manually pull and
22 cock the hammer and then -- when you just pull the
23 trigger, only thing you are doing is firing the
24 weapon.

25 Q Can that be done at the same time or does the

1 hammer have to be pulled first?

2 A The hammer is going to have to be pulled
3 first, yes. But it doesn't -- not on the strength of
4 an individual, I'm just saying it doesn't take long.
5 You can pull the hammer and then fire the weapon.

6 MS. CARDILLO: Thank you. I have no further
7 questions.

8 THE COURT: Any objection of the witness being
9 excused from the State?

10 MS. CARDILLO: None from the State.

11 THE COURT: From the defense?

12 MR. GRIMES: No, ma'am.

13 THE COURT: You are excused. You may call
14 your next witness.

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

16 THE COURT: Yes.

17 (Whereupon, a discussion was held at the bench
18 off the record.)

19 THE COURT: Who is the State's next witness?

20 MS. CARDILLO: State calls Sergeant Barry
21 Goldstein.

22 THE COURT: Actually, before we do that,
23 Mr. Foreman, ladies and gentlemen, I have a very
24 brief matter of law I need to take up with the
25 attorneys. It will be very brief.

1 During this break, please do not discuss this
2 case. Please leave your notepads in the seats. I
3 anticipate it will be five minutes or less.

4 (Whereupon, the jurors exit the courtroom.)

5 THE COURT: Okay. Make your motion,
6 Mr. Grimes.

7 MR. GRIMES: Thank you, Your Honor. May it
8 please the Court. We would have Agent Black's
9 testimony about the test done for the trigger pull
10 and the hammer test to be stricken from the record.
11 The State violated Rule 5, not disclosing those
12 reports to us. I did not make a contemporaneous
13 objection because I was learning of this for the
14 first time. I was --

15 THE COURT: That does not preclude you from
16 making a contemporaneous objection when you became
17 aware of it; is that correct?

18 MR. GRIMES: Ma'am?

19 THE COURT: It did not preclude you from
20 making a contemporaneous objection at the time, did
21 it?

22 MR. GRIMES: Perhaps not. I was trying to
23 sort of lay a foundation so I could make a better
24 argument.

25 THE COURT: The rules require you to make a

1 contemporaneous objection to preserve the record,
2 does it not?

3 MR. GRIMES: I think in issue in the cases
4 where it's a question asked by the solicitor or the
5 answer is coming out --

6 THE COURT: I think it is contemplated by
7 everything, it's not limit to questions. Evidence is
8 everything. You are required to make a
9 contemporaneous objection to it.

10 MR. GRIMES: I know there are some exceptions,
11 for example closing arguments in terms of --

12 THE COURT: There are no exceptions that I'm
13 aware of in closing arguments. You are still
14 required to make a contemporaneous objection.

15 MR. GRIMES: Not to argue with the Court, but
16 I don't know the name of the case, but I believe
17 there's one which race was involved, solicitor was
18 involved, in that type of case you may not have to
19 make a contemporaneous objection.

20 THE COURT: This isn't one of those
21 circumstances.

22 MR. GRIMES: Yes, ma'am. And we have
23 specifically requested in our Discovery Question
24 Number 8, was filed on July 8, 2008, results of all
25 forensic testing performed in this case. Including,

1 but not limited to, the worksheets using gunshot
2 residue testing and electropherogram and DNA test.

3 We specific requested any tests, it was never
4 disclosed to us. Based upon that we believe the
5 State violated Rule 5, we'd ask that that testimony
6 to be stricken from the record.

7 In the alternative we'd move for a mistrial.
8 Thank you, Your Honor.

9 THE COURT: You're welcome. Would the State
10 like to respond?

11 MS. CARDILLO: Your Honor --

12 MR. WILLIAMS: Your Honor, I will answer. My
13 understanding is they specifically requested the GSR
14 and DNA. I believe that was specifically given to
15 them.

16 THE COURT: You gave them the report that he
17 referred to?

18 MR. WILLIAMS: Based on what they said that
19 they wanted, I believe in his request for a specific
20 report of GSR and DNA.

21 THE COURT: You gave them -- what proof do you
22 have that you gave that to them?

23 MR. WILLIAMS: I think we have more in our
24 file. I think that the report itself when it talks
25 about the gun being found in working order

1 contemplates that it obviously was tested for that
2 purpose.

3 And it is in the exhibits that I think, I
4 think the exhibit for identification only, the report
5 says found to be in working order. What that means
6 is he tested the trigger pull and he did all these
7 other things. Mr. Grimes already knew that that
8 testimony was going to come in.

9 THE COURT: Did you have the report in your
10 possession?

11 MR. WILLIAMS: We only have the report that
12 was made an exhibit. We don't have the information
13 as it was stated with the agent that was what he
14 testified to.

15 THE COURT: You're losing me. What report did
16 you provide to Mr. Grimes?

17 MR. WILLIAMS: I was addressing his specific
18 request. On the gun itself, just the SLED final
19 report, I guess.

20 THE COURT: Which is the report that the
21 officer just -- the agent just testified about?

22 MR. WILLIAMS: Correct.

23 THE COURT: You had that in your possession?

24 MR. WILLIAMS: Right. We turned that over.

25 THE COURT: You turned that over?

1 MR. WILLIAMS: Correct.

2 THE COURT: What report is it that he was
3 referring to?

4 MR. WILLIAMS: He made a specific request to
5 us for --

6 THE COURT: That's not what I'm asking. I'm
7 asking what report was this agent just testifying to?

8 MR. WILLIAMS: I think he was talking about
9 his notes that he kept in his custody.

10 THE COURT: So it is not a report, it's his
11 notes?

12 MR. WILLIAMS: That's what I heard.

13 THE COURT: Please stop him before he leaves.
14 Has the agent already left?

15 MS. MULLANEY: He's outside, still waiting.

16 THE COURT: Were those marked at all?

17 THE COURT REPORTER: The only thing marked was
18 the Defendant's Exhibit 1, which is the --

19 THE COURT: For ID only. Which was what?

20 THE COURT REPORTER: The report.

21 THE COURT: Okay. And you asked him about
22 that report, correct, Mr. Grimes?

23 MR. GRIMES: Ma'am?

24 THE COURT: You asked him about that report,
25 correct?

1 MR. GRIMES: Yes, ma'am.

2 THE COURT: He can just sit in the gallery for
3 me please. You asked him about that report, correct?

4 MR. GRIMES: Yes, ma'am. The one I marked as
5 Defense Exhibit 1.

6 THE COURT: So what additional report are you
7 referring to?

8 MR. GRIMES: Basically his notes.

9 THE COURT: Did you ask for his notes? The
10 rule refers to report, it does not say notes, does
11 it?

12 MR. GRIMES: Ma'am?

13 THE COURT: Does the rule say notes or does it
14 say report?

15 MR. GRIMES: Copy, inspect a copy of any
16 results or report of physical examination in a
17 scientific test or experiment. I think --

18 THE COURT: That are within the possession,
19 control or -- custody or control of the prosecution.
20 Do you have some information this was within their
21 control?

22 MR. GRIMES: SLED did the --

23 THE COURT: You're missing my point. Do you
24 have some indication that these reports were in the
25 care, custody and control, and that they had a duty

1 to turn them over to you?

2 And more specifically, did you request them?

3 MR. GRIMES: First, I have no information that
4 Ms. Cardillo had those underlying reports.

5 THE COURT: And you acknowledge that you
6 received the same report that SLED produced of all of
7 their testing, with all of their findings in it that
8 was provided to the solicitor, that that was provided
9 to you under Rule 5, correct?

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: Okay. The rule does not talk
12 about mental impressions or notes, does it?

13 MR. GRIMES: I believe results would include
14 notes.

15 THE COURT: That's not what I asked you. Does
16 the rule say that? We are bound by the plain and
17 ordinary meaning of the rule. We don't get to
18 extrapolate from it, we don't get to write into it
19 what we want it to say. We are bound by what it
20 says.

21 MR. GRIMES: I understand that.

22 THE COURT: I don't need you to argue, I just
23 need you to answer my questions.

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: Because I've heard your argument

1 and I'm going to allow the State to respond and I'm
2 going to allow you to have rebuttal. When I ask a
3 question, I need a direct answer.

4 MR. GRIMES: Yes, ma'am.

5 THE COURT: Now, thank you. You can take your
6 seat. Ms. Cardillo, finish your argument, or Mr.
7 Williams, then I'm going to let Mr. Grimes have
8 rebuttal.

9 And I need to be clear. The report that's
10 been marked as Defendant's ID 1 for Defendant's 1 for
11 identification only is the SLED report provided by
12 the examiner, correct?

13 MR. WILLIAMS: Yes, Your Honor.

14 THE COURT: And that report provides all of
15 the results of his testing, correct?

16 MR. WILLIAMS: Correct.

17 THE COURT: And that is the report that you
18 had in your possession and control?

19 MR. WILLIAMS: Right. We still have.

20 THE COURT: And you turned that over to Mr.
21 Grimes in response to his Brady request or his Rule 5
22 request as we routinely refer to it?

23 MR. WILLIAMS: Yes, Your Honor.

24 THE COURT: Was that all you had in your
25 possession?

1 MR. WILLIAMS: As far as that witness, yes,
2 Your Honor.

3 THE COURT: That's the only person I'm asking
4 about. Is there anything else you had in your
5 possession, any other notes, any other tests? Did
6 you have any results, reports -- well, physical,
7 mental examination would not apply -- does that
8 report reflect his scientific tests or experiments?

9 MR. WILLIAMS: Yes, Your Honor. That's why I
10 was referring to he said it was a working order. I
11 think that is his conclusion, but the underlying
12 information was in his notes, which is what he
13 testified to.

14 THE COURT: Okay. You may proceed with any
15 further argument you have, Mr. Williams.

16 MR. WILLIAMS: I don't think I have anything
17 -- I'm simply trying to point out that when Mr.
18 Grimes did ask for those things underlying the
19 material with other witnesses, we provided that.

20 THE COURT: He did not request it in this
21 sense?

22 MR. WILLIAMS: Not until just now, apparently.

23 THE COURT: The reason I asked the very
24 pointed questions that I asked is I was given the
25 impression in the initial argument that you did not

1 get a report at all. That was not the case. A
2 report was produced, it was provided to you, correct?

3 MR. GRIMES: Yes, ma'am.

4 THE COURT: Okay. You may proceed with your
5 argument.

6 MR. GRIMES: Sorry for leaving that
7 impression.

8 THE COURT: That's the impression the Court
9 had. I needed it clarified.

10 MR. GRIMES: I acknowledge what Mr. Williams
11 said, I did receive the report. Basically the bullet
12 came from that gun, was fired by the gun. We were
13 never disputing that.

14 But the report does not contain any
15 information about the trigger pull test or about this
16 hammer test. And --

17 THE COURT: Well, he indicated in his
18 testimony that that would not be in the report,
19 that's general information based on his expertise,
20 correct? Based on his knowledge of the weapon as I
21 understand his testimony.

22 MR. GRIMES: He said he performed the test.
23 He did test on that to see how much pressure it took
24 to fire the gun.

25 THE COURT: But he said in general that is not

1 something they include in the report, correct?

2 MR. GRIMES: In the report that I introduced
3 -- that was marked as an exhibit, he said that's
4 correct.

5 THE COURT: Pardon me?

6 MR. GRIMES: In the report I marked as an
7 exhibit --

8 THE COURT: He said they never put it in the
9 report, correct?

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: So it wasn't just this report?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: He said that was matter of policy,
14 really a matter of protocol. They don't put it in
15 the report, correct?

16 MR. GRIMES: Yes, ma'am.

17 THE COURT: Did you specifically request this
18 information?

19 MR. GRIMES: Closest I would say would be my
20 Question Number 8, results of all forensic testing
21 that was performed in this case, including but not
22 limited to the following: Not only worksheets, but
23 the GSR test, the electropherogram charts used in the
24 DNA testing.

25 THE COURT: Say that one more time. You said

1 Number 8, what did you request?

2 MR. GRIMES: Yes, ma'am, may I approach?

3 THE COURT: Just read it, number 8.

4 MR. GRIMES: The results of all forensic
5 testing that was performed in this case, including
6 but not limited to the following: A) worksheets used
7 in the gunshot residue testing, B) the
8 electropherogram chart that's used in DNA testing.

9 THE COURT: Do worksheets exist for testing
10 for the firearm?

11 MR. WILLIAMS: I don't know, Your Honor. We
12 did turn over the GSR as well as the entire DNA case
13 file, which included the electropherogram I believe.

14 THE COURT: Mr. Black, do you have something
15 that would be considered a worksheet for this testing
16 that you performed?

17 THE WITNESS: Yes, ma'am. We do have
18 worksheets we do use.

19 THE COURT: Do you have those in your file?

20 THE WITNESS: Yes, ma'am, I do.

21 THE COURT: Can you please provide those to
22 the State so that I can provide copies of those to
23 Mr. Grimes?

24 THE WITNESS: Yes. If it's okay, I can hand
25 them the case file, they can make a complete copy of

1 the case file if they'd like.

2 THE COURT: You can do that but I need the
3 worksheets now.

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Now, the request for mistrial is
6 denied. There is no basis for a mistrial in this
7 case.

8 The request to strike the testimony is denied,
9 that's an extreme remedy. There's no basis for that
10 either. There is no indication that the State
11 deliberately withheld any information that was
12 material to the guilt or innocence of this defendant.

13 The remedy is to give you access to the
14 reports, Mr. Grimes, for you to study those to see if
15 there is anything appreciably different. The
16 standard is not whether information was kept from
17 you, the standard is whether there is resulting
18 prejudice.

19 Case law defines that as whether the result
20 would be substantially different. We don't know what
21 the result is, so we don't know that that test can be
22 met.

23 However, out of an abundance of caution, I'm
24 going to make sure that they give you these
25 worksheets. And Agent Black will be made available

1 in the event you decide you want to recall him for
2 that purpose of additional cross-examination.

3 MR. GRIMES: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 MR. WILLIAMS: Your Honor, we are having those
6 copies made now. It is my understanding Sergeant Van
7 Horn with City Police Department is here. He is the
8 one that processed the cell phone. You can deal with
9 him whenever you'd like. He is available.

10 THE COURT: Where is Mr. Van Horn? Mr. Van
11 Horn, how are you?

12 MR. VAN HORN: I'm fine.

13 THE COURT: What we are trying to determine is
14 can the dates and times that the phone calls were
15 received on the telephone be determined?

16 MR. VAN HORN: I don't believe on this model
17 of phone, they were not put out in the digital report
18 or the hard copy of the report. Each phone is
19 different.

20 THE COURT: Tell me why you can't do that
21 because it shows up on the phone itself.

22 MR. VAN HORN: Yes, ma'am. It just depends on
23 what the firmware of the phone is. What the
24 operating system, so to speak, of the phone is.
25 That's all. And how the software interacts with that

1 operating system.

2 THE COURT: Okay.

3 MR. VAN HORN: Some phones we can, some phones
4 we can't. In this model phone, we cannot.

5 THE COURT: Okay. That answers my question.

6 MS. CARDILLO: Your Honor, I also have the
7 phone number that you requested for the SunCom legal
8 department.

9 THE COURT: Yes. What's the phone number for
10 the record?

11 MS. CARDILLO: Your Honor, phone number for
12 the victim's cell phone is [REDACTED] 7956. Her name,
13 again, was Latoya Pendergrass.

14 THE COURT: Are we ready to proceed with the
15 next witness?

16 MS. CARDILLO: Yes, Your Honor.

17 THE COURT: Please bring in the panel.

18 MS. CARDILLO: Your Honor.

19 THE COURT: Yes. Wait one second.

20 MS. CARDILLO: Your Honor, can Corporal Van
21 Horn be free to leave?

22 THE COURT: Oh, he came over here just for
23 that?

24 MS. CARDILLO: Yes.

25 MR. VAN HORN: It was worth it, Your Honor.

1 THE COURT: Okay. You're fine. Well, do you
2 know much about cell phones?

3 THE WITNESS: It depends.

4 THE COURT: I am trying to figure out why the
5 phone won't scroll down for us to let us look at it.

6 MR. VAN HORN: I'm trying to remember back.
7 Motorola, right.

8 THE COURT: Yeah.

9 MR. VAN HORN: It's very possible it could be
10 from humidity. There could be degradation, won't
11 have contact or something like that.

12 THE COURT: Okay. Thank you. Have a good day

13 MR. VAN HORN: You, too. Thank you.

14 THE COURT: Are we ready proceed from the
15 State?

16 MS. CARDILLO: Yes, Your Honor.

17 THE COURT: From the defense?

18 MR. GRIMES: Yes, ma'am.

19 THE COURT: Please bring in the panel.

20 (Whereupon, the jurors enter the courtroom.)

21 THE COURT: Please call your next witness,
22 Ms. Cardillo.

23 MS. CARDILLO: Sergeant Barry Goldstein, Your
24 Honor.

25 THE COURT: Thank you very much, Mr. Robinson.

1 Ladies and gentlemen, we appreciate your
2 patience. We will now resume with the trial. You
3 may call your next witness.

4 MS. CARDILLO: Your Honor, State calls
5 Sergeant Barry Goldstein.

6 THE COURT: Sir, if you come to the witness
7 stand to be sworn.

8 MR. BARRY GOLDSTEIN,
9 after having first been duly sworn to state the
10 truth, the whole truth and nothing but the truth,
11 testified on his oath as follows:

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MS. CARDILLO:

15 Q Good afternoon, Sergeant Goldstein.

16 A Good afternoon.

17 Q Where are you employed?

18 A Charleston Police Department.

19 Q And how long?

20 A 31 years.

21 Q So what are your present duties?

22 A I'm assigned to the detective division to
23 investigate violent crimes.

24 Q Do you have any particular area of expertise
25 that you are mainly assigned to?

1 A I've investigated various types of violent
2 crimes. But for my entire investigative career, I
3 have investigated violent crime.

4 To answer your question, for the past 12 years
5 has been nothing but death.

6 Q And you said you have been with the Charleston
7 Police Department for 31 years?

8 A Yes.

9 Q What did you do before you were in the
10 homicide division, or I guess, if you will, the
11 criminal investigation division?

12 A I have been in this unit for a total of 21
13 years. Prior to that, I worked in the uniform
14 division in a street clothes unit, which would
15 saturate problem areas throughout the city.

16 Q Now, were you involved in an investigation of
17 a homicide of Latoya Pendergrass?

18 A Yes.

19 Q And were you dispatched to [REDACTED] Harris Street on
20 July 8th of '07?

21 A No, I was at home. I was asleep. I was the
22 duty detective on-call at that time of the night.

23 Q What -- how did you become involved in this
24 case?

25 A The Charleston Police Department would call my

1 residence and advise me that there was a call out.
2 In this case it would be a death of some type at [REDACTED]
3 Harris.

4 Q Did you go to that location?

5 A Yes. It was around five o'clock in the
6 morning.

7 Q And what did you find upon your arrival? or
8 what did you do upon your arrival?

9 A First thing I did upon my arrival would be
10 meet with Sergeant Ambrose, who was the supervisor in
11 charge of the scene, who advised me to speak with
12 Officer Feeders. I spoke with Feeders. He had done
13 a canvas of the neighborhood at which time I was
14 directed to [REDACTED] Minor 1.

15 Q And did you speak with [REDACTED] Minor 1 ?

16 A I did.

17 Q Without going into what she said, was she
18 articulate?

19 A Yes, she was.

20 Q What did you do next as part of your
21 investigation?

22 A After speaking to her, I met with the crime
23 scene unit once they were complete in taking their
24 photographs and whatever processing that they were
25 going to do. And from there, I responded to

1 Charleston Police Department on Lockwood Boulevard.

2 Q Did you take any witness's statements?

3 A Yes, I did. I met with several witnesses
4 there in the Johnson Street area.

5 Q Was that before you proceeded to the
6 headquarters at Charleston Police Department?

7 A Yes. It would have been with immediate
8 neighbors, Ms. James, I had spoken to her. She lived
9 next door. That was a written statement, I remember.

10 Q Did you speak with anybody else?

11 A I spoke to a Ms. Williams. She was with
12 Minor 1 several doors down.

13 Q And did you take witness statements?

14 A Ms. Williams I did not; James, I did.

15 Q What else, as part of your investigation, did
16 you do? Better yet, what does canvassing the
17 neighborhood mean?

18 A Canvas of a neighborhood is when an officer --
19 first place you start is by the bystanders. You go
20 through, speak with the bystanders, see if anybody
21 has seen anything, knows anything pertaining to the
22 crime.

23 Then you do a systematic door-by-door. This
24 is -- a lot of times this is done by the uniformed
25 officers there because it takes so much time getting

1 the data of the residence, who lives there, et
2 cetera. And the detectives, they just have so much
3 going on trying to gather facts and get an idea of
4 what took place. So this was all going on in that
5 short period of time.

6 Q And after you conducted this, what did you do
7 next?

8 A After looking at the crime scene, once they
9 allowed me after their processing, then I would go to
10 the Charleston Police Department.

11 Q For what reason did you go there?

12 A To speak with an individual by the name of
13 Jake Antonio Wilson.

14 MS. CARDILLO: Your Honor, may we approach?

15 THE COURT: You may.

16 (Whereupon, a discussion was held at the bench
17 off the record.)

18 THE COURT: Mr. Foreman, ladies and gentlemen,
19 I have a matter of law to take up with the attorneys.
20 It will be brief. Please leave your notepads in the
21 seats.

22 If you need anything, please let the bailiff
23 know. For those of you who smoke, you do have enough
24 time to go downstairs. Or if you'd like to get air,
25 let the bailiff know.

1 (Whereupon, the jurors exit the courtroom.)

2 (Whereupon, State's Exhibit No. 78 is marked
3 for identification.)

4 THE COURT: You may proceed.

5 MS. CARDILLO: Thank you, Your Honor.

6 IN-CAMERA DIRECT EXAMINATION

7 BY MS. CARDILLO:

8 Q Sergeant Goldstein, you mentioned that you
9 went to the police department to interview Jake
10 Antonio Wilson?

11 A Yes.

12 Q What did you do upon your arrival? Was he
13 already there?

14 A He was already there. He was transported by
15 uniform officer, Officer Inabinett. He was in the
16 booking area. And at this time, I have identified
17 myself and I pulled out my Miranda card and I read it
18 to him as Miranda warnings off the card.

19 Q Let me show you what has been marked as
20 State's Proposed Exhibit 78. Do you recognize that?

21 A Yes. This is the card that I read to him.

22 Q And what I'm going to need you to give --
23 where did you read this to him?

24 A Right there at the booking area of the police
25 department.

1 Q And is that your signature and date on the
2 card?

3 A This is my signature and the card reflects
4 July 8th, '07 -- 2007 at 7:55 a.m. This is my
5 signature.

6 Q And while at the booking desk, what did you
7 advise him? If you could go through.

8 A Number one, you have the right to remain
9 silent. Two, anything you say can and will be used
10 against you in a court of law. Three, you have the
11 right to talk with a lawyer, to have him present
12 during any questioning. Four, if you cannot afford a
13 lawyer, one will be appointed to represent you before
14 any questioning, if you wish one. Five, if you
15 decide to answer questions without a lawyer present,
16 you have the right to stop answering questions at any
17 time if you so choose.

18 Then you flip it over. Do you understand your
19 rights? And I asked him if he understands them if he
20 would sign in his own handwriting the signature spot
21 for the suspect.

22 Q Did he do that?

23 A He did.

24 Q And did you witness that?

25 A Yes.

1 Q Now, was there any other officers present at
2 that time?

3 A Officer Inabinett was present. He was the
4 uniformed officer that transported him from the
5 address in the city.

6 Q Did it appear to you that the defendant was
7 under the influence of alcohol or drugs from your
8 observation?

9 A No, ma'am.

10 Q Did it seem that he was under any influence of
11 any substance that would have impaired his ability to
12 understand?

13 A No.

14 Q To your knowledge, did the defendant have any
15 physical or mental disability that would have
16 impaired him to understand his Miranda rights as you
17 just read them to the Court and to him on that
18 morning?

19 A No.

20 Q What was the physical surroundings of this
21 area where you read him his Miranda rights?

22 A It's a desk. You have a fenced area, like
23 bars where somebody could not get out of the police
24 department. His property was already up on the
25 countertop. That's the procedure. They ask the

1 individuals that are brought in to empty their
2 pockets or the officers do it.

3 Q What did he empty out of his pockets?

4 A There were two cell phones there. And
5 personal property.

6 Q What -- after -- did you speak with him at
7 this point without going into what he said?

8 A Yes, I did.

9 Q Did there come a point where you took him to
10 an interview room?

11 A Yes, it did.

12 Q And how long from the time you read him his
13 Miranda rights, you spoke with him at the booking
14 desk, to the time you took him to the interview room?

15 A Probably approximately five to ten minutes.

16 Q So you had to go through the booking process
17 first before you took him?

18 A It would be the property process where they
19 bag up the property in the presence of the individual
20 just so it's witnessed by the individual surrendering
21 their property.

22 Q Now, what kind of room -- what was the
23 physical surrounding of this room where you took him
24 to?

25 A Go up to a second floor area. It's a large

1 office. Go up to an elevator, and the interview room
2 is a room large enough to hold three chairs and a
3 table. And I don't know the dimensions. It's not
4 very large, but that's the furniture that was in
5 there.

6 Q Was there anybody else present in the
7 interview room other than yourself?

8 A Sergeant Gordon, Michael Gordon.

9 Q What was the length of the time of the
10 questioning of the defendant?

11 A Twenty minutes.

12 Q Any breaks?

13 A No.

14 THE COURT: Let me interrupt you one second.
15 My clerk talked to a person SunCom, she says all we
16 need is a subpoena and she will get it to me in 20
17 minutes. Something about a judge calling.

18 MS. CARDILLO: I do think so.

19 MR. GRIMES: Our office will have to issue a
20 subpoena.

21 THE COURT: Can we get a subpoena, and I will
22 fax it to her. I have the information she says she
23 will fax it right back to my office. Do you all need
24 the information?

25 MS. CARDILLO: Yes, Your Honor.

1 THE COURT: I may need to sign the subpoena.
2 Did you have the subpoena form I can sign to her?

3 MS. CARDILLO: We can get one printed out. We
4 can bring it back here for your signature.

5 THE COURT: I'm going to give you what needs
6 to be on the fax cover sheet.

7 MS. CARDILLO: Do you want me to go ahead and
8 continue?

9 THE COURT: I just need a subpoena so that I
10 can sign it, get it over there. Either one of you
11 that wants to do it.

12 MR. GRIMES: I think we may have already sent
13 one up there.

14 THE COURT: Does not matter. They're not
15 going to honor that, they're going to honor the one
16 that comes from my office. I'm trying to follow
17 their directions.

18 You all just do me a little subpoena form that
19 will work. Thank you so much. You may continue with
20 your questioning.

21 MS. CARDILLO: Thank you.

22 Q (By Ms. Cardillo) Okay. Were there any --
23 how long was the questioning again? I'm sorry.

24 A Twenty minutes.

25 Q Was he denied any access to a phone or

1 bathroom during this 20 minutes?

2 A No.

3 Q Were there any promises or threats made in
4 exchanged for the statement to the defendant?

5 A No.

6 Q Was he under arrest at the time? Was he in
7 your custody at the time that you were speaking with
8 him?

9 A Yes.

10 Q Was the defendant responding to your
11 questions?

12 A Yes, he was.

13 Q And was he advised of the nature of the
14 investigation?

15 A Yes, he was.

16 Q And again, was he advised of his
17 constitutional rights pursuant to Miranda prior to
18 any questioning regarding the case or the crime?

19 A That was the very first thing that I did.

20 Q And you said you went through the card?

21 A Yes.

22 MS. CARDILLO: Your Honor, at this time the
23 State would move for the admission of, you probably
24 want it a Court's exhibit.

25 THE COURT: Let me see them. Will be marked

1 as a Court's Exhibit.

2 MS. CARDILLO: Got it. I'm jumping ahead of
3 myself.

4 THE COURT: Did you show it Mr. Grimes?

5 MS. CARDILLO: I did, Your Honor.

6 THE COURT: I imagine there is no objection to
7 having it marked as a Court's Exhibit?

8 MR. GRIMES: No, ma'am.

9 THE COURT: Mark as Court's whatever next in
10 line for purpose of the in-camera hearing. You may
11 proceed.

12 MS. CARDILLO: Thank you.

13 (Whereupon, Court's Exhibit No. 2 is marked
14 for identification.)

15 Q (By Ms. Cardillo) You indicated that you did
16 sign this card and just previously read it to us?

17 A Yes.

18 Q How was the advice of rights accomplished?
19 Were you standing beside him?

20 A I have standing in front of him, face to face.

21 Q Was he looking at you while you were doing
22 this?

23 A To the best my knowledge. His face was in
24 front of me.

25 Q How did you explain the warnings to the

1 defendant? Did you just go through each question?

2 A Yes. I read the complete card.

3 Q Did he indicate he understood his rights?

4 A Yes.

5 Q Did he have any other -- from your
6 observations, did he have any trouble understanding
7 what you read to him, his rights?

8 A No.

9 Q Did he understand English?

10 A To the best of my knowledge he did, yes.

11 Q To your knowledge, did he have any educational
12 issue that you observed that would have prevented him
13 from understanding his rights?

14 A No.

15 Q Did his answers appear rational and
16 responsive?

17 A Yes.

18 Q And was the defendant so emotional that gave
19 you any concerns about him understanding his rights?

20 A No.

21 Q Did you or anyone in your presence threaten or
22 coerce him in any fashion or offer him any promises?

23 A No.

24 Q How did he respond when asked whether he
25 wanted an attorney before he spoke with you?

1 A He agreed to speak with us orally but put
2 nothing in writing.

3 Q Did he waive his rights?

4 A Yes.

5 Q Did he ever change his mind later and ask to
6 speak to an attorney?

7 A He did, yes.

8 Q And what did you do when that happened?

9 A That would be 20 minutes later from when we
10 went upstairs in the interrogation room. When he
11 said he wanted a lawyer, I terminated the questioning
12 based on that fact.

13 Q To the best of your knowledge, was defendant's
14 statement freely and voluntarily given?

15 A Yes.

16 Q Did he respond again to your questions?

17 A Yes, he did.

18 Q What did the defendant tell you from when you
19 were at the booking desk after you read his Miranda
20 rights?

21 A The first statement that he made was that he
22 was downstairs in the living room and that he was
23 going up the stairs and he heard a single shot as he
24 was going up the stairs. That was at the booking
25 desk.

1 Upstairs the questioning we went into was how
2 he got down to the area of Johnson Street. And he
3 gave me a story there. Do you want me to tell you
4 what that was?

5 Q Please.

6 A He caught a ride with somebody. I asked him
7 what the name of the person was and he wouldn't tell
8 me. In his property, there was a rental car key. I
9 believe it to be an Enterprise. And on the tag, it
10 had a description of the motor vehicle, Chevrolet
11 Cobalt, had their serial number and had a color red.
12 So I took possession of that key.

13 Q Okay.

14 A I later went out, once I completed the
15 majority of my paperwork, which would have been
16 several hours later, and I rode the area around the
17 public housing area where I located the vehicle
18 matching that description of a red Chevy Cobalt
19 within a block of Ms. Pendergrass's apartment. Took
20 the key, I put it in the door, the door unlocked. So
21 that's how I located the car.

22 Q Anything else during the interview that the
23 defendant stated to you or that you went through with
24 him before he terminated the interview?

25 A The question I had asked him was who else was

1 in the apartment at the time of the incident. And
2 his answer was himself, and the two children. And
3 obviously Ms. Pendergrass. But he said himself and
4 the two children.

5 I was looking for any other adult figures that
6 may be involved or may be witnesses to this incident.

7 Q Any other conversation with the defendant?

8 A Yes. I asked him if he had shot
9 Ms. Pendergrass. At the booking desk, he got
10 agitated with that question. He said no. When I
11 asked him -- he had told me there were no other adult
12 figures, so when he told me he didn't shoot her, I
13 asked him if **Minor 1** shot her. And he said to me,
14 you know she can't pull the trigger.

15 I said did the youngest child shoot
16 Ms. Pendergrass. And he really became agitated like
17 that was not a proper question. But what I was
18 trying to do was eliminate any and all people that
19 were in the apartment which would come back to him.

20 Q And was that the extent of your interview with
21 the defendant?

22 A Yes. He became agitated and said he wanted an
23 attorney, so I went ahead and terminated it.

24 Q Any other conversations about any of the
25 defendant's property that was turned over at the

1 property desk?

2 A The two cell phones. I found that out for an
3 individual to have two phones, I asked him, you know,
4 why did he have two phones. He admitted one of the
5 phones, being the Motorola Razor, belonged to Latoya.

6 Q Just for -- to make sure out of abundance of
7 caution, did you see the defendant in regards to the
8 investigation on another date?

9 A Yes, I did.

10 Q When was that?

11 A It would have been -- I believe to be July
12 16th, 2007, at about 1:00 p.m.

13 (Whereupon, Court's Exhibit No. 3 is marked
14 for identification.)

15 Q (By Ms. Cardillo) I'm going to show you what
16 is Court's Exhibit No. 3. What is that?

17 A This is a second Miranda card, same style card
18 that I just read to the Court.

19 Q What was the reason that you were around the
20 defendant again as part of the investigation?

21 A I had received a magistrate's search warrant
22 for blood. The defendant was being transported from
23 the Charleston County Jail to Charleston Memorial
24 Hospital to have his blood drawn for a comparison at
25 SLED.

1 As a precautionary measure, on a regular basis
2 everytime, whenever I pick up somebody from the
3 Charleston County Jail or have them in my presence,
4 even though I'm aware that they're represented, I
5 read them Miranda to be on the safe side.

6 Q Did you do that in this case?

7 A I did.

8 Q And did you sign that card?

9 A Card is signed by Jake Wilson. I am the
10 warning officer. The other transport officer with me
11 was Kenneth Diaz, and I dated it 13:05, which is
12 military time for 1:05 p.m. on July 16th, 2007.

13 Q But there was no questioning and you had no
14 responses from the defendant?

15 A I did not question him at all.

16 MS. CARDILLO: Thank you. Your Honor, State
17 has no more questions for --

18 THE COURT: Any questions for the witness?

19 MR. GRIMES: Yes, ma'am.

20 IN-CAMERA CROSS-EXAMINATION

21 BY MR. GRIMES:

22 Q Good afternoon, Detective Goldstein.

23 A How are you, sir?

24 Q I'm all right. How are you doing today?

25 A Fine, thanks.

1 Q I'm a little confused. Some of these
2 statements, were they made in the booking room or
3 were they made, I guess, in an interview room or
4 where he was giving his property over at?

5 A The cell phone statements would be right there
6 at the booking desk when the officers took the
7 property from him.

8 Q Okay. Had he been read his rights at that
9 time?

10 A Yes.

11 Q And what time was that statement made?

12 A The Miranda was done at 7:55 a.m. And it
13 would be within five minutes of Miranda.

14 Q Like 8 o'clock in the morning?

15 A That's correct, sir.

16 Q And then you took him back to the interview
17 room?

18 A That is correct.

19 Q With Sergeant Gordon?

20 A Yes.

21 Q There you asked him about what happened?

22 A Yes.

23 Q And he said he was downstairs going upstairs
24 as he heard the shot?

25 A That statement was made in the presence of

1 officer Inabinett, okay, at the booking desk.

2 Q Okay. What time was that statement made?

3 A It would be at the same time as around the
4 cell phone, so 8 o'clock, 8:05. Because as I stated
5 to the Court we were downstairs approximately ten
6 minutes.

7 Q Okay. And Officer Inabinett was a witness to
8 that?

9 A Yes, sir.

10 Q What else did he say downstairs at the booking
11 desk?

12 A That's all that I recall. Because like I
13 said, he became agitated, so I backed off at that
14 point until we got to a secure area because you have
15 people coming and going.

16 Q When you say agitated, what do you mean by
17 that?

18 A Upset.

19 Q Was he upset beforehand?

20 A He was upset when I asked him if he had shot
21 Latoya Pendergrass.

22 Q Was he upset when he arrived at the police
23 station?

24 A He did not appear to be.

25 Q You did not transport him to the police

1 station, did you?

2 A No, I did not.

3 Q That was Officer Inabinett who did?

4 A Yes.

5 Q Was there anything in that car recorded, their
6 interactions between Officer Inabinett and
7 Mr. Wilson?

8 A Some police vehicles have cameras in them.
9 I'm not aware. It's very limited. Mostly traffic
10 units. This officer worked out in a team area riding
11 radio calls, so I'm not aware of what equipment he
12 has in his car.

13 THE COURT: Do we have the subpoena yet?

14 MS. CARDILLO: Yes, we have two, Your Honor,
15 actually. One that is printed out through SunCom
16 it's got my name and my investigator at the bottom,
17 also a blank one.

18 THE COURT: You may continue.

19 Q (By Mr. Grimes) At the booking desk, was
20 there any way to record his statements?

21 A Not at the booking desk.

22 Q In the interview room, what did he say there?

23 A He said he would speak to us verbally, which
24 he did for approximately twenty minutes. And we went
25 into the background of how he had gotten down there.

1 And I told the Court, you know, what his answer was.

2 And tried to break it down to the occupants of
3 the apartment, as I told the Court. And again, he
4 became agitated with my type of questioning, you
5 know, where I would be accusatory, you know, whether
6 his children had pulled the trigger of the gun.

7 So at that point after he got agitated, he
8 said he wanted a lawyer so I stopped questioning at
9 that time.

10 Q All right. Was any of that portion of the
11 interview recorded?

12 A No, he said he would only speak to us.

13 Q Any tape recorder?

14 A No.

15 Q Camera?

16 A No, sir. It not equipped with a camera.

17 Q Were you wearing a gun at the time?

18 A No, sir.

19 Q Was Sergeant Gordon?

20 A No, sir.

21 Q You said there were no promises made to him?

22 A No, sir.

23 Q Any type of statements, you know, sometimes
24 officers may say, if you help us now, we can help you
25 later on. It's better to come clean, anything like

1 that said to Mr. Wilson?

2 A No, sir.

3 Q Anything like, well, if you tell us what
4 happened, we can tell the judge that you were
5 cooperative?

6 A No, sir.

7 Q How did you start interviewing Mr. Wilson?

8 A After introducing myself, I asked him what had
9 happened. And he said that he would talk to us but
10 he wouldn't put anything into writing so we agreed to
11 that.

12 Q Okay. What was your tone of voice when you
13 were talking to him?

14 A My tone of voice was normal.

15 Q You weren't yelling at him or screaming at him
16 in any way?

17 A No, that's not my manner.

18 Q Any type of field sobriety test to see if he
19 may have been drinking?

20 A No, sir.

21 Q Did you smell any alcohol upon his breath?

22 A No, sir.

23 Q There was one part caught my attention on your
24 direct. You said, I believe, that when you asked him
25 who gave him a ride, he refused to answer.

1 A Right, he wouldn't give us the name.

2 Q And after he invoked his right to remain
3 silent, you kept questioning him?

4 A No, sir.

5 Q If he refused to answer your question, you
6 kept questioning him?

7 A No, sir.

8 Q What you asked -- did he say anything else
9 after he wouldn't give you a name?

10 A What's that, sir?

11 Q Did he make any other statements after he
12 would not give you the passenger's name?

13 A I did not say he was the driver or the
14 passenger. I don't know how he got down there, he
15 said he caught a ride.

16 Q But you said he would not give you that
17 person's name?

18 A Correct.

19 Q And did he make any statements after that?

20 A No, sir. Because my plan was, sir, track back
21 whatever name he had given me. I had nothing to work
22 with.

23 Q So he didn't say anything about Minor 1 after
24 that? I guess as I understand the outline, the way
25 you questioned him was, what happened that night, how

1 did you get down there. Once you got down there, did
2 Minor 1 do this or is it possible that Minor 2 may have
3 done that?

4 A That's correct, sir.

5 Q And when you asked him who, I guess, gave him
6 the ride down there, he refused to answer that
7 question, right?

8 A That's correct. He said he caught a ride down
9 there.

10 Q And he would not give you the person's name?

11 A That is correct.

12 Q And did you understand that as him invoking
13 his right to remain silent, to stop questioning him
14 at that point?

15 A No, sir.

16 Q Why not?

17 A What I took that as, he said he caught a ride
18 down there, he didn't want to bring anybody else into
19 this.

20 Q Okay.

21 MR. GRIMES: May I have one moment, Your
22 Honor?

23 THE COURT: Yes, certainly.

24 MR. GRIMES: Thank you, Your Honor. I have no
25 further questions.

1 THE COURT: Any redirect of the witness?

2 MS. CARDILLO: No, Your Honor.

3 THE COURT: Any argument on the Jackson versus
4 Denno issue from the State?

5 MS. CARDILLO: Your Honor, I think Sergeant
6 Goldstein went through -- as indicated, he went
7 through the proper channels of advising the defendant
8 of his Miranda rights; he read each question off the
9 card to the defendant; the defendant signed it; he
10 witnessed the signature.

11 The defendant went through all of the
12 questions regarding whether he understand his rights,
13 which he did and he indicated so to Sergeant
14 Goldstein. We do believe that his statement, for 20
15 minutes that he did give the statement, was freely
16 and voluntarily given. He did waive his Miranda
17 rights.

18 In addition, when he did invoke his rights to
19 an attorney, the interview was immediately ended and
20 there was no more questioning after that moment.

21 Sergeant Goldstein went so far as to protect
22 against the Miranda rights by reading it again when
23 he went back to get a search warrant for -- well,
24 whenever he transported the defendant a few days
25 later to the hospital, out of an abundance of

1 caution, read him his rights again which the
2 defendant again signed and dated.

3 THE COURT: Mr. Grimes?

4 MR. GRIMES: I believe it's material we call
5 Mr. Wilson as a witness.

6 THE COURT: I'm sorry. I did not realize you
7 wanted to call a witness.

8 Detective Goldstein, step down for me so we
9 can call a witness.

10 You may proceed, Mr. Grimes.

11 MR. GRIMES: We call Jake Antonio Wilson.

12 THE COURT: Sir, if you come to the witness
13 stand.

14 MR. JAKE ANTONIO WILSON,
15 after having first been duly sworn to state the
16 truth, the whole truth and nothing but the truth,
17 testified on his oath as follows:

18 THE COURT: You may proceed.

19 MR. GRIMES: Thank you, Your Honor.

20 IN-CAMERA DIRECT EXAMINATION

21 BY MR. GRIMES:

22 Q Mr. Wilson, I want to take you back to the
23 afternoon of July 7th. Were you drinking anything
24 that day?

25 A Yes, sir.

1 Q where were you drinking at?

2 A I was drinking at my friend's house.

3 Q What's your friend's name?

4 A Name is Buba.

5 Q And how much beer or what were you drinking?

6 A I was drinking Heineken.

7 Q How much did you have to drink that day?

8 A A lot, a lot to drink that day.

9 Q And where were you drinking at? You said
10 Buba's. Where was Buba's at?

11 A Please repeat that again.

12 Q Where were you drinking with Buba at?

13 A I was drinking with Buba at his baby momma's
14 house.

15 Q And where does Buba live?

16 A Buba was living on Johnson Street Projects.

17 Q And where did you go after -- did you go down
18 to his place after you left the baby momma's place?

19 A Please repeat that again.

20 Q Did you go back to his place later on that
21 night?

22 A Yes, sir.

23 Q What did you have to drink there?

24 A We was drinking Heineken.

25 Q About what time did you last drink Heineken?

1 A My last drink of Heineken was probably around
2 12:15.

3 Q How much do you think you had to drink from
4 that afternoon to 12:15?

5 A I was drinking a lot. I cannot be exact.

6 Q And what -- I did not hear the last answer.
7 Can you repeat your answer?

8 A I was drinking a lot. I cannot tell you
9 really how much.

10 Q And what effect did all that beer have on you?

11 A Feel high. Like brings you down.

12 Q And had you been doing any drugs that day?

13 A Only thing I was doing was drinking, sir.

14 Q And taking any medication?

15 A No, sir.

16 Q And jump ahead a little bit. I believe you
17 were taken into custody around 5:00 on the morning of
18 July 8?

19 A Yes, sir.

20 Q And eventually Officer Inabinett took you to
21 the police station?

22 A Yes, sir.

23 Q When you were in the car with Officer
24 Inabinett, what did you do?

25 A Can you please repeat that again?

1 Q When you were in the car with officer
2 Inabinett, did you have any conversations with him?

3 A When I was in the backseat, when they locked
4 me up and took me from [REDACTED] Harris Street, I was in
5 the back of the car telling them I want a lawyer, I
6 keep saying I want a lawyer.

7 Q Who did you tell that to?

8 A Officer Inabinett.

9 Q Okay. And what did he say to you?

10 A He did not respond to me.

11 Q Okay. And then when you got to the Charleston
12 police station, were you read your rights at that
13 time?

14 A Yes, sir.

15 Q Who read your rights to you?

16 A I think it was Sergeant Goldstein.

17 Q And did you tell him that you wanted a lawyer?

18 A I told him I wanted a lawyer after -- they
19 basically pressured me, took me upstairs. I was
20 nervous.

21 Q How did he pressure you?

22 A Tone of voice. They have, like, basically
23 what happened. I was -- was scared. I did not say
24 nothing right then to him.

25 Q And did you eventually ask for a lawyer again?

1 A Yes, I asked for a lawyer again.

2 Q And at that time, did they honor your request?

3 A Yes, sir.

4 Q Did anyone threaten you in any way to get you
5 to make a statement?

6 A No, sir.

7 Q Anybody promise you anything to get you to
8 make a statement?

9 A No, sir.

10 Q Please answer any questions the State may have
11 for you.

12 THE COURT: You may proceed.

13 MR. WILLIAMS: Thank you, Your Honor.

14 IN-CAMERA CROSS-EXAMINATION

15 BY MR. WILLIAMS:

16 Q You signed the Miranda card that the detective
17 gave to you?

18 A Yes, sir.

19 Q But you did not ask for a lawyer?

20 A I did ask. I asked for a lawyer at one time.

21 Q You did not ask you for a lawyer when he gave
22 you the card and told you you had the right to a
23 lawyer?

24 A Right then I was talked to, I didn't really
25 understand it.

1 Q What didn't you understand?

2 A I didn't under -- that.

3 THE COURT: Sir, repeat your answer, please. ,
4 I'm sorry.

5 Q (By Mr. Williams) What didn't you understand?

6 A I was -- I didn't really understand what it
7 really was and I didn't know really what it meant.

8 Q I'm going to show you Court's Exhibit 2.
9 That's your signature, right?

10 A Yes, sir.

11 Q He read this card to you, right?

12 A Yes, sir.

13 Q It says you have the right to talk with a
14 lawyer and have him present during any questioning.
15 Are you telling the Court you did not understand
16 that?

17 A At that time, I did not understand.

18 Q Why didn't you understand it at that time?

19 A I was intoxicated.

20 Q You went through a booking process, right?

21 A Yes, sir.

22 Q You were able to tell the booking officer
23 where you lived?

24 A He did not question me right then where I
25 lived.

1 Q You went through booking, they took your
2 fingerprints?

3 A Yes, sir.

4 Q Gave you -- you were able give an address of
5 where your family lived, things like that?

6 A Yes, sir.

7 Q So you weren't so drunk as to not know where
8 your family lived, right?

9 A Right.

10 Q So you are telling the Court you could say
11 where your family lived, but you did not understand
12 when somebody told you you had the right to talk to a
13 lawyer?

14 A It was a different time when we were talking
15 about my family.

16 Q How long after this was that?

17 A It was approximately about two hours.

18 Q You knew enough in the car to ask for a
19 lawyer, right?

20 A Yes, sir.

21 Q And you are saying you didn't know a few
22 minutes later to ask for a lawyer?

23 A Right then, like I tell you, I was nervous. I
24 just tell them lock me up, I was like, I want a
25 lawyer when I'm in the back of the car.

1 Q And it was the tone of the detective's voice
2 that made you nervous?

3 A Yes, sir.

4 Q How did that make you nervous?

5 A Because when they took me down there, they --
6 when I first get down there, it wasn't really -- he
7 didn't really take me into -- I was in a cell, matter
8 of fact. In the cell, they did the hand thing on me
9 first.

10 Q So what was about it the tone of voice that
11 made you nervous?

12 A It's the way they were talking to me.

13 Q What was it about the way they were talking to
14 you that made you nervous?

15 A Loud.

16 Q They talked loud and that made you nervous?

17 A Yes, sir.

18 Q Anything else about their tone of voice or how
19 loud they talked that made you nervous?

20 A No, sir.

21 Q So because somebody talked loud, that made it
22 so you couldn't ask for a lawyer when they read you
23 these rights?

24 A Yes, sir.

25 Q You were able to sign the card, right?

1 A Yes, sir.

2 Q You were able to put the date on the card and
3 read all the rights that were on there, acknowledge
4 it?

5 A Please repeat that question again.

6 Q You were able to look at the card and read the
7 rights, find the line to sign, right?

8 A I did not read it.

9 Q Why didn't you read it?

10 A I did not read it.

11 Q They handed it to you, right?

12 A Yes, I signed it.

13 Q But you had it in your hand to sign it?

14 A It was on the table, I signed it.

15 Q After he read it to you?

16 A Yes, sir.

17 MR. WILLIAMS: Thank you. I have nothing
18 else, Your Honor.

19 THE COURT: Any redirect?

20 MR. GRIMES: No, ma'am.

21 THE COURT: Sir, you may step down. Anything
22 further from the defense?

23 MR. GRIMES: No, ma'am.

24 THE COURT: Any further argument from the
25 State?

1 MR. WILLIAMS: Your Honor, I think it's really
2 a credibility issue. Obviously Detective Goldstein
3 said that the defendant was knowingly and voluntarily
4 giving a statement, became agitated.

5 The defendant now I guess would have the Court
6 belief somebody raising their voice not only makes
7 the statement I suppose involuntarily, but frightened
8 him to the point where he was unable to invoke a
9 right which he was more than capable of invoking,
10 according to his statement, in the backseat of the
11 patrol car.

12 Your Honor, I propose that is a question of
13 credibility. And the defendant's theory simply does
14 not have a whole lot of credibility to it.

15 THE COURT: Mr. Grimes?

16 MR. GRIMES: Thank you, Your Honor. First I
17 know it's the State's burden of proof to show that --

18 THE COURT: By a preponderance of the
19 evidence, very low threshold.

20 MR. GRIMES: Yes, ma'am. Mr. Wilson knowingly
21 and intelligently waived his rights. In this case,
22 we have uncontroverted testimony from Mr. Wilson that
23 he told Officer Inabinett that he wanted a lawyer.

24 Officer Inabinett is not here. I don't know
25 why the State does not have him here. They should

1 have him here.

2 THE COURT: You could have called him.

3 MR. GRIMES: Once he invoked his rights --

4 THE COURT: You had the opportunity to call
5 him, correct?

6 MR. GRIMES: Ma'am?

7 THE COURT: You had the opportunity to call
8 Officer Inabinett if you desired, correct?

9 MR. GRIMES: If he was around, I could have.
10 But it's not -- I don't have the burden.

11 THE COURT: You're correct, but I don't think
12 they need him to meet their burden.

13 MR. GRIMES: That's the Court's call on that
14 one. And then once --

15 THE COURT: He doesn't say anything in the car
16 with Officer Inabinett, did he?

17 MR. GRIMES: Ma'am?

18 THE COURT: He did not say anything in the car
19 with Officer Inabinett, did he?

20 MR. GRIMES: He said he wanted a lawyer.

21 THE COURT: No, I mean he didn't make any
22 inculpatory statements in the car with Officer
23 Inabinett?

24 MR. GRIMES: No, ma'am. And once he requested
25 counsel, Detective Goldstein should have never even

1 come up and talked to him. At that point the
2 statement at issue --

3 THE COURT: You always have to Mirandize
4 somebody, don't you?

5 MR. GRIMES: No, ma'am. You don't have to
6 Mirandize anybody. You only have to do it if you are
7 seeking to introduce statements taken by
8 interrogation. His statements at the house, the 911
9 tapes, there's no Miranda there. They're coming in.

10 THE COURT: Those were voluntary, sort of
11 excited utterances for lack of a better word,
12 spontaneous statements that he made. And not -- most
13 of which he did make to law enforcement, which you
14 all did not object to because I assume there was
15 something in it that you all benefitted from. That's
16 why you let them in.

17 MR. GRIMES: Yes, ma'am. Once he asked for a
18 lawyer that cuts off the State's ability to talk to
19 him. The State did not on honor that request. That
20 testimony is uncontroverted.

21 It's not a credibility contest. The State
22 failed totally to bring into evidence what they need
23 to. The fact he may have signed a waiver and that he
24 exercised his right later on shows he is being
25 credible. His being agitated, maybe he's getting

1 agitated because they're not honoring his request.

2 I mean he has just witnessed the most
3 traumatic thing in his life. It's undisputed he had
4 been drinking that night. He may not have been
5 totally drunk, five hours had passed.

6 THE COURT: Eight hours had passed. He said
7 he last drank at 12:15, and the statement was taken
8 at 7:55 a.m. That's almost eight hours.

9 MR. GRIMES: I was thinking 5 o'clock. I
10 apologize. It still had some effect on him.

11 And you combine that with the tone of voice,
12 he was being credible. He said Detective Goldstein
13 did not promise him anything, didn't threaten him in
14 any way. He could have said something like that if
15 he wanted to make up a story. I think it does show
16 he was being credible here, Your Honor.

17 Therefore, we'd ask the Court to suppress the
18 statement. Thank you.

19 THE COURT: You're welcome. Anything further
20 from the State?

21 MR. WILLIAMS: No, Your Honor.

22 THE COURT: Court would find the State has met
23 its burden with regarding any statements made by
24 Mr. Wilson both on July 8th, 2007, and July 16th,
25 2007.

1 The Court does not find Mr. Wilson credible on
2 his statement that he asked for counsel in the back
3 of the police cruiser. However, even if I were to
4 find him credible on that issue, I do not think it is
5 dispositive of this matter. Mr. Wilson does not
6 strike the Court as what we would typically call a
7 shrinking violet. I hate to use that term, it's so
8 southern, but he does not strike me as the kind of
9 person that has trouble articulating himself if he
10 decides to make his desires known.

11 And he made his desires known, and he was
12 forceful about that when he indicated to Detective
13 Goldstein that he wanted counsel and the questioning
14 was terminated. Of course, no one -- it's clear that
15 he was in custody, there is no question about that.
16 It is clear that he was not subject to leave. It is
17 also clear that under the law, he was entitled to be
18 Mirandized before he had any contact with law
19 enforcement for the purposes of interrogation.

20 I find Detective Goldstein credible, and there
21 is objective proof of the fact that Mr. Wilson was
22 Mirandized, that being the Miranda card, Court's
23 Exhibit 2, which indicates and I find Detective
24 Goldstein credible on the fact that before he had any
25 discussions with Mr. Wilson that he Mirandized him,

1 advised him of all of his rights.

2 without belaboring the hour, he had the right
3 to remain, anything could be used against him, he
4 could have a lawyer, if he cannot afford one, one
5 will be appointed for him. And that at any time that
6 he indicated he wanted a lawyer, or if he did not
7 want a lawyer, he had the right to stop questioning
8 at any time he show choose.

9 Mr. Wilson very clearly and in very good
10 handwriting, which does not indicate to the Court
11 that he was impaired in any way, his handwriting is
12 completely legible, he signed the card on July 8th at
13 7:55 a.m. I find Detective Goldstein credible on the
14 fact he saw no indication that the defendant was
15 under the influence of any drugs or alcohol. There
16 was no mental instability. That he was not coerced
17 or under any duress.

18 He was not denied access to what we would
19 consider to be anything that he would need available,
20 such as the restroom. That he was advised of the
21 nature of the investigation. That he was able to
22 answer the questions in an educationally appropriate
23 manner. His responses were rational and appropriate.
24 He was not too emotional to understand his Miranda
25 rights. He was not threatened or coerced.

1 I also find Detective Goldstein credible on
2 the fact that the defendant represented to him he
3 would only speak to him, would not give anything in
4 writing and waived his Miranda warning.

5 I listened very intently to the defendant's
6 testimony. He claimed he was at Buba's house or
7 Buba's baby's momma's house on Johnson Street
8 Project. He had been drinking Heineken. He said he
9 really doesn't recall how much he drank, but that his
10 last beer was at 12:15. This statement was taken at
11 7:55, which is really just shy of eight hours.

12 I'm not a drinker. I don't know how to
13 estimate, although I have done this job a long time.
14 To some extent, I can estimate the effects of
15 alcohol. I would be hard-pressed to believe you
16 would still be under the influence of Heineken eight
17 hours later. I cannot even imagine you would have a
18 slight buzz. I think you probably would have drank
19 three cases, four cases of beer, you would not be
20 able to walk if you had done that.

21 So I cannot imagine any amount of alcohol that
22 he would have drank that he would still be under the
23 influence what we would consider regular beer eight
24 hours later, such that his handwriting is not
25 illegible. His handwriting is completely legible,

1 which is an objective indicator, to me at least, of
2 where he was emotionally at the time. He certainly
3 was able to sign his name and was not impaired to do
4 that.

5 He indicates that he was in the cruiser saying
6 I want a lawyer, I want a lawyer over and over. And
7 let's just say for argument's sake that that is
8 accurate. That that is, in fact, what happened.
9 There is nothing that precludes Detective Goldstein,
10 when he arrived at the police station, especially if
11 he was not made aware of that, and I don't know
12 whether he was or not, but even if he was there is
13 nothing that precludes him from Mirandizing Mr.
14 Wilson, and Mr. Wilson saying I don't want to talk to
15 you, I want a lawyer.

16 But instead he signed the card saying he
17 understood his rights and waived them. I do not find
18 it credible that there was anything in Detective
19 Goldstein's tone of voice that intimidated him and
20 prevented him from being adamant about his desire for
21 counsel.

22 I do not find it's -- I do not find any
23 particular veracity in that statement and I do not
24 find it's persuasive or credible. Nor do I find it
25 credible that he was nervous and that because of

1 Detective Goldstein's tone of voice and that's why he
2 didn't ask for an attorney.

3 The two statements would just be so completely
4 inapposite of one another. If you were adamant in
5 the car you would be adamant when you got out of the
6 car. It's not logical to me. Especially if you were
7 adamant about not speaking to someone. In addition
8 to that, there is nothing he said that implicates
9 himself. He simply said I didn't do it, and then the
10 questions terminated. Again, that's not to say it's
11 not possible.

12 He was then advised of his Miranda warnings
13 again on July 16, 2007. And he, again, signed the
14 card and indicated he understood his rights and that
15 he was waiving them.

16 What the Court finds particularly persuasive,
17 although no questioning took place at that time, what
18 the Court finds particularly persuasive is that his
19 handwriting is exactly the same from the first card
20 to the second card and certainly he was not impaired
21 eight days later.

22 So certainly if he were under some influence
23 of alcohol such that it impaired him to the degree
24 that he did not understand, I would look for his
25 signature to be completely and substantially

1 different from one another. But they look exactly
2 the same to me, which would give me some indication
3 that he was completely cognitively aware at the time
4 of the surroundings, oriented as to time and place,
5 and able to understand his Miranda warnings.

6 The Court would also note and find credible,
7 and it is consistent with Mr. Wilson's testimony and
8 the detective's testimony, that when he requested an
9 attorney when he became agitated that he in fact
10 ceased questioning and terminated the questioning and
11 allowed him the opportunity to seek counsel or have
12 counsel appointed for him.

13 Therefore, the statements are admissible. Is
14 there anything further for the record before we
15 proceed from the State?

16 MS. CARDILLO: No, Your Honor.

17 THE COURT: From the defense?

18 MR. GRIMES: Three minor things.

19 THE COURT: I'm not going to reargue the
20 motion. That's not what I'm asking. I'm asking if
21 there is something else we need to take up before we
22 resume court.

23 MR. GRIMES: I guess two additional points
24 related to the motion.

25 THE COURT: I'm not rearguing the motion.

1 MR. GRIMES: I'm not arguing. I just would
2 ask the State not to have any testimony by
3 Mr. Wilson to invoke his right to counsel. I think
4 it's improper for them to comment upon his exercising
5 his right during the testimony.

6 THE COURT: Well, now, it's a part of what
7 happened. He asked for an attorney after he was
8 Mirandized, they can ask about that. That's not
9 improper comment.

10 Now, they cannot make any comment in closing
11 argument if he doesn't testify during the course of
12 this trial, now that's improper comment. But there's
13 nothing -- you have to show me a case that says they
14 can't do that.

15 MR. GRIMES: The case that comes to mind is
16 Doyle v Ohio, it's a Miranda, comment upon the
17 Miranda to remain silent.

18 THE COURT: That's --

19 MR. GRIMES: I think the same analogy would
20 apply once somebody asks for counsel.

21 THE COURT: I think them simply saying that
22 once they Mirandized him he asked for counsel, that's
23 part of the investigative process.

24 MR. GRIMES: Second point would be that after
25 he was told he had a right to remain silent, when

1 Detective Goldstein asked who had given him a ride,
2 he refused to answer, he had that right --

3 THE COURT: He certainly has a right to refuse
4 to answer any further questions once he asserts his
5 right. But I didn't understand Detective Goldstein
6 to say he did that.

7 MR. GRIMES: I don't think they can comment
8 upon his refusal to answer that question.

9 THE COURT: I absolutely agree.

10 MR. GRIMES: The third thing I have is going
11 back to Agent Black. I looked at the notes you had
12 made available to us. I would not need to recall him
13 for anything.

14 THE COURT: I was going to deal with that. I
15 was going to ask, that was going to be my next line
16 of inquiry. Give me one second.

17 You've had access to the SLED's agents's
18 complete file, that being the firearms, Mr. Black,
19 file, did you have full access to his report, given
20 copies of his report, his notes, everything?

21 MR. GRIMES: I assume.

22 THE COURT: Well, he gave his whole file over
23 and asked them to copy it.

24 MR. GRIMES: I received five sheets.

25 THE COURT: I would assume they gave you what

1 you did not already have.

2 MS. CARDILLO: It's indicated that the only
3 copies that were made were of five worksheets.

4 MR. GRIMES: That's all I was looking for was
5 the worksheets.

6 THE COURT: You've had a full opportunity to
7 review the worksheets?

8 MR. GRIMES: Yes, ma'am.

9 THE COURT: Do you feel you need to offer any
10 additional cross-examination of Mr. Black?

11 MR. GRIMES: No.

12 THE COURT: Do you need additional time to
13 review those notes or worksheets or to consult with
14 any other expert in order to cross-examine Mr. Black?

15 MR. GRIMES: No, ma'am.

16 THE COURT: Let the record reflect the Court,
17 I'm making you aware if you needed that, I certainly
18 would have given it to you. I would have given you
19 whatever time you needed to review those, also would
20 have directed Mr. Black be available for any
21 additional questioning.

22 But you've indicated you do not need that,
23 correct?

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: Okay.

1 MS. CARDILLO: Your Honor, just to clarify.

2 THE COURT: Yes. My clerk is waiting for the
3 records from SunCom.

4 MS. CARDILLO: When Mr. Grimes asked about the
5 defendant's response to the question from Sergeant
6 Goldstein regarding who brought him or --

7 THE COURT: Any questions that were asked
8 after he asserted his right to counsel are
9 inadmissible.

10 MS. CARDILLO: Because that question was asked
11 before.

12 THE COURT: I thought it was asked before.
13 That's why I said my memory might not be accurate,
14 but I thought it was before.

15 MR. GRIMES: I agree with that. I'm just
16 saying he refused to answer that. He had the right
17 to cut off all questioning and refuse to answer.
18 That portion of the interview he refused to answer.
19 I think that should not be allowed in. I think you
20 can talk on some things --

21 THE COURT: You cannot pick and choose. While
22 he was being interrogated he answered yes or no or he
23 refused to answer. That's all part of the
24 interrogation until he terminated the interrogation.
25 Those are apples and oranges.

1 You can't say, well, I refuse to answer this
2 and then continue with the interrogation. Let's say,
3 for example, the officer asked me -- I'm using a very
4 simple example -- is this notebook yellow? Yes. Is
5 this sheet of paper white? I'm not going to answer
6 that question. Is this mouse black? well, I'll tell
7 yeah it's black, and it has gray. You don't get to
8 do that. That's the whole course of the
9 interrogation.

10 Now once he says, I want a lawyer, anything
11 after that is not admissible. But if he is engaged
12 in the interrogation and in the course of questioning
13 he's not refusing to answer questions, saying I want
14 this interrogation to stop, I'm terminating this
15 interrogation, anything within that interrogation is
16 admissible, Mr. Grimes.

17 You don't get to pick and choose from the
18 course of the interrogation what you want to admit
19 and what you don't want to admit.

20 MR. GRIMES: Our position would be that you
21 can --

22 THE COURT: Miranda rights say you have the
23 right to stop the interrogation at any time, to stop
24 questioning at any time. That is not what the
25 testimony would reflect. He did not request that

1 questioning be stopped or terminated. He answered
2 other questions after that, as I recall.

3 MR. GRIMES: Yes, ma'am.

4 THE COURT: I will stick with my -- I think
5 that's a simple analogy I can with what was available
6 to me that I can use.

7 MR. GRIMES: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 Okay, are we ready to resume questioning of
10 the witness? Do you think we will be able to finish
11 Detective Goldstein today?

12 MS. CARDILLO: I would think so, Your Honor.

13 THE COURT: How many witnesses does the State
14 have after that? Do you still plan to call Ms.
15 Myisha Danielle Ray?

16 MS. CARDILLO: No, Your Honor.

17 THE COURT: Do you still intend to call
18 Corporal Larry Brown?

19 MR. GRIMES: He is here in the courtroom, Your
20 Honor. That is in regards to the pending domestic
21 violence warrant that we said we would take up at the
22 time of his testimony.

23 THE COURT: Do you still intend to call
24 Kalisha Gill?

25 MS. CARDILLO: We did, Your Honor.

1 THE COURT: That was today, correct?

2 MS. CARDILLO: Yes, Your Honor.

3 THE COURT: Ken Bogan?

4 MS. CARDILLO: Your Honor, he is the SLED DNA
5 analyst. He was here out in the courtroom. So I
6 don't know how --

7 THE COURT: You all should have made the
8 decision to call him before Detective Goldstein since
9 he's in town.

10 MS. CARDILLO: We had to call Sergeant
11 Goldstein due to -- Sergeant Goldstein was present at
12 the blood draw of the defendant. We couldn't have
13 Mr. Bogan --

14 THE COURT: It's your choice. I'm not keeping
15 the jury here all day. They have lives, they have to
16 go home at some point.

17 MS. CARDILLO: I understand.

18 THE COURT: We will play it by ear. Corrandia
19 Williams?

20 MS. CARDILLO: We are not calling her, Your
21 Honor.

22 THE COURT: That leaves just Dr. Shandl, then,
23 correct?

24 MS. CARDILLO: Yes.

25 THE COURT: You should anticipate being able

1 to finish maybe by lunch tomorrow by the State?

2 MS. CARDILLO: Your Honor, we also have
3 Latasha Pendergrass.

4 THE COURT: Yeah, I counted her in.

5 MS. CARDILLO: Okay. Yes, I do anticipate
6 that, Your Honor.

7 THE COURT: So then maybe you need to have
8 your witnesses available and ready by lunchtime
9 tomorrow, Mr. Grimes.

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: For purposes of the schedule, how
12 long will Ms. Pendergrass' testimony be? I'm just
13 asking for scheduling purposes.

14 MS. CARDILLO: Your Honor, I would think, if
15 it goes well, 15 to 20 minutes.

16 THE COURT: Corporal Brown?

17 MS. CARDILLO: If you allow his testimony,
18 maybe 10 minutes.

19 THE COURT: What about Ken Bogan?

20 MS. CARDILLO: Your Honor, I think that's
21 roughly 30 minutes as far as his direct is concerned.

22 THE COURT: Okay.

23 MR. GRIMES: Your Honor, maybe we might be
24 able stipulate to Dr. Bogan's report.

25 THE COURT: You want stipulate to Dr. Bogan's

1 report?

2 MS. CARDILLO: No, Your Honor.

3 THE COURT: Okay. That ends that. Please
4 bring in the panel, Mr. Robinson.

5 MS. CARDILLO: Your Honor, is Agent Black
6 allowed to leave?

7 THE COURT: Absolutely.

8 (Whereupon, the jurors enter the courtroom.)

9 THE COURT: Thank you. Ladies and gentlemen,
10 we appreciate your patience. We will now resume with
11 the witness's testimony.

12 Detective, I need you to retake the stand for
13 me, please.

14 Ms. Cardillo, you may resume questioning.

15 MS. CARDILLO: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Q (By Ms. Cardillo) Sergeant Goldstein, would
18 you prefer to be called sergeant or detective?

19 A Either one is fine.

20 Q I'll just go with detective.

21 A That's fine.

22 Q When we last left your testimony, you had just
23 proceeded to the Charleston Police Department
24 headquarters.

25 A Yes.

1 Q For what reason did you go there?

2 A To speak with Jake Antonio Wilson.

3 Q And did you indeed meet and speak with the
4 defendant?

5 A Yes, I did.

6 Q When and where was your first interaction with
7 the defendant?

8 A It would be in the holding area of the
9 Charleston Police Department.

10 Q And what was your involvement at that time
11 with him?

12 A There was another policeman there, Officer
13 Inabinett. He's a uniformed policeman. He was in
14 charge of the transportation of Mr. Wilson from the
15 Harris Street address to the Charleston Police
16 Department.

17 At this time, Officer Inabinett was removing
18 the property and processing Mr. Wilson's property for
19 safekeeping at the police department, which is a
20 procedure, and this is all done in the presence of
21 whoever owns the property. In this case, it would be
22 Jake Wilson.

23 Q Would this occur at the booking desk?

24 A Yes, it would be.

25 Q Now, was -- to your knowledge, was the

1 defendant under in the influence of drugs or alcohol?

2 A No.

3 Q And did it appear that he was confused at all
4 as a result of being under the influence?

5 A No.

6 Q Did he have an odor of alcohol about his
7 person?

8 A No.

9 Q Did he have any, to your knowledge, mental
10 disabilities that would cause him to not understand
11 you?

12 A No.

13 Q Now, what were the physical surroundings of
14 this booking desk?

15 A We have two -- one set of steel bars and then
16 you have a door with a window behind it. A desk,
17 which is probably about five or six feet long. And
18 then there is cabinets there, and then there is a
19 doorframe which is open and that goes out into the
20 lobby of the police department.

21 Q Where was he located when you were there?

22 A He would be on the outer side of this booking
23 desk. I'm on the inner side closest to the lobby of
24 the police department.

25 Q And you were able to speak with him and you

1 could hear him and he could hear you?

2 A There is no division between us. There is no
3 partition of any type. All you have is a low desk
4 area like this.

5 Q And once that process was complete, where was
6 he taken?

7 A He was -- well, he was taken upstairs to an
8 interrogation room.

9 Q And who took him up there?

10 A Myself and Sergeant Gordon.

11 Q Can you explain the layout of this
12 investigation or interrogation room?

13 A The interrogation room has a piece of carpet
14 in it. I don't have the dimensions, but it's large
15 enough to hold three chairs. It has a little work
16 station there. If I have to lean or write or
17 anything or keep a file, and it's really about it.
18 No windows. Just a door, three chairs, and a work
19 area.

20 Q What was the length of the time of questioning
21 between yourself and the defendant?

22 A Twenty minutes.

23 Q And was there any breaks or did the defendant
24 request any breaks?

25 A He did not request any breaks and there were

1 none.

2 Q Was he denied access to the phone or bathroom?

3 A No.

4 Q Any promises or threats made in exchange for a
5 statement from the defendant?

6 A No.

7 Q Was the defendant under arrest at this time?

8 A Yes.

9 Q Was he responding to your questions?

10 A Yes, he was.

11 Q Was he advised by yourself of the nature of
12 this investigation?

13 A Yes, he was.

14 Q Was he advised of his constitutional rights
15 pursuant to Miranda prior to any questioning?

16 A Yes.

17 Q And was the advisement of his rights
18 accomplished by writing or how did you go about doing
19 that?

20 A Charleston Police Department, we have a card,
21 it's a printed card and it has five rights. It's the
22 responsibility of the law enforcement agent prior to
23 any questioning to read these rights and for the
24 defendant or person who's being questioned to
25 understand them.

1 That's all a part of it. The law enforcement
2 agent is supposed to ask them, do you understand
3 these rights, which I did in this case.

4 (Whereupon, State's Exhibit Nos. 77 and 78 are
5 marked for identification.)

6 Q (By Ms. Cardillo) Detective Goldstein, I'm
7 going to show you what's been previously marked as
8 State's Proposed Exhibit Nos. 77 and 78.

9 Can you identify State's Proposed Exhibit 78?
10 what is it?

11 A State's Exhibit 78 is a Miranda card that I
12 read to Mr. Wilson on July 8th, 2007, at 7:55 a.m.

13 Q Could you please read directly from the card
14 what you advised the defendant of on that morning?

15 A Number one, you have the right to remain
16 silent. Two, anything you say can and will be used
17 against you in a court of law. Three, you have the
18 right to talk with a lawyer and to have him present
19 during any questioning. Four, if you cannot afford a
20 lawyer, one will be appointed to represent you before
21 any questioning, if you wish one. Five, if you
22 decide to answer questions without a lawyer present,
23 you have the right to stop answering questions at any
24 time if you so choose.

25 And then you flip it over on the back here,

1 says, do you understand your rights. I understand --
2 and then I asked him, do you understand your rights?
3 And if they do, I ask the individuals, just as I did
4 in this case, if they would sign their name to the
5 card that they have acknowledged that I read it and
6 they understand it.

7 Q Did you sign this card as well?

8 A I did. I signed it as the warning officer.

9 Q And did the defendant also sign this card?

10 A He did.

11 Q And did you witness that signature when he was
12 signing the card?

13 A I was present, yes.

14 MS. CARDILLO: Your Honor, the State at this
15 time would move for the admission of State's Exhibit
16 78.

17 THE COURT: Admitted subject to the objection.

18 (Whereupon, State's Exhibit No. 78 is admitted
19 into evidence.)

20 Q (By Ms. Cardillo) Now, did the -- I think
21 I've already covered this. But did he in fact waive
22 his rights and agree to speak with you?

23 A Yes.

24 Q And where exactly did you read him these
25 rights?

1 A That card was read at the booking desk while
2 Officer Inabinett was taking his property. So his
3 property was already up on the desk, and he was here.
4 He was in front of me facing me while I read the
5 rights.

6 Q Did the defendant have any trouble -- appear
7 to have any trouble understanding his rights?

8 A No.

9 Q To your knowledge did he understand what you
10 said and understand English?

11 A Yes, to the best of my knowledge.

12 Q Did you observe any educational issue that
13 would have prevented him from understanding his
14 rights?

15 A No.

16 Q Did his answers appear rational and responsive
17 to your questions?

18 A Yes.

19 Q Was he emotional at this point when you were
20 speaking with him about his rights?

21 A No.

22 Q Was there any point where he was too emotional
23 that gave you concern that he understood his rights
24 or not?

25 A No.

1 Q Did anyone -- you or anyone in your presence
2 threaten or coerce the defendant in any way or offer
3 him any promises for a statement?

4 A No.

5 Q And how did the defendant respond when asked
6 whether he wanted an attorney before speaking with
7 you at that time?

8 A He advised me that he would speak to me orally
9 but not give a written statement.

10 Q So he agreed to speak with you without an
11 attorney at that time?

12 A Yes.

13 Q And did he, in fact, waive his rights?

14 A Yes.

15 Q Did he later change his mind and ask to speak
16 to an attorney?

17 A Yes, he did.

18 MR. GRIMES: Objection, Your Honor.

19 THE COURT: Basis?

20 MR. GRIMES: Comment upon one's exercise of
21 those rights.

22 THE COURT: Overruled. It was part of the
23 investigation. You may continue.

24 MS. CARDILLO: Thank you, Your Honor.

25 Q (By Ms. Cardillo) Did he ever change his mind

1 and ask to speak to an attorney?

2 A Yes, he did.

3 Q And did the questioning stop at that time?

4 A I stopped it at that time.

5 Q To the best of your knowledge did the
6 defendant give his statement freely and voluntarily
7 to you?

8 A Yes, he did.

9 Q And did he, in fact, respond to your
10 questions?

11 A Yes.

12 Q What -- if you would, did you question the
13 defendant at the booking desk after you read him his
14 Miranda? What did he say?

15 A Yes. There were two topics that we went into.

16 MR. GRIMES: Objection, Your Honor.

17 THE COURT: Basis?

18 MR. GRIMES: Reasons given in-camera.

19 THE COURT: Please approach.

20 (Whereupon, a discussion was held at the bench
21 off the record.)

22 THE COURT: You may proceed.

23 MS. CARDILLO: Thank you, Your Honor.

24 Q (By Ms. Cardillo) Do you need the question
25 restated, Detective?

1 A No, I'm fine.

2 Q Please answer the question.

3 A I had asked him why there were two cell phones
4 present at the booking desk.

5 Q And what was his response?

6 A said that one of them, being the Motorola
7 Razor phone, belonged to Ms. Pendergrass. Then the
8 other question that I had asked him down there was
9 just what happened.

10 Q And what did he say?

11 A First we went into I asked him who was in the
12 apartment. And we started breaking that down.
13 Stated that he was in the apartment, [Minor 1], the
14 four-year-old child was in the apartment, and then
15 the younger child.

16 I asked him if he had shot Ms. Pendergrass.
17 He denied it. I asked him if [Minor 1] had shot
18 Ms. Pendergrass. He said no, that was impossible. I
19 asked him if the youngest child had shot
20 Ms. Pendergrass. This was just -- I was trying to do
21 a process of elimination. He said that he and the
22 two children plus Ms. Pendergrass were the only
23 persons in the apartment at the time of the incident.

24 Q Was that the extent of your conversation at
25 the booking desk?

1 A At the booking desk, yes.

2 Q Then what happened?

3 A The booking desk being an open area where
4 other people can come in, once this property was
5 taken, it was documented, myself and Sergeant Gordon
6 took Mr. Wilson up to this interview area up on the
7 second floor, which is right outside the detective's
8 office.

9 Q And what happened, if anything, in the
10 interview room with the defendant?

11 A I had asked him how he gotten down there to
12 the area because I knew he wasn't from there. And
13 said he had caught a ride. I asked him who he had
14 caught a ride with so I could backtrack and
15 substantiate it, and he would not give me an answer
16 on who gave him a ride.

17 In his property was a key. The key was to a
18 rental car. It had a description, it had a little
19 tag with the color of the car, type of car Chevy
20 Cobalt, red in color, and it had their serial number.
21 I took possession of this key at this time.

22 Q Through your investigation, what did you do
23 with that key?

24 A Later on in the day, it would have been late
25 like around 4:00 or 5:00 o'clock in the afternoon, I

1 went down around the apartment where this took place
2 and worked my way outward riding the streets.

3 And within a block or two, I found this Chevy
4 Cobalt parked on the side of Hanover and Johnson,
5 Nassau and Johnson, one of those street corners, but
6 it was within a block or two of the incident.

7 I got out of my vehicle. With it being red, I
8 put the key in the door of this red Cobalt. It was
9 parked on the side of the road, and the door
10 unlocked. So this was the key to the car that was
11 within a block of where Ms. Pendergrass resided.

12 Q Any other conversations with the defendant in
13 the interview room?

14 A No.

15 Q And how long, again, did that interview take
16 place?

17 A It would be 20 minutes.

18 Q As a result of -- what did you do next as part
19 of your investigation?

20 A I would go out and look for other witnesses to
21 this incident. Several days later, I would do
22 another process of paperwork.

23 Q And did it come a point in time where you were
24 around the defendant again as part of this
25 investigation?

1 A Yes. I had applied for a search warrant
2 through a magistrate's office.

3 Q And did you obtain that search warrant?

4 A Yes, I did.

5 Q What was that search warrant for?

6 A That would be to draw blood from the
7 defendant. And at this time, myself and another
8 investigator, Kenneth Diaz, went to the Charleston
9 County Jail and picked up the defendant to transport
10 him to Charleston Memorial where they draw the blood
11 through the nursing staff there.

12 Q I am going to show you what has been marked as
13 State's Proposed Exhibit 77. Do you recognize that
14 and what is it?

15 A This is a Miranda card just like the one that
16 I just read to the Court. It has the five rights and
17 then on the back it asks, do you understand your
18 rights. And if the defendant understands, I ask them
19 to sign it. At which time it was signed by the
20 defendant, signed by myself, and gives a date and a
21 time.

22 Q For what reason did you do another Miranda
23 card?

24 A As a precautionary measure. I knew he was
25 represented by counsel. But as precautionary, I

1 always, when I come in contact with the defendant, I
2 read them their Miranda rights. I did not question
3 him, but not knowing if he would start questioning, I
4 wanted both he and myself to be covered. So I took
5 that precautionary measure, which I do on a regular
6 basis.

7 MS. CARDILLO: Your Honor, State would move
8 admission of State's Proposed Exhibit 77, which is
9 the second Miranda card.

10 THE COURT: Marked and admitted subject to the
11 objection.

12 (Whereupon, State's Exhibit No. 77 is admitted
13 into evidence.)

14 Q (By Ms. Cardillo) Now, where did you take the
15 defendant on this occasion, on July 16th I think you
16 said it was?

17 A We would drive from the Charleston County
18 Detention Center on Leeds Avenue in North Charleston
19 to Charleston Memorial Hospital on Courtney Drive.

20 Q What was reason you did that again?

21 A To serve the warrant, which would be I would
22 read him the warrant and then the nursing staff would
23 draw blood from him, which would be -- which I took
24 it to the Charleston Crime Scene Lab and they do the
25 paperwork and they transport it up to SLED to be

1 compared for whatever part of this investigation.

2 Q Were you present during the blood draw of the
3 defendant.

4 A I stood there, yes.

5 Q And did you watch it?

6 A Yes.

7 Q And once the blood draw was completed, again
8 if you would explain in a little bit more detail what
9 you did or did you check the blood draw?

10 A I took custody of it. Two ways we can do
11 this. I can take custody and transport it to the
12 crime lab or I could have one of them, a crime
13 technician, come down and pick it up. I'm standing
14 right there. I am part of the chain. I transported
15 it myself to save time and save any confusion. So
16 that's what I did in this case.

17 Q Sergeant Goldstein, did you do anything else
18 apart as part of the investigation regarding Minor 1 ?

19 A Yes.

20 Q And what was that?

21 A I spoke to her on the day of this incident,
22 and then I made arrangements for somebody else to
23 speak to her.

24 Q And who was that?

25 A That would be Dr. Elsey.

1 Q Where is he affiliated with?

2 A. The Low Country Children's Center.

3 Q For what reason did you do this as part of the
4 investigation?

5 A Because of her age, Dr. Elsey, being an
6 experienced psychologist, I made arrangements to do
7 it in a professional atmosphere by a professional
8 instead of an agent of law enforcement, which I don't
9 have the experience, nor anybody that I work with I
10 felt had it.

11 Q Now, was the defendant charged with any crime
12 in this case?

13 A Yes, he was.

14 Q What was he charged with?

15 A He was charged with murder and possession of a
16 firearm during the commission of a violent crime.

17 Q Was he charged with anything else?

18 A Yes.

19 Q And what was that?

20 A Criminal domestic violence.

21 Q No, let me ask you --

22 MR. GRIMES: Objection.

23 THE COURT: Sustained.

24 THE COURT: Please approach.

25 (Whereupon, a discussion was held at the bench

1 off the record.)

2 THE COURT: Mr. Foreman, ladies and gentlemen,
3 you are to disregard the witness's last answer. You
4 are to give it absolutely no consideration in your
5 deliberations and it is not to be discussed in any
6 manner in the jury room.

7 You may proceed.

8 Q (By Ms. Cardillo) Sergeant Goldstein, was the
9 defendant later charged with burglary?

10 A Yes.

11 Q And for what reason?

12 A Based on the latent comparison that I received
13 from our fingerprint lab.

14 Q Thank you.

15 MS. CARDILLO: Your Honor, may I have brief
16 moment?

17 THE COURT: Sure.

18 Q (By Ms. Cardillo) Sergeant Goldstein, when
19 you were interviewing the defendant after you
20 Mirandized him, did he mention anything about going
21 up the stairs?

22 A Yes.

23 Q What was the extent of that conversation?

24 A At the booking desk with Officer Inabinett
25 after being read Miranda, I asked him what had

1 happened. He told me he was downstairs in the living
2 room by the couch, he was going up the staircase when
3 he heard a gunshot.

4 Q And anything else other than what you've
5 already discussed?

6 A No.

7 Q Thank you. Please answer any questions that
8 Mr. Grimes may have.

9 THE COURT: Mr. Grimes, any cross-examination
10 of the witness?

11 MR. GRIMES: Yes, ma'am.

12 THE COURT: Then you may proceed.

13 MR. GRIMES: Thank you, Your Honor.

14 CROSS-EXAMINATION

15 BY MR. GRIMES:

16 Q Good afternoon, Detective Goldstein.

17 A How are you, sir?

18 Q Little cold. Apart from that, I'm all right.
19 It's my understanding that you are the lead detective
20 in this case?

21 A Yes.

22 Q What are the responsibilities of a lead
23 detective?

24 A Gather as much information on the incident
25 upon the initial response, delegate whatever

1 responsibilities there are to other officers, and to
2 follow through and be responsible for the case from
3 the beginning to the end.

4 Q And as part of being a lead detective, did you
5 review the reports from the other officers?

6 A Yes.

7 Q And you sort of be the centralized place for
8 everything; is that correct?

9 A Yes.

10 Q And eventually you forward everything to the
11 solicitor's office?

12 A Yes, I would.

13 Q And eventually would forward stuff
14 discoverable to our office to prepare the defense?

15 A Yes.

16 MR. GRIMES: Excuse me. May I have moment,
17 please?

18 THE COURT: Certainly.

19 Q (By Mr. Grimes) Now, I believe on your direct
20 testimony, you mentioned two witnesses that you
21 interviewed.

22 A Yes. It would be Ms. Williams -- it would be
23 Tisha Williams and then Ms. James.

24 Q You also interviewed Myisha Ray, correct?

25 A Who is that, sir?

1 Q Myisha Ray, you also took a statement from
2 her?

3 A Yes, I took a written statement from her.

4 Q I believe there was a fourth person you took a
5 written statement from, too, correct?

6 A Besides Minor 1, the young child.

7 Q Written statement, I think there was another
8 person, wasn't there?

9 A I don't have them in front of me.

10 MR. GRIMES: May I have moment, Your Honor?

11 Q (By Mr. Grimes) Did you also interview Tianai
12 Lee?

13 A Yes.

14 Q Tisha Williams and Ellesse James?

15 A That's correct, sir.

16 Q And you said you kind of delegated to other
17 officers to go door-to-door to talk to the other
18 people, other occupants of this complex, correct?

19 A Yes.

20 Q And did all those officers prepare a report
21 for you?

22 A No, they didn't.

23 Q Now, have you had a chance to review all the
24 statements you received in this case?

25 A I have read through them at the beginning of

1 this case, yes, sir.

2 Q And in preparing for trial, did you go back
3 through them again?

4 A Some of the paperwork, I did not have.

5 Q You sat in here most of the trial, is that
6 correct?

7 A Yes, sir.

8 Q Did you hear Detective Ambrose's testimony
9 about Mr. Wilson making a statement about Latoya
10 saying, why did you do this?

11 A I heard the one about, oh my baby, my baby.
12 Is that what you are talking about?

13 Q No, sir. I think he said Detective Ambrose --
14 or Sergeant Ambrose, first responder or the officer
15 that responded first. He said that Mr. Wilson
16 basically made three statements. Oh, my baby.
17 Another one, I love you or -- I don't remember
18 offhand -- I don't want to lose you. And then, why
19 did you do this.

20 Is there any of that statement about why did
21 you do this, is that in any report anywhere?

22 A It should be in his supplements, not in any of
23 my documentation. But he documented it.

24 Q He did?

25 A I believe. I would have to look at his

1 supplement.

2 Q I got a clean copy.

3 MR. GRIMES: Mark this for identification as
4 Defense Exhibit No. 3.

5 THE COURT: For ID only.

6 MR. GRIMES: Yes, ma'am.

7 (Whereupon, Defendant's Exhibit No. 3 is
8 marked for identification.)

9 Q (By Mr. Grimes) I'll show you what has been
10 marked as Defendant's Exhibit 3 for identification
11 only.

12 Is that the supplemental report by Detective
13 Ambrose?

14 A Yes. It's signed by him, sir.

15 Q I will let you review it for a moment.

16 A Okay, sir. Go ahead.

17 Q Is there anything in that report about
18 Mr. Wilson saying, why did you do this?

19 A I don't see that in here, sir.

20 Q All right. Thank you. How important is it to
21 interview witnesses who have key information in a
22 case like this?

23 A It's very important.

24 Q And if the solicitor found out about a
25 witness, would they refer them to you for you to

1 interview them?

2 A It varies. I have had both direction by the
3 solicitor, not this one, but in another cases I have
4 been directed to, or sometimes they interview them.

5 Q Okay. Have you ever interviewed Latasha
6 Pendergrass?

7 A What is that, sir?

8 Q Have you ever interviewed Latasha Pendergrass
9 in connection with this case?

10 A No. Not that I'm aware of.

11 Q Have you ever seen a written report from her?

12 A No.

13 Q Now you said you found two cell phones on
14 Mr. Wilson?

15 A Yes, there were two at the booking desk.

16 Q Did you pull up the cell phone records for
17 those phones?

18 A Yes. We forwarded to the Charleston Police
19 Department phone analysts. They have a laboratory
20 where they are able to go through the phones.

21 Q Do you have the phone records with you today?

22 A Do I? I don't have them with me, no, sir.

23 Q Does anyone? Does any witness, any of them
24 have the phone records?

25 A To the best of my knowledge, they don't. We

1 have technicians for that.

2 Q In this time frame a little bit, this incident
3 happened on July 8th?

4 A Yes.

5 Q On July 8th, you charged him with murder and
6 possession of a weapon during a crime of violence?

7 A Yes.

8 Q And in August you charged him with the
9 burglary charge?

10 A Yes.

11 Q Basically you charged him with the burglary
12 charge with the fingerprint that was lifted from the
13 outside window?

14 A Yes.

15 MR. GRIMES: May I have one moment, Your
16 Honor?

17 THE COURT: You may.

18 MR. GRIMES: Thank you. Thank you, Your
19 Honor. I have no further questions.

20 THE COURT: Any redirect of the witness?

21 MS. CARDILLO: No, Your Honor.

22 THE COURT: Any objection to the witness being
23 excused from the State?

24 MS. CARDILLO: No, Your Honor.

25 THE COURT: Any objection from the defendant?

1 MR. GRIMES: Yes, ma'am. We may call him in
2 our case.

3 THE COURT: Sir, you are excused subject to
4 being recalled.

5 Could counsel approach for me, please?

6 (Whereupon, a discussion was held at the bench
7 off the record.)

8 THE COURT: Mr. Foreman, ladies and gentlemen,
9 we know that it is late. I am sure you all would
10 like to go home and have some dinner, as everyone
11 would.

12 I have an indulgence to ask of you, however
13 but I will abide by whatever you tell me. Your
14 preference will prevail.

15 We have a witness that has driven from
16 Columbia that, if possible, we would like to do this
17 evening before we adjourn. We anticipate that
18 witness will be 20 to 30 minutes, worst case
19 scenario.

20 I need to know if that would cause you all any
21 anxiety, if it would cause you any scheduling
22 conflicts? I guess are you all comfortable letting
23 me know by a show of hands if that is acceptable to
24 you?

25 If that's agreeable to you, raise your hands

1 for me.

2 Okay. Except one. Is that going to cause you
3 a scheduling problem?

4 A JUROR: I have got tickets to the show
5 tonight.

6 THE COURT: What time?

7 A JUROR: At 7:30. I have got to go from here
8 almost Waldmalaw and drive back.

9 THE COURT: Are you sure you are going to make
10 it?

11 A JUROR: No, I'll miss the show.

12 THE COURT: I don't want you to miss your
13 show.

14 A JUROR: Now I'm not going to stop this trial
15 for the show.

16 THE COURT: Your show is important, too.

17 A JUROR: It's not important, no, ma'am, it's
18 not.

19 THE COURT: Are you certain?

20 A JUROR: Yes, ma'am. I'm positive.

21 THE COURT: Okay. It sounds like you really
22 might not have wanted to go. Were you being pressed
23 into service?

24 I'm just adding a little levity. The witness
25 may not take that long. I needed to give you the

1 worst case scenario.

2 Okay. You may proceed.

3 MS. CARDILLO: Thank you, Your Honor.

4 State calls Ken Bogan.

5 MR. KENNETH BOGAN,

6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on his oath as follows:

9 THE COURT: You may proceed.

10 MS. CARDILLO: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. CARDILLO:

13 Q Agent Bogan, where are you employed?

14 A I'm employed with the State Law Enforcement
15 Division, also known as SLED.

16 Q And how long have you been with SLED?

17 A In January, it will be 25 years.

18 Q What do you do there? What is your main job
19 duties?

20 A I'm currently assigned to the DNA analysis
21 section. I perform DNA analysis on evidence
22 submitted in cases from law enforcement agencies
23 throughout the state of South Carolina. I also
24 supervise approximately six case working analysts.

25 Q How long have you been a forensic analyst in

1 the DNA lab?

2 A I began my training in DNA in 1990. I did
3 some training at the Federal Bureau of Investigation
4 at Quantico, Virginia. And I also did some training
5 at the State Law Enforcement Division, and began
6 doing cases in approximately 1992.

7 Q What's your educational background, Agent?

8 A I have a bachelor of science degree from the
9 University of Central Florida. My degree is in
10 medical technology, that's a field of science which
11 deals with diagnostic medicine. I worked in a
12 clinical laboratory, hospital laboratory for
13 approximately six years before becoming employed by
14 SLED.

15 After being employed with SLED in 1984, I was
16 trained in basic forensic serology. I attended the
17 Federal Bureau of Investigation School for Basic
18 Forensic Serology, received additional training
19 through other agencies such as the Serological
20 Research Institute.

21 Again in 1990, I attended the FBI DNA analysis
22 training school, also taught and trained case working
23 DNA analysts at the State Law Enforcement Division.
24 In 1994 I attended an advanced class in DNA analysis
25 methods. Again, I began my -- doing active case work

1 in 1993, have been doing it ever since.

2 Q Does SLED have any -- their own in-house
3 training?

4 A Yes.

5 Q Have you been part of that as well?

6 A Yes. I have participated as a trainee, and I
7 have also participated as trainer.

8 Q Are you certified by SLED to perform forensic
9 DNA analysis?

10 A Yes.

11 Q And how long did you say you have been doing
12 DNA?

13 A Since about 1992.

14 Q How many cases have you handled over that
15 period of time?

16 A I don't have an exact number. It's probably
17 in the thousands.

18 Q Okay. Have you ever been qualified as an
19 expert in DNA analysis?

20 A Yes, I have.

21 Q And how many times roughly?

22 A It's approximately 58 times.

23 Q In what courts?

24 A In the courts in South Carolina general
25 sessions court, throughout the counties of South

1 Carolina, and one time in Georgia.

2 MS. CARDILLO: Your Honor, at this time the
3 State would offer Agent Ken Bogan as an expert in the
4 field of forensic DNA.

5 THE COURT: Any objections or questions?

6 MR. GRIMES: No, ma'am.

7 THE COURT: So admitted.

8 Q (By Ms. Cardillo) Agent Bogan, in general
9 terms, what does the field of forensic DNA entail?

10 A I'm sorry?

11 Q DNA analysis.

12 A Basically what I do is I receive evidence from
13 law enforcement agencies throughout the state of
14 South Carolina. I examine that evidence for the
15 presence of body fluids, that would be the
16 serological portion of my analysis.

17 Sometimes there is no evidence of body fluids
18 and there is a request to do analysis for what's
19 known as touch DNA. Basically what I do is I extract
20 DNA from samples that are submitted to me, develop
21 what DNA profiles I can from that, and then compare
22 it to known reference standards from individuals who
23 may be involved with the case.

24 Q I know it's, I guess, a basic level. What is
25 DNA exactly?

1 A DNA, of course, is an abbreviation that stands
2 for deoxyribonucleic acid. DNA is the genetic
3 material that is inherited from the parents of an
4 individual; half of a person's DNA comes from the
5 father, half from the mother at conception. And as
6 the body develops, the DNA acts as a genetic
7 blueprint in determining such things as skin color,
8 hair color, eye color, in the development of the
9 human body.

10 No two people have the same DNA except
11 identical twins. DNA is found in the human body and
12 all nucleated cells of the body. So it can be found
13 in blood cells, it can be found in white blood cells,
14 it can be found in skin cells and teeth and hair
15 roots.

16 And DNA is a powerful forensic tool in that it
17 is used for human identification. That a DNA sample
18 can be found at a crime scene and compared to a known
19 standard and if the samples match the assumption is
20 that they came from the same individual.

21 It has been used for identification for war
22 deaths, for individuals who have been killed in the
23 war, and also it has been used for identification of
24 bodies in the World Trade Center in 2001.

25 Q And you may have just answered this, why is it

1 forensically significant?

2 A Well, for identification purposes, so
3 associating individuals with a crime scene.

4 Q Agent Bogan, with regard to this case, your
5 lab number L0710815, did you receive evidence from
6 the Charleston Police Department for DNA testing?

7 A Yes, I did.

8 Q And what evidence did you receive?

9 A I received a swab from a handgun. I received
10 a blood standard from Jake Wilson. I received a
11 blood standard from Latoya Pendergrass. I received
12 fingernail clippings from the left and right hand
13 from Latoya Pendergrass. Also received known head
14 hairs and known pubic hairs from Latoya Pendergrass,
15 and what was listed as a cut weave from latoya
16 Pendergrass.

17 Q And were all these items properly packaged and
18 labeled?

19 A Yes.

20 Q Any evidence that any of these items had been
21 tampered with?

22 A No. The evidence I received were all in
23 heat-sealed packages and sealed when I received them.

24 Q Agent Bogan, I'm going to show you what has
25 been marked as State's Proposed Exhibit 72, 71, and

1 76. Do you recognize these items?

2 A Yes, I do.

3 Q And how do you recognize these items?

4 A Has my case number here. Also has my initials
5 here and here where I resealed it. And also here.
6 And the packages on the inside also have my initial
7 markings.

8 Q When you received these item --

9 A That was only -- excuse me, that was only
10 State's Exhibit 72. State's Exhibit 76 also has my
11 initials here and here and here where I sealed it.
12 And State's Exhibit 71 also has my initials, my case
13 number, and my initials here and here where I sealed
14 it.

15 Q Where, I guess, inside of SLED did you receive
16 these items?

17 A State's Exhibit 76 is a swab. I received that
18 directly from John Martino, who is a forensic DNA
19 analyst and supervises the evidence processing
20 department.

21 State's Exhibits 71 and 72 were placed in a
22 secured refrigerator in a box that has my initials on
23 it.

24 MS. CARDILLO: Your Honor, at this time, State
25 would offer State's Proposed Exhibit 71 -- 76, 72,

1 and 71 into evidence.

2 THE COURT: Any objection?

3 Show them to Mr. Grimes.

4 MR. GRIMES: She showed them to me today. No
5 objection.

6 THE COURT: Marked and admitted without
7 objection.

8 MS. CARDILLO: Thank you, Your Honor.

9 THE COURT: You're welcome.

10 (Whereupon, State's Exhibit Nos. 71, 72 and 76
11 are admitted into evidence.)

12 Q (By Ms. Cardillo) Agent Bogan, did you
13 prepare a chart which sets forth your findings with
14 regard to forensic DNA analysis you performed in this
15 case?

16 A Yes, I did.

17 MS. CARDILLO: Your Honor, may I have this
18 marked for identification purposes only?

19 THE COURT: Show it to Mr. Grimes.

20 Do you have any objection? Are you seeking to
21 admit it?

22 MS. CARDILLO: No, Your Honor, only to
23 demonstrate.

24 THE COURT: Marked for ID only.

25 (Whereupon, State's Exhibit No. 79 was marked

1 for identification.)

2 Q (By Ms. Cardillo) Agent Bogan, I'm going to
3 hand you what's been marked for ID only as State's
4 Exhibit 79 and ask you to examine that. What is
5 that?

6 A It looks like a photocopy of a portion of page
7 four of my report that I prepared.

8 Q And you prepared this chart yourself?

9 A Yes, I did.

10 Q Would reference to those exhibits, which were
11 just admitted, help you in explaining your findings
12 of the chart or do you need that?

13 A I'd rather have my own copy.

14 Q Okay.

15 MS. CARDILLO: Thank you, Your Honor.

16 THE COURT: You're welcome.

17 Q (By Ms. Cardillo) Can you see that?

18 A It looks a little -- yes, I can see that
19 better.

20 THE COURT: You are going to have to zoom in a
21 little bit. You can focus the top with the top of
22 the play. There you go.

23 Q (By Ms. Cardillo) I know it's -- Agent Bogan,
24 I will give you this pointer so maybe that could hit
25 the top button.

1 what are these items listed out in the first
2 column?

3 A The items in the first column are the items
4 that I performed DNA analysis on. For example, Item
5 12 was a blood standard from Latoya Pendergrass.
6 Item 11 was a blood standard from Jake Wilson. Item
7 1.1 was a swab from a handgun. 13 and 14 are
8 fingernail clippings from Latoya Pendergrass.

9 Q And what are the letter and number
10 combinations at the top of the chart?

11 A Across the top, is this what you're talking
12 about?

13 Q Yes.

14 A In performing a DNA analysis, I examine DNA at
15 different locations on the DNA molecule. The letters
16 here, the "D" stands for DNA. The "8", if you can
17 make that out to be an 8, stands for chromosome
18 number 8. The S-1179 stands for a site location on
19 that chromosome. It's a site that was discovered and
20 they named it 1179.

21 So if you go across, this would stand for DNA,
22 chromosome 21, site 11; DNA, chromosome 7, site 820.
23 And some of these do not have chromosome names,
24 although they're still known chromosomes, but they
25 were discovered in conjunction with examinations for

1 evidence of diseases such as cystic fibrosis.

2 So some of these were named after people that
3 discovered them. And so they don't have the D in
4 front of them like CSF, or what we call 01. Those
5 were probably named after someone that actually
6 discovered those sites.

7 What those sites represent are a little bit
8 interesting, but what those sites represent are
9 polymorphic regions on a DNA molecule. What I mean
10 by polymorphic is poly means many, morphic means
11 form. So at those locations, the DNA, everybody has
12 those locations but they exist in different forms.

13 My DNA would be different at that location
14 from other people, although there is occasionally
15 someone would share and have the exact same what I
16 call a genotype at that location as I do. But if you
17 consider the entire DNA profile, which is represented
18 by the numbers that you see in the rows beside Latoya
19 Pendergrass, that represents the DNA profile.

20 Q Thank you. I'm going to move this over.

21 What are -- is I'm not sure if I'm saying this
22 correctly or not, what is amelogenin?

23 A Amelogenin.

24 Q Thank you. I'm trying. What is the
25 significance of the next line?

1 A Amelogenin is an area of DNA that we can
2 determine the sex of an individual. A female would
3 have two X chromosomes, which would show up as a
4 single X. And a male would have an X and a Y
5 chromosome. So basically the amelogenin site is used
6 to determine the sex of the contributor of the DNA.

7 Q What is the significance of -- I see some
8 numbers up there in parentheses. What does that
9 mean?

10 A During DNA analysis, there are some thresholds
11 that the DNA department has determined are areas that
12 need to be observed and observed with caution.
13 Basically we have a detection threshold. That means
14 that as DNA is passing through our genetic analyzer,
15 we get a signal. If the signal is low, there will
16 not be a genotype called at all, we will not get
17 enough. There is a range that we -- that I use, and
18 the range is between 75 and 149.

19 Now, what that number means is relative to the
20 unit, it's a little bit complicated but it's called
21 RFU's for short. So any value that I get, such as a
22 number like you'll see here, I have two numbers,
23 that's the actual genotype of what I got from that
24 sample was in a range of 75 RFU to 149 RFU. What
25 that indicates to me is I am in an area of DNA that I

1 have to examine and interpret with extreme caution.

2 There are potential dropouts. You'll notice
3 that I don't have any results in some of these areas
4 and some of them I do. What you will notice here,
5 these are fingernail clippings from Latoya
6 Pendergrass. This is a genotype that I got. If you
7 will recall, this is her genotype, so you can see
8 that they do match.

9 But I'm in an area where I have a limited
10 amount of DNA and I don't get very much signal from
11 it, it indicates to me that -- it explains to me
12 because I have low DNA that I may not get results
13 here. In this particular location, you can see I
14 have a 9, this is from Latoya Pendergrass' fingernail
15 clippings, you can see her genotype is an 8/9. So
16 what I had is what we call an allelic dropout. I had
17 a dropout of a number. One of her genotypes dropped
18 out. That's why I have to observed those and
19 interpret it with caution.

20 And actually on the other side over there
21 there is a legend at the bottom that indicates what
22 that means. That the parentheses equals alleles
23 between 75 and 149 RFU.

24 Now when I refer to the word alleles, I am
25 talking about these numbers. Okay. When I talked

1 about at those locations on the chromosome, that we
2 all have alleles there, but they differ in numbers.
3 And that's what these numbers represent, they
4 represent the numbers -- they actually represent the
5 number of short tandem repeats on the DNA molecule.

6 Q Were you able to obtain DNA from item 1.1
7 which is swabs from the handgun?

8 A Yes.

9 Q Could you explain your findings to the jury?

10 A Okay. What I determined was that based on my
11 findings that I had a limited amount of DNA, number
12 one. I am able to determine that because I have
13 values that are in parentheses; I have some locations
14 of DNA where I got no values at all so I did not get
15 any results.

16 What I can also tell is that I've got a
17 mixture of DNA from two individuals. Now the reason
18 that I can say that it's at least two individuals is
19 because at this location I have four alleles. Most
20 people in a normal situation will either have two
21 alleles at most, or one.

22 And the reason that they would have one, for
23 example here, Latoya Pendergrass only has one at
24 location D-3. She actually has two, but they're the
25 same. She's what we call homozygous 17. That means

1 both copies, the copy from her mother and the copy
2 from her father, are both 17.

3 whereas in this locus she would be called what
4 we call heterozygous, she's got two alleles, one came
5 from her mother, one came from her father and their
6 different.

7 So by knowing that here that I have at least
8 four alleles, it could be -- had to come from at
9 least two individuals. It could have come from more
10 than two, but at least two. The same here I have
11 three alleles which means that it's indicating at
12 least two individuals. And here again I have four
13 alleles which indicates it came from at least two
14 individuals.

15 what I did further is I compared the values
16 from -- or the allele types or genotypes, this is
17 what I would call a genotype -- I compared the
18 genotypes from Latoya Pendergrass to what I got off
19 the handgun.

20 Now remember I said that it's consistent with
21 at least two individuals. what I looked for is
22 similarities, there is a 17 and 17 here, if two
23 individuals contributed to this. I also compared the
24 genotype from Jake Wilson to this sample and you can
25 see that there's a 17, which matches, there is a 14

1 and a 16, and there is a 15 that is not explained by
2 these two profiles.

3 So there is DNA from someone other than these
4 two individuals present.

5 Here I looked for DNA, I looked for Latoya
6 Pendergrass's DNA, I did not find it. And if you go
7 further over you can see that her 12 allele does not
8 show up. I looked at DWA, her 15 -- or 20 allele did
9 not show up. All the way over here at D-5 there is
10 is an 8 and a 9 that she has that does not show up.

11 Based on that evidence, knowing that there are
12 at least two individuals there, I excluded Latoya
13 Pendergrass as a contributor of DNA to the handgun.

14 However, looking at the same profile I looked
15 at for example from Jake Wilson, the 6 and 7 is
16 present; a 10 is present; an 11/13 is present; a 16
17 and 19 is present; if you went on over here a 12 is
18 present. So I could not exclude Jake Wilson as a
19 possible contributor of DNA to the handgun.

20 Q Now are you saying the swab of the handgun,
21 what type of DNA came from this type of swab?

22 A The request was for what is called touch DNA.
23 And that would be DNA that is transferred from the
24 mere act of touching something. And it's a transfer
25 of skin cells to an object.

1 Q So from your analysis or your opinion is that
2 Latoya Pendergrass can be excluded from this mixture?

3 A Yes.

4 Q But Jake Wilson could not be excluded from
5 this mixture?

6 A That's correct.

7 Q And you mentioned a range, I guess you said,
8 of alleles from 75 to 149. Is that SLED protocol to
9 use that? I guess if you could explain that a little
10 bit more in detail.

11 A The SLED laboratory in developing this
12 technology, it's not a technology that we use and no
13 other laboratories use. It's a techniques that is
14 used in probably 99 percent of the forensic
15 laboratories throughout the U.S. as well as the
16 world.

17 But to use that technology in our laboratory
18 we have to prove to ourself that it works. So we
19 went through what is called a validation procedure.
20 We have an instrument that I mentioned earlier that's
21 called a genetic analyzer, it's basically I put the
22 extracted DNA sample, once it's amplified I put it on
23 there and run it through the machine and it actually
24 develops the results, the raw data which I then
25 convert into these DNA profiles.

1 In that validation procedure, first of all we
2 have to make sure that the instrumentation works.
3 And we have to develop what's known as background
4 noise, and recognize what is known as baseline or
5 background noise. We also have to validate the
6 actual reagents that we use in amplifying and to help
7 develop these DNA profiles.

8 So during that validation process we, and I
9 was part of it, the laboratory did studies on things
10 such as reproducibility. We took a sample that had a
11 known DNA profile that is used in ever forensic lab
12 that I know of in the country; it's called 99478.
13 And it's a human DNA. We ran that sample over and
14 over and over again to make sure we were getting the
15 right genotype every single time.

16 We also did, other than reproducibility
17 studies, we diluted that sample out, knowing what the
18 genotypes are, we diluted it so that we could run
19 what we call sensitivity studies. And in doing our
20 sensitivity studies we determined a baseline for a
21 value that we could look at DNA and be confident that
22 when alleles were called, when these numbers were
23 developed, that they were indeed true alleles. That
24 they were not what we call artifacts.

25 So our level, or threshold level, is at 75

1 RFU. Anything that reaches 75 RFU, the SLED
2 laboratory is confident that that is a true allele.
3 Anything that is under that, we are not as confident
4 and so we don't report it out.

5 Q I guess in layman's terms would that mean that
6 the ranges from 75 to 149, according to SLED
7 standards, are more reliable?

8 MR. GRIMES: Objection, leading.

9 THE COURT: Sustained, leading. You may
10 rephrase.

11 Q (By Ms. Cardillo) Are these ranges reliable?

12 A Yes. They're reliable in the fact that --

13 MR. GRIMES: Leading, Your Honor.

14 THE COURT: I'm going to give her a little
15 latitude. No more leading questions.

16 MS. CARDILLO: Okay, Your Honor, thank you.

17 THE COURT: You're welcome.

18 Sir, you may continue your answer.

19 A The -- I have confidence in any allele that is
20 detected that is above 75 RFU that I deem to be a
21 true allele. That means it is an amplified product
22 and it is an allele that came from an individual.

23 To distinguish that from what might be what's
24 called an artifact. Sometimes there are artifacts
25 that are not true alleles that also go above that

1 range, go above that 75 RFU range.

2 But where my confidence, and everybody in my
3 lab, based on our interpretation guidelines,
4 everybody in our lab, if the alleles are above 150 we
5 are dead certain that those are true alleles.
6 Anything that is between 75 and 149 it just notifies
7 us that we need to look at this with caution and make
8 interpretations with caution.

9 And what really happens is that it's a very,
10 very conservative approach to statistical analysis in
11 developing the probability or likelihood that someone
12 else chosen at random might have that same DNA
13 profile.

14 So basically those -- any alleles that are in
15 that 75 to 149 range I have confidence in them, but
16 they are treated differently as far as for
17 statistical purposes.

18 MS. CARDILLO: Agent Bogan, thank you for
19 answering my questions. Please answer any that Mr.
20 Grimes may have.

21 THE COURT: Mr. Grimes, any cross-examination
22 of the witness?

23 MR. GRIMES: Yes, ma'am.

24 THE COURT: You may proceed. Are you going to
25 need that?

1 MR. GRIMES: No, ma'am.

2 THE COURT: Okay.

3 CROSS-EXAMINATION

4 BY MR. GRIMES:

5 Q Good afternoon, Dr. Bogan.

6 A Good afternoon.

7 Q Is it doctor?

8 A No, I'm not a doctor. I do not have a
9 doctorate. Thank you though.

10 Q Got you a little promotion. Let me ask you a
11 couple questions about your conclusions.

12 First you said you were able to exclude Ms.
13 Pendergrass from her DNA being on the gun?

14 A That's correct.

15 Q And you said you could not exclude Mr.
16 Wilson's DNA from being on the gun?

17 A That's correct.

18 Q But you didn't -- because obviously your
19 testimony you did not testify that his DNA was on the
20 gun, did you?

21 A I did not.

22 Q Would your opinion change if you knew that he
23 admitted to holding the gun when the gun was fired?

24 A I try not to base my opinions -- I base my
25 opinions on the evidence that I find in the

1 laboratory.

2 Q Okay. Now when you're talking about threshold
3 levels, like 75 is the lowest that SLED would use?

4 A That's correct.

5 Q And would it change your opinion of Ms.
6 Pendergrass's DNA being on the gun if your threshold
7 level was lower?

8 A The interpretation guidelines that the SLED
9 laboratory has adopted is that I'm not going to lower
10 my threshold below 75, realizing that there may be
11 alleles below 75 that aren't detected, but I cannot
12 interpret them.

13 Q So it's possible to say there are alleles
14 below 75?

15 A Yes.

16 Q And there are artifacts above 75?

17 A Yes.

18 Q And in the last set of questions I have, sort
19 of touch DNA, if I started coming up here and touch
20 this, I could leave DNA there?

21 A It possible.

22 Q I may not leave DNA there?

23 A That's more likely. Just that minor little
24 touch.

25 Q If I hit something real hard, does that make a

1 difference?

2 A Probably.

3 Q And when you handle evidence, do you wear
4 gloves?

5 A Yes.

6 Q Do you wear gloves because you don't want to
7 contaminate the evidence?

8 A That's correct.

9 Q You don't want to transfer your DNA onto the
10 evidence?

11 A That's correct.

12 MR. GRIMES: Thank you. I have no further
13 questions, Your Honor.

14 THE COURT: Any redirect?

15 MS. CARDILLO: No, Your Honor.

16 THE COURT: Any objection to the witness being
17 excused?

18 MS. CARDILLO: Not at all from the State, Your
19 Honor.

20 THE COURT: From the defense?

21 MR. GRIMES: No, ma'am.

22 THE COURT: Sir, you are excused.

23 THE WITNESS: Thank you very much.

24 THE COURT: Mr. Foreman, ladies and gentlemen,
25 we appreciate your patience and indulging us this

1 evening. We will resume in the morning at 9:00.

2 During the break please do not discuss the
3 case among yourselves or with anybody else. Please
4 don't watch, read or listen to any media accounts
5 about this case, that includes anything that may be
6 on the radio, television, Internet or otherwise.
7 Radio, I knew I was forgetting one, or otherwise.

8 Again, please don't have any contact with
9 anyone when you come back into the courthouse in the
10 morning. If you -- I know it's dark, getting dark,
11 if anyone feels uncomfortable going to their car, I
12 will have the deputy escort you all down to the
13 garage. So please let the bailiffs know and we will
14 make sure we have someone escort you to your car.

15 Again, we really appreciate your patience.
16 Please leave your notepads in your seats and we will
17 see you in the morning at 9:00.

18 (Whereupon, the jurors exit the courtroom.)

19 THE COURT: Okay. Now here's what we were
20 able to find out about the cell phone records.
21 Apparently Ms. Pendergrass had a pay-as-you-go phone
22 which means they don't keep records of her details,
23 so they wouldn't have been available anyway so it
24 becomes a non-issue.

25 They have -- they researched it and what they

1 indicated they had no subscriber agreement during
2 that time frame. They only show that there is a
3 pay-as-you-go phone, they only show that there is an
4 activation, that's all they show. Then the person
5 pays as they go along for the use of the phone.

6 so all it would show in their records is that
7 it was a prepaid cell phone. However, she said there
8 is guy at SunCom in Pennsylvania that she is sent
9 this to just to double-check make and sure there are
10 absolutely no records.

11 so they have sent that, we've tried to reach
12 him but we left him a voicemail. That was much
13 earlier. we did not get an answer from him, and she
14 is also going to follow up with him with an e-mail
15 and phone number.

16 what she faxed back to us was basically what I
17 just told you which is, we are unable to provide the
18 information you seek because there is no subscriber
19 during the time frame requested, 7/7/07 to 7/8/07.
20 So there are no records that exist. So that resolves
21 the issue for us.

22 The only information we have is that which is
23 on the phone, and for whatever reason -- and it's the
24 same information you already had -- for whatever
25 reason it will not display the times. But I don't

1 see that as any deficit to the defendant. The main
2 information he needs is the number of calls that were
3 made, he has that from the telephone itself.

4 The State provided that, the Court also looked
5 at the telephone and tried to -- and gave those very
6 same phone numbers. And that's about all the detail
7 that is available.

8 I think that resolves that issue. Is there
9 anything before we break from the State.

10 MS. CARDILLO: Your Honor, I just wanted to
11 put on the record that the State made a copy of the
12 911 calls of just the portion of the defendant.

13 THE COURT: Yes, and I want to indicate and
14 I'm glad you brought that up. What I indicated to
15 the court reporter before the luncheon recess was
16 that you could not alter the original, that it has
17 been marked as a Court's Exhibit.

18 You have to copy that first call on to another
19 tape and substitute that into the record, so you all
20 did that?

21 MS. CARDILLO: Yes, Your Honor.

22 THE COURT: Okay, then that's taken care of.

23 MR. GRIMES: We'd like to hear it before it
24 goes back to the jury.

25 THE COURT: Of course. You all need to give

1 him a copy.

2 MS. CARDILLO: Okay.

3 THE COURT: He needs to have his own copy.

4 Okay, is there anything else before we break
5 for the evening from the State.

6 MS. CARDILLO: Nothing from the State, Your
7 Honor.

8 THE COURT: From the defense?

9 MR. GRIMES: Just to follow-up a little bit on
10 the phone call issue. We did receive from the State
11 are blanks --

12 THE COURT: I'm sorry, I can't hear you.

13 MR. GRIMES: The CD's that we received from
14 the state in discovery --

15 THE COURT: What calls are you referring to.

16 MR. GRIMES: Cell phone, the telephone records
17 from Ms. Pendergrass.

18 THE COURT: What do you mean are blank? You
19 lost me.

20 MR. GRIMES: For some reason either I cannot
21 open it up on my computer because I'm a computer
22 idiot, or they just did not copy right. Last time I
23 went down Ms. Cardillo's office to look at it, I was
24 satisfied --

25 THE COURT: I'm sorry, I don't mean to -- tell

1 me what it is you were looking at exactly, what
2 recordings are you referring to?

3 MR. GRIMES: I just wanted to make sure she's
4 going to provide it.

5 THE COURT: What are you all referring to?

6 MR. GRIMES: Cell phone records of Ms.
7 Pendergrass's cell phone.

8 THE COURT: You just want to look at the --

9 MR. WILLIAMS: They provide a report in
10 digital format, you have to open up the digital copy.

11 THE COURT: You cannot print from the CD?

12 MR. WILLIAMS: They encrypted it. He can
13 borrow our copy.

14 THE COURT: Okay. Is that acceptable, Mr.
15 Grimes?

16 MR. GRIMES: Yes, ma'am.

17 THE COURT: Okay, there you go. The record
18 should reflect it was just given to you.

19 MR. GRIMES: Thank you, Your Honor.

20 THE COURT: You're welcome. Any anything else
21 we need to take up before we break for the evening?

22 MR. GRIMES: I think, going back to the phone
23 calls again, I don't want to belabor it I want to
24 touch on there's a Brady issue we want to raise at
25 the appropriate time.

1 THE COURT: What Brady issue?

2 MR. GRIMES: That the phone calls --

3 THE COURT: I think we have just addressed the
4 Brady issue.

5 MR. GRIMES: Well, we should have received
6 this information sooner.

7 THE COURT: It's not available. It would
8 never have been available so it's a non-issue, that's
9 why I said it was resolved. The records were never
10 available. It was a prepaid phone. It wouldn't have
11 mattered if he got it the day after the event, the
12 week after the event, week from now, they're not
13 available.

14 MR. GRIMES: Well, the information about her
15 making a phone call saying there is a threat --

16 THE COURT: I'm not going to argue that until
17 they offer it. But the bottom line is I told you
18 what the Court is inclined to do.

19 MR. GRIMES: I understand.

20 THE COURT: My research reflects that it's
21 basically the nature of an admission. It comes in.
22 My main concern -- I have no concern about the
23 admissability of the statement. The remedy for them
24 not turning it over to get it to you, you've had it
25 now for a day, you'll have it again possibly this

1 evening, if you need additional time I certainly will
2 give that to you for any additional investigation you
3 feel is necessary.

4 It is unlikely Ms. Pendergrass -- I assume
5 that's her last name.

6 MS. CARDILLO: It is, Your Honor.

7 THE COURT: It is unlikely she ever would have
8 spoken with you. So I don't know that you ever would
9 have had access to her. And the remedy is to give
10 you access to the statement.

11 My main concern was your ability to
12 cross-examine her regarding her statement that the
13 phone calls were made. And the remedy for that, for
14 you to cross-examine her, would be to actually get
15 the call detail. So any concern that I had about
16 that is remedied because they're not available, they
17 never were available.

18 It would be different if they were available
19 and they had been destroyed and you did not -- you
20 were denied access to it. But you'd still have to
21 show me some prejudice and you can't show me that at
22 least at this point.

23 There is pre-paid cell phone. They don't keep
24 details on those. Lots of reasons that's why people
25 buy them.

1 MR. GRIMES: Of course the 404(B) issue, maybe
2 the Anderson case or --

3 THE COURT: It's always relevant because he
4 contends it was an accident.

5 MR. GRIMES: I know it's certainly relevant.
6 The question still has to show by clear and
7 convincing evidence --

8 THE COURT: Doesn't have to be clear and
9 convincing evidence. There is case law that
10 indicates it is not in the nature of 404(B) issue,
11 it's an admission.

12 MR. GRIMES: We would disagree. We don't
13 believe it an admission.

14 THE COURT: I'm not going to argue it now, Mr.
15 Grimes, it's 6 o'clock.

16 MR. GRIMES: I'm talking about --

17 THE COURT: I'm tired. It's actually 6:04.
18 And until they offer her it's speculative and I'm not
19 going to entertain it any further.

20 MR. GRIMES: Thank you.

21 THE COURT: When they offer it we will hear
22 arguments and I will give you a full opportunity to
23 be heard. I merely have you a head's up out of
24 curtesy.

25 MR. GRIMES: Thank you, Your Honor, we

1 appreciate it.

2 THE COURT: You're welcome. You all have a
3 good evening. See you in the morning.

4 (Whereupon, the proceedings in this matter
5 before the Court were adjourned for the evening.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, in the General Sessions Court for the session week of November 17th through 21st, 2008.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.



Anne Bouley Meyer, RPR
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2007-GS-10-12312, 12313

3 STATE OF SOUTH CAROLINA)
4)
5 Plaintiff)

6 V.)

TRANSCRIPT OF RECORD

7 JAKE ANTONIO WILSON,)
8 Defendant.)

9 NOVEMBER 20, 2008
10 CHARLESTON, SOUTH CAROLINA
11 VOLUME 4

12
13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

18 A P P E A R A N C E S:

19 MS. JULIE CARDILLO, ASSISTANT SOLICITOR
20 MR. NATHAN WILLIAMS, ASSISTANT SOLICITOR
21 REPRESENTING THE STATE

22 MR. ANDREW GRIME, ASSISTANT PUBLIC DEFENDER
23 MS. MARYBETH MULLANEY, ASSISTANT PUBLIC DEFENDER
24 REPRESENTING THE DEFENDANT

25 ANNE BOULEY MEYER, RPR

CIRCUIT COURT REPORTER

1 THE COURT: Okay. State ready to proceed?

2 MS. CARDILLO: Yes, we are, Your Honor.

3 THE COURT: Is the defense ready to proceed?

4 MR. GRIMES: I think we had a motion from
5 yesterday I didn't put on the record.

6 THE COURT: We don't do hindsight motions,
7 Mr. Grimes.

8 MR. GRIMES: You allowed the State to do a
9 next in-camera on the motion for mistrial of
10 Detective Goldstein talking about the CDV conviction
11 prior to arrest.

12 THE COURT: Oh, I denied that motion and did a
13 curative instruction, and it will be noted for the
14 record.

15 MR. GRIMES: I don't believe the curative
16 instruction was proper. I think in this case when
17 you have repeated instances --

18 THE COURT: It wasn't repeated instances.
19 That's the only time CDV was mentioned in this trial.
20 He was in fact charged with it. Frankly, I don't
21 feel that it really was objectionable. Out of an
22 abundance of caution I struck it from the record and
23 I instructed the jury to disregard it.

24 The court will find the curative instruction
25 is sufficient based on the case law, and motion for

1 mistrial is denied.

2 MR. GRIMES: Thank you, Your Honor. Just for
3 the record, I request a curative instruction when --
4 something along the lines of when the state
5 introduces evidence that they know to be
6 inadmissible, you may draw an inference against the
7 State.

8 THE COURT: I'm not going to do that,
9 Mr. Grimes. That's not consistent with our case law.

10 MR. GRIMES: Thank you, Your Honor.

11 THE COURT: All righty. State ready to
12 proceed?

13 MS. CARDILLO: Yes, Your Honor.

14 THE COURT: Defense ready to proceed?

15 MR. GRIMES: Yes, ma'am.

16 THE COURT: All right. Who is the next
17 State's witness going to be?

18 MS. CARDILLO: Your Honor, State's next
19 witness is Latasha Pendergrass.

20 THE COURT: And who would the next witness be?

21 MS. CARDILLO: I'm sorry, after her?

22 THE COURT: Uh-huh.

23 MS. CARDILLO: That would be Corporal Brown.
24 We were discussing that he is the officer who was
25 trying to serve the CDV warrant on the defendant and

1 spoke to the defendant two or three days leading up
2 to the murder.

3 THE COURT: What would you be offering him
4 for?

5 MS. CARDILLO: Your Honor, we would be
6 offering him for motive.

7 THE COURT: What is it he would say is my
8 question?

9 MS. CARDILLO: Essentially, this officer was
10 assigned the CDV warrant that was pending from June
11 17th of '07 against the victim. He had called and
12 searched and investigated to try to locate the
13 defendant.

14 He had talked to the defendant's mother, who
15 is according to the officer gave her his cell phone.
16 Defendant called him on July 3rd, I believe it is,
17 and said he'd turned himself in. The officer advised
18 him what the warrant was for, who it was against.
19 And the defendant said he'd turned himself in, but
20 did not.

21 Two days later on the 5th, the defendant
22 called the officer again, explained he wanted him to
23 turn himself in on the warrant, and again failed to
24 turn himself in.

25 THE COURT: Why is that relevant?

1 MS. CARDILLO: Your Honor, I think it goes to
2 the state of mind of the defendant at the time of the
3 murder of a motive to -- that he was supposed to stay
4 away from the victim.

5 THE COURT: Was there an order pending for him
6 to stay away from her?

7 MS. CARDILLO: There was a no contact order,
8 Your Honor, from the May 30 of '06.

9 THE COURT: If he testifies, wouldn't that be
10 appropriate for cross-examination?

11 MS. CARDILLO: Well, Your Honor, we are
12 thinking --

13 THE COURT: -- about the no contact order?

14 MS. CARDILLO: There was no -- because he had
15 not been arrested on the new CDV warrant, there was
16 no bond set, there was a no, no-contact order on the
17 new CDV warrant at that time. And so Corporal Brown
18 can testify to the prior no contact order.

19 THE COURT: He can't testify to anything
20 actually, what's he going to testify to? He is not
21 going to be able to testify to the prior no contact
22 order.

23 MS. CARDILLO: It is more about regarding the
24 defendant's statements, what he said --

25 THE COURT: What statements did he make, other

1 than he was going to turn himself in and he didn't?

2 MS. CARDILLO: He made that twice, Your Honor.
3 He also informed the defendant that Latoya was the
4 victim of the CDV. So he was well aware of the
5 circumstances, that there was a warrant pending
6 against the defendant, that he was out there on the
7 run. That the victim was Latoya, which we believe it
8 goes toward motive for his murdering of the victim,
9 to keep her possibly from prosecuting him for another
10 CDV.

11 THE COURT: We'll deal with that when you
12 offer him to testify. I guess the last witness would
13 be Dr. Shandl.

14 MS. CARDILLO: It is, Your Honor. She will be
15 here at 10:00 a.m.

16 THE COURT: Other than the testimony regarding
17 the threats, what else is Ms. Pendergrass going to
18 testify to?

19 MS. CARDILLO: Well, as part of your statement
20 yesterday, Your Honor, of not allowing in the prior
21 bad acts, she would be explaining her relationship
22 with her sister, laying the foundation of how they
23 were close, they got along, they knew each other.

24 She would also be discussing some phone calls
25 that the defendant made to the victim on the July 6,

1 two days before the murder and the threat.

2 I would of course establish that she
3 recognized his voice. That they had been in contact
4 and talked to each other for years, and also resided
5 together at one point. That's how she recognized his
6 voice. And that would be the extent of her
7 testimony.

8 And I have instructed her repeatedly not to go
9 into the prior acts, other than the conversation on
10 July 6th. That's all she can be testifying to.

11 THE COURT: What we will do, you will call her
12 as a witness. You will -- at that point where she
13 will be testifying about the threat and the phone
14 calls, you need to let me know that so we can take
15 the testimony in-camera, hear argument and make a
16 record. Then we will proceed in that manner.

17 MS. CARDILLO: Yes, ma'am.

18 THE COURT: Anything before we proceed,
19 Mr. Grimes?

20 MR. GRIMES: No, ma'am.

21 THE COURT: Good. Please bring in the panel.
22 (Whereupon, the jurors enter the courtroom.)

23 THE COURT: Ladies and gentlemen, I hope that
24 you all had a restful evening. Go ahead, pass your
25 pads out. As soon you've done that, we will resume

1 the trial.

2 You may call your next witness.

3 MS. CARDILLO: Thank you, Your Honor.

4 The State calls Latasha Pendergrass.

5 MS. LATASHA PENDERGRASS,
6 after having first been duly sworn to state the
7 truth, the whole truth and nothing but the truth,
8 testified on her oath as follows:

9 THE COURT: You may proceed.

10 MS. CARDILLO: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MS. CARDILLO:

13 Q Good morning, Latasha.

14 A Good morning.

15 Q I'm going to ask you to speak up as best as
16 you can, okay? Thank you.

17 How old are you?

18 A Twenty-eight.

19 Q And do you have any brothers or sisters?

20 A Yes. I had one sister and one brother.

21 Q And what's your sister's -- what was your
22 sister's name?

23 A Latoya Pendergrass.

24 Q Do you live here in Charleston?

25 A Yes, ma'am.

1 Q How long have you lived here in Charleston?

2 A All my life.

3 Q How old was your sister?

4 A At the time she was 25.

5 Q Could you please, for the jury, explain your
6 relationship with Latoya?

7 MR. GRIMES: Objection, relevance.

8 THE COURT: Basis?

9 MR. GRIMES: Relevance.

10 THE COURT: I would imagine she's laying the
11 foundation for other things. I'm going to give her
12 some latitude.

13 You may proceed.

14 Q (By Ms. Cardillo) Can you explain your
15 relationship with your sister? Were you close?

16 A Me and Latoya was more -- I would say more
17 like best of friends than sisters. We had a real
18 close relationship.

19 Q For your whole life?

20 MR. GRIMES: Leading.

21 A Yes, ma'am.

22 THE COURT: Sustained, leading.

23 A Our whole lives.

24 Q (By Ms. Cardillo) Now, what types of things
25 would you do together?

1 A We would -- like on her days off, she would
2 come up to my house with the kids, let them play with
3 my kids. She would wash clothes. We would just
4 laugh, joke.

5 Sometimes we'd go to the park or something
6 like that. But the majority of the time we'd just
7 sit in the house and just play with the kids.

8 Q Leading up to her death, how often would you
9 guys get together?

10 A Well, we was together before her death, like,
11 I would say every weekend. We was just together all
12 day the 4th of July.

13 Q And I'm sorry, could you say that again?
14 Every day?

15 A Just about every day.

16 Q And what would you do when you saw her about
17 every day?

18 A Well, I asked her -- well, I don't have to ask
19 her -- she have **Minor 1** and **Minor 2** with her and we would
20 just hang out. Sometimes we'd go to my mom's house,
21 and we'd sit over there at my mom's with the kids.

22 Or we'd have like some of her friends would
23 come over, or some of my friends would come over. We
24 all knew each other, we all sit together. We just
25 laugh and joke.

1 That was just about the main thing we do
2 together. Laugh and joke just about every day all
3 day.

4 Q Was she seeing anyone?

5 A Not at the time.

6 Q How about before that?

7 A Before that she was with her kids' father.

8 Q And who was that?

9 A His name is Jake Wilson.

10 Q Do you see him in court today?

11 A Yes, ma'am.

12 Q Can you please point him out for the Court and
13 jury?

14 A Yes, ma'am. He's sitting right there.

15 Q Okay. Did you -- how long were they together?

16 A Before she had her kids, they was together for
17 about -- to my knowledge, I would say like three or
18 four years before she had her kids.

19 Q Did it ever become an opportunity where you
20 hung out with Toya and the defendant?

21 A Yes, ma'am.

22 Q And how often did that happen?

23 A Well, during the time when the defendant and
24 Latoya was staying with me, I would see them like
25 just about everyday.

1 Q They lived with you?

2 A Yes, ma'am.

3 Q And how long did that take place?

4 A They were staying with me for about two to
5 three months at the most.

6 Q would you talk to the defendant often?

7 A Yeah. When he was at the house, we all talk,
8 we laugh, we joke together, uh-hum.

9 MS. CARDILLO: Your Honor, may we approach?

10 THE COURT: Yes, you may.

11 (Whereupon, a discussion was held at the bench
12 off the record.)

13 THE COURT: Ladies and gentlemen, I have a
14 matter of law I need to take up with the attorneys
15 that will be fairly brief.

16 During the break, please do not discuss the
17 case. Please leave your notepads in your seats.
18 Thank you for your patience.

19 (Whereupon, the jurors exit the courtroom.)

20 THE COURT: You may proceed with your
21 questioning.

22 MS. CARDILLO: Thank you, Your Honor.

23 VOIR DIRE EXAMINATION

24 BY MS. CARDILLO:

25 Q Latasha, prior to Toya's death, did you happen

1 to see her?

2 A Yes, ma'am.

3 Q And when did you see her before her death?
4 when was the last time?

5 A I saw her on July the 6th.

6 Q And what was the reason you saw Toya on that
7 day?

8 A Like I said, me and Toya, we hung out all the
9 time. That was the particular day, which was on a
10 Friday. She came to my house with the kids. We sat
11 down, we laugh, we joke, we played cards.

12 And she washed clothes. In the apartment
13 complex that I lived in, we had like a laundry room.
14 So she brought her clothes. And she washed her
15 clothes. And I asked her if she was going to sit a
16 while and she was like yeah.

17 So that day we just sat, we laughed, we joked.
18 She left me. Her and the kids left. They walked up
19 -- up the pathway that they have about -- took from
20 my house. She said, I will be right back, Boo. I'm
21 going to get --

22 Q Boo?

23 A Yeah, that's a nickname that they call me, my
24 family call me.

25 Q Okay.

1 A So she was like, Boo, I'm going to go walk
2 outside with the kids and get us something to eat, I
3 will be right back. I said, you want me to walk with
4 you? She's like no, it's right there. I will be
5 right back.

6 Her and the kids left. They did come back,
7 and that's when she started her laundry. After her
8 laundry, I asked her if she was leaving. She said,
9 no, not yet, I'm not leaving right now. I'm going to
10 stay a while.

11 Q Well, how long, roughly, did Toya stay with
12 you on July 6th, her and the kids?

13 A She was with me up until after 1:00 that
14 morning. She was with me all that day.

15 Q All that day. Did anything unusual happen
16 that day when you were together with Toya?

17 A Well, that night when we was in the house
18 laughing and joking, her cell phone rung, and it was
19 a private call coming in. So she told me, she's
20 like, I'm not answering that. I'm not answering that
21 because that's Tony calling. And I was like, well,
22 give me the phone, I will answer the phone.

23 Q How many times -- how many phone calls did she
24 get essentially?

25 A Well, that particular night it was one phone

1 call from a private number.

2 Q What happened next?

3 A And when I answered the phone, I was like
4 hello. He was like Boo, let me speak to Toya. I was
5 like Toya --

6 Q Let me ask you, did you recognize the voice?

7 A Yes, ma'am.

8 Q And how did you recognize the voice?

9 A I automatically know his voice.

10 Q And why do you know that? I need you to be
11 specific.

12 A He's always -- because he is -- from the time
13 him and Toya is always talking, and by me being in
14 his presence I picked up on his voice.

15 Q All right. Please continue.

16 A And when I answered the phone, I was like
17 hello. He was like, Boo, let me speak to Toya and I
18 was like, Toya don't want to speak to you. And he's
19 like, okay then, tell Toya I'm going to kill her and
20 she don't know when I'm coming to do it either. And
21 he hung up the phone.

22 Q Is that the extent -- were there any other
23 phone calls?

24 A No, ma'am.

25 Q How did he sound when he said that, and what

1 was his emotion when he said that?

2 A He sounded upset.

3 Q And did she receive any other phone calls
4 while in your presence from Tony?

5 A Not in my presence.

6 Q What happened after? Did you -- did she stay
7 with you that night or did she go?

8 A No, ma'am. I asked her if she wanted to spend
9 the night, because it was already after 1:00. So I
10 was like, there was no use for you to go home. You
11 can sleep right here. She was like, no, I'm going
12 home. She liked to spend the night at her house.
13 She said, no, I'm going home.

14 I asked her -- she was going to catch a cab,
15 but my boyfriend at the time, he was there and a
16 couple of my homeboys was there. So I was like,
17 well, let me ask him if he'll drop you off home
18 instead of you wasting money on a cab.

19 But he was like, yeah. We all ride together
20 with Latoya. We got down there. We helped her with
21 her basket, basket of clothes, her laundry detergent,
22 the kids, we made sure she was in the house.

23 And after that, I told her I said, well, lock
24 up. And I will call you when I get home, since you
25 are already home. I will call you and let you know

1 that I already got home safe. So she was like, okay.

2 So once I got back home, I called her, and I
3 told her I'm already home. She was like, okay. I
4 said, are you going to sleep? She was like, yeah. I
5 said okay, well, call me in the morning.

6 Q Was that the last time you spoke to Toya?

7 A That's the last time I spoke to her.

8 MS. CARDILLO: Thank you, Your Honor. State
9 has nothing further.

10 THE COURT: That was proffered testimony. Is
11 there any argument from the State?

12 MS. CARDILLO: Your Honor, I think the threats
13 made by the defendant, Latasha clearly recognized the
14 defendant's voice. He called her by her nickname.
15 They resided together at one time. Overtime she
16 could come to recognize who it was.

17 I think the threats may go toward his state of
18 mind. They go towards motive and his intent.
19 Essentially goes towards malice, as well as ill will
20 towards the victim regarding the case at hand.

21 I would ask that it be allowed in front of the
22 jury.

23 THE COURT: Mr. Grimes.

24 MR. GRIMES: Thank you, Your Honor.

25 First -- my first concern is yesterday the

1 State represented that there were several phone
2 calls, a lot of hang-ups. And today, and after we
3 looked at the cell phone and saw there was a handful
4 of phone calls, today we have one phone call.

5 THE COURT: I don't think that makes any
6 appreciable difference. I think, frankly, that goes
7 to your client's benefit, wouldn't it?

8 MR. GRIMES: Yes.

9 THE COURT: I would imagine one phone call is
10 a lot less aggravating than a stream of several
11 calls.

12 MR. GRIMES: Both of those I think goes to
13 whether she has been lying.

14 THE COURT: That's a matter for
15 cross-examination.

16 MR. GRIMES: I guess I may have to -- be a odd
17 situation, but I may have to call Ms. Cardillo.

18 THE COURT: I'm sorry, I can't hear you.

19 MR. GRIMES: I may have to call Ms. Cardillo
20 to testify --

21 THE COURT: You have to have some good-faith
22 basis before she would have to do that, to make
23 Ms. Cardillo a witness and I haven't heard anything
24 up to this point.

25 You'd have to cross-examine this witness and

1 determine her -- all the things you are raising right
2 now go to the credibility and weight of the
3 testimony. Those are certainly things you would have
4 more than adequate opportunity in the
5 cross-examination process. That's why we have
6 cross-examination.

7 MR. GRIMES: Thank you, Your Honor.

8 THE COURT: You're welcome.

9 MR. GRIMES: And I believe -- this is a Rule 5
10 violation. The spirit of Rule 5 is to prevent trial
11 by ambush. That's what we are having here today.

12 We went through the case very carefully,
13 looked at the rules evidence, looked at bad acts,
14 which ones we thought could come in, which ones we
15 thought would keep out. We made a conscience
16 decision, based upon that, to go for the defense of
17 accident.

18 At the last minute, we get this evidence that
19 two days before he has made a threat to kill her.
20 Obviously, it's very relevant. It goes to malice.
21 If we had known that, we may have changed our whole
22 trial strategy.

23 THE COURT: Now, that's different than what
24 you told me yesterday. Did you have a chance to
25 reflect last night?

1 MR. GRIMES: Yes, ma'am.

2 THE COURT: So yesterday -- you know,
3 hindsight is always 20/20. You did not tell me it
4 was strategy yesterday, and I feel very comfortable
5 in knowing that yesterday that was not the basis of
6 your objection.

7 If it were a matter of strategy, that
8 certainly would have been your posture on yesterday.
9 Your main concern yesterday was the ability to
10 cross-examine her regarding her credibility, whether
11 these calls in fact ever took place, which is very
12 different than strategy.

13 I don't want to say I find it disingenuous. I
14 think that's always been your client's posture that
15 it was an accident. I really don't think that this
16 testimony has made any appreciable difference on that
17 strategy.

18 MR. GRIMES: We had a statement where he was
19 downstairs, there was no gunshot residue, there is no
20 witness who saw him do anything.

21 THE COURT: But there are certainly more than
22 abundant circumstantial evidence that that's what
23 happened.

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: There are no other adults in the

1 residence.

2 MR. GRIMES: Yes, ma'am. But we still have --

3 THE COURT: You have a tough set of facts.

4 MR. GRIMES: And yesterday, with all due
5 respect to the Court, I wasn't allowed to make a full
6 argument.

7 THE COURT: You were allowed to make a
8 complete and full argument. I just think hindsight
9 is always 20/20 whenever we have the ability to think
10 about a matter, given more time to think about it,
11 and that's just human nature.

12 The witness was not offered yesterday,
13 therefore, there was no necessity for a full and
14 protracted argument, because it was still speculative
15 at that point as to whether or not the State was
16 going to call her. Until they called her as a
17 witness, arguments did not become appropriate or
18 relevant.

19 Out of an abundance of caution, the Court went
20 through really some protracted efforts to get records
21 for you.

22 MR. GRIMES: Yes, ma'am.

23 THE COURT: Because I was very concerned about
24 his ability to have a full and adequate
25 cross-examination of the witnesses as to whether the

1 calls actually took place, the duration of the calls
2 potentially, what location the calls -- in other
3 words, all the call information.

4 And through those efforts, which I really
5 don't necessarily think I had to, but I did, because
6 I'm such a believer in the trial process, and I
7 thought it was appropriate that that be done.

8 And we, of course, came to the conclusion that
9 she had a prepaid phone, and the phone records never
10 would have been available because they don't keep
11 those to prepaid phones. I guess that's why a lot of
12 people -- I don't want to speculate about why people
13 buy prepaid phones. There are lot of reasons.

14 But nevertheless records were not available.
15 Certainly you all have been aware her sister was
16 going to testify. The State indicated that they gave
17 you notification that would potentially fall under
18 prior bad acts.

19 And while I am concerned about the fact that
20 certain disclosures may or may not have been made,
21 the remedy for that is to give you access to that to
22 give you additional time to prepare if you needed it.
23 which to some extent we did because they attempted to
24 call her on yesterday, and to some extent because of
25 Court's efforts that was delayed.

1 But I -- based on what I've observed in this
2 trial up to this juncture, I just cannot see how your
3 client's posture regarding accident would have
4 changed. I think that's always been his position
5 about this from the very beginning. Even based on
6 his statement to the police immediately after the
7 incident.

8 So, you know, I understand what you are
9 saying, but the remedy would not be to exclude this
10 witness or to exclude the statement. The remedy
11 would be to give you access to the witness, which as
12 we have indicated, I doubt she would have spoken to
13 you prior to today or at any time during the course
14 of the trial preparation. To give you access of the
15 records, which we have done. To give you more than
16 adequate access when the statement would have so you
17 adequately prepare, have adequate cross-examine of
18 the team. All those remedies have been employed, and
19 I think are appropriate under the circumstances.

20 MR. GRIMES: Yes, ma'am. I believe the Court
21 on the records that we have gone through that, that
22 was one of my major concerns yesterday and that has
23 been resolved.

24 I think -- yesterday in her pretrial, they
25 said they were alone. Today we found out her

1 boyfriend was there, that several of her homeboys
2 were there.

3 THE COURT: No, that's not what she testified
4 to.

5 MR. GRIMES: She just testified to that, Your
6 Honor.

7 THE COURT: She said they were all together.
8 I didn't get that impression from the testimony.
9 Maybe I missed something. But it really wasn't clear
10 whether she was in a group of people when it was said
11 or not. I had the impression it was she and her
12 sister.

13 MR. GRIMES: The impression I got, her sister
14 was over at her place doing laundry, playing with the
15 kids. You know, and her boyfriend was there and her
16 homeboys were there. We would like to find out the
17 names of these people.

18 THE COURT: You can ask that in
19 cross-examination. If you need additional time to
20 track them down, I will give it to you.

21 MR. GRIMES: Thank you.

22 THE COURT: I think that's more than fair.
23 Is there anything further, Mr. Grimes?

24 MR. GRIMES: Yes, ma'am. I think -- going
25 back to the Rule 5 issue, the State, I think, knew

1 about this statement. They have given us a lot of
2 information that they probably didn't have to.
3 Ms. Cardillo told me a lot of stuff. Like I think
4 the first witness who testified, I forget her first
5 name, the sister, Ms. Ray, it's the same situation.
6 She was interviewed by the police, and I think came
7 and talked to the solicitor. And then Ms. Cardillo
8 told me she had a statement.

9 When Jakayla would make certain different
10 statements in her interviews she would call me and
11 tell me. So everything, you know, seemed to be on
12 track. And it seemed like an open-file policy. Then
13 seems like she made a conscious decision to withhold
14 this evidence.

15 THE COURT: I don't think there is any
16 evidence of that.

17 Ms. Cardillo, exactly what did you disclose to
18 Mr. Grimes regarding this witness?

19 MS. CARDILLO: Your Honor, essentially I
20 disclosed that her sister would be testifying as to a
21 prior 404(B) type situation. I did not specifically
22 say this statement to him. I did seem --

23 THE COURT: Did you provide it to him in
24 writing?

25 MS. CARDILLO: I did not, your Honor.

1 THE COURT: You told him by telephone?

2 MS. CARDILLO: E-mail, phone, throughout our
3 conversation I did.

4 THE COURT: What did you disclose to him, was
5 that her sister would be testifying, the substance of
6 that testimony would be involving 404(B)?

7 MS. CARDILLO: Yes, Your Honor.

8 THE COURT: Is that in fact what was disclosed
9 to you, Mr. Grimes?

10 MR. GRIMES: Yes, ma'am. And the context of
11 it was the May 2006 CDV high and aggravated nature,
12 and the other incident I think from June of 2007.
13 Those were incidents in which it came up.

14 THE COURT: Did you make any further inquiry?

15 MR. GRIMES: I can't recall. I am sure I
16 would have asked --

17 THE COURT: Did you make any attempts to talk
18 to her?

19 MR. GRIMES: No, ma'am.

20 THE COURT: I assume you did not do that
21 because you assumed she probably would not speak to
22 you, probably rightfully so.

23 MR. GRIMES: Correct. Yes, ma'am.

24 THE COURT: Ma'am, when you were having this
25 conversation, as you represent with Mr. Wilson, who

1 were you with?

2 THE WITNESS: It was just me and my sister at
3 the -- at my house. Now the friend part, that was
4 before I moved to my last location. The July 6th,
5 before Latoya had died, I just moved on O'hare
6 Avenue. But when the friends -- we all would hang
7 out with our friends and stuff, that was located [REDACTED]
8 Bond Avenue.

9 But that particular night, July the 6th, it
10 was just me, Latoya, the kids and my boyfriend at the
11 house.

12 THE COURT: And was your boyfriend in your
13 presence when you allege this phone call was
14 answered?

15 THE WITNESS: No, ma'am. He wasn't in the
16 room. It was just me, Latoya and the kids in the
17 living room.

18 THE COURT: Does that provide additional
19 clarification, Mr. Grimes?

20 MR. GRIMES: A little. I would like to know
21 if the witness said anything to the boyfriend like,
22 oh, my God, Jake just said he'll kill my sister or
23 something like that.

24 THE WITNESS: No, ma'am, because at the time
25 we didn't took him seriously.

1 THE COURT: Okay. Does that provide you
2 further clarification?

3 MR. GRIMES: We would like the boyfriend's
4 name, address.

5 THE COURT: Ma'am, can you provide that
6 information?

7 THE WITNESS: Yes, ma'am, but he is deceased
8 at this time. He passed way. The day of Latoya's
9 funeral, he got killed.

10 THE COURT: What's his name?

11 THE WITNESS: His name was Deshawn Brown.

12 MR. GRIMES: I guess that makes that issue
13 moot.

14 THE COURT: To some extent, yes, sir.

15 MR. GRIMES: I hate to belabor, I know we have
16 gone overboard. Our last position I wanted to place
17 in the record was I believe it's also a Brady
18 violation.

19 In this case, the police never received a
20 report of it, something like this. The absence of
21 that -- her statement and lack of absence in any
22 police report in combination is exculpatory evidence
23 and should have been disclosed to us.

24 THE COURT: They didn't have a statement. You
25 are losing me, Mr. Grimes. I don't know what you're

1 saying.

2 MR. GRIMES: I guess what I'm saying is if a
3 witness comes forward with the solicitor and says,
4 Jake had threatened to kill my sister two days before
5 this happened, there is no police report of it, no
6 documentation, those two facts combined create a lot
7 impeachment, as the Court has recognized, and that
8 should have been disclosed to us beforehand under
9 Powell v. Whitley and Brady.

10 THE COURT: I don't see any prejudice to you.
11 You have more than adequate opportunity to impeach
12 this witness. You have more than adequate material
13 with which to do it.

14 I don't know that anything -- there would be
15 any real difference if it was disclosed earlier or
16 disclosed now. You would not have had any more
17 additional information than you have right now, and
18 the ability to adequately provide impeachment, to
19 cross-examine the witness effectively regarding her
20 credibility, believability regarding the statement.

21 MR. GRIMES: My concern on that point, we
22 could have hired an expert who could have looked into
23 that phone, made available to us to try to repair
24 it --

25 THE COURT: I don't know that you would have

1 gotten anybody more expert than the city. They're
2 the best supposedly in the state or in the southeast.
3 They're the only unit, as I understand it, in the
4 southeast that does this type work. And they are --
5 have an overabundance of it because other agencies
6 are employing them because nobody else does the work,
7 correct? That's my understanding.

8 MR. GRIMES: That's not my understanding.
9 I've never heard of that.

10 THE COURT: Do you need an expert? I will
11 give you time to hire one. I'll authorize the
12 payment of it, if we need to delay the trial for them
13 to examine the telephone, we will do that.

14 And I'll preserve your ability to recall this
15 witness and cross-examine her regarding that.

16 MR. GRIMES: Thank you, Your Honor.

17 THE COURT: So if you need to get an
18 additional expert regarding that, you need to let me
19 know immediately so that we can get that person in
20 place so that they can testify on your client's
21 behalf or assist you in the cross-examination of this
22 witness.

23 MR. GRIMES: Thank you, Your Honor. May I
24 talk to someone from my office?

25 THE COURT: Yes.

1 MR. GRIMES: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 How soon can we expect to have an answer?

4 MR. GRIMES: Mr. Pennington is out now. I
5 imagine he'll come back soon or e-mail us.

6 THE COURT: Okay.

7 MR. GRIMES: Your Honor, I think probably last
8 thing we knew is the time of the phone call.

9 THE COURT: I think from that list, does it
10 not give you the time? I told you I can't scroll
11 down. The phone is broken.

12 MR. GRIMES: I think the solicitors have a
13 time and date on it.

14 THE COURT: I think that the gentleman from
15 the city said that this model of that phone and its
16 software, that they were not able to complete that
17 time --

18 MR. GRIMES: If the witness --

19 THE COURT: Ma'am, what time did the phone
20 call take place?

21 THE WITNESS: I'm not sure exactly what time
22 did the phone call took place.

23 THE COURT: Was it morning, evening,
24 afternoon?

25 THE WITNESS: It was in the afternoon.

1 THE COURT: Okay. Can you give us a timeframe
2 in the afternoon? Like a window of time. Was it
3 between 1:00 and 3:00, 2:00 and 4:00, 5:00 and 6:00.
4 Well, that would be in the evening, I'm sorry.

5 THE WITNESS: I would say about 5:00 or 6:00.

6 THE COURT: Okay. Court will find -- anything
7 further from the state?

8 MS. CARDILLO: No, Your Honor.

9 THE COURT: Court would find that there has
10 not been a Rule 5 or Brady violation. The defense
11 was made aware that Ms. Pendergrass was going to
12 testify. They were made aware and acknowledged that
13 they -- that they were told that there would be
14 404(B) evidence, which was an indication that she was
15 going to testify regarding prior bad acts.

16 And while this specific bad act or statement
17 was not disclosed, there is no indication that any of
18 the prior list of bad acts were disclosed, nor was
19 any further inquiry made regarding that.

20 I don't know whether it's because it seems
21 that a lot of this went back and forth between
22 Ms. Cardillo and Mr. Grimes speaking on the
23 telephone.

24 And Ms. Cardillo, if I am inaccurate, please
25 correct me, if I'm not you do admit that you did not

1 tell him about this specific statement, correct?

2 MS. CARDILLO: Correct, Your Honor.

3 THE COURT: But did you tell him about the
4 other two?

5 MS. CARDILLO: I told him she would be
6 testifying to the prior bad acts. I gave him all of
7 the police reports from single prior bad act back to
8 2002. Especially regarding where Latasha was listed
9 as a witness in the May of '06 incident. I was very
10 specific about the prior bad acts.

11 THE COURT: Okay. And the case law is very
12 clear that evidence is material only if there is a
13 reasonable probability that had the evidence been
14 disclosed to the defendant the result of the
15 proceeding would have been different.

16 And while the defense now argues that their
17 trial strategy would have been different, based on my
18 experience in this trial up to this point, I find
19 that I just don't -- I can't imagine under what set
20 of circumstances that that would be true.

21 It has been the defendant's contention from
22 the beginning that this was an accident. It is
23 reflected by the statements he made to the police. I
24 don't see appreciably how his trial strategy would
25 have changed at this point.

1 I do, however, believe that it is possible
2 that his strategy in questioning this witness may
3 have be different, and certainly his ability to have
4 meaningful cross-examination on her credibility and
5 believability.

6 To that extent, the Court has made
7 considerable efforts to get the cell phone details of
8 Ms. Pendergrass's phone. The defense has indicated
9 that Mr. Wilson was using his sister's phone, and
10 that -- did you all get more information from the
11 cell phone company as to that particular cell phone?

12 MR. GRIMES: It was my understanding it also
13 was a prepaid phone.

14 THE COURT: And that also was a prepaid phone?

15 MR. GRIMES: Not a prepaid phone, but it does
16 have detail billing.

17 THE COURT: About that specific phone number.

18 MR. GRIMES: One moment, Your Honor.

19 I think I may have misspoke. I think we could
20 have -- talking again to our investigator, Sprint
21 does keep the records. However, reflects badly on
22 me, we just don't have the phone numbers.

23 THE COURT: Your client should have known the
24 number so I can get the records. His sister should
25 have her phone number.

1 MR. GRIMES: We inquired about that yesterday.
2 still don't have the phone number.

3 THE COURT: Why is that? She does not
4 remember her phone number?

5 MR. GRIMES: I believe so.

6 THE COURT: Well, actually, if we turn the
7 phone on, the phone number will come up on it. Is
8 that the phone that he used or is he saying he used a
9 different phone number?

10 MR. GRIMES: I believe that was the phone he
11 used.

12 THE COURT: Okay. We can turn that phone on
13 and that number will come up. I will do all that is
14 possible to get those records for you today.

15 MR. GRIMES: Thank you, ma'am.

16 THE COURT: You all get a subpoena for me, I
17 will be glad to fill it out, a blank one. Well, not
18 a blank one, addressed to the provider. Leave what
19 is required blank so that I can fill that in.
20 Usually I'll put that language in there about calling
21 somebody there. So leave that portion of it blank.
22 I will fill it in.

23 The portion that I'm referring to is where it
24 says, list documents or objects. Leave that part
25 blank. I will fill that part out. Give me the name

1 and number of the person that the request needs to be
2 directed to. I will have my clerk follow up on it.

3 If yesterday is any indication, we should be
4 able to have the records very shortly. Okay? Thank
5 you.

6 As I was stating for the record, it is clear
7 that it is unlikely that this defendant's strategy
8 regarding his theory of that case, that being
9 accident, would actually have changed. However, I do
10 think he's entitled to have a full opportunity to
11 cross-examine this witness regarding her credibility
12 and believability, regarding whether the statement
13 was made and other weight issues regarding the
14 testimony.

15 And to that extent, as I have indicated, the
16 Court went to great lengths to get cell phone
17 records, call details for the victim's cell phone.
18 And we are going to get the records for his sister's
19 cell phone, and that should give you the call
20 details. Those records from the cell phone company
21 will give you the date, time and duration of the
22 phone calls.

23 I think that will remedy any potential
24 prejudice he could argue regarding his ability to
25 cross-examine this witness.

1 And the case law is also very clear pursuant
2 to Rule 5 and Brady, that once a violation of any
3 rule is discovered, the prosecution, the remedy is to
4 require the prosecution to make full disclosure of
5 the evidentiary material, so that the defense can
6 prepare.

7 And again, the standard is prejudice, and I at
8 this point cannot discern any prejudice to the
9 defendant. And any potential prejudice, the Court is
10 going to extraordinary lengths to remedy so that he
11 has a full opportunity to cross-examine this witness.

12 The Court has already determined, and gave you
13 all an indication, that the events on May of 2006
14 regarding the knife at the victim's throat where she
15 called her sister while she was in the closet, the
16 Court has excluded that statement.

17 Also any statements regarding her reporting to
18 her sister that she woke up in the middle of the
19 night and the defendant had put duct tape on her arm,
20 the police report was taken at least through this
21 witness.

22 I indicated to you all that I would want to
23 hear the testimony in-camera and hear arguments and
24 make a full record, and then the Court would rule
25 regarding the statement of July 6, 2007, which we now

1 know amounted to one telephone call which the
2 defendant placed to the decedent. She indicated she
3 did not want to answer it, and that then the
4 conversation that took place between this witness and
5 the defendant. Which is his statement, tell Toya I'm
6 going to kill her, and she doesn't know when I am
7 coming, and that he sounded angry.

8 The Court would find, based on prevailing case
9 law, that the statement is admissible, and is
10 admissible under several different theories. One is
11 it's admissible under 404(B) because it shows motive
12 and it shows intent. It shows the absence of mistake
13 or accident.

14 Court would find for purposes of the record
15 that this witness is credible; that she is
16 believable; and that the statement has been proven by
17 clear and convincing evidence.

18 In addition to that, the Court finds that
19 threats are admissible against the defendant to show
20 malice and to show intent as to the charged offense
21 of murder. There is very clear case law regarding
22 that.

23 And it is well settled that evidence of
24 previous threats by the defendant, again, are
25 admissible to show malice. And that's based on

1 Blakely versus State, State versus Lee, and State
2 versus Olbert (phonetic).

3 The Court would also find that the statements
4 are very close in proximity to the event, and they
5 were not remote in time. And it also becomes
6 relevant because the defendant contends he killed her
7 by accident. And this statement, of course, refutes
8 that -- or this purported statement refutes that
9 defense. It also refutes his assertive motive for
10 the killing.

11 Also, there is some case law in Anderson
12 versus State that indicates that a threat of this
13 type does not amount to a prior bad act, and that
14 evidence of such a threat is admissible. And that it
15 becomes, in the nature really of a statement against
16 interest made by the defendant.

17 But again, Anderson versus State reinforces
18 the exception under 404(B), which we know and refer
19 to as Lyle, which is the exception to the general
20 rule prohibiting the admission of other crimes.

21 The admission of other crimes where evidence
22 exists, when the testimony is offered to show motive,
23 identity and the existence of a common scheme or
24 plan, absence of mistake or accident or intent.

25 I think clearly the elements of Lyle have been

1 met. That it's offered to show motive. It's offered
2 to show the absence of mistake or accident and
3 intent. So it would come under three of those
4 categories under the exception.

5 To some extent, it may be able to be argued
6 this is part of the res gestae of the crime, because
7 the close proximity with which the threat was made.
8 That's just more of an observation than a ruling.

9 It really was not close enough in time, I
10 think, to be considered res gestae, although you can
11 probably make some argument regarding that.

12 Now, as regards to the remaining issue
13 regarding the cross-examination of this witness,
14 Mr. Grimes, once we get the subpoena, I will be glad
15 to fax it over to whomever is responsible so you can
16 get the records. If it's necessary, we will take a
17 break in the examination of this witness so that you
18 can have adequate opportunity to review those records
19 before cross-examining.

20 And in addition to that -- oh, the cell phone
21 expert. Did you locate someone that you wish to have
22 examine the phone? Certainly the Court will give you
23 adequate opportunity to do that, will sign any
24 funding order to make sure that that is made
25 available to your client so that you will have the

1 opportunity to recall this witness if necessary, and
2 also present that expert in your case.

3 MR. GRIMES: Thank you, Your Honor.

4 THE COURT: You're welcome.

5 And the Court will find again, there has not
6 been a Rule 5 violation -- expressed Rule 5 or Brady
7 violation. The defendant was made aware of the
8 404(B) evidence, received all of the police reports,
9 and certainly was aware Ms. Pendergrass would be a
10 witness concerning prior bad acts of his client.

11 Okay. We will now proceed with the testimony.
12 If your investigator, however, gets here with that
13 subpoena, have Ms. Mullaney give it to the clerk so
14 she can -- she can give it to me. We won't have to
15 interrupt the testimony to go ahead and get that on
16 to whoever it needs to get to, okay?

17 MR. GRIMES: Thank you, your Honor. Yes,
18 ma'am.

19 THE COURT: Okay. All right. Anything before
20 we bring in jury from the state?

21 MS. CARDILLO: No, nothing from the state.

22 THE COURT: From the defense?

23 MR. GRIMES: No, ma'am.

24 THE COURT: Okay. Please bring in the panel.

25 (Whereupon, the jurors enter the courtroom.)

1 THE COURT: Ladies and gentlemen, we
2 appreciate your patience. We will now resume with
3 the testimony of the witness.

4 You may proceed, Ms. Cardillo.

5 MS. CARDILLO: Thank you, Your Honor.

6 THE COURT: You're welcome.

7 Q (By Ms. Cardillo) Latasha, if you could just
8 briefly explain again your relationship with your
9 sister?

10 A Our relationship that me and Latoya had was
11 more like best friends than sisters.

12 Q Did you see each other a lot?

13 A Yes, ma'am. We would see each other on her
14 days that she was off. Also, we would see each other
15 every weekend.

16 Q We also briefly talked about the defendant.
17 How do you know the defendant?

18 A I have known the defendant because at one
19 point in time the defendant and Latoya had stayed
20 with me. And by him and Latoya being together,
21 that's how I knew the defendant.

22 Q Now, I'm going ask you briefly, Latasha, do
23 you have a prior record?

24 A Yes, I do.

25 Q Some convictions for fraudulent checks?

1 A Yes, ma'am.

2 Q Okay. Was that here in Charleston?

3 A Yes, ma'am.

4 Q Now, I want to -- when was last time you saw
5 Toya?

6 A The last time I saw Latoya was on July the
7 6th.

8 Q For what reason did you see her that day?

9 A That was the day that she came to my house. I
10 was living on [REDACTED] O'Hare Avenue. And in our
11 apartment complex, we have a laundry room. So this
12 is what she do all time. She would come to my house
13 to wash her laundry and hang out.

14 So that day she called me, told me she was on
15 her way out to my house to wash her clothes. I was
16 like okay. When she got there, we sat around, we
17 laughed, we joked. She told me she'd be right back,
18 she was going to get something to eat from Subway. I
19 said, well would you want me to walk with you? And
20 she was like no, me and the kids can walk. We will
21 be right back.

22 So I said, okay. I stayed at the house with
23 my kids. And Latoya and her kids came back to the
24 house. We sat down, we laughed, we joked like we
25 always do. And she went to put her clothes into the

1 laundry. She came back. We was doing the same old
2 thing, just sitting there laughing, joking, playing
3 around with the kids.

4 Q And this was -- was this a Friday? This was
5 Friday, July 6th of '07?

6 A Yes, ma'am.

7 Q How long that day was Toya at your house?

8 A She was at my house all that day up until 1:00
9 in the morning.

10 Q Now, did anything unusual happen that day?

11 A Well, we got -- she -- her cell phone rung,
12 and it was a private call coming in. And I told her
13 her phone was ringing. She was like, I'm not going
14 to answer it because it's Tony calling. So I told
15 her, give me you phone and I will answer the phone.
16 I was like, hello. And he was like, Boo, let me
17 speak to Toya.

18 Q Let me stop you there for a second. What does
19 Boo mean?

20 A That's my name. That's something my family
21 called me all my life.

22 Q And did you recognize the voice on the other
23 end of Toya's phone?

24 A Yes, ma'am.

25 Q And how did you recognize that voice?

1 A Like I said before, the defendant and Latoya
2 had stayed with me and I seen their relationship. I
3 know his voice.

4 Q So what did he say?

5 A I answered the phone. He was like, Boo, let
6 me speak to Toya. And I told him Toya won't speak to
7 him. And he was like, okay then, you tell Toya I'm
8 going to kill her, and she don't know when I'm
9 coming.

10 Q Now, what was his emotion? What was his
11 emotional state when you heard him say that?

12 A He was upset, because when he called he was
13 like, Boo, let me speak to Toya like he was expecting
14 Toya to answer. But I answered the phone so he was
15 like, Boo, let me speak to Toya.

16 And that's when I told him, no, Toya don't
17 want to talk to you. And he's like, well, you just
18 tell you her I'm going to kill her, and she don't
19 know when I'm coming. And I was like whatever, and I
20 hung up the phone.

21 Q What -- what did you guys do next after that?

22 A After that, I told Latoya what he said. And
23 like I told you all before, we didn't took him
24 seriously. She was like, whatever. And I said so we
25 continued what we was doing, laughing, joking,

1 playing around with the kids.

2 And then was like -- when I looked at the
3 clock it was like 1:00. She was like, well, Boo, I
4 got to go. I was like, you can spend the night if
5 you want to. She was like, no. I was like, how are
6 you going to getting home? She's like, I'm going to
7 catch a cab.

8 I told her, you know, you don't have to catch
9 a cab. At that time I had asked my boyfriend would
10 he take Latoya and her kids home and he said yes.
11 Me, Latoya's kids and my boyfriend rode downtown to
12 drop her off at home with the kids.

13 Q Was your boyfriend present during that phone
14 call?

15 A No, ma'am. He wasn't in the room during that
16 phone call.

17 Q And where did you take Toya when you yourself
18 and your boyfriend took the kids?

19 A We took her to [REDACTED] Harris Street.

20 Q And was the last time you spoke with Toya?

21 A Yes, ma'am.

22 MS. CARDILLO: May I have a moment, Your
23 Honor?

24 THE COURT: Uh-hum.

25 MS. CARDILLO: Thank you. Latasha, thank you

1 for answering my questions. If you would be so kind
2 as to answer any questions Mr. Grimes may have for
3 you, okay?

4 THE WITNESS: Yes, ma'am.

5 THE COURT: Mr. Grimes, you may proceed.

6 MR. GRIMES: May we approach, Your Honor?

7 THE COURT: You may.

8 (Whereupon, a discussion was held at the bench
9 off the record.)

10 THE COURT: Mr. Grimes, you may proceed.

11 MR. GRIMES: Thank you, Your Honor.

12 May I approach?

13 THE COURT: Yes, absolutely.

14 CROSS-EXAMINATION

15 BY MR. GRIMES:

16 Q Latasha?

17 A Latasha?

18 Q Make sure I spell that right, L-A-T-A-S-H-A?

19 A Yes, sir.

20 Q Two A's, one A?

21 A Yes, sir. Another A at the end.

22 Q Thank you. If I don't speak loud enough, let
23 me know. My back may be turned.

24 We can agree you have a record?

25 A Yes, sir.

1 Q And it was for crimes of dishonesty?

2 A Yes, sir.

3 Q For stealing?

4 A No, sir.

5 Q For cheating?

6 A No, sir.

7 Q For taking people's money?

8 A No, sir.

9 Q You said, you agree with me, it's yes for
10 dishonesty?

11 A For my record?

12 Q Yes, ma'am.

13 THE COURT: I'm sorry, ma'am. I need you to
14 speak up for me.

15 I'm sorry, Mr. Grimes. You might have to turn
16 a different way. We can't hear her.

17 MR. GRIMES: Sorry, Your Honor.

18 THE COURT: That's okay.

19 Q (By Mr. Grimes) We can agree you have a
20 record?

21 A Yes, sir.

22 Q Agree it's for crimes of dishonesty?

23 A The crime was for checks, but that was not for
24 dishonesty.

25 Q It's for fraudulent check?

1 A It was my own personal checks.

2 Q You were charged with writing fraudulent
3 checks, correct?

4 A Tell me about that. Like I said, they was --
5 I don't know the difference between fraudulent check
6 or -- because the checks was my personal checks.

7 Q All right. So we disagree on that. And we
8 disagree that you are not -- it does not involve
9 lying?

10 A Correct.

11 Q We disagree whether it involves stealing?

12 A No, sir, I disagree.

13 Q That's what I meant.

14 A Yes, sir.

15 Q Date for your first fraudulent check that you
16 are convicted of was January 10, 2003?

17 A Yes, sir.

18 Q And you had another conviction on that day
19 too?

20 A All my convictions was around the same time,
21 this area.

22 Q All right. So we have the second one on
23 January 3rd -- January 10, 2003?

24 A Yes, sir.

25 Q And you had a third one from the same date,

1 correct?

2 A The same day? Yes, sir.

3 Q And you had a fourth one on the same date?

4 A I don't remember.

5 Q If I was to show you your criminal history,
6 would that refresh your memory?

7 A I just know it was all in the same year, but
8 exactly when it was, I'm not exact when it was.

9 Q To save some time, isn't it true that you had
10 22 convictions on January the 10th, 2003, for
11 fraudulent checks?

12 A Yes, sir.

13 Q And then you did it again, didn't you?

14 A Sir?

15 Q You did it after January 10, 2003, you started
16 writing bad checks again, didn't you?

17 A Not that I know.

18 Q So we disagree that on March 10th, 2003, that
19 you didn't have three more fraudulent check
20 convictions?

21 A Like I said, the 22 fraudulent checks was all
22 for the same year, but I'm not sure the month or if
23 it was different months. Because I came home in June
24 of 2003 from doing the time.

25 Q Where did you come home from?

1 A I came home from Leeds Correctional
2 Institution.

3 Q So that's 25 convictions. This a bad year for
4 you?

5 A Yes, sir.

6 Q Now, your story today is that on January 6th,
7 you talked to Mr. Wilson?

8 A On January 6?

9 Q Excuse me, July 6th, 2007.

10 A That I talked with Mr. Wilson?

11 Q Yes, ma'am.

12 A Yes, sir.

13 Q And what you're telling the jury today is that
14 he threatened to kill your sister?

15 A Yes, sir.

16 Q And you said you did not take that seriously?

17 A No, sir, because my sister also --

18 Q You did not take it seriously, did you?

19 A I did not take it seriously, because I didn't
20 figure he would do nothing like that.

21 Q But after you found out your sister had been
22 shot and Jake was arrested for the murder, when did
23 you go tell Detective Goldstein about this threat?

24 A I talked to Mr. Goldstein the day that he came
25 out to my mom's house and did the investigation.

1 Q And you told him that -- did you tell him that
2 Mr. Wilson had called your sister, and that you had
3 talked to him, and that he had threatened to kill
4 her?

5 A If I'm not mistaken, yes, I did.

6 Q Okay. And you are sure about that?

7 A I think I did. I'm not sure.

8 Q It would be pretty important, wouldn't it?

9 A Yes, sir.

10 Q And you'd want the lead investigator in the
11 case to know all the important information about this
12 charge, wouldn't you?

13 A Yes, sir.

14 Q So you would have told Detective Goldstein
15 about this, wouldn't you?

16 A Like I said, I didn't remember if I did, but I
17 believe I did.

18 Q It would make sense that you would have,
19 right?

20 A Yes, sir.

21 Q And did you give him a written statement?

22 A No, I didn't.

23 Q Why is that?

24 A I just talked to him, but he came to -- when
25 he came out to my mom's house.

1 Q Do you remember what date that was?

2 A It was -- if I'm not mistaken, he came out the
3 same day, July the 8th. If not July the 8th, it was
4 July the 9th, which was that Monday.

5 Q Let me ask you a question you may not know.
6 If you don't, you can say so. Do you know why
7 Detective Goldstein would never put your name in any
8 report about this phone call?

9 A No, sir.

10 Q And when did you call -- did you call police
11 that night when you received this phone call?

12 A No, sir.

13 Q You love your sister?

14 A I love her?

15 Q You love your sister, right?

16 A Yes, sir.

17 Q You are more than sisters, you are best
18 friends?

19 A Yes, sir

20 Q You would not want to see her get hurt?

21 A No, sir.

22 Q You wouldn't want her to be killed?

23 A No, sir.

24 Q And if somebody threatened to kill her, you
25 would call the police, right?

1 A Like I said, we didn't took him seriously.

2 Q But if someone threatened to kill your sister,
3 you would have called the police?

4 A I did not call the police that night.

5 Q Did you call the police the next day?

6 A No, sir.

7 Q And you said you were with your sister every
8 day?

9 A I said just about. On the weekends, yes. But
10 during the weekdays, it would be on her days off she
11 had come up to my house.

12 Q Did you talk to her on that Saturday?

13 A No, because I was at work that Saturday.

14 Q Let me ask you this then, tell me if you think
15 you can answer it. You told your sister that Jake
16 had threatened to kill her that night, right?

17 A Yes, sir.

18 Q Now if she saw him sitting across the street
19 from her, or across the way, the whole day, watching
20 her, wouldn't it make sense for her to call the
21 police?

22 A Like I said before, me nor my sister never
23 took him seriously.

24 Q Now when you talked to Detective Goldstein
25 about this, did you know whether he had custody of

1 the cell phone, Latoya's cell phone?

2 A I didn't find that out until I heard about
3 what happened, the shooting and when they arrested
4 him they found her cell phone in his pocket.

5 Q And if somebody called your cell phone, there
6 is going to be a record of it?

7 A Yes, sir.

8 Q And you have been in here most of the trial,
9 haven't you?

10 A Well, I just sat in on it yesterday was my
11 first day in here during the trial.

12 Q Have you seen any records of cell phones
13 coming in?

14 A Yes. I was sitting over there when you all
15 had a discussion about the cell phone.

16 THE COURT: Be very careful, Mr. Grimes.

17 Please approach.

18 (Whereupon, a discussion was held at the bench
19 off the record.)

20 THE COURT: You may proceed.

21 Q (By Mr. Grimes) And you are upset that your
22 sister's dead?

23 A Yes, sir.

24 Q You want Mr. Wilson to go to prison for it,
25 don't you?

1 A Yes, sir.

2 Q And isn't it true that the initial bond
3 hearing with Judge Lombard, that you told the judge
4 that you want him to get the death penalty?

5 A I never spoke to the judge.

6 Q Okay. And you'd do anything you could to help
7 send him to prison, wouldn't you?

8 A Yes, sir.

9 MR. GRIMES: May I have one moment, Your
10 Honor?

11 THE COURT: Uh-hum.

12 MR. GRIMES: Subject to her being recalled, I
13 have no further questions.

14 THE COURT: Any redirect of the witness?

15 MS. CARDILLO: Briefly, Your Honor.

16 May I approach?

17 THE COURT: Yes.

18 REDIRECT EXAMINATION

19 BY MS. CARDILLO:

20 Q Latasha, I'm going to ask you briefly about
21 what Mr. Grimes was going through on this voir dire.
22 What were all these fraudulent checks or bad checks
23 about?

24 MR. GRIMES: Objection.

25 THE COURT: Basis?

1 MR. GRIMES: May we approach?

2 THE COURT: You may.

3 (Whereupon, a discussion was held at the bench
4 off the record.)

5 THE COURT: You may proceed.

6 Q (By Ms. Cardillo) Latasha, very, very
7 briefly, were all of these your records from bad
8 checks your bad checks?

9 A Yes, ma'am.

10 Q And they were yours?

11 A Yes, ma'am.

12 Q Did you plead guilty and take responsibility
13 for these?

14 A Yes, ma'am.

15 Q And did you pay your debt to society for this?

16 A I did the consequence for all of this, yes,
17 ma'am.

18 MS. CARDILLO: Thank you. I have nothing
19 further.

20 THE WITNESS: You're welcome.

21 THE COURT: Any objection to the witness being
22 excused subject to recall?

23 MS. CARDILLO: No, nothing from the State,
24 Your Honor.

25 THE COURT: Any objection, Mr. Grimes?

1 MR. GRIMES: No, ma'am.

2 THE COURT: Ma'am, you are excused subject to
3 being recalled.

4 Okay. You may call your next witness.

5 MS. CARDILLO: Your Honor, may we approach one
6 more time?

7 THE COURT: You may approach.

8 (Whereupon, a discussion was held at the bench
9 off the record.)

10 THE COURT: You may proceed.

11 MR. WILLIAMS: Thank you. State calls Cynthia
12 Anna Schandl.

13 DR. CYNTHIA ANNA SCHANDL,
14 after having first been duly sworn to state the
15 truth, the whole truth and nothing but the truth,
16 testified on her oath as follows:

17 THE COURT: You may proceed.

18 MR. WILLIAMS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 DIRECT EXAMINATION

21 BY MR. WILLIAMS:

22 Q Ma'am, where do you work?

23 A I work at the Medical University of South
24 Carolina here in Charleston.

25 Q what do you do there?

1 A I'm a forensic pathologist and assistant
2 professor within the pathology and laboratory
3 medicine department.

4 Q When you say forensic pathologist, what does
5 that mean?

6 A The forensic pathologist is a specialist in
7 the field of pathology, whose main concern is cause
8 of death and manner of death.

9 Q When you say that specialty, what actual job
10 do you do?

11 A Generally, our primary job in this state is to
12 perform autopsies, which are postmortem examinations,
13 on people who have died under circumstances that are
14 not clearly defined as natural.

15 So for example, if someone was in the hospital
16 for a long period of time with cancer or heart
17 disease, we may not do that autopsy. However, if
18 someone was found at home dead, and they had no
19 apparent medical history, that may be an autopsy that
20 we would do.

21 Other autopsies that we would do would include
22 those that involve violence, such as suicides,
23 homicides, accidents such as car crashes, those sorts
24 of things.

25 So anything that is -- may be an accident,

1 suicide, homicide, or in some cases natural where
2 there is no clear record of the person's natural
3 disease. Those are the types of cases that we mostly
4 work on.

5 Q And briefly, do you have any special
6 background that qualifies you to do that job?

7 A Yes. In general, a forensic pathologist must
8 first have a bachelor's degree, and then complete
9 medical school to become a medical doctor. And then
10 must train in the field of pathology, which is called
11 a residency program. That's an additional four years
12 of training.

13 And then following that residency training,
14 one can further do a year of forensic pathology
15 fellowship. And then following all of that training,
16 there are national board examinations through the
17 American Board of Pathology to become certified in
18 anatomic pathology, clinical pathology and forensic
19 pathology, all three of which I'm certified in.

20 Q You have testified as an expert before?

21 A Yes, sir, I have.

22 Q As a forensic pathologist?

23 A Yes, sir, I have.

24 Q Courtrooms in this jurisdiction, Charleston?

25 A Yes, Charleston and others.

1 MR. WILLIAMS: Your Honor, I move to qualify
2 Dr. Schandl as an expert in forensic pathology.

3 MS. MULLANEY: No objection.

4 THE COURT: So admitted.

5 You may proceed.

6 Q (By Mr. Williams) Dr. Schandl, when you
7 perform an autopsy, what is the approach that you
8 take as a forensic pathologist?

9 A Essentially in this state, the coroner will
10 determine which individuals will come to autopsy. So
11 that coroner is responsible for getting that
12 individual from wherever they are, wherever they
13 died, wherever they ended up -- in this case the
14 emergency room -- to our morgue, which is basically a
15 cooler.

16 And then the -- when we begin the autopsy, we
17 bring the body from the morgue upstairs to the
18 autopsy suite.

19 The body is then placed on an autopsy table
20 and photographed as it arrives to us, in whatever
21 state of dress or undress, and before being cleaned
22 or washed or otherwise manipulated. So we take those
23 first photographs as the body comes up to us and is
24 on the table.

25 At that point, then we begin to remove the

1 clothes, examine the clothing for any evidence that
2 may be on the clothing. After that, we may then
3 examine the body before cleaning it to see what we
4 can see at that time. After that, then we examine
5 the body after cleaning to see if we can see more
6 evidence.

7 And then what we do is the external
8 examination, which is totally outside of the body.
9 We're going to look for any evidence of
10 identification. So that would include hair length,
11 height, weight, scars, tatoos, that sort of thing,
12 as well as any evidence of injury. So whether it's a
13 scrape or a cut or a stab or gunshot wound, all those
14 things are identified, measured and photographed at
15 that time.

16 And then once the external examination is
17 complete, we then begin the internal examination,
18 which is what most people think of as the autopsy.
19 We do a body examination, and we examine all the
20 internal organs, including the brain for any
21 evidence, again, of injury or natural disease.

22 And during the course of that, we do take
23 samples for toxicology. So we take, if available, we
24 will take blood samples and urine samples to run a
25 toxicological analysis on them. And we will also

1 take tissues from different organs to look under the
2 microscope, again, to look for any natural disease
3 and to confirm or refute any injury that we think we
4 see with our eyes.

5 After that, we put all that together in a
6 report, issue that report, and that then is the end
7 of the autopsy.

8 Q There is a report that you're in here in court
9 for today?

10 A Yes, sir.

11 Q Which autopsy was that? Who was the patient
12 or victim in that case?

13 A Latoya Pendergrass.

14 Q And what day was that autopsy performed?

15 A We performed this autopsy on the 8th of July,
16 2007.

17 Q When you go through and perform the autopsy,
18 is there a way you take notes or I should say details
19 on any kind of chart what your findings are?

20 A Yes. It's case dependent, but we do have a
21 number of different diagrams that we can write on and
22 take notes, body diagrams to indicate where injuries
23 are or where scars are, where tatoos are, that sort
24 thing. We do have different diagrams that we have
25 available to use.

1 MR. WILLIAMS: Your Honor, I'm going to have
2 this marked.

3 THE COURT: You may proceed. Show it to
4 Mr. Grimes.

5 MR. WILLIAMS: Yes.

6 THE COURT: Any objection?

7 MS. MULLANEY: No, Your Honor.

8 THE COURT: Marked and admitted without
9 objection.

10 MR. WILLIAMS: Your Honor, for the record,
11 it's State Exhibit 80.

12 (Whereupon, State's Exhibit No. 80 is admitted
13 into evidence.)

14 Q (By Mr. Williams) Dr. Schandl, do you
15 recognize what's been admitted as State's Exhibit 80?

16 A Yes. This is a body diagram from this case,
17 Latoya Pendergrass. And it has my handwriting on it
18 that describes the external examination of
19 Ms. Pendergrass.

20 Q And those are your notes?

21 A Yes, they are.

22 Q I know it's a photocopy, but it's what you
23 would have written as you went through this process?

24 A That's correct.

25 Q Dr. Schandl, if you could just tell the jury

1 what was it that you found when you did the external
2 examination?

3 A Essentially what I found was a gunshot wound
4 to the head. There was a single gunshot wound, and
5 the bullet did not exit. The bullet was still --
6 there was no exit wound. So on the external
7 examination, all I found was a bullet entrance or a
8 gunshot entrance wound.

9 That entrance wound was right about here on
10 the head, so slightly to the right side of midline
11 and within the hair line.

12 And then we go ahead and document exactly
13 where that is in inches and so forth, left and right,
14 up and down, and all that good stuff. But basically
15 a single gunshot wound to the head.

16 Q I'm going to give you a laser pointer. If you
17 just press up on it.

18 Can you show the jury on the diagram where
19 that is indicated?

20 A Yes. We designate these things by letters.
21 So this one is designated as the only one. That is
22 letter number A -- letter A. It's here just to the
23 right of midline on the head.

24 Q Now, there is whole bunch of other markings on
25 that diagram. What are those other markings

1 indicating generally?

2 A Yes. So the other markings are indicating
3 other external findings that I am documenting.

4 For example, these circles are the EKG pads
5 that were placed on the body by people trying to
6 resuscitate her. This here says C-spine collar. So
7 again, during resuscitation efforts, the response
8 team put a spinal collar around her to stabilize her
9 neck.

10 These indicate different indices that we try
11 to take notes on in every case, including eye color,
12 height, weight, those sorts of things. This says
13 blood pressure cuff. She had a blood pressure cuff
14 around her arm.

15 And some of this stuff I cannot read on this
16 diagram. If you need more, I can look at my notes.

17 Q I want to ask you, first of all, were there
18 any other signs of injury?

19 A There was one other sign of injury, and that
20 was she had acrylic nails. And the second -- the
21 index finger of the right hand, that nail was torn or
22 broken. That was on the right hand, index finger.

23 Q Can you tell what that came from or just that
24 there was a tear to the nail?

25 A No. Just that there was a part of the acrylic

1 nail absent.

2 Q I just asked you about one of the notes that
3 you made at the top.

4 A Yes.

5 Q Where it says eyes.

6 A Eyes, yes. It's not a whole lot better, is
7 it?

8 Q It says brown, clouded, equal crying. What
9 does mean?

10 A It's says drying.

11 Q I'm sorry.

12 A Drying, not crying. Basically when an
13 individual dies, sometimes their eyes may be somewhat
14 open. So if their eyes are somewhat open when they
15 die, they don't close, they just stay open. So that
16 area that is exposed to the air will begin to dry.
17 And so that looks like a line over the eye, that's
18 just an artifact of drying.

19 Q That's just a copy mistake?

20 A Sorry?

21 Q It looks like a C, but it's actually a D?

22 A It's a D.

23 Q Okay. When you go through the internal
24 examination, what did you find, at least as far as
25 evidence of injury?

1 A As far as evidence of injury, it was confined
2 to her brain and her head. Essentially what you
3 might expect, bleeding along the pathway of the
4 bullet, so bleeding in the scalp, bleeding in the
5 tissues over the skull, skull fracture at the site of
6 the entrance.

7 And then as it passed through the brain, it
8 passed through the right side of the brain, and then
9 through the part of the brain called the cerebellum.

10 And then the bullet itself, fractured the
11 inner table of the base of the skull, right at the
12 middle. So what I mean by inner table, the skull has
13 two layers of bone. So the inner table is just that
14 inner layer of bone that fractured. But it didn't
15 fracture the outer layer, and it didn't exit.

16 So basically it went in, went through the
17 right side of the brain, through the cerebellum,
18 another part of brain, and ended up at the base of
19 the skull. And we retrieved that bullet from inside
20 of her skull.

21 And there were other injuries, obviously, that
22 you would imagine would be there. So bleeding into
23 the brain, structures surrounding that gunshot wound
24 pathway, and bleeding around the brain was also
25 present. So things that you might expect if you were

1 shot in the head.

2 Q What effect would that injury have on a
3 person?

4 A Well, that's always very difficult to say.
5 Many brain injuries are instantly fatal and people
6 just drop dead. Other brain injuries are not
7 instantly fatal, and you might still find evidence of
8 life.

9 So I am not in a position, from looking at the
10 injury necessarily, unless it goes through for
11 example the brainstem which involves breathing and
12 your heartbeat, unless it involves something like
13 that I can't tell you that she dropped dead or that
14 she lived for several hours.

15 These things I can't tell you by looking at
16 the injuries at the end. You have to basically look
17 at the EMS report, the emergency medical response
18 team, their report and so forth.

19 Q Are you able in some cases to determine a
20 range when you have a gunshot injury?

21 A We are. What we look for to determine range
22 of fire -- what he is referring to is if this is
23 what's being shot, how far away was the muzzle or the
24 end of the gun from that target.

25 And so if the -- if the muzzle is right up

1 against the target, you might find soot in or around
2 the wounds.

3 If it's back, but perhaps not further than
4 three feet, you might find stippling, which is
5 particulate matter, little pieces of metal and
6 whatnot, that come out of the muzzle of the gun and
7 actually scratch the skin around the wound. We call
8 that stippling.

9 So those are the two things that we look for.
10 We don't have much else to go by. So if there is
11 soot or if there's stippling, that can give us some
12 indication of the range.

13 If there are neither of those things, then we
14 can either call it distance, which suggests more than
15 about three feet, or indeterminate. Basically we did
16 not find those things, so we are not sure, you know,
17 where it was.

18 In her case, I considered this range
19 indeterminate. In other words, I cannot tell you
20 from what I see what the range of fire was. And the
21 reason is that her hair, in my opinion, acted as an
22 intermediate target. So she had a weave and her hair
23 was between the muzzle and the skin where I would
24 look for soot and where I would look for stippling.
25 So it's possible that that kind of evidence was in

1 the hair.

2 So knowing that, I choose to call it
3 indeterminate range rather than distance range.

4 Q If somebody had clothing over that body part,
5 would that sort of have that same effect, make it
6 indeterminate?

7 A Yes. Absolutely. Anything that is between
8 the muzzle and the skin surface can act as an
9 intermediate target, whether it's a piece of
10 clothing, a door, a pillow, hair, anything.

11 Q And you said earlier that you come up with a
12 means or manner of death or both?

13 A Yes.

14 Q What was the cause of death in this case and
15 the means or manner that you would determine?

16 A The cause of death was cerebral and cerebellar
17 disruption due to penetrating gunshot wound to the
18 head. And the manner of death was homicide.

19 Q When we talk about manner, are there other
20 manners that you are able to consider as a
21 pathologist?

22 A Yes. We have a few to choose from. We have
23 homicide, suicide, accident, natural, and
24 undetermined. Those are the five we have to choose
25 from.

1 Q And you determined that this was a homicide?

2 A That's correct.

3 Q What was basis of that opinion?

4 A Basically, homicide indicates that one
5 individual died because of another individual's
6 actions.

7 When there is a gunshot wound, the only way
8 that in my experience that you can come to the
9 conclusion that there was an accidental shooting is
10 if there was some evidence that perhaps, this is just
11 one scenario, that maybe there was a weapon in a bag,
12 the bag was tossed up on to the counter and it
13 discharged. Nobody did that.

14 So if somebody did pull a trigger, that, in my
15 opinion, is homicide. Now, how the courts choose to
16 -- to call that is a completely different matter.
17 That is my definition, is that one individual died at
18 another individual's action.

19 Q In the process of the autopsy, is a toxicology
20 scan run?

21 A Yes. So again, we do collect what we can at
22 autopsy. We try to collect a blood sample and a
23 urine sample. And we do send them to an independent
24 laboratory for toxicological analysis. And they look
25 for drug abuse, and then there's a very wide screen

1 for other medications?

2 Q Was that done in this case?

3 A Yes, it was.

4 Q What were the results?

5 A She was negative for all drugs with the
6 exception of Atrophene. Atrophene is a drug that is
7 used in resuscitation events.

8 Q Administered by hospitals?

9 A That's correct. So that could have been
10 administered by emergency medical personnel or at the
11 hospital.

12 Q When you do your examination and formulate
13 your opinions, did you determine angle of gunshot as
14 well as trajectory?

15 A Yes. Essentially that's the same thing to me,
16 trajectory and the angle. And basically the way that
17 we determine that is to place a probe, which is
18 essentially a stick, from the entrance wound to where
19 the bullet ended up. And we just pretend that the
20 person was standing straight like this.

21 So this is what they call anatomic position.
22 Stay straight this like and then you determine the
23 angle from that point of view. Of course, people
24 don't usually stand like that. But that's the way
25 that we go about it.

1 And in her case, with the entrance wound right
2 about here, straight back would be like that. Hers
3 was 45 degrees down. So straight back -- if straight
4 back is like this, 90 degrees is straight down; 45
5 degrees is between straight back and straight down.
6 Pretty much right in the middle.

7 So hers went about 45 degree down, and then
8 slightly to the left. So from right to left and then
9 back. And that's -- that's how close we can come
10 with that trajectory.

11 Q Can you come down and demonstrate that for us
12 with a rod?

13 A Okay.

14 MR. WILLIAMS: It's okay with Your Honor, can
15 she come down?

16 THE COURT: Uh-huh.

17 Q (By Mr. Williams) Can you do it if I'm
18 standing up or am I too tall? I'm going to sit for
19 you.

20 A Sure.

21 Q Can you demonstrate for the jury what the
22 trajectory is if I'm seated?

23 A So essentially -- so what we were saying, this
24 would be straight back. This would be straight down.
25 If the entrance wound was about right here, it would

1 be about 45 degrees down. And instead of straight
2 back, it was slightly -- it was straight backwards,
3 it was slightly to the left and then back. So down,
4 left and back.

5 Q Want me to hold that there?

6 A That looks about --

7 Q You said about here. Right about there?

8 A Yeah.

9 Q Now, you said you don't have an opinion as to
10 whether the person was standing, seated or otherwise?

11 A No. I cannot know how the body was in space.
12 All I have is from where it started to where it
13 ended.

14 Q If I give you the assumption, or the -- I
15 guess the premise that you're standing where the gun
16 is, the -- Ms. Pendergrass would have to have been in
17 this direction?

18 A Yes, more or less.

19 MS. MULLANEY: Objection.

20 THE COURT: Overruled. Basis of the
21 objection?

22 MS. MULLANEY: Calls for speculation.

23 THE COURT: Overruled. She was deemed as an
24 expert. Appropriate foundation has been laid. Goes
25 to weight.

1 A If you had to assume that there was a person
2 standing and a person sitting, and this was going 45
3 degrees down, because I'm 4'11", the person would
4 have had to be like this.

5 Yeah. If I was jumping up, maybe not. Or if
6 I was really tall, maybe not.

7 Q Or you could have been on some stairs or
8 something like that?

9 A Yeah. I mean, I cannot tell you how it --

10 Q Let's assume we're on a level plane, like we
11 are right now, and the gun is in your hands, your
12 victim would have had to been about like this?

13 A If we were exactly like this, you can just see
14 it would have to be something like that.

15 Q So for --

16 A I can't tell you, you know, where the other
17 person's hand was either.

18 Q Well, I want to assume that the person's hand
19 was right about right here. I understand you can't
20 tell me that --

21 MS. MULLANEY: Objection.

22 THE COURT: Basis?

23 MS. MULLANEY: Calls for speculation.

24 THE COURT: Overruled. It's in the nature of
25 a hypothetical.

1 Q (By Mr. Williams) Hypothetically speaking, I
2 know it's not your opinion --

3 A Hypothetically speaking --

4 Q If the gun is right about your where your hand
5 is?

6 A Yes. Then the individual would have to be
7 bent over in order to achieve that.

8 Q About this far?

9 A Or more.

10 Q About this far?

11 A Or more. Something like that.

12 MR. WILLIAMS: Okay. Thank you. You can have
13 your seat back.

14 I have no further questions. Thank you.

15 THE COURT: Any cross-examination for this
16 witness?

17 CROSS-EXAMINATION

18 BY MS. MULLANEY:

19 Q Good morning, Doctor.

20 A Good morning.

21 Q The prosecutor asked you some questions
22 regarding homicide, correct?

23 A Correct.

24 Q And homicide simply means death at the hands
25 of another?

1 A That is correct.

2 Q And it doesn't necessarily mean murder?

3 A That's correct. They are completely different
4 definitions.

5 Q And as you stated, it is actually for a court
6 to make that determination whether in fact it was
7 murder?

8 A That is correct.

9 Q And there are many possibilities. You
10 couldn't rule out say manslaughter?

11 A I don't get into the legal definitions, thank
12 you.

13 Q You can't rule out self-defense?

14 A I can't. All I know is that one person died
15 by another person's hand.

16 Q And you can't rule out accident?

17 A All I know is what I have testified.

18 Q And the prosecutor also asked you some
19 questions about the angle, correct?

20 A Yes.

21 Q And you measured the angle from an anatomical
22 position, as if the person were standing straight up
23 like this, correct?

24 A Correct.

25 Q And in fact, you measured the angle the bullet

1 penetrated the head, correct?

2 A That's correct.

3 Q However, you can't tell this jury to any
4 degree of scientific certainty whether the deceased
5 was sitting up, correct?

6 A That's correct.

7 Q Or laying down?

8 A That is correct.

9 Q Or about to sit up?

10 A That's correct.

11 Q Mr. Williams sat in a chair and put a stick to
12 his head, but you can't tell this jury whether in
13 fact she was sitting in a chair or sitting up at all,
14 correct?

15 A That is correct.

16 Q You can't give us any indication that the
17 shooter or the decedent was in at the time the bullet
18 penetrated?

19 A I do not know where the two individuals were.

20 MS. MULLANEY: Thank you. Just one second.

21 Thank you so much, Doctor.

22 THE COURT: Any redirect of the witness?

23 MR. WILLIAMS: None, Your Honor.

24 THE COURT: Any objection to the witness being
25 excused?

1 MR. WILLIAMS: Nothing from the State.

2 THE COURT: Any objection from the defense?

3 MR. GRIMES: No, ma'am.

4 THE COURT: Doctor, you are excused.

5 THE WITNESS: Thank you, ma'am.

6 THE COURT: You're welcome.

7 Ladies and gentlemen, we are going take
8 advantage of this break in testimony to give you a
9 short morning recess. I also have some matters of
10 law I need to take up with the attorneys we are going
11 to deal with during that time.

12 I anticipate the break will be about 15
13 minutes, give or take. If anybody wants to go
14 downstairs and smoke, that's fine. Or if somebody
15 just wants to walk downstairs and get some air,
16 that's also fine. Limit it to about 10 minutes for
17 me.

18 Do not discuss the case. Leave your notepads
19 in your seats.

20 (Whereupon, the jurors exit the courtroom.)

21 THE COURT: I need to know your client's
22 sister's name.

23 MR. GRIMES: Myisha Wilson.

24 THE COURT: I need you to spell that for me,
25 please.

1 MS. WILSON: M-Y-E --

2 THE COURT: I'm sorry, ma'am. Say that for me
3 again.

4 MS. WILSON: M-Y-E-S-H-A.

5 THE COURT: And your last name?

6 MS. WILSON: Wilson.

7 THE COURT: Do you have any middle name?

8 MS. WILSON: M.

9 THE COURT: Is that the name your account
10 would have been in with the cell phone company?

11 MS. WILSON: Yes.

12 THE COURT: Do you remember your cell phone
13 number?

14 MS. WILSON: No.

15 THE COURT: Okay. Do you have a different
16 number now?

17 MS. WILSON: No, ma'am. I don't have a cell
18 phone.

19 THE COURT: Okay.

20 Does anybody have a cell phone charger,
21 possibly, that will fit a phone that looks like this
22 charger?

23 MR. GRIMES: Her battery is dead.

24 THE COURT: Looks like the charger goes right
25 there. It's one of those little tiny chargers. Not

1 the one with the prongs on it. I don't know what
2 model phone this is.

3 MR. GRIMES: May I approach, Your Honor?

4 THE COURT: Yes, sir. It's a Qualcomm 3G
5 CDMA. That does not look like any USB.

6 You might have the same.

7 My bailiff may have a charger. It looks like
8 he has a new version of the same phone. As soon as
9 we get the information, we will be able to send the
10 subpoena to the -- and actually, while we are doing
11 that, Mr. Grimes, I ask that the list document or
12 object that that portion be left blank, and this one
13 is not. Do you happen to have another one for me
14 that is left blank?

15 MR. GRIMES: Your Honor, may I inquire as to
16 the model of the victim's phone?

17 THE COURT: I'm sorry. I can't hear you.

18 MR. GRIMES: Model?

19 THE COURT: This is a Razor, an older version
20 of the Razor. Motorola Razor. I don't know what
21 version of this this is. And it doesn't say. V3.

22 MR. GRIMES: V3?

23 THE COURT: Uh-huh. V3G8.5/9/18/19.

24 MR. GRIMES: Wasn't sure. I think yesterday
25 you said it did not have a SIM card?

1 THE COURT: Doesn't have a SIM card. And I
2 would imagine because it was a prepaid phone, it
3 didn't have one.

4 MR. GRIMES: I think we are talking to two
5 experts in New York, and they would need the model
6 and/or manufacturer information.

7 Your Honor, I guess talking to Mr. Pennington,
8 as I recall, you could get some information on the
9 phone. There was some damage, you couldn't scroll
10 down.

11 THE COURT: The little wheel in the center
12 that you use, it will not allow you to scroll down.
13 And the guy from the city says that it's just -- that
14 phone has been battered a lot. It's old, and it has
15 been beat up quite a bit.

16 Those phones -- all cell phones are just
17 delicate. Can't take but so much abuse. The wheel
18 on it just won't work. They tried to get that
19 information, they can't get it. It doesn't have a
20 SIM card because of the software on it, it won't
21 download.

22 I guess the whole purpose of the SIM card is
23 the cell phone company keeps track of you while you
24 are think you are being anonymous. And if you throw
25 away phones they don't keep working.

1 But it does not have a SIM card. And he said
2 if you want the -- what's name of the guy at the city
3 so you can talk to them and tell him exactly what's
4 on the phone?

5 MR. WILLIAMS: Corporal Van Horn.

6 THE COURT: Say that again.

7 MR. WILLIAMS: Corporal Van Horn.

8 THE COURT: Corporal Van Horn.

9 MR. WILLIAMS: Detective Goldstein has his
10 number. He is in the hallway.

11 THE COURT: [REDACTED]-7194. And the phone
12 number on this phone is [REDACTED] 7194. The entire
13 block. What you need needs to be empty, even if it's
14 not required. That signature line needs to be taken
15 off of that.

16 MR. GRIMES: Apologize, Your Honor.

17 THE COURT: That's all right.

18 Okay. The outgoing call history on this phone
19 is as follows. There was an emergency call made on
20 7/8 at 5:12 a.m. The next call was -- the preceding
21 call was 7/8 at 5:12 a.m. The proceeding call was
22 7/8, that's an outgoing emergency call at 5:11 a.m.
23 All three of those calls were to 911.

24 A call was made at 4:41 a.m., July 8th to
25 [REDACTED]-4751. The [REDACTED]-4751 at 4:41 a.m.

1 MR. WILLIAMS: You said July 8th?

2 THE COURT: July 8th. The call made to 611 on
3 7/8 at 4:32 a.m. Call made to [REDACTED]-7194 on July 8th
4 at 1:36 a.m.

5 Call made on July 8th at 1:34 a.m. to
6 [REDACTED]-7194. And that's says that number is voicemail.
7 There was an outgoing call at 1:12 a.m., July 8th to
8 [REDACTED]-9313.

9 MR. GRIMES: I'm sorry, I missed that number.

10 THE COURT: I said [REDACTED]-9313. That was
11 July 8th at 1:12 a.m.

12 The next call was July 8th at 12:57 a.m. to
13 [REDACTED]-9313. Same area code. Tenth call, July 8th,
14 12:29 a.m., [REDACTED]-5471.

15 The eleventh call, July 8 at 12:27 a.m., [REDACTED]
16 [REDACTED]-7219. Twelfth call, July 8, 12:25 a.m. [REDACTED]
17 [REDACTED]-7219. 7/8, 12:19 a.m., [REDACTED]-7219.

18 Fourteenth call, July 8th, 12:17 a.m. [REDACTED]-7219.

19 Fifteenth call, July 8, 12:15 a.m., [REDACTED]-0559.

20 Sixteenth call, July 8, 12:12 a.m. [REDACTED]

21 [REDACTED]-5471. Seventeenth call, July 8, 2:10 a.m., [REDACTED]

22 [REDACTED]-6041. Eighteenth call, July 8, 12:09 a.m., [REDACTED]

23 [REDACTED]-6041. Nineteenth call, July 8, 12:07 a.m., [REDACTED]

24 [REDACTED]-5471. July 7, 11:21 p.m. [REDACTED]-0559.

25 And that's all the calls that it keeps, 20

1 calls in its memory.

2 Do you all want incoming calls also?

3 Did you want incoming calls,

4 Mr. Grimes?

5 MR. GRIMES: Yes, ma'am.

6 THE COURT: First call was July 8th, 5:18 a.m.

7 -- and I assume this is from EMS. It's [REDACTED] 7074.

8 Second call was July 8th, 1:33 a.m. [REDACTED] 3317.

9 MR. GRIMES: What time was that?

10 THE COURT: For second call, 1:33 a.m. Do you
11 want the number again?

12 MR. GRIMES: [REDACTED] 3317?

13 THE COURT: Yes. Third call was from the same
14 number, July 8th, 1:26 a.m. 7/8, 1:26 a.m.,

15 [REDACTED] 9313. July 8th, 1:06 a.m., [REDACTED] 0559.

16 Sixth call, July 8th, 1:06 a.m., [REDACTED] 5471.

17 Seventh call, July 8th, 1:06 a.m., [REDACTED] 0559. Eighth

18 call, July 8th, 12:53 a.m., [REDACTED] 5471. Ninth call,

19 12:50 a.m., July 8th, [REDACTED] 0559. Tenth call, July

20 8th, 12:19 a.m., [REDACTED] 7219.

21 Eleventh call, July 8th, 12:15 a.m., [REDACTED] 0559.

22 Twelfth call, July 8th, 12:08 a.m., [REDACTED] 5471.

23 Thirteenth call, July 7th, 11:23 p.m., [REDACTED] 0559.

24 Fourteenth call, 11:15, July 7th, [REDACTED] 3317.

25 Fifteenth call, July 7th, 10:56 p.m., same number,

1 [REDACTED] 3317.

2 And the sixteenth call, same date, 10:53 p.m.,
3 the same number, [REDACTED] 3317. Seventeenth call, July
4 7th, 10:26 p.m., [REDACTED] 6041. Eighteenth call, July
5 7th, 10:06 p.m., [REDACTED] 3317. Nineteenth call, July
6 7th, at 10 p.m., [REDACTED] 8399. And the twentieth call,
7 July 7th, 9:46 p.m., [REDACTED] 9318.

8 The missed calls begin on Sunday. All right.

9 Any other information you need off of this
10 telephone? Mr. Grimes?

11 MR. GRIMES: Any call -- missed calls from
12 [REDACTED] 3683?

13 THE COURT: Eight three. That's not her phone
14 number.

15 MR. GRIMES: I thought --

16 THE COURT: Her phone number is [REDACTED] -
17 [REDACTED] 7956.

18 MR. GRIMES: Seven?

19 THE COURT: [REDACTED] 7956. That's her phone
20 number.

21 MR. GRIMES: Were there any missed calls, do
22 you know?

23 THE COURT: The first missed call was July
24 8th, Sunday at 2:54 a.m., from [REDACTED] 6041. [REDACTED] 3317.
25 [REDACTED] 3317. Same number. Same number. Same number.

1 And then [REDACTED] 5471. [REDACTED] 9318. Sister, missed
2 call from her at 9:05, which was I assume was sister,
3 [REDACTED] 0656; [REDACTED] 0656; [REDACTED] 9318; [REDACTED] 9318; [REDACTED] 9318;
4 [REDACTED] 9318; [REDACTED] 0559; [REDACTED] -2303, somebody Jim;
5 [REDACTED] -0745; and a restricted missed call at 1:46
6 p.m.

7 Any additional information you need?

8 MR. GRIMES: No, ma'am.

9 THE COURT: Okay. Yes, ma'am, something you
10 want to say?

11 MS. CARDILLO: Your Honor, we still have the
12 issue of Corporal Brown.

13 THE COURT: Yeah. I haven't forgotten. I
14 need to deal with the cell phone right now. We will
15 deal with that in a moment.

16 Is there anything else regarding the cell
17 phone?

18 MS. CARDILLO: No, Your Honor.

19 THE COURT: Do we still need the fax record
20 now that we have gone through the phone and given you
21 everything?

22 MR. GRIMES: I think we have more than 20
23 calls. We don't have anything from July 6th?

24 THE COURT: That's fine. I mean, I'm just
25 asking. Well, now we didn't ask for July 6th. Is

1 that what you want too?

2 MR. GRIMES: I guess that's easiest for the
3 phone company --

4 THE COURT: Tell me what timeframe you want.

5 MR. GRIMES: All of July 6th.

6 THE COURT: Okay. Take a short break for the
7 court reporter and then we will deal with that.

8 Take a five-minute recess.

9 (Whereupon, a recess was taken.)

10 THE COURT: Okay. We have sent the subpoena
11 to the person directed at the direction of the public
12 defender's office. My clerk has called her. She was
13 not at her desk. She wanted to leave a voicemail for
14 her. I wanted to confirm each of the subpoenas, and
15 I will have her call again shortly to see whether she
16 may have had a chance to talk to someone in her
17 absence.

18 What would be the substance of the officer's
19 testimony?

20 MS. CARDILLO: Your Honor, Corporal Brown was
21 assigned to the warrant division late June of 2007.
22 He was in charge of locating and serving the warrant,
23 CDV warrants that had just occurred on the defendant
24 by the victim. These calls --

25 THE COURT: What was the date of that CDV?

1 MS. CARDILLO: That was, I want to say -- that
2 was June 17th of 2007. Essentially he was assigned
3 that warrant. He tried to make contact with the
4 defendant. He went out to his address in
5 Summerville. He spoke to his mother. The mother
6 essentially gave the defendant the officer's cell
7 phone number. The defendant called July 3rd.

8 The defendant called the officer July 3rd.
9 The officer informed him what the warrant was for,
10 who the victim was. They agreed that the defendant
11 would turn himself in on the warrant later that day,
12 and he did not.

13 Again, the defendant called him two days later
14 on July 5th and said I do want to turn myself in on
15 that warrant. He agreed to do that, and then failed
16 to do so.

17 THE COURT: Tell me why that is relevant and
18 what it's being offered to prove. What facts or
19 consequences does it make more or less probable.

20 MS. CARDILLO: Your Honor, it goes toward the
21 fact that the defendant's state of mind and motive in
22 the killing of the victim. She had a warrant pending
23 on him. She was actively prosecuting him. We
24 believe it goes toward the element of malice to show
25 that he was trying to keep her from prosecuting him

1 essentially.

2 THE COURT: Because he did not turn himself
3 in?

4 MS. CARDILLO: No, because he later murdered
5 her on July 8th.

6 THE COURT: Mr. Grimes.

7 MR. GRIMES: Thank you, Your Honor.

8 May it please the Court. First, motive is not
9 evidence of murder, it shows malice aforethought.
10 Him not turning himself in does not show malice or
11 show forethought. Simply the State's backdoor way to
12 try to enter this character evidence to show he was a
13 bad person. And based upon that, we ask the Court to
14 exclude that evidence.

15 Thank you.

16 THE COURT: Anything further, Ms. Cardillo?

17 MS. CARDILLO: No, Your Honor.

18 THE COURT: Would that be the State's last
19 witness? Does the State have any further witnesses?

20 MS. CARDILLO: That would be the State's last
21 witness, subject to rebuttal.

22 THE COURT: Are the defense witnesses present
23 and ready to proceed?

24 MR. GRIMES: Yes, ma'am.

25 THE COURT: And how many witnesses are you

1 intending to call, Mr. Grimes?

2 MR. GRIMES: Four.

3 THE COURT: How long do you think you
4 anticipate it will take to take those witnesses?

5 MR. GRIMES: First witness will be Mr. Wilson.
6 Imagine that will be involved.

7 THE COURT: I'm sorry, I cannot hear you.

8 MR. GRIMES: I apologize. The first witness
9 will be Mr. Wilson. That will be rather involved.

10 Second witness may be Detective Goldstein,
11 should be brief. Dr. Ostrowski, not too long --

12 THE COURT: Can you just give me an estimate.
13 Think you can finish today, tomorrow? Do you need to
14 go into tomorrow, that's what I'm asking.

15 MR. GRIMES: I think I can finish today.

16 THE COURT: Okay.

17 MR. GRIMES: Depends how long the lunch break
18 is.

19 THE COURT: We're going to take an hour for
20 lunch. I may break early so that we have greater
21 time in the afternoon. That's why I'm asking.

22 MR. GRIMES: Could be close. Probably take
23 the full afternoon.

24 THE COURT: Okay. Now, I do agree with the
25 State that if they wanted to show motive evidence

1 regarding what the defendant's motivation may have
2 been in killing the defendant [sic] or what his state
3 of mind may have been, that that would be relevant.

4 However, simply presenting a witness who says,
5 he had CDV charges pending, and he didn't turn
6 himself in twice. I just don't think that rises to
7 the level of what would be contemplated.

8 It would be different if he said to someone,
9 you know, she has CDV charges pending against me, I
10 want to hurt her because I don't want her to
11 prosecute me or something along those lines. But the
12 evidence as it is presented simply is speculative of
13 itself. I think it would have a tendency to confuse
14 the jury. It has a great danger of unfair prejudice.

15 And in addition to that, I'm really
16 hard-pressed to determine how it is relevant. In
17 other words, what fact or consequence does it make
18 more or less probable. Therefore, the witness is
19 excluded to the extent that you would offer testimony
20 about him not turning himself in on the warrant.

21 If you have something else you want him to
22 testify to, certainly you can call him.

23 Is there anything else that the witness would
24 be offering in the form of testimony?

25 MS. CARDILLO: No, Your Honor.

1 THE COURT: Does the State rest?

2 MS. CARDILLO: The State does, Your Honor.

3 THE COURT: Are there any motions?

4 MR. GRIMES: Yes, ma'am.

5 THE COURT: You may proceed.

6 MR. GRIMES: We move for directed verdict on
7 the -- all the charges.

8 First one, I have gone over this pretty
9 carefully, that I don't believe the State has any
10 witnesses that the incident happened in Charleston
11 County --

12 THE COURT: I'm sorry, I cannot hear you.

13 MR. GRIMES: I don't believe think any witness
14 has testified that [REDACTED] Harris Street is actually in
15 Charleston County.

16 THE COURT: I think there is case law that
17 says they don't have to do that directly anymore.
18 It's circumstantially inferred from the evidence, and
19 I think we all know [REDACTED] Harris Street is in the City
20 of Charleston.

21 I'm not sure whether Detective Goldstein
22 testified to it or not. I don't want to rely on my
23 memory. But there is case law on point from the
24 Supreme Court that says you don't have to
25 specifically have someone say that this particular

1 address is in Charleston County, if it can be
2 inferred from the underlying facts and circumstances.
3 And there has been evidence replete of facts that
4 this took place at [REDACTED] Harris Street, and it's in
5 the City of Charleston.

6 MR. GRIMES: Yes, part of the City of
7 Charleston is in Berkeley County.

8 THE COURT: [REDACTED] Harris Street ain't in
9 Berkeley County.

10 MR. GRIMES: I understand that, Your Honor.
11 And based upon that, we don't believe venue is proper
12 and therefore the case should be dismissed based upon
13 that ground.

14 THE COURT: Motion is denied.

15 You may proceed with your next motion.

16 MR. GRIMES: As to the charge of murder,
17 looking at all the evidence in the light most
18 favorable to the State, still haven't established
19 malice aforethought.

20 I think that the strongest evidence shows that
21 there was a shooting. Every witness who testified
22 said they can't tell how it happened. You can look
23 at the 911 tape that the State's introduced, the
24 testimony of officer show he was distraught, upset,
25 not acting maliciously. He called the police, called

1 911, stayed, didn't run.

2 Based upon that, we don't believe the State
3 has established malice on the charge of murder.

4 THE COURT: Any further argument?

5 MR. GRIMES: Not on that issue, Your Honor.

6 THE COURT: You need to make your full
7 argument.

8 MR. GRIMES: Thank you.

9 On the charge of burglary, I don't believe
10 there is any evidence to show how Mr. Wilson entered
11 the house, whether that was entered without her
12 permission. At the most, Detective Goldstein
13 testified he charged him because of the fingerprint
14 that was found on the window.

15 I believe that the State vs. Mitchell was -- I
16 would say factually distinguishable in some respects
17 that there was a fingerprint case on the window
18 screen, readily moveable. They found that was not
19 enough and they granted a directed verdict for
20 burglary.

21 In this case, no one has shown how he entered,
22 and no one has shown that he didn't have permission
23 to enter that home that night. In fact, they may
24 have broken up, she may have thrown him back out,
25 does not show that she might not invite him back over

1 to see his children or to try to work things out.

2 Therefore, the State has not shown he entered
3 the house without permission or with the intent to
4 commit a crime.

5 Thank you.

6 THE COURT: That's the extent of your
7 argument, Mr. Grimes?

8 MR. GRIMES: If those charges were dismissed,
9 the gun charge there would be no crime.

10 THE COURT: Who would like to argue on behalf
11 of the State?

12 MS. CARDILLO: I will, Your Honor.

13 THE COURT: You may proceed.

14 MS. CARDILLO: Thank you.

15 In the light most favorable to the State is
16 the evidence. As far as the murder goes, I believe
17 there is ample evidence to show that the State has
18 proven malice, both expressed and inferred.

19 One, he did possess a deadly weapon. He
20 admitted he had a deadly weapon, expressly through
21 threats that he made to the sister two days before
22 that he was going to kill her. And also, he sat
23 outside and watched her apartment, which shows some
24 evidence of planning.

25 As far as the malice is concerned, I believe

1 the State has met its burden to surpass the directed
2 verdict motion as far as the charge of murder.

3 As far as the charge of burglary in the first
4 degree, Your Honor, there has been ample evidence he
5 was kicked out of the home, that the locks had been
6 changed, even his belongings had been put out.

7 There's also ample evidence that there is --
8 has been evidence that the point of entry was that
9 second floor rear window where the actual murder took
10 place, that he entered in the nighttime, and also, he
11 had a deadly weapon.

12 The left palm print found on the exterior of
13 the window has many connotations, the main one being
14 he entered that window and pushed it up to enter that
15 window that night, thus committing burglary in the
16 first degree. The crime he committed once he entered
17 was, of course, the murder and the possession of a
18 firearm -- possession of firearm during a crime of
19 violence, proceeds also to the murder which he also,
20 through their theory, was in possession of a firearm.
21 So I think that part is moot at this point.

22 The State believes that the evidence is amply
23 fulfilled to surpass the defense counsel's directed
24 verdict motion.

25 THE COURT: Anything further, Mr. Grimes?

1 MR. GRIMES: No, ma'am.

2 THE COURT: Case law is very clear considering
3 the evidence in the light most favorable to the
4 State, as the Court is required to do, the Court is
5 required to look at the existence or nonexistence of
6 evidence and not its weight. It is not for the Court
7 to act as the factfinder.

8 Motion should be granted if the evidence
9 merely raises a suspicion of the defendant's guilt;
10 however, if the State presents any evidence which
11 reasonably tends to prove the defendant's guilt
12 either by direct evidence or substantial
13 circumstantial evidence reasonably tending to prove
14 his guilt, or from which his guilt could be fairly
15 and logically deduced, the case must go to the jury.

16 And what made me start in an opposite order,
17 going not --

18 As regards -- as regards to the elements of
19 murder, State has met its burden. There is
20 substantial circumstantial evidence, and there is
21 direct evidence reasonably tending to prove the
22 defendant's guilt.

23 In order to prove murder, the State must prove
24 that the defendant killed another person with malice
25 aforethought. We know the definition of malice.

1 Malice does not have to be expressed, it can be
2 inferred from the use of a deadly weapon. And
3 clearly, there is substantial circumstantial evidence
4 meeting that element of the offense.

5 It can also be proven from acts of the
6 defendant showing preparation beforehand. And
7 certainly there is circumstantial evidence in the
8 record regarding that; that he was outside of her
9 residence, as well as the threat.

10 And also, malice can be inferred from showing
11 a total disregard for human life. Again, that arises
12 from the use of a weapon, which certainly is evidence
13 present of that in the record.

14 And if the State is able to meet the elements
15 of murder, they certainly will be able to meet
16 elements of possession of a weapon during the
17 commission of a violent crime.

18 And as it regards the element of burglary,
19 there is substantial circumstantial evidence in the
20 record reasonably tending to prove the defendant's
21 guilt that the fingerprint on the top of the window,
22 as well as the use of the weapon and the entry of the
23 residence, at least that could be circumstantially
24 inferred.

25 State must prove beyond a reasonable doubt

1 that the defendant entered the dwelling without
2 consent. There is certainly substantial
3 circumstantial evidence regarding that element.

4 They don't have to prove force. A person can
5 enter by using deception, trick or artifice. I'm not
6 saying that that is necessarily in this record, but I
7 think certainly that it would be within the State's
8 ambit that they could argue that, considering the
9 State -- parties' relationship.

10 There is substantial circumstantial evidence
11 that the defendant intended to commit a crime
12 therein. Because that can also be inferred by the
13 use of a weapon, or him having a weapon on his
14 person, which there is substantial circumstantial
15 evidence of that element.

16 And certainly there is substantial
17 circumstantial evidence of the other elements of the
18 offense of burglary in the first degree. Therefore,
19 the motion for directed verdict is denied.

20 And as it regards the issue of venue, State
21 vs. Brisban, and venue in a criminal case need not be
22 affirmatively proved if there is sufficient evidence
23 from which it can be inferred. Motion on that basis
24 is denied also.

25 MS. CARDILLO: Your Honor, just as to the

1 venue --

2 THE COURT: I can't hear you.

3 MS. CARDILLO: Just as to the venue, as well,
4 either the second or third witness of the lay
5 witnesses did testify it was Charleston.

6 THE COURT: I thought so, but, you know, we
7 had so many witnesses, I did not want to rely on my
8 memory.

9 MS. CARDILLO: I know.

10 THE COURT: Is there anything further before
11 we proceed? Do you want me to question your client,
12 and then you all can have the luncheon recess to
13 discuss whether he wants to testify, Mr. Grimes?

14 MR. GRIMES: Yes, ma'am.

15 THE COURT: Ms. Cardillo, what record, if any,
16 would the State be seeking to introduce against the
17 defendant?

18 MR. WILLIAMS: Your Honor, I'll probably
19 question him. I believe he has a distribution.

20 THE COURT: Pardon me?

21 MR. WILLIAM: I believe he has a distribution
22 of crack cocaine in '03 as well as proximity on that
23 same offense. He got a YOA on it.

24 THE COURT: You would be seeking to introduce
25 that?

1 MR. WILLIAMS: Yes. That's all I know that
2 would be admissible.

3 THE COURT: Okay. The state Supreme Court has
4 indicated that narcotics offenses are not probative
5 on the issue or the -- on the issue of truthfulness.
6 They're not bearing on truthfulness. You would not
7 be able to ask him whether he was convicted of -- are
8 these felonies?

9 MR. WILLIAMS: They are distributions, Your
10 Honor.

11 THE COURT: I'm going to study it a little bit
12 over the luncheon recess. I may well allow you to
13 ask him if he was convicted of felonies in 2003. You
14 would not be able to ask him if they were drug
15 offenses. They're not probative on the issue of
16 truthfulness and any possible prejudice they have
17 would outweigh the probative value on the issue of
18 his credibility.

19 MR. GRIMES: Your Honor?

20 THE COURT: Yeah.

21 MR. GRIMES: If you are inclined to allow the
22 question about the felonies, we would rather just
23 bring out the nature of the charge.

24 THE COURT: Really?

25 MR. GRIMES: Yes, ma'am.

1 THE COURT: I'll think about that over the
2 lunch break then.

3 Sir, if you would stand for me please, raise
4 your right hand to be sworn.

5 (Whereupon, the defendant is placed under oath
6 by the Court.)

7 THE COURT: I need you to speak up for me.

8 MR. WILSON: Yes, ma'am.

9 THE COURT: You can put your right hand down.

10 Sir, we have reached the stage of the trial
11 where you may be able to testify if you so desire.
12 So I'm going to explain to you certain of your
13 rights. If you do not understand anything that I
14 say, please let me know. If you want me to explain
15 anything in more detail, let me know. Do you
16 understand?

17 MR. WILSON: Yes, ma'am.

18 THE COURT: Sir, again, as I've explained,
19 we've now reached the stage of the trial where you
20 may present your defense. You have the right to
21 claim the protections given to you by the Fifth
22 Amendment to the constitution. And that amendment
23 states that no person shall be compelled in any
24 criminal case to be a witness against himself.

25 This means that you cannot be required to

1 testify in this case. You have the right to testify
2 on your own behalf, however no one can make you
3 testify. It is a personal right, and no one can
4 waive this right except you.

5 If you decide to testify, you will be subject
6 to the same rules that govern other witnesses. And
7 you may be examined and cross-examination on any
8 relevant issue in this case.

9 In addition, if you have any convictions
10 involving dishonesty or false statement, or for
11 crimes punishable by imprisonment for more than one
12 year, and the Court determines that the probative
13 value of admitting this evidence outweighs the
14 prejudicial effect to you, the solicitor will be able
15 to introduce your record to attack your credibility.

16 And I've already indicated that my preference
17 is to allow them to ask you if you've been convicted
18 of two felonies in 2003; that they would not be able
19 to ask you if they were drug offenses. I, of course,
20 will let you discuss that in more detail with
21 Mr. Grimes.

22 And I would imagine that if he wants them to
23 ask if they are drug offenses, that that would be a
24 matter of strategy that he has discussed with you,
25 and you agree with. And I will question you about

1 that before we go further, before you decide whether
2 you are going to testify.

3 Sir, if you decide not to testify, I will
4 instruct the jury that they cannot give the fact that
5 you did not testify any consideration whatsoever.
6 And there is to be absolutely no prejudice to you
7 because you did not testify.

8 In fact, they will be instructed that they
9 cannot discuss it in the jury room in any manner
10 whatsoever. It is left entirely up to you whether or
11 not you testify. You can talk with your attorney,
12 your family members, your friends, but the final
13 decision will be left entirely up to you.

14 Sir, have you understood my questions and what
15 I've just explained to you?

16 MR. WILSON: Yes, ma'am.

17 THE COURT: Do you have any questions about
18 what I have just explained to you?

19 MR. WILSON: No, ma'am.

20 THE COURT: Have you discussed with your
21 lawyer whether you should or should not testify?

22 MR. WILSON: Yes, ma'am.

23 THE COURT: Okay. Do you want to talk with
24 him some more at this time?

25 MR. WILSON: Yes, ma'am.

1 THE COURT: Okay. You can take your seat,
2 sir.

3 I think we can break until 1:15. Is that
4 acceptable to everybody? That's an hour for lunch.

5 MR. GRIMES: Yes, ma'am.

6 MS. CARDILLO: Yes, Your Honor.

7 THE COURT: Please bring in the panel,
8 Mr. Robinson.

9 (Whereupon, the jurors enter the courtroom.)

10 THE COURT: Thank you. Ladies and gentlemen,
11 we appreciate your patience.

12 We have been able to work through some matters
13 of law that I think will allow us to go through the
14 remainder of the trial with very little interruption.

15 We are going to break for lunch. During this
16 break, please do not discuss this case among
17 yourselves or with anyone else. Please don't allow
18 yourself to have any media exposure to the case, and
19 please do not have any contact with anybody in or
20 about the courthouse.

21 We are going to resume an hour from now. I
22 have 12:18, so why don't we just say 1:20 we'll
23 resume the trial. Please be comfortable and return
24 to -- directly to your jury room.

25 I understand some of you have plans next week.

1 I anticipate we will finish the trial today in terms
2 of testimony, and we will have closing arguments and
3 instructions tomorrow.

4 If the trial -- if I am not able to stick to
5 that schedule, if we should go over, the longest that
6 I anticipate we will go will be Monday. So I hope
7 that gives you all some ease, but it is my intention
8 to try to complete the trial by the close of this
9 week.

10 If you would leave your notepads in your
11 seats. Have a wonderful lunch, and we'll see you
12 back at 1:20.

13 (Whereupon, the jurors exit the courtroom.)

14 THE COURT: Is there anything we need to take
15 up before we break for lunch from the State?

16 MS. CARDILLO: No, Your Honor.

17 THE COURT: From the defense?

18 MR. GRIMES: No.

19 THE COURT: Does the State have any requests
20 for the charge? I have received requests from the
21 defense.

22 MS. CARDILLO: Your Honor, I will do some more
23 research on that, get with you this afternoon.

24 THE COURT: If you have something to me -- my
25 charge is basically completed, unless you just want

1 to make yourself some extra work. You might want to
2 hear what the Court's proposed charge is.

3 Generally, I charge my standard charge because
4 they are an accurate reflection, a very objective
5 statement of the law versus what I generally consider
6 to be an advocate's view of what the law is.

7 MS. CARDILLO: Okay.

8 THE COURT: But -- so I say that to you to
9 save you time. If you like, please feel free to
10 submit any charges you'd like the Court to consider,
11 but I would ask you to give them to me as soon as
12 possible.

13 MS. CARDILLO: Of course.

14 THE COURT: Thank you all very much. Have a
15 good lunch.

16 (Whereupon, a recess was taken.)

17 THE COURT: I had to make sure Mr. Grimes was
18 going to get what he needed. They said they're
19 obligated to say four days, but they will have it in
20 an hour. So they said they think they will have them
21 in an hour. As soon as they fax them over my
22 secretary will bring them in.

23 MR. GRIMES: Thank you, Your Honor.

24 THE COURT: You're welcome. Is there anything
25 else we need to take up before we resume the trial?

1 I need to finish questioning Mr. Wilson.

2 Mr. Wilson, will you stand for me, please.

3 Sir, have you had a full opportunity to discuss
4 whether you wish to testify with your attorney?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And, sir, do you have any further
7 questions for the Court concerning your rights?

8 THE DEFENDANT: No, ma'am.

9 THE COURT: Have you fully -- do you have any
10 further questions for Mr. Grimes?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: Sir, do you wish to testify?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: And now have you fully discussed
15 with Mr. Grimes your criminal record?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And, sir, you understood when I
18 said to the solicitor that I would not allow the
19 state to ask you that you had been convicted of a
20 drug offense, correct.

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: And did you understand my
23 reasoning? In other words that our Supreme Court has
24 said that's not what we can call probative, it's not
25 helpful on the issue of whether you are truthful or

1 not. Do you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And you understand that I
4 instructed them that they would only be able to ask
5 you if you had been convicted of a felony on this
6 date or a conviction on this date, but they would
7 then be stuck with whether you said yes or no. Do
8 you understand that?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And do you understand that your
11 lawyer has indicated to the Court that he would
12 prefer that they be able to ask you what you have
13 been convicted of?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have the two of you fully
16 discussed that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Sir, is that a matter of strat --
19 and I don't want you to give me any details, I just
20 need you to tell me yes or no to this question. Is
21 that a matter of strategy that you and Mr. Grimes
22 have discussed?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: Do you understand the question I'm
25 asking?

1 THE DEFENDANT: Not really.

2 THE COURT: Okay, I will try to make it a
3 little more simple. Strategy is something that the
4 two of you have discussed and decided that something
5 is more beneficial to you or less beneficial to you.
6 In other words, something better for you or you just
7 feel this is better way to approach, that that's in
8 your best interest. Does that make more sense?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: Okay. Have the two of you fully
11 discussed that?

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: And is it correct that you have
14 come to the conclusion, along with Mr. Grimes, that
15 it is in your better interest that they be able to
16 ask you about the actual offense?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Any further questions of your
19 client, Mr. Grimes, regarding his right to testify?

20 MR. GRIMES: No, ma'am.

21 THE COURT: Okay.

22 MR. GRIMES: We would like to briefly be heard
23 on the prior conviction issue.

24 THE COURT: Okay.

25 MR. GRIMES: The Court noted generally crimes

1 involving narcotics incidents are not probative. As
2 you indicated, you thought maybe they could ask about
3 a felony. I think that lines of cases only comes in
4 when the person is charged with a similar offense, if
5 he was charged with a similar offense, you would want
6 to bring out the fact that he had a prior drug
7 offense, therefore use felony.

8 In this case he is not charged with a drug
9 offense, so therefore --

10 THE COURT: However, credibility is an issue
11 in this case. Where he has been convicted of a
12 felony is probative on his credibility. But I think
13 it is unduly prejudicial to have them ask about
14 whether it's a drug offense.

15 I think that a jury may very well not see him
16 in a very good light based on that.

17 MR. GRIMES: I understand that.

18 THE COURT: And -- but that's a matter
19 strategy for you and your client. There's another
20 way to look at that, of course. I'm not advocating
21 that. It may well be in your estimation that it's
22 better for him to be able to say that because then he
23 could be able to say, you know, when I committed the
24 crime, I admitted it, I 'fessed up to it, I have been
25 involved in this kind of activity, I have never been

1 involved in this other kind of activity. And that's
2 just not the nature of who I am.

3 And I am just extrapolating based on my
4 experience, the things and the reasons lawyers have
5 told me why they prefer to do something a particular
6 way or not. But again I will leave that completely
7 up to you.

8 MR. GRIMES: The Court was inclined it was a
9 felony that was a non-violent crime, does not involve
10 all --

11 THE COURT: You can ask him that. I'm not
12 going to make any comment about any of the evidence,
13 that's improper for me to comment factually on any of
14 the evidence.

15 If you all want to stipulate to that, I can
16 instruct the jury it's a stipulation and requires no
17 further proof.

18 MR. WILLIAMS: Your Honor, I think if I can
19 ask him if it's a felony, I'm going to do that. If
20 he wants to ask more about it he certainly can. I
21 understand the Court's ruling to say I can say he is
22 convicted of a felony in 2003, and I'm going to
23 follow the Court's ruling.

24 THE COURT: Well, my question is more specific
25 than that. Mr. Grimes has suggested he would like to

1 be able to have the jury know that it was a
2 non-violent, that it did not involve an assault.
3 What I am asking is if you all are willing to
4 stipulate to that?

5 MR. WILLIAMS: I don't want to stipulate, Your
6 Honor. It is a non-violent crime.

7 THE COURT: That's the truth, how does it hurt
8 you?

9 MR. WILLIAMS: I think he can ask him. I'd
10 rather have him tell the jury that than do it through
11 the form of a stipulation. It is true, I would not
12 object to it being true.

13 MR. GRIMES: May I have a moment to discuss
14 this issue with my client?

15 THE COURT: Sure, go right ahead.

16 Do you need to go to the room or are you
17 comfortable right there?

18 MR. GRIMES: I think we are comfortable right
19 here.

20 THE COURT: Okay.

21 MR. GRIMES: Thank you, Your Honor. I think
22 we probably, as you suggest, will limit it to a
23 felony. I'll ask follow-up questions.

24 THE COURT: I think that's clearly in his best
25 interest. It has been my experience that jurors have

1 a dim view of drug offenses. That's particularly why
2 the Supreme Court has found it is not probative of
3 truthfulness. I mean I can't speak for the Supreme
4 Court, I assume based on what I have read.

5 The Court would find for that purposes of
6 impeachment of the defendant's credibility that his
7 offenses from 2003 -- what are the exact date of
8 those offenses?

9 MR. WILLIAMS: I show July 13, 2003. June
10 23rd, 2003 was the offense date.

11 THE COURT: Is that the date he pled guilty?

12 MR. WILLIAMS: I believe the plea was July
13 15th, 2004.

14 THE COURT: That would be the offense date.
15 He pled guilty July 15, 2004?

16 MR. WILLIAMS: That's what I show, Your Honor.

17 THE COURT: Okay. The Court would find that
18 the offense for which the defendant pled guilty on
19 July 15, 2004 are admissible. The Court is required,
20 pursuant to Rule 609(A)(1) to employ a two-part test
21 in determining the admissability of the convictions.

22 That being whether the prior crime must have
23 been punishable by death or imprisonment in excess of
24 one year, it clearly meets that. Distribution of
25 crack I think is zero to 15, I cannot remember but

1 it's clearly over a year. And the proximity charge I
2 know carries up to 15. I think it was before they
3 changed the statute, I cannot remember. It's really
4 not dispositive, but the operative point being that
5 they both were punishable by imprisonment in excess
6 of one year.

7 The Court must determine that the probative
8 value of admitting the evidence outweighs the
9 prejudicial effect to the accused. The Court would
10 find that the probative value of admitting the
11 offenses outweighs any prejudicial effect to the
12 accused. Credibility is a pivotal issue in this case
13 and it's a well held precedence that conviction of a
14 crime can be considered by a jury on the issue of a
15 person's credible and for that limited purpose.

16 The Court would also note that our Supreme
17 Court has determined that narcotics offenses are
18 generally not considered probative of truthfulness,
19 and that is based on State versus Cheeseburro
20 (phonetic), as well as Green versus State and State
21 versus Bryant.

22 In light of that the Court has indicated that
23 the State will not be able to ask the defendant about
24 -- can you all give me one moment.

25 Did you want to call him first, Mr. Grimes?

1 MR. GRIMES: Yes, ma'am.

2 THE COURT: Give me one moment, please.

3 Okay. I appreciate you all indulging me. The
4 Supreme Court has been very clear that narcotics
5 offenses are generally not considered probative of
6 the truthfulness. And the exact language that they
7 use actually: Violations of narcotics law is
8 generally not probative of truthfulness for purposes
9 of the rule providing that prior conviction involving
10 dishonesty or false statement must be admitted for
11 impeachment purpose regardless of their probative
12 value or prejudicial effect, citing rule 609(A)(2).

13 Which that's why I took a pause because the
14 cases that I was reading deals with 609(A)(2). And I
15 believe it was argued that basically those offenses
16 involved dishonesty, false statement, should come in
17 regardless of punishment. And the Supreme Court
18 indicated that that would not be appropriate
19 interpretation of that section of rule.

20 The Supreme Court went on to cite: A
21 conviction for robbery, burglary, theft and drug
22 possession beyond the basic crime itself, is not
23 probative of the truthfulness.

24 And that when the Court is considering the
25 admissability of a prior conviction for the purpose

1 of impeachment, the Court is required to engage in a
2 balancing test, since we are dealing in 609(A)(1) and
3 not 609(A)(2). And when considering whether to admit
4 prior convictions for impeachment purposes the Court
5 should consider, one, the impeachment value of the
6 prior crime; the point in time of the conviction and
7 the witness's subsequent history; the similarities of
8 the past crime and the crime charged; the importance
9 of the defendant's testimony; and the centrality of
10 the credibility issue, citing 609(A).

11 And as indicated it is clear that this
12 conviction comes within the window outlined by the
13 rule. It is not over 10 years old, so that is not an
14 issue, and it clearly carries more than one year.

15 The Court must then engage in a balancing test
16 to determine if the probative value of admitting this
17 evidence outweighs the prejudicial affect to the
18 accused. I guess the reason I pause is because
19 really to some extent this issue we are dealing with
20 has not been addressed by our authority, by the
21 Appellate Court. It has been addressed within the
22 context of 609(A)(2) but not 609(A)(1) which deals
23 with -- to some extent they have given us guidance
24 when they say narcotics offenses are generally not
25 considered probative of truthfulness, because that

1 deals with the first prong that the Court must
2 consider which is the impeachment value of the crime.

3 He pled guilty. The offense actually took
4 place in 2003, he pled guilty in 2004, this event
5 took place in 2007. There is no similarity between
6 the past crime and the crime that he is now charged
7 with. His testimony is important and credibility is
8 central in this case because there are no
9 eyewitnesses other than those who were present at the
10 time of the offense.

11 Minor 1 is an eyewitness to some extent,
12 circumstantially she's an eyewitness as to the event.
13 But she did not actually, based on her testimony from
14 the stand, did not actually see her father pull the
15 trigger.

16 But the Court must entertain a balancing of
17 whether the probative value of the defendant's prior
18 conviction outweigh their prejudicial effect such
19 that they are admissible for impeachment purposes.
20 And of course the Court must articulate its position
21 for the record, and why the probative value would
22 outweigh its prejudicial effect to the defendant.

23 We have been to some extent what I have
24 suggested following a mean approach which is where a
25 crime is similar allowing, where credibility is

1 central, allowing the State to ask if there is a
2 conviction for a felony but not the nature of the
3 felony because it would be of such prejudicial effect
4 to the defendant.

5 And I think our courts have acknowledged that
6 where credibility is central, a criminal record bears
7 on that credibility and is admissible for the
8 purposes of impeaching a person's credibility.

9 I am concerned, however, about the language
10 that the Supreme Court seems to presume that,
11 actually the way it's articulated is that -- but I'm
12 paraphrasing it -- is beyond the basic crime itself
13 that they're not probative on the issue of
14 truthfulness.

15 And the rule in and of itself really
16 acknowledges a conviction of crime does not bear on a
17 person's credibility. So the Court would find --
18 bear with me one second. In addition, the Court
19 would find in weighing the probative versus
20 prejudicial aspect, the Supreme Court has also
21 articulated in State versus Dunlap that violations of
22 narcotics laws are generally not probative of
23 truthfulness. And such relative lack of probative
24 value should figure prominently in weighing of
25 prejudice when determining whether to permit a

1 criminal defendant's impeachment by such conduct,
2 citing rule 609.

3 And while I think the Supreme Court has not
4 specifically addressed that issue, I think they have
5 given us enough guidance that it should not be
6 admitted for the purposes of impeachment. So out of
7 an abundance of caution, I'm going to exclude being
8 able to ask him about it.

9 Now we have the records from -- and that's why
10 I asked for you all to indulge me one moment -- we
11 have the records here from Sprint, Mr. Grimes. I'm
12 going to have copies made here.

13 They said that they could not find the
14 incoming calls but the details clearly reflect that.
15 So what I am going to do, we are going to destroy
16 your credit card information.

17 Okay, are we ready to proceed?

18 MR. WILLIAMS: Your Honor, I do want to bring
19 up some areas that I intend to tread upon lightly in
20 cross-examination, I want to bring them up now.

21 THE COURT: I can barely hear you all, I'm
22 sorry. That noise over my head.

23 MR. WILLIAMS: Judge, there are four areas I
24 want to bring up before I bring them up on cross.
25 One was as Your Honor heard earlier there was a

1 pending plea set that week of July 15th, I intend to
2 inquire about that on cross.

3 THE COURT: Why would you do that?

4 MR. WILLIAMS: Your Honor, I think it goes to
5 the defendant's motive as well as the credibility of
6 his state of mind.

7 THE COURT: The fact that he was set for a
8 guilty plea and changed his mind?

9 MR. WILLIAMS: The fact that he killed the
10 victim that was also the victim in the guilty plea
11 would alleviate him from that.

12 THE COURT: Oh, you're losing me. You are not
13 talking about a guilty plea in this case?

14 MR. WILLIAMS: No.

15 THE COURT: You need to be more specific.

16 MR. WILLIAMS: There was a pending CDV case
17 against this victim that he was set for a guilty plea
18 on the week of July 15th, the week before the murder.
19 He then went ahead and killed the victim of that case
20 that he was set to plea on.

21 And obviously, Your Honor, there is certainly
22 a high motive for him to kill the victim if she is
23 the one that the reason for that case to go forward.

24 The other was that he had bond condition in
25 that case, I have his certified bond that he is to

1 have no contact with this victim. He had signed it
2 and he was not to be within one block of her
3 residence, workplace.

4 THE COURT: I think you can mention the
5 restraining order.

6 MR. WILLIAMS: It was actually a bond
7 condition.

8 THE COURT: Yeah, but I think you might have
9 to phrase it differently. You can't bring up a
10 pending charge.

11 MR. WILLIAMS: That's why I wanted to bring
12 up.

13 THE COURT: There is a way you can phrase it.
14 I think you can say something, you know, there is
15 another way to put it. In other words that legally
16 you knew you were not supposed to be within so many
17 feet of her without going into the pending charge.

18 I think going into the pending charge would be
19 a problem.

20 MR. WILLIAMS: Finally, I did want to go into
21 another pending charge. I guess you are going to say
22 it's improper. That was what Corporal Brown told him
23 that the victim had a warrant out for him, a CDV.
24 And my reasoning is the same, Your Honor, that's
25 certainly strong motive or some motive to want to

1 kill somebody.

2 If he kills Ms. Pendergrass, he no longer has
3 two pending charges against him. One had not been
4 served, he knows they're looking for him on, and
5 another that he is set to plea on. He gets out of
6 all of that by killing her.

7 Your Honor, if we had nothing else in this
8 case, Ms. Pendergrass turned up dead, Mr. Wilson
9 would be the first person they'd go looking for
10 because he had probably the highest motive of anybody
11 out there to kill her. He had something to gain by
12 her death.

13 THE COURT: Mr. Grimes.

14 MR. GRIMES: If Mr. Williams had some evidence
15 to support that speculation it would be a different
16 story. However, this is pure speculation. I think
17 the Supreme Court case lays that out.

18 If they had that, that type of evidence, they
19 would be able to have prior bad acts. They don't
20 have anything. There is no statement, nothing saying
21 I'm going to kill you because I want to drop these
22 charges.

23 As the Court knows a lot of times between two
24 -- Ms. Pendergrass voluntarily dropped a lot of
25 charges on her own.

1 THE COURT: I'm sorry, I didn't hear you.

2 MR. GRIMES: The history between these two,
3 what I've seen Ms. Pendergrass voluntarily dropped a
4 lot of charges on her own.

5 THE COURT: Do you have evidence of that?
6 They had other CDV cases and she dropped the charges.

7 MR. GRIMES: Yes, ma'am. There's a history.
8 There was originally a satellite monitor, from what I
9 understand she went and asked for it to be taken off.
10 I'm not sure that also included the no contact
11 provision.

12 THE COURT: I'm sorry.

13 MR. GRIMES: It is my understanding that he
14 had a satellite monitor that was on. She went and
15 asked for that to be taken off. I believe that also
16 went to the no contact provision was also taken off.

17 THE COURT: You'd have to have that in writing
18 for me. I remove people's monitors all the time,
19 they still have no contact. The monitor is
20 \$700-something a month. That's why they come and
21 ask, for various reasons, one of which people are
22 usually paying child support. They don't pay the
23 child support when they have to pay \$700 for a
24 monitor.

25 That does not mean that condition was -- as

1 long as there is a court order that says that
2 provision is there, then that that would be that.
3 There would be a court order removing the monitor.
4 And by virtue of that there would also be a court
5 order removing any conditions.

6 Okay, I'm going to think about whether you
7 will be able to ask about that other stuff. You
8 definitely are going to be able to ask him about the
9 restraint, restrained from contact.

10 MR. GRIMES: We would ask that before Mr.
11 Williams inquires that we have an in-camera hearing
12 on that.

13 THE COURT: I am going to let Mr. Williams
14 know before he does anything about that. Before he
15 begins his cross, I am going to let him know what the
16 Court's decision is.

17 Is there anything further before we resume?

18 MS. CARDILLO: I would love to have a copy of
19 the phone records.

20 THE COURT: Do you have any objection to them
21 having a copy?

22 MR. GRIMES: No.

23 THE COURT: Thank you.

24 Please bring in the panel.

25 And it appears the records have a lot more

1 calls on them than were on the phone.

2 (Whereupon, the jurors enter the courtroom.).

3 THE COURT: Mr. Foreman, ladies and gentlemen,
4 we appreciate your patience. We will now resume with
5 the trial.

6 Mr. Grimes, you may proceed.

7 MR. GRIMES: Thank you, Your Honor.

8 MS. CARDILLO: Your Honor, I believe I need to
9 rest.

10 THE COURT: You sure do, I apologize.

11 Ladies and gentlemen, I apologize, we have a
12 procedural matter we need to deal with.

13 Ms. Cardillo, you may proceed.

14 MS. CARDILLO: Thank you, Your Honor. The
15 State rests at this time subject to any rebuttal

16 THE COURT: Thank you, ma'am.

17 Mr. Grimes, you may proceed.

18 MR. GRIMES: For the record I think we have
19 addressed the normal motions I would make at this
20 time.

21 THE COURT: The record is already preserved.

22 MR. GRIMES: Thank you. We call Jake Antonio
23 Wilson.

24 THE COURT: Sir, if you would come to the
25 witness stand to be sworn.

1 MR. JAKE ANTONIO WILSON,
2 after having first been duly sworn to state the
3 truth, the whole truth and nothing but the truth,
4 testified on his oath as follows:

5 THE COURT: You may proceed, Mr. Grimes.

6 DIRECT EXAMINATION

7 BY MR. GRIMES:

8 Q Mr. Wilson, get right to the heart of the
9 matter. Would you look the jury in the eye and
10 answer a couple questions for me?

11 A Yes, sir.

12 Q Did you murder Ms. Latoya Pendergrass?

13 A No, sir.

14 Q How did the shooting happen?

15 A It was an accident.

16 Q How, how did the accident occur?

17 A The accident occurred, I was playing with the
18 gun, waving it around.

19 Q And after you were playing with the gun and
20 waving it around, what happened?

21 A She hit my hand and the gun went off and shot
22 her.

23 Q And what did you do after it shot her?

24 A After the gun had shot her I called the
25 police. I called 911.

1 Q why did you call the police?

2 A I called 911 because I didn't want her to die.

3 Q When you found out she died, how did you feel?

4 A I felt sad. Really it hurt me.

5 Q Are you sorry that this happened?

6 A I am sorry.

7 Q Would you like to apologize to anyone in this
8 case?

9 A I meant to apologize to the family.

10 Q Let me go back a little bit and ask you a few
11 questions about your background, okay?

12 A Yes, sir.

13 Q What name do you go by?

14 A I go by the name Tony.

15 Q Why did you go by the name of Tony?

16 A That's short for Antonio.

17 Q Tony, how old are you today?

18 A I'm 24 years old.

19 Q And where were you born at?

20 A I was born in Charleston, South Carolina.

21 Q And how long have you lived in the Charleston
22 area?

23 A I've lived in the Charleston area for a few
24 years. I was originally living in Summerville.

25 Q And did you grow up in Summerville?

1 A Yes, sir.

2 Q Who did you live with?

3 A I lived with my grandmother.

4 Q Is there anyone in the courtroom with you
5 today?

6 A Yes, sir.

7 Q And who is here with you?

8 A My mother and my sister.

9 Q Are they over there?

10 A Yes, sir.

11 Q Apart from -- let me go back now and ask you
12 how you met Latoya.

13 A I meet Latoya through a friend of mine named
14 Jesse Austin.

15 Q When did you meet her?

16 A It was around '99 or 2000.

17 Q And after you met her, when did you start to
18 go out with her?

19 A We started to go out approximately two months
20 after we had met.

21 Q And did you have any children with Latoya?

22 A Yes, sir, I have two kids from her.

23 Q And I think we saw one of your children in
24 court. Who was that?

25 A That was Minor 1.

1 Q And what's the name of your other child?

2 A [REDACTED] Minor 2 .

3 Q Let me ask you a couple questions now about a
4 record you may have. Have you ever been convicted of
5 a felony?

6 A Yes, sir.

7 Q And was that a non-violent charge?

8 A Yes, sir.

9 THE COURT: Please approach.

10 (Whereupon, a discussion was held at the bench
11 off the record.)

12 THE COURT: You may proceed.

13 Q (By Mr. Grimes) Did that felony involve
14 breaking and entering into a house?

15 A No.

16 Q Involve any type of violence?

17 A No, sir.

18 Q Did you receive a youthful offender act
19 sentence for that?

20 A Yes, sir.

21 Q Did you plead guilty to that charge?

22 A Yes, sir.

23 Q Why did you plead guilty to that charge?

24 A I plead guilty because I was guilty, sir.

25 Q Why are you pleading not guilty to this

1 charge?

2 A Because I'm not guilty of murder or these
3 charges that I am facing right now.

4 Q Is there any reason you are pleading not
5 guilty?

6 A Yes, sir.

7 Q What are they?

8 A Because I want my daughter to know the truth,
9 that I did not murder her mother.

10 Q Now we have heard some evidence about
11 fingerprints in this case on the window. Do you
12 recall that line of testimony?

13 A Yes, sir.

14 Q Have you ever handled that upstairs window or
15 touched that upstairs window?

16 A Yes, sir.

17 Q When was the last time you did that?

18 A It was July 4th.

19 Q Of what year?

20 A Of 2007.

21 Q And how did you get into Latoya's residence on
22 July 4th of 2007?

23 A July 4th it was a holiday. And we was outside
24 with the kids. And she had asked me to fix the
25 window because the window was jammed. So I went

1 upstairs to try to fix the window and I couldn't get
2 it fixed because it was still jammed in a certain
3 spot.

4 Q And when you were trying to fix the window,
5 how did you do that?

6 A When I was trying to fix the window I had put
7 my left hand was out the window and my right hand was
8 on the window trying to get it back on track, but I
9 could not get it back on track.

10 Q So is it fair to say you still had both hands
11 outside messing around with the window?

12 A Yes, sir.

13 Q And on July 4th, 2007 did Latoya let you into
14 her house?

15 A Yes, sir.

16 Q And why was -- was there any other reason why
17 she let you in besides the window?

18 A No, sir.

19 Q We have heard some testimony about you had
20 been thrown out of the residence before. Tell the
21 jury a little bit about that.

22 A I was thrown out of the residence, it was
23 Valentine's Day. And me and her had some
24 disagreements because I wanted to spend some time
25 with her on Mother's Day.

1 Q Valentine's Day or Mother's Day?

2 A It was Mother's Day, it was Mother's Day and I
3 didn't want to spend some time with her. And she
4 wanted to go to her mother's house. So I was like,
5 it's Valentine's Day, me and you should spend some
6 time together. And we had got into a little argument
7 that day. And she had kicked me out.

8 Q Okay. Now I want to turn your attention to
9 July 7th of 2007, okay?

10 A Yes, sir.

11 Q What time did you wake up that morning?

12 A I wake up approximately nine o'clock.

13 Q And after you woke up, what did you do?

14 A After I wake up I ran a few errands.

15 Q And did you ever go downtown that day?

16 A Yes, sir.

17 Q When did you go downtown?

18 A I went downtown approximately 2:30.

19 Q Let me step back for a minute. July 7th,
20 where were you living at?

21 A I was living in Summerville.

22 Q With who?

23 A With my grandmother.

24 Q And when you went downtown, whose house did
25 you go to?

1 A When I went downtown I went Robert Tillman's
2 house.

3 Q Does Robert Tillman have a nickname?

4 A Yes, sir.

5 Q What's his nickname?

6 A His name Buba.

7 Q And how long have you known Mr. Tillman?

8 A I've known Mr. Tillman approximately six
9 months.

10 Q Where did Mr. Tillman live at?

11 A He lived right across from Latoya.

12 Q In the same community or same neighborhood?

13 A Yes, sir.

14 Q And could you see his door from her door?

15 A Yes, sir, because there is a tree but you
16 probably could see it.

17 Q And when you got to Mr. Tillman's house, what
18 did you do?

19 A When I got to Mr. Tillman's house I came over
20 there to sit outside for a little while, then I
21 picked him up and we went to Pepper Tree off of
22 Dorchester Road.

23 Q And whose house did you go to at Pepper Tree?

24 A We went to one of Buba's friend's house.

25 Q Did you know the person whose house you were

1 at?

2 A No, I didn't know the person whose house we
3 were at. I never seen her before.

4 Q When you got there, what did you do?

5 A When we got there we came in the house, we
6 were drinking, watching television.

7 Q What were you drinking?

8 A We were drinking Heinekens.

9 Q And how much did you have to drink?

10 A I had a fairly lot to drink.

11 Q When you say fairly lot, it means different
12 things to different people. Tell the jury as best
13 you can about how many Heinekens you had to drink
14 that day?

15 A Probably about a 12-pack.

16 Q You have to speak up a little bit.

17 A Probably about a 12-pack.

18 Q And if you move your chair to line up with the
19 microphone.

20 And how long were at the house in Pepper Tree?

21 A We was at the house in Pepper Tree until
22 approximately 9 o'clock, 9:30.

23 Q And at 9:00 or 9:30, where did you go next?

24 A We went to a little bar named JC's.

25 Q What did you do at JC's?

1 A When we got to JC's there was really nobody
2 there so we had left.

3 Q And where did you go after you left JC's?

4 A We went back to Pepper Tree.

5 Q What did you do at Pepper Tree?

6 A When we got back to Pepper Tree, we continued
7 drinking and watching television.

8 Q Now did you drink -- I'm going to ask you when
9 you said the 12-pack or 12 beers, was that in the
10 afternoon or does that include when you got back to
11 Pepper Tree?

12 A That includes when we got back to Pepper Tree.

13 Q And how long did you stay there at Pepper Tree
14 after you got there after you returned there from
15 JC's?

16 A We stayed there approximately two hours
17 almost.

18 Q And where did you go after you left Pepper
19 Tree?

20 A After we left Pepper Tree, that's where we
21 went back downtown.

22 Q When you say we, who did you go with?

23 A Me and Robert Tillman.

24 Q Where did you go to?

25 A We bent back to the mother of his kids house.

1 Q Is that where you picked him up at?

2 A Yes, sir.

3 Q When you got to Mr. Tillman's house, what did
4 you do there?

5 A When we got there we was playing a game named
6 pitty-patty-tonk.

7 Q What is pitty-patty?

8 A It's a card game.

9 Q And what is tonk?

10 A Tonk is another card game.

11 Q Who was winning those games?

12 A It was back and forth.

13 Q Did you play any other games while you were
14 there?

15 A Yes, we were playing Madden Football.

16 Q What team were you playing?

17 A I was playing with the Stealers.

18 Q What team was Mr. Tillman playing with?

19 A He was playing with the Colts.

20 Q Who was winning those games?

21 A It was back and forth.

22 Q So high scoring games or?

23 A Sometimes he gets his advantages on me,
24 sometimes I get advantages on him.

25 Q Is that a Play Station or an X-box?

1 A It was a Play Station Two.

2 Q And how long did you stay at Mr. Tillman's
3 playing games?

4 A Stayed at Mr. Tillman's house probably until
5 about 1:15, 1:30.

6 Q And at 1:15, while you were playing games,
7 were you drinking anything else?

8 A Yes, we was drinking still.

9 Q How much did you have to drink there?

10 A We had a few beers to drink there.

11 Q And when you say a few beers, are you
12 including those in the 12 you mentioned originally or
13 is that in addition to the 12?

14 A That was in addition to the 12.

15 Q How many total beers do you think you drank by
16 1:15 that morning?

17 A Probably drank approximately 10 beers.

18 Q How much?

19 A Approximately drank 10 to 12 beers, around
20 there.

21 Q Okay. And about 1:15 where did you go?

22 A Approximately 1:15 that's when I went to
23 Latoya's house.

24 Q How did you enter Latoya's house?

25 A I had knocked on the door and she had let me

1 in.

2 Q Did you climb up like Spiderman on the wall
3 and grab the poll and sneak in through the window?

4 A No, sir.

5 Q Sort of like do a little Tarzan and grab the
6 poll and swing up and push the window open and climb
7 in?

8 A No, sir.

9 Q Now let me ask you a question. When you went
10 into Latoya's, did you have a gun with you?

11 A Yes, sir.

12 Q Why did you have a gun with you?

13 A I took the gun for protection. I was robbed
14 in the past.

15 Q Where were you robbed at?

16 A I was robbed on Harris Street before.

17 Q And were you beat up when you got robbed?

18 A No, sir.

19 Q And is the area where Latoya lived is that,
20 would probably describe, is that a high crime area,
21 is that generally a safe neighborhood or is that sort
22 of in the middle?

23 A I think it's a high crime area.

24 Q And step back for a minute. You said you went
25 to Latoya's house, what did you do when you got

1 there?

2 A When I get to Latoya's house she was
3 downstairs talking.

4 Q Before you entered, did she let you in or did
5 you barge your way in somehow?

6 A She had let me in.

7 Q And after you -- she let you in, what did you
8 do?

9 A After she had let me in we was downstairs
10 watching TV and we was talking.

11 Q And who else was at the house?

12 A It was me, Latoya, Minor 1 and Minor 2.

13 Q What was Minor 1 doing?

14 A Minor 1 was sleeping on the couch.

15 Q And what was Minor 2 doing?

16 A Minor 2 was up in the chair.

17 Q How old was Minor 2 at the time?

18 A Minor 2 was approximately one.

19 Q And what happened after you finished talking
20 with Latoya downstairs?

21 A After we finished talking downstairs, me and
22 Latoya, we went upstairs to the bed because she said
23 she was tired.

24 Q And where were Minor 2 and Minor 1 when you
25 went upstairs?

1 A Minor 1 was downstairs. Minor 2 went upstairs
2 with us.

3 Q After you went upstairs, what happened?

4 A We went upstairs me and her was in the room
5 and we was laying across the bed.

6 Q And after you were laying across the bed, what
7 happened?

8 A We were laying across the bed, she had falled
9 asleep.

10 Q After she fell asleep, what did you do?

11 A I was up for a little while longer, then I
12 fell asleep.

13 Q Can you repeat that?

14 A I said after she fell asleep I was up a little
15 while longer and then I fell asleep.

16 Q Let me ask you a question. Where was the gun
17 at at this time?

18 A I had the gun, the gun was in my pocket.

19 Q Now I don't know much about guns, but why in
20 the world would you have a gun in your pocket when
21 you were sleeping on the bed with Latoya and Minor 2 ?

22 A I was being careless around that time.

23 Q And how long did Latoya sleep for?

24 A Latoya, she slept for approximately an hour
25 and a half because Minor 2 had got up.

1 Q After Minor 2 got up, what did Latoya do?

2 A Latoya went downstairs and she got Minor 2 a
3 sippy cup out of the refrigerator.

4 Q what were you doing at this time?

5 A At that time I was up, I got up. After a
6 while when she came back I got up and I was sitting
7 in the bed with her.

8 Q And after she came back up, what happened?

9 A When she came back up she had to feed Minor 2 ,
10 give him something to drink, some juice out of a
11 sippy cup.

12 Q And did Minor 2 fell asleep?

13 A Yes, sir.

14 Q After Minor 2 fell asleep, what happened?

15 A When Minor 2 fell asleep she was sitting on the
16 bed and then she laid back down and I laid back down.

17 Q And how long did you two lay there for?

18 A we laid down approximately an hour and a half.

19 Q After an hour and a half passed, what did you
20 do?

21 A After an hour and a half passed I got up and
22 she had get up too.

23 Q when you got up, what were you doing?

24 A when I get up I was watching the TV upstairs.

25 Q what was she doing?

1 A She was just laying in the bed.

2 Q What were you doing with the gun at this time?

3 A At this time I had got it out of my pocket.

4 Q About what time was this?

5 A This was approximately around almost five
6 o'clock.

7 Q And did you at sometime take the gun out of
8 your pocket?

9 A Yes, sir.

10 Q Why did you take the gun out of your pocket
11 for?

12 A I was taking the gun, I was being careless
13 playing around with the gun.

14 Q Why were you playing around with the gun for?

15 A Because I was being an idiot, sir.

16 Q What were you doing when you were playing
17 around with the gun?

18 A I was waving the gun back and forth.

19 Q What caused you to do that?

20 A I have no idea. Just being stupid, sir.

21 Q And as you were waving the gun back and forth,
22 what happened?

23 A When I was waving the gun back and forth,
24 that's when Latoya sit up in the bed, and she had
25 told -- first she said, Tony quit playing with the

1 gun, quit playing with the gun. I continued to play
2 with the gun. And that's when she had sit up in the
3 bed. When she had sit up in the bed I was waving the
4 gun back and forth and that's when she had hit my
5 hand and the gun went off and shot her.

6 Q And how did she hit your hand?

7 A She had hit my hand down.

8 Q And how were you holding the gun when she hit
9 your hand?

10 A I was waving it, waving the gun back and forth
11 like this right here.

12 (Witness indicating.)

13 Q Did you intentionally pull the trigger?

14 A No, sir.

15 Q Were you trying to kill her when you were
16 playing with the gun?

17 A No, sir.

18 Q I'm still puzzled. It seems strange someone
19 would play with a gun like that with the mother of
20 their children right there. You were playing with
21 the gun and she hit it?

22 A Yes, sir.

23 Q How long did that take to happen?

24 A It happened so fast. It didn't take long.

25 Q And after -- when the gun went off, how did

1 you react?

2 A When the gun went off I called 911. I was so
3 scared.

4 Q Why did you call 911 for?

5 A I called 911 because I didn't want the mother
6 of my kids to die.

7 Q And what did you do after you called 911?

8 A After I called 911 I was with the operator
9 with 911. I was waiting for EMS to arrive.

10 Q Did you try to do anything to help Latoya out?

11 A I had put my hand on her neck.

12 Q Why did you do that for?

13 A I put my hand on her neck to see if she was
14 breathing or if any blood was flowing.

15 Q Anyone told you to do that?

16 A No, sir.

17 Q After you put your hand on her neck, what
18 happened next?

19 A When I put my hand on her neck she didn't have
20 no pulse or nothing.

21 Q And what did you do?

22 A At this time, yeah, I was on the phone with
23 the operator from 911 waiting for the EMS to arrive.

24 Q And how long did it take for EMS or the police
25 to arrive?

1 A It didn't take too long for EMS and police to
2 arrive.

3 Q And after the police arrived, what did you do?

4 A After the police arrived, after the police
5 arrived I was coming downstairs and he met me at the
6 stairway. He was concerned about a gun being in the
7 house or something, and so I walked back upstairs in
8 the room where Latoya was and he came up the stairs.
9 I was away from the gun and he was like, I'm coming
10 up, I'm coming up, so he came up the stairs.

11 Q And after he came up the stairs, what
12 happened?

13 A After he came up the stairs he got closer to
14 the gun and that's when he had to tell me to take the
15 kids downstairs.

16 Q Did you do that?

17 A Yes, sir.

18 Q At any time did you try to wash your hands?

19 A No, sir.

20 Q Try to hide any -- at any time did you try to
21 hide any evidence of the shooting?

22 A No, sir.

23 Q Try to run, try to run away and get away?

24 A No, sir.

25 Q Why is that?

1 A I had nothing to hide right then.

2 Q I'm not sure if I understood your answer
3 there, you said nothing to hide right there. Do you
4 have anything to hide today?

5 A No, sir.

6 Q And after you took the children downstairs,
7 what happened next?

8 A After I took my children downstairs I was
9 right on the porch. The other police had called
10 another police or something and the other police
11 arrived.

12 Q Now at this time what was your demeanor like,
13 were you mad, were you upset, were you happy?

14 A I was upset.

15 Q How upset were you?

16 A I was real upset. I was saying, oh my baby,
17 oh my baby, oh my baby.

18 Q At this time did you know that she had died?

19 A No, sir.

20 Q And at some point I take it you were arrested?

21 A Yes, sir.

22 Q Transported to the police station?

23 A Yes, sir.

24 Q Do you remember the name of the officer who
25 took you to the police station?

1 A I'm not sure what his name is.

2 Q Have you seen him in court this week?

3 A Yes, sir.

4 Q The officer that took you to the police
5 station?

6 A Yes, sir.

7 Q Okay.

8 A I think his name was Nabinette or something
9 like that.

10 Q Officer Inabinett?

11 A Yeah, I think so.

12 Q And when Officer Inabinett took you to the
13 police station, did you talk to him while you were in
14 the police car?

15 A I told him when I was in the police car I want
16 a lawyer.

17 Q And did he get you a lawyer?

18 A No, sir.

19 Q What happened when you got to the police
20 station?

21 A When I got to the police station I was
22 downstairs in booking area and they was waiting for a
23 man to come through GPS or something to get the
24 gunshot residue off my hand.

25 Q Did you cooperate with them about that?

1 A Yes, sir.

2 Q Did they take any pictures of you while you
3 are at the police station?

4 A Yes, sir.

5 (Whereupon, Defendant's Exhibit Nos. 4, 5 and
6 6 are marked for identification.)

7 Q (By Mr. Grimes) I want to show you what has
8 been marked Defense Exhibits 4, 5 and 6. Do you
9 recognize these pictures?

10 A Yes, sir.

11 Q Are they a fair accurate depiction of how you
12 were dressed that night?

13 A Yes, sir.

14 Q How -- the clothes you were wearing?

15 A Yes, sir.

16 Q And the condition your clothes were in?

17 A Yes, sir.

18 Q All right.

19 MR. WILLIAMS: I have seen those, Judge,
20 there's no objection.

21 THE COURT: Marked and admitted without
22 objection.

23 (Whereupon, Defendant's Exhibit Nos. 4, 5 and
24 6 are admitted into evidence.).

25 MR. GRIMES: May I publish them to the jury at

1 this time?

2 THE COURT: Uh-hum.

3 Q (By Mr. Grimes) Is that the shirt you were
4 wearing that night?

5 A Yes, sir.

6 Q And I think it shows on the other one, is that
7 a Clemson shirt?

8 A Yes, sir.

9 Q Did you talk to Detective Goldstein while you
10 were at the police station?

11 A Yes, sir.

12 Q And what did you tell him about what happened
13 that night?

14 A I told him that I was downstairs when it
15 happened.

16 Q Now how come you didn't tell him it was an
17 accident?

18 A I was scared at the time. I was really
19 scared. I did not thought they would have believed
20 me. I was in and out.

21 Q Sir?

22 A I was in and out.

23 Q I'm sorry?

24 A I said I was in and out.

25 Q Was this a traumatic incident to you?

1 A Yes, sir.

2 Q How old were you at the time?

3 A I was 23 at the time.

4 Q Were you still under the influence of anything
5 at that time?

6 A At that time I was still feeling I was
7 buzzing, in a buzz.

8 Q And was Detective Goldstein, was he polite to
9 you, was he rude to you?

10 A His tone of voice was a little loud.

11 Q Apart from that was he doing anything that he
12 shouldn't have done to you?

13 A No, sir.

14 Q He didn't threaten you in anyway?

15 A No, sir.

16 Q Promise you anything?

17 A No, sir.

18 Q So you told him that you were downstairs?

19 A Yes, sir.

20 Q And had they already arrested you at that time
21 before you made your statement?

22 A Yes, sir.

23 Q Let me ask you a few questions in conclusion.
24 You do admit shooting Latoya?

25 A Yes, sir.

1 Q How far were you away from her when the
2 shooting happened?

3 A I was pretty close to her.

4 Q Say close to me and you?

5 A No, closer.

6 Q Tell me when to stop.

7 A Right there.

8 Q And you had your hand out like this?

9 A Yes, sir.

10 Q And she hit your hand?

11 A Yes, sir.

12 Q Did you intentionally shoot her?

13 A No, sir.

14 Q Did you want her to die?

15 A No, sir.

16 Q Did you break into her place without her
17 permission?

18 A No, sir.

19 Q What would you do to undo this night?

20 A What I would do is wish I would have listened
21 to her, wasn't playing with that gun, none of this
22 would have occurred.

23 Q Would you rather that you had been shot than
24 her?

25 A Yes, sir.

1 MR. GRIMES: Thank you. Please answer any
2 questions.

3 One moment, Your Honor.

4 Thank you, Mr. Wilson. Please answer any
5 questions -- Mr. Williams may have for you.

6 THE COURT: Counsel approach for me, please.

7 (Whereupon, a discussion was held at the bench
8 off the record.)

9 THE COURT: You may proceed.

10 MR. WILLIAMS: Thank you, Your Honor

11 THE COURT: You're welcome.

12 CROSS-EXAMINATION

13 BY MR. WILLIAMS:

14 Q You said you ran errands that morning?

15 A Yes, sir.

16 Q At 9 o'clock?

17 A I got up around 9 o'clock.

18 Q What was the first errand you ran?

19 A The first errand I ran is I went to the
20 Piggly-Wiggly with my mother.

21 Q Went to where?

22 A Piggly-Wiggly in Summerville.

23 Q What did you do at Piggly-Wiggly?

24 A Piggly-Wiggly in Summerville, I had to get
25 some milk.

1 Q How long were you at Piggly-Wiggly for?

2 A I was there probably 10 to 15 minutes. It's
3 close right by my mother's house.

4 Q What did you buy there?

5 A I had to get some milk.

6 Q Anything other than the milk?

7 A Just got some milk.

8 Q What did you after you went to Piggly-Wiggly?

9 A After I went to Piggly-Wiggly, then I went
10 back my mother's home.

11 Q Did you have other errands you ran?

12 A Yes.

13 Q What other errands did you run after you went
14 to Piggly-Wiggly?

15 A Other errands I run was I was running around
16 back and forth to my friend's house.

17 Q Which friend?

18 A I was with Keem.

19 Q What's his name?

20 A His name is Keem, I'm not sure what his last
21 name is.

22 Q What does he go by?

23 A That's his name Keem, I call him Keem.

24 Q What did you do at Keem's house?

25 A At Keem's, when I went to Keem's house I was

1 outside with him.

2 Q What were you doing outside with him?

3 A We were smoking cigarettes.

4 Q What kind of cigarettes?

5 A Newport.

6 Q So you went over to his house to smoke
7 cigarettes?

8 A No, I was over at the house visiting and we
9 were talking.

10 Q What time in the morning?

11 A That was probably about 10 o'clock.

12 Q What did you talk to him about at 10 o'clock?

13 A Just holding a general conversation.

14 Q You went over there to talk to him and smoke
15 cigarettes at 10 o'clock?

16 A Yes.

17 Q How long were you there talking to him and
18 smoking cigarettes?

19 A Probably about 30, 45 minutes.

20 Q What did you talk about when you were there?

21 A We was just talking about games and stuff.

22 Q What games?

23 A Like basketball games.

24 Q Did you ever talk to him on the phone?

25 A No, sir.

1 Q Could you have called him on the phone instead
2 of going there?

3 A I just took a chance by going to his house.

4 Q You said you went back and forth, you did that
5 several times?

6 A No, sir.

7 Q Where did you go after Keem's house?

8 A After Keem's house I went to my mother's
9 house.

10 Q What did you do at your mother's?

11 A At mother's house I was in the backyard with
12 my brother and we were just sitting in the backyard.

13 Q What were you doing sitting in the backyard?

14 A That was my mother's house, we was sitting in
15 the backyard.

16 Q What were you doing as you sat in the
17 backyard?

18 MR. GRIMES: Asked and answered, Your Honor.

19 THE COURT: I'm going to give him some
20 latitude.

21 Sir, you need to answer the question yes or no
22 and then you may explain your answer.

23 Restate the question.

24 Q (By Mr. Williams) What were you doing as you
25 were sitting in the backyard with your brother?

1 A I was just sitting in the backyard with my
2 brother just talking.

3 Q What were you talking about then?

4 A We was talking about cars, he just got a new
5 car.

6 Q Why did you talk about that in the backyard?

7 A My grandmother, they live on a corner lot. We
8 always got chairs in the backyard and we sit in the
9 backyard.

10 Q Smoke any cigarettes back there?

11 A Yes, I smoke.

12 Q What kind of cigarettes were you smoking back
13 there?

14 A Newport's.

15 Q How long were you in the backyard smoking
16 cigarettes with your brother at 10 o'clock?

17 A I was in the backyard with my brother probably
18 about an hour.

19 Q You just sat there talking about cars?

20 A We just sit there talking about cars, we was
21 talking about all kinds of things.

22 Q What else did you talk about?

23 A Talked about fixing the car up.

24 Q That was for an hour you said?

25 A Yes, sir.

1 Q Was that all the errands you ran?

2 A No, sir.

3 Q What was the next errand you ran?

4 A Next errand I ran is I went to the Fork of the
5 Road, a little corner store.

6 Q What did you do there?

7 A When I went to the Fork of the Road I bought
8 some sodas for the house.

9 Q What kind of sodas did you buy?

10 A I bought Sprite and I bought some Pepsi.

11 Q Big bottles, small bottles?

12 A Big bottles, two liters to be exact.

13 Q Why didn't you get them at Piggly-Wiggly?

14 A At that time, nobody had really want soda at
15 that time.

16 Q When did you talk to people about wanting
17 soda?

18 A When I came back to the house and we was
19 sitting in the backyard my brother was talking to ask
20 me to go to the store and get some sodas. So I went
21 to the store and get some soda.

22 Q You talked to him about cars, then people
23 asked you to get sodas so you went to the store?

24 A Yes, I was at my grandmother's.

25 Q And how long were you at the store for?

1 A The store is five to ten minutes down the
2 road.

3 Q After you got back from the store, what time
4 was it?

5 A Approximately -- approximately about 11:30, 12
6 o'clock probably. I'm not sure to be exact.

7 Q What did you do at 12 o'clock? 11:30, 12
8 o'clock?

9 A 11:30, 12 o'clock that's when me, my mother,
10 my sister all of us was in the yard.

11 Q What were you doing in the yard?

12 A When we be outside we sit around in the yard
13 and we talk. My grandmother was sick.

14 Q You sit around in the yard and talk?

15 A Yes.

16 Q How long did you talk for?

17 A We talked for probably about a hour or two.

18 Q So that was from say about 11:30, 12 o'clock
19 until about 2 o'clock?

20 A That was probably -- it was probably from 1
21 o'clock something like that.

22 Q Until 1 o'clock or from 1 o'clock?

23 A Until probably 1 o'clock.

24 Q What did you do at 1 o'clock?

25 A At 1 o'clock it was me, my cousin Twan and his

1 dog Trina, he has a pit bull named Trina, because I
2 had a pit bull in my backyard too.

3 Q What do you mean, the three of you went there?

4 A No, he was -- I was at my grandma's house and
5 he had came to my grandma's house. Me -- and both of
6 us have dogs.

7 Q So he came over?

8 A Yes.

9 Q What happened when he came over?

10 A When he came over that's when me and my
11 brother, we got a trampoline in the backyard, we got
12 on the trampoline, jumping around on the trampoline
13 and we had the dogs chained up so when we get up on
14 the trampoline the pit bull dog, it affects the air,
15 and they just run crazy, run around crazy.

16 Q So you jump on the trampoline to entertain the
17 dogs or the dogs to entertain you?

18 A Yes, sir.

19 Q How long did you do that?

20 A Probably about 30 minutes.

21 Q After you jumped on the trampoline, what did
22 you do?

23 A After I jumped on the trampoline that's when I
24 went in the house. I washed up.

25 Q Then what did you do when you washed up?

1 A When I was washing up, that's when my friend
2 Robert Tillman had called me.

3 Q What's his name, Robert Tillman?

4 A Yes.

5 Q That's Buba?

6 A Yes, sir.

7 Q When Buba called you, after he called you,
8 what did you do?

9 A After he called me he tell me I needed to come
10 pick him up. That's when I came from Summerville, I
11 went downtown.

12 Q Did you take the red car?

13 A Yes, sir.

14 Q Did you take your gun?

15 A Yes, sir.

16 Q Where was the gun at?

17 A The gun was on me, I had the gun on me all
18 that day.

19 Q Say that again?

20 A I had the gun on me.

21 Q Did you have the gun when you were jumping on
22 the trampoline?

23 A No, sir.

24 Q When did you get the gun, when you went to
25 wash up?

1 A Yes.

2 Q Where did you buy the gun?

3 A I bought the gun from off the street.

4 Q What did you mean off the street?

5 A I bought it from a dude.

6 Q What did you mean a dude?

7 A A man.

8 Q When you say a man, what type of man?

9 A A black male.

10 Q Was he like pawnshop, drug dealer, crackhead,
11 who are you talking about?

12 A I'm not sure if he was a drug dealer or
13 anything.

14 Q When you saw him, what did he look like?

15 A Like a normal person.

16 Q What's his name?

17 A I have no idea what his name is.

18 Q Do you have a permit for the gun?

19 A No, sir.

20 Q Was it illegal for you to own a gun?

21 MR. GRIMES: Objection.

22 THE COURT: Basis.

23 MR. GRIMES: May we approach?

24 THE COURT: Yes.

25 (Whereupon, a discussion was held at the bench

1 off the record.).

2 THE COURT: Object is withdrawn, you may
3 rephrase.

4 Q (By Mr. Williams) Did you have a permit to
5 carry the gun?

6 A No, sir.

7 Q Did he give you a receipt for the gun?

8 A No, sir.

9 Q How much did you pay for it?

10 A 80 dollars.

11 Q Did -- you weren't working as a security
12 guard, wasn't like you needed it for work?

13 A No, sir.

14 Q You didn't have any other type of reason to
15 have a gun except you wanted to carry it around?

16 A No, sir. I got robbed before.

17 Q So when did you carry it with you, just when
18 you were going certain places?

19 A No. I just had the gun that day, I was going
20 downtown to pick Buba up. And when I go downtown you
21 never know what could happen down there, it's a bad
22 area.

23 Q What time of day was it when you went over to
24 Buba's?

25 A Approximately 2:00, 2:30.

1 Q So you needed to carry a gun down to Buba's at
2 2:30 in the afternoon?

3 A I was just taking the gun with me.

4 Q Because you thought you might get robbed?

5 A You could say that.

6 Q I want to know what you want to say. Was it
7 because you thought you were going to get robbed?

8 A Yes, sir.

9 Q It wasn't like somebody said they were going
10 to rob you, you just had a generalized view?

11 A Yes, sir.

12 Q Only reason you were carrying the gun?

13 A Yes, sir.

14 Q You concealed it and put in you pocket, right?

15 A Yes, sir.

16 Q Did the dude give you the bullets too?

17 A The bullets was in the gun when I bought it.

18 Q So he sold you the full chamber?

19 A Yes, sir.

20 Q Six shots?

21 A Yes, sir.

22 Q When you get to Buba's is that when you start
23 drinking?

24 A When we get to Buba, I sit there for a little
25 while and I was waiting for him to get dressed.

1 Q Where were you are sitting?

2 A I came in the house to sit.

3 Q You were waiting for him to get dressed?

4 A Yes.

5 Q Did you start drinking then?

6 A At that time we didn't really start drinking
7 right then.

8 Q What did you do after he got dressed.

9 A Well when he was getting dressed, I came in
10 and sit on the porch, I smoked a cigarette and came
11 in the house and that's when we had left.

12 Q Where did you go when you all left?

13 A When me and Buba left, that's when we went to
14 Pepper Tree.

15 Q That's when you started drinking?

16 A Yes.

17 Q And you were drinking Heineken?

18 A Yes, sir.

19 Q What size were the bottles or cans?

20 A We were drinking 12-ounce cans.

21 Q How many of those did you drink when you were
22 there?

23 A When I was where?

24 Q At Pepper Tree?

25 A Pepper Tree I was drinking about four or five.

1 Q Four or five cans?

2 A Yes.

3 Q How long did it take you to drink the four or
4 five cans?

5 A I'm not sure.

6 Q Approximately how long?

7 A Approximately about an hour.

8 Q Where did you drink the first one?

9 A I drank the first one when I was at Pepper
10 Tree.

11 Q Where at in Pepper Tree?

12 A I'm not sure of the apartment name.

13 Q Where at in the room?

14 A I was downstairs in the living room.

15 Q Where did you drink the second one?

16 A I was downstairs in the living room be
17 drinking.

18 Q Where did you drink the third one?

19 A The living room.

20 Q The fourth one?

21 A The living room.

22 Q Where were you sitting when you drank?

23 A Would you please repeat that question again?

24 Q Where were you sitting in the living room?

25 A I was sitting at the living room table.

1 Q You drank four or five Heineken's sitting at a
2 table in the living room?

3 A Yes, we was playing, I was playing cards there
4 too.

5 Q What kind of cards were you playing?

6 A We was playing Tonk.

7 Q It's a game of skill, you've got to know what
8 you are doing, right?

9 A Yes, sir.

10 Q You were able to win games and lose games?

11 A Yes, sir.

12 Q You weren't so drunk you couldn't tell one
13 card from the other?

14 A Yes, sir.

15 Q You were able to actually outsmart other
16 players. You weren't drunk, right?

17 A Yes, sir.

18 Q So you drink those five Heineken's, you're
19 still able to play cards. Where do you go next?

20 A After we were sitting there, I did not leave
21 there until about 9 o'clock.

22 Q So you sit there and drink how many beers
23 during that time?

24 A I drink another beer. Another beer.

25 Q So probably drank six there?

1 A Approximately, I'm not sure.

2 Q Until 9 o'clock?

3 A Yes, sir.

4 Q You're still able to play cards?

5 A Yes, sir.

6 Q Did you drive away leaving the red car at that
7 point?

8 A At that point, yes, sir.

9 Q So you were able to drive?

10 A Yes, sir.

11 Q You could get in the car, turn the key, put it
12 in gear, keep it on the road?

13 A Yes, sir.

14 Q Where did you go after you drank the six beers
15 and start driving?

16 A That's when we went to a little bar called
17 JC's.

18 Q What happened at JC's?

19 A At JC's there was nobody really was there so
20 we left and went back to the house.

21 Q You did not drink anything there?

22 A No, nobody was there was no crowd so we left
23 and go back.

24 Q Go back to Pepper Tree?

25 A Yes.

1 Q How many more do you drink there?

2 A At Pepper Tree we were just sitting around
3 playing, playing cards and stuff.

4 Q You are still able to play cards?

5 A Yes, sir.

6 Q You are still winning games?

7 A Yes, sir.

8 Q And you were able to play football video
9 games?

10 A We didn't play video games, we were playing
11 cards.

12 Q So you were able to play cards while you were
13 still drinking?

14 A Yes, sir.

15 Q You were winning some games, losing some
16 games?

17 A Yes, sir.

18 Q You were able to pick the cards up, look at
19 them, play them, right?

20 A Yes, sir.

21 Q You could do all those things?

22 A Yes, sir.

23 Q After you get done drinking more beer and
24 playing cards, what did you do?

25 A We left back -- we had left from Pepper Tree

1 approximately 10:30 or 11 o'clock.

2 Q Where did you go?

3 A When we left Pepper Tree we went downtown.

4 Q Where did you go downtown?

5 A We went to the mother of Buba's baby's mother
6 house.

7 Q Is that on Johnson Street?

8 A Harris or Johnson. I'm not sure.

9 Q What did you do there?

10 A When we got there, when we had got there
11 that's when he came in the house, started playing
12 games.

13 Q That was the video games?

14 A Yes.

15 Q Did you drink more?

16 A Yes, sir.

17 Q How much more did you drink?

18 A I'm not sure to be exact right then.

19 Q You have no idea?

20 A Yeah, we was drinking a couple more beers.

21 Q So about two beers? A couple is two?

22 A At that time.

23 Q That's while you are playing the video game?

24 A We was playing video games, just doing
25 something ordinary.

1 Q Say that again?

2 A We were doing something ordinary, just playing
3 games.

4 Q You were playing games and drinking some beer.
5 Did you drink a few more beers there?

6 A I drank more than two beers.

7 Q How many did you drink while you were there?

8 A I'm not sure to be exact.

9 Q More than three?

10 MR. GRIMES: Your Honor, he's answered the
11 question.

12 THE COURT: I'm going to give him a little
13 more latitude.

14 Q (By Mr. Williams) More than three?

15 A Yes, sir.

16 Q More than six?

17 A No, I don't think it was more than six.

18 Q So between three and six?

19 A Yes, sir.

20 Q You were playing video games, right?

21 A Yes, sir.

22 Q You were able to win some games, lose some
23 games?

24 A Yes, sir.

25 Q The game requires that you be able to use your

1 fingers, watch TV, see what's happening, react to it,
2 right?

3 A Yes, sir.

4 Q You were able to do all those things?

5 A Yes, sir, at that time.

6 Q So after you get done playing the games, what
7 do you do?

8 A After I finish playing the game I would sit in
9 the couch for a little while.

10 Q How long is a little while?

11 A Approximately 5 or 10 minutes.

12 Q What are you -- where do you get on the couch
13 for 5 or 10 minutes?

14 A My head was spinning from.

15 Q So you could play video games but your head
16 was spinning?

17 A Yes, my head was spinning.

18 Q What did you do next?

19 A Next it was approximately 12:30, 1 o'clock.

20 Q What do you do then?

21 A That's when I left and I went to Latoya's
22 house.

23 Q You weren't supposed to go to her house, were
24 you?

25 A No, sir.

1 Q There was a no contact order against you for
2 going to that house?

3 A Yes, sir.

4 Q You did it anyway?

5 A Yes, sir, we see each other. We see each
6 other regardless to that contact order.

7 Q So regardless of a judicially signed no
8 contact order, you went over there?

9 A Yes, sir.

10 Q She had changed the locks on the doors, right?

11 A Yes, sir.

12 Q She bagged up your stuff and thrown it out?

13 A I'm not sure if she bagged the stuff up.

14 Q Kicked you out, right?

15 A Yes.

16 Q Judge told you not to go there?

17 A Can you repeat the question, sir?

18 Q She threw all your stuff out, changed the
19 locks and the Judge told you not to go over there --

20 MR. GRIMES: Objection, asked and answered
21 about it.

22 THE COURT: I'm going to give him a little
23 latitude on this last question. You may finish.

24 Q (By Mr. Williams) She had thrown all your
25 stuff out, changed the locks on the door, and the

1 Judge told you not to go back there and you did
2 anyway, right?

3 A Yes, sir.

4 Q With a gun that you weren't supposed to have?

5 A Yes, sir.

6 Q That was loaded in your pocket?

7 A Yes, sir.

8 Q How do you play with a gun?

9 A You look at it.

10 Q Let me ask you this, you know how to play a
11 video game, right?

12 A Yes.

13 Q You know how to play cards?

14 A Yes.

15 Q How do you play with a gun?

16 A Just being careless, waiving it around, call
17 that playing.

18 Q Show me how you play with a gun.

19 A Being careless waving a gun around, like this,
20 playing with a gun.

21 Q How was that playing? What do you mean, when
22 you say that's your definition of playing?

23 A I was being careless by moving the gun back
24 and forth.

25 Q How are you holding it?

1 A I'm holding it now because this thing here.

2 Q So that's how you hold the gun when you play
3 with it?

4 A I'm not saying to exact, this isn't the way I
5 was playing with the gun waving it, moving the gun
6 back and forth when the gun went off and shot her.

7 Q When you play your video game that's fun,
8 right?

9 A Yes, sir.

10 Q When you play cards that's fun?

11 A Yes, sir.

12 Q What's fun about playing with a gun?

13 A There's nothing fun about it, just a careless
14 mistake you can make.

15 Q You can sit down.

16 THE COURT: Put it right there in front of
17 you, sir.

18 Q (By Mr. Williams) When you say you were
19 playing with it, what do you mean?

20 A I was waving the gun back and forth.

21 Q You just said that you had gone to bed and
22 slept, right?

23 A Yes.

24 Q Get your clothes on?

25 A Yes, sir.

1 Q And a gun in your pocket?

2 A Yes, sir.

3 Q Do you always sleep with your clothes on?

4 A Majority of the time.

5 Q How often of the time that you sleep would you
6 say that you sleep with all your clothes on?

7 A sleeping with my clothes on is normal for me.

8 Q Your shoes too?

9 A No, I don't really have my shoes on all the
10 time.

11 Q Did you have your shoes on that night when you
12 slept?

13 A Yes.

14 Q Why were you sleeping with your shoes on?

15 A I was sleeping with my shoes on, that's
16 something I did.

17 Q You said you were watching television, right?

18 A At where at? What are you talking about?

19 Q At Toya's house, the woman who was murdered.

20 A Yes, sir.

21 MR. GRIMES: Objection.

22 THE COURT: Sustained to characterization.

23 Ladies and gentlemen, you will disregard the
24 solicitor's last comment and you will disabuse it
25 from your mind and you will give it absolutely no

1 consideration in your deliberation.

2 I will note your objection, we will hear it
3 in-camera and it's denied. Mr. William.

4 Q (By Mr. Williams) Mr. Wilson at Toya's house
5 you were watching TV, right?

6 A Yes.

7 Q What did you watch?

8 A It was Lifetime or something on that time of
9 night.

10 Q What was on?

11 A I'm not sure to be exact.

12 Q You know what cards games you were playing,
13 right?

14 A Yes, sir.

15 Q You know what team you were playing with
16 Madden Football?

17 A Yes, sir.

18 Q You said Pittsburgh versus -- what was the
19 other team?

20 A The Colts.

21 Q You knew how many beers you drank, right?

22 A Yes, sir.

23 Q You knew the card games that you were playing,
24 right?

25 A Yes, sir.

1 Q You don't remember what TV show you watched?

2 A I'm not sure, it was Lifetime. I'm not sure
3 what the name of the TV show because it's different
4 ones that come on.

5 Q How long did you watch it for?

6 A We was downstairs for hour and a half. I'm
7 not sure to be exact.

8 Q Hour and a half you don't remember anything
9 about what they were showing?

10 A I'm not sure to be exact what was on because
11 Lifetime wasn't be about like woman's, talking about
12 woman's and stuff.

13 Q Was it a movie?

14 A You could call it a movie, I'm not sure if it
15 was a movie or not.

16 Q What was it about?

17 A I'm not sure.

18 Q You at that point said you went upstairs and
19 went to bed with Toya?

20 A That's when at this point me, Toya and Minor 2
21 went upstairs.

22 Q And you went to bed?

23 A We didn't quite go to bed or anything.

24 Q At some point you went to sleep?

25 A Yes, sir.

1 Q Then you woke up?

2 A Yes, sir.

3 Q Then you got up and started playing with the
4 gun?

5 A I was being careless, waving the gun around.

6 Q At 5 o'clock in the morning?

7 A Yes, sir.

8 Q You do that a lot?

9 A No, sir.

10 Q What were you going to do after you got up at
11 five o'clock in the morning, what was the next thing
12 you were going to do that day?

13 A I'm not sure.

14 Q What was your plan for the day?

15 A My plan for the day, something I can't tell
16 you right there my plan for the day because I got
17 locked up early in the morning, I didn't have no
18 plans.

19 Q So you just woke up and started playing with
20 the gun?

21 A I was playing with the gun being careless when
22 I woke up.

23 Q You actually got out of bed and stood up,
24 right?

25 A I was walking, I walked around.

1 Q There's a square room, four walls, right?

2 A Yeah.

3 Q And in all the places you could have been
4 playing with that gun in that room, you aimed it
5 directly at where Toya and Quez were both sitting?

6 A Yes, sir.

7 Q You knew they were right there, you knew the
8 gun was loaded, right?

9 A Yes, sir.

10 Q Did you cock the hammer back?

11 A No, sir.

12 Q So when you were playing with the gun it
13 didn't have the hammer cocked back?

14 A It didn't have the hammer cocked back.

15 Q You are standing there waving the gun around,
16 and you say that she then sat up?

17 A Yes.

18 Q And hit your hand?

19 A Yes, sir.

20 Q Where did she hit your hand at?

21 A I'm not sure to be exact but she hit my hand.

22 Q Hold the gun like you were holding it when you
23 were waving it around at your --

24 A I can't remember how I was holding the gun.

25 Q You don't remember how you were holding the

1 gun?

2 A Yeah, I couldn't, a good year or better ago.

3 Q Say that again?

4 A I can't tell you exactly how I was holding the
5 gun right now.

6 Q Are you sure you were holding it?

7 A Yes, sir.

8 Q Which hand were you holding it in?

9 A My left hand.

10 Q You have no idea how you were holding?

11 A That's my right hand right there.

12 Q Is that how you normally hold the gun?

13 A Please repeat the question.

14 Q Is that how you normally hold the gun?

15 A You could say so.

16 Q So you know you didn't have it cocked, you
17 said that, right?

18 A Yes, sir.

19 Q Did not have the hammer pulled back?

20 A Yes, sir.

21 Q And you know that you were playing with it and
22 waving it around?

23 A Yes, sir.

24 Q But you don't know how you were holding it
25 when it went off?

1 A Yes, sir.

2 Q Obviously it was pointed at **Minor 2** and Toya,
3 right?

4 A No, sir.

5 Q It wasn't pointed at them?

6 A **Minor 2** was in the bed, Toya had sit up. I was
7 waving the gun, I was waving the gun, I was waving it
8 around and she had sit up in the bed.

9 And before she said, she was like, Tony quit
10 playing with that gun, Tony quit playing with the
11 gun. I had a hard head, I keep playing with the gun.
12 That's when she sit up in the bed she had hit my hand
13 and the gun went off and shot her.

14 Q So she actually hit your hand?

15 A Hit my hand.

16 Q What did she hit your hand with?

17 A Her hand.

18 Q And when she hit your -- which hand of hers?

19 A I'm not sure.

20 Q When she hit your hand with the gun, that's
21 when it went off?

22 A Yes, sir.

23 Q Did she ever hit the gun?

24 A I'm not going to tell you she had hit my hand
25 or not to be exact.

1 Q So she told you to stop playing with the gun,
2 sat up, reached for it, hit your hand, and then it
3 accidentally went off?

4 A Yes, sir.

5 Q You pulled the trigger, right?

6 A You could say so.

7 Q I want you to tell this jury whether you
8 pulled that trigger or not?

9 A Yes, sir.

10 Q When you pulled the trigger you were aiming
11 the gun at her, right?

12 A No, sir.

13 Q The gun wasn't aimed at her?

14 A No, I was waving the gun around. When she sit
15 up, she hit my hand, that's when the gun -- I was not
16 intendedly waiving the gun at her.

17 Q You were pointing the gun at her and waving it
18 before it went off, right?

19 A I was waving the gun, yes, sir.

20 Q And when you were doing that it was pointed at
21 her? Wasn't like it was pointed at the door, wasn't
22 like it was point at the window, it was pointed at
23 her?

24 MR. GRIMES: Objection.

25 THE COURT: Basis.

1 MR. GRIMES: Asked and answered.

2 THE COURT: Overruled.

3 Q (By Mr. Williams) of all the places it could
4 have been pointed, it was pointed at her as you were
5 waving it around, right?

6 A Yes, sir.

7 Q By what you are saying now she told you to
8 stop?

9 A Yes, sir.

10 Q You didn't do that?

11 A Yes, sir.

12 Q You kept pointing the gun at her?

13 A I kept waving the gun around.

14 Q And then you pulled the trigger.

15 A When she hit my hand, that's when the gun went
16 off, my hand hit the trigger.

17 Q So she hit your hand, then your finger hit the
18 trigger?

19 A As I can't -- I'm not going to be so she hit
20 my hand or she hit the gun.

21 Q Your memory gets a little bit worse when that
22 stuff comes up, doesn't it?

23 A Yes, sir.

24 Q You can remember what video games you were
25 playing, what the teams were, what cards you were

1 playing, but when it comes to when you shoot somebody
2 in the head your memory is not so good?

3 A No, sir.

4 Q So **Minor 1** 's four years old at the time,
5 right?

6 A I believe so.

7 Q And **Minor 2** is a year old?

8 A Yes, sir.

9 Q And you just shot Toya in the head, right?

10 A It was accidental.

11 Q You shot her in the head, right?

12 A Yes, sir.

13 Q You then drop the gun on the floor?

14 A Yes, sir.

15 Q You don't help the woman you just shot in the
16 head, do you?

17 A Yes, sir. I helped her.

18 Q You put your hand on her neck, that was
19 helping her?

20 A Yes, sir.

21 Q Your phone works fine in that room, doesn't
22 it?

23 A I called 911.

24 Q And it worked perfectly fine up there in that
25 room?

1 A Can you repeat that question?

2 Q Your phone worked perfectly fine up in that
3 room?

4 A Yes, sir.

5 Q It's pretty busy down there, a lot of people
6 out on Johnson Street all time at night, right?

7 A You could say so.

8 Q People down there, it's populated?

9 A Yes, sir.

10 Q Instead of staying up there trying to save her
11 life, instead of staying up there trying to keep a
12 loaded gun away from a child, you run outside and
13 start screaming and yelling and putting on a show?

14 A No, sir. At this time when she was shot I
15 grabbed Minor 1, Minor 1 came upstairs, Minor 1 came
16 upstairs. When Minor 1 was coming upstairs I grabbed
17 Minor 1 from coming upstairs and I had Minor 2 in my hands
18 too.

19 This is when I stepped over the gun and I
20 kicked the gun closer by the door to get the gun
21 closer from being by my kids.

22 Q You run outside and start putting on a show
23 about, oh my baby, oh my baby?

24 A I was not putting on no show.

25 Q Calling 911, yelling on the phone where

1 everybody can see you, right? Right?

2 A No, sir. I was trying to help her.

3 Q You heard the 911 tape, right?

4 A Yes, sir.

5 Q Where you're screaming and all the sudden you
6 tell somebody, what the F do you think happened, or
7 something like that?

8 A Somebody out there said something to me and
9 I'm not sure what I said to them. But he made me out
10 of my character.

11 Q It what?

12 A It made me out of my character.

13 Q What do you mean by out of your character?

14 A It mean --

15 MR. GRIMES: Objection, Your Honor.

16 THE COURT: Basis?

17 MR. GRIMES: May we approach?

18 THE COURT: Yes, sir.

19 (Whereupon, a discussion was held at the bench
20 off the record.)

21 THE COURT: You may proceed.

22 Q (By Mr. Williams) You said it was just got in
23 your character, that was your character?

24 A Can you please repeat that question?

25 Q Well, you are down there on 911 for the whole

1 street to see yelling, oh my baby, oh my baby,
2 somebody says something to you and you basically
3 curse him out?

4 A No. Me and somebody was arguing.

5 Q What was that argument about?

6 A I'm not sure, she had said something smarter
7 and I tell her -- I forget what I told her.

8 Q But it wasn't any concern whatsoever about a
9 woman upstairs dying, it was you were upset about
10 somebody insulting you?

11 A Yeah, she insulted me.

12 Q Then you stop all the carrying on, hollering
13 on the phone and tell her off?

14 A No, sir. I said one thing to her, that was
15 it.

16 Q What did you say to her?

17 A I'm not sure. It was on the 911 tape what I
18 said to her.

19 Q And then after you get done saying that you go
20 back to screaming and yelling, right?

21 A I was screaming and yelling because she said
22 something to me, I said one word to her, I was
23 screaming and yelling, I was scared.

24 Q You could have been upstairs comforting a
25 dying person, right?

1 A I came downstairs, I came downstairs was
2 waiting on the EMS or the police to arrive.

3 Q You could have done all that upstairs and you
4 never did, right?

5 A You could say so.

6 Q You never had a drop of blood on you, did you?

7 A I'm not sure.

8 Q You heard the detective say, I ran in there,
9 turned my back to a gun, put a wrap on her head and
10 stayed there with her knowing that there was somebody
11 out there that had done this. You heard him say
12 that, right?

13 A Yes.

14 Q Wasn't what you did. You ran outside and
15 started yelling in the courtyard?

16 A I was not yelling, I was scared, I called the
17 police.

18 Q And then you get a chance to talk to the
19 police?

20 A Yes.

21 Q And you tell them that nobody in there did it?

22 A Yes, sir. I should have been honest with the
23 police. I was scared at the time.

24 Q What does scared have to do with it?

25 A I thought they would not believe me.

1 Q You were scared they wouldn't believe you so
2 you didn't tell them the truth?

3 A That's what I thought in the day, I just want
4 to be honest, I want the truth, I'm telling the truth
5 right now.

6 Q You told them that nobody there did it, right?

7 A I'm not sure to be exact what I tell them.

8 Q Now you don't remember what you told them?

9 A I'm not sure to be exact what I tell them.

10 MR. GRIMES: Objection, mischaracterizes.

11 THE COURT: Please refrain from any editorial
12 comments, Mr. Williams.

13 You may rephrase the question.

14 Q (By Mr. Williams) Did you tell them you heard
15 the gun go off as you were going up the stairs?

16 A Yes, sir.

17 Q Did you tell them that you didn't shoot her?

18 A Yes, sir.

19 Q Those things weren't true, right?

20 A It was not true.

21 Q After you tried that story and it didn't work,
22 now you come up with this one, right?

23 A No, sir. Today is not a story, I'm telling
24 the truth of what happened.

25 Q You told them that story because you did not

1 want to get in trouble. You were scared that you
2 were going to get in trouble, right?

3 A No, sir.

4 Q What were you scared of?

5 A I was scared, I thought they would not believe
6 me of what had happened.

7 Q And if they did not believe you you would get
8 in trouble, right?

9 A Yes, sir.

10 Q You were scared that you were going to get in
11 trouble so you wouldn't tell them the truth?

12 A Yes, sir.

13 Q And this is the exact same circumstances,
14 isn't it?

15 A No, sir.

16 MR. GRIMES: Objection.

17 THE COURT: Basis.

18 MR. GRIMES: Withdraw the objection.

19 THE COURT: Objection withdrawn.

20 Q (By Mr. Williams) You are no longer worried
21 about getting in trouble?

22 A I'm not -- please rephrase what you just said.

23 Q You are not worried about getting in trouble?

24 A I am worried about getting in trouble.

25 Q And the best thing you can come up with this

1 time around is, I was waving a gun around when
2 somebody hit my hand and it went off?

3 A That's not the best thing, that's the truth of
4 what happened.

5 Q That's the truth today as you are telling it
6 this time, right?

7 A Yes, sir.

8 MR. WILLIAMS: Nothing further.

9 THE COURT: Any redirect of the witness?

10 MR. GRIMES: Yes, ma'am.

11 THE COURT: You may proceed.

12 REDIRECT EXAMINATION

13 BY MR. GRIMES:

14 Q Mr. Williams asked you a lot of questions
15 about what you were doing that day, specific times,
16 who you were with. Were you keeping a diary or
17 anything that day?

18 A No, sir.

19 Q How many months ago was that?

20 A That was approximately 16 months ago.

21 Q And he asked you a lot of questions about how
22 this happened, about you aiming at her, did you aim
23 the gun at her forehead as the doctor said, like
24 that?

25 A No, sir.

1 Q Did you walk up to her and take the gun and
2 point it at her and shoot her pointblank?

3 A No, sir.

4 MR. WILLIAMS: Objection, Your Honor.

5 THE COURT: Basis?

6 MR. WILLIAMS: Leading.

7 THE COURT: Sustained, leading. Rephrase.

8 Q (By Mr. Grimes) How did you walk up to her?
9 or did you walk up to her?

10 A I was walking around the room, and when I was
11 walking around the room because the bed is real low
12 to the ground. The only thing on the bed is a box
13 spring and a mattress, so it's low.

14 Q When you were waving the gun, where was the
15 gun aimed at?

16 A When I was waving the gun I was basically --
17 basically aiming at the window.

18 Q And when she hit your hand, how hard did she
19 hit your hand?

20 A She hit my hand pretty hard.

21 Q And do you recall where at she hit you?

22 A I'm not sure to be exact.

23 Q Did you intentionally pull the trigger?

24 A No, sir.

25 Q When you found out she passed away, how did

1 that make you feel?

2 A I felt sorry.

3 Q Are you sorry that this happened?

4 A Yes, sir. I would like to apologize to the
5 family for putting them through this.

6 Q Did you plan to go there and plan to kill her?

7 A No, sir.

8 MR. WILLIAMS: Objection, Your Honor, leading.

9 THE COURT: Sustained, leading.

10 Q (By Mr. Grimes) What were you thinking when
11 you went into her house that night?

12 A I was just thinking of spending time with her.

13 Q What were you were planning to do with the gun
14 that night?

15 A I didn't have no plans to harm nobody or
16 nothing.

17 MR. GRIMES: Thank you, Your Honor. No
18 further questions.

19 THE COURT: Sir, you may step down.

20 Ladies and gentlemen, we are going to take
21 advantage of this break in testimony to take a
22 10-minute afternoon recess. We will break until
23 3:30.

24 During that break please don't discuss the
25 case and leave your notepads in your seats. Enjoy

1 your break.

2 (Whereupon, the jurors exit the courtroom.)

3 THE COURT: We'll take a 10-minute recess.

4 You all may refresh yourselves.

5 Mr. Grimes, who's your next witness going to
6 be?

7 MR. GRIMES: Dr. Ostrowski.

8 THE COURT: Is he here already.

9 MR. GRIMES: Yes, ma'am.

10 THE COURT: Who will be next after that?

11 MR. GRIMES: Mr. Hollifield.

12 THE COURT: Is he here?

13 MR. GRIMES: Yes, ma'am.

14 THE COURT: Okay. Then who is it that you are
15 not calling I guess is what I need to find out.

16 MR. GRIMES: I don't believe we are going to
17 call Samuel, Sally, Mr. Tillman and I think --

18 THE COURT: So we are going to have Denishia
19 Watson --

20 MR. GRIMES: No Denishia Watson.

21 THE COURT: So we just have the two experts
22 left?

23 MR. GRIMES: Detective Goldstein I probably
24 will be calling.

25 THE COURT: Did you have any luck or can you

1 give any progress on whether you plan to call an
2 expert for the cell phone?

3 MR. GRIMES: I doubt that at this time.

4 THE COURT: Just keep me posted.

5 MR. GRIMES: May recall Ms. Pendergrass.

6 THE COURT: Okay, just let me know.

7 MR. GRIMES: Thank you, Your Honor.

8 THE COURT: Okay, enjoy your break.

9 (Whereupon, a recess was taken.)

10 THE COURT: Is the State ready to proceed.

11 MS. CARDILLO: Yes, Your Honor.

12 MR. GRIMES: Defense ready to proceed?

13 THE COURT: I gave the jury a little longer
14 break, they wanted some drinks and stuff.

15 MR. GRIMES: May we briefly approach?

16 THE COURT: Yes.

17 (Whereupon, a discussion was held at the bench
18 off the record.)

19 THE COURT: State ready to proceed?

20 MS. CARDILLO: Yes, Your Honor.

21 THE COURT: Is the defense ready to proceed?

22 MR. GRIMES: Yes, ma'am.

23 THE COURT: Please bring in the jury.

24 (Whereupon, the jurors enter the courtroom.)

25 THE COURT: Ladies and gentlemen, bear with us

1 one moment.

2 (Whereupon, a discussion was held at the bench
3 off the record.)

4 THE COURT: You may proceed.

5 MS. MULLANEY: At this time defense calls Dr.
6 Ron Ostrowski.

7 DR. RONALD OSTROWSKI,
8 after having first been duly sworn to state the
9 truth, the whole truth and nothing but the truth,
10 testified on his oath as follows:

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MS. MULLANEY:

14 Q Hello, Dr. Ostrowski.

15 A Hi.

16 Q Can you give the jury your educational
17 background, please?

18 A Relative to forensic science I have a master's
19 degree in population genetics and a Ph.D. in
20 molecular genetics.

21 Q And population and molecular genetics are the
22 two subspecialties used in forensic DNA analysis; is
23 that correct?

24 A That's correct.

25 Q And can you tell the jury a little bit about

1 your professional experience?

2 A I'm a retired professor of genetics. I was a
3 professor at UNCC Charlotte for 34 years where I
4 taught genetics, genetics lab, medical genetics and
5 DNA profiling which is a subject in forensic science.

6 Q And, Doctor, are you being paid to testify
7 here today?

8 A Yes, I am.

9 Q What is your hourly rate?

10 A Actually I'm being paid for my expertise, not
11 to testify.

12 Q That's correct, for your expertise.

13 A I charge \$195 an hour.

14 Q When did you first begin to do molecular DNA
15 research?

16 A In 1968 as a graduate student.

17 Q And can you tell the jury about the relevant
18 professional societies that you are affiliated with
19 and a member of?

20 A I'm a member of the Forensic Academy of
21 Science, the Society for Human Genetics.

22 Q And have you ever been published, Doctor?

23 A Yes, I have.

24 Q Have you ever given lectures?

25 A Yes, I have.

1 Q And in fact you have been a professor so
2 you've given numerous lectures?

3 A Yes.

4 Q Is that fair to say? Approximately how many
5 criminal cases involving DNA profiling have you been
6 involved in?

7 A In excess of 400.

8 Q And have you ever testified in court
9 proceedings before?

10 A Yes, I have.

11 Q And approximately how many times?

12 A I would guess 25 or 30 times.

13 Q Have you been qualified as an expert on
14 previous occasions?

15 A Yes, I have.

16 MS. MULLANEY: At this time, Your Honor, I
17 move to have the Doctor qualified as an expert in
18 population, molecular genetics.

19 THE COURT: Any objections or questions?

20 MR. WILLIAMS: If I may voir dire briefly,
21 Your Honor?

22 THE COURT: You may proceed.

23 VOIR DIRE EXAMINATION

24 BY MR. WILLIAMS:

25 Q Doctor, have you testify in general sessions

1 in Charleston County before?

2 A I'm not sure the term general sessions.

3 Q Circuit court? In these courtrooms in
4 Charleston?

5 A I have been in this courtroom -- this building
6 before, I don't remember if I testified or not.

7 Q How many times have you testified in general
8 sessions court in South Carolina?

9 A Probably four or five.

10 MR. WILLIAMS: No objection, Your Honor.

11 THE COURT: So admitted.

12 Please restate the area where you are
13 qualifying him.

14 MS. MULLANEY: It's population molecular
15 genetics.

16 Q (By Ms. Mullaney) And, Doctor, tell us
17 exactly what is that?

18 A What -- typically in forensic sciences you've
19 heard now about the DNA, there are samples collected,
20 and DNA studies are done on the samples collected.
21 That is the white lab coats, the test tube, that sort
22 of thing.

23 Once there is a so-called match between an
24 evidentiary sample and person or persons involved in
25 the case, then a population genetics question is

1 asked, that's strictly a math science. That's guys
2 in green visors sitting at computers. And that
3 question asks -- that science answers the question,
4 how many other people on the face of the earth may in
5 fact match the evidence.

6 Q Doctor, you have had a chance to read and
7 analyze DNA evidence in this case?

8 A Yes, I have.

9 Q Would you please give us an overview of DNA
10 technology and how it works?

11 A May I use the visuals for that, please?

12 Q Yes, please.

13 MS. MULLANEY: Is it okay, at this time, Your
14 Honor, may I have Dr. Ostrowski?

15 THE COURT: Yes, you may.

16 A Just a quick overview to put what I am about
17 to say to put the evidence in context, I would like
18 to give you a quick, simple overview of how this
19 technology works. In this particular case samples
20 were collected from Mr. Wilson, a known sample, a
21 blood sample. A sample from Ms. Pendergrass, a known
22 sample. Samples from a swabbing of the gun. And
23 samples of fingernail scraping from Ms. Pendergrass.

24 So on each one of those pieces of evidence if
25 you will, each one of those samples, the following.

1 technology was done one at a time.

2 Let's start with the simple blood from Mr.
3 wilson. The blood is put in a test tube about that
4 big. And chemicals are added to break open the cells
5 releasing the DNA. When the DNA is released,
6 chemicals are then added to the solution for a
7 technology called PCR, that stands for polymerase
8 chain reaction, it sort of a Xerox.

9 This technology allows the laboratory person
10 to make multiple copies of 16 loci from the DNA.
11 I'll explain loci in just a bit. So there are 16
12 genotypes, if you will, that are looked at that have
13 been amplified, Xeroxed.

14 while the amplification is going on,
15 fluorescing molecules are attached to these genos.
16 Because you cannot see DNA with the naked eye, you
17 have to have some method of visualizing that DNA.
18 And that method is done with these fluorescing
19 molecules. They pass through a computer, through a
20 software, exciting the computer and giving a
21 printout.

22 So we have got a collection of cells, release
23 of DNA in a test tube, millions of copies being made.
24 Then those copies are run through a big soda straw, a
25 tube about that big, filled with a gel-like

1 substance. DNA has a negative charge to it. So the
2 DNA is injected at one end, in this case let's say
3 Mr. Wilson's DNA, at this end is the positive pole
4 and this end is the negative pole.

5 when the collection turns and it goes through
6 the straw, the DNA moves, the negative DNA moves to
7 the positive pole firstly, and secondly moves
8 according to the size. The smaller the piece of DNA,
9 the smaller genes move faster than the bigger genes.

10 The software then prints out something called
11 an electropherogram. This is an electropherogram
12 from the known blood sample of Mr. Wilson. And just
13 to get you organized, think soda straw from here to
14 here, the DNA was injected at that end, and all these
15 run through that same straw at the same time.

16 These genes here are called DA, D21, D7, CSF
17 and they're simply given that name simply by the
18 person who discovered them.

19 DA are smaller than D21, which are smaller
20 than D7 which is smaller than DSF. So as they move
21 this way through the tube, these come out first. And
22 remember, these have fluorescing molecules attached
23 to them, so the fluorescing molecules excite the
24 computer and the computer gives a peak for the genes
25 that are at the given locus.

1 So this is the D8 locus; one of these pieces
2 of DNA comes from mom, one comes from dad. Half from
3 mom, half from dad.

4 Along this border here is the number of
5 fluorescing units. It's the same way we use to
6 measure little units. So this is called an RFU,
7 Relative Fluorescing Unit, remember these are
8 fluorescing molecules that excite the computer.

9 This peak represents a gene that has -- you
10 probably cannot see this way back in the jury box --
11 has number 14. That says inside this piece of DNA
12 there are 14 repeats of a particular section of DNA
13 germane to this kind of DNA science. So this one has
14 14 repeats, this one has 15 repeats. So no surprise
15 then, 14 is going to move more quickly through the
16 gel than 15.

17 Now as you can see all these are running at
18 the same time, there is overlap between D3 and D8 and
19 TH01 and D21. The way the computer recognizes these
20 from these, and those and those, is that these are
21 labeled with a different color fluorescing light;
22 usually blue, then green, then yellow.

23 So the beauty of technology is the computer
24 can say, I'm just going to be excited about the blue
25 ones and make this pattern, then get excited about

1 the green ones and make that pattern, et cetera. So
2 this is called an electropherogram. This is the
3 known profile for Mr. Wilson.

4 A blood sample was also taken from Ms.
5 Pendergrass. This is her known DNA profile being
6 exposed to the same technology. And just for
7 discussion's sake and a point of interest, as you can
8 see for locus D8, Mr. Wilson is 14/15, so is Ms.
9 Pendergrass. In other words, we share a lot of genes
10 in common even though we are unrelated. So these two
11 patterns are identical.

12 Also at gene TH01, they are both 6/7. Again
13 the point being even though these are two totally
14 unrelated individuals, they can share some genetic
15 material in common.

16 Q (By Ms. Mullaney) If I could just stop you
17 there. So what you're saying is even though Ms.
18 Pendergrass and Mr. Wilson are not related they still
19 have the same gene, they still share the same gene?

20 A At two loci, each one of these being a locus,
21 loci being plural. And if you count them, there are
22 15 loci including this one here which tells gender.
23 If just an X peak appears that means this is from a
24 female, normal female. If an X and a Y appears it's
25 from a normal male.

1 So we are also able to distinguish male stuff
2 from female stuff.

3 Now probably the major piece of evidence in
4 this case was a swabbing from the gun. Again the
5 same technology, here are the various loci.

6 First of all you notice that there are no
7 results for D7, CSF, D16, D2, TPOX, D18 and FGA. No
8 results for those loci. This is not a perfect
9 science. It's a marvelous science, but not a perfect
10 science.

11 And the PCR mechanism I mentioned earlier was
12 simply not able to make millions of copies of that,
13 that, that, that, and that. So what was left is just
14 these loci here.

15 And what you see is a 14 and a 15, which is
16 consistent at D8, which is consistent with Mr.
17 Wilson. There is no result for him here, know
18 straight genotype. At D3 he is 14/16, that's
19 consistent with him. At TH01 as I already said he is
20 6/7, that's consistent with him. D19 he is there.
21 vWA he is there. D5 he is there. Absolutely no
22 surprise. We have heard testimony that he held the
23 gun, so it's not surprising that his DNA would be on
24 the gun on the swab.

25 You also find that, remember that she is, Ms.

1 Pendergrass is 14/15 at D8. Now that result does not
2 tell you if it's her DNA alone, his DNA alone, or DNA
3 from both of them because if their genotypes are
4 identical, they're both going to go through the same
5 place.

6 So again as this marvelous as this technology
7 is, it cannot distinguish whether it's one of them,
8 either one of them or both of them. Same thing can
9 be said here for TH01.

10 We also find that at locus D3, you find her 17
11 allele. Gene. So what we have -- we have him at six
12 places at this time. We have her at least at one and
13 two and perhaps a third one. And the issue here, the
14 issue here is going to be do you count this one or
15 not?

16 SLED sets a threshold of how many RFU's you
17 need to have to excite the computer to call it
18 reliable data. Their RFU value is 150. These
19 numbers below the gene numbers are the RFU values.
20 So below 14 is 158, below 15 is 188, SLED would say,
21 that's above our 150, we will count that. We will
22 consider that real data.

23 Below 17 it's 94. Now that's below the 150 so
24 their report says, we can't include her because
25 that's below 150. First of all they have to include

1 her because there's a match for her at D8 and TH01.
2 she's there. So the issue becomes, the issue becomes
3 the size of these peaks, the RFU data.

4 Now when I first received this
5 electropherogram, I looked at this and I say, there
6 is a 29 here obviously, and you can see that little
7 tiny peak there, that's consistent with a 28. Ms.
8 Pendergrass is a 28/29.

9 So at first blush you look at that and you
10 say, right there at their baseline you see the
11 remnants of her peak. You find the same thing here.
12 You find the same thing here, here, here and here.
13 In other words at another seven loci, another five
14 loci, you find hints of a peak that are consistent
15 with Ms. Pendergrass.

16 So I'd like to give you an analogy to make a
17 point of what was done with the evidence. Six foot
18 fence. This fence is the threshold, the threshold is
19 six feet. In other words, we cannot see anything
20 unless it's above six feet. That doesn't mean there
21 is no one else behind the fence, it simply says that
22 because we have set our fence at six feet, all we see
23 are the people behind the fence that are six feet or
24 taller.

25 Q If I could stop you. When you say six feet,

1 a six-foot fence, that is what is SLED is setting as
2 the 150 figure, correct?

3 A That would be analogous to SLED setting the
4 150. What has been done with the evidence, SLED's
5 evidence is to lower the fence, you take the fence
6 down and ask the question if there is anyone else
7 behind the fence.

8 Because remember we were seeing just the tips
9 of heads on that slide, electropherogram from the
10 gun. So Mr. Grimes, through the discovery process,
11 got the CD from SLED, their data, that's called the
12 raw electronic data, it's their data generated from
13 the computer.

14 That CD was sent off to a laboratory in
15 Dayton, Ohio called Biochromatics, they are both
16 nationally and internationally renowned for their
17 work in forensic genetics. And when they ran the
18 data only lowering the threshold, dropping the
19 threshold from 150 to a much lower threshold.

20 Q So you analyzed this evidence both from SLED?

21 A Thank you, I did not do the analysis.

22 Q You got the information from SLED?

23 A Yes.

24 Q The electropherogram that you showed was
25 actually from SLED?

1 A The first three are from SLED. Those were
2 given us from SLED, this is simply a Xerox copy that
3 has been blown-up.

4 Q Then you sent it to an independent agency?

5 A The disk was sent to an independent agency,
6 the raw data. Not the electropherogram, it's
7 literally a CD with all the data recorded on the CD,
8 and that was sent off to a computer laboratory.

9 Q Why would you send that information to an
10 outside laboratory?

11 A One, how do you say this diplomatically, so
12 that we have nothing to do with analyzing the data,
13 our hands are not on analyzing the data. They're an
14 unbiased commercial laboratory, sent it to them, and
15 these then are the results I am about to share with
16 you.

17 Q Is that laboratory scientifically reliable?

18 A Yes, they are. They are internationally
19 known, people rely on them from around the world.

20 So these next three slides represent what the
21 Biochromatic folks found when they lowered the
22 threshold. Now anticipating people looking from some
23 distance away, I colored in Ms. Pendergrass's
24 alleles; they are yellow and red.

25 She is there, she is there, she is there,

1 there, there and there. She's at D19 and vWA and
2 she's at D5. In other words, her alleles show up at
3 eight different loci.

4 Not only do her alleles show up at eight
5 different loci, on the swab of the gun Mr. Wilson
6 shows up six times. When you lower the threshold,
7 another two are added to his profile. In other
8 words, further verifies that's in fact his DNA on the
9 gun.

10 Again with the threshold lowered, it
11 demonstrates that her DNA is on the gun in smaller
12 amounts because the peaks were much smaller than his
13 and that is consistent with, scientifically, that is
14 consistent with what has been testified to here
15 today. Someone holding the gun, someone hitting the
16 gun and just depositing small amounts on the gun that
17 somebody is holding.

18 Q But, Doctor, Mr. Bogan testified from SLED
19 that he excluded Ms. Pendergrass's DNA?

20 A If you set the threshold at 150, which SLED
21 does that, then -- I disagree, he would exclude one
22 of the loci, that's 17. He cannot exclude -- based
23 on that, they cannot exclude for D8 and TH01 because
24 both individuals have the same genotype. So Ms.
25 Pendergrass, you can argue, is on here.

1 Q So, Doctor, is it scientifically reliable to
2 set the standard below the 150?

3 A Well, not all laboratories use 150. Some labs
4 use below 150. And I am under the impression that
5 the FBI is at 100, but that's been going down and
6 down for years as people are getting more comfortable
7 with this. And at meetings there has been discussion
8 of some people going to 75 RFU's and as low as 50
9 RFU's.

10 Q Then, Doctor, can you tell us to a degree of
11 scientific certainty whether in fact Ms.
12 Pendergrass's touch DNA was on that gun?

13 A The report sent to along with these results
14 from Biochromatics puts a caveat there, these are
15 results she is there, but release with caution and I
16 agree with that. They're below the threshold, but
17 good science says you have to look at all the
18 information. You just can't pick and choose bits and
19 pieces that fit a particular theory.

20 And all the information here says that both
21 individuals are on this gun. Hers being the lesser
22 amount of DNA.

23 Q And in fact were you able to break it down
24 even further, is it possible that there is somebody
25 else's DNA on this gun?

1 A That's both the positive and the negative of
2 this particular technology. The people in the
3 laboratory wear gloves because if you just touch
4 something you can leave your DNA on an evidentiary
5 sample and contaminate it.

6 So on this gun other people, in trace amounts,
7 other people's DNA is just not surprising. Someone
8 handing the DNA -- the gun to Mr. Wilson, et cetera.

9 Q So, Doctor, what is your opinion about the DNA
10 evidence and exactly how it relates to this case?

11 A The DNA evidence is that from the lower
12 threshold you can confirm that Mr. Wilson is there,
13 in fact two more genes confirm it's his DNA, and you
14 also find the same number of alleles, loci if you
15 will, from Ms. Pendergrass. There were eight from
16 Wilson, eight from Pendergrass.

17 Q And, Doctor, are there any limitations on
18 this? Are you able to tell us for example when the
19 gun was touched?

20 A No. DNA doesn't say when it was touched or
21 what was being done with the gun when it was touched.

22 Q Or for how long the gun was touched?

23 A Or for how long the gun was touched.

24 MS. MULLANEY: Thank you, Doctor.

25 THE COURT: Any cross-examination of the

1 witness?

2 MR. WILLIAMS: Yes, Your Honor.

3 THE COURT: You may proceed.

4 CROSS-EXAMINATION

5 BY MR. WILLIAMS:

6 Q Doctor, did you -- you saw the SLED report
7 that was done in this case, right?

8 A Yes, I did.

9 Q You reviewed that as part of your preparation?

10 A Yes, sir.

11 Q There were conclusions made in that report
12 that basically said that people could or could not be
13 excluded as contributors to the DNA, right?

14 A Yes, sir.

15 Q And you talked about your background and your
16 experience. And part of what it sounds like your
17 expertise is isn't actually quantifying the
18 possibility of somebody being a match, meaning one in
19 two trillion people have this same DNA profile?

20 A Well population genetics was not done in this
21 case that I know of.

22 Q Right. But that's part of your expertise?

23 A Yes, sir.

24 Q Population genetics?

25 A Yes.

1 Q That wasn't done in this case?

2 A No, SLED did not do that.

3 Q And that was because they did not have enough
4 information? There wasn't enough DNA there to
5 actually say, this matches a particular person?

6 A No, there is enough DNA to do population
7 genetics.

8 Q That wasn't done here?

9 A It was not done.

10 Q Did you do it?

11 A Didn't need to because of the particulars of
12 this case.

13 Q What are the particulars about this case that
14 caused you not to do that?

15 A Well, he admits holding the gun so there is no
16 sense in asking a population question as to how many
17 other people in the world would match that DNA.

18 Q Did you talk to him?

19 A I have never met the man before. Saw him for
20 the first time today.

21 Q When did he admit to you that he held the gun?

22 A I was told by the attorneys that he held the
23 gun.

24 Q Okay. So the information you had in this case
25 came from his lawyer?

1 A Yes, sir.

2 Q Did you talk to the prosecutor.

3 A No, sir.

4 Q Did you read the police reports?

5 A I read what was sent to me in terms of the
6 reports.

7 Q Did you read the statement and the report of
8 Sgt. Goldstein where he said the defendant said he
9 didn't shoot the gun?

10 A No, sir, I did not see that report.

11 Q Did you not see it because they did not give
12 it to you?

13 A Apparently not. I didn't see it and that's
14 because they did not give it to me.

15 Q Did they give you the statement where other
16 police officers said the defendant was walking up the
17 stairs and heard a gunshot go off?

18 A No, sir.

19 Q So the defense attorneys didn't give you any
20 information in this case where the defendant said he
21 didn't have the gun?

22 A They gave me some information verbally, but
23 basically they gave me the DNA information to look at
24 and analyze.

25 Q What police reports did they give you?

1 A Based on what you're saying, obviously not
2 that or those police reports.

3 Q I want to know which ones they did give you.

4 A I'd have to look at my folder.

5 Q Can you go ahead and look?

6 A Sure. It states DNA folder.

7 Q They didn't give you any police reports?

8 A No, sir. And sometimes -- and in fact when I
9 do a case I don't read the information about the --
10 the background information about the case until after
11 I've looked at the DNA because that can influence
12 your analysis of the DNA, intentionally or
13 unintentionally. So it's best not to see that
14 information from my perspective.

15 Q So you don't want to know what happened?

16 A I do after I have seen the DNA. But verbally
17 we've had conversations on the phone, and Mr. Grimes
18 told me that in fact Mr. Wilson held the gun.

19 Q Why wouldn't you want all the information?

20 A In this case that was all the information I
21 apparently needed.

22 Q Do you think having more information would be
23 better than having less?

24 A You can never have enough information in my
25 opinion.

1 Q So it was apparently enough because that's
2 what the defense attorney gave you?

3 A Well, my job here is to analyze the DNA --

4 MS. MULLANEY: Objection, Your Honor.

5 THE COURT: Basis?

6 MS. MULLANEY: It's misleading.

7 THE COURT: Overruled, goes to the foundation
8 of his opinion.

9 A I was sent DNA evidence to analyze and asked
10 what it meant.

11 Q (By Mr. Williams) And even if -- if they had
12 given you all the information though that would have
13 been better for you, right?

14 A In this case probably not. I don't think it
15 would really matter.

16 Q Well you just said a few minutes ago that
17 knowing that he touched the gun was important to you?

18 A Yes.

19 Q And in fact it dictated how you did your
20 analysis?

21 A No, no, it did not dictate how I did my
22 analysis. I did my analysis and told them what the
23 information meant and then we had conversations about
24 some of the details; that Mr. Wilson had in fact held
25 the gun and was waving it around.

1 Q That was what the defense lawyer told you?

2 A That's what he told me.

3 Q If you had known --

4 MS. MULLANEY: Objection.

5 THE COURT: Basis?

6 MS. MULLANEY: Right to counsel.

7 THE COURT: Rephrase the question. It's fair
8 game, however, what he utilized in forming his
9 opinion and the foundation of his opinion. Goes to
10 his credibility.

11 Overruled, but be careful, Mr. Williams, you
12 may rephrase your question.

13 Q (By Mr. Williams) Basically, Doctor, you
14 didn't do a quantitative match because that was based
15 on what the defendant's lawyer told you?

16 A No, sir.

17 THE COURT: Rephrase the question.

18 Ladies and gentlemen, please disregard any
19 references to what Mr. Wilson's lawyer did or did not
20 do. Refocus -- and you are to give it absolutely no
21 consideration in your deliberations. You are to
22 disabuse from your mind, and it is not to be
23 discussed in the jury room at all.

24 Confine your question to -- it is irrelevant
25 how he got the information. Confine it to the

1 foundation of his opinion. You may proceed.

2 MR. WILLIAMS: Yes, ma'am.

3 Q (By Mr. Williams) I thought you were saying,
4 when we started this little line of questioning, that
5 the reason you didn't do a number match like one in
6 two trillion is because you were told, you had
7 information that he was holding the gun?

8 A Oh, no. My first concern was SLED is supposed
9 to do population genetics, in fact they're required
10 to do population genetics and it surprised me that it
11 was not here. That was one of the things that was
12 discussed.

13 Then as the conversations went on, we find out
14 that in fact Mr. Wilson held the gun. Therefore it's
15 irrelevant with population genetics and I assume
16 that's why SLED didn't do it.

17 Q Did you talk to Ken Bogan?

18 A No, I did not.

19 Q Why didn't you call him?

20 A Because I'm under the impression we are not
21 allowed to talk directly unless we have permission
22 from the solicitor.

23 Q Who gave you that impression?

24 A In other cases.

25 MS. MULLANEY: Objection, this is misleading.

1 THE COURT: Overruled.

2 Q (By Mr. Williams) Did you contact our office,
3 the solicitors, Ms. Cardillo?

4 A No, sir.

5 Q So that was just the impression you had?

6 A No. I have done other cases in South Carolina
7 where the experts, so-called experts, SLED and
8 myself, were asked not to talk directly, that any
9 communication that would go on would go on through
10 the solicitor's office.

11 Q You got all their software and all their
12 information, right?

13 A Yes, sir, got that through discovery.

14 Q It was turned over to you?

15 A Yes.

16 Q So they were communicating through the
17 discovery process?

18 A No. In fact that's an example here. That
19 went on, those folks contacted you, I did not contact
20 you folks. I assume that's how it's supposed to be
21 done. I'm not supposed to contact you directly, or
22 Mr. Bogan or anybody at SLED directly.

23 Q Why didn't you ask to talk to Mr. Bogan?

24 A I didn't ask to talk to him.

25 Q Why not?

1 A There was no need to.

2 Q So you're saying it wouldn't have been helpful
3 to say, Mr. Bogan, why didn't you do a numbers match
4 on this case?

5 A I'm under the impression that that's not
6 allowable.

7 Q But it would have been helpful?

8 A I'm told it's not allowable. All
9 conversations it's helpful.

10 Q I understand it may not be allowable, but
11 you're saying it would be helpful?

12 A Everything is helpful.

13 Q You did not try?

14 A No, sir, don't need to.

15 Q Even though it would have been helpful?

16 MS. MULLANEY: Objection, again. I think this
17 is misleading.

18 THE COURT: Overruled. You can address it in
19 redirect.

20 A It's SLED's obligation to do population
21 genetics. In fact I did a post-conviction relief
22 trial in this state where SLED did not do the
23 population genetics, and Judge Beatty, who's now on
24 the Supreme Court, threw out all the evidence.

25 Q (By Mr. Williams) That wasn't in a trial?

1 A A PCR hearing. I'm not an attorney, I don't
2 know the difference.

3 Q Now when you were talking on direct you did
4 something like you get the gun like this and then you
5 made a little bursting motion. Do you remember doing
6 that?

7 A I talk with my hands too much. My point was
8 what is --

9 Q But I want you first of all to show me what
10 you did.

11 A I don't remember what I did. Apparently you
12 just mimicked what I did.

13 Q I was asking you. Was it -- you said she hit
14 the gun, you went like this and I think you went like
15 this? Is that what you did?

16 A I should put my hands in my pocket when I
17 lecture.

18 Q Well, why don't you show me what your
19 impression of the gun getting hit looked like.

20 MS. MULLANEY: Objection, asked and answered.

21 THE COURT: Overruled.

22 A The DNA supports the issue that she hit the
23 gun. I don't know if she hit the gun that way, or
24 that way, or that way.

25 Q Were you in here when the defendant testified?

1 A Yes.

2 Q He said she hit his hand, right?

3 A He said that. I think he said that.

4 Q What are you talking about hitting the gun
5 for?

6 A Well, I don't know. I'm not a gun person.
7 But I --

8 Q Did you make up somebody hitting the gun?

9 A No.

10 Q Where did you get it from?

11 A Speaking with the attorneys. I'm not a gun
12 person, but I think you can -- if someone is holding
13 a gun I think if you hit their hand you may in some
14 way, shape or form be hitting the gun and/or
15 depositing cells on the gun.

16 Q Let's be clear here. Hitting a hand is
17 different than hitting a gun?

18 A From a DNA perspective, no, because cells can
19 still be released from the hand and get on the gun.

20 Q Where were the swabs taken from?

21 A I don't know, I have no picture of that.
22 Normally SLED provides a picture of where they get
23 the evidence from.

24 Q Did you talk to Mr. Ortuno who was the one who
25 swabbed the gun?

1 A I did not talk SLED people directly. I'm not
2 allowed to do that.

3 Q It's obviously important to know where the
4 swabs were taken from on the gun that we are talking
5 about being hit, right?

6 A That would be helpful information.

7 Q If the area was covered up, even if the hand
8 was hit, the DNA wouldn't go through the hand and
9 onto the handle, would it?

10 A No, but we do -- if I do that, I just released
11 a number of cells out of hand. We are constantly
12 sloughing off and losing cells.

13 Q If I'm holding this gun like the defendant
14 said he was, handle, trigger covered, somebody hits
15 my hand, their DNA is not going to come through and
16 go onto the handle through my hand or through my hand
17 onto the trigger, is it?

18 A I don't know how he was holding the gun, but
19 what I am saying is you can't -- we are constantly
20 sloughing off cells. And if you hit someone's hand,
21 you not only put cells on their hand, but you put
22 cells on the item that they're holding.

23 Q What I am getting at, if you hit their hand it
24 would certainly not go through their hand?

25 A I would think not.

1 Q You saw this guy testifying, right? The
2 defendant?

3 A I couldn't see how he was holding that from
4 where I was sitting, no.

5 Q So you didn't see how he was holding it?

6 A No. No, sir.

7 Q If he was holding it like this and somebody
8 hit his hand, the DNA could go on the barrel, fair?

9 A Yes.

10 Q Taking this sloughing off, floating skin?

11 A Yes.

12 Q You didn't look at where Officer Ortuno
13 swabbed the gun?

14 A Did not, was not provided that information.

15 Q Are you familiar with how SLED swabs guns?

16 A I assume, I have done swabbing and I assume
17 they use a sterile Q-tip swab.

18 Q Are you familiar with the difference between
19 swabbing for identification or for possession?

20 A I don't know those terms.

21 Q So if somebody swabbed this gun say for
22 possession, to tell who had held it, and only swabbed
23 the handle and the trigger, somebody is holding it
24 like this, that wouldn't show the DNA would not get
25 on those areas that were swabbed?

1 A No, but it might show on the trigger because
2 your fingers are totally -- to give you an example
3 your fingers don't totally cover the trigger.

4 And it might get on the bottom, the butt of
5 the gun, which is not held by his hand.

6 Q So if he swabs the grip and the trigger, you
7 are thinking there is some way maybe something got on
8 the trigger?

9 A Not maybe, that's a fact. This is very
10 sensitive technology.

11 Q You don't know that the victim actually hit
12 the gun except for the statement of the defendant
13 that was in court today?

14 A Statement that I received from the attorney,
15 yes.

16 Q You are basing all of that on the statement of
17 the defendant?

18 A No, I'm saying I have never spoken to him, I
19 have never seen this gentleman before today.

20 Q Why did you listen to his testimony, then?

21 A I assumed his testimony would be finished
22 before the time I got here.

23 MS. MULLANEY: Objection, Your Honor.

24 THE COURT: Overruled, goes to the foundation
25 of his opinion.

1 Q (By Mr. Williams) You're getting paid by the
2 hour to listen to him, right?

3 A Yes.

4 Q You are getting paid by the hour to sit in the
5 hallway, walk upstairs, fly in here, all those
6 things, right?

7 A Yes.

8 Q Drive in?

9 A Yes.

10 Q So \$195 an hour to listen to him testify?

11 A Not to listen to him testify, but to be here
12 at the time I was told to be here.

13 Q Whether you're in the hallway, snack bar or
14 courtroom?

15 A I was told to be here at the time I was here
16 and I'm here.

17 Q Do you think SLED's protocols are bad?

18 A No, I did not say they were bad.

19 Q You disagree with their opinion?

20 A Yes.

21 Q You think Ken Bogan is wrong?

22 A I disagree with his opinion.

23 Q You think he is wrong?

24 A If you want to state it that way I think he's
25 wrong. She cannot be excluded. She clear matches

1 for at least two loci --

2 MS. MULLANEY: Objection.

3 THE COURT: Basis.

4 MS. MULLANEY: Pitting the witness, Your
5 Honor.

6 THE COURT: Please approach.

7 (Whereupon, a discussion was held at the bench
8 off the record.)

9 THE COURT: You may proceed.

10 Q (By Mr. Williams) Do you think Mr. Bogan's
11 opinion is wrong?

12 A I disagree with his opinion.

13 Q And you think that the protocol they use,
14 because they're different than yours, are wrong?

15 A I did not say the protocols are wrong. I said
16 you can look at them with a different protocol and it
17 gives more information.

18 Q You think yours is better?

19 A I think mine is more informative.

20 Q You get paid more for yours, right?

21 A I wouldn't say that.

22 MS. MULLANEY: Objection.

23 THE COURT: Overruled, goes to credibility.

24 MS. MULLANEY: No foundation for SLED how much
25 he got paid, Your Honor.

1 THE COURT: No speaking objections. The
2 question wasn't asked. Overruled. This is more than
3 appropriate for credibility and believability to go
4 into that area. We will leave it at that. I don't
5 want to say anything more in front of the jury.

6 Overruled.

7 MR. WILLIAMS: No further questions, Your
8 Honor.

9 THE COURT: Any redirect of the witness?

10 MS. MULLANEY: Yes, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. MULLANEY:

13 Q Doctor, Mr. Williams made a big deal about you
14 not calling Mr. Bogan, did Mr. Bogan call you?

15 A He did not.

16 Q Did I ask you to call Mr. Bogan?

17 A You did not.

18 Q Doctor, are you a ballistics expert?

19 A I'm not.

20 Q And Mr. Williams asked you some questions
21 regarding forensic samples, correct?

22 A Yes.

23 Q Can you tell me where this technique came
24 from?

25 A Well, the PCR technology has been around for

1 some time, it came out of basic research, which I do,
2 and medical genetics, which I do. So the forensics
3 people picked up on it years after we had been using
4 this particular technology.

5 Q Mr. Williams also asked you some questions
6 about being here for Mr. Wilson's testimony. Doctor,
7 what time were you told to be here today?

8 A I was told to be here at noon, but since it's
9 almost a five-hour drive, I got here better sooner
10 than later, I got here about 11:15.

11 Q Doctor, did you base your opinion on the
12 defendant's testimony?

13 A Not at all.

14 Q What did you base your opinion on?

15 A Reading the evidence.

16 MS. MULLANEY: Just one moment.

17 Thank you, Doctor.

18 THE COURT: Any objection to the witness being
19 excused?

20 MR. WILLIAMS: Can I ask one follow-up
21 question?

22 THE COURT: You may.

23 RE CROSS EXAMINATION

24 BY MR. WILLIAMS:

25 Q You made a \$1,000 to drive here?

1 A I didn't do the math, Probably.

2 MR. WILLIAMS: Thank you, nothing else.

3 THE COURT: Any further questions?

4 MS. MULLANEY: Yes.

5 REDIRECT EXAMINATION

6 BY MS. MULLANEY:

7 Q Doctor, do know how much SLED was paid to
8 drive here?

9 A I have no clue.

10 Q Do you know if they got mileage to drive here
11 or lunch?

12 A I have no idea.

13 Q Doctor, who brought lunch today?

14 A I did.

15 Q Thank you, Doctor.

16 THE WITNESS: May I add to that?

17 THE COURT: No, sir, you cannot.

18 Is there anything further from the State?

19 MR. WILLIAMS: No.

20 THE COURT: Does the State have any exception
21 to the witness being excused?

22 MR. WILLIAMS: No, Your Honor.

23 THE COURT: Any exception from the defense?

24 MS. MULLANEY: No, Your Honor.

25 THE COURT: Sir, you are excused. Thank you,

1 have a good day.

2 THE WITNESS: Thank you.

3 THE COURT: You may proceed.

4 MR. GRIMES: We call Jeffery Hollifield at
5 this time.

6 MR. JEFFREY MORRIS HOLLIFIELD,
7 after having first been duly sworn to state the
8 truth, the whole truth and nothing but the truth,
9 testified on his oath as follows:

10 THE COURT: You may proceed.

11 DIRECT EXAMINATION

12 BY MR. GRIMES:

13 Q Mr. Hollifield, where are you employed at?

14 A I own and operate Microanalytical which is a
15 private forensics lab in Greenville. And I'm also an
16 adjunct instructor at Greenville Technical College
17 where I teach chemistry and forensic science.

18 Q How long have you been working for
19 Microanalytical?

20 A I have owned the business for 12 years.

21 Q And how long have you been a professor, an
22 adjunct professor?

23 A Little over 10 years. And prior to that I
24 worked at the SLED crime lab for 10 years.

25 Q What did you do at the SLED crime lab?

1 A I was hired as a chemist and I worked in the
2 trace evidence department.

3 Q Can you tell the jury a little bit about your
4 educational background?

5 A I received a bachelor's degree in chemistry
6 from Furman University in '84. I received a master's
7 in chemistry also from Furman in '86. And then after
8 I resigned from SLED in '96, I spent a year at
9 McCrone Research Institute in Chicago and received a
10 master's degree in chemical microscopy.

11 Q And have you participated in any continuing
12 education programs?

13 A I have.

14 Q What is one of those programs that you have
15 participated in?

16 A Well, I have been to numerous one-week courses
17 at various places, including the FBI academy, New
18 York State Police homicide seminars, Clemson
19 University, Virginia Tech.

20 Q When were you at the FBI academy?

21 A That was in 1988.

22 Q What did you go there to study?

23 A The FBI training I had was specifically in
24 paint analysis, paint comparisons.

25 Q Have you had any other law enforcement

1 training?

2 A Yes, sir. I've completed a course of training
3 at the criminal justice academy in Columbia after I
4 was hired by SLED.

5 Q And have you been published in any books or
6 papers?

7 A I have. Most of what I've published is in a
8 journal called The Microscope. I do mostly chemical
9 microscopy and a lot of microscopical analysis.

10 Q Who do you work for when you are working now?

11 A I'm sorry?

12 Q Who did you work for now, or contract with?

13 A Well, okay --

14 Q What's your major business?

15 A My business has primarily four clients. I do
16 work for local and state crime labs throughout the
17 country. I do work for lawyers, both criminal and
18 civil, prosecution and defense. I do peer-reviews
19 for the Montana state crime lab. I will do work for
20 insurance adjusters who are investigating fraudulent
21 claims. And I also do a lot of small particle
22 identification for industry which is typically
23 looking at contaminants, contaminants in products
24 that are being manufactured.

25 Q Have you ever been qualified as an expert in

1 South Carolina courts in trace evidence?

2 A I have.

3 Q How many times have you qualified as an
4 expert?

5 A Over 160 times.

6 MR. GRIMES: Your Honor, at this time we would
7 offer Mr. Hollifield as an expert in trace evidence.

8 THE COURT: Any objection or questions?

9 MS. CARDILLO: No objection, Your Honor.

10 THE COURT: So admitted. You may proceed.

11 Q (By Mr. Grimes) Mr. Hollifield, I now we are
12 -- one of my favorite movies is the Godfather we're
13 not -- we're a capitalist society. Are you being
14 paid for coming down here today?

15 A I am, yes, sir, this is my profession.

16 Q And how much are you charging us?

17 A The Court approved \$2,500 for my involvement
18 in the case, which include everything including my
19 expenses.

20 Q And is that contingent on any outcome of the
21 case in anyway?

22 A No, sir. I'm paid the same amount whether I
23 testify today or whether you choose to not call me as
24 a witness today.

25 Q Have you ever seen any materials related to

1 this case?

2 A I have. I received the trace evidence case
3 file which includes the report and also the
4 laboratory data from a gunshot residue analysis that
5 was done in this case.

6 Q Have you received any police reports or
7 anything else in this case?

8 A No, sir, I only received the laboratory
9 information that's directly related to the trace
10 evidence exams.

11 Q And do you need the police reports to make an
12 opinion in this case?

13 A No, sir.

14 Q Have you had an opportunity to review those
15 materials that you've received?

16 A I have.

17 Q Do you have an opinion, to a reasonable degree
18 of certainty in trace evidence, as to whether Mr.
19 Wilson washed his hands after he fired the shot?

20 A In my opinion Mr. Wilson did not wash his
21 hands between the time of the incident and the time
22 of the swabbing.

23 Q What's the basis for that? How did you arrive
24 at that opinion?

25 A The -- in the formal lab report on both

1 individuals the results state that the quantities of
2 metals detected are insufficient to indicate that
3 there is the presence of gunshot residue. Which is a
4 little bit of an oversimplification because it
5 suggests that the hands are completely negative of
6 metals.

7 What I do is go in and actually look at the
8 actual numbers of the raw data, and when I look at
9 the levels of the metals -- and these metals are
10 metals that are commonly present in gunshot residue
11 in very high levels -- when I look at the metal
12 levels on Mr. Wilson's hands, they're not completely
13 zero. If he had washed his hands, you would see zero
14 amounts.

15 These levels are present but they're not high
16 enough for SLED to technically call it as a positive
17 result.

18 Q When the levels of these metals -- what are
19 the names of those metals?

20 A There are three -- there are a lot of metals
21 in gunpowder residue. The three most predominant
22 ones are lead, barium and antimony. And because
23 these three metals are present in the environment,
24 and also a lot of commercial and consumer products,
25 just the mere presence of those metals does not prove

1 that somebody fired a weapon.

2 So because of that, SLED establishes certain
3 threshold levels, and these metals have to be present
4 above those levels in elevated or high amounts to
5 indicate the fact that it's from gunshot residue.

6 Now these levels are below the threshold, but
7 they are present.

8 Q who had a higher level of these metals, Ms.
9 Pendergrass or Mr. Wilson?

10 A Mr. Wilson. Mr. Wilson's levels, if you
11 average from the different areas of the hands, are
12 roughly four to five time greater than the levels on
13 Ms. Pendergrass.

14 Q If he had washed his hands would you expect to
15 find that?

16 A No. If he washed his hands the levels of
17 metals would be completely gone, it would completely
18 wash the metals away and they would be zero.

19 Q And do you have an opinion, to a reasonable
20 degree of certainty in trace evidence, that if Mr.
21 Wilson fired a shot at a close range to Ms.
22 Pendergrass, and if her hands were up, would she have
23 had gunshot residue on her hands?

24 A If she is reasonably close to the weapon, and
25 by that I would say within 12 inches, I would expect

1 to find extremely high levels of gunshot residue on
2 her hands. And those levels are not present.

3 Q Let me ask you a hypothetical. Assume Mr.
4 Wilson was within 12 inches of Ms. Pendergrass when
5 he fired a weapon, do you have an opinion as to
6 whether her hands were in a defensive position?

7 A I have no way of knowing that. She could have
8 been in a defensive position several feet away. I
9 would conclude that she is not in a defensive posture
10 in the immediate vicinity of the weapon simply
11 because --

12 Q That's what I'm asking.

13 A Yes, sir, because --

14 Q I assume that means he's within 12 inches of
15 her?

16 A I don't think so. I don't think her hands
17 were within 12 inches of the weapon because if so I
18 would expect much higher levels of the metals on her
19 hands.

20 Q If her hands were up, correct?

21 A If they're anywhere around the gun,
22 particularly in front of the gun because the bulk of
23 the debris is going to come out the end of the barrel
24 of the gun.

25 Q Did SLED review the gunshot residue on her

1 shirt?

2 A I didn't receive any data, reports or
3 information to indicate that any clothing was tested.
4 My understanding is that the victim's wound was in
5 the head. In that particular case, unless there is a
6 bullet hole in the clothing somewhere, typically the
7 clothing would not be examined unless the
8 investigator specifically requested that.

9 Q Do you know if there was a turban that was
10 examined for gunshot residue?

11 A I don't have any information about a turban.

12 MR. GRIMES: Thank you, Mr. Hollifield.
13 Please answer any questions that the State would have
14 for you.

15 THE COURT: Any cross-examination of the
16 witness?

17 MR. WILLIAMS: Yes, Your Honor.

18 THE COURT: You may proceed.

19 CROSS-EXAMINATION

20 BY MR. WILLIAMS:

21 Q Sir, if somebody had clothing on and the gun
22 is fired at short distance, you can get GSR off that
23 clothing, right?

24 A Yes, sir. If someone is firing a gun it's not
25 uncommon to find the residue on the shooters sleeves

1 if they have long sleeves, or the victim if they're
2 close enough.

3 Q If there is -- I think the defense lawyer was
4 trying to determine, if there is an item such as
5 this, call it a bandana, if that were hit, how would
6 large amounts of blood affect GSR on something like
7 this?

8 A The blood is mostly water so that's certainly
9 going to dissolve away most or all of the -- it's
10 going to wash away the metals and it would literally
11 dissolve the nitrates and nitrites that are present
12 in gunpowder and gun primer.

13 Q So basically blood washes off GSR?

14 A Yes, sir. From the hole, and if there is a
15 hole in the article of clothing, the hole itself can
16 be examined to look for size and shape which could
17 indicate closeness, distance.

18 Q Right.

19 A It could also be examined for singeing which
20 would indicate distance if it's a closer contact
21 shot.

22 But so far as the powder and primer go, I
23 would not expect to see any of that present if there
24 is a lot of blood present.

25 Q You had said that if a gun were fired and a

1 person's hand was within 12 inches of the gun, you
2 would expect to see elevated amounts. When you said
3 elevated I thought you said four to five times what
4 you saw in Ms. Pendergrass, right?

5 A Even more than that. Mr. Wilson had four to
6 five times what Ms. Pendergrass has, but elevated
7 levels would be much higher, probably 20 or 30 --
8 they would have to be 20 or 30 times higher.

9 Q To give you a hypothetical, if this gun were
10 fired as someone's hand bumped it, would you expect
11 to see the bumping hand to have 30 times the elevated
12 amount that Ms. Pendergrass had?

13 A Yes, I would.

14 Q And if you don't see that amount, that is an
15 indication that that hand wasn't that close to the
16 gun, correct?

17 A I don't see how it could be that close to the
18 gun at the instant that the gun is discharged.

19 MR. WILLIAMS: Thank you. Nothing else, Your
20 Honor.

21 THE COURT: Any redirect of the witness?

22 MR. GRIMES: No, ma'am.

23 THE COURT: Any objection to the witness being
24 excused from the State?

25 MR. WILLIAMS: None, Your Honor.

1 THE COURT: From the defense?

2 MR. GRIMES: No, ma'am.

3 THE COURT: Sir, you are excused.

4 THE WITNESS: Thank you.

5 THE COURT: You are welcome.

6 You may proceed, Mr. Grimes.

7 MR. GRIMES: Call Detective Goldstein.

8 THE COURT: Sir, if you could come to the
9 witness stand.

10 MR. BARRY GOLDSTEIN,
11 after having first been duly sworn to state the
12 truth, the whole truth and nothing but the truth,
13 testified on his oath as follows.

14 THE COURT: You may proceed.

15 MR. GRIMES: Thank you, Your Honor.

16 DIRECT EXAMINATION

17 BY MR. GRIMES:

18 Q When did you talk to Ms. Latasha Pendergrass?

19 A I don't recall talking to her.

20 Q Not at all?

21 A No, sir.

22 MR. GRIMES: Thank you, I have no further
23 questions.

24 THE COURT: Any questions for the witness.

25 MS. CARDILLO: No, Your Honor.

1 THE COURT: Sir, you may step down.

2 You may proceed.

3 MR. GRIMES: May we approach, Your Honor?

4 THE COURT: Yes.

5 (Whereupon, a discussion was held at the bench
6 off the record.)

7 THE COURT: Mr. Foreman, ladies and gentlemen,
8 I'm going to give you another short break while we
9 determine how we will be proceeding. And again I
10 anticipate that we will conclude the trial on today
11 and have closing arguments and charge in the morning.
12 But I will give you further instructions regarding
13 that or an update when we resume in about 10 minutes.

14 If you would go with the bailiffs, please
15 don't discuss the case and please leave your notepads
16 in your seats.

17 (Whereupon, the jurors exit the courtroom.)

18 THE COURT: Now before I give you the
19 opportunity to do that, have you spoken with the --
20 do you have any indication that you are going to need
21 additional time to call an expert regarding the cell
22 phone itself?

23 MR. GRIMES: Still have not been able to
24 decide that. We have been stuck in trial and haven't
25 been able to talk to anyone.

1 THE COURT: Well ask Ms. Mullaney or someone
2 to do that, or have someone come over so that you can
3 discuss that with them. I need to have an update so
4 that I can know what we are doing.

5 MR. GRIMES: Thank you, Your Honor.

6 THE COURT: Okay. We will be at ease for a
7 few moments.

8 (Whereupon, a recess was taken.)

9 THE COURT: We are back on the record. Mr.
10 Grimes, have you had an adequate opportunity to
11 review the cell phone records?

12 MR. GRIMES: Yes, ma'am.

13 THE COURT: Do you need any additional time to
14 review those?

15 MR. GRIMES: No, ma'am.

16 THE COURT: Do you wish to recall Ms.
17 Pendergrass as a result of the review of those
18 records?

19 MR. GRIMES: No, ma'am.

20 THE COURT: Do you wish to have, or do you
21 need additional time for an expert to review or to
22 examine Ms. Latoya Pendergrass's cell phone?

23 MR. GRIMES: No, ma'am.

24 THE COURT: And so at this time are you
25 prepared to rest? Do you have additional witnesses?

1 MR. GRIMES: We are prepared to rest.

2 THE COURT: Okay. What we will do, does the
3 State have any rebuttal witnesses?

4 MS. CARDILLO: No, Your Honor.

5 THE COURT: Okay. What I will do is I will
6 allow you to rest in the presence of the jury. We
7 will then hear motions and have a charge conference,
8 then we will close and charge in the morning.

9 MS. CARDILLO: Thank you, Your Honor.

10 THE COURT: And I will need you all to go
11 through all of the evidence and make sure everything
12 is there for the court reporter before we get started
13 in the morning, before you all leave today.

14 Please bring in the panel.

15 (Whereupon, the jurors enter the courtroom.)

16 THE COURT: Thank you very much.

17 Mr. Grimes, you made proceed.

18 MR. GRIMES: Thank you, Your Honor, may it
19 please the Court. Defense would rest at this time.

20 THE COURT: Does the State have any rebuttal
21 witnesses?

22 MS. CARDILLO: No, Your Honor.

23 THE COURT: Mr. Foreman, ladies and gentlemen,
24 you have heard all the testimony in this case. The
25 next part of the process will require closing

1 arguments and the Court's instructions on the law.

2 We will resume that process in the morning at
3 9 o'clock. I would ask that you all be punctual so
4 that we can begin promptly at 9:00.

5 During this break please do not discuss this
6 case among yourselves or with anyone else. That
7 instruction is even more important now that you have
8 heard all of the evidence. It is essential that you
9 remain impartial until you have heard all of the --
10 the parties' closing arguments and the Court's
11 instructions on the law so that you can act in your
12 capacity as fact finders and determine the facts and
13 apply the law to those facts and then render a true
14 and just verdict in this case consistent with the
15 oath that you have taken as jurors.

16 It is even more important that you have no
17 contact with anyone in or about the courthouse.
18 Again I would hate for an innocent conversation about
19 the weather or about what was on TV last night to be
20 observed by someone and for them to misinterpret that
21 you are discussing some matter in this case.

22 Also, and I don't read the papers as
23 diligently as I probably should, I'm not aware if
24 there have been any media reports about this case.
25 But again, please strictly guard against allowing

1 yourself to be exposed to any media accounts; that
2 includes anything that could be in the newspapers,
3 radio or television. And also please don't do any
4 independent research of any type or read any news
5 accounts on the Internet.

6 Please leave your notepads in your seats. I'm
7 going to ask that you return to your jury room. I
8 need you to indulge me for a moment. We're going to
9 order your lunch tomorrow, and I need to go ahead and
10 get those orders so that we will be able to have a
11 seamless process for that so that the clerk and I can
12 coordinate that without having to stop during the
13 portion of closing arguments and the court's
14 instruction and so that we can have your lunch for
15 you in a timely manner on tomorrow.

16 so if you would go to the jury room. And
17 please do not discuss the case in any manner while
18 you're completing this process. Please leave your
19 notepads in your seats. And once you have filled out
20 your lunch order you're free to go and have a great
21 evening and we will see you in the morning.

22 (Whereupon, the jurors exit the courtroom.).

23 THE COURT: Now that the defense has rested,
24 are there any motions?

25 MR. GRIMES: Yes, ma'am. We would renew our

1 motion for directed verdict again. We believe -- I
2 don't think there was any testimony that the shooting
3 or the death occurred in Charleston County.

4 And the defendant did not act with malice
5 aforethought. At most it was an involuntary
6 manslaughter case when you look at the evidence in
7 the light most favorable to the State.

8 I simply -- the record is uncontradicted here
9 after Mr. Wilson testified that Ms. Pendergrass gave
10 him permission to come in the house. There is no
11 witness or anyone that said she did not give him
12 permission that night, therefore no one is here to
13 contradict that. I believe the burglary charge and
14 the murder charge should be dismissed. Thank you.

15 THE COURT: You are welcome.

16 Anything from the State?

17 MS. CARDILLO: Your Honor, the same argument
18 from the State as before regarding the burglary.
19 Again the evidence of his palm print being on the
20 exterior window, I have run through those. As far as
21 the murder, I have seen ample evidence of expressed
22 and inferred malice and we ask that you deny the
23 defense counsel's motion.

24 THE COURT: Viewing the evidence in the light
25 most favorable to the State, the Court is concerned

1 with the existence or nonexistence of evidence and
2 not its weight.

3 The Court would find for the purposes of this
4 record that the evidence does not merely raise a
5 suspicion of the defendant's guilt, that the State
6 has produced direct as well as substantial
7 circumstantial evidence reasonably tending to prove
8 the defendant's guilt, and from which or from which
9 his guilt could be fairly and logically deduced.

10 The Court will stand on its original findings
11 regarding Mr. Grimes' motion and will not go back
12 over that as the record speaks for itself. However,
13 I will address his argument regarding there being no
14 evidence of a burglary first after presentation of
15 the defendant's case.

16 There is substantial circumstantial evidence
17 and direct evidence regarding whether he was invited
18 into the residence or whether he entered without
19 permission. There is substantial circumstantial
20 evidence in the State's case in chief that he was not
21 welcome in the residence and would have broken in and
22 did break into the residence deny. And in the
23 defense's case there is evidence that he was invited
24 in.

25 It is a credibility issue and it comes down to

1 who the jury believes. The Court is not the arbiter
2 of the credibility of witnesses, nor is it in a
3 posture to find facts. Therefore the matter is not
4 appropriate for directed verdict and is denied.

5 Now are we ready for charge conference?

6 MS. CARDILLO: Yes, Your Honor.

7 THE COURT: Is the defense ready?

8 MR. GRIMES: Yes, ma'am.

9 THE COURT: The Court will give a general
10 charge regarding the jury's responsibility and my
11 responsibility. How they are to judge witness
12 credibility and believability.

13 I will give them a general charge regarding
14 how they are to utilize a prior record of a witness,
15 as well as how they are to utilize the prior record
16 of a defendant. And I will utilize the language both
17 convicted of a crime and committed bad acts not the
18 subject of a conviction because of Latoya -- not
19 Latoya, Latasha Pendergrass's testimony. But I'm
20 going to think about that overnight. But out of an
21 abundance of caution I will leave that in to say it
22 is only limited for use in the defendant's
23 credibility. I think I may leave out that other.
24 Actually I will just charge convicted of a crime.

25 Then I will give a Lyle charge regarding them

1 having heard evidence that he committed a bad act not
2 the subject of a conviction.

3 MR. GRIMES: What was the language of that
4 charge, Your Honor.

5 THE COURT: It says that: You have heard
6 evidence that the defendant committed bad acts not
7 the subject of conviction other than the one for
8 which the defendant is now on trial. This testimony,
9 if you conclude it is true, may only be considered by
10 you on the question of intent, motive and absence of
11 mistake and for no other reason and no other purpose.

12 You may give this evidence the weight and
13 value, if any, which you find it should have on the
14 sole issue of intent, motive and absence of mistake.

15 You must not consider evidence of a commission
16 of another offense -- of the commission of a bad act
17 not the subject of conviction as proof of the
18 defendant's guilt of the charge we are trying today,
19 of the charge we are trying today.

20 I will give a general jury charge regarding
21 expert witness testimony and the testimony of
22 children. I will give a general charge regarding how
23 they are to judge any statements made by the
24 defendant which basically mirrors Miranda, and giving
25 them the option to believe that the statement was

1 made or not made, leaving that solely within the
2 jury's prerogative.

3 I have a general charge regarding direct and
4 circumstantial evidence from State versus Griffon. I
5 will instruct them that the charge, the arrest and
6 the indictment are not evidence. I will also
7 instruct them regarding the presumption of innocence.
8 I will charge Victor versus Nebraska on reasonable
9 doubt.

10 Then I will charge the elements of murder. I
11 will charge the elements of voluntary manslaughter.
12 I assume there is no exception to the lesser included
13 request of Mr. Grimes, although factually there
14 really is no evidence of it. But I think out of an
15 abundance of caution I'm going to charge it.

16 MR. WILLIAMS: Your Honor, I think
17 involuntary, but I don't believe any case has been
18 made for heat of passion.

19 THE COURT: What did he request? I'm sorry,
20 that might be my mistake.

21 MR. WILLIAMS: I believe he only requested
22 involuntary.

23 THE COURT: He sure did and I apologize.

24 MR. WILLIAMS: Your Honor, I do believe
25 probably based on the defendant's testimony --

1 THE COURT: Yes, there this and I have it
2 right here, I'm sorry, I pulled out the wrong thing.
3 I will instruct the elements of involuntary
4 manslaughter which I assume there is no exception,
5 correct?

6 MR. WILLIAMS: None, Your Honor.

7 Your Honor, I know his instruction --

8 THE COURT: I'm not going to use his
9 instruction, I'm using my instructions.

10 I will charge the elements of burglary in the
11 first degree as applicable from the statute. I will
12 charge the elements of possession of a weapon during
13 commission of a violent crime. Then charge the
14 defense of accident which has been raised by the
15 defendant.

16 I will also charge voluntary intoxication
17 because during his testimony he raised the issue of
18 being impaired by beer during the course of these
19 events. Which raises it before the jury and it has
20 to be addressed.

21 Then charge that he has multiple charges, that
22 each are to be considered separately as to each
23 indictment, and the State has the burden of proving
24 each and every element of those offenses. Then I
25 will charge the forms of the verdict.

1 As regards to Mr. Grimes' request to charge,
2 they will be marked as a Court's exhibit and made a
3 part of the record. I am not going to charge number
4 one, that's State versus Manning, I'm charging Victor
5 versus Nebraska on reasonable doubt.

6 As to your request number two, which is
7 involuntary manslaughter as a lesser included
8 offense, the Court is charging the lesser included
9 offense of involuntary manslaughter.

10 And as it regards to your number three, which
11 the defense asked, the Court is charging its charge
12 on accident.

13 MR. GRIMES: Thank you, Your Honor.

14 THE COURT: You're welcome. Are there any
15 exceptions to the charges proposed from the State?

16 MR. WILLIAMS: Yes, Your Honor, we object to
17 any charge on accident. I believe the standard in
18 State v Tucker as well as State v Burrows, I think
19 Mr. Grimes has it referenced in his request, but
20 there are only two prongs that he doesn't meet. The
21 defendant was acting lawful, I believe State v
22 Burrows says that having a gun unlawfully will arise
23 to the unlawful activity that precludes an accident
24 instruction or that defense.

25 I think more importantly that due care is

1 exercised in the handling of the weapon. This
2 defendant through all of his testimony kept saying he
3 handled it recklessly, he was playing around, he was
4 being negligent. His whole theory, Your Honor, is
5 recklessness. And he pushed that theory.

6 There is never -- they have used the term
7 accident strictly in the unintentional consequence
8 type way which is a loose use of the word accident.
9 And, Your Honor, I think that's probably a common
10 meaning. But I think the way it has been presented
11 in court it's certainly not the legal defense to
12 that.

13 I think it's quite the opposite, they have
14 been using accident to mean recklessness which is
15 involuntary manslaughter. But even on their own
16 theory from their own witnesses at best this is
17 involuntary manslaughter. And it certainly I think
18 he said when I asked him was he using due care he
19 said no. What are you doing playing with the gun,
20 well that was stupid, that was negligent, I should
21 not have done that, it was reckless.

22 So I think they actually are -- they want
23 accident, but I think they're basically trying to
24 confuse the jury between a legal distinction of
25 accident and probably a more common meaning which

1 is --

2 THE COURT: Which could come under the ambit
3 of involuntary --

4 MR. WILLIAMS: Unintended consequences or
5 recklessness.

6 THE COURT: Let me ask you a question, Mr.
7 Grimes, you do need to address this, and this is the
8 question I had. What evidence is there that your
9 client was acting lawfully? That is an element of
10 the defense of accident and it is one that cannot be
11 ignored. And it is required, it is not one for the
12 jury. He had to be acting lawfully. Either he had
13 the gun lawfully or he didn't.

14 I think the defense of accident does require
15 that. The only other part of that prong would be if
16 he were acting in self-defense. There are some
17 verbiage and dicta in some cases, the Supreme Court
18 indicating that while they are not addressing the
19 issue at some point they may that a person having a
20 gun unlawfully does not preclude the defense of
21 self-defense. But they haven't talked about it in
22 the context of accident.

23 Accident requires that you have the gun
24 lawfully, and that you be acting lawfully.

25 MR. GRIMES: Yes, ma'am. I think under the

1 recent state Supreme Court, the Eller case involving
2 the second amendment. Here Mr. Wilson testified he
3 had the gun for self-defense because it was a high
4 crime area --

5 THE COURT: It has to be self-defense when
6 defending yourself against the person you shot, not
7 self-defense in general.

8 MR. GRIMES: Well, I may be pushing that
9 envelope on that one.

10 THE COURT: I think you would be with the
11 South Carolina Supreme Court. And I don't know what
12 the fact of Eller are, I have not read my U.S.
13 Supreme Court updates lately, I have been busy. But
14 I would have to see the facts of that case to know
15 that it would be the same as these facts, and if the
16 State v Eller had the same sort of statutes, same
17 sort of case law that we have to know if it would be
18 applicable.

19 MR. GRIMES: The facts are totally -- it's a
20 different type of case there. Washington DC has an
21 ordinance against having loaded weapons in your
22 house. So if you had a weapon in your house it had
23 to be disarmed and just because it's a high crime
24 right she didn't live there. And Ms. Eller sued that
25 that violated her Second Amendment right and that --

1 THE COURT: That's very different, that's
2 about right to bear arms. I know the case you are
3 talking about now, I'm familiar with that, and I
4 don't think you can extrapolate that would be
5 applicable here.

6 MR. GRIMES: There is language in that case
7 where you can have a gun to protect yourself.

8 THE COURT: That's different, that's an
9 ordinance in the DC area precluding you from owning a
10 weapon. That's totally different than you having a
11 gun and being on the street and shooting somebody.

12 MR. GRIMES: I would agree. He was in a
13 residence, privacy where we believe he was a guest
14 at, he had a weapon --

15 THE COURT: He had to have a license for that
16 gun. You don't just get to own a gun and shoot
17 somebody and say it was an accident. The defense
18 does contemplate that you acted lawfully. So outside
19 of the self-defense confines, which I would concede
20 if this were a self-defense case you might not have
21 this issue because our Supreme Court has said that
22 illegally having a gun, at least they glean that way,
23 illegally owning a gun will not preclude you from
24 saying you acted in self-defense, or prohibit you
25 from asserting a defense of self-defense to a murder.

1 But the defense of accident requires that you
2 be acting lawfully, which means in and of itself that
3 you have the gun lawfully. It contemplates you being
4 in your house where you bought a gun and you have a
5 license and you have a permit and it going off
6 accidentally. I don't think it contemplates somebody
7 illegally owning a gun and it going off accidentally.

8 MR. GRIMES: I think it raises a concern, may
9 be raised a few years down the road, I think the only
10 evidence here that he lawfully had a gun.

11 THE COURT: He said he bought it. He didn't
12 have a license, he bought it from somebody for \$80.

13 MR. GRIMES: I don't believe you have to have
14 a license to have a gun in your house.

15 THE COURT: You have to have a license to buy
16 a gun in South Carolina, period. There is a waiting
17 period. There is a statute. Even for me to get a
18 gun there is a waiting period. And I can have a gun
19 in the courthouse.

20 But there is a statute that provides, although
21 I have no desire to have a gun, there is a statute
22 that provides how a gun is to be purchased, how you
23 are to own it, how you are to carry it, or we
24 wouldn't have so many people in court pleading guilty
25 to unlawful carrying.

1 There are lots of people that own guns and
2 have them in their residences, but then they
3 illegally have them in their car. We a society of
4 laws and we are governed by those laws and there are
5 different laws for different circumstances. I don't
6 think there is any statute that says you can just go
7 on the street and buy a gun and have it on your
8 person and use it, except in self-defense conflicts.

9 MR. GRIMES: Basically I think that's where I
10 messed up and I brought out the fact he had --

11 THE COURT: I'm sorry, I cannot hear you.

12 MR. GRIMES: That's where I messed up at, my
13 error now he is not going to be able to say it was an
14 accident.

15 THE COURT: You can still argue it was an
16 accident and then voluntary process.

17 MR. GRIMES: We are not going to get the
18 charge of accident for not guilty.

19 THE COURT: I don't know that it really helps
20 you.

21 MR. GRIMES: Well, I --

22 THE COURT: I think the charge of accident
23 hurts you because that language is right in there.
24 It says that he has to have acted lawfully. And by
25 virtue of that it precludes him from claiming it. He

1 has to prove that he acted lawfully -- he does not
2 have to prove anything, but he -- there has to be
3 that he was act lawfully.

4 MR. GRIMES: I guess if he didn't have the
5 prior conviction that evidence wasn't on the record.

6 THE COURT: I don't think it matters whether
7 he had a prior conviction or not.

8 MR. GRIMES: That's what makes him owning the
9 gun illegal.

10 THE COURT: No. He cannot buy the gun, he did
11 not have a permit for it. He did not fill out an
12 application, he did not buy it, he bought it from
13 somebody on the street. That's illegal in and of
14 itself.

15 MR. GRIMES: Assuming that is a crime.

16 THE COURT: That is a crime.

17 MR. GRIMES: But then he still has under the
18 Second Amendment of Eller, still have the gun in his
19 house.

20 THE COURT: Eller had an ordinance that
21 precluded you from having a weapon in your house and
22 that wasn't his house.

23 MR. GRIMES: He was a guest. It's our
24 position he was a guest there.

25 THE COURT: That does not allow you to have a

1 weapon that you bought off the street in somebody's
2 house. That would be like saying if I invited
3 somebody to my house and they brought a gun in my
4 house that would be legal. I don't think so.

5 MR. GRIMES: It wouldn't be unlawful carrying.

6 THE COURT: Yes, it would be, absolutely. In
7 my home? Absolutely. Whether they were my guests or
8 not, under the civil law they would be an invitee,
9 that would be illegal in my house.

10 MR. GRIMES: It doesn't include homes.

11 THE COURT: It includes your home. Does not
12 include somebody else's home. I think it's an
13 imaginative argument, I just don't think there is
14 support for it.

15 MR. GRIMES: Thank you, Your Honor.

16 THE COURT: I'm going to think about it
17 overnight. I was concerned about the acting lawfully
18 prong of that defense. And you can raise the defense
19 of accident, and an act may be excused from the
20 grounds of accident if you show it was unintentional
21 and that you were acting lawfully, and that
22 reasonable care was used in handling of the weapon.

23 And the example that the case law uses, if a
24 person is lawfully armed in self-defense and the gun
25 accidentally discharges, the defense of accident

1 would apply. It contemplates you lawfully owning the
2 weapon.

3 Now having made that observation I don't think
4 there is anything that precludes you from arguing
5 that the gun accidentally went off within the context
6 of discharge, frankly I think this case is
7 tailor-made for that argument. But at this moment
8 I'm not inclined to charge it the more I think about
9 it.

10 Are there any other exceptions to the charge
11 from the State?

12 MR. WILLIAMS: No, Your Honor.

13 THE COURT: But I will let you all know
14 definitively in the morning.

15 Any exceptions to the charge from the defense?

16 MR. GRIMES: Apart from accident, no, ma'am.

17 THE COURT: Okay. Now when my clerk gets back
18 I'll let you see the forms of the verdict. You all
19 can let me know if you have any exceptions to it.

20 Is the State going to open and close or is the
21 State only going to close?

22 MS. CARDILLO: Your Honor, the State is only
23 going to close.

24 THE COURT: If you all could go through the
25 evidence right quick and make sure everything is