

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ABBEVILLE COUNTY

Thomas A. Russo, Circuit Court Judge

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S.C. Supreme Court

Case No. 2012-212875

Clarence Austin Harrison.....Petitioner,

vs.

State of South Carolina.....Respondent

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD) 8TH JUDICIAL CIRCUIT

THE STATE)
 -VS-)
ALTI MONTE LIVINSTON HASKELL,)
AND CLARENCE HARRISON, II)
 DEFENDANTS.)

MARCH 20-21, 2006
ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER COUCH, JUDGE; AND A JURY.

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

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ATTORNEY FOR THE STATE

JAMES GRAHAM PADGETT, III, ESQUIRE
ATTORNEY FOR DEFENDANT HASKELL

CHARLES GROSE, PUBLIC DEFENDER
ALEX BUERGEY, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT HARRISON

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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Case No: 06-GS-01-191 to 193
 Pl./State State

Date: March 20, 2006
 County: Abbeville

Judge: Roger Couch
 Pl./State Atty: John Anthony

Defendant: Alti Montae Haskell
Clarence Harrison
 Court Reporter: Sharon L. Vizer Hanks

Defense Atty: James Padgett
Charles Grose

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
34	Bruce J. Conway	M	W			X-1	
47	Nancy G. Erwin	F	W			X-2	
28	Patricia W. Campbell	F	W				1
95	Robert B. McClair	M	W				2
50	James L. Freeman	M	W				3
102	Patricia M. Moore	F	W				4
101	Jeffrey M. Meyer	M	W				5
55	Bobby L. Gregory Jr.	M	W			X-3	
132	Jeffrey A. Spears	M	W				6
129	Chaka R. Smith	F	B				7
67	Olinka D. Hilley	F	W		X-1		
98	Doris L. McGinn	F	W			X-4	
65	Roy L. Hicks	M	B		X-2		
120	David W. Rouse	M	B				8
130	Ervin L. Smith	M	W			X-5	
39	Roger D. Davenport	M	W		X-3		
103	George L. Morrow	M	W			X-6	
35	Micenele M. Crawford	F	B		X-4		
43	Kenneth E. Driver	M	W			X-7	
66	Allie L. Hill	F	W				9
64	William L. Hesson	M	W			X-8	

VOIR DIRE

Date: March 20, 2006

County: Abbeville

Judge: Roger Couch

Pl./State Atty: John Anthony

06-65-01-191 to 193
Case No: 06-65-01-194 to 196

Pl./State State

Defendant: Alti Montae Haske

Clarence Harrison

Court Reporter: Sharon Vizer - Hanks

Defense Atty: James Padgett

Charles Grose

[illegible]

VOIR DIRE

Date: March 20, 2006County: AbbevilleCase No: 06-GS-01-191 to 193
06-GS-01-194 to 196Judge: Roger CouchPl./State StatePl./State Atty: John AnthonyDefendant: Alti Montae Haskell
Clarence HarrisonDefense Atty: James Padgett
Charles GroseCourt Reporter: Sharon Vizer Hanks

Juror No.	Name	Sex	Race	Strikes			
				Court	Plaintiff	Defense	Accept
116	Felicia N. Reed	F	B				1
94	Flora K. McCall	F	W		X-1		
148	Brian D. Williams	M	W				2
104	Susan P. New	F	W				3
58	Sherry J. Hall	F	W				4
101	Jeffrey M. Meyer	M	W				5
41	Sheila M. Dixon	F	W			X-1	
86	Charles D. Lewis	M	W			X-2	
130	Ervin L. Smith	M	W			X-3	
5	Jeremy C. Alewine	M	W			X-4	
146	Jerry D. Whiten	M	W				6
55	Bobby L. Gregory, Jr.	M	W			X-5	
50	James L. Freeman	M	W				7
47	Nancy G. Erwin	F	W			X-6	
95	Robert B. McClain	M	W				8
16	Janelle A. Bell	F	B				9
64	William L. Hesson	M	W			X-7	
129	Chaka R. Smith	F	B				10
139	Vincent O. Torongeau	M	W			X-8	
4	Keith Aiken	M	B		X-2		
105	William A. New	M	W			X-9	

Court Reporter: Sharon Vizer Hanks

[illegible]

1 Monday, March 20, 2006

2 THE COURT: Ladies and gentlemen of the jury panel,
3 we're about to begin the selection of a jury in the case of
4 The State of South Carolina vs. Alti Monte Livingston Haskell,
5 and The State of South Carolina vs. Clarence A. Harrison, II.

6 Before we begin that trial there is a set of
7 questions again that I will need to ask you that are specific
8 to this particular case.

9 While I realize you were sworn earlier concerning
10 the qualification process it is necessary that you again take
11 an oath to answer the questions that apply to this particular
12 case both truthfully, honestly and complete.

13 So at this point in time, I would ask that the Clerk
14 please swear the jury panel for this case.

15 (WHEREUPON, the jury panel was sworn.)

16 THE COURT: Now, ladies and gentlemen of the jury
17 panel, I'm going to go over with you now some documents which
18 have been presented to this Court. The documents which I have
19 in front of me are documents which are called indictments.

20 Indictments are documents which are issued by the
21 Abbeville County Grand Jury to this Court. They inform this
22 Court of the charge that is brought against the defendant in
23 question. They also inform the defendant of the charges that
24 have been lodged against him.

25 An indictment cannot be used by any juror in any

1 fashion to determine the guilt or the innocence of a person
2 who is before this Court. It is simply the formal written
3 document, again, that brings the charge to this Court, informs
4 us of the charge which is to be tried and informs the
5 defendant of the charges lodged against him.

6 I'm going to go over the indictment so that you can
7 more fully and completely answer the questions that I'm going
8 to have in just a few minutes concerning this case so that you
9 in your own mind can determine what if any knowledge you may
10 have concerning this particular case or the particular
11 incidences which have been alleged in the indictments.

12 The first indictment that I'm going to go over with
13 you is in case number 2006-GS-01-191. This indictment is for
14 assault and battery with intent to kill. It is in the case of
15 The State vs. Alti Monte Livingston Haskell.

16 The indictment states that Alti Monte Livingston
17 Haskell did, along with Clarence A. Harrison, II, aid,
18 abetting and assisting one another did in Abbeville County,
19 state aforesaid, on or about the 10th day of February of 2004
20 willfully, unlawfully and intentionally with malice
21 aforethought commit an unlawful act of violent injury upon Ron
22 Gartrell in violation of Section 16-3-620 of the South
23 Carolina Code of Laws, 1976 amended, against the peace and
24 dignity against the State and contrary to the statute in such
25 case made and provided. That's the first indictment in

1 Mr. Haskell's case.

2 The second indictment is in case number
3 .2004-GS-01-191. This indictment is for attempted armed
4 robbery. The indictment states that Alti Monte Livingston
5 Haskell, along with Clarence A. Harrison, II, aiding, abetting
6 and assisting one another did in Greenwood County, the state
7 aforesaid, on or about the 10th day of February of 2004
8 willfully and unlawfully while armed with a deadly weapon or
9 while alleging either by words or action that he was armed
10 while using a representation of a deadly weapon or any object
11 which a person present during the commission of the robbery

12 reasonably believed to be a deadly weapon feloniously attempt
13 to take away from the person or presence of Ron Gartrell by
14 means of force or intimidation goods or monies with the intent
15 to deprive the owner permanently of such property in violation
16 of Section 16-11-330 of the South Carolina Code of Laws, 1976
17 as amended, against the peace and dignity of the State and
18 contrary to the statute in such cases made and provided.

19 The next indictment is case number 2006-GS-01-193.
20 It's for possession of firearm or knife during the commission
21 of a violent crime. This indictment states that Alti Monte
22 Livingston Haskell, along with Clarence A. Harrison, aiding,
23 abetting and assisting one another --

24 I'm going to ask the attorneys to please approach
25 the bench for just a second, please.

1 (WHEREUPON, a bench conference was had.)

2 THE COURT: I'll begin this one again. That Alti
3 Monte Livingston Haskell, along with Clarence A. Harrison,
4 aiding, abetting and assisting one another did, and this
5 indictment states in Greenwood County, I'm informed that a
6 motion will be made to amend it to be Abbeville County, the
7 state aforesaid, on or about the 10th day of February of 2004
8 possess a firearm or visibly display what appeared to be a
9 firearm or visibly displayed a knife during the commission of
10 a violent offense, to wit, assault and battery with intent to
11 kill and/or attempted armed robbery or any lesser included
12 violent offense, that offense being defined as a violent
13 offense in Section 16-160 of the Code of Laws, South Carolina,
14 1976 as amended, and the said defendant was or were convicted
15 of committing or attempting to commit said violent crime,
16 assault and battery with intent to kill and/or attempted armed
17 robbery or any lesser included violent offense in violation of
18 16-23-490 of the Code of Laws of South Carolina, 1976 as
19 amended. Now, those are the indictments as they relate to
20 Mr. Haskell.

21 The next indictments are for Mr. Harrison. The
22 first indictment that I will go over with you is in case
23 number 06-GS-01-194. It is for assault and battery with
24 intent to kill. The indictment in this case states that
25 Clarence A. Harrison, II, along with Alti Monte Livingston

1 Haskell, aiding, abetting, assisting one another did in
2 Abbeville County, the state aforesaid, on or about the 10th
3 day of February, 2004 willfully, unlawfully and intentionally
4 with malice aforethought commit an unlawful act of violent
5 injury upon Ron Gartrell in violation of Section 16-3-620 of
6 the South Carolina Code of Laws, 1976 as amended, against the
7 peace and dignity of the State and contrary to the statute in
8 such cases made and provided.

9 The next case is case number 06-GS-01-195. This is
10 for attempted armed robbery. This indictment states that
11 Clarence A. Harrison, II, along with Alti Monte Livingston

12 Haskell, aiding, abetting and assisting one another did in
13 Abbeville County, state aforesaid, on or about the 10th day of
14 February, 2004 willfully and unlawfully while armed with a
15 deadly weapon or while alleging either by action or words that
16 he was armed while using a representation of a deadly weapon
17 or any object which a person present during the commission of
18 the robbery reasonably believed to be a deadly weapon
19 feloniously attempt to carry away from the person or presence
20 of Ron Gartrell by means of force or intimidation goods or
21 monies with the intent to deprive the owner permanently of
22 such property in violation of Section 16-11-330 of the South
23 Carolina Code of Laws, 1976 amended, against the peace and
24 dignity of the State and contrary to the laws and statutes in
25 such cases made and provided.

1 The final indictment is in case number 04-GS-01-196.
2 This is for possession of a firearm or knife during the
3 commission of a violent crime. This indictment states that
4 Clarence A. Harrison, II, along with Alti Monte Livingston
5 Haskell, aiding, abetting and assisting one another did in
6 Abbeville County, the state aforesaid, on or about the 10th
7 day of February, 2004 possess a firearm or visibly displayed
8 what appeared to be a firearm or visibly displayed a knife
9 during the commission of a violent offense, to wit, assault
10 and battery with intent to kill and/or attempted armed robbery
11 or any lesser included violent offense, that offense being
12 defined as a violent offense in Section 16-160 of the 1976
13 Code of Laws of South Carolina as amended, and the said
14 defendant was or were convicted of committing or attempting to
15 commit the said violent crime, assault and battery with intent
16 to kill and/or attempted armed robbery or any lesser included
17 violent offense in violation of Code Section 16-23-490 of the
18 Code of Laws of South Carolina, 1976 amended, against the
19 peace and dignity of the State and contrary to the statute in
20 such cases made and provided.

21 Those are the indictments that are before this Court
22 at this time. They represent, again, the charges that have
23 been lodged against these defendants. Indictments are simply
24 that, those charges, and they cannot be used by you in any
25 fashion whatsoever in determining the guilt or the innocence

1 of the defendant who is before this Court.

2 Now, at this point in time, I'm going to go through
3 some questions concerning this case. If you have a response
4 to any of my questions I will ask you, as we did during the
5 qualification process, that you please stand and give your
6 answers.

7 The first question. Has any member of the jury
8 panel ever been related by blood or marriage to the
9 defendants, Clarence A. Harrison, II, or Alti Monte Livingston
10 Haskell, or the alleged victim in this case, Ron Gartrell? If
11 so, please stand.

12 (There was no response)

13 THE COURT: Has any member of the jury panel ever
14 had a close personal or social relationship with the
15 defendant, Clarence Harrison, Alti Monte Haskell, or the
16 alleged victim, Ron Gartrell? If so, please stand.

17 Yes, ma'am, your name and number?

18 POTENTIAL JUROR: Ellen Leverett, I think it was
19 like 85, and Mr. Haskell.

20 THE COURT: Tell me how you know Mr. Haskell.

21 MS. LEVERETT: I've known him from birth. His mom
22 and I were very, very close. I'd say up until about 13 he was
23 in my house almost every day.

24 THE COURT: Ma'am, I would assume then that would
25 prevent you from being fair and impartial --

1 MS. LEVERETT: Yes, sir, it would.

2 THE COURT: -- to both sides in this case?

3 MS. LEVERETT: It would.

4 THE COURT: Ma'am, I'm going to disqualify you from
5 service in this case. Thank you very much.

6 MS. LEVERETT: Thank you. Can I go?

7 THE COURT: Yes, ma'am. Let me tell you before you
8 go though, ma'am.

9 MS. LEVERETT: Sir?

10 THE COURT: I would ask that you please have the
11 number that you call back in concerning your future jury
12 service before you leave the courthouse. If you don't have it
13 check by the clerk's office, get that phone number. You
14 should call in beginning tomorrow evening to determine the
15 extent of your jury service for the remainder of the week.

16 MS. LEVERETT: Thank you, sir.

17 THE COURT: And this goes for anyone else that I
18 excuse at this point in time.

19 Thank you, ma'am.

20 I would ask that the attorneys who are going to be
21 involved in the trial of this case please stand and introduce
22 themselves to the jury panel. First of all for the State.

23 MR. ANTHONY: My name is John Anthony, and I'll be
24 representing the State of South Carolina.

25 THE COURT: For the defense.

1 MR. PADGETT: My name is Tripp Padgett, and I
2 represent Mr. Haskell.

3 MR. BUERGEY: My name is Alex Buergey, and I along
4 with Charles Grose represent Mr. Harrison.

5 THE COURT: Would you introduce yourself, sir.

6 MR. GROSE: Yeah. My name is Charles Grose. With
7 Mr. Buergey I represent Mr. Harrison, who has pled not guilty
8 to these charges.

9 THE COURT: Now, has any member of the jury panel
10 ever been represented by any of the attorneys who are involved
11 in the trial of this case, or as to any of the attorneys who
12 are involved in the trial of this case have they ever appeared
13 on the other side of a legal controversy from you? If so,
14 please stand.

15 Is there any member of the jury panel related -- I'm
16 sorry. Somebody stood up on the first question. Your name
17 and number, please, ma'am?

18 POTENTIAL JUROR: Angela Mack, 91.

19 THE COURT: And your situation, ma'am?

20 MS. MACK: I remember the guy right there with the
21 striped tie. I had a case against him when he defended a
22 suspected child molester.

23 THE COURT: So you had a case against him. Now, if
24 it was a child molester that means the State was the one who
25 prosecuted that case; is that right?

1 MS. MACK: Yeah, but he was the attorney for the
2 guy.

3 THE COURT: For the defendant?

4 MS. MACK: Yeah.

5 THE COURT: Were you -- how were you related to the
6 victim?

7 MS. MACK: It was my daughter.

8 THE COURT: Okay. Now, ma'am, the fact that he
9 appeared on the other side of a legal controversy from you
10 affect your ability to be fair and impartial in this case?

11 MS. MACK: No.

12 THE COURT: Okay. Thank you very much. You can be
13 seated.

14 Anyone else?

15 (There was no response.)

16 THE COURT: Is there any member of the jury panel
17 related by blood or marriage or do you have a close personal
18 or social relationship with any of the attorneys who are
19 involved in the trial of this case? If so, please stand.

20 Yes, sir, your name and number?

21 POTENTIAL JUROR: Matt Babb, number 12.

22 THE COURT: Yes, sir.

23 MR. BABB: I attended high school with Mr. Padgett.

24 THE COURT: That may have been a couple years ago.

25 MR. BABB: It's been a little while.

1 THE COURT: At that time, were you acquaintances or
2 very close friends?

3 MR. BABB: I'd say very close friends.

4 THE COURT: Okay, sir. And have you kept that
5 contact up since your high school days?

6 MR. BABB: No, sir.

7 THE COURT: Would the fact that he's appearing as an
8 attorney in this case affect your ability to be fair and
9 impartial to the State and the defense?

10 MR. BABB: No, sir.

11 THE COURT: I'm going to allow you to continue to
12 serve. Thank you, sir.

13 Anyone else?

14 (There was no response.)

15 THE COURT: Now I'm going to read to you a list of
16 names. These are people who are potential witnesses in this
17 case. Listen carefully, there is a right good number of them.
18 And just remember if you have any relationship to these
19 individuals because I'll be asking you some questions about
20 these names once I have completed going over the list with
21 you. These are people who are listed as potential witnesses
22 in the trial of this case.

23 Neketa Gray; Lakendra Gray; Christopher Brown; Rio
24 Brown; Janet Brownlee Jackson; Adrian Hill; Jessica Butler;
25 Ken Lee; Aaron Thomas; Meyun Wharton; Alti Monte Livingston

1 Haskell; Clarence Harrison; Lieutenant John W. Smith; Sergeant
2 J. G. Killian; Darren Howland; Roderick Gartrell; Torey Brown,
3 Kytraundra, nicknamed Nini, Cole; Sherman Norman; Mario Adams;
4 Sergeant Raymond Vandiver; Sergeant John Schreier; Lieutenant
5 John Smith; Monroe Thompson..

6 Now, is any member of the jury panel related by
7 blood or marriage to any of the individuals who were just
8 listed as potential witnesses in this case? If so, please
9 stand.

10 Yes, sir, your name and number?

11 POTENTIAL JUROR: Jeremy Alewine, Number 5. John
12 Smith.

13 THE COURT: Yes, sir. How are you related to him?

14 MR. ALEWINE: John Smith.

15 THE COURT: I'm sorry?

16 MR. ALEWINE: John Smith.

17 THE COURT: How are you related to him?

18 MR. ALEWINE: Great uncle.

19 THE COURT: Sir, I have some great uncles, some of
20 them I'm very close to, some of them I'm not so close to. How
21 would you describe your relationship with him?

22 MR. ALEWINE: I don't see him often.

23 THE COURT: Well, would the fact that he's going to
24 serve as a witness in this case, would that affect your
25 ability to be fair and impartial to the State and to the

1 defendants in this matter?

2 MR. ALEWINE: No.

3 THE COURT: Okay. Thank you very much for your
4 response. That was number 5.

5 Anyone else?

6 (There was no response.)

7 THE COURT: Does any member of the jury panel have a
8 close personal or a social relationship with any of the
9 individuals that I just listed as potential witnesses? If so,
10 please stand.

11 Yes, ma'am, your name and number?

12 POTENTIAL JUROR: Nancy Erwin, 47.

13 THE COURT: And who do you have some relationship
14 with, ma'am?

15 MS. ERWIN: John Schreier and my oldest son are best
16 friends.

17 THE COURT: Now, I don't know the age of your son.

18 MS. ERWIN: 40.

19 THE COURT: Okay. 40 year of age.

20 MS. ERWIN: Right.

21 THE COURT: So I doubt that you see him on a social
22 basis. You're just aware of that?

23 MS. ERWIN: Yes, sir, I do, rather frequently.

24 THE COURT: You do see him on a social basis?

25 MS. ERWIN: Yes.

1 THE COURT: Would the fact that he's going to be a
2 witness in this case affect your ability to be fair and
3 impartial?

4 MS. ERWIN: No, sir. I do not think so.

5 THE COURT: Now, let me ask a little bit more about
6 that. When you see him fairly often, does he come to your
7 house as a guest or do you just happen to see him with your
8 son?

9 MS. ERWIN: Well, we have social gatherings at my
10 son's, what we call shop, that John and his new wife are at.

11 THE COURT: So you see him --

12 MS. ERWIN: But all of our families are involved.

13 THE COURT: How many people would be involved in
14 that kind of setting?

15 MS. ERWIN: 45 to 50.

16 THE COURT: So you see him at those occasions?

17 MS. ERWIN: Yes, sir.

18 THE COURT: I'll allow you to serve. Thank you,
19 ma'am.

20 Anyone else?

21 (There was no response.)

22 THE COURT: Has any member of the jury panel formed
23 or expressed an opinion about any matter that might affect --
24 that might be involved in the trial of this case? If so,
25 please stand.

1 (There was no response.)

2 THE COURT: Has any member of the jury panel or a
3 member of your immediate family or a close friend of yours
4 ever been charged with murder, assault and battery with intent
5 to kill, high and aggravated assault and battery, robbery,
6 robbery, burglary or any other violent crime? If so, please
7 stand.

8 (There was no response.)

9 THE COURT: Has any member of the jury panel --
10 I'm sorry. Somebody is standing. Yes, sir, your
11 name and number?

12 POTENTIAL JUROR: 39 Dale Davenport.

13 THE COURT: And your situation, sir?

14 MR. DAVENPORT: My brother has been convicted of
15 robbery.

16 THE COURT: Your brother was convicted of robbery?

17 MR. DAVENPORT: Yes.

18 THE COURT: Would the fact that your brother had
19 that conviction affect your ability to be fair and impartial
20 in this matter?

21 MR. DAVENPORT: No.

22 THE COURT: Thank you very much for your answer,
23 sir.

24 Has any member of the jury panel or a member of your
25 immediate family or a close friend of yours ever been charged

1 with a crime by the Abbeville Police Department? If so,
2 please stand.

3 Yes, sir, your name and number?

4 POTENTIAL JUROR: Roy Hicks, 65.

5 THE COURT: And your situation, sir?

6 MR. HICKS: My brother got charged with hit and run.

7 THE COURT: Okay, sir. How long ago was that? Stay
8 up for me.

9 MR. HICKS: Like 10 years.

10 THE COURT: Would that affect your ability to be
11 fair and impartial in the case?

12 MR. HICKS: No.

13 THE COURT: Thank you very much.

14 Has any member of the jury panel or a member of your
15 immediate family or a close friends of yours ever filed a
16 lawsuit against the Abbeville Police Department? If so,
17 please stand.

18 (There was no response.)

19 THE COURT: Is there any member of the jury panel
20 who has religious or moral views which would prevent you from
21 making a judgment as to the guilt or the innocence of someone
22 charged with a crime? If so, please stand.

23 (There is no response.)

24 THE COURT: Is there any member of the jury panel a
25 member of an organization that does not recognize the

1 authority of the government of the United States of America or
2 of the State of South Carolina? If so, please stand.

3 (There was no response.)

4 THE COURT: Is there any member of the jury panel
5 that has anything about your home, neighborhood, workplace or
6 elsewhere that you cannot spend a lot of time that does not
7 cause you to fear for your safety? If so, please stand.

8 (There was no response.)

9 THE COURT: Is there any member of the jury panel
10 who knows or has a relationship with anyone who works in the
11 8th Circuit Solicitor's Office? If so, please stand.

12 Yes, sir, your name and number?

13 POTENTIAL JUROR: Kevin Allen. My brother actually
14 works with the Solicitor's Office?

15 THE COURT: And what does he do there?

16 MR. ALLEN: He's a court administrator.

17 THE COURT: This is your brother over here?

18 MR. ALLEN: Yes.

19 THE COURT: I'm going to disqualify you from service
20 in this particular case. Same thing, sir. If you would call
21 in tomorrow evening about future jury service. Thank you very
22 much.

23 Has any juror or a member of your close family ever
24 been a civilian or military law enforcement officer? If so,
25 please stand.

1 Yes, sir, your name and number?

2 POTENTIAL JUROR: 86, Charles W. Lewis.

3 THE COURT: And your situation, sir?

4 MR. LEWIS: I used to be employed by

5 Abbeville City Police Department.

6 THE COURT: By who?

7 MR. LEWIS: Abbeville City Police.

8 THE COURT: You are no longer employed there?

9 MR. LEWIS: No, uh-uh.

10 THE COURT: You're wearing an E. M. T. jacket. Is
11 that what you are doing now?

12 MR. LEWIS: An E. M. T. now.

13 THE COURT: Would the fact that you had former
14 employment with that agency prevent you from giving a fair
15 trial in this case?

16 MR. LEWIS: No, sir.

17 THE COURT: You were not involved in any of the
18 charges brought in this case?

19 MR. LEWIS: No, sir.

20 THE COURT: You can stay. Thank you very much.

21 Yes, ma'am, your name and number?

22 POTENTIAL JUROR: My name is Sheila Dixon, number
23 41. My mother worked with Greenwood County Sheriff's
24 Department.

25 THE COURT: Now, ma'am, would the fact that you have

1 that relationship to a police officer affect your ability to
2 be fair and impartial in the trial of this case?

3 MS. DIXON: No, sir.

4 THE COURT: Thank you very much.

5 The lady that just stood, your name and number?

6 POTENTIAL JUROR: Donna Bell, 15. My son-in-law is
7 a police officer for Calhoun Falls Police Department.

8 THE COURT: Would that affect your ability to be
9 fair and impartial to the State or the defense in this case?

10 MS. BELL: No, sir.

11 THE COURT: Thank you, ma'am.

12 Yes, sir, your name and number?

13 POTENTIAL JUROR: Juror number 64, Lee Hesson. I
14 was employed by the City of Abbeville Police Department for
15 five years and held a deputy commission for seven years with
16 the sheriff's department.

17 THE COURT: And how long ago was that?

18 MR. HESSON: The 80's. About '95.

19 THE COURT: Okay. More than 10 years ago?

20 MR. HESSON: Yes, sir.

21 THE COURT: So obviously you weren't involved in any
22 of the cases here today?

23 MR. HESSON: No, sir.

24 THE COURT: Would that affect your ability to be
25 fair and impartial in this matter?

1 MR. HESSON: No.

2 THE COURT: Thank you very much, sir. You may be
3 seated.

4 Yes, sir, your name and number?

5 POTENTIAL JUROR: Bruce Conway. I forgot my number
6 while I was standing here.

7 THE COURT: Tell me your situation, sir.

8 MR. CONWAY: My dad was military police in like
9 1946.

10 THE COURT: I see. Would that affect your ability
11 to be fair and impartial in this case?

12 MR. HESSON: Not at all.

13 THE COURT: Thank you very much for your answer.

14 Yes, sir, in the back, your name?

15 POTENTIAL JUROR: Number 55. My wife was a deputy
16 with Laurens County.

17 THE COURT: You say she was. She no longer serves
18 in that capacity?

19 MR. GREGORY: No.

20 THE COURT: Would that affect your ability to be
21 fair and impartial in this case?

22 MR. GREGORY: No.

23 THE COURT: Thank you very much. You can be seated.

24 Anyone else?

25 (There was no response.)

1 THE COURT: Does any potential juror know any law
2 enforcement officer or have some sort of connection with a law
3 enforcement through your business, school, church, community
4 activities or otherwise? If so, please stand.

5 Yes, sir. You've already explained your connection.
6 I think the attorneys understand that.

7 Yes, ma'am, your name and number?

8 POTENTIAL JUROR: Donna Bell, number 15. I work
9 with the town.

10 THE COURT: You work for the town of --

11 MS. BELL: Town of Calhoun Falls.

12 THE COURT: Calhoun Falls. Okay. So you know all
13 the police officers up there?

14 MS. BELL: (Nodded).

15 THE COURT: Would that affect your ability to be
16 fair and impartial in this case?

17 MS. BELL: No, sir.

18 THE COURT: Thank you, ma'am.

19 Anyone else?

20 (There was no response.)

21 THE COURT: Is there any member of the jury panel or
22 a member of your immediate family a member of any organization
23 that has as one of its primary goals the support of law
24 enforcement, such as Mothers Against Drunk Driving, Students
25 Against Drunk Driving, Citizens Against Violent Crime or such

1 organizations as DARE? If so, please stand.

2 (There no response.)

3 THE COURT: The events which give rise to the
4 allegations in this case occurred At Hickory Heights
5 Apartments in the City of Abbeville. I've discussed with you
6 the dates and the individuals involved. Does any potential
7 juror have any knowledge of the allegations in this case? If
8 so, please stand.

9 (There was no response.)

10 THE COURT: Has any member of the jury panel read
11 any information in any media concerning this particular case
12 or had conversations with anyone concerning the facts involved
13 in this case? If so, please stand.

14 (There was no response.)

15 THE COURT: Is there any member of the jury panel
16 aware of any bias or prejudice that you may have toward either
17 the State or the defendants in this case? If so, please
18 stand.

19 (There was no response.)

20 THE COURT: Does any member of the jury panel know
21 of any reason whatsoever why he or she should not serve as a
22 juror in this case with particular emphasis being placed upon
23 your ability to be both fair and impartial to the State and
24 the defendants in this matter? If so, please stand.

25 (There was no response.)

1 THE COURT: Any further questions from the State?

2 MR. ANTHONY: No, Your Honor.

3 THE COURT: Any further questions from the defense?

4 MR. PADGETT: None from the respect of Mr. Haskell.

5 MR. BUERGEY: None from Mr. Harrison, Your Honor.

6 THE COURT: Sir, my court reporter indicated -- the
7 gentleman in the overalls, maybe you stood up at one time and
8 then sat back down. Did you have a response to any of my
9 questions that you felt like you needed to make? I'm not
10 trying to pick on you. It's just that --

11 POTENTIAL JUROR: Well, no, I did. But I just -- I
12 think -- well, I done got them judged already and I don't even
13 know nothing about it.

14 THE COURT: Well, I asked you if there was any
15 reason why you cannot be fair and impartial to either of the
16 parties in this case.

17 POTENTIAL JUROR: Well, I've just been sitting here
18 and I don't even know the people but, you know, I hate a thief
19 and hate people that act like that.

20 THE COURT: Well, now, wait a second. You don't
21 need to go into any editorials. I'm asking you if you can be
22 fair and impartial to either --

23 POTENTIAL JUROR: No, sir, because I done got them
24 judged guilty right now.

25 THE COURT: I'm going to excuse you from service in

1 this case. Thank you very much. Your name, sir?

2 POTENTIAL JUROR: Roy Simpson, number 127.

3 THE COURT: You'll need to get that number and call
4 in starting tomorrow evening.

5 MR. SIMPSON: Okay.

6 THE COURT: Thank you very much.

7 Anyone else?

8 POTENTIAL JUROR: Sir, could I say something?

9 THE COURT: Well, I don't know what you are going to
10 say. So give me some idea what you're going to talk about.

11 POTENTIAL JUROR: I'm good friends with the deputy
12 sheriff. I didn't mention that awhile ago, but with Marion
13 Johnson.

14 THE COURT: Oh, with somebody on the sheriff's
15 department?

16 POTENTIAL JUROR: Yes, sir.

17 THE COURT: Would that affect your ability --

18 POTENTIAL JUROR: No, sir.

19 THE COURT: -- to be fair and impartial?

20 POTENTIAL JUROR: No, sir.

21 THE COURT: That's fine. Thank you very much. Your
22 name and number, sir?

23 POTENTIAL JUROR: Newton, 106.

24 THE COURT: Thank you.

25 Any other questions from the State?

1 MR. ANTHONY: No, Your Honor.

2 THE COURT: Anything further from the defense?

3 MR. PADGETT: No, Your Honor.

4 MR. BUERGEY: None, Your Honor.

5 THE COURT: Thank you very much. We had agreed
6 gentleman at the side-bar, I believe, that strikes would be
7 ten for the State and ten for the defense.

8 Is that correct, State?

9 MR. ANTHONY: Yes, sir.

10 THE COURT: Defendants?

11 MR. GROSE: That was the ruling. We requested an
12 additional ruling.

13 THE COURT: That is the ruling of the Court as far
14 as you are concerned, I believe, your defendants are
15 concerned. And the strikes for the alternate will be one for
16 the State, two for the defense. I believe that was by
17 agreement.

18 Is that right, sir?

19 MR. ANTHONY: Yes, sir. We agree to that.

20 THE COURT: Is that correct?

21 MR. GROSE: Yes, sir.

22 THE COURT: All right. Now, ladies and gentlemen of
23 the jury panel, we're going to begin the jury selection
24 process in the case. When your name is called I'm going to
25 ask that you come forward, come down the isle to right here in

1 front of the bar where the microphones are. Turn around and
2 face to the back of the courtroom. At that point in time the
3 parties will exercise their strikes.

4 Bring with you any personal belongings that you have
5 in your possession that you want to keep in your possession,
6 and if you are selected on the jury we'll ask that you come
7 forward and have a seat in the jury box to my left, and if you
8 are excused to go back and have a seat in the audience.

9 So, again, if your name is called come forward, come
10 down to the microphone, turn and face to the back of the
11 courtroom. At that time the attorneys will be in a position
12 to exercise their strikes.

13 Madam Clerk, you can begin the jury selection
14 process.

15 THE CLERK: 34, Bruce J. Conway.

16 (A white male came forward.)

17 THE CLERK: What say you for the State?

18 MR. ANTHONY: Please present the juror.

19 MR. GROSE: Please excuse this juror from this
20 trial.

21 THE COURT: Just go back and have a seat. Thank you
22 very much.

23 THE CLERK: 47, Nancy G. Erwin.

24 (A white female came forward.)

25 THE CLERK: What say you for the State?

1 MR. ANTHONY: Please present the juror.
2 THE CLERK: What say you for the defense?
3 MR. GROSE: Please excuse this juror from this case.
4 THE CLERK: 28, Patricia W. Campbell.
5 (A white female came forward.)
6 THE CLERK: What say you for the State?
7 MR. ANTHONY: Please present the juror.
8 THE CLERK: What say you for the defense?
9 MR. GROSE: Please seat the juror.
10 THE COURT: Have a seat in the jury box, please.
11 Thank you.
12 THE CLERK: 95, Robert B. McClain.
13 (A white male came forward.)
14 THE CLERK: What say you for the State?
15 MR. ANTHONY: Please present the juror.
16 THE CLERK: What say you for the defense?
17 MR. GROSE: Please seat the juror.
18 THE CLERK: You may have a seat in the jury box.
19 50, James L. Freeman.
20 (A white male came forward.)
21 THE CLERK: What say you for the State?
22 MR. ANTHONY: Please present the juror.
23 THE CLERK: What say you for the defense?
24 MR. GROSE: Please seat the juror.
25 THE CLERK: You may have a seat in the jury box,

1 please.

2 102, Patricia M. Moore.

3 (A white female came forward.)

4 THE CLERK: What say you for the State?

5 MR. ANTHONY: Please present the juror.

6 THE CLERK: What say you for the defense?

7 MR. GROSE: Please seat the juror.

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

9 101, Jeffrey M. Meyer.

10 (A white male came forward.)

11 THE CLERK: What say you for the State?

12 MR. ANTHONY: Please present the juror.

13 THE CLERK: What say you for the defense?

14 MR. GROSE: Please seat the juror.

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

16 55, Bobby L. Gregory, Jr.

17 (A white male came forward.)

18 THE CLERK: What say you for the State?

19 MR. ANTHONY: Please present the juror.

20 THE CLERK: What say you for the defense?

21 MR. GROSE: Please excuse the juror from this case.

22 THE COURT: You may have a seat back in the

23 audience.

24 132, Jeffrey A. Spears.

25 (A white male came forward.)

1 THE CLERK: What say you for the State?
2 MR. ANTHONY: Please present the juror.
3 THE CLERK: What say you for the defense?
4 MR. GROSE: Please seat the juror.
5 THE CLERK: You may have a seat in the jury box.
6 129, Chaka R. Smith.
7 (A black female came forward.)
8 THE CLERK: What say you for the State?
9 MR. ANTHONY: Please present the juror.
10 THE CLERK: What say you for the defense?
11 MR. GROSE: Please seat the juror.
12 THE CLERK: You may have a seat in the jury box.
13 67, Olinka D. Hilley.
14 (A white female came forward.)
15 THE CLERK: What say you for the State?
16 MR. ANTHONY: Please excuse the juror.
17 THE CLERK: 98, Doris L. McGill.
18 (A white female came forward.)
19 THE CLERK: What say you for the State?
20 MR. ANTHONY: Please present the juror.
21 THE CLERK: What say you for the defense?
22 MR. GROSE: Please excuse this juror from this case.
23 THE COURT: 67 [sic], Roy L. Hicks.
24 (A black male came forward.)
25 MR. ANTHONY: I'm sorry. What was the number?

1 THE CLERK: 67 -- 65. What say you for the State?

2 MR. ANTHONY: Please excuse the juror.

3 THE CLERK: 120, David W. Rouse.

4 (A black male came forward.)

5 THE CLERK: What say you for the State?

6 MR. ANTHONY: Please present the juror.

7 THE CLERK: What say you for the defense?

8 MR. GROSE: Please seat this juror.

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

10 130, Ervin L. Smith.

11 (A white male came forward.)

12 THE CLERK: What say you for the State?

13 MR. ANTHONY: Please present the juror.

14 THE CLERK: What say you for the defense?

15 MR. GROSE: Please excuse this juror from this case.

16 THE CLERK: 39, Roger D. Davenport.

17 (A white male came forward.)

18 THE CLERK: What say you for the State?

19 MR. ANTHONY: Please excuse the juror.

20 THE CLERK: 103, George L. Morrow.

21 (A white male came forward.)

22 THE CLERK: What say you for the State?

23 MR. ANTHONY: Please present the juror.

24 THE CLERK: What say you for the defense?

25 MR. GROSE: Please excuse the juror from this case.

1 THE CLERK: Have a seat in the audience.

2 35, Miennele M. Crawford.

3 (A black female came forward.)

4 THE CLERK: What say you for the State?

5 MR. ANTHONY: Please excuse the juror.

6 THE CLERK: 43, Kenneth E. Driver.

7 (A white male came forward.)

8 THE CLERK: What say you for the State?

9 MR. ANTHONY: Please present the juror.

10 THE CLERK: What say you for the defense?

11 MR. GROSE: Please excuse this juror from this case.

12 THE CLERK: 66, Allie L. Hill.

13 (A white female came forward.)

14 THE CLERK: What say you for the State?

15 MR. ANTHONY: Please present the juror.

16 THE CLERK: What say you for the defense?

17 MR. GROSE: Please seat the juror.

18 THE CLERK: You may have a seat in the jury box.

19 64, William L. Hesson.

20 (A white male came forward.)

21 THE CLERK: What say you for the State?

22 MR. ANTHONY: Please present the juror.

23 THE CLERK: What say you for the defense?

24 MR. GROSE: Please excuse this juror from this case.

25 THE CLERK: 58, Sherry J. Hall.

1 (A white female came forward.)
2 THE CLERK: What say you for the State?
3 MR. ANTHONY: Please present the juror.
4 THE CLERK: What say you for the defense?
5 MR. GROSE: Please seat the juror.
6 THE CLERK: You may have a seat in the jury box.
7 Number 15, Donna F. Bell.
8 (A white female came forward.)
9 THE CLERK: What say you for the State?
10 MR. ANTHONY: Please present the juror.
11 THE CLERK: What say you for the defense?
12 MR. GROSE: Please excuse this juror from this case.
13 THE COURT: I have 9 strikes for the defense.
14 THE CLERK: 82, John D. Kidd.
15 (A white male came forward.)
16 THE CLERK: What say you for the State?
17 MR. ANTHONY: Please present the juror.
18 THE CLERK: What say you for the defense?
19 MR. GROSE: Please seat the juror.
20 THE CLERK: 139, Vincent O. Torongeau.
21 (A white male came forward.)
22 THE CLERK: What say you for the State?
23 MR. ANTHONY: Please present the juror.
24 THE CLERK: What say you for the defense?
25 MR. GROSE: Please seat the juror.

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

2 THE COURT: Select the alternate. One strike for
3 the State, two strikes for the defense.

4 THE CLERK: 105, William A. New.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MR. ANTHONY: Please present the juror.

8 THE CLERK: What say you for the defense?

9 MR. GROSE: Please excuse this juror.

10 THE CLERK: 106, Richard H. Newton.

11 (A white male came forward.)

12 THE CLERK: What say you for the State?

13 MR. ANTHONY: Please present the juror.

14 THE CLERK: What say you for the defense?

15 MR. GROSE: Please excuse this juror from this case.

16 THE CLERK: 116, Felicia N. Reed.

17 (A black female came forward.)

18 THE CLERK: What say you for the State?

19 MR. ANTHONY: Please excuse the juror.

20 THE CLERK: 126, Michael A. Simpson.

21 (A white male came forward.)

22 THE CLERK: What say you for the State?

23 THE COURT: Any objection for cause?

24 MR. ANTHONY: No, sir.

25 THE COURT: Any objection for cause from the

1 defense?

2 MR. GROSE: No, sir

3 THE COURT: All right. You're seated as the
4 alternate, sir.

5 Any objection to the jury selection process from the
6 State?

7 MR. ANTHONY: No, Your Honor.

8 THE COURT: Any objection to the jury selection
9 process from the defense?

10 MR. GROSE: Yes, sir.

11 THE COURT: All right. Ladies and gentlemen, those
12 of you who have been selected on this jury, I'm going to ask
13 that you go to the jury room. The bailiff will show you where
14 to go and have a seat. We'll bring you back into the
15 courtroom shortly.

16 I will admonish you at this time, please do not
17 begin any discussions concerning this case. You know very
18 little about this matter, but don't begin any discussions,
19 even among yourselves, until such time as I have instructed
20 you to do so. At this time, I will allow you to retire to
21 the jury room.

22 (WHEREUPON, the jury leaves the courtroom at
23 approximately 3:50 p.m.)

24 THE COURT: For those members of the jury panel who
25 were not selected on this jury, I am not excusing you at this

1 MR. GROSE: 35 and 116.

2 THE COURT: All right. Thank you.

3 MR. GROSE: And I would note that there was only 5
4 black folks drawn in the entire panel and the State struck 60
5 percent of them.

6 THE COURT: All right. It's incumbent upon the
7 State at this point in time to explain to the Court a racially
8 neutral reason for exercising those strikes. I'll be happy to
9 hear from you.

10 MR. ANTHONY: Yes, sir. We struck number 65 because
11 he said that he'd had a brother charged with hit and run by
12 the Abbeville Police Department. We struck number 33 because
13 -- I'm sorry, number 35. It wasn't 33.

14 THE COURT: Number 35, the black female.

15 MR. ANTHONY: Number 35 had 2 harassment
16 convictions, 1 in '98 and 1 in 2001. And number 116 was
17 struck because she said at roll call that she did not have
18 employment. There was also, I know some input from the
19 sheriff's office that she -- they suggested that the State
20 strike her. I would have to inquire with them as to know the
21 specific content of that advice, but that was the reason for
22 the strike.

23 THE COURT: Do you need to inquire of the sheriff's
24 department some detail? I want to know what the reason was
25 she was struck.

1 MR. ANTHONY: Yes, sir, if I could ask.

2 THE COURT: Yes, sir. I'll give you a minute.

3 [PAUSE.]

4 MR. ANTHONY: That was my mistake. We'd rest the
5 strike on her lack of employment.

6 THE COURT: I'll be happy to hear from the defense.

7 MR. GROSE: Your Honor, with regards to the strikes
8 for juror number 65, because the brother had been charged, and
9 35, who had 2 harassment convictions, at this time we would
10 require that the State disclose the criminal records of all
11 the jurors that were sat and the ones that they passed on and
12 allowed us to have a selection.

13 And I do not make this in a vacuum. We made a
14 similar motion a few moments ago in a case where Mr. Buergey
15 and I represented co-defendants Deidra Johnson and Ashley
16 Rayford, and when we got those records they had based their
17 strikes on criminal records of the jurors. When we got the
18 records -- Judge Maddox allowed us to have access to the
19 criminal records of the jurors that were struck. It turned
20 out that they actually sat a juror who had a criminal record.

21 So we think, particularly with that case, which name
22 escapes me, but it was out of Texas that was decided by the
23 United States Supreme Court a couple years ago within the last
24 2 years where they went back and over time looked at, I
25 believe it is Dallas County, and determined that there was a

1 systematic pattern of excluding people of one race, and they
2 overturned a death sentence because of a Batson violation.

3 I think we have this going on in this circuit. It
4 was Mr. Anthony just a few months ago where he was excluding
5 black folks because of race but he didn't exclude a white
6 person because of race.

7 THE COURT: Are you talking about because of their
8 criminal record?

9 MR. GROSE: Because of their criminal record. If he
10 uses what was otherwise a race neutral reason inappropriately
11 and that becomes a pattern over time I think under the
12 emerging Batson theories and the emerging law from United
13 States Supreme Court that that additional evidence could be
14 used as a basis of a Batson motion.

15 But if nothing else, I want to know what the records
16 are of these people that were sat and the numbers that he
17 passed on and allowed us to seat, or make a decision to seat
18 or not to seat.

19 MR. ANTHONY: The only person that I sat or agreed
20 to seat who had a criminal record was juror 50, Mr. Freeman,
21 who had a 1989 conviction for public drunkenness. I decided
22 that that did not merit a strike, that because it was a
23 17-year-old conviction. And I'd submit that there is a
24 significant difference between number 35, who had 2
25 convictions in the last 7 years, and number 50, who hadn't had

1 a conviction in 17 years.

2 THE COURT: Does that satisfy your inquiry or do you
3 wish to go further?

4 MR. GROSE: I think that proves that we need to pick
5 another jury. If you are not satisfied, I do have the
6 transcript, but it's in my office in Greenwood, from the trial
7 in November.

8 THE COURT: I don't know what a transcript has as
9 far as precedential value. If you want to bring me a case
10 from an appeals court I'll be glad to look at that.

11 MR. GROSE: Well, I'm bringing it to you for
12 evidentiary value. I mean, what Mr. Anthony has done now in a
13 couple of cases, and including has admitted to this in this
14 case today, is he sat a white juror who had a criminal record,
15 had a run-in with law enforcement, and struck 2 black jurors
16 using 3 strikes on black jurors when only 5 were drawn had the
17 criminal record. I think that his admission satisfies our
18 burden of proof under Batson and this jury should be thrown
19 out and we should pick again.

20 THE COURT: Anything further from the State?

21 MR. ANTHONY: Well, the State -- I think the State
22 has shown a compelling distinction between those 2 jurors, and
23 there's obviously a big difference in the one with the record
24 that we sat, number 50, and the one with the record that we
25 struck, number 35.

1 THE COURT: Do you have a copy of the case that you
2 were citing? Do you have a citation?

3 MR. GROSE: What I have is a transcript from a case
4 that we tried here where there was an acquittal.

5 THE COURT: But you are saying there was a case out
6 of Texas which you were citing to me. I just want to know if
7 you have a copy of that.

8 MR. GROSE: I could give you a cite if you'll give
9 me about a minute.

10 THE COURT: That will be fine.

11 [PAUSE.]

12 MR. GROSE: Your Honor, I'm looking at Miller-El,
13 which is spelled M-i-l-l-e-r-E-L versus, and I'm going to
14 spell this, D-r-e-t-k-e. It's 125 S.Ct. 2317, 162 L.Ed. 169.
15 I do not have the U. S. cite.

16 While we were doing that, Mr. Buergey has also
17 pointed out that number 28, which was a juror -- 28, which was
18 a white female that was sat --

19 THE COURT: The first juror sat.

20 MR. GROSE: -- had apparently stood up and said that
21 she was a housewife, which means that she's not receiving any
22 compensation for employment. That would be consistent with
23 number 116, which is a black female who said she wasn't
24 working. So I think that, again, we've shown, you know, more
25 inconsistencies with the State.

1 THE COURT: Anything you'd like to say to that,
2 Mr. Anthony?

3 MR. ANTHONY: Your Honor, I would just point out, as
4 far as the Texas case goes, apparently the Texas case goes to
5 some argument of a pattern. In the case that he is talking
6 about, which I'm here today to try this case, but in that case
7 there was no finding of a Batson violation. There was none.

8 THE COURT: You talking about Judge Maddox case?

9 MR. ANTHONY: Yes, sir. Yes, sir. There was no
10 fining of a Batson violation in that case.

11 THE COURT: We're going to take about a 5, 10-minute
12 break, once I've had a chance to consider the case.

13 MR. ANTHONY: If I can one another thing on the
14 record, Your Honor?

15 THE COURT: Yes, sir, absolutely.

16 MR. ANTHONY: As to number 28 and number 116, my
17 notes in roll call indicate that number 28, although she said
18 she was currently a housewife, did give some employment. She
19 said that she had been a secretary at an elementary school.
20 My notes from number 146 -- or, I'm sorry, number 116 simply
21 indicate she said she was unemployed.

22 MR. GROSE: I think that they both are in the same
23 status. I mean, it would be hard to believe that the juror
24 that he struck never had any employment history. And they
25 were both currently unemployed not receiving income, and so I

1 think I would ask you to consider what he's put in the record
2 about his notes as an admission that he knew they were
3 similarly situated when he struck them.

4 THE COURT: We'll be at recess about 5 minutes.

5 (WHEREUPON, a brief recess was taken.)

6 THE COURT: I've reviewed the Batson motion made by
7 the defendant. Considering the Batson motion made by the
8 defense I found no violation of the Batson rule in the
9 selection of the main jury.

10 However, in reviewing the selection of the
11 alternates, juror number 11, a black female, was stricken by
12 the State. The reason given by the State during the Batson
13 hearing was because that particular juror was not employed.
14 It also was pointed out to me by the defense that they were --
15 especially in the case of juror number 28, a white female who
16 was seated, who is also unemployed.

17 The State also gave the reason initially that the
18 alternate -- there was some reason given by the sheriff's
19 department as to why that particular juror should have been
20 stricken, and when inquiring of the sheriff that appeared to
21 be in error.

22 We have 2 jurors who in my opinion are similarly
23 situated. Under the case of State vs. Oglesby when there is
24 not a racially neutral reason why those particular jurors were
25 handled in a different fashion it's my finding that the

1 striking of juror 116 as an alternate would constitute a
2 violation of the rule under Batson and therefore I am going to
3 re-select the jury in this case.

4 Now, what I'll do is ask that the bailiffs please
5 ask the jury panel to step in, and if you'll have the group
6 that was selected in this case return to the jury pool,
7 please.

8 MR. ANTHONY: Your Honor, if I could put one thing
9 on the record just to make it clear.

10 THE COURT: Yes, sir.

11 MR. ANTHONY: In talking to Sergeant Vandiver with
12 the police department he told me that as to one -- as to juror
13 116 that the sheriff, when the sheriff was up here had advised
14 striking that juror, and he told me that. When I had asked
15 the chief deputy what the reason would be for that he did not
16 know, and I'm not saying that that changes anything because --

17 THE COURT: No racially neutral reason was
18 articulated during the Batson hearing. Maybe the sheriff had
19 his reason, but you weren't able to articulated that and it's
20 necessary that you do so during a Batson hearing. So for that
21 reason I will grant the defense motion and re-select the jury.

22 THE ANTHONY: Yes, sir. I just wanted the record to
23 be clear on that.

24 THE COURT: All right. Ask the jurors outside the
25 courtroom to return to the courtroom. Those that are in the

1 jury room be returned to the jury panel.

2 (WHEREUPON, all jurors returned to the courtroom.)

3 THE COURT: Mr. Bailiff, is that all the jurors that
4 you located outside the courtroom?

5 THE BAILIFF: Yes, sir.

6 THE COURT: Ladies and gentlemen of the jury, let me
7 just go over a few things with you so that you'll understand a
8 little bit about where we are.

9 This courtroom is a place of honor. We are
10 dedicated to protecting citizens' rights through our jury
11 system. It is necessary that we make a determination that the
12 jury that is selected is fair and impartial and represents a
13 cross-section -- not a cross-section from you but the peers of
14 the defendant, as required by the constitution.

15 In this case, I have made a ruling that we should
16 re-select the jury in this case, therefore we are going to go
17 through the jury selection process again. All of you are
18 still qualified to serve as jurors in the case, and it will be
19 necessary for us to re-select the jury.

20 So we're going to go through the same process that
21 we went through earlier. When your name is called we're going
22 to ask you to come forward. Come down the isle, turn and face
23 the back of the courtroom and we'll go through the same
24 selection process.

25 We'll have the same number of strikes, gentlemen,

1 (A white female came forward.)
2 THE CLERK: What say you for the State?
3 MR. ANTHONY: Please excuse the juror.
4 THE CLERK: 148, Brian D. Williams.
5 (A white male came forward.)
6 THE CLERK: What say you for the State?
7 MR. ANTHONY: Please present the juror.
8 THE CLERK: What say you for the defense?
9 MR. GROSE: Please seat the juror.
10 THE CLERK: You may have a seat in the jury box.
11 104, Susan P. New.
12 (A white female came forward.)
13 THE CLERK: What say you for the State?
14 MR. ANTHONY: Please present the juror.
15 THE CLERK: What say you for the defense?
16 MR. GROSE: Please seat the juror.
17 THE CLERK: You may have a seat in the jury box.
18 58, Sherry J. Hall.
19 (A white female came forward.)
20 THE CLERK: What say you for the State?
21 MR. ANTHONY: Please present the juror.
22 THE CLERK: What say you for the defense?
23 MR. GROSE: Please seat the juror.
24 THE CLERK: You may have a seat in the jury box.
25 101, Jeffrey M. Meyer.

1 (A white male came forward.)

2 THE CLERK: What say you for the State?

3 MR. ANTHONY: Please present the juror.

4 THE CLERK: What say you for the defense?

5 MR. GROSE: Please seat the juror.

6 THE CLERK: You may have a seat in the jury box.

7 41, Sheila M. Dixon.

8 (A white female came forward.)

9 THE CLERK: What say you for the State?

10 MR. ANTHONY: Please present the juror.

11 THE CLERK: What say you for the defense?

12 MR. GROSE: Please excuse this juror from this case.

13 THE CLERK: 86, Charles D. Lewis.

14 (A white male came forward.)

15 THE CLERK: What say you for the State?

16 MR. ANTHONY: Please present the juror.

17 THE CLERK: What say you for the defense?

18 MR. GROSE: Please excuse this juror from this case.

19 THE CLERK: Number 6, Kevin W. Allen.

20 THE COURT: He is not in the pool.

21 THE CLERK: 130, Ervin L. Smith.

22 (A white male came forward.)

23 THE CLERK: What say you for the State?

24 MR. ANTHONY: Please present the juror.

25 THE CLERK: What say you for the defense?

1 MR. GROSE: Please excuse this juror from this case.
2 THE CLERK: Number 5, Jeremy C. Alewine.
3 (A white male came forward.)
4 THE CLERK: What say you for the State?
5 MR. ANTHONY: Please present the juror.
6 THE CLERK: What say you for the defense?
7 MR. GROSE: Please excuse this juror from this case.
8 THE CLERK: 146, Jerry D. Whiten.
9 (A white male came forward.)
10 THE CLERK: What say you for the State?
11 MR. ANTHONY: Please present the juror.
12 THE CLERK: What say you for the defense?
13 MR. GROSE: Please seat the juror.
14 THE CLERK: You may have a seat in the jury box.
15 55, Bobby L. Gregory, Jr.
16 (A white male came forward.)
17 THE CLERK: What say you for the State?
18 MR. ANTHONY: Please present the juror.
19 THE CLERK: What say you for the defense?
20 MR. GROSE: Please excuse this juror from this case.
21 THE CLERK: 50, James L. Freeman.
22 (A white male came forward.)
23 THE CLERK: What say you for the State?
24 MR. ANTHONY: Please present the juror.
25 THE CLERK: What say you for the defense?

1 MR. GROSE: Please seat the juror.

2 THE CLERK: You may have a seat in the jury box.

3 47, Nancy G. Erwin.

4 (A white female came forward.)

5 THE CLERK: What say you for the State?

6 MR. ANTHONY: Please present the juror.

7 THE CLERK: What say you for the defense?

8 MR. GROSE: Please excuse this juror from this case.

9 THE CLERK: 95, Robert B. McClain.

10 (White male came forward.)

11 THE CLERK: What say you for the State?

12 MR. ANTHONY: Please present the juror.

13 THE CLERK: What say you for the defense?

14 MR. GROSE: Please seat the juror.

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

16 16, Janelle A. Bell.

17 (A black female came forward.)

18 THE CLERK: What say you for the State?

19 MR. ANTHONY: Please present the juror.

20 THE CLERK: What say you for the defense?

21 MR. GROSE: Please seat the juror.

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

23 64, william L. Hesson.

24 THE CLERK: What say you for the State?

25 MR. ANTHONY: Please present the juror.

1 THE CLERK: What say you for the defense?
2 MR. GROSE: Please excuse this juror from this case.
3 THE CLERK: 129, Chaka R. Smith.
4 (A black female came forward.)
5 THE CLERK: What say you for the State?
6 MR. ANTHONY: Please present the juror.
7 THE CLERK: What say you for the defense?
8 MR. GROSE: Please seat the juror.
9 THE CLERK: You may have a seat in the jury box.
10 139, Vincent O. Torongeau.
11 (A white male came forward.)
12 THE CLERK: What say you for the State?
13 MR. ANTHONY: Please present the juror.
14 THE CLERK: What say you for the defense?
15 MR. GROSE: Please excuse this juror from this case.
16 THE CLERK: Number 4, Keith Aiken.
17 (A black male came forward.)
18 THE CLERK: What say you for the State?
19 MR. ANTHONY: Please excuse the juror.
20 THE CLERK: 105, William A. New.
21 (A white male came forward.)
22 THE CLERK: What say you for the State?
23 MR. ANTHONY: Please present the juror.
24 THE CLERK: What say you for the defense?
25 MR. GROSE: Please excuse this juror from this case.

11 MR. ANTHONY: Please present the juror.

2 THE CLERK: What say you for the defense?

3 MR. GROSE: Please excuse this juror from this case.

4 THE CLERK: 125, Rufus C. Sherard.

5 (A white male came forward.)

6 THE CLERK: What say you for the State?

7 MR. ANTHONY: Please present the juror.

8 THE COURT: Any objection for cause from the

9 defense?

10 MR. GROSE: No, sir.

11 THE COURT: You may be seated, sir.

12 Any objection to the jury selection process from the

13 State?

14 MR. ANTHONY: Yes, sir.

15 THE COURT: Ladies and gentlemen who have been
16 selected on this panel, I'm going to ask you to please step
17 back to the jury room. The bailiff will show you where to go.
18 Those people who are in the jury pool will be asked to step
19 outside of the courtroom. Please do not leave the courthouse
20 until we have called you back into the courtroom. Thank you
21 very much.

22 (WHEREUPON, all jurors leave the courtroom.)

23 THE COURT: Before I hear from the State is there

24 any objections from the defense to the jury selection process?

25 MR. GROSE: No objection.

1 THE COURT: Both defendants?

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

3 THE COURT: All right. Now I'll hear from the
4 State.

5 MR. ANTHONY: Your Honor, the defense during the
6 course of the strike, both for the jury and the alternate,
7 exercised a total of 11 strikes and all of those strikes were
8 on Caucasian jurors. The State would ask the defense to -- or
9 would ask that the Court inquire of the defense as to a race
10 neutral reason why each one of those jurors were stricken from
11 the jury strike.

12 THE COURT: Gentlemen, who is going to speak? Is 1
13 attorney going to speak for both defendants or do I need to
14 hear from both defendants?

15 MR. GROSE: I'll speak for both of us.

16 THE COURT: Thank you very much. Be happy to hear
17 from you, sir.

18 MR. GROSE: I may have to refer to my notes. I beg
19 the Court's patience. Juror number 41 was our first strike.
20 I believe she had said that her mother was a cop. Juror
21 number 86 was the second strike, was a former cop.

22 Juror number 130 that was next was employed by the
23 Department of Transportation. I kind of look at them as kind
24 of this big monolithic enemy right now. I'm handling a very
25 high profile murder case that started with a dispute with the

1 Department of Transportation. Every time we have a hearing on
2 it in this courtroom my picture is in the newspaper or I'm on
3 T. V. or something of that nature.

4 THE COURT: That's number 130?

5 MR. GROSE: That's number 130. We've just received
6 in discovery in that case volumes of documents.

7 THE COURT: Let's move on to the next one.

8 MR. GROSE: Number 5 was John Smith's nephew. John
9 Smith is the chief investigating officer in this case. We may
10 not disagree with everything he has to say but we are probably
11 going to disagree with some of it.

12 Number 55 we had, I believe his wife or somebody in
13 his family was a cop. Number 47 the son was a friend with one
14 of the witnesses, John Schreier, which was one of the
15 witnesses. Number 64 was a former cop.

16 Number 139 we sat the first time we just weren't
17 really comfortable with him, things about his demeanor. Just
18 his demeanor, the way that he held himself.

19 When we sat him the first time it was as the 12th
20 juror, and there was a juror in both situations, the lady who
21 was the mother of a victim in a case I defended in 2000 who
22 still remembers me, we were saving the last strike for her.
23 So we sat him the last time because she was still out there.
24 We had more strikes this time.

25 Number 105 is, according to the return here, his

1 wife was a senior accountant clerk in payroll or something of
2 that nature. It just seemed kind of conservative. We felt
3 uncomfortable there and had some strikes left.

4 Number 43, we struck both times. Again, it was a
5 situation we were kind of uncomfortable about the demeanor.
6 I've got to get back to the rest of my notes.

7 And number 15, somebody in her family, son, I
8 believe, was a police officer. So it is the police
9 connection. So most of it was the police connection type
10 situation. Once again, kind of like the situation last time,
11 we didn't have a whole lot of African Americans to pass on.
12 Only 3 were seated. One was the one that the State struck
13 last time, didn't allow them to strike this time. One -- at
14 least 1 of them was one that we had both agreed on -- well, 2
15 of them we -- I believe, we agreed on in the last trial.

16 THE COURT: All right. Be happy to hear from the
17 State.

18 MR. ANTHONY: If I could just have one moment, Your
19 Honor.

20 THE COURT: Certainly.

21 [PAUSE.]

22 MR. ANTHONY: All right, Your Honor.

23 THE COURT: Yes, sir.

24 MR. ANTHONY: The State would accept the
25 explanations as to the jurors, except for number 55. The

1 explanation as to that juror was that he had a wife in law
2 enforcement. That is not accurate. He said his wife was a
3 homemaker. I don't have anything in my notes that juror 55
4 said he had any law enforcement connection at all.

5 As to number 139, he said -- that was 139 and number
6 43, were both just general demeanor justifications for
7 strikes. That does not seem to the State to be adequate.
8 There has not been any kind of particularized explanation
9 given. I don't think it's enough just to say well, we didn't
10 like his demeanor.

11 I would ask the Court to inquire how the demeanor of
12 number 43 and number 139, whom the defense struck, differs
13 from that of number 120 whom the defense seated, because it
14 just does not appear to the State that that is an adequate
15 justification. There's not been any particularized showing of
16 what it is about their demeanor that caused the defense to
17 strike them.

18 THE COURT: Well, maybe we ought to ask that.

19 MR. GROSE: Judge, I would cite you to -- well, with
20 regard to number 55, we have -- I think both these other
21 lawyers have in their notes that that spouse was a Laurens
22 County deputy, and that's what we were relying on for striking
23 that juror.

24 I would cite you to State vs. Wilder, 306 S.C. 535,
25 1991; also State vs. Tucker, 334 S.C. 1, 1999 cert denied 527

1 U.S. 1042. Apparently in that case, according to the notes
2 I'm looking at, the solicitor struck a juror who was
3 argumentative and answers were dogmatic. We just felt based
4 on the demeanor that they were not going to be favorable
5 jurors, people who would be favorable to the defense.

6 THE COURT: Well, tell me what about their demeanor
7 made you think that. That's what I'm asking you.

8 MR. GROSE: Well, one had a camouflage jacket.
9 Mr. Padgett's defendant thought that he was winking in the
10 direction of the State. Things of that nature. Just a
11 general feeling of uncomfortableness. When we got to juror
12 number -- well, I'm not sure how many strikes we had there so
13 I'll leave that off. But I believe that demeanor is an
14 acceptable reason that's been upheld by --

15 THE COURT: Anything further from the State?

16 MR. ANTHONY: I would just argue that the
17 explanation given has not been particularized to the extent
18 that would justify the Batson strikes. I'd ask the Judge to
19 find a Batson violation.

20 THE COURT: I'm going to overrule the motion.

21 Anything further?

22 MR. GROSE: Not from the defense.

23 THE COURT: Bring the jury panel back in.

24 MR. PADGETT: We have just one thing, Your Honor.

25 THE COURT: Just one second.

1 MR. PADGETT: If that old indictment is going to be
2 used that was never read to the venire. Does that cause an
3 issue for the Court? I don't know how the Court --

4 THE COURT: How is it different from what was read,
5 other than the counties? And I said that I thought that was
6 going to be changed or amended. Is it different other than
7 the county? Please take a look and let me know. If there's
8 anything materially different other than the county that is
9 misstated, and I indicated where the counties were misstated,
10 that I thought that would be changed.

11 MR. ANTHONY: Yes, sir. I have the indictment if
12 the Court would like to see it.

13 THE COURT: The old one?

14 MR. PADGETT: Yes, sir.

15 THE COURT: Let him look at it first. He's going to
16 make the argument as to those two charges, Mr. Padgett. Now,
17 the other one he's going to go forward on, the new indictment
18 on the one charge.

19 MR. PADGETT: Right. I'm just making sure that
20 everything is the same because the ABWIK was changed --

21 THE COURT: Yes, sir.

22 [PAUSE.]

23 MR. PADGETT: I'm sorry for the Court's time. It
24 does look like they were the same.

25 THE COURT: Okay. I believe that the reading that I

1 gave would have informed the jury of the fact that the
2 allegations actually were in Abbeville County and the dates
3 and times and the persons involved were accurately stated. So
4 I'll overrule that objection.

5 All right. I have not ruled on whether or not the
6 old one can be used at this point in time, and what I intended
7 to do was to allow you overnight if you want to look for any
8 authority and we'll take that up first thing in the morning.

9 I'm going to look myself to see if I can find any
10 authority. I can tell you our preliminary search does not
11 indicate anything that would prevent the State from doing
12 that. But, you know, if you find something I certainly would
13 be glad to entertain that.

14 MR. PADGETT: Thank you for your time, Your Honor.

15 THE COURT: All right. Bring just the jury pool
16 back in, and if you would bring the jury panel in and have
17 them seated.

18 Just one second. Before we do that, are these
19 gentlemen, are they incarcerated?

20 MR. PADGETT: They are not, Your Honor.

21 THE COURT: Okay. Bring them back in.

22 (WHEREUPON, all jurors returned to the courtroom at
23 approximately 5:15 p.m.)

24 THE COURT: All right. To those members of the jury
25 panel who were not selected on this jury, at this point in

1 time I'm going to release you. I'll allow you to leave. We
2 expect to start the trial of this case in the morning. So
3 there's no need in you calling in this evening.

4 I will ask you, however, to call in tomorrow evening
5 after 6 o'clock. Be sure you have the call-in number to call
6 back to the courthouse so that you can get further
7 instructions concerning your service.

8 That number is a convenience to all of us. It used
9 to be that you had to come in every morning at 9 o'clock to
10 get instructions, and some days we didn't need a jury and it
11 would disrupt your whole day to have to come in. So the
12 call-in service there is for your convenience.

13 Tomorrow evening, after 6 o'clock, call in. You
14 should receive instructions concerning your future jury
15 service this week. Thank you very much for your cooperation
16 and patience. You are free to go at this time. Thank you
17 very much.

18 (WHEREUPON, the jury venire was excused.)

19 THE COURT: Ladies and gentlemen, you have been
20 selected on this jury to serve in this case. We're going to
21 begin the actual trial of the case tomorrow morning at 9:30.
22 So at this point in time I'm going to release you as well to
23 go home. I will, however, release you with some instructions.

24 Since you've been selected on this jury you have not
25 yet been sworn concerning your service as jurors, but

1 nevertheless, it would be highly improper for you to discuss
2 this case in any fashion whatsoever with any other individual.

3 It is okay to tell someone that you have been
4 selected on a jury, that you will be serving, but don't begin
5 to attempt to discuss the charges, the events, when they
6 occurred, where they may have occurred, things of that nature
7 because in those discussions with other individuals invariably
8 you will begin to formulate opinions concerning this case or
9 its potential applicant.

10 It is extremely important that you keep a fair and
11 an open mind until such time as you have heard all of the
12 evidence in this case, you've been instructed concerning the
13 law to be applied to the evidence as you find it to be and I
14 have given you instructions to begin deliberations.

15 The ban against your discussing the case includes
16 your fellow jurors. You should not begin to discuss the case
17 among yourselves until such time as you have heard all of the
18 evidence, all of the evidence has been presented, and you have
19 been instructed concerning the law to be applied to that
20 evidence.

21 Please do not read, watch or listen to any media
22 report concerning this case. It is your obligation, and you
23 will take an oath tomorrow, to decide this case solely upon
24 the evidence that you hear in this courtroom given by
25 witnesses sworn to tell the truth who testify from this

1 witness stand, and any evidence that comes in through that
2 testimony.

3 Do not attempt to gather any information outside of
4 this courtroom by way of the Internet or any other source.
5 Again, that information and media reports may contain evidence
6 which is not admissible under our rules in this Court.

7 It would be improper for you as jurors to consider
8 any matters which have not been presented to you through the
9 rules of evidence and through the testimony of the witnesses
10 who will testify in this case.

11 Once the case has been completed I'll allow you, and
12 you each have the right to discuss this case with anyone you
13 choose to discuss it with. But until such time as your
14 obligation as jurors has been satisfied you should not
15 discuss this case or attempt to gather any information outside
16 of the courtroom.

17 Should anyone attempt to contact you to discuss your
18 service on this jury in any fashion whatsoever I ask that you
19 please report that contact to the Court upon your return to
20 the courthouse. I can assure you I will deal with that
21 contact appropriately.

22 I'm going to ask that you return to the courthouse
23 at 9:30 in the morning. You'll report back to the jury room
24 that you've been assigned in this case. The bailiff can tell
25 you where to report. At that point in time we should be able

1 to begin the trial of this case shortly thereafter.

2 Again, I want to thank you very much for your
3 willingness to come forward and serve our justice system this
4 week. You are free to go at this time. Thank you very much.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 5:20 p.m.)

7 THE COURT: Any objection to my comments from the
8 State?

9 MR. ANTHONY: No, sir.

10 THE COURT: Anything from the defense?

11 MR. PADGETT: No, Your Honor.

12 THE COURT: From either defendant?

13 MR. GROSE: No, sir.

14 THE COURT: Gentlemen, Mr. Harrison and Mr. Haskell,
15 I assume these gentlemen are on bond at the present time; is
16 that correct?

17 MR. PADGETT: Yes, Your Honor.

18 THE COURT: Gentlemen, we have not started the trial
19 of your case at this point in time, so therefore you remain on
20 bond at this point in time.

21 However, I will tell you, and I am putting you on
22 notice at this point in time, we intend to start the trial of
23 your case at 9:30 in the morning in this courtroom. Should
24 you fail or refuse to appear at that point in time I will tell
25 you that you will be tried in your absence.

1 In other words, this case will go forward regardless
2 of your presence or not. It would be a violation of your
3 bonds not to appear at that point in time and appropriate
4 action will be taken should you fail to appear.

5 Do you understand, gentlemen?

6 DEFENDANT HASKELL: Yes, sir.

7 DEFENDANT HARRISON: Yes, sir.

8 THE COURT: Court is in recess until 9:30 in the
9 morning. Thank you very much.

10 (WHEREUPON, Court's Exhibit No. 1, the Court's Jury
11 Selection Notes, were marked and made a part of the record.)

12 (WHEREUPON, the trial of this case was recessed for
13 the day.)

14 Tuesday, March 21, 2006

15 (WHEREUPON, State's Exhibit Numbers 1 through 5,
16 Photographs, were marked for identification only.)

17 THE COURT: Good morning. Is the State ready to go
18 forward?

19 MR. ANTHONY: Yes, sir, we are.

20 THE COURT: The defense ready to go forward?

21 MR. PADGETT: But for the motions.

22 THE COURT: I understand. We'll take those up in
23 just a second.

24 Mr. Grose, Mr. Buergey, ready to go forward?

25 MR. GROSE: Yes, sir. We might have a couple things

1 to put on the record when we start too, as well.

2 THE COURT: Okay. We're ready to start. The
3 defense wish to proceed -- well, let's take up the questions
4 of the indictments first. Gentlemen, anything you want to
5 hand up to me, anything, arguments you'd like to make
6 concerning how the indictments should be handled?

7 First of all, for the State?

8 MR. ANTHONY: Your Honor, I don't know that this has
9 been put on the record. So just to put on the record what the
10 State proposes to do.

11 THE COURT: Yes, sir.

12 MR. ANTHONY: Given the defects in the attempted
13 armed robbery and possession of a firearm during the
14 commission of a violent crime indictments against Mr. Haskell.

15 THE COURT: Yes, sir.

16 MR. ANTHONY: The State would propose to try those
17 charges on indictment 04-118, which was the original
18 indictment against Mr. Haskell, we would propose to try him on
19 counts 2 and 3 on that indictment which are --

20 THE COURT: And you would be dismissing or nolle
21 prossing count 1 of that indictment; is that right?

22 MR. ANTHONY: Yes, sir. We would try him for the
23 assault and battery with intent to kill on the new indictment
24 that was -- that the Court has and that we presented to the
25 Court yesterday.

1 THE COURT: All right. Be happy to hear from the
2 defense.

3 MR. PADGETT: Thank you, Your Honor. Through an
4 investigation I was unable to find anything that said the
5 State can't do it, but on the other hand I couldn't find
6 anything that said the State could do it. So I would submit
7 that since there is a lack of authority that the benefit of
8 doubt should be given to the defendant.

9 THE COURT: Just one second. We've got a juror
10 coming in.

11 [PAUSE.]

12 THE COURT: I'm sorry, Mr. Padgett. That should be
13 the last of the jurors. So you may proceed.

14 MR. PADGETT: Okay. Thank you. Just that I
15 couldn't find any authority either way, and since there was a
16 lack of authority to allow the State to do it the benefit of
17 the doubt should go to the defendant and the State should only
18 be allowed to go forward on the one charge that is legally
19 sufficient in the new indictment.

20 THE COURT: I have reviewed the indictments in
21 question, and normally the rule -- the law in this case would
22 be that amendments are allowed to correct scrivener's errors,
23 and I take this as a scrivener's error in looking at the
24 original indictment that's being relied upon by the State at
25 this time and the new indictments that were issued which

1 indicated that the event occurred in Greenwood County and
2 indicate it was issued for Greenwood County.

3 However, of those amendments with scrivener's errors
4 are allowed to be issued for legally sufficient indictments
5 when it's issued by a grand jury indicating that the grand
6 jury sitting in Abbeville but it's for a different county
7 that's not a legally sufficient indictment. So the new
8 indictments I would agree with the State, should not be relied
9 upon and should not be allowed to go forward.

10 As to the second indictment the State is now relying
11 on, the record indicates that that indictment was properly
12 issued by the Abbeville County Grand Jury. There's no
13 indication that it was not served upon the defendants. The
14 defendants have had knowledge or notice of that particular
15 charge, and the elements of the crime in both indictments are
16 the same. There's no surprise as to the crime that was
17 charged or the crime for which the defense should be allowed.

18 That indictment was not nolle prossed, it was not
19 dismissed, it remains a viable indictment. Therefore, I will
20 allow the State to go forward on the original indictment as
21 proposed with the exclusion of count number one, which has
22 been dismissed, and then proceed on the new indictment in the
23 case where it was properly issued. So I will grant the relief
24 sought by the State and allow you to go forward.

25 Now, gentlemen, there are other motions to be made

11 by the defense?

2 MR. PADGETT: Yes, Your Honor. Mr. Haskell noticed
3 an alibi defense, and pursuant to the Rules of Criminal
4 Procedure, South Carolina, Rule 6 -- Rule 5(e)(1), Mr. Haskell
5 noticed his alibi defense.

6 The State had to, pursuant to 5(e)(2), present the
7 defense with their notice of which witnesses would be used to
8 put Mr. Haskell at the scene. That was not done. We would
9 submit that this would prevent the State from submitting
10 testimony to place Mr. Haskell at the scene.

11 THE COURT: Let me hear from the State, Mr. Anthony.

12 MR. ANTHONY: The statements and the -- well, the
13 identity and the statements of the people the State would rely
14 on to place Mr. Haskell at the scene were turned over to
15 Mr. Padgett when he filed his Rule 5 request.

16 So there was nothing else for us to disclose, there
17 is nothing else for us to disclose now as far as witnesses
18 that we have that put his client at the scene. All those
19 witnesses were turned over as part of our Rule 5 disclosure.

20 THE COURT: Did those witnesses give statements?

21 MR. ANTHONY: Yes, sir, they did. The State turned
22 them over.

23 THE COURT: And the statements have also been turned
24 over?

25 MR. ANTHONY: Yes, sir.

1 THE COURT: Be happy to hear from you, Mr. Padgett,
2 and the rule that you're relying on is?

3 MR. PADGETT: Rules of Criminal Procedure 5(e)(2).

4 THE COURT: Thank you. Go ahead.

5 MR. PADGETT: The rule calls for the names and
6 addresses of the witnesses. I do have the statements but I
7 don't have any further information.

8 THE COURT: Okay. So my ruling would be that any
9 witnesses who have not been disclosed to the defense or
10 statements given by witnesses which have not been disclosed to
11 the defense which might be used as a defense to the alibi
12 defense will be barred.

13 However, those that were previously turned over and
14 the statements previously turned over to the defense will not
15 be barred, and you may proceed.

16 Any other motions by the defense?

17 MR. PADGETT: I have asked -- yes, Your Honor, just
18 one other item. I have asked the State and Mr. Grose if they
19 have any problem with sequestration of witnesses, and they
20 said they had no problem with that.

21 THE COURT: Any --

22 MR. ANTHONY: I just ask that it be reciprocal, and
23 I would ask that Officer Vandiver and Detective Smith be
24 allowed to remain in the courtroom.

25 THE COURT: Well, normally, I'll allow the lead

1 investigator to remain when I issue a sequestration order.

2 Are they both necessary to the prosecution of the case?

3 MR. ANTHONY: I'd ask that they both be allowed to
4 remain.

5 THE COURT: Again, I'd like to know what their --
6 are both of them going to be called as witnesses?

7 MR. ANTHONY: Officer Vandiver will be the first
8 witness. So that ought to deal with that issue.

9 THE COURT: So the other officer will be your
10 officer for the purposes of --

11 MR. ANTHONY: Yes, sir.

12 THE COURT: -- trying the case.

13 Yes, sir?

14 MR. GROSE: Officer Vandiver is on our witness list
15 too, and we've got an issue to take up. I don't know if we
16 are going to be able to get into everything that we want to
17 get into with him the first time he testifies.

18 It seems like in the interest of judicial economy
19 and some other reasons we'll go over we ought to be able to do
20 that. But if there is a chance he's going to testify again I
21 think one of the two needs to be sequestered. I don't think
22 there's any authority for having two investigating officers
23 present. I would just add that we had --

24 THE COURT: In the case where somebody was called as
25 a first witness and they weren't going to be called again I

1 would allow them to stay in the courtroom. If they are
2 putting you on notice that they may call him for additional
3 information that may not be covered in the original
4 interrogation or questioning of the witness that puts a
5 different light on it.

6 MR. ANTHONY: Well, I'll ask that Officer Vandiver
7 be allowed to remain, and I'll agree to sequestration for
8 Detective Smith.

9 THE COURT: All right. That solves that problem.

10 I will allow the motion for sequestration. That
11 will be for both sides. I will say before any witnesses leave
12 the courtroom and instruct the attorneys that witnesses should
13 be instructed that upon the completion of their testimony they
14 remain under the sequestration order. They should not discuss
15 their testimony or questions that were asked of them with
16 other witnesses when they leave the courtroom.

17 In other words, the sequestration order for the
18 witnesses will continue throughout the trial until a verdict
19 has been reached. So any potential witness in the case will
20 be asked to leave the courtroom and, again, not discuss their
21 testimony with anyone until such time as the trial of the case
22 has been concluded.

23 Anything further?

24 MR. GROSE: I just want to say that one of our
25 witnesses is in S. C. D. C., another witness was here this

1 morning, had to go to work. We're probably not going to call
2 him but he's not here right now. So if we bring him back
3 we'll make sure he doesn't come in.

4 THE COURT: And I'm instructing the attorneys to
5 please instruct those witnesses who are not present concerning
6 my ruling in regards to discussion of their testimony with
7 anyone at any time during the trial, even after they have
8 testified. That has been a problem in cases before. People
9 complete their testimony and then think they can talk about
10 everything they want to.

11 MR. PADGETT: And just so the record is clear, Your
12 Honor. I did file a motion for severance and separation of
13 trials. I have spoken to my client who now will waive that
14 motion being heard. And if I may, just so it's on the record.

15 Mr. Haskell, you do waive --

16 THE COURT: Let's do this. Mr. Haskell, if you
17 would raise your right hand, please. You can remain seated.

18 ALTI MONTE LIVINGSTON HASKELL, after having
19 been duly sworn, testified as follows:

20 THE COURT: Mr. Padgett, you may proceed.

21 MR. PADGETT: Mr. Haskell, you asked me to file a
22 motion for the severance and separation of trials?

23 DEFENDANT HASKELL: I asked you, but everything --
24 I'm continuing how we're going.

25 MR. PADGETT: Okay. And you are agreeing for us to

1 try the case together then?

2 DEFENDANT HASKELL: Yeah.

3 MR. PADGETT: Thank you, Your Honor.

4 THE COURT: Thank you very much.

5 Gentlemen, is there anything else you want to take
6 up before we do an arraignment?

7 MR. GROSE: No. I think there was two other
8 motions.

9 THE COURT: All right. Go ahead.

10 MR. GROSE: I'm sorry. One is there's a number of
11 photographs, some of which depict the injuries that the victim
12 suffered in this case. It was a gunshot wound to the mouth.
13 We would move to exclude those under Rule 403 of the Rules of
14 Evidence, which, although, relevant evidence may be excluded
15 if its probative value is substantially outweighed by the
16 danger of unfair prejudice, confusion of the issues or
17 misleading the jury; considerations, undue delay, waste of
18 time or presentation of cumulative evidence.

19 There's not going to be a dispute about the fact
20 that the victim was shot, what the injuries were. The dispute
21 is more about who did it. It's a who-done-it-type case, Your
22 Honor, and Mr. Padgett and I have discussed this to the ends
23 of having these prejudicial photographs excluded.

24 We would also be willing, I think both parties, both
25 defendants, be willing to stipulate to the nature of the

1 injuries and that sort of thing, which would, I think, also
2 render the presentation of the photographs not necessary.

3 THE COURT: Mr. Padgett, you join in the motion?

4 MR. PADGETT: I do, Your Honor.

5 MR. ANTHONY: I don't intend to put any pictures of
6 the victim.

7 THE COURT: Okay. That takes care of that. So that
8 will not be an issue. Obviously, if they later decide to try
9 to introduce those you can reserve your motion at that time.

10 MR. GROSE: Your Honor, there's an issue that may
11 come up in the trial, may not come up in the trial that I want
12 to call to your attention. I have a case. I've already given
13 Mr. Padgett a copy. I have a copy for you and your clerk.
14 This case is State vs. Blurton, 342 S.C. 500, 537 S.E.2d 291
15 from 2000. That case was reversed on other grounds than what
16 I'm handing it to the Court for today.

17 It's our contention -- one of our witnesses, I said
18 one of our witnesses is in S. C. D. C., his name is Torey
19 Brown, he was interviewed initially by Officer Vandiver, gave
20 information, then he was interviewed again by Detective Smith,
21 gave information.

22 Our contention is, is that the information that he
23 gave was false and that that information was relied upon in
24 order to obtain arrest warrants, and it was later proven that
25 that information was false when the victim was finally able to

1 be interviewed on two occasions.

2 And we want to get into in cross-examining or
3 examining, if we have to call them because we have both
4 Mr. Smith and Mr. Vandiver under subpoena, get into the
5 information that they received from this witness, Torey Brown,
6 when they received it and what it was that they received.

7 We'll be able to get in through the victim, you
8 know, some of the statements that he made to the police, when
9 he made those to the police that would show a timeline, a
10 sequence of what happened.

11 We would not be offering those statements for the
12 truth of the matter asserted. In fact, we would be arguing
13 when Torey Brown -- some of these statements that Torey Brown
14 made, we would be arguing that those are false statements.

15 So we are not offering them for the truth. We are
16 offering them to show what happened in the investigation, that
17 the investigators relied on false information that led to two
18 innocent men being arrested and put on trial in this
19 courtroom.

20 In the Blurton case -- it's a rather unusual case.
21 In that case -- and it discusses hearsay in several parts of
22 the case, several sections of the case. There was various
23 materials that were being offered to show the state of mind,
24 what the defendant had been led to believe, that the defendant
25 had been led to believe that he was part of a C. I. A.

1 operation and therefore not committing a crime.

2 There was corroborating materials in the way of
3 statements that were going to be admitted that were excluded
4 because the co-defendant did not testify. These were in tape
5 recordings of conversations with the co-defendant, and they
6 were not being offered for the truth of the matter asserted.
7 In fact, the defense in that case never alleged that it was
8 really a C. I. A. investigation, only that it went to the
9 state of mind.

10 There were also some newspaper articles that were
11 trying to be admitted because the co-defendant had convinced a
12 number of people, including the newspaper, that he was a
13 former Navy Seal operative, and the defense was trying to
14 admit those.

15 Again, those were not being admitted for the truth
16 of what was being asserted. They were being admitted to show
17 that this co-defendant who claimed it was a C. I. A. operation
18 had the ability to convince people that he was a former -- at
19 least a former, if not a current government operative.

20 In fact, during the trial it was undisputed that he
21 was never a C. I. A. -- well, that he was never a Navy Seal.
22 That had been determined. The newspaper had printed the
23 retraction. So it wasn't being offered as the truth but it
24 was being offered to show what the defendant knew, what he was
25 considering, how he was being influenced leading up to and

1 during the commission of the alleged crime.

2 Again, here we would not be offering these
3 statements to prove that what Torey Brown said was true. In
4 fact, we would be offering them to show that they were not
5 true, that they were incorrectly relied on in the
6 investigation and that that, among other things, would lead to
7 reasonable doubt why these two young men should not be
8 convicted.

9 THE COURT: Let me be sure I understand it. You're
10 just putting me on notice that you intend to offer that at the
11 time or are you asking me to rule on the admissibility of that
12 evidence prior to trial?

13 MR. GROSE: I'm planning on offering it and I'm
14 calling it to your attention in case they make an objection so
15 that you'll be prepared to make a ruling.

16 THE COURT: Okay. There's nothing for me to rule on
17 at this moment in time.

18 MR. GROSE: Well, we're planning on doing it and we
19 wanted you to know about it.

20 THE COURT: Anything you'd like to say? I'm not
21 cutting you off, Mr. Anthony, but I don't know if there's
22 anything for me to rule on until the evidence is offered and
23 certainly you have the right to make whatever you think is the
24 appropriate objection at that time, and I'll confer it at that
25 time. But I'll be happy to hear from you if there's anything

1 you would like to say.

2 MR. ANTHONY: I don't think I can really respond
3 until I see what kind of context this comes up in.

4 THE COURT: I understand.

5 Anything further from the defense before we go
6 forward?

7 MR. PADGETT: No, Your Honor.

8 THE COURT: Anything further, Mr. Grose?

9 MR. GROSE: No, sir.

10 MR. ANTHONY: Your Honor, I think you covered this
11 but I just want to make sure. The victim in the case, I would
12 ask that he be exempt from sequestration, the young man who
13 was shot.

14 THE COURT: I'll be happy to hear from defense on
15 that. I did not exclude him from my order originally. If you
16 are asking that he be excluded then I'll certainly be happy to
17 hear from defense.

18 Mr. Padgett?

19 MR. PADGETT: Your Honor, there are certain
20 inconsistencies in the statements, which is the reason for the
21 request for the sequestration anyway. So we would ask --

22 THE COURT: In statements made by the victim as
23 well?

24 MR. PADGETT: Pardon me, sir?

25 THE COURT: In statements made by the victim as

1 well?

2 MR. PADGETT: Yes.

3 THE COURT: I haven't read all these statements. I
4 don't know. You said in the statements. I don't know who
5 made statements you consider to be inconsistent.

6 MR. PADGETT: The victim's statements, and other
7 information gleaned from other witnesses made make his story a
8 little more coherent.

9 THE COURT: Mr. Grose?

10 MR. GROSE: Your Honor, I would like to have all the
11 witnesses sequestered. I know they are probably about to
12 raise the Victim's Bill of Rights. I've never really
13 particularly agreed with that but --

14 THE COURT: The victim normally, if they requested,
15 would be allowed to stay. Obviously, his participation in the
16 prosecution of the case may be important.

17 Mr. Anthony?

18 MR. ANTHONY: Yes, sir, Your Honor. I mean, this is
19 the young man who got shot. We believe he ought to be
20 entitled to see the trial of the case of the two people who
21 are accused of shooting him, and there is, and I can find it
22 if the Court would like me to, but I'm very confident there is
23 a statutory provision in the Victim's Bill of Rights that says
24 the victims are to be exempt from sequestration.

25 THE COURT: I'm going to allow him to stay, along

1 with the lead investigator.

2 MR. ANTHONY: And, Your Honor, I'm going to hand up,
3 since I did not do this yesterday, the 04-118 indictment which
4 is -- I provided the Court with a copy of this last night.

5 THE COURT: Is that the original?

6 MR. ANTHONY: I'm handing up the original at this
7 time so the Court will have it.

8 THE COURT: Thank you very much.

9 Isn't it Mr. Haskell's that had the wrong county?
10 You handed up Mr. Harrison's indictment?

11 MR. ANTHONY: Well, they are both the counts --

12 THE COURT: Oh, they are indicted together. I see.

13 MR. ANTHONY: Yes, sir. On that indictment they are
14 indicted together.

15 THE COURT: I understand. All right. The
16 indictments in cases number 2006-GS-01-192 and 193 are the 2
17 that you are withdrawing at this time; is that correct?

18 MR. ANTHONY: Yes, sir. I'm withdrawing the
19 attempted armed robbery and possession of a firearm during the
20 commission of a violent crime.

21 THE COURT: That's the 2, 192 and 193. I'll return
22 those to the clerk to be indicated that they have been
23 dismissed by the prosecution.

24 Yes, Mr. Anthony, anything else?

25 MR. ANTHONY: Well, we're getting ready to start.

1 I'd asked Mr. Smith -- I know he's under sequestration, so I
2 asked him to leave.

3 THE COURT: Any other witnesses who are present in
4 the courtroom who intend to testify either for the State or
5 the defense other than the victim, lead investigator and the
6 defendant, of course, stay in the courtroom. Others should
7 leave the courtroom at this time.

8 (WHEREUPON, the witnesses were sequestered.)

9 THE COURT: All right. Mr. Harrison, sir?

10 DEFENDANT HARRISON: Yes, sir.

11 THE COURT: Raise your right hand.

12 CLARENCE HARRISON, II, after having been duly
13 sworn, testified as follows:

14 THE COURT: Sir, I have before me certain
15 indictments. The indictments are in cases 2006-GS-01-194, 195
16 and 196. I'm going to go over these indictments with you at
17 this time. If you have any question concerning them when I've
18 completed them, please let me know and I'll be glad to go back
19 over them with you if you do.

20 First in case number 194. The indictment is for
21 assault and battery with intent to kill. That indictment
22 states that you, along with Alti Monte Livingston Haskell,
23 aiding, abetting and assisting one another did in Abbeville
24 County, the state aforesaid, on or about the 10th day of
25 February of 2004 willfully, unlawfully and intentionally and

1 with malice aforethought commit an unlawful act of violent
2 injury upon Ron Gartrell in violation of Section 16-3-620 of
3 the Code of Laws of South Carolina, 1976 amended, against the
4 peace and dignity of the State and contrary to the statute and
5 such cases made and provided.

6 Do you understand that indictment, sir?

7 DEFENDANT HARRISON: Yes, sir.

8 THE COURT: The next case I have is in 195, which is
9 for attempted armed robbery. This indictment states that you,
10 along with Mr. Haskell, aiding, abetting and assisting one
11 another did in Abbeville County, the state aforesaid, on or
12 about the 10th day of February 2004 willfully and unlawfully
13 while armed with a deadly weapon or while alleging either by
14 action or words that he was armed while using a representation
15 of a deadly weapon or any object which a person present during
16 the commission of the robbery reasonably believed to be a
17 deadly weapon feloniously attempt to take from the person or
18 presence of Ron Gartrell by means of force or intimidation
19 goods or monies with the intent to deprive the owner
20 permanently of such property in violation of Section 16-11-330
21 of the South Carolina Code of laws, 1976 as amended, against
22 the peace and dignity of the State and contrary to the statute
23 and such cases made and provided.

24 Do you understand that indictment, sir?

25 DEFENDANT HARRISON: Yes, sir.

1 THE COURT: The next indictment I have is for the
2 possession of a firearm or knife during the commission of a
3 violent crime. This is case 2006-196. This indictment states
4 that you, along with Mr. Haskell, aiding, abetting and
5 assisting one another did in Abbeville County, the state
6 aforesaid, on or about the 10th day of February of 2004
7 possess a firearm or visibly displayed what appeared to be a
8 firearm or visibly displayed a knife during the commission of
9 a violent offense, to wit, assault and battery with intent to
10 kill and/or attempted armed robbery or any lesser included
11 violent offense, said offense having been defined as a violent
12 offense in Section 16-160 of the 1976 Code of Laws as amended,
13 and the said defendant was or were convicted of committing or
14 attempting to commit said violent crime, assault and battery
15 with intent to kill and or attempted armed robbery or any
16 lesser included violent offense in violation of Section
17 16-23-490 of the South Carolina Code of Laws of South
18 Carolina, 1976 as amended, against the peace and dignity of
19 the State and contrary to the statutes and such cases made and
20 provided.

21 Do you understand that indictment, sir?

22 DEFENDANT HARRISON: Yes, sir.

23 THE COURT: You have the right to plead either
24 guilty or not guilty to those indictments. You can plead to
25 them separately or together. Do you wish to plead to them

1 together?

2 DEFENDANT HARRISON: No, sir.

3 MR. GROSE: He'll plead to them all at once, Your
4 Honor.

5 THE COURT: You'll plead to them all at one time?

6 DEFENDANT HARRISON: Yes, sir.

7 THE COURT: All right, sir. Then how do you plead,
8 guilty or not guilty?

9 DEFENDANT HARRISON: Not guilty.

10 THE COURT: And how do you wish to be tried, sir?
11 Do you wish a jury trial of the case?

12 DEFENDANT HARRISON: Jury trial, yes, sir.

13 THE COURT: Thank you very much.

14 Now, Mr. Haskell, you've already been sworn. You
15 can keep your seat. I'll remind you that you remain under
16 oath at this time. I'm going to go over the indictments in
17 your case with you. Should you have any question concerning
18 these when I complete them you let me know and I'll be glad to
19 go back over the indictments.

20 The first case is case 2006-GS-01-191. The
21 indictment is for assault and battery with intent to kill.
22 The indictment states that you, along with Mr. Harrison,
23 aiding and abetting and assisting one another did in Abbeville
24 County, state aforesaid, on or about the 10th day of February,
25 2004 willfully, unlawfully and intentionally and with malice

1 aforethought commit an unlawful act of violent injury upon Ron
2 Gartrell in violation of Section 16-3-620 of the Code of laws,
3 South Carolina, 1976 as amended, against the peace and dignity
4 of the State and contrary to the statute and such cases made
5 and provided.

6 Do you understand that indictment, sir?

7 DEFENDANT HASKELL: Yes, sir.

8 THE COURT: The next indictment I have, sir, is in
9 case number 2004-GS-01-118. The indictment has three counts.
10 The first count has been dismissed. The second count states
11 that you and Mr. Harrison, aiding, abetting and assisting one
12 another did in Abbeville County, state aforesaid, on or about
13 the 10th day of February, 2004 willfully and unlawfully
14 attempt to commit robbery while armed with a deadly weapon, to
15 wit, a firearm or while alleging either by action or words
16 that he was armed while using a representation of a deadly
17 weapon or any object which a person present during the
18 commission of the robbery reasonably believed to be a deadly
19 weapon, by willfully, unlawfully, feloniously attempting to
20 take the goods and/or monies from the person, Ron Gartrell,
21 and the said goods and/or monies being owned by the said Ron
22 Gartrell in violation of Section 16-11-330 and 16-180 of the
23 South Carolina Code of Laws, 1976 as amended.

24 Do you understand that count of that indictment?

25 DEFENDANT HASKELL: Yes, sir.

1 THE COURT: Count three of that indictment also
2 states that you and Mr. Harrison, aiding, abetting, and
3 assisting one another did in Abbeville County, state
4 aforesaid, on or about the 10th day of February, 2004 possess
5 a firearm or visibly displayed what appeared to be a firearm
6 or visibly displayed a knife during the commission of a
7 violent offense, to wit, assault and battery with intent to
8 kill and/or attempted armed robbery or any lesser included
9 violent offense, that offense being defined as a violent
10 offense in Section 16-160 of the 1976 Code of Laws of South
11 Carolina, as amended, and the said defendant or defendants was
12 or were committed -- or were convicted of committing or
13 attempting to commit the said violent crime, assault and
14 battery with intent to kill and/or attempted armed robbery, or
15 any lesser included violent offense in violation of Section
16 16-23-490 of the South Carolina Code of Laws, 1976 as amended,
17 against the peace and dignity of the State and contrary to the
18 statute, such cases made and provided.

19 Those last two counts are for attempted armed
20 robbery and possession of a firearm or knife during the
21 commission of a violent crime. Do you understand those two
22 counts of that indictment?

23 DEFENDANT HASKELL: Yes, sir, I understand.

24 THE COURT: Now, do you wish to plead to them all
25 together at one time?

1 DEFENDANT HASKELL: Yes.

2 THE COURT: You have the right to plead guilty or
3 not guilty. How do you plead?

4 DEFENDANT HASKELL: I plead not guilty.

5 THE COURT: And how do you wish to be tried, by jury
6 trial?

7 DEFENDANT HASKELL: Jury trial.

8 THE COURT: Okay. Thank you very much.

9 Anything further from the defense before we begin?

10 MR. PADGETT: No, Your Honor.

11 THE COURT: Anything further from the State?

12 MR. ANTHONY: No, sir.

13 THE COURT: You may bring the jury back to the
14 courtroom.

15 (WHEREUPON, the jury enters the courtroom at
16 approximately 10:05 a.m.)

17 THE COURT: Morning, ladies and gentlemen. I will
18 thank you for returning to the jury room in a prompt fashion.
19 We've been taking care of some preliminary matters. Hopefully
20 these things will help the case move along a little quicker
21 now that we're ready to start. I want to thank you very much.
22 I hope everybody has had a good evening and you've come back
23 ready to begin the trial of this case.

24 I told you yesterday that when you got back to the
25 courtroom that you would be asked to take an oath concerning

1 your responsibility as jurors in this particular case, and at
2 this point in time the clerk will administer that oath.

3 Madam Clerk.

4 (WHEREUPON, the jury was sworn.)

5 THE COURT: Now, if any member of the jury panel
6 either failed or refused to take the oath that was just
7 administered by the clerk I'd ask that you now please stand.

8 The record should reflect that all jurors in this
9 case have now been sworn.

10 Before we begin the actual trial of this case
11 there's a few things that I would like to go over with you to
12 explain a little bit about the procedure that we will follow
13 and also explain to you something about the roles of the
14 various people that will be appearing in this case and be
15 involved in the trial of this case, as well as a little bit
16 about your role as a juror in this case.

17 I take it, and this is normally the case, that most
18 people who are selected on juries in this State have never
19 served on a circuit court jury in a case such as the one that
20 you've been selected on in this case and so this is probably a
21 new or a different experience for most of you involved in this
22 process.

23 It would be my belief that up until this point in
24 time the experience that you've had concerning the jury
25 process in our judicial system has probably been gathered from

1 books that you've read, TV shows that you've watched, movies
2 that you've seen, such as that, things that you may have
3 learned in school, things of that nature, and TV shows,
4 movies, things of that are all interesting. They contain
5 facts and high drama and good acting and they are intended to
6 fit neatly within time slots and time segments and they are
7 intended primarily for your entertainment.

8 And I want you to realize, however, that this trial
9 is totally different from those experiences. This trial is
10 not intended in any way for your entertainment. What this
11 trial is about is a search for the truth. It is an effort on
12 the part of this Court to see that justice is done between the
13 parties that appear before this Court.

14 The jury trial is a fundamental part of our
15 democracy. It is a system by which you as citizens are taken
16 from your day-to-day walks of life, brought into this
17 courtroom and asked to serve an important and essential
18 function in our judicial system, that being the sole judges of
19 the facts between the parties that appear before this Court.

20 This is an effort to see that justice is done, as I
21 stated, and you will find that efforts to see that justice is
22 done are often slow, deliberate, repetitive in nature, as they
23 should be. That's what this is about.

24 So don't expect this trial to fit within neat time
25 segments, to begin at the beginning of the hour and end at the

1 end of the hour, because that's not what this is about. We
2 will take the time sufficient to see that the appropriate
3 evidence is presented before you for your consideration in
4 this matter.

5 This courtroom is a place of honor. It is dedicated
6 to the preservation of citizens' rights through what I believe
7 to be one of the greatest justice systems ever devised on the
8 face of the earth, a system by which the citizens control the
9 important decisions that are made between fellow citizens in
10 this courtroom.

11 The attorneys that are going to appear in front of
12 you today are here to represent their clients, and I'm sure
13 they will do an excellent job in doing so. But first and
14 foremost those attorneys are also officers of this Court.

15 They have taken an oath to assist you in your
16 finding of the facts in this case. You can expect from them
17 that they act in a professional manner and a competent manner
18 in the representation of their clients.

19 And I will remind you, too, now that you have also
20 taken an oath in this courtroom your oath is to decide this
21 case based solely upon the facts as you determine them to be
22 and reach a just and a true verdict in this case.

23 You too are now expected to act in a professional,
24 ethical and reasonable manner in the discharge of your duties
25 before this Court as well. I want to thank you very much for

1 accepting the important responsibility of serving on a jury in
2 Abbeville County this week in the Court of General Sessions.

3 What I am telling you now is not intended to serve
4 as a charge on the law in this case. The way our procedure
5 works is that we will allow the attorneys to make arguments,
6 present the case, their clients' facts of the evidence from
7 the witnesses that will testify in this case. And at the
8 close of the trial we will allow the attorneys to make a
9 closing statement.

10 Once that has been completed, I will give you or
11 charge you with the law that you are to use in determining the
12 verdict in this case. It is your job in this trial to be the
13 sole finders of the facts in this case.

14 Now, I told you yesterday that there are certain
15 indictments before this Court. Indictments are documents
16 which are issued by the grand jury in Abbeville County. They
17 set forth the charges which the defendants face and that they
18 are charged with. So it puts the defendants on notice of the
19 charges for which they should prepare a defense. Also, the
20 indictment puts this Court on notice of the charges which this
21 Court is to try..

22 An indictment, however, is not a document that can
23 be used by you in any fashion in determining the guilt or the
24 innocence of any defendant who appears in this Court. It's
25 simply necessary that a formal written document be presented

1 so that only the appropriate charges are tried and the
2 defendants are aware of those charges before they come to
3 court so that they can be adequately prepared for those cases.

4 Now, in this case there are several indictments
5 before the Court, and I have gone over those with you already.
6 I'm not going to read the indictments to you in their entirety
7 at this point in time but I will go over with you the charges
8 which have been brought by these indictments.

9 First of all, in case number 2006-GS-01-194, that's
10 The State vs. Clarence A. Harrison. This indictment is for
11 assault and battery with intent to kill.

12 The second indictment in this case against
13 Mr. Harrison is in case number 2006-GS-01-195. That
14 indictment is for attempted armed robbery.

15 The third indictment is in case number
16 2006-GS-01-196. That's for possession of a firearm or a knife
17 during the commission of a violent crime.

18 The other defendant that is being tried here today
19 is Mr. Alti Monte Livingston Haskell. There are two
20 indictments in his case. 2006-GS-01-191 is for assault and
21 battery with intent to kill.

22 The indictment in case number 2004-GS-01-118, there
23 are three counts in that indictment. He is on trial for two
24 of those counts. Two of those counts are attempted armed
25 robbery and possession of a firearm or knife during the

1 commission of a violent crime.

2 Now, again, those indictments simply bring those
3 charges before this Court and those are the charges which will
4 be tried before this Court today, but the indictment cannot be
5 used by you in any fashion in determining the guilt or the
6 innocence of the defendant in this case.

7 Now, to the indictments that have been presented
8 before this Court the defendants have pled not guilty. By
9 that plea the burden is placed under our laws and our
10 constitution upon the State to prove each and every element of
11 the indictments alleged by proof which satisfies you of its
12 truth, and that proof must rise to the level of proof beyond a
13 reasonable doubt.

14 It will be your duty, ladies and gentlemen, at the
15 close of this trial to decide whether the State has met its
16 burden of proof as it relates to each and every indictment
17 before this Court and each and every element of those
18 indictments which are presented to you.

19 It is your purpose as jurors to find and determine
20 the facts of this case. I will tell you on several occasions
21 during this trial that you are the sole judges of the facts in
22 this case. I am the presiding officer in this trial. It will
23 be my responsibility to see to it that only admissible
24 evidence is presented to you during the trial of this case.

25 In doing so it will be necessary from time to time

1 for me to make comments and rulings to the attorneys
2 concerning the appropriateness of questions or the
3 admissibility of evidence, things of that nature.

4 If you take from anything that I say during the
5 discharge of my duties that I have any opinion whatsoever as
6 to how you will determine the facts of this case you should
7 disregard that notion all together.

8 The law does not allow me to have an opinion
9 concerning how you determine the facts in this case, and I can
10 assure you I have no opinion on that subject. It's simply
11 necessary for me in the discharge of my duty from time to time
12 to make certain comments, and those comments are not intended
13 in any way to affect your decision as to how you determine the
14 facts in this case.

15 It is especially important that you perform your
16 duty of determining the facts in this case diligently and
17 conscientiously. Under our system of justice, ordinarily,
18 there is no means whatsoever by which an erroneous
19 determination of facts by a jury can be changed.

20 Now, the same law that makes you the sole judges of
21 the facts in this case makes me the sole judges of the law in
22 this case. The law as given to you by me, the Court, is the
23 only law that you may use in determining your verdict in this
24 case. You must accept it and follow the law even though you
25 may not agree with the law.

1 I cannot tell you what the facts are, you cannot
2 disagree with me concerning what the law is. It is your job
3 as a juror in this case to take the law as I give it to you,
4 apply it to the facts as you find them to be and from the
5 other evidence introduced in this trial, and after doing that
6 it will be your responsibility to render a just and a true
7 verdict under the solemn oath that you have now taken as
8 jurors to act in this case.

9 As I told you yesterday and I will tell you every
10 time you leave this courtroom, you should not begin your
11 deliberation discussions concerning this case with anyone
12 until such time as you have heard all of the evidence in this
13 case and I have charged you concerning the law to be applied
14 to that evidence and then instructed you to begin your
15 deliberations.

16 The attorneys in this case as well as their clients
17 have been instructed and advised not to talk to you at all.
18 If at any time anyone attempts to contact you concerning your
19 role as a juror in this case then you should report that
20 matter to the Court and I will take the appropriate action.

21 I've also instructed you and it will remain my
22 instruction throughout the trial that you should not read,
23 listen to, watch or gather any information outside of the
24 courtroom concerning this case in any fashion whatsoever.

25 It's your obligation as jurors to take the

1 information, the evidence that's presented from this witness
2 stand and the other evidence that comes in through those
3 witnesses and consider only that evidence in reaching your
4 verdict in this case.

5 You should keep an open mind, not decide any issue
6 in the trial until all of the evidence has been presented to
7 you, the parties have made their closing arguments and I have
8 instructed you concerning the law in this case.

9 It is your solemn responsibility in this trial to
10 determine the guilt or innocence of the defendant before this
11 case, therefore your verdict must be based solely upon the
12 evidence as it is presented to you in this trial and the law
13 as I instruct it to you at the close of the trial.

14 Now, in a few minutes I'm going to allow the
15 attorneys to begin the trial with what we call an opening
16 statement. I will tell you now and I will tell you at the
17 close of the trial, statements made by attorneys in the trial
18 are not evidence. They are helpful to you. At the beginning
19 of the trial will explain to you what the trial is about and
20 what they expect to be proven or shown during the trial.

21 At the close of the trial, the attorneys comments
22 will give you their client's position in regard to the
23 evidence which you have heard and some of the evidence from
24 their client's prospective.

25 However, again, the statements made by attorneys is

1 not evidence. It cannot be used by you directly in reaching a
2 verdict in this case. The evidence in this case will only be
3 testimony given by witnesses sworn to tell the truth who
4 testify from this witness stand and such evidence that comes
5 in through that testimony.

6 Now, from time to time during the trial, as I told
7 you, it will be my job to rule on questions of evidence. If I
8 believe that our discussion with the attorneys in regards to
9 the admissibility of evidence might lead to a discussion
10 concerning evidence which is not admissible it's my
11 responsibility to see that you are taken from the courtroom so
12 that you will not consider that inadmissible information.

13 Do not take it from the fact that I have asked you
14 to leave the courtroom during those times, again, that I have
15 any opinion as to how you determine the facts in this case.
16 It is my job and responsibility, again, to see to it that you
17 only consider admissible evidence in reaching your verdict.

18 If I allowed you to stay in the courtroom during
19 those discussions obviously you would hear discussions,
20 possibly, concerning evidence which is not admissible and it
21 would be inappropriate for you to consider any of that
22 information in reaching your verdict.

23 So when I ask you to leave the courtroom it is
24 simply me discharging my responsibility and, again, should not
25 be taken by you in any fashion that I have any opinion as to

1 how you determine the facts to be in this case. It is simply
2 necessary for me to take that action from time to time.

3 Now, in determining what the facts are in any case
4 you as jurors must decide which testimony you find to be
5 believable. It will be your responsibility to determine the
6 credibility of the witnesses who testify in this case.

7 It's my responsibility to decide whether or not the
8 testimony can be offered. But once it is admitted you have
9 the right to consider anything in the record of this case in
10 reaching your verdict.

11 Now, in deciding whether or not to believe a witness
12 you have the right to use your own good common sense that you
13 brought into this courtroom. You should use that common sense
14 that you brought into the courtroom.

15 You can consider such factors as to whether or not
16 the witness has some stake in the outcome of the case, whether
17 or not the witness might have some bias or prejudice in the
18 matter, whether or not the witness actually had the ability to
19 see, observe or know the things about which that witness is
20 testifying about.

21 And perhaps most importantly, we place the witness
22 chair directly across from the jury box so that you can
23 observe the demeanor of the witnesses, the way in which they
24 testify, how they testify.

25 You can take all of those factors into consideration

1 and any other factors that you use in your own good common
2 sense to determine the credibility or the believability of the
3 witnesses who testify before you in this trial.

4 You have the right as the sole judges of the facts
5 to believe one witness against all or all against one. You
6 have the right to believe part of what a witness tells you and
7 disregard the rest. You have the right to believe all of what
8 a witness tells you, you have the right to believe none of
9 what a witness tells you.

10 You are the sole judges of the facts in this case.
11 You are also the sole judges of the credibility or the
12 believability of the witnesses who will testify before you in
13 this trial, therefore it is important that you pay close
14 attention to the testimony as it is given as well as the
15 actions of the attorneys and the other things that go on in
16 the courtroom during the trial of this case.

17 Now, don't think that because I have not appointed a
18 foreperson at this point in time that I have forgotten that
19 fact. I'm a little different from other judges. There's no
20 law that says when the foreperson of a jury should be
21 appointed. It's up to me as the presiding officer to make
22 that decision.

23 I like to wait until the close of the trial to
24 appoint the foreperson of the jury. It gives me a chance to
25 observe you as the trial goes on as well and make the decision

1 based on my observations and my knowledge concerning you as
2 jurors. So at the close of the trial I will appoint a
3 foreperson to serve as the foreperson of your jury.

4 That person has no greater say in the outcome of the
5 trial than any other juror that serves in this case. It's
6 simply that that person will preside over the deliberations,
7 that person will communicate with the Court if communication
8 during deliberation becomes necessary, and that person will
9 write and deliver the verdict to the Court. Again, I will
10 take that action at the close of the trial when I am doing my
11 charge on the law in this case.

12 Now, in order to be sure that everyone's rights have
13 been protected, does the State have any objection to my
14 opening comments?

15 MR. ANTHONY: No, sir.

16 THE COURT: Mr. Padgett, any objection?

17 MR. PADGETT: No, Your Honor.

18 THE COURT: Mr. Grose, any objection?

19 MR. GROSE: No, sir, Your Honor.

20 THE COURT: All right. As I told you, the
21 defendants' plea of not guilty to the indictment has placed
22 the burden of proof upon the State to prove its case to you
23 beyond a reasonable doubt. Since the State has the burden of
24 proof we allow them to go first with their argument and also
25 allow them to go first with the presentation of their

1 evidence.

2 At this time, Mr. Anthony, you may make the opening
3 statement for the State.

4 MR. ANTHONY: Thank you, Your Honor.

5 Good morning. My name is John Anthony. I'm the
6 Deputy Solicitor for Abbeville County, and I'm going to be
7 representing the State in the trial of this case.

8 When I was younger I used to play a lot of the game
9 Chess. I don't know if any of you all ever played Chess
10 before, but the objective of Chess and the way you win the
11 game is to get what's called a checkmate, and that means that
12 you capture the piece, the king of your opponent, and you do
13 that by doing two things. The first thing you do is you
14 attack the king. Then the second thing you do is cut off the
15 way that the king would get away from your attack. You cut
16 off the king's means of escape.

17 Well, back on February 10 of 2004, the two
18 co-defendants in this case, Monte Haskell and Clarence
19 Harrison, were planning an attack at a place called Hickory
20 Heights Apartments in Abbeville, which is commonly known as
21 the Village. And like a good Chess player what they wanted to
22 do is they wanted to cut off the route of escape of the person
23 they were trying to attack. They were trying to attack and
24 rob a young man by the name of Rod Gartrell.

25 So in order to do this, Mr. Harrison went to the

1 door of the apartment of a woman named Nini Cole, and he told
2 Ms. Cole to lock her door. And the reason he did this was
3 because he and Mr. Haskell were getting ready to try to rob
4 Mr. Gartrell, and they are going to rob him right outside of
5 her apartment. And they knew that if Mr. Gartrell tried to
6 get away from their attack that that's where he was going to
7 go. He was going to try to go to Ms. Cole. So they told her
8 to lock her door -- or Mr. Harrison told her to lock her door.

9 So Mr. Harrison had this conversation with Ms. Cole.
10 He went into the parking lot at the apartment building. He
11 found Mr. Gartrell. He suggested that they go back around to
12 Ms. Cole's apartment to wait for Ms. Cole's boyfriend, who is
13 a young man that Mr. Gartrell knew and was friends with.

14 So Mr. Gartrell did this. He walked down the steps
15 towards Ms. Cole's apartment. When he got right outside of
16 her apartment Mr. Haskell came around from the bushes in the
17 back of the apartment, he pulled a gun on Mr. Gartrell. He
18 told Mr. Gartrell to give him what he had then he shot
19 Mr. Gartrell in the face.

20 Luckily, fortunately, Ms. Cole didn't do what she
21 was asked to do. She hadn't locked her door, and Mr. Gartrell
22 went through her door. Mr. Harrison followed Mr. Gartrell
23 into her apartment, and Ms. Cole, in trying to make this move,
24 what Mr. Haskell and Mr. Harrison did was they created a
25 witness in Ms. Cole, and she can testify and tell you what she

1 heard and what she saw that night.

2 And there's some other witnesses as well who saw
3 what went on that night. There's a man by the name of Sherman
4 Adams who saw Mr. Harrison and Mr. Haskell together shortly
5 before this occurred. There's a young man named Mario Adams
6 who saw Mr. Haskell shortly after this occurred.

7 So we believe after you've heard the evidence in
8 this case, after Mr. Gartrell tells you what happened to him,
9 after what Ms. Cole tells you, Mr. Adams, Mr. Norman, after
10 you hear from the officer who responded to the crime of the
11 scene we believe that you'll find that Mr. Harrison and
12 Mr. Haskell are guilty of assault and battery with intent to
13 kill, attempted armed robbery and possession of a firearm
14 during the commission of a violent crime. Thank you.

15 THE COURT: Mr. Padgett.

16 MR. PADGETT: Thank you, Your Honor.

17 Good morning, ladies and gentlemen of the jury. My
18 name is Tripp Padgett, and I was introduced earlier, and I
19 represent Mr. Haskell. Mr. Haskell is a 31-year-old man, born
20 and raised here in Abbeville County.

21 Now, you've heard those charges that were read to
22 you by the Court. You've heard the story of the State.
23 You'll see as the evidence is presented there are other
24 stories. All the stories don't match up.

25 You'll also hear Mr. Haskell's defense, and that is

1 that he wasn't there. There will be testimony put on that
2 witness stand that shows you he wasn't there, that he couldn't
3 have committed that crime, or any of the three crimes that
4 he's charged with.

5 Now, the Judge has told you a brief kind of road map
6 of where we're going with this. The State puts on their
7 evidence, their story that they want you to hear. We get a
8 chance to put on our story, the story that witnesses will tell
9 you something different from what the State wants you to hear.

10 Now, all of that will come through to you by
11 evidence. Evidence comes in generally three ways. Testimony,
12 people speaking to you from the witness box; exhibits, things
13 that you can touch that are marked, that are moved into
14 evidence that you can consider; and stipulations. That's
15 something that the State and the defense can agree to that
16 you'll take as a fact.

17 But when you consider that evidence be aware of that
18 burden that the Court has told you about, beyond a reasonable
19 doubt. It's a very difficult concept. Courts have struggled
20 with the definition of it.

21 It's either firmly convinced, that you need to be
22 firmly convinced before you can reach that level of beyond a
23 reasonable doubt when you consider their evidence. Some
24 courts have said if you hesitate to act you haven't gotten to
25 that beyond a reasonable doubt standard. Some courts have

1 even said we're not going to define it for you. It's whatever
2 doubt is reasonable for you, if you don't get beyond that.

3 So you need to apply that standard, and the Court
4 will charge you that you must apply that standard, but it is a
5 very difficult job. But it is only the evidence that is
6 presented here that you are to consider.

7 And the reason that burden is so high is our
8 constitution provides that every defendant brought before a
9 court like this, and in this case, General Sessions, has a
10 presumption of innocence that cannot be stripped from him
11 until you find beyond a reasonable doubt that the evidence
12 shows otherwise. So throughout this trial Mr. Haskell carries
13 that presumption of innocence.

14 We were all present when out of the venire someone
15 said I've already made my decision. I submit to you, ladies
16 and gentlemen, our constitution, the laws of this land say you
17 have to -- this man is innocent until you find different,
18 until you hear the evidence and you find different.

19 And in closing, I would join with the Court and
20 thank you for serving today. It's something that no one wants
21 to do, but certainly Mr. Haskell and I appreciate you doing
22 that. Thank you.

23 THE COURT: Mr. Buergey.

24 MR. BUERGEY: Thank you, Your Honor. May it please
25 the Court.

1 THE COURT: Yes, sir.

2 MR. BUERGEY: Good morning. You know, there's an
3 old saying that says that whenever a crime is committed and in
4 any kind of a criminal case the first suspect in that case
5 should be the person who knows the most about what happened.

6 And there's some funny things that went on the night
7 that Mr. Gartrell got shot. As you heard, he was shot in the
8 face on February 10th, 2004 at Hickory Heights Apartments, and
9 it's a very sad thing that happen to him. It's very
10 regrettable that this happened to him.

11 But some interesting things happen that night.
12 There was a man by the name of Torey Brown who you are going
13 to hear testimony that he gave Mr. Gartrell a ride to the
14 hospital. Mr. Brown didn't see anything that happened that
15 night. He wasn't there, he didn't witness anything.

16 His role in this was taking Mr. Gartrell to the
17 hospital, but somehow that night Mr. Brown is able to tell law
18 enforcement who did this. He gives them the names of Clarence
19 Harrison and Alti Haskell.

20 And what's interesting about that is about a week
21 later Mr. Gartrell is interviewed at the hospital by
22 Lieutenant John Smith. At this point, Mr. Gartrell still has
23 injuries to his mouth. He's not able to talk. So he gets
24 sort of a handwritten interview where they ask him questions
25 and he writes things down, circles yes, no, things like that.

1 Now, this is a week after the incident and he can't
2 say who the person was that shot him. He can't say who the
3 people were that did this to him. He doesn't know. But
4 somehow a week before Torey Brown, the man that gave him a
5 ride to the hospital, somehow Torey Brown says that he knew
6 who did this, even though he didn't witness this.

7 Torey Brown gives this information to law
8 enforcement and they base their entire investigation on what
9 Torey Brown told them. By the time that they even bother to
10 talk to Mr. Gartrell at the hospital they've already got two
11 people in jail based on what Torey Brown told them.

12 And you're going to hear about Torey Brown's
13 motives, you're going to hear why Torey Brown is going to want
14 to point the finger at these two people.

15 You're going to hear some testimony, the State,
16 Mr. Anthony has already told you you're going to hear some
17 testimony by a woman named Nini Cole. You're going to hear
18 about her connection to Torey Brown. You're going to hear why
19 she's going to have the motive to make her story consistent
20 with what Torey Brown said.

21 But the interesting thing is, like I said, a week
22 later Mr. Gartrell doesn't know who did this to him. They
23 interview him again at the police station a month later and he
24 doesn't know who did this to him.

25 But somehow on the night of the incident Torey

1 Brown, who didn't see anything, knows who did this and he's
2 able to point the finger at these two people and the police
3 base their entire investigation on what Torey Brown tells
4 them.

5 You are going to hear testimony in this case, like I
6 said, Mr. Gartrell was shot in the face, you're going to hear
7 testimony that the night that this happened he had been
8 hanging out earlier with Clarence Harrison. You're even going
9 to hear testimony that Mr. Harrison was somewhat nearby when
10 this happened to him. But Clarence Harrison had nothing to do
11 with what happened to Mr. Gartrell.

12 And it's sad what happened to Mr. Gartrell, but he
13 doesn't know who did this to him. He can't say who did this
14 to him. Clarence Harrison had nothing to do with it. And at
15 the end of all the evidence in this case we're going to ask
16 you to deliver a verdict of not guilty on all counts regarding
17 Clarence Harrison. Thank you.

18 THE COURT: Mr. Anthony, you may call the first
19 witness for the State.

20 MR. ANTHONY: Thank you, Your Honor. Sergeant
21 Vandiver.

22 THE COURT: Sir, come forward and be sworn.

23 RAYMOND VANDIVER, after having been duly sworn,
24 testified as follows:

25 THE COURT: Mr. Anthony, your witness.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

DIRECT EXAMINATION

1

2 BY MR. ANTHONY:

3 A. Sergeant Raymond Keys Vandiver.

4 Q. Mr. Vandiver, how are you employed?

5 A. I'm employed at Abbeville Police Department. Been
6 there for 7 years. Have 33 years in law enforcement.

7 Q. I need you to make sure you speak up so everybody
8 can hear you.

9 A. 33 years law enforcement.

10 Q. What's your position at the Abbeville Police
11 Department now?

12 A. Shift supervisor.

13 Q. And how else have you been employed in law
14 enforcement?

15 A. I had 18 years in the military police as an
16 investigator, and before that I had 7 years with the Abbeville
17 County Sheriff's Department here. I'm retired from the
18 military.

19 Q. And were you working on the evening of February
20 10th, 2004?

21 A. I was.

22 Q. And did you receive a call out to Hickory Heights
23 Apartments, Apartments 402?

24 A. I did. It was approximately about 8 o'clock.

25 Q. And is that in the City of Abbeville?

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 A. It is.

2 Q. Is that in Abbeville County?

3 A. Yes, it is.

4 Q. And what is that apartment? Hickory Heights
5 Apartments, what is it also known as?

6 A. As the Village.

7 Q. And is there any other apartment building in close
8 proximity to it?

9 A. Oakland Apartments. They are adjoining apartment
10 complexes.

11 Q. Okay. And Apartment 401 and 402, where are they
12 located at Hickory Heights?

13 A. In building 400 there is 8 apartments. This is on
14 the east side of Building 400 on the ground floor on the end.

15 Q. And in relation to the other buildings at the
16 apartment building where is Building 400?

17 A. 400 is if you go all the way back to the Village
18 where the apartments are, turn left at the dumpsters. It's
19 the only last building against the wood line.

20 Q. All right. And you said there's a wood line at the
21 back of it?

22 A. It's on 2 sides of it.

23 Q. Okay. And how does that wood line run? The wood
24 line at the back of Building 400, how does it run in relation
25 to Oakland Apartments?

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 A. The wood line starts at the parking lot at Building
2 400, goes down toward the end of it and then goes down the
3 rear of it all the way down past Oakland Apartments.

4 Q. All right. And are there any means of getting
5 through those woods from Hickory Heights to Oakland?

6 A. There's all kind of paths going down through there.

7 Q. And when you were called out to Hickory Heights what
8 time did you get there?

9 A. It was shortly after 8 o'clock.

10 Q. And what type call were you responding to?

11 A. Shots fired.

12 Q. And when you arrived there, was Mr. Gartrell there?

13 A. No, he wasn't.

14 Q. What had happened with Mr. Gartrell?

15 A. He -- from everybody talking there, he was already
16 on his way to the hospital. He did not go in the ambulance.
17 He was taken.

18 Q. And did you advise anybody to deal with him at the
19 hospital?

20 A. I sent Officer Schreier to the hospital.

21 Q. And then what did you do?

22 A. I stayed at the crime scene, took photographs of
23 what was there.

24 Q. When you got to the crime scene whose apartment did
25 you go to?

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 A. I went to 402. That's where the call came in from.

2 Q. And whose apartment is that?

3 A. That was Nini Cole.

4 Q. And when you went to her apartment did you observe
5 anything unusual there inside the apartment?

6 A. The floors were almost all covered with blood.

7 Q. And was there any blood outside the apartment?

8 A. There was some on the concrete, like a deck on the
9 ground floor, a couple of spots on there going to that
10 apartment.

11 Q. Okay. And did you locate anything outside the
12 apartment that night?

13 A. About 4 feet off of the concrete edge in the grassy
14 area I found a partial grille, which is a grille that goes
15 over your whole teeth. You can either get them in gold or
16 silver, depending on it. I did find a gold grille partial
17 that I later found out that Mr. Gartrell was wearing.

18 Q. And what did you do with that grille?

19 A. I retained it as evidence.

20 (WHEREUPON, State's Exhibit No. 6, a Tooth Grille,
21 was marked for identification only.)

22 Q. I'm handing you what's been marked for
23 identification as State's Exhibit Number 6. Could you take a
24 look at that bag and see if you've seen that before.

25 A. Yes, I have.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 Q. And what is that?

2 A. That is a partial grille that goes over your teeth.

3 Q. And where did you recover that grille?

4 A. About 3 to 4 feet off of the concrete in front of
5 Building 400, Apartment 402.

6 Q. Is that the grille you recovered on February 10th
7 you just testified about?

8 A. That is correct.

9 Q. And does it still appear to be in the same condition
10 it was in when you took it into evidence back on February 10,
11 2004?

12 A. It is, and that was my diagram where I found it.

13 Q. And you are referring to a diagram on the front of
14 bag; is that correct?

15 A. Right, on the back where I picked it up right off
16 the concrete there. There's also a hand sketch I did before I
17 had put it in the evidence bag.

18 Q. And do those documents -- do those diagrams fairly
19 and accurately depict where you located the grille at the
20 crime scene?

21 A. It does.

22 MR. ANTHONY: All right. We move Exhibit 6 in
23 evidence at this time.

24 THE COURT: Any objection from the defense?

25 MR. PADGETT: None, Your Honor.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 MR. BUERGEY: None, Your Honor.

2 THE COURT: It will be so admitted.

3 (WHEREUPON, State's Exhibit No. 6, a Tooth Grille,
4 was admitted into evidence.)

5 BY MR. ANTHONY:

6 Q. I'm showing you now what's been marked for
7 identification as State's Exhibit Number 1. Can you identify
8 this photograph?

9 A. This is the east end of Building 400, Apartment 401,
10 402, 403, 404.

11 Q. And, if you would, would you be able to show on that
12 photograph where you found the grille --

13 A. I would.

14 Q. -- that night?

15 What I'm going to do, I'll hand you -- and does that
16 -- well, just strike that. Does Exhibit 1 fairly and
17 accurately depict the appearance of the apartments on the
18 night that this occurred as far as where the buildings were
19 and the general layout?

20 A. It does, because of the tree line there.

21 Q. Well, what I'll do, I'll hand you a pen and
22 something to bear down on it and I'd ask that you put a G on
23 the picture. Just put a G where you located the grille on
24 that photo.

25 A. (The witness complied).

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 Q. Now, when you got to the scene, after you recovered
2 this evidence and everything -- well, let me just ask you.
3 When you got to the scene, did you see either Mr. Harrison or
4 Mr. Haskell?

5 A. I saw Blue.

6 Q. And when you say Blue, which one is that?

7 A. Mr. Harrison.

8 Q. That's the name Mr. Harrison goes by?

9 A. Right.

10 Q. Okay. And where was Mr. Harrison when you saw him?

11 A. He was inside Apartment 402 with a mop in his hand
12 starting to mop the blood up.

13 Q. And what did you do in regards to Mr. Harrison being
14 inside the apartment mopping up the blood?

15 A. Not knowing who was involved, I stopped them all
16 from cleaning it up and photographed inside the apartment.

17 Q. Okay. And what happened as far as Mr. Harrison
18 staying at the scene?

19 A. When I went to get my camera from the car to come
20 back to take it everybody just about left from there except
21 for Nini Cole, which was the occupant of the apartment.

22 Q. So when you got back where was Mr. Harrison?

23 A. He was not in the apartment.

24 Q. I'm showing you now what's been marked for
25 identification as State's Exhibits 4 and 5. Can you tell me

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 what those are pictures of?

2 A. Exhibit 4 is going in the front door of Apartment
3 402, which is on the ground floor. If you can see the white
4 right there, that is a white mop bucket --

5 Q. Okay.

6 A. -- on that, and that's on Exhibit 4 (indicated).

7 On Exhibit 5 you can see the bucket better going
8 toward the kitchen in Number 5, where it's like the hallway
9 going to the kitchen. That's where that photograph was taken.

10 Q. All right. Well, are those pictures that you made
11 on February 10th?

12 A. Yes, they are.

13 Q. And did they fairly and accurately depict the
14 appearance of Ms. Cole's apartment?

15 A. They are.

16 Q. And what I'd ask you to do is, the bucket that's on
17 those pictures, I'd ask that you take this pen and just draw
18 an arrow to that bucket on both pictures.

19 A. On Exhibit 4 you can see the blood droppings where
20 he came from outside going in.

21 MR. ANTHONY: We'd move Exhibit 4 and 5 in evidence.

22 THE COURT: Any objection from the defense?

23 MR. PADGETT: No, Your Honor.

24 MR. BUERGEY: No, Your Honor.

25 THE COURT: Without objection they will be received

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 in evidence as marked. You may proceed.

2 (WHEREUPON, State's Exhibit Numbers 4 and 5,
3 Photographs, were admitted into evidence.)

4 BY MR. ANTHONY:

5 Q. And how was that bucket being used when you arrived
6 at the scene that night?

7 A. As a mop bucket.

8 Q. And who was using it?

9 A. Mr. Harrison.

10 Q. Now, other than going to the scene and speaking to
11 Ms. Cole and locating the evidence that you testified about,
12 did you do anything else at the scene that night?

13 A. At the scene that night, no, because everybody was
14 out at the hospital and officer Schreier had called and said
15 that they were piling up there, everybody wanted to see what
16 was going on. There was only 3 of us on. We all went to the
17 hospital. I notified Lieutenant Smith what I had and he did
18 come in, picked up the investigation from there.

19 Q. And after you went to the hospital would you -- were
20 you able to see Mr. Gartrell?

21 A. I did.

22 Q. And were you able to observe any injuries to him
23 that night?

24 A. When I went in room 5 out there, is for, like, the
25 cardiac, serious patients, Mr. Gartrell was already in bed.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 He had a big hole in his bottom lip right here (indicated). I
2 could see his teeth were missing right here (indicated). You
3 could see gold fragments, which were taken also, which did
4 match the other half of the grille that I had already picked
5 up in the Village, Hickory Heights Apartments.

6 He was sort of slurred speech, could not, you know,
7 make out exactly what he was saying. I know the man was in
8 pain because it went through. The bullet did lodge in his
9 spinal column back here (indicated). And he was transported
10 to Greenwood for removal of that.

11 Q. And when you saw him were you able to actually see
12 the bullet?

13 A. I could see it through the hole through his tongue
14 where it went in here (indicated). They did hold his tongue
15 up. I could see the hole through his tongue and a shiny
16 object believed to be the bullet in the back, and later it was
17 with the x-ray -- it was the bullet.

18 Q. And where was Mr. Gartrell -- well, was Mr. Gartrell
19 sent anywhere from Abbeville that night?

20 A. Was he what, sir?

21 Q. Was he sent anywhere from Abbeville that night from
22 the hospital?

23 A. He was sent to Greenwood Self Memorial Hospital.

24 Q. And what was the purpose of that?

25 A. That was to further stabilize him and treat him due

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 to where the bullet was located. They didn't have the
2 capability out here so they sent him to Self Memorial
3 Hospital.

4 Q. And did you recover -- or did the department recover
5 the bullet or any fragments from Mr. Gartrell's mouth?

6 A. Officer Schreier went to Greenwood and retrieved the
7 fragments of the bullet, the grille and some teeth.

8 Q. Were the fragments that were recovered, would they
9 have been sufficient to match with any weapon?

10 A. No, they wouldn't.

11 Q. All right. And did you do anything -- after your
12 work on this that night did you do anything to deal with it
13 the next day?

14 A. No.

15 Q. Did you ever go back out there to Hickory Heights
16 apartments?

17 A. I went back with Lieutenant Smith to show him where
18 I had picked up evidence and stuff, and then he took over the
19 investigation from that. As far as talking with anybody else,
20 investigating, I did not.

21 Q. Did you ever search for anything else?

22 A. No.

23 MR. ANTHONY: Thank you. That's everything on
24 direct.

25 THE COURT: Mr. Padgett?

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 MR. PADGETT: Thank you, Your Honor.

2 CROSS-EXAMINATION

3 BY MR. PADGETT:

4 Q. What time was it that you went out to the scene?

5 A. It was shortly after 8 after we received the call.

6 Q. Which was what time?

7 A. 20:05, 20:10.

8 Q. Which is 8:10 --

9 A. Right.

10 Q. -- at night? Was it dark?

11 A. In February I would say yeah.

12 Q. You say or you remember?

13 A. It was getting dark. I mean, it's well lit, you
14 know, in the Village parking lot over there.

15 Q. Okay. It's well lit in the parking lot. How well
16 lit is it where the incident took place?

17 A. It's not that very well lit. Unless they have
18 outside light on in the apartments that's it for lighting on
19 that end of the building there.

20 Q. When you got there was the light on?

21 A. One of them was on downstairs.

22 Q. One out of two?

23 A. Yeah.

24 Q. What was the weather like?

25 A. Mild.

RAYMOND VANDIVER -- CROSS BY MR. PADGETT

1 Q. I mean, was it raining?

2 A. No, it was not raining.

3 Q. When you say it was pretty dark by -- say where the
4 grille was found, was it pretty dark right there?

5 A. No, uh-uh.

6 Q. No. So the one light that was on was located where?

7 A. There's one on the front of the apartment then
8 there's one -- there's a dumpster at the steps going down into
9 401 and 402. You come up, there's a telephone light right
10 there which shines down on that right there. But it's not
11 like a bright light like this. It's one of the yellow-type
12 lights that just illuminates, which you can see what's going
13 -- what's happening there.

14 Q. About how far?

15 A. From about halfway from here to the back door there.

16 MR. PADGETT: Your Honor, if I could get a diagram?

17 THE COURT: Yes, you may.

18 BY MR. PADGETT:

19 Q. Now, Officer -- I'm sorry, I forgot your title.

20 Lieutenant do you go by or sergeant?

21 A. Sergeant.

22 Q. Sergeant, I'm sorry. Sergeant, if this is a general
23 sketch of the area, would you say that that is a substantially
24 accurate depiction of what we are talking about?

25 A. Right at 404 right there?

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 Q. Right.

2 A. I don't know if the upstairs on this is 404 over
3 here or 404 over there because I know that they go 1, 2 and
4 when they go up they may go to different apartments, but that
5 reflects Building 400.

6 The only thing missing off of here is you don't show
7 the wood line running down close to that sidewalk right there
8 and turning and coming all the way down this side over here,
9 coming through the backside of the Village, Hickory Heights
10 and Oakland Apartments.

11 Q. So that is Oakland down at the bottom of it?

12 A. This represents Oakland Apartments.

13 Q. Okay.

14 A. And it's not a wire fence. It's, you know, one of
15 the prefab metal stick-in. It was wire, but everybody tore it
16 down. And there's the light pole that I was referring to you
17 about (indicated). There's a dumpster sitting right here, a
18 big one up here (indicated). There is a big oak tree right
19 here, but in February there's no leaves on it so there's no
20 blocking the view of the back right here (indicated).

21 Q. Okay. If you would mark those changes so that that
22 will be a substantially accurate representation of the area in
23 which we are talking about.

24 A. Just put wood line over here?

25 Q. However you would like to do it, yes, sir.

1 A. There is also -- there is also a pole, a telephone
2 pole around the back.

3 Q. And the apartment marked as 404 would be the
4 upstairs?

5 A. If that is 404 that is above 402.

6 Q. Okay. Could that be 402 as well if that was the
7 bottom floor?

8 A. If that was the bottom floor that would be 402.

9 Q. Okay. If you could make that correction.

10 A. I'll just put R-402.

11 Q. And on that photograph where would you have found
12 the grille?

13 A. Where this comes out of the apartment right here
14 it's a half -- comes up like a half a platform. This sidewalk
15 actually stops this part of it. You step off of it right here
16 (indicated). It was about 3 or 4 feet. I put the G since it
17 was labeled in evidence as grille. It's about 4 foot outside
18 right there. There is some steps that come down right here
19 (indicated). From upstairs they have like a step balcony they
20 had to come down, which misses maybe about 2 feet from the end
21 of that concrete there.

22 Q. So with those changes that diagram would be a
23 substantially accurate representation of what we are talking
24 about here?

25 A. The only other thing is right here there's like a

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 little pier comes out just to separate the --

2 Q. Is that the parking area you just marked in?

3 A. There would be a parking lot right here (indicated).

4 This is another building, apartment building right here, which
5 is Building 500, if I'm not mistaken.

6 Q. Okay. If you want to make those marks on there and
7 make it as accurate as we can make it.

8 A. (The witness complied).

9 Q. And that light that you were referring to, other
10 than the light pole.

11 A. Is marked right there (indicated).

12 Q. That's the only light in the area?

13 A. Right, this parking lot here (indicated). There is
14 some more down in here. I don't know exactly where those are
15 at. I know there's some down by these dumpsters here. Every
16 dumpster they have over there they have a big light on there.

17 Q. Right, and the lighting at 402, for Apartment 402 in
18 Hickory Heights --

19 A. Uh-huh.

20 Q. -- did you testify there was light over there?

21 A. There is lights right here (indicated). There was
22 one. This one may be closer this way right here, and I think
23 there's one back out over here but I don't remember whether
24 that one was on or not. I know from this light here I could
25 see what I needed to see out through here (indicated).

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 Q. Okay. So with those corrections on that, that's a
2 substantially accurate representation of the area?

3 A. Uh-huh.

4 MR. PADGETT: Okay. Your Honor, I would like to
5 move this into evidence as Defendant's 1?

6 THE COURT: Any objection?

7 MR. ANTHONY: No, sir.

8 THE COURT: Any objection from the other side?

9 MR. BUERGEY: No, Your Honor.

10 THE COURT: It will be so admitted as Defendant's
11 Number 1.

12 (WHEREUPON, Defendant Haskell's Exhibit No. 1, a
13 Diagram, was marked and admitted into evidence.)

14 THE COURT: You can return to the witness stand,
15 please, sir.

16 (WHEREUPON, the witness returned to the witness
17 stand.)

18 Mr. Padgett, you may proceed.

19 MR. PADGETT: Thank you, Your Honor.

20 BY MR. PADGETT:

21 Q. Sergeant, do you have any pictures of the incident
22 scene at night?

23 A. I think there's one that when I got through with the
24 roll of film that I just sat there and clicked them. I mean,
25 I didn't use them as evidence from this. I just snapped them

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 where I could go get them developed.

2 Q. Okay. So you have pictured but they are not
3 developed?

4 A. They are developed. I'm just saying I didn't use
5 them as for evidence.

6 Q. Would you know where they are right now? Is it one
7 picture or multiple pictures?

8 A. I think I snapped the last three, just snapped them.

9 Q. And they are developed?

10 A. They are developed, yes.

11 Q. Do you have them in your possession?

12 A. Not on me right now.

13 Q. Okay. Do you have them in a place where they are
14 accessible to you?

15 A. Yes, sir.

16 Q. Can you obtain those?

17 A. Yes, I can.

18 Q. And you've further testified that Mr. Haskell was
19 not present in the -- you didn't see him?

20 A. I did not see him. If I saw him I didn't recognize
21 him.

22 MR. PADGETT: Okay. I don't have anything further,
23 Your Honor.

24 THE COURT: Mr. Buergey, your witness.

25 MR. BUERGEY: Thank you, Your Honor.

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

CROSS-EXAMINATION

1

2 BY MR. BUERGEY:

3 Q. Good morning, Sergeant Vandiver.

4 A. Morning.

5 Q. You are here to testify as the chief investigating
6 officer in the case, correct?

7 A. No.

8 Q. You are not here as the chief investigating officer
9 in this case?

10 A. I'm the first one to respond on the scene.
11 Lieutenant Smith took over all the investigations of it.

12 Q. But you've been allowed to remain in the courtroom
13 as the chief investigator officer in this case; is that
14 correct?

15 A. I assume.

16 THE COURT: Well, I would instruct the jury that I
17 have made the ruling that the State could have one
18 investigating officer present to assist in the trial of this
19 case. This gentleman has been designated as that officer.

20 MR. BUERGEY: Thank you, Your Honor.

21 THE COURT: You may proceed.

22 BY MR. BUERGEY:

23 Q. And, Sergeant Vandiver, you said you were initially
24 called out to Hickory Heights Apartments because of reports of
25 shots fired; is that correct?

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 A. (Nodded).

2 Q. And this was on February 10th, 2004?

3 A. That's correct.

4 Q. And you said when you got to Hickory Heights
5 Apartments you went to Apartment 402; is that correct?

6 A. That's correct.

7 Q. And you understood that apartment to be the
8 apartment of Nini Cole?

9 A. That's correct.

10 Q. And when you were there you said the first time you
11 went there you saw a crowd of people around and inside the
12 apartment?

13 A. They was outside, in the parking lot and on up.

14 Q. About how many people total would say was hanging
15 around there?

16 A. I'd say 15, 20.

17 Q. And you said that you recognized one of them as
18 being Blue. Is that the name that --

19 A. Inside the apartment I did.

20 Q. And Blue is Clarence Harrison?

21 A. That's correct.

22 Q. And you saw him -- you said it looked like he was
23 trying to mop up blood and just generally clean up the area.
24 Is that what he was doing when you got there?

25 A. That's correct.

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 Q. Did you recognize any of the other people who were
2 around at that time?

3 A. No. I'm trying to find out what's happening and
4 here's everybody and, you know, we show up and everybody is
5 gone. So when I get back in the apartment that's it. Even
6 Mr. Harrison had come out of the apartment.

7 Q. But the first time you were there you actually had
8 the tell Mr. Harrison to stop mopping up because you needed to
9 process the scene; is that correct?

10 A. That I did.

11 Q. And --

12 A. On the first time I was there. I never left. The
13 first time I went in the apartment.

14 Q. Right, and the first time you went in the apartment
15 you saw Mr. Harrison mopping up, you told him to stop?

16 A. Right.

17 Q. At that point when you came to the apartment until
18 you told him to stop mopping, did he make any effort to stop?

19 A. He did stop. He did stop. He was cooperative.

20 Q. But he didn't try to -- while you were there he
21 didn't try to leave the room or leave the area?

22 A. No.

23 Q. Or he didn't do anything to act evasive when you
24 first got there?

25 A. No.

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 Q. And he was just mopping and he would have kept
2 mopping if you hadn't of told him to stop?

3 A. That's correct.

4 Q. And you said there was a big crowd of about 15
5 people all around the apartment?

6 A. That's from the parking lot all the way around to
7 where the incident took place.

8 Q. And then when you went out, you went out of the
9 Apartment 402 and you came back a little bit later and
10 Ms. Cole was the only one that was left; is that correct?

11 A. I mean, I left. I left the apartment and went right
12 up to the -- up the steps to the parking lot and got my camera
13 out of the car and went back down the steps and Ms. Cole was
14 still in the parking lot -- or apartment.

15 Q. But the big crowd that had been there had basically
16 left except for Ms. Cole?

17 A. They left when I started up the steps. Like I'm
18 going to get one of them or something everyone just scattered.

19 Q. So wasn't, like -- Mr. Harrison was the only one
20 that left?

21 A. No.

22 Q. Everybody else was still hanging out there?

23 A. No, everybody is leaving.

24 Q. When you got back to that apartment Ms. Cole was the
25 only one that was left there?

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 A. That's correct.

2 Q. And you said that you went later that night to -- or
3 shortly thereafter you went to Abbeville Memorial Hospital; is
4 that correct?

5 A. That's correct.

6 Q. And that was the first place where Mr. Gartrell was
7 taken; is that correct?

8 A. That's correct.

9 Q. And at that time you were able to witness injuries
10 to Mr. Gartrell but you weren't able to speak with him at that
11 time; is that correct?

12 A. I tried to speak with him but in him trying to
13 respond back I could not understand what he's saying.

14 Q. He couldn't speak legibly because of the injuries to
15 his face?

16 A. No, he could not.

17 Q. And as for the surgery that he was to undergo, that
18 was actually going to have to take place in Greenwood?

19 A. That's correct.

20 Q. And so later that same night he was taken to
21 Greenwood?

22 A. Correct.

23 Q. To Self Hospital for the surgery?

24 A. Correct.

25 Q. Did you have an opportunity to speak with Torey

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 Brown about this matter?

2 A. I did briefly at the Abbeville County Memorial
3 Hospital.

4 Q. And what was your understanding of Torey Brown's
5 role in this incident?

6 A. That he was the one that had transported him from
7 Hickory Heights Apartments to Abbeville Memorial Hospital.

8 Q. And did Torey Brown tell you anything about this
9 incident that had occurred?

10 A. He had told me that --

11 MR. ANTHONY: Objection. Hearsay.

12 MR. BUERGEY: Your Honor, it's not for the truth of
13 the matter asserted.

14 THE COURT: What purpose is it offered for?

15 MR. BUERGEY: It's being offered to demonstrate why
16 the State -- why law enforcement proceeded in the manner that
17 they did in their investigation, Your Honor.

18 THE COURT: You wish to argue the point,
19 Mr. Anthony?

20 MR. ANTHONY: Your Honor, it's still hearsay.

21 MR. BUERGEY: Your Honor, we do have a matter of law
22 to take up outside of the presence of the jury.

23 THE COURT: Ladies and gentlemen of the jury, this
24 is one of those occasions when I'm going to ask you to step
25 out of the courtroom. I'll instruct that you not begin any

1 discussions concerning this case until such time as you've
2 heard all of the evidence and I have charged you concerning
3 the law in this matter.

4 At this point in time I'll ask you to please retire
5 to the jury room. Thank you very much.

6 (WHEREUPON, the jury leaves the courtroom at
7 approximately 11:10 a.m.)

8 THE COURT: Yes, sir?

9 MR. BUERGEY: Your Honor, Mr. Grose is going to be
10 dealing with this issue. He's brought it to the Court's
11 attention.

12 THE COURT: Thank you very much. Mr. Grose?

13 MR. GROSE: Thank you, Your Honor. This goes back
14 to the Blurton case that I cited to you earlier. In discovery
15 we've been provided with an incident report that was prepared
16 by Mr. Vandiver, probably reviewed maybe by some other people
17 contributing to it.

18 But in it it says that Mr. Brown stated that when
19 transporting Mr. Gartrell to Abbeville County Memorial
20 Hospital he stated to him that Mr. Harrison and Mr. Howland,
21 who is the name on the witness list but not ever been charged,
22 lured him around the building and the other guy shot him.

23 Mr. Brown stated to Officer Vandiver that
24 Mr. Howland was there when the shooting took place and told
25 him that Mr. Harrison had brought Mr. Gartrell to where they

1 were around the side of Apartment 402 and that Mr. Haskell
2 shot Mr. Gartrell.

3 The officer has testified in response to questions
4 of Mr. Buergey that when he attempted to interview the victim,
5 Mr. Gartrell, he couldn't speak. We expect through witnesses
6 Ms. Cole, who was there when the shooting took place, that she
7 will say he was talking but he was mumbling and it was
8 difficult to hear, things of that nature.

9 We expect that testimony will show through officer
10 Smith, who has been sequestered, that when he went to
11 interview, after he had made an arrest, two arrests, he goes
12 and interviews Mr. Gartrell in the hospital. Again, he's
13 having difficulty speaking and there's this question about who
14 shot him and did you ever tell anybody Mr. Haskell shot him,
15 and he does not know the identity of the shooter. The shooter
16 was a masked man we expect the evidence will show.

17 Mr. Smith then interviewed Mr. Gartrell a second
18 time at the police station when he could talk, and a written
19 statement was prepared. And again he said he did not know who
20 shot him. The way we expect through Mr. Smith's testimony to
21 go through a timeline of how this investigation progressed,
22 when the decisions to make arrests and that sort of thing were
23 made and that this information that was given by Torey Brown
24 that has proven to be false, absolutely false on multiple
25 levels, was significant factors that they relied on in the

1 investigation.

2 We are most definitely not offering this to prove
3 that Mr. Gartrell said that Mr. Haskell was the shooter or
4 that Mr. Haskell was involved or that Mr. Gartrell said
5 anything that was able to be relied on in the investigation.
6 In fact, we are offering this through these witnesses to prove
7 that it was said and that it was not true.

8 And so under the definition of hearsay, we're
9 looking for 801, 802, then you get into exceptions into 803
10 and 804, we never get to the exceptions in 803 and 804 because
11 we're looking at the definition of hearsay. Hearsay is an
12 out-of-court statement offered for the truth of the matter
13 asserted. We are not offering these statements for the truth
14 of the matter asserted.

15 It's a lot like in the Blurton case when we put this
16 on the record earlier where statements that were being made
17 that were not true, were not being claimed to be true, were
18 either going to the state of mind of the defendant when he was
19 being brought into the crime not thinking it was a crime or
20 went to show that the co-defendant was a very persuasive
21 person about making false allegations. And so we think that
22 the hearsay objection is not appropriate.

23 Now, all that being said, Mr. Brown, Torey Brown is
24 in the Department of Corrections. Mr. Anthony had indicated
25 to me last night that his office was going to have a

1 transportation order done so that he can be here tomorrow.

2 We can do this the easy way or the hard way. We
3 can get into it now or we can call Mr. Brown as a witness on
4 Wednesday during our case, at which time I put Mr. Vandiver
5 back on the stand, I put Mr. Smith back on the stand, if he
6 has already testified, and it is going to draw this case out
7 a lot longer.

8 One way or the other I think we're going to be able
9 to present this evidence. It's just a matter of how it comes
10 in and which rule it comes in, and we think the way we are
11 trying to do it this morning is appropriate, Your Honor.

12 THE COURT: Mr. Anthony?

13 MR. ANTHONY: Well, I think his argument is working
14 on an assumption that what Mr. Brown said was the basis for
15 the charge and that's not on the record. There's no evidence
16 that what Mr. Brown told Officer Vandiver led to securing the
17 warrants for Mr. Haskell or Mr. Harrison. So I suppose they
18 might can make that argument if they introduce evidence of
19 that fact. Evidence of that fact has not been introduced.

20 To just put this statement in right now and say
21 well, it's not for the truth, we want to show how it impacted
22 the police it sort of puts the cart before the horse because
23 they haven't shown that it did affect the police. That's just
24 pure speculation right now on their part. So if they can lay
25 a basis for that in the record later on I guess it might be --

1 THE COURT: So you're saying if a better foundation
2 was laid you may or may not object?

3 MR. ANTHONY: I might have to concede it's
4 admissible if they could lay a foundation for it. But at this
5 point in time I don't think even under their theory, which I
6 think is kind of hard to expect jurors to be able to say well,
7 I can consider this for the truth but I can't consider that
8 for the truth, but assuming if we want to let the jury to try
9 to do that, I don't think that there's been any foundation
10 shown for him asking to do it right now.

11 MR. GROSE: Your Honor, I would call Officer Smith
12 for the purpose of this hearing to lay out that foundation, if
13 that's what Mr. Anthony wants me to do. I may not be able to
14 get him to testify that that's what he did but I can show a
15 sequence of events, circumstantially, I believe, that he
16 interviewed Mr. Brown -- he received information either in an
17 incident report from Officer Vandiver, he interviewed
18 Mr. Brown, he didn't interview Ms. Cole, who at the time were
19 romantically linked to each other.

20 That following that interview on the 11th he
21 obtained arrest warrant s. On the 12th he interviewed
22 Mr. Harrison. On the 16th he interviewed Mr. Haskell. He
23 interviewed Gartrell, the victim, on the 17th for the first
24 time and then on March 8th for the second time. He
25 interviewed Ms. Cole again on the 8th.

1 Mr. Norman, that was mentioned by the State earlier,
2 was interviewed on March 18th. There was Mr. Rayford, who I
3 don't know that they are going to rely on, he mentioned him in
4 opening, but he was interviewed in August of '04. And Mario
5 Adams, who they said they were going to rely on to put
6 Mr. Haskell at the scene, was interviewed in February of this
7 year, almost 2 years later.

8 So I would propose that by virtue of the fact that
9 the warrants were obtained after only 2 interviews, which were
10 Mr. Torey Brown and Ms. Cole, and that they were served when
11 the interviews were made of Mr. Harrison and Mr. Haskell that
12 circumstantially I think I can show that this false
13 information substantially tainted this information.

14 THE COURT: Who are you alleging made the decision
15 based on this false information to have a warrant issued?

16 MR. GROSE: Mr. Smith, because I believe he was the
17 affiant on the warrants.

18 THE COURT: I think my ruling, and this is what
19 appears to have to be done, is certainly I think if this
20 gentleman took the statements --

21 MR. GROSE: Well, this gentleman has -- well, he has
22 statements documented in his incident report that were done
23 either on the incident date, which was the 10th, maybe into --
24 I'm not sure of the time, but no later than the early morning
25 hours. The incident report -- the date on the incident report

1 -- well, the date on the incident report is the 10th. So
2 presumably these statements were made and documented on the
3 10th.

4 THE COURT: So he took the statements, though, from
5 Mr. Brown?

6 MR. GROSE: He took the first statement from
7 Mr. Brown, which was not a written or recorded statement.
8 It's documented in the incident report.

9 THE COURT: Verbal?

10 MR. GROSE: It was verbal. Then Mr. Smith took the
11 next statement, which was on the 11th. At 9:14 a.m. was when
12 there was a waiver of rights done and the statements timed at
13 9:52 a.m.

14 THE COURT: So what purpose are you trying to put in
15 the contents of the statement through this gentleman?

16 MR. GROSE: Because Mr. Smith, I think he's
17 testified -- well, first of all, the information that he was
18 given that night was that Torey Brown was saying that
19 Mr. Gartrell was saying things about what happened to him.
20 That from the beginning Torey Brown was saying things that
21 were false. That information was then put in an incident
22 report, it was given to Mr. Smith.

23 He said that Mr. Smith was the one who continued the
24 investigation, and I believe Mr. Smith would likely testify
25 that he either received information directly from Mr. Vandiver

1 or through the incident report or both and continued with the
2 investigation.

3 THE COURT: You don't intend to offer or you don't
4 plan to offer that this particular officer took any action
5 other than to write down and memorialize the statement, and
6 turn it over to the investigating officer?

7 MR. GROSE: Right. He wrote it down and turned it
8 over to the investigating officer and then that was -- well,
9 now, he's in the room as the chief investigating officer. I
10 mean, part of our --

11 THE COURT: I'm not sure what that definition
12 necessarily means. I mean, you are saying though that certain
13 actions were taken based on those statements. That's what I'm
14 focussing on, who took the actions, who then would be the
15 person who would have been affected by these statements to
16 show their state of mind, the state of mind of that
17 individual. This gentleman did not take any action other than
18 write it down and turn it over.

19 MR. GROSE: Right. Well, and it goes to -- and I
20 remind you. We're not saying that these statements are true.
21 He took it down, he wrote it down probably thinking it was
22 true at the time.

23 THE COURT: It's got to have some relevance to the
24 case, and you are saying the relevance to the case is that
25 that is the statement upon which certain actions were taken.

1 MR. GROSE: Right.

2 THE COURT: Somebody took actions based on this.
3 This is not the gentleman who necessarily took those actions.
4 I'm not sure he can testify about what the state of mind of
5 the chief investigating officer was. That's for that person
6 to say, I assume --

7 MR. GROSE: Right. But I have to go through this
8 chronologically, Your Honor. We have to show --

9 THE COURT: See, I'm getting to the point where I
10 don't think I have a problem with you asking him whether he
11 took statements and how he recorded them and what he did with
12 them. I have no problem with doing that.

13 I'm not sure as far as this witness is concerned
14 what the content of the statement is has any relevance
15 whatsoever, other than he felt like whatever was said was
16 germane to the investigation, therefore he wrote it down.

17 Now, when you get to the gentleman who sought the
18 warrant, his state of mind, maybe you can offer, you can get
19 into, I think, what his state of mind is and why he sought the
20 warrant and if it was based on this statement that was
21 erroneously given. Now we're talking about a different issue,
22 I think. You see what I'm say?

23 MR. GROSE: Well, I mean, I don't mind going in
24 sequences because I just want to get that recorded
25 information. I think it's important that the jurors know

1 what he recorded because, you know, there's a very good
2 argument here that maybe Torey Brown is the one who really did
3 this, Your Honor, and that's --

4 THE COURT: Again, there's no question, no question
5 has been raised as to whether he actively recorded it. If
6 that became the case then maybe that's an issue you can go
7 into with him. I assume he's going to testify he did write
8 those things down and he wrote them down accurately.

9 I don't think I heard in your argument that there is
10 anybody who is going to testify that he took them down
11 incorrectly, is there, or I'm not hearing it right?

12 MR. GROSE: Right. My understanding is, is he took
13 them down correctly based on what was stated to him, gave them
14 to Mr. Smith, Mr. Smith relied on them.

15 In fact -- and it may be my interpretation, but the
16 tone of some of the material that's written in Mr. Smith's
17 interview with the victim, the first interview that happened
18 in the hospital, you know, he was surprised that the victim
19 was not confirming the statements that had been given to him.
20 I mean, at some point the substance of what Mr. Smith received
21 from Mr. Vandiver is going to have to be known.

22 THE COURT: I think it may come in. I'm not sure
23 this is the right point.

24 Mr. Anthony, anything further?

25 MR. ANTHONY: I just think that at some point in

1 time it might be relevant. It is not relevant right now.

2 THE COURT: Now, let's see. Mr. Padgett, do you
3 have anything you want to add for your client? I know that
4 Mr. Grose is making this argument but that was Mr. Buergey who
5 informed me he was doing that for their client. I don't know
6 if your client has a different position so I'm going to give
7 you an opportunity to speak.

8 MR. PADGETT: We join in the motion.

9 THE COURT: All right. We're going to take about a
10 ten-minute break. Court will be at ease.

11 Sir, let me instruct you. You're in the middle of
12 your testimony. It would be highly improper for you to
13 discuss your testimony with anybody during our break. You
14 certainly can get up and move around the courtroom but I will
15 instruct you, please do not discuss your testimony with anyone
16 at point in time.

17 Court's at ease. Thank you very much.

18 (WHEREUPON, a brief recess was taken.)

19 THE COURT: Concerning the evidentiary question, I'm
20 going to allow the defense to ask the witness about taking the
21 statements.

22 Is Mr. Grose coming back?

23 MR. BUERGEY: I believe so, Your Honor.

24 [PAUSE.]

25 THE COURT: Mr. Grose, I was just announcing I'm

1 going to allow the defense to go forward and ask the witness
2 concerning the taking of the statements, what he did with them
3 at this time. Certainly, he's subject to recall later on if
4 you need to do so.

5 However, concerning whether or not the statement
6 itself is admissible, I think that it has to be admissible for
7 some relevant purpose. Normally if it's being used I think
8 it's to be used to show what was considered of the state of
9 mind of the person who took action upon it.

10 This witness has not testified as to taking any
11 action upon the statements other than to receive them. So
12 I'll allow that much to be elicited from this witness at that
13 time and reserve my ruling of admissibility of the statement
14 for a later witness.

15 Anything further, gentlemen?

16 MR. ANTHONY: Not from the State.

17 MR. PADGETT: No, Your Honor.

18 MR. BUERGEY: Nothing, Your Honor.

19 THE COURT: Bring the jury back.

20 (WHEREUPON, the jury enters the courtroom at
21 approximately 11:38 a.m.)

22 THE COURT: The record should reflect that all
23 jurors have returned to the courtroom. I trust everyone had a
24 good break. I have sustained the objection at this time.

25 I'll allow the defense to continue its

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 cross-examination.

2 MR. BUERGEY: Thank you, Your Honor.

3 BY MR. BUERGEY:

4 Q. Officer Vandiver, at some point did you speak with
5 Torey Brown about this incident?

6 A. I did.

7 Q. And where was that?

8 A. That was at the Abbeville County Hospital.

9 Q. And was that on the night that this incident
10 occurred?

11 A. That's correct.

12 Q. Do you remember whether that was before or after
13 Mr. Gartrell was taken to Greenwood?

14 A. He was still in the Abbeville Hospital at that time.

15 Q. And what form was that statement? Was it an oral
16 statement, a written statement?

17 A. It was an oral statement trying to find out what had
18 actually happened.

19 Q. And what means did he use to record -- without going
20 into what he said, what means did you use to record what he
21 said?

22 A. Just memory.

23 Q. Did you write it?

24 A. Nothing was recorded or written down.

25 Q. Did you write anything in an incident report about

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 it?

2 A. I did in the incident report, yes.

3 Q. And in the incident report you included the fact
4 that on that night you had spoken to Torey Brown?

5 A. That's correct.

6 Q. And you wrote down -- without going into what he
7 said, you wrote down what he said?

8 A. In parts. I'm writing the incident report like what
9 allegedly happened at Hickory Heights.

10 Q. And you wrote a summary of what Mr. Brown had told
11 you and put it in your incident report?

12 A. That's correct.

13 Q. And I know that you had testified that earlier you
14 had been to Ms. Cole's apartment. On the night of this
15 incident, did you have any opportunity to speak with Ms. Cole
16 about what happened?

17 A. I did. She was upset over the blood on her floor.

18 Q. Was it at her apartment where she spoke to you about
19 the incident or was it somewhere else?

20 A. She only spoke to me that he came running in with
21 his mouth bleeding.

22 Q. And the information that Ms. Cole had given you that
23 night at the apartment, did you write that down and put that
24 in your incident report?

25 A. No, I did not.

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 Q. Did you write down in your incident report that you
2 had spoken with Ms. Cole?

3 A. I may have. If you hand me the incident report I
4 can refresh my memory with it.

5 MR. BUERGEY: Can I approach the witness, Your
6 Honor?

7 THE COURT: Yes, you may.

8 BY MR. BUERGEY:

9 Q. Does this look like the incident report that you did
10 on the incident?

11 A. I'll have to see the first page.

12 [PAUSE.]

13 That's correct.

14 Q. And in that report you mentioned speaking with
15 Ms. Cole about the incident?

16 A. Only that she called 911 to report it.

17 Q. Okay. But you put in your incident report Ms. Cole
18 stated that Mr. Gartrell busted through the door and called
19 the police?

20 A. Right, but, I mean, it still hadn't told me what
21 happened. He just busted through the door.

22 Q. So that was the extent of your conversation with
23 Ms. Cole about what happened?

24 A. That is correct.

25 Q. And other than writing it down in the incident

RAYMOND VANDIVER - CROSS BY MR. BUERGEY

1 report that conversation wasn't recorded any other way?

2 A. No, it was not.

3 Q. And, again, without going into the facts of what
4 Mr. Brown told you, based on what Mr. Brown told you and what
5 you put in your incident report in your role as investigating
6 this case what did you do based on what he told you?

7 A. I did an incident report. I had already notified
8 Lieutenant Smith, which is our investigator for the police
9 department, and this is what I had gathered that had taken
10 place and what had been said and we were going to have a basis
11 of where we were going to start, which I did give to John
12 Smith.

13 Q. So you took all the information you had been given
14 from Ms. Cole and from Mr. Brown and turned that over to
15 Lieutenant Smith?

16 A. Right. Right.

17 MR. BUERGEY: Thank you. That's all the questions
18 we would have, Your Honor.

19 Beg the Court's indulgence briefly?

20 THE COURT: Yes.

21 [PAUSE.]

22 BY MR. BUERGEY:

23 Q. And specifically when you talked to Ms. Cole she was
24 upset at the blood being on her floor?

25 A. That's correct.

RAYMOND VANDIVER - REDIRECT BY MR. ANTHONY

1 MR. BUERGEY: That's all the questions we would
2 have, Your Honor.

3 THE COURT: Anything on redirect?

4 MR. ANTHONY: Just briefly.

5 REDIRECT EXAMINATION

6 BY MR. ANTHONY:

7 Q. You said there were about 15 people at the scene
8 when you arrived?

9 A. That's from the parking lot on down to where it
10 actually happened.

11 Q. Okay.

12 A. If anything happens in the Village everybody comes
13 out.

14 Q. How many people were actually in the apartment?

15 A. In the apartment? I would say three to four were in
16 there, not specific.

17 Q. Not more than four?

18 A. Not more than four.

19 Q. And one of those was Mr. Harrison?

20 A. That is correct.

21 Q. And is Mr. Harrison in the courtroom?

22 A. Yes, he is.

23 Q. And would you point him out. Just describe what
24 he's wearing.

25 A. He's sitting there beside his attorney with the

RAYMOND VANDIVER - RECROSS BY MR. PADGETT

1 glasses on.

2 Q. And is Mr. Haskell in the courtroom?

3 A. He is in the courtroom.

4 Q. And how is he dressed?

5 A. He has on a black suit.

6 Q. Okay. And where is he seated in relation to the
7 attorneys?

8 A. He's sitting between the two defense lawyers there.

9 MR. ANTHONY: Your Honor, I'd ask that the record
10 reflect that Mr. Harrison and Mr. Haskell have been
11 identified.

12 THE COURT: The record so reflects.

13 MR. ANTHONY: That's all on redirect.

14 THE COURT: Anything you'd like to ask, Mr. Padgett?

15 MR. PADGETT: I do have one.

16 RECROSS-EXAMINATION

17 BY MR. PADGETT:

18 Q. Sergeant, during the course of your investigation
19 did you learn what, if anything, the shooter was wearing on
20 their face?

21 MR. ANTHONY: Objection.

22 A. Not during my part of the investigation.

23 MR. ANTHONY: I'll withdraw the objection at this
24 time.

25 MR. BUERGEY: Just --

RAYMOND VANDIVER - RECROSS BY MR. PADGETT

1 THE COURT: I'm not sure Mr. Padgett is finished.
2 He said one but sometimes attorneys don't always -- I don't
3 always hold attorneys to that.

4 Do you have any other questions?

5 MR. PADGETT: I do, Your Honor.

6 THE COURT: Okay. Go ahead.

7 BY MR. PADGETT:

8 Q. If I could hand you your incident report again.

9 MR. PADGETT: May I approach, Your Honor?

10 THE COURT: Yes, you may.

11 A. It said one of them had a mask.

12 Q. One of them?

13 A. Yes.

14 Q. Which one?

15 MR. ANTHONY: Objection. This is calling for
16 hearsay and it's beyond the scope of redirect.

17 MR. PADGETT: Your Honor, I would submit that I've
18 only asked during the course of his investigation what he
19 learned. I'm not asking if he told him what.

20 THE COURT: I'll overrule the objection.

21 A. According to the report, the information was given
22 to me that Mr. Harrison lured him around the building. The
23 one with the mask was on -- which was not identified, I never
24 identified him in my incident report neither.

25 Q. Right. The person was not identified. What did the

RAYMOND VANDIVER - RECROSS BY MR. PADGETT

1 person wearing the mask do?

2 THE COURT: At this point I'm going to caution that
3 the reading of the incident report is improper and I'm going
4 to ask the witness to review the incident report, use it to
5 refresh his memory. However, placing the incident report into
6 the record has not been allowed at this time and I'll ask the
7 witness not to quote the incident report. You may use that
8 report if it's your report to refresh your memory.

9 A. Right. The one with the mask is actually the one
10 that had the gun and did shoot Mr. Gartrell.

11 Q. Thank you, Sergeant. And also, Sergeant, in the
12 course of your investigation do you have any -- or did you
13 uncover any evidence, physical evidence linking Mr. Haskell to
14 the shooting?

15 A. Myself, no.

16 Q. As an officer participating in the investigation, do
17 you have any knowledge of any physical evidence linking
18 Mr. Haskell to the shooting?

19 A. I do not.

20 MR. PADGETT: Thank you. I have nothing further,
21 Your Honor. Thank you.

22 MR. BUERGEY: May we approach, Your Honor.

23 THE COURT: You may approach, yes.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: Ladies and gentlemen of the jury, at

1 this point in time I'm going to ask you to retire to your jury
2 room. Again, don't begin discussions of the case until such
3 time as I've instructed you to do so. You may retire to the
4 jury room. Thank you very much.

5 (WHEREUPON, the jury leaves the courtroom at
6 approximately 11:50 a.m.)

7 THE COURT: You indicated you wished to be heard on
8 this, Mr. Grose?

9 MR. GROSE: Yeah. Your Honor, we've been cut off
10 from getting in who told him what in the statement about what
11 Mr. Brown might have said and through examinations of others
12 -- by other parties and through the State not objecting
13 through information the witness volunteered. Some of that
14 information is starting to come in now and --

15 THE COURT: Well, now, so far I have never seen what
16 we are talking about. You want to have that marked for
17 identification and a copy presented to me so I can see what
18 you're talking about.

19 MR. GROSE: If I can find a clean copy. My copy has
20 a lot of markings on it.

21 (WHEREUPON, Defendant Harrison's Exhibit No. 1, a
22 Document, was marked for identification only.)

23 THE COURT: Okay, sir. Give me a minute to look
24 over it.

25 [PAUSE.]

1 All right, sir. I'll be happy to hear from you.

2 MR. GROSE: Your Honor, the part that I'm looking
3 for is on the narrative page two that says Mr. Brown stated
4 that when transporting Mr. Gartrell to A. C. M. H., which is
5 Abbeville County Memorial Hospital, he stated to him that
6 Mr. Harrison and Mr. Howland lured him around the other
7 building and the other guy shot him. And then there's more
8 discussion with more details and again talks about Mr. Haskell
9 being the shooter.

10 THE COURT: Yes, sir.

11 MR. GROSE: And he's volunteered to put some of that
12 into evidence and --

13 THE COURT: What has he volunteered to put into
14 evidence?

15 MR. GROSE: Well, I'm not talking about putting the
16 incident report into evidence but he mentioned that the
17 information that he received was is that Harrison lured him
18 around the building, somebody with a mask shot him, and I
19 believe, Your Honor, it's the rule --

20 THE COURT: Well, the part about the mask, that's in
21 the part of the statement that says that Mr. Gartrell stated
22 to Officer Vandiver that Harrison lured him around the
23 building --

24 MR. GROSE: Right --

25 THE COURT: Let me finish. To where the other two

1 were waiting and the one with the mask pulled down to his nose
2 shot him. Then it starts with what Mr. Brown stated.

3 MR. GROSE: Well, he's testified, I believe, that
4 Mr. Gartrell didn't tell him anything.

5 THE COURT: Well, I'm looking at what the statement
6 says. The statement says that that was stated by Mr. Gartrell
7 to Officer Vandiver.

8 MR. GROSE: But he's also testified he was mumbling
9 and he couldn't understand him. I mean, maybe we need to
10 flesh this out more. I also cite the Court to Rule 106. Now
11 that they brought in part of it they can be made to have to
12 bring in the rest of it.

13 THE COURT: Now, I don't know that the State brought
14 anything in.

15 MR. ANTHONY: I hadn't brought anything in, Your
16 Honor.

17 THE COURT: I think Mr. Padgett asked the questions
18 about who had the mask.

19 MR. GROSE: Well, Mr. Anthony didn't object with
20 somebody else asking questions and his witness volunteering
21 selective positions of --

22 THE COURT: And I made it clear and I instructed the
23 jury and the attorneys that I was not allowing the statement
24 in, I would not admit it, it can be used only for the purposes
25 of refreshing the witness's memory and it should not be quoted

1 or this gentleman reading from it. And I made it clear that
2 that's my ruling at that point in time. I'll be glad to
3 strike that from the record if you want.

4 MR. GROSE: I'm not moving it to be stricken.

5 THE COURT: But at this point in time, I've
6 instructed the attorneys and the witness this document is not
7 to be read from, it's not to be admitted in any fashion. It's
8 an incident report. These aren't admissible.

9 MR. GROSE: I understand that. But this jury has
10 heard that, it has not been stricken from the record --

11 THE COURT: Then are you making the motion to
12 strike?

13 MR. GROSE: I'm not making a motion, Your Honor.

14 THE COURT: Do you want it left in then?

15 MR. GROSE: I want it in but I want it in
16 completely. And it's waived at this point. Nobody made that
17 motion contemporaneously. There was no objection, there was
18 no motion. It was contemporaneously with admitting --

19 THE COURT: Well, in keeping with my ruling I'll be
20 happy to make that ruling to strike it from the record.

21 MR. PADGETT: Which part is being stricken, Your
22 Honor?

23 THE COURT: Anything that was quoted from the
24 statement, from the incident report by this witness. He can
25 use the incident report to refresh memory. He's not allowed

1 to read it into the record. When I realized what he was doing
2 I stopped him, and anything that came in before that that was
3 read from the statement I'll be happy to strike it from the
4 record and instruct the jury to disregard it.

5 MR. GROSE: Well, we're not asking for that, Your
6 Honor.

7 THE COURT: Well, I will do that on my own motion
8 sua sponte. I'm not going to allow him to read that into the
9 record and have it made part of the record then argued by you
10 as a reason why it should come in. I'll sua sponte. I will
11 see that that is stricken from the record and disregarded by
12 the jury --

13 MR. GROSE: And just note --

14 THE COURT: And, again, I'm not ruling on whether or
15 not this is admissible at a later time.

16 MR. GROSE: Right.

17 THE COURT: And I think I've made my ruling on that
18 question clear earlier. This gentleman does not profess to
19 have taken any action based on these statements other than to
20 take them down and put them in his report. Now, if you bring
21 someone in later.

22 So for evidence to come in it has to be relevant as
23 to some part of the inquiry. The fact that an individual made
24 a statement to a police officer and no action was taken on it
25 and that statement is untrue I'm not sure it's evidence until

1 you can show that some action was based upon that statement,
2 that, again, the warrant was obtained as a result of that
3 statement, something of that nature is relevant.

4 But to take someone who is at the scene of the crime
5 and may have given a false statement and then try to use that
6 as evidence to prove anything about guilt or innocence is
7 interesting but, you know, it has to be relevant otherwise,
8 and I have not heard the relevance yet as to that, and that
9 was my ruling previously.

10 MR. GROSE: Yes, sir, and I would just state for the
11 record that we followed your ruling about that and then in
12 other stuff they got away from it so I think --

13 THE COURT: Now, when you say they, it was another
14 defendant who was questioning a witness. And, again, as soon
15 as I realized what he was doing I stopped him, made what I
16 think to be the appropriate ruling.

17 I will certainly instruct the jury to disregard
18 anything that may have been read from the statement. That
19 will be stricken from the record and they are to disregard it
20 and not use it in any fashion whatsoever in reaching a verdict
21 in the case. And, again, I am not ruling as to whether or not
22 that may not be admissible in the proper context in a later
23 witness.

24 MR. GROSE: And just for the record, when you make
25 that we are going to object to that being stricken for the

1 record.

2 THE COURT: I understand. That's fine.

3 MR. GROSE: Thank you, Your Honor.

4 THE COURT: Anything, Mr. Padgett, you want to say?

5 MR. PADGETT: No, Your Honor.

6 THE COURT: Mr. Anthony?

7 MR. ANTHONY: No, sir.

8 THE COURT: Bring the jury back.

9 (WHEREUPON, the jury enters the courtroom at
10 approximately 12:00 p.m.)

11 THE COURT: The record should reflect that all
12 jurors have returned to the courtroom.

13 A little earlier in this witness's testimony I gave
14 the instruction to the witness that the incident report in
15 this matter could not be read from to the jury. To the extent
16 that anything was taken from the incident report and placed
17 before you I am telling you at this point in time I am ruling
18 that inadmissible.

19 I am striking those matters from the record, and by
20 striking those matters from the record you will later be
21 instructed that you cannot use any of that information in any
22 fashion whosoever in reaching a verdict in this case. So that
23 is my ruling in regards to the objection that is before the
24 Court and I am giving that instruction.

25 You wish to put anything on the record?

RAYMOND VANDIVER - RECROSS BY MR. BUERGEY

1 MR. BUERGEY: Just note our objection.

2 THE COURT: Objection is noted. You may proceed
3 with your examination.

4 RECROSS-EXAMINATION

5 BY MR. BUERGEY:

6 Q. Just a couple questions, Sergeant Vandiver. I think
7 you testified on direct that when you first arrived at
8 Apartment 402 that in the general area there was about 15 or
9 so people around; is that correct?

10 A. That's correct.

11 Q. And then on redirect when Mr. Anthony asked you to
12 be more specific you said that actually inside the apartment
13 it was only about 3 or 4 people; is that correct?

14 A. That's correct.

15 Q. Do you remember, other than Mr. Harrison and
16 Ms. Cole, who you've already testified were there, do you
17 remember who any of the other people were?

18 A. I know them when I see them, but putting a name with
19 them I did not know them.

20 MR. BUERGEY: That's all the questions I would have,
21 Your Honor.

22 THE COURT: Sir, you may step down. Thank you very
23 much.

24 The State may call its next witness.

25 MR. ANTHONY: We call Mr. Gartrell.

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 THE COURT: Come forward, sir, be sworn.

2 RODERICK GARTRELL, after having been duly
3 sworn, testified as follows:

4 THE COURT: All right, Mr. Anthony. It's your
5 witness.

6 MR. ANTHONY: Thank you, Your Honor.

7 DIRECT EXAMINATION

8 BY MR. ANTHONY:

9 Q. Would you state your name, please.

10 A. Roderick Gartrell.

11 Q. And, Mr. Gartrell, where do you live?

12 A. Alberton, Georgia.

13 Q. And I want to take you back now to February 10th,
14 2004. What did you do that day?

15 A. Came to Abbeville.

16 Q. And how did you get to Abbeville?

17 A. Torey Brown.

18 Q. And you say Torey Brown. What did Torey Brown do to
19 help you get to Abbeville?

20 A. He came to Georgia and picked me up.

21 Q. Now, how do you know Torey Brown?

22 A. From church.

23 Q. I'm sorry?

24 A. From church. We grew up together.

25 Q. And what time did you two leave Georgia, leave

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 Alberton to come to Abbeville?

2 A. Probably around noon, something like that.

3 Q. And when the two of you got -- well, let me ask you
4 this. Did anybody go with you to Abbeville or was it just you
5 and Torey Brown?

6 A. No. Me and Torey, and I think somebody else. I
7 can't remember. Yeah, there was somebody else, but I can't
8 remember.

9 Q. Did somebody else go with you to Abbeville from
10 Alberton?

11 A. Yeah.

12 Q. Okay. Okay. And where did you go?

13 A. When I first got to Abbeville we stopped by Clarence
14 Harrison's house.

15 Q. Okay.

16 A. Blue. We call him Blue.

17 Q. And after you went to Clarence Harrison's house
18 where did you go then?

19 A. Torey's mom's house. His mom's house.

20 Q. And after you went -- when you say Torey's mom's
21 house, you mean Torey Brown's mom's house?

22 A. Yes.

23 Q. And after you went to Torey Brown's Mother's house
24 where did you go then?

25 A. To Ms. Cole's apartment in the Village.

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 Q. And what was Ms. Cole's relationship to Torey Brown
2 at the time?

3 A. His girlfriend.

4 Q. And what did you all -- what name did she go by?
5 What did you all call her?

6 A. Nini.

7 Q. Nini?

8 A. (Nodded).

9 Q. Okay. And approximately what time did you get to
10 Nini's apartment at the Village?

11 A. Probably around six o'clock.

12 Q. And when you got there, what did Torey do?

13 A. Torey left and went to the store.

14 Q. And what did you do?

15 A. I stayed in there for a second then I left, you
16 know, went through the apartment complex.

17 Q. And was anybody -- when you left Nini's apartment to
18 go out and, you know, kind of visited around at the apartment
19 complex was anybody going with you or was it just you?

20 A. Just me.

21 Q. And which way did you go?

22 A. I came, went up the steps and made a left and walked
23 toward -- down towards the next apartment complex called
24 Oakland.

25 Q. And as you were walking around down in Oakland did

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 you see anybody that you knew?

2 A. I knew some faces but I didn't know too many names.

3 Q. And did you end up having a conversation with
4 anybody?

5 A. I started back up toward the Village, like up the
6 walkway toward the Village. I ran into D.

7 Q. And do you know D's real name?

8 A. I think Darren. I think Darren.

9 Q. And where did you and D go?

10 A. We were standing there talking for a split second.
11 We were just talking, and he was like -- he told me there was
12 some new girls that had moved in the neighborhood. So we were
13 conversating.

14 Q. And you went to talk to the girls?

15 A. Yeah.

16 Q. Okay. All right. And then where did you go to?

17 A. We walked back down toward by the trash can. See,
18 we were like in the middle of the apartment complex. So we
19 walked back toward the trash cans.

20 Q. Toward the trash cans at the Village?

21 A. Yes, sir.

22 Q. And as you were there near the trash can what
23 happened?

24 A. Blue, Clarence Harrison, Blue, he had walked up.

25 Q. And what did he say or what happened?

1 A. He was like, B. I. gone. You now B. I. Yeah, he
2 ain't gone nowhere but to the store.

3 Q. Now, when you say B. I., who is B. I.?

4 A. Torey Brown.

5 Q. Torey Brown, okay. And you said he'd gone to the
6 store?

7 A. Yeah. I said he ain't gone nowhere but to the
8 store.

9 Q. And what did Blue say?

10 A. He said, Man, you want to go up there and wait on
11 him?

12 Q. Go where and wait on him?

13 A. Like walk up to Nini's house and wait on him because
14 we knew he going to come back up there.

15 Q. Okay. All right. So what did you do?

16 A. We started walking across the street together and --

17 Q. Let me ask you this. How long was it, like from the
18 time Blue approached you and suggested this, how long was it
19 from that time until the time that you got back to Nini's
20 apartment or outside of Nini's apartment?

21 A. Probably within, I'd say two minutes. Two minutes
22 at the most. Two or three minutes at the most.

23 Q. Okay. All right. And so where did you walk?

24 A. We walked -- well, first B came through the
25 neighborhood, and I seen a look on Blue's face. Like, he was

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 like walking toward the front of me like -- he was looking
2 like kind of paranoid or something, like something was up.

3 Q. And when you walked -- when you and Blue headed back
4 to Nini's apartment what did D do? What did Darren do?

5 A. He stayed there, as far as I know. I mean, he could
6 have walked behind me but I didn't really look back.

7 Q. And where did you go -- how did you have to go to
8 get back to Nini's apartment?

9 A. We had to walk straight up, like up towards across
10 the street like, and walk up the hallway. We walked up the
11 street toward the walkway.

12 Q. And then how did you turn and where did you go?

13 A. Made a right, and I was on the left side going down
14 the steps and Blue was on the right side going down the steps.

15 Q. And what happened when you got down the steps?

16 A. I walked down the steps, and I got by the first
17 apartment door going toward Nini's house, the first apartment
18 door and --

19 Q. What happened then?

20 A. I got shot.

21 Q. Well, what happened before you got shot? Who did
22 you see?

23 A. Somebody came with a mask on me. From the nose down
24 had a mask on, like a bandanna like. It was white, I know
25 that.

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 Q. And what did the man with the mask do?

2 A. He was like, Give it up, whatever you got. By that
3 time the gun went off and he shot me.

4 Q. Where did the man come from?

5 A. Behind the bushes.

6 Q. And would you describe the gun.

7 A. He was like kind of slender built --

8 Q. No, I mean the gun. The gun.

9 A. Oh, chrome.

10 Q. Do you know what type of gun it was?

11 A. No. I know chrome. It looked like a nine or
12 something. I know it was chrome.

13 Q. And what did the man say to you?

14 A. Give it up.

15 Q. And then could you -- what happened right after he
16 said give it up?

17 A. In a split second he said, Give it up. Then I seen
18 the flash, then that's when he shot me.

19 Q. When he said give it up, were you able to react to
20 him in any way before you got shot?

21 A. No.

22 Q. And where were you hit?

23 A. Right here in my lower bottom lip (indicated).

24 Q. All right. And did you have anything in your mouth
25 at the time covering up your teeth?

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 A. Gold teeth.

2 Q. You had gold teeth?

3 A. (Nodded).

4 Q. And I'm showing you State's Exhibit 1. I ask that
5 you take a look at that. Does that object look familiar to
6 you?

7 A. Yes, that's my grille.

8 Q. Okay. That's the kind of grille you were wearing?

9 A. That's it. This is mine.

10 Q. Okay. That's what you were wearing when you got
11 shot?

12 A. Yeah.

13 Q. And the man that shot you, what could you tell about
14 him as far as a description goes?

15 A. Slender build, kind of a little taller than me.

16 Q. And could you see the man's face?

17 A. No. I just seen him from here down. He had it like
18 tied like this (indicated).

19 Q. And after you were shot in the mouth what did you
20 do?

21 A. After I was shot in the mouth Blue was like -- he
22 was trying to get up on me. I pushed him off me, and I went
23 into Ms. Cole's apartment then.

24 Q. And were you able to get in her door?

25 A. Yeah. I hit it one time and I just went on up in

1 there.

2 Q. And then what did Blue do when you went inside
3 Ms. Cole's apartment?

4 A. He followed me up in there.

5 Q. And what was he doing when he followed you in?

6 A. Trying to go in my pocket and pat me down.

7 Q. And did he say anything to you when he did this?

8 A. He was like, The police come so if you got any dope
9 or money on you you better give it to me right now. I was
10 like, I ain't got none. And I pushed him off me, then I went
11 down the hall.

12 Q. And when you came in where was Ms. Cole, Nini?

13 A. She was in the kitchen. I think she was washing
14 dishes or something. I don't know.

15 Q. And what did she do when you came in her apartment
16 shot in the mouth?

17 A. Like fainted. She was hollering.

18 Q. And did Blue say anything to her?

19 A. She was like, What happened? What happened? He was
20 like, He got hit in the mouth.

21 Q. He said you had been hit in the mouth?

22 A. Yeah. And I was like, No, I didn't get hit in the
23 mouth. I got shot.

24 Q. That's what you said?

25 A. Uh-huh.

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 Q. And what did you do after you went to her apartment?

2 A. I went down the hall because I was panicked. I
3 didn't know what to do. I knew I was about to die. So I
4 went down the hall. I came back up the hall, and I went out.
5 I ran back out the door.

6 Q. Did you ask Ms. Cole to do anything?

7 A. Yeah. I said -- I was like, I need help. Call the
8 police. And she was still hollering, so I ran out the door.

9 Q. And where did you go once you ran out of the door?

10 A. I ran up the steps. And by that time, I seen Torey
11 Brown's car coming toward me, and he jumped out the car.

12 Q. And when he got out of the car what did you do?

13 A. I came to him. He was like, What happened to my
14 man? And he was talking -- responding to me, asking Blue what
15 happened to me because Blue followed me out the door, too.

16 Q. And what did Blue say in response?

17 A. He was like, He got hit in the mouth. I was like,
18 No, I didn't. I got shot. I told Torey I got shot.

19 Q. And what happened then? Where did you go?

20 A. Torey helped me get in the car. I got in the back
21 seat, and he took me to the hospital.

22 Q. And was anything taken from you during this?

23 A. No.

24 Q. And Torey took you -- which hospital did Torey Brown
25 take you to?

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 A. Abbeville.

2 Q. And what happened when you got to Abbeville?

3 A. I got out the car. Torey helped me out of the car,
4 and I walked in the hospital and I laid on the bed. I thought
5 that there was some teeth in my throat, but I was coughing.

6 Q. And what did they do? In Abbeville, what was the
7 first thing they did to help you kind of alleviate the
8 problems you were having with this gunshot?

9 A. They -- I think they gave me some morphine or
10 something, some kind of pain medication, I think.

11 Q. And did they do anything else there as far as a
12 medical procedure?

13 A. They cut my throat right there (indicated). They
14 cut my neck so I could breathe because I was swelling up so
15 quick.

16 Q. And where did they send you after they treated you
17 in Abbeville?

18 A. They rushed me to Self Memorial in Greenwood.

19 Q. And what happened at Self? What did they do to you
20 there?

21 A. I can't remember. I was out of it by that time,
22 from that period of time.

23 Q. What kind of medical procedure did you have at Self?

24 A. I had like three plastic surgeries and a lot of
25 stuff. It blew a whole from here down. My face was opened up

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 so they had to reconstruct my face. They put metal bars from
2 here (indicated). That side to this side. So I got a metal
3 plate with skin pulled over.

4 Q. And as far as when you went to Self that night, what
5 did they do to the bullet? What happened to the bullet?

6 A. It was back there in my spine. The bullet had
7 enlarged through like right here through my tongue, down and
8 then back on my spine. It came about like that much further
9 from me being -- you know, hitting my spine (indicated).

10 Q. And what kind of medical procedure was performed to
11 deal with the bullet?

12 A. I think they had some kind of machine they got the
13 bullet enlarged out of me.

14 Q. Okay. So the bullet was taken out. Okay. I'm
15 going to show you some photographs now, Mr. Gartrell. I'll
16 show you first of all what's been marked for identification as
17 State's Exhibit Number 3. I'll ask that you just take a look
18 at this picture and let me know if you know what that is.

19 A. Village.

20 Q. And what is -- in particular, what is that a picture
21 of at the Village?

22 A. Parking lot.

23 Q. Okay. And does that picture show what the parking
24 lot looked like when this incident occurred on February 10th
25 of '04?

RODERICK GARTRELL - DIRECT BY MR. ANTHONY.

1 A. Yes. This is like a diagram.

2 Q. Well, what I'd ask you to do, you talked about
3 talking to D near a trash can; is that correct?

4 A. Uh-huh.

5 Q. Well, I'd ask you to take that picture, and first of
6 all bear down on this, take this pen and put an X near where
7 you were talking to D. Show where you were when Blue came out
8 and spoke to you.

9 A. (The witness complied).

10 Q. And then if you would, is the building where Nini
11 lived, the front of it on that picture?

12 A. Yeah.

13 Q. All right. If you would, draw an arrow to that
14 building.

15 A. From the apartment?

16 Q. Just draw it like up against the building. Just
17 draw an arrow showing where it is.

18 A. (The witness complied).

19 MR. ANTHONY: Okay. All right. We move Exhibit 3
20 into evidence.

21 THE COURT: Any objection, Mr. Padgett? Have you
22 seen it?

23 MR. PADGETT: Let me see it.

24 THE COURT: Any objection, Mr. Padgett?

25 MR. PADGETT: No, Your Honor.

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 THE COURT: Any objection, Mr. Buergey?

2 MR. BUERGEY: None, Your Honor.

3 (WHEREUPON, State's Exhibit No. 3, a Photograph, was
4 admitted into evidence.)

5 BY MR. ANTHONY:

6 Q. I'm going to show you now what's been marked Exhibit
7 Number 2, and I'd ask that you to take a look at that and tell
8 me if you know what that's a picture of?

9 A. Them were the stairs we walked down.

10 Q. And what else does that picture show besides the
11 steps?

12 A. The front door I got to. You know, like the area,
13 the first portion.

14 Q. That's the area where you were shot?

15 A. Yeah.

16 Q. Okay. All right. And if you would -- well, you
17 said the man who shot you came out from behind the bushes.
18 Are the bushes on that picture?

19 A. Yes, sir. Right there (indicate).

20 Q. Well, what I'd ask you to do is just draw an arrow
21 to the steps and draw an arrow to the bushes. And you can
22 bear down on this if you need to.

23 A. (The witness complied).

24 THE COURT: Mr. Anthony, are you offering that into
25 evidence now?

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 MR. ANTHONY: Yes, sir, we will.

2 THE COURT: Any objection, Mr. Padgett?

3 MR. PADGETT: No, Your Honor.

4 THE COURT: Any objection, Mr. Buergey?

5 MR. BUERGEY: None, Your Honor.

6 THE COURT: All right. The last two photographs are
7 admitted into evidence without objection.

8 (WHEREUPON, State's Exhibit No. 2, a Photograph, was
9 admitted into evidence.)

10 THE COURT: You may proceed.

11 BY MR. ANTHONY:

12 Q. And now I'm going to show you State's Exhibit Number
13 1, and I'll ask you to take a look at that picture and just
14 tell me in you recognize what it shows?

15 A. Ms. Cole's apartment. And the first apartment where
16 I got shot at, I got to, I reached.

17 Q. All right. Well, what I want you to do, I'm going
18 to hand this to you again. I'll ask you to put an X where you
19 were when you were shot and put an S where the shooter was,
20 the man who shot you, where was he when you were shot, and put
21 a B where Blue was.

22 A. (The witness complied).

23 THE COURT: Any objection?

24 MR. PADGETT: I have no objection, Your Honor.

25 THE COURT: Mr. Buergey?

RODERICK GARTRELL - DIRECT BY MR. ANTHONY

1 MR. BUERGEY: None, Your Honor.

2 THE COURT: All right. Without objection that
3 photograph will be made an exhibit for the State.

4 (WHEREUPON, State's Exhibit No. 1, a Photograph, was
5 admitted into evidence.)

6 THE COURT: You may proceed.

7 BY MR. ANTHONY:

8 Q. Mr. Gartrell, you were convicted in 2001 in Georgia
9 with possession with intent to distribute cocaine; is that
10 right?

11 A. Yes.

12 Q. And is Clarence Harrison or the man you knew as
13 Blue, is he here in the courtroom?

14 A. Yes.

15 Q. Could you point him out, please.

16 A. He got glasses on. The one with the short sleeve
17 shirt on (indicated).

18 MR. ANTHONY: I'd ask the record to reflect he's
19 identified Mr. Harrison.

20 THE COURT: The record so reflects.

21 BY MR. ANTHONY:

22 Q. And when this occurred, did you know Monte Haskell?

23 A. No.

24 Q. Do you know who Monte Haskell is now?

25 A. I mean, yeah, I know him know him.

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. Okay. Is he in the courtroom?

2 A. Yeah.

3 Q. How does Monte Haskell, how does his appearance
4 contrast with the appearance of the man who shot you?

5 A. The same height and weight.

6 MR. ANTHONY: Your Honor, that's all on direct. I'd
7 ask to submit Exhibits 1 through 6 to the jury at this time.

8 THE COURT: You may do so.

9 Ladies and gentlemen, he is in the process of
10 publishing those exhibits.

11 You have them passed among the jurors?

12 MR. ANTHONY: Yes, sir. I just handed them to the
13 bailiff.

14 THE COURT: Anything further from the State from
15 this witness?

16 MR. ANTHONY: No, sir. That's all on direct.

17 THE COURT: All right. Mr. Padgett?

18 MR. PADGETT: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. PADGETT:

21 Q. Mr. Gartrell, do you remember if you were ever
22 interviewed by law enforcement in this investigation?

23 A. Yes.

24 Q. How many times?

25 A. Probably -- I remember one time -- two times.

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. Two times?

2 A. Yeah.

3 Q. Was one time on the 17th of February, 2004?

4 A. I can't remember. I was in C. C. U. when they came
5 through. I was in critical condition.

6 Q. But there were two times that you were interviewed
7 close to the time that that occurred?

8 A. I know one time I got interviewed when I was in the
9 hospital and one time outside the hospital when I came to the
10 police department.

11 Q. Okay. Now, you just testified that the man who shot
12 you was the same height and weight as Mr. Haskell?

13 A. (Nodded).

14 Q. Do you recall what your answer was -- who
15 interviewed you?

16 A. Mr. Smith.

17 Q. Would that be John W. Smith?

18 A. Yes.

19 Q. Works for the police department?

20 A. Yes.

21 Q. Do you recall what your answer was when he asked you
22 do you remember any description of the clothes he wore, color
23 or anything else of the shooter?

24 A. Yeah, I didn't know at the time.

25 Q. You didn't know at the time?

1 A. I knew the features, the body features of who shot
2 me.

3 Q. You did?

4 A. Yeah.

5 Q. And did you tell Mr. Smith?

6 A. Yeah, I told him he was slender.

7 Q. You did?

8 THE COURT: You told who? I'm sorry. I didn't hear
9 that well.

10 A. Mr. Smith. As far as I know I told him who -- the
11 person was slender, when he had the mask on. That's all.

12 MR. PADGETT: Your Honor, if I could hand the
13 statement to Mr. Gartrell for him to refresh his memory only
14 and I'll take it back.

15 THE COURT: That will be fine. You may approach.

16 BY MR. PADGETT:

17 Q. Okay. Mr. Smith asked you if you remembered
18 anything about the shooter, and on the date that statement was
19 taken, which was what? What date was that?

20 A. It says the 17th at the top.

21 Q. 17th of what?

22 A. February.

23 Q. Of what year?

24 A. '04.

25 Q. '04. So that would be 7 days after the incident; is

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 that correct?

2 A. Yes.

3 Q. So Mr. Smith asked you a question 7 days after the
4 incident, what he was wearing or if you remembered anything
5 else about this shooter?

6 A. Uh-huh.

7 Q. If I could have that back.

8 What did you say?

9 A. On the paper I said I don't know because I didn't.
10 I was under medication, morphine and stuff. I just wanted to
11 go to sleep.

12 Q. You didn't identify anything about this guy?

13 A. I just wanted to go to sleep at that time.

14 Q. You didn't identify anything about this guy?

15 A. I just wanted to go to sleep at that time. I had
16 plenty of time to think about who shot me.

17 Q. Okay. Now, in your statement you testified you gave
18 a subsequent statement to Mr. Smith?

19 A. What?

20 Q. You gave a second statement to Mr. Smith, correct?

21 A. Yes.

22 Q. Would that have been on March 8th, 2004?

23 A. I think so. I mean, I don't really know the dates.

24 Q. Okay. If I could give you this to review, to
25 refresh your memory, and then I'll ask the question?

1 THE COURT: You may approach the witness.

2 Q. Done?

3 A. Yes.

4 Q. Okay. Thank you. So that was an interview done on
5 the 8th of March, 2004?

6 A. Yes.

7 Q. Did you say at that time what the shooter looked
8 like, that he was same height and weight?

9 A. No, I didn't. I didn't say that.

10 Q. Were you under any -- were you in the hospital at
11 that time?

12 A. No, I told him that it was a slender built.

13 Q. You did? On March 8th you told him that?

14 A. Yeah. I was just talking to him and, you know, I
15 don't know if he wrote all that down.

16 Q. Is that your signature on bottom of that page?

17 A. Yeah, that's mine.

18 Q. So where exactly did you say that he was same height
19 and weight?

20 A. I just told it to him, you know what I'm saying? I
21 didn't just say it was the same height of Monte but I said it
22 was somebody slender who shot me.

23 Q. So not the same height and weight as Mr. Haskell?

24 A. I didn't say that. I just said he was sender built.
25 The dude who shot me was slender built.

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. Why did you come to Abbeville from -- where are you
2 a resident?

3 A. Alberton.

4 Q. Why did you come to Abbeville?

5 A. Abbeville?

6 Q. Yes.

7 A. Oh, because Torey, Torey Brown, me and him friends.
8 Me and him and Blue were friends for a long time, and I think
9 Blue had just got out of jail, or Torey, or someone.

10 MR. BUERGEY: Objection.

11 MR. GROSE: Objection, Your Honor. We have a matter
12 of law.

13 THE COURT: Just one second.

14 Ladies and gentlemen of the jury, at this point in
15 time I'll ask you to retire to the jury room. Don't begin any
16 discussions until I tell you to do so. You may retire.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 12:31.)

19 THE COURT: All right. Who is going first,
20 Mr. Padgett?

21 MR. BUERGEY: I'll let --

22 THE COURT: I heard objections from both sides, I
23 think.

24 MR. GROSE: Well, I think you heard it from both of
25 us, Mr. Buergey and I.

1 THE COURT: I heard two voices. Go ahead.

2 MR. GROSE: Your Honor, Rules 401, 402, 403, 404,
3 405, 401 and 402 deal with what's relevant. The fact that
4 Mr. Harrison had been in jail have no relevance. If the State
5 somehow can make it relevant the prejudicial effect is
6 outweighed by any probative value under Rule 403 and it
7 shouldn't be admitted.

8 404(a) deals with method of proving character. We
9 haven't placed any character into evidence of Mr. Harrison.
10 The State's not allowed to go into it. It's improper
11 character evidence.

12 404(b) gets into prior bad acts. The government has
13 to be able to show and the party trying to enter it has to be
14 able to show one of the exceptions to 404(b). I think there's
15 been some -- you know, some cases out of the Court of Appeals
16 and even the Supreme Court that state that 404(b) exceptions
17 are very narrow.

18 405 gets into methods of proving character. We
19 don't even get to 405 because under the first four rules it
20 should be excluded. That a defendant has been in jail on
21 something unrelated is highly prejudicial. It's the type of
22 thing that cannot be cured and we'd move for a mistrial.

23 THE COURT: Do you join in the motion?

24 MR. PADGETT: The statement was only made about
25 Mr. Harrison. It wasn't made about Mr. Haskell. So I don't

1 think --

2 THE COURT: Well, my question is are you joining in
3 the motion for a mistrial?

4 MR. PADGETT: I'm sorry, Your Honor, I was in
5 conference.

6 THE COURT: That's all right. Take your time.

7 [PAUSE.]

8 MR. PADGETT: Yes, Your Honor, we join in the
9 motion.

10 THE COURT: All right. Mr. Anthony?

11 MR. ANTHONY: Well, all the things about the rules,
12 it's not -- it wasn't my question. He got asked why he went
13 to Abbeville and his answer was that, as I recall, Torey or
14 Blue, one, had got out of jail.

15 THE COURT: I think he said Blue did.

16 MR. ANTHONY: I know he certainly eluded to the
17 possibility Blue was in jail.

18 THE COURT: Yes, he did.

19 MR. ANTHONY: I'll certainly concede that. I don't
20 think there's any question about that. You know, that's
21 obviously not an answer that I elicited. It's certainly not
22 an answer I expected even on cross-examination. I don't think
23 it rises to the prejudicial level that necessitates a
24 mistrial.

25 I think there is a case, State V. Crawley, which I

1 can call up a cite for, I just have an advance sheet on it
2 here in my hand, where there was mention of a defendant
3 making a call from the jailhouse. The mistrial was denied,
4 and that was upheld.

5 I just don't think that this mention in isolation
6 can't be cured, and I think a curative instruction is the
7 remedy and would ask the Court to allow the trial to continue.

8 THE COURT: Yes, sir?

9 MR. GROSE: Two things. Mr. Anthony is correct that
10 it wasn't his question, but he did make the decision to try
11 this case jointly. I think that's a prosecutorial decision
12 under the cases.

13 In addition to the rules that we've cited, there is
14 a due process right to a fair trial under both the United
15 States and the State of South Carolina Constitutions, which is
16 implicated here. And regardless of the source where the
17 denial or the right to a fair trial comes from we're entitled
18 to make the motion for a mistrial, to have this case set aside
19 and do it again.

20 THE COURT: Nobody has questioned your right to make
21 the motion. The question is whether it's going to be granted
22 or not.

23 MR. GROSE: Right. With regard to the case that he
24 cites, I haven't had a chance to look at it. I vaguely
25 remember something like that coming out. If a call was made

1 from the jail and that's somehow central to an issue to be
2 determined in the case that's one thing. I don't know what
3 the underlying facts were.

4 THE COURT: Well, I plan to read that case in a
5 second.

6 MR. GROSE: But if it's not central to an issue
7 that's triable in the case to be decided like this, this is
8 not an issue to be decided in the case. It's not relevant.
9 It's extremely prejudicial. It's improper character evidence
10 under 404(a) and (b).

11 ~~THE COURT: Do you have that citation?~~

12 MR. ANTHONY: I'm in the process of calling it up,
13 Your Honor.

14 MR. GROSE: It was Crawley, C-r-a-w-l-e-y?

15 MR. ANTHONY: That's right.

16 THE COURT: I should be able to get it from that.

17 [PAUSE.]

18 THE COURT: All right. Mr. Grose, I've had an
19 opportunity to read the Crawley case, the relevant portion.
20 Do you wish to be heard on it?

21 MR. GROSE: Yeah, I have too, Your Honor, and I
22 think it supports our motion for the mistrial. It looks like
23 it came up in connection with something that was relevant to
24 the case about a call having been made prior to the murder.
25 And the Court says in affirming the denial of the mistrial it

1 says that the statement was vague and provided no particulars
2 regarding Crawling's connection, if any, to the jailhouse.

3 Here, the testimony was, is that Mr. Harrison was in
4 jail so that gives --

5 THE COURT: I think the statement was he came
6 because Blue had just gotten out of jail.

7 MR. GROSE: Right. So I think that is different.
8 That shows the connection. It also says it was not apparent
9 from this casual remark whether Crawley herself was
10 incarcerated and was visiting somebody else, which I think is
11 what we were just talking about.

12 So I think that, you know, with that case having a
13 connection to an issue that was being tried, the prejudice not
14 amounting to the same thing as we have here, I think that's
15 distinguishable. I think that Crawley would actually be
16 authority in support of our motion.

17 THE COURT: Mr. Anthony?

18 MR. ANTHONY: The Crawley case --

19 THE COURT: Mr. Padgett, I'm kind of skipping over
20 you. If you want to weigh into this argument at any point in
21 time I'm sure you'll let me know; is that right?

22 MR. PADGETT: You're correct, Your Honor.

23 THE COURT: Okay. Thank you.

24 Now, Mr. Anthony.

25 MR. ANTHONY: The Crawley case also cites State V.

1 Council, which was also upheld. The denial of a mistrial was
2 also upheld because there was a question that eluded to a
3 defendant having a fingerprint card and the Court found that
4 that wasn't significant -- that was not a strong enough
5 implication of a prior record to justify a mistrial.

6 The language from the Crawford case also says that
7 mistrials should be granted with the greatest caution for
8 plain and obvious causes. And the State's position is just
9 that this is something that could be cured in just a very
10 passing reference, and we do not believe that it rises to the
11 ~~level of prejudice that would necessitate granting a mistrial.~~

12 MR. GROSE: You know, with fingerprint cards, we all
13 had to get them done as a background check to be a lawyer.
14 There's lots of reasons that people have those done, and
15 again, that's similar to Crawley.

16 As far as things being cured, you know, if I want to
17 make you think about a pink elephant I would tell you don't
18 think about a pink elephant then you can't get that image out
19 of your mind.

20 I think if you bring these jurors back in and say
21 don't think about that statement that Mr. Harrison had just
22 gotten out of jail then they are going to be thinking about it
23 even more than they would otherwise. I think the prejudice is
24 there now. The curative instruction compounds the prejudice.

25 THE COURT: Well, I'm looking at a case that's cited

1 in the Council case, and I'm going to read it too, State vs.
2 Robinson. In that case, apparently testimony created an
3 inference in the jury's mind that the accused had committed
4 another crime. The State never attempted to prove the accused
5 convicted another crime, and thus we conclude this reference
6 is not prejudicial.

7 They talk about the fact that the State never
8 attempted to introduce the appellant's prior criminal record
9 during the guilt phase, this is a capital trial, instead only
10 inadvertent reference was made to appellant's prior record.

11 They concluded that that particular reference was not
12 prejudicial since there's no effort to prove a prior record.

13 Mr. Anthony, is there an effort to prove a prior
14 record in this case?

15 MR. ANTHONY: There won't be any effort to prove
16 prior record during the State's case.

17 THE COURT: So you are saying that you may use prior
18 record to impeach?

19 MR. ANTHONY: Yes.

20 THE COURT: You're not limiting yourself in that
21 regard, is that what you are saying?

22 MR. ANTHONY: Yes, sir. But he has some convictions
23 that we'll argue are impeachable, but it won't be anything
24 about Mr. Harrison's prior record during the State's case in
25 chief.

1 THE COURT: I'm going to have to get my computer
2 back in the office to get my other disk to get Robinson, and I
3 do want to read Robinson.

4 MR. GROSE: Your Honor, can you tell me which page
5 that is cited on in Council?

6 THE COURT: It's right above roman numeral three in
7 the opinion. The paragraph right before that. It says in
8 this it's questionable whether the jury even understood the
9 implication of Council's statement. This Court has held that
10 similar references to defendant's past conduct was too vague
11 to be prejudicial.

12 It cites Singleton. It cites, -- it went all the way
13 to State U. S. Supreme Court. State vs. George, appellant's
14 possible drug dealing merely suggested, no testimony
15 concerning such behavior. And it says, Further the State
16 never attempted to introduce the appellant's prior criminal
17 record during the guilt phase of the trial, instead only
18 inadvertent references made to appellant's prior record. And
19 it says see State vs. Robinson.

20 In that case the Court pointed out that even though
21 testimony created an inference in the jury's mind that the
22 accused had committed another crime the State never attempted
23 to prove the accused was convicted of some other crime, thus
24 we conclude the reference is not prejudicial. ...

25 All right. Gentlemen, anything else you'd like to

1 'add before we proceed?

2 MR. GROSE: Yes, Your Honor. I've had a chance to
3 look at what I believe is the relevant portion of Robinson. I
4 would note that it's been overruled by State vs. Torrence.

5 THE COURT: I read that. That's on a different
6 subject.

7 MR. GROSE: In the discussion --

8 THE COURT: That point that it was overruled on,
9 just for your information, is that you don't have to -- once
10 you make an objection you don't have to make contemporaneous
11 objections every time.

12 MR. GROSE: Right. That was the old in favorem
13 vitae review that we used to have up until Torrence.

14 THE COURT: Yes, sir. Go ahead.

15 MR. GROSE: There was -- in Robinson there was no
16 objection at the time and the comment was about the person
17 being on the way to the probation office. I could be on the
18 way to the probation office, anybody could be on the way to
19 the probation office, just like anybody could have a
20 fingerprint card and it not be subject to being arrested for a
21 bad act and put in jail. I mean, what we have here is gotten
22 out of jail which --

23 THE COURT: Somebody could have been in jail and got
24 out because they were innocent.

25 MR. GROSE: But it implies --

1 THE COURT: And they've nolle prossed the case so
2 they found them innocent.

3 MR. GROSE: But it implies a bad act, whereas a
4 having a fingerprint card or just going to the probation
5 office doesn't necessarily imply a bad act. There would be
6 lots of other reasons for having it, Your Honor.

7 THE COURT: Well, going to the probation office,
8 again, I assume it may imply bad act but it may not. Getting
9 out of the jail may mean that you were found innocent and you
10 are a good guy. Didn't say you've been convicted of a crime
11 and served time. He just said he just got out of jail, is
12 what he said.

13 MR. GROSE: I don't think that's the way most people
14 look at it, Your Honor.

15 THE COURT: Most people probably think if you have
16 gone to the probation office you've probably done a bad thing,
17 too. But the Court points out that that's not always the
18 case. Anyway, I don't mean to quibble with you but that's
19 what I'm looking at, the way they analyze these things, and
20 that seems to be the way that they have analyzed it.

21 Anything further?

22 MR. GROSE: We just stand by our motion.

23 THE COURT: I'm sure you do. No problem with that.
24 I understand you do.

25 Mr. Anthony, anything further?

1 MR. ANTHONY: I have no further arguments than
2 what's been made.

3 THE COURT: I'm going to overrule the objection. I
4 will give a curative instruction. I don't believe the
5 reference was that your client had ever been convicted of a
6 crime or that he was serving time for a crime. It just said
7 that he had gotten out of jail.

8 I think that could mean that he was there and had
9 been released and found innocent of a crime or that the case
10 had been nolle prossed and he got out. So there's several
11 conclusions that could possibly be drawn from the reference.

12 Since it wasn't anymore particular than that I'm
13 going to find that the reference will be stricken from the
14 record. It won't be considered by the jury. I'll offer a
15 curative instruction.

16 I will instruct the witness that you are not to
17 mention anything concerning the incarceration or the jailing
18 of either of the defendants in the remainder of your
19 testimony. Do you understand that, sir?

20 THE WITNESS: Yes, sir.

21 THE COURT: All right. Bring the jury back.

22 (WHEREUPON, the jury enters the courtroom at
23 approximately 12:55 p.m.)

24 THE COURT: Ladies and gentlemen of the jury, I have
25 stricken this witness's last response to the last question

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 from the record. That response is not to be considered by you
2 in any fashion when reaching a verdict in this case.

3 And the objections of the defendants are noted for
4 the record. You may continue your cross-examination.

5 MR. BUERGEY: Your Honor, just for the record. We
6 renew or objection and renew or motion, Your Honor.

7 THE COURT: Again, I've noted that for the record
8 and the ruling remains the same. You may proceed.

9 MR. PADGETT: I think it is me, Your Honor.

10 THE COURT: Okay. Mr. Padgett.

11 BY MR. PADGETT:

12 Q. Mr. Gartrell, I notice that you don't have your
13 bottom -- is it bottom teeth? You don't have it in right now?

14 A. No. They are gone. Got shot off.

15 Q. So you haven't had that replaced?

16 A. Uh-uh.

17 Q. Okay. You testified at six o'clock you went to
18 Nini's apartment; is that correct?

19 A. Yes.

20 Q. You went to Nini's. Okay.

21 MR. PADGETT: If I could get a diagram, Your Honor.

22 THE COURT: You may.

23 BY MR. PADGETT:

24 Q. Mr. Gartrell, are you familiar with the apartment
25 complex of Hickory Heights?

1 A. Yes.

2 Q. About how many times have you been there?

3 A. A lot of times.

4 Q. A lot of times?

5 A. (Nodded).

6 Q. You got a lot of friends over there?

7 A. I know some folks over there. I wouldn't say
8 friends.

9 Q. About how many?

10 A. Just one person I'm real close to, you know, like
11 Nini because that was Torey's girlfriend.

12 Q. How many times you been there?

13 A. I can't count how many times I've been there. A lot
14 of times.

15 Q. Okay. Looking at that diagram, does that look like
16 a substantially accurate diagram showing where Nini's
17 apartment is, the parking lot, the dumpster you've referred
18 to? If you would answer for the court reporter.

19 A. Yes.

20 Q. Okay, thank you. If I could hand you a pen, please.
21 You testified that you went from Nini's at six and then you
22 went out?

23 A. Yeah.

24 Q. Where did you -- who were you with and where did you
25 go?

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 A. I went by myself. I walked down. We walked down
2 toward -- walked down the sidewalk like this (indicated).

3 Q. You can mark it if you'd like.

4 A. Down the sidewalk, came to the --

5 Q. Now, just make sure you speak up.

6 A. There is a breezeway right here (indicated).

7 Q. Hold on. If I can, that bottom is --

8 A. Oakland.

9 Q. Oakland, okay. And the top is?

10 A. The Village.

11 Q. The Village?

12 A. Yeah.

13 Q. So you were at Oakland at one point?

14 A. Yeah. Yeah. I was just hanging out mingling around

15 in Oakland right here for, I'd say about an hour (indicated).

16 They were shooting dice in the breezeway right here, a lot of
17 group of boys in the breezeway.

18 Q. Who was down there shooting dice?

19 A. I don't know them. I just know their face, you
20 know. I don't know their names or anything like that.

21 Q. Okay. Okay. And then what happened?

22 A. I start walking back toward this way coming back up
23 there (indicated). I could see D. I could see D. That's
24 Darren. D right here (indicated). He was right -- standing
25 about this far right here. D was standing like that

1 (indicated). I could see him.

2 I walk back up here (indicated). Me and D met up
3 about right here (indicated). It was like, what's up? I
4 like, I haven't seen you. We just started chatting with each
5 other, that Darren.

6 Q. And when you testified you all talked, you and D
7 talked by the trash cans?

8 A. Yeah, like the walkway and the trash can. The trash
9 can right here (indicated). This is the sidewalk right here
10 (indicated). So that why I say by the trash can.

11 Q. I understand. Okay. And then what did you and D do
12 then?

13 A. We just, you know, communicated. We stepped up then
14 we walked right back up to the alleyway right here
15 (indicated). There was like a little walkway right here, too
16 (indicated). You can go down to these two apartment complexes
17 right there.

18 Q. And was it getting dark about that time?

19 A. Yeah, it was getting dark.

20 Q. Okay. You can go on, please.

21 A. We walked up right here (indicated). We got right
22 here. You know, he was telling me some new girl had moved in
23 the building right here (indicated). This building right here
24 (indicated). And we was like coming to chitchat back and
25 forth with them.

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. And then what?

2 A. Then we walked back down. We mingled back down
3 through here (indicated). We got to right about there again
4 and just mingling, talking, and Blue, Clarence, he walked up.

5 Q. Which direction did he come from?

6 A. I believe he came from the walkway right here. B
7 came down, down the walkway.

8 Q. So down there it was you, D and Mr. Harrison?

9 A. Yeah.

10 Q. And how did you eventually get up to the top of the
11 parking lot?

12 A. Blue, me and him walked up there together.

13 Q. And you all walked diagonally across, or up the
14 sidewalk. How did you all do it?

15 A. Right here (indicated).

16 Q. Okay. Now, at that point it was later in the
17 evening, right?

18 A. It started getting -- you know, it started getting
19 late like.

20 Q. So it was getting darker?

21 A. Like dusk, dark, around eight o'clock.

22 Q. How much light was there?

23 A. I mean, you got the pole lights and stuff?

24 Q. If you would mark where the pole light was.

25 A. Pole light probably about right there (indicated).

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. Any other sources of light around there?

2 A. The moonlight.

3 Q. What was the weather like that day, that night, do
4 you know?

5 A. Clear sky. The moonlight was like shining bright.

6 Q. So you and Mr. Harrison walked down the steps?

7 A. Yeah. We walked down these steps right here
8 (indicated). I was going to put an M for me and a B for Blue.
9 I walked down the steps like that (indicated). Blue came
10 right beside there, and we was talking. We was like
11 chitchatting. I was looking toward him. I wasn't paying
12 attention to what I'm running into.

13 Q. And then you get to the bottom of the steps?

14 A. Yeah.

15 Q. Then what happens?

16 A. I got down the step about to the first apartment
17 door like toward Nini's apartment, you know, the first
18 apartment door.

19 Q. And she's in apartment -- do you know her number?

20 A. No. She on the back. You know, you got two
21 apartments right there together. You got Nini's apartment.
22 It sits probably like this (indicated). Nini's apartment
23 right here. I had got about right here (indicated).

24 Q. So is Nini that second apartment?

25 A. Yeah. She's the second apartment.

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. Was there any light being omitted from the two
2 apartments?

3 A. I can't even remember. I wasn't even -- I mean,
4 everything happened so quick. I couldn't remember. I
5 remember the moonlight and the reflection. You know what I'm
6 saying? I know they had, like, a big bright light shining
7 like this down (indicated).

8 Q. So as you were standing facing Nini's apartment,
9 okay?

10 A. I was coming this way. I wasn't facing Nini's
11 apartment. Nini's apartment like this (indicated).

12 Q. But you testified there was a light source --

13 A.. Like this back here (indicated).

14 Q. -- shining --

15 A. Like back here shining. Like this way (indicated).

16 Q. From behind you?

17 A. Yeah.

18 Q. All right. Now, then what happens? Was the person
19 already standing -- the shooter already standing there or they
20 come around the bush?

21 A. They came around the bush, came around the bush this
22 way (indicated). Like come around like this, and somebody --
23 he was standing there (indicated). I didn't pay no attention.
24 I was like --

25 Q. I'm sorry?

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1 A. . The shooter was standing like that. So I wasn't
2 really, you know, paying -- I'm still looking at Blue like
3 this like I'm looking at the Judge. I'm looking a Blue. We
4 talking. I'm walking down the steps, talking. By the time I
5 turned around I seen the reflection from the moonlight shining
6 on the pistol. Like, give it up (indicated).

7 Q. And so it was a period of how long that you had to
8 observe this?

9 A. I didn't have no -- by the time I turned around the
10 moonlight, the reflection of the pistol, the gun went off,
11 people ran.

12 Q. So is it fair to say you really didn't see much of
13 this at all?

14 A. The pistol and I seen a white mask.

15 Q. And that's all you saw?

16 A. Yeah, and, you know, the body features. Probably we
17 were -- probably like about -- he was standing probably like
18 over there from me and you?

19 Q. But it was seconds?

20 A. Seconds, yeah.

21 Q. Was it less than a second?

22 A. Like he was like -- by the time I turned around I
23 seen him like coming -- you know, coming around the bush. So
24 I'm like, I just glanced like that. I seen the pistol draw in
25 the moonlight (indicated).

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 Q. So from your testimony, about how long did that
2 take? From the time you turned away from talking to Blue --

3 A. Seconds. Two seconds at the most. I mean, three
4 seconds. I mean, it was quick.

5 Q. Okay. Thank you. You can have a seat.

6 A. (The witness complied).

7 Q. Now, you testified previously that the gun was a
8 nine or something?

9 A. Chrome, yeah.

10 Q. But you said it was a nine?

11 A. Yeah, well, a nine.

12 Q. What did you mean by that?

13 A. Nine millimeter is like a handgun.

14 Q. And what does that look like?

15 A. Chrome. Probably about like this big (indicated).

16 Q. How does it hold its bullets?

17 A. I don't know. I guess in the thing.

18 Q. And the thing is the what?

19 A. The barrel, I guess. I don't know. In the clip,
20 whatever.

21 Q. So a nine has got a clip?

22 A. Uh-huh.

23 Q. Nine millimeter has got a clip, okay.

24 A. Between a nine and revolver. I'm not really sure

25 about the gun, but I know it was a chrome pistol. It could be

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 a nine or a revolver.

2 Q. But you testified previously it was a nine?

3 A. Yeah, well, nine, revolver. I just know it was a
4 chrome pistol.

5 Q. Have you ever given a scenario to an investigator
6 that you came out of Nini's apartment and then the shooting
7 occurred?

8 A. No. Unless I was under, you know, medication and I
9 can't remember, but I don't remember me stating it.

10 Q. So it's your position that you never gave a
11 statement to anyone that you were in Nini's apartment?

12 A. No.

13 Q. Mr. Gartrell, I'm going to hand you State's Exhibit
14 1 and 2. Is that a substantially accurate representation of
15 the night of the incident?

16 A. Yes.

17 Q. It is. The incident happened during the day?

18 A. No, it didn't happen during the day.

19 Q. So those pictures really don't show how it was --

20 A. Oh, no.

21 Q. -- when you were there?

22 A. It was dark. You know, it happened around like you
23 know nightfall.

24 Q. Have you seen any other men around the Village that
25 are the same height and weight as Mr. Haskell?

RODERICK GARTRELL - CROSS BY MR. PADGETT

1 A. Yeah, Darren.

2 Q. He's the same height and weight?

3 A. Yeah, about the same height and weight.

4 Q. Before you came to testify did you have anything to
5 refresh your memory about the incident?

6 A. No.

7 Q. Provided to you from the State?

8 A. Uh-uh.

9 Q. No. Okay. Mr. Gartrell, did you see Mr. Haskell
10 anywhere around the Village from the time you got there at six
11 o'clock?

12 A. No, I didn't see him nowhere.

13 MR. PADGETT: Thank you, Your Honor. That's all I
14 have.

15 THE COURT: Can I get the attorneys to approach for
16 a moment?

17 (WHEREUPON, a bench conference was had.)

18 THE COURT: Ladies and gentlemen of the jury, at
19 this point in time I'm going to recess for lunch. I'm going
20 to give you the instruction that I gave you yesterday
21 afternoon, and that is you cannot discuss this case with
22 anyone during your lunchtime period, including your fellow
23 jurors, anyone, because again, in discussing the case with
24 someone you may begin to formulate opinions or gather
25 information outside of this courtroom which does not

1 constitute admissible evidence. It would be improper for you
2 to consider anything of that nature.

3 Please do not listen, watch, read or otherwise
4 attempt to gather any information from the media, the internet
5 or otherwise concerning this particular case because your
6 obligation, again, is to decide the case solely from the
7 evidence that's presented in this courtroom, from the witness
8 stand and through the witnesses who testify.

9 Again, should anyone attempt to contact you during
10 our break concerning your participation in this case please
11 let me know and I'll take the appropriate action.

12 Abbeville is a small town, thank goodness, and
13 there's only a few places in which you might be eating out.
14 If you should see any participant in the trial while you're
15 eating out don't place yourself in such a proximity to those
16 individuals so that you might overhear their conversations
17 because, again, they may discuss matters concerning this case
18 that you should not consider in reaching your verdict.

19 I'm going to allow you to go to lunch at this time
20 and return at 2:30. That means you'll come back to the jury
21 room and be ready to begin the trial of the case again at that
22 time. So at this point in time, I'm going to release you for
23 lunch. I hope you enjoy your lunch. Be back in your jury
24 room at 2:30. Thank you very much.

25 (WHEREUPON, the jury leaves the courtroom at

1 approximately 1:13 p.m.)

2 THE COURT: I want to instruct the witness that you
3 are in the middle of your testimony. It would be highly
4 improper for you to discuss your testimony with anyone during
5 the break or for you to discuss with anyone anything that you
6 may have testified to already outside of the courtroom.

7 You are in sequestration. You should not discuss
8 your testimony with anyone in any fashion whatsoever during
9 the break. You are free to come and go and get lunch but
10 please don't discuss your testimony.

11 The case has begun. The defendants would be in
12 custody during the lunch break. We are in recess until 2:30.

13 Thank you very much.

14 (WHEREUPON, a lunch break was taken.)

15 THE COURT: You can ask the witness to take the
16 stand.

17 MR. ANTHONY: Mr. Gartrell, you can return to the
18 stand.

19 (WHEREUPON, the witness returned to the witness
20 stand.)

21 THE COURT: Is the State ready?

22 MR. ANTHONY: Yes, sir, we are.

23 THE COURT: Defense ready, both defenses?

24 MR. BUERGEY: Yes, sir, Your Honor.

25 MR. PADGETT: Yes, Your Honor.

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 THE COURT: Thank you very much. I believe when we
2 broke earlier, Mr. Buergey, you were getting ready to start
3 your cross. We'll start with you.

4 Bring the jury in.

5 THE BAILIFF: Yes, sir.

6 (WHEREUPON, the jury enters the courtroom at
7 approximately 2:35 p.m.)

8 THE COURT: The record should reflect that all
9 jurors have returned to the courtroom. I trust everyone has
10 had a good lunch.

11 When we broke I believe, Mr. Buergey, you were about
12 to begin your cross-examination of the witness. You may
13 proceed.

14 MR. BUERGEY: Thank you, Your Honor.

15 CROSS-EXAMINATION

16 BY MR. BUERGEY:

17 Q. Mr. Gartrell, I think you said that earlier in the
18 day on February 10th Torey Brown had come to Alberton to pick
19 you up; is that right?

20 A. Yes, sir.

21 Q. And there was one other person with him; is that
22 right?

23 A. Yes, sir.

24 Q. But you don't remember who that other person was?

25 A. I believe it was Junior or something.

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 Q. And when you got to Abbeville you went to a couple
2 of other places before you went to Hickory Heights, right?

3 A. Yeah, went to Blue house. Went to Blue house and
4 met Clarence, then went over to Torey house, Torey momma
5 house.

6 Q. And eventually you and Torey went over to Nini's
7 apartment; is that right?

8 A. Yes.

9 Q. Was anybody else with you when you went over there?

10 A. Junior, the boy who came over there with us. I
11 think it was Junior.

12 Q. So the three of you all went over to Nini's place?

13 A. Yeah.

14 Q. And Nini at the time was Torey's girlfriend, right?

15 A. Yeah.

16 Q. When you got there was there anybody else already
17 there or was it just Nini?

18 A. Just Nini.

19 Q. So there were a total of four of you there?

20 A. Yeah.

21 Q. Okay. I think you had said earlier that you had
22 known Torey for quite sometime. He was an old friend of
23 yours?

24 A. Yeah.

25 Q. And when you left Nini's apartment didn't you say

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 that Torey had already gone at that point?

2 A. Yeah. Torey said he was going to the store.

3 Q. How long after Torey left did you leave?

4 A. I can't even remember the time span. Not that long
5 after.

6 Q. And Torey said he is going to the store?

7 A. Yeah.

8 Q. And your understanding was that he was coming back?

9 A. Yeah.

10 Q. Because that was his girlfriend's place?

11 A. Yes, sir.

12 MR. BUERGEY: And may I approach, Your Honor?

13 THE COURT: Yes, you may.

14 BY MR. BUERGEY:

15 Q. And I think you said this sort of building here is
16 the building where Nini's apartment was at?

17 A. Yes.

18 Q. And these are the Oakland Apartments here?

19 A. Yes, sir.

20 Q. And you said after Torey left you left and I think
21 you testified that you had gone to Oakland Apartments, right?

22 A. Yeah.

23 Q. And you had done that on foot?

24 A. Yes, sir.

25 Q. And by yourself?

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 A. Yeah.

2 Q. And I think you said you came down here then were
3 shooting dice with some people?

4 A. No, I wasn't shooting dice.

5 Q. Okay. You were watching people shoot dice?

6 A. Yeah.

7 Q. And you said you were there for about an hour?

8 A. I mean, I don't know the period of time span. I
9 wasn't looking at my watch.

10 Q. But eventually you came back to Hickory Heights
11 Apartments, right?

12 A. Yeah.

13 Q. And the first person you saw when you came back to
14 Hickory Heights was Darren Howland?

15 A. Yeah.

16 Q. And incidentally, you had said that Darren Howland
17 roughly is the same size and figure as Mr. Haskell; is that
18 right?

19 A. Yeah.

20 Q. And you and Mr. Howland had decided that the two of
21 you all were going to go -- you were going to talk to some
22 girls who lived over here?

23 A. Yes.

24 Q. And you did that for awhile?

25 A. Yeah.

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 Q. And you and Mr. Howland kind of went your separate
2 ways after that?

3 A. No. We walked down right here and Blue came down
4 (indicated).

5 Q. And when you said Blue you are talking about
6 Clarence Harrison?

7 A. Clarence Harrison.

8 Q. Okay. And you said that when Blue came down it was
9 kind of from this direction, right?

10 A. Yeah.

11 Q. So it wasn't Blue?

12 A. I mean, I didn't know because I was like -- it's
13 like he came out of nowhere. He could have came from that way
14 across the street and came down like this (indicated).

15 Q. But I think your earlier testimony was that he was
16 coming down -- when you saw him he was coming kind of down
17 from this direction, right?

18 A. Around the walkway. But how the apartment is made
19 this is the highway right here, the road (indicated). Nini
20 over there (indicated). He couldn't circle. One came that
21 way, circle around and came down like there (indicated).

22 Q. But all you saw was him coming from over here,
23 right?

24 A. Yeah.

25 Q. At some point it wasn't the three of you all

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 anymore. It was just you and Clarence. At what point --

2 A. No, it was the three of us. We were talking.

3 Q. Okay. But Clarence -- I think you said Clarence
4 mentioned something to you about how B. I., Torey Brown,
5 wasn't around anymore, right?

6 A. He was like, No, B. I. gone.

7 Q. And you --

8 A. Yeah, I know he went to the store.

9 Q. And you told Clarence that your understanding was he
10 wasn't going to be gone very long?

11 A. Yeah.

12 Q. He had just gone to the store?

13 A. Yeah.

14 Q. And he was coming back?

15 A. Yeah. He wanted to wait, go there and wait on him.
16 I said sure we could.

17 Q. So as far as you know Torey Brown's plan all along
18 was to go back to Nini's apartment?

19 A. Yeah.

20 Q. And when he had left Nini's apartment before you
21 were there, right?

22 A. Yeah.

23 Q. And I think you had mentioned that at one point
24 during your testimony, that there was a police car that went
25 by and you thought Clarence was acting kind of nervous at that

RODERICK GARTRELL - CROSS BY MR. BUERGEY

1 time?

2 A. Yeah.

3 Q. Now, Clarence was actually on trespass notice at
4 Hickory Heights at that time, wasn't he?

5 A. I don't know..

6 Q. Okay. You don't know that?

7 A. Uh-uh.

8 Q. You hadn't talked about that with him?

9 A. No.

10 Q. And at some point you and Clarence decided that you
11 were going to meet up with B. I. when you came back, right?

12 A. Yeah.

13 Q. And is that why you went over to -- back to Nini's
14 place?

15 A. Yeah, to wait on B. I..

16 Q. Because that's where you were expecting him to show
17 up again?

18 A. Yeah.

19 Q. And, like I said, at the time that he had left
20 before, you were still there when he left before?

21 A. Yeah.

22 Q. And you and Clarence walked down the steps. You say
23 you walked down together to get back down to the apartment?

24 A. Yes. We walked down here, and like I was on the
25 left side, he was on the right side (indicated).

RODERICK GARTRELL - REDIRECT BY MR. ANTHONY

1 Q. And I think you said that the other man came out
2 from behind over in this direction; is that right?

3 A. Yeah.

4 Q. Just one more thing. You had mentioned right after
5 you got shot that Clarence had started going through your
6 pockets and stuff?

7 A. No. He was, like, reaching in trying -- like he was
8 trying to, but I pushed him off me one time.

9 Q. And, specifically, you said that Clarence told you
10 that he was concerned because the police were coming and he
11 wanted you to give up -- if you had any dope or anything like
12 that --

13 A. Yeah, money.

14 Q. -- he wanted you to get that off?

15 A. Yeah. He was, like, trying to pat me down, like
16 trying to go in my pocket.

17 Q. But he told you the police are coming. If you got
18 any dope give it to me?

19 A. Yeah. Yeah.

20 MR. BUERGEY: That's all the questions I have at
21 this time, Your Honor.

22 THE COURT: Redirect.

23 REDIRECT EXAMINATION

24 BY MR. ANTHONY:

25 Q. You testified about talking to the detective when

1 you were in the hospital. What kind of shape were you in when
2 he came and talked to you that day?

3 A. I was out of it. I was, like, in critical
4 condition. I was in C. C. U. when he came down.

5 Q. And you were also asked about not having your lower
6 teeth; is that correct?

7 A. Yes.

8 Q. Why is that?

9 A. Because I got shot and the bullet exploded and blew
10 all this away right here (indicated).

11 Q. Okay. And what are you planning on having done
12 about that?

13 A. They going to remove a bone out my head, from my hip
14 and put it in my face.

15 MR. ANTHONY: Thank you. That's all on redirect.

16 THE COURT: Recross?

17 MR. PADGETT: Just briefly, Your Honor.

18 RECROSS-EXAMINATION

19 BY MR. PADGETT:

20 Q. Mr. Gartrell, we have referred to this illustration
21 several times behind you, and I believe you testified that
22 that was a substantially accurate representation of the
23 complex?

24 A. Yeah, pretty much..

25 MR. PADGETT: And at this time, Your Honor, I would

RODERICK GARTRELL - RECROSS BY MR. PADGETT

1 move that into evidence as Defendant's 2, I believe, Defendant
2 Haskell's 2.

3 THE COURT: Any objection?

4 MR. ANTHONY: No objection.

5 THE COURT: Any objection?

6 MR. BUERGEY: No objection, Your Honor.

7 THE COURT: Without objection it will be received as
8 Defendant Haskell's Number 2.

9 (WHEREUPON, Defendant Haskell's Exhibit No. 2, a
10 Diagram, was marked and admitted into evidence.)

11 MR. PADGETT: And if I could, Your Honor, just have

12 Mr. Gartrell mark on the board that those were his marks.

13 Just write his name on the document.

14 THE COURT: Sir, if you want to step down and put
15 your initials by your marks that you put on the exhibit.

16 THE WITNESS: The mark I put?

17 THE COURT: The marks you put, yes, sir.

18 (The witness complied.)

19 MR. PADGETT: If it helps, Your Honor, he's the only
20 one that's going to mark on that particular board.

21 So that's fine, Mr. Gartrell. Just so you have your
22 mark on there.

23 MR. PADGETT: Thank you.

24 THE COURT: Thank you, sir.

25 MR. PADGETT: Nothing further from Mr. Haskell, Your

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Honor.

2 THE COURT: Mr. Buergey?

3 MR. BUERGEY: No recross from Mr. Harrison, Your

4 Honor.

5 THE COURT: Sir, you may step down. Thank you very
6 much.

7 The State may call its next witness.

8 MR. ANTHONY: We'd call Mr. Norman.

9 THE COURT: Sir, come around and be sworn right over
10 here.

11 SHERMAN NORMAN, after having been duly sworn,
12 testified as follows:

13 THE COURT: Mr. Anthony, your witness.

14 MR. ANTHONY: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q. Would you state your name, please.

18 A. Sherman Norman.

19 MR. PADGETT: I do apologize. Something has come to
20 my attention that I think that we would need to approach, Your
21 Honor.

22 THE COURT: All right.

23 (WHEREUPON, a bench conference was had.)

24 THE COURT: Mr. Anthony, your witness.

25 BY MR. ANTHONY:

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Q. Would you state your name, please.

2 A. Sherman Norman.

3 Q. And, Mr. Norman, where do you currently reside?

4 A. Perry.

5 Q. And what is Perry?

6 A. Correctional Institute.

7 Q. And going back to the evening of February 10th,
8 2004, where were you at that night?

9 A. What did you say? Excuse me? Repeat the question..

10 Q. On the night of February 10th, 2004, where were you?

11 A. On Raymond Road.

12 Q. I'm sorry?

13 A. On Raymond Road.

14 Q. Okay. Were you at any particular apartment
15 building?

16 A. It's not an apartment building.

17 Q. Well, where were you? Whose place were you?

18 A. At Ms. Jeanette Wharton's.

19 Q. And were you at a residence with a lady named
20 Ms. Wharton?

21 A. Jeanette Wharton, yeah.

22 Q. Okay. Okay. And what was the relationship with
23 Ms. Wharton?

24 A. Nothing.

25 Q. Okay. You knew her?

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 A. Yeah, I knew her.

2 Q. And where was Ms. Wharton's residence in relation to
3 Nini Cole's residence?

4 A. These two different people. Nini stay at Hickory
5 Heights and Ms. Wharton stay on Raymond Road.

6 Q. Well, were you at Hickory Heights on --

7 A. No, I wasn't.

8 Q. -- February 10th, 2004?

9 A. No, sir.

10 Q. You were never at Hickory Heights on February 10th,
11 2004?

12 A. No, sir.

13 Q. Did you ever on, around or about February 10th,
14 2004, did you ever see Clarence Harrison and Monte Haskell?

15 A. No, sir.

16 Q. On March 18th -- well, I'm handing you a piece of
17 paper. I'd ask that you take a look at this, review it.

18 A. Yeah. I know what it is.

19 Q. What is that?

20 A. A statement.

21 Q. Whose statement is that?

22 A. It's my statement.

23 Q. And who did you give that statement to?

24 A. John Smith.

25 Q. With the Abbeville Police Department?

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 A. Yeah.

2 Q. And in that statement you said that on February
3 10th, 2004 you saw Monte Haskell with a chrome 38 Special in
4 Oakland Apartments; is that correct?

5 A. That's a counter statement. Do you know what a
6 counter statement is, sir?

7 THE COURT: I want to ask the witness to be
8 responsive to the question.

9 Q. Is that correct, that that's your statement?

10 A. Yes, sir.

11 Q. And the statement says that you saw Monte Haskell
12 with a chrome 38 statement [sic] in Oakland Apartments; that
13 correct?

14 A. Yes, sir.

15 Q. Is that accurate?

16 A. No, sir.

17 Q. It's not accurate?

18 A. No, sir.

19 Q. But you told Detective Smith that on March 18th,
20 2004?

21 A. No, Detective Smith -- yes, sir.

22 Q. You told him that on March 18th, 2004?

23 A. Yes, sir.

24 Q. And you also told him that on February 10th, 2004
25 you saw Monte Haskell and Clarence Harrison outside Megan

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Wharton's apartment house conversing; is that correct?

2 A. Yes, sir.

3 Q. Okay. And you said that about --

4 MR. BUERGEY: Objection to the leading form of the
5 question, Your Honor.

6 THE COURT: I sustain the objection. Try not to
7 lead.

8 BY MR. ANTHONY:

9 Q. Does the statement also say that about 20 minutes
10 after their conversation they split up; is that correct?

11 A. Yes, sir.

12 Q. Okay. And Clarence went to the left and Monte went
13 to the right?

14 A. If that's what the statement says, sir.

15 Q. And then -- and did this happen?

16 A. No, sir.

17 Q. It didn't happen?

18 A. (Shook head).

19 Q. And you said that you heard a knock on Kytraundra's
20 door; is that correct?

21 A. If that's what the statement says, sir.

22 Q. That's what the statement says, and that's what you
23 said; is that correct?

24 A. If that's what the statement says, sir.

25 Q. And this is your statement?

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 A. Yeah.

2 Q. Is that correct? I mean, it's signed by you?

3 A. Yeah, it's signed by me.

4 Q. Okay. And it says you heard Clarence say Nini, tell
5 Rod to come here -- this is D? Is that correct? Or what is
6 this sentence?

7 A. What is what sentence?

8 Q. It says I heard Clarence say Nini, tell Rod to come
9 here.

10 A. It's D.

11 Q. Okay. And who said that?

12 A. That's what the statement says, sir.

13 Q. And who does the statement say said that, Clarence?

14 A. Me, yeah, I guess.

15 Q. You are saying Clarence said that?

16 A. If that's what the statement says, sir.

17 Q. Okay. All right. Then it says Rod came outside and
18 said hey, Rod, somebody wants to holler at you; is that
19 correct?

20 A. If that's what the statement says, sir.

21 Q. Says then there was a gunshot; is that correct?

22 A. If that's what the statement says.

23 Q. Okay. And you met and actually talked to Sergeant
24 Vandiver and myself about this last night, didn't you?

25 A. Yesterday evening.

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Q. Yesterday evening; isn't that correct?

2 A. Yeah, that's correct.

3 Q. And yesterday evening you told detective -- Sergeant
4 Vandiver and myself that what was in this statement was true;
5 is that correct?

6 A. If that's what you say, sir.

7 MR. BUERGEY: Your Honor, may we approach?

8 THE COURT: Yes, you may.

9 (WHEREUPON, a bench conference was had.)

10 THE COURT: Ladies and gentlemen of the jury, this
11 is one of the occasions I'm going to ask you to step outside
12 of the courtroom. I'll have to take up some matters with the
13 attorneys. My same admonition applies this time as every
14 time. Don't begin any discussions concerning this case until
15 such time as you've heard all of the evidence and I've
16 instructed you to begin your deliberations.

17 Thank you very much.

18 (WHEREUPON, the jury leaves the courtroom at
19 approximately 3:00 p.m.)

20 THE COURT: All right, gentlemen. I'll be happy to
21 hear from the attorneys for the defense. You wanted to raise
22 a point?

23 MR. GROSE: Your Honor, can I have a second to try
24 to find a case?

25 THE COURT: Sure.

1 [PAUSE.]

2 MR. GROSE: Your Honor, I'm looking at State vs.
3 Sierra, S-i-e-r-r-a, 337 S.C. 368, 523 S.E.2d 187, and it's
4 under the first point in there with the dealing with the
5 confrontation right.

6 It's dealing with Rule 3.7, and it deals with the
7 situation where the solicitor meets with a witness and then,
8 you know, asked him a question in court about what they told
9 them. And it talks about when the prior inconsistent
10 statement was allegedly made to the prosecuting attorney.

11 This is at 6 and 7 in there on page 376; The
12 availability of extrinsic evidence to establish this statement
13 is directly linked to the ability of the prosecuting attorney
14 to appear as a witness in trial.

15 There's also other rules of professional conduct
16 which prohibit attorneys from interjecting their credibility
17 into the case. And, you know, I think in this case he asked
18 about him meeting with Mr. Vandiver last night as well as
19 Mr. Anthony but then when he starts interjecting his
20 credibility and you told me this, I mean, he's basically
21 testifying. And if he's going to do that he has to recuse
22 himself and they have to get somebody else to try the case so
23 we can cross-examine him, if we choose to.

24 THE COURT: Well, I'm reading from Sierra, and it
25 says that our research indicates there's no absolute

1 prohibition against the prosecuting attorney becoming a
2 witness for the State, however, it is certainly disfavored as
3 or Supreme Court noted in State vs. Lee.

4 And in that case it says; The Court clearly looks
5 with disfavor upon the prosecuting attorney's participation in
6 a case as a witness for the State except under unavoidable
7 circumstances. The solicitor is an officer of the Court who
8 undertakes a more active role in the courtroom than that of a
9 witness. The solicitor interacts through trial, opposing
10 counsel, witnesses of court, continuing to impose his or her
11 presence upon the jury. The Court affords the solicitor and
12 other participating counsel certain deference out of respect
13 to their roles as officers of the Court. In short, the
14 justified reluctance of the Court to permit a prosecutor to
15 become a witness in a case reflects a belief the jury will
16 afford far greater weight to his or her testimony than that of
17 an ordinary witness by virtue of the prosecutor's prestige.

18 MR. GROSE: Your Honor, when I've had --

19 THE COURT: And, of course, it also states about
20 Rule 3.7 -- 3.1 of the Rules of Professional Conduct, and I
21 don't think that is an absolute --

22 MR. GROSE: Well, I've had the situation where
23 Solicitor Jones became a witness in a case by some of the
24 things that he did pre-trial, and what happened in that
25 situation was, you know, we brought a motion and I don't think

1 the Court ever ruled on -- made a final ruling on the motion
2 for him to withdraw but he ultimately decided that he would
3 have to withdraw so that another prosecutor from another
4 circuit could come in and try the case.

5 I think a prosecutor could be a witness. I've
6 certainly made one a witness before in a defense, but when I
7 made him a witness I got to question him both in the
8 suppression hearing and in front of the jurors during the
9 trial. And I think you not only have the rules but you
10 have the confrontation right. The way it stands now we don't
11 have the right to confront and cross-examine Mr. Anthony if
12 he's the prosecuting attorney.

13 THE COURT: In the case you talked about apparently
14 you called him as a witness?

15 MR. GROSE: In the case I'm talking about I called
16 Solicitor Jones as a witness.

17 THE COURT: He's in the courtroom. You can call
18 him.

19 MR. GROSE: Well, I think though that what Sierra is
20 talking about is that once the prosecutor becomes a witness
21 and has to be cross-examined it confuses the duties --

22 THE COURT: It just says that it's frowned upon. It
23 doesn't say it was an absolute prohibition against it. I
24 gather from what's going on in the courtroom right now there
25 is an element of surprise on the part of the prosecutor that

1 this witness has recanted his statement.

2 MR. GROSE: There is not an element of surprise,
3 Your Honor. Maybe Mr. Anthony is forgetful, but our notes,
4 Mr. Buergey's notes -- and we had a side-bar about this, was
5 is that this witness had recanted on September 14th, 2005 in
6 the presence of John Anthony. Mr. Anthony apparently does not
7 remember that right now.

8 But it kind of came as a surprise to us that
9 Mr. Anthony was going to be contesting the fact that this
10 witness had recanted. So if Mr. Anthony is surprised he
11 shouldn't be because we're not surprised based on what
12 Mr. Buergey made in the notes on the witness' statement on
13 September 14th of last year.

14 THE COURT: All right. Mr. Anthony?

15 MR. ANTHONY: Just to be absolutely clear on the
16 history. Mr. Buergey told me at some point in time last year,
17 I'm not sure of the date, that Mr. Norman had recanted to him.
18 I remember Mr. Buergey having some conversation with
19 Mr. Norman when he was sitting in the box over here with other
20 inmates but I do not know what the content of that
21 conversation was. I remember Mr. Buergey told me he recanted.
22 Other than that I don't know what was said between them.

23 Mr. Norman, as late as last night, was in a
24 conversation with Sergeant Vandiver and myself, and he
25 indicated that he would testify what was basically consistent

1 with the statement he gave to the police. He indicated that
2 to me when I talked to him last month as well. So I have no
3 reason -- or had no reason today to think he would testify in
4 the manner that he has.

5 Insofar as me becoming a witness, this conversation
6 that I had with him last night was witnessed by Sergeant
7 Vandiver. I mean, I particularly asked Sergeant Vandiver to
8 come meet me, be with him so that there would be somebody who
9 could testify about the conversation and I wouldn't become a
10 witness in the case.

11 I would refrain in asking the questions from saying
12 you told me. I mean, I would certainly agree to do that. I
13 don't want to make it like I'm pitting my credibility against
14 his, but I don't think there's anything improper about me
15 asking him about a conversation that I had with him,
16 especially as long as there's somebody else who can testify as
17 to the contents of it and hear their ease.

18 So I think that the whole issue that's being raised
19 by the defense is basically just -- it's not really -- it's
20 not really -- there's no basis for the motion because I don't
21 have to be a witness in this case. I can ask about this
22 conversation, prove up the contents of it separate and apart
23 from having to testify.

24 MR. GROSE: I mean, that's our big concern. That's
25 not the way the question was phrased before. I think he can

1 say you had a conversation with Mr. Vandiver and you said
2 this, and he can either admit it or deny it, and then the
3 rules tell us how they deal with that later. And if he admits
4 it, it's handled one way. If he denies it, it could be
5 handled another way. But I don't think he has to put his
6 credibility as the prosecutor as a minister of justice, the
7 way our courts look at it, into issue.

8 MR. ANTHONY: Well, it was a conversation he had
9 with Mr. Vandiver. I was asking the questions, but I will
10 refrain from posing the questions in a way that suggests that
11 he was just talking to me.

12 THE COURT: I'm going to direct you to do that, to
13 ask the questions concerning this in that fashion. I think
14 it's correctly stated the way you should approach this is
15 actually if he made statements last night in the presence of
16 Officer Vandiver, and at that time he confirms -- you can ask
17 him to confirm this written statement at that time. If he
18 admits it there's one way we go. If he denies it then there's
19 another way. That's my direction.

20 MR. ANTHONY: And, Your Honor, just to cover one
21 other thing. There was an objection for leading a few minutes
22 ago. I would argue that under Rule 611 now with him having
23 recanted the evidence that he was expected to give that I'm
24 entitled to lead him because I don't know how to impeach him
25 on things he said without --

1 THE COURT: You want me to declare him as a hostile
2 witness?

3 MR. ANTHONY: Yes, sir, I would.

4 THE COURT: Any objection from the defense?

5 MR. GROSE: Can we have a second to look at the
6 rule, Your Honor?

7 THE COURT: Sure.

8 [PAUSE.]

9 MR. GROSE: I think that, you know, it's not
10 mandatory under the rule. I assume he's talking about Section
11 ~~C of the rule regarding leading questions. I mean, I think~~
12 the question can be asked in a way without having to be a
13 leading question without him having to read it verbatim. But
14 I think it's discretionary with you whether you declare him as
15 a hostile witness and whether you permit him to lead.

16 THE COURT: I will declare him as a hostile witness
17 at this point in time and will allow you to lead.

18 Anything else, gentlemen?

19 MR. ANTHONY: No, sir, not at this time.

20 THE COURT: Sir, you got to stay. I said leading,
21 not leave.

22 THE WITNESS: Excuse me.

23 THE COURT: That's quite all right.

24 All right. Bring the jury back.

25 (WHEREUPON, the jury enters the courtroom at

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 approximately 3:15 p.m.)

2 THE COURT: The record should reflect that all
3 jurors have returned to the courtroom. I have partially
4 sustained the objection made outside of the presence of the
5 jury. I ask that the State proceed with its examination of
6 this witness as directed. You may proceed.

7 BY MR. ANTHONY:

8 Q. Mr. Norman, last night you had a conversation at the
9 jail with Sergeant Vandiver and myself; is that correct?

10 A. That's correct.

11 Q. And during that conversation you said that that
12 night that you were at Ms. Wharton's apartment; is that
13 correct?

14 A. Yeah, that's correct.

15 Q. And you said that that apartment was right beside
16 Nini Cole's apartment?

17 A. Yeah, it is.

18 Q. And you were outside smoking?

19 A. No, I don't recall saying that. I said I was
20 standing outside. I didn't say nothing about no smoking.

21 Q. Okay. You said you were standing outside. And you
22 said that you saw Mr. Haskell and Mr. Harrison; is that
23 correct?

24 A. That's what -- yeah.

25 Q. And you said that you saw Clarence Harrison hand

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Monte Haskell a 38 pistol?

2 A. No, I don't believe I said that.

3 Q. You don't recall saying --

4 A. No.

5 Q. -- that you saw Clarence hand Monte a gun?

6 A. No.

7 Q. And you told -- you said that Mr. Harrison told
8 Mr. Haskell that he was going to tell Rod Gartrell to come out
9 of Nini Cole's apartment?

10 A. Excuse me? Say that again.

11 Q. You said that you heard Mr. Harrison tell

12 Mr. Haskell that Mr. Harrison was going to tell Rod Gartrell
13 to come out of Nini Cole's apartment?

14 A. No, I didn't say that.

15 Q. You never told --

16 THE COURT: I'm going to ask you to make your
17 questions to the witness.

18 Q. Okay. Did you tell us that?

19 A. No, sir.

20 Q. You never made that statement to us?

21 A. No, sir.

22 Q. And you said that -- is it correct that you said
23 that Mr. Haskell told Mr. Harrison to get Mr. Gartrell to come
24 around the corner?

25 A. I just said no, sir.

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Q. Okay. Okay. And that at that point in time you --
2 is it true, is it correct that at that point in time you said
3 Mr. Haskell went behind the bushes? Is that correct, you told
4 us Mr. Haskell went behind the bushes?

5 A. If he went behind the bushes he wouldn't have went
6 behind the building, sir.

7 Q. The question is --

8 A. No, sir. No, sir.

9 Q. Did you tell us that Mr. Haskell --

10 A. No, sir.

11 Q. -- went behind the bushes?

12 A. No, sir.

13 Q. And you told us that you heard Mr. Harrison knock on
14 Ms. Cole's door; is that correct?

15 A. No, sir.

16 Q. You never told us you heard that?

17 A. (Shook head).

18 Q. And is it correct that you told us that at that time
19 you went back in Ms. Wharton's apartment?

20 A. No, sir.

21 Q. You never told us that?

22 A. (Shook head).

23 Q. And is it correct that you told us you heard a
24 gunshot within about five minutes of going back in Ms. Cole's
25 apartment -- or going back in Ms. Wharton's apartment?

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 A. No, sir.

2 Q. You never told us you heard a gunshot?

3 A. No, sir.

4 Q. And is it correct that you told us that when the
5 police came you stayed in Ms. Wharton's apartment?

6 A. When the police came I stayed in the apartment?

7 Q. When the police came you stayed in the apartment.
8 Is it correct you said that?

9 A. Yeah, I probably said that. I probably was in the
10 apartment, yeah, because I'm on trespass in that building.

11 Q. Okay. Well, are you saying now that you were at the
12 apartment or are you just saying that you said you were at the
13 apartment?

14 A. I was at the apartment, period. What you mean?

15 What you mean?

16 Q. So your testimony now is that you were at Hickory
17 Heights Apartments on February 10th, 2004?

18 A. No, you said what I told you last night. I told you
19 no, I didn't say that. You not saying -- you trying to mix
20 the two in together.

21 Q. Well, I'm asking you the question now is are you
22 saying now that you were at --

23 A. No, sir.

24 Q. -- Hickory Heights Apartments --

25 A. No, sir.

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 Q. -- on February 10th --

2 A. No, sir, not on February 10th. No, sir. I wasn't
3 nowhere in that vicinity.

4 Q. But did you tell us that last night?

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

6 Q. You didn't tell us that last night?

7 A. No, sir.

8 Q. And you never told us -- is it correct you never --

9 THE COURT: I'm gone to ask that you ask the
10 questions in the manner I've instructed you to ask them.

11 MR. ANTHONY: I'm sorry.

12 Q. Is it correct you never said that you saw
13 Mr. Harrison and Mr. Haskell with a 38?

14 A. You say is that correct?

15 Q. That's right. Is it correct?

16 A. Yeah, that's correct.

17 Q. It's correct you never said that?

18 A. Yeah, it's correct.

19 (WHEREUPON, State's Exhibit No. 7, Statement of
20 Sherman Norman, was marked for identification only.)

21 BY MR. ANTHONY:

22 Q. And going back to a month or so after this happened.
23 You gave a written statement, signed a written statement that
24 John Smith took; is that correct?

25 A. Not in that fashion, sir. I didn't just sign no

SHERMAN NORMAN - DIRECT BY MR. ANTHONY

1 statement, no. No, sir, it wasn't in that fashion.

2 Q. Did you tell John Smith what had happened?

3 A. No, it wasn't in that fashion. Yeah, I told him
4 what happened but it wasn't in that fashion, to that -- just
5 like you said. And no, it didn't happen like that. I ain't
6 just give him no statement just willingly.

7 Q. Okay. So is this the statement?

8 A. Yeah, that's the statement. But I'm saying but I
9 didn't give it to him willingly, just, hey, I got a statement
10 for you. No, I didn't do it like that.

11 Q. Okay. Is the contents of statement true?

12 A. Nah.

13 Q. But in the statement you say you signed the
14 statement saying that you saw Monte Haskell --

15 MR. PADGETT: I'd object, Your Honor, to asked and
16 answered and cumulative.

17 THE COURT: Sustained.

18 BY MR. ANTHONY:

19 Q. Mr. Norman, you were convicted in 2002 of 3rd degree
20 burglary and grand larceny; is that correct?

21 A. That's correct.

22 Q. And you were convicted in 2000 of escape?

23 A. That's correct.

24 Q. And you were convicted in 1999 of 2 counts of petit
25 larceny?

SHERMAN NORMAN - CROSS BY MR. PADGETT

1 A. That's correct.

2 MR. ANTHONY: If I could have one moment.

3 THE COURT: Yes, sir.

4 [PAUSE.]

5 MR. ANTHONY: That would be all for direct.

6 THE COURT: Mr. Padgett?

7 MR. PADGETT: Thank you, Your Honor.

8 THE COURT: You may cross-examine.

9 CROSS-EXAMINATION

10 BY MR. PADGETT:

11 Q. Mr. Norman, my name is Tripp Padgett. I'm the
12 attorney for Mr. Haskell. I've got a few questions for you.
13 You were saying the statement that the State has referred to
14 was not given willingly?

15 A. No, sir.

16 Q. Could you explain what you are talking about.

17 A. All right. On -- in April -- I don't know the exact
18 date. You know what I'm saying? But April sometime me and my
19 home boys got pulled over and they found dope and stuff in the
20 car. So nobody wanted to take the blame, so they charged all
21 of us with it. So I'm at the county, they done gave me bond.
22 John Smith come the next day and holler at me at the county.
23 You know what I'm saying? He come talk to me.

24 Q. How did he know to come talk to you?

25 A. Because he already had had two warrants that haven't

SHERMAN NORMAN - CROSS BY MR. PADGETT

1 been signed by a judge. You know what I'm saying? He got two
2 warrants that hadn't been signed by a judge plus he showed me
3 all the motions to discovery to you all's case. You know,
4 what I'm saying? Of the statements and all.

5 Q. So you saw everybody else's statement before you
6 gave yours?

7 A. He showed me -- yeah, he showed me everybody else's
8 statement before I even gave mine. Yeah, he done that. Okay.
9 Then when he came he showed me two statements from Mr. Haskell
10 and Mr. Harrison saying that I was involved, that I the one
11 that supplied the pistol.

12 So that's why I say -- that's why I say it was --
13 that's a counter statement. You know what I'm saying? They
14 saying I had something to do with it so I'm like, man, they
15 done have statements on me. So he like -- he directed and I
16 was the -- he was the producer and I was the writer,
17 basically. You get what I mean, sir?

18 Q. I think I understand what you are talking about now.
19 You said that you were at a Janet Ward's house?

20 A. Jeanette.

21 Q. Jeanette. Excuse me. And that's W-a-r-d, Ward?

22 A. Wharton, W-h-a-r-t-o-n.

23 Q. Right. Right. Who lives on Raymond Road?

24 A. Jeanette Wharton.

25 Q. W-a-r-d?

SHERMAN NORMAN - CROSS BY MR. PADGETT

1 A. Wharton. Wharton.

2 Q. Does Ms. Wharton go by another name. Does she have
3 another first name?

4 A. Nah. Her name Jeanette. I was there with her
5 niece.

6 Q. Raymond Road, is that anywhere near Hickory Heights?

7 A. (Shook head). Raymond Road down the street from
8 here.

9 THE COURT: Sir, you have to answer the question
10 verbally. Shaking your head won't work. If you are going to
11 say yes, say so.

12 THE WITNESS: Yes, sir.

13 THE COURT: Don't shake your head.

14 A. Okay. No, sir. No, sir.

15 Q. Okay. So it's down -- Raymond Road is down the
16 street from this courthouse?

17 A. Yeah, down the street from this courthouse, sir.

18 Q. And Hickory Heights is on the other side of the
19 courthouse?

20 A. It's still going to the same path, sir.

21 Q. I'm just not from Abbeville. I don't know where
22 Raymond Road is.

23 A. Yeah, it's in the same path. I'm saying, before you
24 get to Hickory Heights though you got to go through Raymond
25 Road.

SHERMAN NORMAN - CROSS BY MR. BUERGEY

1 Q. Okay. Is it next door to each other?

2 A. No. Raymond Road -- Raymond Road is this street
3 behind the courthouse, when you go on down. You take that
4 right into a trailer park. It's called Raymond Road.

5 Q. So it's your testimony today that you were never at
6 Hickory Heights?

7 A. Yes, sir.

8 Q. So it's further your testimony that you didn't see
9 Mr. Haskell or Mr. Harrison?

10 A. Right, sir.

11 Q. Okay. So is it your testimony -- or would it be
12 correct to say that you were put under some pressure to write
13 the statement that the State has presented to you?

14 A. That's correct, sir.

15 MR. PADGETT: I have nothing else, Your Honor.

16 Thank you.

17 THE COURT: Mr. Grose, Mr. Buergey?

18 MR. BUERGEY: Beg the Court's indulgence briefly.

19 THE COURT: Yes, sir.

20 [PAUSE.]

21 Mr. Buergey, your witness.

22 MR. BUERGEY: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. BUERGEY:

25 Q. Good afternoon, Mr. Norman.

SHERMAN NORMAN - CROSS BY MR. BUERGEY

1 A. How you doing?

2 Q. When Mr. Smith was asking you these questions about
3 -- and asking you to make a statement about Clarence Harrison
4 and Alti Haskell he made you think that you were a potential
5 defendant, right?

6 A. Yes, sir.

7 Q. He actually read you your rights like you were a
8 possible defendant in this case?

9 A. Yes, sir.

10 Q. And he actually had you sign a form saying you
11 understood your right, right to remain silent and everything?

12 A. He had the warrants and all, sir. It just wasn't
13 signed by Mr. Bill McNair.

14 MR. BUERGEY: May I approach this witness, Your
15 Honor?

16 THE COURT: Yes, you may.

17 Q. Do you recognize what this form is?

18 A. Yes, sir.

19 Q. What kind of a form is this?

20 A. I guess to give up your -- waive your right.

21 Q. And this is the kind of form that they make you sign
22 when you are possibly a defendant, when you're maybe going to
23 get charged with something?

24 A. Sure indeed, sir.

25 Q. So you felt under some pressure by Lieutenant Smith

SHERMAN NORMAN - CROSS BY MR. BUERGEY

1 to give the kind of statement that you did?

2 A. Yes, sir.

3 Q. And, in fact, today isn't the first time that you've
4 tried to explain to Mr. Anthony that that statement wasn't
5 true, is it?

6 A. No, sir.

7 Q. You were back in this courthouse back on September
8 14th of last year, weren't you?

9 A. Yes, sir.

10 Q. And you remember meeting with me that day?

11 A. Yes, sir.

12 Q. And you were taken to a room back behind this
13 courtroom; do you remember that?

14 A. Yes, sir.

15 Q. And do you remember Mr. Anthony was brought into
16 that room?

17 A. Yes, sir.

18 Q. And you remember telling Mr. Anthony on that day,
19 September 14th, that everything you had said in this statement
20 to John Smith was untrue?

21 A. True indeed, sir.

22 MR. BUERGEY: That's all the questions I have for
23 this witness, Your Honor.

24 THE COURT: Anything on redirect?

25 MR. ANTHONY: No. No redirect.

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 THE COURT: Sir, you may step down. Thank you very
2 much.

3 The State may call its next witness.

4 MR. ANTHONY: The next witness will be Mr. Adams.

5 THE COURT: Come forward and be sworn, sir.

6 MARIO ADAMS, after having been duly sworn,
7 testified as follows:

8 THE COURT: Mr. Anthony, your witness.

9 MR. ANTHONY: Thank you, Your Honor.

10 DIRECT EXAMINATION

11 BY MR. ANTHONY:

12 Q. Would you state your name, please.

13 A. Mario Adams.

14 Q. Mr. Adams, where do you live?

15 A. I live in Abbeville.

16 Q. In Abbeville?

17 A. Yes, sir.

18 Q. And where were you on the night of February 10th,
19 2004?

20 A. I plead the Fifth.

21 THE COURT: You are refusing to answer the question;
22 is that correct, sir?

23 THE WITNESS: Yes, sir.

24 THE COURT: All right. You may ask the next
25 question.

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. What were you doing the night of February 10th,
3 2004?

4 A. I plead the Fifth.

5 MR. ANTHONY: May we approach?

6 THE COURT: Yes, you may.

7 (WHEREUPON, a bench conference was had.)

8 THE COURT: Ladies and gentlemen of the jury, this
9 is one of those occasions again that I need to discuss some
10 matters with the attorneys outside of your presence. Do not
11 begin any discussions concerning this case until such time as
12 I have instructed you to do so. You may retire to the jury
13 room.

14 (WHEREUPON, the jury leaves the courtroom at
15 approximately 3:30 p.m.)

16 THE COURT: Mr. Anthony, I told you I'd give you a
17 few minutes to look over some matters. I'll do so. Court
18 will be at ease. I'll remain on the bench. Let me know when
19 you're ready.

20 MR. ANTHONY: Thank you, Your Honor.

21 (WHEREUPON, a brief recess was taken.)

22 MR. ANTHONY: I'm prepared to go back on the record
23 as soon as Mr. Grose gets back in the courtroom.

24 THE COURT: Here's Mr. Grose.

25 Mr. Anthony, you communicated you were ready to go

1 back on the record.

2 MR. ANTHONY: Yes, sir, we are. What the State
3 would do at this time is we will give Mr. Adams immunity from
4 prosecution regarding this attempted armed robbery shooting
5 incident.

6 THE COURT: All right. Anything to say about that,
7 defense?

8 MR. GROSE: Yeah. The consensus over the table is
9 that he needs an attorney to advise him of this because, you
10 know, Mr. Anthony has not said that he's going to give him
11 immunity from any other kinds of charges. If he testifies
12 that the statement that he gave was false he could be
13 prosecuted for that. You know, there's all kinds of potential
14 consequences there. I mean, we don't represent him, you know,
15 and he has asserted a right that he has.

16 THE COURT: All right. Assume we stand this witness
17 down, Mr. Anthony, are you ready to go forward with any other
18 witnesses?

19 MR. ANTHONY: I've got another witness here. I can
20 call another witness, Your Honor.

21 THE COURT: How long is that witness going to take?

22 MR. ANTHONY: Her direct will take probably 15
23 minutes.

24 THE COURT: All right. What I'm going to do is --
25 the public defender is already involved in this case?

1 MR. GROSE: That's us, Your Honor.

2 THE COURT: I'm not from this area. Maybe you can
3 help me. I believe this particular witness is going to need
4 to consult with an attorney. Someone needs to be appointed to
5 represent him in this matter before we put him back on the
6 stand. That attorney may want to inquire of you, Mr. Anthony,
7 concerning exactly what you are proposing to give this witness
8 immunity for.

9 I do not know the reason why he has taken the Fifth.
10 He could be taking the Fifth because of prior statements that
11 he may have given to the police which are incorrect, which is
12 also a crime. And if he admits to that then he's committed a
13 crime. I don't know what he's pleading the Fifth for and it's
14 not my job to inquire, but I think he probably does need an
15 attorney to discuss it with him.

16 So I'll be happy to hear from you if you have any
17 suggestions as to who might be appointed to discuss this with
18 him over the evening and maybe he'll be ready to testify in
19 the morning. I don't know.

20 MR. ANTHONY: Well, with all due respect. It's
21 probably not appropriate for me to suggest a lawyer for him.

22 THE COURT: Well, I'm asking the attorneys involved
23 in the case to give me some guidance. I can get the clerk to
24 go down the list and give me the next one on the -- do you
25 have a list developed here for appointment of attorneys,

1 private attorneys?

2 THE CLERK: We have to call Greenwood to get
3 appointment.

4 MR. GROSE: Yeah. There's only four attorneys in
5 town. There's Hite and Pruitt and Stone across the corner
6 over here and Paul Agnew.

7 THE COURT: Any of those attorneys do criminal work
8 in this area?

9 MR. GROSE: Minimal, I think. I mean, they
10 occasionally have cases.

11 THE COURT: Madam Clerk, I'm going to ask you to
12 check with Greenwood and see if we can get somebody appointed
13 to talk to this witness.

14 While that's occurring, I'm going to stand the
15 witness down, give you the right to recall the witness later
16 and allow you to call your next witness.

17 MR. ANTHONY: All right. Thank you, Your Honor.

18 THE COURT: Sir, you may stand down and return to
19 custody, please.

20 MR. ANTHONY: Your Honor, if there's not an attorney
21 who can confer with him here Detective Belcher asked me if it
22 would be agreeable to the Court for him to be transferred back
23 to the jail, Mr. Adams and Mr. Norman.

24 THE COURT: You are calling him as a witness and you
25 have the order of transport. Are you saying permanently?

1 MR. ANTHONY: No, just for this afternoon.

2 THE COURT: This evening?

3 MR. ANTHONY: Well, if they are not going to be
4 called this afternoon I think the jail -- I think --

5 THE COURT: I'm not in a position, Mr. Anthony. If
6 you are going to call this gentleman as a witness and he's
7 invoking his Fifth Amendment Rights, and then you come back in
8 the courtroom and you tell me you are going to grant him
9 immunity from prosecution for matters that arise out of this
10 particular incident I can't then tell him he has an obligation
11 to testify because I don't know why he's taking the Fifth. I
12 don't know if it has something to do with this particular
13 incident or some other incident that might be involved that
14 you have not given him immunity for.

15 So I'm not in a position to direct him that he has
16 to testify or doesn't have to testify. The reason I think he
17 needs an attorney is that he understands what immunities there
18 are, what immunity has been offered or has been tendered,
19 whether or not he still should claim the Fifth Amendment or
20 not, and the Court is not in a position to offer him legal
21 advice. I don't think any attorney in this case is in a
22 position to offer him legal advice on that point.

23 So I think I'm in the position of having to procure
24 an attorney to at least consult with this gentleman who is
25 attempting to exercise his Fifth Amendment Right. This is a

1 substantial constitutional right. He's got a right to
2 exercise it if he chooses to do so. So I'm in a position of
3 having to get him someone to consult with him on that
4 particular point.

5 If you plan to call him again as a witness, and I
6 assume you're going to pretty much wrap your case up at some
7 point in time tomorrow, that discussion needs to take place as
8 soon as possible, I assume.

9 And I'm not telling you how to try your case. If I
10 send him back to prison and they bring him back in the morning
11 and he's not consulted with an attorney I'm not going to force
12 him to get on the stand and testify if he still wishes to
13 assert a Fifth Amendment Right. So that's where we are.

14 ~~MR. ANTHONY: Yes, sir. Well, I was just asking for~~
15 them.

16 THE COURT: I understand you are asking for them,
17 but the point is that he's asserted the right and the only way
18 that he can be used as a witness now would be if he has
19 consulted with an attorney and that he would knowingly, freely
20 and intelligently then waive that right and goes forward. And
21 the only way that I can determine if he has knowingly, freely
22 and intelligently waived that right is for him to have legal
23 counsel on this subject.

24 Because immunity is not a cut and dry and clear cut
25 issue, and I'm not sure that this statement for immunity for

1 the things that went on out there that night necessarily
2 covers what he's asserting that right for. So I'm not in a
3 position to even inquire into that or ask him because he has a
4 right not to talk to me about that.

5 MR. ANTHONY: Yes, sir.

6 THE COURT: So he should consult with someone who he
7 has an attorney-client privilege with on that issue. So he's
8 going to have to stay here if we are going to get him somebody
9 to consult with.

10 MR. ANTHONY: Yes, sir. That's fine.

11 THE COURT: Is that correct, Mr. Anthony?

12 MR. ANTHONY: Yes, sir.

13 THE COURT: All right. Let's bring the jury back.

14 (WHEREUPON, the jury enters the courtroom at

15 approximately 3:47 p.m.)

16 THE COURT: The record should reflect that the jury
17 has returned to the courtroom. The State has called its next
18 witness.

19 Mr. Anthony, who is that next witness?

20 MR. ANTHONY: We would call Ms. Cole.

21 THE COURT: She is coming to the stand right now.

22 Ma'am, come forward and be sworn.

23 KYTRAUNDRA "NINI" COLE, after having been duly
24 sworn, testified as follows:

25 THE COURT: Your witness, Mr. Anthony.

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

DIRECT EXAMINATION

1

2 BY MR. ANTHONY:

3 Q. Would you state your name, please.

4 A. Kytraundra Cole.

5 Q. And, Ms. Cole, where do you live?

6 A. At 1108 Hickory Heights Apartment.

7 Q. And are you employed?

8 A. Yes, sir.

9 Q. How are you employed?

10 A. Hardees in Abbeville.

11 Q. And back in February of 2004 where were you living?

12 A. Hickory Heights Apartments.

13 Q. And which apartment were you living in at that time?

14 A. 402.

15 Q. And were you seeing anyone at this time?

16 A. Yes, sir.

17 Q. Who were you seeing?

18 A. Torey Brown.

19 Q. And are you still involved with Mr. Brown,

20 romantically?

21 A. No, sir.

22 Q. Did you see Mr. Brown at your apartment on the

23 evening of February 10th, 2004?

24 A. Yes, sir.

25 Q. And did he come to the apartment with anyone?

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 A. Later on that day, yeah.

2 Q. Who came to the apartment with him?

3 A. Rod.

4 Q. You know Rod's last name?

5 A. (Shook head).

6 Q. Just Rod?

7 A. Yeah.

8 Q. Is it this fellow on the front row?

9 A. Yes, sir.

10 Q. And what time did they get to your apartment?

11 A. About four, I guess. I can't remember.

12 Q. And when Mr. Gartrell got to the apartment what did
13 he do after he'd been there awhile?

14 A. They was in and out talking on the phone and stuff.

15 Q. And then what did Mr. Brown do?

16 A. He was back in the room with me.

17 Q. Then what did he do after?

18 A. Left.

19 Q. Where did he go to?

20 A. To get a part on his car then go to the grocery
21 store.

22 Q. And what were you doing after Torey Brown left?

23 A. On the phone and cooking.

24 Q. And while you were cooking, did anybody come to your
25 apartment door?

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 A. Yeah, later on that night.

2 Q. Who came to the door?

3 A. Clarence.

4 Q. Okay. You mean Clarence Harrison?

5 A. Uh-huh.

6 Q. And what did Clarence Harrison tell you?

7 A. He just told me to get off my phone, that he had to
8 talk with me.

9 Q. And what did he tell you?

10 A. That -- he just told me get off the phone, he had
11 something to tell me. When I hung up the phone he asked me --
12 told me to lock my door.

13 Q. And what did you say when he told you to lock your
14 door?

15 A. I just asked him for what.

16 Q. And what did he tell you when you asked him for
17 what?

18 A. Just he got something to do.

19 Q. And was it just that he had something to do?

20 A. Uh-huh.

21 Q. What did he say?

22 A. He got something to do. He just told me to lock my
23 door.

24 Q. And did he say that anybody else had something to
25 do?

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 A. I don't remember.

2 Q. And what did he tell you was going to happen? I
3 mean, what else did he tell you?

4 A. He didn't say what was going to happen. He didn't
5 say what.

6 Q. Did he tell you why he wanted you to lock your door?

7 A. He just said lock my door because somebody might
8 knock on it.

9 Q. And why did he say somebody might knock on it?

10 MR. BUERGEY: Objection, Your Honor, calls for
11 speculation.

12 THE COURT: I'll overrule the objection. She can
13 state whether he said why someone might knock on her door, if
14 he did. If he didn't, she can deny that.

15 Q. Did he tell you -- did he tell why somebody might
16 knock on your door?

17 A. I asked him why. He said because there ain't nobody
18 but me or something. I can't really say what.

19 Q. And then what did you do?

20 A. Started back cooking and on the phone.

21 Q. Did you lock your door?

22 A. Uh-uh.

23 Q. What did you tell him you'd do about locking your
24 door?

25 A. I told him I would but I didn't.

1 Q. And then did you call and tell anybody about what
2 Mr. Harrison had done?

3 A. Torey Brown.

4 Q. And then what happened next after you called Torey
5 Brown?

6 A. I got back on the other line with the other person I
7 was on the phone with.

8 Q. And then what was the next thing that happened?

9 A. That's when I just heard a big thump on my door. By
10 the time I came out the kitchen that's when Rod was running
11 through my door.

12 Q. And how much time passed from the time that
13 Mr. Harrison said this to you and the time that Rod came
14 through your door?

15 A. Like 15 minutes, 20.

16 Q. And when he came in through your door what had
17 happened to him? What did you see about him?

18 A. He was shot. I seen blood running out of his mouth.

19 Q. Then where was Mr. Harrison?

20 A. Right behind him.

21 Q. And what was Mr. Harrison doing, coming up behind
22 him?

23 A. Nothing. He just stood there and I asked him what
24 was wrong. You know, I asked Rod what was wrong. He was
25 trying to tell me he had been shot but he couldn't, and he was

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 running down my hall. And I told him don't go down my hall
2 because the blood was going to be everywhere.

3 Q. And what was Blue doing when he came in with Rod?

4 A. Nothing, just standing there. When I tried to tell
5 him don't go down my hall Blue grabbed him and told him.

6 Q. All right. And then did you try to talk to Rod?

7 A. I asked him what happened.

8 Q. And did Rod -- what did Rod tell you happened?

9 A. He had been shot.

10 Q. And then did Blue tell you anything about what had
11 happened?

12 A. He just told me he'd been punched or something.

13 Q. Blue said he'd been bunched?

14 A. (Nodded).

15 Q. And after they came in did you contact anybody?

16 A. I called Torey Brown and I called 911.

17 Q. All right. And what did Rod do?

18 A. He ran out the door. They told me to keep him in
19 there but he was already out the door.

20 Q. And then where did -- where did Mr. Harrison go when
21 Rod ran out the door?

22 A. He stood right there. And I told him that I didn't
23 know what happened but just get this blood up, and he mopped
24 my floor.

25 Q. And so Mr. Harrison began to mop your floor?

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 A. Yeah. Went to the bathroom to get all of it and
2 mopped the floor.

3 Q. And did you do anything when Rod went out of the
4 house?

5 A. I ran behind him. They told me not to let him go
6 nowhere, keep him where he is at.

7 Q. Did you see where Rod went?

8 A. He went up the steps running out in the road.

9 Q. And then did you see where he went after that?

10 A. Torey Brown was coming into Hickory Heights
11 Apartment and he picked him up.

12 Q. And after Rod left where did Blue go? After Rod
13 left with Torey where did Mr. Harrison go?

14 A. Blue was in my house cleaning up and the police came
15 and told him stop mopping my floor because the blood was going
16 to be evidence. He had to take pictures of the floor.

17 Q. And then what did Mr. Harrison do after the police
18 got there?

19 A. They asked him was he my boyfriend. He told them
20 no. And when they told me to put the mop down he put the mop
21 down and left.

22 Q. When Mr. Harrison came to your door that night and
23 had this conversation where he told you to lock your door, did
24 he mention Mr. Haskell?

25 MR. PADGETT: Objection, Your Honor. It was asked

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 and answered. He's already asked who came -- what he said at
2 the door and she's answered it three times already.

3 THE COURT: I think he asked did he mention
4 Mr. Haskell. I didn't hear that question.

5 Go ahead. You may ask the question.

6 BY MR. ANTHONY:

7 Q. Did he mention Mr. Haskell when he came to the door
8 that night?

9 A. I can't remember.

10 Q. And, Ms. Cole, you discussed this incident this
11 morning with Sergeant Vandiver and myself; is that correct?

12 A. Yes.

13 Q. And this morning, as a matter of fact it was in that
14 conference room back behind this courthouse -- back behind the

15 courtroom; is that correct?

16 A. Yes.

17 Q. And this morning you said that when Mr. Harrison
18 came to your door he told you that me and Monte got some
19 business; is that correct?

20 A. I'm not sure if he said Monte. He said he got some
21 business to take care of.

22 Q. Well, is it correct that you told us this morning
23 that you said that Mr. Harrison said me and Monte got some
24 business?

25 A. I'm ain't sure did he say Monte or not.

KYTRAUNDRA "NINI" COLE - DIRECT BY MR. ANTHONY

1 Q. Did you tell us that this morning, that he said
2 Monte?

3 A. I don't remember saying his name because I don't
4 remember.

5 MR. ANTHONY: If I could have one moment?

6 THE COURT: Yes, sir.

7 Q. And, Ms. Cole, you talked to Detective Smith back on
8 March the 8th of 2004; is that correct?

9 A. Uh-huh.

10 Q. And you told Detective Smith that when Mr. Harrison
11 came to your door he said -- he told you -- you asked him what
12 does he want you to lock your door for, and he said me and
13 Monte got some business we need to handle. I just need you to
14 lock your door. Is that correct that you told him that?

15 A. I might have.

16 Q. I'm sorry?

17 A. Back then if I did tell him that when I talked to
18 John Smith I might have did tell him that.

19 Q. Okay. Because back then this was within a month
20 after it happened. March 8th, 2004 would have been a month
21 after it happened; is that correct?

22 A. I think I talked to him like two weeks after it
23 happened.

24 Q. Okay. And you think you told John Smith that he
25 told you me and Monte got some business? That Mr. Harrison

KYTRAUNDRA "NINI" COLE - CROSS BY MR. PADGETT

1 told you that?

2 A. Uh-huh.

3 Q. You need to answer yes or no.

4 A. Yes.

5 Q. And when you called Torey Brown, after Mr. Harrison
6 had come to your door, did you tell Mr. Brown what
7 Mr. Harrison had said?

8 A. Uh-huh, yes.

9 Q. And did you tell Mr. Brown what Mr. Harrison said
10 about -- well, strike that.

11 A. No, I just --

12 MR. ANTHONY: Strike that. There's no question.
13 I'm sorry. That's all on direct.

14 THE COURT: Mr. Padgett.

15 MR. PADGETT: Thank you, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. PADGETT:

18 Q. Ms. Cole, my name is Tripp Padgett, and I'm the
19 attorney for Mr. Haskell. Did you give a statement to John
20 Smith, to Sergeant Smith -- excuse me, Lieutenant Smith prior
21 to the March statement?

22 A. You saying what? I don't understand.

23 Q. Were you interviewed the date after the incident?

24 A. Uh-huh, the same night.

25 Q. Ma'am?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. PADGETT

1 A. Yes, the next day and the same night.

2 Q. Yes, ma'am. And in that statement did you say that
3 Mr. Harrison had said anything to you?

4 A. Mr. Harrison said -- yeah. Yes, sir.

5 Q. Do you recall that statement that you gave back in
6 February 2004?

7 A. I don't remember every word I said.

8 MR. PADGETT: Your Honor, could I refresh her
9 memory?

10 THE COURT: You may show her the statement.

11 MR. PADGETT: May I approach?

12 THE COURT: Yes, you may.

13 BY MR. PADGETT:

14 Q. So the day after the incident did you say that
15 Mr. Haskell was involved in this at all?

16 A. Uh-uh. No.

17 Q. And did you see Mr. Haskell anywhere around the
18 apartment?

19 A. No, sir. No, sir.

20 Q. Ms. Cole, when you were -- when you gave these
21 statements, the first one and the second one, were you given
22 any information in order to make that statement, to assist in
23 making that statement?

24 A. No, sir.

25 Q. Did you give more than two statements?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. PADGETT

1 A. I might have. Yeah, I might.

2 Q. You might?

3 A. Not different, but the first statement you just
4 showed me I didn't write the whole story but I just wrote what
5 happened from the time he came to my house.

6 Q. Did you give a third statement?

7 A. I gave a second statement, yeah.

8 Q. No, not a second. Did you give a third?

9 A. No, not that I recall.

10 Q. Not to the police, to anyone?

11 A. Oh, yes.

12 Q. You did?

13 A. Uh-huh.

14 Q. What did that say?

15 A. The same thing about what I told Torey, what I told
16 Torey, and what Torey told me, to tell the truth. Because at
17 first I said I didn't want to get involved, and he told me the
18 best thing to do if I feel that Blue did it just tell the
19 truth.

20 Q. And that was the entire contents of the statement?

21 A. That I wrote.

22 MR. PADGETT: I have nothing else, Your Honor.

23 Thank you.

24 THE COURT: Mr. Buergey, are you going to --

25 MR. BUERGEY: Beg the Court's indulgence, Your

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 Honor, briefly.

2 MR. GROSE: Your Honor, if it pleases the Court, I'm
3 going to do this cross-examination.

4 THE COURT: Yes, sir, Mr. Grose.

5 CROSS-EXAMINATION

6 BY MR. GROSE:

7 Q. I'm going to approach you and let you look at that
8 for a second. My name is Charles Grose. Mr. Buergey and I
9 represent Mr. Harrison. Is that the same statement that
10 Mr. Padgett just gave you?

11 A. Uh-huh.

12 Q. It is?

13 A. Yes.

14 Q. You remember you got to say yes or no for the court
15 reporter.

16 A. Yes.

17 Q. And at the top of that statement there looks like
18 there's something that's -- that's a photo copy. It looks
19 like there's something that's maybe stapled there and copied.
20 Do you see that?

21 A. Yes.

22 Q. It's a card, copy of a card?

23 A. Yeah.

24 Q. And what that card is saying is that you were given
25 your rights before you made that statement?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 A. Yes.

2 Q. That you were told that you have the right to remain
3 silent?

4 A. Yes.

5 Q. And anything you say could be used against you; is
6 that right?

7 A. Yes.

8 Q. That you had a right to consult a lawyer if you
9 wanted to?

10 A. Yes.

11 Q. That anything you said could be used in a courtroom
12 like this; is that right?

13 A. Yes.

14 Q. And you were being told that that night, February

15 10th; is that right?

16 A. I don't remember --

17 Q. That statement, in fact -- that statement was given
18 on February 10th, wasn't it?

19 A. Yes.

20 Q. Let me show you where to look. See it says February
21 10th, 2004, right?

22 A. Uh-huh.

23 Q. And that was your first statement to the police. So
24 it was 2-10-2004, right?

25 A. Yes.

1 Q. And you knew that that was being given as part of an
2 official police investigation?

3 A. Yes.

4 Q. And you knew that you were a suspect, right?

5 A. No.

6 Q. Well, you knew that you had the right to remain
7 silent?

8 A. Yes.

9 Q. And you knew that this was something that could be
10 used later on?

11 A. Yes.

12 Q. Including against you; is that right?

13 A. Yes.

14 Q. And so you also knew that it would be important to
15 be honest?

16 A. Yes.

17 Q. Okay. And completely truthful, yes?

18 A. Yes.

19 Q. And in that statement Mr. Haskell's name doesn't
20 appear at all, does it? You take a minute to look at it.

21 A. No.

22 Q. It's not in there at all?

23 A. Uh-uh.

24 Q. There's nothing in that statement about Mr. Harrison
25 saying anything about Mr. Haskell, is there?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 A. No.

2 Q. There's nothing in that statement about Mr. Harrison
3 saying that he and Mr. Haskell had any business, is there?
4 Look at it to be sure.

5 A. No. I know. No.

6 Q. There's nothing in that statement about Mr. Harrison
7 saying lock your door? Look at it to be sure.

8 A. No.

9 Q. It's not in there. There's nothing in that
10 statement, the one of 2-10-2004, about Mr. Harrison saying
11 that Rod was punched and not shot, is there?

12 A. No.

13 Q. In fact, you talk about asking Rod what happened,
14 right?

15 A. Yes.

16 Q. And he wasn't talking good but you could understand
17 him a little bit, right?

18 A. Yes.

19 Q. I mean, he wasn't talking good because he was shot
20 in the mouth and there was blood coming from the mouth, right?

21 A. Yes.

22 Q. And that was a pretty serious looking injury, right?

23 A. Yeah.

24 Q. And he wanted you to call the police, right?

25 A. Yes.

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 Q. Okay. You asked him what happened -- we're talking
2 about Rod, and he couldn't tell you, could he?

3 A. No.

4 Q. You asked Blue what happened and he just shook his
5 head? Look at the statement.

6 A. Yeah, he shook his head.

7 Q. There's nothing in there about Blue having said
8 anything, is there?

9 A. No. I said I gave two statements.

10 Q. You feel like what?

11 A. I said I gave two statements. I said that.

12 Q. But this was the one that you gave on 2-10-2004; is
13 that right?

14 A. Yes.

15 Q. As part of the police investigation after you were
16 given your rights; is that right?

17 A. Yes.

18 Q. This was the one that you gave as close in time to
19 the incident, right?

20 A. Yes.

21 Q. The same day, right? Is that a yes?

22 A. Yes.

23 Q. Okay. You were going to call the police, is what
24 you told them, right?

25 A. Yes.

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 Q. And that Rod had run out the door; isn't that right?

2 A. I was already on the phone with the police when he
3 was running out the door.

4 Q. Okay. And you know he got in the car with Torey
5 Brown?

6 A. Yes.

7 Q. Now, Torey Brown at the time was your boyfriend,
8 right?

9 A. Yes.

10 Q. And Torey was the one -- you know that Torey had
11 gone, Torey Brown had gone to Alberton and got Rod and brought
12 him back to Abbeville, right?

13 A. Yes.

14 Q. And brought him to your apartment; is that right?

15 A. Yeah.

16 Q. And there was the three of you in there together,
17 you, Torey Brown and Rod, right?

18 A. Yes.

19 Q. And at some point Rod was in the bedroom on the
20 phone with the door shut, right?

21 A. Rod?

22 Q. I'm sorry. Torey was?

23 A. Yes.

24 Q. Torey, your boyfriend, went in the bedroom with the
25 door shut?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 A. Yes.

2 Q. And then he said he was going to go out in the hood?

3 A. Yes.

4 Q. That's what you told --

5 A. No, Rod said that.

6 Q. Torey didn't say that? Okay. Rod left but Torey
7 stayed; is what you are saying?

8 A. Yes.

9 Q. Okay. And at some point Torey left?

10 A. Yes.

11 Q. And that was after Rod had left?

12 A. Yeah.

13 Q. Now, you said that you had given more than one
14 statement. -- You gave -- you signed that statement, right?

15 A. Yes.

16 Q. And do you know when you gave a statement, the
17 second statement to John Smith? Do you know when you gave
18 that statement?

19 A. No.

20 Q. Have you seen -- I'm going to show you this. Have
21 you seen this document before?

22 A. (Nodded).

23 Q. You have seen that?

24 A. Oh, yeah.

25 Q. You have seen that?

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

- 1 A. Yeah.
- 2 Q. When did you see that?
- 3 A. I ain't sure what date, but I know I done seen it.
- 4 Q. Who showed that to you?
- 5 A. John Smith.
- 6 Q. John Smith. That's got a date on it, doesn't it?
- 7 A. Uh-huh.
- 8 Q. Can you tell us what that date is?
- 9 A. 03-8-24.
- 10 Q. 24 or 04?
- 11 A. 04.
- 12 Q. Okay. Now, that statement was almost a month later,
- 13 right? Is that right?
-
- 14 A. Yes.
- 15 Q. And during that time you and Torey Brown were still
- 16 seeing each other, right?
- 17 A. Yes.
- 18 Q. And you all were still boyfriend and girlfriend?
- 19 A. Yes.
- 20 Q. And you and Torey had time to talk in between the
- 21 10th and the 8th from February to March?
- 22 A. Yes.
- 23 Q. Okay. And it's not until that statement that some
- 24 of these details show up, is it?
- 25 A. Yes.

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 Q. That's when you first talk about Clarence supposedly
2 saying lock the door?

3 A. Yes.

4 Q. That's not in your first statement?

5 A. No.

6 Q. That's where you first talk about Clarence Harrison
7 supposedly saying that he was punched and not hit?

8 A. Yes.

9 Q. That's not in the first statement, is it?

10 A. No.

11 Q. In fact, it's directly contradictory to the first
12 statement because in the first statement all he had done was
13 shake his head after this incident happened, right?

14 A. Yes.

15 Q. So you've told two different things from February
16 10th to March 8th?

17 A. No, not two different things, just not the whole
18 story.

19 Q. Well, go back to your first statement. It says I
20 asked Blue, Clarence Harrison, what happened. He just shook
21 his head. That's what it says, isn't it?

22 A. Yes.

23 Q. And you signed that at the bottom, didn't you?

24 A. Yes, I did.

25 Q. In fact, right above where you signed it there's

KYTRAUNDRA "NINI" COLE - CROSS BY MR. GROSE

1 something that's typed in that says that you certified that
2 that was correct, didn't you?

3 A. Yes.

4 Q. And you certified it was correct that Clarence just
5 shook his head, on the 10th?

6 A. He just shook his head. And Rod said, I've been
7 shot. And Blue said, No, he's been punched.

8 Q. That's not what the statement says. I'm asking what
9 you certified --

10 A. Yes.

11 Q. -- was correct in the statement. Okay. That detail
12 is not in that statement.

13 Now, when Rod had been shot and he came in the
14 apartment you just wanted him to stay in the front part of the
15 apartment, didn't you?

16 A. Yes.

17 Q. You didn't want him coming down the hall?

18 A. No.

19 Q. You didn't want the blood getting down the hall, did
20 you?

21 A. No.

22 Q. Because he was bleeding badly and it was getting on
23 the floor?

24 A. Yes.

25 Q. And you were upset about that?

KYTRAUNDRA "NINI" COLE - REDIRECT BY MR. ANTHONY

1 A. Yes.

2 Q. And you were still upset about that when
3 Mr. Vandiver got there later on that night, right?

4 A. Yes.

5 Q. And when Rod had gone out into the hood you knew
6 that he was coming back there, right.

7 A. Yes. I thought he would, yeah.

8 Q. Well, Torey was his ride from Georgia over?

9 A. Yeah.

10 Q. And Torey knew that he was coming back?

11 A. Yes.

12 MR. GROSE: That's all I have at this time. I'll
13 just take these documents back, please.

14 THE COURT: Redirect.

15 REDIRECT EXAMINATION

16 BY MR. ANTHONY:

17 Q. Ms. Cole, that first statement you gave that you
18 were looking at, the one that's -- this one right here that
19 you were just shown.

20 A. Uh-huh.

21 Q. That's a very brief statement, isn't it?

22 A. Yes.

23 Q. And what does that statement essentially cover, as
24 far as what you were telling happened?

25 A. Yeah.

KYTRAUNDRA "NINI" COLE - REDIRECT BY MR. ANTHONY

1 Q. I mean, what does it cover?

2 A. Just not detail from detail, just half the story.

3 Q. And really it just covers what happened from the
4 time Rod came to the house; is that correct?

5 A. Yes.

6 Q. There's nothing in there about what happened before?

7 A. Uh-uh.

8 Q. The statement -- the second statement that you just
9 looked at is much more detailed; is that correct?

10 A. Yes.

11 Q. I'm showing you this is what statement I'm referring
12 to. You just saw that, right?

13 A. Yes.

14 Q. And how does the second statement contrast with the
15 first in regards to detail?

16 A. It got the whole story on that, the second one, but
17 the first one just got a little detail.

18 Q. The first one you gave, where were you when you gave
19 it? Where did you go?

20 A. At my home.

21 Q. You were at your house?

22 A. Uh-huh.

23 Q. And that was given to a patrol officer; is that
24 right?

25 A. Yes.

KYTRAUNDRA "NINI" COLE - RECROSS BY MR. PADGETT

1 Q. With Abbeville Police Department?

2 A. Yes..

3 Q. Did you write the statement out or did he?

4 A. Huh?

5 Q. Did you write it out yourself?

6 A. I wrote it.

7 Q. Okay.

8 MR. ANTHONY: That's all on redirect.

9 THE COURT: Recross, Mr. Padgett?

10 MR. PADGETT: Yes. Thank you, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. PADGETT:

13 Q. Ms. Cole, do you have any fear that if you don't

14 testify the way the State wants you to that you will suffer

15 some consequences because of that?

16 A. Yes.

17 MR. PADGETT: Thank you.

18 THE COURT: Mr. Grose.

19 RECROSS-EXAMINATION

20 BY MR. GROSE:

21 Q. They asked you about your first statement not being

22 as detailed as your second statement. The second statement

23 they came to you and wanted more detail, didn't they?

24 A. Yes.

25 Q. They did?

KYTRAUNDRA "NINI" COLE - RECROSS BY MR. GROSE

1 A. Uh-huh.

2 Q. But when you gave the second more detailed statement
3 they came to you wanting more detail, didn't they?

4 A. No. I was asked to come to the police station to
5 give a second statement.

6 Q. And when you gave the statement they wanted more
7 detail?

8 A. No, I just wrote what I knew.

9 Q. Okay. Well, the second statement was typed?

10 A. Yes.

11 Q. Did you write something?

12 A. I talked while Joe Smith typed.

13 Q. So you didn't write anything?

14 A. No. I talked and he wrote what I said.

15 Q. And you said you feel some pressure that you could
16 get in trouble if you don't testify the way the State wants
17 you to?

18 A. Yes. I know I can get in trouble.

19 THE COURT: What did you say?

20 A. Yes. I know I can get in trouble.

21 Q. And who's told you you could get in trouble?

22 A. I just know I can. I know you don't supposed to lie
23 and I swore that I wouldn't lie.

24 Q. And you are worried about the police department,
25 getting in trouble with the police department?

KYTRAUNDRA "NINI" COLE - RECROSS BY MR. GROSE

1 A. I ain't worried because I know I'm telling the
2 truth.

3 Q. You're not worried because you know you are saying
4 what they want you to say?

5 MR. ANTHONY: Objection.

6 A. No.

7 THE COURT: Sustained.

8 MR. GROSE: Nothing further.

9 THE COURT: Mr. Anthony, you've already had
10 redirect.

11 You may step down.

12 Ladies and gentlemen of the jury, at this point in
13 time we're going to adjourn for the evening. I will ask you
14 and I'll give you the same admonishment that I did yesterday
15 evening. Please do not listen to, watch, read, or gather any
16 information from any source concerning this case other than
17 the information that you've gathered from this witness stand,
18 from the witnesses who've testified here and the evidence
19 that's come in through those witnesses.

20 Do not discuss this case with anyone during the
21 overnight break. That includes spouses, fellow jurors,
22 anyone. Should anyone attempt to contact you concerning this
23 case during the break, please report that upon your return and
24 I will take the appropriate action.

25 So at this time, I'm going to release you for the

1 evening. Be back in the jury room at 9:30 in the morning. We
2 should be in a position to begin the retrial of the case at
3 that time. Thank you very much. You are free to go.

4 (WHEREUPON, the jury leaves the courtroom at
5 approximately 4:20 p.m.)

6 THE COURT: I'm told perhaps the attorney for the
7 witness who had exercised the Fifth may be in the building.
8 If he is I'd like to talk to him before I break for the
9 afternoon.

10 MR. GROSE: I have two things real briefly before we
11 recess.

12 THE COURT: Yes, sir.

13 MR. GROSE: One is it's possible we may want to
14 recall Ms. Cole. So I ask that she not be excused from any
15 subpoena, and if we need to issue another one to have it
16 issued before she leaves the building.

17 THE COURT: I'll explain that to her. Go ahead.

18 MR. GROSE: And the second thing is with regard to
19 Mr. Harrison and his bond. He did come to court this morning,
20 and he has been admonished that he could be tried in his
21 absence, and we would ask that he remain on bond for the
22 remainder of the trial.

23 THE COURT: Does the State have a position?

24 MR. ANTHONY: We'd leave that up to Your Honor.

25 THE COURT: Generally, once the case has started in

1 a felony case it's my position that the defendants will remain
2 in custody until such time as the case has been completed.
3 That will be the case in this case. The defendants will
4 remain in custody.

5 THE COURT: Mr. Padgett, I see you rising.

6 MR. PADGETT: Well, since you have already ruled on
7 it for both defendants, Your Honor, I don't know if my motion
8 would be just pure surplusage, but if I may?

9 THE COURT: You may put it on the record.

10 MR. PADGETT: Okay. Thank you. I would join with
11 the motion for Mr. Grose, and further point out for
12 Mr. Haskell that he was notified of the warrant, came back
13 from Chicago, was arrested and bonded out and been here ever
14 since. His family is here in Abbeville. When he was --

15 again, when he was notified of the arrest -- of the warrant
16 being issued he came back to accept it. I'd submit that he is
17 not a flight risk and not a danger to society.

18 THE COURT: At this point in time, though, once the
19 case has started there's no longer a bond in place and, of
20 course, I can't continue the bond without the consent of the
21 bondsman.

22 MR. PADGETT: And the bondsman is in the courthouse,
23 Your Honor.

24 THE COURT: Is he present?

25 MR. GROSE: It's the same bondsman for both of them,

1 I believe, Your Honor.

2 THE COURT: If he wants to come forward and be
3 willing to remain live on the bond I'll be happy to hear him.

4 Sir, if you will just have a seat I'll talk to you
5 in just a second. Thanks for coming.

6 [PAUSE.]

7 MR. PADGETT: I'm sorry, Your Honor. Just one
8 second.

9 THE COURT: While we're doing that, is it okay if I
10 discuss this matter with Mr. Callison outside of your
11 presence?

12 MR. PADGETT: Yes, Your Honor.

13 THE COURT: Mr. Callison, if you'll come forward. I
14 want to thank you very much for coming. What the situation

15 we've had is that there is a witness who has appeared. He's
16 in the department of corrections.

17 The gentleman's name is?

18 MR. ANTHONY: His name is Monroe Adams. He's not in
19 the department of corrections. He's just in the local jail.

20 THE COURT: Okay. I notice he was in prison garb.

21 I didn't catch the uniform was from the jail. At any rate, he
22 has taken the Fifth upon his taking the stand. Thereafter,
23 the State has offered immunity. I think it was announced
24 immunity from any prosecution arising from the facts before
25 the Court in this case. The particular incident occurred on

1 February -- what was that date?

2 MR. ANTHONY: February 10th, 2004.

3 THE COURT: February 10th of 2004. I do not know
4 the reason why the gentleman has exercised his Fifth Amendment
5 Right, and I don't think I'm in a position to inquire of that.

6 I don't know if it has to do with matters involving
7 this incident, statements he may have made to the police or
8 other things that he may be taking the Fifth for. So I think
9 it's necessary that I appoint an attorney to discuss this
10 matter with him.

11 The State does intend to recall him to the stand and
12 attempt to require his testimony based on their offer of
13 immunity and I would like for you -- I'm appointing you to at
14 least represent him in regards to his exercise of his Fifth
15 Amendment Right in connection with this case.

16 As an officer of the Court I'd like for you to
17 inquire into that matter, discuss the offer of immunity from
18 the State and be in a position in the morning to advise the
19 Court as to whether or not your client continues to wish to
20 exercise his Fifth Amendment Right in regard to questioning
21 him before this Court or whether he has decided to testify in
22 this matter. Do you understand?

23 MR. CALLISON: Yes, sir.

24 THE COURT: And, again, I appreciate your
25 willingness to appear. It's my understanding, it's my belief

1 that this defendant is indigent and you can make the
2 appropriate motion before the Court for fee. Okay, sir?

3 MR. CALLISON: Thank you. Is there a written order
4 appointing me?

5 THE COURT: No, sir. I'm Appointing you verbally
6 from the bench at this point. I could place it in writing
7 probably in the morning.

8 MR. CALLISON: Just so I'll have something in the
9 file to submit.

10 THE COURT: I'll get that for you. But at any rate,
11 you may want to discuss the question of immunity with the
12 State once we break, and we're going to break shortly and give
13 you a minute to talk with your client and we will resume in
14 the morning at 9:30. I don't know when the State intends to

15 call him or when that issue would come up, but you can discuss
16 that with the State.

17 MR. CALLISON: Yes, sir.

18 THE COURT: Thank you very much.

19 Now, what is the situation with our bondsman?

20 MR. PADGETT: The bondsman is not in the courthouse,
21 Your Honor. I was misinformed. He was actually on his way to
22 Anderson. He's unavailable to appear before you, and on the
23 record. However, he does have a phone number, if Your Honor
24 would entertain that.

25 THE COURT: I don't usually take testimony or

1 appearances over the phone. I'm sorry. That's not the way we
2 do business here. Given the fact that the terms of the bond
3 have been completed it will be my requirement that the
4 defendants remain in custody overnight.

5 The Court is in recess. We'll resume at 9:30 in the
6 morning. Thank you very much.

7 (WHEREUPON, the trial of this case was recessed for
8 the day.)

9
10 * * END OF VOLUME I * *
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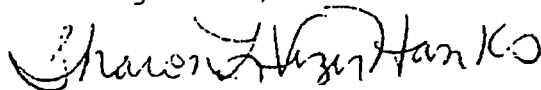
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C E R T I F I C A T E

I, Sharon L. Vizer-Hanks, Official Court Reporter
for the 8th Judicial Circuit of the State of South Carolina,
do hereby certify that the foregoing is a true, accurate and
complete transcript of record of all the proceedings had and
the evidence introduced in the trial of the captioned case in
Circuit Court on the 20th and 21st day of March 2006.

I do further certify that I am neither of kin,
counsel nor have an interest to any party hereto.

August 12, 2006



SHARON L. VIZER-HANKS

CIRCUIT COURT REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD) 8TH JUDICIAL CIRCUIT

THE STATE)
 -VS-)
ALTI MONTE LIVINSTON HASKELL,) 04-GS-01-118 & 191
AND CLARENCE HARRISON, II) 04-GS-01-194 - 196
 DEFENDANTS.)

MARCH 22-23, 2006

ABBEVILLE, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROGER COUCH, JUDGE; AND A JURY.

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

JOHN ANTHONY, DEPUTY SOLICITOR
ATTORNEY FOR THE STATE

JAMES GRAHAM PADGETT, III, ESQUIRE
ATTORNEY FOR DEFENDANT HASKELL

CHARLES GROSE, PUBLIC DEFENDER
ALEX BUERGEY, ASSISTANT PUBLIC DEFENDER
ATTORNEYS FOR DEFENDANT HARRISON

SHARON L. VIZER-HANKS
CIRCUIT COURT REPORTER

I N D E X

(SW) - DENOTES STATE'S WITNESS

(DW) - DENOTES DEFENSE WITNESS

(IC) - DENOTES IN CAMERA

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1 Wednesday, March 22, 2006

2 THE COURT: Is the State ready?

3 MR. ANTHONY: Yes, sir, Your Honor. The State's
4 first witness is going to be Mr. Adams, the man that took the
5 Fifth yesterday. And his attorney, Mr. Callison, is here at
6 the courthouse.

7 THE COURT: I understand. I'll get with him in just
8 a second.

9 Is the defense ready?

10 MR. GROSE: We are, Your Honor. We have a matter of
11 law to take up that would require calling a witness to bring
12 the matter before the Court.

13 THE COURT: Does that have to do with Mr. Adams'
14 testimony?

15 MR. GROSE: Well, it might be consistent with some
16 of the issues, but it would be a separate matter. So we want
17 to --

18 THE COURT: Should I take up his matter first or is
19 this something I should take up before I take that up? I have
20 no clue what you are taking about, is what I'm saying.

21 MR. GROSE: Well, Your Honor, if we're able to
22 develop an adequate record we're going to be moving for a
23 mistrial based on the issue that I need to bring up.

24 THE COURT: All right. Then let's take that up
25 first.

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 MR. GROSE: Okay. I call Nakisha Wardlaw.

2 THE COURT: Come forward, ma'am.

3 NAKISHA WARDLAW, after having been duly sworn,
4 testified as follows:

5 DIRECT EXAMINATION

6 BY MR. GROSE:

7 Q. Ms. Wardlaw, would you please state your full name
8 for the record.

9 A. Nakisha Wardlaw.

10 Q. And do you live in Abbeville?

11 A. Yes.

12 Q. Do you know the lady, Ms. Cole, who testified
13 yesterday afternoon?

14 A. Yes.

15 Q. How do you know her?

16 A. She's my first cousin.

17 Q. Have you been here for the trial this week?

18 A. Yes.

19 Q. Are you connected to this trial?

20 A. No.

21 Q. Are you on the witness list for this trial --

22 A. No.

23 Q. -- as far as you know?

24 Have you been in the courtroom while the trial was
25 going on?

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 A. Yes.

2 Q. Have you also been in the hallways outside the
3 courtroom?

4 A. Yes.

5 Q. And did you see Ms. Cole's testimony yesterday
6 afternoon?

7 A. Yes.

8 Q. During the trial have you had any contact with
9 Ms. Cole?

10 A. Yes.

11 Q. And where did that contact take place?

12 A. The hallway.

13 Q. And when you say the hallway, describe where you are
14 talking about.

15 A. Right outside the doors.

16 Q. If you go through these back doors?

17 A. The bench right there.

18 Q. There's a bench on the stairwell landing. You go
19 through the doors, you go down the stairs, that bench?

20 A. No. Right -- directly right upstairs.

21 Q. Directly outside. Okay. And through part of that
22 time has she been in a room back there?

23 A. Yes.

24 Q. And was there a time when she was not in that room?

25 A. Yes.

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 Q. Do you know why she didn't want to be in that room?

2 A. She stated that she didn't want to sit in there with
3 the prisoners.

4 Q. And that was some of the other witnesses who
5 testified that were in custody?

6 A. Yes.

7 Q. Now, did she talk to you about the substance of her
8 testimony?

9 A. No.

10 Q. Now, did she talk to you about whether or not she
11 wanted to testify?

12 A. Yes.

13 Q. Tell His Honor about that conversation.

14 A. She stated to me that she didn't want to come on the
15 stand yesterday. She didn't want -- she didn't really have
16 anything to do with this besides the fact that yes, they did
17 come into her house. But she didn't want to have anything to
18 do with this and that she wanted to plead to her Fifth. And I
19 stated to her, Well, you are going to have to tell them.

20 When we came back off break she proceeded to go tell
21 I know of one, Mr. Anthony. I don't know who else was in the
22 room. But she told me that he stated to her that she could
23 not do that. It was too late for her to do that, and just
24 don't worry about it. Go ahead and take the stand. And that
25 if she tried it then, then that's when she would get in

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 trouble. It was too late for her to plead to her Fifth. And
2 she was so upset about it.

3 Q. Well, let me ask you a few more questions. You saw
4 her go in the room with Mr. Anthony?

5 A. Yes. I'm not sure who else was in there. This was
6 after break.

7 Q. Did you hear any of the conversation involving her
8 and Mr. Anthony?

9 A. No.

10 Q. Okay. What you're taking about -- also, you talked
11 with her after she was in the room with Mr. Anthony?

12 A. Yes, directly after. She didn't stay in the room.
13 She came back out, yes.

14 Q. And for clarify, what was it that she said when she
15 came back out of the room with Mr. Anthony?

16 A. She was shaking her head no. And I'm looking at her
17 like no, what. She said, He told me that I couldn't do it. I
18 said, Who told you? She said the solicitor told me I couldn't
19 do it. That now is the time that I would get in trouble for
20 doing it because it's too late. To go ahead and take the
21 stand everything will be all right.

22 Q. Okay. And this was before she was called as a
23 witness?

24 A. Yes.

25 Q. Do you know about what time yesterday all this took

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 place? Was it yesterday that this took place?

2 A. Yes, right in the vicinity of 2:30.

3 Q. So when we were coming back from the lunch break?

4 A. Yes.

5 Q. Now, did you tell anybody about this yesterday?

6 A. No, just -- it just stayed between me and her.

7 Q. At the end of the day did you tell anybody?

8 A. At the end of day?

9 Q. Did you tell Mr. Padgett, specifically?

10 A. Yes.

11 Q. And you know Mr. Padgett because I believe he's
12 representing somebody that you are connected to?

13 A. Yes.

14 Q. And did you tell this to me this morning?

15 A. Yes.

16 Q. You also had indicated to me this morning something
17 about Ms. Cole being locked up by the city police department?

18 A. Yes.

19 Q. What do you know about that?

20 A. Maybe about a month ago she was read -- like I said,
21 I don't know if this is the right word, she was ready to
22 recant her statements or whatever. I don't know if that's the
23 right word. But anyway, she didn't want anything to do with
24 it back then either, and this is like a month ago. And she
25 was locked up by Lieutenant Smith and placed in a holding cell

NAKISHA WARDLAW (IC) - DIRECT BY MR. GROSE

1 for practically the whole day, and he told her that he could
2 lock her up for -- I don't know what was the basic name of the
3 charge he gave her, and it scared her up, too.

4 Q. Did you actually see her locked up?

5 A. I had to go pick her up.

6 Q. You picked her up from being locked up. Do you know
7 if she was charged with anything that day?

8 A. She just came out crying, you know.

9 Q.. Where was this that she was locked up? Was it at
10 the city or at the county jail?

11 A. City.

12 Q. And they have a holding cell at the city, don't
13 they?

14 A. Yes.

15 Q. When she came out -- going back to the time when she
16 went in the room with the prosecutor and then came out and
17 said that he said she couldn't do it. What did you understand
18 it to mean?

19 A. Yesterday?

20 Q. Yes, ma'am.

21 A. What did I understand that he meant she couldn't do?

22 Q. Yes.

23 A. Plead to her Fifth.

24 MR. GROSE: We don't have anything else at this
25 time, Your Honor.

NAKISHA WARDLAW (IC) - CROSS BY MR. ANTHONY

1 THE COURT: Mr. Anthony?

2 CROSS-EXAMINATION

3 BY MR. ANTHONY:

4 Q. The conversation between me and Ms. Cole, you seen
5 it?

6 A. No.

7 Q. And where do you think it occurred?

8 A. Where do I think it occurred?

9 Q. Yeah, where did she talk to me?

10 A. After break yesterday right here out the doors to my
11 left.

12 Q. In that room back there?

13 A. Yes.

14 Q. And you are saying I called her into that room back
15 there and talked to her?

16 A. Yes, after break.

17 Q. And you weren't there for the conversation?

18 A. No, sir.

19 Q. But she came out of that room with me and told you
20 that?

21 A. Yes.

22 Q. And then as far as Detective Smith goes, you say
23 that she was arrested a month ago for something?

24 A. It was basically about a month ago, yes.

25 Q. Do you know if she was charged with anything?

NAKISHA WARDLAW (IC) - CROSS BY MR. ANTHONY

1 A. No, I don't know.

2 Q. And you got her out of jail -- or you picked her up
3 from the jail?

4 A. Yeah.

5 Q. Did you make her bond?

6 A. No.

7 Q. And did she tell you that Detective Smith had said
8 anything to her about testifying in this case?

9 A. That's what the subject was about. That's what it
10 -- she wanted to not be involved with, and he was telling her
11 she couldn't change or whatever. It was all to do with this
12 case, yes.

13 Q. Okay. So you are saying that she told you that she
14 got taken to the police department because of this case?

15 A. Yes.

16 Q. And that she was kept there and he told her she
17 couldn't change what she was going to say?

18 A. Yes.

19 Q. Okay. And when you picked her up that's what she
20 told you?

21 A. Yes.

22 Q. And, I mean, you picked her up at the police
23 department, right?

24 A. Yes. Are you talking about a month ago?

25 Q. Yeah. I mean, you picked her up a month ago at the

1 police department?

2 A. Yes.

3 Q. And how did you know to go pick her up?

4 A. She called me and told me to come and get her.

5 Q. Okay. And that's when she told you that they had
6 her up there all day on --

7 A. I wasn't sure what she was up there for until I
8 picked her up and she was all upset, and I asked her who was
9 the problem. And that's when she explained to me what had
10 happened.

11 Q. Okay. Okay. And she told you they had her up there
12 that day because of this case?

13 A. Yes.

14 MR. ANTHONY: Okay. That's all on cross-examination
15 at this time, Your Honor.

16 THE COURT: Anything on redirect?

17 MR. GROSE: No, sir.

18 THE COURT: Mr. Padgett, anything you'd like to
19 bring out?

20 MR. PADGETT: Nothing to add, Your Honor.

21 THE COURT: All right. Ma'am, you may step down.

22 MR. GROSE: Your Honor, I think we need to get
23 Ms. Cole back here.

24 THE COURT: Is she present?

25 MR. GROSE: I don't know if she's present or not but

1 we had indicated yesterday at --

2 THE COURT: She was not released from her subpoena.

3 MR. GROSE: That's right.

4 THE COURT: I assume she has one. Does she have a
5 subpoena, Mr. Anthony?

6 MR. ANTHONY: She was subpoenaed. Yes, sir.

7 MR. GROSE: I'd like to call Ms. Cole then.

8 MR. ANTHONY: Sergeant Vandiver says she was out
9 there.

10 THE COURT: If she's present bring her in the
11 courtroom.

12 Mr. Bailiff, I need Ms. Cole if she's out there.

13 [PAUSE.]

14 THE BAILIFF: Your Honor, sir, no one answers. The
15 other bailiff has gone outside to try to locate her.

16 THE COURT: We'll wait until we hear from him.

17 [PAUSE.]

18 THE BAILIFF: Your Honor, sir, the other bailiff has
19 been out and checked outside, no answer.

20 THE COURT: Not present. All right. I'm going to
21 direct the sheriff to pick up Ms. Cole, bring her back to the
22 courthouse. She's under subpoena. It's in the form of a
23 bench warrant. I want her back to the courthouse.

24 MR. ANTHONY: She works at Hardees. So she may be
25 working.

1 THE COURT: Thank you. Mr. Grose, I don't think we
2 can continue this issue at this point in time without her
3 present.

4 MR. GROSE: I don't think we can either, Your Honor.
5 I think that's the next step.

6 THE COURT: I'm going to proceed with the trial of
7 the case. When she becomes available we'll take that matter
8 up at that time.

9 MR. GROSE: Thank you, Your Honor. I would just
10 note that -- I mean, I think we need to develop more of a
11 record before we can make a mistrial motion but we wanted to
12 call this to your attention as soon as we learned about it.
13 We learned about it last night. This morning was the first
14 opportunity.

15 THE COURT: I understand.
16 Now let's take up Mr. Callison.

17 MR. CALLISON: Yes, sir.

18 THE COURT: I assume you've had an opportunity to
19 talk to your appointed client?

20 MR. CALLISON: Yes, sir.

21 THE COURT: Does he wish to continue to exercise
22 his Fifth Amendment Right in this case?

23 MR. CALLISON: Well, I talked with him last night.
24 He indicated that he would testify truthfully on the basis
25 that the solicitor's office is granting unqualified and

1 absolute immunity concerning his testimony, including anything
2 related to the statements that he made.

3 THE COURT: Solicitor, you understand what
4 Mr. Callison is saying? In other words, you mentioned
5 yesterday, you indicated that the State is willing to give
6 this witness immunity from anything that occurred as a result
7 of -- involving this incident that we are trying here today.
8 He's saying that that includes anything that has to do with
9 the statements that he has given to the police, then he would
10 be willing to testify fully.

11 MR. ANTHONY: Yes, sir, it will. The immunity will
12 extend to his involvement in the incident in question and
13 statements he may have made as part of police investigation.

14 THE COURT: Mr. Callison, I assume, it appears that
15 that satisfies that requirement?

16 MR. CALLISON: Yes, sir.

17 THE COURT: I would ask that you remain while he
18 testifies incase some issue comes up during his testimony.

19 All right. You wish to call him as your next
20 witness?

21 MR. ANTHONY: Yes, sir.

22 THE COURT: All right. Bring him out.

23 [PAUSE.]

24 THE DEPUTY: He's at the jail.

25 THE COURT: I see Ms. Cole at the back of the

KYRAUNDRA "NINI" COLE (IC) - DIRECT BY MR. GROSE

1 courtroom.

2 MR. GROSE: Do you want to proceed?

3 THE COURT: Since the other gentleman is not
4 available we'll go ahead and start without him.

5 Go ahead and call Ms. Cole forward.

6 Ms. Cole, come forward, please. Ma'am, If you'll
7 take that hat off from around your neck. Thank you. I'm
8 going to remind you that you have been placed under oath for
9 purposes of this trial. You remain under oath at this time.
10 You are sworn to tell the truth.

11 THE WITNESS: Yes, sir.

12 THE COURT: You may proceed.

13 MR. GROSE: Thank you, Your Honor.

14 DIRECT EXAMINATION

15 BY MR. GROSE:

16 Q. Ms. Cole, I'm sure you probably remember me from
17 yesterday. I need to ask you a few questions about some
18 things that happened -- or might have happened at the
19 courthouse, okay?

20 A. Uh-huh.

21 Q. Have you been sequestered as a witness? Let me
22 rephrase that question. Have you been told you have to stay
23 out of the courtroom while the trial is going on?

24 A. Yes.

25 Q. And have you been being kept or allowed to sit in

KYRAUNDRA "NINI" COLE (IC) - DIRECT BY MR. GROSE

1 this conference room that's behind the courthouse back here?

2 A. I've been back out there.

3 Q. And have you been in the hallway part of that time?

4 A. Yes.

5 Q. And where in the hallway have you been?

6 A. Outside right there. By the seat right there.

7 Q. And at some point -- well, you know Nakisha Wardlaw,
8 don't you?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. And she's a cousin of yours, I believe?

13 A. Yes.

14 Q. And you had some conversations with her, didn't you,
15 yesterday?

16 A. Yes. Later on that day, yeah.

17 Q. I want to direct your attention to about 2:30 after
18 the lunch break yesterday. Did you have a conversation with
19 her about whether or not you wanted to testify in this case?

20 A. No, not really. Yeah, I told her I wanted to plead
21 the Fifth. I didn't want no part of it, but he told me I
22 couldn't.

23 Q. Who told you you couldn't?

24 A. I don't know his name.

25 Q. Can you describe him?

KYRAUNDRA "NINI" COLE (IC) - DIRECT BY MR. GROSE

1 A. The man sitting right there (indicated).

2 Q. The man in the uniform or the suit?

3 A. Right there (indicated).

4 Q. He just raised his hand a minute ago?

5 A. Yes.

6 Q. He's wearing a blue tie?

7 A. Uh-huh.

8 Q. Blue suit?

9 A. Yes.

10 Q. Sitting next to the police officer?

11 A. Yes.

12 MR. GROSE: Your Honor, I'd ask that the record
13 reflect that she identified Deputy Solicitor John Anthony.

14 THE COURT: So reflects.

15 BY MR. GROSE:

16 Q. Can you tell us where this conversation took place?

17 A. Which one?

18 Q. The one where Mr. Anthony told you you could not
19 take the Fifth.

20 A. I asked him after the lunch break.

21 Q. Where were you when you asked him that question?

22 A. Right here (indicated).

23 Q. Right where?

24 A. Right up in here.

25 Q. In the courtroom?

KYRAUNDRA "NINI" COLE (IC) - DIRECT BY MR. GROSE

1 A. Yes.

2 Q. And what did you ask him about taking the Fifth?

3 A. I just asked him could I plead the Fifth because I
4 didn't want no part of saying anything and I just want to go
5 home. He told me no, it was too late.

6 Q. It was too late?

7 A. (Nodded).

8 Q. What did you take it to mean by that it was too
9 late?

10 A. I thought it was just because I had done made a
11 statement. I couldn't do it after I made a statement.

12 Q. Did he tell you that or is that the conclusion that
13 you drew?

14 A. No. Since he said it was too late I just took it
15 because I had already said -- wrote the statement.

16 Q. About a month ago were you locked up at the police
17 station?

18 A. I was called up there.

19 Q. You were called up there?

20 A. Yeah.

21 Q. Who called you up there?

22 A. John Smith.

23 Q. And what happened when John Smith called you up
24 there?

25 A. He asked me questions about what happened and was I

KYRAUNDRA "NINI" COLE (IC) -- DIRECT BY MR. GROSE

1 paid to tell -- to say otherwise than what happened.

2 Q. Were you?

3 A. No.

4 Q. Did you tell them that you wanted to change some of
5 your statements?

6 A. No.

7 Q. Okay. How long were you kept down there?

8 A. Like an hour. Not long. About 30 minutes.

9 Q. When you were called up there did you ride down
10 there yourself or did somebody pick you up and take you down
11 there?

12 A. Somebody picked me up.

13 Q. Who picked you up?

14 A. My aunt?

15 Q. And did your aunt leave while you were there?

16 A. Uh-huh.

17 Q. Is that a yes?

18 A. Yes.

19 Q. Remember, you got to give her yes or no answers so
20 it goes into the record. And did you have to call somebody to
21 come pick you up?

22 A. Yes.

23 Q. And who was that?

24 A. I called my aunt back.

25 Q. And you were down there for about how long?

KYRAUNDRA "NINI" COLE (IC) - DIRECT BY MR. GROSE

1 A. About 30 minutes to an hour.

2 Q. What type of experience was this at the police
3 station?

4 A. John Smith just got on the recorder and told me if
5 Mr. Harrison had paid me to say otherwise just say that he did
6 if he did, and I told him he didn't.

7 Q. He took a recording of this?

8 A. No, because I didn't say nothing. I told him no.

9 Q. Was this an upsetting experience for you?

10 A. Not really. I just said no, and we left it like
11 that.

12 Q. You weren't crying or anything?

13 A. No.

14 Q. Could it have been Ms. Wardlaw that picked you up
15 that day?

16 A. No.

17 Q. Has anybody ever told you what could happen to you
18 if you changed your testimony from your statements?

19 A. No.

20 Q. Has anybody ever threatened you with any type of
21 prosecution or anything?

22 A. No.

23 Q. Yesterday you said that you knew you could get in
24 trouble?

25 A. Uh-huh.

KYRAUNDR "NINI" COLE (IC) - CROSS BY MR. ANTHONY

1 THE COURT: Mr. Anthony, your witness.

2 CROSS-EXAMINATION

3 BY MR. ANTHONY:

4 Q. Ms. Cole, when Mr. Smith came to the police
5 department -- he asked you to come to the police station; is
6 that what happened?

7 A. Yes.

8 Q. And when he did, he wanted to talk to you about
9 whether you were feeling intimidated or threatened by
10 Mr. Harrison?

11 A. Yes.

12 Q. Is that correct?

13 A. Uh-huh.

14 Q. And the reason he did that is because Mr. Harrison
15 just a few days before, he called you, had been to your house;
16 is that correct

17 A. Yes.

18 Q. And he had been at your house with an investigator
19 from the public defender's office?

20 A. Yes.

21 Q. So an investigator from his lawyer's office had
22 brought Mr. Harrison, the defendant, to your home?

23 A. Yes.

24 Q. And he'd attempted to interview you about what you
25 saw that day in the presence of Mr. Harrison; is that correct?

KYRAUNDR "NINI" COLE (IC) - CROSS BY MR. ANTHONY

1 A. Yes.

2 Q. All right. And Mr. Harrison was sitting right there
3 in your residence and they were expecting you to talk to this
4 investigator right there in front of him; is that correct?

5 A. Yes.

6 Q. And how did that make you feel?

7 A. I guess -- the same.

8 Q. Did you like having to talk --

9 A. I didn't really want to say nothing because, like I
10 said, I didn't want no part of it.

11 Q. You didn't like having to talk about that with
12 Mr. Harrison --

13 A. With nobody.

14 Q. -- sitting in your house, did you?

15 A. No.

16 Q. And I found out -- well, actually, the police found
17 out about that, correct?

18 A. Yes.

19 Q. And that's why Detective Smith wanted to talk to
20 you; is that right?

21 A. Yes.

22 Q. And there was some concern on the part of the police
23 department that Mr. Harrison might have offered you money to
24 change your testimony about what happened; isn't that correct?

25 A. Is that what they -- what did you say?

KYRAUNDRA "NINI" COLE (IC) - CROSS BY MR. ANTHONY

1 Q. Detective Smith was worried?

2 A. Yeah. He was asking me, yeah.

3 Q. Because he thought you might have been paid
4 something by Mr. Harrison to try and influence your testimony
5 in this case?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. And I actually called you and talked to you about
10 that myself?

11 A. Yes.

12 Q. Do you remember that conversation on the phone we
13 had?

14 A. Uh-huh.

15 Q. And so when Detective Smith talked to you that was
16 all he was worried about; isn't that right?

17 A. Yes.

18 Q. And he never threatened you if you didn't say what
19 he wanted you to say, did he?

20 A. No.

21 Q. Okay. And I never threatened you if you didn't say
22 what I wanted you to say, did I?

23 A. No.

24 Q. Did anybody from law enforcement ever say anything
25 to you about if you change your story about this you could

KYRAUNDRA "NINI" COLE (IC) - CROSS BY MR. ANTHONY

1 wind up getting arrested or go to jail or anything like that?

2 A. Uh-uh.

3 THE COURT: You need to answer verbally, ma'am.

4 A. John Smith told me I ain't allowed to change my
5 statement.

6 Q. Okay. He told you that?

7 A. Yes.

8 Q. He told you you couldn't change your statement?

9 A. Yes.

10 Q. Did I ever tell you that you couldn't change what
11 you had to say?

12 A. No.

13 Q. And when you were up here yesterday you spoke to me
14 right after lunch; is that correct?

15 A. Yes.

16 Q. And you were sitting in the courtroom; is that
17 right?

18 A. Yes.

19 Q. And you were, I don't know, maybe three or four pews
20 from the back sitting down?

21 A. Yes.

22 Q. And as I walked through you flagged me down,
23 correct?

24 A. Uh-huh.

25 Q. And at that time you communicated to me that you

KYRAUNDRA "NINI" COLE (IC) - CROSS BY MR. ANTHONY

1 didn't want to have to testify?

2 A. Yes.

3 Q. And you said something along the line of you just
4 didn't want anything to do with this; isn't that correct?

5 A. Yes.

6 Q. And that was because you didn't want anything to do
7 with it?

8 A. No.

9 Q. And you really never have wanted anything to do with
10 it, have you?

11 A. No, sir.

12 Q. And why is that?

13 A. Because I talked to all of them and I really don't
14 -- can't tell you no more than what I know. He came to my
15 house bleeding and what was said to me: So I really can't
16 tell you no more than that.

17 Q. Okay. And I had explained to you that that was
18 really all I wanted you to say, didn't I?

19 A. Yes.

20 Q. I told you that I didn't want you to say anymore
21 than just what you saw and what you heard; isn't that correct?

22 A. Yes.

23 Q. Okay. And wasn't it also true that you told -- you
24 had told me or you were concerned about having to live in the
25 Village and Clarence and Monte knowing who you were?

KYRAUNDR A "NINI" COLE (IC) - CROSS BY MR. ANTHONY

- 1 A. Have I told you that?
- 2 Q. Well, are you concerned about that?
- 3 A. No.
- 4 Q. You are not concerned about that?
- 5 A. No, sir.
- 6 Q. That didn't have anything to do with you just not
- 7 wanting anything --
- 8 A. I just -- because I talked to all of them so.
- 9 Q. I mean, you talked to Clarence and Monte?
- 10 A. I've talked to Rod, too.
- 11 Q. And Rod. And you have to see Clarence and Monte?
- 12 A. No, because I stay in my house. So I really don't
- 13 have to, but I do.
- 14 Q. But you could?
- 15 A. Yes.
- 16 Q. Okay. And that has something to do with you not
- 17 wanting to be up here and testify, doesn't it?
- 18 A. No. I just don't want to say no more than what I
- 19 know.
- 20 Q. Okay.
- 21 A. So I really don't want no part of this because I
- 22 don't know. So I can't tell you no more.
- 23 Q. But you were never asked to say more than what you
- 24 knew, correct?
- 25 A. No.

KYRAUNDRA "NINI" COLE (IC) - RECROSS MR. ANTHONY

1 Q. Okay. Okay. And you told me that you just didn't
2 want anything to do with it, right?

3 A. Yes.

4 Q. And then as part of telling me that you said can't I
5 just take the Fifth; isn't that correct?

6 A. I asked you could I plead the Fifth first, and you
7 said no.

8 THE COURT: I'm sorry. Say that again. You asked
9 what?

10 THE WITNESS: Can I please the Fifth, and he told me
11 no.

12 THE COURT: Because you didn't want to have anything
13 to do with it?

14 THE WITNESS: Yeah.

15 THE COURT: Okay. Go ahead.

16 BY MR. ANTHONY:

17 Q. And that's the reason you asked me that was because
18 you didn't want to have anything to do with it?

19 A. Yes.

20 Q. And you told me you didn't want to have anything to
21 do with it?

22 A. After I asked you you told me no. And you asked me
23 why, had I been pressured. And I told you no, I just didn't
24 want to.

25 Q. Okay. And at that point, I told you that we were

KYRAUNDRA "NINI" COLE (IC) - REDIRECT BY MR. GROSE

1 going to go ahead and call you to the stand yesterday
2 afternoon?

3 A. Yeah.

4 Q. Is that correct?

5 A. Yes.

6 Q. And that's what we did?

7 A. Yeah.

8 Q. And when you were called to the stand you, to your
9 mind, you testified truthfully; is that right?

10 A. Yes.

11 MR. ANTHONY: That's all on cross. Thank you.

12 THE COURT: All right. Redirect.

13 (WHEREUPON, Defendant Harrison's Exhibit Numbers 2
14 and 3, Statements, were marked for identification only.)

15 MR. GROSE: May I approach the witness, Your Honor?

16 THE COURT: Yes, you may.

17 REDIRECT EXAMINATION

18 BY MR. GROSE:

19 Q. I'm going to hand you what we've marked as
20 Defendant's Exhibit Number 2. That's a copy of the statement
21 we were talking about yesterday, wasn't it?

22 A. Yes.

23 Q. One of them. That's the one that you signed, right?

24 A. Yes.

25 Q. And the date on that was February 10th, 2004?

KYRAUNDRA "NINI" COLE (IC) - RECROSS BY MR. ANTHONY

1 A. Uh-huh. Yes.

2 Q. And, I mean, you are probably like most people, you
3 don't want to be accused of a crime and come to court and face
4 going to prison, do you?

5 A. No, sir.

6 Q. That's not a very pleasant thought, is it?

7 A. No.

8 MR. GROSE: Nothing further at this time, Your
9 Honor.

10 THE COURT: Anything on recross?

11 MR. ANTHONY: No.

12 THE COURT: You may step down. Ma'am, you are still
13 not released from your subpoena. You need to stay at the
14 courthouse sequestered.

15 MR. ANTHONY: Well, Your Honor. I'm sorry. Can I
16 cross-examine her briefly about something?

17 THE COURT: Sure.

18 Ma'am, come back and resume the stand.

19 RECROSS-EXAMINATION

20 BY MR. ANTHONY:

21 Q. Ms. Cole, I'm sorry. I just have a couple other
22 things I want to ask you. This statement that I'm looking at,
23 that I'm showing you right here which is marked Defendant's
24 Exhibit Number 3, is that the statement that you signed when
25 the investigator for the public defender's office came to your

KYRAUNDRA "NINI" COLE (IC) - RECROSS BY MR. ANTHONY

1 house?

2 A. Yes.

3 Q. And when he brought Mr. Harrison with him?

4 A. Yes.

5 Q. So this is a statement you gave that Mr. Harrison
6 was there when you gave?

7 A. Yeah.

8 Q. And that's the statement that -- and it was that
9 meeting that prompted Detective Smith to ask you to come to
10 the city police department?

11 A. Yes.

12 Q. And let me ask you this. When you gave that
13 statement do you remember what you told me about how you were
14 talking to them and how it made you feel to have to talk to
15 them?

16 A. Do you remember?

17 Q. With Mr. Harrison there. Do you remember what you
18 told me about that?

19 A. Yes.

20 Q. What did you tell me?

21 A. That I felt uncomfortable.

22 Q. Okay. And what did you tell me that you -- how did
23 you tell me you dealt with them asking you those questions
24 with Mr. Harrison there?

25 A. How I told you?

KYRAUNDRA "NINI" COLE (IC) - FURTHER REDIRECT BY MR. GROSE

1 Q. How did that affect what you said?

2 A. I just did just like I did on the first statement.
3 I just didn't write everything. I just wrote some part down.
4 He didn't tell me I had to write the whole, every single
5 detail that happened.

6 Q. Okay. And so you did that because they had brought
7 Mr. Harrison to your house and were wanting you to talk about
8 this with him there?

9 A. He just told me to write. So I just wrote that.

10 Q. And that statement wasn't as complete --

11 A. No.

12 Q. -- when you sat down and told John Smith what
13 happened and he typed it into the computer?

14 A. No.

15 MR. ANTHONY: That's all. Thank you.

16 MR. GROSE: Just a brief follow-up.

17 THE COURT: Yes, sir.

18 FURTHER REDIRECT EXAMINATION

19 BY MR. GROSE:

20 Q. Again, you didn't say anything really any different
21 than what you had told him before, did you?

22 A. No.

23 Q. I mean, it's basically the same thing, is what you
24 told Mr. Best, is what you told the police that night; is that
25 right?

KYRAUNDRA "NINI" COLE (IC) - FURTHER REDIRECT BY MR. GROSE

1 A. Yes.

2 Q. And they were asking you if somebody had paid you or
3 done something, and you are saying that absolutely did not
4 happen, aren't you?

5 A. No.

6 Q. Nobody has paid you?

7 A. No.

8 Q. You've been uncomfortable a lot in this case,
9 haven't you?

10 A. Yes.

11 Q. I mean, you're uncomfortable right now?

12 A. Yes.

13 Q. You were uncomfortable yesterday testifying on the
14 stand?

15 A. Yes.

16 Q. You were uncomfortable talking to John Smith a month
17 ago at the police station?

18 A. Yes.

19 Q. You were uncomfortable talking to John Smith on the
20 typed-out statement, weren't you?

21 A. Yes.

22 Q. You were uncomfortable talking to the officers the
23 night when this happened, weren't you?

24 A. Yes.

25 Q. You've been uncomfortable every stage of the way

KYRAUNDRRA "NINI" COLE (IC) - FURTHER REDIRECT BY MR. GROSE

1 when you've had to talk about this?

2 A. Yes.

3 Q. Probably uncomfortable when you talked to
4 Mr. Padgett when his client was there?

5 A. Yes.

6 Q. And there's not been a time that this case has made
7 you feel uncomfortable about anything, is there?

8 A. No.

9 Q. You'd rather not be involved in it, not associated
10 with it?

11 A. Yes.

12 Q. I mean, there's nothing pleasant about being here --

13 THE COURT: Mr. Grose, we've established she's
14 uncomfortable.

15 MR. GROSE: Thank you, Your Honor.

16 THE COURT: Anything else?

17 MR. GROSE: No, sir.

18 THE COURT: You may step down, ma'am. Again, you
19 need to stay outside of the courtroom. You're still subject
20 to subpoena in this case.

21 Any other witnesses the defense wishes to call on
22 this subject?

23 MR. GROSE: I think we need to know from Mr. Anthony
24 whether or not he admits that this conversation took place. I
25 think that by the questions that he asked and the seeking the

1 agreement that I think he would admit that she asked about the
2 immunity and he told her that she couldn't do it.

3 THE COURT: Well, the way I've heard the terms
4 testified to by that witness, if he admits what she says is
5 true, was that the reason she wanted to exercise the Fifth is
6 because she's uncomfortable and didn't want to testify. I
7 don't know if that is a basic reason to exercise the Fifth.

8 I might agree with his statement at that point in
9 time. You can't exercise the Fifth because you are
10 uncomfortable and you don't want to testify. I will be glad
11 to hear from you. That was what she said. That's what I
12 heard, anyway.

13 MR. GROSE: Well, our position is, is that she was
14 also a suspect in this case at one point and like the other --

15 THE COURT: Because she was given her rights and
16 interviewed by a police officer?

17 MR. GROSE: Well, she said she felt like she was a
18 suspect.

19 THE COURT: At this time, not yesterday.

20 MR. GROSE: Yes, sir.

21 THE COURT: I didn't hear her say, testify that she
22 felt like she was a suspect yesterday. Did you hear that
23 testimony?

24 MR. GROSE: I didn't hear that testimony but I think
25 that if she had felt that way at any point it gives her the

1 right to seek independent advice. I mean, we needed to make a
2 record of this, Your Honor.

3 THE COURT: I understand. I'm not saying you
4 shouldn't make a record of it.

5 Mr. Anthony, do you wish to make any statement?

6 MR. ANTHONY: I do feel like I need to. I need to
7 put my account of this on the record as a factual matter. I
8 also wish to call Detective Smith. I can do it whichever
9 order the Court wishes.

10 THE COURT: I'll allow you to present witnesses, if
11 you'd like. Of course, as an officer of the Court you are
12 bound to tell the truth. I can swear you and you can make a
13 statement, if you wish to.

14 MR. ANTHONY: If the Court will allow me to make the
15 State's presentation on this issue I'll call Detective Smith
16 then I'll make a statement.

17 THE COURT: Is he present?

18 MR. ANTHONY: He's sequestered.

19 THE COURT: Ask him to step in.

20 MR. ANTHONY: We call Detective Smith to the stand.

21 THE COURT: Mr. Smith, come forward to be sworn.

22 JOHN SMITH, after having been duly sworn,
23 testified as follows:

24 THE COURT: Mr. Anthony, you may proceed.

25 DIRECT EXAMINATION

JOHN SMITH (IC) - DIRECT BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. Would you state your name, please.

3 A. John Smith.

4 Q. And, Mr. Smith, how are you employed?

5 A. I'm a police officer with the City of Abbeville.

6 Q. And what's your position with Abbeville Police
7 Department?

8 A. I'm a detective, lieutenant.

9 Q. I want to ask you -- I want to take you back to I
10 guess it would be late January, early February of this year.
11 Did you receive any communications at that point in time,
12 sometime about that time concerning any kind of alleged
13 improper contact with Ms. Cole, a witness in this case?

14 A. She had told me that the public defender's office
15 had been over to talk to her.

16 Q. Do you remember how you became aware of that?

17 A. Yes, sir. You and I were over there talking to her.

18 Q. And then later on that week did you have a
19 conversation with me about speaking to her?

20 A. I think so.

21 Q. Okay. And then based on that conversation what did
22 you do in regards to getting in touch with Ms. Cole?

23 A. I don't remember too much about that, Solicitor, to
24 be honest with you.

25 Q. Do you remember any conversation you had with

JOHN SMITH (IC) - DIRECT BY MR. ANTHONY

1 Ms. Cole about whether somebody had contacted her?

2 A. Yes, sir.

3 Q. What do you recall about it?

4 A. She said somebody from the public defender's office
5 had come over there and talked with her about the case.

6 Q. Do you remember anything else she might have told
7 you about who was there or anything like that?

8 A. Whoever it was from the solicitor's office [sic] and
9 I think Clarence Harrison was supposed to have been there.

10 Q. Okay. All right. And did you make any inquiries of
11 her as to whether there had been any threats or intimidation
12 of her as a result of that?

13 A. Yes, sir. I asked her, but she didn't say that she
14 was threatened.

15 Q. Okay. And did you have any other conversation with
16 her about her testimony in this case?

17 A. I just told her to come in here and tell what
18 happened.

19 Q. Okay. And is that basically the substance of the
20 conversation you had with her about this?

21 A. Yes, sir.

22 Q. Okay. Where did you talk to her; do you remember?

23 A. At her apartment.

24 Q. Do you think you went to her apartment?

25 A. Yes sir.

1 MR. ANTHONY: Thank you. That's everything.

2 THE COURT: Mr. Grose?

3 MR. GROSE: No questions.

4 THE COURT: You may step down.

5 Mr. Anthony, you indicated you might want to make a
6 statement for the record.

7 MR. ANTHONY: Yes, sir. What I'll try to do is
8 sever my account with what happened with an argument I might
9 make on that account.

10 Yesterday morning I had an interview with Ms. Cole.
11 Sergeant Vandiver was present. We went back over the things I
12 would be asking her about. She was sequestered. I didn't see
13 her at all until I was coming back.

14 At some point yesterday afternoon before we started
15 back, I can't recall -- I can't recall exactly when it was.
16 But at some point yesterday afternoon I was walking down the
17 main isle and she was sitting on one of the isles in the back
18 of the courtroom to my left side, and she called my name or
19 got my attention some way.

20 And my recollection is she told me that she didn't
21 want to testify and asked me if there was any way she could
22 not testify, and in the context of asking that she mentioned
23 can I take the Fifth? And I never addressed whether or not
24 she could take the Fifth. I just told her that we were going
25 to call her that afternoon.

1 And it was obvious to me and she even told me that
2 she just did not want to be a part of this. And I just tried
3 to assure her that we would get to her testimony this
4 afternoon and that that would be -- that would take care of
5 her involvement in this matter.

6 And that's essentially what I told her was we'll
7 call you this afternoon and, you know, you shouldn't have to
8 be involved in this trial anymore. And my intention in doing
9 that was that I had a witness who obviously just didn't want
10 to be here, wanted to leave and I was trying to -- I guess you
11 would say appease her.

12 And, you know, it was clear to me from the context
13 of the remarks she made that in saying she wanted to take the
14 Fifth she just didn't want to testify and she mentioned it in
15 the same sentence as I just don't want to testify. So that
16 was my response to her and she has never, in speaking to me,
17 said anything that would have incriminated herself.

18 And that's basically my factual statement. I would
19 like to argue that but I won't at this time unless -- I'll do
20 that when the Court wants to hear from me.

21 THE COURT: You indicated that she was not a suspect
22 in this case; is that correct?

23 MR. ANTHONY: No, sir.

24 THE COURT: Is she under any type of criminal
25 investigation, to your knowledge?

1 MR. ANTHONY: No, sir.

2 THE COURT: By anything she may have done or said in
3 this case?

4 MR. ANTHONY: No, sir.

5 THE COURT: All right. Mr. Grose, you wish to ask
6 any questions of Mr. Anthony?

7 MR. GROSE: No, sir.

8 THE COURT: Mr. Padgett?

9 MR. PADGETT: No, sir, Your Honor.

10 THE COURT: All right. Anything further from the
11 State?

12 MR. ANTHONY: I mean, I would --

13 THE COURT: In regard to this question.

14 MR. ANTHONY: I have no other factual evidence to
15 present. I would like to be heard at the appropriate time.

16 THE COURT: Well, right now there's not a motion
17 before the Court.

18 Mr. Grose, do you wish to make a motion?

19 MR. GROSE: Your Honor, at this time we will move
20 the Court for the mistrial. I mean, this did not happen in a
21 vacuum. We had a witness yesterday who testified that
22 statements that he made to the police were not true.

23 There was lots of questions that he made about --
24 that the State asked about, statements that were made to them
25 the night before trial that he said were not true statements.

1 apparently to him that she might want to take the Fifth, but
2 her reason was because she just didn't want to have anything
3 to do with the case.

4 You know if people could take the Fifth for that
5 reason we'd never get a trial conducted in this State. It
6 would be very difficult. I don't want to be there, just take
7 the Fifth and not show up.

8 Again, I don't know that she has ever given a cogent
9 and valid reason for wishing to take the Fifth. Certainly
10 didn't do so this morning. She's had it discussed with her
11 thoroughly at this point in time, I assume. She didn't wish
12 to take the Fifth this morning when she got on the stand.

13 I don't find that there's been any violation of her
14 rights, that she certainly is aware that she has Fifth
15 Amendment Rights. She's free to hire an attorney if she
16 chooses to. She could have taken the Fifth again this morning
17 if she chose to do so. She didn't. She testified again.

18 In fact, she went back over her statements again.
19 She said she testified truthfully yesterday. Nobody tried to
20 suborn perjury, asked her to testify to anything that was
21 incorrect or improper or was not truthful, from what I can
22 tell, from your side or from the other side. She didn't
23 indicate anybody tried to get her to do that.

24 But to say that she might want to exercise the Fifth
25 Amendment just because she doesn't want to participate in the

1 trial, doesn't want anything to do with it, I'm sorry. I
2 don't think that's grounds for mistrial, the fact that she did
3 not have legal advice concerning that.

4 I think if she got any legal advice, Mr. Anthony
5 denies, and also I'll put on the record, I believe his version
6 is more credible than what I've heard from the other
7 witnesses. The first witness placed their conversation in a
8 back room. The other two witnesses, the lady who had the
9 conversation and Mr. Anthony's statement, was that it occurred
10 in this courtroom.

11 You know, I find that the first witness's statement
12 is less credible than the statements given by the other two
13 witnesses in this matter. So I sign more credibility to
14 Mr. Anthony, as well as the second witness, Ms. Cole. So I'm
15 going to deny the motion.

16 Do you wish to be heard on it?

17 MR. PADGETT: Just that I join in the motion.

18 THE COURT: I knew you were rising for that purpose.
19 The record will reflect that you joined in the motion.

20 Anything else?

21 MR. ANTHONY: No. I have nothing else from the
22 State.

23 THE COURT: Before we get started. I did tell
24 Mr. Callison that he could go downstairs. Has the gentleman,
25 Mr. Adams, arrived?

1 MR. VANDIVER: He's in the back.

2 THE COURT: So he's present. You can bring him into
3 the courtroom, please, and I'll need somebody to go downstairs
4 and tell Mr. Callison we're about ready to begin. Will
5 somebody do that for me.

6 [PAUSE.]

7 Mr. Adams, come down and have a seat in the witness
8 stand, please. Mr. Adams, I have sent for Mr. Callison, the
9 attorney that I appointed for you yesterday, to be present.
10 As soon as he arrives in the courtroom we'll begin.

11 [PAUSE.]

12 Is the State ready?

13 MR. ANTHONY: Yes, sir, we are.

14 THE COURT: The defense ready?

15 MR. GROSE: Yes, sir.

16 MR. PADGETT: Yes, Your Honor.

17 THE COURT: All right. Bring the jury back.

18 (WHEREUPON, the jury enters the courtroom at
19 approximately 11:00.)

20 THE COURT: The record should reflect that all
21 jurors have returned to the courtroom. First of all, ladies
22 and gentlemen, I want to apologize to you. Had I known that
23 we had some issues that were going to have to be dealt with
24 this morning I would have not called you in as early as I did.
25 I apologize for having you sit in the jury room as long as you

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 did but there were some matters that came up that were
2 unexpected and had to be dealt with before we could begin our
3 trial this morning.

4 At this point in time, Mr. Adams has been recalled
5 to the witness stand.

6 Mr. Adams, I remind you, you were placed under oath
7 yesterday to tell the truth in your testimony in this trial
8 and you remain under oath at this point in time.

9 Your witness, Mr. Anthony.

10 MR. ANTHONY: Thank you, Your Honor.

11 DIRECT EXAMINATION

12 BY MR. ANTHONY:

13 Q. Mr. Adams, where do you live?

14 A. 111 Abbeville Drive.

15 Q. In Abbeville?

16 A. Yes, sir.

17 Q. And where were you on the night of February 10th,
18 2004?

19 A. Oakland Apartment.

20 Q. And what were you doing there that night?

21 A. Gambling.

22 Q. And where were you gambling?

23 A. Out in the breezeway.

24 Q. Okay. All right. And did you see Monte Haskell
25 that night?

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 A. No, sir.

2 Q. You never did see him?

3 A. No, sir.

4 Q. Didn't see him at all that night?

5 A. No, sir.

6 Q. When you were there at Oakland Apartments?

7 A. No, sir.

8 Q. Okay. Do you remember having a conversation with
9 Detective John Smith back on February 1st of 2006?

10 A. Yes, sir. Yes, sir.

11 Q. And do you remember him having you write out a
12 statement about what happened on February 10th, 2006?

13 A. Yes, sir.

14 (WHEREUPON, State's Exhibit No. 8, a Statement, was
15 marked for identification only.)

16 Q. I'm showing you what's been mark for identification
17 as State's Exhibit Number 8. Can you identify this document
18 I'm showing you?

19 A. Uh-huh.

20 Q. What is that?

21 A. A statement.

22 Q. All right. And whose statement is it?

23 A. Mine, but I was threatened and coached to write
24 that.

25 Q. Well, I just asked you whose statement it was.

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 A. Okay.

2 Q. And who wrote this?

3 A. I did.

4 Q. And when did you write it?

5 A. On the 1st.

6 Q. On the 1st of February?

7 A. Yes, sir.

8 Q. And who was with you when you wrote it?

9 A. Mr. Smith.

10 Q. Detective Smith?

11 A. Detective Smith.

12 Q. With the Abbeville Police Department?

13 A. Yes, sir.

14 Q. And in this statement you say that that night that
15 you were shooting dice in Oakland Apartments; is that correct?

16 A. Yes, sir.

17 Q. And you say that you told Detective Smith that Monte
18 Haskell came through the woods with a pistol under his shirt;
19 isn't that correct?

20 A. Yes, sir.

21 Q. And said that -- you said that he went to his
22 cousin's house and said somebody had got shot; is that
23 correct?

24 A. Yes, sir.

25 Q. And that Torey Brown called you at the hospital and

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 you told him you thought Monte had shot Rod?

2 A. Yes, sir.

3 Q. You said that?

4 A. Yes, sir.

5 Q. And said that Monte was acting real scared like he
6 had done something?

7 A. Yes, sir.

8 Q. Is that correct?

9 A. Yes, sir.

10 Q. And said that Monte caught a ride somewhere after
11 about 2 hours later; is that right?

12 A. Yes, sir.

13 Q. And this statement that I've shown you, Exhibit
14 Number 8 for identification, this is your handwriting?

15 A. Yes, sir.

16 Q. This is what you wrote out, yourself?

17 A. Yes, sir.

18 Q. And John Smith just gave you the form and you wrote
19 it out and you signed it?

20 A. Yes, sir.

21 MR. ANTHONY: We'd move Exhibit Number 8 into
22 evidence.

23 THE COURT: Any objection, Mr. Padgett?

24 MR. PADGETT: Yes, Your Honor. We would object on
25 the grounds that the statement has basically been read into

MARIO ADAMS - DIRECT BY MR. ANTHONY

1 the record. It does not need to be placed into the record as
2 evidence.

3 THE COURT: Any objection, Mr. Grose?

4 MR. GROSE: I had initially told Mr. Anthony I would
5 but I've changed my mind. I'm not going to object.

6 THE COURT: Okay. I'm going to admit it. He's
7 acknowledged that it is his handwriting, he signed it. Put it
8 in the record.

9 I'll allow you to cross-examine him on it.

10 MR. PADGETT: Thank you.

11 (WHEREUPON, State's Exhibit No. 8, a Statement, was
12 admitted into evidence.)

13 BY MR. ANTHONY:

14 Q. And after you gave this statement you talked with
15 Detective Smith at the jail about this last Friday; is that
16 correct?

17 A. Yes, sir.

18 Q. And I was present there also?

19 A. Yes, sir.

20 Q. And at that time when you were asked about what
21 happened you said the same things that are in that statement
22 was what happened?

23 A. I told -- I had said I was coached to do it and
24 threatened, but I had told you that.

25 Q. You said that the things that were in that statement

MARIO ADAMS - DIRECT BY MR. ANTHONY.

1 were correct; is that right?

2 A. Yes.

3 Q. And that's what you said last Friday?

4 A. Yes, sir.

5 Q. But what did you tell us about wanting to testify at
6 that time?

7 A. What I had told you, I was coached and threatened by
8 an inmate and you didn't listen to me so.

9 Q. What did you tell us about what your attitude was
10 about testifying on Friday afternoon?

11 A. I mean, I can't lie about it. I can't sit and lie
12 and say this didn't happen because, I mean, I know that I was
13 coached into doing it.

14 Q. Well, the question was on Friday afternoon what did
15 you tell us your attitude was about testifying?

16 A. Oh, I ain't want to testify.

17 Q. You didn't want to testify?

18 A. No.

19 Q. And why did you tell us that was?

20 A. Because, I mean, somebody get hurt for testifying.
21 You can get hurt for lying on somebody, period.

22 Q. And you thought that you might get hurt?

23 A. Yeah.

24 Q. But this statement, when you talked to us last
25 Friday you said that this statement was still true?

MARIO ADAMS - CROSS BY MR. PADGETT

1 A. No, I told you I was coached into doing it.

2 Q. Okay. Didn't you tell us that it was still true?

3 A. No, I didn't say that. I said I was coached into
4 doing that and I didn't want to testify.

5 Q. And you said you didn't want to testify because you
6 were afraid?

7 A. No. I said it wasn't true. I was coached into
8 doing it and I didn't want to testify.

9 Q. And you were afraid; is that correct?

10 A. Yeah.

11 Q. That's right. You said that you were afraid?

12 A. Yeah.

13 Q. Did you ever see Sherman Norman in Oakland that
14 night?

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

16 MR. ANTHONY: Okay. You didn't. Thank you. That's
17 all my questions.

18 THE COURT: Mr. Padgett, your witness.

19 CROSS-EXAMINATION.

20 BY MR. PADGETT:

21 Q. Mr. Adams, my name is Tripp Padgett, and I'm the
22 attorney for Mr. Haskell. You first testified in response to
23 Mr. Anthony's question that you were not in Oakland that
24 night?

25 A. Right. Right. I was coached into doing that.

MARIO ADAMS - CROSS BY MR. PADGETT

1 Q. Right. That's not my question. But you were not in
2 Oakland Apartments?

3 A. No, sir.

4 Q. Where were you?

5 A. I was down the street -- well, by my house. Down
6 the street.

7 Q. How far is that?

8 A. Like the end of the street.

9 Q. A half mile, mile?

10 A. A half mile.

11 Q. Half mile. Okay. And you testified that you never
12 saw Mr. Haskell?

13 A. No, I testified I did. But I told you I was
14 threatened into doing it.

15 Q. All right. Tell me about this threatening and
16 coercion going on.

17 A. Okay. I mean, I was in there. I ain't know nothing
18 about the incident.

19 Q. You were in where?

20 A. I mean, I was in the county jail. I didn't know
21 nothing about the incident. The incident happened so long ago
22 I didn't know nothing about the incident, and all of a sudden
23 my name gets popped up in it by Torey Brown. My name got
24 popped up in it and he came back threatening me telling me I
25 better do --

MARIO ADAMS - CROSS BY MR. PADGETT

1 Q. Hold on. How did he do that?

2 A. I mean, he went up and told the D. A. -- I mean, the
3 defense -- I mean, what you call them, that I knew something
4 about the incident, which I didn't.

5 Q. Okay. So Torey Brown -- and stop me if I'm
6 incorrect. Torey Brown went to the solicitor's office?

7 A. Yeah. He went up to there to the county with him,
8 the multipurpose room with the solicitor.

9 Q. And said you knew something about it?

10 A. Yeah. And came back and threatened me to write a
11 statement.

12 Q. How did he threaten you?

13 A. You better write the statement or it's going to be
14 trouble, me and you. You know, threatened me to write a
15 statement.

16 Q. And the statement that you issued was given on
17 February 1st, 2006?

18 A. Yes, sir.

19 Q. Like a month and a half ago?

20 A. Yes, sir.

21 Q. Do you know when this incident supposedly occurred?

22 A. I didn't know when the incident occurred. I mean, I
23 heard about it on the street, what the street say, but I
24 didn't know nothing about the incident until he put me in the
25 county.

MARIO ADAMS - CROSS BY MR. PADGETT

1 Q. So you didn't see?

2 A. I didn't see nothing, I didn't hear nothing. I
3 didn't know nothing about the incident until he broadcast me
4 into the incident to the solicitor.

5 Q. Again, back to your statement given February 1st,
6 2006. You said we were shooting dice in Oakland?

7 A. Uh-huh.

8 Q. That's not true?

9 A. No, sir.

10 Q. You said you saw Mr. Haskell come through the woods
11 with a pistol. That's not true?

12 A. No, sir.

13 Q. Excuse me?

14 A. No, sir.

15 Q. You said you heard him say somebody got shot.
16 That's not true?

17 A. No, sir. I was coached into doing all of that. I
18 didn't know nothing about the incident until I got into the
19 county jail with Mr. Brown.

20 Q. So nothing in State's 8, which is your statement,
21 State's 8; is that correct?

22 A. Yes, sir.

23 Q. Nothing in State's 8 is correct?

24 A. No, sir.

25 MR. PADGETT: We have nothing further, Your Honor.

MARIO ADAMS - CROSS BY MR. GROSE

1 Thank you.

2 THE COURT: Mr. Grose?

3 MR. GROSE: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS-EXAMINATION

6 BY MR. GROSE:

7 Q. I'm Mr. Grose, Charles Grose. I represent
8 Mr. Harrison, along with Mr. Buergey. I'm going to just hand
9 this back to you because I want to ask you some questions
10 about that in just a second. But before I do that, you were
11 here yesterday, weren't you?

12 A. Yes, sir.

13 Q. And when you came in here and Mr. Anthony started
14 asking you questions you told everybody that you wanted to
15 take the Fifth Amendment; is that right?

16 A. Yes, sir.

17 Q. And I've got to ask you to say yes or no because
18 she's taking down what you are saying.

19 A. Yes, sir.

20 Q. And after that happened, you were given the right to
21 talk to a lawyer, weren't you?

22 A. Yes, sir.

23 Q. And Mr. Callison sitting over here is a lawyer who
24 was appointed to talk with you?

25 A. Yes, sir.

MARIO ADAMS - CROSS BY MR. GROSE

1 Q. Is that right?

2 A. Yes, sir.

3 Q. And I don't want to know what you and he talked
4 about because that's between you and him, but you have talked
5 to him?

6 A. Yes, sir.

7 Q. And today you're testifying with some promises of
8 immunity, right?

9 A. Yes, sir.

10 Q. One promise is, is that you cannot be prosecuted for
11 the assault and battery with intent to kill or the attempted
12 armed robbery on Roderick Gartrell, correct?

13 A. Yes, sir.

14 Q. And the other part of the immunity is, is that you
15 cannot be prosecuted for coming in here and testifying that
16 you'd previously had made a false statement?

17 A. Yes, sir.

18 Q. And you wanted those assurances before you came in
19 here and told these jurors about what happened in this case?

20 A. Yes, sir.

21 Q. Okay. I want to ask you some questions about this
22 statement, okay?

23 A. Yes, sir.

24 Q. Mr. Padgett asked you when this statement was given,
25 and if you look there it was given on February 1st, 2006,

MARIO ADAMS - CROSS BY MR. GROSE

1 right?

2 A. Yes, sir.

3 Q. Can you look at it and verify that?

4 A. Yes, sir.

5 Q. And right next to it says the place that it was
6 given. Where was the place that it was given?

7 A. County farm. But they spoke with me in the county
8 jail.

9 Q. And the county farm is like a prison?

10 A. Yes, sir.

11 Q. And it's right next to the county jail?

12 A. Yes, sir.

13 Q. And so you were in custody on something else, not on
14 this charge? You are not charged with anything but --

15 A. No.

16 Q. But you were in custody on something else when they
17 gave the statement?

18 A. Yes, sir.

19 Q. And what you are saying here today is that Torey
20 Brown was another inmate at the time, right?

21 A. Yes, sir.

22 Q. And you being incarcerated at the county farm is
23 consistent with having --

24 A. No. I was incarcerated in the county jail at the
25 time.

MARIO ADAMS - CROSS BY MR. GROSE

1 Q. In the county jail at the time?

2 A. Yes, sir.

3 Q. Is that where Torey Brown was?

4 A. Yes, sir.

5 Q. And so your statement verifies that at this time
6 frame that you were in custody, correct?

7 A. Yes, sir.

8 Q. Okay. And this was done at 3:35 p.m., right?

9 A. Yes, sir.

10 Q. And John Smith was the person who witnessed the
11 statement, took the statement?

12 A. Yes, sir.

13 Q. And his name appears on there in a couple places,
14 right?

15 A. Yes, sir.

16 Q. If you could look with me at what you said there. I
17 want to break it down and talk about it. Well, first of all,
18 this was almost -- if I told you the incident date was
19 February 10th, 2004 --

20 A. Yes, sir.

21 Q. -- that's almost 2 years before you gave this
22 statement. You'd agree with that?

23 A. Yes, sir.

24 Q. And it starts off, it says we was shooting dice in
25 the Oakland Apartments.

MARIO ADAMS - CROSS BY MR. GROSE

1 A. Uh-huh.

2 Q. Then it says when Monte came through the woods with
3 a pistol under his shirt.

4 A. Yes, sir.

5 Q. Is that what it says?

6 A. Yes, sir.

7 Q. And that really doesn't make sense because if a
8 pistol was under his shirt you couldn't see it, could you?

9 A. No, sir.

10 Q. And so even in your statement there's something
11 that's a little bit off?

12 A. Yes, sir.

13 Q. He went up to his cousin's house and said somebody
14 got shot.

15 A. Yes, sir.

16 Q. And then you say Torey called me at the hospital.
17 When you talk about Torey you are talking about the same Torey
18 Brown?

19 A. Yes, sir.

20 Q. So he's right in the middle of this statement, too?

21 A. Yes, sir.

22 Q. And he was the one who was coaching you and
23 threatening you?

24 A. Yes, sir.

25 Q. And I told him I believe Monte shot Rod. That's not

MARIO ADAMS - CROSS BY MR. GROSE

1 true?

2 A. No, sir.

3 Q. Because this pistol, you never saw a pistol?

4 A. No, sir.

5 Q. You couldn't have seen a pistol because in your
6 statement it was under his shirt.

7 A. Yes, sir.

8 Q. Do you agree with that?

9 A. Yes, sir.

10 Q. And he was acting real scared like he had did
11 something and he caught a ride about 2 hours later. That's
12 the substance of your statement?

13 A. Yes, sir.

14 Q. Now, you've said that you had a meeting with
15 Mr. Anthony?

16 A. Yes, sir.

17 Q. And did I understand you tried to tell him that this
18 statement wasn't accurate?

19 A. Yes, sir, I told him. I tried.

20 Q. That you tried to tell him that you had been
21 coached?

22 A. Yes, sir.

23 Q. And that you had been coached by Torey Brown?

24 A. Yes, sir.

25 Q. Do you know where Torey Brown is now?

MARIO ADAMS - CROSS BY MR. GROSE

1 A. He's incarcerated now.

2 Q. Okay. And do you know if he's connected with
3 Ms. Cole in any way?

4 A. No, sir, I don't know.

5 (WHEREUPON, Defendant's Exhibit No. 4, a Waiver of
6 Rights Form, was marked for identification only.)

7 BY MR. GROSE:

8 Q. If I can, I'm going to hand you what's been marked
9 as Defendant's Exhibit Number 4. Except for the writing, the
10 fax machine stuff across the top, you've seen that document
11 before, haven't you?

12 A. Yes, sir.

13 Q. Have you?

14 A. Yes, sir.

15 Q. And there's another document that you filled out at
16 the same time that you talked with Mr. Smith about a month and
17 a half ago?

18 A. Yes, sir.

19 Q. And you had testified earlier that you were an
20 inmate in the county jail and they came to see you and your
21 name had been caught up in all of this, right?

22 A. Yes, sir.

23 Q. And at that time that you talked with Mr. Smith he
24 advised you of your rights, didn't he?

25 A. Yes, sir.

MARIO ADAMS - CROSS BY MR. GROSE

1 Q. Including your right to remain silent?

2 A. Yes, sir.

3 Q. And you signed that form?

4 A. Yes, sir.

5 MR. GROSE: Your Honor, at this time I would move
6 Defendant's Exhibit, I believe it's Number 4, into evidence.
7 Our Exhibit Number 4.

8 THE COURT: Any objection?

9 MR. ANTHONY: No, sir.

10 THE COURT: Without objection. It will be received
11 and marked.

12 (WHEREUPON, Defendant's Exhibit No. 4, a Waiver of
13 Rights Form, was admitted into evidence.)

14 THE COURT: You may proceed.

15 BY MR. GROSE:

16 Q. Now that you've been granted the immunity, including
17 from prosecution for giving that statement, you are wanting to
18 come here today and set the record straight?

19 A. Yes, sir.

20 Q. And tell these jurors the real deal about that
21 statement?

22 A. It was false. I mean, I tried to tell the
23 solicitors that it was a false statement but they didn't want
24 to listen. And no, I didn't see Mr. Haskell with a pistol.
25 And his name didn't even mention in my mouth. I didn't know a

MARIO ADAMS - REDIRECT BY MR. ANTHONY

1 thing about the incident,, and I was just caught up with it by
2 another inmate.

3 MR. GROSE: That's all I have at this time, Your
4 Honor.

5 THE COURT: Redirect.

6 REDIRECT EXAMINATION

7 BY MR. ANTHONY:

8 Q. How did Mr. Brown know to come ask you about this in
9 the first place?

10 A. Mr. Brown used me to be -- to testify so he wouldn't
11 have to come testify.

12 Q. Well, the question was how did he know to talk to
13 you about this in the first place?

14 A. I mean, he been telling everybody about the
15 incident. I mean, he feel that I was real close with
16 Mr. Brown and he feel that he can just use me to testify so he
17 won't have to do it. He was supposed to be my home boy, but
18 he used me to testify.

19 Q. How did he know to talk to -- to tell anybody to
20 talk to you?

21 A. I mean, he can say anything. I didn't know nothing
22 about the incident. I mean, I ain't know how he know or
23 whatever but he just told my name.

24 Q. Okay. So he just pulled your name out of the blue
25 as somebody to talk to about this?

MARIO ADAMS - RECROSS BY MR. PADGETT

1 A. I guess.

2 Q. And then you just out of the blue decided to come up
3 with this?

4 A. No, because after he left from talking to you all he
5 came back and harassed me and threatened me.

6 Q. And he just out of the blue told you you had to tell
7 what you told in that statement?

8 A. Yeah. I mean, he threatened me. That's what I'm
9 saying. He coached and threatened me.

10 Q. And in the statement you said that you called him up
11 that night and told him what happened; isn't that correct?

12 A. I mean, he told me to say everything that was in the
13 statement, sir.

14 Q. And he's not in the same place you are now, is he?

15 A. No, sir.

16 MR. ANTHONY: Thank you. That's all.

17 THE COURT: Recross?

18 MR. PADGETT: Yes, Your Honor.

19 RECROSS-EXAMINATION.

20 BY MR. PADGETT:

21 Q. Mr. Adams, has Mr. Brown ever put you in this type
22 of position before?

23 A. No, sir.

24 MR. ANTHONY: Objection.

25 THE COURT: What's the objection?

MARIO ADAMS - RECROSS BY MR. GROSE

1 MR. ANTHONY: Beyond the scope of redirect.

2 THE COURT: I'll allow him to ask the question. How
3 he might have picked him up out of the group. This may be one
4 of the ways he did it.

5 You may proceed.

6 BY MR. PADGETT:

7 Q. Has Mr. Brown ever put you in this position before?

8 A. No, sir, but he have put so-called home boys in a
9 position and so-called friends in a position.

10 MR. PADGETT: Thank you, Your Honor. Nothing else.

11 THE COURT: Mr. Grose?

12 MR. GROSE: Just briefly.

13 RECROSS-EXAMINATION

14 BY MR. GROSE:

15 Q. How old are you?

16 A. I'm 18.

17 Q. And how old is Torey brown?

18 A. Probably 20 something.

19 Q. So he's older than you?

20 A. Yes, sir.

21 MR. GROSE: Thank you.

22 THE COURT: You may step down, sir.

23 The State may call its next witness.

24 MR. ANTHONY: The next witness will be Detective
25 Smith.

JOHN SMITH - DIRECT BY MR. ANTHONY

1 THE COURT: Counsel, you're free to go if you like.

2 MR. CALLISON: Thank you, Your Honor. If you need
3 me call me.

4 THE COURT: We appreciate your cooperation with the
5 Court. Thank you very much.

6 Sir, come forward and be sworn right here.

7 JOHN SMITH, after having been duly sworn,
8 testified as follows:

9 THE COURT: Mr. Anthony, it's your witness.

10 DIRECT EXAMINATION

11 BY MR. ANTHONY:

12 Q. Would you state your name, please.

13 A. John Smith.

14 Q. And, Mr. Smith, how are you employed?

15 A. I am a detective with the City of Abbeville Police
16 Department.

17 Q. And how long have you worked for the City of
18 Abbeville Police Department.

19 A. 30 and a half years.

20 Q. And did you, in your job as a detective there, did
21 you come to investigate the shooting incident that occurred at
22 the Hickory Heights Apartments on February 10th, 2004?

23 A. Yes, I did.

24 Q. And as a result of that, being assigned to that
25 case, did you charge anyone with any crimes or request

JOHN SMITH - DIRECT BY MR. ANTHONY

1 warrants for any crimes?

2 A. Yes, sir. We charged Monte Haskell and Clarence
3 Harrison.

4 Q. And when did you do that?

5 A. I think the warrants were obtained on February 11th,
6 2004.

7 Q. And as a part of your investigation of the case did
8 you conduct an interview with Kytraundra Cole or Nini Cole?

9 A. Yes, I did.

10 Q. And where did that interview occur?

11 A. The first interview I had with Ms. Cole was at the
12 Abbeville Police Department in my office.

13 Q. And do you recall the date on which it occurred?

14 A. I think it was around February 13th, or somewhere in
15 that area.

16 Q. Could it have been in March?

17 A. Could have been. This case is kind of old.

18 Q. If I show you the notes from your conversation would
19 that refresh your recollection of when it occurred?

20 A. Yes, sir. Maybe around March the 18th or something
21 like that.

22 Q. I'm going to hand up a document. If you want to
23 take a look at that and see if that refreshes your
24 recollection.

25 A. Yes, sir. It's on March 8th, 2004.

JOHN SMITH - DIRECT BY MR. ANTHONY

1 Q. And when you talked to her on that day what did you
2 ask her about in general?

3 A. I told -- you know, I said there was a shooting over
4 by your residence. I'd like for you to tell me everything you
5 know about it.

6 Q. And what did she tell you in regards to what
7 happened when Mr. Harrison came to her door?

8 A. She said Mr. Harrison, who they call Blue, had come
9 to her door and come in and told her, he says I want you to do
10 something for me. I want you lock your doors.

11 She said, Why?

12 He said, Me and Monte is about to do something and
13 you need to lock your doors.

14 Q. All right. And also as part of your investigation
15 of this case did you talk to a man by the name of Sherman
16 Norman?

17 A. Yes, sir, I did.

18 Q. And do you know what day you talked with him?

19 A. I would have to look at the notes on that.

20 Q. Okay. Well, I'll hand you a document and ask you if
21 this refreshes your recollection when you talked to him.

22 A. Yes, sir. I talked to Sherman Norman on March the
23 18th of 2004.

24 Q. Okay. And the document that I showed you, what was
25 that?

JOHN SMITH - DIRECT BY MR. ANTHONY

1 A. This is a waiver of rights where I always read
2 everybody before I talk with them, and this is a written
3 statement that he gave me.

4 Q. And where did you speak to him?

5 A. At the --

6 MR. PADGETT: Your Honor, I'd object to him reading
7 off of it. Using it to refresh his recollection is fine, but
8 I would submit that reading off it would be improper.

9 THE COURT: Sustained.

10 Q. Do you recall now where you spoke to him?

11 A. Yes, sir, out at the county jail.

12 Q. And how did you come to talk to Mr. Norman?

13 A. He asked to speak to me, and one of the officers
14 came and told me that he wanted to talk to me. So I went out
15 to the county jail and talked to him.

16 Q. When you went out there what knowledge did you have
17 about what he wanted to talk to you about?

18 A. I didn't have the slightest idea.

19 Q. At that time, what information did you have that
20 Mr. Norman was a witness to this shooting incident at Hickory
21 Heights?

22 A. None.

23 Q. And at that time, were you looking to interview him
24 as a witness in the case?

25 A. Yes.

JOHN SMITH - DIRECT BY MR. ANTHONY

1 Q. Well, I mean, before you found out he wanted to talk
2 to you?

3 A. Oh, no. No, not until this day.

4 Q. So after you found out he wanted to talk to you what
5 did you do?

6 A. I went out and talked to him. Gave him his rights
7 and he gave me a written statement.

8 Q. When you talked to him did you -- did you show him
9 any statements that you had taken from anybody else?

10 A. No.

11 Q. Did you advise him of any evidence you had that
12 implicated him as a suspect in the robbery?

13 A. No.

14 Q. At that time, were there any warrants on Mr. Norman
15 or had you drawn any warrants on Mr. Norman?

16 A. No.

17 Q. Now, you have -- I believe one of the documents I
18 handed you was a waiver form; is that correct?

19 A. Yes, sir, waiver of rights.

20 Q. And what does that waiver form-- what purpose does
21 it serve when you go to interview somebody?

22 A. It informs the individual of his rights to have an
23 attorney, and that he can remain silent if he doesn't have an
24 attorney, or one would appoint one for him, and it goes on
25 down through your Miranda warnings. I read it and initial it

JOHN SMITH - DIRECT BY MR. ANTHONY

1 and, you know, he initialed each one of these things that I
2 read and then he signs it.

3 Q. And why was it -- if he wasn't a suspect why was it
4 that you went through that waiver form with him before you
5 talked to him?

6 A. That's just a procedure I have.

7 Q. Okay. And is that just something you do whether a
8 person is a suspect or not?

9 A. Yes, sir.

10 Q. Now, did you later on after moving on from the
11 conversation with Mr. Norman, did you later on have a
12 conversation with Mario Adams about this incident?

13 A. Yes, sir, that was this past February 1st.

14 MR. GROSE: Your Honor, I'm going to object to him
15 going into the substance of the statement from Mario Adams
16 because that's already in evidence, the actual statement is in
17 evidence now.

18 THE COURT: He hadn't asked that question at this
19 point in time.

20 MR. ANTHONY: I just asked him if he talked to him.

21 MR. GROSE: That's fine. I'll withdraw the
22 objection at this time.

23 BY MR. ANTHONY:

24 Q. And where did you talk to Adams?

25 A. County jail.

JOHN SMITH - DIRECT BY MR. ANTHONY

1 Q. And how was it that you came to talk to Mr. Adams?

2 A. A subject named Torey Brown had said that he knew
3 something about the shooting over at what they call the
4 Village, Hickory Heights Apartments.

5 Q. And did you -- when you went to talk to Mr. Adams,
6 did you have him fill out or advise him of any rights?

7 A. Yes, sir. He was Mirandized and signed the sheet.

8 Q. And I'm showing you Defendant's Exhibit Number 4.
9 Is this a Miranda advisement you gave Mr. Adams?

10 A. Yes, it is.

11 Q. And without going into what Mr. Adams said, what
12 procedure did you follow in taking the statement from him?
13 How did you go about having him do it?

14 A. Well, I had a piece of paper and I said it's my
15 understanding you know something about the shooting over
16 there. Write down what you know.

17 Q. And then did he -- did you have him do anything to
18 indicate that that was indeed what he said had happened?

19 A. He wrote it down. I said, Is that what happened?

20 He said, Yes, it is.

21 I said, Well, sign the sheet.

22 Q. And did he do that? Did he sign it?

23 A. Yes, he did.

24 Q. All right. And did you -- after you took this
25 statement from Mr. Adams on February 1st, did you have a

JOHN SMITH - DIRECT BY MR. ANTHONY

1 conversation with him last Friday?

2 A. Yes.

3 Q. And who was present for that conversation?

4 A. You were.

5 Q. And who else?

6 A. Just you and myself and Mario.

7 Q. And where did we speak to Mr. Adams?

8 A. The county jail.

9 Q. And at that time did Mr. Adams' account of what had
10 actually happened that night, had it changed in any way?

11 A. He said he didn't want to testify.

12 Q. What did he say in regards to what had actually
13 happened that night when he was asked about what had happened?

14 A. Are you talking about what did he put on the
15 statement?

16 Q. Well, how did what he was saying Friday afternoon
17 compare to what he said in the statement, as far as what had
18 happened?

19 A. I'm not really following you there. You know, he
20 told me he did not want to testify because he was afraid of
21 his life and his family's life.

22 Q. When he was asked, though, if the statement was
23 still accurate what did he say?

24 A. He told me yes, the statement was right.

25 Q. And that was last Friday he said that?

JOHN SMITH - CROSS BY MR. PADGETT

1 A. Yes, sir.

2 MR. ANTHONY: Thank you. That's all on direct.

3 THE COURT: Mr. Padgett, your witness.

4 CROSS-EXAMINATION

5 BY MR. PADGETT:

6 Q. Sir, your title is lieutenant?

7 A. Yes.

8 Q. Is that how I should address you?

9 A. I get called a lot of things.

10 Q. You said you asked for the warrants on the 11th of
11 February 2004?

12 A. Yes.

13 Q. And you took -- and you had not taken Ms. Cole's
14 statement yet?

15 A. Not at that time, no.

16 Q. You didn't take a statement from her that night?

17 A. No, I didn't.

18 Q. Did you enter a statement by her on the 11th of
19 February?

20 A. If that's when I talked to her, yes.

21 MR. PADGETT: If I may approach, Your Honor?

22 THE COURT: Yes, you may.

23 A. That may have been something she told me at the
24 apartment but it was not the written statement.

25 Q. Would this be the written statement that you typed

JOHN SMITH - CROSS BY MR. PADGETT

1 up?

2 A. This was given to Sergeant John Schreier. This was
3 not given to me.

4 Q. Right. But if you'll check these two pieces of
5 paper. The top says entered by John W. Smith. Is that not
6 you?

7 A. Every time I go into the computer it puts an entry
8 date on there like a status date.

9 Q. But that was on the 11th of?

10 A. When I went in and read that.

11 Q. So you had that information. Is that all the
12 information you have before you ask for the warrants, the
13 warrant on Mr. Haskell?

14 A. No. I have information from a Brown subject, Torey
15 Brown.

16 Q. So how long did your investigation last of this
17 matter?

18 A. Well, it ended last Friday.

19 Q. Okay.

20 A. Every time I would get some information I would try
21 to follow it up, and a lot of times I would have to get off --
22 I'm the only detective we have. So I wasn't assigned to this
23 case. I'm assigned to all cases, and sometimes I will
24 investigate maybe two or three days on this then have to get
25 onto another case then come back to this again later on.

JOHN SMITH - CROSS BY MR. PADGETT

1 Q. So the incident occurred on the 10th, warrants were
2 issued on the 11th?

3 A. Right.

4 Q. So the information you have from Torey Brown is what
5 you used to ask for the warrants?

6 A. Yes. That's what I went in front of the judge with.

7 Q. Did you contact Mr. Haskell or did Mr. Haskell
8 contact you at any point after the issuance of the warrants?

9 A. I don't think I saw Mr. Haskell until he was
10 arrested. He may have come up on his own and talked to me. I
11 don't remember.

12 Q. Would you have notes if he turned himself in?

13 A. I don't know. I don't even know where he lives. He
14 may have come up and turned himself in. We would have to look
15 at the report.

16 Q. Okay. If you could look at the report.

17 A. I mean, I didn't arrest him.

18 Q. Okay. Do you have access to the booking report?

19 A. The solicitor should have it in that file.

20 Q. So you never had any contact with Mr. Haskell before
21 he was ultimately arrested for the charge?

22 A. I'm not sure of the arrest date. I would have to
23 look.

24 Q. I'm sorry. I couldn't hear.

25 A. I'm not sure of the arrest date. I talked with him.

JOHN SMITH - CROSS BY MR. PADGETT

1 I did an interview with him. But I was thinking it was on the
2 date that he was arrested when he came in. I'm not sure. I
3 would have to look at the date.

4 Q. So everyone that you interviewed in this
5 investigation was given Miranda?

6 A. Yes.

7 Q. Did you interview an Adrian Hill?

8 A. No.

9 Q. All right. Going back to Sherman Norman. You said
10 that you were told that he had some information. Who told you
11 that again?

12 A. When one of the officers out at the jail or
13 something, he told them -- Sherman Norman told him he wanted
14 to talk to me.

15 Q. Sherman Norman told one of the officers?

16 A. And when the officer came back he said Sherman
17 Norman wants to talk to you.

18 Q. And when you interviewed Mr. Adams that was because
19 Torey Brown said he had something to say?

20 A. Yeah.

21 Q. Did you ever ask him if Torey Brown told him what to
22 say?

23 A. No.

24 Q. You just said write down your story?

25 A. No. That's not what I said. I said you write down

JOHN SMITH - CROSS BY MR. GROSE

1 what you saw. I didn't say write a story. I said write down
2 what you saw.

3 Q. Is that your procedure you do with everybody?

4 A. Yeah. A lot of times if you don't somebody will
5 write down something that they heard somebody said or --

6 MR. PADGETT: I'd object, Your Honor. It's not
7 responsive to a question.

8 THE COURT: I'll allow him to explain his answer.
9 Objection is overruled.

10 MR. PADGETT: Thank you, Your Honor. I don't have
11 anything else, Your Honor.

12 THE COURT: Mr. Grose.

13 CROSS-EXAMINATION

14 BY MR. GROSE:

15 Q. Lieutenant Smith, I think you know that I represent
16 Mr. Harrison?

17 A. Yes.

18 Q. I'm going to ask you some questions, and if you
19 don't understand them would you let me know before you try to
20 respond to them?

21 A. I certainly will.

22 Q. Okay. I want to go through and try to establish a
23 chronology, if that's all right. Okay. You would agree that
24 the incident date was February 11th, 2004?

25 A. The incident date was February 10th, 2004.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. I'm sorry, February 10th. Now, I believe that you
2 testified that your role is as a detective for the Abbeville
3 Police Department?

4 A. Yes.

5 Q. And you said that you were the only detective?

6 A. That's correct.

7 Q. Abbeville City is kind of a small agency, compared
8 to others?

9 A. Compared to some, yes.

10 Q. I mean, it's a small town, small agency compared to
11 Greenwood or Greenville or something like that?

12 A. Oh, yes.

13 Q. And so all the investigations, all the follow-up
14 comes to you, if there's an investigation?

15 A. Yes, and unless I can get another officer to assist
16 me sometime.

17 Q. And they are pretty busy too, I would think?

18 A. They do what?

19 Q. They are pretty busy as well?

20 A. Oh, yes.

21 Q. And so in an investigation different officers
22 sometimes have different roles, right? Well, for example,
23 Mr. Vandiver was one of the first responders?

24 A. He was the responder, yes.

25 Q. Where as you were the one who followed up on

JOHN SMITH - CROSS BY MR. GROSE

1 information, right?

2 A. Right.

3 Q. So you did not go to the apartment complex on the
4 10th, did you?

5 A. Yes, I did.

6 Q. You did?

7 A. Yes.

8 Q. So you were beginning to receive information on the
9 10th; is that right?

10 A. I talked to Ms. Cole briefly, yeah.

11 Q. So you talked to Ms. Cole?

12 A. Yes.

13 Q. Did you talk to anybody else on the 10th?

14 A. I don't recall talking to anybody else that evening.
15 I spent most of the time outside.

16 Q. Now, you are familiar with the incident report in
17 this case, I'm sure?

18 A. Yes.

19 Q. And the incident report was completed on the 10th as
20 well, right?

21 A. Yes, sir.

22 Q. And somebody else completed that report?

23 A. Yes.

24 Q. Now, if you would review that for a second. I
25 believe Officer Vandiver completed the report; isn't that

1 correct?

2 A. It's got Officer Vandiver's name on here and also
3 Sergeant Eden, which would have been the back-up officer.

4 Q. And the incident report is something that you would
5 typically receive as a detective or an investigator?

6 A. Yes.

7 Q. And that incident report contains some summary of
8 interviews with witnesses, right, particularly if you look at
9 page two? Just look at it.

10 A. The only one I see here is where he had talked to --

11 MR. ANTHONY: Well, objection.

12 Q. I'm just asking him -- I'm not asking for any
13 statements. Just who was it that is in that that had given a
14 statement?

15 A. Ms. Cole.

16 Q. Okay. All right. There's also in there that --

17 A. Mr. Gartrell and Mr. Brown.

18 Q. And that's Torey Brown?

19 A. Torey Brown, yes.

20 Q. Now, you have -- which document is that that you
21 have in your hand still?

22 A. Waiver of rights of Mario Adams. Do you need it?

23 Q. You can hang onto that. I'm going to show you
24 what's been marked for identification only as Defendant's
25 Exhibit Number 2. That is a statement given by Ms. Cole, I

JOHN SMITH - CROSS BY MR. GROSE

1 believe; is that correct?

2 A. That's correct. It's got her name on it.

3 Q. And Mr. Padgett was asking you about some questions
4 from that, right?

5 A. Yes, sir.

6 Q. Okay. And that statement was given on February
7 10th, 2004?

8 A. That's right.

9 Q. To somebody other than you?

10 A. Yes, Sergeant Schreier.

11 Q. Is there a time on that statement?

12 A. 21:11, which would be 9:11 p.m.

13 Q. And you all keep a lot of things in military time,
14 don't you?

15 A. Well, we always do military time.

16 Q. Now, Mr. Padgett asked you about a statement of
17 something that was typed on the 11th. This is a copy of what
18 he showed you, wasn't it?

19 A. Yes.

20 Q. And that's just that same statement typed into the
21 computer?

22 A. Right.

23 Q. In fact, you all keep a lot of things
24 electronically, right?

25 A. Yes.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. In this day and age its just easier to access things
2 that way, isn't it?

3 A. (There was no response).

4 Q. Now, you would have reviewed, I believe, this
5 incident report and the statements on the 11th, right?

6 A. That's correct.

7 Q. There was some questions about the arrest warrants
8 and the dates that those were gotten. Do you recall those
9 questions?

10 A. Yes.

11 Q. And these are a copy of at least a warrant for at
12 least one charge or for a charge on both defendants, right?

13 A. Yes.

14 Q. And you were the person who obtained those arrest
15 warrants?

16 A. Yes.

17 Q. And you did that on the 11th?

18 A. Right.

19 Q. I'm going to hand these back to you for a second.
20 That first one is an arrest warrant on my client,
21 Mr. Harrison, right?

22 A. Yes, sir, it is.

23 Q. Those warrants show the date that they were served
24 which is the date that the arrest is made, right?

25 A. Right.

1 Q. And what date was Mr. Harrison arrested?

2 A. February 12th, 2004.

3 Q. So that's 2-12-04?

4 A. Yes.

5 Q. And the second warrant, if you'll take a look at
6 that, is a warrant on Mr. Haskell?

7 A. Yes.

8 Q. And it shows when he was arrested?

9 A. February 16th, '04.

10 Q. Now, you interviewed Rod Gartrell?

11 A. Yes, sir.

12 Q. And was the first interview with him -- that was
13 February 12th, wasn't it?

14 A. That sounds right.

15 Q. Let's try to be certain about that. I'm going to
16 show you --

17 A. Self Memorial Hospital.

18 Q. -- some documents. That is some notes that you made
19 following your interview with Mr. Gartrell?

20 A. That's right.

21 Q. And, again, it's got the enter date. That's when
22 you go into the computer?

23 A. Right.

24 Q. But the text says the interview date, right?

25 A. This -- yeah. Any time you go into the computer

JOHN SMITH - CROSS BY MR. GROSE

1 that date is going to change.

2 Q. But I'm looking at this date here. That date is not
3 going to change?

4 A. On February 12th, I went to Self Memorial Hospital.

5 Q. That's actually part of the narration that you typed
6 in, and that the 12th --

7 A. Of February.

8 Q. And that was at Self?

9 A. Self Memorial Hospital.

10 Q. Now, just so we follow with what's going on here,
11 your interview with Mr. Gartrell was on the same day that
12 Clarence Harrison was arrested, the 12th?

13 A. Yeah, I guess so. If he was arrested on the 12th,
14 yeah.

15 Q. Okay. Do you know what time Mr. Harrison was
16 arrested?

17 A. No, I don't.

18 Q. But you do know that you had some contact with him
19 at 12:15 that day?

20 A. Yes.

21 Q. Do you recall the time that you were interviewing
22 Mr. Gartrell at the hospital?

23 A. I would have to look at that report you just had.

24 No, I don't have a time on there.

25 Q. So we don't know the time, correct?

1 A. Right.

2 Q. Now, Mr. Padgett was asking you some questions about
3 your contact with Mr. Haskell; is that right?

4 A. Yes.

5 Q. Do you know what time you talked with him on that
6 day?

7 A. No, sir. It will be on that waiver of rights that
8 he signed.

9 Q. Would it be 10:56 a.m.?

10 A. Yes, on 16th, which was the date he was arrested.

11 Q. Now, there was a second interview with Mr. Gartrell;
12 is that right?

13 A. I talked with him, I think after he got out of the
14 hospital. He and his mother came by the police department,
15 and his father.

16 Q. Incidentally, when you talked with him in the
17 hospital you didn't give him a waiver of rights, Mr. Gartrell?

18 A. No.

19 Q. And when you talked with him at the police station
20 you didn't give him a waiver of rights either?

21 A. I don't remember if I did or not. If I did I don't
22 remember.

23 Q. Well, on this document there's not any indication of
24 it.

25 A. Okay.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. Is there? There's not, is there?

2 A. No. Uh-uh.

3 Q. Whereas, for example, on State's Exhibit Number 8,
4 Mario Adams' statement, there is an indication of a waiver of
5 rights?

6 A. There is one.

7 Q. Okay. The date of what -- you are having this
8 interview at the police station, right? That was March,
9 correct? Is it 8th, March 8th?

10 A. March the 8th.

11 Q. Now, we've had some discussions of interviewing
12 Ms. Cole a second time; is that right?

13 A. Yes. I've talked to her more than once.

14 Q. Let me go back to this for a second. This is
15 Mr. Gartrell's statement we were just looking at.

16 A. Right.

17 Q. Are you able to tell the time of that interview on
18 the 8th?

19 A. It would have had to have been around close to
20 dinnertime, close to 12:00.

21 Q. Close to noon?

22 A. Yes.

23 Q. And you are looking at this typed-in something?

24 A. Well, I'm looking up here on this one because it's
25 the same date and time indicated.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. So it was around noon?

2 A. Right.

3 Q. Okay. And I think we've established -- well, let me
4 hand you those. Is that what you typed up from interviewing
5 Ms. Cole? Is that right?

6 A. Yes.

7 Q. That was also on the 8th; is that correct?

8 A. Entered on 3-8, that's right.

9 Q. And are you able to tell from that the time or are
10 those times things that were just --

11 A. This would be around 6:23 p.m.

12 Q. Now, there was some questions about interviewing
13 Sherman Norman. Do you recall those questions?

14 A. I remember he mentioned it, yes.

15 Q. This would be your documentation from interviewing
16 Mr. Norman, right?

17 A. Yes.

18 Q. And that was on 3-18-04?

19 A. Yes, sir, around dinnertime.

20 Q. You just said around dinnertime. Does that mean
21 noon again?

22 A. 12:10.

23 THE COURT: Mr. Grose, I'm going to have to stop you
24 at this point in time. I'm going to take a little break.

25 MR. GROSE: Thank you, Your Honor.

1 THE COURT: Our court personnel has been at it for
2 awhile.

3 Ladies and gentlemen of the jury, we're going to
4 take a short 10-minute break at this point in time. I'm going
5 to ask you return to the jury room, please. Do not begin any
6 discussions concerning this case until I've advised you to
7 begin your deliberations.

8 You may retire to the jury room. Thank you very
9 much.

10 (WHEREUPON, the jury leaves the courtroom at
11 approximately 12:04 p.m.)

12 THE COURT: All right. Lieutenant, I will caution
13 you, you are in the middle of your testimony. You should not
14 discuss your testimony with anyone during the break. You do
15 have the right to move about the courtroom, but again, do not
16 discuss your testimony at this time.

17 Court will be in recess for about 10 minutes.

18 (WHEREUPON, a brief recess was taken.)

19 THE COURT: Is the State ready?

20 MR. ANTHONY: Yes, sir.

21 THE COURT: Defense ready?

22 MR. GROSE: Yes, sir. Your Honor, he does just want
23 some water. We're going to just get that.

24 [PAUSE.]

25 THE COURT: Now, is everyone ready? Defense ready?

JOHN SMITH CROSS BY MR. GROSE

1 MR. GROSE: Yes, sir.

2 MR. ANTHONY: Yes, sir. Thank you.

3 THE COURT: Bring the jury back, Mr. Bailiff.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 12:18 p.m.)

6 THE COURT: The record should reflect that the jury
7 panel has returned to the courtroom.

8 Mr. Grose, you were in the middle of your
9 cross-examination. You may proceed.

10 MR. GROSE: Thank you. May it please the Court?

11 THE COURT: Yes, sir.

12 BY MR. GROSE:

13 Q. I think this last thing, Lieutenant Smith, that I
14 had asked you about was interviewing Mr. Norman. I think we
15 determined that was March 18th of 2004; is that correct?

16 A. That's correct.

17 Q. You also interviewed a gentleman named Robert
18 Rayford; is that right?

19 A. I would have to look and see. I don't recall
20 interviewing Robert Rayford.

21 Q. I'm sorry. Did somebody in your office interview
22 Robert Rayford? Have you seen that before?

23 A. No, sir. I'd have to say this is the first time
24 I've seen this one. Sergeant Killian was the one that did
25 this.

JOHN SMITH CROSS BY MR. GROSE

1 Q. Okay. So you weren't involved in that?

2 A. No.

3 Q. Okay. Now, you did interview Mario Adams?

4 A. Yes, I did.

5 Q. Okay. And there's been some question about that
6 already today, I believe, by one of the other lawyers. This
7 is State's Exhibit Number 8. That's your documentation of
8 that interview, I believe.

9 A. Yes.

10 Q. And the date of that interview is February 1st of
11 this year, isn't it?

12 A. Yes, it is.

13 Q. So 2-01-06. This is Mario Adams. And that one was
14 at the county farm, is where you indicated that was done?

15 A. Right.

16 Q. I believe it was about 3:55 that afternoon?

17 A. Yeah, 3:35.

18 Q. 3:35. And you said also that your investigation of
19 this ended last Friday?

20 A. Yes.

21 Q. So that was St. Patrick's Day, the 17th?

22 A. Was it? All I know, it was last Friday.

23 Q. Do you think that was the 17th?

24 A. Well, if that was last Friday.

25 Q. Well, we'll just put last Friday.

JOHN SMITH CROSS BY MR. GROSE

1 A. I'm not into holidays too much lately. I did wear
2 green that day.

3 Q. So the investigation ended, and you also talked to
4 Mario Adams that day, I believe; is that right?

5 A. I don't know. What time did we put down for Mario?

6 Q. Well, we put Mario on February 1st.

7 A. Yes, we talked to Mario that Friday. Yes, we did.
8 Yes.

9 Q. And that's when, I believe, that Mr. Adams told you
10 that he didn't want to testify?

11 A. Right.

12 Q. Going back to February 1st, you went to see Mario
13 Adams because Torey Brown told you to go see him, told you he
14 had information?

15 A. Torey Brown told me Mario had information about the
16 shooting. It was actually on the last day of January when I
17 went out there, and I went back February 1st to take a
18 statement.

19 Q. Okay. So you talked to him on the 31st and the 1st?

20 A. Right.

21 Q. And what we've been talking about is a fair summary
22 of the activities that you took in the investigation and the
23 things that you documented, isn't it?

24 A. That's part of it, yes.

25 Q. Okay. Going back to the beginning. We know the

JOHN SMITH CROSS BY MR. GROSE

1 incident date was on February 10th, 2004, right?

2 A. Right.

3 Q. And we know that you got the warrants on the next
4 day?

5 A. Right.

6 Q. And at the time that you got the warrants, the
7 information that you had available to you is what you knew
8 when you went out there on the night of the 10th and you
9 talked to Ms. Cole?

10 A. Well, when I talked to Ms. Cole and when I talked to
11 Mr. Brown.

12 Q. Okay. And you also had received the incident report
13 where other people had talked with Ms. Cole, possibly
14 Mr. Gartrell and Torey Brown?

15 A. They had talked to Ms. Cole and Mr. Brown, and I
16 think they tried to talk to Mr. Gartrell but there wasn't a
17 whole lot he could say.

18 Q. Right, because he was injured in the mouth?

19 A. Right.

20 Q. And that's understandable that he couldn't talk.

21 A. Right.

22 MR. GROSE: Okay. Your Honor, may we approach?

23 THE COURT: Yes, you may.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: Ladies and gentlemen of the jury, it's

1 apparent to me there's some matters I'm going to have to take
2 up with the attorneys before we can continue the examination
3 of this particular witness. And I note that it's about 12:30
4 on the clock and so it would be a good time for you to take a
5 break for lunch while we work through those matters.

6 I'm going to again instruct you as I have yesterday
7 at lunch that you should not gather any information outside of
8 this courtroom from any other source that would have anything
9 to do with this case.

10 You should not discuss this case with anyone. If
11 anyone attempts to discuss it with you, please let me know.
12 Again, you should not begin any deliberations until such time
13 as I have instructed you to do so.

14 I'm going to ask you to reassemble in the jury room
15 at 2:30 this afternoon. We should be in a position to restart
16 the trial at that point in time. Thank you very much.

17 (WHEREUPON, the jury leaves the courtroom at
18 approximately 12:30 p.m.)

19 THE COURT: You indicated at the side-bar conference
20 that you wanted to get into some matters with this witness
21 concerning communications he may have had with one Torey
22 Brown; is that correct?

23 MR. GROSE: And the information that he received.

24 THE COURT: Whatever communications he had with him
25 is what I'm saying.

1 MR. GROSE: Yes, sir. Do you have a copy, the thing
2 that was marked Defendant's Exhibit Number 1, which was the
3 incident report?

4 Okay. that was something I was going to refer to.
5 We just were looking for it.

6 Your Honor, this is the situation that I told you
7 about before the trial that was going to come up and that
8 we've gradually been getting into and something that is
9 probably becoming, we think, relevant to determining the case.

10 What we are in the process of trying to establish is
11 we know the incident date happened on February 10th, 2004.
12 Mr. Smith has testified about his involvement when he spoke
13 with Ms. Cole that night. He's also testified that he
14 received the incident report, which is marked as Defendant's
15 Exhibit Number 1 for our client, and that there was
16 information in there about Ms. Cole, Mr. Gartrell --

17 THE COURT: Stop. Is that in evidence or is that
18 just marked for identification?

19 THE COURT REPORTER: Identification.

20 THE COURT: It's for identification purposes.

21 MR. GROSE: Right. It's identification only because
22 you wanted to look at it.

23 THE COURT: That's what I thought. I wanted to be
24 sure I confirmed it was not in evidence at this time. Go
25 ahead.

1 MR. GROSE: And I'm not going to try to put the
2 actual report into evidence.

3 Mr. Gartrell we know from the witnesses and
4 confirmed by Mr. Smith couldn't really speak that night and
5 talk about what really happened to him.

6 The statements from Torey Brown, whose name keeps
7 coming up in the middle of all of this, was that Mr. Brown
8 stated that when transporting Mr. Gartrell to A. C. M. H. he
9 stated to him that Mr. Harrison and Mr. Howland lured him
10 around the building and the other guy shot him.

11 Mr. Brown stated to Officer Vandiver that
12 Mr. Howland was there when the shooting took place and told
13 him that Mr. Harrison had brought Mr. Gartrell to where they
14 were around the side of 402 and that Mr. Haskell shot
15 Mr. Gartrell.

16 So we have a situation where this information was
17 communicated to Mr. Smith on February 10th, and I may have
18 left something out. On February 10th, Ms. Cole had given a
19 statement. We have testimony that it was the less detailed
20 version. I will probably need to go back and put in that
21 Mr. Smith interviewed Mr. Brown on about the 11th.

22 So the information that he has is coming all from
23 Ms. Cole, Mr. Brown, that he got the arrest warrants on the
24 11th. The 12th is when the first arrest was made. That was
25 our client. On the 12th, we don't know which order they

1 happened in, but on the 12th he went to the hospital and
2 interviewed Mr. Gartrell.

3 Remember, at this point he knows from the incident
4 report that -- and I would get into this statement as well of
5 what he was told, that he has information about what Gartrell
6 supposedly told Torey Brown.

7 Mr. Smith was, even on the 12th when he interviewed
8 Mr. Gartrell at the hospital, some of the questions that he
9 was asking him, do you know the name of the guy that shot you?

10 Answer is no.

11 The next question, number 8, has anybody given you a
12 name or told you who he was?

13 Answer: No.

14 The next thing he types in -- and I may have where
15 the whole punch is, part of it may or may not be cut off. But
16 it says, I want you to understand that I'm investigating your
17 shooting, when you got shot. All right.

18 Answer: Yes.

19 It's my understanding that there was 3 guys who was
20 going to set you up and they told you that 1 of the guys was
21 from Due West. Have you heard that?

22 I don't remember.

23 And they ask him does the name Monte mean anything
24 to you? Monte Haskell, I assume who they are referring to.

25 The answer is no.

1 At this point, on the 12th, Mr. Smith has an arrest
2 warrant for -- he has one man in jail, or at least arrested.
3 I don't know if he made bond or not. He has an arrest warrant
4 for Monte Haskell based on Torey Brown saying that Monte
5 Haskell was the shooter, and that he got that information
6 from the victim.

7 The victim, who admittedly was probably under
8 medication and in the hospital and not able to communicate
9 very well, has now contradicted that information. On the
10 16th, an arrest was made anyway.

11 On the 8th he goes back, Mr. Smith goes back and
12 interviews Gartrell again and he still does not identify Monte
13 Haskell as the shooter. Two people have already been
14 arrested, and even to this day Mr. Gartrell has not said that
15 Monte Haskell was the shooter. In fact, he said that the
16 shooter was masked, and some of that is in the incident report
17 about there being a mask.

18 And so at this point, the charges, or at least the
19 basis, the allegation of the charges, I'm not sure if some of
20 these charges were added later or not, but at least the
21 arrests were made, the basis for this prosecution has begun
22 based on the information that Torey Brown has given.

23 Now, we fastforward from the investigation to this
24 trial and we've had a witness today testify with immunity from
25 prosecution from giving false statements. We've learned that

1 his fear, at least about testifying, his need for the immunity
2 so his testimony could be compelled is because Torey Brown
3 coached him and threatened him and told him what to say.

4 We've corroborated Torey Brown's involvement with
5 that witness through Lieutenant Smith because Lieutenant Smith
6 said that Torey Brown was the one that told him that Mr. Adams
7 had information that he needed to talk to him about.

8 And so we also know the other witness -- one of the
9 other witnesses who has testified, Ms. Cole, and we've had
10 lots of issues about her, and I don't want to rehash those,
11 that was kind of an uncomfortable thing this morning, but we
12 know that at the time, from the testimony in this courtroom,
13 that she was the girlfriend of Torey Brown.

14 THE COURT: I don't believe that was ever
15 established.

16 MR. GROSE: I think that has been established.

17 THE COURT: I'll be glad to review the testimony. I
18 don't think she acknowledged that there was a relationship
19 between them. Go ahead.

20 MR. ANTHONY: She was. I mean, at the time of the
21 shooting she was. That was part of her testimony.

22 THE COURT: All right.

23 MR. GROSE: I believe that was even brought out on
24 direct.

25 THE COURT: I may have misunderstood that. Go

1 ahead.

2 MR. GROSE: The other witness who's testified,
3 Sherman Norman, has also testified that his statements to the
4 police were not true. So we've got a situation. I'm not
5 offering Torey Brown's statements that he, that Mr. Gartrell,
6 the victim, told him that Haskell was the shooter. I'm not
7 offering that to prove that. I'm not trying to prove that
8 Haskell was the shooter.

9 In fact, I'm trying to prove the exact opposite of
10 that. I'm trying to prove that when they got that information
11 that that information was false, that that information became
12 the basis of that arrest, that that information became the
13 basis of everything that's -- or at least part of the basis of
14 everything that has followed in this investigation.

15 And quite honestly, you know, if it turns out that
16 they've arrested the wrong person you got a situation where
17 you got warrants on the 11th, and it's not my client, but
18 Mr. Haskell was arrested after Lieutenant Smith failed to
19 confirm what Mr. Gartrell told Mr. Brown. You know, I mean,
20 there could be civil liability for Abbeville City on this. If
21 you arrest somebody with --

22 THE COURT: I'm not here to try that.

23 MR. GROSE: I'm not either but motive is something
24 that can be -- under 404, something that can be inquired in
25 the criminal case. And I'm not here to try that either but it

1 is a motive, a possible motive.

2 THE COURT: For the continued prosecution?

3 MR. GROSE: Yes, sir. Yes, sir. But I think we are
4 entitled to show, make an argument that there's reasonable
5 doubt and that Torey Brown continuing to infect this case by
6 saying things that are proven not to be true and then by what
7 witnesses have told us today, being that the witness was
8 coached and threatened by him, I think we are entitled to show
9 that and there's a reason to why these jurors should not rely
10 on this investigation beyond a reasonable doubt, and that
11 reasonable doubt does, in fact, exist to allow them or to
12 require them to acquit these two young men that are charged
13 with these serious crimes.

14 THE COURT: All right. Be happy to hear from you,
15 Mr. Anthony.

16 MR. ANTHONY: Well --

17 THE COURT: I assume, Mr. Padgett, you join in the
18 arguments for the defense?

19 MR. PADGETT: I'm just going to discuss that with my
20 client.

21 THE COURT: To be allowed to go into this; is that
22 correct? You don't object to him going into Torey Brown's
23 testimony or story.

24 MR. PADGETT: Well, I am discussing that with my
25 client now.

1 THE COURT: Yes, sir, your client.

2 Excuse me, Mr. Anthony.

3 MR. ANTHONY: Well, none of the things that the
4 defense has put forward is a justification for allowing in
5 hearsay. And if you say well, it's not hearsay, it's just for
6 the truth of the matter asserted, we just want to get in why
7 he said it, there's still not really been any real relevant
8 reason introduced why it should come in.

9 The issue in the case is not whether they were
10 arrested properly or whether the police department should have
11 charged him or not. The issue is whether they are guilty, and
12 there's just no basis for putting in a hearsay statement to
13 try to show that. There's not been any theory shown that
14 forms a basis for introducing this testimony.

15 And if I could point out, the case that he's
16 arguing, this Blurton case, in that case there was a relevant
17 reason to go into testimony that was not for the truth of the
18 matter asserted. The defendant had made statements, there
19 were taped conversations of the defendant that went to negate
20 his criminal intent.

21 Well, that's relevant reason to let in hearsay
22 testimony or to treat hearsay testimony as really not being
23 hearsay because it's not for the truth. But we would just
24 submit that there has been no such theory propounded here.
25 There's no reason to let this in.

1 MR. GROSE: And the only thing I was going to do is
2 remind you of the Blurton case so that was connected to this
3 part of the record. I was the one who tried the Blurton case,
4 and maybe I'm a little bit too familiar with it to be arguing
5 it, but it was a very unique defense, and it's different than
6 the defense here today. But I think that anything that you
7 can argue, any inference that you can argue from the evidence
8 and how it developed that shows reasonable doubt is relevant.

9 Now, Torey Brown is supposed to be delivered from
10 the department of corrections to Abbeville County today. If
11 we have to I can just go back and get in here the time frame
12 that Mr. Brown was interviewed and we can call Torey Brown
13 later today or tomorrow, whenever it's my turn, and ask him,
14 you know, some of these things.

15 That may lead to me recalling Mr. Vandiver,
16 Mr. Smith if we have to go through and determine, you know,
17 what he actually said or what was actually documented that he
18 said. I mean, we can go that route.

19 If Mr. Anthony's objection is basically that it's an
20 out-of-court statement, we're prepared to bring Torey Brown to
21 court and have him say this in court or given an opportunity
22 to say it and then bring these witnesses back.

23 MR. ANTHONY: Torey Brown is here, just so you'll
24 know.

25 MR. GROSE: Some of this stuff in Blurton's case

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 there was available witnesses and unavailable witnesses and so
2 it got really kind of confusing at times.

3 THE COURT: Mr. Grose, I believe my earlier
4 discussion with you went somewhere along the lines that you
5 would have to tie this particular information into some -- to
6 a state of mind on the part of Lieutenant Smith or at least a
7 motivating factor in the actions that he took.

8 I don't think I've heard those questions asked at
9 this point in time. You've certainly laid out a timeline, but
10 I don't think you've had this witness testify in any fashion
11 as to whether -- why he took actions, when he took actions,
12 things of that nature.

13 I'll allow you to proffer that testimony at this
14 point in time if you want to inquire of the witness concerning
15 his use of those statements and what affect they may have had
16 on the investigation at that time and then I'll reserve my
17 decision until you've completed that inquiry.

18 MR. GROSE: Thank you, Your Honor.

19 THE COURT: You may proceed.

20 BY MR. GROSE:

21 Q. Mr. Smith, I'm going to hand you Defendant's Exhibit
22 Number 1 for identification. That's the incident report in
23 this case, isn't it?

24 A. Yes, it is.

25 Q. And we had talked earlier about some statements that

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 were documented in that incident report, hadn't we, on page
2 two?

3 A. Yes.

4 Q. And if you would look at the fourth line down on
5 page two.

6 A. Right.

7 Q. The sentence that begins the last three words of
8 that line.

9 A. Mr. Brown stated?

10 Q. Yes. If you could read that up through the part
11 where it begins Ms. Cole stated, a few lines down.

12 A. Mr. Brown stated that when transporting Mr. Gartrell
13 to Abbeville County Memorial Hospital he stated to him that
14 Mr. Harrison and Mr. Howland lured him around the building and
15 the other guy shot him. Mr. Brown stated to Officer Vandiver
16 that Mr. Howland was there when the shooting took place and
17 told him that Mr. Harrison had brought Mr. Gartrell to where
18 they were around the side of Apartment 402 and that
19 Mr. Haskell shot Mr. Gartrell.

20 Q. Okay. So you had information that the victim had
21 identified the actual shooter?

22 A. This was information Sergeant Vandiver had.

23 Q. And passed on to you?

24 A. Right.

25 Q. And that it identified -- Mr. Gartrell had

JOHN SMITH (IC) -- EXAMINATION BY MR. GROSE

1 identified a shooter?

2 A. (There was no response).

3 Q. Well, it says Mr. Haskell --

4 A. Says Mr. Brown stated to Officer Vandiver that
5 Mr. Howland was there when the shooting took place and told
6 him that bla, bla, bla. Mr. Brown is the one who said that,
7 not Mr. Gartrell.

8 Q. But the information that Mr. Brown was given
9 supposedly came from Mr. Gartrell?

10 A. Supposedly, yes.

11 Q. And then if you could read where Ms. Cole stated,
12 through the end.

13 A. Ms. Cole stated that Mr. Gartrell bust through her
14 door, Apartment 402, and stated call the police. Ms. Cole did
15 call 911 to report the incident. Mr. Gartrell was stabilized
16 at the Abbeville County Memorial Hospital and transported to
17 Self Memorial for surgery. Mr. Gartrell was given a victim's
18 statement and investigation continued by Detective John Smith.

19 Q. And as part of your continued investigation you
20 interviewed Torey Brown, right?

21 A. Yes, sir, the next day.

22 Q. So that was on the 11th?

23 A. Right.

24 Q. And in that last paragraph of that statement what --
25 if you could read the last -- let me show you where I'm

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 looking at so we're --

2 A. On the way to the hospital?

3 Q. Yes, sir. Right there.

4 A. On the way to the hospital Gartrell was telling me
5 what had happened. He said that Clarence had got him to come
6 around the building. Clarence told him to give him everything
7 that he had. After Gartrell said no, Monte Haskell asked for
8 everything, and he said no again. Then that is when Monte
9 shot him. After he got shot he ran from behind the building
10 to my girl's house.

11 Q. Anywhere in your investigation up to this point, up
12 to the time that you obtained the arrest warrants do you have
13 any other information identifying Mr. Haskell as the shooter?

14 A. No.

15 Q. Okay. Now, you talked with Mr. Gartrell on the
16 12th, right?

17 A. Right.

18 Q. Now, at that point, that was the same day that you
19 arrested Mr. Harrison, the 12th?

20 A. That was the same day he was arrested.

21 Q. The information -- you relied on this information
22 that you had from Torey Brown that Monte Haskell was the
23 shooter, didn't you?

24 A. Yes, I did.

25 Q. And that was part of what was in your mind when you

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 decided to make an arrest and charge him with these crimes?

2 A. Expand on that.

3 Q. Your thought process was that you had a witness who
4 gave information that Monte Haskell was the shooter, right,
5 and based on that information you made an arrest, or you got
6 arrest warrants because Mr. Haskell hadn't been arrested at
7 this point?

8 A. I had information from an individual who was willing
9 to go to court and testify to what he told me.

10 Q. And that was Mr. Brown?

11 A. Yes. And I went in front of the judge and told him
12 what I had and the judge issued a warrant.

13 Q. And what you told the judge, going in front of the
14 judge to get an arrest warrant, that's an affidavit, right? I
15 mean, you put the information that you have under oath in the
16 form of an affidavit, right?

17 A. It's typed into the warrant, talking about the
18 warrant affidavit, yes, the narrative.

19 Q. And in the warrants, I mean, you identify Monte
20 Haskell as the shooter, don't you?

21 A. Yes.

22 Q. Do you need to look at them?

23 A. No.

24 Q. So you were relying on that information?

25 A. Yes, I was.

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 Q. And when you interviewed Mr. Gartrell on the 12th it
2 turned out that he had -- he said that he had never identified
3 Mr. Haskell as the shooter?

4 A. That's correct.

5 Q. So now you had a contradiction between
6 Mr. Gartrell's statement to you on the 12th and Mr. Brown's
7 statement to you on the 11th and his statement to the
8 investigating officers on the 10th?

9 A. Right.

10 Q. And you again interviewed Mr. Gartrell on the 8th?

11 A. Yes.

12 Q. Okay. Now, let me ask you. Your interview with
13 Mr. Gartrell on the 12th, he couldn't talk very well at that
14 point, could he?

15 A. Very little.

16 Q. And so your interview was him asking questions and
17 either picking yes or no on a piece of paper or writing an
18 answer on a piece of paper?

19 A. That's correct.

20 Q. And when he was out of the hospital you interviewed
21 him in more detail where he actually gave a statement and
22 signed a statement?

23 A. Right.

24 Q. And he again confirmed that he couldn't identify
25 Mr. Haskell as the shooter?

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 A. That's correct.

2 Q. But that was the information from Mr. Brown that you
3 had relied on, correct?

4 A. That's correct.

5 Q. And at the time that you went in front of the
6 magistrate to ask for the warrants you believed that -- you
7 believed Torey Brown when he said that Mr. Gartrell identified
8 Haskell as the shooter?

9 A. Yes, I believed him.

10 Q. And that was a basis for you making the case?

11 A. That was the first step in it, yes.

12 Q. And you had indicated -- well, but that's when the
13 arrest warrants were obtained?

14 A. Right.

15 Q. And, of course, a lot of what we have talked about
16 today, the events have happened since the two gentlemen were
17 arrested, a lot of your interviews?

18 A. That's correct.

19 Q. You said that you considered Torey Brown as a
20 witness that was willing to come to court and testify about
21 what he had told you?

22 A. Yes.

23 Q. Do you know whether Mr. Anthony intends to call him
24 as a witness or not?

25 A. You'd have to talk to Mr. Anthony about that. I

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 really don't know.

2 Q. If it turns out that Monte Haskell was arrested
3 improperly on the 16th of February your department could be
4 sued for that, couldn't they?

5 A. I suspect so. You can be sued for everything.

6 Q. Torey Brown is somebody who's come up throughout
7 this investigation, hasn't he?

8 A. Yes, of course.

9 Q. In fact, let me take a look at this, Torey Brown's
10 statement. Yeah. In fact, his statement to you on the 11th
11 identified Ms. Cole as his girlfriend, didn't it?

12 A. Yes.

13 Q. And he was the one who wanted you to talk to
14 Mr. Adams?

15 A. Yes.

16 Q. And in the meeting that you had with him on last
17 Friday did he tell you that he had been coached and threatened
18 by Mr. Adams?

19 A. No, he did not. You meant by Mr. Brown, no.

20 Q. I meant by Mr. Brown?

21 A. No, he never said that.

22 Q. Would it surprise you to know that he testified to
23 that today?

24 A. Well, nothing surprises me at my age.

25 Q. Mr. Adams and Mr. Brown were in jail together on

JOHN SMITH (IC) - EXAMINATION BY MR. ANTHONY

1 February 1st of '06 though, weren't they?

2 A. Yes.

3 MR. GROSE: Nothing else at this time in the
4 proffer, Your Honor.

5 THE COURT: Mr. Anthony, do you wish to ask any
6 questions during the proffer?

7 EXAMINATION

8 BY MR. ANTHONY:

9 Q. When Mr. Gartrell gave you the statement that you
10 took -- well, when you took the statement from Mr. Gartrell on
11 February 17th Mr. Haskell had already been arrested; isn't
12 that correct?

13 A. Yes. He was arrested on the 16th.

14 Q. He was arrested on February 16th?

15 A. Right.

16 Q. So you didn't learn, you didn't get any kind of
17 firsthand information from Mr. Gartrell that he couldn't
18 identify the person who shot him until after both defendants
19 had been arrested; is that correct?

20 A. Mr. Gartrell never could identify.

21 Q. That's right. And you didn't get the information
22 that he couldn't identify the person that shot him until both
23 Mr. Harrison and Mr. Haskell had been arrested; is that
24 correct?

25 A. On the day that Clarence Harrison was arrested was

JOHN SMITH (IC) - EXAMINATION BY MR. ANTHONY

1 the day I went and got the statement from Mr. Gartrell in
2 Greenwood.

3 Q. Oh, I'm sorry. I'm sorry. Okay. You talked to
4 Mr. Gartrell on the 12th, not the 17th. I apologize.

5 A. Yes.

6 Q. You talked to him on the 12th. Mr. Harrison was
7 arrested that day. Mr. Haskell was arrested 4 days later.
8 Did that affect what you were going to do about this case at
9 all? How did you look at that once he told you he couldn't
10 pick out the shooter?

11 A. I didn't feel comfortable with it. One of the
12 things he told me is I don't know these people by names
13 because he's not from this area. I didn't feel comfortable
14 about him not being able to identify them at that time. I
15 didn't feel comfortable with it at all.

16 Q. And did you do anything as a result of that?

17 A. Well, I come back and I sat down and talked to
18 somebody and thought we got to get these people in here and
19 get statements from them. We got to put these people at the
20 scene.

21 Q. Okay. And is that what prompted -- and what action
22 did that prompt on your part?

23 A. Doing interviews, like with Ms. Cole. I went back,
24 got her in there and did more of an in depth interview on her
25 and that's when she told me about what she said about Harrison

JOHN SMITH (IC) - EXAMINATION BY MR. ANTHONY

1 coming down and saying me and Monte got something we got do.

2 Q. Okay. Okay. And when you got -- when you obtained
3 the warrant it was based primarily on your statement of
4 Mr. Brown on February 11th?

5 A. Yes, sir.

6 Q. And that statement, in that statement he says that
7 he was given information from Mr. Gartrell that Mr. Harrison
8 and Mr. Haskell were the ones involved?

9 A. Yes.

10 Q. And he said that he was given information from
11 Ms. Cole that Mr. Harrison was involved?

12 A. Yes.

13 MR. ANTHONY: That's all my questions.

14 MR. PADGETT: Your Honor, I've got one thing so the
15 record is clear. I do feel that it is incumbent for me to
16 object to the motion as well. However, my client has asked
17 that that objection be withdrawn?

18 THE COURT: Okay. Anything further gentlemen? Do
19 you wish to argue any further? Anything else you'd like to
20 say?

21 MR. GROSE: I just think that at this point we've
22 shown that this was what he relied on to make his decision.
23 He believed it, he relied on and he made his decision to get
24 the warrants, and at that point there's motives from probably
25 Mr. Brown, Ms. Cole and the city police department to try to

1 make this investigation work itself out.

2 THE COURT: Anything further?

3 MR. ANTHONY: And I just do not -- would just argue
4 that there has been no relevant theory shown as a basis for
5 admitting this evidence. It's certainly hearsay and there is
6 no non-hearsay basis that's relevant to the issue that the
7 jury has to decide in this case.

8 THE COURT: All right. It is my ruling that the
9 evidence that's being offered is not being offered for the
10 truth of the matter asserted, therefore it is not hearsay.
11 The relevance will be as far as credibility of the witnesses
12 who have testified, also as to the state of mind of the
13 investigating officer.

14 I will caution the attorneys, however, this trial is
15 not about whether or not a warrant should have been issued in
16 any particular time but about the guilt or innocence of the
17 defendants. So I don't plan to make this the focus of the
18 trial and I would ask you to try to get through that as
19 quickly as possible without delaying the trial. But certainly
20 you have the right to cover it fully.

21 All right. That's my ruling. We are in recess for
22 lunch until 2:30. Thank you very much.

23 My same caution to you goes concerning your
24 testimony. You are still in the middle of your testimony.
25 You cannot discuss it with anyone during the break.

JOHN SMITH - CROSS BY MR. GROSE

1 Court's in recess.

2 (WHEREUPON, a lunch break was taken.)

3 THE COURT: The State ready?

4 MR. ANTHONY: Yes, sir, we're ready.

5 THE COURT: The defense ready?

6 MR. GROSE: Yes, sir.

7 THE COURT: Bring the jury back.

8 (WHEREUPON, the jury enters the courtroom at
9 approximately 2:35 p.m.)

10 THE COURT: The record should reflect that all
11 jurors have returned to the courtroom. I trust everyone had a
12 good lunch.

13 I believe when we broke, Mr. Grose, you were in the
14 process of cross-examining the witness. You may do so at this
15 time.

16 MR. GROSE: Thank you, Your Honor.

17 BY MR. GROSE:

18 Q. I want to maybe put just a couple more dates up
19 here. I'm going to hand you a statement. You interviewed
20 Torey Brown, right?

21 A. Yes, sir.

22 Q. And that interview was on February 11th, 2004?

23 A. Yes, it was.

24 Q. There's a time on there. It was 12 something, I
25 believe?

JOHN SMITH - CROSS BY MR. GROSE

1 A. 9:41.

2 Q. I'm sorry, 9:41. So it was early in the morning?

3 A. Yes.

4 Q. Was that before or after you got the arrest

5 warrants?

6 A. The judge doesn't -- depending on what day it is,

7 the judge doesn't even come in until 8 o'clock one day or

8 3 o'clock the next and then 6:00 p.m. the next.

9 Q. So is that 8 o'clock in the evening one day?

10 A. No, it's 9:41 a.m.

11 Q. But I mean, when the judge comes in. Is that in the

12 evening?

13 A. No, it's in the mornings.

14 Q. On this date, do you know when you would have seen a

15 judge?

16 A. No, sir. I would have to look at what date it was.

17 Q. Okay. Do you think you probably talked to Mr. Brown

18 before you went to the judge?

19 A. I'm sure I did at that time in the morning.

20 Q. So that was 2-11-04, Torey Brown, that was 9 -- what

21 time again?

22 A. 9:41 a.m.

23 Q. 9:41 a.m. And you also talked to a Darren Howland?

24 A. Yes, on 2-12-04 at 12:40 p.m.

25 Q. Okay. And do you know if that was before or after

JOHN SMITH - CROSS BY MR. GROSE

1 you went to the hospital to see Mr. Gartrell?

2 A. That was before.

3 Q. So that would be after Clarence Harrison was
4 arrested at 12:15?

5 A. I would have to guess so.

6 Q. So this is 2-12-04 and that time was 12 --

7 A. 40 p.m.

8 Q. Now, if we look at the chronology of events, at the
9 time that you got these warrants it's fair to say that you had
10 received information the first time when you were at the scene
11 on the night of the 10th, correct, from Ms. Cole?

12 A. Yes.

13 Q. And that you received additional information from
14 the incident report which was dated the 10th about Ms. Cole,
15 Mr. Gartrell and Mr. Brown?

16 A. That's correct.

17 Q. And then on the 10th you had a statement from
18 Ms. Cole at 9:11 p.m. that you received?

19 A. No, sir. Sergeant Schreier, I think, got that
20 statement.

21 Q. But you received that information in your
22 investigation?

23 A. Yeah, the next day.

24 Q. So you received that on the 11th, correct?

25 A. Right.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. And then you, yourself, interviewed Torey Brown in
2 the morning on the 11th, correct?

3 A. Correct.

4 Q. I'm going to hand you for purposes of refreshing
5 your memory what's been marked for identification only as
6 Defendant's Exhibit Number 1, which is the incident report
7 from 2-10-04, correct?

8 A. Correct.

9 Q. And as far as receiving information from
10 Mr. Gartrell, he had been shot in the mouth and wasn't able to
11 communicate very well, right?

12 A. I didn't see him that evening.

13 Q. Okay. But everything that you know was is that he
14 had a hard time talking because he had been shot?

15 A. I would think so.

16 Q. In fact, one of the things that you received is
17 what's been marked as Defendant's Exhibit Number 2 for
18 identification. I realize somebody else took that but that
19 was Ms. Cole's statement and she said something to the affect
20 while he could talk it was difficult to understand?

21 A. Right, that's what she says.

22 Q. Now, Torey Brown gave some information to Officer
23 Vandiver, correct?

24 A. Yes, sir.

25 Q. And he claimed that Mr. Gartrell had told him

JOHN SMITH - CROSS BY MR. GROSE

1 information when he was taking -- he, Torey Brown, was taking
2 Mr. Gartrell to the hospital, correct?

3 A. Yes.

4 Q. And told him that there was three people involved in
5 it, correct?

6 A. I don't see that on here.

7 Q. Let me --

8 A. Oh, Mr. Harrison.

9 Q. And the claim was, is that Mr. Howland and
10 Mr. Harrison had lured Mr. Gartrell around the building?

11 A. Right.

12 Q. And that another guy had shot him?

13 A. Right.

14 MR. PADGETT: Your Honor, and I would object to this
15 being used for the truth of the matter as hearsay.

16 THE COURT: Yes, sir. Consistent with my prior
17 ruling I'm going to allow him to proceed in as much as my
18 understanding is it's not being offered for the truth of the
19 matter asserted but being offered to show the state of mind of
20 the persons involved in the investigation.

21 MR. PADGETT: Thank you, Your Honor.

22 THE COURT: So consistent with my prior ruling, is
23 that correct, the reason that this is being offered? I'm
24 speaking to you, Mr. Grose.

25 MR. GROSE: Yes, sir. I'm not offering this for the

JOHN SMITH - CROSS BY MR. GROSE

1 truth but just it was something that was said and was taken
2 into account in his investigation.

3 THE COURT: Consistent with my prior ruling, I'll
4 note your objection.

5 You may proceed.

6 By MR. GROSE:

7 Q. And Mr. Brown also claimed that Mr. Gartrell had
8 told him who shot him?

9 A. Yes, he did.

10 Q. And he named Monte Haskell as the person that
11 Gartrell, Mr. Gartrell claimed had shot him?

12 A. Yes.

13 Q. And then -- and this is what we are talking about
14 here is the incident report dated the 10th?

15 A. Yes, sir.

16 Q. I'm going to hand back to you the statement that
17 Mr. Brown gave to you on the 11th, the next day, at 9:40 a.m.
18 And once again, Mr. Brown tells you at this time that
19 Mr. Gartrell was talking to him on the way to the hospital,
20 correct?

21 A. That's correct.

22 Q. And again he names Monte Haskell as the person that
23 Mr. Gartrell said shot him?

24 A. That's true.

25 Q. Okay. And this is the information that you had up

JOHN SMITH - CROSS BY MR. GROSE

1 to the 11th when you got the arrest warrants?

2 A. That's true.

3 Q. Now, on the 12th was when Mr. Harrison was arrested,
4 correct?

5 A. I think that's what we established, on the 12th.
6 Isn't that what you got written down here?

7 Q. That's what I have written down and the warrant
8 shows when it was served.

9 A. At 2:12.

10 Q. And we established that you talked to Mr. Harrison.
11 We had written down about 12:15?

12 A. Right.

13 Q. All right. And we also know that it was that day
14 after you talked with Mr. Howland that you went to Self
15 Hospital and talked to Mr. Gartrell; is that correct?

16 A. Correct.

17 Q. And at that time, Mr. Gartrell, you asked -- you
18 were not able to talk to him where he could answer questions
19 verbally because of his injuries, correct?

20 A. He could say a few things but nothing -- I mean, he
21 could not carry on a real conversation.

22 Q. And that was understandable because of the type of
23 injury that he had sustained?

24 A. That's correct.

25 Q. But you were able to communicate with him in

JOHN SMITH - CROSS BY MR. GROSE

1 writing, so-to-speak?

2 A. Yes.

3 Q. You could ask a question and he could either pick
4 yes or no on a piece of paper?

5 A. Yes.

6 Q. And he could write information on a piece of paper?

7 A. That's correct.

8 Q. And in that conversation with Mr. Gartrell you asked
9 him if he knew the name of the guy that shot him, didn't you?

10 A. I certainly did.

11 Q. And he told you that he did not?

12 A. He said he didn't know them people.

13 Q. And you asked him has anybody given you a name or
14 told you who he was?

15 A. That's correct.

16 Q. And he said no?

17 A. That's correct.

18 Q. And at that point you wanted him to understand that
19 you were investigating who shot him?

20 A. That's right.

21 Q. And he acknowledged that he understood that?

22 A. Right.

23 Q. And in that interview at the hospital on the 12th he
24 never gave you the name of the masked person who shot him?

25 A. No.

JOHN SMITH - CROSS BY MR. GROSE

1 Q. And that was contrary to what Torey Brown had told
2 you?

3 A. That's correct.

4 Q. And you also interviewed Mr. Gartrell again later on
5 the 8th at about noontime, March 8th?

6 A. Right.

7 Q. And again you asked him if he knew the name of the
8 person who shot him?

9 A. That's correct.

10 Q. And he could not tell you the name of the person who
11 shot him?

12 A. No.

13 Q. He did not identify Monte Haskell?

14 A. No, he didn't.

15 Q. And again, that's contrary to the information that
16 you had received from Torey Brown?

17 A. Yes.

18 Q. And you knew from the information that you received
19 that Torey Brown and Ms. Cole were romantically involved
20 during this time frame in 2004?

21 A. I found out the night of the shooting, yes.

22 Q. And I believe that you still have Ms. Cole's
23 statement up there, the first statement?

24 A. Yes, sir.

25 Q. There is nothing in that statement about Clarence

JOHN SMITH - CROSS BY MR. GROSE

1 Harrison telling her to lock the door, is there?

2 MR. ANTHONY: I'd object. This was asked and
3 answered when she testified.

4 THE COURT: Sustained.

5 MR. GROSE: Mr. Anthony went back through some of
6 the statements that Ms. Cole gave when he was directing this
7 witness earlier.

8 THE COURT: I don't recall that.

9 MR. GROSE: There was some discussion about what --
10 I believe about what she had said in her second interview and
11 that it being more detailed and that sort of thing.

12 THE COURT: I don't remember any specifics being
13 discussed of the contents of the statement. So I'm going to
14 sustain the objection.

15 MR. GROSE: Okay. Again, we're offering this for
16 the state of mind, Your Honor.

17 THE COURT: I sustained the objection.

18 MR. GROSE: Thank you, Your Honor.

19 BY MR. GROSE:

20 Q. Your first interview with her -- well, the first
21 time that you actually talked to her was on the 8th, correct,
22 March 8th?

23 A. That's correct.

24 Q. And you went back to her and that statement is one
25 that's been referred to as the more detailed statement?

JOHN SMITH - CROSS BY MR. GROSE.

1 A. Yes.

2 Q. You had also testified about interviewing Mr. Adams
3 on February 6th of this year?

4 A. That's correct.

5 Q. And, again, Torey Brown was the one that told you
6 that Mr. Adams had some information?

7 A. Right. It was on February the 1st, I think.

8 Q. I'm sorry, February the 1st of 2006. And I think we
9 actually determined that you saw him on January 31st then
10 again on the 1st of February?

11 A. Right.

12 Q. And that was at the county farm?

13 A. Well, he stayed at the county farm. They were
14 housing him at the county jail.

15 Q. And you are aware that Mr. Adams and Torey Brown
16 were in jail at the same time in February of 2006?

17 A. Yes.

18 Q. And you also talked with Mr. Adams on last Friday?

19 A. That's correct.

20 Q. And at that point was when he had indicated that,
21 you know, he was uncomfortable about coming to court and
22 testifying?

23 A. Last Friday, yes, he did.

24 MR. GROSE: I don't have any other questions at this
25 time, Your Honor.

JOHN SMITH - REDIRECT BY MR. ANTHONY

1 THE COURT: Redirect.

2 REDIRECT EXAMINATION

3 BY MR. ANTHONY:

4 Q. When you went to the jail and talked to Mr. Adams
5 back in January and then took the statement from him the next
6 day.

7 A. Yes, sir.

8 Q. Going back to the first time that Mr. Adams was
9 spoken to, what was the sequence as far as who you talked to
10 first, then how quickly did you talk to Mr. Adams after
11 talking to Mr. Brown?

12 A. You talking on the end of January?

13 Q. Yes, the first time you talked to Mr. Adams about
14 this.

15 A. I think maybe 15, 20 minutes. I don't really
16 remember the time frame.

17 Q. Well, when you went and had the interview the first
18 -- at the end of January, the first time you talked to
19 Mr. Adams, who did you speak to first, before you talked to
20 him?

21 A. I think we talked to Mr. Brown first.

22 Q. That's right. You say we, because I was there with
23 you?

24 A. Because you were there.

25 Q. And then after we spoke to Mr. Brown who did we talk

JOHN SMITH - REDIRECT BY MR. ANTHONY

1 to after that?

2 A. Mario.

3 Q. And how much time passed from the time that we spoke
4 to Mr. Brown and the time we spoke to Mr. Adams?

5 A. I wouldn't say more than 15 minutes.

6 Q. And when you went to the hospital to speak to
7 Mr. Gartrell on February 12th what kind of condition was he
8 in?

9 A. He was laying in bed. You know, couldn't talk real
10 good. His parents were there.

11 Q. And for most of that conversation he was just
12 circling yes, no to things that you were saying; is that
13 correct?

14 A. Right.

15 Q. Okay. And when the two interviews that you were
16 asked about that were done with Mr. Brown, the one that's
17 recorded on the incident report and then the one, the
18 statement that you took yourself, what -- well, first of all,
19 on the one -- on the one recorded on the incident report, what
20 is the allegation as to Mr. Harrison's involvement in the
21 incident based on what's recorded on the incident report?

22 A. The allegation was that he took Mr. Gartrell, he was
23 with Mr. Gartrell when they went up by Ms. Cole's apartment.

24 Q. Okay. Then what after that?

25 A. Then after that he was talking to him and some guy

JOHN SMITH - REDIRECT BY MR. ANTHONY

1 come around and then told them to give up everything he had
2 and pulled a pistol out and shot him in the face.

3 Q. And that's what the incident report records
4 Mr. Brown said about Mr. Harrison's involvement in this?

5 A. Yes.

6 Q. And then the statement, the more formal statement
7 that you took from Mr. Brown, in that statement what is
8 recorded about Mr. Harrison's involvement in that statement?
9 And I can show it to you if it refreshes your recollection.

10 A. I would have to look at it.

11 Q. Okay. All right. What have I just handed you?

12 A. This was -- we said on the way to the hospital
13 Gartrell was telling him that Clarence told him to give him
14 everything that he had --

15 THE COURT: At this time I'm going to stop. It's
16 been my ruling throughout that you can't read from these
17 documents. He can use it to refresh his memory. He can state
18 what he recalls being made in the statement. But I'm going to
19 stop the witness at this point in time. You can let him
20 refresh his memory then I'll let you ask questions as to what
21 he recalls based on his refreshed memory from that statement.

22 Q. Detective Smith, just read that, if you would, then
23 you can give it back to me after you read it.

24 MR. GROSE: And actually, Your Honor, I think he
25 still has my copy. If I could get that back, too.

JOHN SMITH - REDIRECT BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. So what did Mr. Brown tell you that Mr. Gartrell
3 told him about Mr. Harrison's involvement?

4 A. That Mr. Harrison did go around the building with
5 Mr. Gartrell, told him to give him everything that he's got.
6 And then he said no. And then the man with the gun stepped
7 out from around the bush then pulled it out and shot him in
8 the face.

9 Q. And in this statement you also referenced things
10 that Mr. Brown says he was told by Ms. Cole; is that correct?

11 A. Yes.

12 Q. Okay. And I'm going to show you it again. I'd
13 refer you to the top paragraph this time. I'd ask you to just
14 read that and see if that refreshes your recollection. Just
15 read it and I'll ask you a question after you do.

16 [PAUSE.]

17 And what did Mr. Brown tell you Ms. Cole had said
18 about Mr. Harrison's involvement

19 A. That Mr. Harrison had -- after Mr. Gartrell was shot
20 Mr. Harrison followed him into her apartment reaching around
21 him trying to get into his pockets. And she said, What
22 happened? He said he shot. Mr. Harrison said, No, he was hit
23 in the mouth.

24 Q. And as far as Mr. Adams goes, going back to him.
25 When you spoke to him last Friday at the jail was Mr. Brown

JOHN SMITH - RECROSS BY MR. PADGETT

1 still being housed at the jail when you spoke with Mr. Adams
2 last Friday?

3 A. No, sir, I don't think so.

4 Q. Mr. Adams -- or Mr. Brown was gone?

5 A. Yes.

6 MR. ANTHONY: Okay. Thank you. That's all on
7 redirect.

8 THE COURT: Recross, Mr. Padgett?

9 MR. PADGETT: Thank you Your Honor.

10 RECROSS-EXAMINATION

11 BY MR. PADGETT:

12 Q. In the course of your investigation did you ever get
13 information that Darren Howland was involved in this?

14 MR. ANTHONY: Objection. That's beyond the scope of
15 redirect.

16 THE COURT: Did he mention Mr. Howland on redirect?

17 MR. PADGETT: No, but the incident report was --

18 THE COURT: I only allowed him to refresh his memory
19 about the matters he was asked about. I'll sustain the
20 objection.

21 MR. PADGETT: Thank you, Your Honor.

22 MR. GROSE: Your Honor, may we approach?

23 THE COURT: Yes, you may.

24 (WHEREUPON, a bench conference was had.)

25 THE COURT: Ladies and gentlemen of the jury, this

1 is one of those occasions where we're going to have to take up
2 the matter outside of your hearing. My same instruction
3 holds, don't begin any discussions until such time as I have
4 instructed you do so.

5 Please retire to the jury room.

6 (WHEREUPON, the jury leaves the courtroom at
7 approximately 3:00 p.m.)

8 THE COURT: Mr. Grose, you want to take up the
9 matters you discussed at side-bar at this time?

10 MR. GROSE: Yes, Your Honor. Mr. Anthony asked
11 about what Torey Brown told Detective Smith that Ms. Cole had
12 told him, and we are in this time frame between the 10th and
13 the 11th when they got the warrants, and the statement that
14 they were referring to was the 9:41 a.m. on February 11th
15 statement of Mr. Brown.

16 The February 10th statement of Ms. Cole, which has
17 been marked as Defendant's Exhibit Number 2, says, I asked
18 Blue what happened. He just shook his head. Which at this
19 point, you know, he's relied on Ms. Cole and Torey Brown's
20 statements, some of what Torey had said had turned out to be
21 false, in order to get --

22 THE COURT: That's up to the jury to decide, but go
23 ahead.

24 MR. GROSE: In order to get the warrants.

25 Well, it's certainly contrary to what the victim has

1 told us.

2 THE COURT: Well, the question of credibility of any
3 witness is going to be for the jury to decide.

4 MR. GROSE: Right. And I just want him to establish
5 that at that point he had conflicting information from the
6 statement that was provided to him from Ms. Cole --

7 THE COURT: Tell me, how is that relevant to any
8 issue in the case as far as him having conflicting information
9 of two witnesses?

10 MR. GROSE: Well, that's relevant --

11 THE COURT: Earlier I told you you could bring in
12 these matters if you were going to tie it to his state of
13 mind, his state of mind as to why he did something.

14 Now, you can ask him if he changed the course of his
15 investigation based on those statements or he did something,
16 and you didn't really tie it in on your examination. You
17 didn't get into the fact that he relied on it to take any
18 actions. I didn't hear that tied in like my ruling said it
19 should be tied in, but any rate, I didn't stop you.

20 MR. GROSE: Well, I meant to ask.

21 THE COURT: Well, you may have but I didn't catch
22 all that. But at any rate, I think what you are doing is
23 basically trying to get into dueling statements and try the
24 statements. I'd let it in again for the purpose of showing
25 this gentleman's state of mind and why he took certain

1 actions.

2 If you want to lay a foundation that he somehow
3 changed the course of his investigation or his course of
4 actions based on those statements and then get into them then
5 that might work, but we are on recross right now.

6 MR. GROSE: Okay.

7 THE COURT: And recross is limited to matters that
8 were brought up on redirect. And I want to hear how you are
9 tying that into something new that was brought up on redirect.

10 MR. GROSE: Well, this ties into him asking about
11 Ms. Cole's statements to Torey Brown.

12 THE COURT: Is that something new?

13 MR. GROSE: That's something that Mr. Anthony asked.

14 THE COURT: Mr. Anthony, I'll be glad to hear you on
15 this.

16 MR. ANTHONY: Well, he was asked on
17 cross-examination after the Court said he could go into what
18 Mr. Brown told him. So I asked him some redirect questions
19 about a statement that he was cross-examined about. I don't
20 think that there's been any showing why he should be allowed
21 to go back into something that he already has been able to ask
22 him some questions about.

23 MR. GROSE: I don't think that I brought up -- well,
24 I was stopped when I brought up about things that Ms. Cole had
25 told him in the investigation, and then he goes back into what

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 Ms. Cole told Mr. Brown. My proffer would just be Defendant's
2 Exhibit Number 2 for identification.

3 THE COURT: So you want to put the whole statement
4 in?

5 MR. GROSE: No, I'm just putting that in as to
6 proffer. That's already -- I mean, my proffer for appeal
7 because I don't think I'm going to be able to ask these
8 questions.

9 THE COURT: That's not what I asked you. So you are
10 offering the entire statement?

11 MR. GROSE: Well, I'm offering that sentence
12 regarding what Blue said out of it, but the proffer is
13 contained in Defendant's Number 2.

14 THE COURT: Again, how does that reflect on this
15 gentleman's state of mind?

16 MR. GROSE: I think it goes to the information that
17 he was relying on when he got the warrants and --

18 THE COURT: Well, have you somehow tied that
19 statement into some change of course by this gentleman,
20 something that changed his state of mind, that statement?

21 MR. GROSE: Can I ask him that question right now?

22 THE COURT: Certainly.

23 EXAMINATION

24 By MR. GROSE:

25 Q. I'm going to hand you Defendant's Exhibit Number 2,

JOHN SMITH (IC) - EXAMINATION BY MR. GROSE

1 Lieutenant Smith. Did you rely on that statement when you got
2 the warrants on February 11th?

3 A. No, I did not.

4 Q. Did you discount that statement when you got the
5 warrants on February 11th?

6 A. No, I did not discount it.

7 Q. Did that enter into your considerations at all when
8 you got the warrants?

9 A. The only thing about the statement that it really
10 entered into my thinking was Blue, that she named him as being
11 there.

12 Q. And it didn't enter into your mind that that was --
13 that the things that Torey Brown told you that happened are
14 not in that statement?

15 A. Well, this wasn't taken from Torey Brown. This was
16 taken from Ms. Cole. You know, a lot of times when you go to
17 a scene you will get a statement, and then you say I need you
18 to come back and see me and let's go over this thing and get
19 everything that you can remember.

20 MR. GROSE: That's all the questions I have, Your
21 Honor. I would ask if I'd be allowed to, since it was part of
22 your ruling and since he did go back to the statement, ask if
23 he relied on the statements of Torey Brown from the incident
24 report and on the 11th when he got the warrants.

25 THE COURT: You want to ask him that now?

1 MR. GROSE: No, when the jury comes back in.

2 MR. ANTHONY: Well, I think he's already been
3 questioned about that. I mean, that was the whole basis for
4 asking about --

5 THE COURT: That was my ruling. I didn't hear him
6 necessarily say that he relied upon anything. It seemed like
7 to me he just went through the statements and dates and that
8 sort of thing. I never heard him say that what did you rely
9 on when you got the warrant or that these statements were used
10 to get the warrants. Maybe you asked those questions. I
11 didn't hear them.

12 MR. GROSE: I know I asked them in the proffer. My
13 intent was to ask him in the cross-examination. I've got you
14 recalling that I didn't and Mr. Anthony recalling that I did.

15 THE COURT: I'll allow you to ask those questions.

16 MR. GROSE: Okay. Thank you, Your Honor. And I'll
17 be very brief with him.

18 THE COURT: Anything?

19 MR. ANTHONY: Just so I understand the Court's
20 ruling. Is he going to be allowed to go back into the content
21 of the statement or just ask him if he relied on it?

22 THE COURT: Again, the only reason these statements
23 have any relevance to anything in this case is that this
24 gentleman may have relied on them in order to take some of the
25 actions that he took in getting warrants, whatever he did.

1 That's the only relevance I've been able to determine the
2 statements have.

3 In any investigation you get conflicting statements,
4 you get statements from people that are later augmented. That
5 happens. But what he's doing is saying he's not offering it
6 for the truth of the matter asserted. He's saying he's
7 offering these statements for the purpose of showing this
8 gentleman's state of mind, and he's not relying on them for
9 the truth. Okay.

10 So then the question becomes well, why is his state
11 of mind important? Well, for the actions he may have taken.
12 So somehow he's got to lay a foundation that the statements
13 that I am going to let him get into that this gentleman
14 changed his course of action for some reason, he did something
15 relying upon that.

16 I would assume police officers quite often get
17 conflicting statements and they say well, I'll rely on this
18 one but I'm not relying on this one. They throw it out, they
19 take no action. It didn't affect their statement, they don't
20 do anything with it. They go on what they believe.

21 That's what makes it somehow relevant, is the only
22 thing I can see. The fact that you have conflicting
23 statements is not unusual in an investigation, I would not
24 think. So that was the basis for my ruling.

25 And he said he wasn't offering it for the truth of

1 the matter asserting but just to show why this gentleman might
2 be doing something. He just testified he didn't rely on the
3 statement made by the young lady in doing anything. I'm going
4 to allow him to ask questions concerning if he did rely on
5 Mr. Brown's statements. I'll let him ask that question.

6 MR. GROSE: And I'm not planning on --

7 THE COURT: I'm being somewhat liberal in allowing
8 it but he's on cross-examination and I'm going to do that. I
9 realize that's probably not strictly following the rules on
10 recross. Anything else?

11 MR. GROSE: No, sir. I just was going to say I
12 wasn't going to go into the substance again.

13 THE COURT: Thank you.

14 Bring the jury back.

15 MR. ANTHONY: Your Honor, could I just advise the
16 Court one thing so you'll know?

17 THE COURT: Yes, sir.

18 MR. ANTHONY: The next witness after Mr. Smith is
19 done is going to be Sergeant -- I'm going to recall Sergeant
20 Vandiver, and part of the subject of his testimony will be the
21 matter that I brought up in chambers with the Court this
22 morning. And I think the defense said they wanted to hear a
23 proffer on that. So I just wanted the Court to know that,
24 after they are done.

25 THE COURT: It sounds like we're going to get the

JOHN SMITH - RECROSS BY MR. GROSE

1 jury back and send them right back out.

2 MR. ANTHONY: I just thought you would want to know.

3 THE COURT: Bring the jury in.

4 (WHEREUPON, the jury enters the courtroom at
5 approximately 3:10 p.m.)

6 THE COURT: The record should reflect the jury panel
7 has returned.

8 I believe, Mr. Grose, you were about to begin on
9 recross.

10 MR. GROSE: Thank you, Your Honor.

11 RECROSS-EXAMINATION

12 BY MR. GROSE:

13 Q. We had asked some questions earlier about Torey
14 Brown's statements that were in the incident report of
15 2-10-04. Do you remember that?

16 A. Oh, yes.

17 Q. And we had asked about his statements on 2-11-04 to
18 you.

19 A. Right.

20 Q. And those are statements that you took before you
21 saw the magistrate or received before you saw the magistrate?

22 A. Yes.

23 Q. And those are statements that you relied upon when
24 you obtained the warrants?

25 A. Both those statements, yes.

RAYMOND VANDIVER (IC) - DIRECT BY MR. ANTHONY

1 Q. And we're talking about Torey Brown's statements?

2 A. Right.

3 MR. GROSE: Nothing further.

4 THE COURT: You may step down, sir.

5 Ladies and gentlemen of the jury, I'm sorry to do
6 this at this point in time. We had to complete that witness
7 before I could go to the next step. I'm going to ask you to
8 return back to the jury room. Don't begin any discussions.
9 There's another matter I have to take up concerning the next
10 witness with the attorneys before we begin the trial.

11 Please retire to the jury room. Thank you very
12 much.

13 (WHEREUPON, the jury leaves the courtroom at
14 approximately 3:12 p.m.)

15 THE COURT: You wish to make a proffer. I'll be
16 happy for you to do so at this time. Your witness is?

17 MR. ANTHONY: The first witness proffer is going to
18 be Sergeant Vandiver.

19 THE COURT: Okay, sir. Officer, you have been sworn
20 already.

21 THE WITNESS: Yes, sir.

22 THE COURT: You remain under oath at this time.

23 DIRECT EXAMINATION

24 BY MR. ANTHONY:

25 Q. Sergeant Vandiver, yesterday afternoon what was your

RAYMOND VANDIVER (IC) - DIRECT BY MR. ANTHONY

1 responsibility in regards to transporting Mr. Harrison and
2 Mr. Haskell and also Mr. Norman and Mr. Adams to the county
3 jail?

4 A. My responsibility was to go with Mike Belcher,
5 detective from the county, because their other cage unit had
6 already taken the other two and I was assisting them in
7 transporting them back to the county jail.

8 Q. When you say them, you mean you were transporting
9 Mr. Harrison and Mr. Haskell?

10 A. Harrison and Haskell.

11 Q. Okay. And when you arrived at the county jail where
12 did you go with Mr. Harrison and Haskell?

13 A. We went into the booking area as you enter the jail
14 through the sally port.

15 Q. And once you go there, where was Mr. Norman when you
16 got to the booking area?

17 A. If you walk in through the sally port into where the
18 booking area is there is one big cell that's adjacent to the
19 left as you come in, and then there's two cells that go down
20 the wall in front of the booking area, and Mr. Sherman Norman
21 was in cell two.

22 Q. And that's one of the cells on the wall?

23 A. Right. It has glass plates on the front of it.

24 Q. And when you arrived at the booking area with
25 Mr. Harrison and Mr. Haskell what did you do?

RAYMOND VANDIVER (IC) - DIRECT BY MR. ANTHONY

1 A. They was booking one that the another county had
2 brought in so the jailer asked Mike Belcher and myself if we
3 would go ahead and pat them down and take the property off of
4 them, which we did.

5 Q. All right. And what happened as you were in the
6 process of doing that?

7 A. In the process of doing that I was searching
8 Mr. Harrison, and when I touched his left pocket there was a
9 big wad of money. I told him that he would have to turn that
10 in because they are not allowed to have money in the jail.

11 I told him to watch me while I count it. I counted
12 out \$792. I got a sticky thing and wrote 792 because the jail
13 has to count it again to verify my count. I asked
14 Mr. Harrison to count it with me. We did. He turned back
15 around and picked the money back up.

16 Q. Now, you say you asked him to count it with you.
17 You went through the bills and counted up --

18 A. Correct.

19 Q. All right. And after you did that what did
20 Mr. Harrison do?

21 A. He was -- you know, they were talking among
22 themselves while I was counting it right there, and when he
23 turned he said I don't think you counted that right.

24 I picked the money back up and I said I'm going to
25 count it again, at which time he turned to Sherman Norman,

RAYMOND VANDIVER (IC) - DIRECT BY MR. ANTHONY

1 spread the money out. It's a clear glass look in through
2 there, and at that time Mr. Sherman Norman went up like that
3 (indicated). Mr. Harrison told him, said keep cool, and then
4 gave me the money back. He did not count it.

5 Q. And how far away when Mr. Harrison turned and did
6 this with the money, how far away was Mr. Norman from
7 Mr. Harrison?

8 A. From here to that railing right there (indicated).
9 It's not that big a space in between the booking counter,
10 would be maybe right here and the two cells over here about
11 that distance there, halfway in between there?

12 Q. From where you were standing -- from where you are
13 sitting to that rail is approximately how far?

14 A. Three feet.

15 Q. Okay. Okay. And to your knowledge, did you hear
16 Mr. Haskell say anything concerning this?

17 A. Did not.

18 Q. And did you hear any other conversation between the
19 two of them?

20 A. Did not. That ended the conversation there. They
21 were put in cell one, both of them.

22 Q. Are you aware of where Mr. Harrison and Mr. Haskell
23 had lunch yesterday relative to where Mr. Norman ate lunch
24 yesterday?

25 A. They were side-by-side cells. The same cells they

RAYMOND VANDIVER (IC) - CROSS BY MR. PADGETT

1 were in yesterday afternoon were the same cells they were in
2 at lunch yesterday.

3 MR. ANTHONY: All right. That's all on direct on
4 Mr. Vandiver for the proffer, Your Honor?

5 THE COURT: Cross-examination, Mr. Padgett?

6 MR. PADGETT: Yes, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. PADGETT:

9 Q. Sergeant, were you aware that the witnesses were
10 under a sequestration order?

11 A. I was but didn't know Sherman Norman was in there
12 until this incident happened. I turned around, there's
13 Sherman.

14 Q. Who was in charge of placing the witnesses in the
15 same vicinity?

16 A. The county is. They run the whole thing. We do not
17 have a jail. When they are taken out there it's on them.

18 Q. You are not alleging Mr. Haskell had anything to do
19 with this?

20 A. No.

21 Q. I don't have anything else.

22 A. He never said nothing.

23 MR. PADGETT: Thank you.

24 THE COURT: Yes, sir.

25 CROSS-EXAMINATION

RAYMOND VANDIVER (IC) -- CROSS BY MR. GROSE

1 BY MR. GROSE:

2 Q. Now, you said that the two defendants and Mr. Norman
3 were in proximity to each other for lunch.

4 A. They were.

5 Q. You're not here to say any conversation took place?

6 A. Oh, no. Other than what I just testified to, the
7 money, there was no conversation that I know of.

8 Q. So you are not alleging that any wrongdoing happened
9 at lunch?

10 A. Other than this money.

11 Q. The money happened after Court?

12 A. Right, after Court yesterday. I'm not alleging
13 anything happened prior to that.

14 Q. Okay. Were you there when they booked Mr. Harrison
15 into the jail last night?

16 A. I was there when they started.

17 Q. And does it sound like this name sounds right,
18 Ms. Wallon was doing the booking?

19 A. I don't know Ms. Wallon. If she is the new jailer
20 they have out there she was there because I did not know one
21 of the jailers that was there.

22 Q. What exactly is it that you are saying was
23 wrongdoing?

24 A. In my opinion, as long as I've been in law
25 enforcement, you flash somebody money and they hold up the

RAYMOND VANDIVER (IC) - CROSS BY MR. GROSE

1 amount and they are incarcerated a deal has been cut.

2 Q. That's your opinion?

3 A. That is my opinion.

4 Q. You don't have any direct evidence that a deal has
5 been cut?

6 A. No, I did not.

7 Q. And when you hold up a finger -- you are holding up
8 four fingers?

9 A. That's correct.

10 Q. And you are speculating that that means an amount?

11 A. That's correct.

12 Q. That's your opinion?

13 A. That is my opinion.

14 Q. Not direct evidence that that means an amount?

15 A. No.

16 Q. In fact, everything that you are talking about is
17 speculation, isn't it?

18 A. It's to an extent, yeah.

19 MR. GROSE: Nothing further.

20 THE COURT: Redirect?

21 MR. ANTHONY: No. No redirect on this witness.

22 THE COURT: Sir, you may step down.

23 You may call your next witness.

24 MR. ANTHONY: We'll call Detective Belcher.

25 THE COURT: Sir, come be sworn.

MICHAEL BELCHER (IC) - DIRECT BY MR. ANTHONY

1 MICHAEL BELCHER, after having been duly sworn,
2 testified as follows:

3 DIRECT EXAMINATION

4 BY MR. ANTHONY:

5 Q. Would you state your name, please.

6 A. Michael Belcher.

7 Q. And, Mr. Belcher, how are you employed?

8 A. I work with the sheriff's department.

9 Q. And what is your position with the sheriff's
10 department?

11 A. I'm an investigator.

12 Q. And how long you been employed in that capacity?

13 A. A little over 10 years; 10, 11 years, somewhere in
14 there.

15 Q. And yesterday were you working?

16 A. Yes, sir.

17 Q. And what were your responsibilities yesterday?

18 A. My responsibility yesterday was the courtroom
19 security, handle court.

20 Q. And in that capacity did you become involved in the
21 transportation of Mr. Harrison and Mr. Haskell to the jail?

22 A. That's correct.

23 Q. And who assisted you with that?

24 A. Sergeant Vandiver with the city.

25 Q. And when you arrived at the jail what did you do?

MICHAEL BELCHER. (IC) - DIRECT BY MR. ANTHONY

1 A. Once we pulled into the sally port, which is an area
2 where inmates are dropped off and picked up, as I was walking
3 up to the glass door I saw one of the other witnesses who had
4 just testified.

5 At that time, my main concern then was to just
6 separate the defendant from the witness because I didn't know,
7 you know, was there any animosity or something like that.

8 Q. And the witness who testified, what was his name?

9 A. I want to say Norman. He had on the S. C. D. C.
10 uniform, tan looking.

11 Q. And where was he when you first saw Mr. Norman?

12 A. At first, he was standing right there in front of
13 booking station.

14 Q. And did he go anywhere else?

15 A. At the time, I alerted the jailer, told him that I'm
16 bringing some defendants in, they needed to put him in a
17 holding cell.

18 Q. And was Mr. Norman put in the holding cell?

19 A. Yes, that's correct.

20 Q. And once Mr. Norman was placed in a holding cell
21 what did you do? What did you and Sergeant Vandiver do with
22 your two men that you were transporting?

23 A. At that time, I'm not sure whether myself or
24 Sergeant Vandiver removed the restraint. At the time, I told
25 the jail that I was bringing two inmates in that the Judge had

MICHAEL BELCHER (IC) - DIRECT BY MR. ANTHONY

1 ordered in our custody. And at the time, Mr. Haskell -- I
2 mean, not Haskell, Harrison went over around to the booking
3 station.

4 Q. And who dealt with Mr. Harrison at the booking
5 station?

6 A. At the time, he was over there counting some cash.
7 He was by himself at the time.

8 Q. And what did you see transpire between Mr. Harrison
9 and Mr. Haskell and Mr. Norman?

10 A. Like I say, Mr. Harrison came to me with a large sum
11 of cash and later identified was a good bit of cash counted,
12 and then I think he stated a certain amount. Then Sergeant
13 Vandiver begin to count it, and then he told him what he had
14 counted. Then at the time, Mr. Norman shouted out from one of
15 the cells to Mr. Harrison. At the time, I think Mr. Harrison
16 raised his hands up in the air, and like, you said enough, you
17 said enough. Then he shouted back --

18 Q. Let me just ask you. What did Mr. Norman shout to
19 Mr. Harrison?

20 A. He had shouted something I couldn't make out
21 because, like I say, I was talking with the jailer. I just
22 heard, you know, a voice behind me and I looked and I saw him
23 in the holding cell. And then there was Mr. Harrison -- well,
24 he was already standing up raising his hand saying, You said
25 enough, you said enough. Then at the time, he shouted

MICHAEL BELCHER (IC) - CROSS BY MR. PADGETT

1 something like he needed some money.

2 Q. Who did?

3 A. Norman.

4 Q. And what did Mr. Norman say?

5 A. He wanted some money, wanted Mr. Harrison to leave
6 some money. And then at the time, that's when Mr. Haskell
7 replied to Harrison for him to leave him 20 dollars for
8 canteen for him. And then at the time, the jailer spoke up
9 and said, No, he can't do that.

10 Q. So Mr. Monte Haskell told Mr. Harrison to leave
11 Mr. --

12 A. Yeah, to go ahead. Yeah, go ahead to -- something
13 like leave him 20 dollars, man. Go ahead and leave him 20
14 dollars.

15 Q. Okay. And then did Mr. Norman say anything else?

16 A. I think once the jailer said he couldn't do that and
17 then he shouted something about he can get his address. He
18 can mail it to him.

19 MR. ANTHONY: That's everything that's part of the
20 proffer on Detective Belcher.

21 THE COURT: Mr. Padgett?

22 MR. PADGETT: Thank you, Your Honor.

23 CROSS-EXAMINATION

24 BY MR. PADGETT:

25 Q. Were you in the same vicinity as Sergeant Vandiver?

MICHAEL BELCHER (IC) - CROSS BY MR. PADGETT

1 A. Yes, sir.

2 Q. So would it be fair to say you would have heard the
3 same things he heard?

4 A. Like I say, I really wasn't anticipating on someone
5 shouting. Like I say, my main concern would be fighting going
6 on, you know. So that is my main concern.

7 Q. How close were you to him?

8 A. To who?

9 Q. Sergeant Vandiver?

10 A. About where you are standing at.

11 Q. So that would be about 10 feet?

12 A. Yes, give or take, approximately.

13 Q. Were there any walls in between?

14 A. No, sir.

15 Q. And could you see Mr. Harrison as well?

16 A. Yes, sir.

17 Q. And everything you've -- is there anything else you
18 want to add to your testimony about what happened or is that
19 basically what went on?

20 A. Yes, sir.

21 Q. And you said that Mr. Haskell did participate in the
22 conversation?

23 A. Yeah. The only thing he just said, Man, go ahead
24 and leave him 20 dollars.

25 Q. When Mr. Norman shouted out you couldn't make out

MICHAEL BELCHER (IC) - CROSS BY MR. GROSE

1 what he asked for?

2 A. I mean, like I say, I heard him say something.
3 That's what brought my attention to look that way. Normally,
4 from time to time sometimes inmates in there, sometimes inmate
5 were not. Like I said, I wasn't expecting somebody to be
6 shouting. So when I heard it it just caused me to look.

7 And I just went and told the jailer while I was
8 there. Like I said, he was standing -- you know, I didn't
9 want something to go on and I didn't see it, as far as inmates
10 fighting or something.

11 Q. Right, but you couldn't make out what Mr. Norman's
12 shout was, it just drew your attention?

13 A. Right, it drew my attention.

14 MR. PADGETT: Thank you, Your Honor. I have nothing
15 further.

16 THE COURT: Mr. Grose?

17 MR. GROSE: I think I'll be brief, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. GROSE:

20 Q. You heard a conversation enough to know that
21 Mr. Norman was requesting 20 dollars in canteen money?

22 A. Like I say, your client -- I get the name mixed up,
23 Harrison, he said something. Like I know he raised a hand up.
24 Then said, you know, you said enough, you said enough. Like
25 that. And then he put the hand out, then he shouted back, I

MICHAEL BELCHER (IC) - CROSS BY MR. GROSE

1 want, you know, 20 dollars. And then that's when the other
2 guy said, Leave him 20 dollars. And then the jailer spoke and
3 said, No, you can't do that.

4 Q. Are you aware that Mr. Norman was in S. C. D. C.
5 custody until yesterday?

6 A. I didn't know until he got here.

7 Q. And so he was coming from S. C. D. C. into the
8 Abbeville jail?

9 A. Yes.

10 Q. And when you come from S. C. D. C. into the
11 Abbeville jail you don't have any canteen money, do you?

12 A. I'm not sure what they let them bring. You know, he
13 might have had some with the department. I know once you get
14 in they pat them down, make sure they didn't have anything
15 like that and they put it with their property if they do. But
16 I'm not sure if he had anything on him at the time because I
17 wasn't in there.

18 Q. So you don't know whether he had canteen money or
19 not?

20 A. No, sir. No, sir.

21 Q. And the amount that they tried to put on his account
22 was 20 dollars?

23 A. Yes, sir.

24 Q. And the jailer said you couldn't do that?

25 A. Yes, sir.

MICHAEL BELCHER (IC) - REDIRECT BY MR. ANTHONY

1 Q. And the jailer was the one that said get his address
2 and mail it to him?

3 A. I'm sure that they wouldn't do it. You know, they
4 would either tell him to do it or somebody on the outside to
5 do it, because they wouldn't mail it theirselves, no, sir.

6 MR. GROSE: That's all.

7 THE COURT: Anything further from this witness?

8 MR. ANTHONY: Just to clear one thing up.

9 REDIRECT EXAMINATION

10 BY MR. ANTHONY:

11 Q. The comment about mailing the money, that came from
12 Mr. Norman, right?

13 A. Yes, sir.

14 Q. Mr. Norman asked them to mail it?

15 A. Yes, Mr. Norman would be the S. C. D. C. inmate.

16 Yes, sir.

17 MR. ANTHONY: That's all on redirect, thank you.

18 THE COURT: Anything further, Mr. Padgett?

19 MR. PADGETT: No, Your Honor.

20 THE COURT: Mr. Grose?

21 MR. GROSE: No, sir.

22 THE COURT: You may step down.

23 Anything further, Mr. Anthony?

24 MR. ANTHONY: That's all the evidence I have.

25 THE COURT: You intend to offer those witnesses; is

1 that right?

2 MR. ANTHONY: Yes, sir. Yes, sir.

3 THE COURT: I'll be happy to hear from the defense.
4 Mr. Padgett, I'll let you go first..

5 MR. PADGETT: Thank you, Your Honor. I would object
6 to their testimony, ask that it be excluded. The versions are
7 totally different. They were both in a very small area,
8 observed the same situation.

9 I would submit to the Court that the testimony would
10 be unreliable and under Rule 403 would cause unfair prejudice
11 and the jury -- well, it may mislead the jury, and therefore
12 the prejudicial value outweighs any probative value for these
13 witnesses to be offered to the jury. That's all, Your Honor.

14 THE COURT: All right. I'll be happy to hear from
15 you, Mr. Grose.

16 MR. GROSE: Your Honor, I would refer the Court to
17 Rules 602 regarding personal knowledge and the rules that deal
18 with opinion evidence, 701 and 703. 703, of course, is just
19 with experts. I haven't heard Mr. Anthony try to qualify
20 either of these witnesses as experts. 602, of course, refers
21 to 703.

22 THE COURT: I don't think he offered an opinion.
23 You elicited, and I don't think he offered an opinion.

24 MR. GROSE: Well, I think that they are offering
25 this testimony to convey to the jurors that there was some

1 sort of deal between one or both of the defendants in exchange
2 for testimony when what they've presented is, is that the only
3 amount that's been discussed and named in this Court was 20
4 dollars for canteen money.

5 I don't think that this is relevant to an issue
6 under 401 or 402, and I agree with Mr. Padgett that if it
7 somewhat is relevant the prejudicial effect outweighs the
8 probative value. This could be extremely misleading and
9 confusing to the jury and I think that's exactly what they are
10 trying to do.

11 THE COURT: My question, though, is about the
12 opinion testimony. What I heard him offer was testimony of a
13 circumstance that occurred, which is circumstantial evidence.
14 And when I make a charge to the jury I tell them they can draw
15 whatever inferences they wish to draw from circumstantial
16 evidence. I don't think he offered an opinion. I don't
17 remember an opinion being offered.

18 Did you offer any opinions?

19 MR. ANTHONY: No, sir, I did not.

20 MR. GROSE: Well, I mean he was talking about --

21 THE COURT: You asked if he had any direct evidence.
22 He said no, just what I described to you. Circumstantial
23 evidence is admissible in this State, too.

24 MR. GROSE: I understand that. You know, I think
25 he's trying to base claim that because of a police officer

1 that he has some special understanding that certain signals
2 mean that a deal was being made.

3 THE COURT: The proffer was simply what happened.
4 You elicited whether or not -- what opinion he might draw from
5 that. I didn't hear that proffered by the State. Let's put
6 it that way. And I certainly wouldn't let him speculate or he
7 could testify what he saw and heard then the jury draws
8 inferences.

9 MR. GROSE: Okay. Well, if it's limited that way
10 it's one thing. But I don't think that any of this is
11 relevant, and if it is the prejudicial effect outweighs the
12 probative value. I mean, a lot of what they are trying to do
13 is cause the jury to speculate about things that can simply be
14 explained by putting 20 dollars on somebody's account because
15 they didn't have any money when they came back from
16 S. C. D. C.

17 THE COURT: One thing that disturbs me here is I
18 thought my sequestration order was clear. Your clients were
19 present in the courtroom when I made that order. Any
20 communication whatsoever with any witness. I even proffered
21 you in that order, would you agree, or do you not agree?

22 MR. GROSE: Well, I'd have to go back. I think your
23 order was about the testimony. I don't know that there's
24 been --

25 THE COURT: I said even after you testify don't

1 discuss anything with anybody. I thought I made that clear.

2 MR. GROSE: Well, I mean -- and I think that was
3 clear to the officers who put them in the same proximity.

4 THE COURT: I don't recall them communicating.
5 Communication is done between witnesses not having been done
6 through somebody else.

7 MR. GROSE: Yes, sir. Right now I think we're
8 dealing with whether or not this is admissible.

9 THE COURT: I think we are but I'm also pointing out
10 to you and your clients, as I do so.

11 MR. GROSE: Yes, sir.

12 THE COURT: That's highly improper.

13 MR. GROSE: Yes, sir. I'll counsel them about that.

14 THE COURT: That might be a good idea. I'll take a
15 break. Court's at ease.

16 (WHEREUPON a brief recess was taken.)

17 THE COURT: It is apparent to the Court that the
18 credibility of the witnesses involved in this case has
19 probably become the central issue in the case. We've had
20 witnesses who are recanting stories totally, we have had
21 witnesses who have changed their written statements. All of
22 that has been placed into evidence by the defense, in
23 particular.

24 In connection with Mr. Brown's statements, the
25 credibility of those statements is obviously in question. So

1 I think the credibility of the witnesses in this case is of
2 paramount interest and of paramount importance in this matter.

3 I say that to state that in this case there is a set
4 of facts or circumstances which may bear on the credibility of
5 the witnesses who have testified thus far in this case or who
6 may testify in the case.

7 Therefore, it is my ruling that anything, any
8 evidence that would bear on the credibility of the witnesses
9 involved in this case and their conduct before this Court is
10 highly probative, and the probative value of that evidence
11 would outweigh any prejudicial effect that it might have to
12 the parties involved.

13 In this case, there is circumstantial evidence which
14 could, if you by reasonable juror, have some bearing on the
15 credibility of the witnesses who have testified before this
16 Court or who have refused to testify before this Court.

17 And therefore, it is my ruling that this evidence
18 can be placed before the jury. It is circumstantial evidence.
19 The jury, I will charge them appropriately concerning
20 circumstantial evidence. They can draw whatever inferences
21 they choose to draw from that evidence.

22 Ready to go forward, State?

23 MR. ANTHONY: Yes, sir, we are.

24 THE COURT: Is the defense ready?

25 MR. PADGETT: Yes, Your Honor.

1 THE COURT: Mr. Grose?

2 MR. GROSE: Yes, sir.

3 THE COURT: Just as a matter of housekeeping. You
4 intend to call, obviously, these next witnesses.

5 MR. ANTHONY: Yes, sir.

6 THE COURT: Does the State have any other witnesses?

7 MR. ANTHONY: No, sir. We don't plan on calling
8 anybody else.

9 THE COURT: Do you intend to rest at that time?

10 MR. ANTHONY: Yes, sir.

11 THE COURT: Bring the jury back.

12 (WHEREUPON, the jury enters the courtroom at
13 approximately 3:46.)

14 THE COURT: The record should reflect that the
15 jurors have returned to the courtroom. At this point in time
16 the State may call its next witness.

17 MR. ANTHONY: We'd would recall Sergeant Vandiver to
18 the stand.

19 THE COURT: Sir, return to the stand, please.

20 Sergeant Vandiver, you have been placed under oath
21 concerning your testimony in this case. I will remind you of
22 that fact. You remain under oath at this time.

23 THE WITNESS: Yes, sir.

24 THE COURT: You may proceed, Mr. Anthony.

25 DIRECT EXAMINATION

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 BY MR. ANTHONY:

2 Q. Sergeant Vandiver, Monday night, two nights ago, did
3 you witness a conversation with Sherman Norman?

4 A. I did.

5 Q. Where was that conversation?

6 A. You and I and Sherman Norman were in the interview
7 room at the county jail.

8 Q. Was anybody else there besides the three of us?

9 A. No, it wasn't.

10 Q. And what was Mr. Norman asked about Monday night?

11 A. He was asked about the statement that he had already
12 previously made, and he did confirm that statement was true to
13 the best of his knowledge.

14 Q. And what -- just sort of backing you up, what was
15 that statement about?

16 A. It was about the same shooting that took place
17 outside of 402 Hickory Heights Apartment complex.

18 Q. And when Mr. Norman was asked where he was at the
19 time of that shooting where did he say he was?

20 A. He was inside of Apartment 402 -- 401, I'm sorry.
21 It's the one right beside 402. Meyun Wharton's apartment?

22 Q. And that apartment, where is that apartment in
23 relation to Ms. Cole's apartment?

24 A. They are side-by-side on the bottom floor on the
25 east end of the Building 400.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 Q. And what did Mr. Norman tell, say, what did he say
2 Monday night that he had witnessed when he was there at that
3 apartment?

4 A. He was coming into --

5 MR. GROSE: Your Honor, I'm going to object to them
6 going through the statement under Rule 613. I mean,
7 Mr. Norman admitted the statement in Court and said it wasn't
8 true, but since he's admitted this statement I don't think
9 they get to offer additional evidence. I'm looking at
10 paragraph D.

11 MR. ANTHONY: He did not admit the statement that he
12 made Monday night. I'm not asking about the written
13 statement. I'm asking about the statement that he gave Monday
14 night with Sergeant Vandiver and I.

15 THE COURT: This is a verbal statement, Mr. Grose?
16 Is that the one that you are referring to?

17 MR. GROSE: I think he admitted parts of it. He may
18 have denied parts of it. I think they can only go into the
19 parts that he denied.

20 THE COURT: I will allow them to go into any parts
21 that he denied.

22 BY MR. ANTHONY:

23 Q. What did Mr. Norman say he witnessed there at the
24 apartment that night?

25 A. He witnessed Mr. Harrison and Mr. Haskell outside of

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 the apartment as he was going in Apartment 401.

2 Q. And what did he say he had seen occur between the
3 two of them?

4 A. He had heard a conversation where Mr. Harrison --
5 where Mr. Haskell had told Mr. Harrison to get Rod to come out
6 of Apartment 402.

7 Q. And what had he seen pass between the two of them?

8 A. He saw his silver color pistol pass between them.
9 Mr. Harrison gave it to Mr. Haskell.

10 Q. And he told you that Monday night?

11 A. That is correct, sir.

12 Q. And did he tell you Monday night anything else he
13 heard in regards to the conversation between Mr. Haskell and
14 Mr. Harrison?

15 A. He heard Mr. Haskell tell Mr. Harrison --

16 MR. PADGETT: I'd object, Your Honor, as to hearsay.

17 THE COURT: Both defendants?

18 MR. PADGETT: As least to Mr. Haskell. Anything --
19 something someone else was told that they said. I believe the
20 testimony here is --

21 THE COURT: He's recalling the statement by
22 Mr. Norman which he said he witnessed a conversation between
23 the defendants, and he's related the statement that was given.

24 MR. PADGETT: And it's being offered for the truth
25 of the matter.

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1 THE COURT: Mr. Anthony?

2 MR. ANTHONY: Well, Mr. Norman has denied. He
3 denied having heard this conversation on Monday -- I'm
4 sorry --

5 THE COURT: You're offering this as extrinsic
6 evidence of the statement that he, in fact, made?

7 MR. ANTHONY: Yes, sir. I'm offering it to prove up
8 the impeachment that he denied that testified yesterday.

9 THE COURT: Overruled.

10 BY MR. ANTHONY:

11 Q. Sergeant Vandiver, what else did Mr. Norman tell you
12 he heard said between Mr. Harrison and Mr. Haskell?

13 A. He heard Mr. Haskell tell Mr. Harrison -- tell
14 Mr. Harrison to get Rod, which is Rod Gartrell sitting in
15 front of you there, to come out of the apartment. At that
16 time, Mr. Haskell went around the corner of the building into
17 the bushes there. Mr. Norman then related to me and to you
18 that he went in Apartment 401 and did leave the door cracked.
19 He did not shut it.

20 Q. And what did he say he heard happen after that?

21 A. He had stepped on further into Apartment 401. He
22 did hear a gunshot. He come back, went to the door. He did
23 not see anybody except Mr. Gartrell and Mr. Harrison were
24 headed in Apartment 402, which is Ms. Cole's apartment.

25 Q. And when he made these statements did he give a

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 reason why he didn't speak to the police that night.

2 A. He was on trespass notice from over there. I know
3 him on an everyday basis seeing him on the street. He knows
4 me. The reason he left from there --

5 Q. Well, let me just back you up. That's what he said?

6 A. That's what he said because he knew I knew he was on
7 trespass notice.

8 Q. Well, getting away from what he told you for right
9 now. Did you see Mr. Norman that night? When you went to the
10 crime scene did you see him?

11 A. Yes.

12 Q. And where was he when you saw him?

13 A. He was going down the sidewalk from Apartment 402.
14 When I pulled up, I went to the scene. I came back. I had to
15 go get my camera. When I went to get my camera out of the car
16 Mr. Norman was going down beside 401, which is in front of
17 Apartment 401, the sidewalk going down by it, going toward
18 Oakland Apartments.

19 Q. So he was headed away from where this occurred?

20 A. Right.

21 Q. Now, at that time, what did you know about his
22 permission to be at Hickory Heights Apartments?

23 A. I knew he was on trespass notice, and it is filed in
24 the police department he is on trespass notice.

25 Q. Did you do anything about that at that time?

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 A. Trespass notice is minor compared to what I was
2 dealing with, the call I got to respond to.

3 Q. And now I'm going to take you to yesterday morning.
4 Were you present for a conversation with Nini Cole or
5 Kytraundra Cole?

6 A. Yes, I was.

7 Q. And where was that conversation held?

8 A. It was in what we call the grand jury room behind
9 the courtroom right here.

10 Q. And who was present for that conversation?

11 A. Yourself and me and Nini Cole, which is Kytraundra
12 Cole.

13 Q. And what was Ms. Cole questioned about?

14 MR. GROSE: Your Honor, I don't know that this is
15 relevant, and this is getting into hearsay. And she's already
16 testified and I've been cut off from going into statements
17 that she told people.

18 THE COURT: What's your objection?

19 MR. GROSE: Relevance.

20 THE COURT: Relevance. Thank you.

21 Yes, sir?

22 MR. ANTHONY: I'm proving up one thing that she
23 denied when she testified that I believe I can present
24 evidence she gave a contradictory answer or gave a
25 contradictory statement about when she was questioned during

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 this conversation.

2 THE COURT: I'll allow him to go into those matters
3 she may have denied in her statement.

4 You may proceed.

5 BY MR. ANTHONY:

6 Q. And what was she questioned about yesterday morning?

7 A. The same shooting incident we are talking about now
8 that occurred outside of her apartment.

9 Q. And when she was asked what Mr. Harrison had said
10 when he came to her door, what was her response to that
11 question?

12 A. Ms. Cole stated that Mr. Harrison told her to lock
13 her door, that something was fixing to go down. And she
14 stated she did not lock her door.

15 Q. And what did she say in regards to -- did she make
16 any statements in regards to what Mr. Harrison said about who
17 was involved or what was going to happen to a particular
18 person?

19 A. If what would happen?

20 Q. Did she make any statements --

21 MR. PADGETT: Objection, Your Honor, just
22 cumulative.

23 THE COURT: I think, as I recall her testimony, she
24 may have denied having made a statement or someone having made
25 a statement to her about what was about to happen. Do you

1 recall that as well?

2 MR. PADGETT: I thought --

3 THE COURT: Am I correct in recalling that?

4 MR. PADGETT: I remember testimony different but

5 I'll take the Court's --

6 THE COURT: Well, no. I'll be glad to check the
7 record if you're objecting on the fact that he's bringing out
8 evidence about a matter she may not have denied. You can
9 check the transcript. I can send the jury back and you can
10 check it if you like to.

11 MR. PADGETT: May I have one second? If I could
12 check my notes, Your Honor.

13 THE COURT: We'll take a second to let you look at
14 your notes.

15 [PAUSE.]

16 MR. PADGETT: Okay. Well, Your Honor, I can't find
17 it in my notes.

18 THE COURT: I'll be glad to review it. My
19 understanding was her original statement was that somebody
20 told her to close the door something was about to go down, and
21 then when she testified she didn't remember somebody telling
22 her something was about to go down.

23 Is that what you are referring to, Mr. Anthony?

24 MR. ANTHONY: That's not exactly, but basically.

25 THE COURT: Well, tell me what I'm referring to.

1 MR. ANTHONY: Would you like me to approach the
2 bench to do it or do it here?

3 THE COURT: You can come to the side-bar, gentlemen.
4 (WHEREUPON, a bench conference was had.)

5 THE COURT: Ladies and gentlemen of the jury, I'm
6 going to ask you to return to the jury room. Do not begin any
7 discussions concerning this case until such time as I've
8 instructed you to do so. Thank you very much.

9 (WHEREUPON, the jury leaves the courtroom at
10 approximately 4:00 p.m.)

11 THE COURT: All right. Put on the record the point
12 that you are trying to get to.

13 MR. ANTHONY: When Ms. Cole testified yesterday she
14 said that when Mr. Harrison came to her door that he told her
15 to lock the door, that he had something he needed to do, or
16 something along those lines.

17 She did not mention that he and Mr. Haskell had
18 something they needed to do. She has told -- she was asked on
19 the stand if she did not tell me and Sergeant Vandiver
20 yesterday morning that Mr. Haskell had been mentioned in
21 Mr. Harrison's statement.

22 My recollection is that she denied having said that.
23 I think she said she didn't remember. And the questioning of
24 Sergeant Vandiver is meant to elicit that impeachment or prove
25 up impeachment.

1 THE COURT: That she had just before trial said
2 that?

3 MR. ANTHONY: Yes, sir.

4 THE COURT: Now, Mr. Padgett.

5 MR. PADGETT: If I may, Your Honor. The solicitor
6 has Ms. Cole's statement to use as impeachment, her second
7 statement, the one of March 8th, 2004. It is in there where
8 it says me and Monte got some business we need to handle.
9 That was the statement made by Mr. Harrison.

10 Your Honor is right. The best way to find out is to
11 go through the record. However, that impeachment, if that was
12 a prior inconsistent statement was available at the time and
13 it could have been brought in through --

14 THE COURT: This is the gentleman that heard her say
15 it right before trial. My understanding is he's asking about
16 the interview they had with her right before trial, and I
17 think at that time she said -- I think he's going to say. He
18 hadn't gotten that far. I assume they are going to elicit
19 testimony that she stuck with her former story up until the
20 time of the trial. I think that's what he's going to get to.

21 Mr. Grose, you want to say something?

22 MR. GROSE: Actually, I was just going to say I
23 think that this conversation actually took place during the
24 trial. That's all I was going to say. I'm sorry.

25 THE COURT: All right. Can we go back and review

1 here testimony in that regard?

2 (WHEREUPON, previous testimony was reviewed by the
3 Court and attorneys.)

4 THE COURT: Now, Mr. Padgett, we've had an
5 opportunity to review some relative portions of the testimony
6 yesterday of Ms. Cole; is that right?

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

8 THE COURT: And do you wish to renew your objection?
9 My understanding is he's going into whether or not your client
10 is mentioned as having some business to do right before the
11 shooting occurred by Mr. Harrison.

12 MR. PADGETT: Yes, Your Honor, and she did say that.
13 she might have said that.

14 THE COURT: I think the closest she came to an
15 admission of her statement was that she might have said it. I
16 don't think that is an admission, and I believe she actually
17 denied having said it right before the trial. And, of course,
18 I believe that's what you were asking about, was in the
19 interview right before the trial.

20 MR. ANTHONY: It is, yes, sir.

21 THE COURT: So I'm going to overrule the objection.

22 MR. PADGETT: Thank you, Your Honor.

23 THE COURT: I'll allow him to go into those matters
24 that she did not admit.

25 MR. GROSE: I would just have a brief motion, Your

1 Honor.

2 THE COURT: Sure.

3 MR. GROSE: Pursuant to Rule 5(a)(2) of the South
4 Carolina Rules of Criminal Procedures if any written, recorded
5 statements of any type resulted from these conversations on
6 Monday and Tuesday of this week we move that they be produced
7 at this time since both of these witnesses have already
8 testified.

9 THE COURT: Are there any?

10 MR. ANTHONY: No, sir.

11 THE COURT: Okay. There are none.

12 MR. GROSE: So not even notes of these statements or
13 anything?

14 THE COURT: Is there any writing, any
15 memorialization of the conferences that you've had, I assume
16 with Ms. Cole. Is that the one you want?

17 MR. GROSE: Well, Ms. Cole and Mr. Adams. The ones
18 that took place this week.

19 MR. ANTHONY: I did not take notes when I talked to
20 Ms. Cole. I did not take notes when I talked to Mr. Adams.

21 THE COURT: Were there any recordings or written
22 transcripts of the tapes?

23 MR. ANTHONY: No, sir. No, sir.

24 THE COURT: Did they sign a written statement of any
25 kind?

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1 MR. ANTHONY: No, sir, they did not.

2 MR. GROSE: Now, Mr. Vandiver is shaking his head.

3 THE WITNESS: I have none either. I took no notes,
4 no nothing when I was listening to the conversation.

5 THE COURT: Apparently there's no written memoranda
6 of those conversations.

7 MR. GROSE: That's what I wanted to know.. Thank
8 you, Your Honor.

9 THE COURT: Now, anything further before we bring
10 the jury back?

11 MR. PADGETT: No, Your Honor.

12 THE COURT: All right. Bring the jury back.

13 (WHEREUPON, the jury enters the courtroom at
14 approximately 4:18 p.m.)

15 THE COURT: The record should reflect that the jury
16 has returned to the courtroom. We've had an opportunity to
17 review the relevant portions of Ms. Cole's testimony. I am
18 overruling the objection. I'll allow Mr. Anthony to go
19 forward with the questions concerning those portions of
20 Ms. Cole's prior statements that she either did not admit or
21 denied at the trial.

22 You may proceed.

23 MR. ANTHONY: Thank you, Your Honor.

24 BY MR. ANTHONY:

25 Q. Sergeant Vandiver, when you heard Ms. Cole speak

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1 about this incident yesterday morning and she told you that
2 Mr. Harrison came to her door, who did she mention
3 Mr. Harrison mentioned when he came to her door?

4 A. When Mr. Harrison came to her door she stated that
5 Mr. Harrison stated that me and Monte got to take care of some
6 business, lock your door.

7 Q. All right. I want to take you now up to yesterday
8 afternoon. Did you have any interaction with Mr. Harrison and
9 Mr. Haskell yesterday afternoon?

10 A. I did. I was one of the officers that transported
11 them.

12 MR. GROSE: Your Honor, I would renew our objection.
13 This is not relevant, and also our 403 objection.

14 THE COURT: Mr. Padgett, you wish to join in that as
15 well?

16 MR. PADGETT: I wish to join.

17 THE COURT: My prior ruling will stand. I have
18 found that the probative value of this testimony outweighs its
19 prejudicial effect and I will allow the State to continue.

20 BY MR. ANTHONY:

21 Q. What was the nature of the interaction you had with
22 them.

23 A. When court ended yesterday I was one of the officers
24 that transported Mr. Haskell and Mr. Harrison back to the
25 county jail. Their bonds ended when they started this trial.

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1 And Mr. Belcher was the county officer that went with me. We
2 left here, went straight to the jail. And in processing them
3 in out there, the officer to bring someone into the jail, it's
4 their responsibility to search that individual.

5 Q. So when you got in the -- first of all, when you got
6 to the jail, what area of the jail did you go to?

7 A. Went into the sally port where you pull your vehicle
8 in. They pulled the door down, which is secure once the door
9 comes down prior to going into the booking area.

10 Q. And once you got inside the booking area what
11 happened?

12 A. We went into the booking area. I had Mr. Harrison,
13 which I went to the end of counter with mine. Mr. Belcher had
14 Mr. Haskell. They were already processing one that another
15 deputy from the county brought in so we were trying to
16 separate and do three things at one time.

17 Q. And when you walked in did you notice Sherman
18 Norman, the man who testified yesterday, in the booking area?

19 A. I didn't.

20 Q. At some point did you come to notice him?

21 A. Yes, sir.

22 Q. And where was he?

23 A. He was in the booking area. Mike Belcher had gone
24 in before, and I'm with Mr. Haskell and them coming in. And
25 he said put Mr. Norman out of the way, and that's how I knew

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 Mr. Norman was present, in which they did put him in a holding
2 cell to keep a confrontation from going.

3 Q. And what did you do in regards to dealing with
4 Mr. Harrison when you brought him in?

5 A. When I brought him in I was the one that uncuffed
6 both of them and I took Mr. Harrison to the left side of the
7 counter, and Mr. Belcher had Mr. Haskell on the right side --

8 Q. Okay.

9 A. Right end of it.

10 Q. And what did you have to do as far as interacting
11 with Mr. Harrison?

12 A. If I'm the officer that's got custody of one it's my
13 responsibility to search that person and turn what I find over
14 to the booking officer.

15 Q. And did you do that?

16 A. I did.

17 Q. And in searching him what did you find?

18 A. In searching Mr. Harrison in his left front pocket I
19 retrieved \$792 in cash.

20 Q. Now, when you found that cash what did you do with
21 it? What did you have to do once you found that money?

22 A. I have to count it. I have the person I took it off
23 of to count it, also. I asked Mr. Harrison to watch me count
24 it. He had already laid out in hundred dollar stacks,
25 verified it, recounted it again. I told him that he had \$792.

RAYMOND VANDIVER - CROSS BY MR. PADGETT

1 Q. And then what happened? What did Mr. Harrison do
2 after that?

3 A. Mr. Harrison said I don't think you counted that
4 right. He picked the money back up, turned around, and at
5 that time, Mr. Norman was in cell two, which has a glass front
6 on it. He did waive the money in front of him like that, and
7 Mr. Norman held up four like this (indicated).

8 Mr. Harrison told him just be cool, just be cool,
9 and then he did not count the money, handed it back to me,
10 which I did recount it, and handed it to the jailer and the
11 jailer marked it up.

12 Q. And how far away was Mr. Norman from Mr. Harrison
13 when Mr. Harrison turned and spread the money?

14 A. Just from that pole right there to right here.
15 About three feet. Three to four.

16 MR. ANTHONY: Thank you. That's all on direct.

17 THE COURT: Mr. Padgett?

18 MR. PADGETT: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MR. PADGETT:

21 Q. Sergeant, did Mr. Haskell have anything to do with
22 this interaction?

23 A. As far as I know he had nothing. I did not hear --
24 if he did say anything I did not hear it because he was on the
25 other end of the counter.

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 Q. So the answer is no, he didn't have anything to do
2 with it?

3 A. From my testimony, no he has nothing to do with it.

4 MR. PADGETT: Thank you, Sergeant.

5 I have nothing further, Your Honor.

6 THE COURT: Mr. Grose.

7 CROSS-EXAMINATION

8 BY MR. GROSE:

9 Q. Other than that statement, be cool, you are not here
10 to testify about any statements that were exchanged between
11 either defendant and Mr. Norman?

12 A. Other than that I heard no conversations. It was a
13 motion and what I saw and what I heard when he said keep cool.

14 Q. And you are aware that Mr. Norman had been in
15 S. C. D. C. custody until this week?

16 A. Until he came up here I did not know he was in
17 S. C. D. C. I thought he was on the county farm out there.

18 Q. Well, he was wearing an S. C. D. C. uniform?

19 A. Ye, sir, I now he is. When he came up here in the
20 uniform I thought he was doing his time out here at the county
21 farm.

22 Q. But so you know now that he's been in the department
23 of corrections?

24 A. Right.

25 Q. And was brought back to this trial?

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 A. Correct.

2 Q. And you don't know what kind of canteen money or
3 anything like that he had available, do you?

4 A. No. The county picked him up from down there,
5 transported him. Other than seeing him here in the courtroom,
6 yesterday afternoon is the only time I've had any dealings
7 with him.

8 Q. And you know that over at that county jail having
9 money to buy food and other supplies off the canteen is --

10 A. I did not know whether he had any.

11 Q. Well, you know people want to be able to buy that,
12 don't you?

13 A. Right, I do know that. Yes.

14 Q. You testified about conversations that you and
15 Mr. Anthony had with Mr. Norman, I believe on Monday night?

16 A. That's correct?

17 Q. And conversations you had with Ms. Cole yesterday?

18 A. That's correct.

19 Q. Now, you have been in policing for a very long time?

20 A. Yes, sir.

21 Q. And I believe that your testimony the other day was
22 about 34 years?

23 A. 33.

24 Q. 33 years, with different agencies?

25 A. Correct.

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 Q. And you've had a fair bit of training to be a police
2 officer?

3 A. Correct.

4 Q. And there's procedures that go along with being a
5 police officer, right?

6 A. That's correct.

7 Q. And one of the things that we've had some discussion
8 in this courtroom is about, you know, incident reports and
9 documenting things, right?

10 A. Correct.

11 Q. And I'm not going to go into the substance of any of
12 this but this is what's been marked Defendant's Exhibit 1 for
13 identification, right?

14 A. That's correct.

15 Q. And that's the incident report that you did
16 originally on February 10th of 2004?

17 A. That's correct.

18 Q. And documenting what witnesses had told you at that
19 time, correct?

20 A. In talking with all of them I summated one --

21 Q. Did a summary?

22 A. Right. Just a summary of what everybody said.

23 Q. And you all have forms at the police department, and
24 I'm not going into the substance of these, but I'm giving you
25 Defendant's Exhibit 2 for identification only and State's

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 Exhibit 8 into evidence. Those are forms for writing down --
2 where people write down statements?

3 A. That's correct.

4 Q. And sign statements?

5 A. Correct.

6 Q. To document things?

7 A. Correct.

8 Q. And those are things that can be put in the file?

9 A. That's correct.

10 Q. And preserved?

11 A. That's correct.

12 Q. And given to the prosecutor?

13 A. That's correct.

14 Q. And opposing counsel?

15 A. That's correct.

16 Q. And you also have the ability to tape record
17 statements, don't you?

18 A. Do we have what?

19 Q. The ability to tape record statements?

20 A. That we do, yes, sir.

21 Q. I mean, a device even simpler than what we've got up
22 here that you just click on, you hear the questions asked, you
23 hear the answers that were given.

24 A. That is correct.

25 Q. You also have, you know, just simple paper, right?

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 A. That's correct.

2 Q. I mean, being a patrol officer you probably carry a
3 pad of paper with you all the time, right?

4 A. Most of the time. Something to write on.

5 Q. So if you get a witness you can write down their
6 name, like things like date of birth, age, stuff like that,
7 right?

8 A. Uh-huh.

9 Q. Summary of what they say?

10 A. If I know them I may not write their name down. You
11 know, if I know they are in the computer I just take it at
12 that.

13 Q. But you can take notes that you can eventually put
14 into an incident report later?

15 A. Yes.

16 Q. And, I mean, you've got one, two, three pens in your
17 pocket right now?

18 A. That's correct.

19 Q. Now, this first conversation that you are talking
20 about with Mr. Norman where Mr. Anthony was present was Monday
21 night?

22 A. That's correct.

23 Q. At the jail?

24 A. That's correct.

25 Q. There's not an incident report from that, is there?

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 A. No.

2 Q. There's not a handwritten statement from that?

3 A. No.

4 Q. There's not a tape recording of that conversation?

5 A. Nope.

6 Q. There's not any notes that you made of that?

7 A. No.

8 Q. You didn't see Mr. Anthony make any note of that?

9 No, you didn't?

10 A. There is not.

11 Q. And so you are here talking about your recollection
12 of that conversation?

13 A. The firsthand. He's telling me and the solicitor.

14 Q. What you recall of it?

15 A. Right.

16 Q. There's no notes that you can give to me to look at?

17 A. No. No.

18 Q. Or statements or anything like that?

19 A. No.

20 Q. Then the conversation with Ms. Cole was in that
21 room, conference-type room out these back doors?

22 A. That's correct.

23 Q. And, again, there's no incident report from that?

24 A. No, sir.

25 Q. There's no tape recording of that?

RAYMOND VANDIVER - CROSS BY MR. GROSE

1 A. No, sir.

2 Q. We can't hear the questions that were asked or the
3 answers that were given, can we?

4 A. No, sir.

5 Q. There's no notes from that?

6 A. No, sir.

7 Q. I mean, you've had those pens in your pocket in your
8 uniform all week this week?

9 A. That's correct.

10 Q. You didn't see Mr. Anthony who was there making any
11 notes, did you?

12 A. No, sir.

13 Q. So, again, we are relying on, you're testifying
14 about your recollection of that?

15 A. That's correct.

16 Q. And there's nothing that you can give to me that was
17 made contemporaneously with those conversations?

18 A. That was made what?

19 Q. Anything that you can get me, notes or anything that
20 was made contemporaneous with the conversations with these two
21 witnesses?

22 A. I cannot. There was none taken.

23 MR. GROSE: Nothing further. Thank you, Your Honor.

24 THE COURT: Redirect?

25 MR. ANTHONY: Yes, sir.

RAYMOND VANDIVER - REDIRECT BY MR. ANTHONY

1 REDIRECT EXAMINATION

2 BY MR. ANTHONY:

3 Q. If you know, is it customary to take another
4 statement from somebody this close to a trial of what they
5 testified at trial?

6 A. If I was taking a statement from them I would go
7 ahead and advise them of their rights again because what they
8 may tell me this time it could incriminate theirsself or it
9 could incriminate somebody else.

10 If later on down the road I'm reading that statement
11 and they say I was not advised of my rights and I was going to
12 be charged, well, you were advised of your rights because you
13 didn't have to tell me anything, you didn't have to say
14 anything, do anything. You can have a lawyer present with you
15 if you want to, and they will sign that form, the date and
16 time it was read to them and they will initial off each
17 sentence that they are given.

18 Q. But Ms. Cole and Mr. Norman had both given a
19 statement; is that correct?

20 A. She gave a verbal statement to us.

21 Q. And she had given statements before?

22 A. Yes, she had given statements before. That's
23 correct?

24 Q. And Mr. Norman had given a statement in this case
25 before, too?

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 A. Yes, he did.

2 Q. And where did Mr. Norman have lunch yesterday
3 relative to where --

4 MR. GROSE: Your Honor, that's beyond the scope of
5 cross. I don't think either of us went into that and that
6 wasn't gone into on direct.

7 THE COURT: Well, they were asked again on cross --
8 he was asked on cross about what he saw between the two of
9 them.

10 MR. GROSE: This was what happened in the evening
11 time yesterday, Your Honor.

12 THE COURT: I'll sustain the objection.

13 MR. GROSE: Thank you.

14 MR. ANTHONY: That's all on redirect.

15 THE COURT: Recross?

16 MR. PADGETT: No, Your Honor.

17 MR. GROSE: No, sir.

18 THE COURT: You may step down, sir.

19 The State can call its next witness.

20 MR. ANTHONY: We call Detective Belcher.

21 THE COURT: Sir, come forward and be sworn.

22 MICHAEL BELCHER, after having been duly sworn,
23 testified as follows:

24 DIRECT EXAMINATION

25 BY MR. ANTHONY:

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 Q. Would you state your name, please.

2 A. Michael Belcher.

3 Q. And, Mr. Belcher, how are you employed?

4 A. With the Abbeville Sheriff's Department.

5 Q. And what is your job there?

6 A. Investigator.

7 Q. How long have you been an investigator there?

8 A. Probably 10, 11 years, approximately.

9 Q. Okay. And what was your responsibility yesterday?

10 A. Yesterday I was court officer and security.

11 Q. And did you have any responsibilities regarding or
12 in relation to Mr. Harrison and Mr. Haskell yesterday
13 afternoon?

14 A. Yes, I did.

15 Q. And what were those responsibilities?

16 A. To transport them back to the detention center.

17 Q. And when you did that -- did anybody assist you in
18 doing that?

19 A. Yes, sir.

20 Q. Who did that?

21 A. Sergeant Vandiver with the Abbeville Police
22 Department.

23 Q. And when you got to the detention center with
24 Mr. Harrison and Mr. Haskell what happened? What did you do?
25 Where did you take them?

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 A. When I got there we pulled in the sally port. A
2 sally port is an area where inmates --

3 MR. GROSE: Your Honor, I'm going to object to this,
4 401, 402 relevance, and 403.

5 THE COURT: My prior ruling with stand. I assume
6 you join in that as well, Mr. Padgett?

7 MR. PADGETT: I do, Your Honor.

8 THE COURT: My prior ruling will stand. My ruling
9 has been that the probative value of this testimony outweighs
10 its prejudicial effect and it is relevant.

11 You may proceed.

12 BY MR. ANTHONY:

13 Q. Where did you go when you got them there?

14 A. To the detention center.

15 Q. Where did you go at the detention center?

16 A. In the sally port area.

17 Q. Okay. And once you got to the sally port, what
18 happened then?

19 A. Once I got them to the sally port, as I was walking
20 into the door I saw one other witness that was in this case.

21 Q. And who was that?

22 A. Last name Norman.

23 Q. And where was he?

24 A. He was inside the booking area in front of the desk?

25 Q. And where was Mr. Norman? What eventually happened

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 with him?

2 A. At the time that I saw him I kind of got in front of
3 the defendants that I was bringing in because I didn't want
4 that contact.

5 Q. And where was Mr. Norman? What was done with him as
6 you were bringing him in?

7 A. He was standing inside the booking area in front of
8 the desk there.

9 Q. And where did he go after that?

10 A. Once I got there I bring him to the jail official.
11 He was then placed in a holding cell.

12 Q. And then once Mr. Norman was placed in a holding
13 cell what did you do in regards to Mr. Harrison or
14 Mr. Haskell?

15 A. At that time, I'm not sure whether myself or
16 Sergeant Vandiver removed the restraint. I then kind of spoke
17 with the jail official and told them that Mr. Norman was a
18 witness and that I was bringing two in that was in our
19 custody.

20 Q. Okay. And after you told the jail official that
21 what did you do?

22 A. At the time, Mr. Harrison kind of went around to the
23 booking station and began to count a large sum of cash.

24 Q. And who was dealing with Mr. Harrison?

25 A. At the time, he was by himself.

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 Q. Where was Sergeant Vandiver?

2 A. He was either standing to my left or either behind
3 me. I'm not sure.

4 Q. Okay. And once Mr. Harrison walked over there did
5 anything call your attention to him or to Mr. Norman?

6 A. Yes, something did call my attention. That's
7 correct.

8 Q. What was that?

9 A. I heard a voice, and I kind of looked to my left and
10 heard Mr. Norman shouting back at Mr. Harrison.

11 Q. And what did Mr. Harrison do?

12 A. At the time, he kind of raised up his arm and then
13 began to say that you said enough, you said enough.

14 Q. Mr. Harrison said that?

15 A. Yes, sir.

16 Q. To Mr. Norman?

17 A. Yes, sir.

18 Q. Did you hear what Mr. Norman said to Mr. Harrison in
19 the first place?

20 A. I heard something. I couldn't make out, you know,
21 what was said.

22 Q. Well, after Mr. Harrison turned to Mr. Norman and
23 said you said enough, you said enough, did Mr. Norman say
24 anything back to Mr. Harrison?

25 A. Yes, sir. He then asked for 20 dollars for the

MICHAEL BELCHER - DIRECT BY MR. ANTHONY

1 canteen.

2 Q. Mr. Norman asked Mr. Harrison for 20 dollars --

3 A. That's correct.

4 Q. -- for the canteen? All right. And what did
5 Mr. Norman do -- or what did Mr. Harrison do in response to
6 that?

7 A. At the time, he didn't reply. The other defendant,
8 Mr. Haskell, then kind of spoke up and said go ahead and leave
9 him 20 dollars. Leave him 20 dollars.

10 Q. And what happened after that?

11 A. At that time then the jail official then spoke up
12 and said he couldn't leave him anything.

13 Q. And so did Mr. Norman say anything after that?

14 A. He said something about he was going to leave him
15 his mailing address.

16 Q. Mr. Norman said he would leave his mailing address?

17 A. Yes, sir.

18 Q. And going back a little earlier in the day, are you
19 aware of where Mr. Norman had lunch yesterday in relation to
20 where Mr. Harrison or Mr. Haskell had lunch?

21 A. Like I say, once I transported them back to the
22 detention center I assume they might have had lunch in the
23 holding cell.

24 MR. GROSE: Objection, lack of personal knowledge.

25 THE COURT: Sustained.

MICHAEL BELCHER - CROSS BY MR. PADGETT

1 MR. GROSE: Move to strike.

2 THE COURT: I'll strike that response and let him
3 rephrase the question.

4 BY MR. ANTHONY:

5 Q. Did you see where Mr. Harrison and Mr. Haskell had
6 lunch?

7 A. I didn't.

8 MR. ANTHONY: That's all on direct.

9 CROSS-EXAMINATION

10 BY MR. PADGETT:

11 Q. Would you please describe the area in which you were
12 in with Mr. Haskell and Sergeant Vandiver and Mr. Harrison,
13 please. How big is it?

14 A. It's not that big. I mean, I can sit the booking
15 area inside the courtroom, a little courtroom right here.

16 Q. So from maybe --

17 A. About from where you are standing at is about the
18 distance I was from the defendant.

19 Q. Were you in a position to observe what went on in
20 the booking area?

21 A. Yes, sir.

22 Q. Did you observe any actions of Mr. Haskell other
23 than the comment about the money, about 20 dollars?

24 A. Other than, you know, the comment he made.

25 Q. And when you said that you heard a noise coming from

MICHAEL BELCHER - CROSS BY MR. GROSE

1 somewhere else, you didn't -- do you know what that noise was?

2 Could you make out what that --

3 A. It was someone talking, saying something.

4 Q. And could you make out what was said?

5 A. No, sir. From time to time when officers come in
6 there you got inmates would shout stuff back to the officers,
7 you know, saying they might want to talk to them or something.

8 MR. PADGETT: I don't have anything else, Your
9 Honor.

10 THE COURT: Mr. Grose?

11 MR. GROSE: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. GROSE:

14 Q. Are you aware that Mr. Norman was in S. C. D. C.
15 custody, the department of corrections custody until this week
16 for this trial?

17 A. I didn't know until he come in yesterday.

18 Q. You know that now?

19 A. Yes, sir.

20 Q. And he's being held at the Abbeville Jail during the
21 trial?

22 A. I know he was yesterday. I'm not sure if they
23 transported him back to S. C. D. C.

24 Q. And you don't know what he was allowed to bring with
25 him from the department of corrections or not allowed to bring

MICHAEL BELCHER - CROSS BY MR. GROSE

1 with him, do you?

2 A. No, sir.

3 Q. But you know that whether somebody is in the
4 department of corrections or in a jail that they often times
5 want money to be able to buy off the canteen?

6 A. Well, I'm not sure. I know they have their own
7 fund. Whether he bring it with him, that I don't know.

8 Q. So you don't know if he had any money from
9 S. C. D. C.?

10 A. No, sir.

11 Q. And you know that people want to buy stuff off the
12 canteen, don't you?

13 A. Yes, sir.

14 Q. I mean, food is provided in the form of meals at the
15 jail, right?

16 A. Right.

17 Q. But you can buy things like potato chips and candy
18 off the canteen?

19 A. That's correct.

20 Q. But that requires money whereas the meals don't?

21 A. That's correct.

22 Q. And 20 dollars is not an uncommon amount for
23 somebody to have on a canteen-type thing?

24 A. I mean, I don't know what's a common amount. You
25 know, some have had more than that. I'm not sure.

MICHAEL BELCHER - CROSS BY MR. GROSE

1 Q. Okay. And all that you heard about as far as any
2 amount of money goes was 20 dollars, right?

3 A. And when I saw the defendant counting.

4 Q. But you saw that Mr. Harrison had money?

5 A. Right.

6 Q. But the only money that you have any knowledge of
7 that was possibly going to change hands was 20 dollars for a
8 canteen?

9 A. That's correct.

10 Q. And you didn't hear everything that took place in
11 this conversation?

12 A. No, sir.

13 Q. And it was a small area?

14 A. That's correct.

15 Q. And as far as you know there's nothing more going on
16 here than canteen money?

17 A. Like I say, I went there to let the jail official
18 know that there was a potential witness and that they may need
19 to separate. I didn't want any confrontation to happen. So
20 that was my main concern in talking with the jail official.

21 Q. And as far as you know, though, nothing more is
22 involved here than canteen money? That's what you heard?

23 A. I mean, yes, that's what I heard, then what the
24 other defendant said.

25 Q. Which was just about canteen money?

MICHAEL BELCHER - REDIRECT BY MR. ANTHONY

1 A. That and plus you said enough.

2 Q. About canteen money?

3 A. Well, I didn't say with canteen money. It could be
4 anything.

5 MR. GROSE: Nothing further.

6 THE COURT: Redirect?

7 MR. ANTHONY: Yes, sir.

8 REDIRECT EXAMINATION

9 BY MR. ANTHONY:

10 Q. Was it ever characterized by anybody in the
11 conversation as canteen money?

12 A. No, sir.

13 Q. You never heard that term used?

14 A. No. He just said, you know, leave him 20 dollars.

15 Q. Okay. They were just asking for money?

16 A. Right.

17 Q. Mr. Norman was just asking for money?

18 A. Right.

19 MR. ANTHONY: That's all.

20 RE CROSS-EXAMINATION

21 BY MR. GROSE:

22 Q. And if they left 20 dollars with the --

23 THE COURT: Mr. Padgett normally would go.

24 MR. GROSE: I'm sorry.

25 MR. PADGETT: That's fine, Your Honor. I have

MICHAEL BELCHER - RECROSS BY MR. GROSE

1 nothing.

2 THE COURT: Now recross, Mr. Grose.

3 BY MR. GROSE:

4 Q. The jail keeps an account for all the inmates,
5 right?

6 A. That's correct.

7 Q. And you can access that account to buy money off the
8 canteen -- or to buy stuff off the canteen?

9 A. Right. I think they go through the jail official to
10 get it and they just mark it off. They don't never receive
11 the money.

12 Q. Right. The money goes into an account?

13 A. Right.

14 Q. And if you want a candy bar and that candy bar costs
15 a dollar you take a dollar off?

16 A. That's correct.

17 Q. So you start with 20 dollars, you buy a dollar candy
18 bar, you have 19?

19 A. Well, I didn't say you start with 20 dollars.
20 That's what you started off with.

21 Q. Well, hypothetically.

22 A. Okay.

23 Q. And is there anything else that this account is used
24 for at the jail?

25 A. All I know is canteen.

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 MR. GROSE: Nothing further.

2 THE COURT: You may step down, sir.

3 MR. ANTHONY: May we approach?

4 THE COURT: Yes, you may.

5 (WHEREUPON, a bench conference was had.)

6 MR. ANTHONY: Your Honor, the State would ask to
7 briefly recall Sergeant Vandiver.

8 THE COURT: Sir, return to the stand. Sir, I'll
9 remind you again that you've been placed under oath for
10 purposes of this trial. You remain under oath at this time.

11 THE WITNESS: Yes, sir.

12 DIRECT EXAMINATION

13 BY MR. ANTHONY:

14 Q. Are you aware of where Mr. Harrison and Mr. Haskell
15 had lunch yesterday relevant to where Mr. Norman did?

16 MR. GROSE: Objection. Not relevant, 401, 402; 403
17 prejudicial effect outweighs the probative value; lack of
18 personal knowledge and speculation under Rule 602.

19 THE COURT: Similar grounds?

20 MR. PADGETT: Join in, Your Honor.

21 THE COURT: I will overrule on all grounds except
22 for the question of lack of personal knowledge. I'll ask that
23 you lay a foundation as to his knowledge.

24 BY MR. ANTHONY:

25 Q. Well, the question was is he aware of where they had

RAYMOND VANDIVER - DIRECT BY MR. ANTHONY

1 lunch yesterday, if you know?

2 A. When we broke for the evening lunch yesterday myself
3 and Officer Belcher transported both of them to the county
4 jail for lunch. We were to be back at 2:30. Mr. Belcher and
5 I came back, went to the Rough House and ate a hot dog. We
6 returned back to the jail to pick them up, assuming they had
7 already eaten, and brought them back to the courtroom.

8 Q. And where were Mr. Harrison and Mr. Haskell in
9 relation to Mr. Norman when you went back to the jail to pick
10 them up?

11 A. I did not see Mr. Norman at lunchtime yesterday. I
12 saw they put them in cell two, and we turned around and went
13 back out so we could eat and be back by 2:30.

14 MR. GROSE: We renew or objection, Your Honor.

15 THE COURT: I'll sustain the objection.

16 MR. ANTHONY: I mean, just if I could just ask him
17 one more question.

18 THE COURT: I'll let you ask one more question,
19 going toward the foundation.

20 MR. ANTHONY: Yes, sir.

21 BY MR. ANTHONY:

22 Q. I just want to make sure I understand. Do you know
23 where Mr. Norman had lunch yesterday?

24 A. He was taken to the L. E. C., the same place that we
25 took Mr. Haskell and Mr. Harrison to have lunch because their