

VOLUME I OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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JAN 28 2013

Appeal from Spartanburg County

S.C. Supreme Court

J. Derham Cole, Circuit Court Judge

GARY MICHAEL PIPER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-212410

APPENDIX

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VOLUME 1 OF 2

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Thomas W. Cooper, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

GARY M. PIPER,

APPELLANT

RECORD ON APPEAL

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7 Defendant.) November 26, 27 and 28, 2007
8 Spartanburg, South Carolina
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HONORABLE THOMAS W. COOPER, JR., JUDGE; and a jury

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MOTIONS AND MATTERS

1 (Proceedings November 26, 2007)

2 MR. BULSA: May it please the Court, Your Honor.

3 THE COURT: Yes, sir.

4 MR. BULSA: The state has prepared to call the trial of
5 the State vs. Gary Michael Piper tomorrow morning. It's a --
6 it's got several counts: one count of murder, two counts of
7 attempted armed robbery, pointing and presenting a firearm,
8 common law robbery, possession of a stolen vehicle and failing
9 to stop motor vehicle when signaled by an officer. The
10 state's prepared for trial. It's been on notice for over a
11 month now with the defense and they tell me they're moving for
12 a continuance. The state would like the Court's ruling so we
13 don't have to bring the witnesses up if the Court grants it.

14 THE COURT: All right. Your name please, sir.

15 MR. BULSA: Derrick Bulsa.

16 THE COURT: Hi, Mr. Bulsa. I'm sorry. It's been a while
17 since I've been here, ---

18 MR. BULSA: Yes, it has.

19 THE COURT: --- Mr. Bulsa.

20 MR. BULSA: Yes.

21 THE COURT: I should have recognized you.

22 MR. BULSA: I've been here a while.

23 THE COURT: Yeah, that's right. All right, Mr. Schultz,
24 you represent Mr. Piper?

25 MR. BULSA: Yes I do, Your Honor. And he's at the county

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1 jail right now which is why he's not here. He wasn't put on
2 the jail chain. I'm re -- I'm requesting a continuance for
3 the simple reason that today I was handed a videotape of a
4 crime scene when a search warrant was executed December 21st
5 2006 of the of the scene of the alleged murder. Your Honor, I
6 was also today granted discovery in way of a audiotape
7 recording of my client's statement which is dated sometime in
8 February of 2007 I believe. Your Honor, there is also another
9 thing that I requested from the solicitor that I still do not
10 have and that's a that's a videotape of an occurrence at a
11 Citgo gas station that happened the same night as the alleged
12 murder happened. I do not have that in my possession right
13 now. I know the solicitor's office has that but I have not
14 been provided that as as of yet.

15 Your Honor, I would request a continuance because I just
16 got these articles of discovery. I have not had the chance to
17 go over these items and articles with my client as of yet.
18 I've been over a -- all discovery with my client but but not
19 these things and I think these things, these articles that are
20 just given to me are very very important in this case so I
21 would um...

22 THE COURT: Mr. Schultz, let me go over these one by one.
23 You first ---

24 MR. SCHULTZ: Yes, sir.

25 THE COURT: --- of all mentioned a video of a crime scene

MOTIONS AND MATTERS

1 and the crime occurred on December 21st of last year, is that
2 right?

3 MR. SCHULTZ: Yes sir, Your Honor.

4 THE COURT: Have you received any still photographs of
5 the of the crime scene?

6 MR. SCHULTZ: Yes, I have, Your Honor.

7 THE COURT: All right. Is there anything that you've
8 been able to determine that is revealed in the video that is
9 not shown in the still photographs?

10 MR. SCHULTZ: Your Honor, as I indicated to the Court I
11 have not had time to to look at that video yet.

12 THE COURT: Right.

13 MR. SCHULTZ: And I I would like to compare the videotape
14 of the crime scene and and the still photos that I've had.
15 Part of my defense in this case is that it's it's granted, and
16 I think this -- these facts will come out at trial, is that
17 not only did my client have a gun at at the the scene that
18 night, but there was three guns found when the police executed
19 a search warrant: a 9-millimeter Hi-Point, a .25 Lorcin and
20 another 9-millimeter. And the police when they wrote on their
21 incident report they said that the room was clutter, full of
22 trash, full of garbage and I would like to see if they, the
23 police missed anything and I think that directly goes to my
24 strategy of of trying to defend Mr. Piper. I would like to,
25 and this this may be a little bit ambitious, but I would like

MOTIONS AND MATTERS

1 to freeze these of the video one by one and look for maybe
2 some more bullet holes or some more, you know, some more
3 weapons that maybe the police missed that night. I'm not, the
4 the only reason I say it is that, I'm not sure and I would
5 like to investigate that further.

6 THE COURT: Do do you have any any evidence or that would
7 would indicate that some of these things do actually occur,
8 that this is not just a a sort of a fishing expedition ---

9 MR. SCHULTZ: Yeah,

10 THE COURT: --- is the word.

11 MR. SCHULTZ: --- a fishing expedition. I I understand,
12 Your Honor. The, uh, -- beg the Court's patience, sir.

13 THE COURT: All right.

14 MR. SCHULTZ: Under the ballistics, and I was provided
15 this by the state and I constructed my own map here of the of
16 the scene, ---

17 THE COURT: All right.

18 MR. SCHULTZ: --- there's a there's a shell found near
19 the body of the victim there near the closet. That item was
20 tested. There is a -- another bullet hole found in that same
21 bedroom which is where the alleged murder occurred. There is
22 another bullet hole found in another bedroom, okay. And Your
23 Honor, there is another bullet hole which I have found in the
24 in the forensics report there that was never tested and I
25 would like to see in this video where that bullet hole was.

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1 To my knowledge this this bullet hole was never tested for any
2 sort of forensic analysis and being that there were three or
3 four guns or there could have been five or six guns I I don't
4 know, Your Honor, that's that's one thing that I really wanna
5 look at and investigate further.

6 THE COURT: Right.

7 MR. SCHULTZ: I need some additional time in order to to
8 look at that.

9 THE COURT: Right. The second thing you mentioned was
10 that there was a -- you just received an audio recording of a
11 statement made by your client in February of this year, is
12 that right?

13 MR. SCHULTZ: Yes, I believe -- beg the Court's patience
14 again, Your Honor.

15 THE COURT: Okay.

16 MR. SCHULTZ: Yes, that's February 16th, Your Honor.

17 THE COURT: Okay.

18 MR. SCHULTZ: And I have a a statement. I have a
19 transcript of of that recording but, Your Honor, these these
20 cases can turn on fairly innocuous details that first seem
21 innocuous but then later later on become very very important,
22 and I have a transcript of the statement but I never got the
23 the original until today and ---

24 THE COURT: You also mentioned that you ---

25 MR. SCHULTZ: Yes.

MOTIONS AND MATTERS

1 THE COURT: --- requested the video of a gas station that
2 same night. Now, what would the relevance of that be?

3 MR. SCHULTZ: Well, the the relevance of it is that the
4 the solicitor's office to my knowledge unless that -- this
5 changed is that it's it's alleged that my client had committed
6 a common law robbery that same night around the the same time
7 as this murder happened, this alleged murder happened.
8 Because the state wished to join these two charges at the same
9 time ---

10 THE COURT: Right.

11 MR. SCHULTZ: --- I I really wanna see that. To my
12 understanding it's a I guess a stop still video. I'm not sure
13 what the right word for it is but it's pretty complicated and
14 I would like to see that and check out the surveillance video.

15 THE COURT: So that relates directly to one of the
16 charges for which your client's on trial?

17 MR. SCHULTZ: This relates directly to one of the charges
18 yes sir, Your Honor.

19 THE COURT: All right. Mr. Bulsa, let me hear from you.
20 First of all, why were these things just delivered or have not
21 yet been delivered to Mr. Schultz, and if if there's a good
22 reason why they have not been done, then let me deal with the
23 fact that they must be relatively insignificant from you all's
24 perspective. Go ahead.

25 MR. BULSA: Yes, sir, each of these items were mentioned

MOTIONS AND MATTERS

1 in the discovery that was provided to Mr. Schultz back in
2 April when he first filed the discovery motion. I sought to
3 meet with Mr. Schultz back in mid-October to review the
4 evidence, review the the discovery and to see what else he
5 felt he needed or wanted. I did not hear from him until a
6 couple weeks ago when I was in Lexington trying a capital
7 case. And I met with him the Monday I came back to
8 Spartanburg which was last Monday and then immediately began
9 to try to provide him with these documents. The CDs and
10 audiotapes it took a little bit of doing to to copy 'cause of
11 the technology but I was able to get it done and provided it
12 in as quickest fashion as I could.

13 (Pause.)

14 THE COURT: When did this crime occur? December?

15 MR. BULSA: December.

16 MR. SCHULTZ: December 21st 2006, Your Honor.

17 THE COURT: Of '06. Here we are -- I think they're not
18 all that far down, not quite a year a year committing crime.
19 Clearly Mr. Schultz is entitled to all of these things that
20 he's asked for under Rule 5. I don't think anybody would
21 seriously dispute that. Rule 5(a)(1)(A) refers to the
22 statement of the defendant, "Prosecution shall permit the
23 defendant to inspect and copy or photograph: any relevant
24 written or recorded statements made by the defendant, or
25 copies within the possession," et cetera. The videotape of

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1 the of the gas station, now does that purport to show the
2 crime being committed itself? Is that what's supposed to be
3 in that?

4 MR. SCHULTZ: That's what I believe so.

5 MR. BULSA: You can see a vehicle through the window, you
6 can see the defendant going around the back of the vehicle and
7 you can see the victim fleeing as right before he comes
8 around. You can't actually see the confrontation 'cause the
9 vehicle blocks the view so it's pretty much testimony
10 driven ---

11 THE COURT: All right.

12 MR. BULSA: --- as far as the victim is concerned what
13 happened, but you do see an individual walking around behind
14 the vehicle towards the driver's door. You can't even see the
15 driver's door and you see it drive off. She later identified
16 him in the photograph at the lineup.

17 THE COURT: Right.

18 MR. BULSA: She is available to testify.

19 THE COURT: Rule 5(a)(1)(C) deals with documents and
20 tangible objects like the videotape, "Upon request of the
21 defendant the prosecution shall admit the -- permit the
22 defendant to inspect and copy photographs, tangible objects
23 which are material to the preparation of his defense or
24 intended to use -- for use by the prosecution as evidence in
25 chief." And so what I struggle with the fact clearly he's

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1 entitled to all of these things although frankly the fact that
2 the audiotape was not provided when the transcript was
3 provided is not that big a deal and quite frankly the video of
4 the crime scene is not that big a deal either given the fact
5 that given the fact that photographs, still photographs of the
6 crime scene were provided. The most potentially harmful piece
7 of evidence would appear to be the video of the station 'cause
8 here's, I mean, here's a picture purportedly of the crime
9 being committed, as it's being committed by the defendant and
10 he -- and in my understanding is Mr. Schultz still ain't got
11 that.

12 MR. BULSA: We we had -- we were in the process of
13 copying it, Mr. Schultz was in the office. I gave him the
14 other two this morning and he left before I could get the
15 other one to him and I came downstairs looking for him. I was
16 gonna give it to him today and then I got word he was ---

17 THE COURT: Right.

18 MR. BULSA: --- moving for this continuance so it -- it's
19 not that we didn't try to give it to him, Your Honor.

20 THE COURT: I I -- well, no I -- and I know what you've
21 been doing in Lexington for the last couple weeks over there.
22 I'm aware of that and I and I can appreciate the fact that
23 that that that creates some severe problems so I'm not
24 describing necessarily any bad faith in any of this or any
25 neglect. I'm just trying to look at this from the perspective

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1 of the of the defendant who's trying to to defend a murder
2 case and several armed robbery cases or common law robbery
3 cases as the case might be and he and he still doesn't have
4 this or or could have gotten it today earlier let's let's say
5 that he could have had it today, the day before trial.

6 MR. SCHULTZ: Your Honor, for the record too there's not
7 only was my client charged with murder that same night but he
8 also had two counts of attempted armed robbery and a pointing
9 and presenting, Your Honor.

10 THE COURT: All right. And Mr. Bulsa mentioned the the
11 whole litany of charges against him when he ---

12 MR. SCHULTZ: Yes, sir, Your Honor.

13 THE COURT: How long will it take to try the case, Mr.
14 Bulsa?

15 MR. BULSA: Probably two, two two and a half days.

16 THE COURT: This is a -- all these intend to be tried
17 together?

18 MR. BULSA: Yes, we feel that they are ---

19 THE COURT: Common.

20 MR. BULSA: --- common, all basically part of the res
21 gestae of the murder ---

22 THE COURT: Right.

23 MR. BULSA: --- although closely connected.

24 MR. SCHULTZ: Your Honor, if I may.

25 THE COURT: Yes, sir.

MOTIONS AND MATTERS

1 MR. SCHULTZ: I think we'll take a little longer. I have
2 several pretrial motions to make. I think it will take over
3 over that if not three then maybe four.

4 THE COURT: Mr. Schultz, Mr. Bulsa said that back in
5 October he was making some efforts to try to get this to you
6 but you all never could get together. Tell me about that.

7 MR. SCHULTZ: Yes, sir, Your Honor. Your Honor, I was I
8 was actually preparing for another case that did not get
9 called, a resisting arrest case, Your Honor. And I don't --
10 do you have that e-mail, Derrick? I don't I don't remember
11 when exactly it was but we could not get together, yes, that's
12 that's true, Your Honor. Um...

13 THE COURT: Was that all of this evidence we're talking
14 about today or just certain parts of it?

15 MR. BULSA: Your Honor, it's my practice to meet with
16 defense counsel as soon as I can ---

17 THE COURT: Right.

18 MR. BULSA: --- after I set a trial date to review the
19 discovery, talk about the evidence and see what else they feel
20 they might need ---

21 THE COURT: Right.

22 MR. BULSA: --- and that's what I was trying to do.

23 THE COURT: And how long ago was this set for trial?

24 MR. BULSA: I think I noticed him back in August maybe?
25 It would have been -- we were we were setting our homicides

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1 for trial through the end of the year and I noticed him
2 probably two to three months ago if not further.

3 THE COURT: Right. They're to be tried this week?

4 MR. BULSA: Yes, sir.

5 MR. SCHULTZ: Your Honor, I'm I'm not requesting a
6 continuance of a couple months or anything, I'm I'm -- I just
7 wanted to request that I be able to try it in the next term
8 for me to go over the audiotaped statement of my client, the
9 videotape of the crime scene and the, obviously, the Citgo
10 videotape, that's that's all I ask for. I'm not asking for
11 this case to be set in February or anything like that.

12 THE COURT: I understand. Of course that -- Mr. Bulsa
13 probably got his homicide cases set for every week from now
14 till the end of December I would imagine.

15 MR. BULSA: We do have several others scheduled yes, sir.

16 THE COURT: And this this, the dilemma that I'm faced
17 with here of course is, this is the reason I don't like
18 non-jury court, this is the reason that I when I went into
19 retirement I said I wouldn't do non-jury court because in
20 non-jury court all you do is settle discovery disputes between
21 lawyers and civil cases, you know. One lawyer says, "I
22 requested this and he didn't send it to me."

23 And the other lawyer says, "I did send it to him but he
24 wanted more or he's asking for too much in the first place,"
25 which is not exactly what I've got here today. But it's a

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1 discovery dispute nonetheless in which I've got two reputable
2 lawyers telling me that each of 'em has done all that they
3 need -- know to do to get what they need to try the case or to
4 present all they have to the other side.

5 Mr. Bulsa, if you wanna try the -- if you wanna try the
6 cases involving the gas station together with the murder case,
7 you're gonna have to try 'em another time. That's the only
8 piece of evidence which I find to be particularly telling that
9 needs to be disclosed well in advance of the trial. You've
10 provided to him, I understand, still photographs of the crime
11 scene and I take it that the videotape is not gonna show much
12 that that does not although I'm sure it will be somewhat more
13 detailed. You provided the transcript of the statement. The
14 audio, of course, he can listen to and compare. There's not
15 gonna be much new revealed there either. But but the
16 videotape of the robbery of the gas station is a particularly
17 significant piece of evidence and I don't know what it's gonna
18 show and Mr. Schultz doesn't know either but apparently
19 it's, you know, the jury's gonna be asked to look at it and
20 determine from looking at that that what the clerk says about
21 the identification of the defendant can be borne out by what's
22 on that tape. If you wanna separate that and try it
23 separately, you can from the others, but if you wish to try
24 them all together as you have a right to do, they got to be
25 tried another term of court.

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1 MR. BULSA: Yes, sir.

2 THE COURT: All right.

3 MR. SCHULTZ: Thank you, Your Honor.

4 THE COURT: Okay. I'll let you all get together and make
5 the decision of that shortly so so that everybody will know
6 what we got to do tomorrow.

7 MR. BULSA: Thank you.

8 (Proceedings November 27, 2007)

9 THE COURT: All right, Mr. Solicitor, you can call your
10 case.

11 MR. BULSA: The state calls the case of the State vs.
12 Gary Michael Piper: indictment 07-2718 indictment for murder,
13 2717 attempted armed robbery, 2719 attempted armed robbery,
14 2716 pointing and or presenting a firearm, 07-0544 failure to
15 stop a motor vehicle when signaled by an officer.

16 THE COURT: All right.

17 MR. BULSA: Hand these up. I have a -- I've already
18 provided the Court I believe with the witness list.

19 THE COURT: Okay. Thank you.

20 MR. BULSA: And I have a list of question for voir
21 dire.

22 THE COURT: All right.

23 (Counsel handed the documents to the Court.)

24 THE COURT: Thank you. Mr. Schultz, I understand you
25 have a motion to sever the failure to stop charge from the

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1 other charges, is that right?

2 MR. SCHULTZ: That's correct, Your Honor.

3 THE COURT: All right. So you wanna be heard on that
4 now?

5 MR. SCHULTZ: Yes, I do, Your Honor.

6 THE COURT: Thank you.

7 MR. SCHULTZ: May it please the Court.

8 THE COURT: Right. Yes, sir.

9 MR. SCHULTZ: Thank you. Your Honor, as the solicitor
10 just instructed you, the state intends to call the the murder,
11 the attempted -- two counts of attempted armed robbery, a
12 point and present -- presenting a pistol or firearm and a
13 failure to stop this -- in this same trial. We believe that
14 this severely prejudices the the client in this and I wanna
15 put down some things on the record here ---

16 THE COURT: All right.

17 MR. SCHULTZ: --- and some applicable case law as well.
18 To my understanding in the case law research that I've done is
19 that it's well established that a motion for severance is
20 addressed to the sound discretion of trial court and the trial
21 court's ruling will not be disturbed on appeal unless some
22 abuse of that discretion. Your Honor, I have some various
23 cases here that I'd like to pass up to the Court. *State v.*
24 *Tucker* is the operative case here, Your Honor.

25 THE COURT: Okay. *State v. James Neal Tucker*?

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1 MR. SCHULTZ: *James Neal Tucker*, Your Honor, yes, sir, if
2 I could pass that ---

3 THE COURT: Notice who the trial judge was in that case?

4 MR. SCHULTZ: Pardon, Your Honor?

5 THE COURT: You notice who the trial judge was on that
6 case?

7 MR. SCHULTZ: I'm thinking that it's you, Your Honor.

8 THE COURT: That would be me.

9 MR. SCHULTZ: Okay.

10 THE COURT: Okay, kind of familiar with that case.

11 (Counsel handed the document to the Court.)

12 THE COURT: All right.

13 MR. SCHULTZ: The case law that I've -- I found not only
14 in *State v. Tucker* but also in the other cases as well is that
15 there there can be no clearly defining rule for determining
16 when a defendant is entitled to a separate trial because they
17 exercise the discretion means that the decision must be based
18 upon just and proper consideration of the particular
19 circumstances which are presented to the court in each case.
20 The trial court, I believe, must act cautiously in considering
21 problems that could arise from a joint trial and I believe a
22 proper cautionary instruction, I mean, may be in play here.
23 Your Honor, according to *State v. Tucker*, what I've seen in
24 this case and I've shepardized this and and found it to be
25 good law um...

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1 THE COURT: I hope so. I went to a lotta trouble to make
2 it.

3 MR. SCHULTZ: (Laughed) Yes, sir.

4 THE COURT: Right.

5 MR. SCHULTZ: And the charges can be joined in the same
6 indictment and tried together where they (1) arise out of a
7 similar chain of circumstances, (2) are proved by the same
8 evidence, (3) are in the same general nature and (4) no real
9 right of the defendant has been prejudiced.

10 THE COURT: Right.

11 MR. SCHULTZ: Your Honor, the alleged murder, attempted
12 armed robbery happened on the night of December 21st 2006.

13 THE COURT: Right.

14 MR. SCHULTZ: As the solicitor indicated, the fail to
15 stop occurred on December 27th 2006 six days after the alleged
16 murder. So I don't believe right now that they arise out of
17 the same chain of circumstances nor are they proved by the
18 same evidence. The witnesses that will be testifying in the
19 alleged murder are gonna be different from the witnesses that
20 are gonna be testifying in the failure to stop. They're not
21 of the same general nature, common sense will tell you
22 that. A murder is very different from a failure to stop and
23 no real right of the defendant has been prejudiced.

24 Now, as for the facts of this case, it's my understanding
25 to the discovery, and this this probably will be established

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1 through testimony I I assume as much, that what will happen is
2 that the the facts of the the alleged entry into the home 220
3 Tharon Drive will be established, okay, and after that the
4 failure to stop will be testified to witnesses and the, I
5 believe, the state's position with this is that this is
6 connected through the .38 caliber gun which was allegedly used
7 in both incidents. The facts as I understand them and
8 obviously this will be established through testimony as well
9 that a .38 was used in the in the killing here.

10 THE COURT: Right.

11 MR. SCHULTZ: Six days later, according to discovery that
12 I have got, the defendant was in his car being pursued by the
13 police, he did not stop. In the meantime it is alleged that
14 he threw out the the hand gun while being pursued by the
15 police. However, at the scene in December of 2000 -- December
16 27th 2007 no handgun was found there; thus, I think that does
17 not -- I think takes it out of the res ges -- gestae. That
18 handgun was found later on in the next year actually in 2007,
19 Your Honor. So we have the alleged murder happening December
20 21st 2006, the failure to stop where no pistol was
21 recovered ---

22 THE COURT: Right.

23 MR. SCHULTZ: --- December 27th 2006 then was recovered a
24 couple months later in early 2007.

25 THE COURT: Right.

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1 MR. SCHULTZ: So I believe that linking the the gun from
2 the murder to the failure to stop would be extremely
3 prejudicial to the client because I believe it falls outside
4 of the confines established in the *res gestae*. It ---

5 THE COURT: All right.

6 MR. SCHULTZ: It ---

7 THE COURT: Go ahead.

8 MR. SCHULTZ: Thank you, Your Honor. It doesn't furnish
9 part of the context of the crime because there was no pistol
10 recovered in this failure to stop. It's it's not necessary to
11 a full presentation in the case. I I believe the standard for
12 *res gestae* and the case that I have here is *State v. Adams* if
13 I could pass that up to the Court.

14 THE COURT: Okay.

15 MR. SCHULTZ: Beg the Court's patience.

16 (Counsel handed the document to the Court.)

17 THE COURT: Thank you.

18 MR. SCHULTZ: So I believe that there's, if if I can
19 continue, Your Honor.

20 THE COURT: Yeah, and let me give you these extra copies
21 back. Thank you.

22 MR. SCHULTZ: Thanks.

23 THE COURT: All right. Go ahead.

24 MR. SCHULTZ: Handing one to the state as well, Your
25 Honor.

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1 THE COURT: Good.

2 MR. SCHULTZ: So I believe that according to the case law
3 set down in *State v. Tucker* as far as motion for severance and
4 the *res gestae* I found in *State v. Adams* I believe that this
5 failure to stop falls outside not only *res gestae* but it also
6 does not arise out of the same chain of circumstances, Your
7 Honor. Thank you.

8 THE COURT: Thank you, Mr. Schultz. All right, sir,
9 Mr. Bulsa.

10 MR. BULSA: Thank you, Your Honor. The evidence will
11 show that the defendant obtained a .38 pistol revolver on the
12 day of December 21st 2006. He also, evidence will also be
13 entered that he was seen in possession of a Ford Explorer SUV.
14 There's there's some facts and we won't go into as to how he
15 obtained that SUV but ---

16 THE COURT: Right.

17 MR. BULSA: --- it is important that he was driving that
18 SUV, that he did not have ---

19 THE COURT: Right.

20 MR. BULSA: --- previously.

21 THE COURT: The jury won't hear those facts as I
22 understand 'em but for the purpose of this motion of course he
23 can ---

24 MR. BULSA: Yes, sir.

25 THE COURT: Right.

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1 MR. BULSA: He obtained the SUV at about 9:15 that same
2 evening December 21st and at approximately 9:55 this incident
3 occurred at Tharon Drive in Spartanburg County where it's
4 alleged that he had tried to rob two individuals and shot and
5 killed Alberto Chavez. Your Honor, the evening of December
6 26th, the morning of December 27th the police went to a
7 residence where they believed he was staying on Gentry Street.
8 He fled that area in the same vehicle used in the or that he
9 u -- drove to and from the murder scene. He fled, he gave --
10 police gave chase through this neighborhood. It's a
11 neighborhood off of Isom Drive here in the City of
12 Spartanburg. He eventually wrecked that vehicle, jumped out
13 of the vehicle and fled. He was located after a search hiding
14 in some bushes and arrested for failure to stop and possession
15 of a stolen vehicle. Two days later one of the residents of
16 that neighborhood recovered a -- the .38 revolver, that was
17 turned into the city police, it was later matched through
18 ballistics to one of the bullets recovered from the the
19 residence of Tharon Drive.

20 THE COURT: Now, tell me again the time frame between the
21 date of his arrest and the recovery of the weapon.

22 MR. BULSA: Two days approximately. Actually,
23 approximately a day and a half. He was arrested about 1:40 in
24 the morning hours of December 27th. December 29th about
25 shortly before 2:00 in the afternoon ---

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1 THE COURT: All right.

2 MR. BULSA: --- the weapon was found and turned in.

3 THE COURT: Okay. Go ahead.

4 MR. BULSA: We feel that this is evidence that will be
5 admissible regardless of whether he was charged as part of the
6 *res gestae* of this case linking him to the vehicle that he
7 drove to and from the from the incident and also the weapon
8 used in the commission of that crime.

9 THE COURT: All right. Thank you. All right.
10 Mr. Schultz, let me hear from you in response. It's your
11 motion so you've got the last word.

12 MR. SCHULTZ: Thank you, Your Honor. We believe that we
13 would stand on the *State v. Adams* and also *State v. Tucker*
14 that this obviously falls out of the same it -- out of the *res*
15 *gestae* and it does not arise out of the same chain of
16 circumstances. Your Honor, the state says that the same car
17 was used in both incidents but I don't think that's that's
18 enough to bring this into the *res gestae*. I think the the
19 operative article that it's tr -- that the state is trying to
20 link it is the is the pistol ---

21 THE COURT: Right.

22 MR. SCHULTZ: --- I believe and I think that the pistol's
23 not part of the failure to stop because it was recovered as
24 the solicitor said on February 27th 2007 almost approximately
25 two months two months after the alleged murder.

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1 MR. BULSA: I think I said December not February.

2 THE COURT: Excuse me?

3 MR. BULSA: It was December.

4 THE COURT: December.

5 MR. SCHULTZ: December.

6 MR. BULSA: Yes, Your Honor.

7 THE COURT: That's right. Yeah, he -- in his recitation,
8 that's the reason why I went over those facts again,
9 Mr. Schultz, he indicated it was a day and a half after he was
10 arrested that the the weapon was found. Am I correct on that,
11 Mr...

12 MR. BULSA: Yes, sir.

13 THE COURT: Thank you. Now, truly the weapon was not
14 tied to the murder until some time afterward as I understand
15 it.

16 MR. BULSA: Correct, Your Honor.

17 MR. SCHULTZ: That -- that's my point as well, Your
18 Honor.

19 THE COURT: Right. Okay. All right. Thank you.

20 MR. SCHULTZ: Okay.

21 THE COURT: Let me deal first of all with the issue of of
22 the *State v. Tucker* analysis. In *Tucker*, Mr. Tucker was
23 accused of and eventually convicted of killing a victim on
24 June the 25th of 1992 in Sumter County and after that he
25 escaped and led the police on a rather long and involved chase

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1 involving the subsequently the murder of another person in
2 Calhoun County and then his arrest in Maggie Valley, North
3 Carolina several days after. But while he was in Sumter
4 County he stayed in the same area for a long time or for
5 several days trying to get out of there and two days after his
6 his murder of Ms. Dolly Oakley in Sumter County he broke into
7 a church in rural Sumter County, stole some clothes. When he
8 was arrested, he was wearing the clothes that he was -- that
9 he had stolen from the church and the question was whether or
10 not the state could introduce evidence of the subsequent
11 break-in of this church two days following the the murder
12 itself. And in that particular case the Supreme Court
13 determined that it was appropriate to allow that evidence to
14 come in because the clothes that he was wearing tied to the to
15 the robbery of the church which tied to his flight from the
16 from the scene and and were evidence of flight and evidence of
17 his identity.

18 In this particular case, as I understand the facts as
19 they've been laid out for me, in in the chambers conferences
20 where both counsel were present and here today, the defendant
21 was seen with a weapon prior to the murder. He, a few days
22 following the murder, fled from the police in a vehicle that
23 he was also seen in prior to the murder and subsequent to the
24 murder. At -- after his arrest, following the flight, some
25 several days following the murder, a subsequent search of that

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1 area revealed this pistol. The pistol was put into evidence,
2 there were different jurisdictions involved as I understand it
3 and it was some period of time after that before the pistol
4 was actually tied to the crime which occurred on December the
5 21st at which time he was charged with a murder. Is that a
6 roughly a -- did I miss anything from that, gentlemen, in
7 that ---

8 MR. BULSA: Your Honor, I just wanna clarify. I don't
9 want the Court to be misled. There will be evidence presented
10 that will show that he would have had to come in possession of
11 the weapon on the 21st. Nobody actually saw him with the
12 weapon until after he fired a shot when he came out of the
13 house.

14 THE COURT: Right. Okay.

15 MR. BULSA: So...

16 THE COURT: That doesn't disturb anything from my ---

17 MR. BULSA: Yes, sir.

18 THE COURT: --- from my line of thinking I don't believe,
19 Mr. Bulsa. Thank you.

20 And so the question then is whether or not the failure to
21 stop for the blue light is is appropriate to this particular
22 case. Frankly, the analysis applied in the *Tucker* case is not
23 unlike the analysis that would be applied in this particular
24 case. Evidence of flight of course is is admissible and the
25 fact that the weapon was found near where the vehicle was was

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1 abandoned is additional evidence that ties it together and
2 when I think in fact does fit into the *res gestae* of this of
3 this entire scenario.

4 The the same evidence of of the weapon could be used to
5 prove that he was the driver of the vehicle if it goes back to
6 the fact that he -- it was the weapon that he was seen with
7 prior to this time, if the weapon is tied to the murder
8 through ballistics, then that would tend to prove that that he
9 had some involvement in the murder. All of that of course is
10 circumstantial but nonetheless it is evidence the Court can
11 consider. For that reason the motion to sever is respectfully
12 denied. I think that it it does meet the standards that are
13 laid out for consolidation of charges even applying the the
14 *Tucker* and the and the *Adams* scenario. Thank you.

15 MR. SCHULTZ: Thank you, Your Honor.

16 THE COURT: All right. Any further motions then before
17 we get the jury up to begin the jury selection process?

18 MR. SCHULTZ: Yes, Your Honor. I have a motion to
19 challenge the admissibility of my client's statement through a
20 *Jackson Denno* hearing.

21 THE COURT: Okay. Now, we can do that we can do that
22 after the jury is selected though, I believe, if that's okay.
23 What I what I would like to do since we've got a jury who
24 apparently is waiting to come in is to go through the jury
25 selection process and then once we've got the jury seated then

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1 we can deal with the *Jackson v. Denno* issues and the other
2 issues that -- *in limine* that you filed with me, okay?

3 MR. SCHULTZ: That's fine, Your Honor. Thank you.

4 THE COURT: All right. Good. All right. Let me go over
5 the voir dire request before we get the jury in here so that
6 we'll be together on that. I have the state's request for
7 voir dire: 1, 2, 3 and 4 I will grant those requests. I have
8 the defendant's requested voir dire. Number 4 will be
9 modified somewhat. The question is as I state it, "Have you
10 or has any close friend or family member been the victim of a
11 violent crime?" I will also ask them if they've ever been a
12 defendant in a violent crime or a witness to a violent crime
13 which sort of combines your question No. 15, Mr. Schultz.

14 MR. SCHULTZ: Yes, sir.

15 THE COURT: I will decline to give No. 5. I will give
16 questions 6 through 12 and I will decline to give the
17 remaining questions 13 through -- actually misnumbered 41,
18 there not that many there but they're numbered out of
19 sequence. So the questions that I will ask of the jury is 1,
20 2, 3, 4 with a modification, 6, 7, 8, 9, 10, 11 and 12. The
21 voir dire request will be made a part of the Court's record as
22 a Court's exhibit to preserve appellate rights in this case.
23 All right.

24 MR. SCHULTZ: Thank you, Your Honor.

25 THE COURT: All right, folks. Are we ready for the jury

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1 panel then?

2 MR. BULSA: Yes, sir.

3 THE COURT: Now, will they be sent in here, is that the
4 way it works?

5 MR. BULSA: Yes, sir.

6 THE COURT: Okay. Very good. All right. If you'll ask
7 'em to send us a panel please. Thank you.

8 Mr. Solicitor, in the presence of the jury if you'll call
9 your case once again, please, just to identify the charges in
10 this case.

11 MR. BULSA: Yes, sir.

12 THE COURT: You can have these indictments back if you
13 need 'em.

14 MR. BULSA: I have copies I can refer.

15 THE COURT: Okay. Thank you.

16 Good morning, ladies and gentlemen. My name is Tommy
17 Cooper. I'm a circuit judge from down in Manning, in
18 Clarendon. It's about three hours from here. Actually, it
19 was 2 hours and 57 minutes yesterday morning with the fog and
20 the rain. For the last fifteen years I've been a trial judge
21 in the state of South Carolina. I retired last October but I
22 continue to to hold court one week a month throughout the
23 state and it's a pleasure for me to be here in Spartanburg
24 County, where I haven't been really in the last ten or fifteen
25 years that I can remember, and to work with you and the other

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1 fine people who make up the Court system here.

2 You have been through a qualification system yesterday
3 morning, a process I should say, and some of you were present
4 perhaps when Judge Alford was qualifying jurors for a case in
5 the court of common pleas. In this courtroom during this week
6 we're trying cases in the court of general sessions. You and
7 I commonly refer to that as criminal court. And we're about
8 to qualify you all as perspective jurors in a case that we're
9 going to try and in that regard we're gonna be asking you some
10 questions and giving you some information about the case.
11 It'll be similar to the qualification process that you've gone
12 through before and I'll tell you more about that as you need
13 to know it as we go through this process this morning. It
14 will not be a lengthy process and we will seat a jury and
15 after we have seated the jury in this case then the balance of
16 you will be dismissed to go back to the jury assembly room or
17 wherever they make you go and wait, hopefully not for a long
18 period of time, until you find out what the plans are for the
19 rest of the day for those of you who are not selected as
20 jurors in this case.

21 Mr. Solicitor, you can call your case.

22 MR. BULSA: Thank you, Your Honor, the State vs. Gary
23 Michael Piper, Indictment 07-GS-42-2716 pointing and or
24 presenting a firearm, 07-2717 attempted armed robbery, 07-2718
25 murder, 07-2719 attempted armed robbery, 07-0544 for the

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1 failure to stop a motor vehicle when signaled by an officer.

2 THE COURT: Thank you.

3 Ladies and gentlemen, as you have heard from the
4 solicitor's recitation of the case that has been called, the
5 defendant Mr. Gary Michael Piper has been indicted by the
6 Grand Jury of Spartanburg County and charged in several
7 offenses and I'll read those charges to you in the order in
8 which they were presented: Indictment No. 2716 accuses
9 Mr. Piper here in Spartanburg County on or about December the
10 21st of 2006 with pointing or presenting a firearm
11 specifically a pistol at Artis Jackson in violation of the
12 law; Indictment 2717 charges Mr. Piper with attempted armed
13 robbery and that indictment accuses Mr. Gary Michael Piper
14 here in Spartanburg County also on December the 21st of 2006
15 attempting to rob Artis Jackson while armed with a pistol and
16 attempting to take money from him in violation of the law;
17 Indictment 2718 charges Mr. Piper with the crime of murder,
18 that indictment accuses Mr. Gary Michael Piper here in
19 Spartanburg County on or about December the 21st of 2006
20 feloniously, willfully and with malice aforethought killing
21 one Alberto Domingo Chavez by shooting the victim with a
22 pistol and the victim died as a proximate result thereof in
23 violation of the law; Indictment 2719 charges Mr. Piper with
24 attempted armed robbery and that indictment accuses Mr. Piper
25 also in Spartanburg County on December the 21st of 2006

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1 attempting to rob Alberto Domingo Chavez while armed with a
2 pistol and attempting to take money and or jewelry from him in
3 violation of the law; Indictment 07-544 charges Mr. Piper with
4 failing to stop for a law enforcement officer when properly
5 signaled and that indictment accuses Mr. Piper here in
6 Spartanburg County on or about December the 27th of 2006
7 failing to stop the motor vehicle which he was driving on a
8 street, road or highway of the state when he was signaled by a
9 law enforcement officer by means of a flashing light or siren
10 or both.

11 Now, ladies and gentlemen, the indictments which I have
12 just read to you are not evidence nor are they proof of the
13 charges contained in them, they're simply charging papers,
14 legal documents that tell you or me or anybody else who reads
15 'em what these charges are all about. To the charges
16 contained in these indictments, Mr. Piper has entered pleas of
17 not guilty and has asked for a jury trial at your hands.

18 Mr. Piper, would you please stand and face the jury
19 behind you.

20 (Whereupon, the defendant stood.)

21 THE COURT: Thank you. You can be seated.

22 Ladies and gentlemen, I need to know if any of you all
23 are related by blood or connected by marriage to Mr. Gary
24 Piper. Are you friends of his, business associate, casual
25 acquaintance, personal acquaintance or a person who has any

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1 direct or indirect contact with Mr. Gary Piper, if so please
2 stand.

3 (No response.)

4 THE COURT: Thank you. Ladies and gentlemen, potential
5 witnesses who may testify in the trial of this case are
6 Dominick Baird of the sheriff's office, Randy Bogan of the
7 sheriff's office, George Brown of the Spartanburg Public
8 Safety Department, Jason Bryant of the sheriff's office,
9 Diedra Amanda Colquitt, Dan DeFreese of the South Carolina Law
10 Enforcement Division, Lou Ellen Green, Tina Green, Margaret
11 Greer of the sheriff's office, Nancy Gregg, Jennifer Gregg;
12 are any of you all related by blood or connected by marriage
13 to any of those potential witnesses, if so please stand. Or
14 are you friends of theirs, business associates or people who
15 have any direct or indirect contact with any of those
16 potential witnesses, if so please stand.

17 (No response.)

18 THE COURT: Thank you. Other witnesses who may testify
19 in the trial of this case are Russell Holthaus H-O-L-T-H-A-U-S
20 of the sheriff's office, Christian Hudson, Artis Jackson,
21 Charles Jackson, Mike Jones of the detention center, Gregg
22 Maurice Lee, Reid Lindsey of the sheriff's office, Sean Nix
23 from the sheriff's office, C.D. Norkett N-O-R-K-E-T-T of the
24 public safety department, Jeff Powell from the public safety
25 department, Amanda Robinson, Robert Talanges of the sheriff's

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1 office, Steve Wilson of the sheriff's office and Dr. David
2 Wren of the Spartanburg Regional Medical Center. Are any of
3 you all related by blood or connected by marriage to any of
4 those witnesses or are you friends of theirs, business
5 associates, casual acquaintances or persons who have any
6 direct or indirect contact with any of those potential
7 witnesses, if so please stand.

8 (No response.)

9 THE COURT: Thank you. Ladies and gentlemen, according
10 to the indictment which I just read to you the alleged victim
11 in the murder in the attempted armed robbery case was
12 Mr. Alberto Domingo Chavez. I need to know if any of you all
13 are related by blood or connected by marriage to Mr. Chavez or
14 are you or were you a friend of his, a business associate, a
15 casual acquaintance or a person who has any direct or indirect
16 contact with Mr. Chavez, if so please stand.

17 (No response.)

18 THE COURT: Thank you. Ladies and gentlemen, the lawyers
19 who'll be involved in the trial this case on behalf of the
20 state the case will be prosecuted by Deputy Solicitor Derrick
21 Bulsa.

22 (Whereupon, counsel stood.)

23 THE COURT: Mr. Piper is represented by Josh -- Joshua
24 Schultz of the public defender's office.

25 (Whereupon, counsel stood.)

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1 THE COURT: Thank you. I now need to know if any of you
2 all are related by blood or connected by marriage to any of
3 these lawyers or are you friends of theirs, business
4 associates, casual acquaintances or people who have any direct
5 or indirect contact with any of 'em or if you ever been sued
6 by any of 'em or represented by any of 'em, if so please
7 stand.

8 THE COURT: Yes, sir, your name please, sir.

9 JUROR NUMBER 131: Yes, sir, Juror No. 131, Bill Rhodes.
10 I used to work in the Spartanburg County Solicitor's office so
11 I know many of the attorneys who are in the courtroom.

12 THE COURT: All right, sir. That's Juror No. 131, Mr.
13 Rhodes. Mr. Rhodes, how long ago did you last work with the
14 solicitor's office?

15 JUROR NUMBER 131: I left 'em in February.

16 THE COURT: February of this year?

17 JUROR NUMBER 131: Yes, Your Honor.

18 THE COURT: All right. Mr. Rhodes, would the fact that
19 you know many of the folks who or at least in the solicitor's
20 office and perhaps in the public defender's office as well,
21 would that make it difficult for you to serve fairly and
22 impartially as a juror in the trial of this case in which
23 these lawyers are representing either side?

24 JUROR NUMBER 131: It would not affect me in any way,
25 Your Honor.

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1 THE COURT: Would you be able to set aside that
2 association then and decide this case based on the evidence
3 that you will hear in this court without regard to that
4 association?

5 JUROR NUMBER 131: I would, Your Honor.

6 THE COURT: And will you do that please, sir?

7 JUROR NUMBER 131: Yes, sir.

8 THE COURT: Thank you, Mr. Rhodes.

9 THE COURT: Ladies and gentlemen, as you have heard, the
10 charges in this case involve some of 'em crimes of personal
11 violence. Murder is obviously a crime of personal violence,
12 armed robbery is a crime of personal violence and so I need to
13 know if any of you or any members of your immediate family
14 have ever had any involvement with a crime of personal
15 violence. Not just like murder or armed robbery, it could be
16 assault and battery of a high and aggravated nature, criminal
17 domestic violence, criminal domestic violence of a high and
18 aggravated nature, criminal sexual conduct, kidnapping,
19 there's a whole long list unfortunately of crimes of personal
20 violence. And so the question does not own apply to you, it
21 applies to any members of your immediate family, that is, any
22 members of your household. And secondly, the question applies
23 not only to the crimes that we have before us today but any
24 crimes of personal violence of the nature that I have just
25 described to you. And finally, the question applies to a list

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1 of possible involvement in those crimes. You or your family
2 member could have been a victim of the crime, that is, the
3 person against whom the crime was committed. You or your
4 family member could have been a defendant in the crime, that
5 is, the person who was charged with committing the crime. You
6 or your family member could have been a witness to the crime.
7 So if any of you or any members of your immediate family have
8 been involved in a crime of personal violence as I described
9 that to you either as a defendant or a victim or a witness, I
10 want you to stand right now and we will get your names and
11 your numbers and then we will call you down and hear, at the
12 side bar in the presence of the court reporter and the lawyers
13 in this case, I will inquire about your situation in greater
14 detail. If that question applies to anyone, please stand.
15 And all I need now is your name and if you know your number
16 that is helpful to us as well.

17 Yes, ma'am, we'll start with you on the front.

18 JUROR NUMBER 193: 193. My name is Jan Barton.

19 THE COURT: Okay. Well, I'll take you on the outside
20 then. Ms. Barton, Juror No. 6, is that right? No.

21 JUROR NUMBER 193: 193.

22 THE COURT: 193. There's another Barton in the crowd --
23 okay, thank you. Ms. Barton, would you come at this point in
24 time and form a line right there in the center aisle if you
25 don't mind. We'll call you forward individually at the time.

JURY QUALIFICATION

1 Yes, ma'am. Your name now please. I'm sorry.

2 JUROR NUMBER 138: 138, Mary Ruzga.

3 THE COURT: 138, Ms. Lufca [sic]. Ms. Rusca. Ms. Rus --
4 if you would get in second in line, Ms. Ruzga, if you don't
5 mind please. Thank you.

6 Yes, sir, at the back in the aisle. Your name first.

7 JUROR NUMBER 135: Curtis Robinson 135.

8 THE COURT: Mr. Washington [sic], thank you, sir. Mr.
9 Washington if you get next. Yes, sir, your name please.

10 JUROR NUMBER 149: Michael Smathers 149.

11 THE COURT: Thank you, Mr. Smathers.

12 All right. We'll start, I think this is the first row
13 here on the outside, your name please, ma'am.

14 JUROR NUMBER 37: Gertrude Dawkins No. 37.

15 THE COURT: Number 37. Thank you, Ms. Dawkins, if you'll
16 get in line next please.

17 I believe you're next, ma'am, as I can see. My my depth
18 perception is not real good so I can't tell one row from the
19 next of this at this ---

20 JUROR NUMBER 206: Georgia Vaughn 206.

21 THE COURT: Ms. Vaughn, thank you, ma'am, if you'll get
22 next in line.

23 THE COURT: And who's next on that row? Is it...

24 JUROR NUMBER 131: Me. Juror No. 131, Bill Rhodes.

25 THE COURT: All right. Mr. Rhodes.

JURY QUALIFICATION

1 Yes, your name on the aisle please.
2 JUROR NUMBER 209: Shawn Rutledge 209.
3 THE COURT: Thank you, Mr. Rutledge.
4 Yes, ma'am, in the blue jacket.
5 JUROR NUMBER 196: 196, Lisa Marshall.
6 THE COURT: Ms. Martian [sic], thank you, ma'am.
7 JUROR NUMBER 50: Jane Fore, No. 50.
8 THE COURT: 50. Thank you, ma'am, if you'll get in line
9 next please.
10 THE COURT: Okay. I've got others? Okay. I'm sorry.
11 Yes, in the red on that side (indicating). Your name please,
12 ma'am.
13 JUROR NUMBER 91: Number 91, Janet Matthews.
14 THE COURT: Ms. Matthews. All right. Thank you. Next.
15 JUROR NUMBER 208: Juror No. 208, Patricia Lemaster.
16 THE COURT: Thank you, Ms. Lemaster, if you'd get in line
17 as well.
18 And your name please.
19 JUROR NUMBER 73: Kenneth Jeter 72 -- 73.
20 THE COURT: 73? And your name again please, sir.
21 JUROR NUMBER 73: Kenneth Jeter.
22 THE COURT: Mr. Jeter.
23 All right, counsel, if you'll approach please. Thank
24 you.
25 THE COURT: Ms. Barton, we'll start with you.

JURY QUALIFICATION

1 (Whereupon, Juror No. 193 approached the bench and a
2 discussion was held off the record.)

3 (The juror returned to her seat.)

4 THE BAILIFF: Ms. Ruzga, Juror No. 138.

5 (Whereupon, the juror approached the bench and a
6 discussion was held off the record.)

7 THE COURT: Juror No. 138 will be stood aside as a juror
8 in this case.

9 (The juror returned to her seat.)

10 THE COURT: Mr. Washington [sic].

11 (Whereupon, the juror approached the bench and a
12 discussion was held off the record.)

13 THE COURT: Juror No. 135 will be set aside as a juror in
14 this case.

15 (The juror returned to his seat.)

16 THE COURT: Mr. Smathers, Juror 149.

17 (Whereupon, the juror approached the bench and a
18 discussion was held off the record.)

19 THE COURT: Juror No. 149 will be stood aside as a juror
20 in this case.

21 (The juror returned to his seat.)

22 THE COURT: Ms. Dawkin. Ms. Dawkins, Juror No. 37.

23 (Whereupon, the juror approached the bench.)

24 THE COURT: Ms. Dawkins, was it you or a family member
25 that was involved?

JURY QUALIFICATION

1 JUROR NUMBER 149: My son was a domestic violence.

2 THE COURT: Ma'am?

3 JUROR NUMBER 149: My son.

4 THE COURT: Your son. And what was he involved with?

5 JUROR NUMBER 149: Domestic violence for a girlfriend.

6 THE COURT: Okay. Was he prosecuted for that?

7 JUROR NUMBER 149: Probation.

8 THE COURT: Put on probation?

9 JUROR NUMBER 149: Um-hum.

10 THE COURT: Was that here in Spartanburg County?

11 JUROR NUMBER 149: Yes, sir.

12 THE COURT: Would that circumstance make it difficult for
13 you to be fair and impartial as a juror in a trial of this
14 nature?

15 JUROR NUMBER 149: No.

16 THE COURT: Could you set aside your son's experience
17 then and decide this case based just on what you hear in court
18 without regard to that?

19 JUROR NUMBER 149: Yes, sir.

20 THE COURT: And will you do that please, ma'am?

21 JUROR NUMBER 149: Yes.

22 THE COURT: Thank you, Ms. Dawkins. Go back and have a
23 seat.

24 (The juror returned to her seat.)

25 THE COURT: Ms. Vaughn. Juror No. 206.

JURY QUALIFICATION

1 (Whereupon, the juror approached the bench and a
2 discussion was held off the record.)

3 THE COURT: Juror No. 206 will be set aside as as juror
4 in this case.

5 (The juror returned to her seat.)

6 THE COURT: 131, Mr. Rhodes, come up.

7 (Whereupon, the juror approached and a discussion was
8 held off the record.)

9 (The juror returned to his seat.)

10 (Whereupon, a juror approached the bench.)

11 THE COURT: Mr. Rutledge, is it?

12 JUROR NUMBER 209: Yes.

13 THE COURT: Juror No. 209. Mr. Rutledge, if you'll speak
14 so that she can hear you. Was it you or a family member that
15 was involved?

16 JUROR NUMBER 209: Me.

17 THE COURT: And what were the circumstances please.

18 JUROR NUMBER 209: I was a victim of domestic violence
19 for four years.

20 THE COURT: And who was the perpetrator of that?

21 JUROR NUMBER 209: My father.

22 THE COURT: Was he prosecuted as a result of that?

23 JUROR NUMBER 209: No.

24 THE COURT: Okay. How long ago was that?

25 JUROR NUMBER 209: It's been nine or ten years.

JURY QUALIFICATION

1 THE COURT: Okay. Would those circumstances make it
2 difficult for you to serve fairly and impartially as a juror
3 in this case?

4 JUROR NUMBER 209: I believe it would.

5 THE COURT: You think so?

6 JUROR NUMBER 209: Yes, sir.

7 THE COURT: All right. Mr. Rutledge, we'll stand you
8 aside as a juror in this case.

9 JUROR NUMBER 209: Thank you.

10 THE COURT: Go back and have a seat.

11 (The juror returned to his seat.)

12 THE COURT: Juror 209 will be stood aside.

13 (Whereupon, a juror approached the bench.)

14 THE COURT: Ms. Martian, is it?

15 JUROR NUMBER 196: Marshall.

16 THE COURT: Martial. Am I saying your name right?

17 JUROR NUMBER 196: Marshall.

18 THE COURT: Marshall.

19 JUROR NUMBER 196: M-A-R-S-H-A-L-L.

20 THE COURT: Please speak so that she can hear you.

21 JUROR NUMBER 196: Okay.

22 THE COURT: Was it you or a family member that was
23 involved?

24 JUROR NUMBER 196: A family member.

25 THE COURT: Who was the relation?

JURY QUALIFICATION

1 JUROR NUMBER 196: My husband?

2 THE COURT: What was his involvement?

3 JUROR NUMBER 196: He is currently a witness in an
4 assault and battery case.

5 THE COURT: Okay. Do you know anything about that case
6 yourself?

7 JUROR NUMBER 196: I was not there.

8 THE COURT: Okay.

9 JUROR NUMBER 196: Obviously, I heard a lot but I was not
10 there.

11 THE COURT: Did it involve friends or family members?

12 JUROR NUMBER 196: Friends.

13 THE COURT: Friends. Would that involvement although
14 somewhat vicarious through your husband would it make it
15 difficult for you to be fair and impartial as a juror in a
16 trial like this?

17 JUROR NUMBER 196: I don't believe so.

18 THE COURT: You can set that aside and decide this case
19 based on what you hear in court?

20 JUROR NUMBER 196: Yes.

21 THE COURT: Thank you, Ms. Marshall. You can go back and
22 have a seat.

23 (The juror returned to her seat.)

24 THE COURT: Ms. Fore.

25 (Whereupon, the juror approached the bench and a

JURY QUALIFICATION

1 discussion was held off the record.)

2 THE COURT: Juror No. 50 will be stood aside as a juror
3 in this case.

4 (The juror returned to her seat.)

5 (Whereupon, a juror approached the bench.)

6 THE COURT: Ms. Matthews. Ms. Matthews, if you'll speak
7 so that she can hear you.

8 JUROR NUMBER 91: Okay.

9 THE COURT: Was it you or a family that was involved?

10 JUROR NUMBER 91: Family member.

11 THE COURT: And who was the relation please.

12 JUROR NUMBER 91: My son.

13 THE COURT: Your son?

14 JUROR NUMBER 91: Yes.

15 THE COURT: And what was his involvement.

16 JUROR NUMBER 91: He was robbed by gunpoint.

17 THE COURT: Okay. How old is your son?

18 JUROR NUMBER 91: He was 16 when it happened. It
19 happened last year.

20 THE COURT: Okay. Was that here in Spartanburg County?

21 JUROR NUMBER 91: Yes, sir.

22 THE COURT: Was anybody caught?

23 JUROR NUMBER 91: No.

24 THE COURT: Never have been caught?

25 JUROR NUMBER 91: No, we done a police report and

JURY QUALIFICATION

1 everything.

2 THE COURT: Okay. Ms. Matthews, would your would your
3 son's involvement -- was he living at home at the time?

4 JUROR NUMBER 91: Yes, it happened around the corner from
5 the house.

6 THE COURT: All right. I see. Would would your son's
7 involvement and I guess your involvement through him as his
8 mother in that type of case make it difficult for you to be
9 fair and impartial as a juror in this case?

10 JUROR NUMBER 91: Yes, Your Honor.

11 THE COURT: It would. All right. Thank you,
12 Ms. Matthews, we'll stand you aside. If you'll go back and
13 have a seat.

14 (The juror returned to her seat.)

15 THE COURT: Juror No. 91 will be stood aside as a juror
16 in this case.

17 THE COURT: Ms. Lemaster, 208.

18 (Whereupon, the juror approached the bench and a
19 discussion was held off the record.)

20 THE COURT: Juror No. 28 -- 208 will be stood aside as a
21 juror in this case.

22 (The juror returned to her seat.)

23 THE COURT: Mr. Geter.

24 (Whereupon, the juror approached the bench and a
25 discussion was held off the record.)

JURY QUALIFICATION

1 (The juror returned to his seat.)

2 THE BAILIFF: 199. They didn't stand up a while ago.

3 THE COURT: All right, sir. Thank you. If you'll come
4 forward. What's your name?

5 (Whereupon, the juror approached the bench.)

6 JUROR NO. 199: Alfred Scates.

7 POLICE OFFICER: Sir, take your hands out of your pocket.

8 THE COURT: Thank you. Your name please, sir.

9 JUROR NO. 199: Alfred Scates.

10 THE COURT: Gates?

11 JUROR NO. 199: Scates, S-C-A-T-E-S.

12 THE COURT: S-C-A-T-E-S. Mr. Scates, was it you or a
13 family member that was involved?

14 JUROR NO. 199: Nephew.

15 THE COURT: Nephew. And what was his involvement?

16 JUROR NO. 199: He was with two other fellers and they
17 robbed a man and killed.

18 THE COURT: All right.

19 JUROR NO. 199: He's a good kid but he was still there.

20 THE COURT: Right. Where did that happen?

21 JUROR NO. 199: In Gaffney.

22 THE COURT: And what was the outcome of that as far as
23 your nephew was concerned?

24 JUROR NO. 199: They all doing time now.

25 THE COURT: Did -- he was charged with murder?

JURY QUALIFICATION

1 JUROR NO. 199: Yes. Well no, he wasn't charged with
2 murder he was charged with accessory.

3 THE COURT: I see. All right. Would that involvement of
4 your nephew in a crime similar to the crime that you're
5 dealing with here, would that make it difficult for you to be
6 fair and impartial as a juror in a trial of this case?

7 JUROR NO. 199: No, sir it wouldn't.

8 THE COURT: Could you set aside your own experience and
9 that of your nephew and decide this case based on the evidence
10 you hear in this case without regard to that?

11 JUROR NO. 199: Right.

12 THE COURT: Would you do that please, sir?

13 JUROR NO. 199: Yes, sir.

14 THE COURT: Thank you, sir. You can go back and have a
15 seat.

16 (The juror returned to his seat.)

17 THE BAILIFF: Number 154.

18 (Whereupon, the juror approached the bench.)

19 THE COURT: Thank you. Yes, ma'am. If you will, speak
20 so that she can hear you. Your name please, ma'am.

21 JUROR NO. 154: Candie Soper.

22 THE COURT: Last name?

23 JUROR NO. 154: Soper, S-O-P-E-R.

24 THE COURT: Thank you, Ms. Soper. Was it you or a family
25 member that was involved?

JURY QUALIFICATION

1 JUROR NO. 154: My brother.

2 THE COURT: Your brother. And what was his
3 involvement?

4 JUROR NO. 154: He's a registered sex offender in
5 Washington State.

6 THE COURT: Okay. All right. So he's obviously been
7 convicted of a sexual crime in Washington State or somewhere,
8 is that right?

9 JUROR NO. 154: Um-hum.

10 THE COURT: How long ago did those things happen? Do you
11 know?

12 JUROR NO. 154: Eighteen years ago.

13 THE COURT: Okay. Were you living in Washington State at
14 the time?

15 JUROR NO. 154: No.

16 THE COURT: Okay. Would your brother's involvement in
17 that regard make it difficult for you to be fair and impartial
18 as a juror in a crime of this nature?

19 JUROR NO. 154: No.

20 THE COURT: Could you set aside those things and decide
21 this case based on what you would hear in court without regard
22 to those?

23 JUROR NO. 154: Yes, sir.

24 THE COURT: Would you do that please?

25 JUROR NO. 154: Yes, sir.

JURY QUALIFICATION

1 THE COURT: Thank you, Ms. Soper. You can have a seat.

2 (The juror returned to her seat.)

3 THE BAILIFF: No. 65. If there's anybody else, please
4 stand now.

5 THE COURT: Yes. Let's -- I'd like to know what what I'm
6 dealing with. Thank you.

7 (Whereupon, the juror approached the bench.)

8 THE COURT: Your name please, sir.

9 JUROR NO. 65: Ansel Henson.

10 THE COURT: Mr. Henson?

11 JUROR NO. 65: Um-hum.

12 THE COURT: Thank you, Mr. Henson. Was it you or a
13 family member that was involved?

14 JUROR NO. 65: A family member.

15 THE COURT: And who was the relation please?

16 JUROR NO. 65: My son.

17 THE COURT: Your son. And what was his involvement?

18 JUROR NO. 65: He robbed a bank.

19 THE COURT: Where did that happen?

20 JUROR NO. 65: First Citizens in -- here in
21 Spartanburg.

22 THE COURT: How long ago did that happen?

23 JUROR NO. 65: Uh, sixteen years, seventeen years ago.

24 THE COURT: Okay. And he was caught obviously and
25 convicted, is that right?

JURY QUALIFICATION

1 JUROR NO. 65: Yeah.

2 THE COURT: Did he have -- how much time did he have to
3 serve?

4 JUROR NO. 65: See, me and my wife, first wife's divorced
5 then.

6 THE COURT: Right. So you don't you don't know exactly
7 how much time he had.

8 JUROR NO. 65: I didn't have no dealings to do with it.

9 THE COURT: You didn't have any ---

10 JUROR NO. 65: Actually divorced ---

11 THE COURT: So you didn't know whether he was prosecuted
12 in the state court or in federal court for that.

13 JUROR NO. 65: Uh, federal court.

14 THE COURT: In federal court. Was your sons -- do you
15 have any connection with your son now?

16 JUROR NO. 65: No.

17 THE COURT: Would his involvement in that regard make it
18 difficult for you to be fair and impartial as a juror in a
19 case like this?

20 JUROR NO. 65: No it won't.

21 THE COURT: Could you set aside those things and decide
22 this case based ---

23 JUROR NO. 65: Yeah.

24 THE COURT: --- on what you hear in court? And you'll do
25 that?

JURY QUALIFICATION

1 JUROR NO. 65: Um-hum.

2 THE COURT: Thank you, Mr. Henson. You can go back and
3 have a seat.

4 (The juror returned to his seat.)

5 THE COURT: Thank you, folks, I appreciate your patience
6 through that line of questioning which is obviously important
7 to this process but I I realize it somewhat unsettling at
8 certain times.

9 Ladies and gentlemen, I read to you a few moments ago the
10 indictment. As I told you at the time and I remind you again,
11 the indictment is not evidence nor is it proof of the charges
12 that it contains, they're simply charging papers that tell us
13 what the case is all about because I need to know if you know
14 anything about this case. I need to know if you have seen or
15 heard or read anything about this case or if you have any
16 knowledge about the case from any source at all, if you would,
17 please stand.

18 (No response.)

19 THE COURT: Ladies and gentlemen, I have identified the
20 lawyers who'll be involved in the trial of this case.
21 Obviously the case is being presented by the solicitor's
22 office of the Seventh Judicial Circuit, the Seventh Circuit is
23 made up of Spartanburg and Cherokee Counties, and being
24 defended by a member of the public defender's office of
25 Spartanburg County. So I need to know if any of you all are

JURY QUALIFICATION

1 related by blood or connected by marriage or if you're friends
2 of anyone who works in the solicitor's office or the public
3 defender's office for Spartanburg County or the Seventh
4 Circuit, if so please stand.

5 THE COURT: Mr. Rhodes is -- 131 is it?

6 JUROR NUMBER 131: 131, Your Honor.

7 THE COURT: 131. Mr. Rhodes, I think you've answered
8 this earlier. Is it the same question that I asked earlier?

9 MR. RHODES: It is, Your Honor.

10 THE COURT: All right, sir, and the same answer?

11 MR. RHODES: Same answer, Your Honor.

12 THE COURT: Thank you, Mr. Rhodes.

13 All right. Yes, ma'am. Is it Ms. Vaughn?

14 JUROR NUMBER 206: Yes, sir.

15 THE COURT: Ms. Vaughn is Juror No. ---

16 JUROR NUMBER 206: 206.

17 THE COURT: 206. Ms. Vaughn, tell me about the
18 association. Who's it with please, ma'am.

19 JUROR NUMBER 206: I worked for the department of social
20 services in the 80s and in that capacity I worked with members
21 of the solicitor's office on a regular basis.

22 THE COURT: All right. Ms. Vaughn, we've already stood
23 you aside as a juror in this case so that I I apologize for
24 bothering you again. Thank you.

25 Yes, ma'am, your name please?

JURY QUALIFICATION

1 JUROR NUMBER 197: Susan Corn 197.

2 THE COURT: Ms. Corn.

3 JUROR NUMBER 197: Yes.

4 THE COURT: 197. Tell me about the association please,
5 Ms. Corn.

6 JUROR NUMBER 197: I'm a friend of Mr. Whelchel.

7 THE COURT: All right. He's with the public defender's
8 office?

9 MR. WHELCHER: Yes, sir.

10 THE COURT: All right. Would you would you describe that
11 as a casual friendship, close personal friendship? How would
12 you describe it, Ms. Corn?

13 JUROR NUMBER 197: We went to school together ---

14 THE COURT: I see.

15 JUROR NUMBER 197: --- many years ago.

16 THE COURT: Okay. I won't ask you how long ago that was
17 but, (laughter) Ms. Ms. Corn, obviously it looked like it was
18 long ago for Mr. Whelchel than it was for you there
19 (laughter). Would would that association make it difficult
20 for you to be fair and impartial as a juror in a trial like
21 this?

22 JUROR NUMBER 197: Not in any way.

23 THE COURT: Thank you, Ms. Corn, you can be seated.

24 Ladies and gentlemen, are any of you or any members of
25 your immediate family currently a a victim or a complaining

JURY QUALIFICATION

1 witness in a case being prosecuted by the solicitor's office?
2 I think I've already covered this question but I wanna make
3 sure: Any of you or any members of your immediate family who
4 have not already come up and talked with me a victim, a
5 complaining victim or a witness in any case being prosecuted
6 by the solicitor's office? Have any of you ever been a
7 complaining witness or a victim in the past of a case that was
8 prosecuted by the solicitor's office other than those of you
9 who've already talked with me?

10 (No response.)

11 THE COURT: Ladies and gentlemen, are any of you all
12 members of or contributors to any group which has as its
13 primary focus the promotion of law enforcement or victim's
14 rights such as MADD, SADD, CAVE, CAUDRY (phonetic), the
15 Trooper's Association and things of that nature, if so would
16 you please stand.

17 (No response.)

18 THE COURT: Thank you. Have any of you all formed in
19 your own mind or expressed to anyone else any opinion about
20 the guilt or the innocence of Mr. Piper the defendant in this
21 case, if you have would you please stand.

22 (No response.)

23 THE COURT: Are any of you aware of that is to say
24 conscious of any bias or prejudice that you might have for or
25 against the State of South Carolina or for or against the

MOTIONS AND MATTERS

1 defendant in this case, if you are aware would you please
2 stand.

3 (No response.)

4 THE COURT: Finally, ladies and gentlemen, do any of you
5 know of any reason then of any kind whatsoever that would keep
6 you from serving fairly and impartially as a juror in this
7 case both for the state and the defendant? If you know of any
8 such reason would you please stand.

9 (No response.)

10 THE COURT: Thank you. Mr. Bulsa, other than previously
11 noted, any further questions from the state?

12 MR. BULSA: No, Your Honor.

13 THE COURT: Thank you. Mr. Schultz, other than
14 previously noted, any questions from the -- any additional
15 questions from the defendant?

16 MR. SCHULTZ: No, sir, Your Honor.

17 THE COURT: Thank you. Madam clerk, you can give us a
18 jury. The strikes will be five for the state, ten for the
19 defendant. We will select two alternates. The strikes will
20 be one for the state, two for the defense as to each of the
21 two alternates.

22 (Whereupon, a jury was impaneled.)

23 THE COURT: Mr. Bulsa, are there any matters of law
24 regarding the jury selection process from the state?

25 MR. BULSA: No, Your Honor.

MOTIONS AND MATTERS

1 THE COURT: Mr. Schultz, from the defense?

2 MR. SCHULTZ: None from the defense, Your Honor.

3 THE COURT: Thank you.

4 (Whereupon, the remaining jurors were excused.)

5 THE COURT: Now, ladies and gentlemen, you all have been
6 selected as jurors for the trial of this case and we've got
7 some matters that we need to take care of before we're gonna
8 be in a position to start the trial of this case. We've got
9 some motions that we need to deal with, things that we do
10 outside of your presence do not involve you all as jurors and
11 so I'm gonna send you to an early lunch and it's gonna be
12 somewhat extended to allow us to do the things that we have to
13 do. There's no point in us shutting you back up in that jury
14 room while we're talking out here. That's that's not fair to
15 you and it's really not fair to the process.

16 I know you might find this difficult to believe -- well,
17 only this just happens to be Tuesday of your week of jury
18 service, but we do work hard try -- trying not to waste your
19 time. This morning before you were brought in here to begin
20 this jury selection process we had some things that we had to
21 do outside of your presence to get the process in a position
22 to go forward and before we start the trial this afternoon at
23 1:30, that's what time we're gonna start the trial this
24 afternoon at 1:30, we've got some other matters that we need
25 to take care of that do not require your presence and there's

MOTIONS AND MATTERS

1 no way that we can do those things in advance unfortunately.
2 We have to wait till we're at this stage of the proceeding.
3 So I don't know, I know that Senator Clinton was over at the
4 Resin -- at the Ramada where I was, where I've been staying
5 and I don't know whether you wanna drop in and speak to her or
6 not but I'm sure she'd be delighted to see you if you made a
7 good enough financial contribution to the democratic party to
8 get a ticket in there, but I don't know anything else that's
9 happening exciting in Spartanburg. I know I was just glad to
10 get out of the hotel this morning when I was when I was
11 leaving there but I'll leave you on your own designs as to how
12 you're gonna occupy yourself between now and 1:30. But there
13 are some limitations that I have to impose upon you and that
14 is this: You may not discuss this case among yourselves or
15 with anybody else or expose yourself to any information about
16 this case from any source at all until your involvement with
17 juror -- as jurors in the trial of this case has ended and
18 until you begin, I should say until you begin your
19 deliberations, not until your involvement has ended but until
20 you begin your deliberations among yourselves. I know that
21 you don't know anything about this case itself because I asked
22 you and you told me you didn't know anything about the case.

23 Now, you understand what the charges are and so you might
24 understand what some of the issues might be in the trial of
25 this case. It's improper for you to discuss those things

MOTIONS AND MATTERS

1 among yourselves or with anybody else or to let anybody else
2 talk with you because as I just explained to the juror panel
3 that was not selected in the trial of this case, what we've
4 been doing all morning is trying to make sure that when we got
5 fourteen of you all in that box, that we had fourteen people
6 there who didn't have any predisab -- predispositions about
7 this case. And so if you let somebody else talk with you
8 about this case and express their opinions to you or if you
9 try to find out something on your own about this case outside
10 of this courtroom, you'll upset all that process that you've
11 been a very important part of this morning so please don't do
12 that and I know that you won't. And even during the trial of
13 the case itself you can't you can't talk about it among
14 yourselves. I'll give you some more detailed instructions
15 about those things before we start the trial today at 1:30,
16 but I didn't want you mistakenly or inadvertently between now
17 and then to do some of those things and you might not even
18 know that you weren't supposed to do that.

19 When you come back at 1:30, you'll come back directly
20 into this jury room right through this door. Mr. Nesbitt
21 knows. He'll take you out -- is that -- that way right there
22 (indicating). He'll show you where to come. There's a back
23 way that you'll come into the jury room. You won't come back
24 into the courtroom. You'll come a back, a back way, and and
25 they'll seat you in the jury room. Will you -- we'll get you

MOTIONS AND MATTERS

1 out at 1:30 to start the trial of this case. Enjoy your
2 extended lunch hour.

3 Our normal hours of operation we'll start in the morning
4 at 9:30 and we'll work through, we'll take a break in
5 mid-morning and we'll stop for lunch around 12:30 or 1:00.
6 We'll take about an hour and fifteen minutes or so for lunch.
7 We'll come back around 2 or 2:30 whenever that lunch hour is
8 up. We'll work until around 5 or 5:30 in the afternoon.
9 That's the schedule that we'll work on the rest of this trial,
10 the last couple of days at least. And so you're free to tell
11 anybody that needs to know what your schedule will be you just
12 can't talk about the case among yourselves or with them.
13 Everybody understand that? Have any questions about that?

14 (No response.)

15 THE COURT: 1:30. Please be in the jury room at 1:30.
16 Mr. Nesbitt will show you the way.

17 (The following takes place outside the presence of the
18 jury.)

19 THE COURT: Folks, we're gonna take fifteen minutes
20 before we start the motions if that's all right, give us a
21 chance to stretch our legs, will be about -- the clock there
22 (indicating) is right on it so let's start back at 11:30.
23 Thank you. We'll be recessed until 11:30.

24 MR. SCHULTZ: Thank you, Your Honor.

25 THE COURT: Thank you.

MOTIONS AND MATTERS

1 (Whereupon, a recess was taken.)

2 THE COURT: I have before me a list of the written
3 motions numbered 1 through 5 filed by Mr. Schultz. In
4 addition to this list there there is a *Jackson v. Denno* motion
5 to be dealt with and we can take those up in any order that
6 you all are prepared to take them up in. Mr. Schultz, are
7 your motions -- do, uh, let's dispose of these on the written
8 list first of all if we could, if you don't mind, because I
9 think most of those can be handled pretty expeditiously and
10 then we'll get to the *Jackson v. Denno* issue.

11 MR. SCHULTZ: Yes, sir.

12 THE COURT: All right.

13 MR. SCHULTZ: Your Honor, the the first motion is
14 actually *Jackson Denno* that's that's my first motion
15 numerically there. My second motion is to make sure
16 that -- to determine they exist if any and all Lyle South
17 Carolina Rules of Evidence 404(b) that the state intends to
18 present at trial is evidence of the defendant's character and
19 or any alleged prior bad act followed by a motion in limine to
20 determine the admissibility of any such evidence.

21 Your Honor, at this time we're not sure if my client
22 intends to tes -- would testify but I'd like to know if he
23 does whether the state -- what the state intends to present as
24 far as his prior record in order to impeach him.

25 THE COURT: All right. I think we had indicated earlier

MOTIONS AND MATTERS

1 that that what I'd like to do is to have the 609 hearing at
2 the conclusion of the state's case. I would like to in the
3 meantime see the the notice that the state has furnished you
4 regarding his prior record which they intend to to offer, give
5 me a little bit of time to look at those things to make up my
6 decision -- my mind about that, but let's deal with the Lyle
7 evidence.

8 Mr. Bussel -- Bulsa, do you indicate or do you do you
9 anticipate the introduction of any Lyle evidence or 404(b) bad
10 acts evidence other than the record if that is appropriate?

11 MR. BULSA: Not at this time, Your Honor. We kinda
12 touched upon it in the severance motion just just the
13 defendant's acts -- in the motion for severance?

14 THE COURT: Right.

15 MR. BULSA: The defendant's actions surrounding this
16 whole circumstance.

17 THE COURT: That's right. All right, sir. Okay. Um...

18 MR. SCHULTZ: Just just for the record, Your Honor, could
19 Mr. Bulsa get a little more specific as far as the acts
20 surrounding it?

21 MR. BULSA: The taking of the pistol without permission
22 from the owner of the pistol, ---

23 THE COURT: Right.

24 MR. BULSA: --- the flight from the police, disposal of
25 the weapon.

MOTIONS AND MATTERS

1 THE COURT: Right. Okay.

2 MR. SCHULTZ: Thank you.

3 THE COURT: Number 3 has to do with copies of NCIC
4 records or reports of any testifying witnesses. Has that been
5 complied with?

6 MR. BULSA: Yes, sir.

7 THE COURT: Okay. Thank you.

8 MR. SCHULTZ: Your Honor, that was just provided to me at
9 the at the beginning of this trial.

10 THE COURT: Okay.

11 MR. SCHULTZ: I have them in my possession. Your Honor,
12 this is the first time I've been able to look at these. Your
13 Honor, I would like to go outside the ten year limit in
14 impeaching the state's witnesses especially those that do have
15 criminal records. I'm not sure if the Court would allow me to
16 do such.

17 THE COURT: The -- I'll be glad to look at those
18 potential records to see what might apply to see if there's
19 any reason. Rule 609(b) is a rule that deals with the time
20 limit and it says that evidence of a conviction under this
21 rule is not admissible if a period of more than ten years has
22 elapsed since the date of the conviction or of the release of
23 the witness from the confinement imposed for that conviction,
24 whichever is the later date, unless the Court determines in
25 the interest of justice that the probative value of the

MOTIONS AND MATTERS

1 conviction supported by specific ac -- facts and circumstances
2 substantially outweighs it's prejudicial effect. And of
3 course it requires notice if a conviction more than ten years
4 old is going to be used. Obviously, you couldn't give the
5 notice until you saw the record, Mr. Schultz, so that's not
6 applicable ---

7 MR. SCHULTZ: That's correct, Your Honor.

8 THE COURT: --- in this particular case. But the
9 question is whether or not the prejudicial impact outweighs
10 its probative value and or as the rule says whether the
11 probative value outweighs, substantially outweighs its
12 prejudicial effect. Since we're talking about impeachment,
13 obviously, I'll have to look at the -- at those at those
14 cases. If you'll highlight the record that you'd like for me
15 to consider I could do that during the lunch hour and and
16 determine whether or not the ten year limit is a is a time
17 frame that we're going to treat with some elasticity both from
18 the state's and the defense's perspective or that I'm gonna
19 stay within the ten year limit, okay, but I'll have to need to
20 know what I'm talking about in advance so I'll depend on you
21 all to hand those things up with the convictions highlighted
22 or marked in some way. If you'll highlight them for me please
23 'cause as you know, going through those records and trying to
24 separate the wheat from the chaff takes some time.

25 MR. SCHULTZ: Yes sir, Your Honor. Thank you.

MOTIONS AND MATTERS

1 THE COURT: All right. And then the No. 4, any criminal
2 charges against any potential state witness, has that been
3 complied with or does it apply?

4 MR. BULSA: Your Honor, no deals have been struck with
5 anybody. I did speak with each witness and asked about
6 pending charges. I believe everybody's had their charges
7 resolved. Mr. Gregg Lee I noted on his rap sheet had an
8 arrest February of 2007 but it didn't come into play in any of
9 our discussions other than whether whether it was still
10 pending. I believe he told me it was not pending. I did not
11 check but that doesn't really apply, Your Honor. We haven't
12 stricken a deal.

13 THE COURT: All right. Sequestration of all potential
14 state witnesses. Of course as a practical matter all these
15 witnesses are not gonna be in the courtroom during the trial
16 anyway. I imagine most of 'em would love to be sequestered
17 until they're called or at least not have to be here. But the
18 only witnesses that I will -- tell me in this particular case
19 since we've got various witnesses testifying about various
20 aspects of this, what fact witnesses might be educated by the
21 testimony of other fact witnesses? Help me along those lines,
22 Mr. Schultz.

23 MR. SCHULTZ: Your Honor, the two principal witnesses
24 that the state intends to call is one Artis Jackson and he's
25 supposedly witnessed the whole incident that night.

MOTIONS AND MATTERS

1 THE COURT: Right.

2 MR. SCHULTZ: The other witness that they intend to call
3 is Charles Jackson. He was in another room at that time but
4 at the at the very least I would like to see Mr. Jackson
5 testify and Mr. -- that Artis Jackson testify and Charles
6 Jackson to be outside of the courtroom when he does and vice
7 versa obviously.

8 THE COURT: All right. Well, ---

9 MR. SCHULTZ: I think that's that's the most, two most
10 important witnesses I think that need to be sequestered.

11 THE COURT: Well, Artis Jackson is a is a victim in the
12 trial as I understand it ---

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: --- at least on the cover of the indictments.
15 All right. I'm gonna allow him to stay in the courtroom.
16 Mr. Charles Jackson is a witness. I will allow Mr. Charles
17 Jackson to be sequestered while Mr. Artis Jackson is
18 testifying.

19 MR. SCHULTZ: Thank you, Your Honor.

20 THE COURT: All right. Okay. And I believe that takes
21 care of everything except the the Jackson v. Denno matter
22 which we can handle now and the 609 hearing which we'll handle
23 at the conclusion of the state's testimony.

24 MR. SCHULTZ: Your Honor, there's one more thing and and
25 I talked to you briefly about this back in chambers, ---

MOTIONS AND MATTERS

1 THE COURT: Right.

2 MR. SCHULTZ: --- Your Honor, is I wanna make a motion to
3 reveal, for the state to reveal, the identify of a
4 confidential informant.

5 THE COURT: Right. You did did -- we did discuss that in
6 chambers and I apologize for for overlooking it. Mr. Bulsa,
7 as we discussed in chambers, unless the confidential informant
8 testifies in this particular case, there's no reason to
9 disclose his or her identity. If the confidential informant
10 does testify and if the informant received any sort of
11 incentive, stipend, money, whatever, to -- in return for the
12 evidence that that he he or she gave, then that would be
13 relevant as I understand it under the rule which goes to to
14 possible bias. What's the State's position in that regard?

15 MR. BULSA: Your Honor, the state is prepared to reveal
16 that person. We do intend to use them as a witness.

17 THE COURT: All right. Thank you. If that person is
18 used, then that information will be forthcoming and you'll be
19 able to cross-examine of course appropriately. Um...

20 MR. BULSA: At what point should I reveal that, Your
21 Honor?

22 THE COURT: I think enough time in advance to to allow
23 Mr. Mr. Schultz the opportunity to prepare to cross-examine on
24 the issue, you know, not just before the witness takes the
25 stand, but perhaps if the witness is gonna testify in the

MOTIONS AND MATTERS

1 afternoon, during the lunch break.

2 MR. BULSA: Yes, sir.

3 THE COURT: Gonna testify in the morning then first thing
4 in the morning.

5 MR. BULSA: Thank you.

6 THE COURT: Any of those things I think would be would be
7 appropriate. He'd have a chance to to prepare his examination
8 in that regard.

9 MR. SCHULTZ: Your Honor.

10 THE COURT: Yes, sir.

11 MR. SCHULTZ: Just for the record a lot of things -- I'm
12 not sure what the solicitor -- what order the solicitor
13 intends to call the case at.

14 THE COURT: Right.

15 MR. SCHULTZ: This confidential informant could testify
16 first, this confidential informant could testify last or
17 some -- sometime in the middle. This may change a lot of the
18 strategy in my case so I'd just like to put on the record that
19 I would like to request that the solicitor reveal it now.

20 THE COURT: He doesn't know whether he's gonna testify
21 now or not.

22 MR. BULSA: I do know.

23 THE COURT: Sir?

24 MR. BULSA: I do know.

25 THE COURT: All right.

MOTIONS AND MATTERS

1 MR. BULSA: I -- and I anticipate it to be this
2 afternoon. I'll tell him over the lunch break, Your Honor.

3 THE COURT: I'm sorry?

4 MR. BULSA: I'll tell him over lunch break.

5 THE COURT: All right.

6 MR. BULSA: I have no problem doing that.

7 THE COURT: All right. Thank you.

8 MR. SCHULTZ: Thank you, Your Honor.

9 THE COURT: Okay. Good. All right. Does that clear up
10 everything in pre -- other than the *Jackson v. Denno* issues?

11 MR. BULSA: I believe that's on the defense side. There
12 was a matter we mentioned in chambers, just to protect the
13 record, a plea offer made to the defendant.

14 THE COURT: Yes.

15 MR. BULSA: We'd like to put on the record that the state
16 has recommended or would recommend a sentence of 30 years if
17 the defendant pled to all the charges.

18 THE COURT: All right.

19 MR. BULSA: I understand he has rejected that.

20 THE COURT: All right. Thank you.

21 MR. SCHULTZ: That's true, Your Honor.

22 THE COURT: All right, folks, anything else?

23 Mr. Bulsa, you've got your *Jackson v. Denno* witnesses
24 here?

25 MR. BULSA: Yes, sir, I do.

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: All right, sir. You can call your first
2 witness.

3 MR. BULSA: The state would call Jason Bryant.

4 THE COURT: Mr. Bryant, come forward please, be sworn.

5 DETECTIVE JASON BRYANT, having
6 been first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA:

8 Q. Detective Bryant, you work with the Spartanburg Sheriff's
9 Office?

10 A. Yes, sir, I am.

11 Q. And do you investigate homicides?

12 A. Yes, sir, I do.

13 Q. In this case did you have an occasion to speak with the
14 defendant?

15 A. I did.

16 Q. You recall what date you spoke with him?

17 A. We spoke, myself and Investigator Lindsey, spoke with him
18 on the 16th of February 2007.

19 Q. And where did you first meet the defendant?

20 A. We first met him at the annex of the Spartanburg County
21 Jail.

22 Q. And what took place when you met?

23 A. We had picked him up and had asked him if he had minded
24 riding back to the sheriff's office with us to discuss a
25 matter which he obliged. Once we got into the vehicle I then

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 Mirandized the defendant on a pocket card, off of a pocket
2 card.

3 Q. So you and Investigator Lindsey went to the annex and
4 were transporting him back to the sheriff's office?

5 A. That is correct.

6 Q. In a detective car?

7 A. In an unmarked patrol car yes, sir.

8 Q. Okay. And so who was driving the car?

9 A. Investigator Lindsey.

10 Q. Okay. And you pulled out what you call a pocket card?

11 A. That's correct.

12 Q. Why did you follow that process?

13 A. Well, the the defendant had began to speak in regards to
14 some information in regards to the case and I wanted to make
15 sure that Miranda was gone ahead and covered.

16 Q. Okay. And did you at any time give a written Miranda
17 form?

18 A. No, sir, I didn't.

19 Q. Okay. Why did you not do that?

20 A. I covered it in -- off of a pocket card with Investigator
21 Lindsey.

22 Q. Okay. Do you have that card with you?

23 A. I do, sir.

24 Q. Could you read it to the Court as you read it to
25 Mr. Piper?

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 A. Absolutely. And the card reads, and it's a Suspect's
2 Rights Miranda Warning, "You have the right to remain silent.
3 Anything you say can and will be used against you in a court
4 of law. You have a right to talk to an attorney and have him
5 or her present with you while you're being questioned. If you
6 cannot afford to hire an attorney, one will be appointed to
7 represent before any question begin if you wish. You can
8 decide at any time to exercise these rights and not answer any
9 questions or make any statements. Do you understand each of
10 these rights as I've explained to you and having these in
11 rights in mind -- and having these rights in mind do you wish
12 to talk to us now?"

13 Q. And how did he answer those two questions?

14 A. He affirmed that he did understand his rights and that he
15 did wish to speak with us.

16 Q. Did he have any questions about any of those rights when
17 you read 'em?

18 A. Not at all?

19 Q. All right. How did he appear to you when you were taking
20 him back or taking him from the jail to the sheriff's
21 office?

22 A. Extremely nervous.

23 Q. Okay. Did he appear to be under the influence of
24 anything?

25 A. Absolutely not.

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 Q. In fact for this part of the hearing how long had he been
2 in custody?

3 A. He'd been in custody I believe since the end of December
4 I I believe.

5 Q. Okay.

6 A. Without looking at his booking I couldn't tell ya.

7 Q. So he would have been dressed in a jail uniform?

8 A. Absolutely.

9 Q. Orange jumpsuit.

10 A. Yes, sir.

11 Q. All right. And when he affirmed that he understood those
12 rights and just wanted to talk to you, did you then begin the
13 questioning on the ride over?

14 A. We we really -- there was several questions that we had
15 spoke in regards to the weapon that was found, and let me let
16 me review this right quick, about a a weapon that had been
17 recovered and possibly linked to another crime. And then we
18 went into the interview room at the sheriff's office.

19 Q. Okay. So did the interview actually begin in the car
20 after the Mirandas had been read?

21 A. We had just briefly spoke in the in the vehicle.

22 Q. Okay. All right. So then you brought him to the
23 sheriff's office and what kind of room did you go into?

24 A. It is now what is now the unsolved homicide room. At
25 that time, the sheriff's office, we didn't have interview

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 rooms. We had been in the process of moving and it was a --
2 an empty room which we had used as an interview room.

3 Q. And about what dimensions?

4 A. I would say it's probably around 15 by 15 give or take.

5 Q. Okay. So who all went into that room?

6 A. Myself, Investigator Lindsey and the defendant.

7 Q. And do you have any recollection as to how long this
8 interview took place?

9 A. We picked him up around 10:00. I advised him of his
10 rights around 10:05 and without looking at the evidence sheet
11 or anything such as that I couldn't tell ya without ---

12 Q. Not sure when it ended?

13 A. --- how long it ended.

14 Q. Okay. Well, when you took him into the room, did you
15 read him his rights again?

16 A. No, sir.

17 Q. Okay. What took place?

18 A. At that time he invoked his rights to an attorney. Once
19 we began speaking with him, he invoked his rights to an
20 attorney.

21 Q. Do you recall what he said?

22 A. He said and let me just review this.

23 Q. Are you reviewing a report that you wrote?

24 A. I am reviewing the investigative report that I I had. He
25 had stated, I believe, that he he didn't wanna answer any more

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 questions without speaking to an attorney first.

2 Q. Okay. And were both you and Investigator Lindsey present
3 for that?

4 A. Absolutely.

5 Q. And what did you all do at that point?

6 A. At that time I asked him if there was an attorney I could
7 call, if he was represented by anyone or anything such as that
8 and I believe he had requested a cigarette which we began to
9 to try to oblige.

10 Q. Okay. Did you cease questioning involving this
11 incident?

12 A. Absolutely.

13 Q. And did he provide you with anybody, any attorney whom he
14 wished to speak to?

15 A. No, sir, not at all.

16 Q. Okay. Describe what took place after you told him or or
17 asked him about an attorney.

18 A. Well, what I had done is I had went and we actually
19 obtained a cigarette from Captain Denton and while bringing
20 the cigarette back into the interview room Mr. Piper had then
21 began to ask questions in regards to the case. Once he had
22 began to ask the questions in regards to the case that's when
23 Investigator Lindsey had advised him that that we're not gonna
24 discuss the case with him, that he had invoked his rights to
25 an attorney and that he could reinitiate contact with us but

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 he had invoked his rights to an attorney and we were not going
2 to discuss the case.

3 Q. What did he do at that point?

4 A. He then requested to speak with us without an attorney.

5 Q. And then what took place?

6 A. That's when he had provided us with a voluntary
7 statement, an audio statement, in regards to the incident and
8 he had also provided me with a drawn diagram of the incident
9 location.

10 Q. Okay. And how did it come to be an audio statement?

11 A. He had requested to provide an audio statement himself.
12 He didn't wanna write a statement. He had requested to make
13 an audio statement, tell his side of the story.

14 MR. BULSA: Can I have these marked for this hearing?

15 (Evidence bag marked State's Exhibit No. 1 and
16 audiocassette tape marked State's Exhibit No. 2 for
17 identification.)

18 BY MR. BULSA:

19 Q. Detective, may I show you State's Exhibit No. 1 and No. 2
20 for this hearing? What does No. 1 show us?

21 A. That is a evidence bag for the Spartanburg County
22 Sheriff's Office that I had filled out.

23 Q. Okay. And and what information is on it?

24 A. That is the case information such as the case number, the
25 description of the evidence, the date and time that it was

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 recovered, where it was recovered, the type of offense, the
2 arrested party, the victim and who it was recovered by.

3 Q. Is that the envelope for the the statement?

4 A. That's correct. That's the envelope that I filled out
5 for the voluntary statement of Mr. Piper.

6 Q. And State's 2 is the actual audiocassette tape.

7 A. That's correct.

8 Q. We've taken it out of the container but ---

9 A. Correct.

10 Q. --- so that would have been taken and placed in evidence
11 and did you note when?

12 A. I put it into evidence on the 16th at 11:45 a.m.

13 Q. So note with that information about how long was your
14 interview with Mr. Piper?

15 A. It was approximately about an hour and forty-five
16 minutes.

17 Q. You you told us about him invoking his right to an
18 attorney. Did he seek to invoke any other right?

19 A. I'm sorry, sir?

20 Q. Did he seek to invoke any other ---

21 A. No, sir, not at all.

22 Q. Did he appear to understand what was taking place?

23 A. Absolutely.

24 Q. What kind of educational level did he have?

25 A. Do I have?

DETECTIVE JASON BRYANT - DIRECT EXAMINATION BY MR. BULSA

1 Q. Did he have.

2 A. I cannot recall. I do not recall.

3 Q. But he appeared to understand ---

4 A. Absolutely.

5 Q. Did he ever have any questions about any of the rights?

6 A. He did not have any questions. And then also prior to
7 his audio statement, I believe it is it it is even on the
8 audio statement that he was advised of his Miranda warnings
9 and he did understand those.

10 Q. Okay, but the actual warnings themselves aren't on the
11 audio.

12 A. No, sir, I don't recall.

13 Q. Just a question as to whether he ---

14 A. Exactly.

15 Q. --- still understood and ---

16 A. That is ---

17 Q. --- wished to speak.

18 A. That is that is correct.

19 Q. Okay. Did he appear to give this information freely and
20 voluntarily?

21 A. Absolutely.

22 Q. All right. Thank you. Answer any questions Mr. Schultz
23 may have.

24 THE COURT: Mr. Schultz, you can cross-examine.

25 MR. SCHULTZ: Thank you, Your Honor. May it please the

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 Court.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION BY MR. SCHULTZ:

4 Q. Investigator Bryant, when did you first have contact with
5 Mr. Piper?

6 A. It was around 10 a.m.

7 Q. On what date?

8 A. And that was on the 16th of February of '07.

9 THE COURT: Sixteenth of February?

10 BY MR. SCHULTZ:

11 Q. And where where did you have contact with him?

12 A. At the annex in the Spartanburg County Jail.

13 Q. Did you conduct any interviews at the jail?

14 A. Absolutely not.

15 Q. What part of the annex did you pick him up in?

16 A. We went through the front and he was back in a back pod
17 and we'd brought him out.

18 Q. Why was he in the annex in the first place?

19 A. He was under arrest for some other charges.

20 Q. But nevertheless he was not in cuffs when you took him,
21 correct?

22 A. I'm sorry, sir?

23 Q. He was not under arrest when you first began talking with
24 him, right?

25 A. He was in custody.

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. He was in custody?

2 A. Absolutely.

3 Q. Your custody?

4 A. Custody of the Spartanburg County Jail.

5 Q. But not your custody?

6 A. Correct.

7 Q. And according to your testimony today you picked him up
8 at the Spartanburg County Annex?

9 A. Yes, sir.

10 Q. And this was in a police car?

11 A. Absolutely.

12 Q. And how many people were in that car with with him?

13 A. Just myself and Investigator Lindsey.

14 Q. According to your testimony today that that he made some
15 incriminating statements in the car, is that correct?

16 A. He had sta -- let let me refer to my notes please. We
17 had advised him of a gun that had been recovered and it
18 possibly had been linked to another crime and that's when I
19 had advised him of his rights.

20 Q. But nevertheless he did not respond, did he, at this
21 point?

22 A. What do you mean by respond?

23 Q. He did not respond to that accusation or that information
24 that you presented him, correct?

25 A. He he understood his rights.

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. But you told him according to your report that, "He had
2 asked what we wanted to speak with him about and we advised
3 him of a gun that had been recovered," is that true?

4 A. Correct?

5 Q. Did he respond?

6 A. What what are you trying to ask?

7 Q. Did he respond to that information?

8 THE COURT: Did he answer the question?

9 MR. SCHULTZ: I'm sorry, Judge.

10 THE COURT: Did -- I think the question is did he answer
11 it?

12 MR. SCHULTZ: Yes.

13 THE COURT: That's all.

14 MR. BRYANT: No, sir.

15 BY MR. SCHULTZ:

16 Q. He did not answer?

17 A. No, sir.

18 Q. When you read Mr. Piper his rights, did you give him his
19 full Mirandi -- Miranda warnings?

20 A. I gave him just exactly off the card.

21 Q. Could you read that card again?

22 A. Yes, sir, be glad to, "The Suspect's Rights Miranda
23 warning: You have the right to remain silent. Anything you
24 say can and will be used against you in a court of law. You
25 have the right to talk to an attorney and have him or her

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 present with you while you're being questioned. If you cannot
2 afford to hire an attorney, one will be appointed to represent
3 you before any questions begin -- questioning begin if you so
4 wish." Excuse me. "You can decide at any time to exercise
5 these rights and not answer any questions or make any
6 statements. Do you understand each of these rights as I have
7 explained to you and having these rights in mind do you wish
8 to talk to us now?"

9 Q. And you gave him every one of those warnings?

10 A. Absolutely.

11 Q. So that's your testimony today?

12 A. Absolutely.

13 Q. Did you continue to question him in the car?

14 A. We spoke briefly not really and truly about the case at
15 all just about the weapon that had been recovered like that I
16 had told you about earlier, and then the interview, the
17 questioning began at the sheriff's office in the interview
18 room.

19 Q. And you never mirandized him at the sheriff's office,
20 correct?

21 A. No, sir.

22 Q. When you presented him with this information, going back
23 to the car, when you presented him with this information about
24 the recovered gun, did -- is -- did Mr. Piper's demeanor
25 change?

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. He began -- he became extremely nervous.

2 Q. Did he turn pale white?

3 A. Yes, sir.

4 Q. Do you believe he was in his right mind?

5 A. Absolutely.

6 Q. Nevertheless, your testimony today is that he was nervous
7 and pale and white?

8 A. Yes, sir.

9 Q. And you still believe that he was in his right mind?

10 A. Yes, sir.

11 Q. Do you know Mr. Piper's father?

12 A. Yes, sir.

13 Q. Could you tell me a little bit about his case?

14 A. I did not actually work that case that much, sir. I
15 don't know.

16 MR. BULSA: I need to object, Your Honor. I don't see
17 the relevancy of this.

18 THE COURT: What would the relevance of that be,
19 Mr. Schultz?

20 MR. SCHULTZ: Your Honor, there is going to be some
21 relevance as to certain statements that the investigators made
22 to Mr. Piper concerning the case of his father which although
23 it wasn't not intrinsically linked to the facts of this crime
24 were, if you let me continue, will be linked to the facts of
25 this Jackson Denno hearing.

DETECTIVE JASON BRYANT -- CROSS-EXAMINATION BY MR. SCHULTZ

1 THE COURT: Can you can you be a little bit more
2 specific? I'm trying to figure out how that goes to the
3 voluntariness of this -- of the of the statement that was made
4 which of course is is the concern of this hearing.

5 MR. SCHULTZ: Your Honor, could we approach?

6 THE COURT: Sure.

7 (Whereupon, a bench conference was held off the record.)

8 BY MR. SCHULTZ:

9 Q. So it's your testimony today that you were not involved
10 with Mr. Piper's father's case?

11 A. Minibly [sic].

12 Q. Minibly. But nevertheless you knew of his father ---

13 A. Absolutely.

14 Q. --- and his -- do you know what charges his father had?

15 A. I'm wantin' to say his father was charged with murder.

16 Q. And do you know what happened with that?

17 A. I think that it was -- he pled to a manslaughter. I I
18 don't recall. I don't recall.

19 Q. Do you know what happened to Mr. Piper's father when he
20 was incarcerated?

21 A. He had passed away.

22 Q. And you were familiar with the facts of this case at the
23 time that you interviewed Mr. Piper, correct?

24 A. That his father had died?

25 Q. That's correct?

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Oh yes, sir, absolutely.

2 Q. So according to your testimony you were familiar with the
3 case, you knew that he was convicted of manslaughter and that
4 he died ---

5 A. Absolutely.

6 Q. --- while incarcerated, correct?

7 A. Yes, sir.

8 Q. Did you, at any time in your interrogation of Mr. Piper
9 either at the annex, at the -- in the car or in the
10 Spartanburg County Sheriff's Office say, "Don't make the same
11 mistake your father did, Gary."?

12 A. I did not.

13 Q. But nevertheless you were familiar with the facts of that
14 case?

15 A. Absolutely.

16 Q. Did you ever bring up Mr. Piper's father in any part of
17 the interrogation whatsoever?

18 A. Absolutely.

19 Q. You did?

20 A. Yes, sir.

21 Q. And what did you say?

22 A. We talked to him in regards to wantin' to make sure that
23 he understood that he had a story to be told and we want to
24 know his side of the story.

25 Q. So what what is the comparison to his father's case?

DETECTIVE JASON BRYANT - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. I don't believe his father gave a statement. I I don't
2 recall his father giving a statement.
- 3 Q. And you didn't want him to make the same mistake that his
4 father made, correct?
- 5 A. I didn't tell him that.
- 6 Q. You didn't tell him that?
- 7 A. Exactly.
- 8 Q. Do you remember maybe your other investigator telling
9 him?
- 10 A. I think Investigator Lindsey did tell him that.
- 11 Q. Okay. In your opinion do you think this would be a
12 little more coercive?
- 13 A. Absolutely not.
- 14 Q. Do you think this would be threatening?
- 15 A. No.
- 16 Q. But nevertheless, did you say this after he invoked his
17 right to an attorney?
- 18 A. That was said after he had invoked his right to an
19 attorney.
- 20 Q. That was said after he invoked his right to attorney ---
- 21 A. And and had rein ---
- 22 Q. --- and you continued to question him, didn't you?
- 23 A. No, sir. And he had reinitiated.
- 24 Q. But nevertheless it was after he invoked his right to an
25 attorney, correct?

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

1 A. And after he had reinitiated contact.

2 MR. SCHULTZ: Beg the Court's patience, Your Honor.

3 THE COURT: Yes, sir.

4 BY MR. SCHULTZ:

5 Q. Were you armed while conducting this interrogation?

6 A. No, sir.

7 Q. Was your partner armed?

8 A. I don't recall. I don't think so but I don't -- I can't
9 swear to it.

10 MR. SCHULTZ: That's all I have, Your Honor.

11 THE COURT: Thank you. Redirect, Mr. Bulsa.

12 MR. BULSA: No redirect, Your Honor.

13 THE COURT: Thank you. You can step down, Mr. Bryant.
14 Thank you.

15 (Whereupon, the witness was excused.)

16 MR. BULSA: The state calls Reid Lindsey.

17 THE COURT: Mr. Lindsey, come forward please, be sworn.

18 DETECTIVE REID LINDSEY, having
19 been first duly sworn, testified as follows:

20 DIRECT EXAMINATION BY MR. BULSA:

21 Q. Detective Lindsey, you're also with the sheriff's office?

22 A. Yes, sir.

23 Q. And are you the lead investigator in this case?

24 A. Yes, sir.

25 Q. And on December 16th 2007 did you meet with Detective

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

1 Bryant to speak with Mr. Piper?

2 A. Yes, we left together and went to the jail annex.

3 THE COURT: December the 16th?

4 MR. BULSA: 2007.

5 THE COURT: Two thousa --

6 DETECTIVE LINDSEY: February 16th.

7 MR. BULSA: February. I'm sorry.

8 THE COURT: Okay.

9 MR. BULSA: Thank you, Your Honor.

10 THE COURT: Okay.

11 BY MR. BULSA:

12 Q. February 16th 2007, you all went to the annex to speak
13 with him?

14 A. Yes.

15 Q. What were you intentions?

16 A. To interview Mr. Piper in regards to the murder.

17 Q. Okay. Had you received some information that he might be
18 involved?

19 A. Very good information.

20 Q. Okay. And what took place?

21 A. Basically we checked him outta the jail, from the jail
22 annex, and describe the jail, the jail annex is quite
23 different than the regular jails, kind of open area in the
24 back and you have to take 'em through two doub -- two double
25 doors and you take 'em out to the front, the car was parked

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

1 out in the front area, put him into the car, he began talking,
2 Detective Bryant read him his Miranda rights and we took him
3 to the sheriff's office.

4 Q. Okay. What was the purpose of reading the Miranda
5 rights? Did you instruct Detective Bryant to do that?

6 A. We'd already we we'd already decided that when we got him
7 in the car we needed to read the Miranda 'cause he's in
8 custody. It's plain not only is he in jail, he's in a police
9 car, he's in custody.

10 Q. Okay, so you had decided to do that?

11 A. That's correct.

12 Q. And that took place?

13 A. Yes, it did.

14 Q. And in your opinion what was his demeanor?

15 A. He was, I mean, he -- no real notable demeanor. He was
16 fine. I guess he was curious about what we wanted to ask him
17 about. I guess anytime any person who's approached by a
18 police officer has that that typical demeanor I guess you
19 would say wantin' to know what's going on.

20 Q. You were driving the car? You you were driving,
21 correct?

22 A. Yes, sir.

23 Q. Detective Bryant in the front seat with you?

24 A. Yeah, he was the passenger, front passenger.

25 Q. The defendant was in the back?

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

1 A. Yes, sir.

2 Q. Okay. And when you took him to the sheriff's office,
3 anybody else join you in your interview?

4 A. No. No, sir.

5 Q. You took him to the room?

6 A. Yes, sir.

7 Q. And describe from your perspective what happened.

8 A. Um, let me read my notes real quick. In the car we had
9 brought up the subject of the gun. Um, when we got him to the
10 office and in the actual, now it's the violent unsolved
11 homicides room, we basically confronted him with the
12 information we had gotten through the investigation through
13 witnesses and that and it wasn't very long after that he
14 requested an attorney.

15 Q. Okay. So in the car he acknowledged his rights and
16 agreed to speak to you ---

17 A. That's correct.

18 Q. --- and began providing him information about the crime.
19 He then invoked his right to an attorney.

20 A. That's correct.

21 Q. And then what did you do?

22 A. Uh, Detec -- well -- I go -- we stopped the interview.
23 Detective Bryant asked him if he had an attorney. He said no.
24 He asked for a cigarette. I went and got a cigarette from
25 Captain Denton and brought it back in the room.

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. Why'd you do that?
- 2 A. 'cause he asked for one.
- 3 Q. Did you make arrangements to take him back to the jail?
- 4 A. Yes, we were gonna have to take him back but there was no
- 5 reason to be -- he was cooperative, there was no reason to be
- 6 mean.
- 7 Q. Okay. And where did he smoke?
- 8 A. He smoked right there.
- 9 Q. In the room?
- 10 A. Yes.
- 11 Q. Okay. What was going on while he smoked a cigarette?
- 12 A. He asked he asked about the charges or potential
- 13 charges.
- 14 Q. Okay. Did you or Detective Bryant question him about the
- 15 case at all any further before he had asked about the
- 16 charges?
- 17 A. No. No, I sca -- I -- when I went back in there I asked
- 18 him if he had I wanted to make sure he didn't have a public
- 19 defender too. I asked him if he had a public defender or a
- 20 private attorney. He said no. I knew that he had been
- 21 involved in the judicial system before so maybe he had one. I
- 22 mean, I knew he'd been incarcerated.
- 23 Q. So he told you he didn't have one.
- 24 A. Yes, sir.
- 25 Q. And then what took place?

DETECTIVE REID LINDSEY - DIRECT EXAMINATION BY MR. BULSA

1 A. I basically explained to him that he had invoked his
2 right to have an attorney present but, you know, the only way
3 I could talk to him if he wished to waive his right to have
4 counsel present which he did.

5 Q. Then whadya do?

6 A. Questioned about the murder.

7 Q. Okay. And who's idea was it to put it on tape?

8 A. He was given an option. I asked if if he wanted --
9 prefer to do an audio or written. He chose audio.

10 Q. Okay.

11 MR. BULSA: Your Honor. at this time I'd like to play the
12 tape for, Your Honor.

13 THE COURT: All right. What number is it?

14 MR. BULSA: State's 2.

15 THE COURT: Okay. Thank you.

16 (Whereupon, the audiotape was played.)

17 BY MR. BULSA:

18 Q. Detective, did you ever threaten or coerce Mr. Piper?

19 A. No.

20 Q. Did you make him any promises?

21 A. No, I did not.

22 Q. Did you have a weapon on you?

23 A. No, I did not.

24 Q. Okay. What took place after you got this audio
25 statement?

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Placed into evidence, he was actually allowed to see his
2 girlfriend after that, I believe, and then later he was taken
3 to the jail. I don't remember everything. He wasn't
4 immediately snatched up and taken back to the annex ---

5 Q. And his girlfriend ---

6 A. --- to the jail.

7 Q. --- was at the -- which girlfriend is this?

8 A. Contacted her, Jennifer Gregg. Jennifer Gregg.

9 Q. She was at the sheriff's office?

10 A. She was called.

11 Q. Oh, he was allowed to call her.

12 A. I called her.

13 Q. Did she come up there?

14 A. She did.

15 Q. So you gave him a visit with his girlfriend?

16 A. Sure.

17 Q. Okay. Okay. Thank you answer any questions Mr. Schultz
18 has.

19 THE COURT: Mr. Schultz, you can cross-examine now.

20 MR. SCHULTZ: Thank you, Your Honor. May it please the
21 Court.

22 THE COURT: Yes, sir.

23 CROSS-EXAMINATION BY MR. SCHULTZ:

24 Q. Investigator Lindsey, when did you first have contact
25 with Mr. Piper that day?

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 A. At the jail annex.

2 Q. Jail annex. Can you describe the location where you had
3 contact with him? Where in the ---

4 A. In the back ---

5 Q. --- jail annex was it?

6 A. --- of the -- the man's in the back, we took him out from
7 the jail annex. I can't -- it was inside the jail.

8 Q. It was inside the jail. Did you take him up -- out in
9 handcuffs?

10 A. I wanna say we handcuffed him in the front but I can't
11 remember.

12 Q. In the front meaning where?

13 A. Like like this (demonstrating).

14 Q. But you definitely handcuffed him?

15 A. I don't remember. I think we did. I'm not a hundred
16 percent positive.

17 Q. When was he under arrest?

18 A. He was under arrest inside the jail. I mean, he was in
19 custody at the jail on separate charges.

20 Q. I understand that but when was he under arrest for this
21 murder?

22 A. I guess when we signed the warrant on him and it was
23 served.

24 Q. Now, were you familiar with his father's case?

25 A. Yes, I did work on that.

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. You did work on that. Were you the chief investigator on
2 that case?

3 A. No, I was not.

4 Q. But you did work on it, correct?

5 A. I did. I responded to the scene.

6 Q. You responded to the scene ---

7 A. The scene, ---

8 Q. --- initially?

9 A. --- the actual scene of the crime, yes. Detective Cooper
10 was the lead investigator.

11 Q. Detect -- Detective Cooper was the lead investigator?

12 A. Yes, sir.

13 Q. Were you assisting Detective Cooper in ---

14 A. That fir ---

15 Q. --- this investigation?

16 A. Oh, I'm sorry. Yeah, that first night I did assist
17 him.

18 Q. So you knew the facts of this case very very clearly, the
19 facts of his father's case, right?

20 A. I knew -- I had a good understanding. I can't tell you
21 that I knew every exact detail 'cause basically my part was to
22 deal with one side of the family that night so my knowledge is
23 more limited to what Detective Cooper told me plus what they
24 told me.

25 Q. Were you aware that Gary Piper's father was incarcerated

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 at this time?

2 A. Oh, yes, sir.

3 Q. Do you know if he got convicted?

4 A. Yes.

5 Q. And what was he convicted for?

6 A. Manslaughter.

7 Q. And you knew the relationship between the father and the
8 son, correct? That day?

9 A. Yes, sir.

10 Q. So and that -- it's your testimony that day on February
11 16th you were familiar with not only the facts of Mr. Piper's
12 case, my client, but also his father's case, correct?

13 A. That's correct.

14 Q. Did you at any time say to him -- well, make any
15 statement, "Don't make mista -- the same mistake your father
16 made."?

17 A. Yes, I did.

18 Q. You did? And you said this, do you believe that that was
19 coercive at all?

20 A. No, sir.

21 Q. But nevertheless you you did say that?

22 A. Yes, sir.

23 Q. And what did you mean by that?

24 A. Exactly that. I believe his father made a mistake.

25 Q. And what mistake did his father make?

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 A. His father did not give a statement. His father invoked
2 his right to an attorney at the scene.

3 Q. And that's a bad decision to make ---

4 A. In my opinion ---

5 Q. --- invoking your rights in your opinion?

6 A. In my opinion based on that case and the knowledge of
7 that facts absolutely.

8 Q. And you believe that this led to Mr. Piper's father's
9 conviction?

10 A. I can't say what the jury was thinking. I can tell you
11 this: There were several investigators including myself, and
12 I can't give you the names of who was which, that felt like
13 there probably would be a fairly good self-defense that can be
14 made on his case.

15 Q. So by extension you believe that my client would have a
16 very good self-defense argument, correct?

17 A. No.

18 Q. No?

19 A. No, sir.

20 Q. But nevertheless you said, "Don't make the same mistake
21 your father made." You were comparing his case with his dad's
22 case, weren't ya?

23 A. No, I was comparing his action with his dad's action.

24 Q. But you knew there was a struggle that night, correct?

25 A. Well, um, which -- I'm sorry. Which case we talking

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 about?

2 Q. We're talking about my client's case.

3 A. Okay, you talking about ---

4 Q. You knew there was a struggle that day.

5 A. I I knew he had robbed the victim, yes.

6 Q. But you knew there was a struggle that night?

7 A. Yes, sir.

8 Q. In fact, you say in your report, "I told him that I knew
9 there was a struggle in the house and that he that he had shot
10 the Hispanic suspect," correct?

11 A. If you read my report yes, sir.

12 Q. Were you familiar with Jennifer Gregg and Amanda
13 Colquitt?

14 A. I was definitely familiar with Jennifer Gregg. I don't
15 know if I had talked to Amanda yet or not.

16 Q. But you were familiar with the charges that Jennifer
17 ch -- faced, correct?

18 A. Jeniffer?

19 Q. Yes.

20 A. No, sir.

21 Q. Did you feel in your capacity as an officer that Jennifer
22 would be involved in this case criminally?

23 A. I I -- at the time -- wha -- wha -- we tal -- what point
24 are we talking about?

25 Q. At the time ---

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. At one point I listened to some jail conversa -- I'm
2 sorry if I ---
- 3 Q. At the time of Mr. Piper's statement or prior to that,
4 did you feel that ---
- 5 A. I knew she was involved in the situation. I ---
- 6 Q. Let me finish the question.
- 7 A. I'm sorry.
- 8 Q. At the time of Mr. Piper's interrogation ---
- 9 A. Yes, sir.
- 10 Q. --- on February 16th 2007, ---
- 11 A. Yes, sir.
- 12 Q. --- did you feel in your capacity as an officer that
13 Jennifer Gregg would be criminally liable for this whole
14 incident involving the alleged murder?
- 15 A. No.
- 16 Q. And why is that?
- 17 A. She didn't shoot the victim. She wasn't there.
- 18 Q. But nevertheless ---
- 19 A. She was in jail.
- 20 Q. --- she handled the gun, correct?
- 21 A. I'm sorry?
- 22 Q. She handled the gun at some point, didn't she?
- 23 A. I I don't know. I would assume so. I think it was her
24 grandmother's. I can't remember. I have to look through the
25 report to tell you that.

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. But nevertheless you knew that she was involved somewhat,
2 correct?

3 A. Well, I knew she was involved with the suspect so she was
4 involved in the situation yes, sir.

5 Q. Did you ever say when Mr. Piper invoked his right to an
6 attorney that, "Well, we're just gonna get Jen. We're just
7 gonna charge Jen with this."?

8 A. No, sir.

9 Q. But you knew that Jen and Gary Piper were, uh, were
10 boyfriend and girlfriend, correct?

11 A. Yes, sir.

12 Q. And you knew that they had a relationship, correct?

13 A. Yes, sir.

14 Q. And you knew that Mr. Piper would react badly if if you
15 did say, "Well, let's charge Jen with accomplice liability
16 here," correct?

17 A. No.

18 Q. No?

19 A. No, sir.

20 Q. Now, did you ever Mirandize Mr. Piper when he walked in
21 the sheriff's office?

22 A. No, sir.

23 Q. Did you ever Mirandize Mr. Piper at any time in the
24 interview room?

25 A. No, sir.

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Did you Mirandize Mr. Piper right before he gave his
2 audio statement?

3 A. No, sir.

4 Q. When is the only time you Mirandized him?

5 A. I never Mirandized him.

6 Q. You never Mirandized him? Do you remember investigator,
7 the other investigator Mirandize him?

8 A. I observed him pull a card out and I heard him read the
9 card, what was on the card where he read today.

10 Q. And this was in the car, correct?

11 A. Yes, sir.

12 Q. And he did invoke his right to atto -- his his attorney
13 several times, correct?

14 A. Once.

15 Q. So it's your testimony that he invoked his right to an
16 attorney just one time?

17 A. He invoked his right to an attorney and the interview
18 stopped and then we -- yes.

19 MR. SCHULTZ: Okay. Beg the Court's patience, Your
20 Honor.

21 THE COURT: Yes, sir.

22 BY MR. SCHULTZ:

23 Q. At that time did you ever say, when he invoked his right
24 to an attorney, did you ask him what attorney he had?

25 A. When I went back no, sir. At the time he invoked his

DETECTIVE REID LINDSEY CROSS-EXAMINATION BY MR. SCHULTZ

1 right.

2 Q. He invoked his right.

3 A. After I took the cigarette back in I asked him if he I
4 asked him if he had a public -- a private attorney rather or a
5 public defender.

6 Q. So your testimony today is even after he invoked his
7 rights you further questioned him, correct?

8 A. I asked him I asked him the question if he had an
9 attorney.

10 Q. You asked him the question if he had an attorney. Did
11 you indicate that -- did he indicate to you that he had a
12 public defender?

13 A. No.

14 Q. Did he indicate to you anything about Andy Johnston?

15 A. No.

16 Q. Did you know that Andy Johnston represented his father?

17 A. No, I I knew he had been to trial but I didn't remember
18 the attorney.

19 Q. Isn't it a fact that on that audio tape that we just
20 heard Miranda warnings were not given, correct?

21 A. That's correct.

22 MR. SCHULTZ: Beg the Court's patience again, Your Honor.

23 THE COURT: All right.

24 MR. SCHULTZ: Nothing further, Your Honor.

25 THE COURT: Thank you. Redirect, Mr. Bulsa?

DETECTIVE REID LINDSEY -- REDIRECT EXAMINATION BY MR. BULSA

1 MR. BULSA: Just briefly, Your Honor.

2 REDIRECT EXAMINATION BY MR. BULSA:

3 Q. Detective Lindsey, on the audiotape it's Jason Bryant's
4 voice that's asking him the question about Miranda?

5 A. That's correct.

6 Q. And what was his response?

7 A. Yes, he had been -- he understood he had had been read
8 Miranda.

9 Q. All right. Did you ever make any promises to the
10 defendant about charging or not charging anybody else?

11 A. No. No, sir.

12 Q. Thank you. That's all I have.

13 THE COURT: Thank you. You can step down.

14 (Whereupon, the witness was excused.)

15 MR. BULSA: That's the state's showing.

16 THE COURT: Mr. Bulsa anything further from the state?

17 MR. BULSA: No, sir, that would be the state's showing.

18 THE COURT: Thank you very much. All right,

19 Mr. Schultz.

20 MR. SCHULTZ: Your Honor, I'm not sure what the Court
21 intends to do. Would you like us to call Mr. Piper after
22 lunch?

23 THE COURT: No, we'll we'll -- we got the jury coming in
24 in an hour so we need to go ahead and get this done.

25 MR. SCHULTZ: That -- that's fine, Your Honor.

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 THE COURT: Right.

2 MR. SCHULTZ: The defense would call Gary Piper to the
3 stand.

4 THE COURT: Thank you. Mr. Piper, if you'll come forward
5 please, be sworn.

6 GARY MICHAEL PIPER, having
7 been first duly sworn, testified as follows:

8 THE COURT: Mr. Schultz.

9 MR. SCHULTZ: Thank you, Your Honor. May it please the
10 Court.

11 THE COURT: Yes, sir.

12 DIRECT EXAMINATION BY MR. SCHULTZ:

13 Q. Could you please state your name for the record.

14 A. Gary Michael Piper.

15 Q. And how old are you?

16 A. I'm 31.

17 Q. Back in February of 2007 were you at the Spartanburg
18 County Annex?

19 A. Yes, sir.

20 Q. And at that time did you have a meeting with Investigator
21 Bryant and Investigator Lindsey?

22 A. Yes, sir.

23 Q. And what did they -- how did they approach you?

24 A. They they called me out of my -- out of the area where I
25 was housed over there at the annex part of the jail. They

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 called me out in the hall. They -- I had been told to dress
2 out, you know, that somebody was here to see me and they
3 called me out in the hall.

4 Q. Did you dress out?

5 A. Yes, sir.

6 Q. And what did they want to come talk to you about?

7 A. I wasn't sure at first. They, uh, they said that, uh,
8 they had some questions about a gun that had been found, they
9 asked me what I was in jail for at the time, they -- for the
10 most part that was what they asked me about.

11 Q. Where'd you say these things? Were were you at the annex
12 or were you in another place?

13 A. It started, I believe, in the sally port leaving out of
14 the annex and continued on. Uh, we mighta paused for a minute
15 with the conversation until we got into the car but it was
16 basically pretty continual, you know, the whole way from the
17 time that we started talking they -- and they introduced
18 themselves and, you know, they started communicating with me.
19 Uh...

20 Q. At any point in this interrogation process, did you feel
21 free to leave?

22 A. No, sir.

23 Q. And why was that?

24 A. I was handcuffed and shackled.

25 Q. And this continued all throughout the interrogation?

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 A. Yes, sir.

2 Q. After they picked you up at the annex what happened
3 then?

4 A. We, uh, we drove to the sheriff's office.

5 Q. Was anything said to you at -- in the car?

6 A. Yes, sir.

7 Q. What was said?

8 A. Uh, they they asked me what I was arrested for. Again,
9 maybe they were looking for something more specific as far
10 as --- I I told 'em I was I was there for, uh, I'd been
11 charged with stealing a truck and they asked me, you know, you
12 know, anything else was that it, you know, "that's what you're
13 here for."

14 And I'm -- I told 'em, "Yeah," you know, "there were a
15 couple more charges." They they said they wanna speak speak
16 to me about a gun that had been found. I said, uh, I said,
17 "Well, okay."

18 Officer Bryant said real casually he said I -- he he he
19 pulled this -- pulled a card that looked similar to the one
20 that he just had, I believe, from the visor or somewhere there
21 he he got it in his hand he was like, "These are your Miranda
22 rights," you know, he said -- he says, "Do you understand what
23 what the Miranda rights are and all?"

24 I said, "Yeah, basically pretty much, yeah."

25 He said, uh, "Well," he said, "I can go through all of

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 these, you know, but basically what you need to know right now
2 is that you have a right to an attorney, you have a right to
3 remain silent if you want to." He read he read those rights
4 to me. Uh, I don't remember hearing the whole thing but
5 he ---

6 Q. Did he ever tell you that you have the right to stop
7 answering questions at any time?

8 A. No, sir, I don't remember hearing that.

9 Q. Did he give you any other rights?

10 A. No, sir. He had told me that you know for the purposes
11 intended right now, you know, you know for just just our
12 discussion at that point that was all that, you know,
13 basically I needed to know and, you know, if we got into
14 further detail that he would, uh, assure me of my rights after
15 that.

16 Q. So it's your testimony today that he never gave you full
17 Miranda warnings?

18 A. Yes, sir.

19 Q. Now, according to your testimony you were taken back to
20 the sheriff's office?

21 A. Yes, sir.

22 Q. And what happened then?

23 A. We went to, uh, they put me in a interview room. They
24 they did provide me with a few cigarettes, you know, during
25 our conversation, you know. I don't -- I can't recall exactly

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 at which points but they they provided me with few cigarettes
2 there. And they they asked me on the way on the way to the to
3 the jail they had asked me about about the gun that they had
4 found. They asked me if I knew about a about a gun that
5 had -- that belonged to Ms. Gregg. I said -- I had mentioned
6 to them that I had seen the gun in the car when I was riding
7 around with Jennifer. When we got to the I believe it was on
8 the way to the sheriff's office, they asked me if I had if, I
9 don't don't remember whether it was Bryant or which one which
10 one of 'em it was had asked me, if I had if I had stolen the
11 revolver, if I knew anything about the revolver other than it
12 had been in the car. I told 'em I had not stolen the revolver
13 but at that point I wasn't exactly sure, you know, what was
14 going on so at that point that's what I told 'em. They they
15 asked me if I knew Ms. Gregg. I said, "Yeah, she was my
16 girlfriend's grandmother."

17 When we got to the sheriff's office they they they kept
18 going back and forth in the conversation so, you know,
19 specifically I I can't recall exactly which one said what.
20 They they told me the evidence that they had against me as far
21 as there -- a murder had had occurred, that that they knew
22 that I had been identified there. They told me that they knew
23 I had been there, that I had shot the victim. They said that
24 they didn't believe that I had come in there intentionally to
25 to rob anybody or hurt -- to hurt anybody but they needed to

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 know from me why I was there. As a matter of fact, at that
2 point they'd asked me to, you know, just listen to what they
3 had to say. As they, you know, told me this information they
4 expressed to me that they didn't think that I was there to
5 hurt anybody and that, uh, they needed to know my side of the
6 story because the way things were standing at that point if I
7 didn't talk to 'em that I would be charged with murder, until
8 they could find out otherwise they would have to charge me
9 with murder. In order for me to avoid that, the only way for
10 me to avoid that would be speaking with them and giving them
11 my side of the story. Uh, at that point ---

12 Q. Mr. Piper.

13 A. Yeah.

14 Q. You're familiar with the details of the charges that your
15 father faced previously, correct?

16 A. Yes, sir.

17 Q. And could you tell us a little bit about that?

18 A. A fellow, a couple fellas were in the yard attacking my
19 stepbrother and his girlfriend and threatening my stepmother
20 and my father went out and told 'em to leave the yard and
21 they wouldn't leave and one of the guys came up on my dad
22 like, you know, he was about to attack him and, uh, my father
23 shot him.

24 Q. And your father was convicted of what?

25 A. Manslaughter.

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 Q. Now, the two investigators that interviewed you that day
2 did they refer to this case that day?

3 A. Yes, sir.

4 Q. And what did they say?

5 A. They told me they felt like my father had got -- gotten a
6 bit of a bad rap on that, that that was self-defense all the
7 way, there was no reason that he should have gotten any time
8 or been found guilty for for that. He he was defending his
9 home and his family but he didn't cooperate with them. He
10 didn't give them a statement and because he didn't give them a
11 statement they couldn't help him. They were forced to charge
12 him with murder which ultimately led to a conviction of
13 manslaughter.

14 Q. And at that time you felt that if you cooperated you
15 wouldn't have to go through the same trial that your father
16 did, correct?

17 A. Right. That's that's where I was leaning with it. I was
18 starting to get that idea and Detective Lindsey, you know,
19 kept on, you know, with, uh, --- my father had had just passed
20 away only two days before this and it was still very sore in
21 my in my heart about him having to die in prison and my father
22 was a very good man that not many people felt like deserved
23 the punishment that he got for what -- for protecting his
24 family and it it was a sore spot in my heart that, you know,
25 by -- for protecting his family he died in prison. And

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 according to the detectives that was a result of him not
2 communicating with them, something that could have been
3 avoided which was of course very important to me. Uh,
4 they ---

5 Q. So your testimony here today is that you were promised
6 something if you gave a statement.

7 A. It was it was it was my interpretation that if I
8 cooperated the situation would go one way and if I didn't it
9 would go the other way. Detective Lindsey got loud. He he
10 smacked the table. He he said, "Damn it, Gary. Don't make
11 the same mistake your father made. Please, I'm begging you
12 man," you know.

13 And Detective Bryant was sitting to the side he's like,
14 you know, "We wanna we wanna resolve this," you know, "we
15 don't we don't think you had any intentions to hurt anybody,
16 we," you know, "but we can't go any further with this is case.
17 If you if you don't work with us, we're not gonna have any
18 choice but to but to charge you with murder because we're
19 gonna have to charge you."

20 Q. Was this after you invoked your right to an attorney?

21 A. Yes, sir.

22 Q. And they still continued to question you, correct?

23 A. Yes, sir. They told me that what they needed to know was
24 what my intentions were that night.

25 Q. When they went to go leave, did they say anything to

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 you?

2 A. Yeah, they finally -- they both got frustrated with me
3 and Detective Lindsey, especially, he he jumped up from his
4 seat rather quickly and said, uh, "Well, all right then. Just
5 sit sit there and make yourself comfortable 'cause this is
6 about to be a long day for you 'cause you're gonna be here for
7 for a while so just make yourself comfortable," and he looked
8 over at Detective Bryant and said, "Let's go see what Jen and
9 Amanda have to say about this."

10 And Detective Bryant said, "Yeah and Christian too." And
11 and I thought about that. I didn't really feel like they were
12 to be involved with it, you know, they they didn't they didn't
13 have anything to do with what happened that night.

14 Q. But nevertheless you were scared that they could be
15 involved in this or charged with this, correct?

16 A. Yeah, it it looked like, you know, when -- after they
17 left I'm I'm thinking, you know, Jen had, uh, you know, let me
18 hold the pistol, this could come back on her, you know, the
19 gun thing could come back on her. I was standing -- I had
20 left Amanda's house to go over there and then came back to
21 Amanda's house and I didn't know -- I'm not, you know, that
22 clear on these these these laws like that's -- to decide -- I
23 didn't know whether or not they were -- what they would
24 consider, you know, as involvement. And in my heart, you
25 know, I felt like, you know, they weren't that in -- you know,

GARY MICHAEL PIPER - DIRECT EXAMINATION BY MR. SCHULTZ

1 really to be involved so I felt like it was a responsibility,
2 that you know, they had just made it a responsibility of mine
3 that if if, you know, if I'm gonna keep them out of this then
4 I need to go ahead and, you know, talk to 'em and I'm I'm
5 considering the supposed mistake that my father made, I'm
6 considering that they're about to go after my friends those
7 were, you know...

8 Q. So as a result of those -- all this, did you feel in your
9 position that you were promised anything?

10 A. Yes, in a way, yes.

11 Q. What kind of promise did you interpret out of this?

12 A. That if I cooperated that they would they would work with
13 me, that they would charge me with a proper charge for
14 whatever happened. They didn't feel like it like whatever had
15 happened if I had, you know, if I had shot Mr. Chavez, they
16 didn't feel like it was murder, they felt like there's --
17 there was another situation that had went down.

18 Q. And you believed that they wanted to help you avoid a
19 murder prosecution, correct?

20 A. Yes.

21 MR. SCHULTZ: Beg the Court's patience.

22 THE COURT: Thank you.

23 MR. SCHULTZ: Nothing further at this time, Your Honor.

24 THE COURT: Thank you. Mr. Bulsa, cross-examine.

25 CROSS-EXAMINATION BY MR. BULSA:

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 Q. Mr. Piper, what were you in jail for at the time?

2 MR. SCHULTZ: Objection. Relevancy.

3 THE COURT: No, sir. There's nothing -- well, there's
4 nothing wrong with that for these proceedings. Go ahead.

5 DEFENDANT: Um, possession of a stolen vehicle, failure
6 to stop for a blue light, um...

7 BY MR. BULSA:

8 Q. Probation violation?

9 A. Probation violation.

10 Q. What had you been convicted of?

11 A. Possession of a stolen vehicle.

12 Q. Back in 2005?

13 A. Yes, sir.

14 Q. You actually served some time, ---

15 A. Yes, sir.

16 Q. --- got out ---

17 A. Yes, sir.

18 Q. --- on probation and didn't even abide by your probation.

19 MR. SCHULTZ: Objection again, Your Honor. Relevancy.

20 THE COURT: What would the relevance of the violation be,
21 Mr. Bulsa?

22 MR. BULSA: Impeachment, Your Honor, on his credibility,
23 impeach him on his credibility.

24 THE COURT: All right. Go ahead.

25 BY MR. BULSA:

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 Q. Right?

2 A. I didn't have anywhere to call home when I got outta
3 prison, I didn't have anywhere to find help and it -- I had no
4 transportation of my own to make it back and forth to a job to
5 to pay the supervision fees for probation. I I didn't even
6 know how to get back back and forth to to report to the
7 probation office from wherever it may have been that I found
8 to stay which of course was, you know, up in the air when I
9 got outta jail and ---

10 Q. You're telling us you didn't have a ride?

11 A. Or a home and no way to get a job.

12 Q. Where did you ultimately wind up staying?

13 MR. SCHULTZ: Objection, Your Honor. This this hearing
14 is supposed to test the voluntariness of my client's statement
15 and the solicitor's going into a probation violation.

16 THE COURT: All right. He -- the rational for that is
17 that he's trying to impeach your your client and he has the
18 right to go into things that would impact his credibility of
19 course because credibility's one of the issues that I have to
20 take into account.

21 MR. SCHULTZ: Yes, sir, Your Honor.

22 THE COURT: I'll allow that in so far as the impact upon
23 his credibility..

24 MR. BULSA: Thank you, Your Honor.

25 MR. SCHULTZ: Yes, sir. Thank you.

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 THE COURT: All right.

2 BY MR. BULSA:

3 Q. You ultimately found a place to stay.

4 A. I wouldn't say that I ever had a steady place to stay.
5 I'd -- in in six months I lived from Spartanburg to Saint
6 Louis to back to Spartanburg, uh, several different friends
7 houses.

8 Q. So you left the state after you got out of prison?

9 A. I was trying to find work. I was trying to do better.

10 Q. Were you supposed to leave the state on your probation?

11 A. No, sir.

12 Q. Okay. I didn't see any way that I could that I could do
13 my probation. I couldn't get a job.

14 Q. Did you ever go at all?

15 A. No, sir. When I was released from the department of
16 corrections, they do a very thorough check as far as whether
17 or not you have holds, what your requirement, what the
18 requirements of your release are and they're so thorough and
19 and in fact about their information when they release you that
20 they tell you not to even request any information about it,
21 they'll come to you if there's something that you need to
22 know. The fact of probation was never brought to me. It was
23 never -- it was it was something that I had felt I had gotten
24 when I went to court when I asked them when I was gettin'
25 ready to be released, you know, I'm supposed to have probation

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 they got mad at me, "If you're supposed to be on probation
2 then then I told you you're supposed on probation," and they
3 released me. I considered doing the probation. I called down
4 to the probation office, uh, didn't get ahold of anybody when
5 I did call, I called twice, and from there I saw my situation.
6 I didn't have a home, I didn't have any money, I didn't have a
7 ride to get down to report to the probation office. And after
8 about a week of that and sleeping on a friend of mine's couch I
9 saw an opportunity to go to Saint Louis and get a job where
10 hopefully I could buy clothes, I could get a place of my
11 own, possibly a car. One of the conditions of my -- when I
12 when I got sentenced I was ordered to pay restitution.

13 Q. Um-hum.

14 A. Uh, I wanted to pay that restitution, be done with my
15 obligations and try to try to do better, you know, than what I
16 was doing in Spartanburg.

17 Q. Okay. All right. You acknowledged that the detective
18 read you part of the rights but you're telling us you didn't
19 hear the whole rights?

20 A. Yes, sir.

21 Q. Did you understand what was read to you?

22 A. Yes, sir.

23 Q. And you've been through that process before?

24 A. Similar. Similar. That similar process.

25 Q. Okay. And you had your rights read to you?

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 A. Yes, sir. I've never found myself in a situation where I
2 felt I needed to, uh, invoke my right to an attorney ---

3 Q. Okay.

4 A. --- but yes, I've been read my rights before.

5 Q. You invoked your rights at the county when you were in
6 the sheriff's office?

7 A. Yes, sir.

8 Q. Had you talked about the case before that?

9 A. No, sir.

10 Q. Okay. Were they providing you with information on things
11 they said they knew you did ---

12 A. Yes, sir.

13 Q. --- trying to convince you to give a statement?

14 A. Yes, sir.

15 Q. And then you said you didn't wanna give 'em one, you
16 wanted a lawyer.

17 A. Yes, sir.

18 Q. Do you recall them asking you who your lawyer was?

19 A. Yes, sir.

20 Q. Okay. Did they ask you any more questions about this
21 case?

22 A. Yes, sir.

23 Q. They asked you questions when you said you were willing
24 to talk to 'em?

25 A. Before then and after I had asked for an attorney.

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 Q. So you're telling the Court that they ignored your
2 request for an attorney, that you didn't wanna speak?

3 A. Basically, yes. They they let it be known to me that
4 they needed to know what my intentions were as to going into
5 that house that day. That's all they needed to know. They
6 didn't feel that -- like it was murder but ---

7 Q. You ----

8 A. --- if if ---

9 Q. You went over all that. My question was is did you feel
10 they ignored your request?

11 A. Yes, sir.

12 Q. Okay, so that's your testimony. You you invoked your
13 right to a lawyer and they ignored your request and continued
14 to talk to you?

15 A. Yes, sir.

16 Q. And at some point you decided to speak to them?

17 A. Yes, sir.

18 Q. Okay. You heard this taped statement?

19 A. Yes, sir.

20 Q. You've seen a transcript of it, right?

21 A. Yes, sir.

22 Q. And I believe before you actually started your statement
23 you were asked, "I wanna make sure that you understand that we
24 discussed earlier you were advised of Miranda," and you
25 acknowledged yes?

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 A. Yes. I was also told when I was told a portion of the
2 Miranda that I that I did receive that if we got into de --
3 greater detail of what we were discussing and it became
4 necessary for me to hear the whole thing that I would then be
5 told ---

6 Q. Okay. What about ---

7 A. --- but for the but for the purposes of our discussion
8 right then in the car and on the way to the sheriff's office
9 you -- he wanted me to know that I had a right to an attorney
10 and that I had a right to remain silent.

11 Q. And then only later he would tell you the rest of it if
12 he felt it was necessary?

13 A. If I if if I had agreed to talk to him or if the
14 conversation got in detail enough to where it was necessary
15 for me to to hear my Miranda rights, what qualifications that
16 would require I'm not sure.

17 Q. Okay. Did they ever promise you anything, sir?

18 A. As far as?

19 Q. Make any promises at all. You know what a promise is.

20 A. I felt like they did, yes.

21 Q. Like they finally said, "I'm gonna promise you this. I'm
22 gonna promise you that."

23 MR. SCHULTZ: Objection. Vague.

24 THE COURT: No, sir, he's trying to ask him, I think, to
25 be specific what what a promise is. It's cross-examination.

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 DEFENDANT: They told me that if I cooperated with them
2 they would make sure I got a fair shake and I would be charged
3 with a proper charge according to what happened.

4 Q. So you're telling us that they promised you that it
5 wouldn't be murder?

6 A. If I didn't tell them I walked in there -- this -- they
7 they promised me that if I did not tell them that I walked in
8 there and pulled a gun and just shot that man for no reason or
9 for any other reason just outta cold-bloodedness that I --
10 that that -- that they would not charge me with murder. They
11 did not they did not feel like I went in there to hurt anybody
12 and that whatever had happened, what it was they weren't clear
13 on that's what they needed to know from me they didn't feel
14 like it was murder. They felt like somethin' else had
15 happened in the house that night and unless I told them that I
16 walked up in there and cold-bloodedly shot that man, I would
17 not be charged with murder. They would make sure I got
18 charged with the with the proper crime for the proper ---

19 Q. Did they tell what ---

20 A. --- circumstance.

21 Q. Did they tell you what kind of crime?

22 A. The death of a man.

23 Q. They didn't state the charge to you?

24 A. No, I asked 'em. I asked 'em, I said, "What what am I
25 looking at here," you know, "murder or manslaughter," that's

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 when they clarified for me the difference between murder and
2 manslaughter, ---

3 Q. Um-hum.

4 A. --- that if their investigation revealed that somethin'
5 else did happen in that house that that led to his death, that
6 if if I walked in there cold-blooded then that's murder, if I
7 if I walked in there, we got in an argument about something
8 and he accidentally got, that that's not murder. They
9 clarified that for me and they told me that unless I told them
10 I walked in there and cold-bloodedly killed him that I had not
11 committed murder.

12 Q. Did you wanna give a statement?

13 A. Not at first no.

14 Q. You didn't wanna tell your side of the story?

15 A. I didn't trust my surroundings at that point.

16 Q. And then you invoked your right to an attorney.

17 A. Yes, sir.

18 Q. Then you began asking them what was gonna happen.

19 A. I asked them what kinda charges they were talking
20 about.

21 Q. Okay. You began ---

22 A. He ---

23 Q. --- asking them questions, right?

24 A. They they had, uh ---

25 Q. Mr. Piper, ---

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 A. After they ---

2 Q. --- listen to me.

3 A. --- told me after they told me that if I didn't work with
4 them they -- he would make sure that he would have to charge
5 me with murder, they would make sure that I would be buried
6 under the jail for not cooperatin' and, uh, at that point
7 yeah, I asked a question. I said, "What are you talking about
8 here, man? What kinda charge? What kinda charge are you
9 talking about, you know, you're telling me that you just wanna
10 know why I came in well well what what difference is it, you
11 know. Is it a different -- difference in the charge, you
12 know, of what happened in the house or what?"

13 And they said, "Yes it makes a big difference," and then
14 they that's when they they told me what they did about the
15 difference between manslaughter and murder.

16 Q. Okay, and they answered your question.

17 A. Yeah.

18 Q. And that's what convinced you to give your statement?

19 A. No, not at not at that point. At that point they left,
20 they left out again and came back. They came back into the
21 room and sat down, asked me again about an attorney. They're
22 like, "Look, man, we just wanna resolve this."

23 And for like the third time I told 'em, "I know you just
24 wanna to resolve if and I'm not trying to complicate your life
25 or make your job hard but I I need to speak to an attorney.

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 I'm not saying that I won't speak to you at all but right now.
2 before I do speak to you I want to speak to an attorney," and
3 that was about the third time I I told 'em I want to talk to a
4 lawyer. That's about about the third or fourth time that it
5 left my mouth, "I want to speak to an attorney."

6 And they at that point they're like, "Okay, you keep
7 saying you wanna talk to an attorney, who do you want? Who --
8 do you have an a -- do you have an attorney?" They said, uh,
9 "Your father had Andrew Johnston. Do you wanna speak to
10 Andrew Johnston?"

11 I said, "Well, yeah, that that be great."

12 "Well, have you paid Andrew Johnston? Do you have him on
13 retainer?"

14 I said no.

15 They said, "Well, then he probably won't come down here,"
16 you know, "Just just tell us who you wanna talk to, we'll get
17 'em. We'll do our best we can to get 'em down here whoever
18 you wanna talk to."

19 They asked me about Andy Johnston, I said, "No." I said,
20 "Yeah, that be great but I hadn't paid him so he probably
21 wasn't coming." They asked me about a another public
22 defender, I said, "I don't trust this guy so no, I don't wanna
23 talk to him. Right now I'm supposed to be assigned a public
24 defender but I haven't spoke to the public defender's office
25 yet so I don't know who to talk to. I don't know who to tell

GARY MICHAEL PIPER - CROSS-EXAMINATION BY MR. BULSA

1 you to get," and ---

2 Q. So it's your testimony, sir, I don't want you to keep
3 going over that, is that you invoked your right several times
4 and only after they convinced you that it would be less than
5 murder that you gave a statement?

6 A. It was a combination of that, them telling me that they
7 were about to go involve my friends. They they really caught
8 my attention when they told me what they did about my father.

9 Q. Okay.

10 A. Uh, the the -- when they when they said that my father
11 had made a mistake and for me not to make make that same
12 mistake, that moved me because it, I feel like it was ha -- it
13 was, you know, a bad bad deal for him to have to die in prison
14 and then when they told me that they were gonna charge me with
15 the proper crime for for the -- what had happened, I
16 considered that greatly. But yeah, after they after them
17 continually, you know, ---

18 Q. Um-hum.

19 A. --- reassuring me with with these different things that
20 they said yeah, I spoke to 'em.

21 Q. But you would have never given a statement at all if you
22 had not been caught would you have? That's a yes or no
23 question.

24 A. I can't guess on that.

25 Q. Okay. Thank you.

GARY MICHAEL PIPER - REDIRECT EXAMINATION BY MR. SCHULTZ

1 MR. BULSA: That's all I have, Your Honor.

2 THE COURT: Thank you. Mr. Schultz, redirect.

3 MR. SCHULTZ: Briefly, Your Honor.

4 REDIRECT EXAMINATION BY MR. SCHULTZ:

5 Q. It was your understanding that day that even after you
6 invoked your right to an attorney that you were promised a
7 charge of manslaughter and not murder, correct?

8 A. As long as I didn't tell 'em I went -- just went in there
9 with guns a blazin', yeah.

10 Q. And that's when you decided to give a statement,
11 correct?

12 A. Yes, sir.

13 MR. SCHULTZ: That's all I have, Your Honor. Thank you.

14 THE COURT: Thank you. Mr. Piper, you can step down.

15 MR. SCHULTZ: Thank you.

16 (Whereupon, the defendant was excused.)

17 THE COURT: All right. Mr. Schultz, any further evidence
18 from the defendant on the *Jackson v. Denno* issue?

19 MR. SCHULTZ: Nothing further as far as evidence.

20 THE COURT: All right. Is there anything from the state
21 in reply?

22 MR. BULSA: No, Your Honor.

23 THE COURT: Thank you. All right. Mr. Schultz, I'll be
24 glad to hear briefly your argument in connection with the with
25 the motion.

MOTIONS AND MATTERS

1 MR. SCHULTZ: Thank you, Your Honor. May it please the
2 Court.

3 THE COURT: Yes, sir.

4 MR. SCHULTZ: Your Honor, it is our position that from
5 the testimony of not only Mr. Piper but also from Investigator
6 Lindsey, Investigator Bryant that his voluntary will was
7 overborne at the time right before the time that he was giving
8 a statement. It's pretty clear from the testimony that he was
9 given some kind of Miranda warnings. I think the record is
10 inconclusive as to what kind of Miranda warnings he got.
11 There are there are cases out there that say that complete
12 Mirand -- Miranda warning should be given. It is clear from
13 Mr. Piper's testimony that not the -- an incomplete version of
14 the Miranda was given.

15 Your Honor, you've also heard it and I think this is a
16 very convincing aspect of this motion that you you heard
17 Investigator Lindsey say specifically to my client, "Don't
18 make the same mistake your father made." That would lead, I
19 think in my opinion, a reasonable person to believe that if he
20 did not give a statement like his father had did, he would be
21 charged with murder. If he did give a statement, then he'd be
22 charged with manslaughter which he was trying to explain
23 himself of what happened and that led directly to his
24 statement. So I believe that that statement was indeed co --
25 coerced because of the promise given to Investigator Lindsey

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1 and Investigator Bryant to Gary Piper..

2 And also as far as the investigators also knew that
3 Mr. Piper had a relationship with a one Jennifer Gregg.
4 Jennifer Gregg was at the very least tangentially involved in
5 this in this scene and that they knew that Mr. Piper cared a
6 great deal for Jennifer, they had a relationship together,
7 they were boyfriend and girlfriend and that Mr. Piper knew
8 that if he did not say what happened that night, give a
9 statement that Jennifer Gregg would get get in trouble and he
10 did not want that to happen so he was coerced that way as
11 well, Your Honor.

12 Your Honor, we've received no evidence that he was given
13 Miranda warnings not on that audiotape. On the audiotape it's
14 clear that they said, "Do you understand Miranda," but no
15 Miranda warnings in their entirety were given on that
16 audiotape.

17 Your Honor, it's it's the defense's position that the --
18 after Mr. Piper invoked his right to an attorney that
19 Investigator Lindsey and Bryant continued to badger Mr. Piper
20 by asking who his attorney was. They asked him, "Do you want
21 Andy Johnston who represented your father?"

22 And Mr. Piper said, "No, I don't want him."

23 "Do you want a public defender offered?" Your Honor,
24 it's our position that they should have stopped their
25 interrogation at that point and at that point alone and not

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1 continued with these questions. And not only that, from what
2 I've said before, this keeps adding and adding up rendering
3 this statement involuntary. Thank you.

4 THE COURT: All right. Thank you, Mr. Schultz.

5 MR. SCHULTZ: Thank you.

6 THE COURT: Mr. Bulsa.

7 MR. BULSA: Your Honor, the state feels this all comes
8 down to an issue of credibility. We got two officers who both
9 acknowledge that full Miranda was given, that no promises were
10 made, no coercion was made. You heard from the defendant he
11 was in jail for a probation violation for previous charges.
12 He didn't even abide by the conditions of the release. All
13 right. On the issue of credibility, Your Honor, we just
14 believe that the the state's witnesses are accurate in what
15 they say, they had notes that they referred to to recollect
16 their memory. They stopped when he said he wanted a lawyer.
17 He reinitiated and that is the standard.

18 THE COURT: All right. Thank you. The motion to
19 suppress the statement has two problems: first of all, it has
20 a problem with the Miranda warnings were not properly given
21 and secondly, that Mr. Piper invoked his right to a lawyer and
22 the police did not honor that invocation of his right to to
23 counsel. The officer have testified that full Miranda
24 warnings were given, that he was in custody obviously and he
25 was told that before the statement was given that he had the

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1 right to remain silent and that if he gave up that right that
2 the statement could be used against him in court, that he had
3 a right to have a lawyer present and if he didn't have one
4 himself one would be appointed to represent him, he had the
5 right to consult with a lawyer before the statements were made
6 and so forth and that he could stop questioning at any time.
7 And the officers further testified that before he gave any
8 statement of any substance that he did in fact invoke his
9 right to an attorney and at that point in time they ceased
10 questioning and only when he, that is, when Mr. Piper
11 continued to ask questions about his case and they told him
12 they could not talk with him about the case in view of his
13 implication of a right but then he indicated he wanted to talk
14 further and that he subsequently did and made the statement
15 which has been introduced into evidence as State's No. 2. It
16 obviously is a question of credibility, first of all as to
17 whether the Miranda warnings were given in full or not.
18 Mr. Piper's testimony was that that he recalled the two rights
19 that he had a right to an attorney, he had a right to remain
20 silent. His indication was that he didn't recall the whole
21 thing being given. On the face of that, of course, I have the
22 two officers who indicated that it was given. The implication
23 of his right to a lawyer, of course, is a right that has to be
24 scrupulously observed and questions cannot be asked in
25 furtherance of that implication or after that implication's

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1 been made unless unless the defendant himself indicates his
2 willingness to be questioned further.

3 One of the many cases on that point is *State vs. Kennedy*
4 a 1999 -- 1998 Supreme Court case, 510 S.E.2d 714. In that
5 case there was some question at the trial as to whether or not
6 he had actually invoked his right to a lawyer. That was
7 resolved and it was clearly found that he did in fact invoke
8 his right to a lawyer. The Court went on to find however that
9 even if the Court of Appeals had erred in that regard before,
10 the defendant in that case had waived his right when he
11 initiated further discussions on his own, uh, let's see. Once
12 an accused requests counsel, police interrogation must cease
13 unless the accused himself initiates further communication,
14 exchanges or conversations with the police. Interrogation is
15 the expressed questioning or it's a function equivalent which
16 includes words or actions on the part of the police that they
17 should reasonably know are likely to illicitate -- illicit an
18 incriminating response.

19 In the *Kennedy* case, that -- after the petitioner told
20 the officers that he wanted an attorney he was told that if he
21 wanted an attorney the solicitor couldn't speak to him any
22 further and he said in that particular case, "Let's go ahead
23 and gets this over with," and he was told that one would be
24 appointed to represent him. And he said in that case he
25 agreed to talk out of frustration and because he didn't know

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1 any other way out of jail. The Court found that he had
2 voluntarily waived his rights before the statement was taken
3 and he agreed to make the statement.

4 The question is whether or not after the right to an
5 attorney has been e -- in -- evoke -- invoked and whether then
6 the defendant initiates conversation as to whether or not the
7 Miranda warnings have to be regiven. The -- there is a list
8 of of things that have to be done. Miranda warnings being
9 regiven is not an absolute essential but in this particular
10 case the tape in -- clearly indicated a a reference to the
11 Mira -- Miranda warnings which had been given earlier.

12 Now, on the issue of credibility, which is of course a
13 key issue when you have two people saying one thing and one
14 person saying another, I have to observe the credibility of
15 the witnesses in the case and make a finding in that regard.
16 I find that Mr. Piper's testimony on direct examination was
17 somewhat equivocal about promises that had been made. As a
18 matter of fact, he indicated that, "My interpretation was that
19 if I cooperated, the situation would go one way and if I did
20 not it would go another." The question about making the same
21 mistake that his father made or involving other people in this
22 I do not find to be coercive. That's not a threat as such. I
23 think that's no more than saying, you know, "Don't make a
24 mistake, help us or whatever you can do or tell your side of
25 the story." He indicated that Mr. Lindsey was frustrated and

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1 he jumped up and he said, "It's gonna be a long day. Let's
2 see what others have to say."

3 And then he said, "I felt I felt if I cooperated with
4 them it would help me." Now, apparently between the time of
5 that direct examination and the time of Mr. Bulsa's
6 cross-examination an epiphany of sorts occurred to Mr. Piper
7 because on cross-examination he remembered specific threats,
8 he remembered specific promises which he did not recall when
9 Mr. Schultz his own attorney was was questioning him. He
10 said, "They promised me that if I did not tell them that I
11 that I shot the man in cold blood that I would not be charged
12 with murder." In other words, "Unless I told 'em I shot the
13 man in cold blood I would not I would not be charged with
14 murder." He said, "They told me that I would be buried under
15 the jail for not cooperating," a threat. On one hand a
16 promise the other a threat. He indicated on
17 cross-examination, "Three or four times I told 'em that I
18 wanted an attorney." And they finally told him that he was
19 promised manslaughter and not murder and none of those things
20 on dir -- on redirect by his own attorney. Now, those things
21 didn't come out the first time around and I thought if they
22 were that significant and if he had been threatened that
23 openly and made promises that directly that they would have
24 occurred to him and I would have heard them the first time the
25 testimony was offered.

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1 I've considered the evidence and I find beyond any doubt
2 that I need to have resolved which for this particular
3 standard frankly is just a preponderance of the evidence, that
4 before the the statement itself was made that he was fully
5 advised of his rights under the Fifth and Six Amendments of
6 the Constitution and the safeguards that are required by
7 *Miranda vs. Arizona*, that he was advised that he had the right
8 to remain silent, that he was advised that if he waived that
9 right any statement could be used against him in a court of
10 law, that he was told that he had a right to have a lawyer of
11 his own present with him during the questions and if he didn't
12 have one one could be appointed to represent him free of
13 charge, he had the right to have a lawyer present with him and
14 obviously he must have understood that because he in fact
15 invoked that right, that he further was advised that he had
16 the right to consult with his lawyer and that he had the right
17 to stop the questioning at any time if he chose to do so.

18 I further find that he knowingly and intelligently waived
19 those rights after having initially invoked the rights because
20 the tape itself indicates, "You you recall the Miranda
21 warnings that were given?"

22 And he said, "Yes," and he obviously made a statement
23 himself, an audio statement which is preserved in the record.
24 I find that ultimately that statement itself was made freely,
25 voluntarily, it was without duress, without coercion, without

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1 undue influence, without reward or without promise or hope of
2 reward, without a promise of leniency and that it was a
3 voluntary product of his free and unconstrained will. I find
4 those things they'll be -- can be presented to the jury
5 obviously and the jury will be instructed that they have to
6 find that that the proper warnings were given and that the
7 statement was freely and voluntarily given beyond a reasonable
8 doubt. The threshold requirement for this court however is
9 simply by the greater weight or preponderance of the evidence.
10 The motion to suppress the statement then is respectfully
11 denied and we still have a ten minute lunch hour left, folks.
12 I can keep the jury. I will I will apologize to the jury for
13 a twenty-five minute lunch hour but we need to be back in here
14 a quarter of the hour to begin.

15 MR. BULSA: Yes, sir.

16 THE COURT: Thank you. We'll be in recess until quarter
17 of the hour.

18 (Whereupon, a recess was taken.)

19 THE COURT: Folks, in just a minute I'll bring the jury
20 in, the jury will be sworn, I'll appoint a foreperson, I'll
21 make some brief introductory comments and then allow you all
22 brief opening statements and then we'll begin with the
23 testimony. And if by that time, Mr. Schultz, you've been able
24 to highlight those records that you want me to consider --

25 MR. SCHULTZ: Yes, sir.

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1 THE COURT: --- I'll I'll be able to I'll be able to look
2 over those perhaps while you all are making your opening
3 statements I can look at those. That's not to say you won't
4 have my undivided attention while you're making the opening
5 statements but I'll be I'll be reading as you talk.

6 MR. SCHULTZ: Yes, sir.

7 (Pause.)

8 THE COURT: Mr. Bulsa, Mr. Schultz, do you have everybody
9 you need?

10 MR. SCHULTZ: Yes I do, Your Honor.

11 THE COURT: Mr. Bulsa, are you ready?

12 MR. BULSA: Yes, sir.

13 THE COURT: I appreciate the fact that your victims are
14 not here and I understand we took a we took a ---

15 MR. BULSA: Yes, sir.

16 THE COURT: --- twenty minute recess instead of a lunch
17 hour. I want to explain I don't normally do that sort of
18 thing. I mean, I'm mindful of of the fact that all of us need
19 to eat regular meals and to have regular breaks and to leave
20 here at normal times and I -- I'm pretty conscientious about
21 that. I underestimated the length of time that it was gonna
22 take to do the motions that we had and and I was struck within
23 the equally undesirable alternatives of having this jury wait
24 in the jury room for a full lunch hour for us or shortening
25 our lunch hour for this period of time. I hate to start off

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1 with a trial by making a jury wait unduly. It sorta it sort
2 of covers their whole attitude about these proceedings and I'm
3 mindful of the time. And besides if I'd made them wait when
4 they came outta there, they're gonna be mad enough for
5 somebody to kill 'em and I don't know who it was gonna be.
6 Either --- I'm the only one they can't get at so it doesn't
7 bother me.

8 All right. Mr. Bulsa, you ready? Mr. Schultz, are you
9 ready for the jury?

10 MR. SCHULTZ: Defense is ready, Your Honor.

11 THE COURT: Thank you. Bring us a jury please.

12 (The following takes place in the presence of the jury.)

13 THE COURT: Ms. Horton, would you step right there in
14 that front chair right there (indicating). Ms. Horton, I've
15 asked you to occupy that chair please, ma'am. I want you to
16 serve as a foreperson or forelady of the jury and all that
17 means is that during the trial you will be the spokesman of
18 the jury for the Court. When the trial is over you'll be
19 responsible for writing the verdict of this jury but I'll tell
20 you more about that before you have to do it. You don't need
21 to concern yourself now about that. You just need to know
22 you've got a reserved chair and you'll occupy that chair
23 throughout the trail of the case.

24 Mr. Lowe, Mr. Nesbitt, gentlemen, during the trial you
25 will occupy those two chairs as alternates unless sometime

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1 during the trial I ask you to sit somewhere else, okay?

2 ALTERNATE JUROR: Okay.

3 THE COURT: The rest of you ladies and gentlemen don't
4 have reserve seats, you just got general admission tickets.
5 You gotta do the best you can. It's always a good idea to do
6 what you did a minute ago to walk all the way down to where
7 you sit down 'cause you don't have a whole lotta room to step
8 over somebody. You leave an open chair beyond you somebody's
9 gonna stumble across your feet to get to it. That could get
10 kinda painful during the course of a trial.

11 I want to apologize briefly for having gotten you out
12 here thirty minutes after I asked you to come back. I
13 hesitate to start the trial of a case on a bad note like that
14 but I was a poor estimator of time. When you all left here at
15 11:15 this morning, I thought that we had enough time to hear
16 the motions that we had to hear. We took a fifteen minute
17 break. We started at 11:30. As a matter of fact, we finished
18 those things at twenty after one, many of you were already in
19 the jury room and so we took our lunch hour was from twenty
20 minutes after one and I was very generous and gave the Court
21 personnel an extra fifteen minutes so they had a twenty-five
22 minute lunch hour. And I apologize to you for that delay but
23 I I felt they needed and we all needed some brief break before
24 we started. I'll be conscious of your time throughout the
25 trial of this case and we'll do all that we can to see that it

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1 is not wasted.

2 You're going to be sworn in now as jurors, folks, and I
3 want you to pay attention to the oath that you're about to
4 take. It is a time honored, it is an artfully worded oath and
5 it explains to you very completely yet at the same time very
6 concisely what your responsibilities are as jurors in this
7 case. I'm gonna be reminding you during the trial and indeed
8 after the trial as to exactly what you're sworn to do as
9 jurors. So please pay attention now to the oath as the clerk
10 administers the oath. Madam clerk.

11 (Whereupon, the jury panel was sworn.)

12 THE COURT: Thank you, madam clerk. Ladies and
13 gentlemen, before we begin the actual trial of this case, let
14 me take just a few minutes to tell you what the procedure will
15 be that we will follow in this trial and tell you what your
16 role will be as jurors. In just a minute when I finish
17 talking to you, Mr. Bulsa on behalf of the state, the deputy
18 solicitor who is trying this case on behalf of the state, will
19 stand before you and make a brief opening statement and in
20 that opening statement he is going to outline for you in
21 something of a preview fashion what this case is all about
22 from the point of view of the state. And he may even indicate
23 to you some of what he intends to offer by way of proof in
24 support of the charges the state has brought in these
25 indictments. And after he has finished making the opening

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1 statement on behalf of the state, Mr. Schultz on behalf of the
2 defendant, Mr. Piper, has the right to make an opening
3 statement but he is under no obligation to do that and I'll
4 tell you why in just a few minutes.

5 And after the opening statements have been made then you
6 will actually begin to see and hear the presentation of
7 evidence. Evidence for the most part will take the form of
8 testimony of witnesses who will take an oath and sit in this
9 chair right here (indicating) and answer questions that the
10 lawyers for both sides will ask of them. Evidence may also
11 take the form of photographs and diagrams and documents and
12 things of that nature which will be offered into evidence
13 under our rules. The state will offer its evidence and its
14 testimony first and after the state has put in its evidence
15 and testimony then the defendant has a right to offer evidence
16 and testimony but once again is under no obligation to do
17 that.

18 Now, after all of the evidence and testimony has been
19 presented to you then the lawyers will come back before you
20 and make their closing statements, their final arguments
21 they're sometimes called. And after that has been done then I
22 will instruct you on the law. I will charge you on the law as
23 it's called. And then after you've received the charge on the
24 law you'll go back into the jury room and finally begin to
25 start to talk about this case, to discuss it among yourselves,

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1 to deliberate and to reach a verdict.

2 I remind you again that you may not discuss this case
3 among yourselves at any time during the trial and for reasons
4 that I've already told you you don't -- you can't talk with
5 anybody else about it and you can't try to find out anything
6 on your own about it. You might wonder why you can't talk
7 about it among yourselves. You're all jurors in this case,
8 you all just took the same oath, why can't you talk about it?
9 You might hear somebody testify about something and we take
10 the afternoon recess and you go back and then you say, "I got
11 some questions about that. I'd like to discuss it while it's
12 fresh in my mind," but you can't do that. And the reason that
13 you can't do it is that you have to keep an open mind
14 throughout this entire trial. It might be that later in the
15 trial of the case you hear some evidence that's different from
16 that that you've already heard but if you've already started
17 to discuss that earlier testimony among yourselves, you can
18 start to make up your mind based on that earlier discussion.
19 And you might not be able to receive that later testimony even
20 though it's different with an open mind and for that reason we
21 ask you please don't discuss this case at any time during the
22 trial among yourselves. When the trial is over, you can take
23 as much time as you want to talk about it but not until then.

24 Now, ladies and gentlemen, the opening statements that
25 the lawyers are going to make and the closing statements that

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1 the lawyers are gonna make and the questions that the lawyers
2 are gonna ask are important to us but they are not evidence.
3 And I wanna make sure that you understand the distinction now
4 between what is evidence and what is not evidence. All of
5 those things are important. We wouldn't be able to conduct a
6 very orderly trial if we didn't have opening and closing
7 statements and questions. But they're not evidence. The
8 evidence is not the questions, it's the answers to the
9 questions that come from a witness who's supposed to know
10 something about what they're talking about under oath with
11 questions put to them by lawyers from both sides. That is a
12 crucible upon which the truth is discovered in trials of this
13 nature. That's the evidence along with those other evidence
14 items. And the reason that it's real important that you
15 understand the distinction between what is and what is not
16 evidence is this: When it comes to evidence, folks, you all
17 actually are judges. Judges. Those badges say jurors. And
18 you're just getting a jurors pay and I hate to tell ya but it
19 ain't a whole lot of money but when it comes to the evidence
20 that badge could more accurately say judge. I'm the judge of
21 the law. I've got the easy job. I've got a computer up here
22 and I've got bunch of books around and and thirty-four years
23 of experience as a lawyer and a judge combined and sometimes
24 those things help, sometimes they don't, but I've got the job
25 of deciding whether you can hear somebody tell you something,

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1 whether you can listen to that testimony or whether you can
2 look at that item as evidence. But once I decide that you can
3 hear the testimony or look at the evidence from that point on
4 it's up to you to decide what to do with it. You've got the
5 right to believe it or not to believe it. And you've got the
6 obligation if you believe it of deciding how important it is
7 to the issues tried in this case and to the decision that
8 you're gonna have to make and that means you gotta pay
9 attention.

10 This trial's gonna last a couple of days but you've
11 already understood what the issues are and the charges are and
12 you understand the seriousness of it to everybody on both
13 sides of the aisle in this courtroom. And it's important that
14 you give it the attention that it deserves and I'm sure that
15 you will 'cause you have to keep not only an open mind as I
16 told you earlier, you have to keep an open ear as well because
17 if you don't, when this trial is over sometime tomorrow or the
18 next day, you're not gonna be in a position to go into that
19 jury room and discuss intelligently the decision that you have
20 to make in this particular case.

21 I told you earlier a few minutes ago that the defendant
22 in this case doesn't have to make an opening statement and
23 doesn't have to present evidence if he chooses not to do so
24 because as I indicated to you before you were selected as
25 jurors in this case the defendant has plead not guilty to the

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1 charges in the indictments. Now, the legal effect of a plea
2 of not guilty by a defendant in a criminal case is this: that
3 means that the defendant is presumed to be innocent of the
4 charges, presumed to be innocent.

5 When we say that somebody is presumed to be innocent,
6 that means that he doesn't have to testify and try to convince
7 you that he didn't do the things he's accused of doing. He
8 doesn't have to bring in another parade of witnesses to sit in
9 this witness chair and try to make you believe that he did not
10 do the things that he is accused of doing. He has no
11 obligation. The burden of proof is upon the state not just in
12 this case but in every case like this to prove that he is
13 guilty and to prove it beyond a reasonable doubt. I imagine
14 if I were asked for a show of hands I'd get fourteen hands to
15 be raised in the air if I asked you if you've heard of the
16 proposition innocent until proven guilty. Every one of you's
17 heard that. It's it's one of the cornerstones of our
18 constitution. If you examine that four word phrase "innocent
19 until proven guilty," you'll find that there's nothing in
20 there that says that innocence has to be proven. Innocence
21 until proven guilty says that it is guilt that has to be
22 proven and the burden is on state to present evidence that
23 convinces you, all of you, beyond a reasonable doubt that the
24 defendant is guilty for the crimes charged in this case.

25 When the trial is over and when I instruct you on the

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1 law, I will tell you in greater detail what we mean by proof
2 beyond a reasonable doubt, but for our limited purposes right
3 now let me tell you that what proof beyond a reasonable doubt
4 means, that is, proof that leaves you firmly convinced of the
5 defendant's guilt. And so after you listen to all of the
6 evidence from whatever source it might come in this case and
7 you go back and start talking among yourselves if you all
8 reach the collective decision that the state has firmly
9 convinced you of the defendant's guilt, it has met its burden
10 of proof and would be entitled to a verdict of guilty at your
11 hand; but on the other hand if after listening to all of the
12 evidence you go back to that jury room and if your collective
13 judgment is that there's still a real possibility that the
14 defendant is not guilty and it has not met its burden of
15 proof, the defendant is entitled to a verdict of not guilty.
16 And so what you're going to be doing is listening to the
17 evidence and the testimony and then you'll listen to the
18 lawyers at the conclusion of the trial and you'll listen to me
19 when I tell you what the law is and then you'll go back into
20 that jury room and you'll talk about this case among
21 yourselves and you'll deliberate until you have reached a
22 verdict and that verdict will express your opinion as to
23 whether or not you feel that the state has met its burden of
24 proof and you'll write that opinion down on the verdict form
25 that will say, "We find the defendant guilty," or, "We find

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1 the defendant not guilty," according to your view of the
2 evidence and the law just as you have taken an oath to do.
3 Thank you, folks, for your attention to these remarks. Now,
4 please listen to the lawyers as they make their opening
5 statements. Mr. Bulsa.

6 MR. BULSA: May it please the Court. Good afternoon,
7 ladies and gentlemen. Thank you for your participation in
8 this case. Briefly, I'm gonna discuss with you you heard the
9 indictments that I read at the start of this trial. Back on
10 December 21st 2006 Alberto Chavez was shot in the head and
11 killed as a result of that. Mr. Chavez was staying at the
12 home of Artis and Charles Jackson, are the two black gentlemen
13 seated back there (indicating). He was -- they were kind
14 enough to give him a place to stay. He was a working man and
15 minding his own business that evening.

16 On December 21st approximately 9:45, 9:50 the defendant
17 went to the home of Mr. -- the two Jacksons, knocked on the
18 door, Artis Jackson was laying in the front room on a couch.
19 He heard a name that he thought was a friend of his so he said
20 to come on in and the defendant walked in brandishing a
21 weapon, demanding money from Artis Jackson, Artis is the one
22 in the wheelchair, demanding money from Artis. Artis did not
23 have any money. He demanded drugs. Artis did not have any
24 drugs. He then went, the defendant then went to the next room
25 where Chavez, Alberto Chavez was, confronted him demanding

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1 money. Mr. Chavez resisted, the defendant shot him in the
2 head. You will see evidence of at least four gunshots in that
3 room. Charles Jackson was sleeping in another bedroom. He
4 heard the commotion. He actually had a firearm with him and
5 fired a shot himself thinking that he was gonna be next 'cause
6 heard the shots. He fired through his bedroom door into the
7 kitchen area of the home.

8 The defendant fled the scene in a vehicle with a man by
9 the name of Gregg Lee. Gregg Lee will come and testify and
10 tell you about what occurred that day, how he came to be with
11 the defendant, what the defendant's mindset was and what he
12 was doing.

13 December 27th approximately 1:30 a.m. in the morning the
14 defendant was at a home on Gentry Street. The police went to
15 find him. He fled that location in a SUV, the same SUV he had
16 driven over to the crime scene. The police gave chase in this
17 neighborhood. He wound up wrecking the car, jumping from the
18 car, hiding in the bushes, he was found. Two days later a
19 resident turned in a gun. A gun that was found in the
20 vicinity of the wreck in his flight. That gun was turned over
21 to the city police. The murder occurred in the county. They
22 finally made the connection that that gun might have something
23 to do with this murder and they put two and two together and
24 then the defendant was arrested.

25 You will hear from several officers in this case about

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1 the evidence at the scene. You will hear from many of the
2 defendant's acquaintances including his girlfriend about what
3 was going on. The gun was his girlfriend's grandmother's gun.
4 You'll learn how he came to be in possession of it. He used
5 that weapon to shoot and kill Alberto Chavez.

6 He's charged with murder. That is the most serious
7 charge as you all know. Murder, the judge will charge you, is
8 the unlawful killing of another person with malice
9 aforethought. Malice can be inferred from the facts and
10 circumstances of the case as well as the use of a deadly
11 weapon. The defendant tried to rob Mr. Artis Jackson, tried
12 to rob Alberto Chavez. Those are the two attempted armed
13 robberies. He pointed a gun at Mr. Artis Jackson when he was
14 demanding the money. Mr. Artis Jackson as you can see is a
15 feeble man. He has to get around in a wheelchair. And then
16 he's charged with failing to stop for police on December 27th
17 when he fled. I submit you the cases are connected. He
18 should be found guilty of all charges at the conclusion of
19 this case. Thank you.

20 THE COURT: Thank you, Mr. Bulsa. Mr. Schultz.

21 MR. SCHULTZ: Your Honor, may it please the Court.

22 Ladies and gentlemen, I wanna thank you for your service this
23 week. Jury service I believe is one of the foundations as the
24 judge was saying of our society and the state, the defense,
25 this whole court system appreciates this a lot.

MOTIONS AND MATTERS

1 Ladies and gentlemen, there are always two sides to every
2 story. You just heard the state's side of what happened that
3 cold December night December 21st 2006. Ladies and gentlemen,
4 my name is Joshua Schultz. I'm assistant public defender. My
5 client's name is Gary Piper and he's sittin' over there
6 (indicating). That night we will show that Mr. Piper did
7 indeed walk into 220 Tharon Drive here in the City of
8 Spartanburg but unlike the state's case Gary did not rob
9 anybody that night, he did not murder anybody that night but
10 at the end of the night one person was almost dead but we will
11 show that this shooting was not murder.

12 Now, you've heard it said before, maybe you have maybe
13 you haven't, not all killings are murder. Not all homicides
14 are murder. There's different categories of it. For
15 instance, if a person is defending themselves on their own
16 property, that wouldn't be considered murder if the intruder
17 walks into one's own house, that's what is known as
18 self-defense. And we will show by the end of this trial that
19 Gary piper was faced that night with a gun at his face and he
20 had no other choice but to respond in kind.

21 You will hear witnesses for the state testify that there
22 was a struggle. At the end of this case I don't believe that
23 anybody could deny that there was a struggle between Gary
24 Piper and Mr. Chavez. You will hear witnesses from the state
25 offer their testimony today and the next day and maybe the

MOTIONS AND MATTERS

1 next day after that. Now, I want you to remember this, and
2 you will hear the state's witnesses testify to this that Gary
3 walked into that house, he walked into that house that night.
4 He didn't bust in. He didn't jimmy open the door. He didn't
5 try to shoulder in the door. He walked in. It was not a
6 forceful entry and that, ladies and gentlemen, is a good
7 indication of what Gary Piper's intention was that night. And
8 we will show that his intention was never to intentionally rob
9 and kill a fellow human being that night.

10 Now, you may have heard that not all killing is murder.
11 I've spoken to you about that before. Now, when you read the
12 indictment at the end of this this whole process, you'll see
13 that murder is the unlawful killing of a human being with
14 malice aforethought. Now, aforethought is a very interesting
15 word. It's an old word that is passed down through English
16 law. We don't really talk like that anymore. Aforethought,
17 it's it's a very grand sort of term but what it means is use
18 your common sense. Aforethought means the defendant had to
19 think about killing before it happened. Think about that. He
20 had to think about this.

21 You've heard the term "premeditated murder." Well, to me
22 that's almost a contradiction of terms because a med -- a
23 murder is premeditated anyways. Manslaughter or self-defense
24 is not, meaning that you had no choice in the matter. The
25 state has to prove that Gary piper had an intent to go in

MOTIONS AND MATTERS

1 there that night and kill. It is their burden to do this.
2 They have to present their case and convince all twelve
3 people, you all, that Gary Piper murdered Mr. Chavez beyond a
4 reasonable doubt. My job is to present reasonable doubt in
5 this case. And, ladies and gentlemen, you will see evidence,
6 you will hear witnesses testify, you will see evidence
7 presented to you, you will see videotapes of the crime scene
8 that will show reasonable doubt on this case.

9 The law of murder and manslaughter and self-defense has
10 not changed much in eight hundred years.. We we still use it.
11 In fact, the jury system has not changed much in the last five
12 hundred years. And like I said you're going to hear words
13 like "malice aforethought," and I wanna stress this again, not
14 all killings are murder. If there's adequate provocation,
15 that's another keyword that I want you to remember adequate
16 provocation, like a gun in your face and the person responds,
17 then that that is not murder it is manslaughter. It is
18 manslaughter because it is done precisely without malice
19 aforethought. But just because the law of homicide and the
20 law of killings and murders is old, it goes back doesn't mean
21 it does doesn't apply in the 21st century here in this
22 technologically advanced country that we live in. We're stuck
23 with this definition of homicide. We're stuck with this
24 definition of murder and manslaughter and self-defense.

25 Ladies and gentlemen, too much alcohol and too many guns

MOTIONS AND MATTERS

1 is usually a recipe for disaster and it was a recipe for
2 disaster that very cold night in December of last year. We
3 will show that things became very heated that night last
4 December on that cold December night.

5 The police will testify that in this house there were
6 several guns found. The police will show and the state will
7 have to show this that there was a 9-millimeter found, another
8 9-millimeter found and a .25 Lorcin. Ladies and gentlemen, we
9 will show that this is not your common law abiding house.

10 Now, we talked a little bit about murder. Let's talk
11 about the other charges: attempted armed robbery. And we
12 will show through cross-examination and the evidence that we
13 present to you that there was no attempt to take any money
14 that night from either Alberto Chavez or Artis Jackson. Now,
15 Gary Piper's also charged with pointing and presenting a
16 firearm. And you will see that again, there is no evidence
17 that he pointed a gun at Artis Jackson.

18 Now, when you just took your oath as jurors a couple
19 minutes ago and that oath means that you have to consider all
20 the facts, you have to give the state's due deference to their
21 case and you have to give my side due deference as well. Now,
22 you have already heard from the state, right now you're
23 hearing from me. You will now hear as the judge indicated to
24 you from the witnesses in this case.

25 Ladies and gentlemen, the jury system is the best way we

MOTIONS AND MATTERS

1 have to resolve disputes in our country. Not many countries
2 in the world use this, statistically not many countries do
3 this, and we believe that your service in here is extremely
4 important as I talked to you about before.

5 Now, when all is said and done, ladies and gentlemen, at
6 the -- either tomorrow or the next day, you may not remember
7 my name, you may not remember the solicitor's name, you may
8 not remember any of the testimony of the witnesses, you may
9 not remember the judge's name but I I know you will remember
10 that each and every one of you did justice in this case and
11 that's all we're asking for in this case is to do justice.
12 Thank you very much. I look forward to this case.

13 THE COURT: Thank you, Mr. Schultz. Mr. Bulsa, you can
14 call your first witness.

15 MR. BULSA: The state calls Steve Wilson.

16 MR. SCHULTZ: Your Honor, before this let's -- permission
17 to approach.

18 THE COURT: You wanna hand that up? Okay.

19 MR. SCHULTZ: Yes, sir.

20 THE COURT: The sequestration order is now in effect also
21 as to Mr. Charles Jackson.

22 Mr. Wilson, come forward please, be sworn.

23 DEPUTY STEVE WILSON, having
24 been first duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. BULSA:

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 Q. Good afternoon, Deputy Wilson.

2 A. Good afternoon, sir.

3 Q. Please introduce yourself to the jury.

4 A. My name is Deputy Steve Wilson with the Spartanburg
5 County Sheriff's Office. I've been a deputy with them for
6 eight years.

7 Q. Okay. Were you in law enforcement before that?

8 A. I was in the military for ten years prior to that.

9 Q. What service?

10 A. United States Army Infantry.

11 Q. Got out of the military, went to work with the sheriff's
12 office.

13 A. Yes, sir.

14 Q. And what are your -- what's your position with the
15 sheriff's office?

16 A. I'm a a road deputy and a field training officer. I
17 train up-and-coming deputies.

18 Q. And back in December of last year, December 21st, were
19 you on duty?

20 A. Yes, sir, I was.

21 Q. And what du -- what were those duties that day?

22 A. I received a call at 21 -- I'm sorry, I apologize, 9:59
23 p.m. to respond to 220 Tharon Drive in reference to a
24 shooting. That's as much as we got. Upon arriving on the
25 scene myself and fellow officers made entry, observed

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 Mr. Chavez in the bedroom. Mr. Artis was still sitting in the
2 couch in the living room. Charles, his brother, was in the
3 back bedroom. We secured Artis and Charles, got 'em out of
4 the area, cleared the house and secured the crime scene.

5 Q. Okay.

6 A. And waited and waited for EMS to arrive.

7 Q. So you were on normal patrol that evening?

8 A. Yes, sir.

9 Q. You got a call to go to Tharon Drive. Where is that
10 located?

11 A. In Spartanburg, South Carolina.

12 Q. In Spartanburg County but approximately where in the
13 county?

14 A. Whitney area. Whitney area off of 221 Cleveland Chapel.

15 Q. Okay. And when you got there do you recall whether the
16 door was open?

17 A. I do not, sir.

18 Q. Okay. And so when you got there everybody was inside.

19 A. Yes, sir.

20 Q. All right. I'm letting -- I've got some pictures I'm
21 gonna share with you.

22 (Photographs shown to defense counsel.)

23 (Pause.)

24 MR. BULSA: Let's see. Let me get these marked. Any
25 objection to these, Mr. Schultz, as evidence?

DEPUTY STEVE WILSON -- DIRECT EXAMINATION BY MR. BULSA

1 MR. SCHULTZ: Not at this time.

2 (Photographs marked State's Exhibit Nos. 3 through 17 and
3 admitted into evidence.)

4 BY MR. BULSA:

5 Q. Deputy, I'm gonna show ya some pictures. First of all,
6 State's 3 and 4, do you recognize the house in those pictures?

7 A. I do. That is 220 Tharon Drive.

8 Q. Okay. And State's Exhibit 4 does that show the door you
9 would have entered?

10 A. It does.

11 Q. When you got to the scene, officer, did you have to knock
12 on the door?

13 A. No. No, sir.

14 Q. You went right in?

15 A. Yes, sir, and I wouldn't have normally have done that so
16 I would have to say it was -- you you just don't do that.

17 Q. Okay.

18 A. I mean it's a shooting call. I'm not gonna sit there and
19 knock on the door. It's been a year but I know I remember we
20 did go straight in.

21 Q. Okay. And ---

22 MR. SCHULTZ: Your Honor, I can't hear the the witness.

23 THE COURT: Can you pull that microphone a bit closer to
24 you please, sir?

25 MR. SCHULTZ: Thank you.

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: Thank you, Mr. Bulsa.

2 BY MR. BULSA:

3 Q. You told us that Mr. Artis Jackson was in the front room.

4 A. As soon as I entered the -- through the front door, Mr.

5 Ja -- Artis Jackson was sitting on the couch.

6 Q. Okay. Let me show you State's Exhibit No. 5. Does that
7 appear to be the view you had when you walked in?

8 A. Yes, sir, it is.

9 Q. State's Exhibit No. 6 is that the reverse view showing
10 the front door entrance?

11 A. Yes, sir, it is.

12 Q. Okay. As soon as I get that screen I'll show this these.
13 Now, where was Mr. Alberto Chavez?

14 A. When -- as soon as you enter through the house, direct
15 almost immediately to your left there's another doorway where
16 the room was, take a few steps you're in that room and he was
17 immediately to my right in the the corner of that that bedroom
18 (indicating).

19 Q. When you found him, were you trying to clear the house?

20 A. When we found him, we were trying to clear, um, we found
21 him, left him where he was at. I had other units there with
22 me we. We got Mr. Artis secure and Ms. -- his brother
23 secured, got 'em out of the the crime scene and then cleared
24 the residence for, you know, possibly either a second victim
25 or the subject.

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 Q. And when you went into the room where Mr. Chavez was did
2 you immediately see him?

3 A. Yes, sir. Yes, sir, I did.

4 Q. Where was he positioned?

5 A. As soon as you walk in through the doorway, to my
6 immediate right he was slumped into -- in the corner
7 pretty -- kind of curled up and his head was on the ground and
8 it was obvious that it was a head wound from -- you could see
9 the the matter on the floor.

10 Q. Okay. So you said he would have been to the right of the
11 doorway?

12 A. Yes, sir.

13 Q. Okay. Show you State's Exhibit No. 12. Does that show
14 the doorway you would have entered?

15 A. Yes, sir, it's from the kitchen view.

16 Q. Okay. And there's a dresser in that pictures?

17 A. Yes, sir.

18 Q. Okay. Did you did you touch him in any way?

19 A. No. No. It -- there was -- I've been on a few of these
20 and there was no point at that time to check for a pulse.

21 I -- my main response for that point is to secure a crime
22 scene, that a crime has been committed and secure the scene as
23 best we we can.

24 Q. Do you know if the ambulance had been called?

25 A. Yes, sir, they were.

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 Q. All right. Who got there first you or the ambulance?

2 A. I did.

3 Q. And after you saw Mr. Chavez, where did you find
4 Mr. Jack -- Charles Jackson?

5 A. Charles Jackson was in his bedroom.

6 Q. Okay. Now, this house is sort of an odd layout, is that
7 right?

8 A. Yes, sir, it is.

9 Q. You actually have to go from Mr. Chavez's bedroom into
10 the kitchen.

11 A. That is correct.

12 Q. And that's Mr. Charles's bedroom off the kitchen.

13 A. Yes, sir, it is, to the right.

14 Q. Okay. And then you you said you got all of them out of
15 the house.

16 A. Yes, sir.

17 Q. Okay. What was -- how was Mr. Artis and Mr. Charles
18 Jackson acting?

19 A. Um, Mr. Artis was in the front on the couch. He was, I
20 guess, it's hard to explain. He was cooperative but yet and,
21 you know, shocked I -- it would be the best to say.

22 Q. He was shocked you say?

23 A. You know, he -- the man, you know, he could tell me what
24 happened but then, you know, he -- it would just be, you know,
25 just short term memory from when -- from what had ha -- what

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 had happened, couldn't go much further than, you know, a guy,
2 an individual was at the door, ca -- how he -- the the subject
3 entered the door, what was said. It was just short, choppy
4 sen -- short answers but from there I know it was -- he he got
5 a little clouded there.

6 Q. How 'bout Mr. Charles Jackson?

7 A. Mr. Jackson he was he was more talkative. He was like,
8 you know, he had no idea what what was going on 'cause he was
9 laying in bed at the time these three or these shots went off.
10 He was laying in the bed. And since he did not know what was
11 going on he he told me that he yelled who was there asking who
12 was there and then put a shot through the door, to
13 the -- his bedroom door that leads into the kitchen.

14 Q. Okay. Now, if you're standing in his bedroom looking out
15 the door that he would have shot through, what wall would you
16 have been looking at?

17 A. You'd look at the far kitchen wall.

18 Q. Okay. And that wall is not the same wall that would
19 adjoin the other bedroom, is it?

20 A. No, it is not.

21 Q. Okay. So your -- from your perspective the shot through
22 the door by Mr. Charles Jackson could not have entered the
23 room where Mr. Chavez was?

24 A. No, it could not have.

25 Q. Okay.

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 A. It was nowhere in the same direction.

2 Q. Okay.

3 MR. BULSA: May I have -- I now have this screen working.
4 If I may publish this to the jury.

5 THE COURT: Yes, please.

6 (Whereupon, the photographs were displayed on the
7 overhead projector.)

8 BY MR. BULSA:

9 Q. State's 3 -- can we get some lights down please. Okay.
10 Is this the residence you responded to?

11 A. Yes, sir, 220 Tharon Drive.

12 Q. We see some yellow yellow line through there
13 (indicating). Is that crime scene tape?

14 A. Yes, sir, it is to secure the scene.

15 Q. Are you looking up the drive here (indicating) ---

16 A. Yes, sir.

17 Q. --- to the lower left?

18 A. Yes, sir.

19 Q. Okay. State's Exhibit No. 4, is that the entrance that
20 you would have went into?

21 A. Yes, sir, it is.

22 Q. And State's Exhibit No. 6, is that the entrance you would
23 have come through?

24 A. Yes, sir, it is.

25 Q. Okay. So this (indicating) is the front living area we

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 see?

2 A. Yes, sir.

3 Q. And then to the right of the picture we see the tail end
4 of a couch?

5 A. Yes, sir, that's where Mr. Artis was sitting when I
6 arrived.

7 Q. Okay. Is that the couch shown in State's Exhibit No. 8?

8 A. Yes, sir, it is.

9 Q. Well, ---

10 A. Now, that's ---

11 Q. That's the opposite wall, isn't it?

12 A. Right. Yes, it is.

13 Q. Okay.

14 A. There was two. There's a fireplace and then there was a
15 couch across the way.

16 Q. This one has a better picture if I zoom out. You can see
17 more of it there (indicating), right?

18 A. Yes.

19 Q. Okay. And the door we see at the ta -- at the end of the
20 couch behind that lamp?

21 A. That is Mr. Chavez's room.

22 Q. Okay. So after checking that first room you went into
23 Mr. Chavez's room?

24 A. Yes, sir.

25 Q. All right. State's Exhibit No. 6 or excuse me No. 10, is

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 this a view from the doorway that you would see?

2 A. Yes, sir, it is.

3 Q. All right.

4 THE COURT: Into which room, officer?

5 MR. BULSA: In Mr. Chavez's room.

6 OFFICER WILSON: Into Mr. Chavez's room.

7 THE COURT: Thank you.

8 BY MR. BULSA:

9 Q. So you testified earlier that Mr. Chavez would have been
10 located off to the right of that.

11 A. He was on the other side of a a dresser.

12 Q. Okay. Let's show the jury State's Exhibit No. 12.

13 That's the doorway you would have entered into Mr. Chavez's
14 room?

15 A. That is correct.

16 Q. And he would have been top left as you're -- as we're
17 looking at this picture?

18 A. As we're looking at it, it would be to the left, yes, ---

19 Q. But it's not ---

20 A. --- but coming through the door it would be to the right.

21 Q. So he would have -- would he be the floor of this
22 (indicating) tall chest?

23 A. Yes, sir, it'd be to the left of the corner of the
24 dresser.

25 Q. Okay. Show you State's Exhibit No. 13 seeing that same

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 chest, where would he have been?

2 A. To the very bottom of the dresser was where he was found.

3 Q. Using this pointer, if you would, point it out, point it
4 out to the jury.

5 A. There we go, right there (indicating).

6 Q. Okay. And once again how was his body positioned?

7 A. He was slumped right here (indicating) his head here
8 (indicating), the rest of his body was down this way
9 (indicating), his head on the ground and in the corner right
10 here (indicating) but the rest of his body was like really
11 compacted and slumped in this area (indicating).

12 Q. Okay. Show you State's Exhibit No. 14. That's a closer
13 view of the floor. You'll see some numbers in this picture.
14 What is the substance near No. 1 ---

15 A. That is ---

16 Q. --- that appeared to you at that time?

17 A. I'm sorry, sir?

18 Q. That appeared to you when you saw it.

19 A. Number 1 here (indicating) or here (indicating).

20 Q. This this substance on the -- right there (indicating).

21 A. That that is blood and brain matter.

22 Q. Is that where Mr. Chavez's head would have been?

23 A. Yes, sir.

24 Q. Okay. You see -- what is that white strip and that --
25 those plastic baggy type objects at the base of the floor?

DEPUTY STEVE WILSON - DIRECT EXAMINATION BY MR. BULSA

1 A. That is debris from EMS when they came in to help Mr.
2 Chavez.

3 Q. Okay. So do you know if he was still alive at that
4 point?

5 A. No, I did not know at that -- at the time, sir.

6 Q. But EMS took him out?

7 A. Yes, they did.

8 Q. Did it appear that they were trying to work on him?

9 A. They were they were trying to get him basically in the
10 stretcher and get him out to the hospital.

11 Q. But he wasn't carried out in a body bag, was he?

12 A. No, he was not.

13 Q. Okay. Did you assist any of the other officers when they
14 came? Forensics officers?

15 A. Um, I -- yes, I did, there was -- 'cause we were looking
16 for other evidence vehicles, there was vehicles in the yard.
17 We did do a search, a thorough search of the house and I did
18 assist in that.

19 Q. Okay. You recall Dominick Baird arriving?

20 A. I do.

21 Q. Was he in charge of the collecting evidence at the crime
22 scene?

23 A. Yes, he was.

24 Q. Okay. All right. Deputy Wilson, that's all I have at
25 this time. Answer any questions Mr. Schultz might have.

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 THE COURT: Mr. Schultz, you can cross-examine.

2 MR. SCHULTZ: Thank you, Your Honor. May it please the
3 Court.

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION BY MR. SCHULTZ:

6 Q. Deputy Wilson is it?

7 A. Yes.

8 Q. You were the first officer on the scene, correct?

9 A. I was between -- there was three of us. We pretty much
10 got there at the same time.

11 Q. And the three of, three of you being what officers?

12 A. I'm sorry, sir?

13 Q. The three of you being you and what other off -- what
14 other officers were there?

15 A. First Sergeant Woodward and Deputy Brown.

16 Q. Okay. So there are three officers on the scene initially
17 is what you're telling the Court?

18 A. Yes, sir.

19 Q. Okay. Now, when you first walked in, and this is what I
20 really wanna know, referring back to State's Exhibit 4, this
21 (indicating) is the the house there 220 Tharon Drive?

22 A. Yes.

23 Q. All right. And, officer, is that a good indication of
24 the door that you walked in?

25 A. That is the door I walked into.

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. And to your knowledge is that the same door that
2 Mr. Piper walked in that night?

3 A. Yes, sir, from -- at -- from my initial investigation on
4 scene that's what I was told. That's the door.

5 THE COURT: Can you give us the Exhibit No. please,
6 Mr. Schultz.

7 MR. SCHULTZ: Your Honor, that is Exhibit No. 4, State's
8 Exhibit No. 4 I believe.

9 BY MR. SCHULTZ:

10 Q. Now, you -- have you investigated armed robberies before,
11 officer?

12 A. I have.

13 Q. And have you investigated shootings?

14 A. I have, being that -- being the initial person on the
15 scene.

16 Q. The initial responding officer, ---

17 A. Yeah. Yes, sir.

18 Q. --- correct? Okay. And a lot of these armed robberies
19 that happen in homes do you often see signs of forced entry?

20 A. That would be different between an armed robbery. That a
21 been a home invasion.

22 Q. Okay. In a home invasion or an armed robbery in a home,
23 do you often see signs of forced entry?

24 A. You do. You you do see signs. You can go -- it -- or it
25 can go as far as just knocking on the door and as soon as you

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 open it you force your way in, uh, it -- but it -- yes, sir.

2 Q. You often do see that?

3 A. Yes, sir.

4 Q. But yet as the first officer on the scene within you said
5 an hour ---

6 A. No.

7 Q. --- of this happening?

8 A. Oh, no, sir. It was within minutes.

9 Q. Within minutes, all right, of this happening. You didn't
10 see any sign of forced entry, did did you?

11 A. No, I did not.

12 Q. So nobody jimmied the door that night?

13 A. No, sir. Per Mr. Artis there was a knock at the door.

14 Q. There was a knock at the door. Nobody busted a
15 window ---

16 A. No, sir.

17 Q. --- to get in. Nobody went in the back.

18 A. No, sir.

19 Q. So whoever this was that night came in and knocked
20 (demonstrating), correct?

21 A. Yes, that is correct from statements taken on scene.

22 Q. And no signs of forced entry that you found.

23 A. No, sir.

24 Q. And when you arrived you said Artis Jackson was seated on
25 the couch, correct?

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Yes, sir.

2 Q. Okay. And Mr. Chavez was on the floor in the adjoining
3 bedroom, correct?

4 A. Yes, sir.

5 Q. And according to your testimony today Mr. Jackson or
6 excuse me Mr. Chavez was still alive.

7 A. No. I believe I said, "I don't know if he -- from the
8 wound that I witnessed" ---

9 Q. But you don't know?

10 A. Right. I do not know but my first, but I am not a
11 medical professional, my first primary job is to secure the
12 crime scene so later on down the road where we're sitting now
13 we can prosecute the case.

14 Q. I understand that. That's fair. But yet at the same
15 time you testified that Mr. Jackson's demeanor was somewhat, I
16 believe your word in your direct testimony was a sort of
17 befuddled or...

18 A. My direct word was shocked.

19 Q. Shocked.

20 A. Yes, sir.

21 Q. Okay. And were they anywhere near Mr. Chavez attending
22 to him at all? I mean this -- these were her -- his friends,
23 correct?

24 A. I don't know their relationship. I mean, obviously he
25 was living there. Uh, I I ---

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. They knew each other, correct?

2 A. Acquaintances. I don't know if they're, I mean, or if he
3 was paying rent that's -- I don't know that. That's not the
4 part but they -- you're you're correct, Mr. Artis was sitting
5 on the couch.

6 Q. But nevertheless even you admit at the very least that
7 they were acquaintances.

8 A. Yes.

9 Q. Didn't you find it odd that Artis Jackson was sitting on
10 the couch?

11 MR. BULSA: Objection, Your Honor, calls for speculation.

12 THE COURT: It would. It would call for a conclusion on
13 the part of the witness. He's just a fact witness testifying
14 by what he saw. Thank you.

15 BY MR. SCHULTZ:

16 Q. And Mr. Charles Jackson, where was he?

17 A. He was in his bedroom.

18 Q. He was in the bedroom. Is that bedroom, relatively
19 speaking, is that anywhere near close to where Mr. Chavez was
20 laying?

21 A. Well, I think if you were anywhere in that house you
22 could say relatively speaking. I mean, it -- it is a a
23 strange design inside. But his his bedroom was -- you have
24 Mr. Chavez's bedroom, you have a kitchen and then you have
25 Charles' bedroom.

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. All right. Now, you went through most of the rooms in
2 this house, correct?

3 A. Yes, sir.

4 Q. Did you go through all the rooms in the house?

5 A. Well initially yes, sir, to clear it that's the first
6 response to secure the scene, clear it, make sure nobody's
7 there and then we pull up.

8 Q. And you mean by clearing the house what do you mean?
9 Describe to the jury what that means?

10 A. I apologize. Clearing the house basically means we get
11 on scene, in this case a shooting, it's that obvious, victim
12 is down, a shooting has occurred, we secure the people that
13 are present, Mr. Artis Jackson and his brother Charles, get
14 them out of the residence, now we're going through room to
15 room closet to closet making sure that there's no other
16 victims or the person who did the shooting's not on scene
17 anymore. Once we are satisfied that the house is clear we
18 will step back and leave -- and the house is now secure so
19 we're not either we're not destroying any evidence and so we
20 just tighten it up.

21 Q. Officer, in your opinion as a law enforcement officer
22 would you say this house was a cluttered mess?

23 MR. BULSA: Objection, Your Honor.

24 THE COURT: Well, the folks have seen the evidence. I'm
25 not sure that cluttered mess actually requires a law

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 enforcement officer to testify as an expert. The jury's seen
2 it. They they can understand this.

3 MR. SCHULTZ: I understand, Your Honor.

4 BY MR. SCHULTZ:

5 Q. Present state -- State's Exhibit 5 here (indicating).

6 This is the front living room where Mr. Artis Jackson was?

7 A. Yes, it is.

8 Q. Is that cluttered or not?

9 THE COURT: We'll let the jury reach that conclusion.

10 His opinion of what it was really is not is not that important
11 to the jury's consideration.

12 BY MR. SCHULTZ:

13 Q. The point that I'm trying to make...there could have been
14 all kinds of other evidence in this house that you as the
15 initial responding officer did not find that night, correct?

16 A. The initial responder yes but not after it's been
17 secured.

18 Q. But you were responsible for securing it, correct?

19 A. Correct, and we did secure it.

20 Q. And the evidence that you found that night?

21 A. Well, that that is not a question for me to answer 'cause
22 that, I mean, I was there to assist.

23 Q. Fair enough. Let's go back to Artis and Charles Jackson.
24 Is your testimony to that Mr. Artis Jackson was on the couch.

25 A. Yes.

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Mr. Charles Jackson was in his bedroom.

2 A. Yes.

3 Q. I wanna explore that a little bit further. Charles
4 Jackson was in his bedroom. Did he have his door shut?

5 A. Yes, sir, he did.

6 Q. He did?

7 A. Yes, sir.

8 Q. Okay. Did he wanna have anything to do with you? Did he
9 seem concerned at all?

10 A. No, sir, he kept -- to the best of my recollection is
11 that he wanted to know, you know, who was it, "Who is it?"

12 And we told him, "Sheriff's office," and that's when he
13 came to the door.

14 Q. And you found and you testified today that he fired a
15 shot.

16 A. Yes, sir.

17 Q. And what caliber-type pistol was this?

18 A. .25.

19 Q. .25. And he fired a shot into his bedroom door,
20 correct?

21 A. Yes, sir.

22 Q. Did you find it odd at all for him to do this?

23 A. Well, per Mr. Charles, I can't speak for his thought
24 process, but he did this: He shot through the door after he
25 heard the shots in the living room, all right, I'm sorry -- in

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Mr. Chavez's room. Shortly thereafter he stated to me he
2 asked who was there, what's happening, didn't get an answer
3 and that's when he shot through his bedroom door.

4 Q. But nevertheless, officer, it would be fair to say that
5 this would be sort of a careless use of a firearm not knowing
6 who's on the other ---

7 MR. BULSA: Objection, Your Honor.

8 MR. SCHULTZ: --- side of the door.

9 THE COURT: Yes, I sustain that. That -- that's not
10 relevant to the proceedings here. Thank you.

11 BY MR. SCHULTZ:

12 Q. When you interviewed Mr. Artis Jackson, what did he say
13 concerning the entry?

14 A. The initial ---

15 MR. BULSA: Object. Mr. Jackson's here. He'll be
16 testifying. This is hearsay.

17 THE COURT: Right. How do we get around the hearsay
18 objection, Mr. Schultz?

19 MR. SCHULTZ: Your Honor, strike that question.

20 THE COURT: All right.

21 BY MR. SCHULTZ:

22 Q. Just a couple more questions, deputy. You said you did a
23 thorough search of the residence?

24 A. The initial search from when we arrived on scene is again
25 like I stated you secure your evidence which in this case was

DEPUTY STEVE WILSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 actually Mr. Chavez and his room, get your either witnesses or
2 possible suspects out of the house and just do a general sweep
3 of the house to make sure that there is no one no one else
4 injured or no other suspects are in the house. Now, after
5 that I was just, you know, it's my ca -- or my call. I was on
6 standby and I was with ID out at the scene.

7 Q. All right. Just a couple more questions. Did you find a
8 Hi millimeter 9 Point in the house that night?

9 A. I know one was found. I don't recall if it was me that
10 found it.

11 Q. Did you find the other one?

12 A. The only one I remember locating is the .25.

13 Q. And that was a Lorcin?

14 A. I -- according to papers that I have read, yes.

15 MR. SCHULTZ: Beg the courts patience, Your Honor?

16 THE COURT: All right, sir.

17 MR. SCHULTZ: Nothing further from the defense, Your
18 Honor.

19 THE COURT: Thank you. Mr. Bulsa, redirect?

20 MR. BULSA: No redirect, Your Honor.

21 THE COURT: Thank you, Officer Wilson, you can step down.
22 Thank you.

23 MR. BULSA: I ask that this officer be excused.

24 THE COURT: Without objection Officer Wilson can be
25 excused.

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 MR. SCHULTZ: Without objection, Your Honor.

2 THE COURT: Thank you.

3 (Whereupon, the witness was excused.)

4 MR. BULSA: Dominick Baird.

5 THE COURT: Mr. Baird, come forward please, be sworn.

6 OFFICER DOMINICK BAIRD,
7 having been first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BULSA:

9 Q. Officer Baird, would you please introduce yourself to the
10 jury.

11 A. Dominick Baird with the Spartanburg County Sheriff's
12 Office. I currently work the crime scene unit.

13 Q. Make sure you keep your voice up.

14 A. Yes.

15 Q. How long have you been with the sheriff's department?

16 A. A little over twelve years.

17 Q. How long have you been with the crime scene unit?

18 A. A little over two years.

19 Q. So you were back -- back in December last year, you were
20 with the crime scene unit?

21 A. Yes, sir.

22 Q. Did you re -- did you get a call to respond to Tharon
23 Drive?

24 A. Yes, sir, I did.

25 Q. Okay. About what time did you get there?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

- 1 A. I received a call and arrived on scene at approximately
2 11:20 p.m.
- 3 Q. Okay. And was the crime already secured? The scene
4 already secured?
- 5 A. Yes, sir. Officers had already secured the scene like
6 Deputy Wilson described.
- 7 Q. Okay. And were you the lead forensics officer?
- 8 A. Yes, sir, I was.
- 9 Q. Did you oversee the taking of photos?
- 10 A. Yes, sir, I did.
- 11 Q. Collection of evidence?
- 12 A. Yes, sir.
- 13 Q. Okay. We've seen some of the photographs.
- 14 A. Yes, sir.
- 15 Q. I'll walk you through them if we -- if I may. We've seen
16 the exterior of the home. Were the Jacksons still there when
17 you got there?
- 18 A. They were on scene yes, sir. They were outside with the
19 officers.
- 20 Q. Help the jury understand this a little bit. State's
21 Exhibit No. 6, is that the -- that's (indicating) the view of
22 the front door?
- 23 A. Yes, sir, that's the view of the front door from -- as if
24 you were standing in the living room area.
- 25 Q. Okay. And that's the door you entered?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 A. Yes, sir.

2 Q. Okay. State's Exhibit No. 8. Is that (indicating) a
3 view of the right hand wall as you walk into the into the
4 room?

5 A. I believe that is yes, sir.

6 Q. And we see some sort of a ---

7 A. That looks like maybe the furnace there.

8 Q. Some sort of furnace.

9 A. Yes, sir.

10 Q. Top middle?

11 A. Yes.

12 Q. Okay. In fact, that furnace is depicted, is it not, in
13 State's Exhibit No. 7?

14 A. Yes, sir, that would be it.

15 Q. Okay. Is there anything significant about that
16 location?

17 A. Uh, yes, sir. When we were investigating the scene, we
18 found a strike mark in the brick chimney there where the
19 furnace is at and down below that on the floor we found some
20 lead from a projectile.

21 Q. Okay. Is that -- is this area (indicating) opposite the
22 wall that contains the doorway into Mr. Chavez's room?

23 A. Yes, sir, it is.

24 (Pause.)

25 MR. BULSA: Get this marked.

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 (Diagram marked State's Exhibit No. 18 for
2 identification.)

3 BY MR. BULSA:

4 Q. Okay. Show you State's Exhibit No. 18, diagram. Did you
5 prepare that (indicating) diagram?

6 A. Yes, sir, I did.

7 Q. Is that a diagram of this residence?

8 A. Yes, sir.

9 Q. Okay. I believe this is entered without objection.
10 Mr. Schultz?

11 MR. SCHULTZ: Without objection, Your Honor.

12 THE COURT: Thank you, 18 in evidence.

13 (Exhibit No. 18 was admitted into evidence.)

14 BY MR. BULSA:

15 Q. Give the jury a little different perspective. We will --
16 got the pictures to assist us. Using this pointer, officer,
17 could you point out the door that we saw in State's Exhibit
18 No. 6 which was the front door, okay?

19 A. Front door we used to enter would be right there
20 (indicating), sir.

21 Q. All right. So entered that room, saw some of the
22 pictures of that room and Mr. Chavez's bedroom woulda been
23 where?

24 A. Right there (indicating).

25 Q. So you go in and take a right. Okay.

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 A. Take a left if you're entering.

2 Q. Excuse me a left. Mr. Chavez was not there when you
3 arrived, was he?

4 A. No, sir, he had already been transported to Spartanburg
5 Regional.

6 Q. Did you process his room?

7 A. We searched it and collected evidence out of there yes,
8 sir.

9 Q. Okay. How good of a search did -- would you say you
10 did?

11 A. We did a very thorough search, sir.

12 Q. Okay. This diagram has some e's along ---

13 A. Yes.

14 Q. --- some of the walls.

15 A. Yes, sir.

16 Q. What do that -- those stand for?

17 A. Those e's part of the computer diagram program we use
18 that designates wall evidence. Wall evidence could be blood
19 spatter on the wall, bullet holes in walls, anything like
20 that.

21 Q. Okay. Now, show the jury on this diagram where Mr. --
22 where the pool of blood would have been where Mr. Chavez was
23 lying.

24 A. The pool of blood we found would have been right in here
25 (indicating), sir, on the floor between the little dresser and

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 the closet which is outlined here (indicating).

2 Q. Did you find anything near that location?

3 A. Yes, sir. We found a projectile on the floor which had
4 been right there (indicating), right near the pool of blood.

5 Q. Okay. Show you State's Exhibit No. 14. Does that
6 depict, that depict where you found that bullet?

7 A. It would have been right in there, (indicating) sir.

8 Q. Behind that dumbbell?

9 A. Yes, sir.

10 Q. Okay.

11 BY MR. BULSA:

12 Q. State's Exhibit No. 3.

13 A. Right there (indicating).

14 (Pause.)

15 MR. BULSA: Have this marked.

16 (Projectile marked State's Exhibit No. 19 for
17 identification.)

18 Q. Let me show you State's Exhibit No. 19. You look in that
19 (indicating) and see if that is the round that you recovered
20 from that location.

21 (The witness examined the exhibit.)

22 A. It's still taped up.

23 Q. You can break the seal ---

24 A. Okay.

25 Q. --- if you need to. You need some scissors or something?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: Is that a shell casing, officer? Is that
2 what that is?

3 OFFICER BAIRD: It should be a projectile.

4 THE COURT: Projectile.

5 OFFICER BAIRD: Yes, sir.

6 THE COURT: The lead portion itself.

7 OFFICER BAIRD: Thank you.

8 (The witness removed the exhibit from the package.)

9 OFFICER BAIRD: Yes, sir.

10 MR. BULSA: Okay, and we offer that, I believe, without
11 objection?

12 MR. SCHULTZ: Without objection, Your Honor.

13 THE COURT: State 19. Thank you.

14 (State's Exhibit No. 19 was admitted into evidence.)

15 BY MR. BULSA:

16 Q. Okay. Jury gets a closer view. State's Exhibit No. 17
17 is where it was found. That (indicating) was just entered as
18 state Exhibit 19?

19 A. Yes, sir.

20 Q. Is that right?

21 A. That's correct.

22 Q. Now, let me go back to the diagram State's Exhibit 18.
23 I'll concentrate straight first in Mr. Chavez's bedroom. What
24 did you find in there else other than that shell casing or
25 excuse me that that that projectile?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 A. Other than that projectile we found we had blood spatter
2 on the wall here (indicating), we had a shirt with blood on it
3 that was hanging from a hanger on a closet door, we had a
4 9-millimeter Hi-Point pistol that was found on the floor
5 halfway under the bed here (indicating) and we also recovered
6 a projectile from the wall in this bedroom (indicating), the
7 first bedroom, Mr. Chavez's bedroom, plus we also recovered
8 some ammunition from in one of the dressers, sir.

9 Q. Okay. Did you find any spent shell casings?

10 A. Not in this bedroom no, sir.

11 Q. Okay. Did you make a thorough search?

12 A. Yes, sir, we did.

13 MR. BULSA: We have two more pictures. Mark please.

14 (Photographs marked State's Exhibit Nos. 20 and 21 for
15 identification.)

16 Q. Now, officer, were these -- excuse me. I'm sorry.
17 Were these pictures taken before you -- what was the sequence
18 of these pictures to your search of the house?

19 A. Our standard procedure is we go through, we do initial
20 walk through of the scene and we'll take -- then we'll take
21 initial photos of the scene; all the rooms, everything around
22 the house on the outside -- exterior plus interior and we do
23 initial video; then we'll go through and look for any evidence
24 that we can find, mark it with the yellow evidence placards
25 that were shown in the photos -- in the photos and we take more

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 photographs and another video of the scene.

2 Q. Okay. So that's why we see the placards. They're
3 marking the actual evidence you document?

4 A. Yes, sir. And after we do that we even do a even deeper
5 search and see if we can uncover any further evidence.

6 Q. Okay. Let me show you State's 20 and 21. State's 21 --
7 excuse me State's 20, is that a picture of Mr. Chavez's bed?

8 A. Yes, sir.

9 Q. Okay. And do you have the pointer?

10 A. Yes, sir.

11 Q. Can you point out any object?

12 A That would be the gun we found that was sticking halfway
13 out from under the bed on the floor.

14 Q. Okay. Now, that doesn't have a placard by it.

15 A. Not yet. No, sir.

16 Q. So this would have been one of your initial pictures?

17 A. Yes, sir.

18 Q. State's Exhibit No. 21. Is that (indicating) a close up
19 picture of that same weapon?

20 A. Yes, sir, that is.

21 Q. And does that denote how it was actually found?

22 A. Yes, sir.

23 Q. Okay. And what portion are we looking at?

24 A. That would be the barrel end, muzzle end.

25 Q. Okay. All right. And you talked about a round being in

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 one of the walls? The far wall?

2 A. Yes, sir. We found a, found and recovered a projectile
3 from the wall or back wall of Mr. Chavez's bedroom. It would
4 have been located above the bed. It was the wall that
5 separates his bedroom from the kitchen.

6 Q. Okay. Here's State's Exhibit No. 10. Is this a view
7 looking into his room?

8 A. Yes, sir, it is.

9 Q. And that was the bed that we saw in the previous picture
10 of State's Exhibit 20?

11 A. Yes, sir.

12 Q. Okay. Now, let me show you State's Exhibit No. 11. Is
13 that the wall above the bed?

14 A. Yes, sir, that is.

15 Q. And it has a placard marking it?

16 A. Yes, sir, we're marking the hole where the projectile was
17 recovered from.

18 Q. Okay. And did you make any attempts to recover that ---

19 A. Yes, sir, ---

20 Q. --- projectile.

21 A. --- we did. We recovered a projectile out of that. It
22 was ---

23 Q. How ---

24 A. --- lodged in one of the wall studs.

25 Q. Howdya get it?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 A. We cut the wall out in the area around the around the
2 projectile.

3 Q. Okay.

4 (Counsel showed exhibit to defense counsel.)

5 MR. SCHULTZ: No objection, Your Honor.

6 THE COURT: Thank you.

7 MR. BULSA: Can we get this marked?

8 (Projectile marked State's Exhibit No. 22 for
9 identification.)

10 BY MR. BULSA:

11 Q. State's No. 22, would that be the projectile recovered
12 from that wall?

13 A. This is the package I worked, yes, sir. You want me go
14 ahead and remove it?

15 Q. Yes.

16 A. (The witness removed the exhibit from the package.) Yes,
17 sir, that would be it.

18 Q. Okay. You can put it back in.

19 A. Yes, sir.

20 Q. All right. So from -- going back to State's Exhibit No.
21 18 the bedroom of Alberto Chavez, what would be the actual
22 physical items that you recovered from that location?

23 A. Uh, let's see we recovered the projectile that was on the
24 floor, we recovered a projectile from the back wall of the
25 bedroom, we recovered a 9-millimeter Hi-Point handgun from the

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 floor underneath the bed, a T-shirt that was hanging on the
2 closet in that bedroom 'cause it had blood on it, we took
3 swabs from the blood spatter on the wall to the right, um, I
4 believe we took swabs from the floor and we also collected a
5 empty 9-millimeter ammunition box as well as another box of
6 ammunition that was, uh, right on here, .32 caliber Smith &
7 Wesson rounds from that bedroom and also a passport of of
8 Mr. Chavez.

9 Q. Okay. You talked about the hole in the back wall. Were
10 there any other holes in the walls?

11 A. Yes, sir. There was holes above the doorway right here
12 (indicating) and there was also a hole in the wall of bedroom
13 1 that went through a mirror right through there (indicating)
14 to the -- if you're facing from the bedroom back towards the
15 living room, it was to the left of the door, went through a
16 mirror, that was the round that we determined went through the
17 wall, struck the brick chimney ---

18 Q. Okay. Let me ---

19 A. And left that ---

20 Q. --- show you State's 9. Does this ---

21 A. Yes, sir.

22 Q. --- show those two locations?

23 A. Yes, sir. There's one there (indicating) that's over the
24 doorway and it went up into the ceiling in the living room and
25 that's the one in the mirror (indicating) and it went through

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 the wall and struck the chimney area in the living room.

2 Q. Did you recover anything from the hole above the door?

3 A. The one above the door no, sir, we did not.

4 Q. And you said you did recover something opposite?

5 A. Yes, sir. The one that went through the mirror it on its
6 path woulda gone through and struck the chimney which is the
7 mark we found on the chimney and then the lead that we found
8 on the floor by the chimney.

9 Q. Okay.

10 (Lead marked State's Exhibit No. 23 for identification.)

11 BY MR. BULSA:

12 Q. Let me show you State's Exhibit 23. If you would,
13 identify that for us.

14 A. This should be the lead that we recovered from the living
15 room floor by the chimney.

16 (The witness removed the exhibit from the package.)

17 OFFICER BAIRD: Yes, sir, this looks like the lead we
18 recovered.

19 MR. BULSA: Okay. And that would be, Your Honor, State's
20 Exhibit 23 without objection.

21 THE COURT: All right, 23 in evidence.

22 (State's Exhibit No. 23 was admitted into evidence.)

23 BY MR. BULSA:

24 A. Okay. We've seen photos of the living room, we've seen
25 photos of Mr. Chavez's room. Let me show you now -- go back

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 to State's Exhibit No. 10. Well, let me use this first. As
2 you exit Mr. Chavez's room in the back, you go into the
3 kitchen area, is that right?

4 A. That is correct, sir.

5 Q. And then to the right of that would be the other
6 bedroom?

7 A. Yes, sir.

8 Q. Did you find anything in the kitchen area?

9 A. There was a hole in the bedroom door that separates
10 bedroom No. 2 is marked there and the kitchen.

11 Q. Point that out for the jury.

12 A. Right there (indicating)..

13 Q. Okay. Did you find any corresponding hole in the wall
14 or...

15 A. No, sir, we were unable to locate any strike marks in the
16 kitchen or the projectile from that.

17 Q. Okay, but in in your experience and in your observation
18 which direction did it appear that that round would have
19 traveled?

20 A. Based from everything I've gathered the round traveled
21 from bedroom to into the kitchen area.

22 Q. Okay. And once you went into bedroom 2 what did you
23 find?

24 A. We went into bedroom 2, we recovered two hand guns a .25
25 caliber Lorcin which was on the bed here (indicating), we

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 found another Hi-Point 9-millimeter, it was on the bed there
2 (indicating), a shell casing from a .25 Lorcin or from the .25
3 I should say on the floor between the bed and the little
4 dresser here (indicating) as well as a green plant like
5 material, some ball tickets and such on the dresser.

6 Q. Okay. And the small weapon on the corner of the bed
7 there (indicating)?

8 A. That would be the Lorcin, sir, .25.

9 Q. Does it expel the projectile? The casings?

10 A. Yes, sir, it's a semi-automatic. It's not a revolver so
11 it would eject the shell casing.

12 Q. Okay. And then the casing that you found on the floor
13 did it appear the same caliber as...

14 A. Yes, sir, it was a .25 as well.

15 Q. Okay. Okay.

16 (Photographs marked State's Exhibit Nos. 24 through 26
17 for identification.)

18 BY MR. BULSA:

19 Q. Just to give the jury a perspective on these rooms let me
20 show you a few other pictures. State's Exhibit No. 24, is
21 that (indicating) the door leading Mr. Chavez's room into the
22 kitchen?

23 A. Yes, sir, that does.

24 Q. Okay. And I see a refrigerator there.

25 A. Yes, sir.

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. This is this -- 25's another closer view. Okay.
2 And then State's Exhibit 26, is that a view into that second
3 bedroom noted in your diagram?

4 A. Yes, sir, it looks like a view facing from the kitchen
5 into bedroom No. 2.

6 Q. And the door that had the hole in it would be the one
7 that we see that's open?

8 A. Yes, sir.

9 Q. All right. So the pistol would have been on this
10 (indicating) corner of the bed that we're actually looking
11 at?

12 A. Yes, sir.

13 Q. All right. Now, once you -- you can turn the lights back
14 on. Did you do any attempt to take fingerprints off of
15 anything?

16 A. Yes, sir, I did. I fingerprinted or dusted the door that
17 was entered by the suspect, uh, ---

18 Q. Speak up there.

19 A. --- dusted the door coming into the residence that we
20 entered and the suspect entered, we dusted the there was a
21 refrigerator there beside that door dusted it, the door and door
22 frame going into the bedroom Mr. Chavez, basically followed a
23 path that we were advised the suspect followed and dusted
24 everything he coulda possibly touched.

25 Q. Okay. And were you successful in lifting any

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 fingerprints?

2 A. No, sir, we were not.

3 Q. All right. In your experience is there a reason why you
4 couldn't find them?

5 A. It's possible he didn't touch it, the weather, conditions
6 of the the surface, numerous things.

7 Q. Okay.

8 (Shell casing marked State's Exhibit No. 27.)

9 (Exhibit shown to defense counsel.)

10 MR. SCHULTZ: No objection, Your Honor.

11 THE COURT: Thank you.

12 BY MR. BULSA:

13 Q. State's exhibit -- show you State's Exhibit 27. Would
14 that be the shell casing from bedroom No. 2?

15 A. It's listed as such.

16 (The witness removed the exhibit from the package.)

17 OFFICER BAIRD: Yes, sir.

18 Q. Okay. Officer Baird, other than the live ammunition you
19 found are these the only spent items that had been fired or
20 removed from a firearm?

21 A. Those are the ones recovered yes, sir.

22 Q. Okay. In Mr. Chavez's bedroom we had three holes in the
23 wall?

24 A. Yes, sir.

25 Q. Okay. And one round on the floor?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

- 1 A. That's correct, sir, and one round in the wall.
- 2 Q. Okay. So we had two holes leaving his room into the
- 3 living room area.
- 4 A. Yes, sir, that is correct.
- 5 Q. Okay. All right. Did -- was this evidence submitted to
- 6 South Carolina Law Enforcement Division?
- 7 A. Yes, sir, it was.
- 8 Q. Okay. And that was to match up to a weapon?
- 9 A. Yes, sir.
- 10 Q. Did you later recover a revolver from Spartanburg Public
- 11 Safety Department?
- 12 A. Uh, the detectives investigating the case recovered one
- 13 from them. They turned it over to me and I sent it to SLED.
- 14 Q. Okay. To be compared to these ---
- 15 A. Yes, sir.
- 16 Q. --- items?
- 17 A. Yes, sir.
- 18 Q. Okay. You wanna clear this?
- 19 (Whereupon, the revolver was cleared by law enforcement
- 20 for safety purposes.)
- 21 Q. You have a notation in your notebook what the serial
- 22 number of that revolver you recovered?
- 23 A. Yes, sir, I do. The serial number was Bravo (B) Kilo (K)
- 24 Yankee (Y) 1148. It was a Smith & Wesson .38 Lady Smith .38
- 25 caliber revolver.

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 Q. And that was the revolver you submitted to South Carolina
2 Law Enforcement Division?

3 A. Yes, sir.

4 Q. Okay. Did you submit the other weapons that were
5 recovered?

6 A. Yes, sir.

7 Q. Okay. Okay. Let me show it to him. Can I get this
8 marked?

9 (Revolver marked State's Exhibit No. 28.)

10 MR. BULSA: Your Honor, we're gonna get a tie so it won't
11 close.

12 THE COURT: All right.

13 Ladies and gentlemen, we're required by Supreme Court
14 rules and by good common sense to secure these weapons before
15 they're offered into evidence for obvious reasons they have to
16 be rendered inoperable so that they cannot be opened or closed
17 or fired in any way and of course these items have been in
18 evidence for some time and clearly they have not been loaded
19 while they've been in evidence but still discretion is a
20 better part of valor in dealing with with weapons of this sort
21 and that's the reason it takes a while to get these things
22 done after they've been offered into evidence.

23 (Whereupon, the revolver was secured by law enforcement
24 for safety purposes.)

25 MR. SCHULTZ: Derrick, can I see it?

OFFICER DOMINICK BAIRD - DIRECT EXAMINATION BY MR. BULSA

1 (Defense counsel examined the revolver.)

2 BY MR. BULSA:

3 Q. Show you State's Exhibit 28 serial no. to note that
4 that's the same weapon.

5 (The witness examined the exhibit.)

6 A. Yes, sir.

7 MR. BULSA: Okay. I believe this is offered without
8 objection.

9 THE COURT: Thank you.

10 MR. BULSA: State's 28.

11 THE COURT: Twenty-eight (28) in evidence without
12 objection.

13 (State's Exhibit No. 28 was admitted into evidence.)

14 BY MR. BULSA:

15 Q. Okay. So that weapon was not recovered at the scene?

16 A. No, sir.

17 Q. There was one weapon recovered under the bed of
18 Mr. Chavez?

19 A. That's correct.

20 Q. And then there were two weapons in bedroom No. 2.

21 A. That is correct.

22 Q. One being on the bed itself.

23 A. Both of 'em were on the bed.

24 Q. Both on the bed?

25 A. Yes.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. One being on that corner of the bed opposite appears to
2 be the one that was shot?

3 A. Yes, sir.

4 Q. Okay. Thank you. Answer any questions Mr. Schultz may
5 have.

6 THE COURT: Mr. Schultz, you can cross-examine.

7 MR. SCHULTZ: Thank you, Your Honor. May it please the
8 Court.

9 THE COURT: Yes, sir.

10 CROSS-EXAMINATION BY MR. SCHULTZ:

11 Q. Now Officer, you were there at the scene that's 220
12 Tharon Drive, correct?

13 A. That is correct, sir.

14 Q. And what time did you arrive that night?

15 A. Arrived at 11:20 p.m.

16 Q. 11:20 p.m. So that's approximately how much time after
17 the alleged crime happened?

18 A. I don't recall what time they said an incident, initial
19 incident happened...trying to see here (examines notes). I've
20 got in my reports that the initial call to 9-1-1 came in at
21 9:58 so we could round it up to 10:00 and I arrived at 11:20
22 so that'd be just over an hour and twenty minutes.

23 Q. An hour and twenty minutes. And when you first walked in
24 the door that night, did you see any signs of forced entry?

25 A. I did not observe any signs no, sir.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 Q. But did you take a video of the scene?
- 2 A. A video was taken yes, sir.
- 3 Q. Did you take it?
- 4 A. No, sir.
- 5 Q. What officer took that video?
- 6 A. That would have been Investigator Talanges.
- 7 Q. Talanges?
- 8 A. Yes.
- 9 Q. Thank you, sir. And you did a thorough search of the
10 entire residence, correct?
- 11 A. Yes, sir.
- 12 Q. Let me refer back to the map and as you indicated in your
13 direct this is a fair representation of of overhead look of
14 how the house looked that night, correct?
- 15 A. Yes, sir.
- 16 Q. And you just testified that you did a thorough search of
17 the entire residence.
- 18 A. Yes, sir.
- 19 Q. I'm interested in the storage area right now, the storage
20 area. You said that "room not involved." Did you write
21 that?
- 22 A. Yes, sir, I did.
- 23 Q. Why did you find it important to write room not involved?
- 24 A. I marked it "room not involved" because we did not locate
25 any evidence in there that we deemed pertinent to this case.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. What kind of room was that?

2 A. It was just a room that had a lotta junk in it. There's
3 photographs in it in the file.

4 Q. A room that had a lotta junk in it. Did you shift shift
5 through all this junk?

6 A. Yeah, we did a thorough search of all the rooms in the
7 residence, sir.

8 Q. Now, you said you arrived at what time?

9 A. 11:20, 11:20, sir.

10 Q. Thank you. And what time did you leave?

11 A. It was in the morning time, trying to find here (examines
12 notes). I don't have in my notes exact time. It would have
13 been in the morning time though.

14 Q. In the morning time meaning?

15 A. We stayed all night workin' the scene.

16 Q. Stayed all night workin' the scene.

17 A. Yes, sir.

18 Q. You and what other officers?

19 A. Myself and Officer Talanges.

20 Q. Okay. So what's a fair and accurate time that you would
21 say that you spent there? Estimate the amount of time that
22 you spent.

23 A. Like I said, I don't have in my notes the exact time we
24 left the scene. Um, I really don't recall the ---

25 Q. So you don't know.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. I don't recall the exact time. I don't wanna say one
2 thing and be proved wrong later, sir. I I couldn't tell ya.
3 We spent the night there though.

4 Q. But yet you were po -- you were sure on your testimony
5 today that you made a thorough search of everything here.

6 A. Yes, sir.

7 Q. Okay. Now, let's go back to bedroom No. 1. Now, that's
8 where Mr. Chavez was found, correct?

9 A. That was my understanding yes, sir.

10 Q. Now, you didn't see Mr. Cha -- Chavez?

11 A. Not at the scene no, sir. He had been transported to
12 Spartanburg Regional.

13 Q. Okay. And you indicated in your direct testimony that
14 there were several holes found in that bedroom.

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

16 Q. There was one hole found in the mirror, correct?

17 A. Yes, sir.

18 Q. And that exited out in the living room, correct?

19 A. Yes, sir.

20 Q. And you sent that down to SLED, the South Carolina Law
21 Enforcement Division to be examined, correct?

22 A. We sent to the lead that we found that we felt that
23 corresponded with that hole.

24 Q. Okay. And there was another hole found in the, I guess
25 from where we are, the the front -- not the front but the --

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 betwee -- the wall between the bedroom and the kitchen ---

2 A. Yes, sir.

3 Q. --- there's another hole, correct?

4 A. Yes, sir.

5 Q. Did you ever find a projectile or bullet for that?

6 A. Yes, sir, we did.

7 Q. Did you send it down to SLED?

8 A. Yes, sir.

9 Q. So now we have two shots, correct?

10 A. So far.

11 Q. Okay. Now, do you find another ---

12 A. Yes, sir.

13 Q. --- bullet hole? And where was that?

14 A. It was over the doorway.

15 Q. Over the doorway.

16 A. Leading from bedroom 1 into the living room area.

17 Q. So, now we're on three shots, correct?

18 A. Yes, sir.

19 Q. Did you send that down to SLED to be examined.

20 A. We did not send the hole down there no, sir. We didn't
21 find a projectile.

22 Q. Did not find the projectile.

23 A. No, sir.

24 Q. Nevertheless, your testimony today that you made a
25 thorough and complete search of the residence and yet you

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 failed to find that bullet.

2 A. Yes, sir.

3 Q. In your professional opinion wouldn't that be a very very
4 important part of this case?

5 A. If we could find it yes, sir, I think it would be very
6 important.

7 Q. And how would you go about looking for that?

8 A. We would have to tear up into the attic and tear
9 everything out of the attic and ---

10 Q. But nevertheless you were trying to solve the crime that
11 night, correct?

12 A. Yes, sir.

13 Q. And your testimony today is that you let a key piece of
14 evidence fall through your fingers, correct?

15 A. No, sir.

16 Q. No?

17 A. No, sir. We didn't let any evidence fall through our
18 fingers. We searched the best we could, recovered what we
19 were able to.

20 Q. But you knew of that bullet hole, didn't you?

21 A. Yes, sir. We knew there was a hole there.

22 Q. And you didn't find anything there?

23 A. No, sir.

24 Q. No projectiles, no bullets.

25 A. No, sir.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. But you knew there was a hole there. You knew.

2 A. Yes, sir.

3 Q. You didn't test anything, correct?

4 A. Didn't test anything.

5 THE COURT: Mr. Schultz, that's been asked and answered.
6 Why don't we stop at this point. I hate to interrupt your
7 cross-examination but the jury's been in here about almost two
8 hours and that's as long as we like to take in one time, half
9 the time they've been here in the dark and it's just tough
10 staying awake in the dark like this and so I'm gonna send you
11 to your jury room for the afternoon break. We'll keep you in
12 there for fifteen minutes. We'll bring you out around four
13 o'clock to conclude the afternoons work. Please don't discuss
14 the case among yourselves. Thank you very much.

15 Officer Baird, you can step down while the jury's in its
16 recess and we'll have a recess as well. You're not allowed to
17 discuss your testimony with anybody while you're on the stand,
18 okay?

19 OFFICER BAIRD: Yes, sir.

20 THE COURT: Thank you. Folks, let's start back at four
21 o'clock. Thank you.

22 (Whereupon, a recess was taken.)

23 (The following takes place outside the presence of the
24 jury.)

25 THE COURT: Folks, I indicated to the witness that the

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 jury sent word back through the bailiff that they're having
2 difficulty hearing the witness because of the -- this
3 microphone's not working and so if you all will be conscious
4 in advising your witnesses and I've already indicated to
5 Mr. Baird to speak up and he is gonna do that but you might
6 wanna put your future witnesses on notice that they really do
7 really need to speak up 'cause this microphone's not working.
8 All right.

9 MR. SCHULTZ: Thank you, Your Honor.

10 THE COURT: All right. And, Mr. Schultz, I hate to
11 interrupt your cross-examination but I I realize you got a lot
12 to cover and I didn't wanna keep this jury without a break
13 to -- I should have broken the direct and the cross into two
14 separate things but the time slipped away from me but we're
15 ready for the jury. You can have a seat, Mr. Baird. We'll
16 get the ---

17 OFFICER BAIRD: Yes, sir.

18 THE COURT: --- jury back in.

19 Ready to continue, Mr. Schultz?

20 MR. SCHULTZ: Yes, sir, Your Honor.

21 THE COURT: All right.

22 THE BAILIFF: Ready for 'em?

23 THE COURT: Just one second.

24 (Whereupon, a discussion was held off the record.)

25 THE COURT: All right. Bring us a jury please.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 (The following takes place in the presence of the jury.)

2 THE COURT: Ladies and gentlemen, the the folks are
3 working on the sound system to try to get it to work and in
4 the meantime the witnesses have been advised and will continue
5 to be advised to speak up loudly so that you all can hear
6 them. And if if during the testimony of a witness, if you
7 will just, if you have difficulty, if you'll raise your hand
8 or raise your hand to me I know what that means 'cause I do it
9 all the time, anyhow, if if I'm looking at you and if I'm not,
10 try to get our attention, we'll get 'em to speak up. Thank
11 you.

12 We interrupted the cross-examination of Officer Baird by
13 Mr. Schultz and we pick up at this point now he's continuing
14 his cross-examination. Mr. Schultz.

15 MR. SCHULTZ: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 BY MR. SCHULTZ:

18 Q. Officer, here's this laser pointer if you -- you'd like
19 to use this.

20 A. Thank you.

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

22 MR. SCHULTZ: Beg the Court's patience, Your Honor.

23 THE COURT: Yes, sir.

24 BY MR. SCHULTZ:

25 Q. Investigator, when we broke we were talking about the

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 bullet hole found above the door frame of bedroom No. 1.

2 Could you point that out using the laser pointer again?

3 A. Yes, sir. It would have been right there (indicating),
4 sir, between the bedroom 1 and the living room that's over the
5 doorway.

6 Q. Approximately how -- what was the distance between the
7 floor and that bullet hole?

8 A. In the door?

9 Q. Not in the door.

10 A. In the doorway.

11 Q. In the wall.

12 A. Yeah.

13 Q. The door.

14 A. The door. The area over the door yes, sir.

15 Q. The area over the door.

16 A. Probly a little over 6 foot I would guess. I'm assuming
17 it's a 6 foot door.

18 Q. What was the path of that?

19 A. It was at an upward angle, sir. It went through the wall
20 above the door opening and into the living room and struck the
21 ceiling of the living room area right near the doorway.

22 Q. In your opinion where did it come from? Where did it
23 originate? Where did the shot originate?

24 A. I would say it originated in bedroom No. 1.

25 Q. Bedroom No. 1.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Yes, sir.

2 Q. And again, you never recovered a bullet?

3 A. No, sir.

4 Q. Let me refer back to States Exhibit 21 and 20 just for
5 clarification purposes. Where is the 9-millimeter found?

6 A. There were two of 'em, sir. We had would one in bedroom
7 No. 1 underneath the bed on the floor (indicating) and we also
8 had another one in bedroom No. 2 laying on top of the bed.

9 Q. In bedroom No. 1 approximately where was it using your
10 laser pointer.

11 A. It been right in there (indicating), sir. It was on the
12 floor under the bed, halfway under the bed, halfway sticking
13 out.

14 Q. All right. And this is how you found the gun, correct?

15 A. Yes, sir.

16 Q. In your experience do you usually find guns like that
17 with a barrel sticking out?

18 A. I'm not sure what you're asking me. I mean, we find guns
19 in all kinds of positions and places.

20 Q. I understand but if someone was going to place a gun
21 somewhere in their bedroom, ---

22 MR. BULSA: Objection. That calls for speculation. I
23 believe he's answered the best he could.

24 THE COURT: Right. It it would call for speculation I
25 think. I'll allow you to finish the question though. It

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION. BY MR. SCHULTZ

1 might -- you might be able to get it out of speculative realm
2 but go ahead but it sounds like it's it's gonna cause some
3 speculation.

4 BY MR. SCHULTZ:

5 Q. Would you display -- would you put your gun in that kind
6 of position in your bed -- bedroom?

7 A. I wouldn't no, sir.

8 Q. And why's that?

9 A. Several reasons. I don't want kids to get ahold of it
10 and I don't want to grab my gun by the muzzle end if that's
11 what you're getting at.

12 Q. That's what I'm saying. And the proper place to probably
13 put a gun if you're gonna put it under the bed there would
14 probably be with the holster out, correct?

15 A. With the grip out yes, sir.

16 Q. The grip out. At any time did you notice, did you see
17 Mr. Chavez in there, in the bedroom there or did you arrive
18 after he had been transported?

19 A. I arrived after he had already been transported, sir.

20 Q. Let me go back to the hole found in bedroom

21 No. 2 and it's your conclusion that a shot was fired from
22 bedroom No. 2 into the door, correct?

23 A. Yes, sir.

24 Q. So looking at all the shots that night that happened
25 there's bedroom No. 1 and it's not really con -- conclusively

OFFICER DOMINICK BAIRD -- CROSS-EXAMINATION BY MR. SCHULTZ

1 proven how many shots were in there, correct?

2 A. That's correct, sir.

3 Q. Okay. But in bedroom No. 2 we may have at least one,
4 correct?

5 A. Yes, sir.

6 Q. So there may have been more?

7 A. Didn't observe any evidence thereof but that's all we
8 found is one.

9 Q. But nevertheless you found a .25 Lorcin in that bedroom,
10 correct?

11 A. That's correct.

12 Q. Bedroom No. 2?

13 A. Yes, sir.

14 Q. And it was fired that night, correct?

15 A. Yes.

16 Q. And it was fired and you found a shell casing, correct?

17 A. That is correct, sir.

18 Q. And it is your conclusion, in fact, that the door was
19 closed at this point when the shot was fired, correct?

20 A. That would make sense yes, sir.

21 Q. Now, looking at bullet holes, Investigator, can you
22 distinguish whether what kinda of caliber the bullet is from
23 the hole in the wall?

24 A. I can't. You can say some of 'em sometimes holes are
25 real small, sometimes they make big holes and sometimes it

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 depends on the caliber, depends on where the bullet's
2 tumbling, depends on the material. I'm not gonna guess on
3 caliber of weapons based on just a hole in the wall.

4 Q. Can you explain the difference be -- between an automatic
5 pistol and a semi-automatic pistol?

6 A. Automatics continue to fire as long as you hold the
7 trigger back, semi-automatics fire once each time when the
8 trigger's pulled.

9 Q. And the Lorcin .25 was that a semi-automatic or an
10 automatic?

11 A. That would be a semi-automatic.

12 Q. A semi-automatic?

13 A. Yes, sir.

14 Q. A lot of people use the terms interchangeably. They'll
15 say automatic when they mean semi-automatic but it's not a
16 revolver if that's what you're getting at, sir.

17 Q. Nevertheless, the .38 that you recovered that was a
18 revolver, correct?

19 A. I didn't recover it but the one that was recovered in the
20 city if that's the one you're talking yes, sir, that was a
21 revolver.

22 Q. That's fine. Now, you briefly went over this in bedroom
23 No. 2 in your direct testimony you said you found some green
24 plant like material. What is that?

25 A. Uh, should be marijuana, sir.

OFFICER DOMINICK BAIRD - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Okay. Did you find any baking soda?

2 A. I don't recall finding any baking soda. There could be a
3 little of it. I I don't recall though.

4 Q. But you did a thorough search and you you don't remember
5 any baking soda.

6 A. I don't remember any.

7 Q. Okay. And you also found some ball tickets, is that
8 correct?

9 A. Yes, sir.

10 Q. Could you explain what ball tickets are.

11 A. It's a form a gambling.

12 Q. Okay. So you found marijuana, ball tickets which is a
13 form of gambling and a .25 Lorcin in bedroom No. 2.

14 A. Yes, sir.

15 Q. Okay.

16 MR. SCHULTZ: Beg the Court's patience, Your Honor.

17 THE COURT: All right, sir.

18 BY MR. SCHULTZ:

19 Q. Just a couple more questions.

20 A. Okay.

21 Q. In your opinion in bedroom No. 1 there was found many
22 projectiles but there could have been more, correct?

23 A. We found two.

24 Q. You found two.

25 A. In bedroom 1.

OFFICER DOMINICK BAIRD - REDIRECT EXAMINATION BY MR. BULSA

1 Q. And in the living room there was another projectile.

2 A. There was some lead from a projectile, yes.

3 Q. And in bedroom 2 there was another one, correct?

4 A. We found a shell casing in bedroom 2, sir.

5 MR. SCHULTZ: That's all I have on cross, Your Honor.

6 THE COURT: Thank you. Redirect, Mr. Bulsa.

7 MR. BULSA: Just briefly, Your Honor.

8 THE COURT: Okay.

9 (Photograph marked State's Exhibit No. 29 for
10 identification.)

11 REDIRECT EXAMINATION BY MR. BULSA:

12 Q. Show you State's 29. Mr. Schultz has gone into the the
13 shot fired above the door frame.

14 A. Yes, sir.

15 Q. Is that (indicating) the hole? Can you point to it?

16 A. Yes, sir. It would have been right there (indicating),
17 sir.

18 Q. And can you see the ceiling where it would have
19 entered?

20 A. I believe that's gonna be it there (indicating), sir.

21 Q. Okay. And is it correct that you recovered a round from
22 each of the other -- that were attributed to each of the other
23 holes in the wall?

24 A. In that bedroom yes, sir.

25 Q. Okay. And the 9-millimeter pistol that was found under

OFFICER DOMINICK BAIRD - REDIRECT EXAMINATION BY MR. BULSA

1 the bed in Mr. Chavez's bedroom is that a semi-automatic?

2 A. Yes, sir, it was.

3 Q. And how are rounds ejected with semi-automatic or a shell
4 casing?

5 A. Uh, after the bullet is fired the slide comes back and
6 the shell casing that is left is ejected out the side of the
7 gun.

8 Q. And did you find any shell casings ---

9 A. No, sir, we did not.

10 Q. -- in that bedroom?

11 A. No, sir.

12 Q. But you did find a shell casing in bedroom No. 2?

13 A. Yes, sir.

14 Q. Where the .25 was.

15 A. Yes, sir.

16 Q. Thank you. That's all I have.

17 THE COURT: Thank you. You can step down, Officer Baird.
18 Thank you.

19 MR. BULSA: Your Honor, we ask that Officer Baird be
20 excused.

21 THE COURT: Without objection?

22 MR. SCHULTZ: Without objection, Your Honor.

23 THE COURT: Thank you. Officer Baird, you can be
24 excused.

25 OFFICER BAIRD: Thank you, sir.

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 (Whereupon, the witness was excused.)

2 MR. BULSA: The state calls Artis Jackson.

3 ARTIS JACKSON, having been
4 first duly sworn, testified as follows:

5 DIRECT EXAMINATION BY MR. BULSA:

6 Q. Mr. Jackson, ---

7 A. Huh.

8 Q. --- make sure you speak up, okay?

9 A. All right.

10 Q. All these people over here need to be able to hear you.

11 MR. SCHULTZ: Derrick, I can't see the witness. I'm
12 gonna have to move this out out of the way.

13 MR. BULSA: Okay. I don't think I'll use it anyways.

14 (Counsel moved the projector.)

15 BY MR. BULSA:

16 Q. Mr. Jackson, where do you live?

17 A. 120 Tharon Drive, Woodruff, South Carolina. Tharon
18 Drive.

19 Q. Tharon Drive in Whitney?

20 A. Yeah, it's in Spartanburg now. It used to be Whitney.

21 Q. Okay. And how old are you, sir?

22 A. 75 -- 76.

23 Q. How long have you lived in that house?

24 A. Since '42. Since '42.

25 Q. Okay. Now, you were in here and you saw the pictures,

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 right?
- 2 A. Yeah.
- 3 Q. Okay. And you pretty much stay in that living room
- 4 area?
- 5 A. Yeah.
- 6 Q. Is that an addition to the original house?
- 7 A. Yes, sir. That's -- yes, half as large as the old house.
- 8 We had it built on.
- 9 Q. You had it built on?
- 10 A. Yeah.
- 11 Q. Okay. The room you stay is what was built on?
- 12 A. Yeah.
- 13 Q. Okay. And who stays at that house with you?
- 14 A. Charles.
- 15 Q. And Charles is?
- 16 A. My brother.
- 17 Q. Is your brother? Your younger brother?
- 18 A. Yeah.
- 19 Q. And how did you know Alberto Chavez?
- 20 A. He was a friend of -- he worked with my nephew but then
- 21 he needed a place to stay so we let him come stay with us.
- 22 Q. Do you know where he worked?
- 23 A. Yeah.
- 24 Q. Where where did he work?
- 25 A. He was working in Gaffney.

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. He worked at a place in Gaffney?
- 2 A. In Gaffney -- not Gaffney, up in Cowpens but what's the
- 3 name of that place? I asked him to go over there. In fact, I
- 4 used to work there myself. Uh, he was working at the concrete
- 5 place with my nephew ---
- 6 Q. Okay.
- 7 A. --- and he come -- got staying with us and then he got
- 8 him a job up in Gaffney.
- 9 Q. Another job. Okay.
- 10 A. Um-hum.
- 11 Q. About how long did he stay with you?
- 12 A. Oh, almost two years or or nearly.
- 13 Q. He work just about every day? Did he work about every
- 14 day?
- 15 A. Yeah.
- 16 Q. Was he paying you rent?
- 17 A. Yeah.
- 18 Q. Now, do you remember the night that he died, the night he
- 19 got shot?
- 20 A. Yeah.
- 21 Q. Were you in your living room area on that couch?
- 22 A. I I was outside when he got shot. I went in and I went
- 23 back outside.
- 24 Q. Right. Okay. Now ---
- 25 A. I called the cops from there.

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. Tell us what happened. How did somebody get in
2 your house that evening?

3 A. Uh, he come in there. When he knocked I thought it was a
4 girl 'cause he told me a name, a name. Well, I told him to
5 come on in.

6 Q. Do you remember the name that you heard? You thought you
7 heard?

8 A. No. I know it. I know it. I know it but it ---

9 Q. Okay.

10 A. --- it slipped my mind now. Uh...

11 Q. Was it somebody you thought you knew?

12 A. I know her. I can't ---

13 Q. Is -- would Jerry be the name?

14 A. Jerry, that's her.

15 MR. SCHULTZ: Objection, Your Honor. Leading.

16 THE COURT: I'll ---

17 MR. JACKSON: I was trying ---

18 THE COURT: Just a second, Mr. Jackson. I'll overrule
19 that objection that in accordance with Rule 611 a certain
20 amount of leading can be offered in certain circumstances. He
21 testified that he knew the person's name. He just simply
22 could not recall it at the time and once it was given to him
23 he obviously recalled the name. Rule 611(c) is a salient
24 rule.

25 BY MR. BULSA:

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. And is is Jerry a person that you know?

2 A. Yeah.

3 Q. Okay. And what did you do when you heard that knocking
4 that night?

5 A. Well, I told him, "Come in."

6 Q. You just told him to come in?

7 A. Yeah.

8 Q. All right. And then what happened?

9 A. Well, when he come -- when that guy come in, he come in
10 with me with the pistol.

11 Q. He had a pistol in his hand?

12 A. Pistol in his hand said to me, "I want your drugs and
13 your money."

14 I said, "I don't have no drugs. I don't have no money."
15 That's when Chavez was in the next room. He heard him and he
16 saw him.

17 Q. Was he pointing a gun at ya?

18 A. At me yes.

19 Q. Okay. And you told him you didn't have anything.

20 A. I say, "I don't have no money or no drugs."

21 Q. And then what happened?

22 A. That's when Chavez got into it.

23 Q. Did he say anything to Chavez?

24 A. Yeah, he tried to get his chain off his neck. He pulled
25 the gun or had the gun on Chavez and Chavez had one of them

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 long gold chains and he said, "Well I'll just take that gold
2 chain," ---

3 Q. Did he -- did ---

4 A. --- and that's the last thing I know. I -- the next
5 thing I know he "pop" "pop" "pop" and Jerry took off.

6 Q. Did you hear him ask Chavez for any money?

7 A. He wanted the chain and the money.

8 Q. Were you in a position to be able to see what was going
9 on?

10 A. I was standing right -- let's see, the couch is here
11 (indicating) the door is here (indicating) but Chavez bed was
12 over here (indicating) and he was in there (indicating) and I
13 was in here (indicating). I could see him.

14 Q. And you could hear what was being said?

15 A. Yeah, I heard he wanted the chain and the money. He
16 didn't have, Chavez said he didn't have no money so he said he
17 was gonna take his gold chain and -- drunk or such.

18 Q. About how many shots did you hear?

19 A. Three I think. Yeah, I think it was three.

20 Q. Do you recall three?

21 A. Yeah.

22 Q. Okay. What did what did ya do when you heard the
23 shots?

24 A. I didn't do nothing. I called the police.

25 Q. What happened af -- what happened after the shots? What

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 happened to the man that came into your house?
- 2 A. He run back out and he got in the car out there and
- 3 bolted off and left the church parking lot.
- 4 Q. Okay. So your house is located behind a church?
- 5 A. Yeah.
- 6 Q. Okay. Can you tell if anybody was in the car with him?
- 7 A. I didn't get to see the car 'cause when I got out there
- 8 the car was gone. They left there speeding.
- 9 Q. Okay. Now, you're here in a wheelchair today. How hard
- 10 is it for you to get around?
- 11 A. Well, I -- back then I was doing all right. I can -- I
- 12 got a better thing I walk with too but this thing here
- 13 (indicating) is better and I'm trying to walk with my leg like
- 14 it is.
- 15 Q. So back then were you able to get up and ---
- 16 A. Yeah, I could get up and go then.
- 17 Q. Okay. So you were able to get up and you said you went
- 18 outside?
- 19 A. Yeah.
- 20 Q. And then you went back in?
- 21 A. I was outside there when all of this happened. I was
- 22 right there when the police come.
- 23 Q. Right. Okay.
- 24 A. They wouldn't let us back in the house for three days.
- 25 Q. How many days?

ARTIS JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 A. Three.
- 2 Q. Three days?
- 3 A. Yeah.
- 4 Q. Okay. Did the police talk with you about trying to
- 5 identify anybody?
- 6 A. They asked me had I seen the guy before. I told 'em yeah
- 7 I believe I had.
- 8 Q. You remember 'em showing you some pictures?
- 9 A. Yeah. No, they didn't show me that. They showed me some
- 10 pictures and then they was trying to draw him.
- 11 Q. Right. Were you able to pick anybody out of any
- 12 pictures?
- 13 A. No.
- 14 Q. So you weren't able to identify anybody?
- 15 A. No. I I knew him by him and his sister used to come over
- 16 to the house.
- 17 Q. Okay. All right. Did you get a good look at the gun he
- 18 had?
- 19 A. It was a automatic. It wasn't no revolver.
- 20 Q. Okay. You certain about that?
- 21 A. I'm positive. I was lookin' at it.
- 22 Q. Okay.
- 23 A. Yeah, in fact the gun they pointed in my face for that's
- 24 how ---
- 25 Q. Okay. All right. Thank you, Mr. ---

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. You're welcome.

2 Q. --- Jackson, answer any questions Mr. Schultz has.

3 THE COURT: Mr. Schultz, you can cross-examine.

4 MR. SCHULTZ: Thank you, Your Honor. May it please the
5 Court.

6 THE COURT: Right.

7 CROSS-EXAMINATION BY MR. SCHULTZ:

8 Q. Mr. Jackson you just said that, if I understand you
9 correctly, that it was an automatic not a revolver.

10 A. It was like a .45, could have been a .32.

11 Q. Okay. According to your statement you said someone came
12 to the door, correct?

13 A. Right.

14 Q. And you let them in?

15 A. I I didn't let 'em in. I I laid there and told 'em to
16 come in.

17 Q. Told them to come in?

18 A. I told 'em come in.

19 Q. Them meaning a couple people?

20 A. It wasn't but one person knocked on the door and come
21 in.

22 Q. Nevertheless, looking at your voluntary statement there,
23 I'm not sure how good your vision is, could you read this line
24 right there (indicating).

25 A. "I told 'em to come in."?

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Yes, that's the emphasis that I wanna make sure. You
2 told them to come in?

3 A. Yeah.

4 Q. Them meaning?

5 A. I tell 'em to come in. See, we tell people around there,
6 my brother and Chavez, my nephew well, when they come up and
7 knock on the door I tell 'em to come on in.

8 Q. But you had no idea who it was, correct?

9 A. No, I didn't.

10 Q. Nevertheless, the person identified themselves as Jerry
11 according to your statement, correct?

12 A. Right.

13 Q. Now, were you sitting on the couch the entire time that
14 this ---

15 A. I was laying on the couch.

16 Q. You were laying on the couch.

17 A. Yeah.

18 Q. Okay. Did you witness this whole thing happen?

19 A. Well, in the next room when he shot him?

20 Q. Next room.

21 A. No.

22 Q. No?

23 A. I didn't witness that. I didn't want to.

24 Q. You didn't want to. So nevertheless you didn't see
25 anything going on in the next room, correct? You you heard

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 it.

2 A. Yeah, I heard it and I just ---

3 Q. But you didn't see anything, correct?

4 A. I saw part of it. I didn't see it all.

5 Q. You saw a part of it or you didn't see it all?

6 A. I didn't see it all.

7 Q. You didn't see at all.

8 A. I didn't see it at all.

9 Q. Okay. Now, one of the first questions that the solicitor
10 asked you said you were outside. You mean outside of your
11 house? Or please elaborate on that.

12 A. Outside when?

13 Q. Outside when this person came into the house?

14 A. No, I was in the house when he came in.

15 Q. Nevertheless, according to your testimony you said you
16 were outside?

17 A. Outside later.

18 Q. Outside ---

19 A. When ---

20 Q. --- later?

21 A. --- I called the cops. Yeah, I called the cops. I was
22 outside. I came in the house, got the phone, went outside and
23 called the cops, police.

24 Q. Okay. Now, according to your testimony you said today
25 that whoever this was coming in asked Chavez for money and

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 chain?
- 2 A. And his chain ---
- 3 Q. And his chain.
- 4 A. --- his chain around the neck, right.
- 5 Q. Okay. Now, According to your testimony the man came in
- 6 and asked you a question, correct?
- 7 A. He asked me, yeah, asked me did I have some dru -- drugs
- 8 and money.
- 9 Q. Okay. Did he just say drugs?
- 10 A. He said drugs and money.
- 11 Q. Drugs and money.
- 12 A. That's what he -- he had a pistol on me and he say, "I
- 13 want your drugs and your money."
- 14 Q. And ---
- 15 A. I say, "I don't have drugs and I don't have no money."
- 16 Q. And according to your statement you said, "I don't have
- 17 any drugs or money, ---
- 18 A. You're right.
- 19 Q. --- but there's somebody that does."
- 20 A. No, I didn't.
- 21 Q. Okay.
- 22 A. I didn't say that. He saw he saw Chavez next. Chavez
- 23 was in the next room lookin'.
- 24 Q. So you never directed him.
- 25 A. No, I didn't direct him. I didn't didn't have to. The

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 door's right here (indicating) and Chavez is standing right
2 here (indicating). I (inaudible).
- 3 Q. What's that, sir?
- 4 A. Huh?
- 5 Q. What what did you say? I didn't understand you.
- 6 A. I said well lets start over. The guy stands here
7 (indicating) and the guy both of 'em standing right here
8 (indicating) at the door. I don't have to show nothing, tell
9 him nothing.
- 10 Q. You don't have to what?
- 11 A. I didn't have to tell him nothing because he was trying
12 to get Chavez' chain and money.
- 13 Q. Did you at all feel responsible?
- 14 A. No, I didn't.
- 15 Q. How so?
- 16 A. Why should I?
- 17 Q. Honest question. That's true but at the same time you
18 said that there's a person in there that ---
- 19 A. I I didn't I didn't tell him a person was there. I just
20 told you he's standing right here (indicating) at the door. I
21 got up and said, "Yeah," the room, the other room's right
22 there (indicating), he sees Chavez.
- 23 Q. All right. Let's go back to the State's Exhibit 18.
- 24 MR. BULSA: You wannna pull it back?
- 25 MR. SCHULTZ: Yeah.

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 MR. BULSA: Pull -- just pull the whole machine back.

2 MR. SCHULTZ: Oh, okay.

3 BY MR. SCHULTZ:

4 Q. Now, sir, according to your testimony today, and I'm not
5 sure if you can make ---

6 A. I can see it.

7 Q. Can you make that out?

8 A. Yeah.

9 Q. Okay. Isn't it true that you were sitting right here
10 (indicating) ---

11 A. I was right there.

12 Q. --- when this incident happened, correct?

13 A. Right.

14 Q. And you didn't see anything going on in that room.

15 A. Right there. I can see in there.

16 Q. Pardon?

17 A. I can see his bed all the way through the wall over there
18 right where his bed is. See right where that (indicating)
19 door is?

20 Q. This (indicating) door?

21 A. Yeah. Well his bed's over there where that (indicating)
22 square thing is there. You see that?

23 Q. Okay. Do you remember a shot coming through that wall
24 between the living room and the bedroom?

25 A. Do I remember a shot coming through?

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. A shot coming through.

2 A. No.

3 Q. Right here (indicating), sir.

4 A. There's a there a hole in there but I didn't see -- I
5 mean, when the thing went off I just almost froze. In fact, I
6 did freeze.

7 Q. Froze on your -- on ---

8 A. Right there ---

9 Q. --- the couch.

10 A. --- on the couch, right.

11 Q. Okay.

12 A. 'cause when he come in there with a pistol he's on me at
13 first, "Give me your money and your dope."

14 "I don't have no money and I don't have no dope," and
15 Chavez was in the next room that's -- then he he had this
16 chain on. You know those chains they have on. The guy said,
17 "Give me that chain. Give me your money and your chain," and
18 Chavez wasn't giving him nothing.

19 Q. All right.

20 MR. SCHULTZ: Beg the Court's patience, Your Honor?

21 THE COURT: Yes, sir.

22 MR. SCHULTZ: Your Honor, could we approach briefly?

23 THE COURT: All right, sir.

24 (Whereupon, a bench conference was held off the record.)

25 THE COURT: Ladies and gentlemen, I apologize for

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 whispering over there behind your back. We did that to keep
2 from having to send you out to the jury room while I dealt
3 with those matters and it didn't take long obviously. All
4 right. Mr. Schultz.

5 BY MR. SCHULTZ:

6 Q. Just a couple more questions, Mr. Jackson.

7 A. Um-hum.

8 Q. Now, you said this man, according to your statement,
9 according to your testimony today, asked you for money and or
10 drugs, correct?

11 A. Right.

12 Q. And you didn't have any drugs that night?

13 A. I don't. I don't I don't ever mess with drugs.

14 Q. You don't have what?

15 A. I don't ever mess with drugs.

16 Q. You don't ever mess with drugs?

17 A. No.

18 Q. But nevertheless, at the same time did you know that
19 Chavez had drugs?

20 A. No, I didn't know he had.

21 MR. BULSA: Objection, Your Honor.

22 THE COURT: Yes, sir.

23 MR. BULSA: I don't believe there's been any testimony of
24 that and I don't believe it's relevant.

25 THE COURT: All right. Is there any evidence -- I don't

ARTIS JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 think there's any evidence -- the question would assume the
2 facts not in evidence currently Mr. Mr. Schultz.

3 MR. SCHULTZ: Thank you, Your Honor.

4 BY MR. SCHULTZ:

5 Q. Did your brother have any drugs found inside the house?

6 A. I don't know. You have to ask him.

7 Q. All right.

8 MR. SCHULTZ: Your Honor, beg the Court's patience.

9 THE COURT: All right, sir.

10 MR. SCHULTZ: Nothing further, Your Honor.

11 THE COURT: Thank you. Redirect, Mr. Bulsa.

12 MR. BULSA: No redirect, Your Honor.

13 THE COURT: Thank you. Mr. Jackson, you can stand down.

14 (Whereupon, the witness was excused.)

15 THE COURT: Who's your who's your next witness scheduled
16 to be, Mr. Bulsa?

17 MR. BULSA: Charles Jackson. He's outside. We're gonna
18 get him.

19 THE COURT: All right. How long do you, how long do you
20 think his testimony might take?

21 MR. BULSA: Should be comparable to Mr. Artis Jackson's.

22 THE COURT: Okay.

23 Mr. Jackson, come forward please and be sworn.

24 CHARLES JACKSON, having been first
25 duly sworn, testified as follows:

CHARLES JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 DIRECT EXAMINATION BY MR. BULSA:

2 Q. Good afternoon, Mr. Jackson, introduce yourself to the
3 jury.

4 A. My name is Charles Jackson.

5 Q. Make sure you speak up, okay? Our microphone's not
6 working.

7 THE COURT: Speak up Mr. Jackson.

8 MR. JACKSON: Okay. My name is Charles Jackson.

9 BY MR. BULSA:

10 Q. Where did you live Mr. Jackson?

11 A. 220 Tharon Drive.

12 Q. And do you live with your brother Artis?

13 A. Yes.

14 Q. How old are you, sir?

15 A. 65 -- I mean, 64.

16 Q. And how long view lived at Tharon Drive?

17 A. I was born there.

18 Q. You were born there?

19 A. Um-hum.

20 Q. So that's the family home?

21 A. Yes.

22 Q. All right. Now, Mr. Jackson, how do you know Mr. Chavez?

23 A. I met him through my nephew.

24 Q. Okay. And how did he come to stay with ya'll?

25 A. Well, my nephew asked they both they were kind of been

CHARLES JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 out together and he asked. I liked him and told him, "Yeah."
2 Q. Speak up. You're trailing off.
3 A. Oh yeah, I forgot. He asked us, you know, and I liked
4 him and I told him, "Yeah."
5 Q. Okay. You met him and you liked him, is that what you
6 said.
7 A. Yeah. He was a good guy.
8 Q. And about how long do you remember him staying there?
9 A. I really don't know. I was drinkin' a good bit at that
10 time and I don't remember.
11 Q. So you don't remember the dates very well?
12 A. No.
13 Q. Okay. Do you remember the night he was shot?
14 A. Oh, yes.
15 Q. Where were you that evening when the shooting happened?
16 A. I was in bed.
17 Q. Okay. And where was your bedroom?
18 A. It was on the far side of the house.
19 Q. Okay. Let me show you, I'm gonna let you look at this up
20 close and then I'm gonna put it on the overhead, State's
21 Exhibit No. 18. I understand this is a diagram of your living
22 room, bedroom 1, kitchen, bedroom 2.
23 A. No, there's a bedroom there.
24 Q. That would be your bedroom 2? Okay. All right. So you
25 were in bedroom 2. Was your door closed?

CHARLES JACKSON - DIRECT EXAMINATION BY MR. BULSA

- 1 A. Yes.
- 2 Q. All right. And were were you asleep?
- 3 A. Yes.
- 4 Q. Okay. Had you been drinking that day?
- 5 A. Yes.
- 6 Q. What -- did anything awoke -- awaken you?
- 7 A. Noise had to be where something woke me up.
- 8 Q. Something woke you up?
- 9 A. Um-hum.
- 10 Q. And whadya remember hearing?
- 11 A. I don't know. Sounded like something might have been at
- 12 my door. I asked who was it and nobody replied so I let it
- 13 go.
- 14 Q. Can you describe that to the jury.
- 15 A. Well, I shot through the door 'cause I knowed it wasn't
- 16 right someone messing around I feel like, you know.
- 17 Q. Did you hear noise? Did you hear shots or do you know
- 18 what the noise was that you heard?
- 19 A. I really didn't know what it was but I figured it must
- 20 have been something like that for me to shoot.
- 21 Q. Whadya you shoot with?
- 22 A. .25 automatic.
- 23 Q. Had a little pink handled gun?
- 24 A. Yes.
- 25 Q. .25 Lorcin? You remember ---

CHARLES JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 A. It might have been. My friendgirl she let me have it.
2 That's that's how I had it.

3 Q. Okay. Did you shoot straight through the door?

4 A. Yes.

5 Q. And whadya with the gun?

6 A. I had it in my hand 'cause I went to try to catch the
7 people that was shooting or whatever was happening and when I
8 came out the room my brother told me that that someone had
9 shot Chavez.

10 Q. Okay. Now, you shot once out of the doorway and then you
11 came out the door with your gun?

12 A. I I don't remember exactly did I have a gun in my hand or
13 not but I think I did. I'm pretty sure I did.

14 Q. All right. And you came out?

15 A. I went out in the yard to see could I see anyone but they
16 they was gone. Then at that time all the police was coming in
17 and had to call 9-1-1.

18 Q. Now, you said spoke with your brother Artis.

19 A. Right.

20 Q. Okay. And he told you about Chavez being shot?

21 A. Yes.

22 Q. So did you not see Chavez when you first came through his
23 room?

24 A. Yeah, I was kinda of hazy too but I know he said that
25 Chavez had been shot so I went to look at Chavez to check him

CHARLES JACKSON - DIRECT EXAMINATION BY MR. BULSA

1 out.

2 Q. And where did you find him?

3 A. On the floor.

4 Q. And did you do anything? Did you touch him in any way?

5 A. I'm pretty sure I did. I think I grabbed him 'cause like
6 I said, he was just like a family member and I was crazy about
7 the guy, nice guy and I was trying to see was there anything I
8 could do.

9 Q. Did he work as far as you know?

10 A. Yes, he did.

11 Q. Was he paying ya'll rent?

12 A. Yes.

13 Q. Other than touching Chavez did you touch anything else in
14 that room?

15 A. I don't know. I'll be honest with you I don't really
16 know.

17 Q. Okay. Then the police arrived. So you didn't see
18 anybody in the house ---

19 A. I ---

20 Q. --- you heard noise and reacted?

21 A. I didn't see anything.

22 Q. Thank you, Mr. Jackson. Answer any questions that
23 Mr. Schultz might have.

24 THE COURT: Mr. Schultz, you can cross-examine.

25 MR. SCHULTZ: Thank you, Your Honor. May it please the

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Court.

2 THE COURT: All right.

3 CROSS-EXAMINATION BY MR. SCHULTZ:

4 Q. Mr. Jackson, according to your testimony you said you
5 were drinking a lot at the time?

6 A. Yes.

7 Q. So wouldn't it be true that your memory of that night is
8 not entirely accurate?

9 A. Well, well just -- no. Well, whatever.

10 Q. Well, yes or no? Is your memory entirely accurate. You
11 admitted to drinking a lot that night, correct?

12 A. I remember when I got up.

13 Q. And what happened then when you got up?

14 A. Well, I had done shot and I came out when I shot but
15 nobody said nothing so I came out the door.

16 Q. That's ---

17 A. That's when ---

18 Q. That's after you shot, correct?

19 A. Yeah.

20 Q. Okay. Now, according to your testimony today you shot
21 because you heard a commotion outside.

22 A. Right.

23 Q. You didn't hear shots, correct?

24 A. Couldn't tell what it was.

25 Q. Couldn't tell what ---

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. I don't remember exactly what it was.
- 2 Q. But yet your first reaction was to shoot through the
- 3 door?
- 4 A. Yes.
- 5 Q. And you had no idea who was on the other side of that
- 6 door?
- 7 A. No.
- 8 Q. It could have been Chavez.
- 9 A. It wasn't.
- 10 Q. But it could have been. You didn't know ---
- 11 A. I ---
- 12 Q. --- at the time, at the time it could have been.
- 13 A. I hollered. I hollered. If it had a been Chavez, he
- 14 woulda said something. He called me U-Boy.
- 15 Q. Not if he was shot, correct?
- 16 A. He called me U-Boy. That's what he called me. If I'da
- 17 said who is it or what is it, he'da said U-Boy. I didn't get
- 18 no response.
- 19 Q. But nevertheless at the same time it could have been your
- 20 brother, correct?
- 21 A. No, forget that.
- 22 Q. My point is is that at the time you were si -- and you
- 23 you just woke up, correct?
- 24 A. Right.
- 25 Q. You picked up your pistol.

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. Right.
- 2 Q. It was a Lorcin .25.
- 3 A. Right.
- 4 Q. You heard something going outside your door. And your
- 5 first reaction was to shoot through the door ---
- 6 A. Right.
- 7 Q. --- not knowing who was on the other side, correct?
- 8 A. Right. Okay.
- 9 Q. Okay. So, again, it could have been Chavez or it could
- 10 have been Artis Jackson, your brother, correct?
- 11 A. It could have been.
- 12 Q. It could have been.
- 13 A. Yeah.
- 14 Q. You don't know.
- 15 A. I don't know.
- 16 Q. And that bullet went through the door.
- 17 A. Right.
- 18 Q. Sir, is that your normal practice to fire through a door
- 19 when you hear a commotion outside your bedroom?
- 20 A. No, I don't guess so.
- 21 Q. Nevertheless, you -- that was sort of strange, wouldn't
- 22 you say, to shoot a gun through the bedroom not knowing who's
- 23 on the other side by your own admission, correct?
- 24 A. No, you said it.
- 25 Q. No. I know I can say that but could you say that?

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. I knowed it wasn't Chavez.

2 Q. Nevertheless, according to your statement that you gave
3 you never mentioned Chavez, correct?

4 A. No.

5 Q. So basically your policy that night was to shoot first
6 and ask questions later.

7 A. I imagine so.

8 Q. Okay. Now, you talked with your brother about this,
9 correct?

10 A. Yeah.

11 Q. Okay. And your brother and you have been living in the
12 same house for a long time, right?

13 A. Um-hum.

14 Q. Okay. All right. And could you read the last part of
15 your statement here, sir?

16 MR. BULSA: Your Honor, I would just ask that he ask him
17 a question, see if he could answer it.

18 THE COURT: All right. I'll let him look at his
19 statement. First of all it's cross-examination and we'll see.
20 If if there's a question in there somewhere, Mr. Schultz,
21 could you put it...

22 MR. SCHULTZ: Yes, sir.

23 THE COURT: All right.

24 BY MR. SCHULTZ:

25 Q. Is it true that you tried to pick Chavez up by his head?

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. I may have.
- 2 Q. Was Artis in the room when you were trying to do this?
- 3 A. No, he couldn't have been.
- 4 Q. But you were talking to Artis at this point?
- 5 A. I don't remember.
- 6 Q. All right. You said that he could have been. What did
- 7 you mean by he could have been?
- 8 A. What do you mean?
- 9 Q. Artis was -- where where was Artis at this point is what
- 10 I'm getting at?
- 11 A. He was on the couch I guess. I remember.
- 12 Q. He was still on the couch?
- 13 A. I don't remember.
- 14 Q. Okay. But nevertheless at this point you talked to Artis
- 15 about this happening.
- 16 A. He the one told me that Chavez had been shot.
- 17 Q And according to your your statement you said that Artis
- 18 told you that Chavez had been shot by two white people,
- 19 correct?
- 20 A. I don't ---
- 21 MR. SCHULTZ: Your Honor, then I'll -- permission to
- 22 refer to the statement ---
- 23 THE COURT: All right.
- 24 MR. SCHULTZ: --- to refresh the witness's recollection
- 25 here.

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 (Counsel approached the witness.)

2 BY MR. SCHULTZ:

3 Q. Sir, can you read that part right there (indicating)?

4 A. Talking about right here (indicating)?

5 Q. Yes, sir.

6 A. "Back when Artis had told me that Chavez had been shot by
7 two white men."?

8 Q. Two white guys.

9 A. Yeah, okay, the same thing.

10 Q. Well, one white guy and two white guys is a little
11 different, isn't it?

12 A. Yeah.

13 Q. That's what you're saying in the statement when your
14 recollection was freshest in your mind.

15 A. Yeah.

16 Q. Is your memory clear now or then?

17 THE COURT: Are you are you trying to impeach his
18 brother's testimony with this person's statement?

19 MR. SCHULTZ: No. No, Your Honor, I'm I'm just trying to
20 clarify his testimony with his statement, Your Honor.

21 THE COURT: I didn't recall him testify that he saw
22 anything about the shooting itself so I was -- but go ahead.
23 I'll let you go ahead.

24 MR. SCHULTZ: Are are you talking about Charles Jackson
25 or...

CHARLES JACKSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 THE COURT: The witness who's on the stand right now.

2 MR. SCHULTZ: Yes, sir.

3 THE COURT: All right.

4 BY MR. SCHULTZ:

5 Q. Okay. Now, according to your testimony today you said
6 you don't remember if you had a gun or not?

7 A. I know I had a gun 'cause I shot it.

8 Q. Okay. But at one point you don't remember having a
9 gun.

10 THE COURT: He said when he came out of the room he
11 didn't recall whether he had a gun in his hand at the time or
12 not.

13 MR. SCHULTZ: That's fine. Beg the Court's patience,
14 Your Honor.

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: That's all I have, Your Honor.

17 THE COURT: Thank you. Redirect, Mr. Bulsa?

18 MR. BULSA: No redirect.

19 THE COURT: Thank you. Mr. Jackson, you can step down.

20 (Whereupon, the witness was excused.)

21 THE COURT: Ladies and gentlemen, the timing is rather
22 fortuitous. It's three minutes until five. That's a good
23 stopping place for the day. We normally try to look for a
24 good stopping place around five o'clock each day and so I'm
25 gonna throw you out into the teeth of the five o'clock traffic

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1 and you'll be on your own from that point on. When you come
2 back in the morning, please report directly to the jury room
3 just like you did this afternoon. We'll start in the morning
4 at 9:30 so please be in the jury room at 9:30 tomorrow
5 morning. We'll continue the trial at that time. I remind you
6 as always not to discuss this case among yourselves. When you
7 get back in the jury room tomorrow at 9:30, don't talk with
8 anybody else about it overnight and don't try to find out
9 anything about it from any other source. Thank you, folks.
10 We appreciate your patience throughout the day. We'll start
11 at 9:30 tomorrow morning.

12 (The following takes place outside the presence of the
13 jury.)

14 THE COURT: Mr. Bulsa, is there anything from the state
15 before we break for the day?

16 MR. BULSA: No, Your Honor.

17 THE COURT: Mr. Schultz, anything from the defense before
18 we break for the day?

19 MR. SCHULTZ: No. No, Your Honor, the only thing is I
20 wanna take care of this now. I wish to put on the record the
21 rulings concerning the prior convictions of the state's
22 testifying witnesses.

23 THE COURT: Right.

24 MR. SCHULTZ: I'm I'm not gonna go over all of them but
25 Your Honor ruled that I cannot use the prior convictions in

MOTIONS AND MATTERS

1 order to impeach the credibility of any of the state's fact
2 witnesses. I wanted to put that on the record.

3 THE COURT: That's right, and if you'd like to offer
4 those rap sheets as as Court's Exhibit with my rulings and all
5 on top of 'em, the the ruling was based on Rule 609, the rules
6 of evidence having to do with convictions older than ten years
7 of age. The convictions all in question in this case some of
8 'em, one of 'em I think was fifty some years old or something
9 like that, forty-seven and some of 'em ---

10 MR. SCHULTZ: 54, Your Honor, yes, sir.

11 THE COURT: Fifty-four years-old and and then there were
12 some various witnesses in the in the mid 90s maybe 12 or
13 13-years-old, just outside of the ten year limit. The the
14 question then is the Court has to determine that the probative
15 value of those convictions substantially outweighs their
16 prejudicial effect. And that's -- so there's there's
17 something of a presumption, in other words, there that that
18 there that there has to be some strong probative value behind
19 the introduction of those convictions on the issue of
20 impeachment that substantially outweighs the prejudicial
21 effect of a criminal record. I could not find that in in this
22 particular case. The the various convictions the records will
23 speak for themselves. There was some DUI's, there was even a
24 CSC on on one of those charges but they were all outside of
25 the ten year period and frankly on the issue of credibility I

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1 cannot find that those that those matters met the test. There
2 was one, a forgery case within the last several years which I
3 think does clearly meet the test and is certainly admissible,
4 but that was the basis of my ruling having made that. And as
5 I said, I'll allow you, if you would like, to to offer the --
6 those rap sheets along with my pen notations on them as a
7 Court's exhibit if you'd like to do that.

8 MR. SCHULTZ: I would like to do that, Your Honor.

9 THE COURT: All right. Do we anticipate any pretrial
10 stuff tomorrow? When we get here at 9:30, are we gonna be
11 ready to go or do I need to get here at 9:00? I don't I don't
12 wanna keep this jury waiting. When I get here at 9:30, you
13 know, ---

14 MR. BULSA: I don't ---

15 THE COURT: --- we'll hit the ground running and if we
16 need to be here earlier, we can.

17 MR. BULSA: I don't foresee any, Your Honor.

18 THE COURT: Okay. All right.

19 MR. SCHULTZ: The earlier the better, Your Honor.

20 THE COURT: All right. Well be -- we'll start at 9:30
21 tomorrow and thank you all. Have a good evening.

22 MR. SCHULTZ: Thank you, Your Honor.

23 THE COURT: Thank you.

24 (Proceedings November 28, 2007)

25 THE COURT: I just received word through the bailiff that

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1 the forelady has re -- wanted to know if they can take notes.
2 Let me ask you all what your position is in that regard to
3 begin with and then we will -- we'll move from that point on.
4 Mr. Bulsa, does the state have a position in that regard?

5 MR. BULSA: Your Honor, we typically do not like that
6 because it detracts from ---

7 THE COURT: Right.

8 MR. BULSA: --- their ability to observe the witnesses.

9 THE COURT: Okay. Since we don't have una -- unanimous
10 opinion, Mr. Mr. Schultz, it's not that I don't value your
11 opinion in that regard but I -- it would take unanimous
12 opinion of of allowing them to take notes before we could do
13 it given the stage of the trial. Sometimes when I receive
14 that request before the trial begins I act on it and sometimes
15 I approve it. I have co -- some concern about it. However,
16 the trial being underway now it means that if they started
17 taking notes at this juncture, they would they would have an
18 incomplete picture in those no notes of what what this case is
19 about and so I would not do that unless both sides agree to
20 it.

21 All right. Mr. Bulsa, is the state ready for the jury?

22 MR. BULSA: Yes, sir, but I -- may I approach?

23 THE COURT: Yes, sir.

24 MR. BULSA: I've got the defendant's record ---

25 THE COURT: Okay.

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1 MR. BULSA: --- based on that 609 issue if Your Honor
2 wants to review plus the notice I provided Mr. Schultz.

3 THE COURT: All right. Good. We, uh, obviously the --
4 it would be some time before the ---

5 MR. BULSA: Yes, sir, just wanted to hand it up to the
6 Court so you could review it.

7 THE COURT: And I appreciate that. I appreciate the
8 advance notice and I'll have a chance to look through that and
9 we will argue that as I've said at the conclusion of your case
10 when we decide whether or not it's gonna be necessary to do
11 it.

12 All right. Mr. Schultz, is the defense ready for the
13 jury?

14 MR. SCHULTZ: Your Honor, the defense is ready but
15 there's two issues that we wanna take up with the Court here.
16 I was just handed this rap sheet for a potential state
17 witness. I talked to the solicitor he's not sure if he
18 intends to call Amanda Colquitt. Your Honor, may we approach
19 with this?

20 THE COURT: Surely.

21 (Whereupon, a bench conference was held off the record.)

22 THE COURT: All right. Anything further, Mr. Schultz?

23 MR. SCHULTZ: Your Honor, there's two more things.

24 Number one, I'd like permission to to move this apparatus. I
25 think that I realized this last night some of the jurors on

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1 that end (indicating) may not be able to see the defendant.

2 THE COURT: Right.

3 MR. SCHULTZ: And I think that's very important
4 psychologically to the case.

5 THE COURT: All right.

6 MR. SCHULTZ: I would just like to move this maybe to
7 another place.

8 THE COURT: Well, when it's not being used obviously. I
9 think yesterday you all just pushed it over here (indicating)
10 out of the way, is that right?

11 MR. BULSA: Yes, sir.

12 THE COURT: It -- that's -- I mean, did that work
13 yesterday, Mr. Schultz, from your perspective?

14 MR. SCHULTZ: From my perspective, yes.

15 THE COURT: All right. Surely. If it's not being used,
16 you can push it over, put it out of the way.

17 MR. SCHULTZ: All right.

18 THE COURT: Is that a big is that a big deal?

19 MR. BULSA: I'm not gonna use it for the next couple of
20 witnesses anyway.

21 THE COURT: Okay.

22 (Whereupon, a discussion was held off the record.)

23 THE COURT: All right. Okay.

24 MR. SCHULTZ: The last thing, Your Honor, and this was
25 just brought to our attention and this is for the sake of full

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1 disclosure, Your Honor, this was brought to our attention last
2 night. In my investigation of the case I I obviously
3 interview a potential and actual state witnesses.

4 THE COURT: Right.

5 MR. SCHULTZ: One of the witnesses I interviewed last
6 night was Jen Gregg, who may be called today, it turns out
7 that my co-counsel, Mr. Whelchel, represented Ms. Gregg
8 previous to this I believe ten years ago or -- okay, a
9 substantial amount of time ago.

10 THE COURT: All right.

11 MR. SCHULTZ: Your Honor, I also learned that her friend,
12 Amanda Colquitt, is is a I believe a cousin to Mr. Whelchel
13 who again is my co-counsel. I want to let the Court know
14 that. If if the Court would in it's discretion make
15 Mr. Whelchel leave during their testimony that's that's fine.
16 I didn't really see a conflict of interest there. I don't
17 really see a problem. I'm not sure if the Court does but I
18 wanted to let the Court know about that and ---

19 THE COURT: All right.

20 MR. SCHULTZ: --- as well as the state.

21 THE COURT: All right. I I don't see a problem. Mr.
22 Bulsa, does that create a problem for the state?

23 MR. BULSA: It shouldn't. If it does I'll impeach him.

24 THE COURT: Right. That's right (laughter.) All right.

25 Thank you ---

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1 MR. SCHULTZ: Thank you, Your Honor.

2 THE COURT: --- for that, Mr. Schultz, but that won't
3 create a problem.

4 MR. SCHULTZ: Okay.

5 THE COURT: All right. That being said now are we ready
6 for the jury?

7 MR. SCHULTZ: Defense is ready.

8 THE COURT: Thank you. Bring us a jury please.

9 (The following takes place in the presence of the jury.)

10 THE COURT: Madam forelady and members of the jury, thank
11 you for your prompt return this morning and I'm sorry that
12 it's about fourteen minutes late in getting you out here but
13 there are always one or two housekeeping matters that we have
14 to deal with every morning before we begin the trial of the
15 case and this is no exception. So we've done that and now are
16 ready to begin with the days work.

17 We received word that that you all had wanted to know
18 whether or not you could take notes. Note taking is is
19 something that although it seems like a good idea, it's what
20 got most of us through school at one time or another, in the
21 trial of the case it has its pitfalls. One of the pitfalls is
22 that that when we take notes sometimes there's a tendency for
23 us to write down our impression of what somebody said rather
24 than the exact words that they said. And there's also some --
25 sometimes the the possibility if not the probability that as

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1 we are writing down the answer to one question we might miss
2 the answer to the next. And and moreover in this particular
3 case if we would begin taking notes now in the second day of
4 the trial, it's likely that what you hear today might receive
5 some undue influence over what you had heard yesterday but did
6 not make notes on, but reluctantly, well not necessarily re --
7 I say reluctantly because I can't grant your request to do
8 that, but in the overall scheme of things I think it's best.
9 And let me say this: Your collective memory, the collective
10 memory of the twelve of you who eventually will go back there
11 and decide this case will be sufficient I think to resolve any
12 factual question that you all might have about what was said
13 out here, but if for some reason your your collective memory
14 and your collective wisdom you are unable to resolve a factual
15 point as to what you heard out here, we have got ways of of
16 helping you resolve that type of dispute should it arise.
17 That doesn't mean that you're at liberty now just to go to
18 sleep and wake back up at the end of the trial and count on us
19 to help to answer those questions. We can't do that. But if
20 you do have some some genuine issues or questions of fact that
21 you all disagree upon among yourselves as to what was said or
22 what you heard in the courtroom, we can help you with that.
23 Thank you, folks.

24 We pick up now where we left off yesterday. The state
25 was offering evidence and testimony in support of its charges

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

1 and we start again at that stage here today. Mr. Bulsa.

2 MR. BULSA: Thank you, Your Honor. The state calls Gregg
3 Lee.

4 THE COURT: Come forward please, Mr. Lee.

5 GREGG LEE, having been first duly
6 sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA:

8 Q. Good morning, Mr. Lee.

9 A. Mornin'.

10 Q. Make sure you speak up for us, okay?

11 A. All right.

12 Q. Introduce yourself to the jury.

13 A. My name's Gregg Lee.

14 Q. And where do you live, Mr. Lee?

15 A. 220 Foster Street, Cowpens.

16 Q. Is that in Spartanburg?

17 A. Spartanburg County.

18 Q. Spartanburg County. Okay. How long have you lived
19 there?

20 A. Forty years.

21 Q. Do you know -- well, do you work?

22 A. Yeah.

23 Q. Where do you work?

24 A. I'm a welder by trade but I changed up. I'm doing
25 construction now.

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

1 Q. You work for yourself?

2 A. Yeah.

3 Q. Mr. Lee, do you know Mr. Piper?

4 A. Yeah.

5 Q. How long have you known Mr. Piper?

6 A. About a year now.

7 Q. Okay. And back on -- back in December of 2006 did you
8 have occasion to see him on a regular basis?

9 A. For about a week, two weeks.

10 Q. And where would you usually see him?

11 A. At Amanda's house.

12 Q. And Amanda, do you know her full name?

13 A. Colquitt.

14 Q. All right. Now, did you know his girlfriend Jennifer
15 Gregg?

16 A. Yeah, yes.

17 Q. Did you see her also in Amanda's house?

18 A. Yes.

19 Q. Back on December 21st 2006 were you with Mr. Piper that
20 day?

21 A. Yes.

22 Q. How did you come to to be with him or get with him that
23 day?

24 A. He came by, said he needed -- he's sorta panicky, said he
25 had to get to his girlfriend.

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. So he came by where?
- 2 A. Amanda's house.
- 3 Q. What street did she live on?
- 4 A. Gentry.
- 5 Q. Okay. And did you know what happened to the
- 6 girlfriend?
- 7 A. Said she's been in a wreck.
- 8 Q. All right. And did you go with him anywhere?
- 9 A. Yeah. Yeah.
- 10 Q. You did? What was the nature of him wantin' to -- what
- 11 was he wantin' to do?
- 12 A. I I don't really understand that part. He sai -- he
- 13 sai -- he just kept saying he needed to get to her and he
- 14 needed to go borrow some money.
- 15 Q. Okay. Do you know why he needed the money?
- 16 A. Gas or something I guess.
- 17 Q. All right. So did you leave with him?
- 18 A. Yeah.
- 19 Q. What was he driving?
- 20 A. A white Explorer.
- 21 Q. And where did you think you were going?
- 22 A. To borrow some money.
- 23 Q. All right. And where did you wind -- well, approximately
- 24 what time of the evening was this?
- 25 A. It wasn't real late. I don't know, nine. Nine maybe.

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. Nine or after nine?
- 2 A. Yeah.
- 3 Q. Okay. It was dark?
- 4 A. Was dark.
- 5 Q. All right. Well, where'd you go?
- 6 A. Whitney. I don't know the name of the road.
- 7 Q. You don't know the name of the road? Did you go anywhere
- 8 in between?
- 9 A. No.
- 10 Q. About how far is that location from Gentry Street?
- 11 A. Three miles, four miles.
- 12 Q. Three miles? And how long did it take you to get there?
- 13 A. Eight minutes.
- 14 Q. Did you know where you were going?
- 15 A. Not not going. I knew where we was at when we got
- 16 there.
- 17 Q. Okay. Did you yourself give him directions to go
- 18 anywhere?
- 19 A. No.
- 20 Q. Why did you ride with him?
- 21 A. He said he wanted somebody to ride with him. He wanted a
- 22 Amanda to go. She said she couldn't go 'cause she had to stay
- 23 with her mamma.
- 24 Q. So was he -- did you consider him a friend at that
- 25 time?

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

- 1 A. I didn't really know him at that time, went to see him at
2 her house a couple of times.
- 3 Q. Okay. So he was more of an acquaintance of yours?
- 4 A. Yeah.
- 5 Q. All right. But you road with him and you wound up in
6 Whitney.
- 7 A. (The witness nodded in the affirmative.)
- 8 Q. And you were in court yesterday. You saw the pictures?
- 9 A. Yeah.
- 10 Q. Is that (indicating) the house you went to?
- 11 A. Yeah.
- 12 Q. Is that located behind a church?
- 13 A. Yeah.
- 14 Q. All right. Tell us what happened when you got there.
- 15 A. We got there, we pulled right up beside the door. He got
16 out and he knocked. They said, "Who is it?"
- 17 He said, "Gary."
- 18 They said, "Come in," and um...
- 19 Q. Let let me ask you to pause right there. How close did
20 he park to the door?
- 21 A. Five foot from it.
- 22 Q. Five foot?
- 23 A. Here to that wall right there (indicating).
- 24 Q. Okay. Were you able to see inside the door yourself?
- 25 A. No, I I was pulled forward just a little bit.

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. So you couldn't see anything inside but you could
2 hear hear at least and you at least heard what happened at the
3 door?

4 A. Yeah.

5 Q. Okay. All right. And what what happened after they
6 said, "Come in."?

7 A. Um, my window was down a little bit 'cause I was smokin'
8 and this one was down a little bit. It sounded like talking
9 for a minute just -- and then it got a little bit loud. That
10 that drew my attention to the -- to more or less look that way
11 and, um, and then, uh, I heard a shot, one shot. It sounded
12 like something fell maybe a book. Something heavy fell. And
13 then three more shots and Gary walked out.

14 Q. Did you hear him demanding anything inside?

15 A. I heard somebody say, "Up it."

16 Q. "Up it."?

17 A. Yeah, I don't know who said it but somebody said, "Up
18 it."

19 Q. Okay. And what does that mean?

20 A. Slang for give it up I guess.

21 Q. Did you know if Mr. Piper had a gun?

22 A. No.

23 Q. You didn't see it before then?

24 A. Not not beforehand.

25 Q. Did you see it afterwards?

GREGG LEE - DIRECT EXAMINATION BY MR. BULSA

- 1 A. Afterhand.
- 2 Q. When did you see it?
- 3 A. As soon as he come out.
- 4 Q. Where was it?
- 5 A. In his hand.
- 6 Q. You didn't see it in his hand as he went in the door?
- 7 A. No, didn't see it on his person period.
- 8 Q. Okay. What kind of clothing was he wearing?
- 9 A. Maybe a jacket, pants, shirt.
- 10 Q. Was it something that the gun could have been put in a
- 11 pocket?
- 12 A. I guess. It was cold out. It was pretty cool.
- 13 Q. Um-hum. How was he acting when he came out?
- 14 A. Sorta spooked.
- 15 Q. Okay. What what happened when he came out?
- 16 A. Said, "The Mexican come around the corner. I had to
- 17 shoot him," said, "he had a gun."
- 18 Q. All right. And then what happened?
- 19 A. We tore outta there.
- 20 Q. Who was driving?
- 21 A. He was.
- 22 Q. And where'd you go?
- 23 A. Straight to Amanda's house.
- 24 Q. And what happened at Amanda's house?
- 25 A. He, um, he didn't tarry there long. He said he had to

GREGG LEE - CROSS-EXAMINATION BY MR. SCHULTZ

1 get to Jeni -- had to get to Jennifer and, um, Amanda's
2 wantin' to know what was going on. He didn't really say. He
3 left.

4 Q. Did you stay at Amanda's?

5 A. Yeah.

6 Q. Did you see him again after that?

7 A. I think he was in jail after that.

8 Q. Thank you, Mr. Lee. Answer any questions Mr. Schultz may
9 have.

10 THE COURT: Mr. Schultz, you can cross-examine.

11 MR. SCHULTZ: Thank you, Your Honor. May it please the
12 Court.

13 THE COURT: Yes, sir.

14 CROSS-EXAMINATION BY SCHULTZ:

15 Q. Mr. Lee, how how old are you?

16 A. 40.

17 Q. Okay. And you gave a statement to the police, correct?

18 A. Correct.

19 Q. All right. And in that statement you said it was true,
20 complete and accurate, correct?

21 A. True.

22 Q. So everything in that statement is true, complete and
23 accurate ---

24 A. (The witness nodded in the affirmative.)

25 Q. --- from what you remember?

GREGG LEE - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Yeah.

2 Q. And you gave this statement sometime in February,
3 correct?

4 A. Yeah.

5 Q. February of this year 2007?

6 A. Right.

7 Q. And this incident happened December 21st of 2006,
8 correct?

9 A. (The witness nodded in the affirmative.)

10 Q. All right. Now, in your testimony today you said you
11 pulled up to the door and you were the passenger, correct?

12 A. (The witness nodded in the affirmative.)

13 Q. You gotta say yes or no.

14 A. Right. Yes.

15 Q. Okay. I'm not sure if the jury can hear ya. You may
16 wanna lean back -- lean forward ---

17 A. Yes.

18 Q. --- a little bit. And you were the passenger in this
19 car?

20 A. That's right.

21 Q. Were the windows rolled down?

22 A. Very little. I was smoking 'cause I know mine was.

23 Q. Just a little?

24 A. Yeah, very little.

25 Q. All right. And you said according to your testimony here

GREGG LEE -- CROSS-EXAMINATION BY MR. SCHULTZ

1 today that you heard some shouting, correct?

2 A. Yeah.

3 Q. Now, isn't it a fact that you only knew Mr. Piper for
4 about a week?

5 A. That's right.

6 Q. So you didn't know him that well at all.

7 A. No.

8 Q. So you couldn't tell who his voice was as as
9 distinguished from another person's voice, correct?

10 A. I couldn't distinguish the voice, just know just what I
11 heard.

12 Q. But you heard -- what what did you hear again?

13 A. "Up it."

14 Q. "Up it."

15 A. Yeah.

16 Q. Okay. And but you -- you're not sure, in fact, you're
17 not really sure at all who's voice that was.

18 A. No.

19 Q. It could have been anybody else in that house, correct?

20 A. Could have been.

21 Q. Could have been. Now, according to your direct testimony
22 too is that when you and Gary pulled up to the house you knew
23 that -- what that house was?

24 A. Correct.

25 Q. Could you explain that a little bit?

GREGG LEE - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. It was a drug house. At one time it had been.
- 2 Q. Did you know it was still a drug house?
- 3 A. No, I hadn't been there.
- 4 Q. But you knew at one time that people sold drugs there.
- 5 A. Um-hum. Yes.
- 6 Q. Did you ever buy anything there?
- 7 A. Yes.
- 8 Q. What did you buy there?
- 9 A. Crack.
- 10 Q. Crack. What else did you buy there?
- 11 A. Crack.
- 12 Q. Do you still have a crack problem?
- 13 A. No, sir.
- 14 Q. Are you on drugs now?
- 15 A. No, sir.
- 16 Q. Now, when Gary was talking to you this night before you
- 17 came to Tharon Drive, did he say anything about robbin'
- 18 anybody?
- 19 A. No, said he had to come up with some money, had to get
- 20 some money, gonna borrow some money.
- 21 Q. But to your recollection he never said anything about
- 22 robbin' anybody ---
- 23 A. No.
- 24 Q. --- correct?
- 25 A. No.

GREGG LEE - REDIRECT EXAMINATION BY MR. BULSA

1 MR. SCHULTZ: Beg the Court's patience, Your Honor.

2 THE COURT: Yes, sir.

3 MR. SCHULTZ: Nothing further at this time.

4 THE COURT: Thank you. Redirect, Mr. Bulsa?

5 MR. BULSA: Yes, briefly, Your Honor.

6 THE COURT: All right.

7 REDIRECT EXAMINATION BY MR. BULSA:

8 Q. Mr. Lee, if Mr. Piper had said something about going to
9 rob somebody would you have ridden with him?

10 A. No. No.

11 Q. Thank you. That's all I have.

12 THE COURT: Thank you, sir. You can step down, Mr. Lee.

13 (Whereupon, the witness was excused.)

14 MR. BULSA: State calls Jennifer Gregg.

15 THE COURT: Ms. Gregg, come forward please, be sworn.

16 JENNIFER GREGG, having been first
17 duly sworn, testified as follows:

18 DIRECT EXAMINATION BY MR. BULSA:

19 Q. Good morning, Ms. Gregg.

20 A. Good morning.

21 Q. Please introduce yourself to the jury.

22 A. Jennifer Gregg.

23 Q. Make sure you speak up for us, okay?

24 A. Okay.

25 Q. Ms. Gregg, where do you live?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

- 1 A. Uh, 305 Mustang Drive.
- 2 Q. You live with your grandmother?
- 3 A. Yes.
- 4 Q. Okay. Is her name Nancy Gregg?
- 5 A. Yes.
- 6 Q. All right. Are you employed?
- 7 A. No, sir.
- 8 Q. Do you have any children?
- 9 A. Yes.
- 10 Q. How many?
- 11 A. One.
- 12 Q. And do you know Amanda Colquitt?
- 13 A. Yes, sir.
- 14 Q. Is a friend of yours?
- 15 A. Yes, sir.
- 16 Q. And did she at one time date Mr. Piper?
- 17 A. Um...
- 18 Q. Or you dated Mr. Piper.
- 19 A. I dated Mr. Piper.
- 20 Q. She dated Mr. Lee.
- 21 A. Yes.
- 22 Q. Call it that.
- 23 A. Yes, sir.
- 24 Q. Okay. So how long did you date Mr. Piper?
- 25 A. Um, probably from May or June of 2005 up until

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 December, ---

2 Q. Okay.

3 A. --- a little bit after.

4 Q. Okay. In the evening this happened, where were you?

5 A. Um, I was with him earlier during the day Christmas
6 shopping and whatnot and right before Christmas and later that
7 afternoon I ended up wreckin' my grandmother's car and got
8 some tickets and ended up going to jail that evenin'.

9 Q. Okay. Did you go to the hospital first?

10 A. Yes, sir.

11 Q. And how long did ya stay in jail?

12 A. Um, just -- I think they ended up -- I got a DUI so I
13 stayed there a pretty good while, I think eight hours and then
14 saw the judge. I got released in the wee hours of the
15 morning, I think, about five or six that morning.

16 Q. Okay. So when did you borrow your grandmother's car?

17 A. Um, earlier that afternoon. I took ---

18 Q. What kinda car was it?

19 A. 2006 Honda Accord.

20 Q. Did you borrow her car often?

21 A. Um, sometimes yes.

22 Q. Did you not have your own transportation?

23 A. Um, I did. I just liked hers better.

24 Q. And did Mr. Piper ride with you anywhere that day?

25 A. Um, he went with me Christmas shopping.

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 Q. Where'd you all go Christmas shopping?

2 A. Went to Wal-Mart, um, I think a couple other stores. I
3 don't recall exactly but I know we were at Wal-Mart.

4 Q. Okay. Do you know if your grandmother had a pistol in
5 that car?

6 A. Um, she had two.

7 Q. Okay. And what -- do you know where she kept 'em?

8 A. Um, one was in the middle console in between the driver
9 and passenger seat and the other was in the trunk where the
10 spare tire's kept.

11 Q. Okay. When you were driving that car around, did you
12 realize it was in there?

13 A. I realized the one was in the middle console which
14 normally wasn't kept there but had been put there probably
15 about a month prior.

16 Q. Do you know if Mr. Piper knew it was there?

17 A. Um, yes, sir.

18 Q. Did you know if he took that gun that day?

19 A. Not that day.

20 Q. Okay. You weren't aware whether he did or not?

21 A. Right.

22 Q. Did you later learn that he did?

23 A. Yes, sir.

24 Q. And how did you learn that he did?

25 A. Um, I learned the gun was gone the next morning when I

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 went to retrieve my stuff out of the car and my grandmother
2 asked me to make sure those -- that the guns were there and to
3 get those and one was there and the one in between the two
4 seats was not. And I didn't know then that he had it and a
5 few days later I had found out that he was the one who
6 actually had it.

7 Q. Did you actually ---

8 MR. BULSA: Your Honor, just for clarification purposes
9 I'm not sure what the witness is talking about. What day?

10 MS. GREGG: The 22nd of December.

11 THE COURT: What happened on the 22nd of December?
12 You ---

13 MS. GREGG: That's when I realized that the gun that was
14 kept in between the driver and passenger seat was gone from my
15 grandmother's car.

16 THE COURT: All right.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: Thank you.

19 BY MR. BULSA:

20 Q. You borrowed the car on the 21st.

21 A. Correct.

22 Q. Mr. Piper road with you at some time during the day?

23 A. Yes, sir.

24 Q. Did you -- he wasn't with you when you wrecked it, was
25 he?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 A. No, I had just, um, we had just departed.

2 Q. Where had you dropped him off?

3 A. Um, if I recall correctly there was another friend at --
4 we had stopped at Lil Cricket which was just maybe a block
5 from where I'd actually wrecked the car and he had
6 gotten out there with someone else.

7 Q. Okay. So he had just gotten out before you wrecked it?

8 A. Yes, sir.

9 Q. Okay. And then you went to the hospital, then you went
10 to the jail, you got released, the next day you went to get
11 your belongings.

12 A. Yes, sir.

13 Q. That's when you realized the pistol in the console was
14 not there.

15 A. Yes, sir.

16 Q. Do you remember what it looked like, the pistol?

17 A. It was a wood handle, um, not a shiny chrome but I guess
18 kind of a brush chrome looking Smith & Lady -- Smith & Wesson
19 Lady revolver.

20 Q. Does it look like State's Exhibit 28?

21 A. Yes, sir.

22 Q. Okay. It didn't have chew marks on it though, did it?

23 A. No, sir.

24 Q. Approximately how many days later did you realize that
25 Mr. Piper had taken that pistol from the car?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 A. Maybe three days, two, three days, a few days, it wasn't
2 too long.

3 Q. Did he tell you when he took that pistol?

4 A. Um, I was told ---

5 THE COURT: Wait a minute. You were told by whom?

6 MS. GREGG: Mr. Piper.

7 THE COURT: Okay.

8 MS. GREGG: That before I wrecked my car that, uh, I
9 ga -- I guess I told him he could take it. I didn't recall
10 that ---

11 BY MR. BULSA:

12 Q. Um-hum.

13 A. --- at all and, um, other than -- other -- I didn't -- I
14 don't recall giving it him. I don't -- I'm 99.9 percent sure
15 I would not have, you know, given him, you know, one of my
16 grandmother's guns and that's -- that was the first story I
17 got that, you know, I had actually given him permission to
18 take the gun. And later on I found out that Mr. Piper told me
19 that he had actually gotten it from between the console, out
20 of the middle console, between the seats while I was in the
21 store right before I came out and we departed.

22 Q. Are you telling us he told you two different stories?

23 A. Right.

24 Q. The first story was he led you to believe that you had
25 given him the gun?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 A. Right.

2 MR. SCHULTZ: Objection, Your Honor, hearsay.

3 THE COURT: It's from the defendant as I understand it
4 though, right?

5 MR. BULSA: Yes, sir.

6 MS. GREGG: Yes, sir.

7 THE COURT: That's right. That's not hearsay.

8 BY MR. BULSA:

9 Q. Now, when did you learn that something had happened the
10 evening that you were in the hospital and in jail?

11 A. Um, later later on the 22nd I went home after I got
12 released from -- I got picked up from the jail I went home and
13 if I recall right went to sleep a little bit 'cause I was
14 really tired and later that afternoon kinda towards the
15 evening I was, you know, I hang out with a bunch a friends in
16 Beaumont and I -- I'm pretty sure probably went to Amanda's
17 house and just -- I don't know. I know the people I hang out
18 with and I knew something was, you know, being whispered about
19 us I guess the best way to put it and it was a little bit -- I
20 knew something had happened that evening as for Mr. Piper
21 getting money. Now, what exactly happened ---

22 MR. SCHULTZ: Objection, Your Honor, hearsay.

23 THE COURT: Explain how she knew about him getting the
24 money that -- whether or not that's, uh...

25 MR. BULSA: Yes, sir.

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 BY MR. BULSA:

2 Q. Did you learn that from Mr. Piper?

3 A. Um, yes, sir.

4 THE COURT: Okay.

5 BY MR. BULSA:

6 Q. And explain how you learned that?

7 A. Well, when I was in -- I called Amanda's house while I
8 was in jail to let them know that's where I was. I didn't
9 know they, you know, they hadn't -- if they knew that I'd
10 wrecked my car, I was supposed to come back over there and I'd
11 wrecked my car, I didn't know if they knew so with my phone
12 call I called the -- I called from the jail to Amanda's house
13 and spoke to him and he said he was gonna get the money to to
14 get me outta jail which at the time I didn't -- hadn't seen a
15 judge so I didn't have a bond or, you know, didn't know if I
16 was gonna need money to get out.

17 Q. Okay. Did he tell you himself that something had
18 happened?

19 A. Um, not not the next day. A few days later when we were
20 riding around he did.

21 Q. Okay. You were riding around in the SUV?

22 A. Yes, sir.

23 Q. Ford Explorer?

24 A. Yes, sir.

25 Q. Okay. Would this be the same day you learned about him

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 having a pistol?

2 A. No, I think it was probably about two days after I knew
3 he had the pistol.

4 Q. Okay. So you learned that he had the pistol first?

5 A. Correct.

6 Q. When you learned he had the pistol, did you try to get it
7 back from him to give to your ---

8 A. Yes, sir.

9 Q. --- grandmother. I'm sorry?

10 A. Yes, sir.

11 Q. Did you get it back?

12 A. No, sir.

13 Q. Why not?

14 A. I was told I didn't want it back to ---

15 Q. By Mr. Piper?

16 A. Yes, sir. I was told that I didn't want to -- that the
17 gun was dirty and I didn't want the gun to be, you know, I
18 didn't want the gun to be taken back to my grandmother's house
19 given that it was a dirty gun, it had been used to commit some
20 type of crime at the time.

21 Q. Well, did you go into that with him?

22 A. Um, at the time I didn't. We were on the phone. He was
23 at somebody else's house. We didn't have a very lengthy --
24 lengthy conversation about it at that direct moment.

25 Q. Okay. Did you confront him about that?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 A. Later on yes, sir.

2 Q. When?

3 A. Um, probably the next time I saw him, I assume, probly
4 the next day.

5 Q. Okay. What was said at that time?

6 A. Um, we were riding around and I asked him where it was
7 and he said it was put up safe where nobody could get to it
8 and I asked him, you know, what, you know, what was dirty
9 about the gun, you know, what what had been done with it and
10 he presumed to tell me that the night I went to jail that he
11 was trying to get money to get me outta jail and there was
12 nobody to borrow any money from and that he was told there was
13 a house that was an easy an easy easy to rob and so they
14 had -- he had gone to the house which I presumed was the
15 one -- I I -- before this I, you know, kinda had heard about
16 somebody gettin' shot over on, I'm not sure the name of the
17 street but in Whitney and he presumed to tell me that he had
18 gone over there, him and Gregg had gone over there to rob the
19 people to get drugs and money and that when he walked in, I
20 don't know how he entered or any of that, but he walked in and
21 there's a gentleman sitting in the front room, a a black guy
22 in the front room and he was asking him for money and drugs
23 and he said he didn't have any. And when he was talking with
24 the gentleman, the gentleman in the front room, that a Mexican
25 guy came from the side and he went back there and was asking

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

- 1 him about, you know, to give him drugs and money and he
2 couldn't under -- understand him, he was, I assume, speaking
3 Spanish. While he was talking with, you know, trying to get
4 something from the Mexican, he turned back to check on the guy
5 in the den, the the black guy that was sitting in the living
6 room and I assume while he was, you know, checking on him that
7 the Mexican had gotten ahold of a gun during his checking on
8 the other guy that was in the room that he walked through and
9 they had struggled over the gun and the gun went off.
- 10 Q. And he told you his reason to go over there was to get
11 some money.
- 12 A. Right.
- 13 Q. And what did you do when he told you this information?
- 14 A. I didn't do anything right at that moment. I just kinda
15 absorbed it.
- 16 Q. Why didn't you do anything?
- 17 A. I'm riding around with somebody who just told me, you
18 know, they they shot somebody. I'm ---
- 19 Q. Well, ---
- 20 A. --- I'm scared.
- 21 Q. Well, let me ask you this: When you when you left him,
22 separated ---
- 23 A. Correct.
- 24 Q. --- from him that day, did you call the police or ---
- 25 A. Not ---

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 Q. --- go anywhere?

2 A. Not that specific time, no.

3 Q. Why not?

4 A. Honestly, I didn't wanna get involved.

5 Q. Okay. Were you at Amanda's house on Gentry Street when
6 the police came looking for Mr. Piper?

7 A. Yes, sir.

8 Q. Do you recall was that on the evening of the 26th, the
9 morning of the 27th?

10 A. Um, I do believe so. It was late, very late that -- at
11 night I know that.

12 Q. Okay. Were you aware that he fled the police?

13 A. Yes, sir.

14 Q. Did you later see the vehicle?

15 A. I didn't actually see the vehicle itself. I saw where it
16 was wrecked.

17 Q. Okay. And how could you tell it had been wrecked?

18 A. Because there was a piece of the front blinker or a
19 piece, I assume, it was probably the front, may have been the
20 back but the turn signal from one of the sides there was a
21 piece of it and a piece of -- from the front or the back
22 bumper like a rubber strip at a telephone pole right up the
23 street.

24 Q. Okay. Did you see him anymore that evening?

25 A. Not after the -- not after he wrecked the car and fled

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 from the police.

2 Q. Okay. Did you hear from him?

3 A. Um, he called my cell phone. It was real late during the
4 night and I'd actually fallen asleep. He had called my cell
5 phone from jail and left me a message telling me that he was
6 in jail and a couple of the reasons, you know, some of the
7 things he had done to get there and when I awoke, I called the
8 jail to find out myself.

9 Q. And did you ever have any con -- well, did he call you
10 from the jail often?

11 A. Many times.

12 Q. Did you ever have any conversations about the gun?

13 A. Yes, sir.

14 Q. What did he tell you about the gun?

15 A. That while after he wrecked the car he had taken off
16 running and hopped one or two fences up the street from where
17 I used to live in the neighborhood of, um, I used to live on
18 Kingston and Beaumont and up from my old house he had wrecked
19 the car and got out running and hopped one or two fences and
20 during during the process of him hoppin' the fences and trying
21 to get away he had he had dropped the gun, hidden, gotten rid
22 of the gun.

23 Q. Did you visit him at the jail as well?

24 A. A few times, yes.

25 Q. So you spoke to him in person and on the phone?

JENNIFER GREGG- DIRECT EXAMINATION BY MR. BULSA

1 A. Yes, sir.

2 Q. Ms. Gregg, at what point did you finally tell the police
3 this information?

4 A. About February of this year.

5 Q. Tell us why you finally went to 'em?

6 A. Guilty conscience.

7 Q. Okay. And how did you try to report this information?

8 A. Um, I I had called called through Crime Stoppers and said
9 something, uh, mentioned to the person I was stalking to but I
10 had dealt with somebody at Spartanburg County before and I
11 talked with him and ended up speaking with the detective
12 workin' the case about it.

13 Q. So you tried to do it anonymously?

14 A. Yes, sir.

15 Q. And were you were you paid any information through Crime
16 Stoppers?

17 A. Yes, sir.

18 Q. Paid paid for it, you were?

19 A. Yes, sir.

20 Q. Did you report this in order to get money?

21 A. No, sir.

22 Q. You reported it because why?

23 A. Because it was somebody's life was taken. I felt real
24 guilty that one, I hadn't done it beforehand and two, that I
25 knew that, you know, somebody had shot somebody else, you

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 know, for no -- pretty much no good reason, no reason at
2 all.

3 Q. Thank you, Ms. Gregg, answer any questions Mr. Schultz
4 has.

5 CROSS-EXAMINATION BY MR. SCHULTZ:

6 Q. Ms. Gregg, how old are you?

7 A. 26.

8 Q. How long have you known Mr. Piper for?

9 A. Probably about a year and a half now close to.

10 Q. About a year and a half, okay. When did you first
11 meet?

12 A. About May or June of last year.

13 Q. May or June of last year?

14 A. Um-hum.

15 Q. Meaning '06?

16 A. Yes, sir.

17 Q. Was it 2004 or 2006?

18 A. Well, he's been in jail for a year. Hold on.

19 THE COURT: I'm sorry, I couldn't hear that.

20 MS. GREGG: I said I I wasn't taking in account that he
21 had been in jail for a year.

22 THE COURT: Okay.

23 MS. GREGG: So 2004.

24 BY MR. SCHULTZ:

25 Q. 2004. So not 2006, 2004.

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. No, sir, I apologize.
- 2 Q. Okay. So you've known him for a long time.
- 3 A. Yes, sir.
- 4 Q. Are you abu -- are you abuser of prescription pills?
- 5 A. No, sir.
- 6 Q. No, you're not?
- 7 A. Um-um.
- 8 Q. Okay.
- 9 A. I have in the past but---
- 10 Q. You have in the past?
- 11 A. In the past but as of this moment no, sir.
- 12 Q. As of this moment. So yesterday you were?
- 13 A. No, sir.
- 14 Q. Okay. But in the past you were an abuser of prescription
- 15 pills, correct?
- 16 A. Yes, sir.
- 17 Q. What kind of pills?
- 18 A. Loritab and Oxycoton.
- 19 Q. Loritab, Oxycoton, Oxycoton. How 'bout Xanax?
- 20 A. I've prescribed it, wasn't abusing it.
- 21 Q. Okay. And when you say abusing it what do you mean?
- 22 A. Taking one or two more than I'm supposed to.
- 23 Q. And what what happens when a person does this?
- 24 A. I guess different combinations have you do different
- 25 things.

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Different combinations have you do different things. Do
2 do you become forgetful?

3 A. Sometimes.

4 Q. Okay. Your memory is not as clear as it should be,
5 correct?

6 A. In certain occasions I'd assume not.

7 Q. In certain occasions. Were you abusing medication around
8 the time that you reported this incident to the police?

9 A. No, sir.

10 Q. No?

11 A. No.

12 Q. Now, I talked to you before this, ---

13 A. Um-hum.

14 Q. --- correct? And you did say to me that Gary never
15 talked to you about this incident, did he?

16 A. At the time I didn't a hundred person recollect exactly
17 everything that was said.

18 Q. You didn't a hundred percent recollect ---

19 THE COURT: You have to let her finish the answer please,
20 sir, Mr. Schultz, if you would.

21 MS. GREGG: As I told you that when I read my statement
22 or the interview that I gave at Spartanburg County with the
23 detective, I obviously told you that I wasn't -- I could not a
24 hundred percent tell you that everything in there I remembered
25 fact for fact and like it happened yesterday but if I told

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 them that, there was truth to it.

2 Q. So there was truth to it but you didn't recollect it a
3 hundred percent is what ---

4 A. Not ---

5 Q. --- your testimony is today, correct?

6 A. Not every single word in it.

7 Q. Not every single word but still you don't remember
8 clearly what happened or what somebody said?

9 A. Depends on which, you know, exactly what you're
10 talking -- I mean, you're kinda being vague on ---

11 Q. Isn't it true that you ---

12 THE COURT: Please, sir, Mr. Schultz.

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: You're gonna have to let her finish the
15 answer. Thank you.

16 MR. SCHULTZ: Yes, sir, Your Honor.

17 THE COURT: All right. Go ahead.

18 MS. GREGG: Can you give me an instance, you know,
19 something you're specifically -- you're kinda being general.

20 BY MR. SCHULTZ:

21 Q. Isn't it true that you've heard most of what happened
22 that night through hearsay?

23 A. I've heard some, not everything.

24 Q. But you've heard some, correct?

25 A. Correct.

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Did you go to the police with this information that you
2 heard through hearsay?

3 A. Yes, sir.

4 Q. So your testimony is today that you talked to the police
5 based upon what you heard through third parties?

6 A. And what I was told.

7 Q. But a lot of it you heard through other people,
8 correct?

9 A. Some. Not a lot but some.

10 Q. Let's go back to your relationship with Mr. Piper. He
11 ever cheated on you?

12 A. Yes.

13 Q. He did, didn't he?

14 A. Um-hum.

15 Q. Did it cause you to get mad?

16 A. Who wouldn't? I was a little upset but it was in the
17 first month or so of us talking and initially dating so it --

18 Q. But you got angry, right?

19 A. I was upset with it, yeah.

20 Q. As anybody would?

21 A. Of course.

22 Q. When he was in jail after his arrest, did he write any
23 letters to anybody?

24 A. Uh, only wrote 'em to myself and Amanda. I'm sure he
25 probably wrote ta, you know, anybody that, you know, he was

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 friends with.

2 Q. You find out about any letters that he may have wrote to
3 some of his other girlfriends?

4 A. I knew he wrote, you know, real sweet kinda lovey dovey
5 letters to Amanda.

6 Q. But you still had a relationship with him at this point,
7 correct?

8 A. In the first couple months, yes.

9 Q. In the first couple months?

10 A. Um-hum.

11 Q. Of this year?

12 A. Right after it happened so yes.

13 Q. Okay. So you still had a relationship with him?

14 A. Yes.

15 Q. And he was writing letters from the jail to other women,
16 correct?

17 A. Um-hum.

18 Q. Okay. Did that make you mad?

19 A. No, because they had -- she knew him beforehand and they
20 somewhat had a relationship before I was with him so...

21 Q. So it's your testimony today, you want this jury to
22 believe that he was writing in your words "lovey dovey
23 letters" to other women and as a girlfriend of Gary that
24 didn't make you mad?

25 A. He's in jail. What can he do from jail?

JENNIFER GREGG -- CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. You didn't get a little jealous about that at all?

2 A. Um-um. Not with Amanda, no. I read the letters. I'd
3 write my letters with her. We'd correspond, her and I, to
4 letters to him. It wasn't ---

5 Q. But you -- go on. I'm sorry.

6 A. I said it wasn't like a behind my back thing. They were
7 friends and together before I knew him and was with him so no,
8 it wasn't a, you know, "Oh, I'm upset you're writing her." I
9 read 'em. She read mine. We corresponded together. It
10 wasn't a, you know, behind my back deceitful thing.

11 Q. But still it's your testimony today that you weren't
12 angry about this?

13 A. The letters to Amanda, no.

14 Q. Letters to other woman?

15 A. I don't know a hundred percent if he's written letters to
16 other women, may have.

17 Q. But when I interviewed you yesterday there, you said that
18 that that indeed happened and that made you angry, didn't
19 didn't it?

20 A. When he cheated on me I was upset. I said ---

21 Q. He cheated ---

22 A. --- I'm ---

23 Q. --- on you. You were angry.

24 A. I was upset but who wouldn't be?

25 Q. And when he cheated on you when did -- where did you find

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 him?

2 A. At Amanda's house.

3 Q. At Amanda's house?

4 A. Um-hum.

5 Q. Who was he cheating with?

6 A. A girl, I think her name's Clarisa. We called her, uh,
7 she had a real bad perm. We called her poodle girl.

8 Q. And what kind of evidence did you have that he was
9 cheating on her?

10 A. I found 'em in the bed together.

11 Q. Found 'em in the bed together.

12 A. Um-hum.

13 Q. Were they naked?

14 A. No.

15 Q. But you found 'em in bed together.

16 A. Yes, sir.

17 Q. And that made you furious, didn't it?

18 A. Like I said, I'd only been with him -- it was the very
19 beginning. I'm not -- I think that may have actually been
20 like within the first week or two of us actually like dating
21 instead of talking but it was where he was staying at and I
22 knew the people that came in and out. I might say it was to
23 be expected but I was upset but it wasn't a complete hundred
24 percent shock, no.

25 Q. You were upset though?

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. (The witness nodded in the affirmative.)
- 2 Q. Now, you testified that you did have a relationship with
- 3 Mr. Piper, with Gary, we know that. How many times did you
- 4 call him at the jail?
- 5 A. I can't call him at the jail.
- 6 Q. Okay. How many times did he talk to you?
- 7 A. As much as I put money on the phone for him to call ---
- 8 Q. So it was you ---
- 9 Q. --- very regularly.
- 10 Q. So it was you that had to instigate the conversation,
- 11 correct, by putting money on the phone?
- 12 A. Yes.
- 13 Q. Okay. So you wanted to talk to him, correct?
- 14 A. I wanted ta keep in touch, yeah.
- 15 Q. Okay, even when all this stuff was going on at the
- 16 beginning of this year?
- 17 A. And it didn't last long. It was like January and like
- 18 the first part of February. It wasn't a, you know, an
- 19 ongoing, you know, phone thing after the first of the year.
- 20 Not too much after the first of the year did I speak with him
- 21 too much anymore.
- 22 Q. Not after the first of the year?
- 23 A. Some after the first but it wasn't, you know, I'm sure
- 24 January and maybe the beginning, maybe until the end of
- 25 February but after that I didn't speak with him on a, you

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 know, weekly three or four time a day basis, no.

2 Q. But you, nevertheless, you continued to talk with him?

3 A. Yes.

4 Q. Even after he supposedly told you what happened that
5 night, correct?

6 A. And I also -- yes, and I also tried not to speak with
7 him. I knew somebody else that was in jail and they were
8 calling and if I had money on the phone it didn't, you know,
9 only allow one person to call from the facility, anyone could
10 call and he would call and I would reject the calls.

11 Q. But nevertheless you talked with him, correct?

12 A. Oh, yes.

13 Q. Several times in fact.

14 A. Um-hum.

15 Q. So you were trying to get this relationship started
16 again.

17 A. Can't start something when you can't physically be with a
18 person.

19 Q. But yet you were talking with him, correct?

20 A. I didn't -- yeah, we talked.

21 Q. Okay. What kind of -- what was the tenor of the
22 conversations? Were they just straight business or was it
23 lovey dovey stuff as you said?

24 A. Mix a both.

25 Q. So it was lovey dovey stuff, wasn't it?

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. Yeah.
- 2 Q. Okay. So by your own admission you did still have a
3 relationship with Mr. Piper back then.
- 4 A. (The witness nodded in the affirmative.)
- 5 Q. Did Mr. Piper treat you right?
- 6 A. Yeah.
- 7 Q. Yeah?
- 8 A. Yes.
- 9 Q. But he cheated on you?
- 10 A. It was in the very beginning. I didn't hold that -- I,
11 you know, dated him after that for many months so I didn't
12 hold that, you know, against him in, you know, ill will or
13 whatnot. I'm not even sure if we were actually dating at that
14 time. It was in the very beginning of us, you know, meeting
15 and speaking and talking with each other.
- 16 Q. Were you given any money?
- 17 A. Yes, sir.
- 18 Q. I didn't say when. Where were you given money?
- 19 A. From Crime Stoppers.
- 20 Q. From Crime Stoppers.
- 21 A. Um-hum.
- 22 Q. How much were you given?
- 23 A. Two thousand dollars (\$2,000).
- 24 Q. Two thousand dollars (\$2,000). That's a lotta money. Do
25 you work?

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Not at this time, no.

2 Q. Did you work at the time?

3 A. I don't recall. I don't -- no, sir.

4 Q. So you didn't work at the time and you needed that money,
5 didn't you?

6 A. Yes, sir, I have a son.

7 Q. Okay. So you really needed that money, correct?

8 A. Yeah, and I just wrecked -- didn't have a car, wrecked
9 it.

10 Q. So you you wrecked it? You wrecked the car and you
11 needed some money, you have a son and the best way for you to
12 get back at Mr. Piper, a boyfriend that cheated on you, was to
13 make up a story about him, isn't that right?

14 A. No. What reason do I have to get back at him? For
15 cheating on me? Why would I stay with him for eight, nine
16 months after that if that really bothered me to that effect.

17 Q. Nevertheless, according to your own testimony today is
18 that he was writing love letters to other women and you didn't
19 like that, correct?

20 A. A friend who is ---

21 Q. Did you like it or no?

22 A. I mean, not every time, no.

23 Q. Okay.

24 A. Not some of the things I guess that were, you know, said,
25 you know. Like I said, we corresponded, her and I, sometimes

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 on things and I would talk to him and she would talk to him
2 separately and, you know, they would talk about things that,
3 you know, necessarily him and I didn't talk about and, you
4 know, maybe I didn't, you know, agree with, you know, the way
5 they may have interpreted something or, you know, some things
6 that were being said ---

7 Q. When you say they ---

8 A. --- at the time. Amanda and Gary in their letters.

9 Q. In their letters but you still not like that. It made
10 you upset, correct, by your own testimony.

11 A. A few of 'em.

12 MR. SCHULTZ: Beg the Court's patience, Your Honor.

13 THE COURT: Yes, sir.

14 BY MR. SCHULTZ:

15 Q. Now, you were in a car accident on the 21st of December?

16 A. Yes, sir.

17 Q. All right. And supposedly what day did Gary tol --
18 tol -- tell you about this stuff?

19 A. I don't know the exact date.

20 Q. Okay. But was it around that time?

21 A. Around the 21st?

22 Q. Yes.

23 A. Told me about which stuff? The ---

24 Q. The incident at Tharon Drive.

25 A. Nope 'cause it hadn't happened yet when I had the car

JENNIFER GREGG - CROSS-EXAMINATION BY MR. SCHULTZ

1 accident. It happened later that evening.

2 Q. Um-hum, I understand that but you were in a car accident.
3 What time did you get -- when did you get out of the
4 hospital?

5 A. Um, I'm not exactly sure. I was taken straight from the
6 hospital to Spartanburg County.

7 Q. Were you on painkillers back then?

8 A. Um, I do believe so.

9 Q. Okay. So you were on painkillers and you admitted to
10 this jury that you're a frequent abuser of prescription pills.

11 A. Correct, but not at that time.

12 Q. So when Mr. Piper may have told you about this, you can't
13 say that your memory was a hundred percent correct, correct?

14 A. I wasn't abusing prescription medication many months
15 before that.

16 Q. But nevertheless, you were taking pain killers at this
17 time, correct, for your car accident?

18 A. Not for the car accident, no ---

19 Q. For what then?

20 A. Because I have a degenerating disc disease in my back. I
21 have constant pain in my lower back and my legs from my back
22 from my disc and I'm -- my L4 and L5 are fused together on the
23 left side. I have constant pain.

24 Q. Okay. But at the same time you are on painkillers and
25 painkillers do have some side effects, correct?

JENNIFER GREGG - REDIRECT EXAMINATION BY MR. BULSA

1 A. I assume so, yes.

2 Q. One of the side effects is that you may not remember
3 things as clearly as some other people that are not on
4 prescription medication, correct?

5 A. I don't think that's a side effect of the painkillers. I
6 think that's, you know, other other, you know, uh,
7 medications. I've never been on, you know, something for pain
8 to make you forget.

9 Q. Okay. Just one further question. Again, how much money
10 were you paid to make the story up about Gary?

11 A. I wasn't paid anything to make it up.

12 Q. How much money were you paid?

13 A. Not to make it up and to tell the truth two thousand
14 dollars (\$2,000).

15 Q. Two thousand dollars (\$2,000). Thank you.

16 THE COURT: Thank you. Redirect, Mr. Bulsa?

17 MR. BULSA: Just briefly, Your Honor.

18 REDIRECT EXAMINATION BY MR. BULSA:

19 Q. Ms. Gregg, the defendant and Mr. Schultz asked you
20 questions about hearsay. The information you testified today,
21 did it come from the defendant telling you what did happen and
22 what he had done?

23 A. Yes, sir.

24 Q. All this stuff about girlfriends and all that that was in
25 the past ---

JENNIFER GREGG - RECROSS-EXAMINATION BY MR. SCHULTZ

1 A. I ---

2 Q. --- and over?

3 A. I've -- like -- I've never known him to have any other
4 girlfriend besides myself and the thing between him and Amanda
5 corresponding letters was, you know, friendly, you know.
6 They, you know, they love each other as friends and that's the
7 way it was expressed in the letters. It wasn't, you know,
8 like a second girlfriend type a letter.

9 Q. I believe you testified that you you went to the police
10 out of a guilty conscience, that you tried to remain
11 anonymous.

12 A. Yes, sir.

13 Q. In fact, you didn't even wanna have to come to court, did
14 you?

15 A. No, sir.

16 Q. Thank you.

17 THE COURT: Thank you, ma'am. You can step down, Ms.
18 Gregg.

19 MR. SCHULTZ: Your Honor, if I may just one brief
20 question on recross.

21 THE COURT: Okay. Have a seat, Ms. Gregg. All right.
22 In response to those questions go ahead.

23 RECROSS-EXAMINATION BY MR. SCHULTZ:

24 Q. You just testified in your redirect you've not known him
25 to have any girlfriends other than myself, correct?

JENNIFER GREGG - RECROSS-EXAMINATION BY MR. SCHULTZ

1 A. Correct.

2 Q. Yet at the same time you said here today in my cross-
3 examination that you caught Mr. Piper in bed with another
4 woman, correct?

5 A. But I'm not sure we were dating at that time. You can't
6 have a girlfriends if ---

7 MR. SCHULTZ: That's that's all, Your Honor. Thank you.

8 THE COURT: All right. Thank you. Any follow up on that
9 point, Mr. Bulsa?

10 MR. BULSA: No, sir.

11 THE COURT: Now, Ms. Gregg, you can step down. Thank
12 you.

13 (Whereupon, the witness was excused.)

14 MR. BULSA: You're Honor.

15 THE COURT: Yes, sir.

16 MR. BULSA: Your Honor, we're moving a little quicker
17 than I thought. One of my officers is not quite here.
18 He's -- I'm told he's on the way.

19 THE COURT: Okay.

20 MR. BULSA: We can take a brief ---

21 THE COURT: That'll be your next witness?

22 MR. BULSA: Yes, sir, it -- to keep the continuity of the
23 case.

24 THE COURT: Okay. We can take a brief break at this --
25 he's on the way. Does that mean like he's in the building or

MOTIONS AND MATTERS

1 he's...

2 MR. BULSA: I'm not sure. I don't know exactly where he
3 is. This other officer's gonna help.

4 THE COURT: Okay. If you'll check. If he's in the
5 building, we'll wait. If he's on the way, we'll take a brief
6 break. I don't wanna -- as long as we get a quick report.

7 Ladies and gentlemen, it's not unusual when in the trial
8 of a case, in this case that has twenty-five potential
9 witnesses listed that that sometimes the scheduling gets off a
10 little bit one way or the other. Obviously, it doesn't make
11 sense to have twenty-five people sitting in the courtroom for
12 three days to be called at at will and so both sides try to
13 arrange their witnesses in such a way as not to cause them any
14 great inconvenience and officers are on duty sometimes and so
15 they have to be called from their duty stations to testify.
16 If the next officer is not here then we will take a brief
17 break.

18 MR. BULSA: Your Honor, I just looked back and I have
19 another witness that I think I can go ahead and put in and
20 she's here a little early so I'll go ahead and call her.

21 THE COURT: All right. That'll be fine.

22 MR. BULSA: Nancy Gregg.

23 THE COURT: Just forget everything I just told you,
24 ladies and gentlemen (laughter).

25 Ms. Gregg, come forward please and be sworn.

NANCY GREGG - DIRECT EXAMINATION BY MR. BULSA

1 NANCY GREGG, having been
2 first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. BULSA:

4 Q. Good morning, ma'am, would you please introduce yourself
5 to the jury.

6 A. My name is Nancy Gregg.

7 Q. Make sure you speak up, okay?

8 A. Nancy Gregg.

9 Q. Okay. And, ma'am, are you employed?

10 A. Yes, I am.

11 Q. Where do you work?

12 A. I teach music at Gardner-Webb University.

13 Q. Okay. And that's in North Carolina?

14 A. That's correct.

15 Q. Are you the grandmother of Jennifer Gregg?

16 A. I am.

17 Q. And does she live with you?

18 A. She lives with me, yes.

19 Q. Okay. I'm gonna go straight to the the case here. Did
20 you let her borrow your car back on December 21st of 2006?

21 A. I did.

22 Q. Okay. And was there anything -- was there a pistol in
23 that car?

24 A. Yes, there was.

25 Q. Okay. What kind of pistol was it?

NANCY GREGG - DIRECT EXAMINATION BY MR. BULSA

1 A. It was a a beautiful Lady Smith with a rosewood carved
2 grip. It was a gift to me for a Christmas present from my
3 son.

4 Q. Okay. Did you have another pistol in the car as well?

5 A. There was one in the trunk that was -- belonged to my
6 son.

7 Q. Okay. All right. Did you have other guns yourself?

8 A. Pardon?

9 Q. Did did you have any other weapons? Guns?

10 A. No.

11 Q. Okay. I don't mean to get personal but why would you
12 wanna keep that gun?

13 A. Why would I want to keep that gun?

14 Q. Yes, ma'am.

15 A. Well, I usually kept it in my bedside table in the house
16 but my granddaughter's little boy Tyler became interested in
17 it and it made me concerned for his welfare and so I put it in
18 my car in the trunk -- in the console.

19 Q. Okay. All right. Let me show you State's Exhibit ?

20 No. 28. Is this your weapon, ma'am?

21 A. (The witness examined the exhibit.) Yes, but it doesn't
22 look like it used to. It's been horribly mutilated.

23 Q. On the handle?

24 A. Pardon?

25 Q. On the handle?

NANCY GREGG - DIRECT EXAMINATION BY MR. BULSA

1 A. The handle, yes.

2 Q. Chewed up so to speak?

3 A. That's right. It was in perfect condition.

4 Q. Was it relatively new?

5 A. I had had it for a long time, probably about fifteen ---

6 MR. SCHULTZ: Objection,

7 MS. GREGG: --- years.

8 MR. SCHULTZ: --- Your Honor. I'm not sure what the
9 relevance of of this direct testimony is.

10 THE COURT: It has to go to the identification of the gun
11 and she's just describing that it -- its condition when she
12 last saw it as to the condition today that I'll I'll allow it.
13 I don't think it's outside the pale. Go ahead.

14 BY MR. BULSA:

15 Q. So you had it for a number a years? What kind ---

16 A. I was ---

17 Q. --- of condition did you ---

18 A. I think it was probably about fifteen years but it had
19 been safely in in my house.

20 Q. Okay. Was it damaged in any way?

21 A. No, not in any way.

22 Q. Okay. When did you learn that your granddaughter had
23 wrecked the vehicle?

24 A. I'm sorry? I didn't underst ---

25 Q. When did you learn that she had wrecked that that car

NANCY GREGG - DIRECT EXAMINATION BY MR. BULSA

1 that she was driving?

2 A. It was about, I think about 4:30 on the afternoon of
3 December 21 ---

4 Q. And do ---

5 A. --- of '06.

6 Q. Do you remember about when you let her borrow the car?

7 A. I -- I'm not sure. I believe it was somewhere around ten
8 in the morning ---

9 Q. And that ---

10 A. --- of the same day.

11 Q. And was the pistol in the car at that time?

12 A. Yes.

13 Q. Okay. When did you realize the pistol was missing?

14 A. Well, at the scene of the accident we, after they had
15 taken the car away, we searched -- well, no it wasn't that
16 day. Um, we went to the, to empty things out of the car at
17 the -- where they had -- the wrecker had taken it and when
18 we -- looking through we we didn't find it so then we went
19 back to the scene of the accident and searched. My former
20 daughter-in-law and her husband really did the searching and
21 did it on more than one occasion. I don't recall precisely
22 when but we didn't find it. They didn't find it.

23 Q. Did you ever report it missing to the police?

24 A. Yes, I did.

25 Q. Approximately when?

NANCY GREGG - DIRECT EXAMINATION BY MR. BULSA

1 A. I I meant to look up that date. Um, I think it was after
2 Christmas. This was Christmas and there was a lot going on
3 and I think it was after Christmas, sir, but I'm not I'm not
4 really sure.

5 Q. Were you ever were you ever told that they had recovered
6 it?

7 A. Yes, I had a call. I don't have those dates in my mind.
8 I'm sorry.

9 Q. That's fine, just approximate.

10 A. Uh, but I had a call from the sheriff's office one
11 afternoon and they said they'd recovered my gun and I said,
12 you know, I was very happy and I said I would come down and
13 get it and they said that I could not do that, that it had
14 been used in a in a crime and that I would have to wait to get
15 it back.

16 Q. Now, Ms. -- Mrs. Gregg, did you know Gary Piper?

17 A. Yes, I do.

18 Q. Did you know he was seeing your daughter or your
19 granddaughter?

20 A. Yes, I did.

21 Q. Did you ever give him permission to have that pistol?

22 A. Absolutely not.

23 Q. Thank you, ma'am, answer any questions Mr. Schultz may
24 have.

25 THE COURT: Mr. Schultz, you can cross-examine.

NANCY GREGG CROSS-EXAMINATION BY MR. SCHULTZ

1 CROSS-EXAMINATION BY MR. SCHULTZ:

2 Q. Just a few brief questions. Mrs. Gregg, is it?

3 A. Gregg, yes.

4 Q. Gregg. Okay. Ms. Gregg, how old are you?

5 A. Why do you ask that question? I I -- that's not
6 something that I ---

7 Q. Well, it's important for the ---

8 A. --- will say unless unless it's -- unless the judge
9 orders me to.

10 THE COURT: If if Mr. Schultz can give me some good
11 reason as to why he has to know your age, I'll be glad to
12 consider it. Mr. Schultz.

13 MR. SCHULTZ: I usually ask the question on
14 cross-examination, Your Honor, but in this cross-examination I
15 I will not.

16 THE COURT: I would think it'd be a good idea not to ask
17 a lady who has two guns and uh...

18 (Laughter.)

19 MR. SCHULTZ: I think so, Your Honor.

20 THE COURT: All right.

21 MR. SCHULTZ: Just a couple questions.

22 THE COURT: I'm sorry.

23 BY MR. SCHULTZ:

24 Q. Did you know Gary Piper?

25 A. I did know him, yes.

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. You knew of the relationship that Jen and Jen,
2 Jennifer Gregg, your granddaughter had with Mr. Piper,
3 correct?

4 A. I knew that he believed the ray -- relationship was very
5 serious and I knew that she did not.

6 Q. Okay.

7 MR. SCHULTZ: That's all I have, Your Honor. Thank you.

8 THE COURT: Thank you, Mr. Schultz.

9 Anything further, Mr. Bulsa?

10 MR. BULSA: No, sir.

11 THE COURT: Ms. Gregg, you can step down. Thank you,
12 ma'am.

13 MS. GREGG: Thank you.

14 MR. BULSA: May I ask that she be excused?

15 THE COURT: Without objection Ms. Gregg can be excused.
16 Thank you.

17 (Whereupon, the witness was excused.)

18 MR. BULSA: The state calls Officer Brown.

19 THE COURT: Officer Brown, come forward please, be sworn.

20 OFFICER GEORGE COLLINS BROWN,
21 having been first duly sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA:

23 Q. Please introduce yourself to the jury.

24 A. My name is George Collins Brown. I'm a police officer
25 for Spartanburg City Public Safety Department.

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 Q. And how long have you been a police officer?

2 A. January will be nineteen years.

3 Q. And all that with the Spartanburg Public Safety?

4 A. Yes.

5 Q. And what are your duties with the public safety
6 department?

7 A. Currently and at the time of this incident I'm on patrol
8 on third shift.

9 Q. Okay. You change duties?

10 A. I beg your pardon?

11 Q. You do something different now?

12 A. No, currently, currently and at that time of this ---

13 Q. Okay.

14 A. --- incident.

15 Q. All right. Now, Officer Brown, on December the 27th in
16 the early morning hours, did you have an occasion to go to
17 Gentry Street to look for Gary Piper?

18 A. I did.

19 Q. Okay. And did you receive information that he was in a
20 Ford Explorer?

21 A. Yes, actually detailed information that he was in a white
22 Ford Explorer with South Carolina tag 698TUZ.

23 Q. Okay. And did you see that vehicle?

24 A. I did.

25 Q. Where approximately was it when you saw it?

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 A. It was pulling out of the yard of 411 Gentry Street onto
2 Gentry Street and then turning onto Camp Street towards
3 Phifer.

4 Q. Okay. And what did you do when you saw that vehicle?

5 A. Um, I tried to catch up to it on on Camp Street to verify
6 the tag. Uh, as as I was gettin' to the inter -- as he got to
7 the intersection he slowed down. He he didn't stop. He was
8 still moving pretty fast, ran through the stop sign but it
9 was -- he slowed enough to where I could see the tag. As we
10 turned onto Phifer, I activated my blue lights and siren to
11 try to stop the vehicle. At that point he accelerated and per
12 our policy at that point basically all I had was a subject
13 with, possibly with probation and parole warrants and traffic
14 violations so I turned off my blue lights and siren, not
15 permitted to pursue under those circumstances. Um...

16 Q. Okay. Now, let me ask you what kind of neighborhood are
17 we talking about?

18 A. A a mill hill, real close residential neighborhood,
19 houses are very close together, a lot of cars, very narrow
20 streets, um...

21 Q. Do you have it noted what time in the morning this was?

22 A. It was at 1:40 in the morning.

23 Q. Okay. Were there any other cars on the street?

24 A. Um, there's -- other than parked cars, no, but there were
25 a lotta parked cars along the side of the street there.

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. All right. And you said he accelerated as you
2 turned on your blue lights?

3 A. That's right.

4 Q. And how far did you follow him?

5 A. Um, as soon as he accelerated, I turned the blue lights
6 and sirens off. I continued to go the same direction that he
7 was going because we had several officers in the neighborhood.
8 It's a it's a relatively small neighborhood and the way that
9 he was he was driving I I didn't think he was gonna get very
10 far. I I saw him again. I believe he was going down Camp or
11 towards Kingston Street. I lost sight of him as I went down
12 Kingston Street but as I got to the intersection I could see
13 him coming outta the yard of a house there at the corner of
14 Kingston and Camp and he had wrecked into the house, hit the
15 concrete steps, knocked over the little concrete block siding
16 of the steps, apparently blew out his left front tire when he
17 did that 'cause when he came back out onto the road, he was
18 swerving all over the road and still trying to accelerate.
19 Again, I did not try to pursue at that point. I didn't wanna
20 cause him to to try and run and wreck and cause more damage
21 but I wanted to continue that way in case he did wreck and
22 cause damage or or whatever so as I got to -- I lost sight of
23 him again as he went up Kingston Street. As we got to Liberty
24 Street, I saw the vehicle again and it had, I could see the
25 stop sign on the other side of the road was knocked over and

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 the vehicle had come to rest up in a yard and hit another
2 embankment and come to rest in some bushes in in the yard. At
3 that point I saw the driver on the sidewalk. The driver's
4 door was open. He had apparently fallen as he was trying to
5 flee. He got up. As he got up and ran to over into the back
6 yar -- climb over a fence in the backyard of the house there,
7 I saw officer Norkett coming up, our canine officer, she was
8 coming up the street the other direction in her car. I put my
9 spotlight on him. At that point she also indicated to me that
10 she saw him as well. I stayed with the vehicle as she went to
11 search for him.

12 Q. Okay. So had you radioed for other off -- officers?

13 A. Yes, it's it's -- there were already other officers in
14 route when the call initially came in.

15 Q. Okay.

16 A. And then when I saw the vehicle and and attempted to to
17 stop it basically our just pretty much our whole shift was was
18 over there.

19 Q. Okay. And was he apprehended that evening?

20 A. He was.

21 Q. Okay. And you charged him with failing to stop?

22 A. Uh, failing to stop for blue lights and siren also,
23 uh ---

24 Q. Okay. All right. Okay. Let me show you a couple a
25 pieces of maps of Spartanburg County.

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 (Map marked State's Exhibit No. 30 and blow up of map
2 marked State's Exhibit No. 31 for identification.)

3 MR. BULSA: Your Honor, I've shown these to defense
4 counsel earlier and he has agreed to their entry, ---

5 THE COURT: All right.

6 MR. BULSA: --- State's Exhibits 30 and 31.

7 (State's Exhibit Nos. 30 and 31 were admitted into
8 evidence.)

9 BY MR. BULSA:

10 Q. State's Exhibit 30 is a page out of a map book. State's
11 Exhibit 31 is a portion of that blown up to show the
12 neighborhood in question.

13 A. Right.

14 Q. If I could, Officer, get you to highlight the names of
15 those streets.

16 A. You want me to highlight the streets, ---

17 Q. Yeah.

18 A. --- the route that he took?

19 Q. Yeah, if you could.

20 A. Okay. (The witness complied.)

21 Q. Okay. You got it?

22 A. Yes, sir.

23 Q. Could you estimate the speed at which he was going?

24 A. Um, probably the highest speed that he achieved was on
25 Phifer and I would say he was probably going about roughly 60

OFFICER GEORGE COLLINS BROWN - DIRECT EXAMINATION BY MR. BULSA

1 miles an hour at that point.

2 Q. What's the speed limit in a neighborhood of that size?

3 A. Neighborhood that size is, um, I I believe the entire
4 neighborhood there is 25 miles an hour 'cause it is such small
5 streets.

6 (Pause.)

7 Q. All right. Do you do you know or have information on the
8 street where he was apprehended?

9 A. Um, I I didn't go to that, uh, location so I I could
10 really only testify to what other officers had told me.

11 Q. Officer Norkett actually.

12 A. Officer Norkett and Spivey I believe.

13 Q. Okay.

14 MR. BULSA: Your Honor, publish them to the jury State's
15 Exhibit 31.

16 THE COURT: All right. Thank you. Okay.

17 (Whereupon, State's Exhibit No. 31 was published to the
18 jury.)

19 BY MR. BULSA:

20 Q. Okay. You've highlighted the area. This neighborhood is
21 off of Isom Street?

22 A. That's correct.

23 Q. Is that the -- what's the name of that mill road in that
24 would have been there?

25 A. Beaumont.

OFFICER GEORGE COLLINS BROWN - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Beaumont. Okay. All right. And he wrecked at the
2 intersection there of Kingston and Liberty?

3 A. That's correct.

4 Q. Thank you, Officer, that's all I have. You can answer
5 any questions Mr. Schultz has.

6 MR. SCHULTZ: Briefly, Your Honor.

7 THE COURT: Yes, sir, Mr. Schultz, you can cross-examine.

8 MR. SCHULTZ: Okay.

9 CROSS-EXAMINATION BY MR. SCHULTZ:

10 Q. Officer, you said in your testimony, maybe I didn't under
11 you correctly, that at that time you were not permitted to to
12 stop anybody in that neighborhood or...

13 A. I I was not permitted to pursue him, uh, once he failed
14 to stop.

15 Q. Okay. But nevertheless you did, correct?

16 A. No I did not.

17 Q. Okay. You said that you estimated that he was going 60
18 miles per hour?

19 A. That's correct.

20 Q. And according to this map these are residential streets,
21 correct?

22 A. That's correct.

23 Q. Did you ever put any radar on him?

24 A. No, I did not.

25 Q. Okay. So that's just a guestimate that you have.

OFFICER GEORGE COLLINS BROWN - REDIRECT EXAMINATION BY MR. BULSA

1 A. Um, yes. I I am radar certified and certified to
2 estimate speeds within 3 miles per hour of a vehicle's actual
3 speed.

4 MR. SCHULTZ: Beg the Court's patience.

5 THE COURT: Yes, sir.

6 MR. SCHULTZ: That's all I have, Your Honor. Thank you.

7 THE COURT: Thank you. Mr. Bulsa.

8 (Whereupon, the witness began to leave the stand.)

9 THE COURT: Wait, I think he might have another
10 question, ---

11 OFFICER BROWN: I apologize.

12 THE COURT: --- Officer Brown, if you'll wait just a
13 second.

14 REDIRECT EXAMINATION BY MR. BULSA:

15 Q. Was there anybody in the vehicle?

16 A. No, no one else.

17 Q. Thank you.

18 THE COURT: Any follow up on that point?

19 MR. SCHULTZ: No, Your Honor.

20 THE COURT: Thank you, Officer Brown, you can step down.

21 MR. BULSA: I ask that he be excused.

22 THE COURT: Yes, sir, without objection Officer Brown can
23 be excused.

24 MR. SCHULTZ: No objection, Your Honor.

25 (Whereupon, the witness was excused.)

OFFICER CHRISTY NORKETT - DIRECT EXAMINATION BY MR. BULSA

1 MR. BULSA: The state calls Officer Norkett.

2 THE COURT: Officer Norkett, come forward please, be
3 sworn.

4 OFFICER CHRISTY NORKETT,
5 having been first duly sworn, testified as follows:

6 DIRECT EXAMINATION BY MR. BULSA:

7 Q. Good morning, ma'am. If you would, introduce yourself to
8 the jury.

9 A. Morning. I'm Christy Norkett. I'm a canine handler here
10 with Spartanburg Public Safety Department.

11 Q. How long have you been with public safety?

12 A. Almost nine years.

13 Q. And how long you have been a canine handler?

14 A. Um, three years.

15 Q. And back on December 27 in the early morning hours were
16 you called to the neighborhood of Gentry Street off of Isom?

17 A. Yes, sir.

18 Q. Okay. Did you assist Officer Brown in apprehending an
19 individual?

20 A. Yes, sir, I did.

21 Q. When did you first come into or when did you first see
22 that individual?

23 A. I was on Gentry Street and kind of, it was almost like
24 myself and Officer Brown almost came in together like this
25 (demonstrating) on Gentry Street. As I was trying to get my

OFFICER CHRISTY NORCKETT - DIRECT EXAMINATION BY MR. BULSA

1 car into park, I could see the subject running through jumping
2 fences and going towards the other street which is Shirley
3 Street. That's when I advised Officer Brown that I had eyes
4 on him for a minute.

5 Q. Okay. Did you did you say Kingston Street? Is that
6 street you all came up on him?

7 A. I believe it is yes, sir.

8 Q. Okay. And so you had -- did you actually see the
9 individual get out of the car?

10 A. I didn't see him get out of the car. I saw him running
11 and it was in clo -- close proximity of that vehicle.

12 Q. Okay. Did you see anybody else in the area?

13 A. No, sir.

14 Q. All right. And what did you do when you saw him?

15 A. I told Officer Brown where where he was and took my
16 canine around to the last place I saw him.

17 Q. Okay. And then whadya do?

18 A. I gave her the command for search and she went north and
19 then I could tell she had lost the track so I brought her back
20 to the beginning area and sent her again for the track and she
21 went over Shirley Street to a house that was right in front of
22 us and went along, there a hedgerow of bushes beside the house
23 and he was laying there on the ground behind.

24 Q. Okay. Whadya do when you found him?

25 A. Uh, I advised the other officers I had him. Officer

OFFICER CHRISTY NORKETT - DIRECT EXAMINATION BY MR. BULSA

1 Spivey came and assisted me by detaining him while I held the
2 dog.

3 Q. Okay. Did either one of you do a search of him?

4 A. I believe Officer Spivey did a pat down.

5 Q. Did he have any weapons that you know of?

6 A. Not that I'm aware of no, sir.

7 Q. Was he taken to jail after that?

8 A. Yes, sir, he was.

9 Q. All right. Let me show you these same two maps that I
10 showed Officer Brown, State's Exhibit 30 and 31.

11 A. Yes, sir.

12 Q. If you could on State's 31 highlight the area where you
13 would have found him.

14 A. On which one? I'm sorry. On both of 'em?

15 Q. No, on State's 31 is the blown up.

16 A. Oh, where I found him at?

17 Q. Yes.

18 A. (The witness complied.)

19 Q. And the individual you thought you found was that
20 Mr. Piper?

21 A. Yes, sir, it was. Shirley Street.

22 Q. Okay. And according to this map, State's 31, Shirley
23 Street is one block of it looks like apparently north of
24 Kingston.

25 A. Yes, sir.

OFFICER CHRISTY NORKETT - CROSS- EXAMINATION BY MR. SCHULTZ

1 Q. At least at the top of Kingston. Okay. About how long
2 did it take take you to find him?

3 A. It didn't take more than five minutes, not -- that I
4 remember.

5 Q. Okay. All right. Thank you, Officer, that's all I have.
6 Answer any questions Mr. Schultz might have.

7 A. Yes, sir.

8 THE COURT: Mr. Schultz, you can cross-examine.

9 MR. SCHULTZ: Thank you. Just briefly.

10 THE COURT: All right.

11 CROSS-EXAMINATION BY MR. SCHULTZ:

12 Q. Now, you apprehended Mr. Piper that day?

13 A. I located him yes, sir.

14 Q. Okay. You located him. Were you the one that made the
15 arrest?

16 A. I did not put the handcuffs on him because I had my
17 canine. Officer Spivey did that.

18 Q. But nevertheless you witnessed the arrest, correct?

19 A. Yes, sir.

20 Q. Okay. Did he give the arresting officer any problems?

21 A. I don't remember if he did no, sir.

22 Q. But you would have remembered if he did, right?

23 A. Right. Yes, sir.

24 Q. Okay. Did did you he escort him back to the car?

25 A. No, sir.

TINA GREEN - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. So a ---

2 A. I had a canine with me.

3 Q. So after he was arrested you ceased contact with him and
4 that's all you remember.

5 A. Yes.

6 Q. Okay.

7 MR. SCHULTZ: That's all I have, Your Honor. Thank you.

8 THE COURT: Thank you. Mr. Bulsa, redirect.

9 MR. BULSA: None, Your Honor, I ask ---

10 THE COURT: Thank you.

11 MR. BULSA: --- that she be excused.

12 THE COURT: Officer Norkett, you can step down. Thank
13 you.

14 MR. SCHULTZ: No objection, Your Honor.

15 THE COURT: Without objection. Officer Norkett is
16 excused.

17 (Whereupon, the witness was excused.)

18 MR. BULSA: The state calls Tina Green.

19 THE COURT: Green, come forward please and be sworn.

20 TINA GREEN, having been first duly
21 sworn, testified as follows:

22 DIRECT EXAMINATION BY MR. BULSA:

23 Q. Good morning, ma'am. Could you introduce yourself to the
24 jury please.

25 A. Yes, I'm Tina Green.

TINA GREEN - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. Where do you live, ma'am?
- 2 A. 521 Kingston Street.
- 3 Q. Okay. That's located on the map we just looked at?
- 4 A. Uh, yes, sir.
- 5 Q. How long have you lived there?
- 6 A. Oh, gosh about eighteen, nineteen years maybe.
- 7 Q. Who do you live there with?
- 8 A. With my mother.
- 9 Q. Is that Lou Ellen Green?
- 10 A. Um-hum, yes, sir.
- 11 Q. Ma'am, did you find anything in your yard back last
- 12 December of 2006?
- 13 A. I found a gun in my backyard.
- 14 Q. And about where did you find it?
- 15 A. Um, I I really couldn't tell you right offhand.
- 16 I mean, ---
- 17 Q. Whadya do when you found it?
- 18 A. I went in, told my mother about it and she called the
- 19 police and they came and got it.
- 20 Q. Okay. Did you handle it in any way?
- 21 A. Oh, no, sir.
- 22 Q. Could you tell if it was damaged?
- 23 A. Um, I didn't look at it.
- 24 Q. You didn't look at it?
- 25 A. Um-um.

TINA GREEN -- DIRECT EXAMINATION BY MR. BULSA

1 Q. What did -- whadya -- I mean, you just saw it.

2 A. I spotted it and then I went back into the house.

3 Q. Okay. All right. Were you present when the police came
4 and collected it?

5 A. Uh, yes, sir.

6 Q. Did you see it at that time?

7 A. I did not.

8 Q. You didn't even look at it then?

9 A. Um-um.

10 Q. The officer just went out and got it?

11 A. Yeah, he went out and got it.

12 Q. Okay. But was that -- obviously, it wasn't a gun that
13 you all owned, was it?

14 A. No, we don't have one.

15 Q. Okay. Do you know how it got there?

16 A. No, sir. I didn't see it be put there.

17 Q. Were you aware of a a wreck that had happened nearby?

18 A. Uh, yes, sir. There was a wreck a night or two before
19 that. I'm not really sure of the date.

20 Q. Okay. And is your house in close proximity to where the
21 wreck was?

22 A. It's next store just a few feet away I guess.

23 Q. Thank you, ma'am, answer any questions Mr. Schultz might
24 have.

25 THE COURT: Mr. Schultz.

TINA GREEN - CROSS-EXAMINATION BY MR. SCHULTZ

1 MR. SCHULTZ: Just very briefly, Your Honor.

2 THE COURT: Yes, sir.

3 CROSS-EXAMINATION BY MR. SCHULTZ:

4 Q. Ms. Green, ---

5 A. Yes, sir.

6 Q. --- did you witness this wreck?

7 A. No, we were awoken by the sound of the crash.

8 Q. Okay. That's all I have.

9 THE COURT: Thank you. You can step down, Ms. Green.

10 MR. BULSA: May I ask that she be excused?

11 THE COURT: Without objection, Ms. Green, you can be
12 excused.

13 MR. SCHULTZ: Without objection, Your Honor.

14 THE COURT: Thank you.

15 (Whereupon, the witness was excused.)

16 MR. BULSA: The state calls Jeff Powell.

17 THE COURT: Come forward please, Mr. Powell, and be
18 sworn.

19 OFFICER JEFF POWELL, having been
20 first duly sworn, testified as follows:

21 DIRECT EXAMINATION BY MR. BULSA:

22 Q. Could you introduce yourself to us, officer.

23 A. My name's Jeff Powell. I work for the City of
24 Spartanburg Police Department, been working there since
25 October of 2004.

OFFICER JEFF POWELL - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. You a patrol officer?

2 A. Yes, sir.

3 Q. Back on December 29th 2006 did you have an occasion to go
4 to 521 Kingston Street?

5 A. I did.

6 Q. Okay. And why were you sent to that area?

7 A. I went to that that house due to they had found a weapon
8 in their backyard.

9 Q. Okay. And did you retrieve that weapon?

10 A. I did.

11 Q. What condition was it in when you retrieved it?

12 A. It had -- it was muddy, it had dog bites on the handle.
13 There was a dog in the backyard.

14 Q. Did you document the serial number?

15 A. Yes, sir. The weapon that I recovered was a .38 caliber
16 Lady Smith & Wesson, serial No. BKY1148.

17 Q. I'm not sure where the serial No. is but here's State's
18 Exhibit No. 21 -- excuse me, 28. Is that the weapon that you
19 recovered?

20 A. It is.

21 Q. Okay. Was it loaded?

22 A. Yes.

23 Q. Do you recall how many rounds it had in it?

24 A. It had five unspent rounds.

25 Q. Is that how many rounds it holds?

OFFICER JEFF POWELL - DIRECT EXAMINATION BY MR. BULSA

1 A. I I believe so.

2 Q. You need to look at it?

3 A. (The witness examined the weapon.) Yes, it holds five.

4 Q. What did you do with the weapon when you retrieved it?

5 A. We took it in our possession, turned it into evidence and
6 it was checked through NCIC and at the time it came back
7 clear.

8 Q. Did an officer check the weapon for fingerprints?

9 A. Investigator Guthro with our department checked checked
10 the weapon for prints and none were found.

11 Q. None were found. Thank you. Answer any questions Mr.
12 Schultz might have.

13 THE COURT: Mr. Schultz?

14 MR. SCHULTZ: Your Honor, I don't have any questions for
15 this witness.

16 THE COURT: Thank you. You can step down, Officer
17 Powell. All right.

18 (Whereupon, the witness was excused.)

19 THE COURT: Mr. Bulsa, when you finish the line of
20 questioning along with with the weapon, we'll take a break.
21 I don't wanna interrupt that flow if you're in that but if
22 you ---

23 MR. BULSA: This would be a good spot, Your Honor.

24 THE COURT: A good stop now?

25 MR. BULSA: Yes, sir.

MOTIONS AND MATTERS

1 THE COURT: Good. Thank you. Ladies and gentlemen, this
2 is a good time for the morning break and I'm gonna send you to
3 your jury room. We'll keep you back there for about fifteen,
4 no more than twenty minutes. Please remember not to discuss
5 this case while you're in the jury room. Thank you. All
6 right.

7 (The following takes place outside the presence of the
8 jury.)

9 THE COURT: All right, folks, let's take about -- let's
10 start back at twenty-five after the hour or thereabouts unless
11 I get involved in another long con -- telephone conversation.

12 MR. BULSA: Thank you, Your Honor.

13 (Whereupon, a recess was taken.)

14 THE COURT: Is the state ready for the jury, Mr. Bulsa?

15 MR. BULSA: Yes, sir, we were working on getting
16 technology working.

17 THE COURT: Got some technology. Okay.

18 MR. BULSA: A phone recording. I believe we've got it
19 where we can do that.

20 THE COURT: You got it up?

21 MR. BULSA: Yes, sir.

22 THE COURT: Mr. Schultz, is the defense ready?

23 MR. SCHULTZ: The defense is ready, Your Honor.

24 THE COURT: Thank you. You can bring us a jury.

25 (The following takes place in the presence of the jury.)

CAPTAIN MIKE JONES - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: Thank you, ladies and gentlemen, we are ready
2 now to continue. You just gotta rub it in don't ya? Well,
3 you -- I don't blame you. You deserve to. For the record I'm
4 referring to the gentleman who's wearing a Clemson jersey on
5 this jury. I'm a I'm a Carolina man but -- or I was.

6 All right. We continue now as the state continues to
7 call its witnesses and present evidence and testimony in this
8 case. Mr. Bulsa, call ---

9 MR. BULSA: Thank you, Your Honor.

10 THE COURT: --- your next witness.

11 MR. BULSA: The state would call Captain Jones.

12 THE COURT: Come forward please and be sworn.

13 CAPTAIN MIKE JONES, having
14 been first duly sworn, testified as follows:

15 DIRECT EXAMINATION BY MR. BULSA:

16 Q. Good morning, Captain Jones.

17 A. Good morning.

18 Q. Could you introduce yourself to the jury please.

19 A. My name's Captain Mike Jones. I work at the Spartanburg
20 County Detention Facility.

21 Q. How long have you been with the detention facility?

22 A. Since 1984.

23 Q. Okay. And, Captain Jones, as part of your duties do you
24 have access to the phone logs?

25 A. The inmate phone logs and and the recordings.

CAPTAIN MIKE JONES - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. When an inmate makes a phone call from the
2 facility, is it recorded?

3 A. Yes, sir.

4 Q. Okay. And is that inmate put on notice that it's being
5 recorded?

6 A. Yes, sir, it's prompted. Ev -- every one of 'ems
7 prompted.

8 Q. Okay. And if someone were to ask for those phone
9 conversations, how would you go about doing that?

10 A. They'd have to give me a subpoena.

11 Q. Okay. Would we have to give you a specific number for
12 you to search for it?

13 A. Yes, sir.

14 Q. Okay. And in this case did you receive a request to
15 obtain some phone calls?

16 A. Yes, sir.

17 MR. BULSA: Can I get this marked?

18 (Phone log marked State's Exhibit No. 32 and CD marked
19 State's Exhibit No. 33 for identification.)

20 BY MR. BULSA:

21 Q. I'm gonna show you State's Exhibits 32 and 33. First of
22 all, what is 32?

23 A. This is a record of all the calls made to that number
24 that are between 12:27 and 2:23.

25 Q. Okay. And the number you're referring to is what

CAPTAIN MIKE JONES - DIRECT EXAMINATION BY MR. BULSA

- 1 number?
- 2 A. It's 864-585-2144.
- 3 Q. Okay. And you have no idea who that number belongs to,
- 4 do you?
- 5 A. No. No, sir.
- 6 Q. And now State's No. 33. What is that disk of?
- 7 A. That's the same number with -- it's got three calls on
- 8 it.
- 9 Q. Okay. And that's that's the ---
- 10 A. Yes, that's the calls ---
- 11 Q. Those are the recordings.
- 12 A. Yes, sir, that's the three calls that's on this
- 13 (indicating) paper.
- 14 Q. From your facility to that number.
- 15 A. Yes, sir.
- 16 Q. Okay. And specifically the first call there what was the
- 17 date of that?
- 18 A. 12/27 at 2:30, 2:36.
- 19 Q. And that would be in the afternoon?
- 20 A. Yes, sir.
- 21 Q. And where in the facility was that call made from?
- 22 A. It's made from a booking.
- 23 Q. Okay. Now, if an individual's brought into the jail,
- 24 where are they first brought to?
- 25 A. They're brought to booking. They're brought in there.

CAPTAIN MIKE JONES - DIRECT EXAMINATION BY MR. BULSA

1 They're they're booked in and given a phone call and wait till
2 they see the judge.

3 Q. And how long are they in the booking area?

4 A. That depends on what time of day they come in. A judge
5 will see 'em depending on their case. A judge has to go
6 through and look at their folders and check out their past
7 history or whatever and the case and then he sees 'em and
8 tells 'em whether they can get in or not, whether they get
9 bond or not. If they can't get bond, are denied bond then
10 they're housed in the facility.

11 Q. Okay. What if somebody's brought in in the early morning
12 hours?

13 A. I think it's before twelve I think they get a bond
14 hearing.

15 Q. Okay. But if somebody's brought in say around two
16 o'clock in the morning, do they just remain in booking until
17 they ---

18 A. Yes, sir.

19 Q. --- see a judge?

20 A. Yes, sir.

21 Q. Okay.

22 MR. BULSA: Your Honor, I would offer these into evidence
23 I believe without objection.

24 THE COURT: Without objection, Mr. Schultz?

25 MR. SCHULTZ: Without objection, Your Honor.

CAPTAIN MIKE JONES - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: Thank you. Thirty-two (32) and 33, is it?

2 MR. BULSA: Yes, sir.

3 THE COURT: Thank you.

4 (Exhibit Nos. 32 and 33 were admitted into evidence.)

5 MR. BULSA: Your Honor, at this time we would like to
6 publish the phone call on 12/27/06.

7 THE COURT: Okay. '06? The date again.

8 MR. BULSA: 2006.

9 THE COURT: '06. Okay. Thank you.

10 MR. BULSA: Beg the Court's indulgence. I believe I
11 gotta reboot the computer.

12 THE COURT: Okay.

13 (Whereupon, a CD was played for the jury.)

14 BY MR. BULSA:

15 Q. Is that how it signs off on all the calls?

16 A. Yes, sir.

17 Q. Okay. Thank you. Answer any questions Mr. Schultz may
18 have.

19 THE COURT: Mr. Schultz, cross-examination.

20 MR. SCHULTZ: Nothing from the defense, Your Honor.

21 THE COURT: Thank you. Captain Jones, you can step down.

22 CAPTAIN JONES: Thank you, sir.

23 MR. BULSA: Your Honor, we ask he be excused.

24 THE COURT: Without objection Captain Jones can be
25 excused.

CHRISTIAN HUDSON - DIRECT EXAMINATION BY MR. BULSA

1 MR. SCHULTZ: Without objection.

2 THE COURT: Thank you.

3 MR. BULSA: The state calls Christian Hudson.

4 THE COURT: Come forward please and be sworn.

5 CHRISTIAN HUDSON, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA:

8 Q. Good morning Christian.

9 A. Good morning.

10 Q. Could you introduce yourself to the jury please.

11 A. I'm Christian Hudson.

12 Q. How old are you, Christian?

13 A. I'm 17.

14 Q. Okay. And back last December you were 16?

15 A. Yes, sir.

16 Q. Where do you live?

17 A. 476 Sloan Street.

18 Q. Is that in the same community as Gentry Street?

19 A. Yes, it is.

20 THE COURT: Mr. Hudson, you're gonna have to speak up
21 just a little bit, if you will please, sir, the jurors are
22 having some difficulty hearing you. We don't have a
23 microphone in here that works. I'm sorry.

24 MR. HUDSON: Yes, sir.

25 BY MR. BULSA:

CHRISTIAN HUDSON - DIRECT EXAMINATION BY MR. BULSA

- 1 Q. Okay. Are you related to Amanda Colquitt?
- 2 A. Yes, I am.
- 3 Q. How so?
- 4 A. She's my cousin.
- 5 Q. Okay. And did you visit her often or do you still visit
- 6 her often on Gentry Street?
- 7 A. I I visit her almost every day when we aren't arguing or
- 8 in a fight.
- 9 Q. Back last December did you come to know Gary Piper?
- 10 A. Yes, I did.
- 11 Q. Did you meet him through Amanda?
- 12 A. Yes, I did.
- 13 Q. You heard the CD that we just played?
- 14 A. Yeah.
- 15 Q. Was it you that Mr. Piper was speaking to?
- 16 A. Yes, sir.
- 17 Q. Now, you had asked him about the gun?
- 18 A. Yes, I did.
- 19 Q. Tell the jury why you asked him that.
- 20 A. I I had asked him that because -- I I really don't know
- 21 why I asked him that.
- 22 Q. Hmm?
- 23 A. I really don't know why I asked him that.
- 24 Q. What gun were you talking about?
- 25 A. The Smith & Wesson .45 or whatever, .38.

CHRISTIAN HUDSON -- DIRECT EXAMINATION BY MR. BULSA

- 1 Q. Had you seen that gun?
- 2 A. Yes, I had.
- 3 Q. Did you know it was used in any way?
- 4 A. Yes, I did.
- 5 Q. How so?
- 6 A. I I knew that Gary had killed a Mexican with it.
- 7 Q. And how did you know that?
- 8 A. Uh, he told me.
- 9 Q. When did he tell you?
- 10 A. He told me, me and him was on the front porch smokin' a
- 11 joint and, uh, I had asked him if he killed a Mexican and he
- 12 said yeah but he wanted me to keep it to myself. Uh, the
- 13 reason I had asked him that was because a day prior to this he
- 14 had told me to watch the news about a dead Mexican and I never
- 15 watched the news. I don't watch the news, but, uh, yeah.
- 16 Q. And so do you remember what day he told you to the watch
- 17 the news?
- 18 A. No, I don't.
- 19 Q. One day he told you to watch the news and then the next
- 20 day you asked him about...
- 21 A. Yeah.
- 22 Q. But you didn't watch the news?
- 23 A. No.
- 24 Q. But you just had another conversation about it and he
- 25 told you about that?

CHRISTIAN HUDSON - DIRECT EXAMINATION BY MR. BULSA

1 A. Yeah.

2 Q. Did you actually see the gun?

3 A. Yes, I did.

4 Q. When did you see it?

5 A. Uh, I saw the gun. He pulled it out and showed it to me.
6 I don't remember where we was but I remember it had a wooden
7 handle and it was a revolver.

8 Q. Does it look sorta like the one here on the stand ---

9 A. Yeah, ---

10 Q. --- State's Exhibit 28?

11 A. --- that's it.

12 Q. Was is chewed up at that point?

13 A. No, it wasn't.

14 Q. As a result of this phone conversation, well, what did
15 you do?

16 A. Uh, well, me and Jennifer Gregg we went out walkin'
17 around Kingston and Southern. I never intended to find the
18 gun, I didn't even expect to find the gun, but if we were to
19 find the gun, I wasn't gonna touch it. I wasn't gonna do
20 nothing with it. I was gonna let Jennifer handle it 'cause I
21 really didn't wanna get wrapped up in all this.

22 Q. Right. Were you aware of Jennifer's wreck?

23 A. Yes.

24 Q. Okay. And did you and Gary talk about that wreck at
25 all?

CHRISTIAN HUDSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. No.

2 Q. Did you ever hear -- did you ever hear him or did he mention
3 anything about needing to get some money?

4 A. Uh-uh.

5 Q. What was that?

6 A. Uh-uh. No.

7 Q. Is that a no? Okay. Good.

8 A. I'm sorry.

9 Q. Do you know where he got that revolver?

10 A. I --- yeah, he got it from Jennifer's grandma, uh, Nancy.

11 Q. Did he tell ya how he got it?

12 A. Auh-auh. No. Excuse me.

13 Q. Okay. Okay. Thank you, Mr. Hudson. Answer any
14 questions Mr. Schultz has.

15 THE COURT: Mr. Schultz, you can cross-examine.

16 CROSS-EXAMINATION BY MR. SCHULTZ:

17 Q. Mr. Hudson, is it okay if I ask you what your age is.

18 A. Yeah, that's fine.

19 Q. What is it?

20 A. I'm 17.

21 Q. Okay. This -- you you said in your direct testimony that
22 you were talking to Gary on the porch, correct?

23 A. Yes.

24 Q. And you said you were smoking a joint, correct?

25 A. Yes.

CHRISTIAN HUDSON - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. Okay. And Gary told you that he shot a Mexican,
2 correct?

3 A. Yes.

4 Q. Okay. If -- did he tell you at any time that he intended
5 to rob this Mexican?

6 A. No, he didn't.

7 Q. Did he say anything about needing money that night?

8 A. No. Well, he he told me that, uh, he needed to get
9 Jennifer outta jail.

10 Q. Okay. But he never said, and you're clear on this, that
11 he intended to rob anybody that night, correct?

12 A. No. No.

13 Q. No. He said -- now, you were the one talking to him on
14 this phone conversation that we just heard, ---

15 A. Yeah.

16 Q. --- correct?

17 A. Yes, sir.

18 Q. Okay. And when you talked with him, you were the one
19 that brought up the gun, correct?

20 A. Yes.

21 Q. Okay. He wasn't the one that brought up the gun,
22 correct?

23 A. Correct.

24 Q. You were the one?

25 A. Yeah.

CHRISTIAN HUDSON - REDIRECT EXAMINATION BY MR. BULSA

1 Q. Okay.

2 MR. SCHULTZ: Beg the Court's patience.

3 THE COURT: Yes, sir.

4 MR. SCHULTZ: That's all I have. Thank you, Your Honor.

5 THE COURT: Thank you. Redirect, Mr. Bulsa?

6 MR. BULSA: Yes, sir, briefly.

7 REDIRECT EXAMINATION BY MR. BULSA:

8 Q. Christian, defense attorney asked you about the money and
9 you said he told you he needed to get Jennifer outta jail.

10 A. Yes.

11 Q. When was that conversation?

12 A. That was I think it was the night after Jennifer went to
13 jail. I'm not sure.

14 Q. Do you remember ---

15 A. I just remember him talking about he needed to get
16 Jennifer outta jail.

17 Q. Okay.

18 A. He never said anything about going and robbing somebody
19 or gettin' money.

20 Q. Okay. But he did wanna get her out?

21 A. Yes.

22 Q. You think it was the day after she went to jail?

23 A. I'm pretty sure.

24 Q. Okay. Thanks. That's all I have.

25 THE COURT: Thank you. You can step down, Mr. Hudson.

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1 (Whereupon, the witness was excused.)

2 THE COURT: Mr. Bulsa.

3 MR. BULSA: May we approach, Your Honor?

4 THE COURT: Yes, sir.

5 (Whereupon, a bench conference was held off the record.)

6 THE COURT: Ladies and gentlemen, I can tell you what
7 we're talking about there. We were planning your immediate
8 future. All right. I tell jurors when we get over there and
9 whisper behind your back it's really because we're talking
10 about sometimes matters of law, sometimes scheduling matters.
11 You probably aren't even concerned about it. That's fine.
12 But if you are concerned about it, if you're curious about it,
13 when your role as jurors in this case is over, if you'll come
14 back and ask me what we were whispering about over there and
15 if I can remember what we're whispering about, I'll be glad to
16 tell you. But what we were whispering about a minute ago is
17 the next witness, we're moving rather rapidly through the case
18 and and the state is nearing the end of its witness list and
19 there's still some witnesses, two, perhaps three witnesses to
20 be called and they will not be available until 1:30 this
21 afternoon, 1:30, is that right?

22 MR. BULSA: Yes, sir.

23 THE COURT: Okay. And so that means that we're gonna
24 break a little early for lunch to accommodate that and and
25 sort of as we did yesterday, a little bit longer than we

MOTIONS AND MATTERS

1 normally have but I'm gonna send you to lunch now and ask that
2 you be back in the jury room at 1:30. We will continue the
3 trial of the case at that time. We may finish it today, it
4 may take until tomorrow. I'm not sure but we're nearing the
5 end of it. It's it's difficult to tell how long it takes
6 these cases because we don't run them as you well know
7 according to a stopwatch. We simply take whatever time is
8 needed to take and you can make some use of it. You'll have
9 enough information to make a decision on the case. But but we
10 can tell you that there aren't a whole lotta witnesses left to
11 be called in this case and so for whatever value that has in
12 your planning please be back at 1:30. Remember not to talk
13 about the case among yourselves or with anybody else. Thank
14 you.

15 (The following takes place outside the presence of the
16 jury.)

17 THE COURT: Gentlemen, to the extent that it has any
18 impact on either of your decisions as to how to strategically
19 present this case from this point on out, I have looked at the
20 notice of Mr. Bulsa to use prior convictions more than ten
21 years old and I have made notations on the on the notice
22 itself. I will simply tell you at this point in time that I'm
23 not inclined to allow into evidence any of the convictions
24 more than ten years of age for two reasons: First of all,
25 some of them are quite old and secondly, there are sufficient

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1 convictions within the ten year time period beginning on
2 10/28/98 failing to stop for a blue light and perhaps a
3 probation violation which the start date was 7/02/96
4 indicating that Mr. Piper was in jail at the time. So I'm not
5 sure whether his release date was within the ten years or not
6 but anything older than that I'm not going to let into
7 evidence. These serve purely for the purpose of determining
8 or allowing the jury to to be assisted in determining the
9 credibility of witnesses and or in this case defendant. And
10 there are at least four, possibly five convictions within that
11 ten year time frame which is sufficient for this jury to take
12 into account in determining the issue of the credibility. I
13 have made that notation on the notice so that each of you can
14 review that. As I say, I offer it for whatever impact it
15 might have on how either of you decides to present this case
16 from this point on out.

17 All right. Anything further from the state before we
18 break for lunch? Mr. Bulsa?

19 MR. BULSA: No, Your Honor.

20 THE COURT: Mr. Schultz?

21 MR. SCHULTZ: Nothing from the defense, Your Honor.

22 THE COURT: All right. Very good. We'll be in recess
23 until 1:30. Thank you.

24 (Whereupon, a recess was taken.)

25 THE COURT: Good afternoon, Ladies and gentlemen.

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1 MR. SCHULTZ: Good afternoon, Your Honor.

2 THE COURT: All right. Mr. Bulsa, is the state ready to
3 proceed?

4 MR. BULSA: Yes, sir.

5 THE COURT: Mr. Schultz, is the defense ready?

6 MR. SCHULTZ: Your Honor, we are ready. There's a couple
7 matters that we wanna bring up before this case goes on.

8 THE COURT: Okay.

9 MR. SCHULTZ: I've been talking to my client over the
10 lunch break and we decided to accept a plea to the failure to
11 stop and we wish to do this right now if the Court would
12 consider a plea to this.

13 THE COURT: I'll ask the the state if the plea offer
14 was -- of course he can plead straight up to anything that he
15 wants to obviously.

16 MR. SCHULTZ: Yes.

17 THE COURT: All right.

18 MR. SCHULTZ: That's my understanding as well, Your
19 Honor.

20 THE COURT: Okay. Mr. Bulsa, does the state have a
21 position in that regard?

22 MR. BULSA: Your Honor, there was no offer.

23 THE COURT: Right. So it's just gonna be a straight up
24 plea.

25 MR. BULSA: It would have to be a straight up plea yes,

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1 sir.

2 THE COURT: All right. Okay.

3 MR. BULSA: And I would just ask the Court as to how we
4 would handle that with the jury.

5 THE COURT: I could tell the jury that that matter has
6 been disposed of otherwise and they will not, they will not be
7 concerned with that charge. And I'll need to, I'm having the
8 verdict form typed up now, so I'll need to get word to take
9 take that charge off. Other than that there'd be ---

10 MR. BULSA: All right. I'd I'd hate for them to get a
11 negative inference from that.

12 THE COURT: Well, I I don't know. I'll be glad to to to
13 try to think of some way that that conveys the idea to them
14 that they don't have to concern themselves with that charge
15 and I'll have to give some thought as to how to deal with that
16 whether just to indicate that he has pled guilty to those
17 charges or or just to leave them wondering about that one way
18 or the other, but but I don't think that -- I don't think
19 there's any way that that that we can prevent him from
20 pleading guilty straight up to a charge if he's willing to do
21 that.

22 MR. BULSA: I understand. I would just like the jury to
23 know, I mean, that's an admission of guilt.

24 THE COURT: Right.

25 MR. BULSA: I would just prefer that the jury know

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1 that ---

2 THE COURT: Right.

3 MR. BULSA: --- instead of thinking well maybe there
4 wasn't enough evidence.

5 THE COURT: And that and that may very well be the the
6 way to deal with that since they, you know, they're aware of
7 the charges and it's before them. And of course that might
8 lead into, work into -- in Mr. Schultz's strategy as well. He
9 could argue that he pled guilty to that because he admits that
10 he's guilty of it but he continues to plead not guilty to
11 these other charges because he's not. You know, I'm not sure
12 strategically how that could be handled from from anyone's
13 perspective but I don't think that that would necessarily
14 prejudice the case on the on the remaining charges
15 obviously ---

16 MR. BULSA: Yes.

17 THE COURT: --- since it was separated by time from the
18 other charges. So I'll be glad to to give some thought to
19 that before we have to cross that bridge but I'm I'm still
20 willing to go ahead and accept his plea and and deal with the
21 sentencing aspect of that as well. Let me rethink that. Let
22 me just hold sentencing abeyance until the conclusion of the
23 trial overall. That indictment is is is down in the judge's
24 office could I ---

25 MR. BULSA: I have a copy of it if Your Honor would like

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1 a copy.

2 THE COURT: I can -- I'm -- is there any way that I have
3 a phone connection with with Judge Cole's chambers in this
4 room -- from this room?

5 POLICE OFFICER: I'll be happy to run back there.

6 THE COURT: If you could just go tell Terri to send us
7 the indictment for failing to stop for a blue light siren and
8 to eliminate that charge from the verdict form she's working
9 on. Failing to stop for a blue light, just eliminate that
10 charge. Thank you. And we can go ahead and proceed to the
11 plea on that charge probably while the original indictment is
12 being brought out.

13 MR. SCHULTZ: Your Honor, if I may, could I move this out
14 of the way?

15 THE COURT: Yeah, I think so just -- do you -- yeah, you
16 can do that for the purpose of the plea. Go ahead.

17 MR. SCHULTZ: Okay.

18 MR. BULSA: Do you -- I'm I'm preparing a sentencing
19 sheet.

20 THE COURT: Yes, sir. Go ahead.

21 (Whereupon, a conversation was held off the record.)

22 THE COURT: All right. Are we ready to proceed then to
23 the plea on the failing to stop charge?

24 MR. SCHULTZ: Your Honor, we're try -- we're trying to
25 find the CDR code for the failure to stop which would be a

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1 second offense.

2 THE COURT: Okay. We ---

3 THE CLERK: 65? 0065?

4 MR. BULSA: I think that's first. It's a second offense.

5 (Whereupon, a conversation was held off the record.)

6 MR. SCHULTZ: Your Honor.

7 THE COURT: It's 2396.

8 MR. SCHULTZ: 2396? Thank you, Your Honor.

9 THE COURT: It's a second offense?

10 MR. BULSA: Yes, sir.

11 MR. SCHULTZ: Yes, sir.

12 THE COURT: 2396. That's according to Doug Strickler's
13 penalty book I believe. That's what I'm relying upon and I
14 think it's right. It's a 2005 edition. I don't think it's
15 been changed since that time.

16 MR. SCHULTZ: It shouldn't.

17 THE COURT: All right. Come around, Mr. Piper, please.
18 Madam clerk, if you'll put Mr. Piper under oath.

19 GARY MICHAEL PIPER, having
20 been first duly sworn, testified as follows:

21 THE COURT: If you'll pass that sheet up. Thank you.

22 (Counsel handed the document to the Court.)

23 THE COURT: Mr. Schultz, you have no doubt and advised
24 Mr. Piper as to the nature of these charges, the significance
25 of his plea, the possible sentence he can receive and his

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1 constitutional rights, does he understand all those things as
2 far as you know?

3 MR. SCHULTZ: As far as I know, Your Honor, yes, he
4 does.

5 THE COURT: And indicates that he wishes to plead guilty
6 to the charge of failing to stop for a blue light and siren?

7 MR. SCHULTZ: Yes, he does, Your Honor.

8 THE COURT: All right. Mr. Piper, when you plead guilty
9 to this being a second offense, you can receive up to five
10 years imprisonment, do you understand that?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: When you enter this plea you give up certain
13 important rights. You first of all give up your right to
14 remain silent because you have to admit that you're guilty of
15 this charge. We're in the midst of the trial of this case of
16 course and you have yet to take the stand in this case and so
17 your -- the the matter of your right to remain silent has not
18 yet been explained to you in that context but you do have the
19 right to remain silent and no one can force you to testify
20 against yourself or make you admit your guilt but if you plead
21 guilty, you have to give up your right to remain silent
22 because you have to admit that you're guilty of this charge,
23 do you understand that?

24 DEFENDANT: Yes, Your Honor.

25 THE COURT: You have the right to continue with the jury

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1 trial, as I've said, that is now underway and to let this jury
2 determine whether you're not -- whether or not you're actually
3 guilty of the charge. And as you have heard me explain to the
4 jury and as you know by now, the state has to convince a jury,
5 all twelve of them, that you're guilty beyond a reasonable
6 doubt. You don't have any burden of proof yourself. The
7 state has the burden of convincing them that you're guilty.
8 But if you plead guilty this case doesn't go to the jury. It
9 ends right now as far as that's concerned. Do you understand
10 that?

11 DEFENDANT: Yes, Your Honor.

12 THE COURT: And of course you would continue to have the
13 right to have Mr. Schultz question the witnesses who are
14 testifying against you on this charge and to call your own
15 witnesses to testify for you as to that charge, do you
16 understand that?

17 DEFENDANT: Yes, Your Honor.

18 THE COURT: But obviously you'd give up that right if you
19 plead guilty at this stage, you understand all that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: Have you understood those rights that I've
22 just explained to you, Mr. Piper?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: Do I need to go over any of 'em with you
25 again?

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1 DEFENDANT: No, Your Honor.

2 THE COURT: The indictment accuses you here in
3 Spartanburg County on or about December the 27th of last year
4 failing to stop your motor vehicle which you were driving on
5 the streets, roads or highways of the state when you were
6 signaled by a law enforcement officer by means of a flashing
7 light or siren, do you understand that charge?

8 DEFENDANT: Yes, Your Honor.

9 THE COURT: How do you plead to the charge?

10 DEFENDANT: Guilty, Your Honor.

11 THE COURT: Has anybody promised you anything or held out
12 any hope of reward to get you to plead guilty to the charge?

13 DEFENDANT: No, Your Honor.

14 THE COURT: Has anyone threatened you or forced you or
15 made you plead guilty?

16 DEFENDANT: No, Your Honor.

17 THE COURT: Are you pleading freely and voluntarily ---

18 DEFENDANT: Yes, Your Honor.

19 THE COURT: --- of your own will and accord?

20 DEFENDANT: Yes, Your Honor.

21 THE COURT: Are you fully satisfied with everything that
22 Mr. Schultz has done for you in representing you in this case?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: Has he done everything you've asked him to
25 do?

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1 DEFENDANT: Yes, Your Honor.

2 THE COURT: Have you had enough time to talk with him
3 about this decision?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: And you've understood those talks?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: You have ten days from today to appeal this
8 plea to a higher court but you have to file a paper with this
9 court within ten days if you wish to appeal, do you understand
10 that?

11 THE COURT: Yes, Your Honor.

12 THE COURT: All right. Mr. Bulsa, I suppose that you're
13 gonna stand on the testimony of the officer in this case, of
14 the two officers in fact, who testified on the charge of
15 failing to stop for a blue light, right?

16 MR. BULSA: Yes, sir.

17 THE COURT: Do you need to put anything else on the
18 record as to this particular charge?

19 MR. BULSA: No, sir.

20 THE COURT: All right. Thank you. I'll find that
21 there's a substantial, factual basis for the charge,
22 Mr. Piper understands what he's doing, he's had the services
23 of a competent lawyer that he's satisfied with, I'll accept
24 the guilty plea. I will hold sentencing in abeyance and I
25 will discuss matters of aggravation and mitigation at the

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1 conclusion of the jury trial on the other charges as well.

2 Everybody understand that?

3 MR. SCHULTZ: Yes, sir, Your Honor.

4 THE COURT: The guilty plea has been accepted.

5 MR. BULSA: Yes, sir.

6 THE COURT: All right. Thank you. All right.

7 MR. SCHULTZ: Thank you, Your Honor.

8 THE COURT: Yes, sir. All right. Anything other -- else
9 before the jury comes in?

10 MR. BULSA: Not from the state, Your Honor.

11 THE COURT: Mr. Bulsa, is the defense ready for the jury?

12 MR. SCHULTZ: Yes, sir.

13 THE COURT: All right.

14 MR. SCHULTZ: We are ready.

15 THE COURT: Bring us the jury please.

16 (The following takes place in the presence of the jury.)

17 THE COURT: Good afternoon, ladies and gentlemen. We're
18 gonna continue now with the trial of this case as the state
19 continues to offer evidence and testimony in support of the
20 charges that it brings. Mr. Bulsa.

21 MR. BULSA:: State calls Dan DeFreese.

22 THE COURT: Mr. DeFreese, come forward please, be sworn.

23 AGENT FRANK DAN DEFREESE, having
24 been first duly sworn, testified as follows:

25 DIRECT EXAMINATION BY MR. BULSA:

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 Q. Good afternoon, Agent DeFreese. Please introduce
2 yourself to the jury.

3 A. My name is Frank Dan DeFreese.

4 Q. Who are you employed with?

5 A. I work the South Carolina Law Enforcement Division in the
6 forensic laboratory in Columbia.

7 Q. And is that commonly known as SLED?

8 A. Yes, sir, it is.

9 Q. And what part of the forensic laboratory do you work
10 in?

11 A. I'm assigned to the part of the laboratory where we do
12 the identification of firearm and toolmark evidence.

13 Q. What kind of education do you have in that field?

14 A. Well, I'm a graduate of the University of South Carolina
15 in Columbia but my principal training in the field of firearm
16 and toolmark identification was received at SLED. After my
17 employment I began a course of study in those fields from
18 Lieutenant Millard Cate and Lieutenant Carl Stokes both of
19 whom were examiners at SLED at that time. And after a period
20 of about two and a half years of studying the techniques of
21 firearm and toolmark identification under their direct
22 supervision I began accepting cases on my own and testifying
23 as to my results. I've been doing that since 1969.

24 Q. All right. So you've been declared an expert in this
25 field before?

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 A. Yes, sir.

2 MR. BULSA: Your Honor, we would offer Agent DeFreese as
3 an expert in firearm and toolmark identification.

4 THE COURT: Thank you. Mr. Schultz, any voir dire?

5 MR. SCHULTZ: No, sir, Your Honor.

6 THE COURT: Thank you. Without objection then, Agent
7 DeFreese is certified as an expert in the field of firearm and
8 toolmark identification.

9 BY MR. BULSA:

10 Q. Agent DeFreese, as part of your position, did you receive
11 some evidence involving the victim of Alberto Chavez from the
12 Spartanburg County Sheriff's Office?

13 A. I did.

14 Q. Specifically did you receive two spent rounds, one lead
15 fragment, one cartridge?

16 A. One cartridge case, yes, ---

17 Q. Cartridge case.

18 A. --- I did.

19 Q. And I have some pieces of evidence previously entered
20 State's 23, 22, 19 and 27. Are those those items that you
21 received?

22 (The witness examined the exhibits.)

23 A. Yes, sir, I did receive and have examined these items
24 before.

25 Q. Were you asked to compare them to specific firearms?

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 A. Yes, sir.

2 Q. Show you State's Exhibit 28. Is this one of the firearms
3 that you were asked to compare these items to?

4 A. (The witness examined the exhibit.) Yes, sir, I did
5 receive and have examined these items before.

6 Q. And you were asked to compare them to specific firearms?

7 A. Yes, sir.

8 Q. Show you State's Exhibit 28. Is this one of the firearms
9 that you were asked to compare these items to?

10 (The witness examined the exhibit.)

11 A. Yes, sir, it is.

12 Q. And do you also receive three other firearms as well?

13 A. That's correct.

14 Q. Those have not been entered into evidence but they've
15 been discussed. What types of weapons were those?

16 A. There were two Hi-Point 9-millimeter Luger caliber
17 semi-automatic pistols and one Lorcin .25 auto caliber
18 semi-automatic pistol.

19 Q. And the Lorcin, would that have been a a smaller gun than
20 the other two?

21 A. Yes, sir.

22 Q. Okay. And briefly if you would in your expertise
23 describe the difference between semi-automatics and revolvers.

24 A. A revolver is a kind of handgun that is manually
25 operated, that is, all the energy that is used to fire the

AGENT FRANK DEFRESE - DIRECT EXAMINATION BY MR. BULSA

1 weapon is supplied by the hand of the shooter. Revolvers are
2 characterized by a rotating central member called a cylinder
3 into which a number of cartridges are loaded. The cylinder in
4 operation is it -- it's manually loaded and closed.
5 Thereafter, the firearm is fired by either in this case a long
6 pull of the trigger (demonstrating) which fires it in the
7 double action mode or by cocking the hammer and then pulling
8 the trigger (demonstrating) which is firing in the single
9 action mode. Each time normally this would happen the
10 cylinder would be rotated to bring it into alignment with the
11 barrel so that the bullet could pass down the barrel and out
12 of the gun. All of the cartridges or fired cartridge cases
13 would remain in the cylinder of the firearm until the the
14 firearm was unlocked and unloaded manually by the shooter. So
15 the revolver's characterized by firing a bullet each time the
16 trigger is pulled but not ejecting a cartridge case.

17 A semi-automatic pistol is a type of firearm that uses a
18 reciprocating slide or breech bolt, that is, each time it's
19 fired the slide or breech bolt goes to the rear and under
20 spring tension it's propelled back forward. This causes a
21 cartridge in the magazine which is usually in the grip of the
22 pistol to be stripped from the magazine box and inserted in a
23 chamber, an enlarged area in the back of the barrel. When
24 it's fired, the bullet is propelled down the barrel and out of
25 the gun and shortly thereafter the fired cartridge case is

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 extracted and ejected from the gun. At the end of that cycle,
2 another fresh cartridge is is removed from the magazine and
3 placed in the gun. The gun itself supplies the energy for
4 this to to happen. It does not require the shooter to
5 reciprocate the slide each time it's fired. So it uses part
6 of the energy of combustion to make the gun itself work which
7 the revolver does not do. But it's it's characterized
8 generally by expelling a bullet and a cartridge case at or
9 about the same time each time it's fired.

10 Q. Does the trigger have to be pulled after each fire?

11 A. Yes, it has to be pulled and then released to some point
12 to reset the firearm for subsequent firing.

13 Q. Is there a difference in trigger pulls between aut -- semi
14 automatics and revolvers?

15 A. The single action pulls of both firearms are -- can be
16 approximately the same thing. The double action pulls, there
17 are some double action semi-automatic firearms and they can be
18 approximately the same thing. Usually the double action
19 trigger pull is considerably heavier and longer than the
20 single action trigger pool.

21 Q. On this case the three semi-automatics were they single
22 or double?

23 A. They were all single action pistols.

24 Q. Okay. And this (indicating) revolver is a ---

25 A. It's a double action. It's capable of firing in either

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 way.

2 Q. Okay. The double action trigger pull would be greater
3 than the single action?

4 A. Correct.

5 Q. Okay. Now, specifically in this case there was a fired
6 round. There was a spent shell casing.

7 A. Correct.

8 Q. That was item, for the record which item is that? Right
9 here (indicating), Item 27. Were you able to compare that to
10 the weapons that you received?

11 A. (The witness examined the exhibit.) Yes, sir. I I
12 compared the fired .25 auto caliber cartridge case in State's
13 Exhibit 27 with test cartridge cases that I had fired from the
14 .25 auto caliber pistol that was submitted. I found some
15 similarities in markings but I was not able to identify this
16 cartridge case as being fired by that pistol to the exclusion
17 of all other .25 autos. That firearm was not very consistent
18 in the markings that it placed on fired cartridge cases and
19 there just was not a sufficient basis to conclude that this
20 was fired only by that gun but it could have been fired by
21 that gun.

22 Q. Okay. It could have been fired by any of the three other
23 weapons?

24 A. It could not have been fired by this revolver or by the
25 two 9-millimeter pistols that were submitted.

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. So we have one spent shell casing, well not
2 conclusively but more likely than not compared to the other
3 weapons fired by the .25.

4 A. Yes, sir. Of the four firearms submitted, it could have
5 been fired by the .25 and could not have been fired by the
6 other three.

7 Q. Okay. And the -- these (indicating) three spent rounds.

8 A. Yes, sir, the three bullet or bullet core specimens?

9 Q. Yes, sir. What were your findings with those rounds?

10 A. (The witness examined the exhibit.) Let's see. Item
11 23 ---

12 Q. If you would also specify where that would have been
13 located.

14 A. Item 23 is described in this container as being one piece
15 of lead recovered from the living room floor near the gas
16 heater.

17 Q. Okay.

18 MR. SCHULTZ: Your Honor, permission to approach?

19 THE COURT: Yes, sir.

20 (Whereupon, a bench conference was held off the record.)

21 BY MR. BULSA:

22 Q. We wanna make sure the record is clear. These are the
23 state exhibit numbers and your SLED items numbers are
24 different.

25 A. That's correct.

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 Q. Okay. So this is state Exhibit...

2 A. State Exhibit 23.

3 Q. Okay.

4 A. My SLED Item No. 7 ---

5 Q. Okay. And that ---

6 A. --- which the piece of lead noted on the container as
7 being recovered from the living floor near the gas heater at I
8 believe at 220 Tharon Drive.

9 Q. Yes, sir. Okay.

10 A. This item is a portion of a fired lead bullet core. Some
11 bullets are constructed of an outer jacket material with the
12 core of the bullet, the center of the core being made out of
13 lead. The lead gives it the weight and the outer jacket
14 material which is usually they're copper or steel gives it
15 hardness so it will grip the rifle. But this is a a piece of
16 a le -- a fired lead bullet core. It has some transferred
17 impression -- semi-impressions of the that went through the
18 jacket and were left on the the core fragment and it also has
19 an impression that's left by the crimping cantalure which is a
20 ring that's placed around bullets, some bullets, so that they
21 can be crimped in the cartridge case, they can be retained
22 firmly in the cartridge case. This has no markings on it that
23 were directly left by the barrel of the gun in which they were
24 fired.

25 I haven't, you know, explained it but the -- our basis

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 for identification of bullets is that when they pass down the
2 bore, through the bore of a firearm during the firing
3 sequence, they are marked uniquely by the barrel in which they
4 were fired. The barrel leaves certain scratches or toolmarks
5 on the barrel. And when the the bullet itself is recovered in
6 sufficiently good condition, we can identify a particular
7 bullet as being fired in of a particular gun barrel. When
8 they are are not marked by the barrel, as this core fragment
9 was not, or when they're so badly damaged that the marks are
10 obliterated, we we cannot tell.

11 Q. So you were not able to match that with any ---

12 A. No, sir.

13 Q. --- firearm.

14 A. I wasn't able -- it -- this core fragment could have been
15 fired by that firearm but it could have been fired by another
16 firearm as well.

17 Q. Okay. Now, let's go on to the other two spent rounds.

18 A. State's Exhibit 22 which is my SLED Item 6 is described
19 as a fired bullet and it's location of recovery according to
20 the container is wall stud of bedroom No. 1 at 220 Tharon
21 Drive.

22 State's Exhibit 22 is a fired Nominal .38 caliber bullet.
23 It's of a type of bullet that's either a jacketed hollow point
24 bullet or a jacketed soft point bullet, that is, the the nose
25 of this bullet (indicating) would have been lead and it would

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 have had either a hollow cavity in it or it would have just
2 had a smooth cap on it. The base of the bullet is covered by
3 jacket material as is the side of the of the bullet
4 (indicating).

5 I compared test bullets fired by the revolver with this
6 bullet but I was not able to identify this bullet as fired,
7 being fired by that particular revolver (indicating) to the
8 exclusion of all other similar guns. This bullet did have the
9 same number of land and groove impressions and it had some
10 similarities to test bullets, but due to the damaged condition
11 of the bullet and due to the way that this revolver marks
12 tests bullets of this type I just want not able to identify it
13 positively.

14 Q. And how did this bullet compare to the other three
15 weapons that were...

16 A. This bullet could not have been fired by any of the three
17 pistols. It's larger than a .25 and the other two pistols had
18 a different number of lands and grooves in their barrel as
19 opposed to the revolver.

20 Q. Okay. Move on to the remaining bullet.

21 A. (The witness examined the exhibit.) State's Exhibit 19,
22 which is my SLED Item 4, is described on the container as
23 being a fired bullet recovered from bedroom No. 1 floor area,
24 220 Tharon Drive. State's
25 Exhibit 19 is a fired .38 caliber full metal jacket bullet.

AGENT FRANK DEFREESE - DIRECT EXAMINATION BY MR. BULSA

1 This is a type of bullet that has a a round copper covered
2 nose. At the base of the bullet you can see the the core
3 exposed. This bullet was not nearly as damaged and not
4 distorted. I found matching individual striated marks as well
5 as the same class characteristic marks on State's Exhibit 19
6 as I did on test bullets fired by the revolver, State's
7 Exhibit 28. From those marks I ---

8 MR. SCHULTZ: Your Honor, just for clarification, what
9 Exhibit is he referring to?

10 THE COURT: Yes, sir, if you'll give us that.

11 AGENT DEFREESE: State's Exhibit 19.

12 THE COURT: 19. Okay.

13 MR. SCHULTZ: And that and that is item No. what on this?

14 AGENT DEFREESE: That's SLED item No. 4. So state's
15 Exhibit 19 was fired by State's Exhibit 28.

16 BY MR. BULSA:

17 Q. Without a doubt?

18 A. Yes.

19 Q. Thank you, Agent DeFreese. Please answer any questions
20 Mr. Schultz may have.

21 THE COURT: Mr. Schultz, you can cross-examine.

22 MR. SCHULTZ: Thank you, Your Honor. May it please the
23 Court.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION BY MR. SCHULTZ:

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. You go by Agent DeFreese?

2 A. Yes.

3 Q. All right." Referring to Item No. 4 in your SLED Analysis
4 Report, sir, let me direct your attention to that.

5 A. Yes.

6 Q. Okay. That's a fired bullet recovered from the floor of
7 bedroom No. 1, correct?

8 A. Yes, sir.

9 Q. Okay. Now, did you lift any other items or microscoptic
10 articles off that bullet?

11 A. Yes.

12 Q. What did you find?

13 A. As part of our examination, we usually look the evidence
14 over very well before we do anything else to it. I found some
15 debris that looked like green paint. It was a sort of smeared
16 paint like material on it which I removed and separately
17 packaged to be returned with the evidence.

18 Q. And that's consistent in your report because you write,
19 "Debris consistent and the appearance of green paint was found
20 on the surface of Item No. 4," correct?

21 A. Correct. It looked like green paint to me. We did
22 not -- I did not analyze it but I just made note of it and
23 returned it with the evidence.

24 Q. According to your report here, your Forensics Services
25 Report ---

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Yes.

2 Q. --- did you find any blood on this bullet?

3 A. No. If I had found blood, obvious blood on it, I would
4 have noted it.

5 Q. Did you find any tissue, soft tissue on this?

6 A. No.

7 Q. Did you find any pieces of skull on this?

8 A. No.

9 Q. Did you find anything relating back to some part of the
10 human body?

11 A. No. There was no obvious debris associated with a human
12 body on this bullet. That wouldn't necessarily mean that it
13 did or did not go through it, it just means that it was not
14 there.

15 Q. Let me refer to you in your report Item No. 6.

16 A. Yes, sir.

17 Q. "One fired bullet recovered from wall of bedroom No. 1."

18 A. Yes, sir.

19 Q. You state in your report that the Item 6 bullet could
20 have been fired by Item 20 which is the .38 revolver,
21 correct?

22 A. Right. Item, my Item 20 is State's Exhibit 28.

23 Q. But yet there are many guns that have similar rifling
24 qualities to them the same way as they would the .38, correct?

25 A. Right. There are there are many other firearms that

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 have, that are .38 special caliber with with the five land and
2 groove right hand twist specification that Item 28 has, but of
3 the of the guns that were submitted in this case this is the
4 only one that had five lands and grooves with right hand twist
5 in it's barrel. So in in that sense I say that Item, my Item
6 6 could have been fired by this gun.

7 Q. It could have been fired by this gun but you're not a
8 hundred percent positive, correct?

9 A. Correct. Exactly.

10 Q. There could have been a whole list of guns, in fact, that
11 could have fired from this -- that bullet coulda came from,
12 correct?

13 A. Right. There are other firearms that have five lands and
14 grooves with a right hand twist that potentially could have
15 fired the bullet I referred to as Item 6.

16 Q. As an expert in this field could you ---

17 A. State's Exhibit 22.

18 Q. Yes, sir. Could you list some of the firearms that could
19 have fired that bullet?

20 A. Um, Taurus double action revolvers made after 1977, Ruger
21 double action firearms. Um, there are a number of Spanish
22 made copies of Smith & Wessons like Escodins and
23 Arastes (phonetic) and, you know, other names that are hard
24 for court reporters to type, that could have fired it.

25 Q. Now, in your experience you've testified in numerous

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 trials, correct?

2 A. Yes, sir.

3 Q. Would you say that the Ruger is a very popular firegun --
4 firearm?

5 A. Yes, sir.

6 Q. And especially used in these types of trials, correct?

7 A. They're a popularly distributed firearm and we see them
8 from time to time, you know, involved in in our case work.

9 Q. In fact, would you say that the Ruger is one of the most
10 popular firearms as far as your testimony goes in various
11 trials?

12 A. No, I wouldn't. I wouldn't go so far as to say that. It
13 occurs from time to time. We do see Ruger semi-automatic
14 pistols. We occasionally see Ruger revolvers but, you know,
15 but they do occur but they're they're not really popular in
16 our casework. They don't occur a whole lot in our casework.

17 Q. And a Ruger is a what? Is that a semi-automatic or an
18 automatic weapon?

19 A. Ruger makes semi-automatic pistols and they also make
20 double action and single action revolvers.

21 Q. Now, ---

22 A. Their their double action revolvers in .38 and .357
23 magnum caliber also have five lands and grooves with right
24 hand twists. Their other fire arms do not.

25 Q. Now, from what I understand when it comes to firearms is

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 Ruger is the brand, Ruger is a person, correct?

2 A. Yes.

3 Q. And Ruger is the brand of firearm that is made by that
4 company, correct?

5 A. That's correct.

6 Q. And the Ruger again is a semi-automatic or an automatic?

7 A. Ruger has made both automatic firearms usually in rifles.
8 Their pistols are semi-automatic pistols but they also make
9 double action revolvers and single action revolvers. Ruger
10 makes rifles, pistols, shotguns. They make practically all
11 kinds of firearms.

12 Q. So now going back to Item No. 6, the fired bullet
13 recovered from bedroom No. 1, ---

14 A. Yes, sir.

15 Q. --- so this could have been from a Ruger, correct?

16 A. Correct.

17 Q. Which would never be confused with a .38 revolver,
18 correct?

19 A. No, it could have been fired by a Ruger, .38 Special or a
20 .357 Magnum caliber double action revolver.

21 Q. All right. Now, referring to Item No. 7, that's a lead
22 fragment recovered from the living room floor.

23 MR. SCHULTZ: If I could, Your Honor, could I refer to
24 the map of the --

25 THE COURT: Yes, sir.

AGENT FRANK DEFREESE -- CROSS-EXAMINATION BY MR. SCHULTZ

1 MR. SCHULTZ: Your Honor, I apologize to the Court and
2 the jury. This may take a while to warm up here.

3 (Counsel prepares the overhead projector.)

4 BY MR. SCHULTZ:

5 Q. Now, Agent, can you read that (indicating) okay?

6 A. Yeah, all --- I can't read the writing in the upper right
7 hand corner or the lower right hand corner but I can see the
8 plan fairly well.

9 Q. Okay. Well, neither can I. Can you clearly make out
10 bathroom, kitchen, bedroom 2, bedroom 1, storage area, closet,
11 living room?

12 A. Yes.

13 Q. Okay. All right. Now, referring back -- I apologize to
14 the Court for taking long.

15 THE COURT: It's okay.

16 BY MR. SCHULTZ:

17 Q. Referring back to Item 7, one lead fragment recovered from
18 the living room floor. Can you point out with your laser
19 pointer there where the living room was or is.

20 A. (The witness complied.)

21 Q. And we've heard testimony today that that fragment was
22 found right there (indicating). Have you heard any of the
23 testimony in this case before?

24 A. No, sir, I've I've heard none of the testimony.

25 Q. All right. And Item 7 was a fragment of a fired lead

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 bullet core?

2 A. Correct.

3 Q. And you write also in your report is that that's
4 unsuitable for identification with a specific firearm,
5 correct?

6 A. That's correct.

7 Q. Okay. All right. Thank you. So this could have been
8 fired from a .38 revolver, correct?

9 A. Correct.

10 Q. This also could have been fired from a Lorcin .25.

11 A. Probably not. The reason I say that is the base of
12 the -- the visible base of what's left of the core has a
13 radius that's probably as large or larger than a quarter of an
14 inch. It also has a rather pronounced, distorted impression
15 of a crimping cantalure that is a distance forward of that
16 base that is rather farther forward than you would expect to
17 see of the impression from a .25 auto core. State's Exhibit
18 23, my Item 7, would be consistent with a .38 Special or .357
19 Magnum or 9-millimeter although most 9-millimeter bullets
20 don't don't have crimping cantalures but the .38 Special and
21 .357 revolver bullets frequently do.

22 Q. Nevertheless, you said, according to your testimony that
23 you just said, is that this could be consist with a
24 9-millimeter.

25 A. It could be, yes.

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 Q. And isn't it a fact that two 9 millimeters, Hi-Point
2 9-millimeters were found in that house?

3 A. I don't know that. I know that two were submitted to me.

4 Q. Two were submitted to you?

5 A. Yes.

6 Q. So wouldn't it be reasonable and correct to say that
7 Item 7 could have been fired from a Hi-Point 9-millimeter?

8 A. Yeah, I can't say that it wasn't.

9 Q. Now go to the Item No. 9 in your ballistics report.

10 A. My Item 9 which is State's Exhibit 27.?

11 Q. That was found in the floor of bedroom No. 2.

12 A. Yes, sir, according to the container.

13 Q. Very briefly could you point out, as soon as the lights
14 go down here, could you point out where bedroom No. 2 is?

15 A. (The witness complied.) Did I do it long enough for you?

16 Q. Bedroom No. 2.

17 A. Yes.

18 Q. Okay. And that you say in your forensic report is that
19 that bullet could have been fired by a Lorcin .25, correct?

20 A. That cartridge case. It it ---

21 Q. Excuse me, ---

22 A. Yeah.

23 Q. --- the cartridge case. That cartridge, so for people
24 that aren't familiar with firearms what happens when a gun
25 goes off like a Lorcin ---

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

- 1 A. Well, a Lori ---
- 2 Q. --- when it's fired?
- 3 A. A Lorcin semi-automatic pistol of the type that was
- 4 submitted in this case works as I described semi-automatic
- 5 pistols, that is, they, each time the pistol is fired when
- 6 it's working properly a a cartri -- a bullet will be expelled
- 7 out of the bore and a cartridge case will be extracted and
- 8 ejected from the chamber so that for each shot fired you get a
- 9 one bullet and one cartridge case left so long as ammunition
- 10 is present and so long as the gun's working properly.
- 11 Q. Was a fired bullet ever submitted to your lab?
- 12 A. There were no fired .25 auto caliber bullets submitted in
- 13 this case.
- 14 Q. So it would be reasonable to say that that bullet is
- 15 still somewhere in that house, correct?
- 16 A. It could be.
- 17 Q. Would it be reasonable to say that?
- 18 A. Well, it could be unless it were like fired through a
- 19 window or it escaped in some other way.
- 20 Q. Now, you're positive, in fact, in your report that that
- 21 bullet or excuse me that cartridge was never discharged from a
- 22 .38 revolver, correct?
- 23 A. Correct.
- 24 Q. Now, you found -- in Item 10 you find a 9-millimeter
- 25 Luger caliber pistol.

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 A. That's correct.

2 Q. And that pistol was examined, test fired and found to be
3 in working order, correct?

4 A. That's that's correct, sir.

5 Q. And also a 50 round capacity Winchester brand cartridge
6 box containing 42 unfired .32 Smith & Wesson caliber
7 cartridges was also found in this house, correct?

8 A. Yeah, that was all -- I don't know where it came from but
9 it was submitted to me yes, sir.

10 Q. Would it be reasonable to say that that was in the crime
11 sce -- part of the crime scene, correct?

12 A. Without the packaging I I don't know exactly where it was
13 was recovered. If you'll indulge me just a minute. According
14 to my xeroxed copy of the packaging in which this item was
15 received, it's described as one box of Winchester 32 S&W with
16 42 rounds and the location of recovery on the package is
17 stated as being bedroom No. 1 dresser drawer, 220 Tharon
18 Drive.

19 Q. Very quickly if you could dim the lights there. And
20 bedroom No. 1 again is where?

21 A. (The witness indicated.)

22 Q. And could you point to where it says 220 Tharon Drive
23 there on the right (indicating).

24 A. I'm sorry. I'm ---

25 Q. Okay. 220 Tharon Drive up there (indicating) under

AGENT FRANK DEFREESE - CROSS-EXAMINATION BY MR. SCHULTZ

1 the -- underneath the compass.

2 A. Oh, I'm sorry (indicating). I can just barely read it.

3 I assume that's what that is.

4 Q. Yes, sir, I have bad eyesight too ---

5 A. Okay. I ---

6 Q. --- so that -- that's fine.

7 A. Well, it's slightly outta focus for me.

8 Q. And just lastly you you also were sent a Hi -- another
9 Hi-Point 9-millimeter Luger caliber pistol.

10 A. That's correct, my my Item No. 5.

11 Q. And that Item No. 5 was found where?

12 A. It's not indicated in my notes where it was found.

13 Q. All right.

14 MR. SCHULTZ: Beg the Court's patience, Your Honor.

15 THE COURT: Yes, sir.

16 MR. SCHULTZ: That's all I have, Your Honor. Thank
17 you.

18 THE COURT: Thank you. Redirect, Mr. Bulsa?

19 MR. BULSA: No redirect, Your Honor.

20 THE COURT: Thank you, Agent DeFreese. You can step
21 down.

22 MR. BULSA: We ask that he be excused.

23 THE COURT: Without objection, Agent DeFreese can be
24 excused.

25 MR. SCHULTZ: Without objection, Your Honor.

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. BULSA

1 THE COURT: Thank you.

2 (Whereupon, the witness was excused.)

3 MR. BULSA: State calls Dr. Wren.

4 THE COURT: Come forward Dr. Wren and be sworn.

5 DR. JOHN DAVID WREN, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MR. BULSA:

8 Q. Good afternoon, Dr. Wren. Would you please introduce
9 yourself to the jury.

10 A. My name's John David Wren.

11 Q. What is your profession?

12 A. I'm a physician and with a specialty in anatomic clinical
13 pathology.

14 Q. Does that include forensic pathology?

15 A. Yes.

16 Q. Could you give the jury the benefit of your education and
17 in forensic pathology.

18 A. Well, first off I have a a bachelor's degree, a master's
19 degree and a doctor's degree in chemical engineering from
20 Clemson University. I have an M.D. degree from the Medical
21 University of South Carolina. I did a combined anatomic and
22 clinical pathology residency at Medical University of South
23 Carolina completing five years in three years and nine months
24 with special credits. While I was there I was assistant
25 medical examiner Charleston County from July of 1980 until

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. BULSA

1 January, the end of January of 1983. I did forensic autopsies
2 for the state at the Medical University one weekend a month
3 while I was a resident in anatomic and clinical pathology
4 because of my special interest in that. And by virtue of that
5 I was qualified to stand my boards in anatomic and clinical
6 pa -- I mean in forensic pathology but I didn't take the
7 boards because of the other issues that I did here in anatomic
8 and clinical pathology while I was working.

9 Q. How long have you been a pathologist?

10 A. I started my residency on February the 1st 1979 in
11 forensic -- I mean in anato -- anatomic pathology at that
12 time.

13 Q. And you testified in courts as a expert in forensic
14 pathology?

15 A. Yes, probably a hundred times in this court and scattered
16 over the state. I've -- I can name a few, probably not all of
17 'em; Charleston, Horry, Orangeburg, Lexington, Greenwood,
18 Laurens, Anderson, Greenville, York, Newberry, Georgetown,
19 Berkley and several others.

20 Q. Okay, Doctor.

21 MR. BULSA: Your Honor, we would offer Dr. Wren as an
22 expert in the field of forensic pathology.

23 THE COURT: Thank you. Mr. Schultz?

24 MR. SCHULTZ: No voir dire for the witness.

25 THE COURT: Thank you. Without objection then Dr. Wren

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. BULSA

1 is so qualified as an expert in forensic pathology.

2 BY MR. BULSA:

3 Q. Dr. Wren, if you would briefly describe forensic
4 pathology to the jury.

5 A. Well, forensic pathology is a specialized branch of
6 anatomic pathology. Pathology itself in the study of the
7 disease processes in the body and as such it's divided into
8 anatomic pathology and clinical pathology. Since we'll be
9 talking about anatomic I will cover clinic briefly first.

10 Clinical pathology is that branch of medicine that deals
11 with tests run on predominantly body fluids but any tests that
12 are run in a laboratory is most often supervised as by a
13 pathologist as the laboratory medical director, which I am the
14 laboratory medical director of Spartanburg Regional Medical
15 Center, it does -- those types of things or chemical tests on
16 the blood, examination of tissues or or material that is
17 removed from the body for infectious diseases. It's also
18 typing, cross-matching blood, various things like that whereas
19 anatomic pathology is basically tissue pathology or cell
20 pathology which the cell pathology part would be pap smears or
21 bronchial washings or fluids that are re -- removed from the
22 body in which we look at cells under the microscope and make a
23 diagnosis.

24 The tissue pathology part is tissues that are removed
25 either in a physician's office or in a hospital for the

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1 purpose of determining whether a tissue is benign or malignant
2 in the first place and then whether it's infectious, if it is
3 benign whether it's infectious or other types of disease
4 processes so that the physician can take that information and
5 better treat the patient. Then the -- another portion of
6 anatomic pathology is is actually autopsy pathology which for
7 a hospital based physician mainly that is -- deals with
8 hospital autopsies to determine the cause of death or the
9 result of treatment processes when a person may have had
10 certain treatments to de -- and to determine causes of death
11 in the hospital.

12 Now, forensic pathology is a subspecialty of anatomic
13 pathology that deals with legal medical examination of
14 processes whether it be an autopsy to determine cause and
15 manner of death or whether it deals with other related aspects
16 of pathology dealing with legal cases.

17 Q. All right. And in this case in particular were you asked
18 to perform on Alberto Domingo Chavez?

19 A. Yes, I per -- performed an autopsy an an individual
20 identified as Alberto Domingo Chavez on December 26, 2006
21 beginning at approximately 9 a.m. in the Spartanburg Regional
22 Medical Center autopsy room.

23 Q. Dr. Wren, are you familiar with the -- as to the date of
24 death of Mr. Chavez?

25 A. No, I assumed it was the night before or the morning of

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1 December the 26th. I usually do 'em -- this this individual
2 died in intensive care so I assumed he either died late in the
3 afternoon of Christmas day or early in the morning of the day
4 after.

5 Q. Do you receive your requests to perform autopsies from
6 the coroner?

7 A. Yes.

8 Q. If I hand you coroner's investigative notes, could you
9 identify the date of death?

10 A. No, I did not list it, no.

11 Q. Let me show you these notes.

12 A This is a coroner's investigative notes which is usually
13 prepared after an autopsy is done. The date of death was
14 listed as Friday December 22nd at 11:36 a.m.

15 Q. Could the delay in the autopsy have been the Christmas
16 holidays?

17 A. We usually don't wait that long but nevertheless, um, I
18 would have to assume that's why it was delayed.

19 Q. Okay. Nevertheless, when you performed that autopsy on
20 Mr. Chavez, did you identify his -- the size of Mr. Chavez,
21 how tall he was and how much he weighed?

22 A. Yes, he was 67 inches long which can vary plus or minus 2
23 inches after death because of the way the person stands and so
24 forth and the way we measure it, and a hundred sixty-four
25 (164) pounds was the recorded weight.

DR. JOHN DAVID WREN - DIRECT EXAMINATION BY MR. BULSA

1 Q. So 67 inches is 5 feet 7 inches?

2 A. That's correct.

3 Q. Now, what injuries did he have to his -- to the body?
4 His person?

5 A. Well, his head was wrapped with gauze and when I removed
6 the gauze he had brain tissue matted in his hair and he had a
7 through and through gunshot wound to his head.

8 Q. Could you describe the wound to us?

9 A. The entrance was in the right side of the head right at
10 about the hairline. It was 3 3/4 inches from the top of the
11 head (indicating), 2 inches to the right of midline and
12 2 1/4 inches what I call circumferentially from the midline
13 anteriorly to show it was interior rather the posterior from
14 the midline. The wound was irregular in shape. It measured
15 .20 by .21 inches in overall dimensions and if you look at the
16 the wound like a clock from four o'clock on the hour hand up
17 to eight o'clock, there was an abrasion border about five
18 one-hundredths of an inch wide at its maximum indicating that
19 the bullet as it entered that skin entered first along that
20 area and sorta just abraded the tissue as it entered into the
21 skin.

22 Now, there was an exit in the left parietal occipital
23 region which was further back it was 5 inches from the top of
24 the head, it was 3 1/2 inches to the left of midline and it
25 was 6.75 or 6 3/4 inches circumferentially from the midline

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1 anteriorly. There was -- that wound was irregular in shape.
2 It was split because as bullets leave the skin they often
3 split the skin if they -- as they enter the skin unless
4 they're contact or loose contact they usually make a nice
5 round hole unless they have they have hit something prior to
6 going in it, into the skin and ha -- and may be tumbling or
7 fragmented as they go in. But at any rate, there was tissue
8 protruding from that wound as well as bone indicating that was
9 an exit wound and it measured ninety-one hundredths or
10 nine-tenths of an inch and maximum diameter in in four-tenths
11 of an inch in the other maximum dimension. So that bullet
12 passed through the head going front to back, it was going
13 right to left at about 45 degrees from the straight plane and
14 it was going downward slightly so the bullet passed through
15 his head roughly like this (demonstrating).

16 Q. Okay.

17 A. Now, what was the diameter of the entrance wound?

18 A. It was .20 by .21 inches and that needs a little bit of
19 explanation. Because of the way skin stretches or may be
20 loose or lax, a a diameter of a wound is only a rough
21 approximation of the size of the bullet in that the skin, if
22 one has an injury to the skin whether it be a stab wound or a
23 laceration or a bullet wound, that wound can vary from at
24 least 25 percent in either direction. So just as a rule of
25 thumb let's say it was it was it was it was twenty-five

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1 one-hundredths of an inch in diameter, 25 percent of that
2 would be six and a quarter units so it will be either .315
3 would be the maximum you you should probably see and the
4 minimum would be .185. Now, since he lived for a while after
5 that happened there's gonna be swelling of in -- of the
6 tissues of the skin so that even that is just a rough
7 approximation.

8 Q. Doctor, on Page 3 of your report you describe the wound
9 to the bone, right temporal bone, what was that measurement?

10 A. The the bone in the in the temporal bone which was the
11 bone it went through into the into the cranial vault that
12 wound was round, meaning that the bullet hadn't tumbled or
13 hadn't been fragmented or anything as it entered the bone.
14 Now, one can tell whether bone is -- whether a bullet is an
15 entrance or an exit particularly in the skull because the
16 skull being a certain thickness, as the bullet passes into the
17 bone it makes a round hole but as it breaks through the other
18 side it sort of breaks out and so it makes the the the exit of
19 the bone itself bigger than the entrance and that's called
20 inward beveling if it's going in. This one was inwardly
21 beveled and the diameter of that hole was .40 inches or
22 four-tenths of an inch which is a more accurate diameter of
23 the bullet than the skin would be.

24 Q. Is that consistent with a bullet fired from a .38
25 revolver?

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1 A. Yes.

2 Q. Dr. Wren, the -- you described the path of the bullet
3 through Mr. Chavez's skull. From that path can we make any
4 conclusions or draw any inferences as to how the wound would
5 have been inflicted?

6 A. Well, it was distant more than likely because there was
7 no evidence of powder or stippling. Burning powders hits the
8 skin will will do what what we call stippling or tattooing
9 meaning it sorta burns the skin as -- because it's hot or if
10 it's close enough for the soot that comes out of the barrel
11 after the bullet to hit the skin, it will show soot deposition
12 depending on on how much there is. And as a rough rule of
13 thumb handguns do not throw those burning particles nor the
14 soot for -- as far as as shotguns and and rifles. So the only
15 thing that means when I did not see any was that the the
16 barrel was at least 6 inches and it could have been 3 feet, it
17 could have been 3 miles, it it just means it was further away
18 than it would normally show tattooing of the skin or soot
19 deposition.

20 Q. Based on the angle of this this path ---

21 A. The individual was not looking directly at the person
22 that shot him. He either turned his head as a evasive
23 maneuver or he was shot while he wasn't looking at him.

24 Q. All right. And was the -- would the gun or weapon
25 had -- what proximity up or down to that wound would it

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1 have ---

2 A. Well, it's ---

3 Q. --- been fired?

4 A. Since the head can move considerable directions then all
5 that means is that if you take a straight line through the
6 head from where the entrance and exit were, then the the
7 barrel of the gun would have had to have been in a straight
8 line from that.

9 Q. So...

10 A. Now, that that basically means since the the bullet was
11 going down somewhat either the individual was seated or he had
12 his head down depending on how far the person was away, more
13 than likely. And he could have been lying down of course but
14 any position that the head where a bullet could go straight
15 through like that and you draw a straight line back to a
16 position any of those are possible.

17 Q. The gun would have had to been above his head.

18 A. Uh...

19 Q. Unless he was ---

20 A. No, ---

21 Q. --- ducking his head.

22 A. --- it it would have been -- the bullet was coming in, it
23 hit the skin first at a lower angle but say since we don't
24 have a flat head then that just means that the bullet came
25 into the skin at the four or eight o'clock position but it was

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1 sticking out a little bit further so it went through basically
2 like this (demonstrating), went in here (indicating), it came
3 out here (indicating) and if you were shooting me and my head
4 would have been about like that (demonstrating) for you to
5 shoot but on the other hand if I were lying on the floor, it
6 would have been more like that (indicating) depending on how
7 far you were back but it could be any any position.

8 Q. Okay.

9 A. So one can't, basically one can't say exactly where the
10 person was.

11 Q. Okay. Dr. Wren, in your expert opinion what was the
12 cause of death to Mr. Alberto Domingo Chavez?

13 A. It was, um, I just simply called it gunshot wound to the
14 head. One can speculate in any cause of death as to all the
15 sequence of events that occurred but regardless of how it
16 happened for him to die it was a result of a gunshot wound to
17 the head.

18 Q. And in your opinion, Dr. Wren, with a wound of that
19 nature would Mr. Chavez had been able to move after receiving
20 that wound?

21 A. He could have moved probably his left side of his body
22 unless he lost consciousness as soon as the bullet went into
23 his skull which he probably did because most most individuals
24 do, but he certainly could not have moved the right side of
25 his body because it went through an area that controls the

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1 right side of the body.

2 Q. Do you expect that kind of a wound to cause him to fall
3 where he was shot?

4 A. Pretty much, yes.

5 Q. Thank you, Dr. Wren. Answer any questions Mr. Schultz
6 might have.

7 THE COURT: Mr. Schultz, you can cross-examine.

8 MR. SCHULTZ: Yes, sir. May it please the Court.

9 THE COURT: Yes.

10 CROSS-EXAMINATION BY MR. SCHULTZ:

11 Q. Dr. Wren, what date did you perform the autopsy on?

12 A. I have listed on December the 26th at 2006 at 9 a.m.

13 Q. Okay. And what was the date of death?

14 A. Well, they have listed here 12/22/2006.

15 Q. 12/22 to 12/26.

16 A. Yes.

17 Q. That's approximately, what would you say? Four days?

18 A. Uh, 12/26 -- 12/22 at 11:30 a.m. -- 36 a.m. was the time
19 he was pronounced and I did the autopsy on 12/26. Now, I
20 usually, as I said, I usually do 'em the next day and I do not
21 recall unless there's a error here why -- what the what the
22 difference in dates were.

23 Q. All right. So just to confirm the date of the death was
24 12/22/06 and the date of the autopsy was 12/26/06, correct?

25 A. That that, I don't have my work sheet but that's -- nor

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1 do I have the book I list 'em in, but that's the that's what's
2 stated. Now, now in these notes he had several pronouncements
3 of death, brain death. Now, ---

4 Q. For those of us that don't know, what is a pronouncement
5 of death?

6 A. Well, if -- as everyone knows in in head injuries, often
7 times LifePoint or the -- or Red Cross will ask the family if
8 they can procure organs or if they will donate organs from the
9 person and so if they're on life support then the physicians
10 have to do two different pronouncements of death and that
11 means brain death. So when they get ready to do a -- to to
12 get the organs out, then what they do is they take 'em to the
13 operating room. After they've been pronounced brain dead they
14 will take 'em to the operating room and keep them alive until
15 they get the or -- or give them life support until they get
16 the organs out and then they stop all support. Now, they did
17 procure organs. Uh...

18 Q. I understand that. I I think you've answered my
19 question, doctor.

20 A. So -- well, I was gonna say I am not sure the events that
21 happened around that time. I do know that the -- I do note it
22 that the family consented to organ procurement after he was
23 pronounced brain dead. Now, assuming these two times are
24 correct then I would have to assume that they kept him alive
25 for or kept him on a respirator and life support until the

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1 morning of December the 26th after they did the organ
2 procurement.

3 Q. All right.

4 A. So that's probably why I did the autopsy four days later
5 after he was pronounced brain dead the second time.

6 Q. Now, isn't it a fact that between the shooting on 12/21
7 and the actual autopsy is that certain things happen in the
8 body as a result of this gunshot wound, correct?

9 A. Yes..

10 Q. And you noticed this in your report that maybe the holes,
11 the bullet holes found in the head become irregular in shape,
12 the diameter, the -- they become irregular shape, correct?

13 A. The skin, yes and because of the swelling it goes on and
14 the the wound healing that that can start immediately after a
15 person's shot almost within thirty minutes to an hour you can
16 see evidence of things starting to to -- of the body cells
17 reacting to that.

18 Q. So it's impossible really to tell the caliber, the
19 caliber of the bullet in a average autopsy?

20 A. If it hasn't gone through the bone, yes, probably but but
21 it went through the bone and I said it was a round hole
22 that, the bone doesn't change.

23 Q. I understand that.

24 A. It could have been there for fifty years. Assuming the
25 bone hadn't decomposed, it would have still been that

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1 diameter.

2 Q. All right. Nevertheless, there was swelling of the
3 tissue, correct?

4 A. Yes.

5 Q. And you said the bullet was round, correct?

6 A. It was what?

7 Q. The bullet was round.

8 A. The bullet hole was round. I never saw the bullet.

9 Q. Okay. Now, you said that that would be consistent with a
10 .38 caliber, correct?

11 A. Well, counsel we don't use calibers to measure diameters.
12 I use a metal machinist ruler and it's by eye to measure it so
13 it's kinda hard to measure one one-hundredths of an inch in
14 diameter with your eye without help.

15 Q. So it could ---

16 A. But I but I measured it as .40 inches and that's .
17 fully -- it it wouldn't have been a .22 caliber.

18 Q. Oh, I understand that.

19 A. Okay. And it wouldn't have been a .50 caliber.

20 Q. Okay.

21 A. It was more likely close to .40. Could have been a
22 .40.

23 Q. It could ---

24 A. It could have been a .38.

25 Q. It could have been a whole host of weapons, correct?

DR. JOHN DAVID WREN - REDIRECT EXAMINATION BY MR. BULSA

1 A. Well, I I don't think it'd been a .32.

2 Q. But it could have been.

3 A. And probably not a .44 because it's hard for a .44 to
4 squeeze through a forty-one hundredths of an inch hole.

5 Q. Well, what you're saying is this this wound that you
6 found on the bone a lot of handguns could have made that same
7 mark.

8 A. Sure any that size.

9 Q. All right.

10 MR. SCHULTZ: Beg the Court's patience.

11 THE COURT: Yes, sir.

12 MR. SCHULTZ: That's all I have for this witness, Your
13 Honor. Thank you.

14 THE COURT: Redirect, Mr. Bulsa?

15 MR. BULSA: Just briefly, Your Honor.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION BY MR. BULSA:

18 Q. Dr. Wren, you discussed the organ donor process. Was
19 Alberto Chavez an organ donor? Did he become one in this
20 case?

21 A. Pardon?

22 Q. Did -- were his organs -- what's the word ---

23 MR. SCHULTZ: Objection, Your Honor, relevance.

24 MR. BULSA: What's the word?

25 THE COURT: No, sir, I think that it was brought out on

DR. JOHN DAVID WREN - REDIRECT EXAMINATION BY MR. BULSA

1 cross-examination as a matter of fact. I'll allow him to go
2 into ---

3 DR. WREN: Well, ---

4 MR. BULSA: Procured I believe is the word.

5 DR. WREN: --- I was presented this stuff without being
6 able to read it.

7 BY MR. BULSA:

8 Q. I believe -- do you have your report?

9 A. Item No. 6 states here, "Due to organ procurement by
10 LifePoint autopsy delayed until Tuesday morning December the
11 26th," that's why the difference is in the dates.

12 Q. Okay. So his organs were procured?

13 A. Yeah, and I I have to assume that there were -- well,
14 they have to test the organs or the person's blood to find a
15 suitable match and some -- sometimes it -- these organs go to
16 thousands of miles away, sometimes they're pretty close but
17 usually they have to coordinate with the organ procurement
18 teams that are harvesting other organs to other places at a
19 suitable time so that's why the delay.

20 Q. Yes, sir. Would that process or delay affect the
21 findings that you made in this case?

22 A. Not really. I mean, forensic pathologists are trained to
23 make determinations on all manners of decomposition and this
24 person, as I stated previously, the the skin diameter would
25 have probably have been affected by swelling and and possibly

DR. JOHN DAVID WREN - RECROSS-EXAMINATION BY MR. SCHULTZ

1 a little bit of decomposition or the healing process whereas
2 the hole in the in the skull would not have changed. Now,
3 he'da had to live probably twenty or well at least five to ten
4 years before that bone woulda started filling in.

5 Q. Okay. And that hole to his skull was that consistent
6 with a .38 revolver?

7 A. Yes, it's within within ---

8 Q. The bullet?

9 A. --- measurement error, yes.

10 Q. Thank you. That's all I have.

11 THE COURT: Any follow up on those points, Mr. ---

12 RECROSS-EXAMINATION BY MR. SCHULTZ:

13 Q. Just one more question, Dr. Wren. So a a bullet slightly
14 smaller or a bullet slightly larger could have made that
15 wound, correct?

16 A. I don't think one larger could have assuming that that
17 you have to give me the benefit of the doubt that I can
18 measure a diameter. And there's a little bit of error just
19 trying to measure a round hole with a straight line because
20 because you might not be right in the center of the hole, you
21 might be over slightly or those marks are real close together.
22 But I would I would definitely say it was bigger than a .22,
23 it was bigger than a .25 caliber, probably most likely big --
24 bigger than a .32 and within reasonable certainty bigger than
25 a a 9-millimeter and certainly less than a .44 or .45 ---

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1 Q. But you ---

2 A. --- no doubt.

3 Q. According to you -- are you are you done?

4 A. Yeah.

5 Q. Okay. According to your testimony it could have been at
6 least a .22?

7 A. No, I said I said it was certainly -- the bullet was
8 certainly larger than a .22 and a .25 without a doubt. I
9 mean, no one, I don't think you could find anyone to say it
10 was consistent with a .22 or a .25.

11 Q. And now the measurement, you did this measurement
12 yourself, correct?

13 A. Sure.

14 Q. Okay. And you used your hands, correct, to measure
15 this?

16 A. You know, we don't use calibers ---

17 Q. Well, I understand that.

18 A. --- because...

19 Q. As you said before there's a margin of error containing
20 any scientific measure, correct?

21 A. Pardon?

22 Q. There's a margin of error contained in every scientific
23 measurement that you that you as a physician ---

24 A. You ---

25 Q. --- make?

DR. JOHN DAVID WREN - RE-CROSS-EXAMINATION BY MR. SCHULTZ

1 A. Well, I know a lot about scientific measurements. Do you
2 wanna talk about that?

3 Q. Well, it's not really my question but all all I'm asking
4 you right now is that there's a margin of error, correct, in
5 in any sort of measurements that you would make during the
6 course of an autopsy, correct?

7 A. Yes, that's correct.

8 Q. All right. Thank you. That's that's it, doctor.

9 THE COURT: Mr. Bulsa, you got the last word.

10 MR. BULSA: Nothing further.

11 THE COURT: Dr. Wren, thank you. You can step down. You
12 can be excused without objection.

13 MR. BULSA: Thank you Your Honor.

14 THE COURT: Thank you for coming.

15 (Whereupon, the witness was excused.)

16 THE COURT: Mr. Bulsa.

17 MR. BULSA: May I confer with the court reporter? I
18 believe everything's been entered ---

19 THE COURT: Okay.

20 MR. BULSA: --- into evidence.

21 Okay. Your Honor the state would rest.

22 THE COURT: Thank you. Ladies and gentlemen, the state
23 has now rested its case in chief, that means that you have
24 heard all of the evidence that you'll hear from the state in
25 the presentation of its case in chief. Necessarily now I've

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1 got to send you to your jury room to deal with some matters of
2 law that I have to take up outside of your presence at every
3 case of this sort at this stage of the proceedings. I'll get
4 you out shortly to tell you what the balance of the afternoon
5 will be for you all but now I want you to remember of course
6 not to discuss this case among yourselves or in any way. And
7 this will also be a good time perhaps for the afternoon recess
8 as well if they need a smoke break that they can do that.
9 We'll get you out here as soon as we have finished the work
10 that we have to do probably at least fifteen or twenty minutes
11 at the very least. It'll take us that long to do what we've
12 got to do. Thank you.

13 (The following takes place outside the presence of the
14 jury.)

15 THE COURT: Mr. Schultz, I'll be glad now to hear motions
16 from the defendant.

17 MR. SCHULTZ: Your Honor, at this time I'd like to move
18 for a directed verdict on all indictments. Your Honor, as we
19 discussed in the pretrial, there is a statement of of my
20 client that has not been put forth at this time. The state
21 has failed to put this into evidence. Your Honor, I believe
22 this is a big thing that the state has failed to do in proving
23 the existence of either a malice aforethought or any kind of
24 attempted robbery so I believe that the state has failed to
25 meet its burden. Your Honor, the principal, the only witness

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1 for the state that's -- that attributed any malice
2 aforethought on the part of Mr. Piper was one Jennifer Gregg.
3 The the other state's witnesses did not attribute any ---
4 (Interruption in the courtroom.)

5 THE COURT: Thank you. Yes, sir, go ahead.

6 MR. SCHULTZ: The other state's witnesses did not
7 attribute any malice aforethought or any kind of murderous
8 intent that night whatsoever. We've obviously put in no
9 evidence of that and nor did we intend to put Mr. Piper up for
10 for that and we believe that the state has failed to meet its
11 burden on on the murder, the attempted, the two counts of
12 attempted armed robbery the -- and the pointing and
13 presenting. Thank you, Your Honor.

14 THE COURT: All right. Thank you. Rule 19, of course,
15 of the Rules of Criminal Procedure is a salient rule that we
16 look to for guidance in dealing with these types of motions
17 and the cases that are cited under Rule 19 of the Rules of
18 Criminal Procedure tell us that if there is any direct or
19 substantial circumstantial evidence from which the guilt of
20 the accused might be determined and also taking all of the
21 evidence in the light most favorable to the state, the non-
22 moving party, then the the motion for directed verdict must be
23 denied. In this case, of course, malice can be inferred from
24 the use of a deadly weapon. The use of a re -- reckless use
25 of a deadly weapon one that results in harm or death to the

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1 other party can lead to the inference that malice was
2 involved.

3 As to the elements of the crime of attempted armed
4 robbery, my recollection is that Mr. Artis Jackson testified
5 that a man came into his home, demanded his drugs or his
6 money, when he was unsuccessful in that attempt then the
7 decedent came out and the individual tried to take his gold
8 chain from around his neck. As as I take that evidence in the
9 light most favorable to the state as I am bound to do, I find
10 that the jury could chose to believe that, could believe that
11 that the individual involved, that the individual involved was
12 attempting to take by force, intimidation, the use of a deadly
13 weapon personal properties from someone else and convert it to
14 their own use which of course are the elements of armed
15 robbery. I therefore find that the evidence as it has been
16 presented in the light in which I must consider the evidence
17 is sufficient to su -- to sustain this jury going -- that the
18 jury consider it in this case and to deny the motion for
19 directed verdict so the motion is respectfully denied.

20 MR. SCHULTZ: Thank you, Your Honor.

21 THE COURT: You've already perhaps answered this
22 question, Mr. Schultz, does the defense intend to offer any
23 evidence in this case?

24 MR. SCHULTZ: Your Honor, we -- my client and I have
25 discussed this, you know, at this time, he does not intend to

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1 testify and I have no witnesses to call.

2 THE COURT: All right, sir. All right.

3 MR. SCHULTZ: Your Honor, if I may, could I discuss that
4 a little more with Mr. Piper if we could take a short recess?

5 THE COURT: All right. If you're gonna discuss with him
6 whether or not he will testify, then let me at this point in
7 time go over his rights in that regard so that he can be
8 advised of that.

9 MR. SCHULTZ: Okay.

10 THE COURT: Mr. Piper, would you stand in place right
11 where you are. Madam clerk, if you'll put -- you're al -- I'm
12 sorry. You're already under oath. You've already been sworn
13 by the clerk in connection with the the guilty plea so you can
14 be seated. I just need to ask you a few questions. I'm just
15 standing because my back's hurting.

16 Mr. Piper, your attorney, Mr. Schultz, wants to discuss
17 with you further the matter of your testifying in your own
18 defense. As you know, because I've already told you in
19 connection with your guilty plea on the failing to stop
20 charge, you have a constitutional right to remain silent. The
21 Fifth Amendment of our United States Constitution and the
22 counterpart to that amendment in our South Carolina
23 Constitution declare that no individual in a criminal
24 proceeding can be forced to testify against himself and that
25 means that you cannot be forced to admit your guilt. You

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1 cannot be forced to take the stand and testify in your own
2 behalf in this case. Do you understand that?

3 DEFENDANT: Yes, Your Honor.

4 THE COURT: And if you choose to exercise that
5 constitutional right and choose not to testify, the jury will
6 be instructed that they cannot consider that fact in their
7 consideration of your guilt or your innocence, that they
8 cannot be even talk about it in their deliberations, that you
9 have a constitutional right not to testify and if you choose
10 to exercise that constitutional right, that fact cannot and
11 must not be considered by them in your deli -- in their
12 deliberations. Do you understand that?

13 DEFENDANT: Yes, Your Honor.

14 THE COURT: On the other hand, if you choose to take the
15 stand and testify and give up the constitutional protections
16 given to you, then you will the assume the role of every other
17 witness who has testified in this case. That means that you
18 will be asked questions not only by Mr. Schultz but also
19 my -- by Mr. Bulsa and you can be cross-examined and impeached
20 on any matters which are relevant in this case. Do you
21 understand that?

22 DEFENDANT: Yes, Your Honor.

23 THE COURT: So do you have any questions that you wanna
24 ask me about your right to testify or not to testify in this
25 case?

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1 DEFENDANT: No, Your Honor.

2 THE COURT: So I will assume from that then that your
3 decision either to testify or not to testify will be done with
4 a full understanding of what your rights are, is that fair to
5 say?

6 DEFENDANT: Yes, Your Honor.

7 THE COURT: All right. Thank you. All right.
8 Mr. Bulsa, if you will -- excuse me, Mr. Mr. Schultz, if you
9 will will discuss during the break this matter with your with
10 your client. There's still the matter of the charge
11 conference that we will have and if in fact no testimony or
12 evidence is offered by the defense, Mr. Bulsa, about how long
13 do you think you might take in your argument?

14 MR. BULSA: Fifteen to twenty minutes at most.

15 THE COURT: All right. And, Mr. Schultz, how long do you
16 think that you might take in your argument?

17 MR. SCHULTZ: I think twenty minutes to thirty minutes.

18 THE COURT: Okay. Gentlemen, I never have had the
19 privilege of trying a case with either of you before so I --
20 I'll have to assume that you can tell time pretty well. I I
21 don't keep a clock on you. The jury's the one that really
22 keeps a clock on ya and I and I don't ring a bell when you get
23 to the point where you've told me that you've used that much
24 time and no longer but but I do, if I get the impression as
25 you continue to go on in your final argument, if I get the

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1 impression that you have completely forgotten how long you
2 told me it was gonna take, I'll try to think of some discreet
3 way to remind you and let you know that that we're going on.
4 My concern quite frankly is whether or not to present this
5 jury to the case this after -- the jury with the case this
6 afternoon. Um...

7 MR. SCHULTZ: Your Honor, if if I may.

8 THE COURT: Um-hum.

9 MR. SCHULTZ: I have a lot of notes to go over and I'm
10 sure Solicitor Bulsa does and ---

11 THE COURT: Right.

12 MR. SCHULTZ: --- it's the end of the day, the jury, from
13 what I can see, is pretty exhausted. I would like it and I
14 think it would be beneficial not only to my client but also to
15 the state if we argue and charge in the morning.

16 THE COURT: Well, let me ask Mr. Bulsa what he thinks
17 about that.

18 MR. BULSA: Your Honor, I -- I'm prepared. I can go
19 ahead and close if the Court sees fit.

20 THE COURT: Right. Frankly, you all -- your arguments,
21 if you keep them within the time frames that you've told me,
22 would be a lot shorter than my charge. The charge in this
23 case that I have is scripted. As you know I, you know, it's
24 it's not ad-libbed it's just -- I don't read it but I follow
25 pretty much the script that's been developed over the years.

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1 It's gonna take forty to forty-five minutes for me to charge
2 the jury on these various on these various charges and I'll go
3 over the charges, the proposed charges with you shortly. So,
4 and I I can visualize the jury getting this case, if we take
5 ten more minutes on a break for Mr. Schultz to talk with
6 Mr. Piper and get back in here about 3:20 and have a charge
7 conference, it'll probably last no longer than ten minutes,
8 that's 3:30, you all argue until 4:15, 4:20, I charge until
9 5:00, we start the deliberations at 5 which is a recipe for
10 disaster.

11 MR. BULSA: Yes, sir.

12 THE COURT: So I I would I would think that the better
13 part of discretion would be for us to to bring the jury back
14 tomorrow ---

15 MR. BULSA: There's no objection.

16 THE COURT: --- at 9:30 and do that and if they're not
17 scattered around, I'll get 'em back in and tell 'em that right
18 now. If they're scattered around, I'll have to wait till
19 we -- till they finish ---

20 MR. SCHULTZ: That's ---

21 THE COURT: --- smoking.

22 MR. SCHULTZ: --- fine, Your Honor. Thank you.

23 THE COURT: All right. We'll be in recess in here in any
24 event for at least -- let's start back at let's say let's go
25 ahead and start back at 3 -- at 3:30 and I'll hear from you at

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1 that point in time as to whether or not you wish to put up a
2 defense in this case, okay?

3 MR. SCHULTZ: Yes, sir, Your Honor.

4 THE COURT: All right. Thank you. We'll be in recess
5 until 3:30.

6 (Whereupon, a recess was taken.)

7 THE COURT: All right Mr. Schultz, where are we now?

8 MR. SCHULTZ: Your Honor, Mr. Piper after consulting with
9 me and his co-counsel, Mr. Whelchel, has decided not to
10 testify.

11 THE COURT: All right. Thank you. All right. Then what
12 we'll do is bring in the jury and, Mr. Schultz, I will allow
13 you to rest in the presence of the jury after which I will
14 advise the jury the status of this case and dismiss them until
15 9:30 tomorrow morning and after they're gone we can deal with
16 the charge conference, all right? Any problems with that,
17 Mr. Bulsa? Mr. Schultz? Gentlemen?

18 MR. BULSA: No, sir.

19 THE COURT: Okay. Bring in the jury please.

20 (The following takes place in the presence of the jury.)

21 THE COURT: Ladies and gentlemen, as you know the state
22 has presented all of the evidence and testimony that it will
23 offer in its case in chief and now we turn to defense who has
24 the right to present evidence and testimony but as I told you
25 before this trial began is under no obligation to present

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1 evidence and testimony. Mr. Schultz.

2 MR. SCHULTZ: Your Honor, the defense rests at this time.

3 THE COURT: Thank you. Now, ladies and gentlemen, that
4 means that you have now heard all of the evidence that you
5 will hear in the trial of this case. You have yet to hear the
6 final arguments that the lawyers will present to you and the
7 charge of the law which will be given to you after the
8 arguments have been completed. The hour is such that it would
9 push us past five o'clock before we got this case in your
10 hands by giving -- allowing for the arguments and the charge,
11 which I would give you after that has been done, and
12 experience and common sense have taught us over the years that
13 that's not a good time to get the jur -- the case in the hands
14 of a jury. So that means that I'm going to let you go now, a
15 little early. We'll get you back at 9:30 tomorrow morning to
16 conclude conclude the trial of this case. I can tell you,
17 ladies and gentlemen, if there's any consolation for you
18 having to come back tomorrow that you will not have any
19 involvement after this case is over. We're not gonna ask you
20 to serve on another jury during the week even if another one
21 is selected it won't won't involve you all 'cause you will
22 have done your civil duty by virtue of your service on this
23 case alone. And I tell you that for no other reason other
24 than to let you know that we don't intend to keep ya the rest
25 of the week. We'll keep you here tomorrow and you can stay

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1 tomorrow as long as you need to stay to do your work but this
2 will be the last case you will have any involvement in during
3 this week.

4 I must necessarily tell you now, especially must I tell
5 you now that you're not to discuss this case with anyone. And
6 you can't even talk about it among yourselves tomorrow morning
7 when you get back in the jury room at 9:30. You've heard all
8 of the evidence in this case. You're not gonna hear any more
9 testimony. You will hear the lawyers argue to you tomorrow
10 but I've told you that's not evidence. You will hear the
11 instructions on the law which I will give you. And so you
12 might figure, Well, I've heard everything almost. Well, you
13 haven't, not quite. And I know you must think that I must
14 think you're pretty stupid because every time before you walk
15 through that door I say, "Don't talk among this case
16 yourselves," and you say, "Gosh, that guy doesn't think we
17 have any sense, got a short attention span," well, no it's not
18 that at all. The twelve of you who will eventually end up in
19 that jury room deliberating this case whether it's the twelve
20 principal jurors or whether any alternates will be involved or
21 not, but the twelve of you who will end up discussing this
22 case and deliberating this case tomorrow are the only twelve
23 people on the face of this globe who'll be asked to make a
24 decision in this case. And that's the reason that it's real
25 important that I continue to impress upon you the absolute

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1 necessity of your not talking with anybody else about this
2 case. You might you might have a significant other that you
3 wanna talk about, you understand that you've got a weighty
4 decision to make tomorrow and you might feel that you need
5 some help in making this decision when you don't. You really
6 don't. You're well equipped to make the decision that we're
7 gonna ask you to make tomorrow and as a matter of fact there's
8 nobody else in the world any better equipped than you are to
9 do it. And so please continue to abide by those instructions
10 and I -- and I'm sure you'll do that but I just wanted to let
11 you know that now, you've heard it all except the charge on
12 the law and the final arguments but still don't talk about it
13 to anyone. We'll get you back at 9:30 tomorrow. We'll
14 conclude the trial at that at that time. I thank you for your
15 patience throughout this trial and anticipate that tomorrow.

16 Incidentally, someone, the bailiffs told me someone
17 someone in the back has some back problems and I stand, I
18 know, I feel the same way and I have to do that from time to
19 time. If you -- if you're uncomfortable in that regard just
20 please feel free to stand in place right where you are as long
21 as you don't disturb those around ya, that'll be our -- but as
22 as you've already heard you don't have a lot of more sitting
23 to do, at least not in this courtroom. Have a safe trip home,
24 folks. I'll see you tomorrow at 9:30.

25 (The following takes place outside the presence of the

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1 jury.)

2 THE COURT: Folks, as to the charge, let me go over with
3 you the charges that I think have been suggested to me by the
4 evidence and the testimony in this case and then I will hear
5 from you all with any exceptions, objections or requests for
6 additional charge. My standard felony charge contains a
7 reasonable doubt definition from *Victor vs. Nebraska* or the
8 state cases, *State vs. Darby*. That's the charge that says,
9 "firmly convinced." I alluded to it in my introductory
10 remarks to the to the jury. I tell you that because I didn't
11 want you in your discussions with the jury to suggest that
12 you're gonna hear the judge tell you that reasonable doubt is
13 a type of doubt that would cause a reasonable person to
14 hesitate to act 'cause they're not gonna hear me say that and
15 I didn't wanna mislead you all or have you all mislead the
16 jury in that regard unintentionally so that's the reasonable
17 doubt definition that I use.

18 I will charge the jury on the fact that the defendant in
19 this case did not testify. On the credibility of the
20 witnesses, I will charge the expert opinion testimony, I don't
21 think we had any witnesses who had a con -- a conviction, I --
22 there was one potential who had a conviction but I don't think
23 anybody testified he had a conviction as I recall, the
24 standard murder charge of course, malice. I will charge armed
25 robbery so that I can tell the jury what the attempt is and I

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1 will of course charge them as to intent. I will charge
2 criminal intent. I will charge pointing and presenting a
3 firearm and the elements of that from the statute and
4 basically I use Judge Ervin's charge in that regard which is
5 pretty elemental. I will charge circumstantial evidence and,
6 gentlemen, I think that's all that have occurred to me.

7 Mr. Bulsa, I'll be glad to hear from you with any
8 exceptions to those requests or any requests for additional
9 charge.

10 MR. BULSA: Thank you, Your Honor. Your Honor, I have
11 prepared some charges. You may have this language in your
12 standard charges but but predominantly natural and probable
13 consequences of your actions and then the malice aforethought
14 that malice need not exist at any particular length of time.

15 (Counsel handed the document to the Court.)

16 THE COURT: All right. The malice definitions are part
17 of my general charge. I will I will consider the charge on
18 the natural and probable consequences. I'm gonna let you know
19 about that before I -- before tomorrow, before you argue,
20 okay? All right.

21 Mr. Schultz, I'll be glad now to hear any exceptions or
22 question for additional charge from the defense.

23 MR. SCHULTZ: Your Honor, just for clarification
24 purposes, the paper that Mr. Bulsa submitted to the Court
25 malice aforethought are -- do you plan on using that in your

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1 instructions, that standard?

2 THE COURT: Yes, as a matter of fact, at least the sense
3 of that is in my charge. The wording might not be precisely
4 the same but it is basically the same. It it certainly
5 implies that intent. The -- yes, that's basically -- I've got
6 a copy of my malice charge up here that I'll let you all look
7 at today if you'd like to before you go so you can see what it
8 says, okay?

9 MR. SCHULTZ: I have a couple of requests to charge of
10 self-defense, Your Honor. I'd like to submit this to the
11 Court ---

12 THE COURT: All right.

13 MR. SCHULTZ: --- as well.

14 THE COURT: Now, tell me where the evidence is on the
15 self-defense issue from which the jury could conclude that
16 self-defense is appropriate.

17 MR. SCHULTZ: Yes, sir, Your Honor. The evidence that
18 we've heard for the last two days I think does have some sort
19 of self-defense ring to it. If you look at, if you remember,
20 Christian, and that's again the state's witness that
21 testifies, he says that Mr. Piper had no intent to commit
22 armed robbery or murder that night, no intent to rob anybody.
23 And he says, he relates the story that Mr. Piper was talking
24 to him one day and Mr. Piper said, "I I had to do this, the
25 Mexican came at me," and this is confirmed actually by the

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1 testimony of another state witness, Gregg Lee, who said in his
2 testimony and I believe that's what he said, was that, "The
3 Mexican came at me around the corner and I had to shoot him."
4 And I believe he repeated that several times in his direct
5 testimony is that he -- "I had to shoot shoot him."

6 Your Honor, as as for the intent, Mr. Lee did not testify
7 that Mr. Piper had any intent whatsoever to commit murder that
8 night. Your Honor, not only did the fact witnesses back this
9 up, and again those two fact fact witnesses were from the
10 state not from the defense, the ballistics backs up the fact
11 that there were at least two, conclusively two, guns fired
12 that night, one was Mr. Piper's gun and we know this through
13 ballistics and forensics and from what the experts testified
14 and the police officers testified to, the other was a Lorcin
15 .25 which we've heard no evidence at all that Mr. Piper
16 handled so not knowing what really happened that night on
17 December 21st would lead a reasonable person and I think a
18 reasonable member of a jury conclude that indeed there there
19 may have been another gun pointed at Mr. Piper's face that
20 night. We know that there was a gun fired in bedroom No. 2.
21 We don't know if Mr. Piper went in bedroom No. 2. We don't
22 know if he went in the kitchen. We know that he was probably
23 in the living room and bedroom No. 1 but we don't know that.
24 So I think there is adequate room for a self-defense
25 instruction because of not only these fact witnesses but also

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1 because of the bullin -- ballistics and forensics that was
2 introduced by the state.

3 Beg the Court's patience, Your Honor.

4 THE COURT: All right.

5 MR. SCHULTZ: That's all I have on the self-defense.

6 THE COURT: All right, Mr. Bulsa, let me hear from you on
7 that.

8 MR. BULSA: Thank you, Your Honor. To -- the state
9 agrees that self-defense is not appropriate. As to the
10 defense attorney's argument concerning the two witnesses, he
11 mentioned Mr. Hudson and Mr. Mr. Lee, I must have a different
12 recollection of the facts. Mr. Lee I believe testified that
13 when he, when Piper came out of the house he said that, "I had
14 to kill him. I had to kill him." He didn't give a reason why
15 he had to kill him. And the similar testimony came from
16 Mr. Hudson. When they were on the porch, Mr. Piper told him
17 that he killed the Mexican. I don't believe that the reason
18 why was given to Mr. Hudson as well. So we just don't feel
19 there's any description of any activity by Mr. Chavez which
20 would lead to the necessity of the defendant to use
21 self-defense.

22 THE COURT: All right. Thank you. I'm trying to locate
23 my notes on Mr. Hudson.

24 MR. SCHULTZ: Your Honor, if I may.

25 THE COURT: Yes, sir.

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1 MR. SCHULTZ: Would you like to hear from me now or are
2 you doing something?

3 THE COURT: I'm trying to get my testimony, my notes on
4 the testimony in front of me so that I can ---

5 MR. SCHULTZ: That's fine, Your Honor.

6 THE COURT: --- reread. All right.

7 (Pause.)

8 THE COURT: Yes, I've got the testimony located in my
9 notes. Go ahead and, Mr. Schultz, let me hear from ya in
10 response.

11 MR. SCHULTZ: Your Honor, as as we said before, not only
12 did Christian and Gregg indicate that Gary Piper was as --
13 acting in self-defense that night, but not not only the
14 ballistics and forensics back it up, I've I've been through
15 this before. Your Honor, as for self-defense, and I think
16 this directly goes into adequate provocation if you'll like me
17 to address that at the same time, we're obviously not only
18 asking for self-defense charge but we're also asking at the
19 same time for manslaughter charge. And I believe and -- that
20 Jen, who was to my opinion was the most adverse witness for
21 the defense that the state put up, I think she testified that
22 a -- she related the fact that Gary told her that a gun was in
23 the victim's hand at least to nearest in my recollection so I
24 think that that warrants a second look at. And I think and I
25 believe the case law backs the defense up on this is that I

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1 think instructions need to be given on a lesser included
2 offense of ---

3 THE COURT: Now, we're talking about --- let's let's
4 don't let's don't jumble these two things together. Let's get
5 the self-defense issue put to rest before we start dealing
6 with the manslaughter issue.

7 MR. SCHULTZ: That's fine, Your Honor.

8 THE COURT: All right. Now, are you are you referring
9 to, when you talk about Jennifer Gregg's testimony, are you
10 talking about that as as going to the self-defense issue or to
11 the manslaughter issue?

12 MR. SCHULTZ: Your Honor, that that would, I think
13 that's -- I would believe that that's not mutually exclusive.
14 I I think that goes to both but for for right now as the Court
15 has indicated I ---

16 THE COURT: Right.

17 MR. SCHULTZ: --- think that go go not only to
18 manslaughter but also to self-defense.

19 THE COURT: Right. All right. The elements of
20 self-defense which are required by law to be established
21 before self-defense or at least some evidence of it must must
22 arise is first of all the defendant must be without fault in
23 bringing on the difficulty. Now, the testimony from Ms. Gregg
24 in its entirety is that, "He told me he had gone to rob the
25 house. He said he went in the front room, there was a black

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1 guy with no money and no drugs, a Mexican came out, a Mexican
2 got a gun, struggled and the gun went off," that is to say,
3 Mr. Mr. Piper's gun apparently went off. I think that that's
4 the essence of the testimony that she offered as related to
5 her.

6 Now, as to whether or not that goes to self-defense or
7 not, the fact that he went to the place to rob the place with
8 a gun seems to go against the very first element and that is
9 that he was without fault in bringing on the difficulty. The
10 fact that someone may in their own home may have produced a
11 weapon to defend themselves does not change the fault as
12 having being brought on by someone else.

13 Now, what Mr. Lee had to say in his testimony was that,
14 "He knocked on the door, we're pulled up five feet from it, he
15 said, 'This is Gary,' " I think or Jerry, "They said, 'Come
16 in.'" The window was down. He said he was smoking. He said
17 he heard talking, the talking got louder, he heard one shot,
18 something fell, then he heard three more shots and Gary walked
19 out, yes, "Gary walked out." He said he heard someone say,
20 "up it" during the course of the conversation. He didn't know
21 who said it. He said he also didn't know that Mr. Piper had a
22 gun beforehand, that he came out with a gun in his hand and he
23 said, "The Mexican came around the corner with a gun and I had
24 to shoot him," went to Amanda's house and so forth.

25 What Mr. Hudson had to say about the same events were,

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1 "I asked him about the Smith & Wesson .38. I knew that it was
2 used. I knew that Gary had killed a Mexican with it. We were
3 on the porch smoking a joint, I asked him if he killed a
4 Mexican, he said, 'Yes.'"

5 I don't think there's anything else in that that that
6 lends itself to to the events immediately surrounding this as
7 as having been told them by by Mr. Mr. Piper and so in my view
8 the first prong of the self-defense is that the defendant must
9 be without fault in bringing on the difficulty. There is no
10 evidence in that regard. All of the evidence is that
11 Mr. Piper went to that place to get some money and that's in
12 the light most favorable to him that he went to the place to
13 get some money. The majority of the testimony is that he went
14 there to rob the place and the Mexican came up on him at the
15 time and he had to shoot him as a result. And so as to
16 self-defense I find that that is not an appropriate charge
17 under the circumstances.

18 Now, there is a case on the issue of manslaughter which
19 has held that any struggle over a weapon in certain cases in a
20 in a murder charge that the defendant would be entitled to a
21 charge on manslaughter but there's some specifics about that
22 that I'm not sure are present in here and I'm gonna see if I
23 can find that real quickly I will.

24 (Pause.)

25 THE COURT: Folks, I'm not gonna make you all sit there

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1 and watch me read this computer any longer but the voluntary
2 manslaughter of course is the unlawful killing of another
3 person without malice either expressed or implied. And the
4 case law has, that's what the statute says, the case law has
5 elaborated on that somewhat and has defined it as the unlawful
6 killing of another human being in sudden heat of passion upon
7 sufficient legal provocation. I searched the facts in this
8 case to find sufficient legal provocation, once again
9 hearkening back to the statements that I made during the
10 discussion on self-defense, when a person in his own home or a
11 home that he's been living in, I think he said at the time two
12 years, belonged to somebody else but he had been there for two
13 years paying rent, confronted with a stranger holding a gun
14 who has come there to get money, in the light most favorable
15 to the defense I cannot find that the actions of the
16 inhabitant of that home in attempting to defend themselves
17 amounts to sufficient legal provocation for someone else to
18 take his life so as to be entitled to a voluntarily
19 manslaughter charge. I'll do some more research on that
20 overnight and, Mr. Schultz, I invite you to do the same and
21 Mr. Bulsa as well.

22 Mr. Bulsa, do you have anything you wanna add to that?
23 You might have something more on point than what I'm talking.

24 MR. BULSA: Your Honor, I was searching my case file for
25 that case you quoted. I I prefer to research it some more.

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1 THE COURT: Right.

2 MR. BULSA: I certainly don't feel that voluntary
3 manslaughter applies. There is no provocation by anybody
4 in that house.

5 THE COURT: Right, but there again, as I say, I'll be
6 glad to continue to do -- that had to do with a struggle over
7 a shotgun I remember but the shotgun there was some other
8 evidence in that case as to what precipitated the struggle to
9 begin with and and there's there's several cases, a line of
10 cases that I was looking at and I can't remember whether this
11 is the one that actually referred to that or not.

12 (Pause.)

13 THE COURT: I'll continue to look at that, Mr. Schultz,
14 and I -- as I say, I'll invite your your continued research if
15 you wish to go into that but what I've looked at so far does
16 not lead me to believe that Mr. Piper's entitled to a
17 voluntary manslaughter charge.

18 MR. SCHULTZ: Yes, sir, Your Honor.

19 THE COURT: All right, sir. Any other exceptions or
20 requests from the defense? Mr. Schultz?

21 MR. SCHULTZ: None from the defense, Your Honor.

22 THE COURT: All right. In the current status of the
23 case, I have prepared proposed verdict forms, I did this at
24 the conclusion of the -- as the state's case was winding down
25 and and when I had not heard any any motions, unless I change

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1 my mind on the on the murder case, the indict -- the the
2 charges are layed out on the verdict form and the possible
3 verdict forms for each would be guilty or not guilty. I'll
4 give these to you, let you look at them overnight. If I
5 decide to include the lesser included, the murder charge would
6 contain the lesser included of guilty of voluntary
7 manslaughter but but here are the possible verdict forms right
8 now. I'll let you all cogitate on that overnight.

9 (The Court handed the documents to counsel.)

10 MR. SCHULTZ: Thank you.

11 MR. BULSA: Thank you.

12 THE COURT: All right. Folks, I'll be here at 9:15
13 tomorrow to give us a chance to revisit the voluntary
14 manslaughter issue and for me to hear further from you in that
15 regard and then at 9:30 we'll bring the jury out. Mr. Bulsa,
16 you will make the first of the final arguments. Mr. Schultz,
17 you'll have the right to to close having presented no evidence
18 and I'll charge the the jury and that'll be it.

19 MR. BULSA: Thank you.

20 THE COURT: All right. Thank you.

21 MR. SCHULTZ: Thank you, Your Honor.

22 THE COURT: All right. We'll be in recess until 9:30,
23 9:15 tomorrow morning, folks.

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter and Notary Public in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on November 26, 27 and 28, 2007 at the time and place heretofore set forth; and that the foregoing pages numbered from 8 through 417, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

WITNESS MY HAND AND SEAL at Greenville, South Carolina, this 24th day of February, 2008.



Margaret A. Woods, Notary Public

in and for the State of South Carolina at Large.

My commission expires: 06/09/2009.

1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

} COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,
5 PLAINTIFF,
6 vs.

7 GARY MICHAEL PIPER,

8 DEFENDANT.

TRANSCRIPT

OF

RECORD

07-GS-42-2716 - 2719

9
10 November 29th, 2007
11 Spartanburg, South Carolina

12
13 B E F O R E:

14 THE HONORABLE G. THOMAS COOPER, JUDGE; and a jury.

15
16 A P P E A R A N C E S:

17 DERRICK BULSA
18 ASSISTANT SOLICITOR
Attorney for the State

19 JOSHUA SCHULTZ
20 ASSISTANT PUBLIC DEFENDER
21 Attorney for the Defendant

22
23
24 PAMELA E. GREEN
Circuit Court Reporter
25 Seventh Judicial Circuit

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THE COURT: All right. Folks, I indicated to you yesterday that I would give you-all the chance to revisit briefly the issue of the lesser included of voluntary manslaughter before we started with the arguments this morning.

And since this is your motion, Mr. Schultz, I'll be glad to hear from you first.

MR. SCHULTZ: Thank you, Your Honor.

May it please the Court?

THE COURT: Yes, sir.

MR. SCHULTZ: Your Honor, I found several cases which I think are very applicable in this matter, which I believe the Court can take and decide in charging on the lesser included offense.

Your Honor, the -- one of the first cases I found last night was State v. Watson, and I'll pass that up to the Court and to the solicitor.

THE COURT: Thank you.

MR. SCHULTZ: Under the second headnote, Your Honor, if you'd like me to continue.

THE COURT: Okay.

MR. SCHULTZ: The trial judge is to charge the jury on a lesser included offense if there is any evidence from

1 which a jury could infer that a lesser and a greater offense
2 was committed.

3 THE COURT: Right. And that's a proper statement of
4 the law and is sort of elemental. So, the question then is
5 whether there's any evidence under the circumstances.

6 MR. SCHULTZ: Yes, sir, Your Honor.

7 THE COURT: Right.

8 MR. SCHULTZ: And I believe, I said this yesterday and
9 I, I still believe this today---

10 THE COURT: Right.

11 MR. SCHULTZ: ---that there is, at the very least, some
12 evidence of adequate provocation because we've heard Gregg
13 Lee's testimony today. And again, Mr., Mr. Lee was a
14 witness for the State and not from me, and he said that the
15 Mexican came around the corner. Well, Gary told him that
16 the Mexican came around the corner with a gun, and that's, I
17 think, pretty clear from the record. May not be citing it a
18 hundred percent accurately, but that was the gist of his
19 testimony.

20 THE COURT: Right.

21 MR. SCHULTZ: I believe the Court agrees with that.
22 Christian Hudson, and I'm not, not sure, I don't remember
23 the testimony exactly, but he said something to that extent
24 as well, Your Honor, I believe. And I think the Court may
25 agree with that as well.

1 So, at the very least, Your Honor, I think there is
2 some, some evidence of adequate provocation thus warranting
3 a voluntary manslaughter instruction charge.

4 THE COURT: The, the, the question really is, whether
5 in the face of an attempted armed robbery, one in the house,
6 who has a right to be there as the decedent did in this
7 case, then arms himself to resist the armed robbery or
8 attempted armed robbery, whether or not the fact that, that
9 an inhabitant of a house, by arming himself to resist the
10 attempted robbery, amounts to legal provocation to the
11 assailant to take his life, which is a somewhat unusual case
12 obviously. It's not the usual mutual combat or, or the sort
13 of fight that most normally degenerates into a murder and
14 then the question is who started it, and who said what to
15 whom, and, and what the history was.

16 While that factual scenario is somewhat unusual, it is
17 not unprecedented. In the case of State versus Tyson,
18 T-Y-S-O-N, found at 323 S.E.2d 770, 283 S.C. 375, it's a
19 Supreme Court case from 1984, is directly on point. And in
20 that particular case, the defendant was convicted down in
21 Florence County of murder and armed robbery. In appeal,
22 there was some Miranda issues which the Supreme Court
23 decided in favor of the State, and then it went to the issue
24 of whether or not voluntary manslaughter should of been
25 charged because that was the appellate's contention that,

1 that the decedent threw a weapon, produced a weapon, and
2 that created the heat of passion so as to allow him to raise
3 the defense or the lesser included of voluntary manslaughter
4 because voluntary manslaughter, of course, has two elements.

5 The statutory definition is the unlawful killing of
6 another without malice, but the case law has defined it
7 further as the unlawful killing of another in the heat of
8 passion and upon sufficient legal provocation. Both of
9 which have to be present. There's a long line of cases that
10 cite that. It's almost, it's almost black letter law.

11 State versus Locklair, L-O-C-K-L-A-I-R, is one that's just
12 at the top of the list, 535 S.E.2d 420. It's a Supreme
13 Court case from 2000, which reminds us that both of heat of
14 passion and sufficient legal provocation have to be present.

15 And so, State versus Tyson, a 1984 Supreme Court case,
16 addressed voluntary manslaughter in that context. And it
17 said Tyson's final assertion of error is that the trial
18 judge, and I'm paraphrasing somewhat here, erred in refusing
19 to charge the jury the law of voluntary manslaughter. This
20 contention is clearly without merit. Voluntary manslaughter
21 is the unlawful killing of a human being in the heat of
22 passion and upon sufficient legal provocation.

23 Appellate relies on the evidence of a struggle as the
24 victim resisted the armed robbery in order to establish the
25 heat of passion element. However, there's absolutely

1 nothing to support a finding of sufficient legal provocation
2 present at the time of the killing. Heat of passion alone
3 will not suffice to reduce murder to voluntary manslaughter.
4 Both elements must be present.

5 Here it is clear that the victim simply was defending
6 himself against an armed robber and was killed in that
7 attempt. Since there's no evidence from which a jury could
8 confer that the appellate was guilty of the lesser offense
9 of voluntary manslaughter, it was not error to refuse to
10 charge. And, and essentially that's what we have here.

11 And in relying upon State versus Tyson, I will
12 respectfully decline to charge voluntary manslaughter.

13 MR. SCHULTZ: Your Honor, could I put a couple more
14 things on the record?

15 THE COURT: I've already ruled. But I'll be glad -- if
16 you---

17 MR. SCHULTZ: I've got a---

18 THE COURT: Do you have anything, do you have anything
19 that, that differs with Tyson that I just read?

20 MR. SCHULTZ: Your Honor, not on the voluntary
21 manslaughter. But on the self-defense, I just want to
22 briefly, Your Honor, revisit that issue.

23 THE COURT: All right. Do you have anything in the
24 record that would indicate that, that Mr. Piper was without
25 fault in creating the circumstances?

1 MR. SCHULTZ: Well, Your Honor, it, it's our position
2 that this was not an armed robbery obviously and that's,
3 that's our defense. But our position is that, is that this
4 was not an armed robbery. I think this was backed up by the
5 statements of, of not only Christian Hudson, but also Gregg
6 Lee that Mr. Piper had no intent to rob anybody that night,
7 and thus I believe a---

8 THE COURT: Well, that may of been the, his, his, his
9 stated intent to these individuals. But I don't know that
10 there's any evidence in the record that supports that.

11 If you take Mr. Lee's testimony, all Mr. Lee knew was
12 he drove up there and or rode up there and Mr. Piper went
13 into the house, he heard some loud talking, heard a shot, I
14 think something fell, he heard three more spots, he walked
15 out, and said he came out with a gun in his hand, and he
16 said the Mexican came around the corner with a gun, I had to
17 shoot him.

18 Now, there's, there's, there's nothing in there, no
19 inference under these circumstances from which you could
20 conclude that he went in there with a, with a pure intent
21 and -- because I have to take that evidence along with the
22 evidence of, of, of Mr. Jackson who was in the house and
23 who testified as to what happened in the house, that, that
24 statement, out of context, is that, is not sufficient to say
25 that I was not at fault in creating the incident to start,

1 to start with that led up to it and that's the key.

2 It's not who, who necessarily did something right
3 immediately before the, the fatal shot was fired. It's who,
4 who set the whole chain of circumstances into motion that
5 led to the, to the unfortunate killing itself.

6 Mr., Mr. Hudson's testimony frankly is, is, is, is no more
7 help in that regard.

8 Now, what he very, may very well have, have meant was
9 that he didn't go there to kill anybody and he may not have.
10 He may not have. But he went to a house, apparently of
11 strangers, or at least these folks said they didn't know
12 him, they didn't recognize him, with a gun, in his own words
13 as offered through witnesses, because he needed money.

14 Now, it's not likely, given the scenario that he went
15 there to borrow money from folks he didn't know, this was a
16 crack house, everybody knew it's a crack house, and really
17 it would -- I would have to stretch the inferences of all
18 that to beyond all reason in order to, to avoid the, the
19 fatal defect in the first element of self-defense and that
20 is that the defendant was without fault in bringing about
21 the difficulty. Can't do that under these circumstances.

22 All right, sir. Thank you.

23 And I think the record is well preserved in that. The,
24 the testimony is in the record, and you, of course, have
25 argued it very well in your motion for directed verdict. I

1 don't know that anything you could -- we could continue to
2 elaborate and put case law up. But they'll be a time to do
3 that if you need to do that if there's an adverse verdict in
4 this case. But you don't have to cite all those cases here
5 today in order to protect the record. You've got that
6 protected.

7 MR. SCHULTZ: Yes, sir, Your Honor.

8 THE COURT: All right. Thank you.

9 MR. SCHULTZ: Thank you.

10 THE COURT: All right. The, the jury will be brought
11 in. The State will present the first of the final arguments
12 and then the defense will have the right to close and then
13 I'll instruct the jury accordingly.

14 Mr. Bulsa, is the State ready to proceed?

15 SOLICITOR BULSA: Your Honor, I was gonna ask the Court
16 on your ruling regarding my request for natural or probable
17 consequences.

18 THE COURT: Yes, I'll charge that. That's a, that's an
19 appropriate charge.

20 SOLICITOR BULSA: Thank you, Your Honor.

21 THE COURT: And one more thing, let me tie down the
22 loose end of the rap sheets right now if we do that.

23 Do you have those rap sheets?

24 MR. SCHULTZ: Yes, sir, Your Honor.

25 Beg the Court's patience.

1 THE COURT: Okay. All right.

2 (Pause.)

3 MR. SCHULTZ: Your Honor, my file is a large file. It
4 may take -- I know they're here. I don't want to keep the
5 jury out.

6 THE COURT: Okay. Well, if you, if you want them
7 offered as a Court's Exhibit, and only those witnesses who
8 testified, the wrap sheets only of those witnesses who
9 testified, of course, would be the appropriate---

10 MR. SCHULTZ: Yes, sir.

11 THE COURT: ---ones to go in, into the record. So, you
12 can -- I'll let you do that afterward, after we, after the
13 jury takes it into consideration.

14 MR. SCHULTZ: That's fine, Your Honor. Thank you.

15 THE COURT: All right.

16 SOLICITOR BULSA: There's one other matter regarding
17 the plea to failure to stop, how the Court is going to
18 handle that.

19 THE COURT: All right. That's a good point, Mr. Bulsa,
20 and frankly I've been cogitating how to, how to deal with
21 that. I, I, I think that the jury is entitled to know that,
22 that matter has been disposed of. Clearly it's not before
23 them for their consideration, and, and the -- probably the
24 best way for me to do that is to say simply that Mr. Piper
25 no longer contests those charges, and the -- I probably

1 could tell them that he pled guilty to the charge quite
2 frankly, Mr. Bulsa. But I, I hesitate to do that because
3 frankly I have had, haven't had a chance to research fully
4 the, the issue of that. I've been researching some other
5 issues and frankly have not researched that fully enough to
6 satisfy myself that it doesn't create some problems for
7 appellate review if I do that, and frankly, I don't think
8 that it's, given the evidence and the testimony that's
9 before the jury that they heard on that point, you can
10 argue -- you're fully free to argue those facts to the jury,
11 and, and with the assertion I indicate that he no longer
12 contests those charges. And I believe, from your
13 prospective, strategically that's, that's probably all you
14 need to squeeze out of that.

15 SOLICITOR BULSA: Yes, sir.

16 THE COURT: All right. Okay. Bring us the jury.

17 (Whereupon, the following takes place within the
18 presence of the jury.)

19 THE COURT: Madam Forelady, members of the jury, good
20 morning. Thank you for your prompt return this morning as
21 we enter the very final phase of the trial of this case.
22 The final arguments will be presented by the lawyers and
23 they will unfold in the following manner.

24 Mr. Bulsa, on behalf of the State, will present the
25 first of the final arguments. And after he is concluded

1 that, Mr. Schultz, on behalf of the defendant, Mr. Piper,
2 will have the right to make a last, the last and final
3 argument. After that has been done, then I will instruct
4 you or charge you what the law is in this case, and then
5 you'll be free to go back and talk about this case among
6 yourselves.

7 One matter that I need to let you know of, of, rather
8 of a house-keeping matter. When we started this trial,
9 there were actually five charges against Mr. Piper. There
10 was a pointing and presenting a firearm against Artis
11 Jackson. There was the attempted armed robbery of Artis
12 Jackson. There was a murder of Alberto Domingo Chavez, and
13 the attempted armed robbery of, of Mr. Chavez.

14 All of those are charges in the indictment. I need not
15 tell you again that the indictments are, are simply not
16 evidence in the case.

17 But there was also a charge of failing to stop for a
18 blue light and siren. Mr. Piper no longer contests that
19 particular charge. So, you will not have that in your
20 consideration. The lawyers are free to refer to it, if they
21 need to in the context of things, but that's not a matter
22 that you'll have to decide in this case.

23 You've been attentive throughout the trial of this
24 case, and we appreciate the attention you have given me.
25 You understand, of course, the importance of these issues to

1 everybody who's involved in it, and you have given it the
2 attention that the important issues in this case deserve,
3 and I'm sure that you will continue to give that same
4 attention to the lawyers as they present their final
5 arguments and to the Court as I instruct you in the law.

6 Thank you, folks.

7 Mr. Bulsa.

8 SOLICITOR BULSA: Thank you, Your Honor.

9 Morning, ladies and gentlemen. I too appreciate your
10 time and attention you've given in this case. They're
11 serious matters as you well know.

12 Ladies and gentlemen, Alberto Chavez was a hard working
13 Hispanic gentleman who needed a place to stay. He knew the
14 nephew of the Jackson's. The Jackson's had an extra room,
15 and they allowed him to board with them. He paid rent, and
16 went to work just about everyday, minded his own business.

17 The Jackson's lived in that home for decades. I think
18 Charles said he was born in that house. A house is a
19 person's castle. You have a right to defend yourself and
20 your property in your home.

21 On December 21st, 2006, around 9:50, 9:55, the
22 defendant went to that home with the intentions of robbing
23 the people that lived there. And unfortunately, Alberto
24 Chavez put up some kind of resistance and he died as a
25 result of that.

1 Nothing Mr. Chavez did justifies what that man did.
2 You heard the evidence and I'll go over it with you in just
3 a moment. But that man was upset because his girlfriend had
4 been in a wreck and had been charged with D.U.I. and went to
5 jail. He needed money. He was bent on getting money. And
6 he took a gun he had taken from the car of his girlfriend,
7 and he went to a house with the intentions of robbing the
8 people inside.

9 Ladies and gentlemen, when we began this case we called
10 the witnesses in a certain order. I wanted you to see the
11 scene so when the other witnesses testified you could have a
12 picture of what they were trying to describe to you. That's
13 the reason we called the officers first. And we called the
14 people in the house so you could get an understanding of
15 what took place in the house, then we went into the
16 acquaintances and friends of the defendant, and then into
17 his flight from the police, his telephone conversation to
18 Christian Hudson, and then finally to the forensics and to
19 the pathology.

20 We tried to put it in an orderly flow. I ask you, as
21 we review this evidence, that you keep an open mind, use
22 your common sense, use your common world experiences, and
23 use simple logic in deciding this case. You're gonna have
24 various exhibits and pictures with you. I'm not gonna spend
25 the time to go through them all on this screen like we do.

1 What I've done is we got the diagram of the home, the
2 various pictures. These are numbered on the back as State's
3 Exhibits, and we attempted to put them in some sort of
4 sequential order so as you review them you can get a sense
5 of this home and where things happened and where they were
6 found.

7 So, we begin with Officer Wilson who was the first
8 officer on the scene. He responded to a shooting. He went
9 in the house because of the nature of the call. He saw
10 Artis Jackson in the living room in a state of what he
11 called shock. He goes to clear the house. He finds Alberto
12 Chavez crumpled in the floor in the corner of his room with
13 a gaping wound to his head, massive amount of blood on the
14 floor, and he knows EMS is on the way. He gets the
15 Jackson's out of the house, EMS go in, and take him to the
16 hospital.

17 We have Deputy Baird coming in. He was in charge of
18 all the forensics, in charge of securing or searching the
19 scene. Mr. Schultz mentioned about, I believe tried to
20 comment about the messy nature of that home.

21 These officers spent hours in that home, and they
22 searched and searched and searched. They concentrated
23 primarily in bedroom number one labeled on this diagram,
24 which is Mr. Chavez's house, bedroom because that's where
25 the victim was found, and that's where he was shot.

1 And Deputy Baird found one hole in the back wall, two
2 holes in the front wall, and a hole in the head, well he
3 didn't find it, but it was found. We know there was another
4 hole in the head of Alberto Chavez. He traced those holes
5 to see what kind of physical evidence he could find.

6 We know he dug the bullet out of the back wall. We
7 know he traced the shot through the mirror that struck the
8 brick that went to the fireplace area and he finds a
9 fragment. Then we have the shot above the door that goes
10 into the ceiling. They were unable to recover that one.
11 And then he finds a spent round in the floor near where
12 Mr. Chavez was lying.

13 Something happened in that room. Something happened.
14 We know, if you count the shots, if you count the number of
15 holes, there's four, four shots. He also finds a
16 semiautomatic revolver, or excuse me, semiautomatic pistol
17 under the bed of Mr. Chavez, and they're pictures in there
18 about where that's found and how it's positioned under
19 there.

20 Now, I'm sure Mr. Schutlz will argue about the location
21 of that pistol and the fact that it's there. There's no
22 violation of the law for that gun being there. Look at how
23 it's positioned. Use your common sense and your logic. Use
24 your common sense and your logic. There were no shell
25 casings found in this room. Semiautomatic rounds eject

1 shell casings. Revolvers do not.

2 Deputy Baird goes in, into bedroom number two, which
3 was Charles Jackson's bedroom. He sees the hole in the
4 door, sees the pistol on the bed. It's the semiautomatic.
5 He finds the shell casing. In this messy house, he's able
6 to find a small shell casing. They're able to find bullet
7 fragments. They're able to find bullets. They did a
8 thorough job investigating the scene and recovering the
9 evidence.

10 They're no other shell casings found. I suggest to you
11 that the evidence shows there were no other shots other than
12 the one Mr. Charles Jackson admitted shooting. He admitted
13 shooting that, and they found evidence of that, one shot.

14 Deputy Baird had the pictures taken, created the
15 diagrams so you can have it for your review.

16 What does this evidence suggest happened?

17 It suggests that an altercation occurred in bedroom
18 number one, that Mr. Chavez was shot and fell to the floor.
19 I submit to you it's not important for you to determine
20 which round actually went through his head. I'll get to
21 Doctor Wren's testimony in a minute. But it's not important
22 which of those three or four shots went through his head.
23 The fact is that he was shot and ultimately killed as a
24 result of that gunshot.

25 The fact that no shell casings were found suggests

1 there's no semiautomatic fired, the shooter or someone
2 cleaned up the scene, or the police missed it. Use your
3 common sense and your logic and your normal experiences as
4 to what happened. I suggest to you, in conjunction with
5 everything else and all the other testimony, no other round,
6 no other weapon was fired from that room except a revolver.

7 We then called Mr. Artis Jackson. Mr. Jackson
8 testified to what happened. He was in the living room on
9 the couch, the man comes in, wielding a gun, demanding
10 money, demanding drugs, Mr. Jackson has none, Mr. Chavez
11 comes out, and demands money. This man demands money of
12 Mr. Chavez, tries to take his chain. Mr. Chavez, from what
13 we can tell from what Mr. Jackson says, resisted. He may of
14 went for the gun, but it doesn't appear that he ever made it
15 to it because he was shot, he fell to the floor. As Doctor
16 Wren said, he would of fallen where he was shot.

17 Charles Jackson -- let me back up to Mr. Artis Jackson.
18 I think we learned a lesson from Artis Jackson. He was
19 certain that he had a gun pointed at him and he's certain
20 that he got robbed. And he also testified he was certain
21 that it was an automatic and not a, not a revolver. You
22 might wonder about that.

23 This is an -- this is a lesson in evidence. They're
24 two types of evidence, direct and circumstantial evidence.
25 Direct is eye witness testimony. Circumstantial evidence is

1 when you look at the circumstances and the chain of
2 circumstances, what does that chain prove.

3 This is an example of why sometimes circumstantial
4 evidence is actually more reliable than eye witness
5 testimony because we know, we know that a revolver was in
6 that house and we know that the defendant had that revolver.
7 We know that was the gun he had through all the other
8 testimony. He had a revolver in that house and he's the one
9 that fired it.

10 Charles Jackson testified he was awoken by a noise. He
11 heard something outside his door. He called out. He heard
12 nothing, and he fired a shot.

13 Was that extreme?

14 Sounds extreme.

15 What did he hear?

16 He heard something to the extent that he thought he was
17 next. So, he pulled the trigger and it went through his
18 door into the kitchen.

19 Mr. Charles Jackson, I submit to you, was in fear for
20 his life based on what he heard. He admitted he was drunk
21 that night. He had been drinking. But he was, had a sense
22 enough to know that something bad had happened and boy was
23 he right. Boy was he right. Something bad had happened.

24 We know that the round that he fired went directly into
25 the kitchen and there's no way it could of entered into

1 bedroom one and caused any of the holes in bedroom one's
2 walls.

3 So, we have an attempted armed robbery of Mr. Artis
4 Jackson, pointing a gun at Mr. Jackson, attempted robbery of
5 Alberto Chavez, and the murder of Alberto Chavez based on
6 the testimony of the individuals, the individuals in the
7 house. That substantiates the crimes that the defendant is
8 charged with.

9 We called Gregg Lee. Gregg Lee was with Mr. Piper when
10 he went to that house. Gregg Lee said Mr. Piper was there
11 to get, he needed money. He went to that house and he
12 needed money. Needed a loan I think was the word he may of
13 used.

14 He went into the house, he knocked on the door, he said
15 his, he heard him say his name. And let me back up to
16 Mr. Artis Jackson. Artis says he heard a name Jerry. Gary
17 sounds a lot like Jerry. Artis thought it was somebody he
18 knew and said come on in. That's how trusting Artis was.

19 So, Mr. Piper knocks on the door, announces himself, is
20 invited in, and Mr. Lee is not in a position to see what
21 happens. He's in a position to hear what happens. He hears
22 talking. He hears the comment up it, which he says is slang
23 for give it up. He hears shots. He hears something fall.
24 He sees the defendant come out with a gun in his hand. He
25 comments I had to kill him or I had to shoot him. Drives in

1 the car and they speed away. He goes by the, his business.

2 Jennifer Lee testifies next. Jennifer Lee's the
3 defendant's girlfriend of a couple of years I think she
4 said. Mrs. Lee tells you how she had the wreck, and how she
5 was in jail, and how the gun, she discovered the gun
6 missing. She tells you how she learned what happened to the
7 gun. She learned Gary had it. She tried to get it back.

8 What did Gary say?

9 You don't want it. It's dirty.

10 They have a further conversation. He tells her he went
11 to this house to rob them. He heard it's a place to rob.
12 Went there with the gun to rob.

13 Mr. Schutlz made a comment to Mrs., Mrs. Gregg when she
14 was testifying about everything she knew was hearsay. Well,
15 she learned what she knew from the defendant. That's not
16 hearsay. That's admissions by the defendant. That's
17 admissions. That's just -- it's just as if he told you
18 himself.

19 Her conscious finally got the best of her, rightfully
20 so, and she tells the police. She tells the police he had
21 conversations with Mr. Piper in the jail. Mr. Piper was
22 concerned about that gun, what happened to the gun because
23 he knew that was the link to him and the crime scene.

24 Mr., Mrs. Gregg, Nancy Gregg, the mother of
25 Mrs. Jennifer Gregg, testifies about the gun, the pistol

1 being -- it's over there. It's her pistol. She certainly
2 did not give permission to Mr. Piper to take that gun. She
3 would not have given him permission. Mr. Piper took that
4 gun without the consent of Mrs. Gregg and without the
5 knowledge of Jennifer Gregg. In fact, Jennifer Gregg says
6 when she learned he had it, he gave her two different
7 reasons. He led her first to believe that she had given it
8 to him. Then he admitted he took it while she was in the,
9 in the store shortly before she wrecked her vehicle.

10 We put up testimony of the defendant's flight from
11 Gentry Street and I wrote something down this morning. I
12 read it. A wise man once said that authorities do not
13 frighten people who are doing right, but they frighten those
14 who do wrong.

15 Authorities were coming to get Mr. Piper. He was
16 frightened and he fled. The Court has told you that he no
17 longer contests that charges of failing to stop. But you
18 can consider those facts. Consider that he ran from the
19 police. He got up to sixty miles an hour, residential
20 neighborhood, going through yards, striking steps, wrecking
21 the vehicle, jumping out of the vehicle, fleeing the police
22 once again, hides in the bushes until he's caught.

23 And what does he do when he's arrested and taken to the
24 jail?

25 What was one of the first phone calls, if not the first

1 phone call?

2 You heard it on the CD. He makes a comment I guess
3 this first call is free.

4 Who in the world does he call?

5 He's laughing about being in jail and he's calling a
6 sixteen year old, Christian Hudson, and he's asking him to
7 go get the gun cause he knows if the gun is found it links
8 him to a much more serious crime of murder. Christian
9 testified of the conversations he had with Mr. Piper.
10 Mr. Piper told him to watch the news about a Mexican getting
11 killed. He told him he killed the Mexican. He told
12 Mr. Hudson that he needed to get Jennifer out of jail.

13 This is all about the defendant wanting money to help
14 his girlfriend. He is guilty of these charges.

15 We brought in, to establish the chain and make sure we
16 understand that this was the gun that was found when he
17 dumped it and it's linked back to Mrs. Gregg and Jennifer
18 Gregg, and then we bring in the SLED agent expert, firearms
19 expert, Dan Defreese, to show you how he compared that
20 pistol to the physical evidence taken from the house. We
21 know the gun was in the house because the bullet found in
22 the floor near the body of Alberto Chavez was fired by that
23 bullet or by that gun. We know there was a second round
24 found in the wall. Couldn't be conclusively identified to
25 this firearm. But there were four guns submitted.

1 We know they're three in the house. Two in, two in
2 Mr. Charles Jackson's bedroom. One in Mr. Chavez on the
3 floor. The police sent all four down. They want -- and
4 then the third, the fourth one, the revolver. They want to
5 make sure that everything was tested. They wanted to make
6 sure that everything was tested. They wanted to make sure.

7 And real life isn't quite like CSI and TV. Everything
8 doesn't always come back perfectly. We don't -- we get
9 inconclusive. But we also get, common sense and simple
10 logic, the bullet pulled from the wall wasn't fired by the
11 three semi-weapons. So, it most probably could of been
12 fired by the revolver. So, that's -- submit to you that's
13 the weapon that fired it.

14 And we have the piece of, fragment the expert said it
15 most probably was not fired by the .25. He can't rule out
16 the nine millimeters. But I had the expert describe to you
17 in detail how a revolver and how semiautomatic is fired, and
18 how they eject the shells, and where the shells, the shell
19 casings are.

20 There were no shell casings. We talked about that.
21 The only shell casing belonged to the .25 that was found in
22 the same room as the .25.

23 And then we get to Doctor Wren. Alberto Chavez, the
24 wound to the right side of his head exited back left of his
25 head. The best dimension to look at is where that bullet

1 went through the bone in his skull or was it -- there's a
2 long discussion with Mr. Schutlz and Mr., and Doctor Wren
3 about the timing of that hole and what bullet could of
4 caused it. And Doctor Wren, towards the end of that
5 cross-examination, started listing the size of rounds. It's
6 not a .22. It's not a .25. And reasonably certain to a
7 medical degree of certainty that it's not a .32 or a nine
8 millimeter. But he also said that.

9 He said it's consistent with a .38 or a .40 and there's
10 no .40 caliber. But there certainly was a .38. So, there's
11 no -- should be no question that that revolver was used to
12 kill Alberto Chavez. So, we have the corroboration of the
13 physical evidence to the admissions of the defendant to his
14 friends that he shot and killed the Mexican.

15 So, it all comes back to why.

16 What was his attitude and demeanor that night?

17 What had just happened?

18 He wanted money. He went to this house thinking he
19 could get some easy money. It wasn't as easy as he thought.
20 Regardless of what Mr. Chavez did, the judge will charge you
21 the defendant is responsible for the natural and or probable
22 consequences of his actions. He went there intent on doing
23 one thing, did something that would naturally possibly flow
24 from that, he is guilty.

25 He went there with a weapon to rob. It's a natural or

1 probable consequence that somebody might not want to be
2 robbed and that gun may go off and somebody may get killed.
3 This defendant is guilty of murder, which is killing of
4 another with malice aforethought. The malice may be
5 inferred from the use of a deadly weapon. It can be
6 inferred from the circumstances that he went there to commit
7 a felony of armed robbery.

8 It does not have to -- he did not have the, have the
9 intention of going in there and killing somebody. It's not
10 premeditation. Malice aforethought. He just had to have
11 malice in his heart, and I submit to you just the possession
12 of a gun, going into somebody else's home close to
13 ten o'clock at night, you got malice in your heart, but it
14 only has to exist a moment before you pull that trigger, and
15 it certainly did exist.

16 He's a cold blooded killer is what he is. He didn't
17 care what was gonna happen. He went in there wanting to get
18 money.

19 Use your common sense, world experience, simple logic.

20 Is the evidence corroborated and consistent with each
21 other?

22 Are the witnesses consistent with each other?

23 Does the fact that Jennifer waited two months to tell?

24 Listen to the story she told. It was just like
25 everybody else's.

1 And he needed money. He went there to rob. The
2 defendant had the gun.

3 The judge will instruct you on the law in this case.
4 He will talk to you about credibility, direct and
5 circumstantial evidence. He will talk to you about the
6 specific laws of murder, armed robbery, attempted armed
7 robbery, pointing and presenting, presenting a firearm,
8 charged with the natural and probable consequences.

9 Your job, ladies and gentlemen, is to decide what
10 happened, decide if this man killed Alberto Chavez, decide
11 if this man tried to rob both Mr. Chavez and Mr. Artis
12 Jackson, and whether he pointed the gun at Artis Jackson. I
13 submit to you all the evidence will leave you firmly
14 convinced that he is guilty of each of those charges, and I
15 ask that you do your duty and return a verdict that speaks
16 the truth, and I submit to you that verdict should be
17 guilty.

18 Thank you.

19 THE COURT: Thank you, Mr. Bulsa.

20 Mr. Schutlz.

21 MR. SCHULTZ: Thank you, Your Honor.

22 Ladies and gentlemen, the simple fact of the matter is
23 that the State did not produce sufficient evidence to show
24 or prove that Gary shot Mr. Chavez that cold December night
25 last year. In a case like this you can not assume or guess

1 anything. You can't leave it to chance. You've seen all
2 the evidence that the State is shown, and it's not your job
3 to go back into the jury deliberation room and solve this
4 case like you're on CSI.

5 That's not your job. This is not TV. This is real
6 life, and the fate of a human being rests in your hands.

7 The State is failed to meet their burden to prove that
8 Gary went into that house at 220 Farren Drive here in
9 Spartanburg with the intent to kill. They have not met
10 their burden or proof. And I told you, in my opening
11 statement, I came over here and said this is their burden
12 right here. I don't have a burden. Gary doesn't have a
13 burden to bear. The State does and they didn't do it.

14 You've heard all the State's witnesses testify. You've
15 heard all the forensic evidence. I'm gonna go over that
16 briefly.

17 Think of the State's job as putting together a piece,
18 pieces of the puzzle. And at the end of their case, the
19 puzzle, the puzzle should be handed to you, ladies and
20 gentlemen of the jury, completely so you have absolutely no
21 reasonable doubt whatsoever that Gary committed murder that
22 night.

23 But yet, in this case, the State has given you, the
24 jury, the various pieces of the puzzle and basically asked
25 you to go piece it together. They're asking you to do the

1 heavy lifting. Your job is not to do the heavy lifting.

2 Now, I'm gonna show you now that the pieces of these
3 puzzles do not fit together. I began to show you that
4 during my cross-examination. And here, at the end of the
5 day, the puzzle doesn't fit.

6 As I said before, it's the State's solemn duty to give
7 evidence that is so damning and so convincing and so
8 persuasive, not only that, so compelling that you can not
9 have any reasonable doubts as to the defendant's guilt, as
10 to Gary's guilt.

11 Now, what does reasonable doubt mean?

12 Well, it simply means a doubt that would cause a
13 reasonable person to hesitate to, hesitate to act.
14 Essentially you doubt the State's case. If you believe the
15 State has proved, failed to prove each and every element,
16 and the judge is gonna instruct you on the elements here,
17 then you must acquit.

18 Ladies and gentlemen, over the course of the last two
19 days you've heard all the evidence.

20 But have you heard evidence so damning, so convincing,
21 and so compelling that you don't have a reasonable doubt as
22 to the State's case?

23 Of course you have reasonable doubts, and I know that
24 you haven't been, having questions and thinking about this
25 over the last, the last two days. And I also know that the

1 State's failed to answer all those questions. They've
2 failed to answer the questions that I know each and every
3 one of you have. And if you have reasonable questions at
4 the end of the State's case, then, again, you must acquit.

5 But just to refresh your memory, let's start with what
6 we don't know with this case because the fact witnesses
7 didn't clear anything up. In fact, they gave you more
8 questions that needed answers.

9 Now, here's another thing I want you to remember.
10 That's not my job to prove anything. I don't have to prove
11 anything. My job, my job is to present to you reasonable
12 doubt, and I'm gonna give you a lot of reasonable doubt
13 here.

14 Start with the first fact witness, Artis Jackson. He's
15 the older man who sat her Tuesday in the wheelchair. Now,
16 he was the closest person that the State called for what
17 happened that night. He was the first person that saw Gary
18 when he walked in the door that night.

19 Now, we've heard no testimony from anyone in this
20 trial, not a fact witness like Artis Jackson or Charles
21 Jackson, not a police officer, not a forensic analyst, that
22 there was any forced entry into 220 Farren Drive. No forced
23 entry.

24 You've heard no evidence that it was broken open.
25 You've heard no evidence that it was jimmied open. And in

1 the picture that the solicitor showed you, there was no
2 visual evidence of forced entry.

3 But the testimony that Artis Jackson gave to the Court
4 is that there was a knock on the door, a knock on the door.
5 Just like that. This is not a violent forced entry. This
6 is simply a knock on the door.

7 Now, I ask you, if you're coming into the house with
8 the intention of robbing somebody, don't you try to bust
9 open the door, get a surprise on that person, get a jump on
10 this person, surprise him?

11 Someone with a cold and malicious heart would do that.
12 Someone with malice aforethought would do that. But
13 nevertheless, you heard there was a knock on the door. No
14 forced entry. That's one reasonable doubt.

15 Let me get back to Artis Jackson. Now, he's an older
16 gentleman, 75 years old, and ladies and gentlemen, I think
17 you would agree with me, he's, at best, he's in feeble
18 health. Now, my parents always told me to respect my
19 elders. I try to do that. I did feel bad cross-examining
20 him. Nevertheless he is a witness for the State, and I
21 think, after not only his direct testimony, but after my
22 cross-examination, I think it's very clear, and I believe
23 that you, you think this as well, that he didn't really know
24 what was going on that night. He was in a haze the entire
25 time.

1 Now, my intention was not to embarrass him, take
2 advantage of the frailty of his age. That was not my
3 intention. My intention, however, was to discredit his
4 testimony and the accusation that he made against Gary.

5 Artis' testimony, ladies and gentlemen, was all over
6 the place. One minute he says he sat on the couch for the
7 entire time. The next minute he's outside the house,
8 really, really couldn't of witnessed anything. We're not
9 sure what Artis saw that night, and I don't think Artis is
10 really sure.

11 He said he heard a few words about gunfire. Then he
12 said that the little encounter between Gary and Mr. Chavez
13 was lengthy enough to have him walk out of the house.
14 Ladies and gentlemen, like I said before, his testimony was
15 all over the place.

16 Now, Artis said something else that stuck in my mind
17 and I hope it did with you too. He said that Gary took a
18 gold chain from Mr. Chavez. But yet the next person seeing
19 Gary that night, Gregg Lee, never testified that Gary walked
20 out with a gold chain. And you heard Gregg Lee testify that
21 Gary had no intention to rob anybody that night.

22 Now, when I first read Artis' statements, he said that
23 I heard a knock at the door and told them to come in, and I
24 cross-examined him about that. He may not have understood
25 what I meant by that. But nevertheless, I cross-examined

1 him on that.

2 His testimony on Tuesday, late Tuesday, he again stated
3 he heard a knock on the door and told them to come in. Now,
4 I found this odd and I asked Charles Jackson, that's the
5 next witness that testified the first day, and I had him
6 read from his sworn statement, his sworn statement, which is
7 true and accurate to the best of his knowledge, that two
8 white men broke in and shot Chavez. I want that to sink in
9 a little bit. That's what Artis told Charles Jackson. I
10 submit to you that's more reasonable doubt. This case is
11 permeated with reasonable doubt.

12 Now, Artis gave that statement within a couple hours of
13 that happening. He also told the officers about it. And I
14 know that his memory is no better than well, when, when it
15 was back then.

16 Probably, in this case, it's probably a lot worse. He
17 is at best, Artis Jackson is at best, an incompetent
18 witness. And, at the very least, a person that was in the,
19 in a haze the whole time. Does not remember anything about
20 this case, much less who walked in the door that night.

21 So, after Artis' testimony, we are not any more closer
22 to the truth than we were before.

23 So, the State called Charles Jackson. Charles and
24 Artis' testimony did not prove anything for the State.
25 Remember the State has to prove their case, and they called

1 various witnesses to prove it.

2 It's simply created more and more questions, and more
3 and more questions must lead you to the inevitable
4 conclusion that there's reasonable doubt in this case.

5 The next closest person in the house that night was
6 Charles Jackson like I said. His story did not prove
7 anything either. In fact, it cast more and more reasonable
8 doubt. His behavior that night was, at the very best,
9 strange, and at the very least, extremely odd.

10 Charles testimony introduced, said that he heard a
11 commotion outside his bedroom door, which was closed. And
12 as he woke from the sleep, he decided, by his own admission,
13 by his own admission, shoot first and ask questions later.
14 That's what he did that night.

15 He took his gun, a .25, and they recovered the spent
16 shell casings from that gun in his bedroom. Without even
17 knowing who's on the other side, he decided to shoot. And
18 when I cross-examined him, you may remember this, I asked
19 him could it have been Gary on the other side. He responded
20 I guess so. Could it have been your brother Artis on
21 the other side. He said yes. Could it have been Chavez on
22 the other side and he said yes. He was not sure who was on
23 the other side.

24 What else did Charles do that night?

25 Well, he called the police, yes.

1 But did he follow-up with an ambulance?

2 No.

3 In fact, according to his own testimony, he ran in the
4 room where Mr. Chavez was lying, tried to pick him up.
5 Mr. Chavez was alive at this point. He went through that
6 room, bedroom number one, didn't try to cover Chavez, tried
7 to assist him in anyway. And this from a person who said on
8 the stand, and you heard him Tuesday, that Chavez was his
9 boy.

10 In fact, when the first officer arrived on the scene,
11 Deputy Wilson, where was Charles Jackson?

12 Not in bedroom number one trying to aid his friend.
13 Rather he was found by an officer in his bedroom with the
14 door closed. Separated himself and secluded himself,
15 himself from the initial investigation of this case. But
16 also apparently not caring enough to attend to Mr. Chavez or
17 console his brother, Artis, who was apparently a victim in
18 all this too.

19 Remember he chose to seclude and separate himself from
20 the goings on that night.

21 So, who are we left with when it comes from Charles and
22 Artis' account?

23 At the very best, ladies and gentlemen, we are left
24 with an incomplete picture of what happened that night, and
25 that is reasonable doubt right there.

1 Now, I want to remind you again that these are the
2 State's witnesses. They're suppose to prove their case.
3 Instead, they just cast more reasonable doubt on this whole
4 investigation or this whole case and the charges.

5 Now, let's talk about the testimony of the next closest
6 person to the incident and that was Gregg Lee. To begin
7 with, I asked Gregg if he knew conclusively that Gary went
8 to rob anybody that night and he said no.

9 Now, Gregg's testimony, you remember Gregg, was also a
10 State's witness. That doesn't prove malice aforethought on
11 Gary's part.

12 Let's talk about what Gregg heard inside the house that
13 night. Gregg heard arguments and loud voices. What this
14 reveals to you is that this here is a possibility of some
15 kind of confrontation or conflict.

16 Now, he heard something say up it with the door closed
17 and most of the windows shut in the car that he was in.
18 Gregg couldn't be sure who said up it. I asked Gregg, in my
19 cross-examination, that this voice could of been Gary's. He
20 wasn't sure. In fact, he'd only known Gary for about a
21 week. He knew there was other people in the house. Could
22 of been some of them. Gregg didn't know. That's another
23 reasonable doubt that you should have.

24 Now, the interesting part in Gregg's testimony was that
25 he heard one shot followed by a thump followed by three more

1 shots.

2 So, let's, for the minute, assume this is true. Okay.
3 And this first shot was fired by Gary hitting Mr. Chavez and
4 assume for a moment that this thump is Mr. Chavez hitting
5 the floor. But Gregg's testimony was that there was three
6 more shots.

7 Now, we know from Doctor Wren's testimony, and again
8 that was the last witness that was called, that there was
9 only one shot that killed Mr. Chavez. And if you assume
10 that Gregg's testimony is accurate, then those three more
11 shots would have, could come from Gary's gun. Nevertheless,
12 there weren't three more shots found in Mr. Chavez's body.
13 So, you would have to assume there was more than one gunman
14 that night.

15 Now, that could of happened. Maybe it did. We don't
16 know. Remember I don't have to prove anything. And just
17 that simple fact that we don't know, we don't know the
18 complete story of what happened that night is enough
19 reasonable doubt.

20 And when you go back to the jury deliberation room, you
21 may think that you have all these pieces of the puzzle. You
22 have put them together and you find a verdict.

23 But ladies and gentlemen, that's not the way it goes.
24 These pieces should of already been put together for you.
25 They should of -- the puzzle should of been complete. It's

1 clear in this case that we have puzzle pieces everywhere and
2 anywhere. We are no closer to putting this puzzle together,
3 together now than when you got sworn in on Tuesday. Again,
4 the puzzle doesn't fit.

5 Going back to, to Gregg's testimony, you know that Gary
6 walked into that house to get some drugs cause if, you've
7 heard before from Gregg, he's been there before. Gregg's
8 been there before. Gregg knew what that house was. Gregg
9 knew that that was a crack house. He knew that house's
10 reputation.

11 Now, let's talk a little bit about malice forethought
12 again, which is the two key words in this case. Let's
13 assume that the killing that night was a premeditated act of
14 cold blood. Let's assume that for a minute. For this to
15 happen, you would have to believe that Gary came in there
16 with the intent to rob and the intent to kill.

17 So, after killing Mr. Chavez, you would think that a
18 cold blooded killer who wanted to kill any witness to this
19 deed would of been easy for Gary to shoot Mr. Chavez, then
20 turn around and kill Artis Jackson, Artis couldn't have run.
21 He wasn't too fast. He was approximately 75 years old.
22 Gary's 30th. He gets -- Artis gets around in a wheelchair.
23 That would of been easy to do.

24 Yet, this is not what happens. We know this is not
25 what happens. Artis Jackson is never harmed all throughout

1 the, this entire night, ladies and gentlemen. The State's
2 case does not jive well with what we have seen and heard
3 from the State. The State has their theory of the case.
4 Witnesses don't back it up. That's reasonable doubt right
5 there.

6 They have not met their burden Tuesday. They've not
7 met it Wednesday and they haven't met it today.

8 Now, let's talk about one of the so called fact
9 witnesses. That's Jennifer Gregg.

10 Now, she testified that she had no money, no job, no
11 way to raise and support her kid.

12 So, what did she do?

13 She made a quick easy buck by providing information to
14 the police about Gary's involvement with this incident.

15 Now, she admitted yesterday, right here, she admitted on the
16 stand she wasn't a hundred percent accurate when it came to
17 giving information to the police. She admitted that she
18 heard some things about this story from other people. She
19 admitted on the stand. That's hearsay.

20 She went to the police with this hearsay in order not
21 only to get a quick buck, but also to get back at Gary for
22 cheating on her, which she admitted on the stand that he
23 did.

24 Now, she claims that she got over that. She, she also
25 claimed that she got over Gary sending letters to other

1 women as well. But I think the old phrase is applicable
2 today, hell hath no fear like a woman scorned. She was
3 scorned that day when she went to the police, and it got
4 even better when she was paid money for the lies that she
5 made up about Gary.

6 Now, ladies and gentlemen, she testified yesterday to
7 what she said, what happened. She left this courtroom. In
8 fact, she reminds me of the old Steve Miller song, go on,
9 take the money and run. That's what she did. Told a story
10 about a cheating boyfriend, got \$2,000, and ran.

11 You may be thinking about reasonable doubt now. I'll
12 give you -- I'll give you 2,000 reasons to have reasonable
13 doubt. It's \$2,000 that Jennifer Gregg gave for her
14 testimony here today and what she told the police. Let me
15 state that again. She was paid for her testimony. That is
16 not a reliable witness.

17 SOLICITOR BULSA: I need to object to that, Your Honor.
18 That's an incorrect statement.

19 THE COURT: All right. I think the evidence was that
20 she was paid for her information given to Crime Stoppers I
21 think.

22 MR. SCHULTZ: Yes, sir.

23 Again, the puzzle that the State has been trying to
24 complete in no way can be finished. Those fact witnesses,
25 Artis Jackson, Charles Jackson, Gregg Lee, Jen, do not

1 prove, prove anything to the State. The puzzle doesn't fit.

2 In fact, looking at the last fact witness that
3 testified, which I believe was Christian Hudson, he again
4 confirmed that, the fact that Gary had no intent to rob
5 anybody that night nor did he have any, any intent to murder
6 anybody that night. Remember, these are State's witnesses.
7 Not our witnesses. State's witnesses, witnesses should give
8 you more than enough information to, to convict beyond a
9 reasonable doubt. They didn't do that.

10 Now, let's get into the little bit of the forensics.
11 Now, you heard several police officers testify, SLED
12 analyst, analyst, and a physician testify to what they found
13 at 220 Farren Drive. Some, some people that you heard in
14 the last two days were there at 220 Farren Drive. Some
15 people weren't.

16 But as you've already noticed, the forensics and the
17 ballistics do not come anywhere to completing this puzzle
18 either. Let's go over the list of evidence found starting
19 with the bullet found next to, next to Mr. Chavez's body.

20 Now, Agent Defreese, and you heard him yesterday, said
21 that this was indeed fired from a .38 revolver. When I
22 asked Doctor Wren whether there was any blood or tissue on
23 this fired bullet he said no. This is not conclusively
24 proven that this bullet, that this was the bullet that
25 killed Mr. Chavez.

1 Ladies and gentlemen, we are not sure that the path
2 that this bullet took. The State has failed to show that.

3 Now, this map here, I want you to take this map and go
4 over it so many times that you know it like the back of your
5 hand when you go back there. Think about this map cause
6 this, this is very important.

7 For a minute, let's assume that Mr. Chavez confronted
8 Gary face to face. You heard Doctor Wren testify at the end
9 of yesterday that the entrance wound is from the right to
10 the left. From where Mr. Chavez's body was found, let's
11 assume that this is the correct stance of him, and I hope
12 y'all can see this, bedroom number one, this way.

13 So, the bullet that killed Mr. Chavez had to come from
14 this direction like that. I hope everybody can see this.
15 It had to go towards the living room right to left.

16 Let's assume that this is a correct stance. Let's also
17 assume that it was a bullet from the .38 caliber revolver.
18 Now, if you look at this in close to each other, another
19 bullet was found that could of been fired from a .38
20 revolver. Yet, the trajectory of this bullet was like this.

21 It was found right here, correct?

22 So, we have one bullet going this way, another going
23 this way. I have a question about that and I think, I think
24 you do too.

25 So, what we have is bullets from presumably the same

1 revolver going in different directions. I'm not trying to
2 prove anything by this. I'm asking you to draw your own
3 conclusion about what happened that night, and I believe the
4 only conclusion that this draws, this draws is that it
5 further jumbles the puzzle up.

6 Now, a revolver, as the solicitor said, does not
7 dispense a cartridge. We know this. But an automatic
8 pistol does. And there was definitely a .25 Wilson found
9 this night in this bedroom number two, bedroom number two
10 right there.

11 It was fired. There was a bullet hole right through
12 the door. Look at the picture for that again. Now, there
13 was a cartridge found near the bed. There was a .25 pistol
14 that was recovered. And this is very important.

15 That bullet was never found. This house is a very
16 small place.

17 Could that bullet have deflected through the door of
18 bedroom one?

19 May have not. May have. The point is we don't know.
20 And again, that is reasonable doubt. Nothing we don't know,
21 and this is extremely important, the bullet hole above the
22 bedroom door frame, above that bedroom door frame. We know
23 that that bullet didn't come from the living room. Look at
24 the trajectory of that bullet. It didn't come from the
25 living room. It had to come from bedroom one. Had to come

1 from bedroom one or maybe the kitchen. We don't know.

2 Again, was any bullet recovered from that bullet hole?

3 No, the police said they made a thorough investigation.

4 I asked them on the stand, you ever find a bullet in that

5 bullet hole. No was the answer again and again.

6 Ladies and gentlemen, this, I believe, is one of the

7 key pieces of this entire case, and you think that if the

8 State would find a bullet in this bullet hole maybe a little

9 bit of the pieces would fit together. But again, they

10 didn't find it. They said they made a thorough search.

11 They didn't find it. They knew there was a bullet hole

12 there. Didn't find the bullet.

13 Could of been from a nine millimeter. Could of been

14 from a .25. We don't know.

15 And this shot is coming from a room where a body was

16 found.

17 Don't you find it a strange coincidence that also a

18 high point nine millimeter was found with the barrel

19 sticking out underneath the bed in plain view of anyone that

20 come into that house and I said that, I said that in my

21 opening statement.

22 This is not your common law abiding household. This

23 house was a death trap and Gary was just unlucky that night

24 to be caught in that small crack house on Ferron Drive,

25 which was found to have not only a .25, of course an

1 automatic weapon, but two, count them, nine millimeters.

2 Ladies and gentlemen, this house at 220 Ferron Drive
3 was loaded for bear. I almost think of that house as having
4 a character of its own.

5 Who knows what further investigations would, would of
6 revealed inside this house?

7 More guns, more bullet holes, more bullets, we don't
8 know. That's, again, reasonable doubt.

9 Ladies and gentlemen, there are just too many questions
10 to convict Gary of murder today. The State has not proved
11 their case beyond a reasonable doubt. They have not fit the
12 pieces of the puzzle together for you to convict.

13 In my opening I said that the most important words in
14 this whole case are malice aforethought, and you've heard
15 that State's witnesses testify to the fact that Gary never
16 intended to rob anybody that night nor did he intend to
17 murder anybody that night.

18 Remember these are the State's witnesses. Not ours.
19 The State brought these witnesses to prove their case. Not
20 to cast reasonable doubt upon it. That's exactly what they
21 did.

22 This leads to one and only one inescapable conclusion,
23 and that is, because in this case is reasonable doubt all
24 over the place, you must acquit Gary on all charges.

25 We are left with an incomplete picture of what happened

1 that night at 220 Farren Drive. I'm representing Gary
2 throughout this entire year, talked to him about his case.
3 Soon I'm going to place him in your hands. His fate will
4 soon be in your hands. His life will be in your hands.

5 It's not our intent to make Gary an angel. He did
6 drive to a crack house that night to get drugs. We've heard
7 Gregg testify to that. Our intent instead is to present the
8 fact that Gary's a lot of things, but he is not a cold
9 blooded murderer. He's not a killer.

10 He was in the wrong place at the wrong time that night.
11 This was a tragic situation resulting somehow, somehow in a
12 man's death. Any evidence that the State has showed you
13 which they think proves this case in no way, shape, or form
14 proves him to be a murderer beyond a reasonable doubt.

15 The puzzle pieces aren't complete. The puzzle doesn't
16 fit. I'm asking you for not guilty on all the charges.

17 Thank you.

18 THE COURT: Thank you, Mr. Schutlz.

19 Now, ladies and gentlemen, it's my responsibility to
20 instruct you as to what the law is. My charge is pretty
21 well scripted. It's written down and it's gonna take about
22 35 minutes for me to deliver that. You've been in here a
23 little over an hour so far, and I'm prepared right now to go
24 right into the charge and complete it.

25 But if any one of you needs to take a brief break

1 before we start the charge I'll be glad to declare a brief
2 recess now to give you a chance to do that.

3 Does anybody need a recess before we start?

4 (No response.)

5 THE COURT: All right. Very good. We'll go right to
6 it then.

7 Thank you.

8 As I've said, Madam Forelady and members of the jury,
9 it is now my responsibility to instruct you and charge you
10 as to what the law is in this case because you-all have been
11 patient throughout this trial, and you've listened
12 attentively to the evidence and testimony that's been
13 presented and to the able arguments that have been presented
14 by both the solicitor and the public defender in this case.
15 And now, under the, the Constitution of our state, it is my
16 responsibility to tell you what the law is, and it is your
17 responsibility, as jurors, to accept the law as I charge it
18 to you now to be the correct law.

19 You have the exclusive duty to decide all issues of
20 fact in this case. And for that purpose, you have to
21 determine the effect, and the value, and the weight, of
22 course, and the truthfulness of the evidence and the
23 testimony that you have heard. Both the State and the
24 defendant have the right to expect that you will
25 conscientiously consider and evaluate the evidence in the

1 case and that you will apply the law of the case to that
2 evidence. To the end that both the State of South Carolina
3 and the defendant will receive a fair and impartial trial at
4 your hands.

5 Throughout the course of this charge, ladies and
6 gentlemen, when I use the word defendant, I'm referring to
7 Mr. Gary Michael Piper. Mr. Piper, as you know, has been
8 indicted by the Grand Jury of Spartanburg County, and has
9 been charged in Indictment Number 2716 with pointing and
10 presenting a firearm. That indictment accuses Mr. Piper,
11 here in Spartanburg County on or about December the 21st of
12 2006, with pointing and presenting, pointing or presenting a
13 firearm, specifically a pistol, a handgun, at Artis Jackson
14 in violation of the law.

15 Indictment Number 2717 accuses him of attempted armed
16 robbery, and that indictment accuses Mr. Piper, here in
17 Spartanburg County on the same time, of attempting to rob
18 Artis Jackson while armed with a pistol by taking,
19 attempting to take money from the victim in violation of the
20 law.

21 Indictment 2718 charges Mr. Piper with the crime of
22 murder, and that indictment accuses him, here in Spartanburg
23 County on the same day, feloniously, willfully, and with
24 malice aforethought, killing one Alberto Domingo Chavez by
25 shooting him with a pistol and the victim died as a

1 proximate result thereof in violation of the law.

2 The final indictment, Number 2719, charges Mr. Piper
3 with the attempted armed robbery of Mr. Chavez, and that
4 indictment accuses him, on December 21st of 2006, attempting
5 to rob Mr. Chavez while armed with a pistol by taking money
6 or attempting to take money or jewelry from him in violation
7 of the law.

8 Now, ladies and gentlemen, I remind you again that the
9 indictments which I've just read to you are not evidence nor
10 are proof of the charges which they contain. They're simply
11 charging documents that tell us what the case is all about.
12 And as you know, to the charges contained in those
13 indictments, Mr. Piper has entered pleas of not guilty and
14 has asked for a jury trial at your hands.

15 And the plea of not guilty by a defendant is to place
16 the burden upon the State to prove, by evidence, the guilt
17 of the accused beyond a reasonable doubt before you, as a
18 jury, can convict him and find him guilty. The defendant,
19 Mr. Piper, is presumed in law to be innocent of the charges
20 contained in these indictments. It is a cardinal and
21 fundamental rule of evidence that a defendant, regardless of
22 the nature of the charges or the number of the charges or
23 the seriousness of the charges against him, will always be
24 presumed innocent of the charges for which he has been
25 indicted unless and until his guilt has been proven by

1 evidence, evidence that satisfies you of his guilt beyond a
2 reasonable doubt.

3 The presumption of innocence is not a mere legal
4 theory. It is not an empty legal phrase. The presumption
5 of innocence has been likened to a robe of righteousness
6 which is placed about the shoulder of a defendant, and it
7 assigns to that defendant the class known as the innocent.
8 And that presumptive robe of righteousness continues,
9 continues to rest about the shoulders of a defendant unless
10 and until you, ladies and gentlemen of the jury, reach the
11 conclusion that the State has proven that he is guilty
12 beyond a reasonable doubt.

13 The presumption of innocence accompanies a defendant
14 from the time of his appearance in this courtroom. It
15 follows him throughout every phase of this trial. It even
16 continues to exist to his benefit as you go back into that
17 jury room and start talking about this case among
18 yourselves. The presumption of innocence continues to exist
19 to the benefit of the defendant unless and until you, the
20 jury, reach the conclusion that the State has proven his
21 guilt beyond a reasonable doubt.

22 So that then is the burden of proof, proof beyond a
23 reasonable doubt.

24 What do we mean by that?

25 Some of you may have served as jurors in civil cases.

1 And if you've served as jurors in civil cases you were told
2 that the party who has the burden of proof only has to
3 present evidence to you that is more convincing than the
4 evidence is on the other side of the issue. But in criminal
5 cases, the State's proof has to be more powerful than that.
6 Here it must be proof beyond a reasonable doubt.

7 And what does that mean?

8 Proof beyond a reasonable doubt is proof that leaves
9 you firmly convinced of the defendant's guilt. Now, there
10 are very few things in this world that you and I know with
11 absolute certainty. And in criminal cases, the law does not
12 require proof that overcomes every possible doubt. And so,
13 if, based on your consideration of the evidence, you are
14 firmly convinced that the defendant is guilty of the crime
15 charged, you must find him guilty. If, on the other hand,
16 you think that's a real possibility that he's not guilty,
17 you must give him the benefit of the doubt and find him not
18 guilty.

19 Reasonable doubt might arise from evidence that has
20 been presented in the case or it might arise from the lack
21 of evidence in the case. But you, ladies and gentlemen,
22 have to determine whether or not reasonable doubt exists as
23 to the guilt of this defendant.

24 I tell you that the defendant is entitled to every
25 reasonable doubt that arises in the case. And so, if, on

1 any issue of fact which is necessary to a conviction and a
2 verdict of guilty, you have a reasonable doubt as to how
3 that issue should be resolved, it would be your duty to
4 resolve that reasonable doubt in favor of the defendant
5 because a defendant is never required to prove his
6 innocence. The State is required, in law, to prove every
7 essential element of the offense charged against him before
8 you, the jury, can be satisfied beyond a reasonable doubt
9 that he is guilty of the charge.

10 Now, ladies and gentlemen, in that regard, let me tell
11 you and I emphasize this to you that the fact that the
12 defendant in this case did not himself testify is not a fact
13 that you can be considered, that you can consider in anyway
14 in your consideration on the question of his guilt or
15 innocence. It must not be considered by you in any manner.
16 It must not militate against him in any respect whatsoever
17 because the defendant has a Constitutional right to remain
18 silent. And if he chooses to exercise that Constitutional
19 right, that fact can not and must not be considered by you
20 in your deliberations.

21 And so, under your oath then, you're to reach no
22 inference and draw no conclusion whatsoever from the fact
23 that the defendant in this case did not himself testify.
24 That fact should not even be discussed by you in the jury
25 room because the burden of proof, as I've told you, is upon

1 the State. The defendant has no obligation to prove his
2 innocence, and the burden of proof remains upon the State to
3 prove guilt beyond a reasonable doubt and the fact that the
4 defendant did not testify is not a factor for your
5 consideration.

6 And so, ladies and gentlemen, if then, upon the whole
7 case, you have a reasonable doubt as to the guilt or the
8 innocence of the defendant, he is entitled to that
9 reasonable doubt and would be entitled to an acquittal and a
10 verdict of not guilty. But on the other hand, if, upon the
11 whole case, you find that the State has proven by evidence
12 that satisfies you, as a jury, of the guilt of the defendant
13 beyond a reasonable doubt, then, in such circumstances, it
14 is equally your duty to convict the defendant and to find
15 him guilty.

16 During this trial, ladies and gentlemen, each of us,
17 you and I, have our separate duties to perform. As the
18 trial judge, it's my responsibility to preside over the
19 trial of the case, and I also have the duty of ruling upon
20 or passing upon the admissibility of the evidence which has
21 been offered during the course of this trial. And you are
22 to consider only the competent evidence that has been
23 offered before you. That is the testimony for this witness
24 chair right here and the items or the documents which have
25 been introduced into evidence under our rules.

1 I have the additional duty to instruct you as to what
2 the law is in this case because, as a presiding judge, as I
3 told you before the trial began, I'm the sole judge of the
4 law, and it is your duty to accept the law and to apply it
5 as I now state it to you.

6 You may have brought with you into your service as
7 jurors this week some ideas as to what you think the law is.
8 You might even have some preferences about what you would
9 like for the law to be. But I tell you, ladies and
10 gentlemen, if your preconceived ideas about this law or if
11 your preferences about the law disagree with what I'm
12 telling you now the law actually is, you're obligated, under
13 your oath, to abandon your ideas and your preferences about
14 the law because you're sworn to accept the law precisely as
15 I now state it to you.

16 Now, on the other hand, in every case tried in this
17 Court before a jury you are the sole and exclusive judge of
18 the facts. You're the judge of the facts. I'm the judge of
19 the law. The Constitution has said that a trial judge can't
20 comment upon the facts of a case. I can hint to you how I
21 might feel about the facts of the case or intimate to you
22 what your verdict should be in this case and I don't do
23 that.

24 Since you're the sole judge of the facts, then you're
25 not to gather from anything that I have said during this

1 trial or anything that I say to you now during this charge
2 that I have an opinion about the facts of the case. I'm not
3 allowed an opinion about the facts of the case. That is
4 solely a matter for you, ladies and gentlemen, to determine.

5 And so, as jurors then, it becomes your duty, as I have
6 told you, to determine the effect, the value, the weight,
7 and the truth of the evidence offered during the course of
8 this trial. And as you determine what the facts of the case
9 are, you're necessarily called upon to pass upon the
10 credibility of the witnesses. Credibility is just a legal
11 word that means believability. You and you alone have to
12 determine the truthfulness of the testimony which you have
13 heard, and you also have to determine the value and the
14 weight that you will give to the testimony which you find to
15 be true.

16 Now, as you make this decision, there's a lot of things
17 you can take into account. You can take into account the
18 appearance of the witness as he or she testified from the
19 witness stand, how the witnesses act on the witness stand.
20 We sometimes call that the demeanor of the witness.

21 Was the witness forthright or was the witness hesitant?

22 Was the witness' testimony consistent or did it contain
23 discrepancies?

24 What was the ability of that witness to know the things
25 that he or she was talking about?

1 Did the witness have a cause or a reason to be biased
2 or prejudiced in favor of the testimony that the witness was
3 giving?

4 Was the testimony of a witness made stronger by
5 evidence in the case or was it made weaker by other evidence
6 in the case?

7 You have heard testimony of persons in this case who
8 have been qualified as expert witnesses. Normally lay
9 witnesses like you or me are not allowed to give opinions
10 about things. They're simply allowed to tell you what they
11 saw or heard and let you draw the conclusions or reach the
12 opinions that should be reached on the basis of that
13 testimony that you find to be appropriate. However, expert
14 witnesses, because of their experience and their training
15 and education, if they're qualified as experts, are allowed
16 to express their opinions on those matters in which they've
17 been qualified.

18 But expert testimony should be judged like any other
19 testimony. You're not necessarily bound by the opinion of
20 expert testimony any more than you are of any other witness.
21 Because, ladies and gentlemen, as, as jurors you've got the
22 right to accept as true a small part of what a witness tells
23 you, and to disbelieve the larger part of what that same
24 witness tells you or you might believe the larger part or
25 disbelieve a smaller part. You can believe all of what a

1 witness tells you or you can believe none of what a witness
2 tells you.

3 We don't expect to exercise those considerations
4 arbitrarily, ladies and gentlemen. There's got to be a good
5 reason for doing so because what, what we expect you to do,
6 as jurors, is to use your good common sense, your sense of
7 logic and reason, your experiences in life, your sound
8 judgment. And that's what qualifies you as jurors, and
9 that's what makes this system so unique, and what makes you
10 so valuable.

11 You come into the courtroom in a place where many of
12 you have never been before. You're sworn in as jurors to
13 hear a case that you don't know anything about involving
14 people that you don't know and have no connection with. And
15 you're told to make a decision on that. And you wonder how
16 the jury system works.

17 What qualifies you to make those decisions, important
18 decisions?

19 Well, it's the same thing that qualifies you to make
20 decisions every day in your own life. Everyday since you've
21 been able to think on your own and make decisions on your
22 own you've been using your good common sense, and that's
23 what we expect you to do in this case as well. And, as you
24 exercise those mental processes, and as you exercise your
25 sense of judgment and logic and reason and your good common

1 sense, you will apply those abilities that each of you has
2 to the evidence that you have heard in this case. And once
3 you have done that, you will be able to determine the truth
4 of this case. And once you have decided the truth of the
5 case, you will take that truth and you will wrap with, it
6 around the evidence, or excuse me the law which I'm charging
7 you. Those two things will come together, the truth that
8 you find and the law that I charge you, to result in a
9 verdict which will speak the truth of this case.

10 Now, ladies and gentlemen, I want to instruct you now
11 as to the elements of the offenses charged in the various
12 indictments reminding you, as I will throughout this charge,
13 that the burden of proof is upon the State to prove each of
14 the elements of the offense charged beyond a reasonable
15 doubt if they're able to convict the defendant of that
16 charge. If the State is able to prove each of the elements
17 beyond a reasonable doubt, it is met its burden of proof and
18 is entitled to a verdict of guilty as to that charge. If
19 the State fails to meet its burden of proof as to any of the
20 elements in a single offense, the State has not met its
21 burden as to that offense. And as to that offense, the
22 defendant is entitled to a verdict of not guilty.

23 We begin with the offense of pointing and presenting a
24 firearm. Our Code of Laws in Section 16-23-410 -- you don't
25 need to remember those numbers. That's for the benefit of

1 the record. In Section 16-23-410 of our Code of Laws makes
2 it unlawful for any person to point, to present or point at
3 any other person any loaded or unload firearm. So, before
4 you can defined, can find a defendant guilty of the offense
5 of pointing and presenting a firearm, you must find that all
6 three elements of the offense have been proven beyond a
7 reasonable doubt.

8 And what are the elements?

9 The State must prove to you that the defendant
10 committed some action with regard to a firearm that amounts
11 to pointing or presenting that firearm. Sometimes the case
12 law refers to it as brandishing a firearm in, in some
13 threatening manner.

14 And secondly, it has to be, be proven beyond a
15 reasonable doubt that the item that the defendant pointed or
16 presented was, in fact, a firearm. You don't have to find
17 that the firearm was loaded. It doesn't matter whether it
18 was loaded or unloaded, but it does have to be proven that
19 it was a firearm.

20 And finally, finally the State has to prove that the
21 defendant pointed or presented the firearm at some other
22 person other than himself. If the State is able to prove
23 those three elements beyond a reasonable doubt, it has met
24 its burden of proof as I have said. If it fails in any one
25 of them, it has failed to meet its burden of proof that I

1 have instructed you about.

2 Now, next I want to charge you or instruct you as to
3 the law of murder. Murder is the killing of any person with
4 malice aforethought either express or implied. In order for
5 the State to prove the defendant guilty of murder, it must
6 be proven beyond a reasonable doubt that the defendant did
7 kill a person and that the killing was done with malice
8 aforethought. The State is not required to prove any motive
9 for the killing, but it is required to prove malice.

10 And, so, what then is malice?

11 Malice is the intentional doing of a wrongful act
12 without just cause or excuse and with an intent to inflict
13 injury. Malice aforethought is the deliberate and well
14 formed purpose to do the unlawful act.

15 What does afore, aforethought mean?

16 Aforethought means that the intention to do the
17 unlawful act was conceived or planned some time before the
18 actual commission of the unlawful act itself. But the
19 malice need not exist for any particular length of time
20 prior to the act in order to be malice aforethought.

21 Malice is a word that suggests a wicked or a hatred or
22 a determination to do what one knows to be wrong without
23 just cause or excuse or legal provocation. As I have said,
24 malice need not be in the mind of the one doing the act for
25 any particular length of time before the act of killing in

1 order to render the killing murder. If it is present in the
2 mind of the one doing the killing any length of time before
3 the act, then its presence would be sufficient to render the
4 killing murder.

5 Malice may be expressed or it may be inferred. Malice
6 is said to be express malice where there is shown a violent
7 and deliberate intention to unlawfully take away the life of
8 another human being. Malice can be inferred where no excuse
9 or legal provocation for the killing appears and when
10 circumstances surrounding the killing show an abandoned
11 heart, a malignant heart, a heart fatally bent upon
12 mischief. The law says that if one intentionally kills
13 another during the commission of a felony with a deadly
14 weapon, the inference of malice may arise.

15 Now, a deadly weapon is any object or substance which
16 reasonably could be used to cause bodily harm, and malice
17 may be inferred for the use of a deadly weapon. You are
18 permitted to infer malice from the conduct of a, of a
19 defendant in the use or handling of a deadly weapon if such
20 conduct results directly in the death of another, and if
21 such conduct was so inexcusable, so aggravated, and so
22 reckless as to show an actual and intentional disregard of
23 consequences to human life. A conduct sufficient to show a
24 deliberate intentional use or design to use or employ or
25 handle a deadly weapon as to endanger the life of another or

1 others without just cause or excuse is sufficient to raise
2 an inference of malice.

3 A person engaged in the commission of an unlawful act
4 is legally responsible for all of the consequences which
5 naturally or necessarily flow from the act as one of its
6 probable and natural consequences even though what was done
7 was not intended as part of the original design.

8 Now, malice, as an, as an essential element of murder,
9 does not necessarily import ill will toward the individual
10 killed. But it signifies rather a general, a general
11 malignant reckless of the lives and safety of others, the
12 disregard of those lives and safety, or it's a condition of
13 the mind which shows that the heart lacks social duty and is
14 fatally bent on mischief as cases have used that language in
15 the past.

16 As so, if facts are proven beyond a reasonable doubt
17 sufficient to raise an inference of malice from the use of a
18 deadly weapon to your satisfaction, this inference would
19 simply be an evidentiary fact to be taken into account by
20 you along with all of the other evidence in the case bearing
21 on the issue of malice, and you can give it the weight you
22 should determine it should receive according to your view of
23 the evidence.

24 The State is not required -- excuse me. The defendant
25 is not required to prove the absence of malice. The State

1 is required to prove the presence of malice beyond a
2 reasonable doubt.

3 Now, ladies and gentlemen, the defendant is also
4 charged with attempted armed robbery. In order that you
5 understand the crime of attempted armed robbery, it is
6 necessary, first of all, that I describe for you and charge
7 you on the offense of armed robbery itself and then on the
8 attempt to commit such a crime.

9 Section 16-11-330 of our Code of Laws makes it unlawful
10 for any person to commit a robbery while armed with a pistol
11 or other deadly weapon or while alleging, by actions or
12 words, that he was armed while using a representation of a
13 deadly weapon.

14 Now, I will define for you then first the offense of
15 robbery while or the offense of robbery while armed with a
16 deadly weapon. But in order to do that, I have to define
17 for you the crime of larceny and then robbery and then armed
18 robbery because those lesser offenses are included in the
19 greater. In other words, larceny is a lesser offense, which
20 is included in robbery, and robbery is a lesser offense
21 which is included in armed robbery. And so, I have to tell
22 you briefly what all those things are. And I can tell you,
23 ladies and gentlemen, it's not nearly as difficult to
24 understand as what it might seem.

25 So, we start with larceny.

1 What is larceny?

2 Larceny, quite simply, is what you and I normally refer
3 to as stealing. It is the unlawful taking into possession
4 of somebody's personal property and the carrying away of
5 that personal property with a wrongful intent to permanently
6 deprive that person of the use of that property. It's the
7 unlawful taking and carrying away of personal property with
8 the unlawful intent to deprive the owner of that property
9 and to convert that property to the taker's own use.

10 Robbery then is the unlawful taking and carrying away
11 of somebody's personal property with the intent to deprive
12 that person of it and to convert that property to the
13 taker's own use, but the taking, in the case of robbery, has
14 to be from the person of the victim or from the presence of
15 the victim either by fear or violence or by putting that
16 person in fear or violence.

17 Let me just tell you the difference between those
18 things by way of an example and example only. Right now
19 your cars are parked somewhere along, in a safe zone around
20 the court house. So is mine. If you get back to your car
21 today and somebody's, you find the windows broken out of it
22 and your purse or your CD player or some item that you have
23 left in that car is gone, you would be the victim of
24 larceny, stealing. Somebody has taken away your personal
25 property, carried it away unlawfully with the intent to

1 deprive you of its use.

2 Now, if you would be riding home today, stop at a stop
3 light somewhere, and somebody comes and smashes your window,
4 and snatches something out of your car, you would be the
5 victim of robbery because that personal property would of
6 been taken from your presence either by violence or by
7 putting you in fear of violence. That's robbery.

8 So, what then is armed robbery?

9 Robbery is that same type of robbery which is
10 accomplished with the use of a deadly weapon or what appears
11 to be a deadly weapon. And I tell you that a handgun, under
12 the law, is a deadly weapon.

13 And so, the elements of the offense that are, first of
14 all, to prove someone guilty of armed robbery, you have to
15 prove that that person wrongly took someone else's property,
16 carried it away, with a wrongful intent to permanently
17 deprive that person of that property, and they took that
18 property from the person or presence of the owner by the use
19 of a deadly weapon.

20 Now, the defendant in this case, however, is not
21 charged with armed robbery itself, but with the attempt to
22 commit the crime of armed robbery.

23 So, how does attempt factor into the law of this?

24 Well, an attempt is an act which is done in partial
25 execution of a design or a plan to commit a crime. In this

1 case, the crime of armed robbery as I've just described that
2 to you. There must be an intent that the act shall be
3 committed, and some act done, but not in full execution of
4 it, but in pursuance of that intent.

5 Now, an attempt is different from a preparation to
6 commit a crime. It is also different from the intent to
7 commit a crime because the law doesn't punish the mere
8 entertainment of a criminal intent. To bring the law into
9 action, it is necessary that some act should be done in
10 furtherance of that attempt. Some act that immediately and
11 directly tends to the commission of the crime itself, and an
12 act which, if the crime should of been committed or
13 perpetrated, it would constitute part and parcel of the
14 crime itself, but which is not completed because it is
15 prevented or perhaps voluntarily abandoned.

16 The State has to prove the elements of the crime beyond
17 a reasonable doubt as I have instructed you. Criminal
18 intent then is a necessary element of, of each crime that
19 has to be proven by the State beyond a reasonable doubt, and
20 criminal intent is always a matter that has to be determined
21 by you, the jury, from the circumstances which surround the
22 situation because obviously there's no way that you can
23 determine a person's intent with mathematical, mathematical
24 certainty. You can't look down into a person's brain and
25 determine what they had in mind at the time.

1 And so, the law says that criminal intent can be
2 inferred from the circumstances which surrounded a
3 particular event. And that's how you make a determination
4 of whether or not the element regarding intent was present.

5 So, criminal intent then is a state of mind, and it
6 operates jointly with an act in the commission of a crime or
7 the attempted commission of a crime. Criminal intent is a
8 mental state. It's a conscious wrongdoing. And so, it's up
9 to you, as a jury, to determine what the defendant intended
10 to do based on the circumstances which were shown to have
11 existed. I remind you that criminal intent has to be proven
12 as an element beyond a reasonable doubt just like every
13 other element of the offense has.

14 Now, ladies and gentlemen, they're two types of
15 evidence which are normally presented during the trial of a
16 case, direct evidence and circumstantial evidence.

17 Direct evidence is the evidence, like the testimony of
18 a person who asserts or claims to have actual knowledge of
19 something. The person who takes the stand and tells you
20 this is what I saw or this is what I heard. Eye witness
21 testimony is a good example of direct, of direct evidence.

22 Now, circumstantial evidence is proof of a chain of
23 facts and circumstances which indicate the existence of
24 another fact. For example, and by way of example only, the
25 example that I use, which removes it from any facts around

1 our courtroom, don't have anything to do with the crime at
2 all. In the wintertime I suppose this example is more
3 appropriate than it is otherwise. Suppose, before you go to
4 bed at night, you look out across your front lawn and you
5 see the, the brown dead grass of winter out there, and
6 that's all you see, and you go to asleep. And you wake up
7 the next morning and you look out that same window and you
8 see there's a blanket of snow across your lawn. And as you
9 look more closely you see that in the snow they're
10 footprints that lead up to your door.

11 So, what can you gather from all of that?

12 Well, quickly your common sense tells you. The first
13 thing you can gather is some time after you went to sleep
14 last night it snowed. You didn't see a single flake fall.
15 But you know that it snowed from what you saw the next day.

16 And you also know that after it snowed somebody came
17 across your front lawn up to your front door. You didn't
18 see it. You don't know who they were, but you know that
19 they came after it snowed. You put those things together
20 circumstantially to arrive at that conclusion, and that's
21 how circumstantial evidence actually works.

22 Now, the law doesn't make any distinction whatsoever
23 between the weight or the value that you give either direct
24 or circumstantial evidence, and it doesn't require a greater
25 degree of certainty or proof of circumstantial evidence than

1 it does of direct evidence. You should weigh all of the
2 evidence in the case, and after weighing all of the
3 evidence, if you're not convinced of the guilt of the
4 defendant beyond a reasonable doubt, you must find him not
5 guilty.

6 Finally, that's a word you've been hanging on for a
7 while to hear is finally, finally, ladies and gentlemen, let
8 me tell you that you don't serve as jurors in this or any
9 case as partisans or advocates either for the State or for
10 this defendant. You don't serve as jurors to punish your
11 enemies nor to reward your friends. Obviously that wouldn't
12 be a system of justice at all.

13 You've been selected by both the State and this
14 defendant to serve as fair and impartial jurors. And so, it
15 is your duty then, by your joint deliberations, to determine
16 the truth of this case giving to the defendant the benefit
17 of every reasonable doubt on each and every issue, and then
18 to the facts that you determine to be true, you take and
19 apply the law which I've just given to you, and thus arrive
20 at a verdict which speaks the truth of this case.

21 And that's what the word verdict means. It means a
22 truthful saying. And once you've done that, you will have
23 satisfied the oath that you took before you began this trial
24 two days ago to well and truly try this case and to render a
25 true verdict according to the evidence and the law so help

1 you God. We all know that you will do just that and we have
2 every expectation that you'll do nothing less than that.

3 Now, ladies and gentlemen, I'm going to instruct you
4 now as to the forms of verdict in this case. I've given the
5 form of the verdict to the forelady cause she's the one
6 who's got to fill it out.

7 I know how uncomfortable it can be when you get to
8 coughing and you can't get to anything to help you.

9 Ladies and gentlemen, they're four charges in this
10 case, and so, you will write four verdicts. Your verdict on
11 one charge does not necessarily determine your verdict on
12 another one. The defendant can be convicted or acquitted on
13 any or all of the charges contained in this case according
14 to your view of the evidence and the law that I've just
15 instructed you.

16 The order in which I have written the forms of verdict
17 on this sheet don't have any significance, doesn't have any
18 significance at all, and you're not to draw any conclusions,
19 any inference whatsoever from the order in which I've
20 written the possible verdict forms down there. I simply
21 write them in the order that I find easiest to explain.

22 The charges themselves are written down there in the
23 order of the indictment numbers. We simply started with the
24 lowest indictment number and worked our way to the largest.
25 So, that has no significance either.

1 The verdict form reads we, the jury, by unanimous
2 consent, find the defendant, Gary Michael Piper, as to
3 Indictment 07-GS-42-2716, pointing and presenting a firearm
4 at Artis Jackson, the first part, possible verdict form is
5 guilty. That's a verdict form that you will use if you find
6 that the State has met its burden of proof as to that
7 charge.

8 And if that's a verdict that you arrive at, Madam
9 Forelady, you will indicate that by putting an X or a check
10 mark in the blank to the left of that space that you see
11 there provided.

12 The second possible verdict form on that charge is we,
13 the jury, by unanimous consent, as to that charge, find the
14 defendant not guilty. That's a verdict that you will arrive
15 at if, if you find that the State has failed to meet its
16 burden of proof as to any of the elements of that offense as
17 I've instructed. And likewise, if that's a verdict you
18 arrive at, Madam Forelady, you will indicate that by putting
19 an X or a check mark in the space provided for you.

20 As to each of the charges, the other charges, the
21 possible verdict forms are the same. The attempted armed
22 robbery of Artis Jackson, guilty if you find that the State
23 has met its burden of proof, not guilty if it fails to meet
24 its burden of proof.

25 As to the indictment charging the murder of Alberto

1 Domingo Chavez, guilty if you find the State meets its
2 burden of proof, and not guilty if the State fails to meet
3 its burden.

4 And finally, as to the indictment charging the
5 attempted armed robbery of Alberto Domingo Chavez, guilty if
6 the State meets its burden, not guilty if it fails to meet
7 its burden. And the verdict for each, in each instance will
8 be indicated as I've indicated to you, Madam Forelady, from
9 the sheet.

10 Now, ladies and gentlemen, as I've said, I've given the
11 verdict form to the forelady cause she's the person that's
12 got to fill it out, but obviously it will not be her verdict
13 alone. The verdicts in each of these case have to be
14 unanimous. All twelve of you have to agree to what the
15 verdict will be before you're authorized to write that
16 verdict and sign that form.

17 I'm gonna send you to your jury room, ladies and
18 gentlemen. Momentarily though -- I want you to wait just a
19 moment before you begin your deliberations. I've got to
20 talk with the lawyers to see if I've left out anything. You
21 might find it difficult to believe as long as I've been
22 talking to you I could of left something out or I could of
23 misstated something. And if I have, I'll have to bring you
24 back out to correct that. But if I do not have to bring you
25 back out, we will send in the items of evidence. And once

1 those items of evidence are delivered to you, that will be
2 your signal for you to begin your deliberation. Not until
3 then. And once the items of evidence have been delivered to
4 you, you will begin your deliberations, and you will
5 deliberate until you've reached a verdict on each of these
6 cases. And you will write the verdict that the jury agrees
7 to unanimously, Madam Forelady, on the form that I've
8 presented to you, you will knock on the door, advise the
9 bailiff at that time, and we'll bring you out to the,
10 receive your verdict.

11 If you-all will step to your jury room. Please wait
12 just one more moment before you go.

13 And Mr., Mr. Nesbitt, if you will keep the alternate
14 outside of the jury room please.

15 Thank you.

16 Folks, go to the jury room.

17 (Whereupon, the following takes place outside the
18 presence of the jury.)

19 THE COURT: Gentlemen, other than previously requested
20 or noted, are there any additional exceptions or request to
21 those charges from the State, Mr. Bulsa?

22 SOLICITOR BULSA: No Your Honor.

23 THE COURT: Thank you.

24 From the defendant, Mr. Schultz?

25 MR. SCHULTZ: Yes, Your Honor.

1 THE COURT: Okay.

2 MR. SCHULTZ: As previously argued, we wish that the
3 Court would grant the instruction on voluntary manslaughter.

4 THE COURT: Yes, sir.

5 MR. SCHULTZ: And self-defense.

6 THE COURT: I understand that. Other than previously
7 noted cause we've already preserved the record as to those
8 earlier.

9 But do you have any additional other than voluntary
10 manslaughter and, and self-defense?

11 MR. SCHULTZ: No, sir, Your Honor.

12 THE COURT: Okay. Then those are covered and the
13 record is preserved as to those two.

14 All right. If you-all will check on the evidence and
15 make sure it's together and if you'll bring the two
16 alternates in and let them have a seat please.

17 (Whereupon, the alternate jurors were dismissed at this
18 time.)

19 SOLICITOR BULSA: We've checked the evidence and it is
20 all present.

21 THE COURT: All in place.

22 Okay. If you'll take that evidence in and instruct the
23 jury that they can begin their deliberations.

24 Thank you.

25 All right. Folks, I appreciate you-all's good use of

1 the Court's time in, in trying this case. You've obviously
2 represented each side as well and, and efficiently and I
3 thank you for that.

4 We'll stand at ease in this case until we hear from the
5 jury.

6 (Whereupon, the jury began deliberations at 11:24, and
7 returned with a verdict at 12:08.)

8 SOLICITOR BULSA: Your Honor, may we approach?

9 THE COURT: Yes, sir.

10 (Whereupon, a bench conference was held at this time.)

11 THE COURT: All right. Ladies and gentlemen of the
12 jury, I'm advised the jury has reached a verdict.

13 Both State and defense ready to receive the verdict,
14 Mr. Bulsa?

15 SOLICITOR BULSA: Yes, sir.

16 MR. SCHULTZ: Defense is ready, Your Honor.

17 THE COURT: All right. Thank you.

18 (Whereupon, the following takes place within the
19 presence of the jury.)

20 THE COURT: Madam Clerk.

21 CLERK: Ladies and gentlemen -- Madam Forelady, has the
22 jury reached a unanimous verdict?

23 FORELADY: We have.

24 THE COURT: Okay. Have you signed it?

25 FORELADY: Yes, ma'am.

1 THE COURT: Please pass it to the bailiff.

2 (Forelady complies.)

3 THE COURT: Madam Clerk, you may publish the verdict.

4 CLERK: State of South Carolina, County of Spartanburg,
5 in the Court of General Sessions, we, the jury, by unanimous
6 consent, find the defendant, Gary Michael Piper, as to
7 Indictment Number 2007-GS-42-2716, pointing and presenting a
8 firearm at Artis Jackson, guilty.

9 As to Indictment 2007-GS-42-2717, attempted armed
10 robbery of Artis Jackson, guilty.

11 As to Indictment Number 2007-GS-42-2718, murder of
12 Alberto Domingo Chavez, guilty.

13 As to Indictment 2007-GS-42-2719, attempted armed
14 robbery of Alberto Domingo Chavez, guilty.

15 Signed this day, November 29th, 2007, foreperson's
16 signature, Carla Horton.

17 Ladies and gentlemen, if this is your verdict and still
18 your verdict, if so, please raise your right hand.

19 (Whereupon, all jurors raise their hands at this time.)

20 CLERK: So say you-all.

21 THE COURT: Thank you.

22 Madam Clerk, if you will, poll the jury.

23 Ladies and gentlemen, you're gonna be polled now
24 individually. You'll be asked, as your name is called by
25 the clerk, ask you are these your verdicts and were these

1 your verdicts and still your verdicts or something similar
2 to that. And if you'd give the appropriate response to that
3 question.

4 You may proceed, Madam Clerk.

5 (Whereupon, the jurors were polled at this time and all
6 answered in the affirmative that that was and is still their
7 verdict.)

8 THE COURT: Thank you.

9 All right. Mr. Schutlz, are there any other matters
10 before the jury is dismissed from the defendant?

11 MR. SCHULTZ: No, sir, Your Honor.

12 THE COURT: Thank you.

13 (Whereupon, the jury was dismissed at this time.)

14 THE COURT: All right. Mr. Schutlz, I'll be glad to
15 hear motions from the defendant.

16 MR. SCHULTZ: Your Honor, the only motion I would make
17 at this time is to move for a new trial based upon all the
18 objections that I argued that, and all the motions that the
19 Court denied.

20 THE COURT: All right, sir. Thank you.

21 And I, I renew my ruling that I gave at the directed
22 verdict stage of the case. Obviously this was a case for
23 the jury's consideration. I think it was properly presented
24 to the jury for reasons that we have already put in the
25 record, and the jury made a decision that's well within its,

1 its purview and certainly well within the evidence as it was
2 presented.

3 I note your motion. I respectfully deny it. The
4 record is preserved in that regard.

5 MR. SCHULTZ: Yes, sir, Your Honor.

6 THE COURT: All right. Mr. Bulsa, is the State now
7 ready to proceed to the matter of sentencing?

8 SOLICITOR BULSA: Just have to get the defendant's
9 information on the sentencing sheets, Your Honor. The
10 defendant's family has arrived.

11 THE COURT: Okay. While you're doing that, I will
12 stand down for a minute. I want to speak to somebody else.

13 (Pause.)

14 SOLICITOR BULSA: We're ready, Your Honor.

15 THE COURT: Are you ready?

16 SOLICITOR BULSA: Yes, sir.

17 THE COURT: Mr. Piper, come around please.

18 (Defendant complies.)

19 SOLICITOR BULSA: Judge, would you like the sentencing
20 sheets, Your Honor?

21 THE COURT: Yes, sir.

22 Mr. Bulsa, I'll be glad now to hear from the State and
23 from any of the victim's family or anyone on the State's
24 behalf.

25 SOLICITOR BULSA: Yes, sir.

1 Your Honor has seen his criminal history, but for the
2 record I will read it.

3 THE COURT: Okay. I have it here in front of me.

4 SOLICITOR BULSA: Would you like me to read it into the
5 record?

6 THE COURT: We can make it, just make it part of the
7 record.

8 SOLICITOR BULSA: Make that part of the record.

9 Okay. Thank you, Your Honor.

10 THE COURT: And if there's anything on there you want
11 to highlight for the purposes of this discussion, I'll be
12 glad for you to do it.

13 SOLICITOR BULSA: I think I've highlighted those before
14 I presented it to Your Honor.

15 THE COURT: You did.

16 SOLICITOR BULSA: Okay. We do have a statement that
17 the victim's advocate would like to read on behalf of the
18 victim.

19 THE COURT: All right. Yes, ma'am.

20 MISS MENDEZ: My name is Delores Mendez. I'm a victim
21 advocate with the Solicitor's Office. I'll be reading this
22 statement.

23 THE COURT: Your name again?

24 I'm sorry.

25 MISS MENDEZ: Delores Mendez.